father, taking into account her ability to contribute. Ramp v. Ramp, 11 FSM R. 630, 643 (Pon. 2003).

When under the separation agreement, the father is only obligated to support the parties' adult children while they are pursuing post secondary education and since a child has re-enrolled in college and the father has now resumed paying her expenses and another has left school, these two do not entitle the mother to any measure of relief. Ramp v. Ramp, 11 FSM R. 630, 643 (Pon. 2003).

A requested child support order will be denied as redundant when it is already in the parties' court-approved separation agreement and past history shows that the father has complied with it. Ramp v. Ramp, 11 FSM R. 630, 643-44 (Pon. 2003).

– Divorce

National courts can exercise jurisdiction over divorce cases where there is diversity of citizenship although domestic relations are primarily the subject of state law. Youngstrom v. Youngstrom, 5 FSM R. 335, 336 (Pon. 1992).

Since a divorce case involves the status or condition of a person and his relation to other persons the law to be applied is the law of the domicile. Youngstrom v. Youngstrom, 5 FSM R. 335, 337 (Pon. 1992).

When a divorced couple is jointly responsible on a promissory note, no agreement they could make between them could possibly prevent the creditor from pursuing its claims against either or both of them, and since the issue of whether one of the defendants could have relieved himself or herself from responsibility to the creditor could not have been litigated in the divorce proceeding, the creditor cannot be precluded from litigating that issue. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

A divorcing couple is free to enter into whatever agreement they choose as to who between the two of them will be responsible to repay a bank loan. However, such an agreement can have no effect on bank's right to seek repayment of the loan from either or both of them. Bank of the FSM v. Hebel, 10 FSM R. 279, 286 (Pon. 2001).

Title 6, section 1622, FSM Code provides that any decree as to custody or support of the parties' minor children is subject to revision by the court at any time, but does not provide for continuing jurisdiction over property issues. Ramp v. Ramp, 11 FSM R. 630, 633 n.1 (Pon. 2003).

Because a divorce case involves the parties' status or condition and their relationship to others, the law to be applied is that of the domicile. Thus in a divorce between a Pohnpeian, who now resides in Hawaii, and an American citizen who resides in Pohnpei and the parties lived in Pohnpei during their marriage, the court will apply Pohnpei substantive law. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

– Marriage

A marriage procured and induced by fraud is void ab initio and the party whose consent was so procured is entitled to a judgment annulling the marriage. Burrow v. Burrow, 6 FSM R. 203, 204-05 (Pon. 1993).

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 prisoner's right to marry has not been violated when the wedding ceremony will take place at the Kosrae state jail because the prison has authority to regulate a prisoner's wedding ceremony, including the regulation of the ceremony's time and place. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A prisoner's rights to privacy and association, including intimate association, do not include the right to

be married at his family home. The prisoner's right to privacy and association are necessarily limited during his period of imprisonment. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

Since a prisoner's rights to marry, privacy and association are not violated by the jailer's restriction of the location of prisoner's wedding ceremony to the Kosrae state jail, there is no unlawful restraint of the prisoner's liberty, and thus, a petition for the writ of habeas corpus to be married at home will be denied. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 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).

Kosrae customary practice is to hold wedding ceremonies at a church or at the home of the bride or groom. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

Considering the state's geographic and social configuration, the customary importance of marriages in the state and its effects upon the family and community relationships in Kosrae, the customary location of wedding ceremonies in Kosrae and the absence of any held at the state jail, a request for a prisoner to be married outside of the jail may be granted, in part, upon fulfillment of conditions. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

When a woman, living together with a man for three years, has a title that is taken from the man's Pohnpeian title and that is derived from being his wife, the Social Security Board's decision to cease spousal survival benefit payments to her because she has remarried will be upheld when the evidence submitted on record, taken in its entirety, is competent, material, and substantial and supports the Board's findings in denying benefits to her based on her remarriage. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 200-01 (Pon. 2015).

The Pohnpei Supreme Court recognizes three types of marriages: 1) statutory civil marriage under 39 TTC 51; 2) statutory "religious marriage" commonly known in Pohnpei as "inou sarawi" meaning (a sacrosanct) and 3) statutory customary marriage known in Pohnpei as "pwopwoud en tiahk en sahpw." Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271-72 (Pon. 2015).

Customary marriage is based on a flexible standard and is not established by a single test or a defined set of parameters because the solemnization of a customary marriage can take many forms. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 273 (Pon. 2015).

– Probate

State court, rather than national courts, should normally resolve probate and inheritance issues especially where interests in land are at issue. In re Nahnsen, 1 FSM R. 97, 97 (Pon. 1982).

Probate matters are statutory and involve proceedings in rem, that is, jurisdiction based on court control of specific property. In re Nahnsen, 1 FSM R. 97, 103 (Pon. 1982).

The FSM Supreme Court is empowered to exercise authority in probate matters where there is an independent basis for jurisdiction under the Constitution. In re Nahnsen, 1 FSM R. 97, 104 (Pon. 1982).

The power to regulate probate of wills or inheritance of property is not "beyond the power of a state to control" within the meaning of article VIII, section 1 of the Constitution and is consequently a state power. In re Nahnsen, 1 FSM R. 97, 107 (Pon. 1982).

Nothing about the power to regulate probate of wills or inheritance of property suggests that these are beyond the power of a state to control. In re Nahnsen, 1 FSM R. 97, 107 (Pon. 1982).

The Ponape District Court, although not granted jurisdiction over land matters, may be given the opportunity to hear certified questions from the FSM Supreme Court on issues in a probate case involving land in order to further the intent of the framers that local decision-makers play a part in decisions of a local nature. In re Nahnsen, 1 FSM R. 97, 110-12 (Pon. 1982).

When jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative power of states (e.g., probate, inheritance and land issues) may be involved. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 392-93 (Pon. 1984).

An assignor must be able to inherit the assigned expectancy from the source in order for his assignment of expectancy to be effective. Etscheit v. Adams, 6 FSM R. 365, 382 (Pon. 1994).

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).

Where Trust Territory law in 1956 did not allow non-citizens to acquire land except as heirs or devisees a deed from a landowner to her non-citizen children is invalid because the grantor was still living, and therefore her children were neither heirs or devisees. Etscheit v. Adams, 6 FSM R. 365, 385-86 (Pon. 1994).

Heirs are those persons who acquire ownership upon someone's death. Thus the later issuance of a Certificate of Title to "heirs" confirms their earlier ownership of the property. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 49 n.8 (App. 1995).

A probate appeal may be remanded when a number of essential issues and facts have yet to be established and the ends of justice require that additional matters must be considered, including whether the appellants are proper parties to the proceedings and who are the beneficiaries or the exact persons entitled to share in the assets of the estate and what the proposed division of the assets is. In re Malon, 8 FSM R. 591, 592 (Chk. S. Ct. App. 1998).

The terms of the will and the clear intent of the testator control who shall be in actual physical control of the land for the purpose and its preservation and for the purpose of granting its reasonable use by those persons having a lawful right to the use of the land. In re Ori, 8 FSM R. 593, 594 (Chk. S. Ct. App. 1998).

Because the Chuuk Constitution requires the courts to make decisions consistent with Chuukese customs and traditions, Chuukese custom and tradition may prevail over the provisions of a holographic will in deciding who may enter upon land for the purpose of making reasonable use thereof. In re Ori, 8 FSM R. 593, 595 (Chk. S. Ct. App. 1998).

A will written out by request by someone else does not constitute a holographic will within the meaning of 13 TTC 6, or one in the handwriting of the testator, but one prepared by another at the testator's direction within the meaning of 13 TTC 5. Elaija v. Edmond, 9 FSM R. 175, 181 (Kos. S. Ct. Tr. 1999).

There were no clearly ascertainable statutory requirements for the execution of a valid will in Kosrae in 1962. Elaija v. Edmond, 9 FSM R. 175, 181-82 n.3 (Kos. S. Ct. Tr. 1999).

A person may only transfer such title to land as that person lawfully possesses. So when someone did not own a parcel, he did not have the authority to transfer title and distribute it to his children through his will. Anton v. Heirs of Shrew, 10 FSM R. 162, 165 (Kos. S. Ct. Tr. 2001).

It is in an estate's best interests that a trustee who resides in Kosrae be appointed to manage the lease of a land parcel located in Kosrae, so that negotiations, collection and distribution of the lease payments

can easily take place in Kosrae, where most of the heirs live; and so that the trustee be able to quickly respond to any issues or problems which may arise during the lease, including seeking court assistance. In re Estate of Melander, 12 FSM R. 82, 83 (Kos. S. Ct. Tr. 2003).

Even if a will is valid and judicially recognized as such, this does not automatically make every bequest in that will valid. For a bequest to be valid, the testator must, at the time of his death, actually own the property being bequeathed. A person can only transfer such title to land as he validly owns. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

When the Kosrae State Court did not abuse its discretion in concluding that the Land Commission's findings that the testator had not actually acquired ownership of the land were not clearly erroneous, any further consideration of the will was pointless once it has been determined that the testator did not own the land mentioned in the will. Anton v. Cornelius, 12 FSM R. 280, 288 (App. 2003).

In general, a probate court is not a court of equity, but it is recognized that a probate court may apply principles of equity in determining issues brought before it. In re Estate of Setik, 12 FSM R. 423, 428 (Chk. S. Ct. Tr. 2004).

When the court has determined the portion of a decedent's estate that one heir is to inherit, the court may permit all the heirs to agree to divide the estate to satisfy that heir's judgment. In re Estate of Setik, 12 FSM R. 423, 431 (Chk. S. Ct. Tr. 2004).

The filing requirements in probate proceedings, specifically require that all heirs be listed in the verified petition. The term "heirs" include the decedent's surviving adopted children. In re Skilling, 12 FSM R. 447, 449 (Kos. S. Ct. Tr. 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).

Counsel is expected to know legal and procedural requirements for court filings and proceedings and is required to provide competent representation to a client, which includes the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. It is counsel's duty to complete all preparation necessary to represent a petitioner in a probate proceeding, including investigating and obtaining all necessary facts to prepare the verified petition. In re Skilling, 12 FSM R. 447, 449 (Kos. S. Ct. Tr. 2004).

A person may only transfer such title to land as that person lawfully possesses. If the grantor had no authority to bequeath the property, plainly the devisees acquired no title to the property. Benjamin v. Youngstrom, 13 FSM R. 72, 75 (Kos. S. Ct. Tr. 2004).

When the plaintiffs' predecessor in interest no longer held title to the parcel in April 2002, when he wrote his will, he could not transfer any interest in the parcel, by will or otherwise, to the plaintiffs or to anyone else and therefore the plaintiffs do not have likelihood of success on the merits. This factor weighs strongly in the defendants' favor. Benjamin v. Youngstrom, 13 FSM R. 72, 75-76 (Kos. S. Ct. Tr. 2004).

Pursuant to state law, when the Land Court found that Lonno was the "previous land owner" of the subject parcels and that Lonno died without leaving a will, all heirs of Lonno were therefore interested parties to the parcels. Heirs of Lonno v. Heirs of Lonno, 13 FSM R. 421, 423 (Kos. S. Ct. Tr. 2005).

When a person by virtue of a quitclaim deed that he executed and delivered, no longer owned a parcel on the date that he executed his will, he had no rights, interest or title to the parcel and could not bequeath the parcel in his will. Benjamin v. Youngstrom, 13 FSM R. 542, 549-50 (Kos. S. Ct. Tr. 2005).

Upon the undisputed owner's death, title to land transfers pursuant to a valid will to the devisees specified in the will, or if there is no valid will, to the owner's heirs, according to intestate succession. George v. Abraham, 14 FSM R. 102, 106 (Kos. S. Ct. Tr. 2006).

In Kosrae, an oral will is valid only if made by a person in imminent peril of death, whether from illness or otherwise, and if 1) the testator dies as a result of the peril and 2) the testator declares it to be his will before two disinterested witnesses and the court receives the will for probate within six months following the testator's death unless for good cause the court permits it to be submitted later. An oral will may dispose of personal property only and to an aggregate value not exceeding one thousand dollars. George v. Abraham, 14 FSM R. 102, 107-08 (Kos. S. Ct. Tr. 2006).

In Kosrae, an oral will neither revokes nor changes an existing written will. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

In Kosrae, real property, including land, may not be disposed of by oral will. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

All wills executed after the Kosrae State Code's October 1, 1985 effective date must comply with Title 16, Chapter 2. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 289 (Kos. S. Ct. Tr. 2006).

Oral wills may only dispose of personal property only and must meet other requirements. Oral wills may not dispose of real property or land, and any oral will which disposes of land or interests in land is invalid to that land. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 289 (Kos. S. Ct. Tr. 2006).

Only if a life insurance policy had no designated or named beneficiary, would the policy benefits be payable to his estate to be distributed through probate to his heirs or devisees. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

As the purpose of probate is not to determine issues of ownership, probate petitioners should resolve issues regarding land ownership, if any, before they proceed with probate. Otherwise, the probate proceeding may be subject to collateral attack from those who may claim an interest in the property and who were not given notice or made a party to this proceeding. In re Land Noota, Neppi, 15 FSM R. 518, 519 (Chk. S. Ct. Tr. 2008).

When it was established that a decedent's real property at issue was lineage land, it continues to be property of the lineage, and is not part of the decedent's estate. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

Title to land is not generally subject to probate but transfers pursuant to a valid will to the devisees specified in the will, or if there is no valid will, to the owner's heirs according to intestate succession. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

Social security benefits are not subject to probate, as the Social Security Board, not the court, has initial jurisdiction over applications for social security benefits, whether by a surviving spouse or surviving children. The procedure for such applications is set forth in the Social Security Act. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

When the sole owner of land dies his fee simple interest would be inherited by his multiple heirs who would hold that fee simple estate as a tenancy in common. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 372 n.1 (Kos. S. Ct. Tr. 2009).

One does not have heirs until one has passed away. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 324 n.2, 325 (Kos. 2011).

Under the Pohnpei Intestate Succession Act of 1977, ½ of an intestate decedent's estate is to be distributed to the surviving spouse and the rest (½) is to be divided equally among the decedent's children.

Pohnpei probate courts will deviate from this statutorily-required division of an intestate decedent's assets only when a family agreement has been presented to and approved by the probate court. Mori v. Hasiguchi, 19 FSM R. 16, 19 n.1 (Chk. 2013).

An improper sale by a fiduciary (estate administrator) that has already taken place can be vacated, but not if the buyer was a bona-fide purchaser because, when property of an estate has been transferred to a bona-fide purchaser for value, the latter is protected even if the fiduciary was acting improperly. The beneficiaries' remedy is not to void the transaction but to seek damages for the personal representative's breach of his fiduciary duty. Mori v. Hasiguchi, 19 FSM R. 16, 22 (Chk. 2013).

A bona fide purchaser for value and without notice, should be as protected buying shares from the distributee as he would have been buying them from the fiduciary administrator, especially when it was the same person. Mori v. Hasiguchi, 19 FSM R. 16, 23 (Chk. 2013).

Someone who has wrongfully sold property to a bona fide purchaser for value without notice can be compelled to buy a replacement if this is reasonably possible. Sometimes damages are the only appropriate remedy. Either way, the rightful heir's remedy is against estate administrator. If it were any other way, then anyone who ever bought property after it had been inherited and distributed by a Pohnpei probate court final order could never be certain that his or her title would not be taken away by a future final probate court order that the distributee seller was not the proper distributee. Mori v. Hasiguchi, 19 FSM R. 16, 23 (Chk. 2013).

The FSM Supreme Court is empowered to exercise authority in probate matters when there is an independent basis for jurisdiction under the Constitution, and the court has found such an independent basis when there was a diversity of citizenship among the heirs. In re Estate of Edmond, 19 FSM R. 59, 61 (Kos. 2013).

The Constitution does not mandates such a sweeping expansion of the FSM Supreme Court's jurisdiction over probate cases as would result if creditors were considered parties for jurisdictional purposes. The better view is that only the heirs, potential heirs, or devisees in a probate case be considered parties for jurisdictional purposes and that, in the usual case, the decedent's creditors would file their claims in a state court probate proceeding. This view comports with the proper respect due to the state courts as courts of general jurisdiction that should normally resolve probate and inheritance issues. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

For jurisdictional purposes, the parties in a probate case are those who have a claim that they are heirs. Creditors are not to be considered parties for jurisdictional purposes. This reasoning is suitable for the FSM. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

A creditor may open a probate case in state court without destroying the state court's jurisdiction because a creditor is not an heir. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

The probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes the national courts from disposing of property that is in a state probate court's custody. But it does not bar the national courts from adjudicating matters outside of those confines and otherwise within national court jurisdiction. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 430 (App. 2014).

Interference with the property of the estate, and the probate exception should be read narrowly so as not to bar national court jurisdiction over preliminary matters, or ancillary matters, such as in personam actions and equitable intervention for fraud, maladministration, or non-administration of the estate. In those matters, the national court may appoint an administrator or an administrator pendente lite on behalf of third party interests before, or while, the action is pending in state court. These actions are outside of the scope of the probate exception, but they should not be confused with direct challenges to the validity of the will itself, in interpreting the language of the will, or equitable charges of fraud, undue influence, or tortious

interference with the testator's intent which are core matters within the probate exception. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 430 (App. 2014).

An open probate proceeding at the state level is not a bar to national court subject matter jurisdiction as long as the national court does not interfere with the estate's res. Under the longstanding "creditor exception," the national courts have subject matter jurisdiction to appoint an administrator or an administrator pendente lite and to initiate proceedings on behalf of interested third parties. This appointment has no impact on the res of the decedent's estate, does not interfere with administrative decisions regarding the decedent's estate, nor does it affect the distribution of those assets within the state's control. It is a preliminary matter outside of the scope of the probate exception. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 430-31 (App. 2014).

When jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative powers of states (e.g., probate, inheritance and land issues) may be involved. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 431 (App. 2014).

A long line of precedents supports diversity jurisdiction as a proper independent basis for national jurisdiction of probate matters. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 431 (App. 2014).

Since the FSM Supreme Court trial division has original and exclusive jurisdiction in cases in which the national government is a party except when an interest in land is at issue and since the Federated States of Micronesia Development Bank is an instrumentality of the national government and part of the national government for the purposes of the Constitution's Article XI, § 6(a), the FSM Supreme Court's trial division therefore has original and exclusive jurisdiction in any case in which the bank is a party so long as no interest in land is at issue. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 432 (App. 2014).

Ultimately, the bulk of probate matters are to remain with the states, but an express constitutional exception is carved out when the national government is a party to the suit. Furthermore, the Constitution's framers created a constitutional limitation on the national government's jurisdiction under the land clause exception of article XI, § 6(a). FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014).

Preference toward state courts adjudicating the bulk of probate matters should be read narrowly, to permit creditors and other third parties to protect financial interests by initiating probate proceedings and resolving many auxiliary matters. The national courts are not barred from exercising subject matter jurisdiction over probate matters, and when an independent basis for jurisdiction is established, the national courts may proceed with the probate matter in its entirety. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

Another court's assumption of jurisdiction should be made with restraint, cognizant of the limitation that if a court has already assumed jurisdiction over the matter, a second court will not interfere and assume in rem jurisdiction over the same res. In those cases, abstention may be the appropriate course of action. A probate matter filed only in national court, however, causes no such conflict. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

Under Civil Rule 17's third party beneficiary clause, judgment creditors are real parties in interest when pursuing many preliminary and auxiliary matters relating to the probate of estates. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

DOMICILE AND RESIDENCE

Because a person may have more than one place of residence and a person's legal residence is his place of domicile or permanent abode, as distinguished from temporary residence, an FSM citizen temporarily working abroad is the legal resident of some state in the Federated States of Micronesia, and

thus may be served process in any manner permitted by the FSM rules, such as by certified mail. Alik v. Moses, 8 FSM R. 148, 150 (Pon. 1997).

The Supreme Court may exercise personal jurisdiction in civil cases only over persons residing or found in the Federated States of Micronesia or who have been duly summoned and voluntarily appear, except as provided in the long arm statute. The terms "resides in," "is a resident of," and "residence is in" are roughly synonymous. Alik v. Moses, 8 FSM R. 148, 149-50 (Pon. 1997).

Ordinarily a person's usual place of abode is the place where the party is actually living, except for temporary absences, at the time service is made, but it is possible for a person to have two or more dwelling houses or usual places of abode for the purpose of Rule 4(d)(1) service. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 121 (Chk. 2002).

Because a divorce case involves the parties' status or condition and their relationship to others, the law to be applied is that of the domicile. Thus in a divorce between a Pohnpeian, who now resides in Hawaii, and an American citizen who resides in Pohnpei and the parties lived in Pohnpei during their marriage, the court will apply Pohnpei substantive law. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

When comparing the terms from different parts of the code, the court must presume that by using different terms, in this case "legal residents" and "residents," the drafters could have only intended that the meaning would also be different. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

The word "resident" has many legal meanings that are largely determined by the statutory context in which it is used. The simplest definition of resident is a person who has residence in a location. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

Legal residence is defined as the place of domicile or permanent abode, as distinguished from temporary residence, it is the location defined by law as the residence of the person. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

The statute's plain meaning of term "legal residents of Pohnpei" is individuals who are domiciled in Pohnpei. This interpretation allows a Pohnpeian citizen living abroad, who maintained his or her domicile in Pohnpei, to receive the same hiring preference as a Pohnpeian citizen living in Pohnpei and it would give all FSM citizens and non-citizens who have moved to Pohnpei and made Pohnpei their domicile, equal opportunity for job selection and promotion. This interpretation is also internally consistent with the statute's other parts which give a second preference for employment to FSM citizens who are not legal residents of Pohnpei when applying for a position or promotion and who would receive a preference over non-citizens who are temporarily living in Pohnpei and over other non-residents. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

When, by its own terms, the 51 F.S.M.C. 112(7) definition of a "nonresident worker" applies only to FSM Code Title 51, chapter 1, and not even to the rest of the FSM Code, it certainly does not apply to the Chuuk Health Care Act, which contains its own definition for the term "resident." Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619-20 (Chk. 2011).

Under the Chuuk Health Care Act, a "resident" is any Chuuk citizen for whom Chuuk is his principal residence, or any noncitizen who has established an ongoing physical presence in Chuuk and whose presence is sanctioned by law and is not merely transitory in nature. The non-citizen workers' ongoing physical presence in Chuuk is clearly sanctioned by law when the non-citizen employees apply annually for labor certification and for entry permits in order to maintain their employment in Chuuk. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 620 (Chk. 2011).

The law sometimes equates "legal residence" with domicil, while using "actual residence" to refer to one's present physical location. Even though the term "legal residence" is sometimes used as the equivalent of domicil, a person may have more than one legal residence. Chuuk Health Care Plan v.

Pacific Int'l, Inc., 17 FSM R. 617, 620 (Chk. 2011).

Even though a contractor's non-citizen employees cannot be domiciled in Chuuk, they might have a legal residence here, but, even if they are not considered to have a legal residence here, they do have an actual residence in Chuuk that is legally sanctioned, and they are thus, by statute, enrolled in and eligible for Chuuk Health Care Plan benefits and their employer is therefore liable, as a matter of law, to the Plan for the employees' and the employer's contributions of the health insurance premiums for its non-citizen as well as citizen employees on Chuuk. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 620 (Chk. 2011).

Since a suit against an official in his or her official capacity is a suit against that official's office and since a national government office with nationwide scope and authority must be "found" or be "present" in some form in each state in the nation regardless of whether it has an actual year-round physical presence there, for the purpose of the venue statute, none of the defendant national government officials "reside" on Pohnpei. Marsolo v. Esa, 18 FSM R. 59, 66 (Chk. 2011).

Legal residence is usually defined as the place of domicile or permanent abode, and while the term "legal residence" is often the equivalent of domicile and "actual residence" is used to refer to one's current physical location, a person may have more than one legal residence, but a person can have only one domicile. In re Mix, 18 FSM R. 600, 602 n.1 (Pon. 2013).

ELECTIONS

After the executive branch has declared a candidate to have won an election, that winner has the right to hold office, subject only to the legislative branch's power to judge the qualifications of its members. Daniel v. Moses, 3 FSM R. 1, 4 (Pon. S. Ct. Tr. 1985).

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).

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).

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).

While the Constitution makes ineligible for election to Congress persons convicted of felonies in FSM courts, the Constitution gives to Congress the power to modify that ineligibility by statute. Robert v. Mori, 6 FSM R. 394, 398 (App. 1994).

Congress has the Constitutional power to prescribe, by statute, additional qualifications for eligibility for election to Congress beyond those found in the Constitution. Such additional qualifications must be consistent with the rest of the Constitution. Knowledge of English may not be a qualification. Robert v. Mori, 6 FSM R. 394, 399 (App. 1994).

Congress, not the FSM Supreme Court, has the constitutional power to make persons granted a pardon of a felony conviction eligible for election to Congress. The court cannot exercise a power reserved to Congress. Robert v. Mori, 6 FSM R. 394, 401 (App. 1994).

Where the election law provides for remedies that have not yet been used a candidate cannot show irreparable harm necessary for the issuance of a temporary restraining order. Wiliander v. Siales, 7 FSM R. 77, 80 (Chk. 1995).

While there may be cases in which the court would enter a matter before the election process has been completed the court will not do so where none of the acts complained of are contrary to law. Wiliander v. Siales, 7 FSM R. 77, 80 (Chk. 1995).

Voting is a privilege and not a right. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 47 (Chk. S. Ct. Tr. 1999).

When it appears that there is no provision in the Chuuk Constitution or statutes which guarantees the right to or even permits voting by absentee ballot, the appellants have not shown a likelihood of success on appeal and their request for a stay of a trial court judgment not to deliver Losap municipal absentee ballots to voters outside of Chuuk will be denied. Chipen v. Election Comm'r of Losap, 9 FSM R. 80, 81 (Chk. S. Ct. App. 1999).

There are rare occasions when an equitable remedy may be proper in an election case. Braiel v. National Election Dir., 9 FSM R. 133, 137 (App. 1999).

The innocent voter who has done everything right should not lose the right to vote and be counted because the election officials have disregarded the mandates and directions of the election law. Braiel v. National Election Dir., 9 FSM R. 133, 138 (App. 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).

When a congressional candidate seeks the issuance of a temporary restraining order prior to balloting he will be denied since he cannot show irreparable injury because the Election Code provides an aggrieved candidate with sufficient alternate and adequate remedies. When the election law provides for remedies that have not yet been used a candidate cannot show the irreparable harm necessary for the issuance of a temporary restraining order. Asugar v. Edward, 13 FSM R. 209, 212 (Chk. 2005).

No temporary restraining order will issue ordering the National Election Director to accept the late filing of a candidate's nomination papers even though the candidate was misadvised as to the filing deadline. Doone v. National Election Comm'r, 14 FSM R. 489, 493 (Chk. 2006).

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).

The Tolensom Constitution does not grant the Tolensom Legislature the power to create a method to "appoint" persons to the offices of mayor and assistant mayor. Those offices can be filled in only one way – by vote of the Tolensom electorate, that is, by the people of Tolensom. The only exception to that is when the mayoral office becomes vacant with less than a year left in the mayor's term, the assistant mayor assumes the office for the rest of the term. It was the Tolensom Constitution's framers' clearly expressed will that the mayor and assistant mayor be elected by the voters and not appointed by someone else. Esa v. Elimo, 15 FSM R. 198, 204 (Chk. 2007).

When the Tolensom Legislature elected in 2004 would have been the sole judge of the election of its members elected in that year and that Legislature already judged the four-year members elected, the Legislature elected in 2006 cannot be the judge of the members elected in 2004. The Legislature elected in 2006 can only be the judge of the election of the members elected in 2006. It cannot be otherwise. A later legislature cannot re-examine a four-year member's election at its whim after the mid-term election

because that would make a nullity and a mockery of the provision that four at-large seats would have four year terms, not two year terms. The framers' intent is obvious. They wanted the four year seat holders to be held over throughout the term of the Legislature elected at the mid-term election, to provide a certain continuity. Esa v. Elimo, 15 FSM R. 198, 204 (Chk. 2007).

There may be cases in which the court would enter an election matter before the election process has been completed. But when, assuming the plaintiff fails to get elected, any irregularities in the election results can be addressed by filing a complaint with the State Election Commission to seek a recount or to aside the election, the plaintiff has not demonstrated that he is in danger of immediate, irreparable harm. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 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).

A claim of denial of the right to suffrage in a state election because no revote was ordered is not a claim arising under the national constitution or law. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

If a runoff election must be held, then it must be held and it is the State Election Commission's problem to come up with the necessary funds or to figure out how to conduct the election without funds. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

The State Election Commission cannot refuse to hold an election because it has insufficient funds. If it refuses to hold an election on that ground, it is clear that, if sought, a writ of mandamus would issue to command that the election be announced and held. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

If the State Election Commission has a duty to announce and conduct a runoff election, that duty can only be ministerial and non-discretionary. The State Election Commission does not have the discretion to choose whether to conduct an election or not. Its duty to conduct elections is mandated by the Constitution. Thus, whether the petitioner is entitled to a writ commanding the respondent Election Commission to announce (and conduct) a runoff election to fill the Governor's office depends solely on the meaning of the relevant provisions of the Chuuk Constitution. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21 (Chk. S. Ct. Tr. 2011).

It is a clear non-discretionary duty for the State Election Commission to conduct a runoff election if, during the general election, no ticket of candidates for Governor and Lieutenant Governor receives a majority of the votes cast. However, in a special gubernatorial election to fill a vacancy, the candidates do not run on tickets. They run alone for the office of governor. The Section 7 provision for runoff elections applies to tickets of candidates, not to single candidates. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21-22 (Chk. S. Ct. Tr. 2011).

The Section 11 constitutional provision for special elections does not mention runoff elections if there is no candidate with a majority. Nor does it state that the gubernatorial special election shall be conducted in the same manner as the gubernatorial election in Section 7, and it also does not state that it should be conducted in a manner to be prescribed by statute. If it did then, Section 142 of the Election Code, which provides that "[a]ll special elections shall be conducted in the same manner and form as a general election, except as otherwise provided in this Act," would carry great weight and might lead the court to conclude that there was a clear, non-discretionary duty to conduct a runoff. However, there are no such provisions. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

When the Constitution's framers did not include provisions for runoff elections after special elections, and even if that was through oversight, the court will not insert into the Constitution a runoff provision that is

not there. Accordingly, the petition for a writ of mandamus directed to the State Election Commission commanding it to hold a runoff election will be denied. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 22 (Chk. S. Ct. Tr. 2011).

The Chuuk State Supreme Court appellate division heartily approves of the method that if there were any discrepancies in tally totals at any of the twenty-five ballot checking points that the tabulating committee would recount the ballots they had counted since the last checking point and not count any further ballots until all tally counts agreed instead of using the methods that introduce a substantial chance of inaccurate results, and, although the Chuuk State Supreme Court appellate division does not require that all future elections use this tabulation method, this method will produce the most accurate result. Hallers v. Yer, 18 FSM R. 644, 648 (Chk. S. Ct. App. 2013).

A motion to temporarily restrain an election will be denied as moot when that election was held as scheduled. Simina v. Chuuk State Election Comm'n, 19 FSM R. 572, 573 (Chk. S. Ct. App. 2014).

An appeal of an order denying a run-off election is moot when the real party in interest has taken the oath of office and has served the term as Governor until April 2013 since a run-off election following the August 24, 2011 special election is not now possible. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

– Conduct

The "two-of-three mechanism," in which three tabulators tally the votes for a particular candidate as they are read aloud, and either all three tabulators, or at least two of the three tabulators, must agree on the results for the results to be taken as correct, is not illegal, unreasonable, improper or prohibited. This mechanism will produce an accurate count for most ballot boxes. Olter v. National Election Comm'r, 3 FSM R. 123, 135-37 (App. 1987).

For elections, the timing provisions of the National Election Code prevail over any conflicting timing set out in the APA. Olter v. National Election Comm'r, 3 FSM R. 123, 129 (App. 1987).

Generally, the conduct of elections is left to the political branches of government, unless the court has powers specifically given to it by Congress contrary to that general rule. Kony v. Mori, 6 FSM R. 28, 29 (Chk. 1993).

By statute an aggrieved candidate in an election contest can only appeal to the FSM Supreme Court after his petition to the National Election Commissioner has been denied. Kony v. Mori, 6 FSM R. 28, 30 (Chk. 1993).

The National Election Commissioner has the power to establish voting precincts and designate polling places upon the recommendation of the members of the board of elections of the particular election district. Aten v. National Election Comm'r (II), 6 FSM R. 74, 76-77 (App. 1993).

When a state election is held on the same date as the national election and the closing time for the state poll is later than the 5:00 p.m. closing time for the national election, then the later state closing time prevails for the national election as well. The poll remains open to allow all who are waiting in line at closing time to vote. Aten v. National Election Comm'r (II), 6 FSM R. 74, 79 (App. 1993).

Courts of equity are without jurisdiction to enforce purely political rights. Matters concerning the conduct of elections are usually left to the political branches and the courts generally have no jurisdiction until after the elections are held. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Generally speaking, elections are conducted and carried out and administered by the executive and legislative branches. Courts do not have a primary position in that traditional scheme. The election law states the time at which the court has the right of entertaining an appeal from the final action of the National Election Director. Wiliander v. Siales, 7 FSM R. 77, 79 (Chk. 1995).

By statute, petitions to the National Election Director challenging the acceptablitiy of a vote or votes must be filed prior to certification of the results of the election or within one week of the election, whichever occurs first. Wiliander v. Mallarme, 7 FSM R. 152, 156 (App. 1995).

By statute, absentee ballots are to be examined when received, on or before Election Day, to determine if the voter is qualified to vote absentee, and the ballot envelope deposited unopened in container, and publicly delivered to counting and tabulating committee on Election Day. Wiliander v. Mallarme, 7 FSM R. 152, 156-57 (App. 1995).

Where, because election officials had not processed the absentee ballots until nine and ten days after the election thus making it impossible to file a petition concerning the acceptability of those ballots within the statutory time frame of prior to certification of the results of the election or within one week of the election, whichever occurs first, the petition will still be considered timely if it is filed before certification. Wiliander v. Mallarme, 7 FSM R. 152, 157 (App. 1995).

A timely received absentee ballot may be rejected if the accompanying statement is insufficient, the signatures do not correspond, the procedure for marking and returning the absentee ballot has not been complied with, the voter is not a qualified elector, or the ballot envelope has been tampered with. Wiliander v. Mallarme, 7 FSM R. 152, 156 n.6, 159 (App. 1995).

The formalities involved in the absentee election process are intended to safeguard the electoral process from voter fraud. Therefore a regulation rejecting absentee ballots if the signature on the request form is different from the signature on the statement accompanying an absentee ballot is a reasonable exercise of the National Election Director's power to implement rules and regulations for absentee ballots. Wiliander v. Mallarme, 7 FSM R. 152, 160-61 (App. 1995).

Since the right to vote is personal – one person's vote cannot be cast by another – one person's request to vote absentee cannot be made by another. Wiliander v. Mallarme, 7 FSM R. 152, 160 (App. 1995).

Congress intended that the National Election Code be applied uniformly throughout the nation. Wiliander v. Mallarme, 7 FSM R. 152, 161 (App. 1995).

A radio announcement of the results of an Uman municipal election by the Uman Election Commissioner is not a ruling by the Chuuk Election Commission which would authorize an appeal to the Chuuk State Supreme Court appellate division. David v. Uman Election Comm'r, 8 FSM R. 300d, 300f (Chk. S. Ct. App. 1998).

The Chuuk Constitution provides that there shall be an independent Election Commission vested with powers, duties, and responsibilities, as prescribed by statute, for the administration of elections in the State of Chuuk. David v. Uman Election Comm'r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

The Chuuk Election Law of 1996 applies to all elections in Chuuk including municipal elections unless otherwise specifically provided. David v. Uman Election Comm'r, 8 FSM R. 300d, 300i (Chk. S. Ct. App. 1998).

All the provisions of the Chuuk State Election Law of 1996 apply to all elections in the State of Chuuk, including municipal and national elections whenever applicable unless otherwise specifically provided. Chipen v. Chuuk State Election Comm'n, 8 FSM R. 300n, 300o (Chk. S. Ct. App. 1998).

All ballots forwarded to absentee voters and not physically received by the Commission at its main office prior to the closing of the polls on election day shall be rejected. Chipen v. Chuuk State Election Comm'n, 8 FSM R. 300n, 300p (Chk. S. Ct. App. 1998).

The Chuuk Constitution provides that there shall be an independent election commission vested with powers, duties, and responsibilities, as prescribed by statute, for the administration of elections in Chuuk. Mathew v. Silander, 8 FSM R. 560, 564 (Chk. S. Ct. Tr. 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).

Absentee voting is a privilege granted electors, and not an absolute right. The purpose of statutes permitting absentee voting is to enable a qualified voter to vote at a general election in the precinct of his domicil when he is temporarily absent therefrom. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 47 (Chk. S. Ct. Tr. 1999).

Unless voting is expressly allowed elsewhere, all ballots must be cast in the state of residence. Chipen v. Losap Election Comm'r, 9 FSM R. 46, 48 (Chk. S. Ct. Tr. 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).

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 National Election Commissioner's failure to send out any absentee ballots until eleven days before the election instead of the at least 30 days prior to an election provided for by 9 F.S.M.C. 704(1) is not in substantial compliance with the procedures required by the statute and was a direct violation of a mandatory statute enacted by Congress. Braiel v. National Election Dir., 9 FSM R. 133, 136 (App. 1999).

When requests for absentee ballots were received between January 30th and February 11th and no ballots were sent out until February 19th, those ballots were not sent out as soon as is practicable after the request was received as required by statute. Braiel v. National Election Dir., 9 FSM R. 133, 136 (App. 1999).

Errors in not timely providing absentee ballots can be largely remedied by extending the time in which ballots from such voters can be counted as timely received. Braiel v. National Election Dir., 9 FSM R. 133, 136 (App. 1999).

Absentee ballots must be sent out at least thirty days before the election to all duly qualified voters who have requested them by then. Braiel v. National Election Dir., 9 FSM R. 133, 136, 137 (App. 1999).

No absentee ballots received after the established close of polling places on Election Day should be counted and tabulated. Braiel v. National Election Dir., 9 FSM R. 133, 137 (App. 1999).

Separate mail or delivery by absentee voters is not required by the statute's language. Braiel v. National Election Dir., 9 FSM R. 133, 138 (App. 1999).

Mere irregularities in a ballot's form will not invalidate an election if the voters' intent is obvious. Therefore ballots where the alignment of the candidate's name, picture, and box for an X vary slightly from the specimen ballot are not confusing and will not be invalidated. Braiel v. National Election Dir., 9 FSM R. 133, 139 (App. 1999).

Candidates are to notify the national election commissioner twenty-four hours before their intended use of a government broadcast facility. FSM v. Moses, 9 FSM R. 139, 144 (Pon. 1999).

When there is no statutory requirement that a candidate submit his taped speech before it is aired and when there is no mention of criminal liability on the of the government broadcast facility should it do so, there is no probable cause to believe a crime has been committed, and the information and criminal summons should be dismissed without prejudice. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

A court will not extrapolate a statute's allowable meaning to encompass submission of the taped speech directly to the radio station without first submitting it to the national election commissioner when the statute's only stated requirement is twenty-four hours' notice. FSM v. Moses, 9 FSM R. 139, 145 (Pon. 1999).

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).

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).

The national election director and his deputies in the four states, the national election commissioners, may have a duty to take all reasonable steps to insure that candidates have equal access to government broadcast facilities. FSM v. Moses, 9 FSM R. 139, 146 (Pon. 1999).

All provisions of the Chuuk Election Law of 1996 apply to all elections in the State of Chuuk, including municipal and national elections whenever applicable unless otherwise specifically provided. Phillip v. Phillip, 9 FSM R. 226, 228 (Chk. S. Ct. Tr. 1999).

While conditions may be imposed on candidates, the candidate must be afforded a reasonable opportunity to satisfy the conditions, and the extraction of fees which are arbitrary, or have no relation to the expense of the election will be denied. Nameta v. Cheipot, 9 FSM R. 510, 512 (Chk. S. Ct. Tr. 2000).

The purpose of election filing fees is to defray the costs of the procedures leading to the election. There must be a reasonable relation to the amount of the fee and the costs incurred. Unreasonable fees not only deny the candidate his right to be a candidate, but also deny the right of every person to select him for office. When the fee requirements go beyond the bounds of reasonable regulation, it operates as a substantial impairment of the right of the electorate to freely choose the candidate of their choice. Nameta v. Cheipot, 9 FSM R. 510, 512 (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).

When an ordinance has a savings clause and its provision for election filing fees is found unconstitutional, the filing fee provision of the previous ordinance it superseded will be reinstated. Nameta v. Cheipot, 9 FSM R. 510, 512 (Chk. S. Ct. Tr. 2000).

When a constitution establishes specific eligibility requirements for a particular constitutional office, the legislature is without power to require different qualifications and when there is no direct authority in the constitution for the legislature to establish qualifications for office in excess of those imposed by the constitution, such extra qualifications are unconstitutional. Olap v. Chuuk State Election Comm'n, 9 FSM R. 531, 533 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution does not, either expressly or by implication, give the Legislature any authority whatsoever, to add qualifications for persons seeking a legislative office beyond those in the Constitution. Olap v. Chuuk State Election Comm'n, 9 FSM R. 531, 533 (Chk. S. Ct. Tr. 2000).

It is beyond the power of the Legislature to enact a law to prohibit government employees from becoming candidates for legislative service. Olap v. Chuuk State Election Comm'n, 9 FSM R. 531, 534 (Chk. S. Ct. Tr. 2000).

The issue of whether a person is entitled to have his name placed on the ballot is an election case, over which neither division of the Chuuk State Supreme Court has original jurisdiction, and which is placed solely in the hands of the Chuuk State Election Commission with the Chuuk State Supreme Court appellate division having jurisdiction only as provided in the Election Law of 1996. Hethon v. Os, 9 FSM R. 534, 535 (Chk. S. Ct. Tr. 2000).

Even if the purported enactment of the education qualifications for mayor and assistant mayor were unquestionably enacted, the municipal council is without authority to add qualifications to those set out in the municipal constitution unless the constitution so authorizes the council. Chipen v. Election Comm'r of Losap, 10 FSM R. 15, 17-18 (Chk. 2001).

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).

A municipality and its election commissioner will be restrained from enforcing added qualifications for municipal office when a short time remains to file as a candidate and the harm is irreparable to those potential candidates who are denied nominating petitions because they do not meet the unlawful added qualifications, when there is no harm to the municipality or the election commissioner if they are required to allow the candidacies, and when the public interest is served if eligible citizens are able to present themselves for election. Chipen v. Election Comm'r of Losap, 10 FSM R. 15, 18 (Chk. 2001).

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 executive policy requiring resignation before running for a seat in the Chuuk Legislature adds a qualification prohibited by the Chuuk Constitution and is void, and therefore, the plaintiffs' forced resignation pursuant to the Governor's Executive Order or policy is unconstitutional and beyond his power. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

A governor has only a delegated power and a limited sphere of action, and the Chuuk Constitution does not give the Governor the power to add qualifications, that a person must not be a state employee, to be a candidate for a seat in the Chuuk Legislature. Lokopwe v. Walter, 10 FSM R. 303, 307 (Chk. S. Ct. Tr. 2001).

An FSM citizen, who is over 18 years of age, a resident of Chuuk, and not insane, confined to a mental institution or imprisoned, may vote at any Chuuk election provided he is registered to vote. In re Nomun Weito Interim Election, 11 FSM R. 461, 465 (Chk. S. Ct. App. 2003).

Specific procedures and time frames govern voter registration. No one can be registered except by affidavit of registration made before the registration clerk in the municipality where such person resides at least 30 days prior to any election, when the registration rolls close for that election, and the Commission, accepts no further affidavits except for those who turn 18 years of age within the 30 day period. In re Nomun Weito Interim Election, 11 FSM R. 461, 465 (Chk. S. Ct. App. 2003).

The Chuuk State Election Commission has the statutory power to promulgate in writing the necessary rules and regulations including administrative procedures for elections. In re Nomun Weito Interim Election, 11 FSM R. 461, 466 n.8 (Chk. S. Ct. App. 2003).

Any elector who has previously been registered but whose name does not appear on the master list of his or her election precinct may be re-registered provided, he or she signs an affidavit attesting to such previous registration and swears to before the Election Commission or a designated representative. A registered voter from the same precinct must witness the elector's sworn statement. In re Nomun Weito Interim Election, 11 FSM R. 461, 466 (Chk. S. Ct. App. 2003).

The Election Commission must prepare and compile a registration list of all voters for use in a general election, or any other election. The Election Commission's responsibility is to see that the general register lists accurately reflects the registered voters for the State of Chuuk. In re Nomun Weito Interim Election, 11 FSM R. 461, 467 (Chk. S. Ct. App. 2003).

When it was already too late for the 39 persons on the additional list to be registered if they had not previously registered, then their votes were illegal; and when the specific procedures for re-registration were not followed for any of the 39 persons on the additional list that were being re-registered, their votes were illegal. Therefore, the process used to add the 39 persons on the additional list to the general register list on election day so as to allow them to vote was an election irregularity; all 39 persons on the additional list should not have been allowed to vote; and their votes were illegal. In re Nomun Weito Interim Election, 11 FSM R. 461, 467 (Chk. S. Ct. App. 2003).

Because the statutory provision prohibits making, using or furnishing copies of official ballots by any person, the Election Director should not have authorized the copying of additional ballots and copied ballots should not have been used in the election. In re Nomun Weito Interim Election, 11 FSM R. 461, 467 (Chk. S. Ct. App. 2003).

Opening a ballot box on the day before the election is not in accordance with the election law. In re Nomun Weito Interim Election, 11 FSM R. 461, 468 (Chk. S. Ct. App. 2003).

When voters used a copied ballot but were not aware of it and did not intend to do so and when those voters were properly registered to vote, showed up at the polling place, and properly exercised their constitutional and statutory right to vote, any problem with the ballots that they used was not their fault, but the fault of election officials in carrying out the election. Thus their votes should not be voided. In re Nomun Weito Interim Election, 11 FSM R. 461, 468-69 (Chk. S. Ct. App. 2003).

If true, even a failed attempt to intimidate voters, especially at a polling place, would subject that person to criminal liability. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 474 (Chk. S. Ct. App. 2003).

The Election Director does not have the authority to open a ballot box and to change the certification on his own. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 475 (Chk. S. Ct. App. 2003).

When the election law was not complied with in making a certification of votes, that certification is void. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 476-77 (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 State Election Commission has the power to conduct all elections in the State of Chuuk, including national and municipal elections, if so provided by law or municipal constitutions. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 577 (Chk. S. Ct. Tr. 2003).

Allegations of a total failure to provide an accounting of the number of ballots printed for the election; refusal to record or account for the total number of ballots cast in the election; failure to maintain an acknowledgment list to provide proof of which registered voters actually cast ballots; refusal by the Election Commissioner (the brother of an elected candidate) to permit opponents' representatives to accompany the Guam VAAPP ballot box to Fefan; the ballot box's seizure and opening while it was in his possession;

evidence, including the fact that the key for the ballot box's lock did not fit the lock, raising an inference that the Election Commissioner had tampered with the ballot box while it was in his possession; deciding, a mere 10 days before the election, to do away with VAAPP sites in Hawaii and Pohnpei, thereby effectively depriving Fefan citizens residing in those places of their right to cast votes in the election; and the fact that the entire Fefan Election Commission had been hand selected by a candidate from his active supporters, thereby calling into question whether the Election Commission was truly independent, if proven to be true, are sufficient to call into question whether the election was in fact free and democratic, as required by the Chuuk Constitution. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 578 (Chk. S. Ct. Tr. 2003).

Neither the Legislature, nor the Governor, may add qualifications for public office beyond those qualifications provided in the Chuuk Constitution. It matters not whether the employee in question is an "exempt" employee, or one covered by the Public Service Act. All government employees, with the express exception of the Governor's principal officers and advisors (who serve at the Governor's pleasure), are protected in their political activities from the Governor's interference with their employment. Tomy v. Walter, 12 FSM R. 266, 271 (Chk. S. Ct. Tr. 2003).

When nothing in the record indicates under what tenure a person held the municipal election commissioner's office, the court cannot conclude as a matter of law that he held that position when he conducted an election on August 1, 2003 and that his purported removal from office was unlawful. Summary judgment that the August 1st election was valid will therefore denied. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

The election results certification, the signing of it, and notifying the public and the candidates should all be done at the same time, promptly on the same day. That an intervening day was celebrated as a holiday by many is no excuse. The date of certification is an important starting date in the election contest process. The statutory scheme contemplates that these steps are taken promptly. Wiliander v. National Election Dir., 13 FSM R. 199, 203-04 (App. 2005).

The current election statute only gives the Chuuk State Election Commission the power to conduct municipal elections, if so provided by law or municipal constitutions and also requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Esa v. Elimo, 14 FSM R. 262, 265 & n.1 (Chk. 2006).

Election irregularities may include the polling place's location was not announced thirty days in advance, voting started without a candidate poll watcher's presence, and poll watchers, who, for some reason, were permitted to sit close to the poll workers in the voting area. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

It is a poll watcher's duty to know where the polling place is and to be present before it is scheduled to open. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

Persons who are present at the polling place before closing (or in line at the door) and who are qualified to vote and have not been able to do so, must be given sufficient time to vote. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

The current Chuuk election statute only gives the Chuuk State Election Commission the power to conduct municipal elections if so provided by law or municipal constitutions. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

Elections, particularly, are in the hands of the political branches. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 2007).

Elections belong to the political branch of the government. The court can exercise authority over election disputes only to the extent that there is a constitutional or statutory provision expressly or impliedly

giving it that authority. Kinemary v. Siver, 16 FSM R. 201, 205 (Chk. S. Ct. App. 2008).

Under Chuuk election regulations, stopping the voting at a polling place is authorized if in a precinct board's best judgment an incident creates an imminently extreme and unpreventable danger to human beings, and the election commission's executive director confirms the closing. Aniol v. Chuuk State Election Comm'n, 16 FSM R. 387, 388-89 (Chk. S. Ct. App. 2009).

The determination of whether a ballot can be counted or not is to be performed by examining the integrity of each individual ballot cast to determine if it is lost, destroyed, or defective, or whether it is capable of tabulation. Aniol v. Chuuk State Election Comm'n, 16 FSM R. 387, 389 (Chk. S. Ct. App. 2009).

When the court finds that although there was damage to the ballot box, there was no evidence that any of the individual ballots had been rendered unreliable or were otherwise incapable of tabulation, the court will order the ballot box to be delivered to the election commission for a tabulation of cast votes according to the applicable Election Code provisions and election regulations. Aniol v. Chuuk State Election Comm'n, 16 FSM R. 387, 389 (Chk. S. Ct. App. 2009).

The Commissioners are tasked with a duty that includes the basic administrative planning of an election. Poor planning does not constitute an emergency, and the Commissioners must plan accordingly to ensure that they are carrying out their duties as assigned. To facilitate the process, state law provides that the Commissioners appoint people to conduct the election. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 588 (Chk. S. Ct. Tr. 2013).

When the Commissioners' travel authorization was for travel originating in Chuuk on March 1, 2013, and therefore, any prior expenditure of funds, not directly attributable to the travel, cannot be then ascribed to a preliminary injunction's issuance; when the status quo for state government travel is to purchase full fare tickets which are therefore refundable with a minimal fee imposed and when hotel accommodations and car rentals are generally fully refundable given twenty-four hour notice and other costs associated with the election can generally be transferred to the parties that will travel in place of the Commissioners; when the Commissioners' impartiality is necessary to protect the elections' integrity while protecting the plaintiff candidates' and other individuals' fundamental rights; and when the Commissioners stated that they will attempt to be "honest" but that alone is insufficient because impartiality is required, the balance of the equities tips overwhelmingly in the plaintiffs' favor to enjoin the Commissioners' travel to supervise polling places. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 588-89 (Chk. S. Ct. Tr. 2013).

Allowing the Election Commissioners to travel to conduct the elections will not serve the public interest since the commissioners' need to be physically present at the polling sites to conduct the election is a mischaracterization of the law because subordinate officers and employees are designated duties for the efficient performance of functions and duties and because the law requires impartiality, whether explicitly or implicitly, and the Commissioners' physical presence at the polling sites defeats impartiality and clouds the Election Commission with the appearance of impropriety. Consequently, an injunction will serve the public interest in a manner, which preserves the integrity of elections by ensuring that the Election Commissioners remain impartial while being available for any necessary quorums and require adequate planning for the elections. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 589 (Chk. S. Ct. Tr. 2013).

State election commissioners are enjoined from traveling from Chuuk for the purposes of conducting the election at the voting sites and from appearing in person at the voting locations. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 584, 589-90 (Chk. S. Ct. Tr. 2013).

All ballots forwarded to absentee voters and not physically received by the Chuuk State Election Commission at its main office before the closing of the polls on election day must be rejected. Setile v. Chuuk State Election Comm'n, 18 FSM R.641, 643 (Chk. S. Ct. App. 2013).

Since the FSM Post Office, Chuuk branch was not the Chuuk State Election Commission's main office on March 5, 2013 and the Chuuk State Election Law's language is mandatory and not discretionary and

therefore must be strictly adhered to, counting the thirteen absentee mail-in ballots that were in the post office on March 5, 2013, but that were not physically received at the Chuuk State Election Commission main office until after the closing of the polling places was improper and must be deducted from the totals. Setile v. Chuuk State Election Comm'n, 18 FSM R.641, 643 (Chk. S. Ct. App. 2013).

All Chuuk Election Commissioners must remain neutral to avoid any/all appearances of impropriety, and to be available for any quorum following an election. Additionally, all persons holding a position in the Chuuk State Election Commission must strictly adhere to the mandates of the election laws. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 652 (Chk. S. Ct. Tr. 2013).

All Chuuk Election Commissioners are permanently enjoined from traveling from Chuuk for the purposes of conducting the election at the voting sites and from appearing in person at the voting locations for the purposes of conducting the election at the voting sites. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 649, 652 (Chk. S. Ct. Tr. 2013).

Whether an individual is entitled to be placed on the ballot is left solely in the hands of the Chuuk State Election Commission and is beyond the Chuuk State Supreme Court's jurisdiction. Simina v. Chuuk State Election Comm'n, 19 FSM R. 587, 589 (Chk. S. Ct. App. 2014).

No law (including the Nema Constitution) prevents the Chuuk State Election Commission from determining whether an individual should be placed on the Nema Municipality General Election ballot. Simina v. Chuuk State Election Comm'n, 19 FSM R. 587, 589 (Chk. S. Ct. App. 2014).

– Contests

An election must be completed and the results announced before the election can be contested. Daniel v. Moses, 3 FSM R. 1, 4 (Pon. S. Ct. Tr. 1985).

To interpret 9 F.S.M.C. 904, the FSM Supreme Court should apply a two-prong test. The first prong is whether there is a "substantial question or fraud or error" and the second prong is whether there is "substantial possibility that the outcome would be affected by a recount." Olter v. National Election Comm'r, 3 FSM R. 123, 136-37 (App. 1987).

If the possibility of double voting is alleged the burden is on the appellant to show that it occurred. Aten v. National Election Comm'r (II), 6 FSM R. 74, 78 (App. 1993).

When the National Election Commissioner's decision concerning election irregularities is appealed to the FSM Supreme Court, the appellate division must decide whether the National Election Commissioner's decision is proper, and if not, whether the irregularities complained of could have resulted in the election of a candidate who would not have won had the irregularities not occurred. Aten v. National Election Comm'r (II), 6 FSM R. 74, 81 (App. 1993).

Where election irregularities cannot be corrected by a recount, the election, in whole or in part, can be set aside and done over only if it is more likely than not that the irregularities complained of could have, not necessarily would have, resulted in the election of a candidate who would not have won had the irregularities not occurred. Aten v. National Election Comm'r (II), 6 FSM R. 74, 82 (App. 1993).

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).

The time frames established by statute for election petitions to the National Election Director are short. A candidate must be vigilant in asserting his rights to petition. Wiliander v. Mallarme, 7 FSM R. 152, 157 (App. 1995).

Where no action, or words, or silence of the National Election Director prior to the appellant's initial petition misled the appellant into untimely filing his petition after certification it does not give rise to an estoppel. The Director's later failure to raise the issue of untimeliness until his denial of the petition was appealed to the Supreme Court does not give rise to an estoppel. Wiliander v. Mallarme, 7 FSM R. 152, 157-58 (App. 1995).

Deadlines set by statute are generally jurisdictional. If the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. This applies equally to the National Election Director as a member of an administrative agency (executive branch) hearing an appeal as it does to a court hearing an appeal from an administrative agency. Thus the Director cannot extend statutory time frames set by Congress. When the Director had not rendered his decision within the statutorily-prescribed time limit it must be considered a denial of the petition, and the petitioner could then have filed his appeal in the Supreme Court. Wiliander v. Mallarme, 7 FSM R. 152, 158 (App. 1995).

Congress intended that the election appeal process be timely and expeditious. This is especially important in a year in which the newly elected Congress selects the President and Vice President of the nation from among its members. Wiliander v. Mallarme, 7 FSM R. 152, 161 (App. 1995).

The Chuuk State Election Law, Chk. Pub. L. No. 3-95-26, §§ 126, 130, requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

When the state election law requiring election appeals to go directly to the state court appellate division has a provision applying the law to municipal elections if the municipal constitution or law so provides and there is no such municipal provision, then jurisdiction over the election appeal does not lie in the state court appellate division in the first instance. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

When the state judiciary act gives the state court trial division authority to review all actions of an agency of the government, the trial division has jurisdiction over an appeal of the state election commissioner's denial of a petition to set aside a municipal election. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division had jurisdiction to hear an election appeal from an election conducted, pursuant to the governor's emergency declaration, under a state law providing for such jurisdiction. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 280 n.1 (Chk. S. Ct. Tr. 1998).

A decision of the Chuuk Election Commission may be appealed to the Chuuk State Supreme Court appellate division. David v. Uman Election Comm'r, 8 FSM R. 300d, 300f, 300h (Chk. S. Ct. App. 1998).

The right to contest an election is not a common law right. Elections belong to the political branch of the government, and are beyond the control of the judicial power. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

The jurisdiction of courts exercising general equity powers does not include election contests, unless it is so provided expressly or impliedly by the constitution or by statute. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

It is a general rule that courts of equity have no inherent power to try contested elections, notwithstanding fraud on the part of the election officers. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

Constitutions and statutes of most jurisdictions provide, as a part of the machinery of elections, a

procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

Election contests are purely statutory, and the courts have no inherent power to determine election contests, the determination of such contests being a judicial function only when and to the extent that the determination is authorized by statute. David v. Uman Election Comm'r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

If the Chuuk State Supreme Court appellate division has original jurisdiction to decide an election contest, there must be a specific constitutional or statutory provision giving the appellate division that authority. David v. Uman Election Comm'r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

The Chuuk State Supreme Court appellate division has no original jurisdiction to entertain an appeal directly from a municipal election commissioner. David v. Uman Election Comm'r, 8 FSM R. 300d, 300i (Chk. S. Ct. App. 1998).

When a contestant offers no evidence of voting irregularities before a municipal election board and the Chuuk State Election Commission and the Chuuk State Supreme Court appellate division, the appellate division has no basis to disturb the findings of fact reached by the Election Commission. Findings of fact relative to the residence, age and location of electors will generally be left undisturbed. Chipen v. Chuuk State Election Comm'n, 8 FSM R. 300n, 300p (Chk. S. Ct. App. 1998).

The right to contest an election is not a common-law right. Elections belong to the political branch of the government, and are beyond the control of the judicial power. An election contest is purely a constitutional or statutory proceeding. Mathew v. Silander, 8 FSM R. 560, 562 (Chk. S. Ct. Tr. 1998).

The jurisdiction of courts exercising general equity powers does not include election contests, unless it is so provided expressly or impliedly by the constitution or by statute. Mathew v. Silander, 8 FSM R. 560, 562 (Chk. S. Ct. Tr. 1998).

It is a general rule that courts of equity have no inherent power to try contested elections, notwithstanding fraud on the part of the election officers. Mathew v. Silander, 8 FSM R. 560, 562 (Chk. S. Ct. Tr. 1998).

The constitutions and statutes of most jurisdictions provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. They are not actions at law or suits in equity, and were unknown to the common law. The proceedings are special and summary in their nature. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. Mathew v. Silander, 8 FSM R. 560, 563 (Chk. S. Ct. Tr. 1998).

The determination of an election contest is a judicial function only so far as authorized by the statute. The court exercising the jurisdiction does not proceed according to the course of the common law, but must resort to the statute alone to ascertain its powers and mode of procedure. Mathew v. Silander, 8 FSM R. 560, 563 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division could have had jurisdiction over election commission appeals had the legislature seen fit to grant it such authority, but the Election Law of 1996, provides that Chuuk Election Commission decisions may be appealed to the appellate division. Therefore an election contest appeal in the trial division will be dismissed for lack of jurisdiction. Mathew v. Silander, 8 FSM R. 560, 564 (Chk. S. Ct. Tr. 1998).

No stay in an election appeal will be granted when nothing in the record of the case indicates that appellant will suffer irreparable harm and, also, that he will likely prevail on the merits of the appeal and when granting a stay would have a substantial effect on the municipal employees and other public officials who have held office for almost a year and would not be in the public interest of having an efficient and effective municipal government. Pius v. Chuuk State Election Comm'n, 8 FSM R. 570, 571 (Chk. S. Ct. App. 1998).

An election contest is purely a constitutional or statutory proceeding. At common law there was no right to contest in a court any public election, the theory being that elections belong to the political branch of the government, beyond the control of judicial power. Phillip v. Phillip, 9 FSM R. 226, 228 (Chk. S. Ct. Tr. 1999).

When a voter contests any election he must file a written complaint with the Chuuk Election Commission. If the contestant is dissatisfied with the Commission's decision, appeal to the Chuuk State Supreme Court appellate division can be had, and if the contestant is dissatisfied with the Chuuk State Supreme Court appellate division's decision, appeal to the FSM Supreme Court can be had. The Chuuk State Supreme Court trial division is without jurisdiction to hear an election contest. Phillip v. Phillip, 9 FSM R. 226, 228 (Chk. S. Ct. Tr. 1999).

When the statute requires that a statement of contest must be filed within five days "after declaration of the result of the election by the body canvassing the returns" and also provides that upon "tabulation of each of the precinct votes, the Commission shall tabulate or cause to be tabulated the cumulative results, including the total of election results for each nominee, and make these results known to the public," the declaration is when the results are made known to the public. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

An aggrieved candidate does not have to wait until the final certification of the results to file his complaint. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

The Chuuk State Election Commission must meet within three days after certification to consider any complaints. A contestant is justified in considering the Commission's failure to meet within its deadline as a denial of his complaint, and is thus entitled to file a notice of appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153-54 (Chk. S. Ct. App. 2001).

There is no provision in the election law allowing a voter to cast a ballot after the polling places have closed and everyone in line at the time has been allowed to vote. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 155 (Chk. S. Ct. App. 2001).

When sufficient evidence was not produced to establish a prima facie case for the reliability of state ballots found misplaced in national election ballot boxes, and those ballots were not kept securely, the election contestant has failed to establish an attribute of reliability that might have lead the court to allow those ballots to have been counted. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 156 (Chk. S. Ct. App. 2001).

When the faxed official result form from a polling place abroad is illegible and the results are later sent on an unofficial form, the proper relief for those results' unreliability is not their elimination, but that the ballot box be placed in the court clerk's custody, to be opened and the original official result form used in place of the faxed results to determine the proper result. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 156 (Chk. S. Ct. App. 2001).

The election statute does not contain a deadline to file an election contest appeal from the Chuuk State Election Commission. The only deadlines in the statute that relate to the court are that the court must "meet within 7 days of its receipt of a complaint to determine the contested election," and that the court must "decide on the contested election prior to the date upon which the declared winning candidates are to take office." Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 157 (Chk. S. Ct. App. 2001).

An appellee's cross appeal in an election case will be dismissed when there was no evidence that he had ever raised the issue before either the tabulating committee or the Election Commission. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 158 (Chk. S. Ct. App. 2001).

The absence of a filing deadline in the election statute means that there is no statutory jurisdictional time bar to an appeal, but that any election contest party who appeals within seven days of when the declared winning candidates are to take office runs the risk that the court will either not meet before its authority to decide the appeal expires or that court may be unable to conclude the proceedings and make its decision before its authority to decide the appeal expires. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 158 (Chk. S. Ct. App. 2001).

If, on appeal the Chuuk State Supreme Court confirms the election, judgment shall be rendered against the contestants, for costs, in favor of the defendant. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 222 (Chk. S. Ct. App. 2001).

When, if an election contestant were declared a winning candidate, only one of two other candidates would no longer be a winning candidate, both may properly be considered defendants under the election statute when it is uncertain which of those two the contestant would have displaced if he had succeeded in being elected. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 222 (Chk. S. Ct. App. 2001).

When a municipal election ordinance has no provision for contesting or challenging the election results after an election has been held, or for resolving election disputes and when the state election law applies to all elections in the state including municipal elections whenever applicable unless otherwise specifically provided, the state election law must apply to this phase of the election, and the proper forum to contest the municipal election is the Chuuk Election Commission. Alafanso v. Suda, 10 FSM R. 553, 557 (Chk. S. Ct. Tr. 2002).

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).

A Chuuk Election Commission decision may be appealed to the Chuuk State Supreme Court appellate division where a trial *de novo* may hear witness testimony and oral arguments from the parties. In re Nomun Weito Interim Election, 11 FSM R. 461, 464 & n.2 (Chk. S. Ct. App. 2003).

When even if the number of illegal votes were all subtracted from the real party in interest's legal votes, the real party in interest still has more votes than his opponent, the court cannot set aside the election results because the election results would not change. In re Nomun Weito Interim Election, 11 FSM R. 461, 469-70 (Chk. S. Ct. App. 2003).

When an election contestant has not proven that an unauthorized pollwatcher's actions made the situation at the Pohnpei VAAPP such that the results from that ballot box are so unreliable that they must be discarded, those results will stand. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 474 (Chk. S. Ct. App. 2003).

A letter to the Commission, that asks that the vote be changed from 154 to 164 is not in the form of a verified complaint as required by statute. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 475 (Chk. S. Ct. App. 2003).

The unauthorized opening of a ballot box creates severe impediments to resolving an election contest

in a manner reflecting the voters' intent. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 475 (Chk. S. Ct. App. 2003).

An aggrieved candidate has a due process right, created by statute, to be heard on his verified complaint's contentions. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 475 (Chk. S. Ct. App. 2003).

An aggrieved candidate should file a verified complaint, which should be heard and considered by the Election Commission before it alters or certifies the figures certified by the Overall Chairman and the Director. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 476 (Chk. S. Ct. App. 2003).

When an election contest comes before the Chuuk State Supreme Court appellate division with the best evidence of the results, the ballots, irreversibly tainted and unusable, the court is forced to consider less authoritative evidence. Since the election law mandates that a trial be held for election contests appealed to the appellate division, this requires the court to make a *de novo* determination of the facts as well as stating its interpretation of the law. The court therefore hears witness testimony in addition to considering documentary evidence and legal argument. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 476 (Chk. S. Ct. App. 2003).

The Chuuk election law requires a trial in the appellate division and not a normal appeal where generally only issues of law are decided and the facts as determined below are left undisturbed. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

The Legislature has granted the appellate division "all powers necessary to make the determination" of the contested election. The Legislature's intent when it said "all powers" was that the court could consider all relevant and admissible evidence properly offered. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (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).

When the election commission never properly certified anyone as the winning candidate, an appellate trial's result cannot confirm a candidate's election, but rather determines which of two contestants should have been declared elected. Therefore no judgment for costs will be awarded in anyone's favor. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477-78 (Chk. S. Ct. App. 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).

Since, if the court determines that the Chuuk State Election Commission is constitutionally required to conduct all elections in Chuuk, including all municipal elections, the Chuuk State Election Commission will be required to bear substantial additional burdens and obligations, the Chuuk State Election Commission is thus a necessary party to the litigation as provided in Chuuk Civil Rule 19(a). Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 581 (Chk. S. Ct. Tr. 2003).

A new claim that constitutionally only the state election commission can conduct municipal elections in Chuuk will not be considered unless the municipal defendants are represented separately from the state when past practice in Chuuk has been that municipal officials have run municipal elections, when this new claim is only hypothetical as the state election commission, a non-party, has not asserted that it intends to

and will conduct or that it has the sole authority to conduct municipal elections in the future, and when the defendant Governor and the municipal defendants are represented by the same counsel, a state employee, but may likely have differing views on the point. Even then, the court would desire a separate appearance by the state election commission before considering the issue. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

A prematurely filed election appeal must be dismissed. By statute, an aggrieved candidate in an election contest can appeal to the FSM Supreme Court only after the Election Director has denied his petition or after his petition has been effectively denied because the time has run out for the Director to issue a decision on the petition. Wiliander v. National Election Dir., 13 FSM R. 199, 202 (App. 2005).

The primary forum in which election contests must run their course is the election administrative machinery created by Congress. Constitutions and statutes provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

An election contest appellant has not strictly observed the steps necessary to give the court jurisdiction when he has not filed his appeal within the time frame permitted by statute. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

The election results certification, the signing of it, and notifying the public and the candidates should all be done at the same time, promptly on the same day. That an intervening day was celebrated as a holiday by many is no excuse. The date of certification is an important starting date in the election contest process. The statutory scheme contemplates that these steps are taken promptly. Wiliander v. National Election Dir., 13 FSM R. 199, 203-04 (App. 2005).

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).

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).

The five-day time limit to appeal an election to the FSM Supreme Court does not start when the Director certifies the election, but rather when the aggrieved candidate receives the Director's decision on the candidate's petition or until the time has run out for the Director to issue a decision on the candidate's petition. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

An election contest appellant's failure to specify which statutory standard of review he thinks applies to his appeal should not, by itself, be fatal to his appeal. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

The conduct of elections is generally left to the political branches of government – the legislative and the executive – and not to the judicial branch. The primary forum in which election contests must take place is the election administrative machinery Congress created by statute. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

Constitutions and statutes provide, as a part of the election machinery, a procedure by which election results may be contested. Such contests are regulated wholly by constitutional or statutory provisions. The necessary steps must be strictly observed to give the court jurisdiction, and the jurisdictional facts must

appear on the face of the proceedings. If these steps are not followed, courts are usually powerless to entertain such proceedings. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The election law states the time at which the court has the right to entertain an appeal is from the National Election Director's final action. No statutory or constitutional provision grants the court the power to interfere with the election machinery and issue injunctive relief at a point in the electoral process prior to the election officials' completion of their responsibilities. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The applicable time frame within which an election contest appeal can be made starts with a petition to the National Election Director filed within one week of certification of the results of the election. The winning candidate then has one week to respond to the petition. The Director then has ten days to decide whether to approve the petition. If the petition is denied, then the aggrieved candidate would have five days to appeal to the FSM Supreme Court appellate division. It is at that point that the court would have jurisdiction to consider this election contest. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

By statute, an aggrieved candidate in an election contest can appeal to the FSM Supreme Court only after the election agency has denied his petition. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

The primary forum in which election contests must take place is the election administrative machinery Congress created by statute. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

Constitutions and statutes provide, as a part of the election machinery, a procedure by which election results may be contested. Such contests are regulated wholly by constitutional or statutory provisions. The necessary steps must be strictly observed to give the court jurisdiction, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are usually powerless to entertain such proceedings. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

An election contest appeal must await the National Election Director's certification of the election results and the Director's denial of a timely post-certification petition by the candidate. If the Director's decision on the petition does not adequately address his concerns, only then would the aggrieved candidate have five days from the receipt of the Director's decision to appeal to the FSM Supreme Court appellate division if the Director's decision on the petition does not adequately address his concerns. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

If the National Election Director does not issue his decision on a candidate's post-certification petition within the statutory time frame, the candidate may appeal without waiting further for the decision. Asugar v. Edward, 13 FSM R. 215, 219 n.3 (App. 2005).

Congress, when it drafted the election statute, limited the court's involvement in election contests to until after the issues were narrowed to the certified result and whether a candidate's petition contesting the certified result should have been granted by the Director and, if so, what relief was then appropriate. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

An election contest appeal must be dismissed for lack of jurisdiction when it is filed too soon, at a time before the election statute confers jurisdiction on the court. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

If an aggrieved candidate's appeal seeks a revote, he may, once the election is certified, petition the National Election Director for a revote, and if he feels that the Director's decision does not adequately address his concerns, then appeal that decision to the FSM Supreme Court appellate division within the statutory time limit. An earlier appeal is too soon. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

The court would be without jurisdiction to hear an election contest appeal on the acceptability of a vote or votes when the aggrieved candidate withdrew his only timely petition on the subject. Asugar v. Edward,

13 FSM R. 215, 220 (App. 2005).

If election contest issues come before the FSM Supreme Court appellate division by an appeal properly filed during the statutory time limit after the election contest machinery has run its course, the court will then consider at that time the merits of what is raised and before it. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

When the plaintiffs seek a declaration that they are the legal winners of an election but have not named as defendants the candidates that opposed them and that presumably question their right to office and since these other candidates are not only real parties in interest but also indispensable parties to such a declaration, the case may be dismissed for failure to join indispensable parties. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

It is doubtful whether a court judgment in an election contest case can be collaterally attacked since election contests are purely statutory, and the courts have no inherent power to determine election contests. The determination of election contests is a judicial function only when and to the extent that the determination is authorized by statute. Thus, the jurisdiction of courts exercising general equity powers does not include election contests. An election contest must follow the path set out for it in the statute and no other. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

Whether the Chuuk State Supreme Court trial division lacked jurisdiction to consider the municipal election contest claims that the defendants brought there is irrelevant to a motion to dismiss a case in the FSM Supreme Court that relies on that state court decision because if that court lacked jurisdiction, it is now too late for the defendants to contest the municipal election in any other forum and the municipal election commission's decision will stand as a basis upon which the plaintiffs' complaint can state a claim for which relief may be granted and if that court had jurisdiction, then that court's final (and unappealed) judgment will stand as the basis on which the plaintiffs' complaint can state a claim for which relief can be granted. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

Assuming an allegation that the litigants were denied due process by the Chuuk State Supreme Court trial division to be true, does not assist their argument because they had a clear avenue to appeal that judgment and did not. When no attempt was made to appeal a decision that the candidates considered in error and a violation of their due process rights, the defendants were not vigilant in asserting their rights in seeking appellate review. An aggrieved candidate must be vigilant in asserting his rights to contest an election result. Esa v. Elimo, 14 FSM R. 216, 219-20 (Chk. 2006).

The current election statute only gives the Chuuk State Election Commission the power to conduct municipal elections, if so provided by law or municipal constitutions and also requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Esa v. Elimo, 14 FSM R. 262, 265 & n.1 (Chk. 2006).

Generally speaking, elections are conducted, carried out, and administered by the executive and legislative branches. Courts do not have a primary position in that traditional scheme. The election law states the time at which the court has the right of entertaining an appeal from the National Election Director's final action, although there may be cases in which the court would enter a matter before the election process has been completed. Doone v. National Election Comm'r, 14 FSM R. 489, 493 (Chk. 2006).

Since the Civil Procedure Rules generally apply to civil proceedings in the trial division, not the appellate division, it is not necessary to serve a summons when an election contest is appealed to the appellate division and the respondent was properly served the notice of appeal. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (Chk. S. Ct. App. 2007).

An election contestant, when, if he obtained as relief the nullification of all the votes in a VAAPP box, his vote total would then be higher than another's with the result that he would be declared a winning

candidate, has stated a claim for which the court can grant relief so his election appeal cannot be dismissed on that ground. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 575, 577 (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).

Chuuk Election Code, section 55 involves complaints in general by any citizen involving any misconduct and a candidate, when the candidate is contesting the election of another, is required, not to follow section 55, but to follow the administrative process specifically set forth in sections 123 through 130 for election contests. The completion of the administrative process outlined in section 55 is delegated to the Election Commission, not to the complainant since it is the Commission that makes the referrals to the other agencies, not the complainant. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

Election Code, sections 126 and 127, involving what must be included in an election complaint and the requirement that it be verified, apply to complaints filed before the Election Commission, not to the papers required to be filed in the Chuuk State Supreme Court appellate division for it to obtain jurisdiction over the case. When the Election Commission did not render its decision rejecting Samuel's petition on the ground that his complaint was not properly verified or did not satisfy certain formalities. Any technical defects in the original complaint are not before the court. Furthermore, the proceedings are not to be dismissed by the Commission or any court for the want of form if the contest grounds are alleged with enough certainty as will advise the defendant of the particular ground or cause for which the election is contested. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

When an election contestant's appeal to the court included what he called a Refutation of Decision of Election Commission in which he contends that the Commission's decision was contrary to law, the contestant has alleged abuse of discretion because one way in which an adjudicatory body may abuse its discretion is when its decision is based on an erroneous conclusion of law. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

In an election contest trial in the appellate division, the respondent may, after presentation of the petitioner's case, move for dismissal on the ground that the petitioner has not carried his burden of proof for the relief sought. The court will consider the motion to be analogous to a Civil Procedure Rule 41(b) motion in the trial division and hear argument. Such a motion for dismissal may be made on the ground that upon the facts and the law the petitioner has shown no right to relief, and the appellate court, as the trier of facts, may then determine the facts and render judgment against the petitioner or may decline to render any judgment until the close of all the evidence. When the court renders judgment on the merits against the petitioner by granting a motion to dismiss after the close of the petitioner's case-in-chief, it must make findings of fact and conclusions of law in a manner analogous to Civil Procedure Rule 52(a). Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 594-95 (Chk. S. Ct. App. 2007).

Since, in an election contest appeal, the appellate division is statutorily required to conduct a trial instead of the usual appellate proceeding, the court will follow, where necessary, procedures analogous to those in the Civil Procedure Rules. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 594-95 n.1 (Chk. S. Ct. App. 2007).

For the twenty-plus voters who cast their votes after 5:00 p.m. to have affected the election's outcome, there would have to have been at least twenty-six voters (because the winning margin was twenty-six votes); they would have to have all been illegal votes; and all of them would have had to have voted for real party in interest and none for the petitioner, which since this is a multiple-member district, it was possible that one or more of these voters voted for both. This makes it unlikely that these twenty-plus voters (possibly not even totaling 26), even if they all cast illegal votes, affected the election's outcome. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

An election cannot be set aside on account of illegal votes, unless by deducting those illegal votes, the result is a tie or a different candidate would be declared the winner. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

An election contestant will prevail only when it is more likely than not that the irregularities complained of could have, not necessarily would have, resulted in a tie or the election of a candidate who would not have won had the irregularities not occurred. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

When it was not more likely than not that the allegedly illegal votes cast after the Honolulu polling place had closed, if deducted, could have resulted in a tie or in the petitioner's election and when nothing before the court indicated that any of the other irregularities complained of had any affect on the election's outcome, the election contestant therefore failed to carry his burden of proof to show that upon the facts and the law he had a right to relief, and, on motion, the court may dismiss the case. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596 (Chk. S. Ct. App. 2007).

When a candidate seeks as relief either that the results from certain ballot boxes be nullified, leaving him with a plurality thus making him the "winning candidate" or a revote, it is thus an election contest in which a candidate alleges that fraud or errors affected the election's outcome and challenges the certification of another as the "winning candidate." Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 4 (App. 2007).

The applicable time frame within which an election contest appeal can be made starts with a petition for a recount or a revote filed with the Election Director within one week of certification of the results of the election; the "winning candidate" is then given seven days to respond; and the Director then has fourteen days to decide whether to approve petition. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 4 (App. 2007).

A prematurely-filed election contest appeal must be dismissed because, by statute, an aggrieved candidate in an election contest can only appeal to the FSM Supreme Court after his petition has been denied. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 4 (App. 2007).

The primary forum in which election contests must run their course is the election administrative machinery created by Congress. Constitutions and statutes provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions, and a strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. The statute conferring jurisdiction on the court does not allow appeals to the court until the proceedings before the Director (certification of election, candidate's petition, and Director's decision on the petition) have run their course. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 5 (App. 2007).

If a losing candidate wanted to appeal the National Election Director's April 3, 2007 decision rejecting his petition, he would have had to file a notice of appeal from that decision after it was issued on April 3, 2007. When he did not, and when if he had, then that appeal would have been docketed and filed separately as a different case, the court lacks jurisdiction to consider the appeal from the Director's alleged non-decision, filed before the Director's April 3, 2007 decision, and must dismiss the appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 5 (App. 2007).

The only relief that the Election Code authorizes the FSM Supreme Court to grant is a recount or a revote. It does not authorize the court to restrain the Election Director from acts such as swearing in another candidate or to order a ballot box declared invalid (thus disenfranchising all of the many qualified voters who properly cast their ballots in that box) and thereby declaring another candidate the winner. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

The Election Code does not authorize *ex parte* court hearings. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him within which he could properly seek redress, and although it is true that if Congress seats a candidate unconditionally the election contest becomes non-justiciable, not once has the court failed to decide an election contest appeal before the statutorily-mandated May 11 date for the newly-elected Congress to start. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

A candidate's supporters are not properly part of an election contest. Only the election contestant(s), the National Election Director, and the "winning candidate" are proper parties to an election contest appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

Jurisdiction over election contests rests purely on statutory and constitutional provisions. Courts have no inherent power to determine election contests. The determination of such contests being a judicial function only when and to the extent that the determination is authorized by statute. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

Since the jurisdiction of courts exercising general equity powers does not include election contests and since courts of equity are without jurisdiction to enforce purely political rights in election cases, a writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

Since relief from judgment, either in an independent action or under a Rule 60(b) motion seeks the exercise of a court's equitable powers, and since courts of equity have no jurisdiction in election contests, any trial division justices are without jurisdiction to hear a case seeking relief from judgment in an election contest case or to issue any substantive orders in that case other than to dismiss it for want of jurisdiction. Nikichiw v. Petewon, 15 FSM R. 33, 38-39 (Chk. S. Ct. App. 2007).

The court will consider the constitutionality of a municipal ordinance when the one issue that has always been before the court from the case's inception was the right of those municipal officials elected to municipal offices (mayor, assistant mayor, and Tolensom legislators) in 2004 not to be deprived or divested of those offices until their terms are up; when the terms of the legislators elected for two years have already expired but the terms of the four at-large four-year legislators, the mayor, and the assistant mayor have not; and when the new municipal ordinance relates directly to this issue because it purports to create a Tolensom Special Election Tribunal Commission, which can appoint a mayor or assistant mayor when there is an "executive crisis" created because the offices have been "vacant" for more than six months because the right to those offices is disputed between the candidates who ran for those offices. Esa v. Elimo, 15 FSM R. 198, 203 (Chk. 2007).

In any action where a party seeks relief that would result in that party being declared the winner of an election rather than some other person, that other person is an indispensable party whose absence would make any judgment void and subject to collateral attack. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

The Chuuk Election Law of 1996 applies to Murilo municipal elections. Sections 123-130 of that law provide for the means to contest an election in Chuuk, which is to be before, and decided by, the Chuuk Election Commission. And it is well settled that election contest appeals from the Chuuk Election Commission go directly to the Chuuk State Supreme Court appellate division. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

From the Election Commission's denial in an election contest, the only proper avenue in which an

aggrieved candidate can seek further review is by appeal to the appellate division. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

Once an aggrieved candidate's request to the Chuuk Election Commission is denied, his only recourse is to appeal to the appellate division because the trial division lacks jurisdiction over the election contest. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

All the provisions of the Chuuk State Election Law of 1996 apply to all elections in the State of Chuuk, including municipal elections whenever applicable unless otherwise specifically provided. The Chuuk State Election Law requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 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).

Chuuk courts do not have jurisdiction over disputes regarding an election until after the election and the matter has first been appealed from a decision of the Chuuk State Election Commission, and the Chuuk State Supreme Court trial division does not have any jurisdiction over election disputes even after an appeal from the Chuuk State Election Commission. That the case involves a municipal election in a municipality without a provision for contesting or challenging an election does not change the analysis. Bisaram v. Suta, 15 FSM R. 250, 256 (Chk. S. Ct. Tr. 2007).

In conducting a trial *de novo* in an election contest appeal, the court is not bound to show any deference to the findings of the Chuuk State Election Commission and will consider all admissible documentary and testimonial evidence in support of the petition. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 371 n.1 (Chk. S. Ct. App. 2007).

When a petitioner has presented sufficient evidence to support a *prima facie* case for relief, a respondent's motion for dismissal at the close of the petitioner's case-in-chief will be denied. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 372 (Chk. S. Ct. App. 2007).

After the parties rest, the court makes findings of fact based on the total record in the case. The petitioner (election contestant) has the burden of proof to prove his case by a preponderance of the evidence. The petitioner satisfies his burden of proof if his evidence is more convincing to the court than that of the respondents. Therefore, the petitioner must establish facts in support of his claim by evidence at least sufficient to overbalance any weight of evidence produced by the other parties. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 372 (Chk. S. Ct. App. 2007).

When a motion to dismiss for lack of the court's subject matter jurisdiction is filed in lieu of an answer to an election contest complaint, the court is required to address the preliminary issues raised regarding the appellate division's subject matter jurisdiction before proceeding to the merits of the issue. Kinemary v. Siver, 16 FSM R. 201, 205 (Chk. S. Ct. App. 2008).

The determination of an election contest is a judicial function only so far as authorized by the statute. Even if the court is granted jurisdiction, it does not then proceed according to the course of the common law, but must rely solely on its statutorily granted authority to ascertain its powers and mode of procedure. Kinemary v. Siver, 16 FSM R. 201, 205 (Chk. S. Ct. App. 2008).

The Chuuk State Election Law of 1996, chapter 8 sets forth the procedures for contesting the results of an election. A "contestant" is someone contesting an election. A "defendant" in an election contest is one

whose election or qualifications are contested. A contestant must verify a statement of contest and file it within five days after the declaration of the result of the election by the body canvassing the returns thereof, and the election commission must rule on the complaint within three days after the end of time for filing statements of contest. The Election Law imposes no deadline for appealing a ruling of the election commission to the Chuuk State Supreme Court appellate division. Kinemary v. Siver, 16 FSM R. 201, 205-06 (Chk. S. Ct. App. 2008).

Unless municipal law or constitution provides otherwise, all appeals from the Election Commissioner's decision on an election contest go directly to the Chuuk State Supreme Court appellate division. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

Although there may be no actual decision that was appealed from, an Election Commissioner's failure to act on an election contest constitutes an effective, appealable denial. In order to obtain appellate division jurisdiction over an election contest, however, the timing requirements for filing must be strictly complied with. The reason is that statutory deadlines are jurisdictional, and therefore, if a statutory deadline has not been strictly complied with, the adjudicator is without jurisdiction over the matter. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

The election contest provisions do not allow for the filing of an election contest complaint before an election. Although a petitioner may file a petition after an election is declared but before it is certified, there is no authority for allowing an election contest to be filed outside the framework of section 127 of the Election Law, which specifically states that a contest must be filed within five days after the declaration of the election – the petition must be filed after declaration of the election, but no later than five days from the date of the declaration. The Chuuk State Supreme Court appellate division has no jurisdiction when over an election contest when it was not filed with the Election Commission within the deadline imposed. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

Although it may be preferable to have the issue of a candidate's qualification addressed before the election, there is nothing to prevent a petitioner from re-filing his qualification challenge after the declaration of the results, according to the provisions for an election contest. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

Although there may be some cases where issues regarding the conduct of elections may be raised prior to an election, it seems axiomatic that an election contest only arises once the results of the election are known. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

By filing a complaint under section 55, any person may raise with the state election commission a controversy over a violation of any of the Election Law provisions. If a candidate is found guilty of violating any election law provision, the candidate may be disqualified from office and an Independent Prosecutor or Attorney General, or both, will take whatever necessary legal action to make the disqualification from office legally effective. While there are specific timing provisions that control the filing of an election contest, there is no provision that sets a deadline for filing section 55 controversies. A disqualification resulting from a successful section 55 action may, therefore, occur either before or after a candidate takes office. Kinemary v. Siver, 16 FSM R. 201, 207 (Chk. S. Ct. App. 2008).

While the Election Law explicitly grants jurisdiction to the appellate court over appeals of election contests, it is silent on the question of appellate jurisdiction over appeals from decisions made under section 55 and no other provision in the Election Law, other than those granting jurisdiction over election contests in the appellate division, expressly provides for jurisdiction in the Supreme Court appellate division. Although there is no specific reference to the jurisdiction of the trial division in the Election Law itself, it must be inferred that the trial division, and not the appellate division, has jurisdiction over criminal prosecutions sought pursuant to section 55 as well as the power to hear contempt proceedings that are certified from the Election Commission pursuant to section 8. Since the provisions in the Chuuk Constitution and Judiciary Act for trial court review over agency actions otherwise provide authority for the trial court's jurisdiction over appeals from an election commission, the appellate court does not have

jurisdiction over an appeal from the Election Commission's denial of a petitioner's pre-election complaint regarding the qualifications of candidates for Polle municipal mayoral office. Kinemary v. Siver, 16 FSM R. 201, 207 (Chk. S. Ct. App. 2008).

The state appellate panel must decide on a contested election before the date upon which the declared winning candidates are to take office in the Senate or House of Representatives since the decision of the specific house concerned will prevail and is final. Kinemary v. Siver, 16 FSM R. 201, 208 (Chk. S. Ct. App. 2008).

Except for members-elect of the Senate or House of Representatives, the court is not prevented from ruling on cases involving elected officials even after they have taken office. A candidate will continue to have a legally cognizable interest in whether one or more candidates is disqualified because, if one or more candidates is disqualified, then one of the others may stand to be the winning candidate. If the candidates' qualifications are affirmed by the court, the ruling still serves a valuable function by settling a concrete dispute over the qualifications of an elected official. Kinemary v. Siver, 16 FSM R. 201, 208 (Chk. S. Ct. App. 2008).

The procedures for filing a challenge of a candidate's or elected official's qualifications may be presented at any time. A properly filed petition is not rendered moot by the results of an election or the swearing in of a mayoral candidate. Kinemary v. Siver, 16 FSM R. 201, 208 (Chk. S. Ct. App. 2008).

A case is an election contest when the relief sought may affect or change who the winning candidate is in an election district and the plaintiff-candidate is thus an election contestant. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358 (Chk. 2009).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him through which he could properly seek redress. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358 (Chk. 2009).

When the relief sought is obtainable from the National Election Director before certification since a recount or a revote is a remedy within the National Election Director's power to order during the election contest appeal process, the plaintiff cannot show irreparable harm and his motion for a temporary restraining order may be denied on that ground alone. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358-59 (Chk. 2009).

An election contest appeal must await the National Election Director's certification of the election results and the Director's subsequent denial of the candidate's timely post-certification petition. If the Director's decision on an aggrieved candidate's petition does not adequately address the candidate's concerns, the aggrieved candidate would then have five days from the receipt of the Director's decision to appeal to the FSM Supreme Court appellate division. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

When Congress drafted the election statute, it limited court involvement in election contests until after the issues have been narrowed to the certified result and to whether the Director should have granted a candidate's petition contesting the certified result and, if so, what relief was then appropriate. The statute also designates the FSM Supreme Court appellate division as the forum for election contest appeals. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

Any candidate who would be adversely affected by the relief an aggrieved candidate seeks would be an indispensable party to the action and must be joined before a court could grant any relief or a dismissal will ensue. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 359 (Chk. 2009).

Election Code sections 131 and 132 specifically provide that the Chuuk State Supreme Court appellate division is to hold a trial de novo on an appeal from the election commission, which necessarily means that

the appellate division will make its own determinations of fact. The court is therefore not limited to review of the election commission's findings for an abuse of discretion, but is authorized by law to make findings of fact. Aniol v. Chuuk State Election Comm'n, 16 FSM R. 387, 389 (Chk. S. Ct. App. 2009).

When the election statute appears to contemplate that the election commission will be open for filing election complaints during the five days following the election results' certification regardless of whether one of those day falls on a weekend or holiday; when the election commission had no written policies or regulations or other notice issued to the public that would reasonably inform a complainant that the election commission would be open at reasonable, specified times for filing election contests each of the five days following the results' certification; when the election contestant was not reasonably informed that he could file his verified complaint on Saturday, March 14, rather than filing it on the following Monday, as he had done; when the contestant had sought to file his verified complaint on Saturday, but the election commission office was not open for filing; and when, even if there had been written policies or regulations or other reasonable public notice, the commission was not, in fact, open for filing when petitioner sought to file his complaint within the five-day deadline, the court will conclude that the verified election complaint's Monday filing was timely under the circumstances and remand the matter back to the election commission for an expedited ruling. Aten v. Chuuk State Election Comm'n, 16 FSM R. 390, 391-92 (Chk. S. Ct. App. 2009).

A case is an election contest when the relief sought may affect, change, or prevent the change of who the winning candidates are. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 392, 394 (Chk. 2009).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him through which he could properly seek redress. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 392, 394 (Chk. 2009).

Jurisdiction over election contests rests purely on statutory and constitutional provisions, and courts have no inherent power to determine election contests. The determination of such contests are a judicial function only when and to the extent that the determination is authorized by statute. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 392, 394 (Chk. 2009).

When a candidate seeks relief that would result either in him being confirmed the winning candidate or preventing another candidate from such a confirmation or relief could affect an election's outcome, it is an election contest. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

The FSM Supreme Court trial division lacks jurisdiction over an election contest in a Chuuk state election since jurisdiction over election contests rests purely on statutory and constitutional provisions, and courts otherwise have no inherent power to determine election contests, and since the determination of such contests is a judicial function only when and to the extent that the determination is authorized by statute. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

The court lacks subject-matter jurisdiction over a case when, if applied, the general principle that courts should first consider any non-constitutional grounds that might resolve the issue because unnecessary constitutional adjudication ought to be avoided, would unmask the case as an election contest and the matter would accordingly be dismissed. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

An election contest is a proceeding to challenge the results of an election. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 410 (Chk. S. Ct. App. 2009).

The pleading requirements for filing an election contest are liberal. An election contestant must file a verified, written complaint with the election commission setting forth the contestant's name and that he is a voter in the state, municipality or precinct where the contested election was held; the defendant's name; the office; and the particular grounds of contest, and the complaint must not be rejected, nor the proceeding

dismissed by the commission or any court, for want of form, if the grounds of the contest are alleged with such certainty as will advise the defendant of the particular ground or cause for which the election is contested. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 410 (Chk. S. Ct. App. 2009).

When the petitioners' complaint to the election commission shows numerous, specific allegations of misconduct resulting in election irregularities and when, based on these allegations, the petitioners challenge the election results and request relief that could change the election's outcome, the allegations are set forth with sufficient certainty to advise the defendants of the grounds for the contest, and since the petitioners' complaint challenges the election results with sufficient certainty, it should be treated as an election contest and not an action against the commissioners in their individual capacities. If there is a basis for criminal or civil liability against election commission officials in their individual capacities, the allegations may be pursued in a separate action within the discretion of the Attorney General or an independent prosecutor. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 410 (Chk. S. Ct. App. 2009).

A complainant before the election commission may name as a defendant a person whose election or qualifications are contested or persons receiving an equal or larger number of votes, other than the contestant, and the election commission or an individual member may also be a defendant. If the election commission believes that the commission is an indispensable party to the action, it can easily order that it be named a party to the action. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 410-11 (Chk. S. Ct. App. 2009).

The decision as to the court's jurisdiction over an action is one to be made by the court, and the election commission is not empowered to assume or confer whether a court has jurisdiction. The election commission is limited to determining its own jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

An election contestant must file a verified complaint with the election commission within five days after the declaration of the election result by the body canvassing the returns. The deadline for filing a complaint with the election commission is jurisdictional. If the complainant fails to meet the deadline, then the election commission has no jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

A timely-filed election complaint confers jurisdiction in the election commission. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

A court will refrain from addressing whether it has jurisdiction over an election contest when the matter is merely hypothetical and not a justiciable controversy, but if the issue comes properly before the court and if it appears that the court lacks jurisdiction over the complaint's subject matter, the court would dismiss the action. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

An appeal is an election contest when a candidate seeks relief that would result either in him being confirmed the "winning candidate" or preventing another candidate from such a confirmation or the relief could affect an election's outcome. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

Constitutions and statutes provide, as a part of the election machinery, the procedure by which election results may be contested, and such contests are regulated wholly by these constitutional or statutory provisions. A strict observance of the steps necessary to give us jurisdiction over an election contest is required, and if these steps are not followed, the court is powerless to entertain such proceedings. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

An aggrieved candidate may, within five days after receipt of the National Election Director's decision granting or denying a petition for a recount or a revote, appeal that decision to the FSM Supreme Court appellate division. A post-certification petition, and a decision thereon, is a prerequisite to an appeal to the court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

If the possibility of double voting is alleged, the burden is on the election appellant to show that it is likely to have occurred; he cannot rely solely on an assertion that double voting is possible. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 420 n.4 (App. 2009).

A petition presented to the National Election Director must contain a) a statement of the nature, location and extent of the election fraud or error that forms the basis of the petition; b) a statement of the form of relief the petitioner seeks; c) a list of election records and witnesses that will establish the existence of election error or fraud, specifying how each record or official listed is relevant to the petition's allegations; and d) affidavits, documents and any other evidence in support of the petition. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 420 (App. 2009).

When an election contestant's shifting allegations of irregularities (the allegations shifted from misreporting or tampering with the reported results to double-voting) and his later exhibits could have been an appropriate basis for a post-certification petition to the National Election Director, but instead of filing the required post-certification petition, the contestant filed a court appeal, the court cannot conduct a meaningful appellate review in such a manner and therefore cannot consider them because these issues and exhibits would, if allowed, come before the court without the benefit of the National Election Director's reasoned review and decision. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 420-21 (App. 2009).

If an election contestant's appeal is considered as only a claim challenging the acceptability of votes, the five-day time frame to appeal the National Election Commissioner's denial of that claim would start then even though a recount was pending because an FSM Supreme Court appellate division decision may have the effect of disallowing challenged votes but shall not halt or delay balloting or counting and tabulating. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

A candidate's only appeal from the certification of an election or the declaration of the winning candidate is to file a petition with the National Election Director within seven days of the certification, and, if the candidate is still aggrieved after the National Election Director's decision on the post-certification petition, then he or she may appeal to the FSM Supreme Court appellate division. The Election Code does not authorize an appeal of a certification of election directly to the FSM Supreme Court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421-22 (App. 2009).

An election appeal filed too soon will be dismissed as premature (unripe) because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames have been adhered to. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

Although there are rare occasions when an equitable remedy may be proper in an election case, overlooking or extending a deadline to file an appeal is not one of them. Statutory deadlines to file appeals are jurisdictional, and if the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

The timing provisions for the election commission to rule on an election contest provide that once the state election commission begins a special session, it has two days to reach a determination of the contest. The court reads the two-day deadline as directory, not mandatory. Because the deadline is directory, an election contest is not effectively denied if the election commission fails to reach a determination within two days, so long as the commission is taking reasonable steps to determine the contest as quickly as possible. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 462 (Chk. S. Ct. App. 2009).

A court cannot conclude that there was an effective denial of an election petition until there is a determination as to what, if any, substantive action to determine the contest was taken by the election commission. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 463 (Chk. S. Ct. App. 2009).

If an election complaint was not timely filed with the election commission, then neither the election

commission nor the court have jurisdiction over the election contest. Because statutory filing deadlines are generally mandatory, whether the complaint was timely filed is a jurisdictional question and therefore potentially dispositive of a contest. That determination is initially the election commission's to make, as it involves factual questions going to its own jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 463 (Chk. S. Ct. App. 2009).

Until the election commission determines the election contest, or there is otherwise an appeal from a final order or a determinate effective denial, administrative remedies have not been exhausted and such an election contest will, therefore, be remanded to the election commission for further proceedings. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 463 (Chk. S. Ct. App. 2009).

Since, in an election contest appeal, the Chuuk State Supreme Court appellate division is statutorily required to conduct a trial instead of the usual appellate proceeding and since the Election Law itself does not prescribe rules of procedure, the court has, when necessary, followed procedures analogous to those in the Civil Procedure Rules. Bisaram v. Oneisom Election Comm'n, 16 FSM R. 475, 477 (Chk. S. Ct. App. 2009).

In ruling on a motion to dismiss for failure to prosecute an election contest, the court also takes into consideration the vigilance required of an election contestant to prosecute his claim to a speedy resolution. Due to the time sensitivity of election contests, continuances should rarely if ever be granted since the public interest and the litigants' private rights demand that proceedings be resolved as soon as consistent with justice and orderly process. Bisaram v. Oneisom Election Comm'n, 16 FSM R. 475, 478 (Chk. S. Ct. App. 2009).

The burden is on the election contestant to be vigilant and to prosecute his claim diligently to a speedy resolution. When a contestant has not done this; when the contestant's explanation for not complying with the court's order for a pre-trial record was not consistent with a good faith effort to prosecute his appeal; when the contestant otherwise took no action to expedite his appeal's resolution; and when an election contestant, without reasonable justification, failed to comply with a court order requiring a filing by a set deadline or his claim would be deemed abandoned; and when he has not taken steps to diligently pursue the speedy resolution of the election contest, the court is justified in concluding that the prosecution of the claim has been abandoned and will grant a motion to dismiss for failure to prosecute. Bisaram v. Oneisom Election Comm'n, 16 FSM R. 475, 478 (Chk. S. Ct. App. 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).

Absent a showing that the election commission had failed to take meaningful action on their complaint since the court's remand, the court could not take jurisdiction over the remanded election contest since, if the court had taken jurisdiction over the merits of the case before administrative remedies had been exhausted, it would have circumvented the power vested in the election commission to have primary jurisdiction over election contests and the court's rulings would have been subjected to appeal for lack of jurisdiction when administrative remedies had not yet been exhausted. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 517 (Chk. S. Ct. App. 2009).

Matters of statutory interpretation are issues of law that the court reviews de novo. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

In an election contest appeal in the Chuuk State Supreme Court appellate division, the court will hold a trial on an issue of fact. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

In an election contest trial in the appellate division, a respondent may, after presentation of the

petitioner's case, move for dismissal on the ground that the petitioner has not carried his burden of proof for the relief sought. The court will consider this as a motion analogous to a Civil Procedure Rule 41(b) motion in the trial division. The motion may therefore be made on the ground that upon the facts and the law the petitioner has shown no right to relief, and the appellate court, as the trier of facts, may then make findings of fact and conclusions of law and render judgment against the petitioner. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

Whether an election complaint is timely filed is a matter of great importance in election contests, as an untimely complaint will prevent an adjudicator from ruling on the contest for lack of jurisdiction since an adjudicator's jurisdiction over election contests is limited to the constitutional or statutory provision expressly or impliedly giving it that authority. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

Under the Chuuk Election Law, initially, an election contestant must file a verified complaint with the election commission within five days after the declaration of the election result by the body canvassing the returns. This deadline for filing a complaint with the election commission is mandatory, and, if the complainant fails to strictly comply with the deadline for filing a verified complaint, the complaint will be dismissed for lack of jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

An election contestant must file a verified complaint. An oral complaint does not satisfy the requirements of a verified complaint, which is a written complaint sworn to under oath. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

The public announcement of the results, not the date of certification, is the date for determining an election contest filing deadline under the Chuuk Election Law. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

In an election contest, the court makes findings of fact based on the total record in the case. The petitioner has the burden of proof to prove his case by a preponderance of the evidence. The petitioner satisfies his burden of proof if his evidence is more convincing to the court than that of the respondents. Thus, the petitioners must establish facts in support of their claim by evidence at least sufficient to overbalance any weight of evidence produced by the other parties. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

When there was no evidence to contradict the election commission's finding of the dates that the election results were announced, the petitioners cannot prove by a preponderance of the evidence that the declaration of the election was after April 11, 2009, which, if it had been, would have made their petition timely and the panel would have remanded the contest to the election commission for a third time. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

Neither the election commission nor the court can take jurisdiction over an election contest when it is not timely filed. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

Before the appellate division proceeds to the merits of any action filed as an election contest, the court should determine if it has subject matter jurisdiction because the appellate division has jurisdiction over election contests only to the extent that a constitutional or statutory provision expressly or impliedly gives it that authority. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542 (Chk. S. Ct. App. 2009).

The appellate court's authority to hear an election contest arises when there is an appeal from the election commission's ruling on a complaint filed pursuant to section 127, which requires a contestant to file a verified statement of contest with the election commission within five days after the declaration of the election result by the body canvassing the returns thereof. For the appellate division to take subject matter jurisdiction in an election contest, the appellants must have appealed from the election commission's ruling on a complaint that was filed within five days of the declaration of an election's results. But a complaint raising issues regarding an election, but before an election result has been declared, is not an election

contest. Rather, jurisdiction over appeals of agency decisions, including those of the state election commission, is vested in trial division. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542 (Chk. S. Ct. App. 2009).

Chuuk Election Code, section 138 clearly contemplates that the FSM Supreme Court appellate division may exercise jurisdiction over a Chuuk state election contest even after the candidates that have been declared the winners have been sworn in. Chuuk State Election Comm'n v. Chuuk State Supreme Court App. Div., 16 FSM R. 614, 615 (App. 2009).

A court cannot, for lack of jurisdiction, weigh the likelihood of plaintiff's success on the merits when, pursuant to state law, the merits of his appeal are not before the court because they were duly presented in their proper forum of the appellate division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

In the case of a contested election of a member-elect of the Chuuk Senate or House of Representatives, the decision of the specific house concerned prevails. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 492, 494 (Chk. S. Ct. App. 2011).

When, at the close of the petitioner's case-in-chief, the respondents move to dismiss the petitioner's case because he had not shown a right to relief, the Chuuk State Supreme Court appellate division will consider the motion to be analogous to a trial division Civil Procedure Rule 41(b) motion to dismiss although the civil procedure rules apply to the trial division and not the appellate division. Such a motion to dismiss may be made on the ground that on the facts and the law the petitioner has shown no right to relief, and the Chuuk State Supreme Court appellate division, as the trier of fact, may then determine the facts and render judgment against the petitioner or may decline to render any judgment until the close of all the evidence. Hallers v. Yer, 18 FSM R. 644, 647 (Chk. S. Ct. App. 2013).

When determining whether a petitioner has shown a right to relief in an election contest appeal, the Chuuk State Supreme Court appellate division is not required to view the facts in the light most favorable to the petitioner but may draw permissible inferences, and if it determines that the petitioner has not made out a prima facie case, the real party in interest is entitled to have the case dismissed. Even if a petitioner makes out a prima facie case, the Chuuk State Supreme Court appellate division, as the trier of fact, may, in assessing the evidence on a Rule 41(b) or analogous motion, weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance of the evidence lies, and when weighing the evidence, the court may view the evidence with an unbiased eye without any attendant favorable inferences, and may sift and balance the evidence and give the evidence such weight as it deems fit, and when it renders judgment on the merits against the petitioner by granting a motion to dismiss after the close of the petitioner's case-in-chief, it must make findings of fact and conclusions of law in a manner analogous to Civil Procedure Rule 52(a). Hallers v. Yer, 18 FSM R. 644, 647 (Chk. S. Ct. App. 2013).

When there was an eighty-five vote difference between the petitioner and the real party in interest; when, weighing the evidence with an unbiased eye, the Chuuk State Supreme Court appellate division determined that the petitioner did not show that the possible tabulation inaccuracies, even in the unlikely event that they were all in the real part in interest's favor, were enough that there was a substantial chance that the election's outcome was affected; and when, even if the Chuuk State Supreme Court appellate division were to view the facts in the light most favorable to the petitioner and gave the petitioner the benefit of all reasonable inferences, it still would not have been more likely than not that if a more accurate vote count were obtained through a recount the vote totals would have changed enough so that there was a substantial chance that the election's outcome would be affected; the petitioner failed to carry his burden of proof to show that upon the facts and the law he had a right to relief and the Chuuk State Supreme Court appellate division therefore may, on motion made after the presentation of the petitioner's case-in-chief, dismiss the case. Hallers v. Yer, 18 FSM R. 644, 648 (Chk. S. Ct. App. 2013).

Without the Chuuk State Election Commission case record, including but not limited to the complaint and the Commission's decision, the court cannot determine whether certain requirements before retaining jurisdiction were met: 1) whether the Chuuk State Election Commission case was filed within the

prescribed time and 2) whether the Chuuk State Election Commission case was filed as a verified complaint. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

Whether an election complaint is timely filed is a matter of great importance in election, as an untimely complaint will prevent an adjudicator from ruling on the contest for lack of jurisdiction. An adjudicator's jurisdiction over election contest is limited to the constitutional or statutory provision expressly or impliedly giving it that authority. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of a proceeding. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

When the appellant cannot verify to the court that the election contest requirements were met, the court lacks the jurisdiction. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

– Court Jurisdiction

A writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Courts of equity are without jurisdiction to enforce purely political rights. Matters concerning the conduct of elections are usually left to the political branches and the courts generally have no jurisdiction until after the elections are held. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Generally speaking, elections are conducted and carried out and administered by the executive and legislative branches. Courts do not have a primary position in that traditional scheme. The election law states the time at which the court has the right of entertaining an appeal from the final action of the National Election Director. Wiliander v. Siales, 7 FSM R. 77, 79 (Chk. 1995).

When the state election law requiring election appeals to go directly to the state court appellate division has a provision applying the law to municipal elections if the municipal constitution or law so provides and there is no such municipal provision, then jurisdiction over the election appeal does not lie in the state court appellate division in the first instance. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

When the state judiciary act gives the state court trial division authority to review all actions of an agency of the government, the trial division has jurisdiction over an appeal of the state election commissioner's denial of a petition to set aside a municipal election. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division had jurisdiction to hear an election appeal from an election conducted, pursuant to the governor's emergency declaration, under a state law providing for such jurisdiction. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 280 n.1 (Chk. S. Ct. Tr. 1998).

A decision of the Chuuk Election Commission may be appealed to the Chuuk State Supreme Court appellate division. David v. Uman Election Comm'r, 8 FSM R. 300d, 300f, 300h (Chk. S. Ct. App. 1998).

The jurisdiction of courts exercising general equity powers does not include election contests, unless it is so provided expressly or impliedly by the constitution or by statute. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

It is a general rule that courts of equity have no inherent power to try contested elections, notwithstanding fraud on the part of the election officers. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

Constitutions and statutes of most jurisdictions provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the

constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. David v. Uman Election Comm'r, 8 FSM R. 300d, 300g (Chk. S. Ct. App. 1998).

Election contests are purely statutory, and the courts have no inherent power to determine election contests, the determination of such contests being a judicial function only when and to the extent that the determination is authorized by statute. David v. Uman Election Comm'r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

If the Chuuk State Supreme Court appellate division has original jurisdiction to decide an election contest, there must be a specific constitutional or statutory provision giving the appellate division that authority. David v. Uman Election Comm'r, 8 FSM R. 300d, 300h (Chk. S. Ct. App. 1998).

The Chuuk State Supreme Court appellate division has no original jurisdiction to entertain an appeal directly from a municipal election commissioner. David v. Uman Election Comm'r, 8 FSM R. 300d, 300i (Chk. S. Ct. App. 1998).

The jurisdiction of courts exercising general equity powers does not include election contests, unless it is so provided expressly or impliedly by the constitution or by statute. Mathew v. Silander, 8 FSM R. 560, 562 (Chk. S. Ct. Tr. 1998).

It is a general rule that courts of equity have no inherent power to try contested elections, notwithstanding fraud on the part of the election officers. Mathew v. Silander, 8 FSM R. 560, 562 (Chk. S. Ct. Tr. 1998).

The constitutions and statutes of most jurisdictions provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. They are not actions at law or suits in equity, and were unknown to the common law. The proceedings are special and summary in their nature. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. Mathew v. Silander, 8 FSM R. 560, 563 (Chk. S. Ct. Tr. 1998).

The determination of an election contest is a judicial function only so far as authorized by the statute. The court exercising the jurisdiction does not proceed according to the course of the common law, but must resort to the statute alone to ascertain its powers and mode of procedure. Mathew v. Silander, 8 FSM R. 560, 563 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division could have had jurisdiction over election commission appeals had the legislature seen fit to grant it such authority, but the Election Law of 1996, provides that Chuuk Election Commission decisions may be appealed to the appellate division. Therefore an election contest appeal in the trial division will be dismissed for lack of jurisdiction. Mathew v. Silander, 8 FSM R. 560, 564 (Chk. S. Ct. Tr. 1998).

When a voter contests any election he must file a written complaint with the Chuuk Election Commission. If the contestant is dissatisfied with the Commission's decision, appeal to the Chuuk State Supreme Court appellate division can be had, and if the contestant is dissatisfied with the Chuuk State Supreme Court appellate division's decision, appeal to the FSM Supreme Court can be had. The Chuuk State Supreme Court trial division is without jurisdiction to hear an election contest. Phillip v. Phillip, 9 FSM R. 226, 228 (Chk. S. Ct. Tr. 1999).

The issue of whether a person is entitled to have his name placed on the ballot is an election case, over which neither division of the Chuuk State Supreme Court has original jurisdiction, and which is placed solely in the hands of the Chuuk State Election Commission with the Chuuk State Supreme Court appellate division having jurisdiction only as provided in the Election Law of 1996. Hethon v. Os, 9 FSM R. 534, 535

(Chk. S. Ct. Tr. 2000).

The Legislature has, 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, 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. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 155 (Chk. S. Ct. App. 2001).

The primary forum in which election contests must run their course is the election administrative machinery created by Congress. Constitutions and statutes provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

An election contest appellant has not strictly observed the steps necessary to give the court jurisdiction when he has not filed his appeal within the time frame permitted by statute. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

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).

The five-day time limit to appeal an election to the FSM Supreme Court does not start when the Director certifies the election, but rather when the aggrieved candidate receives the Director's decision on the candidate's petition or until the time has run out for the Director to issue a decision on the candidate's petition. Wiliander v. National Election Dir., 13 FSM R. 199, 204 (App. 2005).

Constitutions and statutes provide, as a part of the election machinery, a procedure by which election results may be contested. Such contests are regulated wholly by constitutional or statutory provisions. The necessary steps must be strictly observed to give the court jurisdiction, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are usually powerless to entertain such proceedings. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The election law states the time at which the court has the right to entertain an appeal is from the National Election Director's final action. No statutory or constitutional provision grants the court the power to interfere with the election machinery and issue injunctive relief at a point in the electoral process prior to the election officials' completion of their responsibilities. Asugar v. Edward, 13 FSM R. 209, 213 (Chk. 2005).

The applicable time frame within which an election contest appeal can be made starts with a petition to the National Election Director filed within one week of certification of the results of the election. The winning candidate then has one week to respond to the petition. The Director then has ten days to decide whether to approve the petition. If the petition is denied, then the aggrieved candidate would have five days to appeal to the FSM Supreme Court appellate division. It is at that point that the court would have jurisdiction to consider this election contest. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

By statute, an aggrieved candidate in an election contest can appeal to the FSM Supreme Court only after the election agency has denied his petition. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

Constitutions and statutes provide, as a part of the election machinery, a procedure by which election results may be contested. Such contests are regulated wholly by constitutional or statutory provisions. The necessary steps must be strictly observed to give the court jurisdiction, and the jurisdictional facts must

appear on the face of the proceedings. If these steps are not followed, courts are usually powerless to entertain such proceedings. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

An election contest appeal must await the National Election Director's certification of the election results and the Director's denial of a timely post-certification petition by the candidate. If the Director's decision on the petition does not adequately address his concerns, only then would the aggrieved candidate have five days from the receipt of the Director's decision to appeal to the FSM Supreme Court appellate division if the Director's decision on the petition does not adequately address his concerns. Asugar v. Edward, 13 FSM R. 215, 219 (App. 2005).

If the National Election Director does not issue his decision on a candidate's post-certification petition within the statutory time frame, the candidate may appeal without waiting further for the decision. Asugar v. Edward, 13 FSM R. 215, 219 n.3 (App. 2005).

Congress, when it drafted the election statute, limited the court's involvement in election contests to until after the issues were narrowed to the certified result and whether a candidate's petition contesting the certified result should have been granted by the Director and, if so, what relief was then appropriate. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

An election contest appeal must be dismissed for lack of jurisdiction when it is filed too soon, at a time before the election statute confers jurisdiction on the court. Asugar v. Edward, 13 FSM R. 215, 220 (App. 2005).

It is doubtful whether a court judgment in an election contest case can be collaterally attacked since election contests are purely statutory, and the courts have no inherent power to determine election contests. The determination of election contests is a judicial function only when and to the extent that the determination is authorized by statute. Thus, the jurisdiction of courts exercising general equity powers does not include election contests. An election contest must follow the path set out for it in the statute and no other. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 2006).

Whether the Chuuk State Supreme Court trial division lacked jurisdiction to consider the municipal election contest claims that the defendants brought there is irrelevant to a motion to dismiss a case in the FSM Supreme Court that relies on that state court decision because if that court lacked jurisdiction, it is now too late for the defendants to contest the municipal election in any other forum and the municipal election commission's decision will stand as a basis upon which the plaintiffs' complaint can state a claim for which relief may be granted and if that court had jurisdiction, then that court's final (and unappealed) judgment will stand as the basis on which the plaintiffs' complaint can state a claim for which relief can be granted. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

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).

In an election contest trial in the appellate division, the respondent may, after presentation of the petitioner's case, move for dismissal on the ground that the petitioner has not carried his burden of proof for the relief sought. The court will consider the motion to be analogous to a Civil Procedure Rule 41(b) motion in the trial division and hear argument. Such a motion for dismissal may be made on the ground that upon the facts and the law the petitioner has shown no right to relief, and the appellate court, as the trier of facts, may then determine the facts and render judgment against the petitioner or may decline to render any judgment until the close of all the evidence. When the court renders judgment on the merits against the petitioner by granting a motion to dismiss after the close of the petitioner's case-in-chief, it must make findings of fact and conclusions of law in a manner analogous to Civil Procedure Rule 52(a). Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 594-95 (Chk. S. Ct. App. 2007).

Since, in an election contest appeal, the appellate division is statutorily required to conduct a trial instead of the usual appellate proceeding, the court will follow, where necessary, procedures analogous to those in the Civil Procedure Rules. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 594-95 n.1 (Chk. S. Ct. App. 2007).

A prematurely-filed election contest appeal must be dismissed because, by statute, an aggrieved candidate in an election contest can only appeal to the FSM Supreme Court after his petition has been denied. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 4 (App. 2007).

The primary forum in which election contests must run their course is the election administrative machinery created by Congress. Constitutions and statutes provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions, and a strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. The statute conferring jurisdiction on the court does not allow appeals to the court until the proceedings before the Director (certification of election, candidate's petition, and Director's decision on the petition) have run their course. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 5 (App. 2007).

If a losing candidate wanted to appeal the National Election Director's April 3, 2007 decision rejecting his petition, he would have had to file a notice of appeal from that decision after it was issued on April 3, 2007. When he did not, and when if he had, then that appeal would have been docketed and filed separately as a different case, the court lacks jurisdiction to consider the appeal from the Director's alleged non-decision, filed before the Director's April 3, 2007 decision, and must dismiss the appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 5 (App. 2007).

The only relief that the Election Code authorizes the FSM Supreme Court to grant is a recount or a revote. It does not authorize the court to restrain the Election Director from acts such as swearing in another candidate or to order a ballot box declared invalid (thus disenfranchising all of the many qualified voters who properly cast their ballots in that box) and thereby declaring another candidate the winner. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

The Election Code does not authorize *ex parte* court hearings. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

An election contestant cannot show irreparable harm, a necessary prerequisite to the issuance of a temporary restraining order and a major factor to be weighed before granting a preliminary injunction, when he has the election appeal process available to him within which he could properly seek redress, and although it is true that if Congress seats a candidate unconditionally the election contest becomes non-justiciable, not once has the court failed to decide an election contest appeal before the statutorily-mandated May 11 date for the newly-elected Congress to start. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

A candidate's supporters are not properly part of an election contest. Only the election contestant(s), the National Election Director, and the "winning candidate" are proper parties to an election contest appeal. Sipenuk v. FSM Nat'l Election Dir., 15 FSM R. 1, 6 (App. 2007).

Jurisdiction over election contests rests purely on statutory and constitutional provisions. Courts have no inherent power to determine election contests. The determination of such contests being a judicial function only when and to the extent that the determination is authorized by statute. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

Since the jurisdiction of courts exercising general equity powers does not include election contests and since courts of equity are without jurisdiction to enforce purely political rights in election cases, a writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Nikichiw v. Petewon, 15 FSM R. 33, 38 (Chk. S. Ct. App. 2007).

Since relief from judgment, either in an independent action or under a Rule 60(b) motion seeks the exercise of a court's equitable powers, and since courts of equity have no jurisdiction in election contests, any trial division justices are without jurisdiction to hear a case seeking relief from judgment in an election contest case or to issue any substantive orders in that case other than to dismiss it for want of jurisdiction. Nikichiw v. Petewon, 15 FSM R. 33, 38-39 (Chk. S. Ct. App. 2007).

From the Election Commission's denial in an election contest, the only proper avenue in which an aggrieved candidate can seek further review is by appeal to the appellate division. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

Once an aggrieved candidate's request to the Chuuk Election Commission is denied, his only recourse is to appeal to the appellate division because the trial division lacks jurisdiction over the election contest. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

All the provisions of the Chuuk State Election Law of 1996 apply to all elections in the State of Chuuk, including municipal elections whenever applicable unless otherwise specifically provided. The Chuuk State Election Law requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Bisaram v. Suta, 15 FSM R. 250, 254 (Chk. S. Ct. Tr. 2007).

Chuuk courts do not have jurisdiction over disputes regarding an election until after the election and the matter has first been appealed from a decision of the Chuuk State Election Commission, and the Chuuk State Supreme Court trial division does not have any jurisdiction over election disputes even after an appeal from the Chuuk State Election Commission. That the case involves a municipal election in a municipality without a provision for contesting or challenging an election does not change the analysis. Bisaram v. Suta, 15 FSM R. 250, 256 (Chk. S. Ct. Tr. 2007).

In conducting a trial *de novo* in an election contest appeal, the court is not bound to show any deference to the findings of the Chuuk State Election Commission and will consider all admissible documentary and testimonial evidence in support of the petition. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 371 n.1 (Chk. S. Ct. App. 2007).

When a motion to dismiss for lack of the court's subject matter jurisdiction is filed in lieu of an answer to an election contest complaint, the court is required to address the preliminary issues raised regarding the appellate division's subject matter jurisdiction before proceeding to the merits of the issue. Kinemary v. Siver, 16 FSM R. 201, 205 (Chk. S. Ct. App. 2008).

The determination of an election contest is a judicial function only so far as authorized by the statute. Even if the court is granted jurisdiction, it does not then proceed according to the course of the common law, but must rely solely on its statutorily granted authority to ascertain its powers and mode of procedure. Kinemary v. Siver, 16 FSM R. 201, 205 (Chk. S. Ct. App. 2008).

Unless municipal law or constitution provides otherwise, all appeals from the Election Commissioner's decision on an election contest go directly to the Chuuk State Supreme Court appellate division. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

Although there may be no actual decision that was appealed from, an Election Commissioner's failure to act on an election contest constitutes an effective, appealable denial. In order to obtain appellate division jurisdiction over an election contest, however, the timing requirements for filing must be strictly complied with. The reason is that statutory deadlines are jurisdictional, and therefore, if a statutory deadline has not been strictly complied with, the adjudicator is without jurisdiction over the matter. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

The election contest provisions do not allow for the filing of an election contest complaint before an election. Although a petitioner may file a petition after an election is declared but before it is certified, there is no authority for allowing an election contest to be filed outside the framework of section 127 of the Election Law, which specifically states that a contest must be filed within five days after the declaration of the election – the petition must be filed after declaration of the election, but no later than five days from the date of the declaration. The Chuuk State Supreme Court appellate division has no jurisdiction when over an election contest when it was not filed with the Election Commission within the deadline imposed. Kinemary v. Siver, 16 FSM R. 201, 206 (Chk. S. Ct. App. 2008).

While the Election Law explicitly grants jurisdiction to the appellate court over appeals of election contests, it is silent on the question of appellate jurisdiction over appeals from decisions made under section 55 and no other provision in the Election Law, other than those granting jurisdiction over election contests in the appellate division, expressly provides for jurisdiction in the Supreme Court appellate division. Although there is no specific reference to the jurisdiction of the trial division in the Election Law itself, it must be inferred that the trial division, and not the appellate division, has jurisdiction over criminal prosecutions sought pursuant to section 55 as well as the power to hear contempt proceedings that are certified from the Election Commission pursuant to section 8. Since the provisions in the Chuuk Constitution and Judiciary Act for trial court review over agency actions otherwise provide authority for the trial court's jurisdiction over appeals from an election commission, the appellate court does not have jurisdiction over an appeal from the Election Commission's denial of a petitioner's pre-election complaint regarding the qualifications of candidates for Polle municipal mayoral office. Kinemary v. Siver, 16 FSM R. 201, 207 (Chk. S. Ct. App. 2008).

When the relief sought is obtainable from the National Election Director before certification since a recount or a revote is a remedy within the National Election Director's power to order during the election contest appeal process, the plaintiff cannot show irreparable harm and his motion for a temporary restraining order may be denied on that ground alone. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 356, 358-59 (Chk. 2009).

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).

Jurisdiction over election contests rests purely on statutory and constitutional provisions, and courts have no inherent power to determine election contests. The determination of such contests are a judicial function only when and to the extent that the determination is authorized by statute. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 392, 394 (Chk. 2009).

The FSM Supreme Court trial division lacks jurisdiction over an election contest in a Chuuk state election since jurisdiction over election contests rests purely on statutory and constitutional provisions, and courts otherwise have no inherent power to determine election contests, and since the determination of such contests is a judicial function only when and to the extent that the determination is authorized by statute. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (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 court lacks subject-matter jurisdiction over a case when, if applied, the general principle that courts should first consider any non-constitutional grounds that might resolve the issue because unnecessary constitutional adjudication ought to be avoided, would unmask the case as an election contest and the matter would accordingly be dismissed. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

The decision as to the court's jurisdiction over an action is one to be made by the court, and the election commission is not empowered to assume or confer whether a court has jurisdiction. The election commission is limited to determining its own jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

Constitutions and statutes provide, as a part of the election machinery, the procedure by which election results may be contested, and such contests are regulated wholly by these constitutional or statutory provisions. A strict observance of the steps necessary to give us jurisdiction over an election contest is required, and if these steps are not followed, the court is powerless to entertain such proceedings. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

An aggrieved candidate may, within five days after receipt of the National Election Director's decision granting or denying a petition for a recount or a revote, appeal that decision to the FSM Supreme Court appellate division. A post-certification petition, and a decision thereon, is a prerequisite to an appeal to the court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

An election appeal filed too soon will be dismissed as premature (unripe) because the statute does not grant the court jurisdiction over election cases until the administrative steps and time frames have been adhered to. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

Although there are rare occasions when an equitable remedy may be proper in an election case, overlooking or extending a deadline to file an appeal is not one of them. Statutory deadlines to file appeals are jurisdictional, and if the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 2009).

The timing provisions for the election commission to rule on an election contest provide that once the state election commission begins a special session, it has two days to reach a determination of the contest. The court reads the two-day deadline as directory, not mandatory. Because the deadline is directory, an election contest is not effectively denied if the election commission fails to reach a determination within two days, so long as the commission is taking reasonable steps to determine the contest as quickly as possible. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 462 (Chk. S. Ct. App. 2009).

If an election complaint was not timely filed with the election commission, then neither the election commission nor the court have jurisdiction over the election contest. Because statutory filing deadlines are generally mandatory, whether the complaint was timely filed is a jurisdictional question and therefore potentially dispositive of a contest. That determination is initially the election commission's to make, as it involves factual questions going to its own jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 463 (Chk. S. Ct. App. 2009).

Until the election commission determines the election contest, or there is otherwise an appeal from a final order or a determinate effective denial, administrative remedies have not been exhausted and such an election contest will, therefore, be remanded to the election commission for further proceedings. Doone v. Chuuk State Election Comm'n, 16 FSM R. 459, 463 (Chk. S. Ct. App. 2009).

Under the Chuuk Election Law, initially, an election contestant must file a verified complaint with the election commission within five days after the declaration of the election result by the body canvassing the returns. This deadline for filing a complaint with the election commission is mandatory, and, if the complainant fails to strictly comply with the deadline for filing a verified complaint, the complaint will be dismissed for lack of jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 518 (Chk. S. Ct. App. 2009).

Neither the election commission nor the court can take jurisdiction over an election contest when it is not timely filed. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

Before the appellate division proceeds to the merits of any action filed as an election contest, the court should determine if it has subject matter jurisdiction because the appellate division has jurisdiction over election contests only to the extent that a constitutional or statutory provision expressly or impliedly gives it that authority. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542 (Chk. S. Ct. App. 2009).

The appellate court's authority to hear an election contest arises when there is an appeal from the election commission's ruling on a complaint filed pursuant to section 127, which requires a contestant to file a verified statement of contest with the election commission within five days after the declaration of the election result by the body canvassing the returns thereof. For the appellate division to take subject matter jurisdiction in an election contest, the appellants must have appealed from the election commission's ruling on a complaint that was filed within five days of the declaration of an election's results. But a complaint raising issues regarding an election, but before an election result has been declared, is not an election contest. Rather, jurisdiction over appeals of agency decisions, including those of the state election commission, is vested in trial division. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542 (Chk. S. Ct. App. 2009).

When the appellants dispute the Election Commission's authority to nullify the results of a municipal mayoral election and reschedule the election, the appellants are not contesting the results of any election, especially since an appellant was the first election's declared winner; rather, the appellants dispute the state election commission's authority to nullify the first election's results and order a new election. Since the Election Law does not contemplate Appellate Division jurisdiction over disputes that arise outside the timeframe set by section 127 and since the appellants are not appealing from an election commission decision on an election complaint that was filed in compliance with section 127, the appellate court has no jurisdiction over the matter pursuant to sections 130 and 131 of the Election Law, which are the only provisions in the Election Law that provide for original jurisdiction over election matters in the appellate division. Rayphand v. Chuuk State Election Comm'n, 16 FSM R. 540, 542-43 (Chk. S. Ct. App. 2009).

Chuuk Election Code, section 138 clearly contemplates that the FSM Supreme Court appellate division may exercise jurisdiction over a Chuuk state election contest even after the candidates that have been declared the winners have been sworn in. Chuuk State Election Comm'n v. Chuuk State Supreme Court App. Div., 16 FSM R. 614, 615 (App. 2009).

The Chuuk State Supreme Court appellate division does not have jurisdiction over a challenge to a municipal election commission's order for a revote because it is not an election contest since the appellant does not contest an election's result or a candidate's qualifications and since it is not an appeal from a municipal court decision or otherwise an appeal from a trial court decision. Siis Mun. Election Comm'n v. Chuuk State Election Comm'n, 17 FSM R. 146, 147 (Chk. S. Ct. App. 2010).

When the election law provides for remedies that have not yet been used, a candidate cannot show irreparable harm necessary for the issuance of a temporary restraining order. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

Since section 131 of Chuuk State Law No. 3-95-26 provides for trials in the Chuuk State Supreme Court Appellate Division when review of Election Commission decisions regarding contested elections is sought and since the plaintiff has availed himself of that remedy, he cannot show irreparable harm. But a

court must weigh three factors other than irreparable harm when considering injunctive relief – the relative harm to the plaintiff and to the defendant, the public interest, and the likelihood of success by the plaintiff in the underlying case – and when none of those factors weigh so strongly in the plaintiff's favor to overcome the lack of irreparable harm injunctive relief will not be granted. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

A plaintiff's request that the court issue a declaratory judgment against defendant Election Commission stating that the scheduled revote election violates plaintiff's due process rights will be dismissed for lack of jurisdiction when that Election Commission decision is already being reviewed by the Appellate Division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

It is the nature of the political process that elections typically yield a single winner and one or more losers. Absent a showing of foul play or procedural irregularity, a defeated election contestant has no claim before any court of law. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

A court cannot, for lack of jurisdiction, weigh the likelihood of plaintiff's success on the merits when, pursuant to state law, the merits of his appeal are not before the court because they were duly presented in their proper forum of the appellate division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

Whether an individual is entitled to be placed on the ballot is left solely in the hands of the Chuuk State Election Commission and is beyond the Chuuk State Supreme Court's jurisdiction. Simina v. Chuuk State Election Comm'n, 19 FSM R. 587, 589 (Chk. S. Ct. App. 2014).

The Chuuk State Supreme Court appellate division has jurisdiction of election matters as provided for in Sections 130 through 139, of the Election Law of 1996. Simina v. Chuuk State Election Comm'n, 19 FSM R. 587, 589 (Chk. S. Ct. App. 2014).

When the appellant cannot verify to the court that the election contest requirements were met, the court lacks the jurisdiction. Iron v. Chuuk State Election Comm'n, 20 FSM R. 39, 41 (Chk. S. Ct. App. 2015).

– Recount

A decision whether to grant or deny a recount is not an everyday decision, but a large question affecting the public interest profoundly and involving fundamental policy considerations. Olter v. National Election Comm'r, 3 FSM R. 123, 133 (App. 1987).

To interpret 9 F.S.M.C. 904, the FSM Supreme Court should apply a two-prong test. The first prong is whether there is a "substantial question or fraud or error" and the second prong is whether there is "substantial possibility that the outcome would be affected by a recount." Olter v. National Election Comm'r, 3 FSM R. 123, 136-37 (App. 1987).

The statutory scheme of the National Election Code strongly suggests that Congress intended the word "substantial" in 9 F.S.M.C. 904 to be applied liberally, so that in the event of doubt, a recount would be available. Olter v. National Election Comm'r, 3 FSM R. 123, 138 (App. 1987).

The statutory scheme of the National Election Code reflects far greater concern that appropriate recounts be provided than that inappropriate recounts be prevented. If a recount is denied when it should have been granted, a grave risk is presented to constitutional government. Olter v. National Election Comm'r, 3 FSM R. 123, 138-39 (App. 1987).

When an appellant seeks to have an election set aside and done over due to irregularities not correctable by a recount the appeal is timely filed if it is filed within one week of the certification of the results of the election. This is the same filing time frame as for a recount. Aten v. National Election Comm'r (I), 6

FSM R. 38, 39 (App. 1993).

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).

The standard to determine whether a recount must be ordered is 1) whether a substantial question of fraud or error exists, and 2) whether there is a substantial possibility that the outcome of the election would be affected. Braiel v. National Election Dir., 9 FSM R. 133, 136 (App. 1999).

A partial recount is a less drastic remedy than requiring part of the election to be done over. Braiel v. National Election Dir., 9 FSM R. 133, 137 (App. 1999).

Under Chuuk election law, once the votes are tabulated and certified, the Election Commission does not have the power to grant a recount request unless ordered to do so by "a court of competent jurisdiction." It can only deny a recount request and a contestant's only recourse then is an appeal to a court of competent jurisdiction. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 154 (Chk. S. Ct. App. 2001).

When the election statute provides that a recount is to be taken if a recount is necessary for the proper determination of the election contest, the proper standard to use to determine whether "a recount is necessary for the proper determination of the contest" is that a recount will be ordered when the contestant has shown that it is more likely than not that there were substantial irregularities that could have affected the election's outcome. It is the election contestant's burden to make this showing. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 156 (Chk. S. Ct. App. 2001).

When one member of the tabulating committee, called the speaker, read out the votes on the ballot, another member verified what he read, and three other members recorded the votes on their tally sheets and stopped at various checking places to check their totals and when the methods used to resolve tally sheet discrepancies – if two tally sheets agreed and one did not, the result of the two that agreed was used; and if all three differed, the middle result was used – introduced a substantial chance of inaccurate results, these methods' inaccurate results could have affected the outcome because of the closeness of the official results (a one vote difference). Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 156-57 (Chk. S. Ct. App. 2001).

The court heartily approved of a recount method designed to achieve an accurate result by which, if there were any discrepancies in tally totals at any of the checking points, the tabulating committee would instead recount the ballots they had counted since the last checking point and not count any further ballots until all tally counts agreed. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 157 (Chk. S. Ct. App. 2001).

When the ballot box was obviously not in the condition it was when locked and it was not even in the condition that the Director asserted that it was in when he opened (and closed) it to retrieve the tally sheet, the possibility that the box could have been tampered with and that the ballots were not in their original condition was unmistakable. Since the court could have no confidence in the integrity of the ballots because they were so tainted that they were inadmissable as evidence of the votes cast, it would be pointless to order a recount. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 476 (Chk. S. Ct. App. 2003).

If the Director had not opened the ballot box on his own, but instead waited as required by statute, for a court order to recount, the ballots' integrity would, in all likelihood, be unquestioned and a recount could have been ordered which should have satisfied the parties and the public as to the true vote totals. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 476 (Chk. S. Ct. App. 2003).

The court, in an election contest, would be extremely hesitant to grant the relief of nullification of all of the votes cast in a ballot box and a declaration that the election contestant was then the winner because that would disenfranchise the many qualified voters who properly cast their ballots in that ballot box in good faith. If there had been proven illegal votes in sufficient number that the ballot box result was cast in doubt, the court would have been inclined to consider ordering the election done over as a less drastic and more equitable and democratic remedy. The statute explicitly gives the court the power to order a recount during trial, but does not specifically grant the power to order a revote or to nullify a ballot box. The powers to effect remedies for irregularities that likely could have affected an election's outcome appear to be implied or inherent in the Election Commission's powers and thus in the court's powers in review of the Commission's election contest decisions. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596-97 (Chk. S. Ct. App. 2007).

A recount will not be ordered when the statements of contest on file do not appear to make it necessary; when the petitioner, who had originally not made that request before the Election Commission, initially made such a request of the court prematurely, but later abandoned his request when the court specifically inquired if he was still seeking a recount; and when, even if the court could be assured of the security and chain of custody of the ballot box in question, it was not shown that it was likely a recount could alter the outcome. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 597 (Chk. S. Ct. App. 2007).

If an election contestant's appeal is considered as only a claim challenging the acceptability of votes, the five-day time frame to appeal the National Election Commissioner's denial of that claim would start then even though a recount was pending because an FSM Supreme Court appellate division decision may have the effect of disallowing challenged votes but shall not halt or delay balloting or counting and tabulating. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

A decision to provide a recount is not appealable. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

Provisions for challenging the acceptability of votes apply to individual or particular votes and not to an entire polling place. The only proper remedies when the reliability of an entire polling place result is in question, are either a recount or a revote, depending on the particular circumstances. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

The court will decline to order the exclusion of all votes at a polling place, thus disenfranchising many qualified and innocent voters and possibly altering the will of the electorate and the election results. Only a recount or a revote would be proper in such cases. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

When the only irregularity clearly alleged in an election petition was that the transmission of the results had been tampered with, a recount of the actual ballots, if the ballot boxes' security and integrity has been maintained and assured, is the logical remedy. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 n.5 (App. 2009).

When the tabulators, after twenty-five ballots had been tabulated, would compare their tabulations and if the tallies did not agree the tabulators would, if two tallies agreed, adopt the majority figure, and if all three were different, they would adopt the middle figure, these methods used to resolve discrepancies introduce a substantial chance of inaccurate results and these inaccurate results, depending on the closeness of the official outcome, could affect the outcome, which would entitle the petitioner to a recount. Hallers v. Yer, 18 FSM R. 644, 647-48 (Chk. S. Ct. App. 2013).

– Revote

When an appellant seeks to have an election set aside and done over due to irregularities not correctable by a recount the appeal is timely filed if it is filed within one week of the certification of the results of the election. This is the same filing time frame as for a recount. Aten v. National Election Comm'r (I), 6

FSM R. 38, 39 (App. 1993).

That the results of the election would have been changed but for the alleged irregularities is not the correct formulation of the ground for a revote. Aten v. National Election Comm'r (II), 6 FSM R. 74, 79 (App. 1993).

Where election irregularities cannot be corrected by a recount, the election, in whole or in part, can be set aside and done over only if it is more likely than not that the irregularities complained of could have, not necessarily would have, resulted in the election of a candidate who would not have won had the irregularities not occurred. Aten v. National Election Comm'r (II), 6 FSM R. 74, 82 (App. 1993).

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).

The proper standard for determining whether a revote should be ordered is whether the result could have been different had the irregularities not occurred. The plaintiffs' obligation is twofold, to establish that irregularities occurred and to show that the result could have been different had no irregularities occurred. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 277-78 (Chk. S. Ct. Tr. 1998).

No revote can be ordered when there is no proof of the alleged election irregularities and thus no showing that the conduct of the election affected the result, and when the outcome is the result of the plaintiffs' refusal to participate in the election. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 278-79 (Chk. S. Ct. Tr. 1998).

The time frame for an aggrieved candidate to seek a revote is the same as that to seek a recount. It must be filed within one week of certification of the election results. The winning candidate has one week to respond to the petition. The National Election Director then has 10 days to decide whether to approve the petition. If he decides not to approve the petition, he must record the reasons for the decision. Wiliander v. National Election Dir., 13 FSM R. 199, 203 (App. 2005).

When election irregularities cannot be corrected by recount, a candidate may petition for an election to be set aside and done over, either in a district as a whole or in the part where the irregularities took place. The procedures for the filing a revote petition, action thereon, and appeal of its denial are the same as those for a recount petition. Wiliander v. National Election Dir., 13 FSM R. 199, 203 n.3 (App. 2005).

Assuming that, as a result of the revote, that the candidate seeking to enjoin the revote is not declared the winning candidate (an assumption that the court cannot make), he still has all the avenues provided by the statutory provisions governing election contests, and once the administrative remedies before the National Election Director have run their course, a candidate still aggrieved may, at that time, seek relief from the FSM Supreme Court appellate division. Since this is an adequate alternative remedy, the candidate cannot show irreparable harm. Asugar v. Edward, 13 FSM R. 209, 212-13 (Chk. 2005).

The court, in an election contest, would be extremely hesitant to grant the relief of nullification of all of the votes cast in a ballot box and a declaration that the election contestant was then the winner because that would disenfranchise the many qualified voters who properly cast their ballots in that ballot box in good faith. If there had been proven illegal votes in sufficient number that the ballot box result was cast in doubt, the court would have been inclined to consider ordering the election done over as a less drastic and more equitable and democratic remedy. The statute explicitly gives the court the power to order a recount during trial, but does not specifically grant the power to order a revote or to nullify a ballot box. The powers to effect remedies for irregularities that likely could have affected an election's outcome appear to be implied or inherent in the Election Commission's powers and thus in the court's powers in review of the Commission's election contest decisions. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 591, 596-97 (Chk. S. Ct. App. 2007).

Provisions for challenging the acceptability of votes apply to individual or particular votes and not to an entire polling place. The only proper remedies when the reliability of an entire polling place result is in question, are either a recount or a revote, depending on the particular circumstances. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

The court will decline to order the exclusion of all votes at a polling place, thus disenfranchising many qualified and innocent voters and possibly altering the will of the electorate and the election results. Only a recount or a revote would be proper in such cases. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 421 (App. 2009).

The Chuuk State Supreme Court appellate division does not have jurisdiction over a challenge to a municipal election commission's order for a revote because it is not an election contest since the appellant does not contest an election's result or a candidate's qualifications and since it is not an appeal from a municipal court decision or otherwise an appeal from a trial court decision. Siis Mun. Election Comm'n v. Chuuk State Election Comm'n, 17 FSM R. 146, 147 (Chk. S. Ct. App. 2010).

When the Election Commission has ordered a revote and that order has been appealed, the relative harm to each party, or even that either party faces an impending harm at all, is difficult to fathom. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

A plaintiff's request that the court issue a declaratory judgment against defendant Election Commission stating that the scheduled revote election violates plaintiff's due process rights will be dismissed for lack of jurisdiction when that Election Commission decision is already being reviewed by the Appellate Division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 490 (Chk. S. Ct. Tr. 2011).

When the trial court is without jurisdiction to either decide or second guess the reasoning underpinning future appellate division decisions and, whatever the results of the revote, neither party is likely to suffer a harm of such import that cannot potentially be redressed through the procedures set forth under our laws. The plaintiff does not stand to lose anything of a magnitude so great as to justify issuance of an order enjoining the election from taking place at all because if the defendant prevails in the appeal, there may be utility in the revote and if the plaintiff prevails in the appeal, the revote becomes a nullity. Under either scenario, the results of the revote may be administratively and, if necessary, judicially appealed. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

When a plaintiff argues that the District No. 11 constituents should not incur the expenses of a revote where there is a likelihood that the appellate court will set aside the results, the public interest is best served if due process is allowed to run its course. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

When, at least procedurally, the law governing appeals of administrative decisions on contested elections has been properly complied with, a plaintiff's petition requesting an injunction against the revote ordered by the Election Commission is wholly without merit and can only serve to frustrate the legal process underway in appellate division. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 487, 491 (Chk. S. Ct. Tr. 2011).

Under Chuuk State Law No. 3-95-26, no irregularity or improper conduct in the proceedings of any election board will void an election result, unless such irregularity or misconduct resulted in a defendant being declared either elected or tied for election, and an election will not be set aside on account of illegal votes unless it appears that such number of illegal votes has been given to the person whose right to the office is contested. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 492, 493-94 (Chk. S. Ct. App. 2011).

Since, in order for the Chuuk State Election Commission to have properly declared a revote, in addition to determining that illegal votes were cast, it was required to determine that the illegal votes resulted in the

winning candidate being declared elected, a call for a revote was in error when there is nothing to indicate the likelihood that the 18 illegally cast votes would have resulted in a different candidate being declared elected, or a tie, or would have rendered a different outcome in the district 11 poll results. Jackson v. Chuuk State Election Comm'n, 17 FSM R. 492, 494 (Chk. S. Ct. App. 2011).

EMPLOYER – EMPLOYEE

Where the employee seeking damages for injuries sustained while working does not, either in his complaint or elsewhere, point to any particular act or omission by the employer, who had been stripped of any supervision and control over the activities of the employee before the injury, that employer cannot be held responsible for any wrongful direction or lack of direction at the scene which might have led to the alleged injury. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 144 (Pon. 1985).

An employer who assigns employees to work under the supervision of another is not legally responsible to the assigned employees for injuries caused by failure of the other employer to provide labor-saving or safety equipment where the hazards known to the employer were equally obvious to the assigned employees. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 144 (Pon. 1985).

In absence of statute pertaining to rights of employees of insolvent companies to receive preference against other creditors of employer, an appropriate source of guidance is the common law as it existed in absence of statute. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 300 (Pon. 1988).

Claims for wages asserted by low level employees and laborers are entitled to preference over all other claims, except wage and salary tax lien rights of the national government, which are given priority over all other claims and liens by 54 F.S.M.C. 135(2). In re Mid-Pacific Constr. Co., 3 FSM R. 292, 301 (Pon. 1988).

An employee's preference for wage claims is determined by reference to the equities among the parties rather than exclusively by specific dates upon which particular liens were established. In re Island Hardware, 3 FSM R. 332, 341 (Pon. 1988).

Where an employee is commanded to take an action which creates a known risk of injury, his obedience to the command will not bar subsequent recovery for injuries suffered, even where the risk of injury is apparent, but this will not excuse clearly reckless conduct by the employee where he had full knowledge of reasonable means to limit or prevent the injury. Epiti v. Chuuk, 5 FSM R. 162, 169 (Chk. S. Ct. Tr. 1991).

A plaintiff employee is not barred from recovery for his failure to exercise due care because defendant employer's conduct amounted to a reckless disregard for the safety of its employees. Alfons v. Edwin, 5 FSM R. 238, 241 (Pon. 1991).

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).

An employer owes a duty of care toward its employee to see that the employee is properly educated about the operation of clearly dangerous machinery. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65 (Chk. 1997).

Where the employer is aware that unsafe procedures are being used and safe procedures are possible, but the employer does not demand them, the employer breaches its duty of care toward its employees. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65 (Chk. 1997).

When a general manager's actions in hiring, supervising and paying the employees of a sawmill were within the scope of authority granted to him by the principals, the sawmill's joint owners, the principals are

bound by their agent's actions in hiring or authorizing the hiring of a sawmill employee. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

The determination of an employee-employer relationship for tort liability purposes will not be based upon an employer's decision on whether to report the persons as "employees" for the purposes of reporting Social Security contributions and FSM Income Tax deductions. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

For the purposes of determining the employee status of an individual person for FSM Social Security contributions or for the FSM Income Tax law, the statutes look to the usual common law rules applicable in determining the employer-employee relationship. An employer includes any association or group employing any person. Employment means any service by an employee for the employer employing him, irrespective of where such employment is performed. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

Under common law generally, "employment" includes any service performed for remuneration under any oral agreement of hire. To "employ" is to make use of the services of another, and to "be employed" means to perform a function under orders to do so. An "employee" is normally defined as a person in the service of another, through an agreement, which may be express, implied or verbal, and which gives the employer the right to control and direct the person in the way the work is to be performed. An employee performs services for an employer and is paid by the employer for those services. Sigrah v. Timothy, 9 FSM R. 48, 52-53 (Kos. S. Ct. Tr. 1999).

If a person performed services at the defendants' sawmill and was paid compensation for his services by the defendants through their sawmill operations manager, who gave employees directions for the performance of labor, he was the defendants' employee under the common law rules for determining the employer-employee relationship for individuals. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

Under the common law, there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the principal's possible liability for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

An employer owes a duty of care toward its employee to see that the employee is properly educated about the operation of clearly dangerous machinery. An employer who recognizes the potential danger of a work situation, but who fails to take steps to reduce the danger or warn his employees of the danger is negligent. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

A general contractor in control of a structure or premises owes to the employees of any other contractor rightfully thereon a duty to exercise ordinary care to keep the structure or premises in a safe condition for their use. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

An employer has a duty to exercise ordinary or reasonable care commensurate with the nature of the business to protect the employee from the hazards incident to it, and the employer is bound to exercise this degree of diligence in providing his employee with a safe working place. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

An owner/general contractor who actively supervises daily construction operations has a duty to keep the premises safe for all workers on the job and is ultimately liable for injuries occurring on the worksite when those injuries result from failure to perform that duty. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

When one company assigned its employee to work for another company, and the assigning company was effectively stripped of control over the way the work was done, and when the assigning company had

no knowledge of facts unknown to the employee that would have affected the risk faced by him, and did nothing else to cause the employee's injury, there is no negligence liability on the part of the assigning company. Amayo v. MJ Co., 10 FSM R. 244, 251 (Pon. 2001).

When an employee is directed or permitted by his employer to perform services for another employer he may become the employee of such other in performing the services and since the question of liability is always raised because of some specific act done, the important question is whether or not, as to the act in question the employee was acting in the business of and under the direction of one or the other employer. Amayo v. MJ Co., 10 FSM R. 244, 251 (Pon. 2001).

A cause of action to collect salary or wages accrues when an employee has a right to collect the money allegedly owed to him. Thus the statute of limitations began to run from the time that each plaintiff's pay for any specific pay period was due. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

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).

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).

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).

An employee or agent is liable to a third person for injuries resulting from the breach of any duty which the employee or agent owes directly to such third person, and is not liable to a third person for injuries resulting from a breach of duty which the employee or agent owes only or solely to his employer. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438-39 (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).

Because it makes no sense to authorize an official to conduct hearings and investigations without also authorizing that official to do something with the information thus obtained, when the statute authorizes the Pohnpei Treasury Director to conduct hearings and investigations and, except for an appeal, makes the Director's decision final, it follows that the finality of the Director's decision applies to the entire administrative process before a judicial appeal. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

Whereas the Pohnpei Division of Personnel, Labor and Manpower Development may issue orders and decisions, the Treasury Director has the final decision, and to give meaning to that finality, the Director's powers include issuing any orders necessary to arrive at and give effect to the decision. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

While the Pohnpei PL&MD Division must establish procedures to ensure compliance with the Pohnpei Residents Employment Act of 1991 and the rules and regulations promulgated thereunder, the statute does not mention a "Chief of the Division," and where the Division of PL&MD is mentioned specifically, it is specifically envisioned that the Division must establish procedures to ensure compliance. By providing the Division with the responsibility for making the rules, the Act nevertheless does not empower only the Division to ensure compliance. Rather, it establishes that responsibility as part of the overall effort to ensure compliance and the statute vests the power of the final decision for effecting compliance with the Director, not the Division or its Chief. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

Since the Pohnpei Residents Employment Act of 1991 does not solely empower the Division of PL&MD to hold hearings, and since it does vest the power of the final decision in the Director, it follows both that the hearing before the Director was legitimate pursuant to the Act, and that there was a legitimate hearing pursuant to the Act. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

When the statute subjects the finality of the Director's decision to judicial appeal, and when it directs that judicial appeals of the Director's order or decision must be made to the Pohnpei Supreme Court trial division within 15 days of the date of the decision or order, the statute creates a statutory obligation to appeal a decision to Pohnpei Supreme Court, and, as the statutory law governing the administrative review of labor contracts disputes, it is a necessary part of the administrative process. Smith v. Nimea, 17 FSM R. 125, 130-31 (Pon. 2010).

An employer has a duty to exercise ordinary or reasonable care commensurate with the nature of the business to protect the employee from the hazards incident to it, and the employer is bound to exercise this degree of diligence in providing his employee with a safe working place. Duty of care is one of the four elements of a negligence cause of action. Roosevelt v. Truk Island Developers, 17 FSM R. 264, 265-66 (Chk. 2010).

When the employer instructed the employees to use safe procedures such as pulling rebars out (or inserting them) from the oceanside and not the roadside and when the employer provided its employees with a safe working place and did not knowingly permit unsafe procedures to be used, it did not breach its duty of care to its employees. Accordingly, since the plaintiff has failed to prove this essential element of a wrongful death claim, she cannot prevail. Roosevelt v. Truk Island Developers, 17 FSM R. 264, 266 (Chk. 2010).

The Constitution's investment in the national government of the power to regulate immigration, emigration, naturalization, and citizenship does not deprive the states of the ability to regulate employment within their own jurisdictions whenever such employment involves non-residents. To the degree that a state law regulating employment of non-resident workers does not directly conflict with national law, such state law is not preempted; and when there is possible conflict, the state law should be construed so as to avoid such conflict. Smith v. Nimea, 17 FSM R. 333, 337-38 (Pon. 2011).

Pohnpei Code Title 19 and its definitions, apply only to private employers and their employees, not to Pohnpei public employees. Berman v. Lambert, 17 FSM R. 442, 447 (App. 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).

No national statute directly addresses overtime pay for private sector employment although 51 F.S.M.C. 139(2) does require an employer of a nonresident worker to present a copy of the worker's

contract, which must contain certain information including a wage scale for regular and overtime work, before approval of the nonresident worker's entry to the FSM. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 & n.1 (Pon. 2011).

Wage and hour laws are a complex field in which there is substantial public concern. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 (Pon. 2011).

Private employment is governed by the principles of contract law. Ihara v. Vitt, 18 FSM R. 516, 524 (Pon. 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).

Since the College of Micronesia is an agency and instrumentality of the government, the Administrative Procedures Act should apply to all COM board decisions including employment disputes. Accordingly, a COM employee is required to bring his grievances to the agency tribunal, as the court of first instance under the primary jurisdiction doctrine, and complete the administrative procedures before the FSM Supreme Court will adjudicate the complaint. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

All College of Micronesia employment contract disputes are to be treated as a grievance, subject to the mandatory grievance procedure which has two components: the informal and the formal. The aggrieved employee must first pursue the grievance informally, and if the efforts to resolve the grievance through the informal procedure have failed, the aggrieved employee may proceed to the formal grievance procedure. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

The discretion an aggrieved College of Micronesia employee has when the grievance has not been resolved informally is the choice to further pursue the grievance through the formal procedure or to abandon the grievance altogether. It is not the discretion to either pursue the formal grievance procedure or to go directly to court. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

An aggrieved College of Micronesia employee's failure to appeal an adverse decision to the Board of Regents within the specified time limit, a required administrative step, is deemed as acceptance of the decision. Thus, when the aggrieved employee did not request an appeal before the Board, he failed to complete the administrative process, and thereby accepted the adverse committee decision. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

All College of Micronesia disputes must be brought before its administrative body, as a court of first instance, before it will be heard by this court, and, under the primary jurisdiction doctrine, the administrative processes created by that agency must ordinarily be completed before the court will entertain either a petition for review or an independent common law complaint. Ramirez v. College of Micronesia, 20 FSM R. 254, 264-65 (Pon. 2015).

Private employment is governed by the principles of contract law. Ramirez v. College of Micronesia, 20 FSM R. 254, 265 (Pon. 2015).

Pohnpei and the FSM have no workers' compensation law. Hairens v. Federated Shipping Co., 20 FSM R. 404, 406 (Pon. 2016).

The underlying purpose of Workers' Compensation Statutes is removal of the burden regarding work-place injury from an employee and instead, place it on the industry he served, irrespective of the cause for said injury. For employees within the statute's reach, Workers' Compensation is the exclusive remedy for accidental injuries sustained in the work place. While providing workers with benefits on a no-fault basis, the flip side of this arrangement is the provision for immunity from common law negligence

suits for employers covered by the statute. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407 (Pon. 2016).

The central tenet of Workers' Compensation is that of true no-fault insurance. In essence, employees were provided wage replacement and medical benefits resulting from industrial accidents for their respective injuries, in exchange for relinquishing the right to pursue a civil remedy. This exclusive remedy doctrine has been gradually eroded. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407 (Pon. 2016).

When an insurance carrier's endorsement contained within an employer's policy limited the applicability of the CNMI Workers' Compensation Program to "the benefits provided under the Workers' Compensation Law of the CNMI," (which would entail that statute's "determination of pay," that statute's exclusive remedy provision setting forth tort immunity does not apply, and an employee would not be forestalled from also bringing a civil action sounding in negligence. Hairens v. Federated Shipping Co., 20 FSM R. 404, 409 (Pon. 2016).

– Employee Handbook

Termination for just cause as described in a written employment contract precludes the former employee from seeking redress for the termination as the breach of an implied contract embodied in the personnel manual. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 353 (App. 1994).

When failure to adopt a manual of administration was not a violation of statute because the statute does not set a time limit for the board to adopt one and when the employer is specifically exempted by statute from the Public Service System Act, summary judgment will be granted against a terminated employee on his claim that failure to adopt a manual made the employer liable for his termination. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665 (Kos. S. Ct. Tr. 2002).

Provisions in a personnel handbook may be enforceable as an employment contract if they meet the requirements for the formation of a unilateral contract. The offer must be definite in form and must be communicated to the offeree. Whether a proposal is meant to be an offer for a unilateral contract is determined by the outward manifestations of the parties, not by their subjective intentions. An employer's general statements of policy are no more than that and do not meet the contractual requirements for an offer. Reg v. Falan, 14 FSM R. 426, 431 (Yap 2006).

It does not matter whether a personnel handbook was received at the time the employee was hired or at some later time because the distribution of the manual may act as an offer of a unilateral contract even if there was no unilateral contract offered at the time of hiring. This is because the consideration for the contract was supplied when the employee continued to work, after receipt of the manual, when he had no obligation to do so. Reg v. Falan, 14 FSM R. 426, 431 n.2 (Yap 2006).

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. Reg v. Falan, 14 FSM R. 426, 431-32 (Yap 2006).

A terminated employee's contract was not violated when he was not given a hearing before termination since the personnel manual did not require any hearing. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

When an employee is presented with an employee handbook, instructed to read and understand it, told to sign-off on it, and when the employee does so, the employee handbook will constitute a unilateral contract between the parties. Ihara v. Vitt, 18 FSM R. 516, 525 (Pon. 2013).

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).

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).

When an employee is presented with an employee handbook, instructed to read the handbook, told to sign off on the handbook, and when the employee does so, the employee handbook will constitute a unilateral contract between the parties. Ramirez v. College of Micronesia, 20 FSM R. 254, 266 (Pon. 2015).

Since an employee handbook can provide contract terms between the employer and employee, when the employment contract explicitly states that the employee's position, construed employment, compensation, leaves of absences, additional employment, benefits, performance evaluations, and termination are governed by the employee manual and when that manual includes terminations provisions explicitly providing the employer with the right to initiate layoffs, the employer had the contractual right to lay off employees before the expiration of the contract term, although this right to lay off employees is limited to the procedures as set forth in the manual. Ramirez v. College of Micronesia, 20 FSM R. 254, 266 (Pon. 2015).

– Wrongful Discharge

Where an employer terminates an employee without proper notice the termination will be given effect at the end of the proper notice period and the employee is entitled to any compensation he would have received during that period. Alik v. Kosrae Hotel Corp., 5 FSM R. 294, 296 (Kos. 1992).

Where there is sufficient evidence in the record for the trial judge to have found that an employee was terminated for the just cause of insubordination as permitted without notice in the parties' written employment contract, the trial court ruling that the plaintiff failed to prove he was terminated without just cause is sufficiently comprehensive and pertinent to the issue to form a basis for the decision. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 352-53 (App. 1994).

Termination for just cause as described in a written employment contract precludes the former employee from seeking redress for the termination as the breach of an implied contract embodied in the personnel manual. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 353 (App. 1994).

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).

An employee fired because he had filed suit against the defendant seeking compensation for injuries received while working on the job for the employer appears to state a cause of action in either tort or implied contract for wrongful discharge or termination. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 114 (Chk. 1995).

When an employee has been laid off for the summer, it is not a termination for disciplinary reasons or a reduction-in-force. A layoff is a termination of employment at the will of the employer, which may be temporary or permanent. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

Summary judgment will be granted against a terminated employee on his claim for breach of his verbal employment contract when he has failed to show that he had an assurance of continued employment through actions of a supervisor with authority to establish employment terms; when even assuming that former general manager did give the employee verbal assurances of continued employment, those verbal assurances ended with the general manager's termination; and when cause was not required for an employee's termination because the statute permitted employees to be terminated for other reasons, as the employer deemed appropriate. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 664 (Kos. S. Ct. Tr. 2002).

When failure to adopt a manual of administration was not a violation of statute because the statute does not set a time limit for the board to adopt one and when the employer is specifically exempted by statute from the Public Service System Act, summary judgment will be granted against a terminated employee on his claim that failure to adopt a manual made the employer liable for his termination. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665 (Kos. S. Ct. Tr. 2002).

When the employer is empowered to create bylaws in which the rights and obligations of employees with regard to termination might be spelled out, but none have been introduced into evidence in this case, only the terms of the contract itself may control the question of whether the plaintiff's termination was in material breach of his employment agreement. Hauk v. Board of Dirs., 11 FSM R. 236, 241 (Chk. S. Ct. Tr. 2002).

An employee's diversion of funds can be construed to violate employment contract provision that bars unethical conduct, but when the contract provides the employer with the right to terminate the employee if he does not discharge his duties and responsibilities to his "employer's satisfaction," the employer could discharge the employee upon sixty days written notice if the employer was dissatisfied in any manner with his job performance, even without the apparent ethical lapse which occurred. Hauk v. Board of Dirs., 11 FSM R. 236, 241-42 (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).

An employer may fire an employee who was convicted of a violent felony while already employed when its personnel manual states it will refuse employment to such persons since an employer who fires an employee is refusing employment to the former employee. Reg v. Falan, 14 FSM R. 426, 433 (Yap 2006).

When a personnel manual gives the director the responsibility of carrying out employee terminations, but another superior carried it out, this variation from the procedure is inconsequential because the

requirement that the director perform the termination is a responsibility placed on the director rather than a procedural right vested in the employee. Reg v. Falan, 14 FSM R. 426, 434 (Yap 2006).

When nothing in the personnel policies manual requires that an employee be given notice of his right to object to his termination and that this notice should have informed him of his right to write to the supervisor, director and the policy council, this notice was not required. Reg v. Falan, 14 FSM R. 426, 434 (Yap 2006).

When the preamble to a personnel manual section states that the disciplinary actions are not mandatory, but the involuntary termination portion of that section is stated in mandatory terms, and when read together, the manual requires that the involuntary dismissal procedure be followed, and where the procedure is set out in such detail and phrased with mandatory language, the earlier general statement that disciplinary procedures are guidelines must give way. Reg v. Falan, 14 FSM R. 426, 435 (Yap 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).

A terminated employee's contract was not violated when he was not given a hearing before termination since the personnel manual did not require any hearing. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

When a plaintiff is due what he should have been paid during the two-week notice period that was required by his contract, but was not paid, the court will award that as damages and the employee's share of taxes should be deducted from this amount and paid to the appropriate taxing agencies as required by law and the employer's share of applicable taxes should not be deducted from this amount, but should be paid to the appropriate taxing agencies as required by law. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

Reinstatement to his former position and back pay to the date of his termination to the date he is reinstated are remedies are generally available to an employee who has shown wrongful discharge. But the amount awarded in back pay should be reduced to the extent the plaintiff has mitigated his damages by securing other employment. Reg v. Falan, 14 FSM R. 426, 436-37 (Yap 2006).

When a plaintiff suing for wrongful discharge has introduced no evidence of his efforts to mitigate his damages by attempting to secure a job during his periods of unemployment, the plaintiff is precluded from recovery of damages for these periods. Reg v. Falan, 14 FSM R. 426, 437 (Yap 2006).

When an employer has unlawfully discharged an employee in violation of his civil rights and the former employee obtains alternative employment, in calculating damages, the income from the alternative employment will be deducted from the back pay owed to the employee, since otherwise the plaintiff could recover a windfall, which would violate the principles of compensatory damages. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

Reinstatement to his former position and back pay to the date of his termination to the date he is reinstated are remedies generally available to an employee who has shown wrongful discharge with the amount awarded in back pay reduced to the extent the plaintiff has mitigated his damages by securing other employment. But the court cannot reinstate a terminated employee in his former position when he is past the mandatory retirement age. It can only award him back pay for time before his retirement date, and any income through alternative employment that was received for employment after he would have had to retire from his Public Service System employment will not be used to reduce the back pay award. Kimeuo v. Simina, 15 FSM R. 664, 666 (Chk. 2008).

The applicable employment taxes should be deducted from a back pay award and paid to social security and the national government as required by law. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

When no evidence was introduced at trial of how much, if any, unused annual leave the plaintiff had accrued before he was wrongfully terminated, the court cannot make an award for unused accrued annual leave. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

In order to be eligible to be paid sick leave, an employee must be ill. The employee will not be paid sick leave when he was not sick. When a plaintiff was not sick when he was wrongfully terminated, he is not entitled to any sick leave. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

Redress for a wrongfully-terminated state employee would include reinstatement and back pay, except when the former employee could not be reinstated due the Public Service System Act's mandatory retirement policy. But the former employee could be awarded back pay if he had mitigated his damages. Simina v. Kimeuo, 16 FSM R. 616, 624 (App. 2009).

The remedies generally available to a state public service system employee who has shown that he was wrongfully discharged are reinstatement to his former position and back pay to the date of his termination. Sandy v. Mori, 17 FSM R. 92, 94 (Chk. 2010).

Back pay compensatory damages are the measure of compensatory damages for wrongful discharge. Compensation for an injury is not doubled just because the plaintiff has two different causes of action on which to base that recovery because only the injury itself is compensated. Sandy v. Mori, 17 FSM R. 92, 95-96 (Chk. 2010).

From awards of back pay damages the employer must deduct the applicable wage and salary taxes and social security taxes, which must then be remitted to the appropriate tax authorities. Sandy v. Mori, 17 FSM R. 92, 96 (Chk. 2010).

When an employee did not report to work for a total of twelve days before the termination action was taken, such action on the employee's part constituted voluntary job abandonment. Peniknos v. Nakasone, 18 FSM R. 470, 480 (Pon. 2012).

When an employee had been requested to come into the work place to meet with management and did not and when the employee subsequently did not report to the work place for twelve days at which point she was administratively terminated, the existing evidence is sufficient for the employer to make out a prima facie case of entitlement for summary judgment. To survive summary judgment, the employee must establish that genuine issues of material fact exist as to whether she voluntarily abandoned her job and when she failed to offer any evidence setting forth specific facts to overcome the employer's voluntary job abandonment evidence, she has not shown that there exists any genuine issues of material fact for trial and the employer will be granted summary judgment that she abandoned her job. Peniknos v. Nakasone, 18 FSM R. 470, 481 (Pon. 2012).

When a job applicant certified that she provided all the information requested in her employment history, and when the employer later discovered that one of the applicant's past employers was intentionally omitted, such omission constitutes a "material" omission to her work experience and would be sufficient grounds for termination. Peniknos v. Nakasone, 18 FSM R. 470, 482 (Pon. 2012).

The employment-at-will doctrine avows that, when an employee does not have a written employment contract and the term of employment is of indefinite duration, the employer can terminate the employee for good cause, bad cause, or no cause at all. Peniknos v. Nakasone, 18 FSM R. 470, 482 (Pon. 2012).

There is no inherent right to continued private sector employment. Peniknos v. Nakasone, 18 FSM R. 470, 483 (Pon. 2012).

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).

"Just cause" or "good cause" for termination means a fair and honest cause or reason regulated by good faith on the employer's part. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

There are situations which would provide just cause for immediate termination even if not specifically set forth in an employment handbook. These situations could include severe or multiple instances of disobedience, insubordination, dishonesty, criminal conduct, theft, and actions detrimental to the business. All circumstances constituting just cause for immediate termination cannot be anticipated and listed in an employee handbook. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

Even when insubordination is not included in the employee handbook as a cause for termination, severe and/or multiple acts of insubordination can provide just cause for immediate termination. A private sector business cannot be required to retain an employee who acts in a way that actively harms the employer's business interest. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

The fact that an employment contract authorizes the employer to terminate it for certain specified causes does not ordinarily prevent the employer from discharging the employee for a legal cause not specified. Ihara v. Vitt, 18 FSM R. 516, 527 (Pon. 2013).

It is implied in every employment contract that the employee will conduct himself with such decency and propriety as not to injure the employer in his business. Ihara v. Vitt, 18 FSM R. 516, 527 (Pon. 2013).

The plaintiff's discharge was justified when her inappropriate behavior in not coming to work to book an airline ticket for a client seaman who had suffered a stroke was so prejudicial from a business standpoint and from a personal health and safety standpoint because of the urgent medical emergency situation and because the employer was directly involved in booking airline tickets for clients. Ihara v. Vitt, 18 FSM R. 516, 527 (Pon. 2013).

As an exception to progressive discipline, an employee's immediate discharge was justified when she refused to come to work to issue airline ticket for client seaman, although she was aware that the client had suffered a stroke and needed to urgently depart Pohnpei to seek additional medical attention off-island since her conduct ran contrary to her employer's integrity, safety, and quality improvement objectives in providing needed, expected, and necessary services to its clients, especially when it involved a medical emergency. Ihara v. Vitt, 18 FSM R. 516, 527 (Pon. 2013).

Three factors are used to determine whether immediate termination is justified even though the employer has a progressive discipline policy in its employee handbook: 1) culpability, 2) knowledge of expected conduct, and 3) control over the offending conduct. Ihara v. Vitt, 18 FSM R. 516, 527 (Pon. 2013).

An employee's immediate termination was justified when not only did the employer have holiday pay but it also offered its employees overtime because of its need to work outside of normal hours; when the employee by refusing to come to work twice on March 21, 2008, engaged in conduct that was materially adverse to the employer's financial interest in not being able to promptly provide needed airline booking services and related assistance to its client who needed the flight arrangements to be made at the soonest possible time; when she was the only employee who could book airline tickets, and after being explained the situation's emergency nature and urgency, she must have known that by her not showing up to work as ordered, a serious interruption of the employer's operations would occur which would have possibly endangered the its client's health; when her absence placed unexpected pressure on other employees in what was already an emergency situation; and when she had control over her actions that day and her decision not to come into work was not abrupt and she had adequate time to consider the consequences of

her actions. Ihara v. Vitt, 18 FSM R. 516, 528-29 (Pon. 2013).

An employee's repeated acts of insubordination provide just cause for her immediate termination and do not require the progressive discipline in the employee's handbook and therefore the employer is not liable to her for any wrongful termination. Ihara v. Vitt, 18 FSM R. 516, 529 (Pon. 2013).

An employee's immediate termination based on multiple acts of disobedience and insubordination was not a wrongful termination and was based on just cause and did not have to proceed through the employee handbook's progressive discipline. Having not prevailed on the wrongful termination claim, the plaintiff's other claims for pain and suffering, punitive damages, and attorneys' fees are also denied. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

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).

The failure to mitigate damages is an affirmative defense for which the defendant bears the burden of proof. The common law rule establishing failure to mitigate damages as an affirmative defense is sound because to hold otherwise would be to impose a burdensome requirement upon every plaintiff in a wrongful termination case and because a holding that failure to mitigate damages is an affirmative defense puts the burden of proof on defendants, who presumably would refrain from litigating this issue unless the question of failure to mitigate damages is actually in dispute. Manuel v. FSM, 19 FSM R. 382, 391 (Pon. 2014).

When the court has not held that the implied covenant of good faith and fair dealing could never be applied to an employment contract, the court, at the summary judgment stage of the proceeding, will not dismiss this cause of action as it might apply to the plaintiff's claim for wrongful termination in violation of his employment contract. George v. Palsis, 19 FSM R. 558, 568 (Kos. 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).

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).

A former employee's allegation that his termination violated human rights policy under the FSM Constitution and his right to work and enjoy just and favorable working conditions under Article 23 of the United Nations Universal Declaration of Human Rights does not state a recognized cause of action. These claims are actionable under FSM domestic law. George v. Palsis, 19 FSM R. 558, 569-70 (Kos. 2014).

The three factors used to analyze whether there is just cause for immediate termination are: 1) culpability, 2) knowledge of expected conduct, and 3) control over the offending conduct. Ihara v. Vitt, 19 FSM R. 595, 601 (App. 2014).

The proper emphasis under the culpability requirement for employee termination should not be upon the number of violations; rather, it should address the problem of whether the discharge was necessary to avoid actual or potential harm to the employer's rightful interest. Ihara v. Vitt, 19 FSM R. 595, 601 (App. 2014).

The trial court's conclusion upholding an employee's termination is sound when the factual findings on which the conclusion is based are not clearly erroneous and the facts meet the three-factor test to permit immediate termination despite an employee handbook provision requiring progressive discipline. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

When an employee failed to discharge his duties in a prompt and efficient manner, and he was insubordinate; when the failure to discharge one's duties in a prompt and efficient manner constitutes just cause for termination from the employer; and when insubordination is also just cause, the employer did not materially breach the employee's employment contract (the employee manual) by terminating him since just cause for termination existed. George v. Palsis, 20 FSM R. 111, 116 (Kos. 2015).

When the plaintiff had the burden to prove by a preponderance of the evidence that his employer's termination of his employment was not for just cause and he failed to do so, he has not shown upon the facts and the law a right to relief and the defendants' motion to dismiss will therefore be granted. George v. Palsis, 20 FSM R. 111, 116 (Kos. 2015).

A plaintiff has not proven a material breach of his employment contract merely because he lost his job. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

When the plaintiff produced no evidence from which the court could reasonably calculate a damages amount and when the plaintiff's termination was not a material breach of his employment contract, even if the plaintiff were permitted to proffer evidence now about the measure or the amount of his damages it would not help his case since he failed to prove a material breach and that failure is enough to bar any recovery. George v. Palsis, 20 FSM R. 174, 177-78 (Kos. 2015).

The public policy reasons for requiring that a matter be first placed within the administrative body's competency include the uniformity and consistency in the regulation of business entrusted to a particular agency are secured and the judiciary's limited functions of review are more rationally exercised by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure. Although wrongful termination claims rarely involve complex or technical issues that are outside of the court's competence, policy reasons also include avoiding conflict, indications of legislative intent, and other factors, and there are many policy reasons to abstain even when administrators lack identifiable expertise because the purpose is simply to promote the uniform application of the law and a proper relationship between the agencies and the judiciary. Ramirez v. College of Micronesia, 20 FSM R. 254, 262-63 (Pon. 2015).

Since an employee handbook can provide contract terms between the employer and employee, when the employment contract explicitly states that the employee's position, construed employment, compensation, leaves of absences, additional employment, benefits, performance evaluations, and termination are governed by the employee manual and when that manual includes terminations provisions

explicitly providing the employer with the right to initiate layoffs, the employer had the contractual right to lay off employees before the expiration of the contract term, although this right to lay off employees is limited to the procedures as set forth in the manual. Ramirez v. College of Micronesia, 20 FSM R. 254, 266 (Pon. 2015).

A permanent employee is an employee who has successfully completed a probationary period. Ramirez v. College of Micronesia, 20 FSM R. 254, 266 n.5 (Pon. 2015).

The employer is entitled to a judgment as a matter of law when, even viewing the uncontested facts in the light most favorable to the discharged employee, there are no genuine issues of material fact and the discharged employee cannot prevail on his breach of contract claim because he was properly laid off in accord with the contract terms incorporated from the personnel manual; because the employer had the right to layoff employees; because the employer created a specific layoff procedure in its personnel manual, and because the employee was laid off according to that procedure. Ramirez v. College of Micronesia, 20 FSM R. 254, 267 (Pon. 2015).

ENVIRONMENTAL PROTECTION

Earthmoving regulations themselves represent a governmental determination as to the public interest, and the clear violation of such regulations may therefore be enjoined without a separate court assessment of the public interest and balancing of hardships between the parties. Damarlane v. Pohnpei Transp. Auth., 4 FSM R. 347, 349 (Pon. 1990).

Where the national government, in previous appearances and filings, stated that no valid earthmoving permit was in effect the burden is on the national government at a motion for summary judgment to establish that there was a valid delegation of permit granting authority by the national government to the state officials. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 1, 7 (Pon. 1991).

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).

Various environmental acts that do not provide for a private citizen's cause of action for monetary damages cannot be used to create a duty for the breach of which damages may be awarded. Damarlane v. United States, 6 FSM R. 357, 360-61 (Pon. 1994).

The FSM Environmental Protection Act does not provide for a citizen's claim for damages. Damarlane v. FSM, 8 FSM R. 119, 121 (Pon. 1997).

Claims for damages for violation of the FSM Environmental Protection Act and for damage based on an alleged property interest in the reef and lagoon adjoining plaintiffs' land will be dismissed for failure to state a claim for which relief may be granted. Damarlane v. FSM, 8 FSM R. 119, 121 (Pon. 1997).

A savings clause that merely states that private parties who could previously seek civil remedies for what are now violations of the Chuuk State Environmental Protection Act still retain that right even if the Chuuk Environmental Protection Agency decides to act, does not create any new rights for those persons. Nor does it entitle them to collect any of the penalties created which may be asserted only by the Chuuk Environmental Protection Agency and only to its credit. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

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).

A cause of action exists in admiralty and maritime law for recovery of damages for oil contamination of wildlife and other natural resources in the marine environment. The type of injury includes both physical loss or injury, such as due to the grounding on the reef, as well as loss of use, either because of a government ban or because there has been a diminution of the resources because of oil contamination. Maritime nations generally recognize that parties injured by an oil spill should recover their damages, as the polluter must pay. Such a cause of action is available under the general admiralty and maritime law of the Federated States of Micronesia. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

Nuisance law is frequently used to address liability in environmental contamination cases. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

No offset for sums spent on cleanup can be given since the defendants had a duty to mitigate their damages and a legal duty imposed by Yap law to respond to the oil spill and clean up as much as possible. The oil spill cleanup protected them from greater liability. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

When the issue of continued monitoring of the marine environment remains unresolved, the court may hold in abeyance its ruling with respect to the monitoring issue and will retain jurisdiction over this issue in the expectation that the parties (and the State) can resolve any differences themselves. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 422 (Yap 2006).

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).

No private cause of action exists under the FSM Environmental Act – Section 704 by its own terms limits enforcement of the Act to the Board and Section 502 is aspirational. Damarlane v. Damarlane, 18 FSM R. 177, 179-80 (Pon. 2012).

When the plaintiffs have not stated a claim based on national law on which the FSM Supreme Court may grant relief and when all that remains is state law, including state environmental regulations, they have not persuaded the court to retain the case, and the court will therefore abstain. Damarlane v. Damarlane, 18 FSM R. 177, 181 (Pon. 2012).

Defendants may be liable for nuisance regardless of whether they violated any environmental regulations and regardless of and without reference to any environmental regulations or laws. Violation of any such regulations might be used as evidence that a nuisance exists. A plaintiffs' nuisance cause of action is not and cannot be based on statutes or regulations when the complaint would state a common law cause of action for nuisance even if there were no environmental laws. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

National or state environmental laws and regulations are relevant to a nuisance claim only to the extent that failure to comply with those laws and regulations that apply to the defendants, may be evidence that the defendants' conduct is unreasonable, negligent, or reckless. However, reference to those laws is not necessary for the plaintiffs to prevail on a nuisance cause of action. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

Nuisance law is frequently used to address liability in environmental contamination cases. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

The FSM Environmental Protection Act, 25 F.S.M.C. 501 *et seq.*, and its enforcement provisions, 25 F.S.M.C. 703-707, do not, as a matter of law, provide for a private cause of action or a citizen's claim for money damages but may support a claim for injunctive relief. Berman v. Pohnpei, 19 FSM R. 111, 116 (App. 2013).

When a regulation's plain language applies only to toilet facilities that might contaminate sources of water that could be used for drinking purposes – in other words, fresh water and when the term "body of water" might be construed as covering the lagoon but in light of the regulation's clear intent to preserve potable water sources, it must be read as a catchall phrase meant to cover any other potential potable water source, the regulation does not apply to a toilet on a berm in a salt-water lagoon. Berman v. Pohnpei, 19 FSM R. 111, 116-17 (App. 2013).

When a regulation's purpose – the evil that the regulation is designed to prevent – is the contamination of drinking water, it would not apply to a case where it might be proven that the privy on the berm leaks pollutants into the lagoon as the lagoon is not a possible potable water source since it is salt water and that evil is not covered by the regulation. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

Money damages are not available in a private environmental protection lawsuit even if injunctive relief is available. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

The potential for a significant impact on the public interest exists when Pohnpei's entire population will be directly and adversely affected by an unsustainable sea cucumber harvest, potentially affecting Pohnpei's public health, welfare, and economy in a negative manner since allowing a potentially environmentally devastating sea cucumber harvest is certainly not in the public interest. There is strong public interest in protecting Pohnpei's precious environment and natural resources. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 552 (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).

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).

EQUITY

Where it becomes apparent that claims of creditors will outstrip the value of debtor's assets, the approach is to give all creditors an opportunity to submit claims, and distribute any available proceeds on an equitable basis. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 306 (Pon. 1988).

Under circumstances where there is no bankruptcy legislation or comprehensive system for

establishing and recognizing liens in the FSM, the court acts essentially as a court of equity when deciding insolvency cases. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 581 (Pon. 1988).

Decisions regarding res judicata and the transitional activities of the Trust Territory High Court typically should be made on the basis of larger policy considerations rather than the equities lying with or against a particular party. United Church of Christ v. Hamo, 4 FSM R. 95, 120 (App. 1989).

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).

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).

Encroachment of a road on adjacent parcels is a trespass when the state has not used the property without interruption for the statutory period, nor for a period of time that would make the assertion of plaintiff's rights unfair. Palik v. Kosrae, 5 FSM R. 147, 156 (Kos. S. Ct. Tr. 1991).

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).

Trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

There are five essential elements to an independent action in equity to set aside a judgment. They are 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of these elements is missing the court cannot take equitable jurisdiction of the case. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

Where there are one or more legal remedies still available to a litigant the trial court has no jurisdiction to grant relief from a judgment through an independent action in equity. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

Courts of equity are without jurisdiction to enforce purely political rights. Matters concerning the conduct of elections are usually left to the political branches and the courts generally have no jurisdiction until after the elections are held. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

A writ of prohibition is proper to prevent a trial court from exercising equity jurisdiction in an election case. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Courts may consult foreign sources about equitable principles when there is no applicable Micronesian authority on point. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 n.3 (App. 1996).

The clean hands doctrine has been expressed in the language that he who has done inequity shall not have equity. A maxim which is closely related to, and which has been described as a corollary of, the clean hands maxim is where the wrong of the one party equals that of the other, the defendant is in the stronger position. On the other hand, one whose wrong is less than that of the other may be granted relief in some circumstances. Senda v. Semes, 8 FSM R. 484, 500 (Pon. 1998).

Equity does not dictate that a setoff for the amount of a defendant's stock subscription be allowed against a contribution claim when the person claiming the setoff received by far the greatest benefit from the

failed corporation while it was operating. Senda v. Semes, 8 FSM R. 484, 507 (Pon. 1998).

An award of attorney's fees, depending as it does upon a finding of reasonableness, is an exercise in equity. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

Rescission is equitable in nature, just as waiver is. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

One who would seek the benefit of equitable relief must himself demonstrate that he has done equity, or that he has clean hands. Obversely stated, he who has done inequity shall not have equity. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

When a defendant has unprofessionally refused to comply with the plaintiffs' discovery requests without any justification for doing so, in the limited context of discovery proceedings, its hands are unclean and it is in no position to make a case under rescission or other equitable principle. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

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 court exercising equity jurisdiction has plenary power to fashion an order in such a manner as to recognize and maintain the equities of the parties involved. The relief granted in equity is dictated by the equitable requirements of the situation at hand and must be adapted to the facts and circumstances of each particular case. More simply stated, the underlying concept is the prevention of injustice, when a legal remedy may not be available to a party because of a technicality. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346 (Pon. 2004).

Reformation is an equitable doctrine that allows a court to conform a contract (even an insurance contract) to the true agreement between the parties rather than the agreement as written. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

The exercise of equity is justified for the court to order the return of a unique pocketknife to the plaintiff when that unique item is not available for purchase on Kosrae. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

If all the parties have unclean hands, the court may afford relief to the party who bears a lesser degree of fault. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 518 (App. 2005).

"Equity" describes a specific set of legal principles used in countries that follow English common law. At one point in history, courts of law and courts of equity (also called courts of chancery) were separate systems with jurisdiction over different types of cases, having different procedures and offering different remedies. Over time, particularly in the United States, courts merged into a unified jurisdiction where an action at law and a suit in equity became less distinct. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

An equitable remedy: 1) cannot take cognizance of any case wherein the common law can give complete remedy; 2) cannot interpose in any case against the legislature's express letter and intention since if the legislature means to enact an injustice, however palpable, the court of equity is not the body with whom a correcting power is lodged; and 3) shall not interpose in any case which does not come within a general description and admit of redress by a general and practicable rule. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

An equitable remedy does not apply unless: 1) there is no adequate remedy at law; 2) it does not conflict with any statute; and 3) it rests on existing legal obligations (it does not create a new obligation or duty where none existed before) and follows legal precedent. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

Equitable relief is not generally necessary for a court to resolve disputes relating to title because establishment of title is available by law. This is true for the Kosrae Land Court. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

Common law, or case law, and statutes provide the basis for Land Court orders, in other words, a complete and adequate remedy. The Legislature established the Land Court's authority to hear and decide title determinations. Statutes require that Land Court decisions not be contrary to law and must be based on substantial evidence. Case law guides the Land Court on what constitutes substantial evidence to support a decision; this is legal precedent. The Land Court must establish title based on substantial evidence by considering the testimony and record before it. There is no need to resort to equitable jurisdiction to make a title determination. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662-63 (Kos. S. Ct. Tr. 2008).

A complex record that takes time to assess, is not normally grounds to rely on equity. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 663 (Kos. S. Ct. Tr. 2008).

A court must make its findings and show it is relying on substantial evidence even if using equitable jurisdiction, because an order must be based on sufficient evidence. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 663 (Kos. S. Ct. Tr. 2008).

Although there are rare occasions when an equitable remedy may be proper in an election case, overlooking or extending a deadline to file an appeal is not one of them. Statutory deadlines to file appeals are jurisdictional, and if the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 422 (App. 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).

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).

Since the defenses of laches, estoppel, and waiver generally require certain factual determinations about a party's acts or omissions, when those facts have not been established, there is an insufficient factual basis on which to grant a movant summary judgment on these defenses. Iwo v. Chuuk, 18 FSM R. 252, 255 (Chk. 2012).

When the defendant built family residences on part of the land and has occupied them at least since sometime in the early 1990s, requiring such longtime occupants to change residence and rebuild elsewhere and take compensation for the houses is burdensome. Equity would not favor giving the plaintiff the choice of paying the defendant for his houses instead of the defendant paying for the land. Killion v. Nero, 18 FSM R. 381, 386 (Chk. S. Ct. Tr. 2012).

Courts of equity are not bound to give any stereotyped form of relief. They readily and easily adapt themselves to the parties' situation and to the facts of the particular case, and may make such decrees as effectuate justice. Killion v. Nero, 18 FSM R. 381, 386 (Chk. S. Ct. Tr. 2012).

When the parties had agreed to a land exchange and the defendant has built houses on the land he received but the plaintiff did not receive any land because the defendant did not have the land to exchange, instead of returning the land to the plaintiff and having the plaintiff pay the defendant the value of the houses the defendant built the most equitable remedy (and the easiest for the court to fashion) is monetary compensation to the plaintiff for the value of the land that he did not receive in an exchange agreement that provided that he was to receive in exchange land of an equal amount to the land transferred to the defendants. To effectuate justice, the defendants should pay the plaintiff the value of the land the defendants received. Killion v. Nero, 18 FSM R. 381, 386 (Chk. S. Ct. Tr. 2012).

A court may not grant a plaintiff's request for injunctive or other equitable relief when there has been no showing of irreparable harm or that there is no adequate remedy at law. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

If both parties have unclean hands, the court may afford relief to the party who bears a lesser degree of fault. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

– Estoppel

Under the doctrine of equitable estoppel, a person may sometimes be precluded by his act or conduct, or silence when he has a duty to speak, from asserting a right which he otherwise would have had. However, this equitable doctrine may apply only when justice demands intervention on behalf of a person misled by the conduct of the party estopped. Etpison v. Perman, 1 FSM R. 405, 417 (Pon. 1984).

The doctrine of equitable estoppel does not apply when a party claiming to have been misled was aware of the facts which he insists the other party should have told him or when the first party could reasonably have been expected to learn those facts. Etpison v. Perman, 1 FSM R. 405, 417 (Pon. 1984).

Laches and estoppel are equitable doctrines which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM R. 174, 178 (Pon. 1987).

The estoppel doctrine, which is applied when justice demands intervention on behalf of a person misled by the conduct of the person estopped, is not available as a defense to a board member of a corporation where the board member knowingly misled regulatory officials and creditors of the corporation. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

Equitable estoppel should be applied to governments in the Federated States of Micronesia where this is necessary to prevent manifest injustice and where the interests of the public will not be significantly prejudiced. KCCA v. Tuuth, 5 FSM R. 118, 120 (Pon. 1991).

A party may sometimes be precluded by his act or conduct from asserting a right which he otherwise would have had. When a party has failed to assert its rights over a long period of time, and another party has relied on this non-assertion, the first party may be estopped from asserting those rights now. NIH Corp. v. FSM, 5 FSM R. 411, 414 (Pon. 1992).

Where the government's prior audit methods had the effect of permitting gross revenue tax computation on the cash basis and where the government's attempts to advise businesses that they are required to use the accrual method have for many years been woefully inadequate, the government will be barred by equitable estoppel from assessing penalties and interest on any underpayment of taxes that was the result of being led to believe that the cash basis was an acceptable method of tax computation. NIH Corp. v. FSM, 5 FSM R. 411, 415 (Pon. 1992).

Where no action, or words, or silence of the National Election Director prior to the appellant's initial petition misled the appellant into untimely filing his petition after certification it does not give rise to an

estoppel. The Director's later failure to raise the issue of untimeliness until his denial of the petition was appealed to the Supreme Court does not give rise to an estoppel. Wiliander v. Mallarme, 7 FSM R. 152, 157-58 (App. 1995).

The affirmative defense of estoppel requires a long non-assertion of one's rights by the plaintiff and the defendant's reliance on that non-assertion to its detriment. There can be no estoppel where there is no loss, injury, damage, detriment, or prejudice to the party claiming it. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65-66 (Chk. 1997).

Defendants are not likely to prevail on counterclaims of promissory estoppel when it does not appear that they relied on the plaintiff's promise to their detriment. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 163 (Pon. 1997).

Estoppel is an equitable doctrine which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 163 (Pon. 1997).

One of the necessary elements of equitable estoppel is that the party to be estopped must have had knowledge, actual or constructive, of the real facts. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 164 (Pon. 1997).

No estoppel can arise from an act or a representation if it was not intended to have the effect claimed and if, from its nature or from the time when, or the circumstances under which, it was done or made, it would be unreasonable to attribute such effect to it. Carlos Etscheit Soap Co. v. Epina, 8 FSM R. 155, 164 (Pon. 1997).

The defenses of estoppel, unclean hands and laches are all equitable defenses which do not apply in actions sounding in personal injury. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

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).

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).

When the plaintiff relied upon the defendant's promise to let him use the land to build his house, and the defendant should have reasonably expected the plaintiff to take action on this promise, such as obtaining financing through a loan, leasing equipment, and purchasing materials and labor to build his house, and when the plaintiff did in fact rely upon the promise and took action to secure financing through a loan, the doctrine of promissory estoppel is applicable and the promise is enforceable. Justice requires the enforcement of the promise and the plaintiff is entitled to recover the amount expended in reliance of his promise, based upon the doctrine of promissory estoppel. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

Evidence that, sometime before defendant's marriage, the plaintiff did have some limited intimate

contact on one occasion with the woman who later became the defendant's wife, does not serve as a defense to the plaintiff's claim of unjust enrichment and to recover restitution for the defendant's stopping construction of the plaintiff's house. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

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).

Pre-judgment interest is not appropriate and a claim for it will be denied when there was no agreement involving a promise to pay money, when the plaintiff was not deprived of funds that he was entitled to because there was no contract made between the parties to pay money, and when the plaintiff was awarded damages based upon the equitable doctrine of promissory estoppel for the plaintiff's expenditures made in reliance on a promise. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 197 (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).

Estoppel in pais is defined as the doctrine by which a person may be precluded by his act or conduct, or silence when it is his duty to speak. Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2001).

The doctrine of equitable estoppel operates to preclude a party from asserting a right he otherwise might have had, based upon his previous conduct. But a plaintiff is not equitably estopped from challenging the Office of Economic Affairs's authority to conduct a trochus harvest because any past acquiescence to the Office's authority does not alter the Office's powers and duties vested in it by Pohnpei state law when, as a matter of law, the Office's activities with regard to the trochus harvest were illegal. Nagata v. Pohnpei, 11 FSM R. 265, 271 (Pon. 2002).

Estoppel is an equitable remedy that may be invoked only by parties who themselves have acted properly concerning the subject of the litigation. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 307 (Pon. 2004).

A plaintiff's effort to induce a driver to claim that he was not intoxicated at the time of the accident, makes it unlikely that the plaintiff will be successful in any attempt to rely upon equitable doctrines in the litigation, especially when it cannot be said that no genuine issue of material fact exists, and that on the basis of estoppel the plaintiff is entitled to judgment as a matter of law. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 307 (Pon. 2004).

Detrimental reliance is subsumed within estoppel. A party seeking to invoke the equitable estoppel doctrine must prove that 1) a defendant made representations or statements; 2) the plaintiff reasonably relied upon the representations; and 3) the plaintiff will be harmed if estoppel is not allowed. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

To claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Elements 3 and 4 are sometimes referred to collectively as "detrimental reliance." Misrepresentation, too, contains the elements of reasonable reliance and damages. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191-92 (Pon. 2006).

Equitable estoppel is (and should be) applied to governments in the FSM when this is necessary to prevent manifest injustice and when the interests of the public will not be significantly prejudiced. But a party asserting equitable estoppel against the government must prove more than is required when it is asserted against a private entity. The government may not be estopped on the same terms as any other

litigant. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

Another element must be established when a party asserts estoppel against the government – affirmative misconduct on the government's part. "Affirmative misconduct" has never been clearly defined by any court. This much, however, is clear. The misconduct complained of must be "affirmative," which indicates more than mere negligence is required. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

"Detrimental reliance" requires, at the very least, that a party has changed its position for the worse as a consequence of the government's purported misconduct. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

When the defendant affirmatively signed a Letter of Commitment that it would issue the plaintiff a permit to purchase the first 60 metric tons of shell from the Pohnpei reefs during each annual trochus harvest and made other promises or representations that there would be a trochus harvest and the plaintiff reasonably relied upon these representations that there would be a trochus harvest and, until it finally stopped business in 1998, kept employees on so that it would be ready to go back into the trochus button business, the defendant is liable. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

The doctrine of detrimental reliance is summarized as a promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee, and which does induce such action or forbearance is binding if justice requires enforcement of the promise. The remedy for breach may be limited as justice requires. In other words, when a person justifiably and reasonably relies on a promise, then the promise will be enforced if it is the only way to avoid injustice. Siba v. Noah, 15 FSM R. 189, 195-96 (Kos. S. Ct. Tr. 2007).

When the plaintiff performed his part of the agreement by providing goods and cash to the a defendant believing the boundary of his land would be extended and he timely filed a subdivision request with the Land Commission and completed building a house on the land, in expectation of receiving title; when the defendant accepted the goods and cash and another defendant received title to the land from that defendant and others, including the portion the plaintiff was to receive; and when the other defendant accepted title to both parcels, but knew that the plaintiff was entitled to a portion of the land and had requested the subdivision, applying the doctrine of unjust enrichment, the other defendant has been unjustly enriched at the plaintiff's expense. To end the other defendant's unjust enrichment, the remedy is to issue title to the plaintiff for the portion of the land he was to receive in 1987 and leave title to the remaining land with the other defendant. An application of the doctrine of detrimental reliance affords the same remedy. Siba v. Noah, 15 FSM R. 189, 196 (Kos. S. Ct. Tr. 2007).

Under the doctrine of equitable estoppel, or estoppel in pais, a person may sometimes be precluded by his act or conduct or silence when he has a duty to speak, from asserting a right which he otherwise would have had. However, this equitable doctrine applies only when justice demands intervention on behalf of a person misled by the conduct of the party estopped. The equitable estoppel doctrine should be applied to Federated States of Micronesia governments when this is necessary to prevent manifest injustice and when the interests of the public will not be significantly prejudiced. FSM v. Katzutoku Maru, 15 FSM R. 400, 403-04 (Pon. 2007).

No estoppel can arise from an act or a representation if it was not intended to have the effect claimed and if, from its nature or from the time when, or the circumstances under which, it was done or made, it would be unreasonable to attribute such effect to it or when the party claiming to have been misled was aware of the facts which he now insists the other party should have told him, or could reasonably have been expected to learn the facts. FSM v. Katzutoku Maru, 15 FSM R. 400, 404 (Pon. 2007).

Detrimental reliance is subsumed within estoppel. A party seeking to invoke the equitable estoppel doctrine must prove that 1) a defendant made representations or statements; 2) the plaintiff reasonably relied upon the representations; and 3) the plaintiff will be harmed if estoppel is not allowed. John v. Chuuk Public Utility Corp., 16 FSM R. 226, 228 (Chk. 2008).

To claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Elements 3 and 4 are sometimes referred to collectively as "detrimental reliance." Detrimental reliance requires, at the very least, that a party has changed its position for the worse as a consequence of the defendant's purported misconduct. John v. Chuuk Public Utility Corp., 16 FSM R. 226, 228 (Chk. 2008).

When there is no evidence before the court that, if it were not for the employer's maintaining life insurance for the employees, the employee would have either quit his job and taken a job with a different employer that provided life insurance benefits or that he would have purchased his own life insurance policy from another source, the employee's widow cannot recover on a promissory estoppel or detrimental reliance theory since she cannot show that the employee relied on the employer's alleged promise to provide life insurance and her mere assertion, first made in her closing argument, that had they known they might have found another policy is insufficient to prove reliance. John v. Chuuk Public Utility Corp., 16 FSM R. 226, 228 (Chk. 2008).

Collateral estoppel prevents the land claimants from disputing, in this appeal, the existence of a *kewosr* transfer because collateral estoppel bars a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one, and the court's 1997 decision between the same parties precludes the claimants from arguing that no *kewosr* transfer occurred or that the land could not have been transferred by *kewosr*. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375 (Kos. S. Ct. Tr. 2009).

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).

A party seeking to invoke the equitable estoppel doctrine must prove that 1) a defendant made representations or statements; 2) the plaintiff reasonably relied upon the representations; and 3) the plaintiff will be harmed if estoppel is not allowed, and to claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. But a party asserting equitable estoppel against a government must prove more than is required when it is asserted against a private entity because the government may not be estopped on the same terms as any other litigant since another element must be established when a party asserts estoppel against the government – affirmative misconduct on the government's part. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

When Actouka relied on Chuuk's promises that the premium payments would be forthcoming and advanced the premium to keep the policy in force and it was reasonable for Actouka to rely on Chuuk's promise (especially in 1996) because Chuuk had always paid late in previous years (1988-95) and Chuuk should have expected that Actouka would keep the policy in force based on past performance and course of dealing; when enforcement of the promise would avoid the injustice that Actouka had to advance payment to keep the policy in force for the other governments operating FSM-owned ships and when Chuuk's affirmative misconduct was its misleading communications to Actouka that the premium money was available and that Actouka would be paid soon, equitable estoppel and detrimental reliance may apply. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

The running of a statute of limitations can be tolled – suspended – by certain events. A defendant's wrongful conduct can, as a form of estoppel, toll or suspend the running of a statute of limitations – for instance, a defendant would be estopped from raising a statute of limitations defense when, by his wrongful conduct, he induced the plaintiff not to sue until the statute of limitations had run out. Iwo v. Chuuk, 18

FSM R. 252, 254 (Chk. 2012).

When it has not been shown, that the three-and-a-half-year time period, by itself, was an inexcusable delay and when it has not been shown, instead of merely speculating, that the delay has resulted in prejudice to the defendants, the defendants cannot be granted summary judgment on their laches defense and for the same reasons, they must also be denied summary judgment on their estoppel and waiver defense. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

An estoppel and waiver affirmative defense requires a long non-assertion of one's rights by the plaintiff and the defendant's reliance on that non-assertion to its detriment, but there can be no estoppel when there is no prejudice to the party claiming it. Tarauo v. Arsenal, 18 FSM R. 270, 273-74 (Chk. 2012).

Under the doctrine of equitable estoppel, a person may sometimes be precluded by his act or conduct, or silence when he has a duty to speak, from asserting a right which he otherwise would have had, and this equitable doctrine will apply only when justice demands intervention on behalf of a person misled by the conduct of the party estopped. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

A party seeking to invoke the equitable estoppel doctrine must prove that 1) another party made representations or statements; 2) the party reasonably relied upon the representations; and 3) the party will be harmed if estoppel is not allowed. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

One essential element of equitable estoppel so far as the party to be estopped is concerned, is that he should have intended, or at least expected, that his conduct on which it is sought to predicate the estoppel should be acted upon by the other party or by other persons. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

The burden of proof is on the party alleging and relying on estoppel. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

Equitable estoppel is based on fraudulent conduct or fraudulent result. One must knowingly take a position with intention that it be acted upon, and reliance thereon by another to his prejudice. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

The application of the doctrine of equitable estoppel generally requires an express representation made by the party estopped and relied upon by another party who changes his position to his detriment. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

Estoppel is to be applied against wrongdoers, not the victim of a wrong. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

Since estoppel is an equitable remedy that may be invoked only by parties who themselves have acted properly concerning the subject of the litigation, a defendant cannot prevail on this defense when it behaved improperly by cashing checks made out to the plaintiff without the plaintiff's express authorization and when it did not reasonably rely on any statement by the plaintiff. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

Equitable estoppel has been defined simply as the familiar principle that where one of two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss, must sustain it. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

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).

To claim promissory estoppel a party must prove that: 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Elements 3) and 4) are sometimes referred to collectively as "detrimental reliance." Misrepresentation, too, contains the elements of reasonable reliance and damages. Johnny v. Occidental Life Ins., 19 FSM R. 350, 358 (Pon. 2014).

The promises made by the insurer's agents bind the insurer and must be enforced in order to avoid manifest injustice because if the plaintiff had enrolled her daughter under a separate cancer policy, she would have been covered under her own policy, but instead, the agent's misrepresentation caused her to keep her daughter under her cancer policy, making the daughter ineligible at the time she was diagnosed with cancer because she did not qualify as a covered family member under that policy's provisions. Johnny v. Occidental Life Ins., 19 FSM R. 350, 359 (Pon. 2014).

A plaintiff's claim under a promissory estoppel and detrimental reliance cause of action is supported when the plaintiff has timely paid the insurance premiums since 1996; when her reasonable expectation was that she and her dependents would receive life and cancer insurance coverage; when she expected that, as an insured, that the insurer's agents would provide her with accurate and reliable information about the policies, which would include when a dependent is no longer covered and what steps to take when coverage has ceased; when the insurer did not fulfill these expectations, to the detriment of her and her dependents; and when, if the insurer had properly advised her, she would have had the opportunity to take out a separate cancer policy for her daughter and her daughter would have been eligible for cancer policy benefits once she was diagnosed with cancer in 2009. Johnny v. Occidental Life Ins., 19 FSM R. 350, 359-60 (Pon. 2014).

A claim that since the property is part of the late patriarch's estate and the state probate proceeding is still pending, the real property still belongs to this decedent, is belied by the fact that the decedent died on August 23, 1997, yet this did not prevent the defendants from pledging the property as collateral for a December 22, 1997 loan, or prevent, after the corporation's formation on October 20, 2004, the administratrix of this decedent's estate and the corporation's chairperson/president from notifying the bank on November 2, 2004, of the corporation's ownership of the subject real estate and businesses. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103-04 (Chk. 2015).

A corporation, by having accepted the benefit of the contract, may be estopped to deny an officer's authority to act on its behalf. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

To claim promissory estoppel a party must prove that 1) a promise was made; 2) the promisor should reasonably have expected the promise to induce actions of a definite and substantial character; 3) the promise did in fact induce such action; and 4) the circumstances require the enforcement of the promise to avoid injustice. Elements 3 and 4 are usually referred to collectively as "detrimental reliance," and detrimental reliance requires, at the very least, that a party has changed its position for the worse as a consequence of the defendant's purported misconduct. A finding of detrimental reliance does not depend upon finding any agreement or consideration. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 429 (App. 2016).

When the supposed "promise" might better be characterized as a careless misrepresentation, the plaintiff has failed to prove one of promissory estoppel's four elements. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 429 (App. 2016).

Estoppel is an equitable doctrine which may be invoked only by parties who themselves have acted

properly concerning the subject matter of the litigation. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Estoppel is to be applied against wrongdoers, not the victim of a wrong. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Estoppel constitutes a doctrine which may be only be invoked by parties who themselves have acted properly concerning the subject matter of the litigation, and is a doctrine by which a person may be precluded by his act or conduct or silence, when it is his duty to speak. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 510 (App. 2016).

When, during a span of four plus years, the judgment debtors never even hinted that subject-matter jurisdiction was an unsettling issue and acquiesced to the trial court's rulings and implied a recognition of the judgment, the venerable legal concept of equitable estoppel applies since the judgment creditor relied on that conduct or more appropriately, lack thereof. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 511 (App. 2016).

– Laches

Laches and estoppel are equitable doctrines which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM R. 174, 178 (Pon. 1987).

Although final judgment in a case has been entered by the Trust Territory High Court, because any effort by a party to have the High Court consider its own jurisdiction would have been futile, it is procedurally fair to later afford the party an opportunity to question that jurisdiction. United Church of Christ v. Hamo, 4 FSM R. 95, 118-19 (App. 1989).

Laches is a tool courts use to limit a party's rights when they have not been timely asserted, such that it is unfair for the court to now redress them. The period of time may be less than the statutory limitations period and each case must be judged on a case by case basis for fundamental fairness. Palik v. Kosrae, 5 FSM R. 147, 155 (Kos. S. Ct. Tr. 1991).

Where there is a long delay in moving for certification of an issue and it appears the motion's sole purpose is to cause further delay, the doctrine of laches may bar the granting of the motion. Youngstrom v. Youngstrom, 5 FSM R. 335, 337-38 (Pon. 1992).

The elements of the equitable defense of laches include, at a minimum, inexcusable delay or lack of diligence by the plaintiff in bringing suit, and injury to the defendant from the plaintiff's inaction. For the delay to have been inexcusable, the plaintiff has to have known or had notice of the defendant's conduct giving rise to the cause of action and had an opportunity to bring suit. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 185-86 (Pon. 1993).

The equitable defense of laches is not available to a defendant who has not shown inexcusable delay by the plaintiff in bringing suit and injury to the defendant as a result. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 186 (Pon. 1993).

The basic elements of the doctrine of laches are 1) inexcusable delay or lack of diligence by the plaintiff in bringing suit, and 2) injury or prejudice to the defendant from plaintiff's delay. Delay is inexcusable when the plaintiff knew or had notice of defendant's conduct giving rise to plaintiff's cause of action, and had prior opportunity to bring suit. Nahnken of Nett v. United States (III), 6 FSM R. 508, 522 (Pon. 1994).

Where the plaintiff did know or should have known of defendants' claims for at least a decade, defendants should not have to be hauled into court to relitigate issues decided over ten years before because it is prejudicial to the defendants who had a reasonable right to assume that the TT High Court

appellate decision had closed the matter in 1982. Nahnken of Nett v. United States (III), 6 FSM R. 508, 523 (Pon. 1994).

Although the doctrine of laches cannot be asserted against government land, where suit is prosecuted in the name of a government by a private individual laches may apply as a bar. Nahnken of Nett v. United States (III), 6 FSM R. 508, 523 (Pon. 1994).

The doctrine of adverse possession is unrelated to the defense of laches. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 176 n.8 (Pon. 1995).

The two elements to a laches defense are inexcusable delay or lack of diligence by a plaintiff in bringing suit, and injury or prejudice to the defendant from the plaintiff's delay. Inexcusable delay exists when plaintiff knew or had notice of the defendant's conduct which gave rise to plaintiff's cause of action, had an opportunity to bring suit, but failed to do so. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 177 (Pon. 1995).

The determination whether a plaintiff's delay in bringing suit is sufficient to justify the application of laches is made on a case by case basis. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 178 (Pon. 1995).

Where plaintiff inexcusably waited fifteen years after accrual of cause of action and prejudiced the state by allowing it to make substantial costly improvements the doctrine of laches will bar plaintiff's claims. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 178 (Pon. 1995).

The doctrine of laches may not be used as a defense against the government in an action brought by the government, but may be used as a defense by the government against a suit brought by a private party. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 179 (Pon. 1995).

A party whose conduct regarding the subject of the litigation is unconscionable, or its actions constitute deceit, fraud, or misrepresentation has unclean hands and thus may not invoke the equitable defense of laches. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 180 (Pon. 1995).

The equitable defense of laches and the statute of limitations are neither synonymous nor mutually exclusive. Unlike statutes of limitation, which forever bar an action after a fixed period of time, laches depends upon considerations of fairness, justice, and equity, and is invoked when the applicable statute of limitations has not yet expired. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 181 (Pon. 1995).

Laches and the statute of limitations are two different defenses. The statue of limitations defense has only one element – the passage of a specific statutory amount of time while the equitable defense of laches has two elements – the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Laches is always applied separate from and irrespective of the statute of limitations. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

Laches is a mixed question of law and fact. Whether the elements of laches have been established in any particular case is one of fact depending on the circumstances, and calls for the exercise of a sound discretion by the trial court. But whether, in view of the established facts, relief is to be denied–that is, whether it would be inequitable or unjust to the defendant to enforce the complainant's right–is a question of law. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

An abuse of discretion standard is used to review whether the elements of laches have been established, but the question of law – whether it would be inequitable or unjust to the defendant to enforce the complainant's right is reviewed *de novo*. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 489 (App. 1996).

In order for a plaintiff to be charged with inexcusable delay or lack of diligence the plaintiff must have

had knowledge of the facts that gave rise to his claim. Ordinarily, actual knowledge on the part of the complainant is necessary in order to charge him with laches. However, knowledge may in some circumstances be imputed to him by reason of opportunity to acquire knowledge, or where it appears he could have informed himself of the facts by the exercise of reasonable diligence, or where the circumstances were such as to put a man of ordinary prudence on inquiry. Ordinary prudence depends on the particular circumstances of the case. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 490 (App. 1996).

A plaintiff inexcusably delays in bringing suit when he was aware of or should have been aware of, the state's control and use of the land that had not been given over to his control and for which he had received no payment for at least fifteen years during which he could have brought suit against the state or its predecessor in interest. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 490 (App. 1996).

Delay alone does not constitute laches. Even lengthy delay does not eliminate the prejudice prong of the laches test, but the longer the delay the less need there is to show, or search for, specific prejudice, and the greater the shift to the plaintiff of the task of demonstrating lack of prejudice. The test of laches is prejudice to the other party. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 490 (App. 1996).

There are two types of prejudice that may stem from delay in filing suit. The adverse party may be unable to mount a defense because of loss of records, destruction of evidence, missing witnesses, and the like, or the prejudice may be economic. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 490 (App. 1996).

The doctrine of laches is applied only where it would be inequitable to allow a person making a belated claim to prevail. Each case is governed chiefly by its own circumstances. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 491 (App. 1996).

Generally, a party who has failed to act properly – a party who has "unclean hands" – cannot invoke an equitable doctrine such as laches. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 491 (App. 1996).

Where public lands are involved laches cannot be used as a defense against the government, but the government may use laches as a defense against another who seeks to claim public lands. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 491 (App. 1996).

Laches is a plaintiff's inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65 (Chk. 1997).

The defenses of estoppel, unclean hands and laches are all equitable defenses which do not apply in actions sounding in personal injury. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

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).

Generally, the laches defense is meant to prevent injustice as to a person against whom one seeks to assert rights where the one asserting the rights has slept on those rights. Thus, laches at a minimum comprehends an inexcusable delay in bringing suit, and prejudice to the defendant as a result. Senda v. Semes, 8 FSM R. 484, 501 (Pon. 1998).

The doctrine of laches or stale demand is whereby the owner after the lapse of time is deprived of his interests because he has not exercised proper diligence in protecting his rights in court. Hartman v. Chuuk, 9 FSM R. 28, 33 (Chk. S. Ct. App. 1999).

Laches involves two factors, 1) inexcusable delay or lack of diligence by the plaintiff in bringing suit, and 2) injury or prejudice to the defendant from plaintiff's delay. A predicate to reliance on the doctrine of

laches is that he who would invoke it must have clean hands, and must have acted properly concerning the subject matter of the litigation. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

A defendant who has had the benefit of the goods which he received without paying for them is precluded from relying on the doctrine of laches as a defense to a suit for payment. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

Both res judicata and laches are affirmative defenses and must be asserted in responsive pleading. If affirmative defenses are not raised in the answer or other responsive pleading, the defenses are waived. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94 (Kos. S. Ct. Tr. 1999).

The doctrine of laches applies to the actual filing of a claim rather than to any inaction that might arise following the initiation of a legal proceeding. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

Since laches is an equitable defense, it is only available to a defendant when a plaintiff seeks some form of equitable relief. It is not a valid defense to an action brought solely at law. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 607 (Chk. 2000).

The doctrine of laches is applied only where it would be inequitable to allow a person making a belated claim to prevail. Each case is governed chiefly by its own circumstances. The equitable defense of laches has two elements: the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Laches is always applied separate from and irrespective of the statute of limitations. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

In determining whether to apply laches, the resulting prejudice to the defendant is explored first. There are two types of prejudice that may stem from delay in filing suit. The adverse party may be unable to mount a defense because of loss of records, destruction of evidence, missing witnesses, and the like, or the prejudice may be economic. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

A predicate to reliance on the doctrine of laches is that he who would invoke it must have clean hands, and must have acted properly concerning the subject matter of the litigation. Generally, a party who has failed to act properly a party who has "unclean hands" cannot invoke an equitable doctrine such as laches. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

When two Directors of Education failed to act properly by not acting upon the plaintiff's grievance and not making a written finding on plaintiff's grievance, as required by regulation, the State cannot invoke the equitable doctrine of laches in its defense. Skilling v. Kosrae, 9 FSM R. 608, 613 (Kos. S. Ct. Tr. 2000).

When a plaintiff has acted expeditiously to notify a defendant of his trespass as soon as the defendant began construction on the land, there has been no unreasonable delay prejudicing the defendant which could give rise to a laches defense. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

Laches and the statute of limitations are two different defenses. The statute of limitations defense has only one element, which is the passage of a specific statutorily set amount of time. The equitable defense of laches has two elements. One element is the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and the other element is the resulting prejudice to the defendant. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

Unlike statutes of limitation, which bar an action after a fixed period of time, laches depends upon considerations of fairness, justice, and equity, and is invoked when the applicable statute of limitations has not yet passed. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

There is a two part standard of review for a laches defense since laches is a mixed question of law and fact. Whether the elements of laches have been established is a factual determination which depends upon the case's circumstances, and calls for an appellate court to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant's right is a question of law that is reviewed *de novo*. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

There was no abuse of discretion by the trial court in finding that the state had not satisfied the laches requirement of showing prejudice due to the passage of time before the plaintiff brought his action when any resulting prejudice due to a witness's death was not significant as other pertinent records and witnesses still existed and because there was no resulting prejudice to the state in light of its joint stipulation of facts and documents. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

The equitable doctrine of laches cannot be invoked when a party has failed to act properly or is said to have "unclean hands." Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

When a state employee did not engage in inexcusable delay or a lack of diligence in bringing suit, as the delay was caused by his engaging the administrative grievance process and waiting for the state's required response, and when the state, by its own inaction on the employee's claims, was not in compliance with the applicable regulation and statute, failed to act properly with regard to his grievance, the state, being the cause of the delay, cannot invoke the equitable doctrine of laches. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

Laches and failure to mitigate damages are not grounds on which to grant summary judgment when a sufficient factual basis to support either ground has not yet been developed. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127 (Chk. 2005).

Laches has two elements – the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Laches is always applied separate from and irrespective of the statute of limitations. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 18 (App. 2006).

When a party has not shown why the delay was inexcusable or how it was prejudiced by the delay, its assertions of laches and estoppel are without merit. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 18 (App. 2006).

The basic elements of the doctrine of laches are 1) inexcusable delay or lack of diligence by the plaintiff in bringing suit, and 2) injury or prejudice to the defendant from plaintiff's delay. Delay is inexcusable when the plaintiff knew or had notice of the defendant's conduct giving rise to the plaintiff's cause of action, and had prior opportunity to bring suit. The doctrine of laches or stale demand applies to deprive an owner of his interests after the lapse of time because he has not exercised proper diligence in protecting his rights in court. It is an affirmative defense that is raised at the time an answer is filed by a defendant or else is usually considered waived. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 299 (Kos. S. Ct. Tr. 2007).

The question of prejudice to the other party is usually treated as a question of law and reviewed de novo on appeal. The longer the delay, the less need there is to show specific prejudice and the greater the shift to the other party to demonstrate the lack of prejudice. When a party developed the property and treated it as their own for over 50 years, the passing of witnesses and the loss of their testimony is prejudicial to them. The prejudice is economic as well, from the loss of their efforts in maintaining and developing the property during this time. With a delay of 50 years, the burden shifts to the other party to demonstrate lack of prejudice. The criteria of prejudice is met. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 299-300 (Kos. S. Ct. Tr. 2007).

The length of the delay is a factor in laches, too. The twenty-year statute of limitations establishes one clear limit to the time allowed for bringing a claim, but laches is a separate analysis. Both address the concern that after the passage of a length of time, a person loses the opportunity to assert their rights.

When over 50 years have passed, if this is not enough time to allow someone to assert a claim of ownership to land, it is difficult to set forth what length of time is sufficient. The Land Court did not abuse its discretion when it treated the claim of ownership as stale after 50 years. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 300 (Kos. S. Ct. Tr. 2007).

Laches is another equitable doctrine that is applied to bar relitigation of cases. Laches requires the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and the resulting prejudice to the defendant. Laches depends upon considerations of fairness, justice, and equity, and is invoked when the applicable statute of limitations has not yet passed. But when the statute of limitations passed on a claim, the question of laches will not be addressed. Andon v. Shrew, 15 FSM R. 315, 322 (Kos. S. Ct. Tr. 2007).

A borrower's laches defense will fail when the borrower has had the use of a blast freezer securing the loan the whole time since 1998 without making any payment on the loan because the equitable doctrine of laches cannot be invoked when a party has failed to act properly or is said to have "unclean hands" regarding the litigation's subject matter. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

Laches is the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, which results in prejudice to the defendant. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538 (Chk. 2011).

When the defendant became an employer in Chuuk sometime during 2009 and when this suit, after some initial contact and some failed negotiations between the parties during 2010, was filed in December 2010, the court can conclude that, as a matter of law, this was not an inexcusable delay. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538 (Chk. 2011).

Since laches is an equitable defense, it is available to a defendant only when a plaintiff seeks some form of equitable relief and is not a valid defense to an action brought solely at law, such as this suit for unpaid statutory health insurance premiums which is an action at law. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 538 (Chk. 2011).

The elements of a laches defense are the plaintiff's inexcusable delay or lack of diligence in bringing suit and resulting prejudice to the defendant. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

Whether the elements of laches have been established in any particular case is one of fact depending on the circumstances, and calls for the trial court's exercise of a sound discretion. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

When it has not been shown, that the three-and-a-half-year time period, by itself, was an inexcusable delay and when it has not been shown, instead of merely speculating, that the delay has resulted in prejudice to the defendants, the defendants cannot be granted summary judgment on their laches defense and for the same reasons, they must also be denied summary judgment on their estoppel and waiver defense. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

Generally, the equitable defense of laches is only available to a defendant when the plaintiff has sought some form of equitable relief and is not available as a defense against actions at law. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

Laches has two elements – the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

Since conversion is an action at law, laches is not a defense that can be used against a conversion claim. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

Even if it were a permissible defense, laches cannot be applied when there was no inexcusable delay. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

In the Kosrae State Court, both res judicata and laches are affirmative defenses that must be asserted in responsive pleadings, and, if affirmative defenses are not raised in the answer or other responsive pleading, the defenses are waived. Waguk v. Waguk, 21 FSM R. 60, 67 (App. 2016).

– Waiver

When an individual claiming an interest in land has no prior knowledge of an impending transaction of other parties concerning that land, his failure to forewarn those parties of his claim cannot be interpreted as a knowing waiver of his rights. Etpison v. Perman, 1 FSM R. 405, 418 (Pon. 1984).

Express or implied waiver, to be effective, must be the knowing, intentional and voluntary relinquishment of a known legal right. Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

Waiver is the relinquishment of a known right, either by action or words, which rests upon the equitable principle that one will not be permitted to act contrary to his former position when to do so results in detriment to another. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

Rescission is equitable in nature, just as waiver is. Adams v. Island Homes Constr., Inc., 10 FSM R. 510, 513 (Pon. 2002).

For a party with "unclean hands," the equitable defense of waiver (as opposed to a contractual waiver) is insufficient as a matter of law. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

ESCHEAT

Unclaimed balances of judgments paid into court may escheat to the government. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 371, 375 (Pon. 1996).

At least two Micronesian legislatures have considered some form of escheat suited for application in the FSM. Congress has enacted a limited escheat statute concerning the proceeds from property found in an unclaimed shipwreck. The Pohnpei Legislature has enacted a more general escheat statute concerning the real and personal property of an intestate who die without heirs. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 672 (App. 1996).

Escheat of property, as is property law in general, is primarily a state power. Therefore, based on the inherent power of the court in the absence of an applicable statute, any funds paid into court left unclaimed after the twenty-year statute of limitations has run will escheat to the state. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 673 (App. 1996).

EVIDENCE

An actor's intention must be inferred from what he says and what he does. FSM v. Boaz (I), 1 FSM R. 22, 24-25 (Pon. 1981).

The FSM Supreme Court is vested, by statute, with authority to suppress or exclude, evidence obtained by unlawful search and seizure. 12 F.S.M.C. 312. FSM v. Tipen, 1 FSM R. 79, 92 (Pon. 1982).

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).

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).

Unsubstantiated speculations raised after trial are not sufficient to raise reasonable doubt as to a person's guilt in the light of eyewitness testimony. Alaphonso v. FSM, 1 FSM R. 209, 225-27 (App. 1982).

Evidence will not be stricken when most previously introduced evidence is unquestionably related to counts still before the court; when the description of the defendants' duties before and after July 12, 1981 did not vary significantly; when the auditor's activities uncovered illegal transactions both before and after July 12, 1981; when various Mobil employees' conversations before July 12, 1981 related to the existence of a pattern of conduct and planning and carrying out illegal transactions and are relevant about whether a conspiracy existed after July 12, 1981. FSM v. Jonas (II), 1 FSM R. 306, 310-12 (Pon. 1983).

Evidence of the earlier alterations is not rendered inadmissible on grounds that it relates to other crimes, wrongs, or acts when the fact a defendant was able to use his position with Mobil to embezzle funds in a particular way before July 12, 1981, lends itself to an inference that the same defendant, holding the same position after July 11, 1981, had the opportunity to carry out the same kind of transaction thereafter and because information concerning pre-July 12, 1981 transactions and activities may also: 1) suggest that defendants who engaged in illegal activities earlier still intended to do so at a later time; 2) indicate preparation for later actions; 3) establish a plan extending beyond July 12, 1981; 4) suggest knowledge of similar later actions; 5) imply identity of people involved in subsequent similar ICR alterations later; and 6) reduce likelihood that ICR alterations after July 12, 1981 occurred by mistake or accident. These legitimate purposes overcome the general prohibition against evidence of prior misconduct merely to show the defendant's character. FSM v. Jonas (II), 1 FSM R. 306, 313 (Pon. 1983).

The existence of plea negotiations says little to the court about defendant's actual guilt. FSM v. Skilling, 1 FSM R. 464, 483 (Kos. 1984).

When there is sufficient evidence of other force in the record to support a conviction for forces sexual penetration, there is no inconsistency in finding the use of force even without ruling that a knife compelled the victim to submit. Buekea v. FSM, 1 FSM R. 487, 494 (App. 1984).

It is not unreasonable for a trial court to conclude that a police officer, claiming to effect an arrest, who hits a person four times with a mangrove coconut husker and kills him was trying to kill him. Loch v. FSM, 1 FSM R. 566, 576 (App. 1984).

Death and the cause of death can be shown by circumstantial evidence. Loch v. FSM, 1 FSM R. 566, 577 (App. 1984).

It is generally recognized by courts that nonmedical persons may be capable of recognizing when someone is intoxicated. Ludwig v. FSM, 2 FSM R. 27, 33 n.3 (App. 1985).

If the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court has broad discretion to admit merely on the basis of testimony that the item is the one in question and is in substantially unchanged condition. Joker v. FSM, 2 FSM R. 38, 46 (App. 1985).

An affidavit unsupported by factual detail is not sufficient to cast doubt on the proposition that a project manager of a joint venture, who is in charge of all activities of a corporate member of the joint venture within a state, is a managing or general agent of that corporation. Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 110 (Pon. 1985).

That a land commission's determination is not sufficiently supported by either reasoning or evidence furnishes "good cause" to permit the reviewing court to conduct its own evidentiary proceeding. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 395, 398 (Kos. S. Ct. Tr. 1988).

Kosrae Evidence Rule 408, which renders evidence of settlement negotiations inadmissible in the trial, is based upon the court's commitment to encourage out of court settlements and includes offers made in the early stages of a dispute. Nena v. Kosrae, 3 FSM R. 502, 505-06 (Kos. S. Ct. Tr. 1988).

In adopting the rules of evidence used by the United States federal courts, the Kosrae State Court also adopted the reasons for those rules and the case law which interprets them, insofar as those are appropriate for Kosrae. Nena v. Kosrae, 3 FSM R. 502, 506 (Kos. S. Ct. Tr. 1988).

Pursuant to Kosrae Evidence Rule 408, all statements, including factual assertions, made during the settlement process are protected and inadmissible in court to prove liability or invalidity of a claim. Nena v. Kosrae, 3 FSM R. 502, 506 (Kos. S. Ct. Tr. 1988).

Although Kosrae Evidence Rule 408 does not require the exclusion of factual evidence "otherwise discoverable" simply because it was presented during compromise negotiations, a statement made in a letter seeking to settle a dispute, which statement is clearly connected to and part of the settlement offer, is not otherwise discoverable. Nena v. Kosrae, 3 FSM R. 502, 507 (Kos. S. Ct. Tr. 1988).

A request for admission as to the genuineness of a letter, excludable as evidence under Kosrae Evidence Rule 408 because it relates to settlement negotiations, is reasonably calculated to lead to evidence which could be admissible, and an objecting party may not obtain a protective order pursuant to Kosrae Civil Rule 26 to avoid responding to the request. Nena v. Kosrae, 3 FSM R. 502, 507 (Kos. S. Ct. Tr. 1988).

An inference is not permitted if it cannot reasonably be drawn from the facts in evidence. Este v. FSM, 4 FSM R. 132, 138 (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).

The trier of fact determines what should be accepted as the truth and what should be rejected as untrue or false, and in doing so is free to select from conflicting evidence, and inferences that which it considers most reasonable. Epiti v. Chuuk, 5 FSM R. 162, 166 (Chk. S. Ct. Tr. 1991).

Evidence that a customary adoption has taken place may be offered via affidavits from the natural parents of the child, consenting and attesting to the customary adoption. In re Marquez, 5 FSM R. 381, 384 (Pon. 1992).

Generally, a breach of duty is proven by the testimony of witnesses who describe what a reasonable person, acting in compliance with the duty of care, would have done or not done in the same situation. In rare circumstances when the facts are indisputable and when they raise such a strong inference that all reasonable people agree on the duty of care, the court can decide, as a matter of law, the person has breached his duty of care. Nena v. Kosrae, 5 FSM R. 417, 421 (Kos. S. Ct. Tr. 1990).

It is error for a trial court to rely on exhibits never identified, described or marked at trial. Waguk v. Kosrae Island Credit Union, 6 FSM R. 14, 18 (App. 1993).

Where exhibits are identified and marked at trial but never introduced, and where there is extensive

testimony and cross examination of witnesses concerning the contents of these exhibits except for interest and late charges, an award for interest and late charges must be deleted because it is not supported by testimony. Waguk v. Kosrae Island Credit Union, 6 FSM R. 14, 18 (App. 1993).

A party seeking to offer evidence after trial must show good cause why it should be admitted. The court, in exercising its discretion, must weigh the evidence's probative value against the danger of injuring the opposite party through surprise because the opposing party cannot properly examine or counter the evidence, and without good cause shown the court should deny its admission as untimely. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 121 (Pon. 1993).

Unless a malfunction is alleged or proven, the printout of a functioning Global Positioning System unit will be presumed correct as to a ship's position regardless of assertions to the contrary. FSM v. Kotobuki Maru No. 23 (II), 6 FSM R. 159, 164-65 (Pon. 1993).

If a judge does not specifically rely on the objected to evidence, the appellate court must presume that he did not rely on that evidence and therefore that any error in admitting the evidence did not result in substantial hardship or prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

It is not an abuse of the trial court's discretion for a trial court to admit testimony that is inconsistent with that witness's answer to an interrogatory. Admissions made in interrogatories are not binding and the answering party may introduce other evidence on the subject of the admissions at trial. Contradictions between a party's answers to interrogatories and court testimony go to the weight and credibility of the testimony, not to its admissibility. Conflicting testimony may be admitted, and it is the responsibility of the finder of fact to weigh all the answers and resolve the conflict. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 350 (App. 1994).

Where there is no indication that the trial court relied on certain evidence, the presumption is there was no such reliance, and any error in its admission is not prejudicial. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 351 (App. 1994).

Inconsistencies between a party's responses to discovery and trial testimony properly go to the weight and credibility of the testimony and not to its admissibility. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 352 (App. 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).

Representations of counsel in a probable cause hearing are not a substitute for competent, reliable evidence in the form of testimony or appropriately detailed affidavits. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 305 (Kos. 1995).

A court cannot infer that someone attended a hearing because they might have attended another hearing that might have taken place an hour beforehand at the same place. Palik v. Henry, 7 FSM R. 571, 575 (Kos. S. Ct. Tr. 1996).

The issue of the court's jurisdiction to try a case is a preliminary matter that the accused, by testifying upon, does not subject himself to cross-examination as to other issues in the case. FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

Proof of guilt may be by either direct evidence, circumstantial evidence or both. Direct evidence is evidence, which if believed, proves the existence of facts in issue without inference or presumption. Circumstantial evidence is evidence of facts and circumstances from which the existence or nonexistence of facts in issue may be inferred. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 171 (Pon. 1997).

An appellate court will not reweigh the evidence presented at trial. Credibility determinations are uniquely the province of the factfinder, not the appellate court. Johnny v. FSM, 8 FSM R. 203, 207 (App. 1997).

It is not a manifest error of fact requiring a new trial that certain evidence that parties felt was compelling was not recited in the court's decision or given the weight they thought proper, when the parties were afforded a full hearing and the court considered all evidence on the record in reaching its decision. Conrad v. Kolonia Town, 8 FSM R. 215, 217 (Pon. 1997).

A court may suppress evidence obtained by an unlawful search and seizure. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

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).

It is improper for counsel to argue facts only within the counsel's knowledge and not in the record. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

Counsel's statements concerning an answer constitute argument of counsel, not evidence. Only the answer itself is admissible evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

Any reliance on a "proposed disposition" to prove the respondent attorney's misconduct is improper when the respondent attorney's statements show that any admissions of misconduct were only for the purpose of the reviewing justice's approval of the proposed disposition and if it was not accepted, the respondent attorney would have to call defense witnesses. Such equivocation is not an admission of professional misconduct. It is thus inadmissible under FSM Evidence Rules 410 and 408, which bar the admission of pleas, plea discussions, and related statements and compromises and offers to settle, respectively. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

When no party raised a best evidence objection about two checks during the trial, when the trial court did not preclude or limit the introduction of evidence about either check, when both checks were involved in much of the testimony offered by the plaintiff and both also formed the subject of direct examination testimony by defense witnesses, when the trial judge himself questioned defense witnesses at length concerning the two checks, and when defense witnesses acknowledged both checks' existence, their amounts and that they were made out to the plaintiff, the trial court cannot be said to have applied the "best evidence" rule, which is exclusionary in character, and requires the production of originals unless specified exceptions are met. Tulensru v. Wakuk, 10 FSM R. 128, 133 (App. 2001).

The weight to be accorded admissible evidence is for the trier of fact to determine. Tulensru v. Wakuk, 10 FSM R. 128, 134 (App. 2001).

Rule 59 provides a means for relief in cases in which a party has been unfairly made the victim of surprise, but relief will be denied if the party failed to seek a continuance. Surprise, along with excusable neglect, is also addressed by Rule 60(b)(1). Thus, if a party is surprised at trial he is amply protected by Rules 59(a) and 60(b). Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

A party may not derive benefit post trial from tendering evidence that which he was under a discovery obligation to produce pre-trial, and did not. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

When a sketch proffered to the appellate court, even if it had been admitted at trial, would not have been enough to demonstrate that a trial court's factual finding was clearly erroneous, the factual finding must stand. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

When the plaintiff's complaint claimed he performed "over 714 hours of overtime work," the defendant

was given notice of the plaintiff's overtime claims. The defendant thus cannot exclude evidence that the plaintiff worked 1184.5 overtime hours, and the plaintiff does not need to amend his complaint, because 1184.5 hours is more than 714 hours. Palsis v. Kosrae, 10 FSM R. 551, 552 (Kos. S. Ct. Tr. 2002).

On a design defect products liability claim, evidence of other accidents is admissible to show a dangerous condition so long as the proponent makes a foundational showing that the prior accidents occurred under substantially the same circumstances. Further, evidence proffered to illustrate the existence of a dangerous condition necessitates a high degree of similarity because it weighs directly on the ultimate issue to be decided by the [finder of fact. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

When the alleged defect in the kerosene resulted from the contamination of the product, and not its design, logic dictates that the plaintiff must show a high degree of similarity between the accident in this case and the accidents in the other cases before the other accidents will be admitted on the question of the dangerous condition of the allegedly contaminated product. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

When the instant case is similar to the other accidents to the extent that the alleged defect is the same, i.e., contaminated kerosene, but the manner in which the other accidents occurred is quite different, the other accidents are not sufficiently similar to be admissible on the question of dangerousness. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

Speculation, guess and surmise may not be substituted for competent evidence, and where there are several possible causes of one accident, one or more of which a defendant is not responsible for, a plaintiff cannot recover without proving that the injury was sustained wholly or in part by a cause for which the defendant was responsible. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 587 (Pon. 2002).

Generally, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith, but such evidence is admissible as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. FSM v. Wainit, 11 FSM R. 1, 5 (Chk. 2002).

Production of an original document, although preferable, is not absolutely required. Other evidence of its contents could be admissible if all originals have been lost or destroyed (unless the proponent destroyed them in bad faith), or if no original can be obtained by any available judicial process or procedure, or if the original is under the control of the party against whom it is offered and he does not produce the original, or if it is not closely related to a controlling issue. FSM v. Wainit, 11 FSM R. 1, 6 (Chk. 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).

The court is required to receive satisfactory evidence that custom or tradition applies to a case, before utilizing it. Kosrae v. Sigrah, 11 FSM R. 26, 30 (Kos. S. Ct. Tr. 2002).

A trial court's errors in admitting or excluding evidence are not grounds for reversal when the appellants have not explained what the evidence would have shown had it been admitted and how this evidence would or could have changed the court's decision because error in admitting or excluding evidence is not ground for vacating judgment unless refusal to do so is inconsistent with substantial justice. Rosokow v. Bob, 11 FSM R. 210, 216 (Chk. S. Ct. App. 2002).

Authentic school and hospital documents, which reflect the correct birth date of a petitioner may be used to establish the petitioner's correct birth date. In re Phillip, 11 FSM R. 301, 302 (Kos. S. Ct. Tr. 2002).

There is no "dead man's statute" barring the admission of a deceased person's statements as

evidence in Kosrae state law or in the rules of evidence. Taulung v. Jack, 11 FSM R. 345, 348 (Kos. S. Ct. Tr. 2003).

An appellate ruling that only determined that certain testimony was admissible did not instruct the trial court as to what weight to give his testimony or what inferences it must draw from it on remand. Rosokow v. Bob, 11 FSM R. 454, 458 (Chk. S. Ct. App. 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).

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).

In order to prove lost rental damages, a business should be prepared to show that all other similar available vehicles were rented and that the had to turn away customers who would otherwise had rented the damaged pickup, and the number of days it would have been rented. A long-term, ongoing business might show this by comparing the average of the total rental days of all pickups combined for each month before the pickup was damaged with the average total rental days for each month after the accident. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

Under the traditional "new business rule," which applies to any business without a history of profits, it has been recognized that evidence of expected profits from a new business is too speculative, uncertain, and remote to be considered and does not meet the legal standard of reasonable certainty. But lost profits can be recovered by a new business when it is possible to show, by competent evidence and with reasonable certainty, that profits would have been made in the particular situation, and the amount of those profits. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

When the boundary claimed by appellants was supported by testimony of a neutral observer and the appellees' was based only on their testimony, the Land Court decision, which accepted the appellees' boundary claim was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23 (Kos. S. Ct. Tr. 2004).

When there was no evidence presented to the Land Court regarding the parties' acceptance of the river as the boundary between their parcels, but the Land Court relied upon an alleged settlement between the parties which was never presented or accepted as evidence at the hearing, the Land Court decision which determined the river as the boundary was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23 (Kos. S. Ct. Tr. 2004).

When the parties' settlement to divide the islands in the swampy area such that each party is owner of two islands was accepted into evidence at the Land Court hearing, but was not reflected in the Land Court decision, that decision regarding the swampy area, was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23-24 (Kos. S. Ct. Tr. 2004).

Representations of counsel at a hearing are not a substitute for competent, reliable evidence in the form of testimony or detailed affidavits. Counsel's statements constitute only argument of counsel and are not evidence. Kosrae v. Nena, 13 FSM R. 63, 67 (Kos. S. Ct. Tr. 2004).

A certified map is conclusive only as to the location and boundaries of the land within it. It is not conclusive as to the boundaries and locations of other parcels of land, although it may be some evidence. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99f (Chk. 2004).

Evidence first introduced in response to questioning by the trial judge during defendant's closing argument was not properly in evidence before the trial court as it was made during the closing arguments and such statements were not made under oath, not subject to cross-examination, and not subject to any rebuttal testimony by any witness. Argument does not constitute evidence. Livaie v. Weilbacher, 13 FSM R. 139, 144 (App. 2005).

When the trial court's assessment of restitution damages was specifically calculated using a figure based on a statement made during closing argument, it was not supported by evidence properly before the trial court. As such, the amount of restitution assessed by the trial court is clearly erroneous and must be vacated and the case remanded to the trial court to determine the amount of restitution based on the evidence properly before it or to hold a further evidentiary hearing on the issue. Livaie v. Weilbacher, 13 FSM R. 139, 144-45 (App. 2005).

When the plaintiff tendered receipts for the equipment rental, but the receipts were not original documents, nor copies of the originals: the receipts had been reconstructed recently for the purpose of the hearing, the receipts were not accepted into evidence. Livaie v. Weilbacher, 13 FSM R. 206, 208 (Kos. S. Ct. Tr. 2005).

When at trial of the matter, the defendant had argued that only 25% of the excavated fill materials had met specifications and had actually been hauled to the road project site, but, at the hearing held on April 14, 2005, did not present any evidence in support of this argument, the plaintiff is entitled to restitution for the market value of all the materials excavated from the quarry. Livaie v. Weilbacher, 13 FSM R. 206, 208 (Kos. S. Ct. Tr. 2005).

When the Plaintiff seeks as a component of restitution, ground rent for his quarry and argues that ground rent is "normally compensated in similar contracts," but did not present any evidence during the June 2003 trial nor at the April 14, 2005 hearing in support of his claim for ground rent and did not offer any "similar contracts" to establish that ground rent is "normally compensated" for the use of land for a quarry, the plaintiff's request for restitution for ground rent must be denied. Livaie v. Weilbacher, 13 FSM R. 206, 208 (Kos. S. Ct. Tr. 2005).

When the defendants had the burden of proof to establish their claim for damages in an amount different than that presented by the plaintiffs, but failed to present any witnesses or other evidence to contradict or modify the calculations presented by the plaintiffs, the court cannot jump to an inference when the underlying testimony does not support the inference. Livaie v. Weilbacher, 13 FSM R. 249, 251 (Kos. S. Ct. Tr. 2005).

Depositions, warrants or other papers may be admitted into evidence in an extradition case if properly authenticated and the FSM Rules of Evidence by their terms do not apply to extradition proceedings. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

When an unrepresented party made statements as a preamble to the questions he posed to another claimant, the Land Court, recognizing that the claimants were lay persons and not trained in legal hearing procedures, should have provided instructions that cross-examination is limited to asking questions of the witness. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Since it is error for a court to rely upon evidence never presented at a hearing or trial, the Land Court's reference in its decision to statements not in evidence properly before it was contrary to law. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Ultimately, the determination as to whether or not to admit evidence is left to the trial court's discretion. The weight to be accorded admissible evidence is for the trier of fact to determine. Kosrae v. Phillip, 13 FSM R. 449, 455 (Kos. S. Ct. Tr. 2005).

The test for the admissibility of field sobriety test results is that the court must consider evidence of the police officers' knowledge of the tests, his training and his ability to interpret his observations. Any testimony concerning the defendant's performance would be subjected to cross-examination and defense counsel could question any inadequacy regarding the administration of the tests. The test results' admissibility must be determined at trial, following such testimony. The test results' admissibility for each accused will necessarily depend upon the facts of his or her case, and must therefore depend upon the evidence presented for each individual accused in each case. The results may be admissible in one case, but not admissible in another. Kosrae v. Phillip, 13 FSM R. 449, 455 (Kos. S. Ct. Tr. 2005).

A duplicate is admissible to the same extent as an original unless a genuine question is raised as to the original's authenticity or in the circumstances it would be unfair to admit the duplicate in lieu of the original. Since an original is not required, other evidence of a writing's contents is admissible if at a time when an original was under the control of the party against whom offered, the party was put on notice that the contents would be a subject of proof at the hearing, and the party does not produce the original at the hearing. When the party had the originals and did not produce them, it has no ground to complain. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

The weight to be accorded admissible evidence is for the trier of fact to determine. Kosrae v. Tilfas, 14 FSM R. 27, 30 (Kos. S. Ct. Tr. 2006).

When the defendant argued that the court should recognize custom regarding the relationship between him and the victim, but did not present any evidence of the relationship between victim and him, and did not present any evidence of custom, specifically evidence that due to the relationship between victim and the defendant, it would be customary for the defendant to show up drunk at a relative's home and commit a battery upon the relative, the court may not utilize tradition in reaching a decision because it has not received satisfactory evidence of the tradition. When a defendant has not provided any evidence of custom or tradition, it cannot be considered. Kosrae v. Tilfas, 14 FSM R. 27, 30-31 (Kos. S. Ct. Tr. 2006).

The Kosrae Rules of Evidence apply to civil, criminal and contempt proceedings, but are not applicable to miscellaneous proceedings, such as preliminary examinations for criminal cases and bail proceedings. The rules do not reference their applicability or inapplicability to juvenile proceedings or to preliminary proceedings to determine whether to treat a minor defendant as an adult. Kosrae v. Ned, 14 FSM R. 86, 89 (Kos. S. Ct. Tr. 2006).

When there was undisputed evidence presented of the defendant's performance of other physical activity, the court can infer that the defendant's ailments did permit the defendant to complete a variety of activities requiring movement of his arms, legs and body, and did not affect his performance of the field sobriety tests. Kosrae v. Tulensru, 14 FSM R. 115, 122 (Kos. S. Ct. Tr. 2006).

When it is undisputed that a public road is a public place and that the defendant was carrying and possessing an open beer can on the public road, the court can draw the inference from the facts in evidence that the open beer can possessed by the defendant on the public road was an open beer can containing beer, which is an alcoholic drink. Kosrae v. Tulensru, 14 FSM R. 115, 122 (Kos. S. Ct. Tr. 2006).

The Kosrae Rules of Evidence do not require corroboration of undisputed testimony. Kosrae v. Tulensru, 14 FSM R. 115, 125 (Kos. S. Ct. Tr. 2006).

Even assuming that the photos not admitted would have shown that the defendant was not at fault in the accident, that would have had no bearing on his state of intoxication because even if the other driver were 100% at fault, there is no question that the defendant was driving a vehicle, and he would still have been subject to conviction under the driving under the influence statute if he were driving that vehicle while under the influence. Tulensru v. Kosrae, 15 FSM R. 122, 127 (App. 2007).

It was not error to exclude photos from evidence when the probative value of the photos of an accident scene taken some months after the accident, and without the vehicles present, is negligible. Tulensru v.

Kosrae, 15 FSM R. 122, 127 (App. 2007).

Japanese survey maps, alone, contain no assurance of who should be shown as owners as they were primarily concerned with boundaries. The survey maps are some evidence of ownership, but that there must be substantial evidence to support the decision of ownership. Testimony from many witnesses to determine that the appellees controlled and used the land from over ten to fifteen years prior to the survey map through the time of filing claims, in excess of fifty years, is substantial evidence. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 298 (Kos. S. Ct. Tr. 2007).

The burden of proving custom and tradition relies on the party asserting its effect. When both parties were specifically given the opportunity to offer such evidence, but neither party took that opportunity, the court correctly concluded that no Kosraean customary transfer or acquisition of land could be considered because no party offered evidence. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 298-99 (Kos. S. Ct. Tr. 2007).

When the Land Court findings consist of testimony of a number of witnesses of a family's undisputed use, control and development of the parcel without interference for over 50 years and that family continues to do so today, the Land Court finding was based on substantial evidence to support the family's ownership, even though another's name was on the Japanese survey map and when considering the evidence in a light favorable to the appellees, the appellants, the Land Court's decision was not clearly erroneous. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 299 (Kos. S. Ct. Tr. 2007).

Failure to inform an accused of his rights does not in and of itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation shall be admissible against the accused. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

The application of the Kosrae Rules of Evidence is expressly excluded from proceedings with respect to release on bail. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

A defendant's suppressed statement may not be used against him at trial unless he chooses to testify on his own behalf, in which case, the statement may be used to impeach his credibility. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

The trial court used a co-defendant's pre-trial, out-of-court affidavit only against the declarant since the judge's discourses with the prosecutor stated that it was only being offered or used against the declarant and the trial court's made specific findings with regard to the affidavit that only concerned the declarant co-defendant and since the court's special findings delineated other pieces of evidence, independent of that affidavit, that supported the other defendants' participation in the conspiracy. Engichy v. FSM, 15 FSM R. 546, 556-57 (App. 2008).

The best practice for a trial court finding itself in the situation where a non-testifying defendant's out-of-court statement will be introduced into evidence in a joint or multi-defendant trial, is to make an early, clear and uniform record identifying those defendants against whom the out-of-court statement will and will not be used. A trial court is not generally prohibited from admitting the statement. Engichy v. FSM, 15 FSM R. 546, 557 (App. 2008).

When the record was uniform in signifying that the trial court did not consider one co-defendant's affidavit against the other defendants and when the trial court, in its special findings made at the trial's conclusion identified the other pieces of admitted evidence that it relied upon and that exist independent of the one co-defendant's affidavit; when a review of this specifically relied upon evidence, in addition to the complete record on appeal, presents a sufficient evidentiary basis to support the other defendants' participation in the conspiracy wholly independent of and detached from the one co-defendant's affidavit, the appellate court will conclude that the trial court was successful in excluding the one co-defendant's affidavit as evidence against the other defendants. Engichy v. FSM, 15 FSM R. 546, 557 (App. 2008).

When the trial court asked the government to redact the other defendants' names from one co-defendant's affidavit but no redacted version offered into evidence, and when a physical redaction under these circumstances would have been superfluous, merely replicating the mental exercise of compartmentalizing already successfully undertaken by the trial court, if the trial court proceeded with the trial despite the government's failure to provide a redacted copy of the statement, that choice was within the trial court's discretion and did not unfairly result in substantial hardship or prejudice to any party and thus was not reversible error. Engichy v. FSM, 15 FSM R. 546, 557-58 (App. 2008).

If challenged, previous ledger pages constituting the rest of an open account may be needed to support a plaintiff's case for any items whose accuracy the defendant has not stipulated to because when a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it. Albert v. George, 15 FSM R. 574, 581 (App. 2008).

Various writings, admitted into evidence, which were signed on the behalf of Chuuk, the party to be charged, can establish by a preponderance of the evidence that the plaintiff and Chuuk entered into an agreement whereby the plaintiff would obtain insurance on Chuuk's vessels for the two periods in question, and that Chuuk would pay for the premiums for the insurance obtained. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651 (Pon. 2008).

Counsel's argument about a memo's effect is not a substitute for evidence. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 653 (Pon. 2008).

Evidence and statements lawfully obtained from a defendant before he had been illegally detained over 24 hours will be admissible, but the defendant is entitled to the suppression of any evidence or statements obtained from him after his first 24 hours of detention. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

The remedy for a defendant's unlawful detention over 24 hours is not the dismissal of the information against him or the suppression of all evidence and statements obtained from him. His only remedy in a criminal prosecution (as opposed to a civil suit) is suppression of any evidence obtained as a result of the illegal detention. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

By statute, 12 F.S.M.C. 218, statements taken (even if made voluntarily) and evidence obtained as a result of a violation of the defendant's statutory right to be brought before a judicial officer without unnecessary delay are inadmissible, but when none of the evidence the defendant seeks to suppress was obtained as a result of his being detained for more than 24 hours, the motion to suppress will be denied. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

When an FSM Evidence Rule is modeled after a United States rule, the court should look to United States court decisions interpreting that rule. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

Evidence that speaks for itself is evidence that is significant or self-evident. Fritz v. FSM, 16 FSM R. 192, 198 (App. 2008).

An agreement granting fishing rights is not alone conclusive evidence of land ownership. Narruhn v. Aisek, 16 FSM R. 236, 241-42 (App. 2009).

Speculation may not be substituted for competent evidence. Jano v. Fujita, 16 FSM R. 323, 328 (Pon. 2009).

Although the presence of a person's name on the 1932 Japanese Survey Map as the owner of a parcel of land is not conclusive or dispositive of that person's ownership but may be overcome or rebutted by other evidence, when there was substantial evidence in the record before the Land Court that Mackwelung used, controlled, and occupied Yekula continuously after 1932, including evidence and testimony presented at the original 1979 Land Commission proceeding, the Land Court reasonably assessed this evidence as

supporting the Mackwelungs' position that a *kewosr* to Sra Nuarar had taken place, and since the testimony that a previously unmentioned person had owned the land and had later transferred it to Kun Mongkeya was reasonably assessed as not credible, the evidence did not overcome the 1932 Japanese survey map. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 377 (Kos. S. Ct. Tr. 2009).

It was not error for the Land Court not to award one side all of the disputed land based on an option agreement that was never exercised and that only refers to a parcel situated somewhere in the disputed land and not all of it and so it does not support a claim to all of the land, even assuming it is some evidence of ownership of some part. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 378-79 (Kos. S. Ct. Tr. 2009).

The FSM Rules of Evidence would appear to be inapplicable to proceedings with respect to release of an arrested vessel on bond. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546 (Yap 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).

Although the court must first look to FSM sources of law for purposes of establishing legal requirements in criminal cases, when an FSM court has not previously construed an FSM evidence rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources on the United States Federal Rules of Evidence for guidance. Cholymay v. FSM, 17 FSM R. 11, 19 (App. 2010).

To prove the content of a writing the original is required, but a duplicate of an original writing is admissible when the original cannot be found and if there is no genuine issue as to the original's authenticity. Cholymay v. FSM, 17 FSM R. 11, 22-23 (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).

Although physical evidence or the lack thereof may be compelling in some cases, it is not a requirement of proof when the victim herself testified credibly to the alleged act and when her testimony was neither impeached nor rebutted. The lack of physical evidence may even be expected in a case charging sexual abuse because, unlike sexual assault, proof of sexual abuse does not require proof of sexual penetration, but only of sexual contact. Sexual contact is defined as any touching of the sexual or other

intimate parts of a person not married to the defendant, done with the intent of gratifying the sexual desire of either party. It would be highly unlikely for a doctor examining a person days after her genitalia or intimate parts had been touched to be able to determine whether she had in fact been touched. Thus, the lack of physical evidence in a sexual abuse case is rather to be anticipated, and does not provide the defendant with a defense. Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

Grounds for admission of a document that were not raised in the trial court, may be considered waived. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

The weight to be accorded admissible evidence is for the court as trier of fact to determine. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

In reviewing a dismissal for insufficiency of evidence, once the appellate court determine the trial court's findings are not clearly erroneous, the appellate court asks whether those factual findings are sufficient or insufficient to meet the plaintiff's burden of proof. The trial court's answer to that question forms a legal conclusion, and as such is a ruling on a point of law that is reviewed de novo. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Uncontradicted and unimpeached evidence will be taken as true to the extent that it cannot arbitrarily be disregarded. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Reversible error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected and no error in the admission or the exclusion of evidence is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

A conclusory argument is not evidence. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 324 (Kos. 2011).

When the FSM proved by a preponderance of the evidence that the fishing boat's HF radio was not on and it also proved that the vessel had a VHF radio, but there was no evidence whether the VHF radio was on or off or whether it was tuned to channel 16, the FSM's claim that the vessel was not monitoring a required radio frequency fails for lack of proof because the statute, the Foreign Fishing Agreement, and the foreign fishing permit all require that the vessel monitor only one of those two frequencies and the evidence shows that the vessel had the ability to monitor the VHF channel 16 and there is no evidence that it was not being monitored. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

The Land Court should not exclude any relevant evidence and the Kosrae Rules of Evidence do not apply in the Land Court, but the State Court cannot consider evidence that was not "received" in the Land Court. "Received" in the statute is read to include evidence offered or introduced but improperly excluded. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

The circumstantial evidence proves proximate cause even though exactly how the reef was damaged – whether anchors and/or chains were dragged on the reef; or whether a detached or slack cable or chain used to connect the barge to the tugboat struck the reef; or whether one or both of the vessels struck the reef; or whether some combination of these was responsible – is undetermined since the damages occurred while the two vessels were on the site (or while just the barge was there) and since no other vessels were present at the time and the damage was of the type that must have been caused by one or more of the methods described. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 174-75 (Yap 2012).

The court will not attach any deference to a state agency's findings of fact when the defendant was never a party to any proceeding in that agency and was not even aware of the proceeding and no state agency ever initiated any action against the defendant or imposed any fines or penalties on it and when this court case is not a judicial review of an adversarial agency action so the agency report is not entitled to the

judicial deference given such agency action. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 175 (Yap 2012).

Evidence is exculpatory if it clears or tends to clear from alleged fault or guilt. FSM v. Kool, 18 FSM R. 291, 293 n.1 (Chk. 2012).

Although to prove the content of a writing the original writing is required, FSM Evidence Rule 1003 makes a duplicate admissible to the same extent as an original unless 1) a genuine question is raised as to the authenticity of the original or 2) in the circumstances it would be unfair to admit the duplicate in lieu of the original. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

When the appellants do not contend that the checks are not authentic but contend that the signature endorsements are all forgeries, and when the trial court found as fact that, except for one or two or a few that she had signed herself, Lilly Iriarte had authorized Santos to sign her name on the premium checks, the appellate court cannot conclude that the finding was clearly erroneous since substantial evidence in the record supports that finding. Since a forgery is a signature of a person that is made without the person's consent and without the person otherwise authorizing it, Lilly Iriarte's signatures are not forgeries even if made by Santos and having the original checks could not have altered the finding that Lilly Iriarte were authorized. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

Counsel's assertion in one post-trial filing that the plaintiff's land occupied by the defendant was worth $26,000 and consisted of 2,000 square meters with an annual rental value of $20 per square meter was not competent evidence because counsel's assertions in argument do not constitute evidence before the court. Killion v. Nero, 18 FSM R. 381, 387 (Chk. S. Ct. Tr. 2012).

When no evidence was presented at trial that the Director of Public Safety was personally involved in the plaintiff's arrest and jailing or that he directed its manner or timing, the court cannot presume that because his wife was the complainant that he ordered or directed that the plaintiff be arrested and jailed because, in the absence of evidence, an inference just as likely is that a zealous subordinate, believing it would curry favor with his superior, decided that a quick arrest and some jail time were in order. The court therefore will not hold the Director, in his personal capacity, liable to the plaintiff. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

It is within the court's sound discretion whether to admit additional evidence after trial. Exercise of such discretion must take into account the evidence's probative value against the danger of injuring the opposite party through surprise. The opposing party cannot properly examine or counter evidence offered after trial, and so the burden is on the party offering the evidence to demonstrate good cause why the evidence should be admitted. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 269 (Pon. 2014).

When the defendant has not indicated what specific pieces of evidence he seeks to exclude and the prosecution does not appear to have informed the defendant what specific evidence it will seek to introduce at trial, the court is not in a position to rule on the evidence's admissibility and will deny the defendant's current motion in limine and will rule on the admissibility of any particular evidence that the defendant objects to if and when that issue comes properly before the court. FSM v. Tipingeni, 19 FSM R. 439, 447 (Chk. 2014).

When the plaintiff's claim for damages to his car from a break-in were not tried by the parties' consent during the trial on the plaintiff's claim for failure to repair his car; when the break-in damages claim was not raised by the pleadings and admitting evidence about it would prejudice the defendant who had not had adequate notice that the issue would be tried; when excluding the evidence about the break-in would not prejudice the plaintiff; and when the break-in was not part of a common nucleus of operative fact with the defendant's alleged behavior in failing to properly repair the plaintiff's vehicle but represented an entirely new claim that the plaintiff could file against the defendant for failure to properly safeguard his property, all evidence that pertained to the alleged break-in would be excluded and not considered. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 471-72 (Pon. 2014).

While it is appropriate for a Chief Justice to engage with all the relevant stake-holders in the process of promulgating a general court order, the decision making process is quite different for a justice called upon to render an evidentiary ruling in a criminal case. Even when a party raises a question of first impression, a judge presiding over a criminal case has a responsibility to apply the law to the case's facts, and it would be an abuse of judicial discretion to delay an evidentiary ruling in order to solicit advice from non-parties suggesting what the law should be. This judicial power is curtailed by the process of appellate review. FSM v. Halbert, 20 FSM R. 49, 53 (Pon. 2015).

An affidavit, not introduced at trial and which the defendants never had the opportunity to address or to cross-examine a witness concerning its contents, will be stricken as evidence since the opposing party cannot properly examine or counter evidence offered after trial and since the burden is on the party offering the evidence to demonstrate good cause why the evidence should be admitted. George v. Palsis, 20 FSM R. 111, 114 (Kos. 2015).

Just because an affidavit was filed while the court was considering cross motions for summary judgment does not mean that it is automatically admitted into evidence at the later trial. To be evidence that the court can consider, the affidavit should be offered at trial in the usual manner. Then it might be admitted in the usual manner, or it might be objected to and the objection sustained, or the affiant himself might instead be called to testify. George v. Palsis, 20 FSM R. 111, 114 (Kos. 2015).

A court cannot award damages based on matter "introduced" during argument after the presentation of evidence has ended. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

In the FSM, a "declaration under the penalty of perjury" is not the equivalent of an affidavit as it would be in the United States where a statute makes it so. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

Since, by its terms, a statute enacted by the U.S. Congress that permits declarations in place of affidavits affects only U.S. rules and regulations and since the FSM Congress has not enacted an equivalent statute and no procedural rule has been promulgated to bring about the same result, an unsworn declaration, even when the declarant avers or asserts that it is made "under the penalty of perjury," is not the equivalent of an affidavit required by the FSM rules. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

A party's insistence that the case solely involved a boundary dispute within a parcel is belied by his claim to the parcel *in toto*. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

Counsel's representation does not constitute competent evidence. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

When there is a dispute about the existence or effect of a local custom, and the court is not satisfied about either its existence or its applicability, such custom becomes a mixed question of law and fact, and the party relying upon it must prove it to the court's satisfaction. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642-43 (Pon. 2016).

An argument contained within a brief does not constitute evidence. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 122 (App. 2017).

– Authentication

Rule 901(a) of our Rules of Evidence provides that the requirement of authentication "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Testimony of two witnesses supporting such a claim is fully adequate to justify the action of the trial court in accepting that matter as evidence. Joker v. FSM, 2 FSM R. 38, 46 (App. 1985).

The FSM Rules of Evidence for identification, authentication and admissibility of evidence do not require that exhibits related to an essential element of the crime may be admitted into evidence only if identified beyond a reasonable doubt. Joker v. FSM, 2 FSM R. 38, 47 (App. 1985).

A certified copy of a judgment from a foreign court is admissible evidence as a properly authenticated public record of that jurisdiction. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

Business records are normally authenticated by a custodian of records. A duplicate of an original writing is not admissible if there is a genuine issue as to the authenticity of the original. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (III), 7 FSM R. 453, 455 (Pon. 1996).

Maps attached to a filing without any sort of foundation or any type of authentication cannot be considered as evidence. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 38 (Kos. S. Ct. Tr. 1997).

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).

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Elaija v. Edmond, 9 FSM R. 175, 182 (Kos. S. Ct. Tr. 1999).

An ancient document or data compilation is authenticated if evidence that the document or data compilation, in any form, is in such condition as to create no suspicion concerning its authenticity, was in a place where it, if authentic, would likely be, and has been in existence 20 years or more at the time it is offered. Elaija v. Edmond, 9 FSM R. 175, 182 (Kos. S. Ct. Tr. 1999).

For a plaintiff to succeed, she must come forward with a preponderance of creditable evidence to establish the authenticity of the document upon which her claim is based. Lukas v. Stanley, 10 FSM R. 365, 366 (Chk. S. Ct. Tr. 2001).

A plaintiff has not met the necessary burden of proof when the affidavit offered by plaintiff to prove her claim is highly suspect in that the plaintiff's father, whom she claims gave the property to her, did not appear in person before the Clerk of Court when he signed the document and the plaintiff presented conflicting evidence in court at which place or where the document was signed. Lukas v. Stanley, 10 FSM R. 365, 366 (Chk. S. Ct. Tr. 2001).

The Kosrae Rules of Evidence, Article IX, require authentication and identification of documentary evidence, sufficient to support a finding that the document is what its proponent claims. When the author of a written statement was not present to identify and authenticate the document and no other person was presented to identify and authenticate the subject statement the prosecution has failed to satisfy the requirements of authentication and identification of documents and the written statement will be suppressed. Kosrae v. Kilafwakun, 13 FSM R. 333, 335 (Kos. S. Ct. Tr. 2005).

Business records are normally authenticated by a custodian of records. The custodian or other qualified witness who must authenticate business records need not be the person who prepared or maintained the records, or even an employee of the record-keeping entity, as long as the witness understands the system used to prepare the records. Objections concerning the identity or competency of preparer of a record might go to the evidentiary weight or credibility of a record but not to the record's admissibility. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

Authentication is satisfied by evidence sufficient to support a finding that the matter in question is what it its proponent claims. The appellate court's review is limited to determining whether the trial court abused its discretion in deciding that the government made a prima facie showing as to the documents' authenticity.

Cholymay v. FSM, 17 FSM R. 11, 21 (App. 2010).

When the defendants did not claim that the exhibits were something other than what the government claimed them to be, but instead stated that the exhibits were illegible, incomplete, or had notes written on them raising substantial doubts as to their authenticity, that is a question of what weight or credibility the exhibits should be given, not whether they should be admitted. Cholymay v. FSM, 17 FSM R. 11, 22 (App. 2010).

When the government's witnesses testified as to what the exhibits were and, if a witness did not know what an exhibit was, it was not admitted, the weight or credibility that an exhibit was given was for the trial court to decide. When the trial court took into account the defendants' stated concerns regarding the documents but there was no requirement that the exhibits be excluded after the witnesses had testified that they were what the government claimed them to be, the trial court, having heard adequate testimony, did not abuse its discretion by admitting the exhibits. Cholymay v. FSM, 17 FSM R. 11, 22 (App. 2010).

Arguments concerning the accuracy of the record go to their weight and not their admissibility. The question then is whether the photocopy was a duplicate of what the government claimed it to be. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

When the defendants' argument is not a true objection to the records' admissibility but is instead a question concerning the weight or credibility that the exhibits should be given because the defendants dispute the exhibits' accuracy; when the government stated that the originals were unobtainable due to judicial process because the documents were collected by the court in the related criminal matters and were not available for the trial of this case; and when FSM Evidence Rule 1004 does not require originals when they cannot be obtained, the trial court did not err or abuse its discretion in admitting the government's exhibits over the defendants' best evidence objections. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

Prima facie authenticity is extended so long as the proffered document is accompanied by a certificate of acknowledgment under the seal of a notary public or other authorized officer. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the trial court excluded an affidavit from admission because the prima facie authenticity for notarized documents extended by Evidence Rule 902(8) was rebutted by the clerk's testimony that he should not have notarized it because the affiant had not appeared before him and it was not signed in his presence, whereupon the court concluded that the affidavit could not be authenticated under Rule 902(8) and when the proponents did not seek to authenticate the affidavit by other means such as by calling another witness to authenticate the signature on the affidavit despite its defective notary seal, the trial court, without any additional testimony to authenticate the signature, had no way of determining whether the signature on the affidavit was in fact genuine. The court's determination not to admit the affidavit was thus within its discretion. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the proponents failed to raise any other basis for admission of an affidavit other than as a self-authenticating document, the appellate court is left to review whether the trial court's exclusion was proper on the basis that the document was not authenticated. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the trial court denies admission of documentary evidence on the basis that it was not properly authenticated, the appellate court's review is limited to determining whether the trial court abused its discretion in deciding whether the movant made a prima facie showing as to the document's authenticity. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

Generally, the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

A notarized affidavit may be authenticated without the affiant's testimony, as it is presumed to be authentic so long as it is acknowledged in the manner provided for by law. A clerk of court's manner of acknowledging an affidavit is for the affiant to swear to it under oath in the clerk's presence. Peter v. Jessy, 17 FSM R. 163, 173-74 (Chk. S. Ct. App. 2010).

When the affidavit was not acknowledged in the manner provided for by law since the affiant was not present at the time that the affidavit was acknowledged, the trial court's determination that the presumption of self-authentication had been rebutted and that the affidavit was not otherwise authenticated was proper. There was therefore no abuse of discretion in the trial court's denial of the affidavit's admission into evidence for the reason that it was not authenticated. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

When an affidavit's substance was only read into the record for the purpose of ruling on its admissibility, the better practice may have been to allow the presentation of a foundation for admission, including establishing the document's authenticity, before proceeding with testimony regarding its contents. That practice would avoid confusion as to whether the substance of inadmissible documentary evidence has become a part of the evidentiary record. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

Extrinsic evidence of authenticity, as a condition precedent to admissibility, is not required with respect to documents accompanied by a certificate of acknowledgment, executed by a notary public in the manner provided by law. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

An ancient document is authenticated if evidence that the document, in any form, is in such condition, as to create no suspicion concerning its authenticity, was in a place where if authentic, would likely be, and has been in existence 20 years or more at the time it is offered. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

– Burden of Proof

In a case of civil conspiracy, the burden of proof is a preponderance of the evidence, not a clear and convincing standard, in order to establish the conspiracy. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 164 (App. 1987).

A party claiming ownership in land for which there is a determination of ownership showing another as owner, with the appeal period expired, has, at a minimum, the burden of showing facts to establish that the determination of ownership is incorrect. Benjamin v. Kosrae, 3 FSM R. 508, 510 (Kos. S. Ct. Tr. 1988).

The concept of Burden of Proof has two aspects. First the plaintiff in a civil case must produce sufficient evidence to establish a prima facie case in order to avoid a nonsuit. Second, the sufficiency of evidence necessary to prove a disputed fact in a civil case is proof by a preponderance of the evidence – the facts asserted by the plaintiff are more probably true than false. Meitou v. Uwera, 5 FSM R. 139, 141-42 (Chk. S. Ct. Tr. 1991).

The plaintiff, whose duty it is to introduce evidence to prove her case by a preponderance of the evidence, carries the burden of proof. This "burden of going forward with the evidence," or "burden of producing evidence," lies with the party who seeks to prove an affirmative fact. Nimeisa v. Department of Public Works, 6 FSM R. 205, 212 (Chk. S. Ct. Tr. 1993).

By statute, only the cargo actually used illegally, or the fish actually caught illegally, are subject to forfeiture, although the burden of proof (presumptions) rest on different parties depending on whether fish or cargo is involved. It is a rebuttable presumption that all fish found a board a vessel seized for Title 24 violations were illegally taken, but there is no such presumption that the cargo found aboard was "cargo used" in the alleged violation. FSM v. Skico, Ltd. (I), 7 FSM R. 550, 552 (Chk. 1996).

The defendant has the burden of proving affirmative defenses. A defense raised for the first time in a

defendant's written closing argument does not meet the burden of proof. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 619 (App. 1996).

The burden of producing evidence in a civil trial generally lies with the plaintiff, who must establish a prima facie case to avoid a nonsuit or other adverse ruling. Berman v. Santos, 7 FSM R. 624, 627 (App. 1996).

The defendants have the burden of proof with respect to each affirmative defense, and must prove that defense by a preponderance of the evidence. Senda v. Semes, 8 FSM R. 484, 496 (Pon. 1998).

In a civil case where defendants seeks to advance Pohnpeian customary practice as a defense to a claim of equitable contribution, the burden is on the defendants to establish by a preponderance of the evidence the relevant custom and tradition. Senda v. Semes, 8 FSM R. 484, 497 (Pon. 1998).

Preponderance of the evidence is not evidence to a moral certainty or clear and convincing evidence. As a standard of proof, preponderance of the evidence has been held to mean that the facts asserted by the plaintiff are more probably true than false. The party having the burden of establishing his claim by a preponderance of the evidence must establish the facts by evidence at least sufficient to destroy the equilibrium and overbalance any weight of evidence produced by the other party. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 12 (Yap 1999).

If the plaintiff's evidence is more convincing than that which defendant offers in opposition, then plaintiff has met its burden of showing that the facts for which it contends are more probably true than false. If, on the other hand, plaintiff's evidence is less convincing than that offered in opposition, then defendant's version of events is the more likely, and the plaintiff fails to meet its burden of proof. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 12 (Yap 1999).

When the plaintiff has demonstrated that it billed the defendant for long distance services according to its usual and customary practice, and that its billing practices accurately reflect its customers' usage of the communications services which it offers to the public and when the defendant's 1998 testimony about her long distance usage habits during September 1990 through July 1, 1992 does not persuade the court that she received inaccurate telephone bills from plaintiff at relevant times under the terms of the parties' valid and enforceable contract, the plaintiff has met its burden of proof. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 15 (Yap 1999).

A plaintiff, who has testified that in 1991 the defendant gave him $500 and that this payment was a portion of a $3,000 check issued by the FSM Finance Office as payment to the plaintiff, but who does not present any other evidence of the $3,000 check or the $500 payment and does not show that documentary proof relating to the $500 payment or the $3,000 check was unavailable through discovery or by subpoena, has failed to sustain his burden of proof. When the plaintiff has testified that in 1996 the FSM Finance Office issued another check in his name, but presents no documentary proof of this check, the plaintiff has again failed to sustain his burden of proof. Tulensru v. Utwe, 9 FSM R. 95, 97 (Kos. S. Ct. Tr. 1999).

A plaintiff must prove the allegations of the complaint by a preponderance of admissible evidence in order to prevail. Chipen v. Reynold, 9 FSM R. 148, 149 (Chk. S. Ct. Tr. 1999).

In a civil case when a defendant seeks to advance Pohnpeian customary practice as a defense, the burden is on the defendant to establish by a preponderance of the evidence the relevant custom and tradition. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 158-59 (App. 1999).

The disciplinary counsel's burden is to prove attorney misconduct by clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 171 (App. 1999).

The standard of proof for establishing allegations of attorney misconduct is clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

Clear and convincing evidence is a higher burden of proof than mere preponderance of the evidence, but not quite as high as beyond a reasonable doubt. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

The clear and convincing evidence standard is the most demanding standard applied in civil cases. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

To be clear and convincing evidence must be of extraordinary persuasiveness. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

Clear and convincing evidence means evidence establishing that the truth of the facts asserted is highly probable. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

The clear and convincing evidentiary standard is that weight of proof which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not. Clear and convincing evidence, on the other hand, reflects a more exacting standard of proof. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

Although stated in terms of reasonable doubt, clear and convincing evidence is considered to be more than a preponderance while not quite approaching the degree of proof necessary to convict a person of a criminal offense. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

The spectrum of increasing degrees of proof, from preponderance of the evidence, to clear and convincing evidence, to beyond a reasonable doubt is widely recognized, and it has been suggested that the standard of proof required would be clearer if the degrees of proof were defined, respectively, as probably true, highly probably true and almost certainly true. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173-74 (App. 1999).

Evidence may be uncontroverted, and yet not be clear and convincing. Conversely, evidence may be clear and convincing despite the fact it has been contradicted. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 174 (App. 1999).

The clear and convincing standard is that which enables the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case. In re Robert, 9 FSM R. 278a, 278g (Pon. 1999).

The proper standard of proof for inherent power sanctions is clear and convincing evidence standard rather than the lower standard of preponderance of the evidence standard. This heightened standard of proof is particularly appropriate because most inherent power sanctions are fundamentally punitive and because an inherent power sanction requires a finding of bad faith, and a bad faith finding requires heightened certainty. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

For those inherent power sanctions that are fundamentally penal – and default judgments, as well as contempt orders, awards of attorneys' fees and the imposition of fines – the trial court must find clear and convincing evidence of the predicate misconduct. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

The clear and convincing evidence standard of an inherent powers sanction is also consistent with the standard of proof needed to discipline an attorney. It would be inequitable if a court could avoid the heightened standard of a disciplinary proceeding by instead resorting to its inherent powers to sanction an

attorney. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 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).

When a trial court has found that all parties fulfilled their obligations under the contract, and the plaintiff did not offer competent evidence of breach sufficient to establish that the trial court's findings were improper, there was no clear error in the trial court's factual findings on the liability issue. Tulensru v. Wakuk, 10 FSM R. 128, 133 (App. 2001).

When defendants did not submit any proof at trial in support of their affirmative defense, they did not carry their burden of proof. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

When there was no evidence presented at trial that two defendants had made any promise to the plaintiff and they were not a parties to any agreement or promise with the plaintiff, the plaintiff has not carried his burden of proof with respect to claims made against them and justice requires that the complaint against them be dismissed. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 197 (Kos. S. Ct. Tr. 2001).

A plaintiff who establishes the existence of risk factors which may have caused the injury, must show that these risk factors did in fact cause the injury. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

It is enough that the plaintiff introduce evidence from which reasonable men may conclude that it is more probable that the event was caused by the defendant than that it was not. Stated another way, it does not require that the proof eliminate every possible cause other than the one on which plaintiff relies, but only such other causes, if any, which fairly arise from the evidence. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

When no product defect is found, causes of action based on strict product liability and on breach of warranty fail and *res ipsa loquitur* is not applicable. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

The clear and convincing evidence standard involves a higher burden of proof than a mere preponderance of the evidence, but not quite as high as beyond a reasonable doubt. "Clear evidence to the contrary" would be a similar standard. FSM v. Wainit, 11 FSM R. 1, 8 n.1 (Chk. 2002).

If the Chuuk State Supreme Court determines that a de novo review of an appeal from Land Commission is appropriate, the plaintiff must prove his case by a preponderance of the evidence, and the court may make its own findings of fact based on the total record in this case, but if the court does not conduct a de novo review of the case, it merely determines whether the Land Commission's decision was arbitrary and capricious, and whether the facts as found by the Land Commission were clearly erroneous. In re Lot No. 014-A-21, 11 FSM R. 582, 588-89 (Chk. S. Ct. Tr. 2003).

When, at a trial de novo, the plaintiff's testimony was credible and supported by other credible testimonial and physical evidence and the defendant's claim was inconsistent and not supported by convincing evidence, the plaintiff's evidence is more convincing and he has met his burden of proving ownership. In re Lot No. 014-A-21, 11 FSM R. 582, 591-94 (Chk. S. Ct. Tr. 2003).

The plaintiffs' reply to a defendant's written closing argument will not be stricken because the plaintiffs have the burden of proof, and therefore may have the last word. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 242 (Pon. 2003).

When a case proceeds to trial, the burden of going forward with evidence as to affirmative defenses is normally on the defendant. However, when the plaintiff seeks summary judgment on the question of liability, the plaintiff must initiate the inquiry even as to affirmative defenses. The party moving for

summary judgment has the burden of clearly establishing the lack of any triable issues of fact. The burden extends to affirmative defenses as well as to the plaintiff's own positive allegations. Sigrah v. Microlife Plus, 13 FSM R. 375, 379 (Kos. 2005).

It is the claimant's burden to present his or her evidence to the Land Court and it is the claimant's burden to request admission of evidence which had been previously presented to the Land Commission in prior proceedings. Wesley v. Carl, 13 FSM R. 429, 431 (Kos. S. Ct. Tr. 2005).

In a civil case the burden of proof lies generally with the plaintiff, who must make a showing of a prima facie case to avoid an adverse ruling such as a nonsuit. At the same time, a defendant has the burden of proof with respect to each affirmative defense, which he must prove by a preponderance of the evidence. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 519 (App. 2005).

In a prima facie case, a party has produced enough evidence to allow the fact-finder to infer the fact at issue and rule in the party's favor. Hauk v. Lokopwe, 14 FSM R. 61, 64 n.1 (Chk. 2006).

The government has met the standard of proof and proved by a preponderance of the evidence that the defendant has waived his rights knowingly and intelligently when the defendant's signed waiver showed that he was informed of his right to silence and his right to counsel and waived those rights and when, considering that signed waiver and the testimony presented, the court has considered the defendant's evidence and argument and cannot find that the manner in which the statement was elicited coerced the defendant into making it. FSM v. Kansou, 14 FSM R. 150, 152 (Chk. 2006).

The plaintiff has the burden of proving each element of a claim by a preponderance of evidence. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 n.1 (Chk. S. Ct. App. 2007).

In a civil case, a plaintiff must prove the allegations of their complaint by a preponderance of evidence in order to prevail. Preponderance of the evidence is not evidence to a moral certainty or clear and convincing evidence. As a standard of proof, preponderance of the evidence means that the facts asserted by the plaintiff are more probably true than false. But, if the plaintiff's evidence is less convincing than that offered in opposition, then defendant's version of events is the more likely, and the plaintiff fails to meet its burden of proof. George v. George, 15 FSM R. 270, 274 (Kos. S. Ct. Tr. 2007).

An open account is not self-proving; it must be supported by enough evidence to show the account's accuracy. George v. George, 15 FSM R. 270, 274 (Kos. S. Ct. Tr. 2007).

When the evidence offered to support the amount claimed in the complaint is minimal and receipts, which the plaintiff's own witnesses testified were available, were not offered into evidence; when one page of the ledger was identified and marked, but never offered into evidence; when the evidence to support the plaintiff's claims consists of his former employees' testimony on the amount owed and the defendant's acknowledgment that she owes some amount but not the amount claimed; when the defendant could have used the receipts to show they did not support the amount in the ledger but did not and did not question the plaintiff's witnesses as to the specific amounts shown in the receipts, the court was given no evidence to weigh in support of an alternative explanation and can only look at the testimony offered and determine whether the facts asserted by the plaintiff are more probably true than false. Thus, based on the defendant's acknowledgment that some amount is owed, but not the $14,431.58 claimed by the plaintiff, and based on the testimony of the plaintiff's witnesses about the ledger and the balance, the evidence weighs slightly to the plaintiff and that it is more probably true than false that the defendant owes the amount of $6,220.52. George v. George, 15 FSM R. 270, 274-75 (Kos. S. Ct. Tr. 2007).

When evidence is available but not offered, the question is raised whether the withheld evidence

supported the claim. George v. George, 15 FSM R. 270, 274 (Kos. S. Ct. Tr. 2007).

The parties have the responsibility to put forward the evidence to support their client's case. This is not the court's responsibility. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

The burden of proof in a civil case is on the plaintiff. Plaintiffs must prove each element of their causes of action. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

When the plaintiff offered no evidence that he was entitled to notice in the Land Commission proceedings so there was no proof of a negligent or wrongful act or omission, he did not prove a violation of his due process rights, and when Land Commission records would have contained evidence about his entitlement to notice and whether he was served with notice, but, the plaintiff did not present those records and did not offer proof that he owned any portion of the disputed land and the only evidence of land ownership showed ownership by another, the plaintiff's claims against the government based on negligence and a violation of due process fail. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

In a civil case, a plaintiff must prove the allegations by a preponderance of evidence in order to prevail. Preponderance of the evidence is not evidence to a moral certainty or clear and convincing evidence. As a standard of proof, preponderance of the evidence means that the facts asserted by the plaintiff are more probably true than false. But, if the plaintiff's evidence is less convincing than that offered in opposition, then the defendant's version of events is the more likely, and the plaintiff fails to meet its burden of proof. George v. Albert, 15 FSM R. 323, 327 (Kos. S. Ct. Tr. 2007).

When the receipts did not support the amount stated in the ledger and claimed by the plaintiff even though the plaintiff's witness testified that the receipts would support the full amount; when the plaintiff was specifically ordered to produce at trial the original of all receipts, ledgers, and any other documents pertaining to the defendant's account but failed to submit receipts supporting the amount in the ledger produced and failed to submit the full ledger for the defendant's account; and when the defendant acknowledged owing some amount and did not dispute the receipts signed by him, the court will award the plaintiff the amounts shown in the receipts and ledger with credit for the defendant's payments. George v. Albert, 15 FSM R. 323, 327 (Kos. S. Ct. Tr. 2007).

When a petitioner has presented sufficient evidence to support a *prima facie* case for relief, a respondent's motion for dismissal at the close of the petitioner's case-in-chief will be denied. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 372 (Chk. S. Ct. App. 2007).

After the parties rest, the court makes findings of fact based on the total record in the case. The petitioner (election contestant) has the burden of proof to prove his case by a preponderance of the evidence. The petitioner satisfies his burden of proof if his evidence is more convincing to the court than that of the respondents. Therefore, the petitioner must establish facts in support of his claim by evidence at least sufficient to overbalance any weight of evidence produced by the other parties. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 372 (Chk. S. Ct. App. 2007).

When, given the weight of the evidence indicating that the petitioner was born on October 26, 1972, which was generated both before, when he did not have a vested interest in the election, and after his application for a delayed birth certificate, the court could not find that his evidence that he was born on October 26, 1971, was more convincing than that of the respondents, and therefore, he has not proven his case by a preponderance of the evidence. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 372 (Chk. S. Ct. App. 2007).

When the defendants did not stipulate to their ledger sheets' accuracy, that would have left one genuine issue of material fact before the court for trial because an open account is not self-proving. An open account must be supported by an evidentiary foundation to demonstrate the account's accuracy. Albert v. George, 15 FSM R. 574, 581 (App. 2008).

The burden at trial is on the party asserting the existence of a customary right to prove it by a

preponderance of the evidence. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

Parties who proffer custom as a basis for a claim must prove the relevant custom by a preponderance of the evidence. Narruhn v. Aisek, 16 FSM R. 236, 240 (App. 2009).

When the testimony on *nechop* is sufficient to establish that it existed as a custom and that, when employed, it operated to disrupt the status quo of matrilineal descent, the trial court did not ignore the established custom of Chuukese matrilineal descent in accepting that a *nechop* took place since it was proven by a preponderance of the evidence that the *nechop* took place. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

When the plaintiff's testimony on the element of damages is speculative, conclusory, and lacking in foundation, the plaintiff did not meet his burden of proof on the issue of damages and a judgment in the defendant's favor is therefore appropriate. Jano v. Fujita, 16 FSM R. 323, 328 (Pon. 2009).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

When there is no way of determining what portion of an amount deposited into a bank account was also converted by another defendant and since the plaintiff has the burden of proof, that other defendant will receive the benefit of the doubt created by this question and will not be held liable for the deposited sums. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 447 (Pon. 2009).

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. The preponderance of the evidence standard also applies to a civil action for conspiracy. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 456 (Pon. 2009).

In an election contest, the court makes findings of fact based on the total record in the case. The petitioner has the burden of proof to prove his case by a preponderance of the evidence. The petitioner satisfies his burden of proof if his evidence is more convincing to the court than that of the respondents. Thus, the petitioners must establish facts in support of their claim by evidence at least sufficient to overbalance any weight of evidence produced by the other parties. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

When there was no evidence to contradict the election commission's finding of the dates that the election results were announced, the petitioners cannot prove by a preponderance of the evidence that the declaration of the election was after April 11, 2009, which, if it had been, would have made their petition timely and the panel would have remanded the contest to the election commission for a third time. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

A plaintiff has not met her burden of showing that the state is liable to her for "summary punishment" when she did not disclose what specific conduct she believed constituted summary punishment and her complaint was silent on that point as well. Berman v. Pohnpei, 16 FSM R. 567, 575 (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).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a

preponderance. George v. Albert, 17 FSM R. 25, 33 n.3 (App. 2010).

In a prima facie case, a party has produced enough evidence to allow the fact-finder to infer the fact at issue and rule in the party's favor. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 45 n.2 (Chk. 2010).

When the discharged employee has not presented any evidence about whether and where he sought employment during a certain time period, he has introduced no evidence of his efforts to mitigate his damages by attempting to secure a job during his periods of unemployment, and he is thus precluded from recovery of damages for those periods since it is the plaintiff's burden to prove every element of his case, including all of his damages. Sandy v. Mori, 17 FSM R. 92, 95 (Chk. 2010).

Since hearsay testimony is inherently unreliable, the court cannot be required to or presumed to rely on hearsay testimony over contrary direct evidence to determine where the preponderance of evidence lies. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

The findings of fact made at the end of trial may differ somewhat from those the court made after the close of the plaintiffs' case-in-chief for the purpose of the defense Rule 41(b) motion since then it still awaited the presentations of the defendant and third-party defendant; since nothing contained in the court's Rule 41(b) memorandum was intended to foreclose the defendant and the third-party defendant of their opportunity to be heard; and since what may then have been reasonable and logical inferences from the evidence might later be shown to be something entirely different. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 121 & n.1 (Chk. 2010).

In a civil case, the plaintiff has the burden of proving each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to prove any one element, judgment will be entered against the plaintiff. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 123 (Chk. 2010).

In ruling on a 41(b) motion to dismiss, the trial court, in determining whether the plaintiff has shown a right to relief, is not required to view the facts in the light most favorable to the plaintiff but draws permissible inferences. If the court determines that the plaintiff has not made out a prima facie case, the defendant is entitled to have the case dismissed. Even if a plaintiff makes out a prima facie case, the court as the trier of fact, may, in assessing the evidence on a Rule 41(b) motion, weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance of the evidence lies. In weighing the evidence, the trial court is required to view the evidence with an unbiased eye, without any attendant favorable inferences, but it is also required to sift and to balance the evidence, and to give the evidence such weight as it deems fit. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

Proof of the existence of a custom is a factual issue. The burden is therefore on the proponents to prove by a preponderance of the evidence that achemwir is a custom practiced in Chuuk, and they have the further burden of proving that the requirements of the custom were met. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

Even if an affidavit were admitted, the proponents have the burden to come forward with a preponderance of credible evidence to establish the document's veracity because notarization does not conclusively establish the truth of the statements made in the document, but only the identity and signature of the person who signed the document. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The plaintiffs' burden of proof to show the truth of the statements in a notarized affidavit is not met when the purported affiant did not appear in person to have the document notarized and there is no other evidence regarding the circumstances of its signing. Without even testimony to authenticate her signature, let alone the circumstances surrounding her signature, the trial court, as finder of fact, had no way to determine whether the purported affiant fully understood and freely signed the document, or whether she signed it under coercion, mistake, or as a result of fraud, or misunderstanding, let alone whether it was indeed her who signed her name to it. Thus, the affidavit, even if it had been admitted into evidence, would rightly be accorded little weight since significant questions were raised regarding its authenticity, reliability,

and veracity. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The mental disease, disorder or defect defense established by 11 F.S.M.C. 302 is an affirmative defense. Under 11 F.S.M.C. 302(3), the party asserting this defense has the burden of proving the existence of the physical or mental disease, disorder, or defect by clear and convincing evidence. FSM v. Andrew, 17 FSM R. 213, 216 (Pon. 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).

In a trespass dispute over land, 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, and not whether it is certain beyond all doubt, or whether it is certain beyond a reasonable doubt, or whether it is clear and convincing that, as between the parties, the plaintiff has the superior right to possess the land. The plaintiff only has to prove its case by a preponderance of the evidence, that is, to show that it is more likely than not that its rights are superior. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233 & n.4 (Chk. 2010).

The standard of review on a question of the sufficiency of the evidence is whether the trial court's findings are clearly erroneous. A finding is clearly erroneous and reversible error if: 1) the findings are not supported by substantial evidence in the record; 2) the finding was the result of an erroneous conception of the applicable law; or 3) after reviewing the entire body of the evidence in the light most favorable to the appellee, the reviewing court is left with a definite and firm conviction that a mistake has been made. Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

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).

When no evidence was presented at trial to support the defendants' counterclaims, those counterclaims fail and are dismissed because the defendants have not met their burden of proof. A counterclaimant has the same burden of proof as a plaintiff – to prove the counterclaim by a preponderance of the evidence. FSM v. Kana Maru No. 1, 17 FSM R. 399, 406 (Chk. 2011).

The substantial-evidence rule is the principle that a reviewing court should uphold an administrative body's ruling if it is supported by evidence on which the administrative body could reasonably base its decision. Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655 (App. 2011).

The record may contain evidence which preponderates one way and yet include substantial evidence to support an order reaching an opposite result. Substantial evidence need not be much evidence, and though "substantial" means more than a mere scintilla, or some evidence, it is less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. The substantial-evidence rule is a very deferential standard of review. Heirs of Benjamin v. Heirs of Benjamin,

17 FSM R. 650, 656 (App. 2011).

"Some evidence" may be a higher standard than the scintilla of evidence standard, but "some evidence" still does not equate with "substantial evidence." "Substantial evidence" is a higher standard than "some evidence" but it is not as high as the "preponderance of the evidence" standard. It can be less. Substantial evidence is more than a mere scintilla or some evidence, but less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. The trial court does not assume the role of fact finder, the issue is purely one of law. In fact, the evidence may be substantial and yet greatly preponderate the other way. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

The "burden of proof" is a party's duty to prove a disputed assertion or charge. The burden of proof includes both the burden of persuasion and the burden of production. Congress v. Pacific Food & Servs., Inc., 18 FSM R. 76, 77 (App. 2011).

When a trial court ruling did not involve disputed facts, the only burden was that of persuasion. Congress v. Pacific Food & Servs., Inc., 18 FSM R. 76, 77 (App. 2011).

The burden of proof is on the party alleging and relying on estoppel. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. The plaintiffs have the burden of proving each these elements in order to prevail on a negligence claim, and if the plaintiffs fail to prove any one element, judgment will be entered against them. William v. Kosrae State Hosp., 18 FSM R. 575, 580 (Kos. 2013).

When damages are calculated based on figures in statements made during closing argument, those damage amounts are not supported by evidence properly before the trial court, and, as such, any judgment based on them would be vacated and the court cannot take the "judicial notice" of the plaintiffs' requested figures. William v. Kosrae State Hosp., 18 FSM R. 575, 582-83 (Kos. 2013).

Determination of damages is an essential element of the plaintiffs' causes of action. Trial is the time for plaintiffs to present evidence about the amount of their damages since, in civil cases, the plaintiff has the burden of proving at trial each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to do so, judgment will be entered against the plaintiff. William v. Kosrae State Hosp., 18 FSM R. 575, 583 (Kos. 2013).

When the plaintiff testified that he was uncertain whether he lost any pay because of his absences from work due to the September 8, 2010 and the November 4, 2010 arrests and no other evidence was introduced about his state employee pay or its amount, the court must find as fact that he did not lose any pay as the result of the September 8, and November 4, 2010 arrests and detentions since he had the burden of proof to establish that he lost pay and the amount of that lost pay and he did not meet that burden. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

It is within the court's sound discretion whether to admit additional evidence after trial. Exercise of such discretion must take into account the evidence's probative value against the danger of injuring the opposite party through surprise. The opposing party cannot properly examine or counter evidence offered after trial, and so the burden is on the party offering the evidence to demonstrate good cause why the evidence should be admitted. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 269 (Pon. 2014).

In a civil case, the plaintiff has the burden of proving each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to prove any one element, judgment will be entered against the plaintiff. George v. Palsis, 19 FSM R. 558, 566 (Kos. 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).

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).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion and it consists of more than a scintilla of evidence but may be less than a preponderance. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 193 (App. 2015).

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 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).

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).

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 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).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Substantial evidence is also evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

In a civil case, the party advancing Pohnpeian customary practice or law must establish, by a preponderance of the evidence, the relevant custom and tradition. Mwoalen Wahu Ileile en Pohnpei v.

Peterson, 20 FSM R. 632, 640 (Pon. 2016).

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 17 (Pon. 2016).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

The party challenging the authenticity or validity of a certificate of title, bears the burden of proving it is not authentic or valid because a certificate of title is *prima facie* evidence of ownership and courts must attach a presumption of correctness to it. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 120-21 (App. 2017).

Parties have the responsibility to put forward the evidence to support their case. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 122 (App. 2017).

– Expert Opinion

Opinion testimony by experts has no such conclusive force that there is an error of law in not following it. The trier of fact may decide what weight, if any, is to be given such testimony, and even if the testimony is uncontroverted, may exercise independent judgment. Setik v. Sana, 6 FSM R. 549, 553-54 (Chk. S. Ct. App. 1994).

Expert opinion testimony is admissible if the witness is qualified by knowledge, skill, experience, training, education, or otherwise; and that the expert's opinion will assist the trier of fact to understand the fact at issue. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 622 (App. 1996).

A trial court's qualification of a witness as an expert and the admission of his opinion testimony will not be reversed unless clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 622 (App. 1996).

To be qualified as an expert witness, the witness must have skill and knowledge superior to the trier of fact, but expert opinion testimony is not restricted to the person best qualified to give an opinion. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 622 (App. 1996).

Under the work product doctrine, even if a plaintiff demonstrates substantial need for factual information contained in the report of a consulting expert whose services a defendant sought in anticipation of litigation, he would have to show exceptional circumstances under FSM Civil Rule 26(b)(4)(B) before being entitled to discover the consulting expert's opinions. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 476 (Pon. 1998).

Rule 26 does not authorize any discovery concerning experts who the other party does not intend to call as a trial witness absent a showing of exceptional circumstances. It would be "unfair" to allow a party to extract his adversaries' consulting expert's knowledge or opinion without having to bear any of the financial cost of retaining that expert and to take unwarranted advantage of the opponent's trial preparation or investigations. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 482-83 (Pon. 1998).

Absent the requisite showing of exceptional circumstances, FSM Civil Rule 26 does not permit a party to obtain any information specific to an adversary's nontestifying experts through interrogatories. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 483 (Pon. 1998).

If a person is to be used by the defendants as a testifying expert, the plaintiff would be entitled to all the discovery authorized by FSM Civil Rule 26(b)(4)(A), and all documents the expert considered in forming his opinions would be discoverable as well. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 483 (Pon.

1998).

If specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill experience, training, or education, may testify thereto in the form of an opinion. Senda v. Semes, 8 FSM R. 484, 497-98 (Pon. 1998).

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 15 (Yap 1999).

When an expert's testimony, although not objected to, lacks the foundation contemplated by Evidence Rule 703, it is, at best, entitled to slight weight. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 16 (Yap 1999).

The appellate court begins its review of trial court rulings by presuming that the trial court's factual findings are correct. The trial court's grant or refusal to adopt an expert's opinion is a question of fact and factual questions are reviewed by this court under the clearly erroneous standard. Sellem v. Maras, 9 FSM R. 36, 38 (Chk. S. Ct. App. 1999).

To state an opinion is not to set forth specific facts. In the context of a summary judgment motion, an expert must back up his opinion with specific facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 580 (Pon. 2002).

No expert opinion arises simultaneously with the events that ultimately gives rise to that opinion, but comes to harvest in the course of a lawsuit and in the usual case is a gloss on the occurrence or events on which the lawsuit is based. In that sense an opinion is not a "fact" within the meaning of Civil Rule 56(e), but since Evidence Rules 702-704 expressly allow for expert witnesses' opinion testimony, the question is whether any given opinion is backed up with specific facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 580 (Pon. 2002).

The precise combustive characteristics of kerosene, gasoline, and mixtures of the two lie beyond the ordinary ken of the court. In these circumstances, an expert's opinion is indispensable to the finder of fact in determining whether questions of fact may be reasonably resolved only in favor of the moving party. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 581 (Pon. 2002).

An expert may opine on a particular case's facts as they are made known to him at or before the hearing at which the expert testifies and the expert may offer an opinion that embraces an ultimate issue to be decided by the trier of fact. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 581 (Pon. 2002).

When the expert opinion offered by the nonmovant does not go to the causation issue presented by the facts, and on which the movant's expert offered his opinion, it does not create a fact issue under Rule 56. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 582 (Pon. 2002).

The litigation process is designed not only to discover information, but also to reduce it to the essentials necessary to advance a party's case. When a lawsuit deals with scientific, technical, or other specialized knowledge, an expert's opinion is a useful tool in this paring process. Its value derives in no insubstantial part from the fact that it reflects a synthesis of relevant facts. When such an opinion goes to a necessary element of the case, and stands unopposed by a countervailing, factually supported expert opinion that fairly meets the moving party's opinion, it may be dispositive in the context of a summary judgment motion. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 582 (Pon. 2002).

When the plaintiff's expert's testimony does not set forth specific facts showing that there is a genuine issue of fact as to the kerosene contamination issue and since the defect's existence goes to a necessary element of the plaintiff's case, the plaintiff has failed to make a showing sufficient to establish the existence

of an element essential to his case, and on which he will bear the burden of proof at trial and summary judgment in the defendants' favor is therefore appropriate. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

Facts that go to the question of a contamination source are rendered immaterial in light of the defendants' expert's competent, uncontroverted expert testimony that nothing about the combustion event that caused the injury led him to believe that the kerosene was contaminated. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583-84 (Pon. 2002).

When the defendants' expert has testified, and the plaintiff conceded, that gasoline and kerosene are completely miscible, when the plain inference from expert's miscibility testimony is that the fuel which first burned normally was identical in its chemical makeup to the fuel which the plaintiff later claimed exploded, and when the defendant offers nothing in her response to address the anomaly created by the expert's specific testimony on the miscibility point as it relates to her memory of what occurred, in the absence of such evidence, and given the expert's competency to opine on a verifiable physical phenomenon like miscibility, no issue of fact exists on this specific point. George v. Mobil Oil Micronesia, Inc., 10 FSM R. 590, 592 (Pon. 2002).

An economist, who holds a master's degree in economics, is qualified as an expert by knowledge, skill, experience, training, or education under FSM Evidence Rule 702, since his expert testimony, if admissible, will assist the trier of fact to understand the evidence or to determine the economic damages in issue. AHPW, Inc. v. FSM, 12 FSM R. 544, 556-57 (Pon. 2004).

The court may appoint an expert witness to assist both the state and the defendant in evaluating a criminal defendant's mental condition. Kosrae v. Charley, 13 FSM R. 214, 215 (Kos. S. Ct. Tr. 2005).

A Certified Public Accountant's testimony based on his compilation of financial records and some computations that a layman could have done and drawing conclusions from them is something an accountant does based on his technical knowledge, skill, experience, and education and he would therefore qualify as an expert witness. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19-20 (App. 2006).

Expert testimony based on ideal conditions and not reality would not make the testimony irrelevant; it would only bear on the weight it would be given. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 (App. 2006).

Generally, although absent a statute or contract expert witness fees and research expenses are not taxable costs, successful litigants may be awarded their out-of-pocket expenses for an expert witness when the expert witness was an indispensable part of the trial and was crucial to the ultimate resolution of the issues and the costs were appropriate and not excessive. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 75 (Yap 2007).

The Rules of Evidence expressly permit an expert witness to testify that he had made assessments of the damage to submerged reefs in numerous other cases, and, as such, the trial court was free to assess whatever weight it saw fit with regard to the expert's testimony when determining the damages that should be assessed. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 60-61 (App. 2008).

Expert opinions have no such conclusive force that there is an error of law in refusing to follow them. It is for the trier of fact to decide whether any, and if any what, weight is to be given to such testimony. Even if the testimony is uncontroverted the trier of fact may exercise independent judgment. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 61 (App. 2008).

An issue of whether the trial court erred by failing to recognize someone as an expert witness is reviewed for an abuse of discretion. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience,

training or education, may testify thereto in the form of opinion or otherwise. It is not the witness, but the trial judge who has the responsibility and discretion to determine whether a witness is qualified as an expert. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

Once faced with the proffer of an expert witness, the question of whether the witness may be qualified as an expert is a preliminary fact to be decided by the trial court. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

When the defendant never presented a witness as an expert witness at trial, the appellate court cannot find that the trial court abused its discretion in declining or otherwise refusing to qualify that witness as an expert witness. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

Although Evidence Rule 706 provides that the court may, on its own motion, enter an order to show cause why an expert witness should not be appointed, a trial court in not acting *sua sponte* to have a defense witness qualified as an expert witness did not abuse its discretion. Fritz v. FSM, 16 FSM R. 192, 197-98 (App. 2008).

A motion to exclude an expert witness's deposition testimony is premature when it is made before his deposition has been completed, and any motion to exclude his trial testimony on the ground of relevance before the deposition is complete is also premature. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 652 (Pon. 2009).

A trial court's grant or refusal to adopt an expert's opinion is a question of fact and will not be reversed unless clearly erroneous. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

A party needs to finish deposing the opposing party's witness far enough ahead of trial so that it would have a fair opportunity to meet that witness's expected expert opinion testimony. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 194 (Pon. 2010).

Ordinarily, a determination that the care, skill, and diligence exercised by a professional engaged in furnishing skilled services for compensation was less than that normally possessed and exercised by members of that profession in good standing and that the damage sustained resulted from the variance requires expert testimony to establish the prevailing standard and the consequences of departure from it in the case under consideration. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580-81 (Pon. 2011).

Because the fact-finder is not permitted to speculate as to the standard against which to measure the acts of the professional in determining whether he exercised a reasonable degree of care, expert testimony is required. Only in a few very clear and palpable cases can a court dispense with the expert testimony requirement to establish the parameters of professional conduct and find damages to have been caused by a professional's failure to exercise reasonable care, skill, and diligence. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

Even assuming *arguendo* that wide recognition and practice of the custom has disappeared so as to preclude judicial notice of its existence, testimony given by the Iso Nahnken of Nett provides a sufficient basis to conclude that the custom is still practiced today when he testified that the custom is still practiced and the defendants failed to sufficiently rebut that testimony and a conclusory argument to the contrary was not evidence. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

– Hearsay

The excited utterance exception to the hearsay rule, FSM Evid. R. 803, does not permit admission of a statement made under stress of excitement caused by a startling event or condition, if the statement does not relate to the event or condition. Jonah v. FSM, 5 FSM R. 308, 313 (App. 1992).

Hearsay is not admissible in a hearing or trial. Hearsay is an out-of-court statement offered as evidence to prove the truth of the matter asserted. A statement is an oral or written assertion. An affidavit

is hearsay which is inadmissible unless allowed by an exception to the hearsay rule. In re Disqualification of Justice, 7 FSM R. 278, 279 (Chk. S. Ct. Tr. 1995).

A court may rely on hearsay evidence for the purpose of finding probable cause at a post-seizure hearing. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 303 (Kos. 1995).

Although procedural and evidentiary rules are relaxed at a probable cause hearing a prosecutor may not rely solely on hearsay evidence when other, more competent testimony is available. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 304 (Kos. 1995).

A court may discount inherently unreliable evidence. The more levels of hearsay or the more hearsay statements contained within an affidavit, which is hearsay itself, the more unreliable the evidence is. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 304 (Kos. 1995).

Statements made for purposes of medical diagnosis or treatment are not excluded from admissibility by the hearsay rule. Primo v. Refalopei, 7 FSM R. 423, 436 n.28 (Pon. 1996).

In order for a deposition to be admissible a deponent must physically appear before someone who can identify and administer the oath even if the deposition is taken telephonically. FSM v. Skico, Ltd. (III), 7 FSM R. 558, 559 (Chk. 1996).

Out of court admissions by a party-opponent are not hearsay statements. FSM v. Skico, Ltd. (IV), 7 FSM R. 628, 630 (Chk. 1996).

Hearsay within hearsay is inadmissible. Hearsay otherwise admissible may be excluded where it consists primarily of reiteration of a statement made by some other unidentified person. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 663 (Pon. 1996).

A statement, which if it had been made by the defendant would have been admissible as an admission of a party-opponent, is inadmissible hearsay when made by the defendant's then spouse as part of a traditional apology, and cannot be considered on a summary judgment motion. Glocke v. Pohnpei, 8 FSM R. 60, 62 (Pon. 1997).

Official government documents submitted to Congress are evidence that falls within an exception to the hearsay rule. Chuuk v. Secretary of Finance, 8 FSM R. 353, 364 n.8 (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).

Statements in a document in existence twenty years or more the authenticity of which is established are excepted from the hearsay rule. Elaija v. Edmond, 9 FSM R. 175, 182 (Kos. S. Ct. Tr. 1999).

The finding of probable cause may be based upon hearsay evidence in whole or in part. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

The evidence rules define a letter from a criminal defendant as non-hearsay – an admission by a party-opponent, and if the defendant were not to testify on his own behalf, as is his right, it could also be admissible under the hearsay exception for statements against interest when the declarant is unavailable to testify. If produced and properly authenticated, the letter itself would be admissible evidence. FSM v. Wainit, 11 FSM R. 1, 6 (Chk. 2002).

Merely because a person who holds a public office creates a document does not necessarily make that document a public record admissible under the hearsay exception for public documents. FSM v. Wainit, 11 FSM R. 1, 6 (Chk. 2002).

As a general rule, hearsay evidence is inadmissible unless it falls within an exception to the hearsay rule. The reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located, is such an exception and is admissible as evidence. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

The subject himself cannot provide the factual basis for the date of his birth, as his knowledge of this information is based upon hearsay only. A person does not have personal knowledge of his date of birth. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

The Kosrae Rules of Evidence do not apply in the Land Commission or Land Court. In the case of hearsay testimony, the Land Commission or presiding justice shall determine the testimony's relevancy and the credibility of the witness. The purpose of allowing hearsay testimony and other evidence at land proceedings, without application of the Kosrae Rules of Evidence, is to allow all relevant evidence on the claims presented before the Land Commission and Land Court, without limitations imposed by the Rules of Evidence. The determination of relevancy of evidence and credibility of witnesses is made by the adjudicators, the Land Commission or a justice of the Kosrae Land Court. Taulung v. Jack, 11 FSM R. 345, 348 (Kos. S. Ct. Tr. 2003).

A log of payments in which entries were made at or about the same time as the transactions took place, and that they were records he kept in the normal course of business can be admitted into evidence. In re Lot No. 014-A-21, 11 FSM R. 582, 592 (Chk. S. Ct. Tr. 2003).

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Hearsay is generally not admissible, and therefore cannot be relied upon to create a material issue of fact when opposing a summary judgment motion. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

It is the Land Court's duty to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes and it retains discretion to accord weight to evidence presented at hearing, including appropriate weight to hearsay evidence made by a person, now deceased, and therefore not subject to cross-examination. Wesley v. Carl, 13 FSM R. 429, 432 (Kos. S. Ct. Tr. 2005).

Any requests deemed admitted may be used only against the party deemed admitting it. This is because admissions obtained under Rule 36 may be offered in evidence, but are subject to all pertinent objections to admissibility that may be interposed. It is only when the admission is offered against the party that made it that it comes within the exception to the definition of hearsay as an admission of a party opponent. Mailo v. Chuuk, 13 FSM R. 462, 471 (Chk. 2005).

When there was testimony concerning the world price for pepper and its relation to Pohnpei's price; when the trial court only determined that Pohnpei set its price without any regard to the world price, not that it bore a certain relationship to the world price; and when someone in the pepper export business would be expected to have first-hand knowledge concerning world prices, the trial court finding that Pohnpei set its buying price without regard to the world price or to the sustainability of the pepper processing facility as a profit-making venture is not error. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 (App. 2006).

Even if the evidence is of events that took place in periods for which prosecution may be time-barred, it is not necessarily inadmissible. Nor is hearsay necessarily inadmissible. FSM v. Kansou, 14 FSM R. 139, 140-41 (Chk. 2006).

Statements by a party-opponent offered against that party are not hearsay and are admissible. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

A statement by a party's co-conspirator made during the course and in furtherance of the conspiracy is not hearsay and is admissible. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

An FSM police report, if relevant, may be considered in a proceeding to release a vessel when it is not a criminal case, since police reports, as matters observed pursuant to duty imposed by law as to which matters there was a duty to report, are admissible as an exception to the rule that hearsay is generally inadmissible and since a motion for a vessel's release is in the nature of a bond or bail hearing, and the rules of evidence generally do not apply to proceedings with respect to release on bail or otherwise. FSM v. Kana Maru No. 1, 14 FSM R. 300, 302 (Chk. 2006).

An account of evidence adduced in a hearing in another case to which the movant was not a party and a hearing at which he was not present or had an opportunity to be heard, even presuming (which the court cannot do) that the evidence presented then is accurately characterized now, is not admissible and cannot be used against the movant's summary judgment motion. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

Former testimony is not admissible unless the party against whom the testimony is now offered (or a predecessor in interest) had an opportunity and similar motive to develop that testimony by direct, cross, or redirect examination. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

Although the strict guidelines against the admission of hearsay evidence do not apply in a probable cause determination, a prosecutor may not rely solely on hearsay testimony when other, more competent testimony is available. The court may therefore discount unreliable hearsay or other evidence that is inherently untrustworthy or suspicious, unless additional measures are taken to ensure reliability or to explain those exigent circumstances that make it impossible to produce more reliable or competent evidence. A prosecutor's own representations are not a substitute for competent, reliable evidence in the form of first-hand testimony or appropriately detailed affidavits from investigating officers who obtained first-hand accounts. Chuuk v. Chosa, 16 FSM R. 95, 98 (Chk. S. Ct. Tr. 2008).

When the affiant's belief that probable cause existed was based solely on affiant's review of a police report, which presumably was prepared by an officer who investigated the crime scene; when the affiant does not state whether the affiant spoke with the reporting officer, or even identify the reporting officer; when there is no explanation of how the information contained in the police report was obtained; when there is no evidence that the affiant or the unknown reporting officer interviewed witnesses or investigated the incident and there is no way to determine the extent to which the report itself was based on hearsay or any assurance that it was based on the investigating officer's reasonable belief rather than on pure speculation, then the "affidavit of probable cause" is deficient because the affidavit suffers from multiple layers of hearsay, and multiple levels of hearsay become less reliable as the number of levels of hearsay increase and because the affidavit fails to adequately identify the information's source or sources and may be based on unattributed hearsay statements of one or more declarants. As the number of included hearsay statements increases, the guarantees of reliability that justify admission become attenuated. Hearsay that is otherwise admissible may be excluded where it primarily reiterates statements of other, unidentified persons. Chuuk v. Chosa, 16 FSM R. 95, 98-99 (Chk. S. Ct. Tr. 2008).

Hearsay is inadmissible unless it falls within an exception to the hearsay rule. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

FSM Evidence Rule 803(6) authorizes the admission, over a hearsay objection, of a record made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the record, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

Business records are normally authenticated by a custodian of records. The custodian or other qualified witness who must authenticate business records need not be the person who prepared or maintained the records, or even an employee of the record-keeping entity, as long as the witness understands the system used to prepare the records. Objections concerning the identity or competency of

preparer of a record might go to the evidentiary weight or credibility of a record but not to the record's admissibility. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

Because of the general trustworthiness of regularly kept records and the need for such evidence in many cases, the business records exception has been construed generously in favor of admissibility. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

No evidence rule requires that the custodian have personal knowledge of the business record. The custodian is merely a person with knowledge of what the proponent claims the record to be. Rule 803 also does not require that the custodian be the author of the record or even an employee of the business from which the record originated. The witness need only be a qualified witness to satisfy the requirements of Rule 803(6). Whether the witness was qualified to satisfy those requirements is a decision within the trial court's discretion. Cholymay v. FSM, 17 FSM R. 11, 21 (App. 2010).

When an extensive evidentiary foundation had been laid before the business records exhibits were admitted over the defendants' hearsay objections, the trial court, having heard adequate foundational testimony, did not abuse its discretion by admitting the exhibits. Cholymay v. FSM, 17 FSM R. 11, 21 (App. 2010).

When compiling of debts owed to businesses was a regular transaction of any company regardless of whether or not it had been prepared at or near the time of pending litigation and when the accountant/bookkeeper was specifically hired to address accounts receivables information for the businesses, her compilation of debts owed by an authority was in the regular course of her duties and a typical business practice, and therefore the trial court did not abuse its discretion by admitting the debt compilation. Cholymay v. FSM, 17 FSM R. 11, 21 (App. 2010).

When the government's witnesses testified as to what the exhibits were and, if a witness did not know what an exhibit was, it was not admitted, the weight or credibility that an exhibit was given was for the trial court to decide. When the trial court took into account the defendants' stated concerns regarding the documents but there was no requirement that the exhibits be excluded after the witnesses had testified that they were what the government claimed them to be, the trial court, having heard adequate testimony, did not abuse its discretion by admitting the exhibits. Cholymay v. FSM, 17 FSM R. 11, 22 (App. 2010).

Since hearsay testimony is inherently unreliable, the court cannot be required to or presumed to rely on hearsay testimony over contrary direct evidence to determine where the preponderance of evidence lies. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

Although a criminal defendant may seek introduction of a police report as an offering against the government of a factual finding resulting from an investigation made pursuant to authority granted by law and the declarant's availability would have been immaterial for the purposes of ruling on the report's admission, when the defendant did not seek to admit the report and the report was not part of the record, the court will not consider it as a basis to challenge the sufficiency of its findings. Chuuk v. Inek, 17 FSM R. 137, 144 (Chk. S. Ct. Tr. 2010).

To admit statements regarding personal or family history under Evidence Rule 804(b)(4), the proponent would have to show that the declarant was unavailable. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When a letter is hearsay and the proponent does not argue its admissibility under any exception to the hearsay rule and when the letter's contents were irrelevant and inadmissible since the letter was proffered as evidence that, in terminating the proponent, the Director was acting in conformity with other wrongs he allegedly committed, the Kosrae State Court correctly granted the State's motion in limine to exclude the letter since evidence of other crimes, wrongs, or acts is not admissible to prove a person's character in order to show that he acted in conformity therewith. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Chuuk v. Hauk, 17 FSM R. 508, 512 (Chk. S. Ct. Tr. 2011).

If it appears from the complaint, or from affidavit or affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the defendant's arrest will issue to any officer authorized by law to execute it. The probable cause finding may be based upon hearsay evidence in whole or in part. Chuuk v. Hauk, 17 FSM R. 508, 512 (Chk. S. Ct. Tr. 2011).

As the levels of hearsay included in the affidavit increase, the guarantees of reliability that justify admission become attenuated. Hearsay that is otherwise admissible may be excluded where it primarily reiterates statements of other, unidentified persons. Chuuk v. Hauk, 17 FSM R. 508, 512 (Chk. S. Ct. Tr. 2011).

A statement by a party's co-conspirator made during the course and in furtherance of a conspiracy is not hearsay and is admissible. FSM v. Sorim, 17 FSM R. 515, 525 n.3 (Chk. 2011).

Hearsay as is an unsworn, out-of-court statement offered to prove the truth of the matter asserted. Chuuk v. Mitipok, 17 FSM R. 552, 553 (Chk. S. Ct. Tr. 2011).

Evidence Rule 803(22) is an exception to the general rule that makes hearsay inadmissible. This exception allows evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment even when the declarant is available as a witness. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

Evidence Rule 803(22) merely makes a person's conviction admissible evidence. To make that evidence conclusive in a summary judgment motion, a plaintiff must rely on a legal principle known as collateral estoppel or issue preclusion. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

An ancient document is authenticated if evidence that the document, in any form, is in such condition, as to create no suspicion concerning its authenticity, was in a place where if authentic, would likely be, and has been in existence 20 years or more at the time it is offered. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

– Judicial Notice

A trial court is entitled to take judicial notice of an agreement authorizing state police officers to act on behalf of the FSM. Doone v. FSM, 2 FSM R. 103, 106 (App. 1985).

In a case in which the defendant proposes a standard of requiring clear and convincing evidence in civil conspiracy cases rather than a preponderance based upon conditions, customs and traditions in Micronesia, it is incumbent upon him to establish such conditions by evidence, because the court will not take judicial notice of such conditions, customs or traditions. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 164 (App. 1987).

The trial court may take judicial notice at any stage of the proceedings and may do so when he gives his findings. Este v. FSM, 4 FSM R. 132, 135 (App. 1989).

When the trial court states that it is taking judicial notice of a fact the parties can raise the issue of the propriety thereof. Este v. FSM, 4 FSM R. 132, 135 (App. 1989).

It is mandatory for a court to take judicial notice of the amount of judgments in favor of creditors when a request has been made and the court has been given all necessary information. Senda v. Mid-Pac Constr. Co., 5 FSM R. 277, 280 (App. 1992).

Judicial notice may be taken on appeal. Welson v. FSM, 5 FSM R. 281, 284 (App. 1992).

When requested to by a party, and once it has been supplied with all the necessary information, a court must take judicial notice of an adjudicative fact, only if it is either generally known within the territorial jurisdiction of the trial court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Counsel's oral argument to that effect is not enough. Stinnett v. Weno, 6 FSM R. 312, 313 (Chk. 1994).

A court may take judicial notice at any stage of the proceedings including during a petition for rehearing on the appellate level. Nena v. Kosrae (III), 6 FSM R. 564, 566 (App. 1994).

A court may take judicial notice of its own reported decisions. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 11 n.2 (App. 1995).

A court may consider as evidence against pleader, in the action in which they are filed, a party's earlier admissions in its responsive pleadings even though it was later withdrawn or superseded by amended pleadings. A court may take judicial notice of them as part of the record. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 249 (Chk. 1995).

When portions of court files in other cases are introduced into evidence a court may take judicial notice of all the papers and pleadings on file in those other cases. Kaminaga v. Chuuk, 7 FSM R. 272, 273 (Chk. S. Ct. Tr. 1995).

When most documents provided in support of a party's submission are official records of the opponent state government, the Kosrae State Court may take judicial notice of the records. Langu v. Kosrae, 8 FSM R. 455, 459 (Kos. S. Ct. Tr. 1998).

In a land case, the Kosrae State Court may take judicial notice of the documents in the file of a Trust Territory land case to clarify if the judgment in that case concerned the land in this case. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

In determining damages, the court may take judicial notice regarding the replacement costs for college transcripts and a college diploma, when they are easily ascertainable and available on the University of Guam Internet site and from the University of Guam Office of Admissions and Records. Talley v. Lelu Town Council, 10 FSM R. 226, 239 (Kos. S. Ct. Tr. 2001).

When deciding the ownership of tideland, the trial court did not err in not taking judicial notice of and following the judgment in a different case that dealt only with the boundaries and ownership of adjacent filled land. Phillip v. Moses, 10 FSM R. 540, 544 (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).

Judicial notice may be taken of a statutory provision. Hauk v. Board of Dirs., 11 FSM R. 236, 240 (Chk. S. Ct. Tr. 2002).

The court may take judicial notice that a person's status as a chief implies his residence within the area of which they are chief. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199 (Yap 2003).

If it were an adjudicative fact, the court could take judicial notice of another suit's existence but not of that complaint's contents when the necessary information has not been supplied. FSM v. Kansou, 12 FSM R. 637, 641 n.3 (Chk. 2004).

In assessing damages, the court may take judicial notice of the prevailing cost in Kosrae of items

similar to the ones lost. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

When portions of court files in other cases are introduced into evidence, a court may take judicial notice of all the papers and pleadings on file in those other cases. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 125 n.2 (Chk. 2005).

The court may take judicial notice of a fact not subject to reasonable dispute in that it is either 1) generally known within the trial court's territorial jurisdiction or 2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. The court must take judicial notice if requested by a party and supplied with the necessary information, but when the existence of the documents is disputed by the plaintiffs and the defendants have not provided the court with the information necessary to take judicial notice of it, such as either copies of the filed document or copy of the docket book showing that such a document was filed, the court will decline to take judicial notice. Ruben v. Petewon, 13 FSM R. 383, 387 n.1 (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).

When, at argument, the state presented the defendant's certificate of live birth, which indicated his age as less than 21 years of age on the date of the offense, the court can take judicial notice of the defendant's certificate of live birth, which is an official public Kosrae state government record. Kosrae v. Jonithan, 14 FSM R. 94, 96 (Kos. S. Ct. Tr. 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).

Foreign law is a fact which must be pled and proven. But state law does not need to be expressly pled, because the court may take judicial notice of any state law. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

Since the court must take judicial notice if requested by a party and supplied with the necessary information, a party, at some point, may have had to provide the trial court and the opposing party with a copy of the statute and its provisions or make them aware of it if they were not. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

The court can take judicial notice of a fact not subject to reasonable dispute in that it is either 1) generally known within the trial court's territorial jurisdiction or 2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and the court must take judicial notice if requested by a party and supplied with the necessary information. John v. Chuuk Public Utility Corp., 16 FSM R. 66, 69 (Chk. 2008).

When the court has not been supplied with the information necessary for the court to take judicial notice that life insurance was a state employee benefit when CPUC was created and what the insurance coverage's terms were or to conclude that CPUC has not adopted its own merit system with changed benefits, there are genuine issues of material fact that preclude either party being entitled to summary judgment: 1) whether state employees in 1997 were afforded life insurance benefits and on what terms (contributory, non-contributory; on the job only, 24-hour; etc.); 2) whether CPUC has since established its own merit system and then altered the benefits; and 3) whether, if notice of the lapse of insurance coverage was required, it was given for the July 2004 lapse. John v. Chuuk Public Utility Corp., 16 FSM R. 66, 69 (Chk. 2008).

A court may take judicial notice of its own reported decisions and of papers and pleadings on file in other cases before it when portions of those cases have been introduced into evidence. Arthur v. Pohnpei,

16 FSM R. 581, 588 n.3 (Pon. 2009).

On a Rule 12(b)(6) motion to dismiss, only the well-pled or well-pleaded facts are to be accepted as true, and, no matter how artfully the allegations may be crafted, the court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations since conclusory allegations or legal allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. Furthermore, the court need not accept as true allegations that contradict facts which may be judicially noticed; for example, the court may consider matters of public record including pleadings, orders and other papers filed with the court. And the court does not have to credit invective, bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

Although the court may take judicial notice of documents filed in earlier related cases without converting the Rule 12(b)(6) motion to a summary judgment motion, the court, when it has given notice in open court that it would consider the motions as summary judgment motions, will follow that course. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

A court must, if requested by a party and supplied with the necessary information, take judicial notice of a fact not subject to reasonable dispute in that it is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, but when the necessary information has not been supplied, the court cannot take judicial notice. Counsel's oral representation or argument is inadequate if the necessary information has not been supplied to the court. FSM v. Suzuki, 17 FSM R. 70, 74 (Chk. 2010).

Defense counsel's representations of what the testimony was in and what facts a state court proceeding found involving a defendant's statements, was inadequate for the FSM Supreme Court to take judicial notice of those adjudicative facts when the court has not been supplied with the necessary information for it to take judicial notice. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

By statute, no evidence or testimony can be considered at the appeal hearing except those matters which constituted the official record, transcripts, and exhibits received at the Land Court hearing. Thus, when a transcript of 2004 Land Court hearing testimony and 1991 testimony before the Land Registration team were part of the title registration process, they should have been part of the official Land Court record and thus reviewable by the State Court. And when a Trust Territory High Court case that was mentioned in the Land Court decision both that court and the State Court could properly take judicial notice of its files if the files had been given to the Land Court and to the other parties. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

When portions of court files in other cases are introduced into evidence, a court may take judicial notice of all papers and pleadings in those cases. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 154 n.1 (Pon. 2012).

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).

When the parties neglected to put any admissible evidence of land values before the court, the Asian Development Bank valuation system, although officially adopted only for governmental transactions, is evidence of Chuuk land values of which a court may take judicial notice because it is information capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Killion v. Nero, 18 FSM R. 381, 386-87 (Chk. S. Ct. Tr. 2012).

While it may be uncontested that the value of the reef on the main island of Yap is $600 per square meter, the court cannot presume, without evidence, that $600 a square meter is an accurate value for any particular Yap outer island reef, especially where on the outer island there may be more reef and fewer people who have the right to rely on or depend on the reef's resources. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 541 (Yap 2013).

The court may take judicial notice of its files in related cases. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284 n.1 (Chk. 2016).

The court may take judicial notice of its own files in related cases. Onanu Municipality v. Elimo, 20 FSM R. 535, 541 (Chk. 2016).

It is only when a local custom is firmly established and generally known and been peacefully and fairly uniformly acquiesced in by those whose rights would naturally be affected that it will be judicially noticed by the court. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

The traditional and customary right of the Nahnmwarki of each established municipality of Pohnpei to receive offerings from their respective subjects is firmly established in history and still widely known and peacefully accepted by the citizens of Pohnpei, thereby making it a judicially noticeable fact. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

A judicially noticed fact must be one not subject to reasonable dispute, in that it is either 1) generally known within the trial court's territorial jurisdiction or 2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 30 (App. 2016).

The fact that it was widely known that Philippine immigration stamps were frequently forged, was capable of accurate and ready determination, by resorting to official Republic of the Philippines websites, the veracity of which cannot be reasonably questioned. As such, that recitation qualified as a fact, to which judicial notice could properly be ascribed. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 30 (App. 2016).

– Objections

FSM Evidence Rule 103 contemplates timely objection and statement of reasons in support of evidentiary objections. Failure to offer reasons in timely fashion, especially when coupled with pointed avoidance by counsel of inquiry into the matters at issue, places a party in a poor position for mounting an effective challenge to an evidentiary ruling. Joker v. FSM, 2 FSM R. 38, 47 (App. 1985).

Failure to raise objections which must be made prior to trial constitutes a waiver of objections, FSM Crim. R. 12(f). Moses v. FSM, 5 FSM R. 156, 159 (App. 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).

Generally, failure to object or to seek a continuance results in a waiver of the objection. Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

An objection to the admission of evidence not made at trial is not preserved for appeal because in the absence of an objection in the trial court an issue cannot properly come before the appellate division for review and the appellate division will refuse to consider the issue. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

When none of the objections to admission of evidence are of the type that should be addressed in a pretrial motion to suppress, which is generally reserved for evidence allegedly obtained illegally, the motion

to suppress should be denied and the issue of whether any of the evidence is admissible is a question that should, and will, come up in an orderly fashion during trial and be ruled upon if offered and objected to. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

Business records are normally authenticated by a custodian of records. The custodian or other qualified witness who must authenticate business records need not be the person who prepared or maintained the records, or even an employee of the record-keeping entity, as long as the witness understands the system used to prepare the records. Objections concerning the identity or competency of preparer of a record might go to the evidentiary weight or credibility of a record but not to the record's admissibility. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

If an objection to the admission of evidence is not raised at the trial level, it is not preserved for appeal and the appellate court will not consider the issue. In rulings excluding evidence, however, the issue is preserved for appeal so long as the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked. The offering of the evidence must otherwise be on the record and it must reveal the grounds for admission. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

If an objection to the admission of evidence is not raised at the trial level, it is not preserved for appeal, and the appellate court will not consider the issue. But, in rulings excluding evidence, the issue is preserved so long as the substance of the evidence was made known to the court by an offer of proof or was apparent from the context within which questions were asked and the offering of the evidence must otherwise be on the record, and it must reveal the grounds for admission. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

When the trial court granted a motion in limine excluding a letter, the proponent did not need to take any further steps to preserve the issue for appeal since, as an interlocutory order excluding evidence, the denial order merged with the final judgment because the letter's substance had been made known to the trial court before its ruling. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

– Privileges

Information concerning the source of funds for payment of attorney's fees of a particular party normally is not privileged information. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

The appropriate test to determine the scope of work product protection to be afforded a document which serves the dual purpose of assisting with future litigation the outcome of which may be affected by a business decision, is that documents should be deemed prepared in anticipation of litigation if in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation. Where a document is created because of the prospect of litigation, analyzing the likely outcome of that litigation, it does not lose protection under this formulation merely because it is created to assist with a business decision. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 479 (Pon. 1998).

Work product protection extends to subsequent litigation as long as the materials sought were prepared by or for a party to the subsequent litigation. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 481 (Pon. 1998).

It is appropriate to allow the deposition of a party's attorney either when 1) the deposition is the only practical means of obtaining the information, 2) the information sought will not invade the attorney-client privilege or the work product doctrine, and 3) the information sought is relevant and the need for it outweighs the disadvantages inherent in deposing a party's attorney; or when it is shown that no other means exist to obtain the information, and that the information sought is crucial to the preparation of the case. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 278 (Pon. 1999).

A privilege is a peculiar right, advantage, exemption, power, franchise, or immunity held by a person or

class, not generally possessed by others. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 n.1 (Pon. 2001).

A witness's privilege is governed by common law principles as they may be interpreted by FSM courts in the light of reason and experience, including local custom and tradition. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 (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).

Legislative privilege has a long history, and was well established at common law even before the founding of the United States. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 (Pon. 2001).

Legislative immunity for state legislators exists under United States federal law independent of state constitutional speech or debate provisions. Legislative freedom has no less vitality in the FSM than in the United States. Our national Constitution and all four state constitutions contain speech or debate clauses. AHPW, Inc. v. FSM, 10 FSM R. 420, 424 (Pon. 2001).

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 lawmaker engages in many activities which are not covered by the legislative privilege, such as a wide range of legitimate errands performed for constituents, making of appointments with government agencies, assistance in securing government contracts, preparing news letters to constituents, news releases, and outside speeches. Such activities, though entirely legitimate, are political in nature rather than legislative, and such political matters do not have speech or debate clause protection. But when a legislator is acting within the legitimate legislative sphere, the speech or debate clause is an absolute bar to interference. AHPW, Inc. v. FSM, 10 FSM R. 420, 424-25 (Pon. 2001).

Legislative privilege should be read broadly to include anything generally done in a session of the legislature by one of its members in relation to the business before it. The ambit of the privilege extends beyond speech and debate per se to cover voting, circulation of information to other legislators, participation in the work of legislative committees, and a host of kindred activities. AHPW, Inc. v. FSM, 10 FSM R. 420, 425 (Pon. 2001).

The legislative privilege doctrine has both substantive and evidentiary aspects. In substance, the doctrine renders legislators immune from civil and criminal liability based on either speech or debate in the course of proceedings in the legislature. From an evidentiary standpoint, a legislator may claim the privilege in declining to answer any questions outside the legislature itself where those questions concern how a legislator voted, acted, or decided on matters within the sphere of legitimate legislative activity. AHPW, Inc. v. FSM, 10 FSM R. 420, 425 (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).

There is no banker-client (i.e., customer) privilege, and no analytical reason to raise an understandably confidential commercial situation of principal-agent or customer-banker to a privilege. A privacy or confidentiality interest must be balanced against a litigant's interest in obtaining relevant and probative information even if the privacy interest implicated is that of non-parties. Adams v. Island Homes Constr.,

Inc., 11 FSM R. 218, 227 (Pon. 2002).

There is no privilege provided by law to protect the victim daughter from testifying against the defendant father. Kosrae State Code § 6.302 provides a privilege to persons from testifying against their spouse, but when the family victim is not the defendant's spouse, no privilege exists. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

For a defendant's former counsel to testify regarding communications made during the course of the case at hearing on a motion to withdraw the defendant's plea, the defendant must be advised that if counsel is permitted to testify, the attorney-client privilege must be waived. Kosrae v. Kinere, 13 FSM R. 230, 236 (Kos. S. Ct. Tr. 2005).

Privilege is governed by the principles of the common law as they may be interpreted by the courts of the Federated States of Micronesia in the light of reason and experience, including local custom and tradition. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The general rule appears to be that there exists no common law privilege with respect to bank customer information, but a court should indulge in a careful balancing of the right of civil litigants to discover relevant facts, on the one hand, with the right of bank customers to maintain reasonable privacy regarding their financial affairs, on the other. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

When an attorney's fee award has been requested, matters concerning attorney's fees are generally not privileged and a blanket refusal to disclose to opposing counsel any supporting documentation showing the date, the work done, and the amount of time spent on each service for which a compensation claim was made, goes far beyond any possible assertion of attorney-client or work-product privilege. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 62 (Yap 2007).

Since the rule with respect to privileges applies at all stages of all actions, cases, and proceedings, it therefore applies during discovery. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

Except as otherwise required by the FSM Constitution or provided by Act of Congress or in rules prescribed by the Chief Justice, the privilege of a witness, person, government, state, or political subdivision thereof is governed by the principles of the common law as they may be interpreted by FSM courts in the light of reason and experience. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

The government, by instituting an action, does not waive any privilege it may have and thereby submit to unlimited discovery. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

Although it may be true in the general case that when the FSM is claiming executive privilege it has an initial duty to provide a sworn declaration demonstrating that the discovery at issue is privileged, but when discovery is sought from a president, no such declaration will be required since presidential communications are "presumptively privileged." This is because a court is not required to proceed against the president as against an ordinary individual. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

Although a former president may not retain the capacity to either assert or waive an executive privilege, an incumbent president can claim the privilege on his predecessor's behalf. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

The presidential executive privilege is rooted in the separation of powers doctrine and in the principle that confidentiality in communications between the president and his advisors should enhance the quality of discussion and government decisions. However, this presumptive privilege is not absolute and must be considered in the light of the rule of law. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

While the public and the courts have a right to every person's evidence, except for that protected by

constitutional, statutory, or other privilege, these privileges are not expansively construed. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

A party seeking discovery, who is confronted with an executive privilege claim, may overcome that claim if the discovery would 1) lead to admissible evidence; 2) is essential to the party's case; 3) is not available through any alternative source or less burdensome means; and 4) will not significantly interfere with the official's ability to perform his governmental duties. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

When the plaintiff contends that the depositions of the president, vice president, and former president would yield admissible evidence about the discussions during high-level national-state government meetings on replacing the plaintiff as the Project Management Unit since the presidents and vice president were the only persons present at all of those meetings and should thus have unique, relevant testimony, the plaintiff has not met its burden to show that information about those meetings cannot be obtained through alternative sources or less burdensome means since a number of other persons were present at each of those meetings. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

When the plaintiff has corroborating testimony from two witnesses, it has not shown why the former president's testimony on the same subject is essential to its case or that what it seeks to obtain from him it has not already obtained from the alternative sources. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

When the president has unique, personal knowledge of an essential relevant issue because only the president, and no alternative source, is available to corroborate testimony, the court will limit discovery from the president to this one narrow topic. Since discovery will be limited to this one narrow point, the president's oral deposition will be more burdensome than needed. The court will therefore craft a protective order so that another means of discovery will be used – the plaintiff may seek discovery from the president through either a Rule 31 deposition upon written questions or through Rule 33 written interrogatories, whichever the plaintiff finds best-suited to its purposes. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512-13 (Pon. 2009).

It is appropriate to depose another party's attorney only when 1) the deposition is the only practical means of obtaining the information, 2) the information sought will not invade the attorney-client privilege or the work product doctrine, and 3) the information sought is relevant and the need for it outweighs the disadvantages inherent in deposing a party's attorney; or when it has been shown that no other means exist to obtain the information, and that the information sought is crucial to the case's preparation. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

Since any communication made to or from an attorney can always be sought from the person or entity on the other end of the communication, there should always be another practical means of obtaining the substance of that communication if it does not violate attorney-client privilege or the work product doctrine. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

To the extent that the discovery a party seeks constitutes internal workings of the Attorney General's Office – attorney work product – it is privileged and not discoverable. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

Any confidential patient-doctor's information can be redacted from documents provided in discovery. The fact that a medical clinic received certain sums as payments for medical services should be discoverable, but what those medical services were and for which patients, need not be provided. That the clinic received an aggregate total payment of some amount for a particular type of service may be provided without violating doctor-patient privilege. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 442 (Pon. 2016).

The mere allegation that the work product doctrine applies, is insufficient to claim the privilege. The party who asserts the work product privilege must demonstrate that the doctrine applies. FSM Dev. Bank

v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

Because the work product doctrine is intended only to guard against divulging the attorney's strategies and legal impressions, it does not protect facts concerning the creation of work product or facts contained within work product. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

Evidence privileges will be governed by the principles of the common law, as they may be interpreted by the FSM courts. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 666 (Pon. 2016).

When prior FSM cases have not addressed a precise point, the court, in such instances, may look to authority from other jurisdictions in the common law tradition, such as the U.S. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 666 (Pon. 2016).

The attorney-client privilege protects communications between an attorney and client that were made for the purpose of providing legal services. The privilege's effect is to safeguard these communications from being disclosed in litigation, since it acts a shield, to prevent adversaries from obtaining such exchanged information. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 666 (Pon. 2016).

The attorney-client privilege is deeply rooted in public policy and essential to the administration of justice. The privilege is traditionally deemed worthy of maximum legal protection. It remains one of the most carefully guarded privileges and is not readily to be whittled down. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 666 (Pon. 2016).

The attorney-client privilege applies only if: 1) the asserted holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of the bar of a court or his or her subordinate and in connection with this communication, is acting as a lawyer; 3) the communication relates to a fact of which the attorney was informed by the client, without the presence of strangers, for the purpose of securing primarily either an opinion on law, or legal services, or assistance in some legal proceeding, and not for the purpose of committing a crime or tort; and 4) the client has claimed and not waived the privilege. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 667 (Pon. 2016).

A justification for the attorney-client privilege is that it promotes disclosure of all relevant information by the client; enabling the attorney to effectively represent the client and dispense thorough legal advice. Without the privilege, there would most likely be a chilling effect, in that many clients would be reluctant to disclose all relevant information to the attorney, if adverse parties could utilize same against them in subsequent litigation. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 667 (Pon. 2016).

A justification for the attorney-client privilege is that an attorney must be able to openly communicate legal advice and strategy to the client, in order to adequately represent him or her and counsel would be hesitant to engage in such discourse, if adverse litigants could discover such communication in subsequent litigation. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 667 (Pon. 2016).

Because sound legal advice or advocacy serves public ends, the attorney-client privilege is necessary to promote full and unrestricted communication; consonant with the attorney-client relationship. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 667 (Pon. 2016).

Whether the attorney-client privilege attaches depends on the nature of the communication. In examining the nature of the communication, courts look to whether the attorney was retained to act in a capacity other than as an attorney, in which case, the communications may not be privileged. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 667 (Pon. 2016).

An uncertain attorney-client privilege – or one which purports to be certain, but results in widely varying applications by courts – is little better than no privilege. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

In determining the dominant purpose of the communication and thus whether the attorney-client privilege is implicated, the relevant question boils down to: was the exchange of information relevant to the rendition of legal services. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

The attorney-client privilege does not require the communication to contain purely legal analysis or advice to be privileged. Instead, if a communication between lawyer and client would facilitate the rendition of legal services or advice, the communication is privileged. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

When the communication documents exchanged by an attorney were intended to be confidential, the attorney-client privilege prevents their disclosure. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

Since parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, a request for communication documents to and from an attorney are shielded by the attorney-client privilege and a motion to compel their production will be denied, but a motion to compel the production of communication documents to and from an engineer co-project manager will be granted. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

– Relevant

"Relevant evidence" is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. FSM v. Jonas (II), 1 FSM R. 306, 312 (Pon. 1983).

Introduction of other burn cases to show that defective fuel in those cases tended to show the fuel was defective in the present case is relevant if the other cases are similar. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 352 (Pon. 2001).

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the action's determination more probable or less probable than it would be without the evidence, and all relevant evidence is admissible, except for the specific exceptions set out in the FSM Rules of Evidence. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 473 (Pon. 2001).

When prosecuting criminal acts alleged to have occurred during the national election, the government may introduce evidence of acts in relation to the Chuuk state election held on the same day so long as those acts are relevant and are evidence of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident in relation to the national election offenses charged in the information. FSM v. Wainit, 11 FSM R. 1, 6 (Chk. 2002).

When the government, in prosecuting criminal acts alleged to have occurred during the national election, may introduce evidence of acts in relation to the Chuuk state election held on the same day so long as those acts are relevant and are evidence of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident in relation to the national election offenses, the defendant may have the State Election Director as a witness give evidence so long as it is restricted to relevant evidence of which he has first-hand knowledge and which is within the scope of evidence the prosecution has introduced concerning the state election during the government's case-in-chief. FSM v. Wainit, 11 FSM R. 1, 7 (Chk. 2002).

The Kosrae Rules of Evidence do not apply in the Land Commission or Land Court. In the case of hearsay testimony, the Land Commission or presiding justice shall determine the testimony's relevancy and the credibility of the witness. The purpose of allowing hearsay testimony and other evidence at land proceedings, without application of the Kosrae Rules of Evidence, is to allow all relevant evidence on the claims presented before the Land Commission and Land Court, without limitations imposed by the Rules of Evidence. The determination of relevancy of evidence and credibility of witnesses is made by the

adjudicators, the Land Commission or a justice of the Kosrae Land Court. Taulung v. Jack, 11 FSM R. 345, 348 (Kos. S. Ct. Tr. 2003).

All relevant documents are not necessarily those required to prove a party's case by the preponderance of the evidence. AHPW, Inc. v. FSM, 12 FSM R. 164, 168 (Pon. 2003).

The Kosrae State Court Rules of Evidence do not apply to Land Court proceedings. Evidence which is relevant and material to the claim or the issues may be presented at the Land Court hearing and the presiding justice will determine the relevancy and credibility of all evidence offered at the hearing, and will determine whether the evidence is admissible in the hearing. This allows the presiding Land Court justice to hear all offered evidence and determine whether the evidence is relevant and credible. The evidentiary standard for Land Court proceedings is very broad and allows the admission and consideration of hearsay and other evidence that would normally be excluded under the Kosrae Rules of Evidence, in Kosrae State Court proceedings. This broad evidentiary standard is applied to allow all relevant evidence of claims and statements to be presented without the limitations imposed by the Kosrae Rules of Evidence. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 627 (Kos. S. Ct. Tr. 2004).

When an agreement stating that the defendant had received full payment for the 27 motors and still owed the plaintiff 14 motors is relevant and is admissible as an admission of a party-opponent, the trial court did not err by relying on it when making a finding of fact since the exhibit was properly admitted, and the trial court was entitled to give it such weight as it saw fit. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 518 (App. 2005).

When a February 19, 1999 letter clearly refers to state legislative seats, but also asks for support for the Government of Udot's candidates, the question of who are the Government of Udot's candidates allowed the court to consider all evidence relevant to the issue, and when further evidence established that the incumbent candidate for the Chuuk Fourth Congressional District was one of those candidates, it was upon this basis that defendant was convicted of interfering in the national election. Thus this evidentiary issue is not substantial. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

A blanket claim that all evidence should have been excluded will not be considered a close or substantial question on appeal. Nor is a claim that prejudicial evidence was admitted a substantial issue because relevant evidence is inherently prejudicial; but it is only unfair prejudice, substantially outweighing probative value, which permits exclusion of relevant matter. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

A motion to exclude an expert witness's deposition testimony is premature when it is made before his deposition has been completed, and any motion to exclude his trial testimony on the ground of relevance before the deposition is complete is also premature. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 652 (Pon. 2009).

The Land Court should not exclude any relevant evidence and the Kosrae Rules of Evidence do not apply in the Land Court, but the State Court cannot consider evidence that was not "received" in the Land Court. "Received" in the statute is read to include evidence offered or introduced but improperly excluded. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the action's determination more probable or less probable than it would be without the evidence. All relevant evidence is admissible, except for the specific exceptions set out in the FSM Rules of Evidence. Mori v. Hasiguchi, 19 FSM R. 222, 225 (Chk. 2013).

When the plaintiff contends that the defendants attempted to interfere with his purchase of Transco stock by trying to get the seller to rescind the sale to him and to purchase it themselves, a past pattern of stock purchases might make it more probable than it would be without the evidence that the defendants tried to get the seller to sell them the shares and, furthermore, written correspondence received by Transco

about this matter must also be relevant. Mori v. Hasiguchi, 19 FSM R. 222, 225 (Chk. 2013).

Evidence must be in the nature of facts – not conclusions or unsupported allegations of counsel. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 122 (App. 2017).

– Stipulations

Since a trial's purpose is to resolve disputed factual issues and to determine the ultimate facts, no trial would have been needed if all the necessary facts had been stipulated. Berman v. Pohnpei Legislature, 17 FSM R. 339, 347 n.1 (App. 2011).

In construing a stipulation, a court should not extend its terms beyond that which fair construction justifies. Berman v. Pohnpei Legislature, 17 FSM R. 339, 348 (App. 2011).

When, by its terms, a stipulation refers only to the attorneys' number of years of legal experience and not to the nature or quality of that experience, it cannot be relied on to prove that a party had the same qualifications as another and thus was entitled to the higher pay that other received. Berman v. Pohnpei Legislature, 17 FSM R. 339, 348 (App. 2011).

Notwithstanding the effect of stipulation as binding judicial admissions dispensing with the necessity of legal proof, when the court makes findings of fact contrary to such stipulations and when ample evidence supports the court's findings, the parties who failed to object or to assert the stipulation in rebuttal to such evidence, have waived their right to rely on the stipulated facts. Berman v. Pohnpei Legislature, 17 FSM R. 339, 348 (App. 2011).

Although parties may stipulate to factual matters, they may not stipulate to interpretations of law. Berman v. Lambert, 17 FSM R. 442, 446, 450-51 (App. 2011).

– Witnesses

At the core of the task of the trier of fact is the power and obligation to determine credibility of witnesses. The court may rely upon that testimony which he finds credible and disregard testimony which does not appear credible. To do this, the trial court must be a sensitive observer of tones, hesitations, inflections, mannerisms and general demeanor of actual witnesses. Engichy v. FSM, 1 FSM R. 532, 556 (App. 1984).

Normally, it is primarily the task of the land commission, not the reviewing court, to assess the credibility of witnesses and to resolve factual disputes, since it is the commission, not the court that is present when witnesses testify and only the commission sees the manner their testimony but commission's major findings, and if no such explanation is made, the reviewing court may conduct its own evidentiary hearings or may remand the case to the commission for further proceedings. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 395, 401 (Kos. S. Ct. Tr. 1988).

A witness's credibility may not be attacked by evidence of a prior criminal conviction if the crime did not involve dishonesty or false statement, or was not for a felony whose punishment ended within the past ten years, or if the prejudicial effect outweighs the probative value. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 122 (Pon. 1993).

A lawyer generally cannot appear as an advocate when he also appears as a witness, although there is an exception when the testimony relates to an uncontested issue. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 344 (Chk. 2001).

A witness summons can be issued for any witness, including the victim, for his or her appearance and testimony at trial. This process is utilized frequently in trials of criminal cases where witnesses are reluctant to appear and testify. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 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).

Every person is competent to be witness except as otherwise provided by the Evidence Rules. A witness must have personal knowledge of the matter testified to and must, prior to testifying, declare, by oath or affirmation that she will testify truthfully. Kosrae v. Jackson, 12 FSM R. 93, 97 (Kos. S. Ct. Tr. 2003).

The Rules do not specify any mental qualifications for testifying as a witness. The issue is better suited to the fact finder in its determination of the witness's weight and credibility. Kosrae v. Jackson, 12 FSM R. 93, 97 (Kos. S. Ct. Tr. 2003).

The question of a witness's competency goes to the issue of credibility, which is for the trier of fact. Even a finding of criminal insanity and incompetence does not make a person incompetent to testify. As long as the person had a sufficient memory, could understand the oath, and could communicate what the person saw, the person was competent to serve as a witness. Kosrae v. Jackson, 12 FSM R. 93, 97 (Kos. S. Ct. Tr. 2003).

A witness's competency to testify requires a minimum ability to observe, record, recollect and recount an event, as well as an understanding to tell the truth. The fact finder hears the testimony and judges the witness's credibility. Therefore, mental capacity generally functions as an effect on the weight of the testimony to be given, instead of precluding admissibility of the testimony. Generally, any showing of memory about the event is sufficient to make the witness competent to testify. If the witness is capable of communicating in any manner, the witness is competent. Kosrae v. Jackson, 12 FSM R. 93, 97 (Kos. S. Ct. Tr. 2003).

A witness will not be disqualified to testify as witness in a trial due to her mental handicap when she took an oath to testify truthfully; had the memory of what actions had taken place; and, based upon her testimony, showed her ability to observe, record, recollect and recount that event. Kosrae v. Jackson, 12 FSM R. 93, 97 (Kos. S. Ct. Tr. 2003).

Kosrae Rule of Evidence 609 permits impeachment through evidence of conviction of a felony, where the date of the conviction is less than ten years and it also requires the court to determine that the probative value of admitted the prior conviction outweighs its prejudicial effect to the defendant. Kosrae v. Jackson, 12 FSM R. 93, 98 (Kos. S. Ct. Tr. 2003).

Every person is competent to be a witness except as otherwise provided in the Rules. Rule 602 requires lay witnesses to have personal knowledge of the matters that they are testifying to. Rule 603 requires every witness to declare that he will testify truthfully. The Rules do not exclude potential witnesses based upon their status as prisoners. Kosrae v. Sigrah, 12 FSM R. 562, 566 (Kos. S. Ct. Tr. 2004).

When a prisoner's testimony complied with the requirements of Rules 601, 602 and 603 and the defendant had the opportunity to cross examine him and attack his credibility by evidence of prior criminal convictions, there is no legal authority for the automatic exclusion of a prisoner's testimony. Ultimately, it is the task of trier of fact to determine the witnesses' credibility and to determine what should be accepted as the truth and what should be rejected as untrue or false. Kosrae v. Sigrah, 12 FSM R. 562, 566 (Kos. S. Ct. Tr. 2004).

A party is entitled to question any witness as to the basis of his knowledge. This is relevant evidence. Thus when the history of the land claim is relevant, an attorney should not be prevented from asking a witness about his family's claim to the land and why his testimony on that subject differed from that of his father. Any witness may be impeached. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e, 99f (Chk. 2004).

Criminal Rule 26.2 creates no right to production of statements of witnesses until the witness has testified on direct examination, but if the prosecution insists upon literal compliance with Rule 26.2(a) the practical result is that a recess must be taken at the conclusion of the direct examination of every witness, and the court would very likely abuse its discretion if it refused to grant a recess. The usual practice in the FSM under Rule 26.2 has been that the prosecution voluntarily provides defense counsel access to witness statements in advance of their testimony and the court finds this a salutary and commendable practice. FSM v. Walter, 13 FSM R. 264, 267-68 (Chk. 2005).

A defendant may obtain a witness's statement in the government's hands either through Rule 16 discovery or through Rule 26.2(a) procedures. It is not obtainable by deposition. FSM v. Wainit, 13 FSM R. 301, 304-05 (Chk. 2005).

A non-party under subpoena may move to quash the subpoena directed to him. FSM v. Wainit, 13 FSM R. 301, 305 (Chk. 2005).

It is for the trial judge to assess a witness' credibility, because he has the opportunity to observe the witness and the manner in which he testifies. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 514 (App. 2005).

There is no rule that would require a party wishing to prove a money transfer to do so by documentary evidence only. Every time a witness takes the stand the trier of fact must determine whether that witness is believable. A trier of fact can perform this function regardless of whether financial transactions are the subject of the testimony. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 514 (App. 2005).

The fact that the appellant challenges the credibility of a witness's testimony does not mean that the trier of fact could not accept it as true, since it is for the trier of fact to assess a witness' credibility. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 519 (App. 2005).

Civil Rule 32(a)(3) permits any party to use a witness's deposition for any purpose if the court finds that the witness is off of the island at which the trial or hearing is being held, unless it appears that the witness's absence was procured by the party offering the deposition. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

The use of a witness's deposition at trial because the witness was off-island was proper when the witness's current job meant he no longer traveled to the Pacific and that he did not expect to be in Pohnpei in the next six months and that, since he was in Texas, an FSM Supreme Court subpoena could not compel him to appear. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

A subpoena directed to someone in a foreign country is considered valid and enforceable only if the person it is directed to is an FSM national or resident. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 n.4 (App. 2006).

The trial court did not commit error when it denied the defendant's request during trial to permit the State Auditor to be called as a witness when the State Auditor was not on the state's witness list; he had not been subpoenaed; and the plaintiff had no prior notice that this witness would be called. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 21 (App. 2006).

Neither state law nor the Kosrae Juvenile Rules require a witness to be qualified as an expert witness under the Evidence Rules in order to accept her testimony and report in a preliminary proceeding to determine whether to treat the defendant as an adult. The court may accept the witness's qualifications based upon her training as a physician and her position as Clinical Director of the FSM National Health Substance Abuse and Mental Health Program. Kosrae v. Ned, 14 FSM R. 86, 90 (Kos. S. Ct. Tr. 2006).

A witness must obey the subpoena that summoned him or her or get that subpoena quashed. Amayo v. MJ Co., 14 FSM R. 355, 361 n.1 (Pon. 2006).

A motion to suppress all witness statements on the ground they were given without the warnings required by law will be denied since the court is not aware of any warnings required to be given a witness before the witness makes a statement and neither the accused's written motion nor oral argument cited any authority that legal warnings are required to be given before a witness's statement may be taken. This does not mean that the FSM Rules of Evidence, especially those concerning hearsay, would not apply at trial. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

Matters regarding a person's qualification to be a witness must be determined by the trial court, and the proponent must establish the qualification. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

Once faced with the proffer of an expert witness, the question of whether the witness may be qualified as an expert is a preliminary fact to be decided by the trial court. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

At the core of the trier-of-fact's task is the power and obligation to determine the witnesses' credibility. The trial court may rely upon that testimony which it finds credible and disregard testimony which does not appear credible. Fritz v. FSM, 16 FSM R. 192, 199 (App. 2008).

Although an argument that it is not logical that one outsider of the clan would know about the history of a *nechop* land transfer when no testifying clan member had knowledge of the *nechop* and that for this reason the testimony is not credible, may affect credibility, the court cannot say that the trial court abused its discretion in accepting and relying upon the testimony when the witness could have attained this knowledge from his wife's uncle. Narruhn v. Aisek, 16 FSM R. 236, 241 (App. 2009).

Although the appellants may consider the timing of a witness's rebuttal testimony to be problematic, when the witness's testimony is not contradictory to his testimony before rebuttal and when the trial court's findings are supported by other testimony, the finding will not be set aside based on an alleged inconsistency between the witness's direct and later rebuttal testimony. Narruhn v. Aisek, 16 FSM R. 236, 241 (App. 2009).

A court cannot assess the credibility of parties, whose deposition testimony was admitted but who declined to appear at trial, because in order to make this assessment the court must carefully observe the witness's tone, hesitations, inflections, mannerisms, and general demeanor. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 439 (Pon. 2009).

The trial court is in the best position to judge the demeanor and credibility of the witnesses. Cholymay v. FSM, 17 FSM R. 11, 17 (App. 2010).

FSM Evidence Rule 611(b) allows the court to permit a procedure where the plaintiff would call the witnesses but each party would be able to treat each witness as if the witness were its own, that is, each defendant could ask each witness any relevant question regardless of whether that question was within the scope of the plaintiff's direct examination. In effect, each party put on its case-in-chief simultaneously with the others. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 & n.2 (App. 2011).

The trier of fact, whose duty it is to assess a witness's credibility, could accept as true some witnesses' testimony and thereby reject another witness's contrary deposition testimony. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

That the trial court found other testimony more credible than one witness's is not a ground for reversal because the trial court was in the best position to judge the witnesses' demeanor and credibility since the trial judge had the opportunity to observe the witnesses and the manner in which they testified. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

Although the trial judge did not have the opportunity the manner in which a witness testified when she

testified by deposition, the appellate court cannot presume that even if she had testified in person that the trial judge would have found her more credible than the other witnesses and then decided the case in her favor since there was substantial evidence in the record to support the trial court's findings. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

A witness is unavailable if he is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means. A foreign resident's attendance at trial cannot be secured by process since the FSM Supreme Court's subpoena power does not extend into other countries. Chuuk v. Emilio, 19 FSM R. 33, 36 (Chk. S. Ct. Tr. 2013).

When the plaintiffs had ample opportunity to impeach a witness's testimony at trial; when all the arguments and evidence presented by the plaintiffs in their post-trial motion were available at trial and should have been presented at trial; when, if the plaintiffs were sincere in their desire to see the witness prosecuted, then they would have brought the matter to the attention of the appropriate authorities rather than asking the court to refer the matter for a perjury prosecution by a separate branch of government; and when the motion's filing suggests that the true motive was to impeach the witness's credibility, the plaintiffs' motion for an order referring the witness to the FSM Department of Justice for violation of the perjury statute will be denied, and the court will not consider the motion's contents in reaching a decision. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 269 (Pon. 2014).

Judging the credibility of witness testimony is the exclusive responsibility of the justice presiding over the matter. Harden v. Inek, 19 FSM R. 278, 280 n.1 (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).

Although the Civil Procedure Rules provide that FSM nationals and residents are subject to the court's subpoenas even in foreign countries, there is no similar provision in the Criminal Procedure Rules. The only relevant Criminal Procedure Rule states that a subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the FSM. FSM v. Tipingeni, 19 FSM R. 439, 448 n.3 (Chk. 2014).

The FSM's confrontation clause does not always require a physical confrontation before the fact-finder. For example, there are certain well-established exceptions to the rule barring hearsay that, because of their indicia of reliability or trustworthiness, allow the introduction of evidence from witnesses a defendant will be unable to confront. FSM v. Tipingeni, 19 FSM R. 439, 449 (Chk. 2014).

Since, generally, a lawyer must not act as advocate at a trial in which the lawyer is likely to be a necessary witness, it follows that a party should not be able to potentially disqualify another litigant's advocate by making the other litigant's lawyer into a witness by noticing that advocate's deposition. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

Testimony may be admissible so long as it contains the essential indicia of reliability, including 1) the giving of testimony under oath; 2) the opportunity for cross examination; 3) the ability of the fact-finder to observe demeanor evidence; and 4) the reduced risk that a witness will wrongfully implicate an innocent defendant when testifying in his presence. FSM v. Halbert, 20 FSM R. 42, 46 (Pon. 2015).

FSM Supreme Court justices, even temporary justices, should be guided by permissible considerations rather than by one party's unsupported supposition that other justices would have ruled differently on a

question of first impression. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

Since for the issue of the admissibility of Skype testimony to be properly before the court, there must be a threshold showing that Skype testimony is feasible and since in the absence of such a showing the government would be asking for a mere advisory opinion, it was proper for the court to require the government to demonstrate Skype testimony's feasibility before ruling on the parties' legal arguments. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

A witness's prior inconsistent statement bears on his credibility. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

An appellate court cannot say that the trial court's finding was clearly erroneous when it was the result of weighing conflicting evidence. When the trial judge believed one witness's testimony and not the other's and gave an extensive analysis of the testimony before him that led to the conclusion, there is no reason for the appellate court to disturb the trial court's conclusion since it was supported by credible evidence and the trial judge had the opportunity to observe the witnesses and the manner of testimony and the appellate court did not have that opportunity. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

Every person is competent to testify. When challenged on the basis of impairment or diminished capacity, the general rule of competency is presumed, and the witness is almost invariably pronounced competent unless shown otherwise. FSM Dev. Bank v. Carl, 20 FSM R. 329, 334 (Pon. 2016).

The burden of proof as to witness competency rests with the objecting party. In determining competence a judge has great latitude in the procedure he may follow. Typically, the court will simply permit the witness to begin direct examination testimony, and then consider the witness's competency in light of the content of that testimony and the manner in which it was given. Alternatively, the court may conduct a preliminary examination, or even hold a separate competency hearing, wherein the prospective witness is subjected to questioning, and other witnesses may testify and external evidence may be submitted to help the court assess the claim because the assistance of experts is sometimes necessary to aid in the determination. FSM Dev. Bank v. Carl, 20 FSM R. 329, 334 (Pon. 2016).

Witness competence is a preliminary question to be decided by the judge. FSM Dev. Bank v. Carl, 20 FSM R. 329, 334 (Pon. 2016).

A diagnosis of diabetes is insufficient to overcome the general rule that every person is competent to testify. FSM Dev. Bank v. Carl, 20 FSM R. 329, 334 (Pon. 2016).

Under FSM Evidence Rule 601, every person is competent to testify, and, if challenged on the basis of impairment, the general rule is that competency is presumed. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 (Pon. 2016).

By trying to take a party's deposition, the parties can reach an informed opinion about that party's competence to testify. Whether she is physically or mentally incapable of testifying is a factual, not a legal, question which can be resolved by taking her deposition. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

EXTRADITION

Extradition is neither a criminal nor a civil proceeding. In re Extradition of Jano, 6 FSM R. 12, 13 (App. 1993).

The FSM Attorney General's Office is not disqualified in an international extradition case where the accused is the plaintiff in a civil suit against one of its members because the Attorney General's office has no discretion in the matter. It did not initiate nor can it influence the course of the prosecution abroad, and the discretion of whether to extradite a citizen does not repose in the Attorney General's Office. In re

Extradition of Jano, 6 FSM R. 12, 13-14 (App. 1993).

Certifications of extraditability are not final decisions of the trial court since the final decision-making authority rests with the Secretary of External Affairs. Therefore they are not appealable. In re Extradition of Jano, 6 FSM R. 23, 25 App. 1993).

Judicial review of a certification of extraditability, although not appealable, is available to an accused in custody by seeking a writ of habeas corpus. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

Where the FSM statute governing extradition proceeding is silent on the appealability of extradition proceedings and where the statute has been borrowed from another jurisdiction where extradition proceedings are not appealable it is presumed that the meaning and application of the statute is as it was interpreted by the courts of the source. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

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).

Certification of extraditability is an adversarial proceeding. An advocate in an adversarial proceeding is expected to be zealous. In re Extradition of Jano, 6 FSM R. 26, 27 (App. 1993).

Extradition is not a criminal action although it involves a criminal accusation. The specific provisions of the international extradition statute apply rather than the general provisions of Title 12, chapter 2. In re Extradition of Jano, 6 FSM R. 62, 63 (App. 1993).

Once a justice certifies an accused as extraditable, the justice must then commit the person to the proper jail until surrendered. The extradition statute does not give the court the authority to release a person on bail pending any judicial review of the certification. In re Extradition of Jano, 6 FSM R. 62, 63 (App. 1993).

In an international extradition case, bail can be granted only if "special circumstances" are shown. Neither risk of flight nor the availability of a suitable custodian are primary considerations. Rather the primary consideration is the ability of the government to surrender the accused to the requesting government. In re Extradition of Jano, 6 FSM R. 62, 64 (App. 1993).

Judicial review of an extradition hearing is by petition for a writ of habeas corpus. In re Extradition of Jano, 6 FSM R. 93, 97 (App. 1993).

No Micronesian custom or tradition is applicable to extradition. In re Extradition of Jano, 6 FSM R. 93, 97 (App. 1993).

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).

A person whose extradition is sought can always contest identification. In re Extradition of Jano, 6 FSM R. 93, 100 (App. 1993).

A person whose extradition is sought may, at the extradition hearing, introduce evidence that explains the government's evidence of probable cause, but not evidence that contradicts it. In re Extradition of Jano, 6 FSM R. 93, 101 (App. 1993).

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 of whether it is criminal under the laws of both signatory governments. In re Extradition of Jano, 6 FSM R. 93, 102-03 (App. 1993).

Extradition treaties are to be construed liberally to effect their purpose of surrender of fugitives to be tried for their alleged offenses. In re Extradition of Jano, 6 FSM R. 93, 103 (App. 1993).

The scope of a habeas corpus review of an extradition proceeding is 1) whether the judge had jurisdiction, 2) whether the court had jurisdiction over the extraditee, 3) whether there is an extradition agreement in force, 4) whether the crimes charged fall within the terms of the agreement, and 5) whether there was sufficient evidence to support a finding of extraditability. In re Extradition of Jano, 6 FSM R. 93, 104 (App. 1993).

An extradition hearing justice is required to make written findings for two reasons: 1) to meet the "rule of specialty" by which prosecution is limited to those offenses upon which extradition is granted, and 2) to reflect that the offenses for which extradition is granted is criminal in both the requesting and requested countries. In re Extradition of Jano, 6 FSM R. 93, 105 (App. 1993).

To satisfy the dual criminality test in extradition matters either national or state law may be used. An exact matching of the offense or elements is not required, but the acts charged must be criminal in both jurisdictions. In re Extradition of Jano, 6 FSM R. 93, 105 (App. 1993).

Where a court has dismissed a criminal case for lack of jurisdiction over the crimes for which the defendant was charged, the dismissal does not act as a discharge so as to preclude extradition on the charge. "Discharge" requires both personal and subject matter jurisdiction. In re Extradition of Jano, 6 FSM R. 93, 107-08 (App. 1993).

Where the extradition agreement specifically requires that the requesting government's statute of limitations be used to determine extraditability, a general provision cannot be read to apply the statute of limitations of the requested government. In re Extradition of Jano, 6 FSM R. 93, 108 (App. 1993).

Extradition is neither a criminal nor a civil proceeding. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 372 (Yap 2005).

Extradition treaties are to be liberally construed to effect their purpose of surrender of the persons sought to be tried for their alleged crimes. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 372 (Yap 2005).

An extradition hearing's purpose is not to hold a trial on the merits to determine guilt or innocence, but to determine whether probable cause exists to believe that the person whose surrender is sought has committed the crime for which extradition is requested. The probable cause standard applicable in extradition proceedings is described as sufficient evidence to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

A person whose extradition is sought may, at the extradition hearing, introduce evidence that explains the government's evidence of probable cause, but not evidence that contradicts it. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

Depositions, warrants or other papers may be admitted into evidence in an extradition case if properly authenticated and the FSM Rules of Evidence by their terms do not apply to extradition proceedings. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

Facts and circumstances detailed in the documents admitted into evidence can constitute probable cause to believe that persons sought to be extradited committed the crime alleged therein. When the documents come with indicia of reliability, including the certifications of authenticity, the court may properly consider this evidence in making the probable cause determination for extradition. In re Extradition of

Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

For extradition, dual, or double, criminality is a requirement, which means that the offense for which extradition is sought must be criminal in both the requesting and requested countries. A precise matching of the crime or its elements is not required, but the acts charged must be criminal in both jurisdictions. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

When the offense alleged in the U.S. indictment is false use of a passport, and when, in the FSM, a person commits the crime of tampering with public records under 11 F.S.M.C. 529 if he makes, presents, or uses any record, document, or thing knowing it to be false, and with the purpose that it be taken as a genuine part of information or records that are received or kept by a public servant or required to be kept by anyone for the government's information, and under 11 F.S.M.C. 524, a person commits the crime of falsification if, with purpose to mislead a public servant in performing his or her official function, he or she submits or invites reliance on any writing which he or she knows to be forged, altered, or otherwise lacking in authenticity, these two FSM statutes proscribe the conduct charged, and the requirement of dual criminality is satisfied. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373-74 (Yap 2005).

The "rule of specialty" means that the court must find that the prosecution is limited to the offense upon which extradition is granted. Specifically, the "principle of specialty" limits prosecution in the requesting country to those extraditable offenses established by the facts on which extradition has been granted by the asylum country. Under this principle, the inquiry does not end merely because the accused is found extraditable on one charge. A determination must be made as to whether each specific charge forms the basis for extradition, as the defendant may be prosecuted only on extraditable charges. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 374 (Yap 2005).

If, on a hearing to determine extraditability the judge deems the evidence sufficient to sustain the charge under the treaty provisions, the judge shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of Foreign Affairs that a warrant may issue upon the requisition of the proper authorities of the foreign government, for the person's surrender according to the treaty's stipulations; and the judge shall issue his warrant for the commitment of the person to be extradited to the proper jail, there to remain until surrender is made. But when no witnesses testified at the hearing, there is no testimony to be transcribed and submitted to the Secretary of Foreign Affairs and counsel for the FSM summarized the papers it filed and when the necessary papers were admitted into evidence and are part of the record, the court will make the certification of sufficient evidence to sustain the charges, but will make no certification of testimony, and when the persons charged are already under house arrest and under FSM Immigration personnel's custody and supervision, no warrant will issue. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 374 (Yap 2005).

FEDERALISM

The Pohnpei State Constitution was established under the authority granted by article VII, section 2 of the Constitution of the Federated States of Micronesia which mandates that a state shall have a democratic constitution and also Pohnpei State Law No. 2L-131-82, section 9, which mandated the Pohnpei State Constitutional Convention "to draft a constitution for the State of Ponape . . . [that] shall make adequate provisions for the exercise of legislative, judicial and executive functions, and shall guarantee to all citizens of the State, a democratic form of government." People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 8-9 (Pon. S. Ct. Tr. 1985).

Although national law requires the FSM Supreme Court to protect persons against violations of civil rights, strong considerations of federalism and local self-government suggest that local institutions should be given an opportunity to address local issues, even civil rights issues, especially when this can be done without placing the rights of the parties in serious jeopardy and when the local decision may obviate the need for a constitutional ruling by the national court. Hadley v. Kolonia Town, 3 FSM R. 101, 103 (Pon. 1987).

As a general proposition, the court will not lightly assume that Congress intends to assert national

powers which may overlap with, or encroach upon, powers allocated to the states under the general scheme of federalism embodied in the Constitution. FSM v. Oliver, 3 FSM R. 469, 480 (Pon. 1988).

Nothing in the language of the statute, 23 F.S.M.C. 105, or in the legislative history, indicates that Congress made an affirmative determination to enact national legislation applicable within twelve miles of prescribed baselines. Therefore, 23 F.S.M.C. 105 gives the national government regulatory power only outside the twelve mile zone. FSM v. Oliver, 3 FSM R. 469, 480 (Pon. 1988).

Statutory provisions in the Trust Territory Code concerning domestic relations are part of state law because domestic relations fall within the powers of the states and not the national government. Pernet v. Aflague, 4 FSM R. 222, 224 (Pon. 1990).

Since the determination of support payments payable by a divorced husband is a matter governed by state law, the FSM Supreme Court in addressing such an issue is obligated to attempt to apply the pertinent state statutes in the same fashion as would the highest state court in the pertinent jurisdiction. Pernet v. Aflague, 4 FSM R. 222, 224 (Pon. 1990).

The FSM Supreme Court will not interfere in a pending state court proceeding where no authority has been cited to allow it to do so, where the case has not been removed from state court, where it has not been shown that the national government is a party to the state court proceeding thereby putting the case within the FSM Supreme Court's exclusive jurisdiction, and where it has not been shown that the movants are parties to the state court proceeding and thus have standing to seek national court intervention. Pohnpei v. Kailis, 6 FSM R. 460, 463 (Pon. 1994).

Congress has the sole power to legislate the regulation of natural resources in the marine space of the Federated States of Micronesia beyond 12 miles from island baselines, and the states have the constitutional power to legislate the regulation of natural resources within that twelve miles of sea. Congress may also legislate concerning navigation and shipping within the twelve-mile limit except within lagoons, lakes, and rivers. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 459 (App. 1996).

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).

When the judgment creditor has an execution remedy apart from a writ of execution directed to the state police, the court is reluctant to unnecessarily consider the constitutional issue raised when doing so could be viewed in any light as hampering voluntary cooperation between state and national law enforcement as a matter of comity, an important concern given the geographical configuration of our country and the limited law enforcement resources of both the state and national governments. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

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).

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).

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).

When the FSM Supreme Court decides matters of tort and contract law, it will apply, in the same way the highest state court would, the state's substantive law, which includes its common law as well as its statutory law. Peniknos v. Nakasone, 18 FSM R. 470, 479 & n.5 (Pon. 2012).

When the FSM Supreme Court is deciding matters of tort and contract law, it will apply in the same way the highest state court would the state's substantive state law, which includes the state's common law as well as its statutory law. Ihara v. Vitt, 18 FSM R. 516, 524 & n.3 (Pon. 2013).

The territorial sea is the waters within 12 nautical miles seaward of FSM island baselines, and the exclusive economic zone is the water seaward of the territorial sea outward to 200 nautical miles from the island baselines. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

– Abstention

As the Ponape District Court bears the closest resemblance to the state court system contemplated by the Constitution, it is appropriate to provide the District Court an opportunity to render an opinion on local issues. In re Nahnsen, 1 FSM R. 97, 97 (Pon. 1982).

State courts, rather than national courts, should normally resolve probate and inheritance issues especially where interests in land are at issue. In re Nahnsen, 1 FSM R. 97, 97 (Pon. 1982).

It would be contrary to the desire of the framers of the Constitution that local officials retain control over local matters if the FSM Supreme Court were to relinquish jurisdiction over issues involving local and state powers to the Trust Territory High Court, which is the least local tribunal now existing in the Trust Territory. In re Nahnsen, 1 FSM R. 97, 110 (Pon. 1982).

The Ponape District Court, although not granted jurisdiction over land matters, may be given the opportunity to hear certified questions from the FSM Supreme Court on issues in a probate case involving land in order to further the intent of the framers that local decision-makers play a part in decisions of a local nature. In re Nahnsen, 1 FSM R. 97, 110-12 (Pon. 1982).

Even though the requirements for pendent jurisdiction are met in a case, a national court has discretion to decline to exercise jurisdiction over state claims. This determination should turn on considerations of judicial economy, convenience and fairness to litigants and should be instructed by a desire of the federal or national court to avoid needless decisions of state law. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 397 (Pon. 1984).

When a Public Land Authority has erred procedurally, but there is no suggestion of bad faith or substantive violations by the Authority, the FSM Supreme Court may appropriately employ the doctrine of primary jurisdiction to remand the public land issue to the Authority for its decision. Etpison v. Perman, 1 FSM R. 405, 429 (Pon. 1984).

A reasoned request by a state that the FSM Supreme Court abstain from deciding a particular issue should be granted unless the opposing party establishes that the benefits of abstention in terms of federalism and judicial harmony, and respect for state sovereignty, would be substantially outweighed by delay, harm or injustice. Panuelo v. Pohnpei (I), 2 FSM R. 150, 156 (Pon. 1986).

Where neither land, inheritance nor any other crucial interest of the state is involved; where the state

has developed no extensive administrative apparatus or practical knowledge relating to the state issue with which a state court would be more familiar; where the state issue is not, strictly speaking, constitutional; and where the state has tendered the issue to the FSM Supreme Court and no party has requested abstention, the FSM Supreme Court should decide the issue rather than abstaining in favor of the state court. Panuelo v. Pohnpei (I), 2 FSM R. 150, 157-59 (Pon. 1986).

Abstention in favor of state court jurisdiction is inappropriate in a case which concerns leasehold of a dock facility, raises issues of national commercial import, and was filed almost two years ago during which time several opinions were rendered. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 260-61 (Pon. 1987).

As a general rule the FSM Supreme Court trial division is obliged to exercise its jurisdiction and may not abstain simply because unsettled issues of state law are presented. Edwards v. Pohnpei, 3 FSM R. 350, 360 (Pon. 1988).

Because the interest of developing a dynamic and well reasoned body of Micronesian jurisprudence, is best served when all courts have the benefit of one another's opinions to consider and question; when the litigants are private parties the FSM Supreme Court normally should attempt to resolve all issues presented, even when matters of state law are involved. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 13 (Pon. 1989).

A cautious, reasoned use of the doctrine of abstention is not a violation of the FSM Supreme Court's duty to exercise diversity jurisdiction, or of the litigants' constitutional rights, under article XI, section 6(b) of the FSM Constitution. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 39 (Pon. 1989).

The FSM Supreme Court may and should abstain in a case where land use rights are at issue, where the state is attempting to develop a coherent policy concerning the disposition of public lands, where there is a similar litigation already pending in state court, where the state requests abstention as defendant in an action which may expose it to monetary damages, where Congress has not asserted any national interests which may be affected by the outcome of the litigation, and where abstention will not result in delay or injustice to the parties. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 39 (Pon. 1989).

While the FSM Constitution provides initial access to the FSM Supreme Court for any party in article XI, section 6(b) litigation, the court may, having familiarized itself with the issues, invoke the doctrine of abstention and permit the case to proceed in a state court, since the power to grant abstention is inherent in the jurisdiction of the FSM Supreme Court, and nothing in the FSM Constitution precludes the court from abstaining in cases which fall within its jurisdiction under article XI, section 6(b). Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 42-43 (Pon. 1989).

Abstention by national courts is desirable in a case affecting state efforts to establish a coherent policy concerning how private persons may obtain rights to use land currently held by the state government. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 44 (Pon. 1989).

In a case brought before the FSM Supreme Court where similar litigation involving the same parties and issues is already pending before a state court, and a decision by the state court in the litigation would resolve all controversies among the parties, the risk of costly, duplicative litigation is one factor to be considered by the national court in determining whether to abstain. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 44 (Pon. 1989).

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).

There are no statutory or constitutional obligations which require the FSM Supreme Court to abstain or certify questions merely because unsettled matters of state law are at issue. Pryor v. Moses, 4 FSM R. 138, 141 (Pon. 1989).

The choice of whether to abstain from a decision or certify questions is one that lies wholly within the discretion of the FSM Supreme Court, and the judge must not undertake that decision lightly. Pryor v. Moses, 4 FSM R. 138, 141 (Pon. 1989).

The list of areas in which the FSM Supreme Court will consider it appropriate to liberally defer to state courts must be open and flexible, responding to the particular state of legal and social development in Micronesia, and when issues important to Micronesians become the focus of concerted state efforts to establish a coherent body of law, the FSM Supreme Court will take those developments into account in evaluating requests for certification or abstention. Pryor v. Moses, 4 FSM R. 138, 142 (Pon. 1989).

Where two private parties are involved, special considerations of state sovereignty are not as weighty in considering requests for abstention or certification, and the FSM Supreme Court normally should attempt to resolve all issues presented, even when matters of state law are involved. Pryor v. Moses, 4 FSM R. 138, 143 (Pon. 1989).

Requiring the FSM Supreme Court to abstain from deciding virtually all state law matters of first impression would not be in the interests of the efficient administration of justice, and would not be consistent with the jurisdictional provisions of the FSM Constitution. Pryor v. Moses, 4 FSM R. 138, 143 (Pon. 1989).

In a case where there is no state party and no issues of land or other matters crucial to state interests for which the state is actively developing policy and law, the healthy and efficient administration of justice demands that the FSM Supreme Court fulfill its duty to exercise jurisdiction and refuse to abstain or certify issues. Pryor v. Moses, 4 FSM R. 138, 145 (Pon. 1989).

The FSM Supreme Court will abstain from a claim for recovery of taxes where the defendant state requests abstention, the claim is for monetary relief, and the state has endeavored to develop a body of law in the areas of excise taxes and sovereign immunity. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

On a claim for declaratory relief from an unconstitutional excise tax, the FSM Supreme Court trial division will not abstain, where the issue could later be certified to the FSM Supreme Court appellate division and result in delay, where the trial court has already retained the case longer than contemplated, where the issue is narrowly posed and not capable of varying resolutions, and where it appears that a greater service may be provided by deciding the issue. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

It is not appropriate to abstain from deciding a claim for injunctive relief where it is undisputed that the court has jurisdiction and where the interests of time can be of pressing importance. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

The national courts, in carrying out their judicial responsibilities, do have inherent power to certify issues, or to abstain partially or completely from exercising jurisdiction in a particular issue or to exercise jurisdiction over part or all of a case. Gimnang v. Yap, 5 FSM R. 13, 19 (App. 1991).

A national court ordinarily should refrain from deciding a case in which state action is challenged as violating the federal constitution, if unsettled questions of state law may be dispositive and obviate the need for the constitutional determination. Gimnang v. Yap, 5 FSM R. 13, 21 (App. 1991).

A national court may not abstain from exercising its constitutional jurisdiction when it is directly faced with a constitutional issue and surely may never abstain completely from exercising jurisdiction in a case where there remains to be resolved a substantial issue under the national constitution. Gimnang v. Yap, 5 FSM R. 13, 25 (App. 1991).

In a case arising under national law there is an especially strong presumption against full abstention, and there is a serious question whether the trial division of a national court may ever certify a question of national law to a state court for decision unless it can reasonably be expected that the particular claim can be resolved entirely through the application of state law. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67C (Pon. 1991).

When there are identifiable, particularly strong state interests, such as questions concerning the ownership of land or where there are monetary claims against the state or its agencies, the national courts should exercise restraint, and look with sympathy upon a state request for abstention. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67D (Pon. 1991).

Although it may be appropriate to defer to state courts the resolution of land related state law issues, abstention and certification of issues should not be allowed to thwart the more fundamental goal and obligation of the judicial system to render just decisions in a speedy fashion at a minimum of costs to litigants and society alike. Therefore a reasonable balance must be sought between responsiveness to state interests and the obligation of the national courts to carry out their own jurisdictional responsibilities. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67D (Pon. 1991).

Full abstention is not appropriate where claims are not essentially state law claims, and are made against another nation, thus falling within the national court's primary jurisdiction. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67E (Pon. 1991).

Abstention may be appropriate for causes of action that raise issues of state law only, but may not be where substantive issues of national law are raised. A national court may not abstain from deciding a national constitutional claim. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67E (Pon. 1991).

Where a claim is against the national government and an interest in land is not placed at issue the claim is within the exclusive jurisdiction of the FSM Supreme Court and it cannot abstain on the claim. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67E (Pon. 1991).

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).

It is appropriate for the state court to rule upon the non-constitutional grounds and upon the alleged violation of the Pohnpei Constitution. The plaintiff may raise at a later time the allegation that the ordinance violates the FSM Constitution if that is still necessary after disposition by the state court. Berman v. Pohnpei, 5 FSM R. 303, 306-07 (Pon. 1992).

A bond of debt is simply a loan instrument. Therefore when determining its legal effect does not require a determination concerning interests in land there is insufficient basis for abstention. Kihara v. Nanpei, 5 FSM R. 342, 345 (Pon. 1992).

Because the FSM Supreme Court is the only court of jurisdiction in cases arising under article XI, section 6(a) of the FSM Constitution, the court has no discretion to abstain in such cases. Faw v. FSM, 6 FSM R. 33, 36 (Yap 1993).

A strong presumption exists under FSM law for deferring land matters to local land authorities. Kapas v. Church of Latter Day Saints, 6 FSM R. 56, 60 (App. 1993).

Determination of property boundaries is the responsibility of the state land commissions, and the national court should not intercede where the local agency has not completed its work. Kapas v. Church of Latter Day Saints, 6 FSM R. 56, 60 (App. 1993).

The FSM Supreme Court has a constitutional duty to hear disputes wherein the parties are diverse, even if land issues are involved, although the court may abstain from exercising such jurisdiction on a case-by-case basis where other factors weighing in favor of abstention are present. Etscheit v. Mix, 6 FSM R. 248, 250 (Pon. 1993).

Where a complaint arises from actions concerning the internal operations of municipal government, and the claims sound in tort, abstention in favor of state court adjudication is appropriate. Mendiola v. Berman (I), 6 FSM R. 427, 429 (Pon. 1994).

That a defendant files a counterclaim alleging violation of constitutional rights does not in itself make abstention of the case as a whole inappropriate. Mendiola v. Berman (II), 6 FSM R. 449, 450 (Pon. 1994).

Deference to state court jurisdiction is warranted in cases involving municipal government issues, given the greater familiarity with such issues at the state level and the greater importance to state interests. Mendiola v. Berman (II), 6 FSM R. 449, 450-51 (Pon. 1994).

Even though the national court has jurisdiction abstention may be warranted in civil forfeiture fishing case for fishing in state waters where defendants are also part of a companion criminal case in state court. Pohnpei v. M/V Zhong Yuan Yu #606, 6 FSM R. 464, 465-66 (Pon. 1994).

When a national court abstains it simply says that it is not going to decide the issue and allows the parties to file in state or local court; it does not submit or transfer anything to another court. Gimnang v. Trial Division, 6 FSM R. 482, 485 (App. 1994).

The choice of whether to abstain from a decision or to certify questions is one that lies wholly within the discretion of the trial court. Gimnang v. Trial Division, 6 FSM R. 482, 485 (App. 1994).

Abstention is left to the sound discretion of the court, but the Supreme Court may not abstain for cases involving issues of interpreting the Constitution. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 603 (Pon. 1994).

Because speedy and final resolution of questions regarding the constitutional roles of the state and national governments will avoid unnecessary conflict and possible jurisdictional tension between the state and national courts, it is proper to stay an order of abstention pending appeal in such cases. Pohnpei v. MV Hai Hsiang #36 (II), 6 FSM R. 604, 605 (Pon. 1994).

The decision whether the FSM Supreme Court will exercise its inherent power to abstain from a case is left to the sound discretion of the trial division which must exercise it carefully and sparingly. Conrad v. Kolonia Town, 7 FSM R. 97, 99 (Pon. 1995).

Counseling against the unfettered use of abstention is the FSM Supreme Court's solemn obligation to consider the interests and protect the rights of those who wish to invoke its constitutional jurisdiction. Conrad v. Kolonia Town, 7 FSM R. 97, 99 (Pon. 1995).

When issues of national law are involved there is a particularly strong presumption against full abstention from the case. Conrad v. Kolonia Town, 7 FSM R. 97, 100 (Pon. 1995).

There is a presumption favoring abstention in claims involving state law and money damages against the state that touch upon the particularly strong state interest of fiscal autonomy and federalism. Even in those cases the FSM Supreme Court will not abstain when abstention will result in substantial delay or additional cost. Conrad v. Kolonia Town, 7 FSM R. 97, 100 (Pon. 1995).

Where a case involves several substantive FSM constitutional claims the FSM Supreme Court will not and most likely cannot exercise its discretion to abstain. Conrad v. Kolonia Town, 7 FSM R. 97, 101 (Pon. 1995).

Extension of the presumption of abstention in certain cases to municipalities is inappropriate. Conrad v. Kolonia Town, 7 FSM R. 97, 101 (Pon. 1995).

Abstention by the FSM Supreme Court is only proper if it has concurrent jurisdiction, such as diversity jurisdiction, and the case involves state powers or interests. Ladore v. U Corp., 7 FSM R. 296, 298 (Pon. 1995).

Abstention may be proper in a case involving a private easement where there are no issues distinctly separate from those involving state powers because state courts have the primary role in setting policy and deciding legal issues concerning ownership and interests in land. Ladore v. U Corp., 7 FSM R. 296, 298 (Pon. 1995).

The choice to abstain from a decision, like the decision to certify a question, lies wholly within the sound discretion of the trial court. Thus the standard of review of the decision not to abstain is whether the trial court abused its discretion. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

Certain circumstances may give rise to an inclination in favor of abstention, such as a state request for abstention where there are identifiable, particularly strong state interests such as monetary claims against the state or questions concerning ownership of land, but national courts still have the obligation to carry out their own jurisdictional responsibilities. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

The FSM Supreme Court has original and exclusive jurisdiction over admiralty and maritime cases. This grant of exclusive jurisdiction is not made dependent upon constitutional grants of powers to other branches of the national government. When the Supreme Court's jurisdiction is exclusive it cannot abstain from deciding a case in favor of another court in the FSM because no other court in the country has jurisdiction. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 459 (App. 1996).

The FSM Supreme Court may not abstain in cases involving interpretation of the FSM Constitution. Island Dev. Co. v. Yap, 9 FSM R. 18, 20 (Yap 1999).

Neither the state's mere presence in a lawsuit by virtue of a monetary claim against it, nor its presence plus the presence of even an important issue of state law serves as a sufficient basis for abstention. Always hovering in the background of any abstention analysis is a litigant's constitutional right under the FSM Constitution to avail himself of the national court's diversity jurisdiction under article XI, section 6(b). Island Dev. Co. v. Yap, 9 FSM R. 18, 21 (Yap 1999).

The likelihood of abstention, always discretionary, is increased when the state is a party; when the subject matter of the requested abstention is one involving local concerns that lie solidly within a state's sphere of interest, such as land or inheritance issues; when the state has developed an administrative approach to deal with the specified issues; and when the issue presented is a "clean" legal issue, as opposed to a factual one. Island Dev. Co. v. Yap, 9 FSM R. 18, 21-22 (Yap 1999).

Yap's interest in establishing a body of contract jurisprudence is, without more, insufficient to cause the FSM Supreme Court to exercise its discretion and abstain in a case in which it has diversity jurisdiction under article XI, section 6(b) of the FSM Constitution. Island Dev. Co. v. Yap, 9 FSM R. 18, 22 (Yap 1999).

The standard of review for a decision not to abstain is that of abuse of discretion. Weno v. Stinnett, 9 FSM R. 200, 210 (App. 1999).

An abstention request that comes after trial, and after the case had been pending for approximately five years, is untimely. Weno v. Stinnett, 9 FSM R. 200, 210 (App. 1999).

Abstention requires the initiation of a new lawsuit in a state court. Weno v. Stinnett, 9 FSM R. 200, 210-11 (App. 1999).

A defense is that which is offered and alleged by the party proceeded against in an action or suit, as a reason in law or fact why plaintiff should not recover or establish what he seeks. A motion for abstention has little common ground with the concept of a defense because abstention by no means precludes a plaintiff from obtaining the requested relief but rather goes to the question of the appropriate forum in which to pursue that relief. Island Dev. Co. v. Yap, 9 FSM R. 279, 283 (Yap 1999).

Abstention is not a defense to a lawsuit in the sense used in Rule 12(b). In abstention practice, the movant is asking the court to exercise its discretion to abstain from hearing the action for the express purpose that another court may hear the lawsuit. Island Dev. Co. v. Yap, 9 FSM R. 279, 283 (Yap 1999).

There is no reason that answers could not be filed in due course during the pendency of an abstention motion, and there is also no reason that discovery could not have been ongoing during an abstention motion's pendency, since discovery was just as inevitable as the answer. Island Dev. Co. v. Yap, 9 FSM R. 279, 284 (Yap 1999).

An abstention motion before the FSM Supreme Court should proceed as a post-answer motion, and not a motion in lieu of answer under Rule 12(b) of the FSM Civil Procedure Rules. Island Dev. Co. v. Yap, 9 FSM R. 279, 284 (Yap 1999).

As a general rule, the FSM Supreme Court trial division is obliged to exercise its jurisdiction and may not abstain simply because unsettled issues of state law are presented. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 635 (Pon. 2002).

The FSM Supreme Court has deferred adjudication of certain land disputes in favor of state land commissions, but has also emphasized its responsibility under article XI, section 6(b) of the FSM Constitution to hear diversity disputes, even if land issues are involved. There is no judicial, constitutional, or legislative rule that in all cases where land is concerned, the FSM Supreme Court must abstain or otherwise refrain from exercising jurisdiction. The presence of certain factors on a case-by-case basis may influence the decision to abstain in land cases. Ambros & Co. v. Board of Trustees, 10 FSM R. 639, 644 (Pon. 2001).

The factors in favor of abstention are outweighed by the factors in favor of the FSM Supreme Court retaining jurisdiction over a case when there is no parallel litigation in state court which will address all of the parties' respective claims; when there is no duplicative litigation from two lawsuits as to the same subject matter; when, if the court does abstain, various claims of the parties will not be addressed, such as the numerous tort claims and the motions for preliminary injunction; and especially when the motion for remand does not seek to transfer the case to a state court, but instead to the party who allegedly committed bad faith and substantive violations in the performance of its duties. Ambros & Co. v. Board of Trustees, 10 FSM R. 639, 644 (Pon. 2001).

Although national law provides for the reciprocal enforcement of child support orders, case law supports the conclusion that FSM Supreme Court should abstain from exercising its jurisdiction at least until the state court has had the opportunity to rule on the issues. Villazon v. Mafnas, 11 FSM R. 309, 310 (Pon. 2003).

A motion to abstain will be denied when the plaintiffs have a constitutional right to pursue their claims in the FSM Supreme Court as the claims arise under the Constitution and national laws and they have chosen to do so, and when the nature of the state law rulings a court might have to make in the case is not apparent at this stage of the case. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

When issues of national law are involved there is a particularly strong presumption against full abstention from the case. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

While certain circumstances, such as a state request for abstention where there are identifiable, particularly strong state interests such as monetary claims against the state or questions concerning

ownership of land, may give rise to an inclination in favor of abstention, national courts still have the obligation to carry out their own jurisdictional responsibilities, but the FSM Supreme Court may not abstain in cases involving interpretation of the FSM Constitution. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

A motion to abstain may be denied when the case does not involve land and when, although it involves monetary claims against the state, it appears that interpretation of the Constitution may also be necessary. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

When a state administrative agency asks that the FSM Supreme Court not exercise jurisdiction in a case because the case involves a question about land, and land issues are best (and traditionally) left to the state court, but when a deeper analysis reveals that the case is not fundamentally a land case, but rather one in which the court is being asked to review an agency's action and determine whether that action was lawful from an administrative or procedural point of view, not a substantive one, the question presented is not whether the plaintiff is entitled to the assignment of the lease in question, but rather whether the board possessed the authority to reconsider its decision and, if so, did it do so in a manner that recognized plaintiff's rights under the FSM Constitution. In such a case, the FSM Supreme Court does not lack subject matter jurisdiction, and the plaintiff's complaint will not be dismissed. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 90 (Pon. 2003).

While the FSM Supreme Court may abstain from a part of a case, it may not abstain from interpretation of the FSM Constitution. Mailo v. Chuuk, 12 FSM R. 597, 601 (Chk. 2004).

A national court has discretion to decline to exercise jurisdiction over state claims, but this determination should turn on considerations of judicial economy, convenience and fairness to litigants and should be instructed by the national court's desire to avoid needless decisions of state law. Judicial economy, convenience and fairness to litigants, especially in light of the expedited determination sought by the parties, would seem to dictate that the entire case proceed in the same forum. Mailo v. Chuuk, 12 FSM R. 597, 601 (Chk. 2004).

The rationale for abstention is that the state court is the better court to decide an issue which involves state powers and particularly strong, identifiable state interests. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 148 (App. 2005).

Motions to abstain cannot be brought before the defendants have pled by filing an answer. The only motions to dismiss that a defendant may file before answering the complaint are those based on 1) lack of subject matter jurisdiction, 2) lack of personal jurisdiction, 3) improper venue, 4) insufficiency of process, 5) insufficiency of service of process, 6) failure to state a claim upon which relief can be granted, or 7) failure to join a party under Rule 19. McVey v. Etscheit, 13 FSM R. 473, 476-77 (Pon. 2005).

An abstention request that comes after trial, and after the case had been pending for approximately five years, is untimely. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

Although the national courts, in carrying out their judicial responsibilities, do have inherent power to certify issues, or to abstain partially or completely from exercising jurisdiction over a particular issue, or to exercise jurisdiction over part or all of a case; and although the trial court may raise the question of abstention or certification on its own motion; it is not mandatory that the court do so. And even if such a motion had been made, the choice of whether to abstain from a decision or to certify questions is one that lies wholly within the trial court's discretion. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

When no motion to abstain or to certify a question to the state court was made, the trial court could not abuse its discretion by not abstaining from deciding or by not certifying the ownership question to the state court. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

The choice to abstain from a decision lies wholly within the trial court's sound discretion. Certain

circumstances may give rise to an inclination in favor of abstention, such as a state request for abstention when there are identifiable, particularly strong state interests such as monetary claims against the state or questions concerning ownership of land, but national courts still have the obligation to carry out their own jurisdictional responsibilities. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 158 (Pon. 2006).

A national court may not abstain from exercising its constitutional jurisdiction when it is directly faced with a constitutional issue and surely may never abstain completely from exercising jurisdiction in a case where there remains to be resolved a substantial issue under the national constitution. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 159 (Pon. 2006).

When the case does not involve a question of land ownership, although land use rights are involved because the fairness and constitutionality of the process by which those rights were granted, is the central issue; when trying to separate the national constitutional issues from the state law issues would be difficult and impractical and would also cause considerable delay; and when abstaining from those parts of the case which do not involve interpretation of the FSM Constitution due process clause (and the FSM civil rights statute) and separating it from the rest of the case would be difficult and impractical and cause unreasonable delay, the factors that favor the court's retention of the case outweigh those that favor abstention. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 159 (Pon. 2006).

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).

That unsettled state law issues are involved in a case about the Lt. Governor's proclamation concerning a municipal election is insufficient grounds to dismiss the case, especially when a significant body of state law has already developed around the Governor's powers over municipal governments. Esa v. Elimo, 14 FSM R. 216, 220 (Chk. 2006).

Generally, a motion for the FSM Supreme Court to abstain from all or part of a case should proceed as a post-answer motion, and not a motion in lieu of answer under FSM Civil Procedure Rule 12(b) since abstention is not one of the enumerated grounds for a Rule 12(b) motion. But when, in one of those rare instances, where the material facts are not in dispute and an answer would not help to identify or to narrow the factual issues since only legal matters are contested, it may be appropriate to permit an abstention motion without an answer. Narruhn v. Chuuk, 16 FSM R. 558, 561 (Chk. 2009).

Even cases which arise under the national Constitution sometimes call for deference to state courts. For example, courts generally strive to avoid unnecessarily or prematurely addressing issues of national constitutional law. A national court ordinarily should refrain from deciding a case in which state action is challenged as violating the national Constitution, if unsettled questions of state law may be dispositive and obviate the need for the constitutional determination. Under such circumstances, the national court may appropriately give the state court the opportunity to provide a definitive ruling as to state law. Narruhn v. Chuuk, 16 FSM R. 558, 562 (Chk. 2009).

When there are identifiable, particularly strong state interests, such as when there are monetary claims against the state or its agencies, the national courts should exercise restraint and look with sympathy upon a state request for abstention. Narruhn v. Chuuk, 16 FSM R. 558, 562 (Chk. 2009).

The likelihood of abstention, always discretionary, is increased when the state is a party; when the subject matter of the requested abstention is one involving local concerns that lie solidly within a state's sphere of interest; when the state has developed an administrative approach to deal with the specified issues; and when the issue presented is a "clean" legal issue, as opposed to a factual one. Narruhn v. Chuuk, 16 FSM R. 558, 562 (Chk. 2009).

When what constitutes property and interests in property is purely a matter of state law; when the strong state interests in fiscal autonomy militate in favor of abstention in lawsuits against the state for monetary damages; and when the state is attempting (finally) to develop an administrative approach and policies to address monetary claims against it and its debts (both matters solidly within the state's sphere of interest), all of these considerations favor abstention. Narruhn v. Chuuk, 16 FSM R. 558, 562 (Chk. 2009).

In a case arising under national law, the analysis must begin with an especially strong presumption against full abstention. Narruhn v. Chuuk, 16 FSM R. 558, 563 (Chk. 2009).

Although, in a case arising under national law, the analysis must begin with an especially strong presumption against full abstention, when the national law question cannot even be reached unless a purely state law question is first resolved in the plaintiff's favor and is thus wholly dependent upon favorable resolution of that issue first and since the national court ordinarily should refrain from deciding a case in which state action is challenged as violating the national Constitution, if unsettled questions of state law may be dispositive and obviate the need for the constitutional determination, the state court should be given an opportunity to resolve that issue first. Narruhn v. Chuuk, 16 FSM R. 558, 563 (Chk. 2009).

That claims in an FSM case might involve injunctive relief to enforce a state court order in aid of judgment is not an adequate basis to deny abstention or to even retain partial jurisdiction. Narruhn v. Chuuk, 16 FSM R. 558, 563 (Chk. 2009).

National court abstention or certification of issues may also be justified on occasion by a desire to avoid unsettling a delicate balance in national-state relationships. Narruhn v. Chuuk, 16 FSM R. 558, 564 (Chk. 2009).

The appellants' likelihood of success on their claim that the court should have abstained or certified their "novel issues" to the state court is virtually zero when they never moved for certification or abstention and when, even if they had, the court is not required to certify or abstain from every "unsettled" state law issue. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 270 (Pon. 2010).

The choice to abstain from hearing a case, like the decision to certify a question, lies wholly within the trial court's sound discretion, and this is reviewed on an abuse of discretion standard. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; when it is based on an erroneous conclusion of law; or when the record contains no evidence upon which the court could rationally have based its decision. Such abuses must be unusual and exceptional; an appeals court will not substitute its judgment for that of the trial judge. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

An appellant must show that there was an abuse of discretion for an appellate panel to reverse a trial court's order of abstention. Narruhn v. Chuuk, 17 FSM R. 289, 294 (App. 2010).

When a trial court's abstention order is well-reasoned and reaches no arbitrary or fanciful conclusions because the trial court provided a careful analysis of the questions before it and citation to the legal precedents on which it relied and no erroneous conclusions of law are apparent and the record contains sufficient evidence on which it could have rationally based its decision, there is no basis under the abuse of discretion standard by which to reverse the trial court. The trial court's decision to abstain was not an abuse of discretion. Narruhn v. Chuuk, 17 FSM R. 289, 296 (App. 2010).

When there are no clear due process rights to be preserved before the national trial court, the appellate court will not remand the matter to the trial court for modification that the trial court retain some jurisdiction over the case or to resume jurisdiction if the state court fails to act within a year. Narruhn v. Chuuk, 17 FSM R. 289, 297 (App. 2010).

Generally, although the national courts have primary responsibility in litigation under article XI, section 6(b), cases which arise under national law are distinguishable from diversity cases, and the courts should be more reluctant to abstain in cases arising under national law. It therefore follows that the national courts' jurisdiction in cases solely within article XI, section 6(b) by virtue of diversity of citizenship is far less compelling. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 (Pon. 2011).

When the national courts are asked to rule on areas of the law which fall within state powers and in which there are identifiable, particularly strong, state interests and particularly when a state is attempting to establish a coherent administrative policy in a complex field in which there is substantial public concern, abstention becomes increasingly appropriate. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 (Pon. 2011).

The point of abstention is not to identify a particular agency to resolve questions of state law, but to relinquish jurisdiction to avoid needless conflict with a state's administration of its own affairs. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 (Pon. 2011).

Because the plaintiffs' causes of action are rooted in questions of state law, and because the field of wage and hour laws is a complex one in which there is substantial public concern and in which the State of Pohnpei has the right to establish a coherent administrative policy, it is altogether appropriate for the FSM Supreme Court to relinquish jurisdiction through abstention. Villarena v. Abello-Alfonso, 18 FSM R. 100, 103 (Pon. 2011).

When the plaintiffs have not stated a claim based on national law on which the FSM Supreme Court may grant relief and when all that remains is state law, including state environmental regulations, they have not persuaded the court to retain the case, and the court will therefore abstain. Damarlane v. Damarlane, 18 FSM R. 177, 181 (Pon. 2012).

In order to accord respect to a Kosrae State Court criminal proceeding, the FSM Supreme Court will abstain from granting a petitioner's application for a writ habeas corpus when the petitioner is currently the subject of an ongoing criminal proceeding in the Kosrae State Court that has not reached final adjudication; when those proceedings afford the petitioner an opportunity to raise his constitutional claims; when the State has an important interest in protecting the public through criminal prosecutions; and when pre-conviction habeas corpus relief is being sought; when the state court remedies have not been fully exhausted; and when no extraordinary circumstances have been presented. In re Anzures, 18 FSM R. 316, 324-25 (Kos. 2012).

An appellate court reviews an abstention order on an abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Damarlane v. Damarlane, 19 FSM R. 97, 106 (App. 2013).

While a plaintiff's lawyer may misconceive the proper legal theory of the claim but the complaint shows that the plaintiff is entitled to some relief which the court can grant, regardless of whether it asks for the proper relief, the complaint is sufficient and will not be dismissed. This same principle applies to abstention – even if the plaintiff's lawyer has misconceived the legal theory as one under the environmental regulations rather than a common law tort, that misconception should not be the basis for a dismissal on abstention grounds. The court must consider the actual nature of the case pled. Damarlane v. Damarlane, 19 FSM R. 97, 107 (App. 2013).

The major rationale for abstention is that the state court is the better court to decide an issue which involves state powers and particularly strong, identifiable state interests. Certain circumstances give rise to an inclination in favor of abstention, such as a state request for abstention where there are identifiable, particularly strong state interests such as monetary claims against the state or questions concerning ownership of land, but national courts still have the obligation to carry out their own jurisdictional

responsibilities. Damarlane v. Damarlane, 19 FSM R. 97, 107 (App. 2013).

When unsettled areas of state law are the key to the case's resolution, abstention may also be appropriate if it would avoid unsettling a delicate balance in national-state relationships and would avoid threatening the state's fiscal autonomy. Damarlane v. Damarlane, 19 FSM R. 97, 107 (App. 2013).

None of the circumstances favoring abstention applies in a case where there is no state request for abstention; the state is not even a party; and none of its agencies or regulations is involved and the plaintiffs' factual allegations set forth an action between private parties based on two common law torts, nuisance and trespass, plus a breach of contract claim, none of which involves unsettled areas of state law. Damarlane v. Damarlane, 19 FSM R. 97, 107 (App. 2013).

Parties to a dispute within the scope of article XI, section 6(b) diversity jurisdiction have a constitutional right to invoke the FSM Supreme Court's jurisdiction and it is the solemn obligation of the court and all others within the Federated States of Micronesia to uphold the constitutional right to invoke national court jurisdiction under article XI, section 6(b). Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

While, when issues of national law are involved there is a particularly strong presumption against abstention, there is still a presumption against abstention when the court's jurisdiction is based solely on diversity of citizenship. As a general rule, the FSM Supreme Court trial division is obliged to exercise its jurisdiction and may not abstain simply because unsettled state law issues are presented. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

The FSM Supreme Court's solemn obligation to consider the interests and protect the rights of those who wish to invoke its constitutional jurisdiction counsels against the unfettered use of abstention. The benefit the Constitution secures to diverse parties is the right to litigate in national court. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

A diverse party's constitutional right to litigate in the FSM Supreme Court should not lightly be disregarded, and the FSM Supreme Court's discretionary power to abstain must be exercised carefully and sparingly. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

When evaluating a motion to abstain, the FSM Supreme Court must recall its responsibility to exercise its jurisdiction under article XI, section 6 of the Constitution, and a judge must not undertake the decision to abstain lightly, since the national courts do have responsibility to exercise their own jurisdiction under article XI, section 6 of the Constitution. The FSM court cannot foist off on the state courts difficult state law questions presented in cases within the FSM Supreme Court's jurisdiction. Damarlane v. Damarlane, 19 FSM R. 97, 108-09 (App. 2013).

Diversity cases where the causes of action are state law are not subject to abstention and dismissal at a judge's whim. That would make the constitutional right for diverse parties to litigate in the FSM Supreme Court an empty one. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

The presumption is always that the FSM Supreme Court will exercise its constitutionally-defined jurisdiction. For the trial court to abstain, this presumption must be overcome. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

Another court's assumption of jurisdiction should be made with restraint, cognizant of the limitation that if a court has already assumed jurisdiction over the matter, a second court will not interfere and assume in rem jurisdiction over the same res. In those cases, abstention may be the appropriate course of action. A probate matter filed only in national court, however, causes no such conflict. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

The FSM Supreme Court may and should abstain in a case where land use rights are at issue, where the state is attempting to develop a coherent policy concerning the disposition of public lands, where there

is a similar litigation already pending in state court, where the state requests abstention as defendant in an action which may expose it to monetary damages, where Congress has not asserted any national interests that may be affected by the litigation's outcome, and where abstention will not result in delay or injustice to the parties. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

When there is similar litigation involving the same parties and issues already pending in a state court, and a state court decision in that litigation would resolve all disputes between the parties, the risk of costly, duplicative litigation is an important factor for the FSM Supreme Court to consider in determining whether to abstain. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

When the case involves a leasehold of public land and is between a plaintiff with a recorded lease and an occupier of the lot; when the lessee's children have been added as third-party beneficiaries so this court would have diversity jurisdiction; when the usual third-party beneficiary claim is by a third-party beneficiary to a contract against a defendant who is one of the contracting parties; when the defendant is not a party to any contract of which the lessee's children would be third-party beneficiaries; when there already is a pending case in the Pohnpei Supreme Court over possession of the leasehold lot; and when the parties may have a remedy in the Pohnpei Supreme Court appellate division through mandamus or procedendo for the trial division's neglect or dilatory behavior, the FSM Supreme Court will abstain from the case. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

The exclusive nature of the national court jurisdiction is such that the FSM Supreme Court does not have the power to abstain from admiralty and maritime cases. Gilmete v. Peckalibe, 20 FSM R. 444, 448 (Pon. 2016).

– Certification to State Court

Where litigation in which a state of the Federated States of Micronesia is a defendant involves an issue concerning the meaning of a provision of the state Constitution, and the parties in that litigation request that the issue of the meaning of the provision be certified to the supreme court of the state, it is an appropriate exercise of the inherent powers of the FSM Supreme Court to devise a procedure for tendering the issue to the state supreme court, so long as the state court approves. Panuelo v. Pohnpei (III), 2 FSM R. 244, 246 (Pon. 1986).

The factors to be considered in the decision about whether the FSM Supreme Court should certify an issue to the state supreme court include: possible harm to the party seeking relief; the likelihood of significant delay; and the objections raised by the opposing party. Hadley v. Kolonia Town, 3 FSM R. 101, 103 (Pon. 1987).

Certification of appropriate issues to the Pohnpei Supreme Court appellate division by the FSM Supreme Court is consistent with the interaction between state and national courts, as contemplated by the FSM Const. art. XI, §§ 7, 8, 10, and as interpreted in earlier case law. Hadley v. Kolonia Town, 3 FSM R. 101, 103-04 (Pon. 1987).

The FSM Supreme Court has earlier explained that in the interests of judicial harmony and out of respect for state sovereignty, it is an appropriate exercise of the FSM Supreme Court's inherent powers to devise a procedure for tendering state constitutional issues to the state courts, so long as the state court approves. Hadley v. Kolonia Town, 3 FSM R. 101, 104 (Pon. 1987).

The FSM Supreme Court trial division is required to decide all national law issues presented to it. Certification to state court is only proper for state or local law issues. Edwards v. Pohnpei, 3 FSM R. 350, 354 (Pon. 1988).

The FSM Constitution, article XI, section 8, as well as general principles of federalism and considerations of judicial harmony, give the FSM Supreme Court power to certify state law issues to state courts. Edwards v. Pohnpei, 3 FSM R. 350, 361 (Pon. 1988).

Considerations of federalism and state sovereignty create a presumption in litigation when a state is defendant in an action for money damages that a request by the state defendant for certification to state court of unresolved and significant issues of state law will be granted. Edwards v. Pohnpei, 3 FSM R. 350, 362 (Pon. 1988).

While the FSM Supreme Court may certify legal issues in a case before it to the highest state court, questions which require application of law to facts may not be certified. Edwards v. Pohnpei, 3 FSM R. 350, 363 (Pon. 1988).

Certification of issues to other courts typically causes delay and increases the cost of litigation and therefore should be employed only for unsettled legal issues. Edwards v. Pohnpei, 3 FSM R. 350, 363 (Pon. 1988).

FSM Supreme Court's trial division does not lose jurisdiction over a case merely because land issues are involved, but if such issues are presented, certification procedures may be employed to avoid encroachment upon state decision-making prerogatives. Bank of Guam v. Semes, 3 FSM R. 370, 381 (Pon. 1988).

There are no statutory or constitutional obligations which require the FSM Supreme Court to abstain or certify questions merely because unsettled matters of state law are at issue. Pryor v. Moses, 4 FSM R. 138, 141 (Pon. 1989).

The choice of whether to abstain from a decision or certify questions is one that lies wholly within the discretion of the FSM Supreme Court, and the judge must not undertake that decision lightly. Pryor v. Moses, 4 FSM R. 138, 141 (Pon. 1989).

The list of areas in which the FSM Supreme Court will consider it appropriate to liberally defer to state courts must be open and flexible, responding to the particular state of legal and social development in Micronesia, and when issues important to Micronesians become the focus of concerted state efforts to establish a coherent body of law, the FSM Supreme Court will take those developments into account in evaluating requests for certification or abstention. Pryor v. Moses, 4 FSM R. 138, 142 (Pon. 1989).

Where two private parties are involved, special considerations of state sovereignty are not as weighty in considering requests for abstention or certification, and the FSM Supreme Court normally should attempt to resolve all issues presented, even when matters of state law are involved. Pryor v. Moses, 4 FSM R. 138, 143 (Pon. 1989).

Because it is appropriate to seek to develop legal standards through careful consideration of every individual case and all its attendant facts, to certify questions of law in a factual vacuum as a regular and frequent practice ill serves the primary purpose of the courts to address the justice of each separate case. Pryor v. Moses, 4 FSM R. 138, 144-45 (Pon. 1989).

In a case where there is no state party and no issues of land or other matters crucial to state interests for which the state is actively developing policy and law, the healthy and efficient administration of justice demands that the FSM Supreme Court fulfill its duty to exercise jurisdiction and refuse to abstain or certify issues. Pryor v. Moses, 4 FSM R. 138, 145 (Pon. 1989).

In a case where there is no state party and no issues of land or other matters crucial to state interests for which the state is actively developing policy and law, the healthy and efficient administration of justice demands that the FSM Supreme Court fulfill its duty to exercise jurisdiction and refuse to abstain or certify issues. Pryor v. Moses, 4 FSM R. 138, 145 (Pon. 1989).

The national courts, in carrying out their judicial responsibilities, do have inherent power to certify issues, or to abstain partially or completely from exercising jurisdiction in a particular issue or to exercise

jurisdiction over part or all of a case. Gimnang v. Yap, 5 FSM R. 13, 19 (App. 1991).

In a case arising under national law there is an especially strong presumption against full abstention, and there is a serious question whether the trial division of a national court may ever certify a question of national law to a state court for decision unless it can reasonably be expected that the particular claim can be resolved entirely through the application of state law. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67C (Pon. 1991).

Although it may be appropriate to defer to state courts the resolution of land related state law issues, abstention and certification of issues should not be allowed to thwart the more fundamental goal and obligation of the judicial system to render just decisions in a speedy fashion at a minimum of costs to litigants and society alike. Therefore a reasonable balance must be sought between responsiveness to state interests and the obligation of the national courts to carry out their own jurisdictional responsibilities. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67D (Pon. 1991).

Where a case requires decisions as to the rights of owners of land in Pohnpei, it is appropriate that these issues be certified for presentation to the Pohnpei Supreme Court if it can be done without undue expense to the litigants, or extended delay. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67F (Pon. 1991).

If national court jurisdiction exists the national court should promptly grant the petition to remove. Thereafter the national court can entertain a motion to abstain or to certify specific issues to the state court. Proceedings in the national court do not have to stop while a certified issue is presented to a state court. Etscheit v. Adams, 5 FSM R. 243, 246 (Pon. 1991).

Where there is a long delay in moving for certification of an issue and it appears the motion's sole purpose is to cause further delay, the doctrine of laches may bar the granting of the motion. Youngstrom v. Youngstrom, 5 FSM R. 335, 337-38 (Pon. 1992).

The circumstance that decisions of the Appellate Division of the Chuuk State Supreme Court may be appealed to the Appellate Division of the FSM Supreme Court and the method chosen by the sovereign State of Chuuk to select members of their appellate panels will not foreclose the FSM Supreme Court trial division from certifying a question to the Chuuk State Supreme Court Appellate Division where there are other elements in favor of certification. Stinnett v. Weno, 6 FSM R. 478, 479-80 (Chk. 1994).

Certification of questions to a state court is appropriate where the decision of the state court on state law may be dispositive, eliminating the need to address the FSM Constitutional issues and where important questions as to the source of authority of one of its political subdivisions to impose a tax and the nature of the exercise of municipal taxing authority are involved. Stinnett v. Weno, 6 FSM R. 478, 480 (Chk. 1994).

Considerations of federalism and local self-government lead to the utility of certification. Stinnett v. Weno, 6 FSM R. 478, 480 (Chk. 1994).

Certification to a state court does not prevent the FSM Supreme Court from addressing the FSM constitutional issues if that becomes necessary. Stinnett v. Weno, 6 FSM R. 478, 480 (Chk. 1994).

Where the validity of a municipal tax ordinance is questioned under the state constitution and right of the taxpayer to a refund it is appropriate for the FSM Supreme Court to certify the question to the appellate division of the state court. Chuuk Chamber of Commerce v. Weno, 6 FSM R. 480, 481 (Chk. 1994).

Unlike abstention, when a national court certifies a state law issue it poses specific questions to the appellate division of the state court. Gimnang v. Trial Division, 6 FSM R. 482, 485 (App. 1994).

The choice of whether to abstain from a decision or to certify questions is one that lies wholly within the discretion of the trial court. Gimnang v. Trial Division, 6 FSM R. 482, 485 (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).

National courts are not required to certify to state courts state law issues of first impression. Whether to certify a question to state court is left to the sound discretion of the trial court on a case by case basis. Youngstrom v. Youngstrom, 7 FSM R. 34, 36 (App. 1995).

A most important issue in determining whether to certify an issue to state court is whether it will result in undue delay and whether that delay will prejudice a party. Youngstrom v. Youngstrom, 7 FSM R. 34, 36 (App. 1995).

Extension of the presumption of abstention in certain cases to municipalities is inappropriate. Conrad v. Kolonia Town, 7 FSM R. 97, 101 (Pon. 1995).

Only "clean" questions of law are appropriate for certification, not questions of fact or mixed questions of law and fact. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

The decision to certify a question to a state court lies wholly within the sound discretion of the trial court. Thus the standard of review of the decision not to certify a question is whether the trial court abused its discretion. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

The FSM Supreme Court is not obligated to certify every unsettled issue of state law, and it does have a constitutional obligation to exercise its own jurisdiction, but there may be a preference for referring a matter to state court when the state court's decision on an unsettled matter of state law would be dispositive and obviate the need for an adjudication of the national constitution. Nanpei v. Kihara, 7 FSM R. 319, 322 (App. 1995).

Certification as practiced in the FSM is a judicially devised procedure that is entirely discretionary with the court. Weno v. Stinnett, 9 FSM R. 200, 209 (App. 1999).

Just as the trial court could exercise its discretion to certify the questions on its own motion, it could properly exercise that discretion to grant plaintiffs' unopposed motion to withdraw the certification after nearly a year had elapsed without any indication from the Chuuk state court appellate division that it would hear the question. Weno v. Stinnett, 9 FSM R. 200, 209 (App. 1999).

Events transpiring in other litigation before the Chuuk State Supreme Court trial division did not have the capacity, by their mere occurrence, to create reversible error in a different case before a different court. The FSM trial court was not obliged to be aware of and draw inferences from those events, which did not constitute controlling precedent, in order to discern the Chuuk State Supreme Court appellate division's mind with respect to the certification question. When Chuuk State Supreme Court appellate division did not speak to the certification issue, the FSM Supreme Court trial division properly exercised its discretion to withdraw the certification. Weno v. Stinnett, 9 FSM R. 200, 209-10 (App. 1999).

A motion to certify issues to a state court may be denied when there is an absence of legal authority in the movant's memorandum and when the issues are imprecisely and inaccurately defined. Island Cable TV v. Gilmete, 9 FSM R. 264, 266-67 (Pon. 1999).

A court is hesitant to initiate the somewhat cumbersome certification procedure until it is satisfied that putative issues raised exist, and that they have been precisely defined. Island Cable TV v. Gilmete, 9 FSM R. 264, 266-67 (Pon. 1999).

A strong presumption exists under FSM law for deferring land matters to local land authorities, along with federalism principles and concerns for judicial harmony. The FSM Supreme Court can certify such

questions of state law to the state courts. But when, if the equitable or mechanic's lien claims had been presented in the original complaint, the court could then have certified the questions to the state court to determine whether such liens exist under state law and when the original complaint's factual allegations support such claims, there was no reason why that claim could not have been made then with discovery on-going while the state court considered the question. But when, considering the circumstances, it has become too late to bring this claim, a motion to amend the complaint to add a declaratory judgment claim that the plaintiffs have such a lien will be denied. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 233 (Pon. 2002).

Although the national courts, in carrying out their judicial responsibilities, do have inherent power to certify issues, or to abstain partially or completely from exercising jurisdiction over a particular issue, or to exercise jurisdiction over part or all of a case; and although the trial court may raise the question of abstention or certification on its own motion; it is not mandatory that the court do so. And even if such a motion had been made, the choice of whether to abstain from a decision or to certify questions is one that lies wholly within the trial court's discretion. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

When no motion to abstain or to certify a question to the state court was made, the trial court could not abuse its discretion by not abstaining from deciding or by not certifying the ownership question to the state court. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

National court abstention or certification of issues may also be justified on occasion by a desire to avoid unsettling a delicate balance in national-state relationships. Narruhn v. Chuuk, 16 FSM R. 558, 564 (Chk. 2009).

The appellants' likelihood of success on their claim that the court should have abstained or certified their "novel issues" to the state court is virtually zero when they never moved for certification or abstention and when, even if they had, the court is not required to certify or abstain from every "unsettled" state law issue. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 270 (Pon. 2010).

The choice to abstain from hearing a case, like the decision to certify a question, lies wholly within the trial court's sound discretion, and this is reviewed on an abuse of discretion standard. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

The choice to abstain from hearing a case, like the decision to certify a question, lies wholly within the trial court's sound discretion, and this is reviewed on an abuse of discretion standard. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

When no motion to certify was ever made, the trial court could not abuse its discretion by not certifying a question to the state court. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

– National/State Power

There appears nothing of an indisputably national character in the power to control all lesser crimes. FSM v. Boaz (II), 1 FSM R. 28, 32 (Pon. 1981).

The Trust Territory High Court's former exclusive jurisdiction over lawsuits against the Trust Territory government has been delegated to the constitutional governments covered by Secretarial Order 3039. Within the Federated States of Micronesia, the allocation of this former exclusive High Court jurisdiction between the Supreme Court of the Federated States of Micronesia and the various state courts will be determined on the basis of jurisdictional provisions within the Constitution and laws of the Federated States of Micronesia and its respective states. Lonno v. Trust Territory (I), 1 FSM R. 53, 68 (Kos. 1982).

The Federated States of Micronesia Supreme Court is specifically given jurisdiction over disputes between citizens of a state and foreign citizens. FSM Const. art. XI, § 6(b). This jurisdiction is based upon the citizenship of the parties, not the subject matter of their dispute. In re Nahnsen, 1 FSM R. 97, 101

(Pon. 1982).

The Constitution places diversity jurisdiction in the Supreme Court, despite the fact that the issues involve matters within state or local, rather than national, legislative powers. In re Nahnsen, 1 FSM R. 97, 102 (Pon. 1982).

The power to regulate probate of wills or inheritance of property is not "beyond the power of a state to control" within the meaning of article VIII, section 1 of the Constitution and is consequently a state power. Nothing about the power to regulate probate or inheritance suggests that these are beyond the power of a state to control. In re Nahnsen, 1 FSM R. 97, 107 (Pon. 1982).

State officials generally should have greater knowledge of use, local custom and expectations concerning land and personal property. They should be better equipped than the national government to control and regulate these matters. The Constitution's framers specifically considered this issue and felt that powers of this sort should be state powers. In re Nahnsen, 1 FSM R. 97, 107, 109 (Pon. 1982).

The allocation of judicial authority is made on the basis of jurisdiction, generally without regard to whether state or national powers are at issue. In re Nahnsen, 1 FSM R. 97, 108 (Pon. 1982).

The prosecution of criminals is not a power having indisputably national character. Truk v. Hartman, 1 FSM R. 174, 178 (Truk 1982).

Exclusive national government jurisdiction over major crimes is not mandated by the Constitution; such jurisdiction would be exclusive in any event only if criminal jurisdiction was a power of indisputably national character. Truk v. Hartman, 1 FSM R. 174, 181 (Truk 1982).

When jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative powers of states (e.g., probate, inheritance an land issue) may be involved. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 396 (Pon. 1984).

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).

There is nothing absurd about a weapons control scheme that recognizes that both the national and the state governments have an interest in controlling the possession, use and sale of weapons. While Congress and the states may eventually wish to allocate their respective roles with more precision, the current Weapons Control Act appears to provide a workable system during these early years of transition and constitutional self-government. Joker v. FSM, 2 FSM R. 38, 44 (App. 1985).

The Weapons Control Act seems well attuned to the recognition of shared national-state interest in maintaining an orderly society and the goal of cooperation in law enforcement as reflected in the Major Crimes Clause, article IX, section 2(p) of the Constitution as well as the Joint Law Enforcement Act, 12 F.S.M.C. 1201. Joker v. FSM, 2 FSM R. 38, 44 (App. 1985).

Major crimes obviously were not viewed by the framers as simply a local or state problem. The Major Crimes Clause undoubtedly reflects their judgment that the very integrity of this new nation could be threatened if major crimes could be committed with impunity in any part of the nation, with the national government forced helplessly to stand aside. Tammow v. FSM, 2 FSM R. 53, 58 (App. 1985).

The framers of the Constitution stipulated that the line for determining whether a crime is major be drawn on the basis of severity or gravity of the crime rather than by reference to principles of federalism developed under the Constitution of the United States. Tammow v. FSM, 2 FSM R. 53, 58 (App. 1985).

The scope of state police powers under the FSM Constitution must be determined by reference to the powers of the national government under the Major Crimes Clause. It follows that legitimate exercise of the national government power to define major crimes cannot be viewed as an unconstitutional encroachment upon the police powers of the states. Tammow v. FSM, 2 FSM R. 53, 59 (App. 1985).

The members of the Micronesian Constitutional Convention obviously did not believe the Major Crimes Clause was improperly at odds with their general view that governmental power should be less centralized under the FSM Constitution than it had been in Trust Territory days. Tammow v. FSM, 2 FSM R. 53, 59 (App. 1985).

The power to impose taxes, duties, and tariffs based on imports is a national, not a state, power and where Congress has exercised the power and shares the revenues with the states, a state may not also impose an additional import tax. Wainit v. Truk (II), 2 FSM R. 86, 88 (Truk 1985).

The nature of the expressly delegated powers in article IX, section 2, of the Constitution – including the powers to impose taxes, to provide for the national defense, ratify treaties, regulate immigration and citizenship, regulate currency, foreign commerce and navigation, and to provide for a postal system – strongly suggests that they are intended to be the exclusive province of the national government, since they call for a uniform nationally coordinated approach. Innocenti v. Wainit, 2 FSM R. 173, 181-82 (App. 1986).

The Pohnpei State Constitution was established under the authority granted by article VII, section 2 of the Constitution of the Federated States of Micronesia which mandates that a state shall have a democratic constitution and also Pohnpei State Law No. 2L-131-82, section 9, which mandated the Pohnpei State Constitutional Convention "to draft a constitution for the State of Ponape . . . [that] shall make adequate provisions for the exercise of legislative, judicial and executive functions, and shall guarantee to all citizens of the State, a democratic form of government." People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 8-9 (Pon. S. Ct. Tr. 1985).

Congress, under section 5 of article XV, had the power to provide for transition from government under the Trusteeship to government under the Constitution of the Federated States of Micronesia. Pohnpei v. Mack, 3 FSM R. 45, 49 (Pon. S. Ct. Tr. 1987).

Trust Territory statutes applicable to the states became part of the state's laws, regardless of whether they were published in the FSM Code. Such holdover Trust Territory laws become laws of the states until superseded. Pohnpei v. Mack, 3 FSM R. 45, 55 (Pon. S. Ct. Tr. 1987).

All Trust Territory statutes that were applicable to the State of Pohnpei prior to Pub. L. No. 2-48 and immediately before November 8, 1984, the effective date of the Pohnpei State Constitution, and which have not been amended, superseded, or repealed, are laws of the State of Pohnpei. Section 3 of S.L. 3L-33-84 made those Trust Territory statutes into laws of the State of Pohnpei, and that includes Title 15 of the Trust Territory Code. Pohnpei v. Mack, 3 FSM R. 45, 55 (Pon. S. Ct. Tr. 1987).

Determination as to whether a statute is a state or national law must be made on a statute-by-statute or a section-by-section basis. Edwards v. Pohnpei, 3 FSM R. 350, 355 (Pon. 1988).

The fact that Congress included a particular law in the FSM Code does not indicate conclusively whether the law is to be applied by this court as part of national law, for some parts of the Code were intended to apply only to the Trust Territory High Court in its transitional role until state courts were established. Edwards v. Pohnpei, 3 FSM R. 350, 356 (Pon. 1988).

If a power is not enumerated in the Constitution, the likelihood is that the framers intended it to be a state power, for the only unexpressed powers which may be exercised by the national government are powers of "such an indisputably national character as to be beyond the power of a state to control." FSM Const. art. VIII, § 1. Edwards v. Pohnpei, 3 FSM R. 350, 357 (Pon. 1988).

Primary lawmaking powers for the field of torts lie with the states, not with the national government, but the national government may have an implied power to regulate tort law as part of the exercise of other general powers. Edwards v. Pohnpei, 3 FSM R. 350, 359 (Pon. 1988).

Wrongful death statutes, including the $100,000 ceiling on wrongful death claims, are part of the law of the states and are not national law. Edwards v. Pohnpei, 3 FSM R. 350, 359 (Pon. 1988).

A FSM Supreme Court decision applying state law in a case before it is final and res judicata; but if in a subsequent case a state court decides the same issue differently, the state decision in that subsequent case is controlling precedent and the national courts should apply the state court rule in future cases. Edwards v. Pohnpei, 3 FSM R. 350, 360 n.22 (Pon. 1988).

Lack of mention of state and local courts in FSM Constitution article XI, section 6(b) reveals that national courts are to play the primary role in handling the kinds of cases identified in that section, but nothing in article XI, section 6(b) may be read as absolutely preventing state courts from exercising jurisdiction over those kinds of cases. Bank of Guam v. Semes, 3 FSM R. 370, 379 (Pon. 1988).

Parties to a dispute in which there is diversity have a constitutional right to invoke the jurisdiction of a national court, but if all parties agree, and if state law permits, a state court may hear and decide the kinds of cases described in article XI, section 6(b) of the Constitution. Bank of Guam v. Semes, 3 FSM R. 370, 379 (Pon. 1988).

Article XI, section 6(c) of the Constitution places authority to prescribe jurisdiction only in the national Congress, and not in state legislatures. Bank of Guam v. Semes, 3 FSM R. 370, 379 (Pon. 1988).

Failure to mention national courts in section 25 of the Pohnpei State Real Property Mortgage Act should not be read as an attempt to deprive litigants of access to the FSM Supreme Court's trial division. Bank of Guam v. Semes, 3 FSM R. 370, 380 (Pon. 1988).

A lawsuit to enforce a mortgage is an attempt to enforce a type of lien against a delinquent debtor. Such a case bears a relationship to the power to regulate "bankruptcy and insolvency," which the Constitution in article IX, section 2(g), places in the national Congress. Bank of Guam v. Semes, 3 FSM R. 370, 381 (Pon. 1988).

The national Constitution does not prohibit state courts from hearing cases described in article XI, section 6(b) if all parties accept state court jurisdiction, but parties to a dispute within scope of article XI, section 6(b) have a constitutional rights to invoke jurisdiction of FSM Supreme Court trial division. U Corp. v. Salik, 3 FSM R. 389, 392 (Pon. 1988).

The intent of framers of the Constitution was that national courts would handle most types of cases described in article XI, section 6(b) of the Constitution and national courts therefore should not lightly find a waiver of right to invoke its jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 394 (Pon. 1988).

Under the Constitution of the Federated States of Micronesia, the national government, not the state governments, assumes any "right, obligation, liability, or contract of the government of the Trust Territory." Salik v. U Corp. (I), 3 FSM R. 404, 407 (Pon. 1988).

Powers not expressly delegated to the national government nor prohibited to the states are state powers. FSM Const. art. VIII, § 2. FSM v. Oliver, 3 FSM R. 469, 473 (Pon. 1988).

The fact that control over marine areas within the twelve-mile zone is not mentioned in the Constitution is a strong indication that the framers intended the states to control ownership and use of marine resources within that area. FSM v. Oliver, 3 FSM R. 469, 473 (Pon. 1988).

Regulatory power beyond twelve miles from island baselines lies with the national government. FSM v. Oliver, 3 FSM R. 469, 479 (Pon. 1988).

Decision making concerning allocation of functions as state and national roles falls most squarely within the role of Congress, for Congress is the most political branch of the national government and is best suited to resolve policy issues. In re Cantero, 3 FSM R. 481, 484 (Pon. 1988).

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).

No jurisdiction is conferred on state courts by article XI, section 6(b) of the FSM Constitution, but neither does the diversity jurisdiction of section 6(b) preclude state courts from acting under state law, unless or until a party to the litigation invokes national court jurisdiction. Hawk v. Pohnpei, 4 FSM R. 85, 89 (App. 1989).

In the course of the formation of the FSM, the allocation of responsibilities between states and nation was such that the impact of the national courts in criminal matters was to be in the area of major crimes and as the ultimate arbiter of human rights issues. Hawk v. Pohnpei, 4 FSM R. 85, 93 (App. 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).

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).

Under traditional constitutional analysis, taxpayers' efforts to recover tax moneys unlawfully extracted from them by a state may be relegated to state procedures and decision-makers so long as there is a reasonable procedure under state law whereby the taxpayer may obtain meaningful relief. Gimnang v. Yap, 5 FSM R. 13, 23-24 (App. 1991).

The power of the national government under article IX, section 2(e) of the Constitution, "to impose taxes on income," is an exclusive national power that may not be exercised by the states. Youngstrom v. Kosrae, 5 FSM R. 73, 74 (Kos. 1991).

The Kosrae transaction tax of KC 9.301 is a selective tax rather than an income tax and is not an encroachment upon the national government's exclusive power to tax income. Youngstrom v. Kosrae, 5 FSM R. 73, 76 (Kos. 1991).

Under national law, the governor of a state is the allottee for all Compact of Free Association funds unless he delegates in writing his right to be allottee, so where a state statute allots such funds to the legislative branch without written delegation from the governor, the statute violates national law. Gouland v. Joseph, 5 FSM R. 263, 265 (Chk. 1992).

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).

The scheme of national, constitutionally-authorized foreign investment legislation is so pervasive there is no room for the state to supplement it. Non-FSM citizen attorneys and their private practice of law are expressly subjected to the national legislative scheme. Insofar as attorneys who are engaged in the private practice of law and whose business activities are within the scope of the national FIA, the state FIA is invalid. Berman v. Pohnpei, 5 FSM R. 303, 306 (Pon. 1992).

Although the FSM Supreme Court has the constitutional power to use its discretion to review a case from a state trial court, generally, proper respect for the state court requires that state appeal rights be exhausted before the FSM Supreme Court would grant appellate review especially when important state interests are involved. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 322, 324 (App. 1992).

The FSM Constitution distinguishes national powers from state powers, FSM Const. art. VIII. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 69 (Pon. 1993).

If a power is of an indisputable national character such that it is beyond the state's power to control, then that power is to be considered a national power, even though it is not an express power granted by the Constitution. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 70-71 (Pon. 1993).

A state power can be concurrently national to the extent that the state cannot adequately exercise that power in the manner in which it is intended either by statute or by or constitutional framework for circumstances not foreseen by the framers of our Constitution. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 72 (Pon. 1993).

To the extent that the state is unable to police its waters and enforce its fishing regulations of its own, the national government has an obligation to provide assistance. However, to the extent that the national government must provide assistance, the power to regulate state waters is beyond the state's control and is in fact a concurrent national power. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 73 (Pon. 1993).

A condition on an MMA fishing permit which prohibits fishing within 12 miles of the FSM unless authorized by the state which has jurisdiction is an exercise of the national government's unexpressed concurrent national power. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 73 (Pon. 1993).

Nothing in the FSM constitutional framework suggests that a state can unilaterally avoid the effect of a valid international agreement, constitutionally arrived at, between the Federated States of Micronesia and another nation. In re Extradition of Jano, 6 FSM R. 93, 103-04 (App. 1993).

The national government has the exclusive power to tax income and imports. The power to levy other taxes, unless specifically barred by the Constitution, is an exclusive state power. Sigrah v. Kosrae, 6 FSM R. 168, 169-70 (App. 1993).

A transaction tax oriented toward individual transactions and not total income, and only triggered by the transactions it covers, even though paid by the vendor, is analogous to a selective sales tax and is not an unconstitutional encroachment on the national government's exclusive power to tax income. Sigrah v. Kosrae, 6 FSM R. 168, 170 (App. 1993).

Comity, the respect of one sovereign for another, and respect for state sovereignty are important principles. Pohnpei v. Ponape Constr. Co., 6 FSM R. 221, 222-23 (App. 1993).

A Chuuk state tax on a lessor or landowner who rents or leases land, building or housing unit, for residential, or office space, or other use is not an unconstitutional encroachment on the national government's exclusive power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 6 FSM R. 310, 311 (Chk. 1994).

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 absence of an express grant of authority to the national government to regulate marine resources within twelve miles of island baselines indicates the framers' intention that states have control over these resources. However, the state authority to regulate marine resources located within twelve miles of island baselines is primary but not exclusive. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 598 (Pon. 1994).

The nonexclusive constitutional grant to the states of regulatory power over marine resources located within twelve miles of island baselines cannot be read as creating exclusive state court jurisdiction over marine resources within the twelve mile limit. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 598-99 & n.7 (Pon. 1994).

The framers of the FSM Constitution favored state control over marine resources within twelve miles of island baselines. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 601 (Pon. 1994).

Even when a national court places itself in the shoes of the state court and interprets state law, the state court is always the final arbiter of the meaning of a state law. State court interpretations of state law which contradict prior rulings of the national courts are controlling. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 601 (Pon. 1994).

A fishing permit issued by the national government prohibiting fishing in state waters unless authorized by the state which has jurisdiction does not constitute regulation of state waters by the national government because it merely tries to prevent a vessel that fishes illegally in state waters from continuing to fish in national waters. FSM v. Hai Hsiang No. 63, 7 FSM R. 114, 116 (Chk. 1995).

Only the national government may constitutionally tax income. The states' taxing power does not include the power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 119 (App. 1995).

If a state wishes to obtain funding from a consumption tax, it can avoid a constitutional confrontation by making the taxable incident the sale or rental transaction, and by expressing the requirement that the tax be paid by the consumer. Therefore a state tax on the gross rental receipts of a landlord is an unconstitutional tax on income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 120 (App. 1995).

Among the powers reserved to the states is the control of administration and policy-making of all branches of state government. Berman v. Santos, 7 FSM R. 624, 626 (App. 1996).

The Constitution reserves to the states all powers not prohibited to them or expressly delegated to the national government or of such indisputably national character as to be beyond the power of a state to control. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 672 (App. 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).

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).

Article IX, section 2(m) of the FSM Constitution expressly grants to the FSM Congress the power to regulate the ownership, exploration, and exploitation of natural resources beyond 12 miles from island baselines. Chuuk v. Secretary of Finance, 8 FSM R. 353, 368 (Pon. 1998).

The line between national and state power in a particular area of government is not always clear, and must be carefully and thoughtfully drawn. Chuuk v. Secretary of Finance, 8 FSM R. 353, 369 (Pon. 1998).

Although article IX, section 2(m) of the Constitution does not expressly state how revenues derived from regulatory activities in the EEZ should be distributed, the FSM Congress constitutionally is empowered to collect and distribute fishing fees as implied or incidental to the express grant of power in article IX, section 2(m), and that discretion over the ultimate division or appropriation of the fishing fees rests with the FSM national government. Chuuk v. Secretary of Finance, 8 FSM R. 353, 369-70 (Pon. 1998).

All express powers delegated to the national government contain within them innumerable incidental or implied powers. Chuuk v. Secretary of Finance, 8 FSM R. 353, 370 (Pon. 1998).

Each of the express powers delegated to the national government in Article IX of the FSM Constitution include the full authority for the national government to enact legislation and engage in activities necessary to exercise that express power. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

The express grant of power to the national government to regulate the ownership, exploration, and exploitation of natural resources, implicitly includes the power of the national government to collect revenues that are generated as a result. Thus, the national government has the authority to enact legislation related to offshore marine resources, including legislation related to collection and distribution of revenues derived therefrom. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

To empower the national government to regulate ownership and exploitation of fishery resources within the EEZ, without the power to collect and distribute revenues derived from these regulatory functions, would violate the intention of the Constitution's framers and unduly limit the national government in the exercise of its exclusive power over natural resources in the area beyond 12 miles from the island baselines. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

Since the national government has the express authority to regulate the ownership, exploration, and exploitation of fishery resources in the EEZ, the power to promulgate legislation which generates revenue from the regulation of these resources and provides for collection and distribution of such revenue, is incidental to or implied in the express grant. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

The Constitution's framers intended to vest complete control of the EEZ in the national government, and the expressed intent of legislation passed by the Interim Congress which terminated the practice of distributing fishing fees from the EEZ to the districts, or states, was to bring certain provisions of the Fishery Zone legislation into conformity with the provisions of the FSM Constitution and the powers granted to the national government under the Constitution. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371-74 (Pon. 1998).

That the states currently are dissatisfied with the national government's power over the fishing fees does not change the constitutional division of powers that each of the states agreed to when it ratified the FSM Constitution and entered the Federated States of Micronesia. The states clearly delegated all power over offshore fishing resources beyond 12 miles from their baselines to the national government in the Constitution. Thus, the FSM has the power to collect and distribute the fishing fees under article IX, section 2(m). Chuuk v. Secretary of Finance, 8 FSM R. 353, 374 (Pon. 1998).

The national government's authority to collect and distribute the fishing fees derived from the FSM EEZ is indisputably of a national character and beyond the ability of a single state to control because of the numerous national powers which the national government is required to exercise in order to effectively regulate and control the FSM EEZ and because the individual states are incapable of regulating and controlling the EEZ. Chuuk v. Secretary of Finance, 8 FSM R. 353, 374-75 (Pon. 1998).

Management and control of the FSM's fishing resources in its EEZ requires the national government to exercise its exclusive treaty powers under article IX, section 2(b) of the FSM Constitution. The FSM national government has specific international rights, and has undertaken specific international obligations, with respect to its EEZ under certain treaties. Chuuk v. Secretary of Finance, 8 FSM R. 353, 375 (Pon. 1998).

Negotiating fishery agreements with foreign governments and foreign companies necessarily involves foreign affairs, another exclusive national power. Chuuk v. Secretary of Finance, 8 FSM R. 353, 375 (Pon. 1998).

The process of determining the appropriate level of the fishing fees, the best method to collect the fishing fees, and ultimately how to distribute the fishing fees, is indisputably of a national character. Thus the national government, not the states, has the power to collect and distribute the fishing fees. Chuuk v. Secretary of Finance, 8 FSM R. 353, 375 (Pon. 1998).

That Congress has legislated sharing revenues from fines and forfeitures with the states and that each of the states has a delegate on the Board of the MMA is not an admission or indication that the states are the owners of the underlying resources. Chuuk v. Secretary of Finance, 8 FSM R. 353, 376 (Pon. 1998).

The Law of the Sea Convention first recognized that the Federated States of Micronesia as a nation has the exclusive right to exploit resources in its 200-mile EEZ. The FSM Constitution was drafted to vest authority over the EEZ in the national government with this in mind. Chuuk v. Secretary of Finance, 8 FSM R. 353, 378 & n.19 (Pon. 1998).

Issues related to the EEZ cannot be determined by relying on custom and tradition, as the commercial value of the EEZ to the Federated States of Micronesia was first realized when the nation acceded to the Law of the Sea Convention. While the rights of individual Micronesians, families and clans to living marine resources under particular circumstances might be amenable to determination by custom and tradition, the states' legal entitlement to share in fishing fees derived from commercial fishing ventures, extending to 200 miles from island baselines, is not. Chuuk v. Secretary of Finance, 8 FSM R. 353, 378 (Pon. 1998).

Any claim to resources in the EEZ based upon custom and tradition must rest with clans, families and individuals rather than with the states. Chuuk v. Secretary of Finance, 8 FSM R. 353, 379 (Pon. 1998).

The FSM national government has the exclusive right to harvest living marine resources in its EEZ, just as it has the exclusive right to harvest offshore mineral resources. As the holder of this exclusive right, the national government is allowed to dispose of this resource and receive revenue in return. Under the Convention on the Law of the Sea, each nation is entitled to exploit its marine resources to the extent it is able to achieve a maximum sustainable yield. When the FSM does not fully exploit its own resources, it is entitled to compensation at the appropriate market rate from foreign fishing vessels which it allows to fish in its waters. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 (Pon. 1998).

Because a Congressional statute set up Telecom to serve the public interest and foster economic development, because Telecom may seek appropriations from Congress and, to the extent approved by the President, grants from sources outside of the FSM, because Telecom's board of directors must submit an annual report reflecting its activities, including financial statements, to the government, and because Telecom has no independent shareholders and is fully owned by the national government, Telecom is deemed, for taxation purposes, to be a part of the national government, and its efforts to carry out its mission should not be hindered by any state's efforts to tax its business activities. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 385 (Pon. 2000).

By making the taxing powers allocated between the national and state governments of Micronesia exclusive and distinct and allocating the exclusive power to tax income and imports, the Constitution's framers sought to avoid vertical multiple taxation and ensure a consistent fiscal policy for Micronesia. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 387-89 (Pon. 2000).

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).

Under the fishery statute enacted by the FSM Interim Congress, the only portion of the fishing fees subject to mutual determination with the states was that attributable to the foreign catch within twelve nautical miles of the baselines, an area whose natural resources the Constitution places under state control. The rest of the fishing fees – those for the area now known as the exclusive economic zone – went directly to the national government. Chuuk v. Secretary of Finance, 9 FSM R. 424, 433 (App. 2000).

The four states are not entitled to the net proceeds of revenues from exploitation of the living resources in the FSM exclusive economic zone on the basis of ownership. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (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).

Unearmarked foreign financial assistance is divided into equal shares for each state and the national government, which means that the national government and every state each receive a 20% share. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

Not less than half of the national taxes must be paid to the state where collected, but fishing fees are not national taxes because they are imposed, not under the national government's power to impose taxes, but under its power to regulate exploitation of natural resources within the FSM exclusive economic zone. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

Revenue sharing is also mandated for net revenue derived from FSM EEZ ocean floor mineral resources exploited, which is to be divided equally between the national government and the appropriate state government. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

The Constitution grants the national government the exclusive right to regulate the exploitation of the natural resources within the EEZ, which necessarily includes the generation of revenue from the EEZ and the use of that revenue. The Constitution requires that of the EEZ-generated revenues, half of the net revenues derived from ocean floor mineral resources be given to the state governments. There is no Constitutional requirement that any revenue from the EEZ's living resources be shared with the state governments although the framers could have easily included one. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435-36 (App. 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).

Import taxes are an exclusive national power, and as such it is a power that is prohibited to the states. MGM Import-Export Co. v. Chuuk, 10 FSM R. 42, 44 (Chk. 2001).

The states have the residual authority to regulate ownership, exploration and exploitation of natural resources within 12 miles from island baselines. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 63 (Pon. 2001).

The power of the states to regulate ownership, exploration and exploitation of natural resources in the marine area within 12 miles from the island baselines is not absolute as it is limited by the national powers to regulate navigation and shipping, and to regulate foreign and interstate commerce. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 63 & n.8 (Pon. 2001).

Control over areas within 12 miles from island baselines was reserved to the states, subject to the national government's control over foreign and interstate commerce, and navigation and shipping. Thus, under the transition clause, the "government" ownership referenced in 67 TTC 2 should be interpreted as "state" ownership within 12 miles from island baselines. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 65 n.13 (Pon. 2001).

In our federal system of government, state courts are not inferior tribunals to the FSM Supreme Court trial division. The national and state court systems are separate systems created by and serving different sovereigns. Neither system is superior to the other. Rather the systems are parallel. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

A Trust Territory statute (except to the extent it is amended, repealed, or is inconsistent with the Constitution), which related to matters that now fall within the national government's legislative powers became national law upon the Constitution's ratification, and the other Trust Territory laws presumably became law of each of the states at the same time; and if neither state nor national powers alone are sufficient to carry out the statute's original purpose, or if state and national powers are invoked, then the statute is enforceable as both state and national law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 414-15 (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).

A national statute whose term "public officer" refers to state and municipal public officials as well as national officials does not raise a constitutional issue involving the allocation of powers between the two sovereigns – state and national – and the three levels of government – national, state, and local because it applies to persons based upon their status as public officers – persons holding posts and exercising governmental functions. It does not matter whether that status is defined and bestowed upon a person by the national government or by another level of government in the FSM. It only matters that the person holds that status. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

A Pohnpei state law exempting it from anticompetitive practices liability does not apply to a case brought under the national anticompetitive practices statute since the lawsuit is based on a cause of action created by the national, not the state, statute covering an activity – foreign and interstate commerce – over which the national government may legislate. It would, of course, apply to an action brought under the state anticompetitive practices statute. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

A state cannot nullify a valid exercise of national power by enacting a state statute. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

A municipality is not a separate sovereign. A municipality is a creature of a state's sovereignty. Unlike states, municipalities are not sovereigns, but exercise that portion of a state's sovereignty that the state authorizes it to. FSM v. Nifon, 14 FSM R. 309, 315 (Chk. 2006).

The national government has the power to ban the possession and use of Philippine slingshots in those places under its jurisdiction and in those circumstances that make the offense "inherently national in character" such as when the offense is committed in the FSM Exclusive Economic Zone or in FSM airspace, or on FSM-flagged vessels, or is committed against an FSM public servant in connection with that servant's service. FSM v. Masis, 15 FSM R. 172, 175-76 (Chk. 2007).

The regulation of possession of firearms and ammunition involved a national activity or function because of the international commerce aspects of their manufacture and movement together with the national government interest in protecting the national security under the national defense clause, and that these, in combination, provided the national government's jurisdictional basis to regulate the possession of firearms and ammunition. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

In an examination to determine whether it is a national crime, the focus is: Does the regulation involve a national activity or function, or is it one of an indisputably national character? FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

The possession or use of a Philippine slingshot does not implicate the national government's functions and activities in the sphere of national defense or security and the connection, if there is one, is too tenuous to give the national government authority to regulate Philippine slingshots. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

The national government certainly has the power to criminalize possession or use of explosive, incendiary or poison gas bomb, grenade, mine or similar devices on the same basis that it has the power to regulate the possession and use of firearms and ammunition because these items definitely implicate both national defense and security and foreign commerce interests on which the Jano court concluded that the national government had the authority to regulate firearms and ammunition. But Philippine slingshots do

not. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

Weapons control has long been recognized as a subject on which both the national and state governments may legislate. It is thus within the power of the State of Chuuk to regulate the possession and use of Philippine slingshots. If it has not done so, that does not mean that it cannot. FSM v. Masis, 15 FSM R. 172, 177 (Chk. 2007).

It has long been recognized that both the national and state governments may enact legislation regulating the possession of firearms. There is nothing particularly absurd about a weapons control scheme that recognizes that both the national and the state governments have an interest in controlling the possession, use 1and sale of weapons. FSM v. Louis, 15 FSM R. 206, 211 (Pon. 2007).

Congress has an independent jurisdictional basis for the Weapons Control Act under FSM Constitution Article IX, Section 2(g) on foreign and interstate commerce and Article IX, Section 2(a) on national defense. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

Congress has always had the power to define national crimes. The power to define national crimes is inherent in the national government and existed before the 1991 amendment made the power express. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

The 1991 constitutional amendment did not proscribe Congress's authority to enact legislation pursuant to its independent authority under the national defense and foreign and interstate commerce clauses. Thus, the 1991 amendment did nothing to curtail Congress's authority to regulate the possession of firearms. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

Congress does not lack the authority to regulate possession of firearms because it was the framers' clear intent that commerce within a particular state should be regulated locally since there is an international commerce aspect to the regulation of possession of firearms and ammunition that is related to its manufacture outside of the FSM and to its movement through the nation's customs and immigration borders. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

In concluding that Congress has the authority to regulate the possession of firearms as part of its power to provide for the national defense, the court does not focus on the defendant's intended use of the firearm at issue, but instead focuses on the potential uses of firearms in general. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

Congress's authority to regulate firearms is not dependent on the defendant's subjective intent because the national government interest in regulating the possession of firearms and ammunition in order to provide for the national security in combination with the international commerce aspects provides a jurisdictional basis for the national government's regulation of the possession of firearms and ammunition. Congress's jurisdiction over the possession of firearms is not tied to the intent of a particular defendant. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

The national government's power to regulate firearms is derived from both its ability to protect the national security under its power to provide for the national defense and its power to regulate international commerce aspects because of the international commerce aspect of firearms manufacture and movement. In combination, these provide the national government with a jurisdictional basis to regulate the possession of firearms and ammunition. FSM v. Tosy, 15 FSM R. 238, 239 (Chk. 2007).

The national government's jurisdiction over firearms is not limited to only certain circumstances or certain quantities. What the national government can regulate in aggregate, it is able to regulate piece by piece; otherwise it would not be able to regulate it at all, and that, is clearly not the case. FSM v. Tosy, 15 FSM R. 238, 239 (Chk. 2007).

Since engaging in business is defined as carrying out any activity relating to the conduct of a business

and expressly includes leasing property of any kind for commercial purposes, when a foreign investment permittee engaged in the business of providing operational and maintenance support to helicopters servicing fishing vessels in the FSM, its leasing helicopters is one aspect of its business that relates to its fishing activity and is therefore that leasing activity is subject to the FSM's exclusive jurisdiction and regulation for foreign investment purposes. Thus Pohnpei may not require it to apply for a foreign investment permit. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335 (Pon. 2007).

Since, by statute, an economic sector included in any of the Categories for National Regulation must not appear in any of the Categories for State Regulation, the statutory provision contemplates that state and national regulation will be mutually exclusive, and works hand in glove with the stated purpose of the Foreign Investment Act, which is to encourage foreign investment. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335-36 (Pon. 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 dual sovereignty doctrine provides an important limitation on the application of double jeopardy to related state and national prosecutions. Under the dual sovereignty doctrine, a state prosecution does not bar a subsequent national prosecution of the same person for the same acts, and a national prosecution does not bar a subsequent state prosecution. The reason is that the national government and its individual states are independent sovereigns, and prosecutions under the laws of those separate sovereigns do not subject a defendant to be twice put in jeopardy. If the constitutional protection against double jeopardy did apply to prosecutions under the laws of independent sovereigns, then prosecution by one sovereign for a relatively minor offense might bar prosecution by another sovereign for a much graver offense, effectively depriving the latter of the right to enforce its laws, and defendants would always race to stand trial in the court where the charges were less severe in order to bar the second action. Chuuk v. Kasmiro, 16 FSM R. 404, 406 (Chk. S. Ct. Tr. 2009).

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).

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).

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).

While the interplay between national and state power does mean that, in land cases, the court must apply state law, or certify unsettled questions to the state courts, when the national court has maintained jurisdiction, national rules of procedure prevail. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos.

2011).

The Constitution's investment in the national government of the power to regulate immigration, emigration, naturalization, and citizenship does not deprive the states of the ability to regulate employment within their own jurisdictions whenever such employment involves non-residents. To the degree that a state law regulating employment of non-resident workers does not directly conflict with national law, such state law is not preempted; and when there is possible conflict, the state law should be construed so as to avoid such conflict. Smith v. Nimea, 17 FSM R. 333, 337-38 (Pon. 2011).

When the FSM Supreme Court decides a matter of state law its goal is to apply the law the same way the highest state court would. If there is a decision of the highest state court it is controlling. If there is no controlling state law, then the court would decide the case according to how it thinks the highest state court would. Should the state's highest court later decide the issue differently, then that case will prospectively serve as controlling precedent for the national court on that state law issue. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

The unconditional 50% transfer of national taxes to the state treasuries is part of the constitutional framework that, through mandatory revenue sharing, allows the states a high degree of fiscal autonomy while at the same time avoiding undesirable vertical multiple taxation. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 530 n.3 (Chk. 2011).

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).

Under the FSM Constitution, the power to establish systems of social security and public welfare may be exercised concurrently by Congress and the states. The State of Chuuk therefore has the constitutional authority to establish a system of health insurance since it is a system created to promote and advance the public welfare of Chuuk. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496 (Chk. 2013).

Payment of Chuuk state employees' contributions and of the employer's contribution out of the Chuuk state funds held in the FSM Treasury is not be a tax or a levy on the national government or an illegal expenditure of FSM funds since the payment would be from Chuuk state funds and, because the obligation to withhold the Plan insurance premium contributions arises by operation of law, the Plan insurance premium contributions would be properly obligated and should be paid. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496-97 (Chk. 2013).

The Constitution does not mandate such a sweeping expansion of the FSM Supreme Court's jurisdiction over probate cases as would result if creditors were considered parties for jurisdictional purposes. The better view is that only the heirs, potential heirs, or devisees in a probate case be considered parties for jurisdictional purposes and that, in the usual case, the decedent's creditors would file their claims in a state court probate proceeding. This view comports with the proper respect due to the state courts as courts of general jurisdiction that should normally resolve probate and inheritance issues. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 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).

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).

Taxing income and taxing imports are both powers reserved exclusively to the national government, and therefore forbidden to municipal governments. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

A state law vesting exclusive jurisdiction in a state court cannot divest the FSM Supreme Court of jurisdiction over a matter it would otherwise have jurisdiction, as mandated by the FSM Constitution. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 613 (Pon. 2016).

FOREIGN INVESTMENT LAWS

The national government has neither the constitutional authority nor the law enforcement capacity to oversee, on a worldwide basis, every noncitizen acquisition of an interest in a business operating within the FSM. Michelsen v. FSM, 3 FSM R. 416, 423 (Pon. 1988).

The "applicant" referred to in the Foreign Investment Act is one interested in doing business, not just investing money, in the Federated States of Micronesia, and the considerations to be employed in determining whether to grant an application relate to business operations within the FSM, not to investment of funds. Michelsen v. FSM, 3 FSM R. 416, 425 (Pon. 1988).

The Foreign Investment Act regulates the operation of noncitizen business within the Federated States of Micronesia, not individual investors. 32 F.S.M.C. §§ 203(2) and 204 have no application to acquisitions of interests in a business operating in the Federated States of Micronesia with a national foreign investment permit. Michelsen v. FSM, 3 FSM R. 416, 426 (Pon. 1988).

Since Congress used the Trust Territory Investment Act as the overall model in drafting the FSM Foreign Investment Act and adopted language similar to that employed in the Trust Territory statute for describing the activities to be covered in the FSM law, analysis of the new Act must begin with a presumption that Congress intended that the FSM Foreign Investment Act would regulate essentially the same activities as those covered by the Trust Territory Investment Act. Carlos v. FSM, 4 FSM R. 17, 26 (App. 1989).

Based on the language and legislative history of the FSM Foreign Investment Act, 32 F.S.M.C. 201-232, and on that law's similarity to its Trust Territory predecessor, there is no indication that Congress intended the Foreign Investment Act to apply to the provision of legal services. Carlos v. FSM, 4 FSM R. 17, 28-29 (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).

A foreign investment permit applicant aggrieved by a final permit decision may appeal the decision to the FSM Supreme Court. 32 F.S.M.C. 215. Michelsen v. FSM, 5 FSM R. 249, 252-53 (App. 1991).

By statute the practice of law is specifically included in businesses engaged in by noncitizens requiring a foreign investment permit. 32 F.S.M.C. 203. Michelsen v. FSM, 5 FSM R. 249, 254 (App. 1991).

The Foreign Investment Act does not explicitly limit judicial review therefore an aggrieved person affected by an agency decision may seek review under the Administrative Procedures Act. Michelsen v. FSM, 5 FSM R. 249, 254 (App. 1991).

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).

The scheme of national, constitutionally-authorized foreign investment legislation is so pervasive there is no room for the state to supplement it. Non-FSM citizen attorneys and their private practice of law are expressly subjected to the national legislative scheme. Insofar as attorneys who are engaged in the private practice of law and whose business activities are within the scope of the national FIA, the state FIA is invalid. Berman v. Pohnpei, 5 FSM R. 303, 306 (Pon. 1992).

An isolated, interest-free, unsecured loan is not engaging in business within the meaning of the Pohnpei State Foreign Investment law. Kihara v. Nanpei, 5 FSM R. 342, 345 (Pon. 1992).

By statute, the national government guarantees that there will be no compulsory acquisition or expropriation of any foreign investment property for which a Foreign Investment Certificate has been issued and that the national government will not take action, or permit any state or other entity within the FSM to take action that although not formally designated or acknowledged as compulsory acquisition or expropriation, indirectly has the same injurious effect ("creeping expropriation") and that if such action nevertheless takes place, the national government is responsible for the prompt and adequate compensation of any injured noncitizen. This statute creates a cause of action by the aggrieved alien against the FSM for compensation for a state's conduct in violation of § 216(1) and (4). AHPW, Inc. v. FSM, 12 FSM R. 114, 120 (Pon. 2003).

While injunctive relief would be available to prospectively enforce 32 F.S.M.C. 219, noticeably absent from this section is any language which creates a cause of action for damages on the aggrieved party's part. AHPW, Inc. v. FSM, 12 FSM R. 114, 122 (Pon. 2003).

An isolated interest-free, unsecured loan transaction plainly is not engaging in business within the meaning of the applicable Pohnpei law and regulations. Similarly, execution of an isolated promissory note and security agreement, to establish payment on an open account, is not engaging in business within the meaning of the Pohnpei foreign investment laws. Goyo Corp. v. Christian, 12 FSM R. 140, 146 (Pon. 2003).

A foreign owned entity's isolated attempt to secure payment of a debt should not require that the foreign entity obtain a foreign investment permit. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

The national government guarantees that there will be no compulsory acquisition or expropriation of the property of any foreign investment as to which a Foreign Investment Certificate has been issued. AHPW, Inc. v. FSM, 12 FSM R. 164, 166 (Pon. 2003).

When a party has not alleged that the state has dispossessed it of any property, and that property is now in the possession of the state or its designee, the party has not stated a cause of action for expropriation under the FSM foreign investment statutes. AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 2003).

While § 219 of the Foreign Investment Laws admits of a cause of action for prospective, injunctive relief against the FSM, it does not permit an action for damages. Chapter 3 provides a remedy for damages, but notwithstanding the fact that the remedy is against Pohnpei, and not the FSM, it is nevertheless a remedy. If the plaintiff prevails, the conduct alleged will not go unsanctioned. AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 2003).

There is no meaningful distinction between the terms "compulsory acquisition" and "expropriation." AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 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 Kosrae State Code provides that a state foreign investment permit may be temporarily suspended only if the permit holder a) begins operation in a different economic sector from the one(s) for which the permit was issued, or b) alters, changes, modifies or transfers the amount of the ownership interest which the non-citizen retains. Wortel v. Bickett, 12 FSM R. 223, 226 (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).

A noncitizen cannot engage in business in the FSM unless that noncitizen holds a valid foreign investment permit. A "noncitizen" is any business entity in which any ownership interest is held by a person who is not a citizen of the FSM. Geoffrey Hughes (Export) Pty, Ltd. v. America Ducksan Co., 12 FSM R. 413, 414-15 (Chk. 2004).

By statute, the national government guarantees that there will be no compulsory acquisition or expropriation of the property of any foreign investment as to which a foreign investment certificate has been issued. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 23 (App. 2006).

By statute, the national government will not take action, or permit action, or permit action to be taken by any state or other entity within the FSM, that although not formally designated or acknowledged as compulsory acquisition or expropriation, indirectly has the same injurious effect ("creeping expropriation"), and that if such action takes place, the national government will be responsible for the prompt and adequate compensation of any injured noncitizen. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 23 (App. 2006).

By statute, the national government will not take action, or permit any state to take action, that would result in a foreign investor being given treatment that is less favorable than the treatment given to citizens, or business entities wholly owned by citizens, engaging in business in the FSM. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 23 (App. 2006).

A state would have to actually acquire the property in some fashion for there to be an expropriation, and 32 F.S.M.C. 219 only authorizes injunctive relief and does not create a cause of action for damages. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 24 (App. 2006).

The Foreign Investment Act of 1997 establishes a system of Categories of economic sectors for the purposes of implementing the FSM policy to welcome foreign investment in all sectors of the FSM economy. Three of these categories are made up of economic sectors that are of special national significance and therefore fall within the national government's jurisdiction in respect of foreign investment regulation. The first is the National Red List. No foreign investment is permitted in the activities specified on this list, which includes the minting of money and arms manufacture. The second is the National Amber List. Banking (other than as defined in Title 29 of the FSM Code) and insurance are included on this list. Certain criteria specified in the FSM Foreign Investment Regulations must be met before investment is permitted in these areas. A third category of activities that fall within the jurisdiction of the national government appear on the National Green List. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 333-34 (Pon. 2007).

Foreign investment Category C (National Green List) comprises the set of economic sectors that are subject to national government regulation but as to which no special criteria need to be met before a foreign investment permit is to be issued. It includes banking, as defined in title 29 of the FSM Code; telecommunications; fishing in the FSM's Exclusive Economic Zone; international and interstate air transport; international shipping; and such other economic sectors as the Secretary may, after consultation

with States, designate in the FSM Foreign Investment Regulations as being on the National Green List. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334 (Pon. 2007).

In contrast to the three areas subject to national regulation, economic sectors that are not of special national significance are delegated to the jurisdiction of the state governments in respect of foreign investment regulation, which are to be established separately by each state, except that an economic sector included in any of the categories for national regulation cannot appear in any of the categories for state regulation. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334 (Pon. 2007).

Fishing and international air transport are areas of foreign investment regulation that are subject to exclusive regulation by the national government. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334 (Pon. 2007).

The Marine Resources Act of 2002 amended the prior fisheries law for the purpose of ensuring the sustainable development, conservation and use of the marine resources in the exclusive economic zone by promoting development of, and investment in, fishing and related activities. Included in the definition of "fishing" under the Act is the actual or attempted searching for fish; the placing of any fish aggregating device or associated electronic equipment such as radio beacons; and the use of an aircraft in relation to any activity described in this subsection. "Fishing gear" is equipment or other thing that can be used in the act of fishing, including any aircraft or helicopter. Helicopters, which are used to search for fish and to place radio devices near schools of fish to assist fishing boats in locating fish, fall within the express definition of fishing equipment. Therefore, since fishing in the FSM's EEZ is subject to the exclusive national government jurisdiction and regulation, and since a company's helicopters, based on fishing vessels and piloted by the company's employees, are used to search for fish within the FSM's EEZ, those helicopters are engaged in fishing for purposes of the statutory definition and thus the helicopters, which the company charters to the purse seine operators, and their pilots are subject to the national government's exclusive regulation. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 334-35 (Pon. 2007).

Since helicopter pilots engaged in fishing are thus subject to the national government's exclusive jurisdiction for foreign investment purposes, it follows that the company which is the pilots' principal, is bound by that conduct. Thus, that company's fishing activities in the FSM's EEZ are also subject to the FSM's exclusive regulation. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335 (Pon. 2007).

Since engaging in business is defined as carrying out any activity relating to the conduct of a business and expressly includes leasing property of any kind for commercial purposes, when a foreign investment permittee engaged in the business of providing operational and maintenance support to helicopters servicing fishing vessels in the FSM, its leasing helicopters is one aspect of its business that relates to its fishing activity and is therefore that leasing activity is subject to the FSM's exclusive jurisdiction and regulation for foreign investment purposes. Thus Pohnpei may not require it to apply for a foreign investment permit. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335 (Pon. 2007).

Since, by statute, an economic sector included in any of the Categories for National Regulation must not appear in any of the Categories for State Regulation, the statutory provision contemplates that state and national regulation will be mutually exclusive, and works hand in glove with the stated purpose of the Foreign Investment Act, which is to encourage foreign investment. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335-36 (Pon. 2007).

When a company has obtained a national foreign investment permit in an area in which the FSM's jurisdiction is exclusive and the company has complied with national laws and regulations in this regard, Pohnpei may not require it to obtain a state foreign investment permit in addition to the FSM permit that it already has. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 336 (Pon. 2007).

When the court has granted summary judgment on the basis that the plaintiff's helicopters are engaged in fishing, the court need not address the plaintiff's further contention that it is also subject to exclusive

national regulation by virtue of the fact that its helicopters are engaged in interstate and international air transport and international shipping. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 336 (Pon. 2007).

Public hearings are a standard part of the foreign investment permit application process. Smith v. Nimea, 18 FSM R. 36, 45 (Pon. 2011).

A foreign investment permit holder is required to, by the terms of his foreign investment permit, to abide by all laws and regulations applicable to the business(es) that his foreign investment permit allows him to engage in. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

A Kosrae Island Resource Management Authority sea cucumber permit is the only sea cucumber permit needed so as not to violate either Kosrae State Code § 13.523(5) or § 13.523(6). A foreign citizen also needs a foreign investment permit to engage in a sea cucumber (or any other) business, and the lack of a foreign investment permit or the violation of one or more of its conditions would be charged under the foreign investment statutes, not under § 13.523(5) or § 13.523(6). Lee v. Kosrae, 20 FSM R. 229, 231 (App. 2015).

Under the foreign investment laws requiring noncitizens "engaging in business" to hold a valid foreign investment permit, "engaging in business" includes providing professional services as an attorney for a fee. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349 (Pon. 2016).

Someone providing professional services for a fee, such as an attorney, is not considered to be "engaging in business" unless he or she, while present in the FSM, performs his or her respective professional services for more than 14 days in any calendar year. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349 (Pon. 2016).

A noncitizen attorney, licensed to practice in the FSM since 1985 and a member of the Bar in good standing but currently resident and practicing on Guam, is excepted from the foreign investment permit requirement when he works in tandem with an FSM citizen licensed to practice in the FSM and when his involvement in the case has been from a remote location and, as a result, he has not been present in the FSM rendering professional services for more than 14 days in any calendar year. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349 (Pon. 2016).

Under 55 F.S.M.C. 419(1) and (2), no foreign investment permit is required of a noncitizen attorney when his representation directly involves "contract management activities" that relate to a public contract awarded for a civil works project to implement part of the Infrastructure Development Plan and that is supported by funds through the Amended Compact of Free Association Section 211. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 349-50 (Pon. 2016).

An attorney cannot be said to come within the ambit of the 32 F.S.M.C. 204, which otherwise would require a foreign investment permit, when his legal representation, to date, has been conducted *in absentia*, and thus cannot be said to have rendered his professional services "while present in the FSM for more than 14 days in any calendar year" and when the present action involves an Infrastructure Development Plan project and the construction by his client was undertaken pursuant to a contract underwritten with Compact monies. Pacific Int'l, Inc. v. FSM, 20 FSM R. 346, 350 (Pon. 2016).

GAMBLING

Poker machines are not included within the term "slot machines" under Truk State law and a search warrant authorizing the seizure of slot machines does not permit the seizure of poker machines. In re Slot Machines, 3 FSM R. 498, 500 (Truk S. Ct. Tr. 1988).

Courts should not broaden statutes beyond the meaning of the law as written, even if it means that gambling devices just as harmful socially as slot machines, such as poker machines, will be excluded from statutory prohibition of slot machines. In re Slot Machines, 3 FSM R. 498, 500-01 (Truk S. Ct. Tr. 1988).

Poker machines involve the use of some skill, and are not based simply upon mere chance, therefore are not "slot machines," and are not subject to current Truk State legislative prohibition, specifically Truk District Law No. 25-3. In re Slot Machines, 3 FSM R. 498, 502 (Truk S. Ct. Tr. 1988).

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).

When an act lists 23 different and distinct prohibited gaming devices, including "slot machines," but makes no mention of "poker machines" whatsoever, by its failing to list "poker machines" in an extended list of prohibited items, the legislature excluded such machines from the application of the law, and the court will not include the machines into the proscription of the statute something which the Legislature intended to exclude. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 547 (Chk. S. Ct. Tr. 2000).

Although there is an element of chance involved in the operation of both slot and poker machines, the fundamental difference between a slot machine and a poker machine is that a poker machine, as opposed to a slot machine, allows the user to exercise his skill to affect the odds and thereby the manner and result of its operation. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 547 (Chk. S. Ct. Tr. 2000).

HABEAS CORPUS

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).

The FSM Supreme Court's constitutional jurisdiction to consider writs of habeas corpus is undiminished by the fact that the courts whose actions are under consideration, the Trust Territory High Court and a Community Court, were not contemplated by the Constitution of the Federated States of Micronesia. In re Iriarte (I), 1 FSM R. 239, 244, 246 (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).

Judicial review of a certification of extraditability, although not appealable, is available to an accused in custody by seeking a writ of habeas corpus. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

4 F.S.M.C. 117 gives both the trial division and the appellate division the powers to issue all writs not inconsistent with law or with the rules of civil procedure. FSM Appellate Rule 22(a) requires petitions for writs of habeas corpus be first brought in the trial division. When the circumstances have been shown to warrant, the appellate division clearly has the authority to suspend the rule. In re Extradition of Jano, 6 FSM R. 31, 32 (App. 1993).

Judicial review of an extradition hearing is by petition for a writ of habeas corpus. In re Extradition of Jano, 6 FSM R. 93, 97 (App. 1993).

The scope of a habeas corpus review of an extradition proceeding is 1) whether the judge had jurisdiction, 2) whether the court had jurisdiction over the extraditee, 3) whether there is an extradition agreement in force, 4) whether the crimes charged fall within the terms of the agreement, and 5) whether there was sufficient evidence to support a finding of extraditability. In re Extradition of Jano, 6 FSM R. 93, 104 (App. 1993).

Because a habeas corpus petition is a civil action (although the proceeding is unique), the clerk will

assign the petition a civil action number and enter it on the civil side of the docket. Sangechik v. Cheipot, 10 FSM R. 105, 106 (Chk. 2001).

When the pleadings clearly name a person as the *de facto* keeper of the detention facility where the petitioner is currently incarcerated and the petitioner seeks a writ of habeas corpus directed to that person in that capacity, that person is properly named as the respondent to the petition. Sangechik v. Cheipot, 10 FSM R. 105, 106 (Chk. 2001).

Habeas corpus proceedings are commenced with an order, directed to the person having custody of the person detained, to show cause why the writ should not be issued. Sangechik v. Cheipot, 10 FSM R. 105, 106 (Chk. 2001).

In order to ensure a citizen's right to life and liberty, Chuuk Constitution Article III, § 7 provides that the writ of habeas corpus shall exist in Chuuk and that it may not be suspended, except by the Governor and only when the public safety requires it in case of war, rebellion, insurrection or invasion. Consideration of the writ must take precedence over all other business of the court, and, if the court determines there is a proper basis, the writ shall issue without delay. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 2002).

Only under certain limited and severely proscribed circumstances may the Governor suspend the writ of habeas corpus, thereby affecting the rights of detainees to petition the court for their release from unlawful detention. In re Paul, 11 FSM R. 273, 277 (Chk. S. Ct. Tr. 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).

The writ of habeas corpus, like the civil rights of citizens, may under certain circumstances be suspended by the Governor, but suspension of the writ of habeas corpus may only occur when "the public safety requires it in case of war, rebellion, insurrection or invasion. 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).

A writ of habeas corpus will issue when the Governor's declaration of emergency did not suspend civil rights to due process of law, and when the petitioner's detention without charge and without initial appearance was unlawful and in violation of his right of due process. In re Paul, 11 FSM R. 273, 280 (Chk. S. Ct. Tr. 2002).

Kosrae State Code, Title 6, Chapter 34, states the prompt timeframe in which habeas corpus petitions must be considered. Sigrah v. Noda, 14 FSM R. 295, 297-98 (Kos. S. Ct. Tr. 2006).

The Kosrae State Court has jurisdiction to hear a petition for a writ of habeas corpus while the prisoner's appeal is pending. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

The requirements for issuance of a writ of habeas corpus under Kosrae State Code § 6.3401, have not been satisfied when there has been no evidence presented to the court that the prisoner is being unlawfully imprisoned at the Kosrae state jail. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A writ of habeas corpus may be issued upon a finding that there is an unlawful restraint of the prisoner's liberty. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

Under 4 F.S.M.C. 117, the FSM Supreme Court has the power to issue all writs and other process as may be necessary for the due administration of justice and, under 6 F.S.M.C. 1503, the court may grant a writ of habeas corpus to inquire into the cause of imprisonment or restraint of a person, who has applied or who has had an application made on his behalf, and who is unlawfully imprisoned or restrained of his liberty under any pretense whatsoever. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

An applicant for a writ of habeas corpus should name as the respondent the person who has custody over him. In re Mefy, 16 FSM R. 401, 403 (Chk. 2009).

Since habeas corpus proceedings are commenced with an order, directed to the person having custody of the person detained, to show cause why the writ should not be issued, an application is deficient when it does not name a respondent. 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).

To the extent that the issues that the applicants for a writ of habeas corpus seek to raise in a moot application are significant and relevant to other issues to be raised and considered in a criminal case, they should be raised for consideration in that case in the proper manner or in a civil suit for damages. In re Mefy, 16 FSM R. 401, 403-04 (Chk. 2009).

A writ of habeas corpus may be used in situations involving an individual incarcerated without probable cause. In re Anzures, 18 FSM R. 316, 320 (Kos. 2012).

The FSM Supreme Court has the power to issue all writs and must consider a petition for a writ of habeas corpus alleging imprisonment of the petitioner in violation of his rights under the FSM Constitution. In re Anzures, 18 FSM R. 316, 321 (Kos. 2012).

In the absence of any statutory restrictions, the FSM Supreme Court will, under the proper circumstances, consider applications for a writ of habeas corpus on the grounds that a person is in custody in violation of the FSM Constitution. The overriding purpose of such a writ is to protect an individual's right to be free from wrongful intrusions and restraints upon their liberty. In re Anzures, 18 FSM R. 316, 322 (Kos. 2012).

In considering a pretrial petition for a writ of habeas corpus, the FSM Supreme Court will consider that the evidence for probable cause need not be sufficient to support a conviction and that the trial court is the most appropriate place to determine whether probable cause exists. In re Anzures, 18 FSM R. 316, 324 (Kos. 2012).

In order to accord respect to a Kosrae State Court criminal proceeding, the FSM Supreme Court will

abstain from granting a petitioner's application for a writ habeas corpus when the petitioner is currently the subject of an ongoing criminal proceeding in the Kosrae State Court that has not reached final adjudication; when those proceedings afford the petitioner an opportunity to raise his constitutional claims; when the State has an important interest in protecting the public through criminal prosecutions; and when pre-conviction habeas corpus relief is being sought; when the state court remedies have not been fully exhausted; and when no extraordinary circumstances have been presented. In re Anzures, 18 FSM R. 316, 324-25 (Kos. 2012).

IMMIGRATION

An alien must willfully fail to depart the Federated States of Micronesia upon expiration of entry authorization to be guilty of a violation of 50 F.S.M.C. 112. Knowledge of the requirement to depart coupled with failure to depart is not enough. There must be an element of voluntariness or purposefulness in the noncitizen's conduct, which will generally require showing a reasonable opportunity to depart, voluntarily rejected, without some justification for the rejection beyond mere personal preferences. FSM v. Jorg, 1 FSM R. 378, 384 (Pon. 1983).

The FSM Supreme Court and the Federated States of Micronesia must not be lured into the role of mediator between visitors and their nations of citizenship. Only in the rarest of circumstances, if ever, would the court second-guess and scrutinize the conditions which other nations place upon offers of funds to their own citizens to assist those persons to comply with FSM immigration laws. FSM v. Jorg, 1 FSM R. 378, 385-86 (Pon. 1983).

A rule that treats aliens unequally to citizens involves immigration and foreign affairs. 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).

All aircraft entering FSM ports of entry are subject to immigration inspection, customs inspections, agricultural inspections and quarantines, and other administrative inspections authorized by law. In Chuuk, the Chuuk International Airport is the only port of entry for aircraft. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

The government may be directed to allow a plaintiff to enter the FSM as required for the limited purpose of prosecuting her lawsuit through trial. O'Sullivan v. Panuelo, 9 FSM R. 229, 232 (Pon. 1999).

If the court were to take the plaintiff at his word that November 26, 2010 is the date of the demand for an immigration hearing, that 17 F.S.M.C. 109(4) obliges the court to view December 26, 2010 as the effective date of rejection, and that 51 F.S.M.C. 165 is now applicable, the court must deny his administrative appeal of the rejection because he filed his motion 15 days after December 26, 2010 and, under 51 F.S.M.C. 165(1), he had to make the appeal within 10 days following the date of the effective rejection. Smith v. Nimea, 17 FSM R. 333, 337 (Pon. 2011).

The Constitution's investment in the national government of the power to regulate immigration, emigration, naturalization, and citizenship does not deprive the states of the ability to regulate employment within their own jurisdictions whenever such employment involves non-residents. To the degree that a state law regulating employment of non-resident workers does not directly conflict with national law, such state law is not preempted; and when there is possible conflict, the state law should be construed so as to avoid such conflict. Smith v. Nimea, 17 FSM R. 333, 337-38 (Pon. 2011).

No national statute directly addresses overtime pay for private sector employment although 51 F.S.M.C. 139(2) does require an employer of a nonresident worker to present a copy of the worker's

contract, which must contain certain information including a wage scale for regular and overtime work, before approval of the nonresident worker's entry to the FSM. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 & n.1 (Pon. 2011).

U.S. citizens, like all other non-citizens, must hold a valid passport at the time of entry into the FSM. A valid passport means a passport that is valid for a period of not less than 120 beyond the date of entry. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 145 (Pon. 2012).

Absent any express regulatory or statutorily established exceptions, the FSM Immigration Regulations and Title 50, F.S.M.C., as amended, control the FSM entry requirements for all non-citizens, including U.S. citizens, regardless of whether they are habitual residents and/or spouses of FSM citizens. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 145 (Pon. 2012).

No express statutory language declares that habitual residents, as provided under 50 F.S.M.C. 104(2), have an exemption from complying with Part 2.2 of the FSM Immigration Regulations since Part 2.2 does not contradict 50 F.S.M.C. 104(2). The statutory and regulatory provisions' plain meaning is that for a habitual resident there is no exception to Part 2.2's application. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 146 (Pon. 2012).

The grant of an entry permit to any non-citizen spouse is specifically authorized on a showing of being an FSM citizen's lawful spouse. A non-citizen spouse can invoke this specific statutory grant when applying to the government for an entry permit, but an FSM citizen's U.S. citizen lawful spouse is not exempted from the passport validity requirements under Part 2.2 of the Regulations. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 146 (Pon. 2012).

The statutory and regulatory provisions dealing with entry permits, habitual residents, and spouses of FSM citizens, are independent of Part 2.2 of the FSM Immigration Regulations and do not provide an exception to the regulations' passport validity requirements. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 147 (Pon. 2012).

Unless statutory or regulatory amendments mandate otherwise, "non-citizens" include U.S. citizens and do not except habitual residents or U.S. citizen spouses of FSM citizens. Since there are no exceptions to the 120-day passport validity requirement under the regulations and Title 50 of the F.S.M.C., as amended, no non-citizen, including U.S. citizens who are habitual residents or spouses of FSM citizens are exempt from the operational reach of Part 2.2 of the FSM Immigration Regulations. Harden v. Continental Air Lines, Inc., 18 FSM R. 141, 147 (Pon. 2012).

Sea vessels and aircraft arriving in the FSM must compensate the FSM Treasury for the actual costs of overtime that immigration officials accrue clearing sea vessels and aircraft into the FSM. These costs must be 1) associated with the arrival of sea vessels and aircraft into the FSM; 2) actual; 3) originate in the official duties of immigration officers carrying out Title 50's requirements; and 4) accrue outside immigration officers' normal working hours. "Actual hours worked" will always correlate with hours that have already been worked or performed and the FSM Treasurer will not be compensated for subjective or imputed work. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

Reading 52 F.S.M.C. 164(3) and 50 F.S.M.C. 115, jointly in order to ensure that the FSM Treasurer is compensated for all actual overtime expenses, the cost of overtime compensation allotted to employees under § 164(3) must equal the compensation the treasury receives under the second part of § 115, and as the treasury is compensated only for actual hours worked, it is clear that the treasury may remunerate employees only for actual hours worked. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

Passage by Vietnamese through the FSM territorial waters was not innocent and therefore unlawful when it was for the purpose of illegal sea cucumber harvesting, and thus it provides a sufficient factual basis for a guilty plea to entry without a permit. FSM v. Bui Van Cua, 20 FSM R. 588, 590-91 (Pon. 2016).

INSURANCE

A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. Actouka v. Kolonia Town, 5 FSM R. 121, 122 (Pon. 1991).

Where a creditor accepts a premium payment for insurance that he has agreed to procure, where he makes a diligent effort to fulfill his agreement to do so, promptly notifies the debtor of his inability to procure insurance, he would not be held liable to the debtor, as he would have fulfilled his contract to attempt to procure insurance which is not a contract of insurance. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

The general rule is that where a creditor has failed to both procure credit insurance paid for by the debtor and to notify the debtor of his failure to procure the insurance requested, prior to loss, the debtor may plead such failure as a defense or setoff. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 250 (Chk. 1995).

Both contract and tort theories can be pursued by a debtor who alleges that a creditor has failed to procure credit insurance. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent performance of that duty or of duty to notify debtor if insurance not obtained. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

Failure of a creditor to notify the debtor of its failure to obtain insurance is negligence. As a consequence the creditor is liable to the debtor for the entire amount of the debtors' loss, otherwise the debtor is only entitled to return of full amount of insurance premiums paid. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

An insurance company that has no contractual obligation to persons other than its insured until a court determines the liability of its insured, cannot be joined as a party to a lawsuit to determine that liability. Wilson v. Pohnpei Family Headstart Program, Inc., 7 FSM R. 411, 413 (Pon. 1996).

In the absence of a contractual or statutory provision authorizing a direct action against or the joinder of a liability insurer, an injured person, for lack of privity between himself and the insurer, has no right of action at law against the insurer and cannot join the insured and the liability insurer as parties defendant. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

An insurance company that has no contractual obligation to persons other than its insured until a court determines its insured's liability, cannot be joined as a party to a lawsuit to determine that liability. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

When no national or state statute or contractual provision authorizes a third party's suit against or joinder of an insurer, an injured party's causes of action against and joinder of an insurer will be dismissed. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52-53 (Chk. 2001).

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).

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).

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).

When the insurance contract language excludes bailment leases, a plaintiff vehicle rental business is not entitled to judgment as a matter of law on a claim that the defendants breached the insurance contract when they did not pay for a damaged rental vehicle. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 305 (Pon. 2004).

In an insurance contract that provides that when the word "insured" is utilized in an "unqualified" manner within the contract, the word will be understood to include all individuals who operate an insured vehicle with the permission of the named insured, but where an exclusion provision does not utilize the word "insured" in an unqualified manner and instead specifies that the provision applies to the "Named Insured," the effect of that qualification is to narrow the definition of "insured" to only those individuals who are actually named on the policy. The term "Named Insured" does not include permissive users. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 306 (Pon. 2004).

When there is a contradiction between the first and second sentences of an insurance policy exclusion, it must be construed against the insurance company that drafted the language and was in a superior bargaining position when the contract was entered into. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 306 n.3 (Pon. 2004).

Contracts impose on the parties thereto a duty to do everything necessary to carry them out, and there is an implied undertaking in every contract on each party's part that he will not intentionally and purposely do anything to prevent the other party from carrying out his part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract, and the FSM Supreme Court will entertain such claims in the context of insurance contracts, where the insurer possesses greater sophistication, can be expected to assist local insureds in understanding the relevant legal terminology, and has a specialized role in processing claims. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 307 (Pon. 2004).

The court cannot say that an insurance claims process which consumed between 3 and 4 months from the filing of the claim to the issuance of a denial is so lengthy, so egregious, as to constitute bad faith as a matter of law. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308 (Pon. 2004).

Insureds frequently pay premiums by executing a promissory note – a "premium note," and, depending on the circumstances of its execution, may pay the premium in full through the execution of a premium note. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 309 (Pon. 2004).

Before an insurance company can obtain summary judgment on an action for enforcement of a premium note, the defenses available to the enforcement of a premium note must be addressed. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 309 (Pon. 2004).

A measure of damages for the tort of negligent misrepresentation (also called deceit) employs the benefit of the bargain rule when damages can be proved with reasonable certainty. Under this principle, the insurer would be entitled to its premium, which would be set off against what it owed its insured. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

Rescission of an insurance contract would, if granted, absolve an insured from liability for the premium and could even entitle him to return of the premium paid. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Reformation of an insurance contract may be sought under a theory of mutual mistake or mistake or fraud of the insurance agent. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Reformation is an equitable doctrine that allows a court to conform a contract (even an insurance contract) to the true agreement between the parties rather than the agreement as written. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 470 (Pon. 2004).

Courts have permitted attorney's fee awards under the vexatious conduct exception when the plaintiff has proven the defendant's breach of the implied covenant or implied duty of good faith and fair dealing (also called the bad faith tort). If a plaintiff were to prevail on a bad faith tort claim against an insurer, the insurer would be liable to him for reasonable attorney's fees that are proximately caused by the bad faith conduct. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

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).

Only if a life insurance policy had no designated or named beneficiary, would the policy benefits be payable to his estate to be distributed through probate to his heirs or devisees. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

When the plaintiff alleges that she is the third-party beneficiary of an insurance contract, the six-year statute of limitations for breach of contract generally applies. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

The Foreign Investment Act of 1997 establishes a system of Categories of economic sectors for the purposes of implementing the FSM policy to welcome foreign investment in all sectors of the FSM economy. Three of these categories are made up of economic sectors that are of special national significance and therefore fall within the national government's jurisdiction in respect of foreign investment regulation. The first is the National Red List. No foreign investment is permitted in the activities specified on this list, which includes the minting of money and arms manufacture. The second is the National Amber List. Banking (other than as defined in Title 29 of the FSM Code) and insurance are included on this list. Certain criteria specified in the FSM Foreign Investment Regulations must be met before investment is permitted in these areas. A third category of activities that fall within the jurisdiction of the national government appear on the National Green List. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 333-34 (Pon. 2007).

Only if a life insurance policy has no designated or named beneficiary, would the policy benefits be payable to a decedent's estate to be distributed through probate to his heirs or devisees. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

When the decedent's life insurance policy named his mother, who predeceased the decedent, as beneficiary, the rights in the policy became part of her estate when she died and descended to the devisees according to her will, if she had one, or her heirs according to the law of intestate succession, if she had no will. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

An insurance broker is an independent middleman between the insured and the insurance company who does not represent any particular insurance company. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651 (Pon. 2008).

An agreement to perform the service of obtaining insurance is different from the contract of insurance

itself. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651 (Pon. 2008).

Various writings, admitted into evidence, which were signed on the behalf of Chuuk, the party to be charged, can establish by a preponderance of the evidence that the plaintiff and Chuuk entered into an agreement whereby the plaintiff would obtain insurance on Chuuk's vessels for the two periods in question, and that Chuuk would pay for the premiums for the insurance obtained. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651 (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 elements of a cause of action for quantum meruit are that 1) valuable goods or services are provided 2) to someone against whom recovery is sought 3) when the goods or services are enjoyed or used by the one against whom recovery is sought 4) under such circumstances that notified the person that the one performing the services or providing the goods expected payment. The fact that Chuuk did not know that its insurance broker had paid the premiums relates to the quantum meruit claim's fourth element, which is whether the benefit conferred by the in-force policies was enjoyed by Chuuk under circumstances such that Chuuk knew that the insurance broker expected payment. Since it is beyond question that Chuuk knew that the broker expected payment because Chuuk acknowledged in writing that the premiums were owed, the notice requirement to Chuuk is met by Chuuk's express acknowledgment that it owed the premiums pursuant to its enforceable contract with the broker. Accordingly, Chuuk's contention that it is not liable because it did not know that the broker had advanced the premiums on its behalf is without merit. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 654 (Pon. 2008).

An insurance broker did not violate the Chuuk Financial Management Act by advancing the premium on Chuuk's behalf when it was not a state officer, employee, or allottee within the meaning of the statute and it thus did not create an obligation within the statute's meaning because no evidence suggests that the broker was anything other than one of Chuuk's many vendors with whom Chuuk entered into a binding contract. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 654 (Pon. 2008).

When the evidence did not suggest that it was ever the understanding of those concerned that if one of the state operators failed to pay for insurance covering its vessels, the FSM would become liable for the insurance premiums because it owned the vessels, no contract to which the FSM was a party imposed such liability on the FSM. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 655 (Pon. 2008).

As the vessels' owner, and as a named insured under the policies along with the four states, the FSM received a benefit as a result of the fleet insurance coverage, but in order to establish a claim for quantum meruit, the insurance broker must demonstrate that the FSM was unjustly enriched by the benefit of the broker paying the premium for Chuuk. But the agreement between Chuuk and the FSM was that FSM would permit Chuuk to use vessels that the FSM owned and Chuuk, in return, would pay for insurance coverage for those vessels; so by advancing the insurance premium, the broker met Chuuk's obligation to the FSM in this regard. The primary benefit conferred by the insurance premium payments went to Chuuk, and not to the FSM, since Chuuk was also an insured along with the FSM under the policies and it was

Chuuk's, not the FSM's, obligation to provide coverage for the vessels. To suggest that when Chuuk failed to meet its obligation to the FSM to insure the vessels, the FSM became liable for the premiums on the vessels is to lose sight of the fact that the vessels were being operated by Chuuk and for Chuuk's benefit on the condition that Chuuk provide the insurance. The broker's remedy for the premium nonpayment is against Chuuk, who breached its agreement with the FSM by failing to pay for the premiums. The broker's remedy does not extend to the FSM. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 655 (Pon. 2008).

When a group insurance policy is non-participatory in that the employee contributes nothing to the payment of the premiums, no contractual relationship arises between the employee and the insurer. Therefore the insurer was under no contractual obligation to provide the decedent employee with notice that the group policy lapsed. John v. Chuuk Public Utility Corp., 16 FSM R. 66, 68 (Chk. 2008).

The effect of an employer's cancellation of the master policy in regard to an employee's coverage depends primarily on the time at which the employer does so. If it occurs before liability under the policy has attached, the insurer is released from any liability that might subsequently accrue so that when the insurer's coverage of CPUC employees lapsed before its employee died, and therefore before liability under the policy attached, the insurer, as a matter of law, was not liable. John v. Chuuk Public Utility Corp., 16 FSM R. 66, 68 (Chk. 2008).

When the court has not been supplied with the information necessary for the court to take judicial notice that life insurance was a state employee benefit when CPUC was created and what the insurance coverage's terms were or to conclude that CPUC has not adopted its own merit system with changed benefits, there are genuine issues of material fact that preclude either party being entitled to summary judgment: 1) whether state employees in 1997 were afforded life insurance benefits and on what terms (contributory, non-contributory; on the job only, 24-hour; etc.); 2) whether CPUC has since established its own merit system and then altered the benefits; and 3) whether, if notice of the lapse of insurance coverage was required, it was given for the July 2004 lapse. John v. Chuuk Public Utility Corp., 16 FSM R. 66, 69 (Chk. 2008).

Generally rights of a beneficiary pass to the beneficiary's estate in the event of the beneficiary's death during the lifetime of the insured, but if a policy reserves to the insured the right to change the beneficiary, the beneficiary's rights may cease in the event of the beneficiary's death during the insured's lifetime. In re Estate of Manas, 16 FSM R. 82, 83 (Chk. S. Ct. Tr. 2008).

When the group insurance plan is non-contributory – when the employee does not contribute anything towards payment of the insurance premiums – the employee is not entitled to notice that the employer has ceased paying the premiums. John v. Chuuk Public Utility Corp., 16 FSM R. 226, 227 (Chk. 2008).

When there is no evidence before the court that, if it were not for the employer's maintaining life insurance for the employees, the employee would have either quit his job and taken a job with a different employer that provided life insurance benefits or that he would have purchased his own life insurance policy from another source, the employee's widow cannot recover on a promissory estoppel or detrimental reliance theory since she cannot show that the employee relied on the employer's alleged promise to provide life insurance and her mere assertion, first made in her closing argument, that had they known they might have found another policy is insufficient to prove reliance. John v. Chuuk Public Utility Corp., 16 FSM R. 226, 228 (Chk. 2008).

An insurance policy's benefits are payable only to those who are beneficiaries. Sigrah v. Micro Life Plus, 16 FSM R. 253, 256 n.1 (Kos. 2009).

Life insurance premiums paid after the insured's death are unearned premiums and may be recovered from the date of the insured's death, provided that the date can be satisfactorily established. Sigrah v. Micro Life Plus, 16 FSM R. 253, 257 (Kos. 2009).

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).

An insurer may rely on an applicant's representations as truthful, and, in the absence of information that gives an insurer notice that an insurance applicant has misrepresented facts, an insurer has no duty to investigate an applicant's representations. Sigrah v. Micro Life Plus, 16 FSM R. 253, 258 (Kos. 2009).

In the absence of special circumstances, such as the existence of an incontestable clause in the policy, fraud is fully available to the insurer as a defense in an action at law on the policy. Sigrah v. Micro Life Plus, 16 FSM R. 253, 258 (Kos. 2009).

An insurance applicant has a duty to be truthful and accurate in making representations when applying for insurance. In insurance law, a representation is a statement made prior to the issuance of a policy which tends to cause the insurer to assume the risk. Sigrah v. Micro Life Plus, 16 FSM R. 253, 259 (Kos. 2009).

A misrepresentation in a negotiation for a life insurance policy is a statement as a fact of something that the insured knows or should know is untrue. Sigrah v. Micro Life Plus, 16 FSM R. 253, 259 (Kos. 2009).

It is a long-established common law rule that an insurance applicant has a duty to inform the insurer of answers that would need to be changed between the date of the application and the insurance policy's effective date. The rule is that the insured must inform the company of any change in his physical condition of which he becomes cognizant after making the application for the policy and prior to the delivery thereof. This duty to disclose any change in health exists regardless of whether there is a policy provision requiring such disclosure. Sigrah v. Micro Life Plus, 16 FSM R. 253, 259 (Kos. 2009).

An insurer may void an insurance contract on the grounds that the insured willfully misrepresented a material fact since the misrepresentation prevents a meeting of the minds, or mutual assent, as to the risk to be insured. A material representation or omission of fact in an insurance application, relied on by the insurer in issuing the policy, renders the coverage voidable at the insurance company's option. This protects the insurer's right to know the full extent of the risk it undertakes when an insurance policy is issued. The mutual good faith which is required in a life insurance contract will not permit a recovery where the insured intentionally withholds or conceals material changes in the condition of his health. Sigrah v. Micro Life Plus, 16 FSM R. 253, 259 (Kos. 2009).

An insurer seeking rescission of an insurance contract based on a misrepresentation in an insurance application must tender the premiums back to the insured. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

An insurer seeking to rescind a life insurance policy upon a ground which rendered it voidable from the beginning must return or tender the premium paid thereunder because rescission of an insurance contract would, if granted, absolve an insured from liability for the premium and entitle him to return of the premium paid since the general rule is that a contract must be rescinded in whole and cannot be rescinded in part.

Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

Reinstatement of an insurance policy cannot take place until after the insurer learned of the insured's misrepresentation and then waived it. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 n.3 (Kos. 2009).

If an insurer seeks to avoid liability for the policy death benefit because of the insured's misrepresentation in the application process, it must tender the premiums to the beneficiaries. If it does not, it cannot prevail on the defense that the insured's misrepresentation made the policy voidable. This is because, after an insured's death, if a tender of the premium in avoidance of the life insurance policy for misrepresentation is not made to the beneficiaries in a timely manner or within a reasonable time, the defense of fraud or misrepresentation is deemed waived, and if the beneficiaries refuse the tender, it should then be paid into court before the insurer seeks a decision on the merits of its defense of fraud or misrepresentation. Sigrah v. Micro Life Plus, 16 FSM R. 253, 260 (Kos. 2009).

The court will not hesitate to deny rescission and order enforcement of the contract when the party seeking rescission has not made a timely tender of the premiums (or benefit) it received under the contract. Sigrah v. Micro Life Plus, 16 FSM R. 253, 261 (Kos. 2009).

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).

Since insurance agents are required to exercise the utmost good faith, loyalty, and honesty toward the insurer during the times that they acted as the insurer's agents, by cashing the premium checks, and thereby failing to send the checks on to the insurer, they breached this duty. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

An insurer has no duty to its agents to undertake an investigation for the agents' benefit in order to stop the agents from converting the insurer's property. When the insurer's property was converted by the agents' intentional actions, the agents cannot argue that the insurer should have known that they were converting – stealing – the insurer's property, and that since the insurer should have stopped them but did not stop them from doing what they had no right to do, the agents should not have to pay back what they took. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 443 (Pon. 2009).

The insurer ratified, or approved, the check cashing activities of its agents to the extent that they distributed the money obtained from the checks to policy holders for legitimate insurance purposes, and that the insurer gave credit to its agents for these distributions shows this conclusively. But the insurer never ratified the agents' conversion of the funds that were not accounted for, or were not used for insurance purposes since the insurer's efforts to figure out what had happened, to stop it from happening, to arrive at an accounting for the missing money, and to restore order to its Pohnpei operation, manifest its disapproval of the practice of cashing premium checks initiated and continued by its agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 444 (Pon. 2009).

Every Chuuk resident is enrolled in the Chuuk Health Care Act and is eligible to receive benefits under it, except for unemployed noncitizens residing in the State who are not dependents of enrollees. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 620 (Chk. 2011).

Under the Chuuk Health Care Act, a "resident" is any Chuuk citizen for whom Chuuk is his principal residence, or any noncitizen who has established an ongoing physical presence in Chuuk and whose presence is sanctioned by law and is not merely transitory in nature. The non-citizen workers' ongoing physical presence in Chuuk is clearly sanctioned by law when the non-citizen employees apply annually for labor certification and for entry permits in order to maintain their employment in Chuuk. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 620 (Chk. 2011).

Even though a contractor's non-citizen employees cannot be domiciled in Chuuk, they might have a legal residence here, but, even if they are not considered to have a legal residence here, they do have an actual residence in Chuuk that is legally sanctioned, and they are thus, by statute, enrolled in and eligible for Chuuk Health Care Plan benefits and their employer is therefore liable, as a matter of law, to the Plan for the employees' and the employer's contributions of the health insurance premiums for its non-citizen as well as citizen employees on Chuuk. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 620 (Chk. 2011).

Under a fleet insurance policy, the premiums must be paid for all the ships in the fleet before any has coverage. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 118 (App. 2011).

Cash advances are deducted from the policy's cash value and if the insured dies before repaying it that amount (plus interest) is deducted from the death benefit. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 n.10 (App. 2012).

Under the Chuuk Health Care Act of 1994, it is the employer who is liable to the Health Care Plan for all health insurance premiums including the employee's contribution. Liability is not imposed on the employee. The Act also imposes sanctions on the employer for non-payment of the premiums. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 (Chk. 2012).

In order to collect overdue premiums or any amount imposed or authorized under the Chuuk Health Care Act of 1994, the Act authorizes civil actions against any person liable to pay any amount under the Act, that is, against the employer because under the Act that is who is liable. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 (Chk. 2012).

Non-citizen employees who reside in Chuuk are covered by the Chuuk Health Care Plan and required to make health insurance premium contributions. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 n.1 (Chk. 2012).

Under the FSM Constitution, the power to establish systems of social security and public welfare may be exercised concurrently by Congress and the states. The State of Chuuk therefore has the constitutional authority to establish a system of health insurance since it is a system created to promote and advance the public welfare of Chuuk. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496 (Chk. 2013).

Every Chuuk state employee is automatically an enrollee in the Chuuk Health Care Plan by operation of law since under the Chuuk Health Care Plan Act every Chuuk resident (except unemployed noncitizens who are not dependents of enrollees) is enrolled in and is eligible to receive benefits and "resident' means any citizen of Chuuk for whom Chuuk is his principal residence or any noncitizen who has established an ongoing physical presence in Chuuk and whose presence is sanctioned by law and is not merely transitory in nature. Chuuk is an employer as defined by the Act. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496 (Chk. 2013).

The FSM does not need each state employee to individually notify it that the employee is enrolled in the Chuuk Health Care Plan since the Act provides for universal coverage for Chuuk residents. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496 (Chk. 2013).

Payment of Chuuk state employees' contributions and of the employer's contribution out of the Chuuk state funds held in the FSM Treasury is not be a tax or a levy on the national government or an illegal expenditure of FSM funds since the payment would be from Chuuk state funds and, because the obligation to withhold the Plan insurance premium contributions arises by operation of law, the Plan insurance premium contributions would be properly obligated and should be paid. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496-97 (Chk. 2013).

A plaintiff has a reasonable probability of success on the merits that insurance premiums will be ruled an income tax when the contributions are computed as a percentage of income earned as wages or

salaries. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

A statute that provides only that the Plan's Board "may prescribe" or "may establish" differing premium amounts based on the number of the enrollee's dependants, or on their risk factors, does not appear to require that differing premium amounts be set. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

The balance-of-harms factor favors the defendant when the harm that it would suffer is that it would receive 16⅔% less revenue than it had expected or budgeted for on the basis of the 3% contribution it has been collecting instead of the 2½% that the plaintiff asks the court to enforce and when the harm to the plaintiff is the extra ½% contribution he is paying which could be credited to future health insurance premium contributions if found unlawful. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

When the insurance carrier approved the patient's off-island referral within two days and was ready to put her on the earliest possible flight but the patient did not leave until 20 days later and when this long delay was the proximate cause of the patient's death, the insurance carrier's actions were not the proximate cause of her death because the insurance carrier did not cause the delay. William v. Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

A 1991 memorandum of understanding between the insurer and the Kosrae State Hospital that required that the hospital provide all necessary health care services within Kosrae to all covered persons and that these services would include the cost of a medical or other attendant to accompany a covered person to a health care facility is an agreement that allocates the cost of attendants between the parties to the memorandum and it does not, by itself, allocate costs or create duties between the state and the insureds ("covered persons") and their families. William v. Kosrae State Hosp., 18 FSM R. 575, 582 (Kos. 2013).

When the statute is silent about what result should follow if the Health Care Board does not submit draft legislation for the selection of its members by citizen enrolles and when that statute only directs the submission of draft legislation but does not require (nor could it) its enactment, the Board's failure to comply does not render the Board's composition illegal or its acts ultra vires. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 188 (Chk. 2013).

When the statute provides only that the Chuuk Health Care Plan's Board "may prescribe" or "may establish" differing premium amounts based on the number of the enrollee's dependants or on their "risk" factors, the statute does not require it, but leaves it to the Board's discretion, the Board may choose to assess premiums in a different manner. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 189 (Chk. 2013).

When the health care assessments or premiums are not imposed by the Chuuk Legislature but are imposed by a public corporation, the Chuuk Health Care Plan through its Board and when the assessments or premiums are not deposited in the Chuuk General Fund but into a special trust fund, these attributes of the premium assessments are characteristic of a classic fee and the opposite of a classic tax. Even though the funds raised will be spent, at least indirectly, for the benefit of the entire Chuuk community since the funds will be spent for the benefit of people needing or using health care services, which is nearly everyone in Chuuk at one time or another, the premium assessments lie nearer the fee end of the spectrum than the tax end. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

When the health insurance premiums and assessments are not raised for general revenue purposes and cannot be used for any Chuuk state government activity and can only be used for the purposes of the Health Care Plan Act and when the premiums or assessments help defray the cost of providing medical care, the benefits they provide are not of the sort often financed by a general tax. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

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).

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).

While there may be no general duty to explain the type of insurance involved, insurance agents may be found to have additional duties when specifically questioned by the insured as to the appropriate level of insurance. Johnny v. Occidental Life Ins., 19 FSM R. 350, 358 (Pon. 2014).

The promises made by the insurer's agents bind the insurer and must be enforced in order to avoid manifest injustice because if the plaintiff had enrolled her daughter under a separate cancer policy, she would have been covered under her own policy, but instead, the agent's misrepresentation caused her to keep her daughter under her cancer policy, making the daughter ineligible at the time she was diagnosed with cancer because she did not qualify as a covered family member under that policy's provisions. Johnny v. Occidental Life Ins., 19 FSM R. 350, 359 (Pon. 2014).

A plaintiff's claim under a promissory estoppel and detrimental reliance cause of action is supported when the plaintiff has timely paid the insurance premiums since 1996; when her reasonable expectation was that she and her dependents would receive life and cancer insurance coverage; when she expected that, as an insured, that the insurer's agents would provide her with accurate and reliable information about the policies, which would include when a dependent is no longer covered and what steps to take when coverage has ceased; when the insurer did not fulfill these expectations, to the detriment of her and her dependents; and when, if the insurer had properly advised her, she would have had the opportunity to take out a separate cancer policy for her daughter and her daughter would have been eligible for cancer policy benefits once she was diagnosed with cancer in 2009. Johnny v. Occidental Life Ins., 19 FSM R. 350, 359-60 (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).

When the insurance benefit is a amount of $10,000 lump sum payment; when the agreement does not specify if expenses incurred for an attendant accompanying a patient for off-island treatment is covered under the policy; and when there was no evidence presented at trial as to the nature and amount of expenses incurred, the expenses claim will be denied. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360-61 (Pon. 2014).

When certain expenses had been covered by a different insurance plan, the court will not grant relief that would provide the plaintiff with a double recovery. Johnny v. Occidental Life Ins., 19 FSM R. 350, 361 (Pon. 2014).

The statutory requirement that an insurance policy must be signed by two major officers of the insurance company is fulfilled when the cover page of the policy shows the signatures of the company's Secretary and President. Johnny v. Occidental Life Ins., 19 FSM R. 350, 361 (Pon. 2014).

Contracts impose on the parties a duty to do everything necessary to carry them out, and there is an implied undertaking in every contract on each party's part that he will not intentionally and purposely do anything to prevent the other party from carrying out his part of the agreement, or do anything which will

have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. The FSM Supreme Court will entertain such claims in the context of insurance contracts, when the insurer possesses greater sophistication, provides the policy, can be expected to assist insureds in understanding the relevant terminology in the policy, and has a specialized role in processing claims. Johnny v. Occidental Life Ins., 19 FSM R. 350, 361-62 (Pon. 2014).

Under the circumstances of an insurance case, there may be a duty to disclose information, based on a relationship of confidence or trust between the parties, or based on one party's superior knowledge or means of knowledge. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

As used in the insurance context, bad faith does not refer to misconduct of a malicious or immoral nature. Rather, the bad faith concept emphasizes unfaithfulness to an agreed common purpose or to the justifiable expectations of the other party to the contract. In short, a showing of bad faith requires that insurers not act unreasonably or arbitrarily when dealing with their insureds. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

A principal is bound by, and liable for, the acts which his agent does with or within the actual or apparent authority from the principal, and within the scope of the agent's employment, and an insurance company's general agent is one who has authority to transact all the business of an insurance company of a particular kind, or in a particular place, and whose powers are coextensive with the business entrusted in the agent's care. Agents have been regarded as general agents when they fully represent the insurance company in a particular district and are authorized to solicit insurance, receive money and premiums, issue and renew polices, appoint subagents, and adjust loses. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362-63 (Pon. 2014).

When an agent has been employed by the insurer for approximately 25 years and, although he may not have had the power to unilaterally amend policies, he informed the plaintiff that cancer coverage was up to 25 years of age; and when, because he was the manager of the insurer's office in Pohnpei and aside from a subordinate he was the only insurer's representative whom the plaintiff was in contact with, the plaintiff had ample reason to rely and accept his statements as the truth. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

When the damages amount was a liquidated sum and the insurance contract involved a promise to pay money if certain events occurred, the plaintiff will be awarded the 9% statutory rate of interest from a reasonable time of 60 days after the diagnosis of her daughter's cancer was submitted to the insurer in a claim form for accident and health policies. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

When discretionary language "may" is used, which indicates that the insurance board has the power to consider these factors when assessing the insurance premiums and may exercise the power of applying these factors in the future, the discretion to do so is left with the board, and not with the court. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 26 (App. 2015).

Insuring vessels that later navigate through FSM waters is not, by itself, sufficient to give the court personal jurisdiction over the insurer. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 210 (Yap 2015).

Since the FSM long-arm statute only requires for personal jurisdiction that the defendant be a party to a contracting to insure a risk located in the FSM, it may cover an agency providing underwriting and claims services for the actual insurers at Lloyd's of London. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 210-11 n.2 (Yap 2015).

Since the FSM long-arm statute specifically provides for personal jurisdiction over non-residents contracting to insure any person, property, or risk located within the FSM at the time of contracting, it does not allow the court to exercise personal jurisdiction over an insurer that insured a vessel that was not

located in the FSM, but was in Singapore at the time of contracting for marine insurance. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

Without a direct action statute, an injured third-party cannot sue an insurer directly because an insurer has no contractual obligation to persons other than its insured, at least until a court determines the liability of its insured and the insurer cannot be joined as a party to a lawsuit to determine that liability. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

Even without a direct action statute, an insurer with world-wide coverage could expect to be called upon to help defend its insured in FSM courts. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

Generally, an insurer has the duty to defend, the duty to indemnify, the duty to settle, and the duty (or implied covenant) of good faith and fair dealing. These duties are all owed to its insured with whom the insurer has a contractual relationship, not to injured third-party claimants. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 213 (Yap 2015).

An injured claimant may not sue an insurer for breach of the duty of good faith and fair dealing. The duty is a product of the fiduciary relationship created by the contract between the insurer and its insured. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 213 (Yap 2015).

An insured's cause of action for the insurer's breach of the covenant of good faith and fair dealing is assignable to the injured third-party claimant, and the assignee may sue on it. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 213 (Yap 2015).

While it may be true that an agent and a principal may be sued in the same case for the same cause of action even when the principal's liability is predicated solely on the agency, when the principal's liability is not based on the agency but is based on a statute, the Chuuk Health Care Act of 1994, that imposes the liability only on the principal – the employer – and absolves the employee from any liability, the employee agent is not a proper party to the litigation. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284 (Chk. 2016).

When the legal issue of whether the foreign citizen CPUC Chief Executive Officer could be a defendant in a lawsuit by the Chuuk Health Care Plan to collect unpaid health insurance premiums, thereby creating diversity jurisdiction, was previously litigated and a final decision rendered concluding that it could not be done; when the time to appeal that decision has expired; and when the same parties are present, res judicata bars the action in the FSM Supreme Court and the case will be dismissed without prejudice to any action in the Chuuk State Supreme Court. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 (Chk. 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).

When an insurance carrier's endorsement contained within an employer's policy limited the applicability of the CNMI Workers' Compensation Program to "the benefits provided under the Workers' Compensation Law of the CNMI," (which would entail that statute's "determination of pay," that statute's exclusive remedy provision setting forth tort immunity does not apply, and an employee would not be forestalled from also bringing a civil action sounding in negligence. Hairens v. Federated Shipping Co., 20 FSM R. 404, 409 (Pon. 2016).

Not every mistake by an insurer or its agent rises to the level of bad faith – is automatically

unreasonable or arbitrary. An insurance agent's misrepresentation, particularly an unintentional misrepresentation, may breach the agent's duty of care toward the insured rather than constitute bad faith and unreasonable and arbitrary conduct towards an insured. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 428 (App. 2016).

When the insurance agents' failure to differentiate between the insured's life and cancer policies was careless, but not arbitrary and unreasonable, and did not deprive the insured of her bargained-for benefit, the trial court's conclusion that the insurers breached the implied covenant of good faith and fair dealing or that they engaged in bad faith conduct was reversible error. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 428-29 (App. 2016).

A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent performance of that duty or of duty to notify debtor if insurance not obtained. FSM Dev. Bank v. Carl, 20 FSM R. 592, 593 (Pon. 2016).

When the debtor has not produced evidence to show that credit insurance was obtained when the loan was entered into, the court will not rule that the debt has been discharged although, if credit insurance had been obtained, the debtor would have had a valid claim of discharge of the debt. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594 (Pon. 2016).

INTEREST AND USURY

Although FSM Public Law No. 2-33, regarding usury, did not appear in the 1982 codification of FSM statutes, it remained effective as did every other law which took effect after October 1, 1981 and it is currently in effect as codified in the 1987 supplement to the FSM Code at 34 F.S.M.C. 201-207. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 36 (App. 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).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Bank of Guam v. Nukuto, 6 FSM R. 615, 616 (Chk. 1994).

Interest on unpaid social security taxes is assessed at 12% from date due until paid even if part of a court judgment and even though court judgments normally bear a 9% interest rate. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 370 (Yap 1996).

Plaintiff's waiver of a portion of its monetary claim cannot summarily disprove an affirmative defense of usury. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (III), 7 FSM R. 453, 455 (Pon. 1996).

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).

Even assuming that the seller historically did not charge interest on its account with the buyer, nothing precludes the parties to a commercial transaction from coming to a new agreement regarding installment payments on the outstanding indebtedness that also included an interest component calculated over the prior 26 months period, so long as the interest rate charged did not contravene FSM public policy as set out in 34 F.S.M.C. 204. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504 (Pon. 2002).

When an agreement provides for 18% interest per annum on the principal remaining after the debtor's

last payment, no usury issue arises, and when the interest charged cannot be said to be arbitrary and capricious on any other basis, the interest portion of the agreement is binding. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM R. 502, 504 (Pon. 2002).

No person in a commercial credit transaction may directly or indirectly receive or charge interest which exceeds an annual percentage rate of twenty-four percent. Bank of the FSM v. Mori, 11 FSM R. 13, 14 (Chk. 2002).

Because the repeal of a statutory prohibition against usury releases any penalties imposed and permits enforcement of the debtor's obligation in accordance with the parties' agreement, it follows that as to a usury defense, the parties' agreement is governed by the law existing when the agreement is enforced. Bank of the FSM v. Mori, 11 FSM R. 13, 15 (Chk. 2002).

A plaintiff is only entitled to a judgment which represents the amount of money he lent to the defendants and the $100,000 in interest he seeks cannot be awarded when it is the product of an unlawful and usurious interest rate. Walter v. Damai, 12 FSM R. 648, 649 (Pon. 2004).

A creditor who engages in a usurious credit transaction has no right to collect or receive any interest and this prohibition extends to prejudgment interest. Walter v. Damai, 12 FSM R. 648, 650 (Pon. 2004).

Interest on unpaid social security taxes continues to accrue at 12% until paid, even though a judgment normally bears interest at 9%. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

The general rule is that, in the absence of express authorization, interest is to be computed on a simple basis rather than compounded. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 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).

A lease agreement's penalty provision, which charged either one or two per cent per day (365% or 730% per annum respectively), is void since either interest rate is usurious. The penalty for charging a usurious interest rate is that the person charging such a rate has no right to receive or collect any interest. Uehara v. Chuuk, 14 FSM R. 221, 225-26 (Chk. 2006).

The legal interest rate is nine per cent per annum simple interest – not compounded. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 n.2 (Yap 2006).

If appellants post a supersedeas bond, they are automatically entitled to stay once the court has approved the bond. Statutory post-judgment interest, however, will continue to accrue until the judgment is paid. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 505 (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).

A 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. Albert, 15 FSM R. 323, 328 (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).

Pre-judgment interest cannot be awarded until the court has determined when payment would reasonably have been due. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

Since 18% per annum is not a usurious rate of interest under FSM law, the defaulting defendants will be liable for this item of damages when the defaulting defendants agreed, by their agent's signature on the invoices, to pay this rate on overdue accounts. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

If the additional 33% charge for collection were considered a penalty instead of attorney's fees, it would then have to be added to the any other penalties and interest to determine the true interest rate, and adding 33% to the 18% contract rate would yield an interest rate over 50%, which is usurious interest. When a creditor seeks a usurious interest rate, the penalty is that the creditor will not be permitted to recover any interest whatsoever. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

The legal rate of interest is 9%, and is simple interest, not compounded. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546 (Yap 2009).

When there is no evidence in the record that the defendant knew of, or had agreed to, a contractual requirement that he pay interest and the ledger sheets admitted into evidence do not show any interest charges and when none of the situations where the courts have previously allowed prejudgment interest is present, prejudgment interest will be denied. George v. Albert, 17 FSM R. 25, 33 (App. 2010).

When the parties have had an agreement stating that interest would be added to an unpaid balance, the FSM court has awarded prejudgment interest, and, prejudgment interest at the 9% statutory judgment rate has also been awarded when the defendant knew precisely the amount to which he was obligating himself and the effective date of that commitment to pay, and when the defendant was liable for conversion. George v. Albert, 17 FSM R. 25, 33 (App. 2010).

The statutory interest rate is 9% per year, which the court may impose prejudgment when the defendant knew precisely the amount to which he was potentially obligating himself, and the effect date of that commitment. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 n.6 (Pon. 2011).

The general rule is that in applying partial payments to an interest-bearing debt which is due, in the absence of an agreement or statute to the contrary, the payment will be first applied to the interest due. Salomon v. Mendiola, 20 FSM R. 138, 140 (Pon. 2015).

At the start of a typical loan repayment, the installment payments are usually not much larger than the amount of interest accrued and due. The bulk of the installment payment is then applied to interest and the remaining amount goes to reducing the principal so that at the next installment payment, if made on time, a little less is needed to pay the accrued interest and a little more can go to the reduction of principal. This does not constitute usury unless the interest rate itself is higher than permitted by statute. Salomon v. Mendiola, 20 FSM R. 138, 140-41 (Pon. 2015).

If the loan payments are late, more interest will accumulate and more of the payment will go to cover the interest and less will go to reducing the principal. Enough late payments or a missed payment and the next payment may end being applied all to accrued interest with nothing left over to apply to the principal. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

When a court finds a lack of an enforceable contract, and no evidence was submitted to support the plaintiff's request for interest, the plaintiff may not recover on a claim for 1.5% interest per month based on the parties' unenforceable agreement. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 19 (Pon. 2016).

INTERNATIONAL LAW

The Trust Territory is not a foreign state such as to give the FSM Supreme Court diversity jurisdiction over a suit against the Trust Territory. Neimes v. Maeda Constr. Co., 1 FSM R. 47, 51 (Truk 1982).

The concept of admiralty is related uniquely to the law of nations. It consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. Lonno v. Trust Territory (I), 1 FSM R. 53, 71 (Kos. 1982).

Retention of the power to play a major role in executive functions, to suspend legislation enacted by the Congress, and to entertain appeals from the court of last resort, the very essence of government suggests that the Trust Territory government remains, not a foreign state, but an integral part of the national government here. Lonno v. Trust Territory (I), 1 FSM R. 53, 73-74 (Kos. 1982).

Under the present state of affairs, the Trust Territory government cannot be considered a foreign state, citizen or subject thereof within the meaning of article XI, section 6(b) of the Constitution. Lonno v. Trust Territory (I), 1 FSM R. 53, 74 (Kos. 1982).

Under international law punitive damages are but rarely and then only reluctantly allowed against foreign national governments. Damarlane v. United States, 6 FSM R. 357, 361 (Pon. 1994).

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another. It is not a rule of law, but one of practice, convenience, and expediency. Under principles of comity, courts will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 431-32 (Pon. 1994).

Any attempt to breathe new life into tort claims time barred by the relevant and analogous statutes should be approached with caution because they are the type of personal claims for money damages that become increasingly difficult of proof and difficult to defend with the passage of time. Ordinarily such claims are resolved by political and diplomatic efforts. Alep v. United States, 7 FSM R. 494, 498 (App. 1996).

International law does not impose vicarious liability on the chief of state or elected or appointed officials to whom governmental authority has been delegated to make military decisions having collateral consequences to noncombatants in theaters of operations. Alep v. United States, 7 FSM R. 494, 498 (App. 1996).

The Law of the Sea Convention first recognized that the Federated States of Micronesia as a nation has the exclusive right to exploit resources in its 200-mile EEZ. The FSM Constitution was drafted to vest authority over the EEZ in the national government with this in mind. Chuuk v. Secretary of Finance, 8 FSM R. 353, 378 & n.19 (Pon. 1998).

The FSM national government has the exclusive right to harvest living marine resources in its EEZ, just as it has the exclusive right to harvest offshore mineral resources. As the holder of this exclusive right, the national government is allowed to dispose of this resource and receive revenue in return. Under the Convention on the Law of the Sea, each nation is entitled to exploit its marine resources to the extent it is able to achieve a maximum sustainable yield. When the FSM does not fully exploit its own resources, it is entitled to compensation at the appropriate market rate from foreign fishing vessels which it allows to fish in its waters. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 (Pon. 1998).

The determination of whether Tonga and its agents are immune from suit is a decision that is better made by the FSM government's executive branch because the FSM Constitution expressly delegates the power to conduct foreign affairs to the President and because whether a party claiming immunity from suit has the status of a foreign sovereign is a matter for the executive branch's determination and is outside the competence of the courts. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 (Kos. 2000).

International organizations, their property, and their assets wherever located, and by whomsoever held, are accorded the same immunity from suit and every form of judicial process by the Federated States of Micronesia government that it accords to foreign governments, but the nature of the immunity the FSM affords foreign governments is still an open question. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 n.5 (Kos. 2000).

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).

Under the United Nations Convention on the Law of the Sea, an international treaty to which the FSM has acceded and which is now in effect, coastal nations do not have sovereign ownership of the resources in their exclusive economic zones. Coastal nations only have sovereign rights for the purpose of exploring and exploiting, conserving and managing natural resources, whether living or non-living. These rights are subject to numerous duties, including the duty to allow other nations access to the living resources of its exclusive economic zone if the coastal nation does not have the domestic capacity to harvest the entire allowable catch in its exclusive economic zone. Chuuk v. Secretary of Finance, 9 FSM R. 424, 432 (App. 2000).

Under the Law of the Sea Convention, a coastal nation does not "own" the fish in its exclusive economic zone. But a coastal nation does "own," if "own" is the right word, the sovereign right to exploit those fish and control who is given the access to its exclusive economic zone and the opportunity to reduce those fish to proprietary ownership. Chuuk v. Secretary of Finance, 9 FSM R. 424, 432 (App. 2000).

A suit over an incident involving a foreign vessel, will not be dismissed when the vessel was engaged in commercial activity, and not in sovereign acts. Kosrae v. Kingdom of Tonga, 9 FSM R. 522, 523 (Kos. 2000).

Conduct attributable to a state that is intended to, and does, effectively deprive an alien of substantially all of the benefit of his interest in property, constitutes a taking of the property, even though the state does not deprive him of his entire legal interest in the property. If a government harasses a foreign entrepreneur in such a way as to make the enterprise unprofitable, one of two outcomes may follow: the entrepreneur may abandon the property or the entrepreneur may sell it to the government at a price which reflects only the diminished potential of the firm. The first is usually classified as a "creeping expropriation" and the second becomes a case of coercion. However, conduct attributable to a state may deprive an alien's property of value without constituting a taking. AHPW, Inc. v. FSM, 12 FSM R. 114, 120-21 (Pon. 2003).

What is now the Federated States of Micronesia was a part of the Trust Territory of the Pacific Islands

during the United Nations Trusteeship, and the government of the Trust Territory was not an agency of the United States. When the present Federated States of Micronesia was part of the Trust Territory of the Pacific Islands, the Federated States of Micronesia was a foreign country relative to the United States, and not a U.S. territory. In re Neron, 16 FSM R. 472, 473-74 (Pon. 2009).

The Federated States of Micronesia is not, and historically was not, a U.S. territory. In re Neron, 16 FSM R. 472, 474 (Pon. 2009).

Although the court will not judge the actions of the U.S. government, when the case's disposition does not require the court to judge those actions, the court can and will judge the actions of the parties to the case if there are satisfactory criteria to do so. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485 (Pon. 2009).

The international nature of admiralty and maritime law would necessitate that FSM statutory maritime law be applied uniformly throughout the FSM and not vary from island to island because the concept of admiralty law is related uniquely to the law of nations and it consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

Pacta sunt servanda ("agreements must be kept"), is the rule of law that applies to all agreements made within the framework of the international legal system, and is the basis of the law of treaties, and once in force treaties are binding on the parties to them and must be performed in good faith. FSM v. Ezra, 19 FSM R. 486, 492 & n.5 (Pon. 2014).

Although the FSM has not acceded to, ratified, or otherwise adopted Vienna Convention on the Law of Treaties of May 1969, pacta sunt servanda is international customary law that binds the FSM independently. FSM v. Ezra, 19 FSM R. 486, 492 n.5 (Pon. 2014).

Customary international law can be derived from a variety of sources, but most often from a general and consistent practice of states, and the "practice of the states" includes: 1) all manner of actual behaviors as well as public statements and instructions from diplomatic and official governmental bodies; 2) international agreements codifying or contributing to the emergence of international law; 3) and can also be derived from general principles common to all legal systems. There is no precise formula to indicate how widespread a practice must be before it is accepted as a general practice. FSM v. Ezra, 19 FSM R. 486, 492 & n.8 (Pon. 2014).

All nations have a duty and obligation over its territory and general authority over its nationals. This duty requires: 1) prescription, 2) adjudication, and 3) enforcement of international law. Prescription is the nation's responsibility to make sure that its laws, whether created by legislation, executive order, rule or regulation, or court order enable it to carry out its international obligations. Adjudication is the requirement that persons or things are subject to the process of its courts or administrative tribunals, whether civil or criminal proceedings. Finally, enforcement of the law requires the nation to induce or compel compliance and punish noncompliance with its laws through the courts, police, or by other action. FSM v. Ezra, 19 FSM R. 486, 493 (Pon. 2014).

Since the FSM became a member state of the United Nations, it has reciprocal obligations to the international community to redress wrongs in good faith under the provisions of the U.N. Charter. FSM v. Ezra, 19 FSM R. 486, 496 n.15 (Pon. 2014).

The territorial sea is the waters within 12 nautical miles seaward of FSM island baselines, and the exclusive economic zone is the water seaward of the territorial sea outward to 200 nautical miles from the island baselines. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

Passage by Vietnamese through the FSM territorial waters was not innocent and therefore unlawful when it was for the purpose of illegal sea cucumber harvesting, and thus it provides a sufficient factual basis for a guilty plea to entry without a permit. FSM v. Bui Van Cua, 20 FSM R. 588, 590-91 (Pon. 2016).

– Diplomatic Relations

It would seem, as a matter of comity among sovereign nations, the Korean Embassy would expect that after the receipt of its diplomatic note, the FSM Department of Foreign Affairs would promptly and voluntarily, long before the trial court ordered it, file its determination that the Korean defendants had diplomatic immunity from suit. McIlrath v. Amaraich, 11 FSM R. 502, 507 (App. 2003).

The FSM President is authorized to enter into diplomatic relations with foreign governments and to consent to the establishment of diplomatic missions in the FSM. FSM v. Ezra, 19 FSM R. 486, 491 (Pon. 2014).

Members of diplomatic missions, and their families and private servants, and diplomatic couriers assigned to the mission must be afforded the privileges, immunities, protections, and exemptions specified in the April 18, 1961 Vienna Convention on Diplomatic Relations, and the diplomatic mission's premises is inviolable. FSM v. Ezra, 19 FSM R. 486, 491 (Pon. 2014).

An embassy's inviolability and protection is law, made by treaty, and the magnitude of the infraction is irrelevant since inviolability is a foundation of international law that precludes even the slightest violation because there is no more fundamental prerequisite for the maintenance of good relations between the countries in today's interdependent world than the inviolability of diplomatic envoys and embassies. The inviolability rule applies to the embassy building, or parts of buildings and land ancillary thereto, irrespective of ownership and to a diplomatic agent's private residence. FSM v. Ezra, 19 FSM R. 486, 491 & n.4 (Pon. 2014).

Under the Vienna Convention, the receiving country is under a special duty to protect diplomatic persons, places, and things against any intrusion or damage, and to prevent any disturbance of peace of the mission or impairment of its dignity. FSM v. Ezra, 19 FSM R. 486, 491 (Pon. 2014).

Since the Constitution explicitly grants the FSM Supreme Court trial division concurrent and original jurisdiction over any cases arising under treaties and since a breach of the inviolability of the embassy premises is a direct violation of an international treaty and international law, the FSM Supreme Court trial division has original jurisdiction over a prosecution for a misdemeanor trespass and theft committed in a foreign embassy. FSM v. Ezra, 19 FSM R. 486, 491-92 (Pon. 2014).

Internationally protected persons are entitled to special protection. Those persons are entitled to a higher degree of protection than afforded to ordinary citizens. FSM v. Ezra, 19 FSM R. 486, 493 n.9 (Pon. 2014).

Under international law, the state is expected to provide an effective civil remedy, and/or criminal sanction when damage or injury to a diplomatic mission occurs. If it does not do so, the claim might proceed before an international tribunal. FSM v. Ezra, 19 FSM R. 486, 493 (Pon. 2014).

In order to fulfill its treaty obligations to protect diplomats, as governed through the application of international law, the FSM must apply its national criminal code of law to private citizens acting within its territorial control. FSM v. Ezra, 19 FSM R. 486, 493 (Pon. 2014).

Exclusive national jurisdiction over a trespass and theft at the Chinese Embassy is proper under 11 F.S.M.C. 104(7)(a)(ii) as an otherwise undefined national crime, but jurisdiction is not proper under 11 F.S.M.C. 104(7)(a)(i) where an exclusive list of national crimes is defined. FSM v. Ezra, 19 FSM R. 486, 494 (Pon. 2014).

The Chinese Embassy does not enjoy full extraterritoriality under the Vienna Convention on Diplomatic Relations, but is afforded special privileges therein because the status of diplomatic premises arises from the rules of law relating to immunity from the prescriptive and enforcement jurisdiction of the receiving state;

the premises are not a part of the territory of the sending state. That embassy premises are inviolable does not mean that they are extraterritorial. FSM v. Ezra, 19 FSM R. 486, 495 n.13 (Pon. 2014).

Under 11 F.S.M.C. 104(7)(a)(ii), the FSM Supreme Court's trial division has exclusive jurisdiction over a trespass and theft at the Chinese Embassy because ambassadors, and all foreign officials, are explicitly intended to be protected by the national government and breaching of an embassy's sanctity affects the personal residence of the ambassador, and directly affects the ambassador's staff, many of whom are legally protected foreign officials; because, although the embassy's physical premises are not explicitly listed in the Constitution as protected property they are necessarily, and implicitly, included within relationship with the ambassador and other foreign diplomats; because the duty of protecting the physical diplomatic mission is an express requirement of the agreement between the FSM and China and the Vienna Convention, statutorily incorporated by reference, requires the protection of the embassy itself; and because this is of an indisputably international character, a fortiori of a national character, and therefore beyond the reach of the state power to control. FSM v. Ezra, 19 FSM R. 486, 496 (Pon. 2014).

JUDGMENTS

The courts must apply three guidelines in determining whether a decision should be given retroactive effect. First, the decision, to be applied non-retroactively, must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied or by deciding an issue of first impression whose resolution was not clearly foreshadowed. Second, the court must weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation. Finally, the court must weigh the inequity imposed by retroactive application. Innocenti v. Wainit, 2 FSM R. 173, 185-86 (App. 1986).

Earlier legislation similar to the legislation at issue cannot serve as "past precedent" within the meaning of the first guideline for determining whether a decision should be given retroactive effect where that legislation has not been subjected to court review for constitutionality. Innocenti v. Wainit, 2 FSM R. 173, 185 (App. 1986).

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 action of a trial court in refusing to vacate a judgment will not be disturbed on appeal unless it clearly appears that the trial court has abused its discretion. Truk v. Robi, 3 FSM R. 556, 564 (Truk S. Ct. App. 1988).

Under Civil Rule 54(c) the court has full authority except in default judgments, to award the party granted judgment any relief to which it is entitled whether that party prayed for it or not. Billimon v. Chuuk, 5 FSM R. 130, 137 (Chk. S. Ct. Tr. 1991).

Where a judge's pretrial order states that the only issue for trial is the ownership of land within certain boundaries as described on a certain map later litigants cannot claim that the determination of title does not include land that they admit is within those boundaries. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 49-50 (App. 1995).

Unclaimed balances of judgments paid into court may escheat to the government. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 371, 375 (Pon. 1996).

An order granting summary judgment does not constitute a judgment. Before an adjudication can become an effective judgment, the judgment must be set forth in writing on a separate document, and the judgment so set forth must be entered in the civil docket. Bank of the FSM v. Kengin, 7 FSM R. 381, 382 (Yap 1996).

Because dicta does not create a precedent and is not binding, no rehearing can be granted on dicta in an opinion. Ting Hong Oceanic Enterprises v. FSM, 7 FSM R. 481, 484 (App. 1996).

In the Chuuk State Supreme Court a trial judge has the discretion to order on his own motion a hearing for the plaintiff to prove to the court by the applicable legal standard the amount of damages or other relief sought to be awarded by an offer of judgment. Rosokow v. Chuuk, 7 FSM R. 507, 509-10 (Chk. S. Ct. App. 1996).

All judgments, by statute, accrue nine percent simple interest a year from date of entry of judgment until satisfied. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670 (App. 1996).

When a second action and judgment is necessary to enforce and satisfy an earlier judgment, the statutory interest on judgments will be computed from the date of entry of the original judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670 (App. 1996).

A judgment that is reversed and remanded stands as if no trial has yet been held. A party whose convictions have been reversed stands in the position of an accused who has not yet been tried. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

An obligation of the state to pay a litigant a sum in exchange for dismissal of claims sought that arises from the judgment of dismissal of that case is not contrary to the legislative intent expressed in any provision of the Financial Management Act. Otherwise, no settlement of litigation requiring payment by the state could ever be made. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

It is the purpose of the Financial Management Act to ensure that public funds are only used or promised in a manner provided by law and a judgment of the Chuuk State Supreme Court trial division is a manner provided by law. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

The FSM does not have a statute which prescribes when a plaintiff may obtain prejudgment interest, but prejudgment interest has been awarded in the FSM. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

As a general rule, a judgment for a defendant based on lack of jurisdiction does not bar the plaintiff from bringing another action on the same cause in another court having jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 147, 148 (Pon. 1999).

A judgment entered upon a dismissal for lack of jurisdiction should recite that fact, so as to make clear that the dismissal is without prejudice to a different suit in a court that does have jurisdiction. Similar reasoning applies to the granting of a motion to dismiss for improper forum. National Fisheries Corp. v. New Quick Co., 9 FSM R. 147, 148 (Pon. 1999).

Before the Chuuk State Supreme Court can enter a judgment against the state's public funds pursuant to an offer and acceptance of judgment under Civil Procedure Rule 68, a hearing for the purpose of having the benefit of evidence or hearing testimony as to the value of the plaintiff's claim, or the validity thereof, is an absolute necessity. Kama v. Chuuk, 9 FSM R. 496, 499 (Chk. S. Ct. Tr. 1999).

Attorney fee awards that are part of money judgments are entitled to bear interest at the judgment rate until satisfied. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Unsatisfied judgments accrue nine percent simple interest from date of entry because the statute does not authorize compounding. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

The generally recognized rule is that interest should not bear interest, but compound interest may be awarded if authorized by statute. When the statute reads "nine percent a year" it is not an express

authorization to compound interest annually, but is instead, without more, merely a statement of the rate of simple interest. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Judgments in the Federated States of Micronesia are valid and enforceable for twenty years, and therefore generally do not need to be "revived." Walter v. Chuuk, 10 FSM R. 312, 315 (Chk. 2001).

A revived or renewed judgment is not a novation of contract. Walter v. Chuuk, 10 FSM R. 312, 315 (Chk. 2001).

Under early common law and prior to the creation of the writ of scire facias, it was necessary to sue on the judgment in a new action, affording the defendant an opportunity of proving that he had discharged it, if he had really done so. The purpose of a writ of scire facias or of a revival of the judgment is to give a dormant judgment a new vitality so that it may be executed upon, although it is not a new action or judgment. Walter v. Chuuk, 10 FSM R. 312, 315-16 (Chk. 2001).

An action upon a judgment must be commenced within 20 years after the cause of action accrued. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

Enforcement of a judgment may also be effected, if the court deems justice requires and so orders, by a civil action on the judgment or in any other manner known to American common law or common in courts in the United States. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

There is no provision in FSM law that makes a judgment dormant or that extinguishes a judgment-creditor's right to execution before the twenty-year statute of limitations has run. A dormant judgment is one upon which the statute of limitations has not yet run but which, because of lapse of time during which no enforcement action has been taken, may not be enforced unless certain steps are taken by the judgment holder to revive the judgment. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

An eight-year-old judgment not being dormant in the FSM (although some other jurisdiction may consider it dormant), it cannot be revived by an FSM court. The general rule is that a judgment, to be revived, must be dormant; if a judgment is not dormant, revivor is not necessary. An FSM judgment creditor may proceed by bringing a new action on the judgment. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

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 the original trial judge had the discretion to hold, or not to hold, a Rule 68(b) hearing and when it appears that, based on the memorandum submitted with the offer and acceptance and the attorney general's authority to settle claims against the state, the trial judge exercised his discretion not to hold a Rule 68(b) hearing and instead issued the judgment, the holding that a Rule 68(b) hearing was an absolute necessity was an erroneous conclusion of law. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

In the FSM, a court judgment remains in effect for twenty years, which gives a judgment holder plenty of time to collect her judgment so that for although the judgment gives the plaintiff $5,000 worth of auto repairs and she may not have a vehicle now, that is not to say that she will never have one at any time in the future and be able to collect on her judgment. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

When the trial court concluded that its ruling would not change what had been established long ago and continued until today and what had been habitually practiced on an island but did not make a finding of what had been established long ago and what had been the habitual and normal practice on the island, the case will be remanded to the trial court for it to determine if the appellants had customary and traditional use rights to the island and what the extent of those rights is. Rosokow v. Bob, 11 FSM R. 210, 216-17 (Chk. S.

Ct. App. 2002).

In the FSM, judgments, by statute, remain valid and enforceable for twenty years from date of entry. In re Engichy, 11 FSM R. 520, 525 (Chk. 2003).

While the court may determine (and has in the absence of statute) the priority of its judgments as to a debtor, the court is reluctant to assume that it may order the discharge of a judgment against a debtor when, by statute, the judgment is to remain valid and enforceable for twenty years. In re Engichy, 11 FSM R. 520, 525 (Chk. 2003).

Any post-judgment charges for attorney's fees and costs – any attorney's fees and costs beyond those awarded in the judgments themselves – must first be determined as reasonable and awarded by the court before the judgment-creditors are entitled to these amounts. In re Engichy, 11 FSM R. 520, 534 (Chk. 2003).

A court has the inherent power to tailor its decision and remedies to prevent any adverse impact on the affairs of the public because it may, if it determines that the best interests of the parties and of the public require it, render a judgment in plaintiffs' favor on constitutional and statutory claims, and make the application of the judgment prospective only. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 580 (Chk. S. Ct. Tr. 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).

A quiet title court judgment is only good against the parties to the case and those in privity with them, while a certificate of title to registered land is presumptively valid against the world. Dereas v. Eas, 12 FSM R. 629, 633 (Chk. S. Ct. Tr. 2004).

Every judgment must be set forth on a separate document. Nikichiw v. O'Sonis, 13 FSM R. 132, 136 n.2 (Chk. S. Ct. App. 2005).

The principle of stare decisis is one of the guiding lights of our jurisprudence, and without a principled and compelling reason for overruling a long line of FSM cases, the court is disinclined to do so. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 149 (App. 2005).

The courts are not given the responsibility of interpreting the law, but deprived of the authority to apply it. The judiciary's power to pass judgment goes hand in hand with its power to enforce those judgments as justice requires. Chuuk v. Davis, 13 FSM R. 178, 185 (App. 2005).

A court which lacks personal jurisdiction over a defendant cannot enter a valid judgment against that defendant. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

Civil Rule 71 only permits enforcement of orders and judgments against non-parties "when obedience to an order may be lawfully enforced against a person who is not a party." The key word here is "lawfully." Ordinarily a judgment may be enforced only against a party. However, an injunction may be enforced upon parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise. Ruben v. Petewon, 13 FSM R. 383, 389 (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).

Previously awarded attorney's fees as sanctions for repeated non-compliance with the court's orders compelling discovery will, if unpaid, be added to the judgment. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 556 (Chk. 2005).

If a detrimental reliance cause of action was pled and tried, or tried by the parties' express or implied consent, the plaintiff is entitled to have the trial court rule on this cause of action when the plaintiff's judgment is reversed for the statutory claim. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 26 (App. 2006).

A defendant may, without waiving defendant's right to offer evidence in the event the motion is not granted, move to dismiss the plaintiff's case after the plaintiff has completed his case-in-chief on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court must make findings as provided in Rule 52(a). Hauk v. Lokopwe, 14 FSM R. 61, 64 (Chk. 2006).

If the awarded sanctions are unpaid at judgment and payable to the prevailing party they should be included as taxable costs. If the sanctions are unpaid at judgment and payable to the non-prevailing party, they ought to be deducted from the money judgment due the prevailing party. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

When unpaid Rule 37 sanctions are not specifically named and included as costs in either the judgment or the later order that fixed and entered the costs and fees that were to be added to the judgment, they should be included in the original judgment by implication, if not specifically, since the court was unaware that the sanctions fixed seven months earlier had not been paid. It would be better practice for the plaintiffs to ask that the amount of unpaid sanctions be specifically included in the court's judgment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475-76 (Pon. 2006).

Chuuk State Supreme Court Civil Procedure Rule 62(a) automatically stays court enforcement of all money judgments for ten days. Billimon v. Marar, 15 FSM R. 87, 89 (Chk. 2007).

Rule 52(a) requires a trial judge, after trial, to make special findings of fact and separate conclusions of law. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

The requirement that the trial court "find the facts specially" serves three major purposes: 1) to aid appellate court review by affording it a clear understanding of the ground or basis of the trial court's decision; 2) to make definite precisely what the case has decided in order to apply the doctrines of estoppel and res judicata in future cases and promote confidence in the trial judge's decision-making; and 3) to evoke care on the trial judge's part in ascertaining the facts. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

The trial court satisfies its responsibility to make specific findings of fact when the findings are sufficiently detailed to inform the appellate court of the basis of the decision and to permit intelligent appellate review, but the trial court need not mention evidence it considers of little or no value. As long as the trial court clearly relates the findings of fact upon which the decision rests and articulates in a readily intelligible manner the conclusions it draws by applying the controlling law to the facts as found, no more is needed. The trial court has the obligation to ensure that the basis for its decision is set out with enough clarity to enable the reviewing court to perform its function. Mathias v. Engichy, 15 FSM R. 90, 96 (Chk. S. Ct. App. 2007).

Since a trial court can only hold that, as between the parties to the case, who has the better claim to ownership, but that is all the trial court can decide regarding ownership, its ruling cannot apply to any claims to ownership by non-parties. Since the state never claimed title to Unupuku, a judgment against the state for title, even if it were valid against the state, would be utterly meaningless. It is certainly no good against

anyone else. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

A judgment can only be enforced against a party to the case. For a judgment to be enforceable, the court rendering the judgment must have jurisdiction over the subject matter of the action and personal jurisdiction over the parties to the action and against whom the judgment is to be enforced. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

Once a judgment has been entered does not mean it is enforceable against anyone and everyone who is not a party. Ruben v. Hartman, 15 FSM R. 100, 111 (Chk. S. Ct. App. 2007).

An order or judgment that may be lawfully enforced against someone who is not a party is an injunction may be enforced upon parties to the action, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise and against a non-party opponent for costs incurred by his misbehavior. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

A trial court can determine no more than who among the parties before it has a better claim to title or in the case of trespass, possession. A court cannot determine who has title good against the world. Land registration (determination of title presumptively good against the world) is the province of the Land Commission and its procedures, not of a court. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

In order for a judgment granting ownership to land to which someone else has a certificate of title to be valid, the judgment would first have to have set aside the other's certificate of title and as a general rule a certificate of title can be set aside only on the grounds of fraudulent registration. When the pleadings never addressed, or even mentioned the existence of, the certificate of title, this was a fatal flaw. Ruben v. Hartman, 15 FSM R. 100, 113 (Chk. S. Ct. App. 2007).

When a fees and costs order was hand carried, along with some other papers, by a traveler to Yap and those other papers were received, as expected, by the court staff in Yap on the next day, March 23, 2007 and an inquiry the next day satisfied the court that the papers had been received and dealt with, but the fees and costs award did not come to the clerk's attention, or into her possession, until June 5, and was then entered on June 6, 2007, the court can direct that the order awarding fees and costs be entered *nunc pro tunc* as of March 23, 2007, the day the court expected the order to be, and thought it had been, entered because a court may issue an order *nunc pro tunc* to supply a record of an action previously done but omitted from the record through inadvertence or mistake, to have effect as of the former date. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 133, 134 (Yap 2007).

Trust Territory judicial decisions are not stare decisis, that is, they are not binding precedent on FSM courts. Nakamura v. Moen Municipality, 15 FSM R. 213, 218 (Chk. S. Ct. App. 2007).

Civil Procedure Rule 52(a) requires a trial judge, after trial, to make special findings of fact and separate conclusions of law before a judgment is entered. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 225 (Chk. S. Ct. App. 2007).

When the Trust Territory judgment that the appellant relies upon explicitly states that the judgment will not affect any rights of way there may be over the lands in question and when it is undisputed that the appellees were granted their right of way prior to the Trust Territory judgment, the Trust Territory judgment did nothing to alter the preexisting right of way. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397-98 (App. 2007).

"Law of the case" refers to the principle that once issues are decided in a case, they will not be redetermined later in the same case. This is a policy relied on by courts out of concern for judicial economy and to avoid the confusion that would result if a court reversed its own decisions during the course of a case. In the absence of statute the phrase, "law of the case," as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of

courts generally to refuse to reopen what has been decided, not a limit to their power. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 453 (Kos. S. Ct. Tr. 2007).

When an issue is decided at trial and later reversed on appeal due to legal error, the findings of fact still bind the trial court on remand as law of the case. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 453-54 (Kos. S. Ct. Tr. 2007).

When the original decision had been reviewed by the Kosrae State Court on appeal and remanded for the purpose of considering new evidence and when the only new evidence was rejected, the findings of fact made in the original decision should bind the Land Court on remand. When, in its second decision, it reconsidered the evidence previously offered and made different, conflicting findings than in the original decision, applying the principle of law of the case, the findings in favor of the appellants' ownership of the subject parcel in the original decision are upheld. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

When an issue is decided at trial and later reversed on appeal due to legal error, the findings of fact still bind the trial court on remand as law of the case. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 453-54 (Kos. S. Ct. Tr. 2007).

When the original decision had been reviewed by the Kosrae State Court on appeal and remanded for the purpose of considering new evidence and when the only new evidence was rejected, the findings of fact made in the original decision should bind the Land Court on remand. When, in its second decision, it reconsidered the evidence previously offered and made different, conflicting findings than in the original decision, applying the principle of law of the case, the findings in favor of the appellants' ownership of the subject parcel in the original decision are upheld. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

When the Land Court's first decision, assessed the evidence and made findings of fact supporting the appellants' ownership of the parcel and its second decision, issued two years later, rejected new evidence and assessed the identical evidence to make findings of fact supporting the appellees' ownership of the parcel, the matter presents the kind of confusion that results when a court reopens what it has already decided. Evidence often conflicts and may reasonably support inconsistent findings. But the Land Court cannot redetermine factual issues decided earlier in the case without new evidence to support a different decision. When the Kosrae State Court was presented with the question of whether the original decision was based on substantial evidence at the time of the first appeal and remanded the case back to Land Court for the purpose of looking at new evidence but did not remand based on a lack of substantial evidence to support the original decision, the doctrine of law of the case applies to uphold the original findings of fact as based on substantial evidence and the original determination of title in favor of the appellants. Heirs of Wakap v. Heirs of Obet, 15 FSM R. 450, 454 (Kos. S. Ct. Tr. 2007).

When the original judgment with respect to trebling the pepper business lost profits damages was ultimately correct in its entirety as the same amount was awarded by the later judgment on remand, that leads to the conclusion that the trebled damages were fully ascertained as of the date of the original judgment. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 524 (Pon. 2008).

An order in aid of judgment is not appropriate when the prevailing party seeks an order evicting an alleged successor-in-interest and non-party because an order in aid of judgment is only appropriate when seeking satisfaction of a money judgment and the matter does not involve a money judgment. Salik v. U Corp., 15 FSM R. 534, 537 (Pon. 2008).

A judgment affecting an interest in land becomes enforceable, by registering the judgment with the appropriate land authority. Salik v. U Corp., 15 FSM R. 534, 537 (Pon. 2008).

An option for enforcing a judgment as provided by statute is the filing of a new civil action based on the judgment. This option is most appropriate avenue and is likely to lead to an efficient and just resolution

when the earlier judgment dismissed claims raised by the plaintiff in connection with a land use agreement he had entered into with the defendant and the defendant, some two decades later, seeks to use this judgment to prevent the others, who are not parties to the action and seemingly not involved in the underlying dispute until recently, from using land that may or may not be subject to the judgment and a dispute clearly exists as to whether the other should be deprived of using the land in dispute even if that land is subject to the judgment because new evidence is needed to resolve this dispute between the defendant and the other. Salik v. U Corp., 15 FSM R. 534, 538 (Pon. 2008).

When the prevailing party's proposed form of judgment includes matters that are tantamount to new findings of fact not found anywhere in the former justice's oral findings and conclusions, the court will decline to enter the submitted proposed form of judgment. Salik v. U Corp., 15 FSM R. 534, 538 (Pon. 2008).

The court is required to find the facts specially and state its conclusions of law thereon but is not required to be reduce findings and conclusions to writing. A justice is under no obligation to reduce his findings and conclusions to writing so long as he stated the findings and conclusions orally in open court. Salik v. U Corp., 15 FSM R. 534, 538 (Pon. 2008).

A successor judge may not make findings of fact and conclusions of law and enter judgment solely upon the record developed by his predecessor except upon agreement of the parties, and a second judge is prohibited from making factual determinations as to a first judge's intent when he interprets an order issued by the first judge. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

Although the plaintiffs' summary judgment motion was granted, no judgment will be entered at this time when one cause of action remains outstanding and unadjudicated. Ruben v. Petewon, 15 FSM R. 605, 609 (Chk. 2008).

Under Rule 58, upon a decision by the court the clerk must enter judgment as directed by the rule or the court, and every judgment must be set forth on a separate document. A judgment is effective only when so set forth and when entered as provided in Rule 79(a). FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 46 (Chk. 2008).

The court can, as an act of grace to prevent undue hardship, permit withholding from payment to the judgment-creditor any sums that might be due in taxes because of the order in aid of judgment since the court may make provision for tax payments to non-parties in its court judgments when a judgment causes a party to incur tax liability. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 137-38 (Pon. 2008).

In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment creditor from acting to enforce the judgment. But a person who cannot furnish a supersedeas bond does not lose the right to appeal, although he does assume the risk of getting his money back again if the judgment is reversed. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 142 (Pon. 2008).

When one of two defendants against whom a judgment is to be entered is a d/b/a of the other, the other is essentially the only defendant against whom the judgment will be entered. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 223 n.1 (Chk. 2008).

Generally, parties must bear their own attorney's fees unless otherwise authorized by law or by contract between the parties. Thus, when the sales contract provides that the buyer will pay the seller's attorney's fees and costs if an attorney is hired to collect the debt, the court will determine and award the seller its reasonable attorney's fees, which, except in unusual circumstances involving bad faith and vexatious litigation, will not exceed 15% of the outstanding principal and interest. Oceanic Lumber, Inc. v. Vincent & Bros. Constr. Co., 16 FSM R. 222, 225 (Chk. 2008).

If, after the plaintiff has completed the presentation of plaintiff's evidence, the defendant, without waiving the defendant's right to offer evidence in the event the motion is not granted, moves for a dismissal

on the ground that upon the facts and the law the plaintiff has shown no right to relief, and if the court then renders judgment on the merits against the plaintiff, the court must make findings as provided in Rule 52(a). Ehsa v. Kinkatsukyo, 16 FSM R. 450, 453 (Pon. 2009).

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).

The usual rule is that the parties are responsible for their own attorney's fees. Generally, a prevailing party will be awarded attorney's fees only if they are authorized by contract or by statute, or when the opposing party has acted vexatiously, or in bad faith, or presses frivolous claims, or employs oppressive litigation practices. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

The prevailing plaintiff will not be awarded attorney's fees when the defendant did not act vexatiously or in bad faith, or press frivolous claims, or employ oppressive litigation practices and when no statute or contractual provision authorized attorney's fees in the case. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

Whether a defendant is liable to the plaintiff for an attorney's fee award is properly part of the matters that must be heard at trial and decided before judgment. The amount of the attorney's fees to be awarded will, however, be determined in response to a post-judgment motion. George v. Albert, 17 FSM R. 25, 34 (App. 2010).

The court renders judgment and grants relief based on what has been proven, not on what was pled. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

A court cannot order as relief a de facto practice that is actually contrary to law, even if it has been the usual practice. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 176, 179 (Pon. 2010).

Trust Territory High Court decisions are not stare decisis in the Federated States of Micronesia, but their rationale may be adopted when persuasive. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

A default judgment is not a judgment obtained on the merits. In fact, it makes no claim as to the merits of the case at all. Instead, defaults and default judgments are procedural mechanisms which enable courts to avoid delay by an unresponsive party and to deter parties from using delay as a litigation strategy. Narruhn v. Chuuk, 17 FSM R. 289, 298 (App. 2010).

The Barrett 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. The FSM Supreme Court has not to date, made such a determination. Narruhn v. Chuuk, 17 FSM R. 289, 299 (App. 2010).

Dicta are expressions in the court's opinion which go beyond the facts before the court and therefore are individual views of the author of the opinion and are not binding in subsequent cases. Narruhn v.

Chuuk, 17 FSM R. 289, 300 n.4 (App. 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).

A default judgment is not a judgment obtained on the merits. In fact, it makes no claim as to the merits of the case at all. Stephen v. Chuuk, 17 FSM R. 496, 499 (App. 2011).

A statement by a court that, to the extent that it is not dicta, is a finding of fact, a conclusion of law, and a reprimand, cannot be used as a basis for any future action when it is vacated on appeal. In re Sanction of George, 17 FSM R. 613, 617 (App. 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).

Once the parties have finished presenting all their evidence, the trial court's duty is to weigh the evidence and make its findings of fact and conclusions of law and to render judgment on whether the plaintiff has shown a right to relief. Thus, a Rule 41(b) motion to dismiss during closing arguments is pointless. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 (App. 2011).

The property right created by a judgment against a government entity is not a right to payment at a particular time but merely the recognition of a continuing debt of that government entity. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

Since the court, adhering to the authority vested in the judicial branch, should only interpret the laws regarding property in Chuuk and should not take over the legislative branch's role, when there has been no legislative intent shown of a specific desire to ascribe a property right to judgments, therefore, absent a specific Chuuk State legislation creating a specific property right, such a right cannot be ascribed to judgments. Kama v. Chuuk, 18 FSM R. 326, 332 (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).

When the issued judgment s valid, it represents an existing liability against the State of Chuuk. 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).

A judgment can be confirmed when it is undisputed that the judgment exists even though a mere recognition of an existing legal obligation would be redundant. Kama v. Chuuk, 18 FSM R. 326, 335 (Chk. S. Ct. Tr. 2012).

When no evidence was presented that supports the liability of the Director of Public Safety in his official capacity, judgment for an illegal arrest by the Pohnpei state police will be entered solely against the Pohnpei state government. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

Whatever arrangements regarding who would be responsible for the payment of the plane tickets that might have been made between an employee's mother and sister and an employee who charged plane tickets for her mother and her sister to her employer does not affect the employee's liability to her employer for all of the tickets because the employee cannot shift liability to another party without her employer's agreement although the employee will be credited for any payments she and her sister made since the employer is not entitled to double recovery. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

No ruling can be made or judgment entered against persons over whom the court does not have personal jurisdiction. William v. Kosrae State Hosp., 18 FSM R. 575, 579 n.1 (Kos. 2013).

When facts are designated established and then those facts are used to render summary judgment, the judgment then rendered is a decision on the merits. Mori v. Hasiguchi, 19 FSM R. 16, 24 (Chk. 2013).

While the better view may be that the dollar value in the judgment reflect the amount the Japanese yen is valued at on the day the court enters judgment because that is the only way the plaintiff would receive the Japanese yen amount equal to the yen she spent on necessary medical bills and other services, the court will not decide this issue when the plaintiff's damages total between $28,454.13 and $30,310.37 depending on the conversion date, and the FSM has waived its sovereign immunity only to the extent of the first $20,000 in damages so only a $20,000 judgment can be entered. Lee v. FSM, 19 FSM R. 80, 85-86 (Pon. 2013).

As a general rule, when one of several defendants who is alleged to be jointly liable defaults, judgment should not be entered against that defendant until the matter has been adjudicated with regard to all defendants, or all defendants have defaulted. This principle guards against inconsistent judgments when the relationship between the parties requires joint and several liability. Damarlane v. Damarlane, 19 FSM R. 97, 110 (App. 2013).

"Law of the case" refers to the principle that once issues are decided in a case, they will not be redetermined later in the same case. This is a policy relied on by courts out of concern for judicial economy and to avoid the confusion that would result if a court reversed its own decisions during the course of a case. In the absence of statute the phrase, "law of the case," as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126 (App. 2013).

When a trial court has already ruled against the plaintiffs on all the issues and arguments they raised in their summary judgment motion, it could refuse to reopen what it had already been decided unless there was new evidence presented or a there had been a change in the controlling law. This is true even though any decision, however designated, which adjudicates fewer than all the claims does not terminate the action as to any of the claims or parties, and is subject to revision at any time before the entry of judgment adjudicating all the claims. Berman v. FSM Nat'l Police, 19 FSM R. 118, 126-27 (App. 2013).

Generally, the filing of a notice of a appeal divests the trial court of jurisdiction over the appealed case. Notwithstanding the general effect of the filing of a notice of appeal, the trial court retains jurisdiction to determine matters collateral or incidental to the judgment, and may act in aid of the appeal. For example, because the mere filing of a notice of appeal does not affect the validity of a judgment, the trial court retains jurisdiction to enforce the judgment. FSM Dev. Bank v. Ehsa, 19 FSM R. 128, 130 (Pon. 2013).

When the issue of the trial court's jurisdiction is being appealed on various constitutional grounds but there has been no determination that the trial court lacks jurisdiction, the trial court retains jurisdiction to enforce the judgment and is not acting without authority or jurisdiction. The extraordinary writ of prohibition

will not serve as a substitute for that appeal. Ehsa v. Johnny, 19 FSM R. 175, 177-78 (App. 2013).

When, although the judge signed the judgment on September 13, 2007, the clerk did not enter it until September 17, 2007, September 17, 2007 is the judgment date. George v. Sigrah, 19 FSM R. 210, 215 n.2 (App. 2013).

When the plaintiffs failed to raise the issue of nuisance, or damages arising from nuisance, at trial, that count of the complaint is waived. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

It is not necessary for the court to make findings on undisputed or stipulated facts. Nor are findings required on issues that are not material. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Uncontested findings need only be included in the court's findings of fact if they form a basis for its conclusion of law. Harden v. Inek, 19 FSM R. 278, 281 (Pon. 2014).

Under the Kosrae statute, a judgment from a Trust Territory court with jurisdiction over Kosrae land matters should be accorded res judicata status. Even if it did not, the general legal doctrine of res judicata, which the statute does not abolish, would accord res judicata status to Trust Territory High Court judgments when the elements are met. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

A Trust Territory High Court judgment is entitled to res judicata effect unless (or until) that judgment is successfully collaterally attacked. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303 (App. 2014).

An argument that citizens' rights must be upheld over a Trust Territory High Court judgment because the Trust Territory High Court was not a constitutional court must be rejected when there were no constitutional courts in 1960 when the judgment was issued and the Trust Territory courts were the only functioning court system then. The impropriety of the Trust Territory High Court deciding cases when both the Trust Territory High Court and constitutional FSM courts were simultaneously in existence and functioning thus offers no support. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303-04 (App. 2014).

Rule 69 applies only to money judgments. Thus, it is generally not applicable to judgments that direct specific acts, which are covered by Rule 70. FSM Dev. Bank v. Carl, 20 FSM R. 70, 74 n.2 (Pon. 2015).

A judgment for a defendant based on lack of jurisdiction does not bar the plaintiff from bringing another action on the same cause in another court having jurisdiction. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 n.4 (Chk. 2016).

A trial judge is not required to limit his analysis to the causes of action pled in the complaint because, under the rules, except as to a party against whom a judgment is entered by default, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

To grant a judgment against the state government for funds that the national government admits that it still holds and is willing to pay would permit double recovery. Eot Municipality v. Elimo, 20 FSM R. 482, 489 n.2 (Chk. 2016).

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. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 514-15 (App. 2016).

There is no Chuuk statute making judgments against the state (or a municipality) a vested property interest, and there are no statutes requiring that judgments be paid within a certain time, or providing the means to effect payment if the governmental entity does not have the funds available. Kama v. Chuuk, 20 FSM R. 522, 529 (Chk. S. Ct. App. 2016).

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).

If a judgment creditor wants Chuuk to furnish money to pay his judgment now, he must seek an appropriation from the Chuuk Legislature that includes it or that can be used to pay it. Kama v. Chuuk, 20 FSM R. 522, 530-31 (Chk. S. Ct. App. 2016).

Since the principle that funds appropriated for other purposes cannot be redirected to pay judgments is inherent in the separation-of-powers scheme in the Chuuk Constitution, the Chuuk State Supreme Court cannot levy any writs on Chuuk state funds because those writs would be levied on money that the Chuuk Legislature has already appropriated for another purpose. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

The statutory presumption that judgments over twenty years old have been satisfied is a rebuttable presumption. Kama v. Chuuk, 20 FSM R. 522, 534 (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).

To grant a judgment against the state government for funds that the national government admits that it still holds and is willing to pay would permit double recovery. Onanu Municipality v. Elimo, 20 FSM R. 535, 540 n.4 (Chk. 2016).

If, and when, a party is awarded its expenses under Rule 37, and if that party is not paid those expenses reasonably promptly, that expense award will, at final judgment, be deducted from any money judgment awarded to the opposing party or added to any money judgment awarded to the party. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 575 (Pon. 2016).

While Trust Territory High Court opinions are not binding precedent on the FSM Supreme Court, they serve as useful advisory precedent, especially considering they contain important information regarding the customs and traditions of the people of Micronesia. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 n.2 (Pon. 2016).

When the plaintiff obtains a judgment in his favor, his claim "merges" in that judgment; he may seek no further relief on that claim in a separate action. Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

When a judgment is rendered for a defendant, the plaintiff's claim is extinguished; the judgment acts as a "bar." Waguk v. Waguk, 21 FSM R. 60, 69 (App. 2016).

A proposition that it is mandatory that separate sections specifically entitled "Findings of Fact" and "Conclusions of Law" appear within an order, is misguided. Kosrae Civil Procedure Rule 52 plainly states that if an opinion or memorandum of decision is filed, it is sufficient if the findings of fact and conclusion of law appear therein. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

A presiding judge is under no obligation to reduce his findings and conclusions to writing, so long as he has stated the findings and conclusions orally in open court. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

Once the parties have finished presenting all their evidence, the trial court's duty is to weigh the evidence and make its findings of fact and conclusions of law and to render judgment on whether the plaintiff has shown a right to relief. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 119 (App. 2017).

– Alter or Amend Judgment

Because until a final judgment has been entered a trial court has plenary power over its interlocutory orders, it may, without regard to the restrictive time limits in Rule 59, alter, amend, or modify such orders any time prior to the entry of judgment. Youngstrom v. Phillip, 8 FSM R. 198, 201 (Kos. S. Ct. Tr. 1997).

A court may alter or amend a judgment under Rule 59 on any of four grounds: 1) to correct a manifest error of law or fact upon which the judgment is based; 2) the court is presented with newly discovered or previously unavailable evidence; 3) to prevent a manifest injustice; or 4) there is an intervening change in the controlling law. Chuuk v. Secretary of Finance, 9 FSM R. 99, 100 (Pon. 1999).

A timely motion to alter or amend judgment is one served not later than 10 days after entry of the judgment. O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

A post-judgment motion for supplemental attorney's fees is not a motion to alter or amend judgment under FSM Civil Procedure Rule 59(e), and does not extend the time for the filing of the notice of appeal under Appellate Procedure Rule 4(a)(4). O'Sonis v. Bank of Guam, 9 FSM R. 356, 359 (App. 2000).

A motion that a judgment be amended to include a statement of the statutory interest and that its title be corrected to read "judgment" instead of "proposed order," is not one to amend, but rather more properly one to correct a judgment. As such Rule 60 applies, not Rule 59. Walter v. Chuuk, 10 FSM R. 312, 315 (Chk. 2001).

The ten day time limit for a motion to alter or amend a judgment does not apply to an order which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties because that order does not terminate the action as to any of the claims or parties, and is subject to revision at any time before the entry of judgment. The appropriate means by which to raise concerns about such an order is not by a Rule 59 motion to alter or amend judgment, but by a Rule 54 motion for reconsideration. A motion for reconsideration can be brought any time before entry of judgment, and is not subject to the 10 day limit. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 470 (Pon. 2001).

A Rule 59 motion must be brought within ten days of entry of judgment and can either be for a new trial or to alter or amend the judgment. Farata v. Punzalan, 11 FSM R. 175, 177 (Chk. 2002).

A motion to alter or amend the judgment will be denied when it does not state what the judgment should be altered to or amended to read, but only states the movant's dissatisfaction with its current form and asks that the judgment be opened. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

Although the trial court, absent a remand, lacks jurisdiction to vacate or alter its judgment pending appeal, the trial court retains the power throughout the pendency of the appeal to simply preserve the status quo by granting a stay of the judgment. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

The defendants have not presented adequate grounds to support their motion to alter judgment or for a new trial when there has been no manifest error of law or fact made by the court in its memorandum and judgment and when there has been no newly discovered evidence presented by the defendants in support of their motion. Livaie v. Weilbacher, 13 FSM R. 249, 251 (Kos. S. Ct. Tr. 2005).

When the court's findings have not been disputed and have not been amended, a motion to reconsider and modify an order will be denied. Akinaga v. Heirs of Mike, 14 FSM R. 91, 93 (Kos. S. Ct. Tr. 2006).

A party may seek the addition of supplemental findings to a judgment within ten days of the judgment being entered. Such action should only be taken by the judge who presided over the proceedings and who entered the judgment and while the facts underlying the proceedings are fresh within the presiding judge's mind. A motion for amended judgment or supplemental findings under Rule 52(b), nearly two decades after entry of judgment and with a new presiding judge, is untimely and inappropriate. Salik v. U Corp., 15 FSM R. 534, 539 (Pon. 2008).

A letter that does not certify that it has been served upon the plaintiff as required and that does not certify that the defendant sought the plaintiff's acquiescence, as required, is procedurally deficient because the court will treat the letter as a motion for amended judgment and/or supplemental findings. Salik v. U Corp., 15 FSM R. 534, 540 (Pon. 2008).

A motion to reconsider that was filed 22 days after the judgment had been entered, cannot be a Rule 54(b) motion to reconsider since those motions must be made before entry of judgment, or a Rule 59(e) motion to alter or amend judgment since a Rule 59(e) motion must "be served not later than 10 days after entry of the judgment." It can only be a Rule 60(b) motion for relief from judgment. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 588 (App. 2008).

A timely-filed motion to reconsider an order of dismissal is considered a Rule 59(e) motion to alter or amend a judgment. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

The timely filing of a motion to alter or amend judgment destroys a previously filed notice of appeal and even a subsequent notice of appeal if that notice is filed while the motion to alter or amend is still pending. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

An order of dismissal is not a final decision if a timely motion under Rule 59 has been made and not disposed of, since the case lacks finality. For that reason, the subsequent filing of a notice of appeal is a nullity and does not deprive the trial court of power to rule on the motion. Alanso v. Pridgen, 15 FSM R. 597, 600 (App. 2008).

A motion to reconsider made more than ten days after entry of judgment can only be considered a Rule 60(b) motion for relief from judgment. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 120 n.1 (App. 2008).

A motion to reconsider or vacate a judgment filed within ten days of the judgment is a Rule 59 motion to alter or amend judgment and a motion filed after ten days is a Rule 60(b) motion for relief from judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138 n.3 (Pon. 2008).

A Rule 52(b) motion is one that asks the court to amend the findings of fact that the court has already made as required by Rule 52(a). The Rule 52(b) term "motion for judgment," when referring to a motion made after the start of trial, refers to a Rule 41(b) motion, not to a motion made after closing arguments. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 17 FSM R. 247, 250 (Yap 2010).

A Rule 52(b) motion is timely – that is, is made at a time permitted by the rule – when it is made after the court has indicated the action it would take but has not yet entered judgment, but when the court has neither issued its written findings of fact nor indicated what those findings will be, such a motion is premature since the court's findings, when issued, may be favorable and no motion would be needed. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 17 FSM R. 247, 250 (Yap 2010).

A motion for judgment as a matter of law that is made too late to be cognizable under Rule 41(b) and that is made too early to be cognizable under Rule 52(b), will, on the opposing party's motion, be stricken, but may be renewed, if need be, after the court has entered its findings. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 17 FSM R. 247, 251 (Yap 2010).

The grounds on which a court may grant a new trial or alter or amend the judgment is either when the court has made a manifest error of law or fact, or for newly discovered evidence. Senate v. Elimo, 18 FSM R. 199, 201 (Chk. S. Ct. Tr. 2012).

A litigant may, under Rule 59(e), move for reconsideration of an order granting summary judgment or move to alter or amend the judgment derived from that order and the court has a responsibility to hear that motion. Senate v. Elimo, 18 FSM R. 199, 201 (Chk. S. Ct. Tr. 2012).

Summary judgment will ordinarily not be altered or vacated on the basis of supplemental exhibits or affidavits filed after summary judgment is granted, particularly when the party seeking to alter or amend the judgment has made absolutely no showing that the additional evidence offered could not have been timely submitted in the exercise of reasonable diligence. Motions for reconsideration cannot in any case be employed as a vehicle to introduce new evidence that could have been adduced during pendency of the summary judgment motion. Senate v. Elimo, 18 FSM R. 199, 201 (Chk. S. Ct. Tr. 2012).

A motion to alter or amend judgment will be denied when no valid reason was given why the movant could not have produced, as part of his summary judgment motion or his opposition to his opponent's summary judgment motion, the evidence now relied on to seek reconsideration because it was all available to him before the cross motions for summary judgment were filed and before those motions were heard. Senate v. Elimo, 18 FSM R. 199, 202 (Chk. S. Ct. Tr. 2012).

A litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome. Senate v. Elimo, 18 FSM R. 199, 202 (Chk. S. Ct. Tr. 2012).

Summary judgment will not be altered on the basis of a movant's supplemental exhibits and affidavits since that additional evidence could have been timely submitted if he had exercised due diligence. Senate v. Elimo, 18 FSM R. 199, 202 (Chk. S. Ct. Tr. 2012).

The court must decline to amend its findings when the proposed finding would require speculation about future events. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

The trial court may, in an effort to assist the appellate division in its review of the matter, amend its findings even though the amendments requested by the defendants did not form the basis for the court's conclusions of law. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

One of the grounds for amending a judgment under FSM Civil Rule 59(e) is to prevent a manifest injustice. This ground is a catch-all basis for relief, and is usually coupled with another ground. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

To alter or amend a judgment to prevent a manifest injustice, it is not enough for the defendants to show that the court's reasoned decision would result in hardship; rather, a successful Rule 59(e) motion will present a flaw in the fact finding or decision making process, and demonstrate that failure to correct the flaw would lead to manifest injustice. Harden v. Inek, 19 FSM R. 278, 282 (Pon. 2014).

A motion to alter, or amend, under FSM Civil Rule 59(e), or reconsideration of a mistake through inadvertence under FSM Civil Rule 60(b) are post-judgment motions that are appropriately filed in the trial division, not the appellate division, and, under the final judgment rule, these post-judgment motions prohibit filing an appeal until they have been either granted or denied. Mori v. Hasiguchi, 19 FSM R. 416, 418 (App. 2014).

A timely filed motion to reconsider a final order is considered an FSM Civil Rule 59(e) motion to alter or amend a judgment. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 422 (Pon. 2014).

The court may alter or amend a final order under Rule 59(e) on any of the following four grounds: 1) to correct a manifest error of law or fact upon which the judgment is based; 2) the court is presented with newly discovered or previously unavailable evidence; 3) to prevent a manifest injustice; or 4) there is an intervening change in controlling law. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 422 (Pon. 2014).

A Rule 59(e) motion may not be used to relitigate old matters, and arguments that could have been raised before may not be raised for the first time in a motion for reconsideration. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 423 (Pon. 2014).

Since the plaintiffs' argument that the delay in the imposition of sanctions is evidence of the reasonableness of their complaint is an extension of their argument of a meritorious complaint, it will be considered on a motion for reconsideration, but when the plaintiffs' argument that the delay in imposing sanctions prejudiced them is clearly a new argument that could and should have been raised in their original opposition, this latter timeliness argument is a new issue that the court must decline to consider. Ehsa v. FSM Dev. Bank, 19 FSM R. 421, 424 (Pon. 2014).

The defendants do not present adequate grounds to support a motion to alter judgment or a motion for a new trial when there has been no manifest error of law or fact made by the court in its memorandum and judgment and when there has been no newly discovered evidence presented by the defendants in support of their motion. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

The court may alter or amend a judgment under Rule 59(e) on any of four grounds: 1) to correct a manifest error of law or fact upon which the judgment is based; 2) the court is presented with newly discovered or previously unavailable evidence; 3) to prevent a manifest injustice; or 4) there is an intervening change in controlling law. FSM Dev. Bank v. Setik, 20 FSM R. 315, 317 (Pon. 2016).

A Rule 59(e) motion may not be used to relitigate old matters. FSM Dev. Bank v. Setik, 20 FSM R. 315, 317-18 (Pon. 2016).

A trial court has jurisdiction to consider and deny a Rule 59(e) motion after an appeal has been filed. FSM Dev. Bank v. Setik, 20 FSM R. 315, 318 (Pon. 2016).

When the movants have failed to satisfy any of the four grounds for altering or amending a judgment, a reconsideration of the court's order transferring title is unwarranted and the motion for reconsideration of that order will be denied. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

– Collateral Attack

In a case in which the High Court of the Trust Territory of the Pacific Islands did not transfer the case to the FSM Supreme Court or to the Truk State Court because it failed to act in conformity with the purpose of Secretarial Order No. 3039 which was to provide maximum permissible self government to the newly self-governing entities, and because the High Court's determination that the case was in active trial and therefore need not be transferred was incorrect, the High Court is not deprived of jurisdiction where the presently objecting party failed to make any objection before the High Court and where the judgment by the High Court is being collaterally attacked. United Church of Christ v. Hamo, 3 FSM R. 445, 451-52 (Truk 1988).

In some cases failure to join an indispensable party may subject a judgment to collateral attack, but failure to join a necessary party will not. A necessary party is one who has an identifiable interest in the action and should normally be made a party to the lawsuit, but whose interests are separable from the rest of the parties or whose presence cannot be obtained; whereas an indispensable party is one to whom any judgment, if effective, would necessarily affect his interest, or would, if his interest is eliminated, constitute unreasonable, inequitable, or impractical relief. Nahnken of Nett v. United States (III), 6 FSM R. 508, 517 (Pon. 1994).

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).

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).

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).

It is doubtful whether a court judgment in an election contest case can be collaterally attacked since election contests are purely statutory, and the courts have no inherent power to determine election contests. The determination of election contests is a judicial function only when and to the extent that the determination is authorized by statute. Thus, the jurisdiction of courts exercising general equity powers does not include election contests. An election contest must follow the path set out for it in the statute and no other. Puchonong v. Chuuk, 14 FSM R. 67, 69 (Chk. 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).

The failure to join an indispensable party may subject a judgment to collateral attack. 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. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

When the plaintiff was an interested party and never received notice or an opportunity to be heard, he could have pursued his claim by filing an appeal of the issuance of title because without notice, his time to file an appeal is extended beyond the statutory sixty-day time limit. The Kosrae State Court favors this approach when Land Commission or Land Court actions are at issue because an appeal ensures that the records needed to make a fair determination are before the court and because this approach promotes finality in decisions on land ownership by encouraging full participation of all interested parties at Land Court proceedings instead of allowing later, collateral attacks on their decisions. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

As the purpose of probate is not to determine issues of ownership, probate petitioners should resolve issues regarding land ownership, if any, before they proceed with probate. Otherwise, the probate proceeding may be subject to collateral attack from those who may claim an interest in the property and who were not given notice or made a party to this proceeding. In re Land Noota, Neppi, 15 FSM R. 518, 519 (Chk. S. Ct. Tr. 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 1930s ¥400 purchase price for over 600,000 square meters of land on Kosrae does not make the whole transaction very questionable and thus the Trust Territory High Court judgment confirming it suspect when ¥400 would have equaled $200 in the 1930s and $200 was a sizeable sum then. The "sale" amount cannot be used to undermine the Trust Territory High Court judgment. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

As recognized by general law and as provided for in Compact of Free Association § 176, Trust Territory judgments that are final, although accorded res judicata status, can be subject to collateral attack or to relief from judgment. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

When a judgment has been entered against a party without notice or an opportunity to be heard, it is void and is subject to direct or collateral attack at any time. A judgment cannot be collaterally attacked merely because it is wrong. It can only be attacked on the grounds of lack of jurisdiction or due process

violations that make the judgment void. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

Parties can, as a defense to the application of res judicata, collaterally attack a Trust Territory High Court judgment and should be permitted the opportunity to try to do so. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 305 (App. 2014).

Trust Territory High Court judgments should be afforded res judicata status but, like any judgment, those judgments may be subject to collateral attack on due process grounds. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 305 (App. 2014).

Kosrae Civil Procedure Rule 60(b) does not limit the power of the court to entertain an independent action. A party collaterally attacking a judgment has the burden to establish its prerequisites. The five essential elements that an independent action in equity to set aside a judgment must satisfy are: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of the elements is missing the court cannot take equitable jurisdiction of the case. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

A judgment entered against a party without notice or an opportunity to be heard is void and subject to direct or collateral attack. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

An argument that the appellants are bound by a Trust Territory High Court judgment but cannot attack that judgment because they were not parties to that case is nonsense and must be rejected. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 367 (App. 2014).

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).

A collateral attack is not an opportunity to appeal or relitigate the matter. Merely leveling a claim of fraud, without connecting up such an allegation in terms of propounding sufficient evidence, does not satisfy the requisite burden of proof for a collateral attack of a Trust Territory judgment and fails to satisfy the five-prong test required to pierce a judgment via a collateral attack. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 122 (App. 2017).

– Finality of

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).

One of the basic tenets of our system of jurisprudence is that of finality of judgments. The principle of finality is essential to ensure consistency and certainty in the law. This salutary principle is founded upon the generally recognized public policy that there must be some end to litigation. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

There is a sharp conflict about whether a judgment from which an appeal is pending has the finality requisite for the application of the res judicata doctrine. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

– Final Judgment

A final judgment that precisely defines a disputed boundary cannot be entered until the Land Commission completes the survey partitioning the land. Once the boundary is determined, the defendant may then meaningfully assess his situation for purposes of considering any appeal. Therefore a motion to stay the survey's completion pending appeal will be denied. Youngstrom v. Phillip, 9 FSM R. 103, 106 (Kos. S. Ct. Tr. 1999).

When the court approves a stipulation that does not adjudicate all the claims or the rights and liabilities of all the parties, the stipulation does not constitute a final judgment. Bank of the FSM v. Hebel, 10 FSM R. 279, 287 (Pon. 2001).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Phillip v. Moses, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

An order that does not adjudicate all claims and the rights and liabilities of all parties is not a judgment or an order from which a judgment could be derived. Nor is such an order a partial final judgment when it does not have an express determination that there is no just reason for delay and an express direction for entry of judgment, both of which are required for the entry of a partial final judgment. Stephen v. Chuuk, 11 FSM R. 36, 40 (Chk. S. Ct. Tr. 2002).

An order that did not adjudicate any of the claims against the defendants or adjudicate any of the defendants' defenses and did not dispose of or dismiss either the case or the complaint, but only disposed of and dismissed the plaintiffs' and both sets of intervenors' claims against each other was therefore not a judgment because all it did was to combine both sets of intervenors and the plaintiffs together as joint plaintiffs against the two defendants. Stephen v. Chuuk, 11 FSM R. 36, 40-41 (Chk. S. Ct. Tr. 2002).

The Chuuk State Supreme Court may correct any errors in judgments or orders resulting from oversight or omission prior to final judgment, which under Rule 54 does not occur until the rights and duties of all parties have been finally determined. Konman v. Adobad, 11 FSM R. 34, 35 (Chk. S. Ct. Tr. 2002).

Under Rule 58, every judgment must be set forth in a separate document, and becomes effective only when docketed by the clerk under Rule 79(a). While an order may be final in some circumstances without Rule 58 compliance, the better course, and the one that the court endeavors to follow, is for the trial court to avoid any ambiguity on the finality point by following Rule 58. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 87 (Kos. 2002).

When summary judgment is granted for a portion of the plaintiff's claim and when the court finds pursuant to Rule 54(b) that as to this portion of the claim there is no just reason for delay, the court will expressly direct entry of final judgment for that amount. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

A cause of action that alleges that the plaintiffs' customary and traditional rights to use an island might be better described as intentional interference with a customary and traditional property right than trespass. That the plaintiffs referred to it as a trespass should not, in itself, be an obstacle to them prevailing on this point if the evidence warrants, because except for judgments rendered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

Judgment can be entered on less than all claims in a case if the court makes an express determination that there is no just cause for delay and expressly directs entry of judgment. Both elements must be present to give a partial adjudication final judgment status. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial

adjudication does not carry final judgment status. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 628 (App. 2003).

A partial adjudication in a consolidated case generally falls within Rule 54(b). Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 628 (App. 2003).

When the provisions of the trial court's consolidation order and later order assigning one docket number indicated that the cases were consolidated for all purposes including trial, and when the trial court dismissed the claims between certain parties but did not make the required findings under Rule 54(b), that dismissal was not a final judgment and thus the plaintiff in one of the consolidated actions remained a party to the consolidated action for purposes of later appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 629 (App. 2003).

A final judgment will issue when the court expressly determines that there is no just cause for delay and hereby directs that judgment be entered. Dereas v. Eas, 12 FSM R. 629, 633 (Chk. S. Ct. Tr. 2004).

The general rule is that, in the absence of express authorization, interest is to be computed on a simple basis rather than compounded. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

When a judgment on less than all claims in the pleadings is entered upon an express determination that there is no just reason for delay and upon an express direction for entry of judgment, that judgment is a final adjudication with regard to the claims disposed of by the judgment. A second judgment will issue later at the appropriate time that addresses the remaining claim. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 2005).

Civil Rule 54(c)'s clear command is that a default judgment cannot be different in kind from or exceed in amount that prayed for in the demand for judgment. This is in contrast to a case decided on the merits where every final judgment will grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 277-78 (Chk. 2005).

If a complaint shows that the plaintiff is entitled to any relief which the court can grant, regardless of whether the complaint asks for the proper relief, the complaint is sufficient, and since, (except as to a party against whom a judgment is entered by default), every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings, the trial court should consider whether to find liability and award damages on a cause of action not specifically named in the complaint but for which evidence was presented at trial. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 26 (App. 2006).

The court in every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

When, although the issue of continued monitoring of the marine environment remains unresolved and the attorney fees and costs award remains to be determined, there is no just cause for delay, and the clerk shall accordingly enter an appropriate judgment forthwith. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 422 (Yap 2006).

A grant of partial summary judgment is not a final judgment when the court did not expressly determine that there was no just reason for delay and did not then expressly direct the entry of a judgment, both of which are required for the entry of a partial final judgment. Dereas v. Eas, 15 FSM R. 135, 138 (Chk. S. Ct. Tr. 2007).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of

the same issues between the same parties or anyone claiming under those parties. Nakamura v. Chuuk, 15 FSM R. 146, 149 (Chk. S. Ct. App. 2007).

Since a previously-awarded $770 discovery sanction will be incorporated into the final judgment as a matter of course, summary judgment for this amount is redundant, and will accordingly be denied. Berman v. Rosario, 15 FSM R. 429, 431 (Pon. 2007).

Any final judgment, when it is not entered by default, must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

A denial of a request for reconsideration does not mean that a partial adjudication order is not subject to revision at any time. Even though the trial court may be very unlikely to revise it, the order remains legally capable of being revised (under the appropriate circumstances) any time before the trial court enters a final judgment. Smith v. Nimea, 16 FSM R. 346, 348 (App. 2009).

A court can enter judgment on less than all of the claims in a case only if the court makes both an express determination that there is no just cause for delay and an express direction for entry of judgment. Both elements must be present to give a partial adjudication final judgment status. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. Smith v. Nimea, 16 FSM R. 346, 348-49 (App. 2009).

When a trial court dismisses less than all of the claims but does not expressly make the required findings under Rule 54(b), that dismissal is not a final decision. When the trial court did not expressly determine that there was no just cause for delay and did not expressly direct the entry of judgment, the appeal is not from a final decision since the trial court must do both for a partial adjudication to be deemed a final decision capable of being appealed. Smith v. Nimea, 16 FSM R. 346, 349 (App. 2009).

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).

A trial court can enter a final judgment on less than all claims in a case only if the trial court makes an express determination that there is no just cause for delay and if it then also expressly directs entry of judgment. Both elements must be present to give a partial adjudication final judgment status. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 358 (App. 2011).

When, even though the trial court may have expressly directed entry of a judgment, it never made an express determination that there was no just cause for delay, the judgment is not an appealable final judgment since in the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties will not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and all the parties' rights and liabilities. Thus, although a filing designated as a "Judgment" was entered, it was, under Rule 54(b), not a final decision and therefore not appealable. Iriarte v. Individual Assurance Co., 17 FSM R. 356, 358-59 (App. 2011).

A contention that a trial court could not make as a ground for relief a claim that was not in the plaintiff's complaint is incorrect because, except as to a party against whom a judgment is entered by default, every final judgment must grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings. Berman v. Pohnpei, 17 FSM R. 360, 373 n.5

(App. 2011).

While the res judicata doctrine formally addresses situations involving prior and subsequent lawsuits, its reasoning and purpose may apply in a lawsuit that has already been adjudged since under the doctrine of merger, all interlocutory orders merge into the final judgment. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 373 (App. 2012).

When a final judgment is entered, temporary orders cease to be valid, subsisting orders. In general, a trial court's temporary orders issued during the pendency of a proceeding are superseded by the trial court's final order. Temporary orders are always subject to revision or repeal by the final judgment, even if not explicitly mentioned in that judgment. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 373-74 (App. 2012).

Interlocutory orders do not survive, but merge in, the final judgment. They are not accorded res judicata effect or final judgment status since interlocutory orders made in the course of an action or proceeding are not binding on the trial court when fashioning the controversy's final adjudication. This should be clear from the operation of FSM Civil Procedure Rule 54(b). Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

A motion to enforce a trial court's previous interlocutory order must be denied when it was not included in the final judgment or explicitly made a separate final judgment under Civil Rule 54(b). Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

An appellate opinion that merely dismissed the appeal for the lack of jurisdiction could not, and did not, convert any interlocutory order into an enforceable final order. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 374 (App. 2012).

When a May 1991 interlocutory order and a March 1991 preliminary injunction were neither included in the 1995 final judgment nor made into a separate final judgment, they were overruled, superseded, or made irrelevant by the 1995 amended judgment dissolving the injunction even though the May 17, 1991 order was not explicitly mentioned in the judgment. They ceased to be valid orders. Damarlane v. Pohnpei Transp. Auth., 18 FSM R. 366, 375 (App. 2012).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

A Kosrae State Court order cannot be a partial final judgment when the court failed to include the express determination required by Kosrae Civil Procedure Rule 54(b) "that there is no just reason for delay" and the "express direction for the entry of judgment" which would allow the entry of a partial final judgment. Andrew v. Heirs of Seymour, 19 FSM R. 331, 337-38 (App. 2014).

When the plaintiffs made two claims in their complaint – trespass and due process violation – and sought damages for both, but the trial court did not calculate any damages, neither claim has been fully adjudicated and therefore neither claim could be granted partial final judgment status under Rule 54(b). Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

Since a permanent injunction is imposed only as part of a final judgment and since there is no final judgment in the absence of either a final judgment including the ruling on damages or an order containing express language that there is no just cause for delay and directing the clerk to enter a final judgment, the permanent injunction must be vacated, which would leave the earlier preliminary injunction in place. Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

A dismissal with prejudice constitutes a judgment on the merits. Saito v. Siro, 19 FSM R. 650, 654

(Chk. S. Ct. Tr. 2015).

When the movants have failed to cite any reasons for the elongated delay in filing their motion for relief from judgment, much less extraordinary circumstances that would warrant having their Rule 60(b)(4) motion supersede the doctrine of *res judicata*, prejudice would invariably inure to the judgment creditor, in light of its justified reliance on the relevant December 28, 2007 default judgment's finality. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509-10 (App. 2016).

When an appeal is pending, the underlying decision is generally not considered final for the purposes of claim preclusion. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

– Foreign

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another. It is not a rule of law, but one of practice, convenience, and expediency. Under principles of comity, courts will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 431-32 (Pon. 1994).

An FSM court may reduce the amount of attorney's fees provided for under a foreign judgment, where that judgment is unenforceable as against public policy to the extent that the attorney fees in excess of 15% of debt are repugnant to fundamental notions of what is decent and just in the FSM. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM R. 430, 432 (Pon. 1994).

A certified copy of a judgment from a foreign court is admissible evidence as a properly authenticated public record of that jurisdiction. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

The FSM Supreme Court will not enforce the part of a Northern Marianas' judgment imposing a CNMI statutory treble damages penalty for writing bad checks when the FSM has no similar public policy. Recovery will be limited to the outstanding principal amount of the bad checks and the plaintiff's undisputed additional costs – bank charges and court costs. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 391 (Kos. 1998).

When the FSM Supreme Court's concern in inquiring into a Guam bankruptcy case was not to determine whether the principles of comity should be applied, but rather whether any order the court might issue would subject a party to liability for contempt in the other court because the party was required by two courts to obey contradictory orders and when that concern has been assuaged, the court will take no position on whether, and under what circumstances, it might recognize U.S. bankruptcy law or proceedings and whether or when comity would apply in such a case. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 366 (Chk. 2003).

Under principles of comity, the FSM Supreme Court will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 444 (Chk. 2004).

The FSM Supreme Court will not enforce a foreign judgment entered by a court that lacked personal jurisdiction over the defendant when it entered its judgment against her. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 446-47 (Chk. 2004).

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).

– Interest on

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Bank of Guam v. Nukuto, 6 FSM R. 615, 616 (Chk. 1994).

Interest on unpaid social security taxes is assessed at 12% from date due until paid even if part of a court judgment and even though court judgments normally bear a 9% interest rate. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 370 (Yap 1996).

All judgments, by statute, accrue nine percent simple interest a year from date of entry of judgment until satisfied. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670 (App. 1996).

When a second action and judgment is necessary to enforce and satisfy an earlier judgment, the statutory interest on judgments will be computed from the date of entry of the original judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670 (App. 1996).

As a general rule interest ceases to accrue on a judgment when the money is paid into a court of competent jurisdiction pursuant to the court's order, unless a statute provides otherwise. If a part of the principal is paid, then the statutory interest stops on that part. Partial payments on a judgment are first to be applied to the accrued interest and then to reduction of the principal. The subsequent statutory interest is computed only on the remaining principal. Payments into court accrue interest for the benefit of the ultimate recipient as earned in the court's depository institution. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670-71 (App. 1996).

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).

The FSM does not have a statute which prescribes when a plaintiff may obtain prejudgment interest, but prejudgment interest has been awarded in the FSM. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM R. 388, 392 (Kos. 1998).

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).

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).

Attorney fee awards that are part of money judgments are entitled to bear interest at the judgment rate until satisfied. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Unsatisfied judgments accrue nine percent simple interest from date of entry because the statute does not authorize compounding. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

The generally recognized rule is that interest should not bear interest, but compound interest may be awarded if authorized by statute. When the statute reads "nine percent a year" it is not an express authorization to compound interest annually, but is instead, without more, merely a statement of the rate of simple interest. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

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).

In the absence of a statute, an award of prejudgment interest is in the court's discretion. If pre-judgment interest is awarded, the statutory, post-judgment interest rate of 9% per annum is appropriate. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

Pre-judgment interest is not appropriate and a claim for it will be denied when there was no agreement involving a promise to pay money, when the plaintiff was not deprived of funds that he was entitled to because there was no contract made between the parties to pay money, and when the plaintiff was awarded damages based upon the equitable doctrine of promissory estoppel for the plaintiff's expenditures made in reliance on a promise. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 197 (Kos. S. Ct. Tr. 2001).

Payments on judgments are credited first to accrued interest, and then to principal. Interest accrues as simple interest. Narruhn v. Chuuk, 11 FSM R. 48, 52 (Chk. S. Ct. Tr. 2002).

If money on deposit with the court is eventually paid out in partial satisfaction of a judgment, the statutory interest, at least on the sum paid into court, stops accruing on the date the money was paid into court and the only interest the judgment creditor would be entitled to on that money would be the amount it earned while on deposit with the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 (Chk. 2003).

As a general rule, interest on a judgment ceases to accrue when money is paid into a court of competent jurisdiction pursuant to the court's order. If a part of the principal is paid, then the statutory interest stops on that part. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 (Chk. 2003).

If money currently deposited with the court ultimately goes toward satisfaction of a judgment, then the statutory interest on whatever part of it that was attributable to the principal when paid into court will have ceased accruing on the date it was paid into court. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 (Chk. 2003).

Partial payments on a judgment are first to be applied to the accrued interest and then to reduction of the principal. The subsequent statutory interest is computed only on the remaining principal. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 n.1 (Chk. 2003).

As a general rule, interest on a judgment ceases to accrue when money is paid into a court of competent jurisdiction pursuant to the court's order. If a part of the principal is paid, then the statutory interest stops on that part. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 (Chk. 2003).

The deposited money's ultimate recipient is entitled to the interest the money earned while deposited with the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM R. 514, 517 (Chk. 2003).

In calculating the amounts due on judgments, the 9% statutory interest ceases to accrue at the point the judgment-debtor pays the money credited to the principal into court and after that time the only interest a judgment-creditor is entitled to is that paid by the court's depository institution on the deposited money.

In re Engichy, 11 FSM R. 520, 534 (Chk. 2003).

The only interest remitted to a judgment-creditor other than that earned before the money was deposited with the court will be whatever amount the court's depository institution has paid on the deposited money. In re Engichy, 12 FSM R. 58, 71 (Chk. 2003).

A plaintiff is only entitled to a judgment which represents the amount of money he lent to the defendants and the $100,000 in interest he seeks cannot be awarded when it is the product of an unlawful and usurious interest rate. Walter v. Damai, 12 FSM R. 648, 649 (Pon. 2004).

Interest on unpaid social security taxes continues to accrue at 12% until paid, even though a judgment normally bears interest at 9%. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

Nine percent a year is the legal or statutory interest rate on judgments. Such interest is only simple interest and is not compounded. Lee v. Lee, 13 FSM R. 68, 71 (Chk. 2004).

A judgment will accrue 9% interest thereon from the date the clerk enters judgment. Uehara v. Chuuk, 14 FSM R. 221, 227-28 (Chk. 2006).

In those few cases in which the court has awarded prejudgment interest when it was not provided for by contract or statute, the court has always awarded the legal interest rate – 9% simple interest. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420-21 (Yap 2006).

All money judgments bear nine percent interest. As part of the judgment, taxable costs bear that same interest imposed by statute and attorney's fee sanctions are a form of "costs" which will bear interest after judgment has been entered. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 475 (Pon. 2006).

Since, if costs are allowed without express mention in the judgment, the date of the judgment starts the accrual of interest on the costs due, therefore earlier awarded Rule 37 attorney fee sanctions would bear interest from the date the judgment was entered because failing to allow attorneys' fees awards to bear interest would give parties against whom such awards have been entered an artificial and undesirable incentive to appeal or otherwise delay payment. Adams v. Island Homes Constr., Inc., 14 FSM R. 473, 476 (Pon. 2006).

If the money is paid into court, interest ceases to accrue on a judgment, and if only a part of the principal is paid, then the statutory interest stops on that part. Partial payments on a judgment are first to be applied to the accrued interest and then to reduction of the principal. The subsequent statutory interest is computed only on the remaining principal. Payments into court accrue interest for the benefit of the ultimate recipient as earned in the court's depository institution. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 501, 504 (Yap 2006).

A 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. Albert, 15 FSM R. 323, 328 (Kos. S. Ct. Tr. 2007).

If a money judgment in a civil case is affirmed, whatever interest is allowed by law will be payable from the date the judgment was entered in the court appealed from, but if a judgment is modified or reversed with a direction that a judgment for money be entered in the court appealed from, the mandate must contain instructions with respect to allowance of interest. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 523 (Pon. 2008).

A prevailing party should not be deprived of statutory interest accrued on a judgment simply because further court proceedings become necessary to collect that judgment. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 523 (Pon. 2008).

The FSM Supreme Court is reticent to issue an inequitable decision denying post-judgment interest that would punish the prevailing party and possibly encourage losing parties to instigate post-judgment litigation for the purpose of lessening its eventual financial liability, a particularly relevant concern in a case involving a substantial award with the potential to accrue substantial interest. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 525 (Pon. 2008).

A judgment should not earn interest if it 1) is not supported by applicable law, 2) needs further factual/evidentiary findings for its support, and/or 3) is ultimately reversed as to the underlying finding of liability. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 527 (Pon. 2008).

The equitable purpose of post-judgment interest is to compensate the successful plaintiff for being deprived of the compensation for the loss from the time between the ascertainment of the damage and the payment by the defendant. A judgment lacking a sufficient legal or evidentiary basis or requiring further factual development should not accrue interest. A legally sufficient judgment that is basically sound but on remand is modified to include additional clarification or explanation without consideration of new evidence or the making of additional findings should accrue interest. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 528 (Pon. 2008).

Equitable principles favor calculating the interest in a manner that more fully compensates the prevailing party so that once a final judgment has been entered as to liability and damages, vacation of the damage award on appeal and issuance of an order requiring further proceedings to explain the basis for the recoverable damages will not prevent accrual of post-judgment interest on the amount common to the earlier and later judgments from the date the original judgment was entered. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 528 (Pon. 2008).

When the appellate division affirmed the underlying liability as well as the base award for the pepper business lost profits and, although the appellate division vacated the trebled portion of the award, it was not vacated for legal or evidentiary insufficiency and it did not request entry of any additional findings, but rather requested further explanation as to why the trial court applied the statute to the damages at issue and explicitly allowed for reinstatement of the trebled damages; and when, on remand, the trial court explained that the statute compelled a mandatory trebling of damages and reinstated the same award for a second time without the consideration of any additional evidence or the making of any additional factual findings with respect to the award of pepper business lost profits damages, the first and second judgments in this matter are identical, and both are supported by the exact same evidentiary and legal basis, and since the trebled award for the pepper business lost profits damages was fully ascertainable on the date the first judgment was entered, interest on the award will accrue from that date. AHPW, Inc. v. Pohnpei, 15 FSM R. 520, 528 (Pon. 2008).

Pre-judgment interest cannot be awarded until the court has determined when payment would reasonably have been due. Saimon v. Wainit, 16 FSM R. 143, 148 (Chk. 2008).

The legal rate of interest is 9%, and is simple interest, not compounded. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546 (Yap 2009).

When there is no evidence in the record that the defendant knew of, or had agreed to, a contractual requirement that he pay interest and the ledger sheets admitted into evidence do not show any interest charges and when none of the situations where the courts have previously allowed prejudgment interest is present, prejudgment interest will be denied. George v. Albert, 17 FSM R. 25, 33 (App. 2010).

The statutory interest rate is 9% per year, which the court may impose prejudgment when the defendant knew precisely the amount to which he was potentially obligating himself, and the effect date of that commitment. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 n.6 (Pon. 2011).

Injured parties in maritime tort cases are typically awarded prejudgment interest. People of Gilman ex

rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 175 (Yap 2012).

While the FSM statute, 6 F.S.M.C. 1401, by its terms, applies solely to judgments from the date of entry, the court has judicially adopted 9% simple interest per annum as the legal interest rate to be applied when prejudgment interest is awarded and the interest rate has not been otherwise designated by statute or contract. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

When a stipulated judgment waived the statutory interest if the judgment was satisfied within 90 days and the judgment was not satisfied within that time, then the post-judgment interest must accrue from the date of entry of judgment. Kama v. Chuuk, 18 FSM R. 326, 335 (Chk. S. Ct. Tr. 2012).

When a limitation of liability fund has been constituted, any judgment covered by that fund would not include any further prejudgment interest because as a general rule, once the funds are paid into court, the only interest that the prevailing party is entitled to is the interest earned by the money in the court's depository institution. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

Money judgments bear interest as provided by law. Under the applicable Kosrae statute, the Kosrae State Court has no discretion. All judgments for the payment of money bear nine percent interest from the date the judgment is entered. George v. Sigrah, 19 FSM R. 210, 216 (App. 2013).

All Kosrae State Court money judgments automatically bear 9% interest regardless of whether the court specifically ordered it, or remembered to put it in the judgment, or whether it is stated in the judgment. George v. Sigrah, 19 FSM R. 210, 217 (App. 2013).

A judgment holder might voluntarily agree to waive his or her statutory right to 9% interest on a money judgment either as an inducement for the defendant to stipulate to a judgment or to pay it off quickly (pay in full by ___ and I'll waive the interest) or for some other reason, but the Kosrae State Court does not have the authority to suspend or vacate liability for the 9% post-judgment interest as that would be an act inconsistent with the law. George v. Sigrah, 19 FSM R. 210, 217 (App. 2013).

The nine percent on Kosrae State Court judgments is simple interest from date of entry since the statute does not authorize compounding. George v. Sigrah, 19 FSM R. 210, 217 n.4 (App. 2013).

Partial payments on a judgment are to be first applied to the accrued interest and then to reduction of the principal with the subsequent statutory interest being computed only on the remaining principal. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

In the absence of a statute an award of prejudgment interest is in the court's discretion. Prejudgment interest is recoverable in cases where the plaintiff is entitled to recover a liquidated sum of money. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

When the damages amount was a liquidated sum and the insurance contract involved a promise to pay money if certain events occurred, the plaintiff will be awarded the 9% statutory rate of interest from a reasonable time of 60 days after the diagnosis of her daughter's cancer was submitted to the insurer in a claim form for accident and health policies. Johnny v. Occidental Life Ins., 19 FSM R. 350, 363 (Pon. 2014).

Statutes, 6 F.S.M.C. 1401; 8 TTC 1, that read: "Every judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is entered" are statutes of general application to money judgments and not statutes that specifically address judgments against sovereign defendants. Eot Municipality v. Elimo, 20 FSM R. 7, 11 (Chk. 2015).

In the absence of an express statutory waiver of immunity against post-judgment interest, the Chuuk

government is not liable for such interest even though there is a statute of general application imposing 9% post-judgment interest on money judgments, but Chuuk is liable for the 5% interest it agreed to on a loan. Eot Municipality v. Elimo, 20 FSM R. 7, 11-12 (Chk. 2015).

Since injured parties in admiralty and maritime tort cases are typically awarded prejudgment interest, when the plaintiff pled a claim for prejudgment interest, the 9% statutory interest will start on the damages award on the day the vessel ran aground. The 9% statutory interest will start on the costs award on the day the amended judgment is entered. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 80 (Pon. 2015).

When, under prior precedent and the law of the case doctrine, the state government is immune from an interest award as a part of a judgment against the state unless the state has expressly consented to the imposition of interest and when the state government has not expressly consented, by statute or by contract, to the imposition of interest for claims or for a conversion claim, no interest will be permitted. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

Sovereign immunity does bar the imposition of interest as part of or on a judgment against the State of Chuuk. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

A declaratory judgment is not a money judgment and does not need to mention interest. Kama v. Chuuk, 20 FSM R. 522, 533 (Chk. S. Ct. App. 2016).

When part of the plaintiff's damages claim rests on their legal conclusion that interest can be imposed and included in a money judgment against the state, but this legal conclusion is incorrect, a default judgment against the State of Chuuk will be entered, but no interest will accrue on the judgment amount. Onanu Municipality v. Elimo, 20 FSM R. 535, 543 (Chk. 2016).

– Payment and Satisfaction

Judgment creditors will be paid in their priority order except for those who release their claims in writing. Payment of a released judgment may be returned to the judgment debtor. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 371, 373-75 (Pon. 1996).

As a general rule interest ceases to accrue on a judgment when the money is paid into a court of competent jurisdiction pursuant to the court's order, unless a statute provides otherwise. If a part of the principal is paid, then the statutory interest stops on that part. Partial payments on a judgment are first to be applied to the accrued interest and then to reduction of the principal. The subsequent statutory interest is computed only on the remaining principal. Payments into court accrue interest for the benefit of the ultimate recipient as earned in the court's depository institution. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670-71 (App. 1996).

A court should retain in its trust account any unclaimed judgments paid into court until the twenty years has run. Otherwise, a judgment creditor may appear and be unable to recover funds rightfully his without yet more litigation and collection efforts, and, if the funds have escheated to a government, a legislative act and appropriation. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 672 (App. 1996).

Generally, a judgment debtor who has paid damages for his wrongful act has no right to receive any part of the payment left unclaimed by the parties because the judgment debtor is not the rightful owner of unclaimed portions of the judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 672 (App. 1996).

Payments totaling the principal amount of a judgment have been paid do not fully satisfy the judgment when the judgment expressly provides for 9% interest and for attorney's fees incurred in enforcing the judgment. Even if it did not so state, the judgment creditor would be entitled to statutory interest of 9% under 6 F.S.M.C. 1401. Until such time as all interest and a reasonable attorney's fee is paid, the judgment remains unsatisfied. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM R. 100, 103 (Kos. 2001).

Payments should be applied first to interest, then principal. Davis v. Kutta, 10 FSM R. 224, 226 (Chk. 2001).

Any person or entity authorized by law to pay the state's debts, in the absence of legislation to the contrary, must use money appropriated by the Legislature to pay judgments against the state in the order in which the judgments were entered, paying the oldest judgment in full before any payments are made on the next oldest judgment. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

Assuming that the transfer of title to property by the judgment-debtors to a judgment-creditor was not a sham transaction with the judgment-debtors retaining ownership of it and the judgment-creditor merely selling it for them, but was a bona fide transfer of title, it was within the judgment-creditor's rights to take property instead of cash as payment on its judgment. In re Engichy, 11 FSM R. 520, 533 (Chk. 2003).

When a judgment-creditor decides to take title to property as full payment for the outstanding judgment in lieu of a cash payment for the remainder of the judgment, the judgment is satisfied at that point, not at some later time when the judgment-creditor has managed to sell the property for cash. A judgment-creditor accepting title to property in lieu of cash as full satisfaction of its judgment takes the risk that its later sale of the property could amount to less (or the chance it could be more) than amount due on the judgment or that the sale might fall through. In re Engichy, 11 FSM R. 520, 533 (Chk. 2003).

While the Chuuk Financial Control Commission is precluded from paying any court ordered judgments unless specifically appropriated by law, it must, in a timely manner, develop in consultation with the Governor and Attorney General subsequent legislation for appropriation or other purposes for consideration by the Chuuk Legislature to address court judgments. That the Commission has disclaimed this responsibility imparted is in material part a basis for the court's ruling that ordering Chuuk to pay the judgment through taking the first step in that direction by proposing a payment plan is not a workable means of obtaining a satisfaction of the judgment, and the parlous state of Chuuk's finances is more reason, not less, why it should have been forthcoming with a plan for payment. Estate of Mori v. Chuuk, 11 FSM R. 535, 540 (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).

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).

When a judgment was entered in a plaintiff's favor and against a defendant prior to the defendant's death, dismissal of the matter is not appropriate as the claim has not been extinguished. The unsatisfied portion of the judgment still exists. Bank of the FSM v. Rodriguez, 11 FSM R. 542, 544 (Pon. 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).

Process to enforce a judgment for the payment of money will be a writ of execution, unless the court directs otherwise. The procedure on execution will be in accordance with the practice and procedure of the state in which the court is held, existing at the time the remedy is sought, except that any FSM statute governs to the extent that it is applicable. Barrett v. Chuuk, 12 FSM R. 558, 560 (Chk. 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).

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).

In the usual case, payment of a money judgment against a state must abide a legislative appropriation. A state will have the ability to pay a judgment as contemplated by 6 F.S.M.C. 1409 when its legislature appropriates money for that purpose. Barrett v. Chuuk, 12 FSM R. 558, 562 (Chk. 2004).

The parties are free to stipulate how any payment on a judgment should be applied – what part of the judgment it should be applied to – but that in the absence of such an agreement, the court would usually presume any payment to be a general payment on the judgment as a whole. Stephen v. Chuuk, 18 FSM R. 22, 27 (Chk. 2011).

While a statute of limitations bars a claim after the passage of a specified time, the common-law rebuttable presumption of payment is, on the other hand, used as evidence, based on the lapse of time, to create a rebuttable inference that the debt has been paid or otherwise satisfied. The presumption is based on the assumption that a person, before the passage of twenty years, would have recovered what belonged to that person unless prevented by some impediment. The persuasiveness of the presumption may be strengthened or diminished by evidence supporting or contradicting the significance of the lapse of time. Kama v. Chuuk, 18 FSM R. 326, 335 (Chk. S. Ct. Tr. 2012).

The presumption of payment of a judgment cannot be raised until after the lapse of 20 years from when the debt is either due or demandable. Kama v. Chuuk, 18 FSM R. 326, 335 (Chk. S. Ct. Tr. 2012).

The presumption of payment of a judgment is prima facie only and may be rebutted. An acknowledgment of the debt within twenty years preceding the action, if made by the debtor, rebuts such presumption. Such acknowledgment need not recognize the debt as a valid and subsisting obligation, and need not expressly nor impliedly contain a promise to pay. It is sufficient if it shows that the debt in question has never been paid. An admission of non-payment coupled with a refusal to pay is sufficient to rebut the presumption of payment. Finally, part payment by a debtor within twenty years before action is begun rebuts such presumption. Kama v. Chuuk, 18 FSM R. 326, 335-36 (Chk. S. Ct. Tr. 2012).

The 6 F.S.M.C. 801 provision that: "[a] judgment of any court shall be presumed to be paid and satisfied at the expiration of twenty years after it is rendered" reflects the common-law rebuttable presumption of payment after a lapse of twenty years. It can therefore be implied that the 20-year statute of limitations for enforcing a judgment is a rule that creates a rebuttable presumption of payment. Kama v. Chuuk, 18 FSM R. 326, 336 (Chk. S. Ct. Tr. 2012).

The doctrine of prescription or presumption of payment of a judgment does not apply when 20 years has not yet elapsed. Kama v. Chuuk, 18 FSM R. 326, 336 (Chk. S. Ct. Tr. 2012).

Partial payments on a judgment are to be first applied to the accrued interest and then to reduction of the principal with the subsequent statutory interest being computed only on the remaining principal. George v. Sigrah, 19 FSM R. 210, 219 (App. 2013).

A $300 payment on a 1998 judgment could not have reduced the principal by $300, and considering the age of the judgment and how little has been paid, it likely did not reduce the principal at all. Therefore the part of the trial court order in aid of judgment reducing the judgment principal by $300 is reversed. George v. Sigrah, 19 FSM R. 210, 219-20 (App. 2013).

When the current matter is in the post-judgment phase and a separate civil action raises claims that the debt has been discharged, the court will defer those issues to be determined in that other civil action and deny the defendant's motion for court order declaring satisfaction of account. FSM Dev. Bank v. Carl, 20 FSM R. 592, 594 (Pon. 2016).

– Relief from Judgment

Rule 60(b)(6) of the FSM Rules of Civil Procedure permits the court to relieve a party from judgment for any reason justifying the relief. Bank of the FSM v. Bartolome, 4 FSM R. 182, 184 (Pon. 1990).

While Civil Rule 60(a) may be used to correct clerical errors in a judgment such as those of transcription, copying, or calculation it cannot be used to obtain relief for acts deliberately done. Therefore where the court deliberately intended to enter in a judgment the amount prayed for in a party's motion and that amount is based on a special master's report not before the court, the party cannot obtain relief under Rule 60(a) for errors in the special master's report. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 444-45 (App. 1994).

Relief from judgment cannot be granted when judgment was granted on two separate grounds and relief is only sought from one of the grounds. However, if meritorious, the record may be corrected to show that one ground ought to be stricken. Setik v. FSM, 6 FSM R. 446, 448 (Chk. 1994).

Trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

Failure of counsel to exercise due diligence in searching for "newly discovered" evidence is sufficient and independent grounds for denial of a motion for relief from judgment under FSM Civil Rule 60(b)(2). Nena v. Kosrae (III), 6 FSM R. 564, 567 (App. 1994).

The purpose of Civil Rule 60(b) is to provide the trial court with a tool for navigating between the conflicting principles that litigation must be brought to an end and that justice should be done. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 129, 133 (Pon. 1995).

Civil Rule 60(b) does not afford relief to a party where the errors complained of were calculated by that party, submitted to the court by that party, and judicially noticed upon that party's request, because it is apparent that that party seeks relief from the insufficient preparation, the carelessness, and the neglect of its own counsel. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 129, 135 (Pon. 1995).

A party may be estopped from seeking Rule 60(b)(1) relief from acts voluntarily undertaken by that party. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 129, 135 (Pon. 1995).

A Rule 60 motion for relief from judgment cannot be granted when the order from which relief is sought is not a final judgment. In re Estate of Hartman, 7 FSM R. 409, 410 (Chk. 1996).

After a judgment has been appealed, a trial court, without appellate court permission, has the power to both consider, and deny Rule 60(b) relief from judgment motions. A trial court, however, cannot grant a

Rule 60(b) motion while an appeal is pending. If the trial court is inclined to grant the motion, it should issue a brief memorandum so indicating. Armed with this, movant may then request the appellate court to remand the action so that the trial court can vacate judgment and proceed with the action accordingly. Walter v. Meippen, 7 FSM R. 515, 517-18 (Chk. 1996).

Because relief from judgment may be granted upon such terms as are just, a court may order as relief that the trial be resumed at some point other than the beginning. Walter v. Meippen, 7 FSM R. 515, 518 (Chk. 1996).

Relief from judgment is addressed to the discretion of the court, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. Walter v. Meippen, 7 FSM R. 515, 518 (Chk. 1996).

Relief from judgment may be granted to a party who failed to appear at trial when he was unaware that trial had been scheduled. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

Courts considering a Rule 60(b) motion also require that the moving party show a good claim or defense before relief from judgment may be granted. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

A stay of judgment may be granted while a motion for relief from judgment is pending. Walter v. Meippen, 7 FSM R. 515, 519 (Chk. 1996).

When a judgment is on appeal, a trial court, without appellate court permission, has the power to both consider and deny Rule 60(b) relief from judgment motions, but cannot grant such a motion while an appeal is pending. If inclined to grant the motion, the trial court issues a brief memorandum so indicating. Armed with this, the movant can then request the appellate court to remand the action so that judgment could be vacated. If the Rule 60(b) motion is denied, the movant may appeal from the order of denial. A trial court's jurisdiction to consider and deny a Rule 59(e) motion (motion to alter or amend judgment) after an appeal has been filed is similar to its power with respect to a Rule 60(b) motion. Stinnett v. Weno, 8 FSM R. 142, 145 & n.1 (Chk. 1997).

When there was no showing that the movant tried to obtain the evidence before judgment and where the evidence would not change the result, it cannot be considered newly discovered evidence that could not have been discovered previously by the exercise of due diligence entitling the movant to relief from judgment. Stinnett v. Weno, 8 FSM R. 142, 146 (Chk. 1997).

In the Kosrae State Court, motions for relief from judgment or to alter or amend a judgment are non-hearing motions. Langu v. Kosrae, 8 FSM R. 455, 457 (Kos. S. Ct. Tr. 1998).

Failure to calendar the date for response and having only one attorney, busy handling a large volume of work, and a number of trial counselors in the office during the month the response was due is not "excusable neglect" entitling a party to relief from judgment. Even if the trial counselors were not prepared to handle the response to the submission, they were certainly capable of and experienced in drafting a motion for enlargement of time. Langu v. Kosrae, 8 FSM R. 455, 459 (Kos. S. Ct. Tr. 1998).

A Rule 60(b) motion is for relief from the judgment of a trial court, not the reconsideration of an appellate order. A motion to reconsider before the Pohnpei Supreme Court appellate division is not analogous to a relief from judgment motion. It is instead analogous to the types of motions to reconsider specifically mentioned in FSM Appellate Rule 4(a)(4). Damarlane v. Pohnpei, 9 FSM R. 114, 118-19 (App. 1999).

A motion for relief from judgment must allege facts sufficient to establish a meritorious defense. Such defendants must make a showing of a meritorious defense that if established at trial, would constitute a complete defense to the action. Irons v. Ruben, 9 FSM R. 218, 219 (Chk. S. Ct. Tr. 1999).

The Chuuk State Supreme Court may set aside any judgment for fraud upon the court, or if the judgment is void as in a case where the judgment is against public policy, or if it is no longer equitable that the judgment should have prospective application, or for any other reason justifying relief from the operation of the judgment. Kama v. Chuuk, 9 FSM R. 496, 499-500 (Chk. S. Ct. Tr. 1999).

A motion to vacate an order of dismissal under Rule 60(b) that is not brought under any of the six enumerated bases set out in Rule 60(b), and reurges the same points made in the response to the original motion to dismiss is plainly not a Rule 60(b) motion, but is considered as a motion for reconsideration. Kosrae v. Worswick, 9 FSM R. 536, 538 (Kos. 2000).

Relief from judgment under Rule 60 is addressed to the court's discretion. The discretion is not an arbitrary one to be capriciously exercised, but a sound legal discretion guided by accepted legal principles. Generally, the court's discretion does not reach neglect of counsel, which, without more, is not a basis for Rule 60(b) relief, except when the neglect itself is excusable. Elymore v. Walter, 10 FSM R. 267, 268-69 (Pon. 2001).

Because clients are responsible for their counsel's conduct, the proper focus is upon whether the neglect of the clients and their counsel was excusable. Clients must be held accountable for their attorney's acts or omissions. Elymore v. Walter, 10 FSM R. 267, 269 (Pon. 2001).

The conduct of both client and counsel is relevant to a determination of excusable neglect under Rule 60(b)(1). Elymore v. Walter, 10 FSM R. 267, 269 (Pon. 2001).

When even if former counsel's neglect were excusable, plaintiffs' failure to secure new counsel in a more timely manner is conduct sufficient in itself to preclude relief under Rule 60(b)(1), the motion for relief from judgment must be denied based on the plaintiffs' own conduct. Elymore v. Walter, 10 FSM R. 267, 269-70 (Pon. 2001).

A motion that a judgment be amended to include a statement of the statutory interest and that its title be corrected to read "judgment" instead of "proposed order," is not one to amend, but rather more properly one to correct a judgment. As such Rule 60 applies, not Rule 59. Walter v. Chuuk, 10 FSM R. 312, 315 (Chk. 2001).

With the exception of void judgments under Rule 60(b)(4), the grant or denial of Rule 60 relief rests with the trial court's sound discretion. The discretion is not an arbitrary one to be capriciously exercised, but a sound legal discretion guided by accepted legal principles. Amayo v. MJ Co., 10 FSM R. 371, 377 (Pon. 2001).

Serving the defendant himself and failure to serve defendant's counsel with documents was not improper conduct entitling the defendant to Rule 60(b)(3) relief from judgment when that defendant had no counsel of record and was appearing pro se. Amayo v. MJ Co., 10 FSM R. 371, 380 (Pon. 2001).

Service of a motion upon an opposing party is expressly required under Civil Procedure Rule 6(d). Such is not the case with a trial subpoena. Therefore, in the absence of any pre-trial order requiring it, failure to serve trial subpoenas on an opposing party does not constitute improper conduct justifying relief from judgment under Rule 60(b)(3). Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

Attorney negligence, even gross negligence, if demonstrated, is not a separate basis for Rule 60(b)(6) relief from judgment. Under established FSM law, attorney neglect as a basis for Rule 60(b) relief falls within subsection Rule 60(b)(1), "mistake, inadvertence, surprise, or excusable neglect." Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

Generally, attorney negligence is not a basis for Rule 60(b)(1) relief from judgment. Parties who freely choose their attorneys should not be allowed to avoid the ramification of the acts or omissions of their chosen counsel. A party in a civil case whose attorney's conduct has fallen below a reasonable standard

has other remedies. To grant Rule 60(b)(1) relief in such circumstances would penalize the nonmoving party for the negligent conduct of the moving party's counsel. Amayo v. MJ Co., 10 FSM R. 371, 381 (Pon. 2001).

The exception to the rule that attorney neglect does not state a basis for relief under Rule 60(b)(1) is where the neglect itself is excusable. Clients must be held accountable for their attorneys' acts or omissions. Amayo v. MJ Co., 10 FSM R. 371, 381-82 (Pon. 2001).

Allegations of an attorney's gross negligence do not entitle his client to relief from judgment under the excusable neglect provision of Rule 60(b)(1). Amayo v. MJ Co., 10 FSM R. 371, 382 (Pon. 2001).

An analysis of excusable neglect under Rule 60(b)(1) by its terms brings into play the conduct of the client, as well counsel because the proper focus is upon whether the neglect of the clients and their counsel was excusable. Amayo v. MJ Co., 10 FSM R. 371, 382 (Pon. 2001).

A pro se party's lack of full involvement in the pretrial process for whatever reasons when he had the opportunity to participate – and indeed was required to do so but did not when it came to responding to plaintiffs' discovery – does not constitute excusable neglect under Civil Procedure Rule 60(b) when he has not demonstrated that his own neglect of the litigation, either in his role of client or attorney, was excusable. Amayo v. MJ Co., 10 FSM R. 371, 382 (Pon. 2001).

Because procedural law cannot cast a sympathetic eye on the unprepared or it will soon fragment into a kaleidoscope of shifting rules, relief under Rule 60 is not appropriate when a party has demonstrated a pattern of delay and neglect. Amayo v. MJ Co., 10 FSM R. 371, 382 n.5 (Pon. 2001).

Rule 59 provides a means for relief in cases in which a party has been unfairly made the victim of surprise, but relief will be denied if the party failed to seek a continuance. Surprise, along with excusable neglect, is also addressed by Rule 60(b)(1). Thus, if a party is surprised at trial he is amply protected by Rules 59(a) and 60(b). Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

For the limited purpose of Rule 60(b)(1) relief from judgment the court will not allow a party, having elected at relevant times to be his own counsel of record, to ascribe his own on-the-record conduct of the litigation after the fact to off-the-record counsel. Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

Subsection (6) is the grand reservoir of equitable power to do justice in a particular case, subject to the requirement that the provision is applicable only when the basis for relief is different from those enumerated in subsections (1) through (5) of Rule 60(b), and to the requirement that extraordinary circumstances exist for justifying relief. Extraordinary circumstances usually means that the movant himself was not at fault for his predicament. Conversely, the usual implication of fault on the movant's part is that there are no extraordinary circumstances. Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

Relief from judgment under Rule 60(b)(6) will be denied when there was sufficient action, and failure to act, on the movant's part to preclude the argument that there was no fault on his part and when there is also no distinct claim for relief that falls outside those specifically enumerated in subsections (b)(1) through (b)(5) of Rule 60. Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

A successor trial court judge has the same power to grant relief from judgment under Rule 60(b) that the original trial court judge had. A successor judge may vacate a judgment when the original judge would have had an adequate legal basis to do so. Kama v. Chuuk, 10 FSM R. 593, 597 (Chk. S. Ct. App. 2002).

Appellate review of a grant or denial of a motion for relief from judgment is limited to determining whether the trial court abused its discretion. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

The right to seek relief from judgment under Rule 60(b) is restricted to a party or a party's legal representative. Rule 60(b) explicitly requires a motion from the affected party, not from the trial court

acting *sua sponte*. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

The Rule 60(b) requirement that a party seek relief is unlike a Rule 60(a) correction of a clerical error in a judgment, which may be corrected by the court of its own initiative or on any party's motion. Kama v. Chuuk, 10 FSM R. 593, 598 (Chk. S. Ct. App. 2002).

It was an erroneous conclusion of law for a trial court to hold it had the authority to move *sua sponte* to relieve a party from judgment. 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).

Relief from judgment must be sought by motion with notice to opposing party and an opportunity for him to be heard. The motion must state the grounds for the relief, including the facts and the law on which the grounds are based, and why the movant believes that the motion is brought within a reasonable time, that is, the movant must show good reason for its failure to take appropriate action sooner. If the motion is brought pursuant to Rule 60(b)(6), the movant must also state the nature of the extraordinary circumstances that are the ground for relief. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

The movant for relief from judgment must keep in mind that generally the standard for reopening a consent final judgment is a strict one. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

When an offer of judgment and an acceptance of offer of judgment were made solely between the plaintiff and one defendant and neither party had the power to bind the other defendants to any judgment by such offer and acceptance, the judgment will be modified under Civil Rule 60(a) to clearly reflect that the judgment is only against the one defendant. Konman v. Adobad, 11 FSM R. 34, 35-36 (Chk. S. Ct. Tr. 2002).

When there is no judgment in the case but only an interlocutory order confirming a settlement agreement between fewer than all the parties to the action, a motion for relief from judgment will properly be characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order. A party cannot seek relief from a judgment that does not exist. Stephen v. Chuuk, 11 FSM R. 36, 43 (Chk. S. Ct. Tr. 2002).

The standard test for whether a judgment is final for Rule 60(b) purposes is usually stated to be whether the judgment is sufficiently final to be appealed. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 87 (Kos. 2002).

In the absence of the Rule 60(b) finality requirement, the court will deem a putative Rule 60(b) motion as one for reconsideration of the court's order. Richmond Wholesale Meat Co. v. George, 11 FSM R. 86, 88 (Kos. 2002).

The determination of what sorts of neglect that can be considered excusable in order to justify relief from judgment is an equitable one. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

Defendants' failure to move for relief from judgment until after a writ of execution has been issued and their property seized was not an unreasonable delay when the plaintiff was so prompt in obtaining a default judgment, a writ of execution, and then levying on the writ. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

Bad checks that, in part, gave rise to the lawsuit are not culpable conduct after the lawsuit's inception that would bar relief from judgment, and neither are the defendants' other instances of alleged culpable conduct (such as moving or closing other businesses) that do not appear to be related to the lawsuit. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 123 (Chk. 2002).

Relief from judgment may be granted only on motion and upon such terms as are just. The requirement of a bond is a just term upon which to grant relief from judgment, especially in a close case that tips in the defendants' favor because of the court's policy favoring resolutions on the merits over defaults. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 123 (Chk. 2002).

Rule 60(b) may not allow a party in whose favor a judgment is entered to seek relief from that judgment because stipulated judgments, while they are judicial acts, also have many attributes of voluntarily-undertaken contracts, and when the parties have made a freely calculated, deliberate choice to submit to an agreed upon judgment rather than seek a more favorable litigated outcome (or risk a less favorable litigated outcome), the burden under Rule 60(b) is probably more formidable than had they litigated and lost. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

Relief under Rule 60(b)(6) is reserved for extraordinary circumstances. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

Relief from judgment will be denied when the movant has not shown the extraordinary circumstances required by Rule 60(b)(6) for her to be granted relief from a judgment, which was in her favor and which she had agreed to, and has not shown unforeseeable changed circumstances. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

A judgment may be vacated for nonjoinder of a necessary or indispensable party or where it affects persons who were never made parties to the suit. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

Although the trial court, absent a remand, lacks jurisdiction to vacate or alter its judgment pending appeal, the trial court retains the power throughout the pendency of the appeal to simply preserve the status quo by granting a stay of the judgment. Konman v. Esa, 11 FSM R. 291, 296 (Chk. S. Ct. Tr. 2002).

Rule 60(b) draws a distinction between relief from judgment for "fraud," which is subject to a one-year limitation, and for "fraud upon the court," which is not subject to such a limitation. These are two distinct types of fraud, since any other conclusion would render nugatory the one-year limitations period that is placed on "ordinary" fraud under Rule 60(b)(3). Ramp v. Ramp, 11 FSM R. 630, 635 (Pon. 2003).

The adversary process is designed to ferret out perjured testimony and the like, and if a party does not litigate vigorously and effectively to accomplish this, then he must live with the result. Thus, the advantage of focusing the inquiry on what the party seeking relief should have accomplished at the earlier trial serves all the purposes of the "intrinsic" versus "extrinsic" fraud distinction. It protects the sanctity of final judgments from those who did not adequately litigate the issues the first time around. The preservation of the sanctity of judgments and the certainty that this is meant to provide in the lives of litigants, irrespective of whether they win or lose, is the rationale for the heightened showing necessary for relief from judgment after one year has elapsed from the time of the entry of judgment. Ramp v. Ramp, 11 FSM R. 630, 636 (Pon. 2003).

A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or jury or fabrication of evidence by counsel, and must be supported by clear, unequivocal and convincing evidence. Ramp v. Ramp, 11 FSM R. 630, 636 (Pon. 2003).

Nondisclosure is not a basis for seeking relief from an order or judgment based on allegations of fraud on the court. Ramp v. Ramp, 11 FSM R. 630, 638 (Pon. 2003).

When a party has received a copy of an instrument evidencing the property transfer that she now claims was concealed from her, notwithstanding this omission, and regardless of the fact that the opponent answered the interrogatory "no," when the only correct answer was "yes," it remains that the discovery responses that were served on her attorney of record and are a part of the court file contain a copy of the

document conveying the half interest. Thus, she cannot now say this transaction was not disclosed to her. At most, the inconsistency between the request for production and the interrogatory created an issue for resolution by further discovery. In light of the property transfer document, even the patently incorrect interrogatory answer does not entitle her to any relief under the fraud on the court provision. Ramp v. Ramp, 11 FSM R. 630, 638-39 (Pon. 2003).

Miscategorization of the property cannot be a basis for a fraud on the court claim when the statement of the parties' assets and liabilities was, and is a part of the record, when the alleged miscategorization was evidently not an issue at the time the parties executed the separation agreement since the listing is attached to that agreement, and when it was not an issue when the parties stipulated to the entry of the divorce decree that incorporated the separation agreement with the attached asset listing. Ramp v. Ramp, 11 FSM R. 630, 639 (Pon. 2003).

When a motion to relieve a party from a final order on the basis of surprise is filed after the order has been appealed, the court may deny the motion and leave the order appealed from intact, or, if the court is inclined to grant the motion it may only state on the record what it would do in the event that the case were remanded to it since the filing of the notice of appeal transferred jurisdiction to the appellate division. Estate of Mori v. Chuuk, 12 FSM R. 3, 9 (Chk. 2003).

A trial court may stay the execution of any proceedings to enforce a judgment pending the disposition of a motion for relief from a judgment or order made pursuant to Rule 60. Estate of Mori v. Chuuk, 12 FSM R. 3, 12 (Chk. 2003).

Chuuk state trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. The FSM Supreme Court trial division therefore also has the power in a proper case to entertain an independent action for relief from a state court judgment. Enlet v. Bruton, 12 FSM R. 187, 189-90 (Chk. 2003).

The grant or denial of relief under Civil Procedure Rule 60 rests with the sound discretion of the trial court. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

An appellate court reviews a trial court denial of a Rule 60(b) motion under an abuse of discretion standard. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

Rule 60(b)(1) provides that a court may relieve an affected party from judgment on the basis of mistake, inadvertence, surprise, or excusable neglect. Panuelo v. Amayo, 12 FSM R. 365, 372 (App. 2004).

A trial court commits an abuse of discretion when it commits legal error by denying a motion for relief from judgment when a defendant was surprised by the date and time of trial since he was never served with a notice of trial because the trial court erred when, through its clerks' office, it failed to serve notice of the trial date and time on the *pro se* litigant. This error seriously affected the judicial proceedings' fairness, integrity, and public reputation, regardless of opposing counsel's service of a trial subpoena on the litigant. 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).

Unlike other grounds under Rule 60(b), the court does not have any discretion when relief from judgment is sought on the ground that the judgment was void because either a judgment is void or it is valid. A judgment is not void merely because it is erroneous. It is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

When the only ground offered to justify relief from judgment is that the movant was not properly served

the amended complaint and when the court has concluded that he was properly served the amended complaint by mail since he had already appeared in the case to plead or otherwise defend, the motion for relief from judgment must be denied. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

When an amended complaint asserted additional factual claims, the defendant had to be served a summons with the amended complaint and the service had to be effected as would the service of any complaint and summons, and since he was served by ordinary mail, he was not properly served the amended complaint. The judgment based on the amended complaint is thus void as to him and a motion for relief from judgment will therefore granted as to him. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

On motion and upon such terms as are just, the court may relieve a party from a final judgment when the judgment is void. The court can order the plaintiff to serve the amended complaint and a summons issued by the court clerk on defendant being relieved from judgment by any means permissible under FSM Civil Procedure Rule 4 or 4 F.S.M.C. 204(2) or 4 F.S.M.C. 204(3) within a certain time. Lee v. Lee, 13 FSM R. 252, 259 (Chk. 2005).

Relief from judgment is addressed to the discretion of the court, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

When a case has been dismissed for the plaintiff's failure to prosecute, the plaintiff's possible remedies are either to appeal the dismissal or a Rule 60(b) motion for relief from judgment (the more viable, quicker, and usual remedy) if he wishes to have the dismissal set aside. (Filing a new case when there has been a dismissal on the merits is not a possible remedy.) Success by either method would reinstate the case at the point it was dismissed. If neither of these routes is taken successfully, the plaintiff, depending on his ability to prove that he would have succeeded at trial, may have a cause of action against his counsel. Kishida v. Aizawa, 13 FSM R. 281, 284 (Chk. 2005).

A trial court's request for clarification of the attorneys' fee request documentation was not a grant of relief from judgment or analogous to relief from judgment, and a trial court's permitting the submission of the attorney fee request one day late was within its discretion. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 22 (App. 2006).

It is an error of law for the trial justice to even consider setting aside a judgment sua sponte or on his own motion since only an affected party may seek relief from judgment. Rule 60(b) explicitly requires a motion from the affected party, not from the trial court acting *sua sponte*. Ruben v. Hartman, 15 FSM R. 100, 108-09 (Chk. S. Ct. App. 2007).

Since a party cannot seek relief from a judgment that does not exist, a motion for relief from a partial summary judgment is therefore properly characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order. Dereas v. Eas, 15 FSM R. 135, 138 (Chk. S. Ct. Tr. 2007).

A motion to reconsider that was filed 22 days after the judgment had been entered, cannot be a Rule 54(b) motion to reconsider since those motions must be made before entry of judgment, or a Rule 59(e) motion to alter or amend judgment since a Rule 59(e) motion must "be served not later than 10 days after entry of the judgment." It can only be a Rule 60(b) motion for relief from judgment. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 588 (App. 2008).

Even after a judgment has been properly appealed, a trial court, without appellate court permission, has the jurisdiction to both consider, and to deny a Rule 60(b) relief from judgment motion, but cannot grant a Rule 60(b) motion while an appeal is pending. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

When the trial judge has a Rule 60(b) motion before him, which is within his jurisdiction to consider and

deny even though the case is on appeal, and also a motion to recuse, and when, upon receipt of a recusal motion, a justice must rule on it before proceeding any further in the matter, the trial judge is required to rule on the recusal motion before proceeding on to the Rule 60(b) motion. The trial judge therefore had the jurisdiction to, and a duty to, rule on the recusal motion. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

If a judgment has been appealed and a Rule 60(b) motion for relief from that judgment is afterwards denied, a separate notice of appeal from that denial must be filed for an appellate court to have jurisdiction to review the Rule 60(b) denial. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 589 (App. 2008).

If the defendants succeed in vacating the judgment, then the next step would be to order a new trial because if the judgment were left in place and only its enforcement barred, the result would the anomalous situation of a valid money judgment which could not be enforced even though the judgment-debtors are solvent and within the jurisdiction. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 630 (Pon. 2008).

Relief from judgment cannot be for a mistake the bank made in preparing the loan agreement and promissory note when the court corrected that "mistake" by reforming the loan agreement and the promissory note to accurately reflect the agreement of the parties to it because the judgment from which relief is sought is not based on, or the result of, this "mistake," but is instead the result of the court's correction of the "mistake." FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

Legal rulings affirmed on appeal and therefore not error are not "mistakes" subject to relief from judgment under Rule 60(b)(1). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

Failure to sue the borrower as well as, or instead of, the guarantors cannot be considered a "mistake" subject to relief from judgment under Rule 60(b)(1) because, as a general legal principle, a lender holding a guaranty of payment can sue a guarantor directly, without naming the borrower and because the terms of the guaranty, under which the guarantors were found liable, permitted the bank, in the case of a loan default, to sue the guarantors without suing the borrower. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

When the defendants do not assert that the judgment is void and do not allege that the court lacked subject matter jurisdiction over the case or personal jurisdiction over the defendants or that the court acted inconsistent with due process, the defendants are not entitled to relief from judgment under Rule 60(b)(4). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

Rule 60(b)(5) which permits relief from a judgment on the ground that "it is no longer equitable that the judgment have prospective application," properly applies only to judgments with prospective effect, and so does not cover the case of a judgment for money damages. While a money judgment may be "prospective" to the extent that the defendant has failed to pay it in a timely manner, it is nevertheless a final order and is not "prospective" for purposes of Rule 60(b)(5). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634 (Pon. 2008).

Subsection 60(b)(6), which permits relief for "any other reason justifying relief," and the other subsections of Rule 60(b) are mutually exclusive. Thus, if the reasons offered for relief from judgment could have been considered under any of the subsections 60(b)(1) through (5), they cannot be considered under Rule 60(b)(6). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634 (Pon. 2008).

Relief under Rule 60(b)(6) is reserved for extraordinary circumstances. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634 (Pon. 2008).

When the defendants do not allege that the FSM Development Bank, or IDF, or FDA committed any wrongdoing causing the borrower's non-performance on the loan repayments, they cannot rely on the principle that a promisor is discharged from liability when the promisor's non-performance is caused by the other contracting party since the other contracting party, the bank (and its principal, IDF) did not cause the

non-performance and they cannot rely on the principle that a person is not permitted to profit by his own wrong at another's expense since neither the bank nor IDF are alleged to have committed a wrong, and it is IDF that will profit if the loan is repaid. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 635 (Pon. 2008).

When the terms of the guaranty under which the guarantors have been held liable waived any right to the borrower's defenses, the guarantors would need to overcome this express waiver in order to be entitled to relief from the judgment against them based on the ground that another's wrongdoing is a defense against the borrower being required to repay its loan. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 635 n.7 (Pon. 2008).

A litigant, as a precondition to Rule 60(b) relief, must give the trial court reason to believe that vacating the judgment will not be a futile gesture or an empty exercise, that is, that the litigant has a meritorious defense. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 635 (Pon. 2008).

Relief from a judgment may be sought either by a Rule 60(b) motion or by an independent action – through filing a separate case. It cannot be sought by both. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008).

When the defendants have not filed their Rule 60(b) motion seeking relief in a separate action in equity collaterally attacking the judgment, but have instead filed it as a post-judgment motion in the original case, the motion may only be treated as a Rule 60(b) motion for relief from judgment, and not as an independent action, despite the defendants styling their motion as one "in the nature of an independent action." FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008).

A motion to reconsider made more than ten days after entry of judgment can only be considered a Rule 60(b) motion for relief from judgment. Palsis v. Tafunsak Mun. Gov't, 16 FSM R. 116, 120 n.1 (App. 2008).

A motion to reconsider or vacate a judgment filed within ten days of the judgment is a Rule 59 motion to alter or amend judgment and a motion filed after ten days is a Rule 60(b) motion for relief from judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138 n.3 (Pon. 2008).

Rule 60(b) permits only motions for relief from judgment under that rule or independent actions. There is no such motion as one in the nature of an independent equitable action for relief filed in the original case. If a party wishes to seek relief through an independent action, it must file a separate independent action. If a party files a motion in the case in which the judgment was issued, it is a Rule 60(b) motion for relief from judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 139 (Pon. 2008).

A motion to vacate a judgment filed in the original case cannot be anything other than a Rule 60(b) motion for relief from judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 139 (Pon. 2008).

Generally, relief from a judgment may be sought either by a Rule 60(b) motion for relief from judgment filed in the original case or by a separate, independent action (a new case), but it cannot be sought by both. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009).

When, taking the guarantors' factual allegations as true – that the bank misrepresented to plaintiffs that the documents were in accord with the loan, caused plaintiffs to rely upon said representations and knew plaintiffs would so rely – it is difficult to see how the guarantors were harmed thereby because, if the bank had prepared all the documents correctly, the documents would have shown that a corporation was the borrower and that the guarantors were guarantors with the result that the guarantors would be liable on their guaranty, and since this result is no different than that in the judgment rendered in the former litigation, any alleged reliance on the bank's representation could not have been to the guarantors' detriment since they were in no worse position than if the loan documents were accurately prepared. Arthur v. Pohnpei, 16 FSM R. 581, 597-98 (Pon. 2009).

Since the court cannot ignore the facts that the guarantors agreed were true and stipulated to in the former litigation – that a corporation was the borrower, that the promissory note was incorrectly completed,

and that they signed a guaranty – and instead pretend, for the sake of this independent action, that those facts are not true, and that the guarantors were the borrowers, the guarantors' current allegation that they were the borrowers cannot be taken as true because it is a conclusion of law masquerading as a factual conclusion that the court cannot accept or, alternatively, it is a conclusory factual allegation that is contradicted by facts which the court may judicially notice – the court filings, record, and reported decision in the former action and the appellate affirmance of that decision. Either way, the court cannot accept this allegation as true because it is not. Arthur v. Pohnpei, 16 FSM R. 581, 598 (Pon. 2009).

When the guarantors steadfastly maintained, from the start and throughout the former litigation and subsequent appeal, their position that a corporation was the borrower and that they were only the guarantors, the guarantors cannot now pretend that, because the former judgment and appeal were unfavorable to them, they were instead the borrowers on the loan, something they had consistently denied throughout. If the guarantors were permitted to now assert that they were the borrowers, they would be relitigating the entire case from the beginning, and that they cannot do in an independent action, and, since the corporation was the borrower, the guarantors' allegations that can be taken as true fail to state a claim for fraud. Because the guarantors' allegation cannot make out a fraud claim, summary judgment could be granted in the bank's favor on this ground alone since, without the existence of the requisite fraud, res judicata prevails. Arthur v. Pohnpei, 16 FSM R. 581, 598 (Pon. 2009).

When the issue of the bank's faulty preparation of some of the loan documents that showed the guarantors as borrowers and the effects of those scrivener's errors on the guarantors' liability was fully litigated in the former civil action and, on appeal, the guarantors' contentions were again fully considered and the trial court's decision was affirmed; when the defense of mistake in the document preparation was fully litigated in the trial court and also considered by the appellate court; and when the guarantors did not raise a fraud defense at that time but they could have if they had chosen to since all the facts known to them now were also known to them then, there is no genuine issue of material fact about whether the guarantors were misled by the bank's errors on the loan documents to believe that they were the actual borrowers and not guarantors since they all believed that the corporation was the borrower, not they, and that they had signed a guaranty, and, in the former action, had stipulated to these facts as true and that these facts were undisputed. Arthur v. Pohnpei, 16 FSM R. 581, 598-99 (Pon. 2009).

A litigant may not sit idly by during the course of litigation and then seek to present additional defenses in the event of an adverse outcome. Arthur v. Pohnpei, 16 FSM R. 581, 599 (Pon. 2009).

When the dismissal for failure to exhaust administrative remedies was without prejudice to any later court action after administrative relief had been sought, granting relief from the dismissal would not be in the interest of justice, and any future litigation would be conducted on a new and accurate pleadings. Aake v. Mori, 16 FSM R. 607, 609 (Chk. 2009).

Relief from a judgment under Rule 60 is addressed to the court's discretion, which is not an arbitrary one to be capriciously exercised but a sound legal discretion guided by accepted legal principles. An appellate court therefore reviews a trial court's denial of a Rule 60(b) motion under an abuse of discretion standard. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 657 (App. 2009).

It is not important whether the trial judge considered the attack upon the judgment under 60(b) or as an independent equitable action, if based on all the evidence the trial judge in the exercise of his judicial and equitable discretion, denied relief. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 658 (App. 2009).

In an independent action, it is fundamental that equity will not grant relief if the complaining party has, or by exercising proper diligence would have had an adequate remedy at law, or by proceedings in the original action to open, vacate, modify or otherwise obtain relief against, the judgment. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 658-59 (App. 2009).

Relief under Rule 60(b)(6) is reserved for "extraordinary circumstances," which usually means that the movant himself was not at fault for his predicament. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

An issue that should have been known to the appellants when the original suit was filed should have been raised as a defense in the original suit or an excuse offered for not raising it then. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

When there is no reason, other than the appellants' own carelessness or inadvertence, not to have raised a defense at the trial level or to have impleaded the State of Pohnpei for indemnification, but they did neither, the appellants fail to demonstrate that they were not at fault or negligent. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

When the appellants' first claim is that the contract reformation was a mistake on the court's part and that issue was already disposed of in their first appeal; when they have been before the trial court as well as the appeals court, and have had an opportunity to fully litigate their claims; when their claim that because the contract was reformed, they were unable to present their defense is unsupported and unpersuasive; when they were not denied any due process rights or remedies in law or equity as they were afforded an opportunity to fully litigate their claims and to present in the original action any meritorious defense against all claims; when they stipulated to the facts; and when many of their arguments are factual claims made in a prior appeal, in which that court already concluded were speculative arguments, the appellants have not demonstrated that their circumstances are in any way unusual and exceptional. Nor have they established that their own fault or negligence was not a factor in the resulting judgment. Therefore the trial court did not abuse its discretion in denying the appellants' request for relief from the judgment. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659-60 (App. 2009).

When the appellants have had ample opportunity to present evidence on every ground or defense that they asserted, or could have asserted, but failed to do so; when the trial court comprehensively and correctly analyzed and denied their Rule 60(b) motion for relief from the trial court's judgment; and when they now urge on this appeal that the trial court's decision be vacated because it failed to treat their Rule 60(b) motion as an independent action under Rule 60(b)(6), this contention is spurious. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 660 (App. 2009).

When, in essence this is an appeal of an earlier final appellate court determination of the appellants' liability based on a defense they could have raised but waived in the trial court, it is yet another attempt to have a second bite of the appellate apple. When the appellants assert that the trial court erred in failing to vacate the judgment and raise claims either already argued and decided in their first appeal or not raised at the trial level, this is not an opportunity or an appropriate occasion for them to have a second bite of the appellate apple or to address issues that were not raised at the trial level. The trial court thus did not abuse its discretion by not vacating the judgment. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 661 (App. 2009).

A plaintiff seeking to maintain an action for unjust enrichment as the result of having paid money on a judgment must first have that judgment vacated or reversed before that plaintiff can pursue an unjust enrichment or restitution claim. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7 (Pon. 2011).

To maintain an action for unjust enrichment or for money had and received or for restitution, the recipient of the money had and received must be shown to be unjustly enriched. Unless and until a judgment on which the plaintiffs have paid the money is vacated or reversed that is something the plaintiffs are manifestly unable to do. They thus fail to state a claim for unjust enrichment or restitution when the judgment has not been set aside and remains valid and enforceable. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7 (Pon. 2011).

Although the plaintiffs' argument for restitution which asserts that an earlier judgment should not be enforced does not explicitly say so, the court must consider the case to be an independent action for relief from judgment joined with, and thus presuming success on the independent action for relief, an action for unjust enrichment and restitution with the necessary element of the prior judgment having been set aside to be accomplished in the same action. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 8 (Pon. 2011).

There are only three methods by which judgment-debtors may have a judgment against them set aside. One is to appeal the judgment and convince the appellate court to reverse it. The second is a motion for relief from judgment as provided for in Civil Procedure Rule 60(b). The third is an independent action in equity (as acknowledged in Rule 60(b)) to set aside a judgment. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 11 & n.5 (Pon. 2011).

Evidence does not qualify as newly discovered evidence that would be a ground for relief under Civil Rule 60(b)(2) when that evidence should have been in the plaintiff's possession all along (since he was a signatory to the agreement) or was evidence he would have, with due diligence, located before he filed suit, especially since this is his second suit for the breach of the same easement agreement and he should have had it for the earlier suit. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 206 (Chk. 2012).

When all the defenses the defendant now seeks to raise were previously raised on his behalf and then considered and rejected by the court, he has not shown any grounds to revisit these issues or for relief from judgment under Civil Procedure Rule 60(b), which governs the defendant's motion to dismiss prior court judgments, which also was not timely. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

When there is no final judgment in a case but only an interlocutory order, a motion for relief from the interlocutory order will properly be characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order under Rule 54(b). People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 307, 312 (Yap 2012).

Civil Procedure Rule 60(b)(4) provides for the relief from judgment when the judgment is void. Unlike other grounds for relief from judgment under Rule 60(b), the court does not have any discretion when the relief is sought because the judgment is void since a judgment is either void or it is valid and if it is void the court must vacate it. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

Although the court has no discretion and must grant the relief when relief is sought from a void judgment, a judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

Since a corporation's directors have a duty to act in the corporation's best interest and when, regardless of whether the judgment existed, the corporation had debts that greatly exceeded its assets and it was unable to pay those debts as they became due, bankruptcy was probably in the corporation's best interest, and the court cannot give any weight to the argument that this meant that the directors had accepted the judgment when they directed the corporation to seek bankruptcy protection. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

The court cannot give any weight to the argument that the passage of time is enough to bar vacating a void judgment. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

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).

As recognized by general law and as provided for in Compact of Free Association § 176, Trust Territory judgments that are final, although accorded res judicata status, can be subject to collateral attack or to relief from judgment. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (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).

A judgment entered against a party without notice or an opportunity to be heard is void and subject to direct or collateral attack. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

There are civil procedure mechanisms to address situations where the Kosrae State Court would be in the position of being asked to enforce contradictory judgments. Under Kosrae Civil Procedure Rule 60(b)(5), on motion and on such terms as are just, the Kosrae State Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding when a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application. Thus, a party could be relieved from an inconsistent permanent injunction as a final order that it is no longer equitable that it should have prospective application. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 & n.7 (App. 2014).

A trial division justice does not have jurisdiction to issue an order granting relief from the summary judgment when the matter has been timely appealed and the jurisdiction lay in the appellate division when he issued the relief order. Kuss v. Joseph, 19 FSM R. 380, 381 (Chk. S. Ct. App. 2014).

After a judgment has been appealed, a trial court, without appellate court permission, has the power to both consider, and deny Rule 60(b) relief from judgment motions, but the trial court cannot grant a Rule 60(b) motion while an appeal is pending. If the trial court is inclined to grant the motion for relief from judgment, it should issue a brief memorandum so indicating, and, armed with this, the movant may then request the appellate court to remand the action so that the trial court can vacate judgment and proceed with the action accordingly. Kuss v. Joseph, 19 FSM R. 380, 381 (Chk. S. Ct. App. 2014).

An appellate court may consider a trial justice's order setting aside the summary judgment to be his "brief memorandum" indicating that he is inclined to grant the motion to set aside the summary judgment as void and remand the case to the trial division so that the trial justice can, if he is so inclined, re-enter his order vacating the summary judgment. Kuss v. Joseph, 19 FSM R. 380, 381-82 (Chk. S. Ct. App. 2014).

A motion to alter, or amend, under FSM Civil Rule 59(e), or reconsideration of a mistake through inadvertence under FSM Civil Rule 60(b) are post-judgment motions that are appropriately filed in the trial division, not the appellate division, and, under the final judgment rule, these post-judgment motions prohibit filing an appeal until they have been either granted or denied. Mori v. Hasiguchi, 19 FSM R. 416, 418 (App. 2014).

Although Rule 60(b) does not limit the court's power to entertain an independent action to relieve a party from a judgment, the procedure for obtaining any relief from a judgment is either by a Rule 60(b) motion or by an independent action; not by both. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

The court, in its discretion and on such condition for the adverse party's security as is proper, may, pending the disposition of a Rule 60 motion for relief from judgment, stay the execution of or any proceedings to enforce a judgment. The criteria to be utilized when determining the propriety of a such a stay are: 1) whether the applicant has made a strong showing that the applicant is likely to prevail on the merits of the appeal; 2) whether the applicant has shown that without the stay, the applicant will be irreparably harmed; 3) whether issuance of the stay would substantially harm other parties interested in the proceedings and 4) whether the public interest would be served by granting the stay. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

The movants do not qualify for a suspension of the proceedings when they do not deny the debt and therefore fail to denote that they are likely to prevail on the merits of the accompanying Rule 60(b) motion; when there has been an inadequate showing that irreparable harm will befall the movants without the stay; when they have made no attempt to meet their obligation under the mortgage even though the executed mortgage pledged the subject parcels as security; when the coveted issuance of a stay would further delay the plaintiff's ability to recoup money due and owing, as reflected in the judgment(s) that have languished for an inordinate length of time, coupled with the fact that the deterioration of the mortgaged buildings is inevitable with the passage of time, thereby adversely impacting the value of the mortgaged property; and

when the stay could set a troubling public policy precedent by allowing other debtors to stave off satisfaction of final judgments when an underlying justification for suspension of proceedings has not been adequately depicted. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

In its discretion and on such condition for the adverse party's security as is proper, the court may, pending the disposition of a Rule 60 motion for relief from judgment, stay the execution of any proceeding to enforce a judgment. The criteria to be utilized when determining the propriety of a stay are: 1) whether the applicant has made a strong showing that the applicant is likely to prevail on the merits; 2) whether the applicant has shown that without a stay, the applicant will be irreparably harmed; 3) whether the stay's issuance would substantially harm other parties interested in the proceedings and 4) whether the public interest would be served by granting the stay. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

A motion to stay will be denied when the defendants' arguments have failed to denote a likelihood of prevailing on the merits of their Rule 60(b) motions; when there has been an inadequate showing that irreparable harm will befall them without a stay, as they do not dispute the debt but have made no attempt to meet their obligation with respect to the outstanding judgment; when the stay's issuance would further delay the plaintiff's ability to recoup monies due and owing, as reflected in the judgment that has been languishing for an inordinate length of time; and when a stay could conceivably set a troubling public policy precedent, in terms of allowing other debtors to stave off satisfaction of final judgments although an underlying justification for a suspension has not been adequately shown. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104-05 (Chk. 2015).

A Rule 59 motion for a new trial must be served not later than ten days after entry of the judgment, but a motion that purports to be a Rule 59(b) motion for a new trial will not be denied merely because it is untimely since a Rule 59 motion served after the ten days has expired will be, and can only be, considered a Rule 60(b) motion for relief from judgment. George v. Palsis, 20 FSM R. 174, 176 (Kos. 2015).

A motion for a new trial or for relief from judgment will be denied when none of the purported "newly discovered evidence" that it relies upon qualifies as newly discovered evidence which by due diligence could not have been discovered earlier. George v. Palsis, 20 FSM R. 174, 176-77 (Kos. 2015).

Evidence, that by its very nature, was in the plaintiff's possession the whole time cannot be considered "newly discovered" evidence especially when the motion for a new trial or relief from judgment does not address the plaintiff's complete failure to produce the evidence at trial. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

When almost a month has elapsed from the July 17th entry of an order and the August 14th filing of a motion to set it aside, coupled with the redress sought therein, the court will characterize it as a motion under FSM Civil Rule 60(b) seeking relief from an order. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 227 (Chk. 2015).

A movant, as a precondition to rule 60(b) relief, must give the court reason to believe that vacating the judgment will not be a futile gesture or an empty exercise; in other words, there must exist a meritorious defense. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).

When a final order has been properly appealed, a trial court has the jurisdiction, without appellate court permission, to both consider and to deny a Rule 60(b) relief from judgment motion, but it cannot grant a Rule 60(b) motion while an appeal is pending, but if the trial court is inclined to grant the motion, it may only state on the record that it would do so if the case were remanded. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

Rule 60(b)(6) is a grand reservoir of equitable power to do justice in a particular case, subject to the requirement that the provision is applicable only when there is a basis for relief different from those enumerated in subsections (1) through (5) of Rule 60(b), and when extraordinary circumstances exist for

justifying relief. In re Contempt of Jack, 20 FSM R. 452, 459 (Pon. 2016).

The "extraordinary circumstances" required for Rule 60(b)(6) relief usually means that the movant himself or herself was not at fault for his or her predicament, and conversely, the usual implication of fault on the movant's part is that there are no "extraordinary circumstances." Relief under Rule 60 is simply not appropriate where a party has demonstrated a pattern of delay and neglect. In re Contempt of Jack, 20 FSM R. 452, 459 (Pon. 2016).

Rule 60(b) is not meant to relieve a party from its own carelessness and neglect, or from its counsel's carelessness and neglect. Rule 60(b) relief is precluded when the complained of injuries result solely from the carelessness or neglect of the moving party, or of the moving party's counsel, except when the neglect itself is excusable under FSM Civil Rule 60(b)(1). In re Contempt of Jack, 20 FSM R. 452, 459 (Pon. 2016).

Rule 60(b)'s purpose is to provide the trial court with a tool for navigating between the conflicting principles that litigation must be brought to an end and that justice should be done. To meet this intended purpose, Rule 60(b), which combines aspects of both law and equity, reposes a high degree of discretion in the trial court. In re Contempt of Jack, 20 FSM R. 452, 460 (Pon. 2016).

The decision to grant or deny a motion for relief from a final judgment is committed to the trial court's sound discretion. Accordingly, the lower court's decision about relief from judgment should be reviewed only upon a showing that the trial judge's ruling manifested an abuse of discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

It is just as important that there should be a place to end litigation, as there should be a place to begin. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506 (App. 2016).

Although the term "void" describes a result, rather than the conditions that render a judgment unenforceable, a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised after the judgment becomes final. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

The provisions of Rule 60(b) must be carefully interpreted to preserve the delicate balance between the sanctity of final judgments and the incessant command of the court's conscience, that justice be done in light of all the facts. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

A judgment is void and therefore subject to relief under Rule 60(b)(4), only if the court that rendered judgment lacked jurisdiction or in circumstances in which the court's action amounted to a plain usurpation of power constituting a violation of due process. The total want of jurisdiction must be distinguished from an error in the exercise of jurisdiction and only rare instances of a clear usurpation of power will render a judgment void. In other words, a court has the power to determine its own jurisdiction and an error in that determination will not render the judgment void. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 508 (App. 2016).

A party seeking relief from a final judgment must do so pursuant to Rule 60(b). Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 508 (App. 2016).

Generally, attorney negligence is not a basis for Rule 60(b)(1) relief. Since, parties may freely choose their attorneys and should not be allowed to avoid the ramification of their chosen counsel's acts or omissions, to grant relief under Rule 60(b)(1) for attorney negligence would penalize the nonmoving party for the negligent conduct of the moving party's counsel. Johnson v. Rosario, 21 FSM R. 7, 11 (Pon. 2016).

Keeping a suit alive merely because the plaintiff should not be penalized for the omissions of his own attorney would be visiting the sins of the plaintiff's lawyer upon the defendant. Johnson v. Rosario, 21 FSM R. 7, 12 (Pon. 2016).

Relief under Rule 60(b)(6) is reserved for "extraordinary circumstances." Subsection (6) is a grand reservoir of equitable power to do justice in a particular case, subject to the requirement that it is applicable only when there is a basis for relief different from those enumerated in subsections (1) through (5) of Rule 60(b), and to the requirement that "extraordinary circumstances" exist for justifying relief. Johnson v. Rosario, 21 FSM R. 7, 12 (Pon. 2016).

"Extraordinary circumstances" justifying relief under Rule 60(b)(6) means that the movant himself was not at fault for his predicament, and conversely, the usual implication of fault on the movant's part is that there are no "extraordinary circumstances." Johnson v. Rosario, 21 FSM R. 7, 12 (Pon. 2016).

The decision to grant or deny a motion for relief from a final judgment is committed to the trial court's sound discretion. Accordingly, the lower court's decision should be scrutinized, with an eye toward determining whether the trial judge's ruling manifested an abuse of discretion. Such abuses must be unusual and exceptional; an appellate court will not merely substitute its judgment for that of the trial court. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (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).

– Relief from Judgment – Default Judgments

Under circumstances where the defendant has failed to set forth a meritorious defense and has exhibited culpable conduct, defendant will not succeed on a motion to set aside a judgment of default. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 512, 514 (Truk 1988).

A motion to set aside a default judgment is addressed to the discretion of the court. In the exercise of discretion the court is guided by the principle that cases should normally be decided after trials on the merits. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 512, 515 (Truk 1988).

The criteria to be met in order to justify the setting aside of a default judgment are whether the default was willful, caused by culpable conduct of the defendant, whether there is meritorious defense, and whether setting aside the default would prejudice the plaintiff. Truk Transp. Co. v. Trans Pacific Import Ltd., 3 FSM R. 512, 515 (Truk 1988).

Under Civil Procedure Rule 55(c), relief from an entry of default may be granted for good cause shown. A default entry may thus be set aside for reasons that would not be enough to open a default judgment. A Rule 55(c) motion is addressed to the trial court's discretion. Good cause is a mutable standard, varying from situation to situation, and it is likewise a liberal one, but not so elastic as to be devoid of substance. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 377 (Chk. 2000).

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b). FSM Dev. Bank v. Gouland, 9 FSM R. 375, 377-78 (Chk. 2000).

The "good cause" threshold for Rule 55(c) relief is lower, ergo more easily overcome, than that which obtains under Rule 60(b) and the trial court should not read "good cause" too grudgingly. This more flexible approach reflects a policy decision that a default judgment should enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere default. FSM Dev. Bank v. Gouland, 9 FSM R. 375, 378 (Chk. 2000).

A default judgment will be set aside when one defendant was served the complaint and summons not by a policeman or some other specially appointed person in compliance with Civil Procedure Rule 4(c) but by plaintiff's counsel and the other defendant was not served at all. Simina v. Rayphand, 9 FSM R. 500,

501 (Chk. S. Ct. Tr. 1999).

An entry of default may be set aside for good cause shown. Rule 55 distinguishes between relief from default, which is an interlocutory matter, and relief from a judgment by default, which involves final judicial action. Thus, a more liberal standard is applied to reviewing entry of default, as opposed to default judgments. Adams v. Island Homes Constr., Inc., 10 FSM R. 159, 162 (Pon. 2001).

A common statement of the criteria to set aside a default judgment is whether the default was willful, that is, caused by culpable conduct of the defendant, whether there is a meritorious defense, and whether setting aside the default judgment would prejudice the plaintiff. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 180 (Pon. 2001).

Any of the reasons sufficient to justify the vacation of a default judgment normally will justify relief from a default entry and in various situations a default entry may be set aside for reasons that would not be enough to open a default judgment. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 180 (Pon. 2001).

Courts generally disfavor default judgments and readily set them aside rather than deprive a party of the opportunity to contest a claim on the merits. O'Sullivan v. Panuelo, 10 FSM R. 257, 260 (Pon. 2001).

Even when service on the defendants was proper, they may still obtain relief from a default judgment if they qualify under Rule 60. Courts generally disfavor default judgments and will, in proper Rule 60(b) cases, readily set them aside rather than deprive a party of the opportunity to contest, and the court to resolve, a claim on its merits, instead of on procedural grounds. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

The criteria to be met in order to justify setting aside a default judgment are whether the default was willful, caused by the defendant's culpable conduct, whether the defendant has a meritorious defense, and whether setting aside the default would prejudice the plaintiff. Relief from judgment is addressed to the discretion of the court, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 122 (Chk. 2002).

In order to obtain relief from a default judgment, the defendant must have a meritorious defense. A defense that would constitute a complete defense to the action if proven at trial would be a meritorious defense justifying relief from judgment when some evidence to support the defense has been produced, although more evidence may be needed to prevail at trial. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 123 (Chk. 2002).

Relief from judgment may be granted only on motion and upon such terms as are just. The requirement of a bond is a just term upon which to grant relief from judgment, especially in a close case that tips in the defendants' favor because of the court's policy favoring resolutions on the merits over defaults. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 118, 123 (Chk. 2002).

When a default judgment that affects persons, who claim ownership of the land and who were never made parties to the suit, but against whom the judgment is sought to be enforced those persons are clearly entitled to relief from the default judgment under Chuuk Civil Rule 60(b)(6), and no time limits are imposed on the granting of such relief because the court may, in its discretion, treat a complaint as a Rule 60(b)(6) motion for relief from judgment. Pastor v. Ngusun, 11 FSM R. 281, 285 (Chk. S. Ct. Tr. 2002).

After a default judgment has been entered, a motion to dismiss cannot be granted unless the motion to set aside the default is successful. Konman v. Esa, 11 FSM R. 291, 294 n.2 (Chk. S. Ct. Tr. 2002).

When a party moves for relief from judgment under Civil Procedure Rule 60(b)(4) on the ground that the judgment was void, there is no requirement, as is usual when a default judgment is attacked under Rule 60(b), that the movant show that he has a meritorious defense. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

Courts generally disfavor default judgments and will set them aside rather than deprive a party of the opportunity to contest a claim on the merits so as to permit the claim to be resolved on its merits instead of on procedural grounds. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

The standard for analyzing whether relief from a default judgment is warranted is whether the default was willful, that is, caused by the defendant's culpable conduct, whether there is a meritorious defense, and whether setting aside the default judgment would prejudice the plaintiff, so when a plaintiff does not want the opportunity to contest a claim or assert a meritorious defense to a claim but wants to add a claim, the inapplicability of this standard to the case highlights the novelty of what the plaintiff is trying to do. No cases support the claim that Rule 60(b) relief is available for a prevailing plaintiff to be granted relief from a default judgment in its favor when the defendant had not appeared in the case prior to the default judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

A plaintiff should seek to amend its complaint to ask for prejudgment interest before asking for a default judgment if it wants an unpled interest claim included in the judgment. When it does not do so, the court cannot grant it leave to amend its complaint after the default judgment has been entered because that would make meaningless Rule 54(c)'s clear command limiting default judgments to the kind and the amount prayed for in the demand for judgment. Western Sales Trading Co. v. Billy, 13 FSM R. 273, 279 (Chk. 2005).

Rule 55(c) governs the setting aside of a default, but when a default judgment was already entered, FSM Civil Rule 60 applies. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69 n.1 (Pon. 2013).

The criteria to be met in order to justify setting aside a default judgment are whether the default was willful, caused by the defendant's culpable conduct, whether the defendant has a meritorious defense, and whether setting aside the default would prejudice the plaintiff. Relief from judgment is addressed to the court's discretion, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69 (Pon. 2013).

Relief from judgment will be granted when the culpability and meritorious defense requirements are met because the defendant has a meritorious statute of limitation defense as to part of the default judgment and because if the defendant had had legal representation during the case's early stages, the statute of limitation defense would have been raised, which would affect a part of the amount granted in the plaintiff's default judgment and when not setting aside the default judgment would prejudice the defendant, instead of the plaintiff, because as it stands, the defendant would be liable for an amount greater than what he is supposed to pay by law. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69-70 (Pon. 2013).

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b). The "good cause" threshold for Rule 55(c) relief is lower, ergo more easily overcome, than that which obtains under Rule 60(b) and the trial court should not read "good cause" too grudgingly. This more flexible approach reflects a policy decision that a default judgment should enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere default. Pohnpei Transfer & Storage, Inc. v. Shoniber, 19 FSM R. 614, 616 (Pon. 2014).

The court may refuse to set aside a default judgment when the default is due to willfulness or bad faith or when the defendant offers no excuse at all for the default. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

In order to obtain relief from a default judgment, the defendant must have a meritorious defense that would constitute a complete defense to the action if proven at trial. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

A default judgment will not be set aside when the defendants' averments were made more than one year after the judgment was entered and as such, fail to come within the time frame prescribed in Rule 60(b)

and when the default was a direct result of the defendants' willful conduct and there has been no meritorious defense or extraordinary circumstance(s) depicted to justify the coveted relief. FSM Dev. Bank v. Setik, 20 FSM R. 85, 89 (Pon. 2015).

The court may refuse to set aside a default judgment when the default is due to the defendant's willfulness or bad faith. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

When a meritorious defense has not been portrayed, the defendants' requests to set aside or vacate the default judgment, order(s) in aid of judgment, and writ of garnishment will be denied. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 104 (Chk. 2015).

– Relief from Judgment – Grounds

Relief from judgment will be denied when the relief sought is for someone not a party. Damarlane v. United States, 7 FSM R. 350, 352-53 (Pon. 1995).

A court may relieve an affected party from judgment on the basis of mistake, inadvertence, surprise, or excusable neglect. The grant or denial of relief under Rule 60 rests with the trial court's sound discretion. The court must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

Relief from judgment will be denied when the basis for relief is that there was mistake, inadvertence, and excusable neglect in the stipulated judgment because besides the fraudulent insurance policies that are the subject of the complaint, there were legitimate policies sold and the defendant mistakenly believed that the properly earned commission and proper rate of commission had already been taken into account when the parties stipulated to judgment, but, during a deposition, in discussing the stipulation, the defendant admitted that the judgment amount was correct and that she had the opportunity to review the stipulation for one to two days before signing it and when no further evidence was produced to support the claim that the judgment amount was inaccurate. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

Relief from judgment will not be granted when the defendants' arguments brought pursuant to subsections 60(b)(1), (2), and (3) are well outside the one-year time constraint and are thus untimely and when the defendants' remaining affirmations fail to demonstrate any other reason justifying relief. FSM Dev. Bank v. Setik, 20 FSM R. 85, 88 (Pon. 2015).

A motion sounding in an attorney's purported negligence does not constitute a basis for Rule 60(b) relief from judgment, as clients are held accountable for their attorney's acts or omissions. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

Whether a default judgment granted relief not prayed for in the complaint's demand for judgment; whether the guaranties that were signed were not attached to the promissory notes; whether the judgment was joint and several; and whether one of the guaranties was not signed by the person it should have been signed by but was fraudulently signed by another person, are not determinants of subject-matter jurisdiction. While they may be raised as defenses, none of these grounds is jurisdictional. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 (Pon. 2016).

When none of the movants' asserted grounds would alter the case's nature or the type of relief sought because the court had jurisdiction over the case's nature – enforcement and collection of defaulted FSM Development Bank loans – and had, under 4 F.S.M.C. 117, the power to grant the relief sought (including mortgage foreclosure) and when none of the movants' grounds would change that or would have limited the

court's ability to rule on parties' conduct or the status of debt and grant relief or judgment in any party's (including any defendant's) favor, the court had full jurisdiction over the case's subject matter even if the defenses had been raised before judgment. A motion for relief from judgment on the ground the court lacked subject-matter jurisdiction will be denied on this ground alone. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 (Pon. 2016).

With the exception of void judgments under Rule 60(b)(4), the grant or denial of relief under Rule 60 rests with the trial court's sound discretion, but that discretion is not an arbitrary one to be capriciously exercised, but a sound legal discretion guided by accepted legal principles, and the factors that should inform the court's consideration are: 1) that final judgments should not lightly be disturbed; 2) that the Rule 60(b) motion is not to be used as a substitute for appeal; 3) that the rule should be liberally construed in order to achieve substantial justice; 4) whether the motion was made within a reasonable time; 5) whether (if the judgment was a default or a dismissal in which the merits were not considered) the interest in deciding cases on the merits outweighs, in the particular case, the interest in the finality of judgments, and there is merit in the movant's claim or defense; 6) whether if the judgment was rendered after a trial on the merits the movant had a fair opportunity to present his claim or defense; 7) whether there are intervening equities that would make it inequitable to grant relief; and 8) any other factors relevant to the justice of the judgment under attack. In re Contempt of Jack, 20 FSM R. 452, 460 & n.3 (Pon. 2016).

Rule 60(b) is not intended as a substitute for a direct appeal from an erroneous judgment. The fact that a judgment is erroneous does not constitute a ground for relief under the Rule. Nor is Rule 60(b) designed to circumvent the policy evidenced by the rule limiting the time for appeal. In re Contempt of Jack, 20 FSM R. 452, 460 (Pon. 2016).

The dilatory approach exhibited by not filing a substitution motion, even though the named plaintiff passed away almost three and a half years earlier, coupled with a representation that "a probate needs to be filed" in the future, is clearly not the type of "extraordinary circumstances" contemplated by Civil Rule 60(b)(6) for relief from judgment. Johnson v. Rosario, 21 FSM R. 7, 13 (Pon. 2016).

A self-proclaimed obliviousness, in failing to make a motion to substitute once the plaintiff's death was suggested on the record, is not a "mistake" justifying relief under Civil Rule 60(b)(1). Neither was it "extraordinary circumstances" justifying relief under Civil Rule 60(b)(6), since the failure to file the relevant motion for substitution was attributable solely to the movant. The defendants should not be expected to endure the prejudicial repercussions attendant to the plaintiff's disproportionate tardiness. Johnson v. Rosario, 21 FSM R. 7, 13-14 (Pon. 2016).

– Relief from Judgment – Independent Actions

Where there are one or more legal remedies still available to a litigant the trial court has no jurisdiction to grant relief from a judgment through an independent action in equity. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

Trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

There are five essential elements to an independent action in equity to set aside a judgment. They are 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of these elements is missing the court cannot take equitable jurisdiction of the case. Election Comm'r v. Petewon, 6 FSM R. 491, 499 (Chk. S. Ct. App. 1994).

In appropriate circumstances, a court will invoke its equitable jurisdiction and will permit an

independent action to set aside a prior judgment. Union Indus. Co. v. Santos, 7 FSM R. 242, 245 (Pon. 1995).

Where an identical action was dismissed with prejudice, the parties were represented by competent counsel, and defendant relied upon the dismissal of the prior action as a final and unequivocal resolution of both parties' claims, it would be inequitable to allow the plaintiff to relitigate the issue. Union Indus. Co. v. Santos, 7 FSM R. 242, 245 (Pon. 1995).

Chuuk state trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. The FSM Supreme Court trial division therefore also has the power in a proper case to entertain an independent action for relief from a state court judgment. Enlet v. Bruton, 12 FSM R. 187, 189-90 (Chk. 2003).

There are five essential elements to an independent action in equity to set aside a judgment: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the defendant's part; and 5) the absence of any adequate remedy at law. Enlet v. Bruton, 12 FSM R. 187, 190 (Chk. 2003).

Relief from a judgment may be sought either by a Rule 60(b) motion or by an independent action – through filing a separate case. It cannot be sought by both. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008).

It is not the function of an independent action to relitigate issues finally determined in another action between the parties. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 n.8 (Pon. 2008).

When the defendants have not filed their Rule 60(b) motion seeking relief in a separate action in equity collaterally attacking the judgment, but have instead filed it as a post-judgment motion in the original case, the motion may only be treated as a Rule 60(b) motion for relief from judgment, and not as an independent action, despite the defendants styling their motion as one "in the nature of an independent action." FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008).

Rule 60(b) permits only motions for relief from judgment under that rule or independent actions. There is no such motion as one in the nature of an independent equitable action for relief filed in the original case. If a party wishes to seek relief through an independent action, it must file a separate independent action. If a party files a motion in the case in which the judgment was issued, it is a Rule 60(b) motion for relief from judgment. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 139 (Pon. 2008).

When an independent action's only purpose is to obtain relief from the judgment in another case; when certain named defendants were not parties in that other case, are not judgment-creditors in that other case, and have neither the power nor the authority to enforce that judgment since none of them has a judgment against the judgment-debtors and none of them is a successor-in-interest to that judgment's judgment-creditor; and when that judgment has not been assigned to any of them and thus, none of them can enforce the judgment, the independent action's complaint, as a matter of law, fails to state a claim against those certain named defendants upon which relief may be granted. Arthur v. Pohnpei, 16 FSM R. 581, 594-95 (Pon. 2009).

Whether certain named defendants can be ordered to order a judgment-creditor to cease collection efforts is pointless and meaningless since the court can, if the right to such relief were shown, vacate the challenged judgment and directly order the judgment-creditor, the only entity with the authority to collect the judgment, to cease collection efforts. If a judgment in an independent action vacates a judgment-creditor's judgment it would grant all of the relief sought, the other named defendants are thus neither necessary nor indispensable parties without whom complete relief cannot be granted. Arthur v. Pohnpei, 16 FSM R. 581, 595 (Pon. 2009).

Generally, claimants seeking equitable relief through an independent action must meet three requirements. They must 1) show that they have no other available or adequate remedy; 2) demonstrate that their own fault, neglect, or carelessness did not create the situation for which they seek equitable relief; and 3) establish a recognized ground–such as fraud, accident, or mistake–for equitable relief. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009).

Generally, relief from a judgment may be sought either by a Rule 60(b) motion for relief from judgment filed in the original case or by a separate, independent action (a new case), but it cannot be sought by both. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009).

There is some authority that if a Rule 60(b) motion for relief from judgment is denied solely as untimely, that denial does not act as res judicata precluding an independent action since the denial was not on the merits. Otherwise the two Rule 60(b) remedies (motion or independent action) are alternative, not cumulative, remedies, and res judicata applies to successive Rule 60(b) motions and independent Rule 60(b) actions. Arthur v. Pohnpei, 16 FSM R. 581, 596 (Pon. 2009).

When the denial of a Rule 60(b) motion for relief from judgment was not only on the ground that the motion was untimely, but also analyzed the merits of the grounds for relief and denied it on the merits of those grounds as well, summary judgment could be granted solely on the ground that the later independent action is precluded by the court's earlier denial on the merits of the motion. Arthur v. Pohnpei, 16 FSM R. 581, 596-97 (Pon. 2009).

The plaintiffs in an independent action have the burden to allege such fraud as to support an independent action for relief from judgment. Without the existence of the requisite fraud, an independent action in equity may not be brought. Instead, res judicata prevails. Arthur v. Pohnpei, 16 FSM R. 581, 597 (Pon. 2009).

An independent action cannot be used to withdraw a party's stipulation to the facts (or to have the court ignore their prior stipulation to the facts) and to then relitigate those issues since an independent action is not a vehicle for the relitigation of issues. Arthur v. Pohnpei, 16 FSM R. 581, 599 (Pon. 2009).

An independent action cannot be made a vehicle for relitigation of issues. A party is precluded by res judicata from relitigation in the independent equitable action issues that were open to litigation in the former action where he had a fair opportunity to make his claim or defense in that action. Arthur v. Pohnpei, 16 FSM R. 581, 599-600 (Pon. 2009).

When it is clear that an "independent action" is only an attempt to relitigate issues already litigated and decided by a trial court and affirmed by the appellate court and when the "fraud" allegation is merely an attempt to cast the same facts and claims in a different light in order to try to sneak under the bar of res judicata, there are no material facts genuinely in dispute and, as a matter of law, the independent action is barred by res judicata. Arthur v. Pohnpei, 16 FSM R. 581, 600 (Pon. 2009).

Rule 60(b) permits an independent action for relief from a judgment based upon fraud upon the court. Fraud upon the court is defined as the most egregious misconduct directed to the court itself, such as bribery of a judge or fabrication of evidence by counsel, which must be supported by clear, unequivocal and convincing evidence. Arthur v. Pohnpei, 16 FSM R. 581, 600 n.14 (Pon. 2009).

It is not important whether the trial judge considered the attack upon the judgment under 60(b) or as an independent equitable action, if based on all the evidence the trial judge in the exercise of his judicial and equitable discretion, denied relief. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 658 (App. 2009).

An independent action in equity to set aside a judgment must satisfy five essential elements: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the

defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of these elements is missing the court cannot take equitable jurisdiction of the case. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

There are only three methods by which judgment-debtors may have a judgment against them set aside. One is to appeal the judgment and convince the appellate court to reverse it. The second is a motion for relief from judgment as provided for in Civil Procedure Rule 60(b). The third is an independent action in equity (as acknowledged in Rule 60(b)) to set aside a judgment. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 11 & n.5 (Pon. 2011).

Resort to an independent action may be had only rarely, and then only under unusual and exceptional circumstances. The defendants must satisfy all five of an independent action's elements, which are: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the defendant's part; and 5) the absence of any adequate remedy at law. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 636 (Pon. 2008).

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).

Kosrae Civil Procedure Rule 60(b) does not limit the power of the court to entertain an independent action. A party collaterally attacking a judgment has the burden to establish its prerequisites. The five essential elements that an independent action in equity to set aside a judgment must satisfy are: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of the elements is missing the court cannot take equitable jurisdiction of the case. Andrew v. Heirs of Seymour, 19 FSM R. 331, 341 (App. 2014).

Although Rule 60(b) does not limit the court's power to entertain an independent action to relieve a party from a judgment, the procedure for obtaining any relief from a judgment is either by a Rule 60(b) motion or by an independent action; not by both. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

The mere filing of an independent action for relief is not in itself a ground for relief of any kind. Just as a Rule 60(b) motion does not affect the finality of a judgment or suspend its operation, an independent action's filing does not affect the judgment's finality or suspend its operation. An independent action is just that – independent of the case in which the judgment was entered unless and until a final judgment in the independent action grants relief from the judgment. The independent action proceeds on its own. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

The filing of an independent action is not a ground for a stay of judgment. It cannot be the basis for a stay since its filing does not affect or suspend the judgment's operation. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

When the plaintiffs have already opted to seek the same relief via a Rule 60(b) motion, the present complaint is therefore an independent cause of action, and since a party seeking relief from a judgment is constrained to choosing, either a Rule 60(b) motion or an independent cause of action, the plaintiffs are thereby precluded from bringing the ostensibly redundant cause of action at hand. Setik v. Mendiola, 20 FSM R. 236, 241 (Pon. 2015).

An independent action seeking equitable relief, must satisfy five (5) essential elements: 1) a judgment

which ought not, in equity and good conscience, be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake, which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the defendant's part and 5) the absence of any adequate remedy at law. Since the components are prescribed in the conjunctive, if any one of these factors are absent, the court cannot take equitable jurisdiction of the case. Setik v. Mendiola, 20 FSM R. 236, 241 (Pon. 2015).

An independent action cannot be made a vehicle for relitigation of issues. A party is precluded by res judicata from relitigation in the independent equitable action that were open to litigation in the former action, where he had a far opportunity to make his claim or defense in that action. Setik v. Mendiola, 20 FSM R. 236, 241-42 (Pon. 2015).

Allegations in an independent action, which could have been previously broached consequently run counter to the doctrine of res judicata. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

Having already utilized a Rule 60(b) motion for relief from judgment, the plaintiffs are not entitled to pursue a later independent cause of action to obtain relief because a party is limited to employing only one of these strategies. Setik v. Mendiola, 20 FSM R. 236, 244 (Pon. 2015).

The mere filing of an independent action for relief, is not in itself a ground for relief of any kind. Such a filing does not affect the judgment's finality or suspend its operation. Nor is the filing of an independent action a ground for stay. FSM Dev. Bank v. Setik, 20 FSM R. 315, 319 (Pon. 2016).

Parties are precluded from seeking relief from a judgment via an independent cause of action, after having previously chosen to utilize a Civil Rule 60(b) motion toward that end. Setik v. Mendiola, 20 FSM R. 320, 323 (Pon. 2016).

An independent action which seeks to belatedly stave off the transfer of land ownership, concerning the same property at issue in the previous actions, constitutes a redundant attempt that is prohibited under earlier case law, and as such, that proscription presents another hurdle, which this action cannot overcome. Setik v. Perman, 21 FSM R. 31, 40 (Pon. 2016).

An independent action in equity to set aside a judgment must satisfy five essential elements: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

A collateral attack is not an opportunity to appeal or relitigate the matter. Merely leveling a claim of fraud, without connecting up such an allegation in terms of propounding sufficient evidence, does not satisfy the requisite burden of proof for a collateral attack of a Trust Territory judgment and fails to satisfy the five-prong test required to pierce a judgment via a collateral attack. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 122 (App. 2017).

– Relief from Judgment – Time Limits

A motion for relief of a partial summary judgment under Civil Rule 59(e) is subject to a strict time limit of 10 days which cannot be enlarged by the court. Such a motion filed 10 months later is untimely. This very strict deadline cannot be avoided by an unsupported assertion that a copy of the judgment was not served. Kihara Real Estate, Inc. v. Estate of Nanpei (II), 6 FSM R. 354, 355-56 (Pon. 1994).

When a motion for relief from judgment is made pursuant to Civil Rule 60(b)(1), (2), or (3) the court must consider whether it was made within a reasonable time even when it is made within the one year time limit. Senda v. Mid-Pacific Constr. Co., 6 FSM R. 440, 445-46 (App. 1994).

Even where a request for Rule 60(b) relief is filed within the stated one-year time limit, a court still must examine whether the filing was made within a "reasonable time." In determining this issue, the court reviews all of the facts and circumstances surrounding the case and may require the party seeking Rule 60 relief to offer a sufficient explanation for not having taken appropriate action in a more timely manner. Mid-Pacific Constr. Co. v. Senda, 7 FSM R. 129, 136 (Pon. 1995).

When a motion for relief from judgment is made pursuant to Civil Rule 60(b)(1), a court must first consider whether it was made within a reasonable time even when it is made within the one year time limit. To determine if the time was reasonable it considers whether the nonmoving party was prejudiced and whether the moving party had some good reason for his failure to take appropriate action sooner. Walter v. Meippen, 7 FSM R. 515, 518 (Chk. 1996).

The time for making a motion for relief from judgment continues to run even while the case is on appeal. Walter v. Meippen, 7 FSM R. 515, 518 (Chk. 1996).

A motion for relief from judgment cannot be brought under Rule 60(b) subsections (1), (2), or (3) when it is more than one year after the judgment. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

A motion for relief from judgment under Rule 60(b) allows the court to consider a motion for relief from a final judgment for several listed reasons, but such a motion must be made within a reasonable time not more than one year after judgment was entered or taken. When the decision was entered nearly three years ago, the one year deadline in which to file a Rule 60(b) motion has long since expired and the motion is thus untimely and must also be rejected on that basis. Edwin v. Heirs of Mongkeya, 12 FSM R. 220, 222 (Kos. S. Ct. Tr. 2003).

There is no time limit on relief from a void judgment. The reason for this is obvious. If a judgment is void when issued, it is always void. When relief is sought from a void judgment, a court has no discretion but must grant relief from judgment. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

There is no time limit to seek relief from a void judgment because if a judgment is void when issued, it is always void, and when relief is sought from a void judgment, a court has no discretion but must grant relief from judgment. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

A Rule 60(b) motion must be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. The one-year time limit is not suspended by the pendency of an appeal because a Rule 60(b) motion can be made even though an appeal has been taken and is pending. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632-32 (Pon. 2008).

The court is powerless to enlarge the one-year time limit to obtain relief from judgment under Rule 60(b) (1), (2), or (3) even if relief had been possible, and the concept of reasonable time cannot be used to extend the one-year limit. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 (Pon. 2008).

Courts that have held that a court's legal error can be considered a "mistake" subject to relief from judgment under Rule 60(b)(1), have ruled that "reasonable time" to seek relief in those cases cannot exceed the time in which an appeal might have been timely filed. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 632 n.4 (Pon. 2008).

There is no time limit to seek relief from a void judgment under Rule 60(b)(4). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

Motions for relief from judgment for Rule 60(b) reasons (5) and (6) must be made within a reasonable time. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

A factor to be considered in determining whether Rule 60(b) relief has been sought within a reasonable

time is whether good reason has been presented for failure to act sooner. Courts have been unyielding in requiring that a party show good reason for the failure to take appropriate action sooner. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

When the defendants have not shown good reason for waiting until March 2008 to seek relief from a 2004 judgment that was affirmed in 2006, the defendants have not moved for relief from judgment "within a reasonable time" as required and their motion to vacate the judgment can be denied on this ground alone. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 2008).

Rule 60(b)(6) cannot be used to circumvent the one-year time limit for motions for relief from judgment under Rule 60(b) reasons (1), (2), and (3). FSM Dev. Bank v. Arthur, 15 FSM R. 625, 634 (Pon. 2008).

By moving to vacate a judgment, the movants automatically raise the issue of whether they had filed their motion within a reasonable time because a motion to vacate judgment made more than ten days after judgment is entered is a Rule 60(b) motion for relief from judgment and Rule 60(b) requires that all motions for relief from judgment be made in a reasonable time. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 138-39 (Pon. 2008).

The court has no need to address the question posed by the movants in a motion to vacate judgment when the movants had to first surmount the hurdle of whether the motion to vacate judgment was filed within a reasonable time, and they could not. FSM Dev. Bank v. Arthur, 16 FSM R. 132, 139 (Pon. 2008).

Rule 60(b) requires that the movant explain why the seven-month lapse between the dismissal of his case and the motion for relief constitutes a reasonable time within which to make the motion for relief from judgment. Aake v. Mori, 16 FSM R. 607, 608 (Chk. 2009).

By moving to vacate a judgment, a movant automatically raises the issue of whether the motion is filed within a reasonable time because Rule 60(b) requires that all motions for relief from judgment be made in a reasonable time. A movant must explain why the lapse between the judgment in, or the dismissal of, the case and his motion for relief from judgment constitutes a reasonable time within which to move for relief from judgment. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

A factor the court must consider when determining whether Rule 60(b) relief has been sought within a reasonable time is whether good reason has been presented for failure to act sooner. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

Courts have been unyielding in requiring that a party show good reason for the failure to take appropriate action sooner. When a movant has not shown good reason for waiting to seek relief, the movant has not moved for relief from judgment "within a reasonable time" as required and the motion to vacate the judgment can be denied on this ground alone. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

A court need not address a movant's claims in a motion to vacate judgment when the movant had to first surmount the hurdle of whether the motion for relief from judgment was filed within a reasonable time, and the movant could not. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205 (Chk. 2012).

When a movant has not shown why the six-month lapse between the summary judgment and his motion for relief from judgment is a reasonable time and has not given any reason for the delay, he has not shown that his motion was filed within a reasonable time and his motion for relief must therefore be denied. Welle v. Chuuk Public Utility Corp., 18 FSM R. 203, 205-06 (Chk. 2012).

When a motion for relief from judgment is made pursuant to Rule 60(b)(1), a court must first consider whether it was made within a reasonable time even when it is made within the one year time limit. To determine if the time was reasonable, it considers whether the nonmoving party was prejudiced and whether the moving party had some good reason for his failure to take appropriate action sooner. Bank of

Hawaii v. Susaia, 19 FSM R. 66, 69 (Pon. 2013).

When a motion for relief from judgment is made pursuant to Civil Rule 60(b)(1), (2), or (3), a court must first consider whether it was made within a reasonable time even when it is made within the one year time limit. To determine if the time was reasonable, the court considers whether the nonmoving party was prejudiced and whether the moving party had some good reason for his failure to take appropriate action sooner. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 5 (Pon. 2015).

Four months may be a reasonable time for a defendant to seek relief from judgment when the defendant was pro se and the plaintiff was not prejudiced by the delay. Moylan's Ins. Underwriters (FSM), Inc. v. Gallen, 20 FSM R. 3, 6 (Pon. 2015).

A motion for relief from judgment must be made within a reasonable time and for most reasons, that time cannot exceed one year. Even if the reason given were one for which reasonable time greater than one year was allowed, a motion sixteen years after judgment, is not made within a reasonable time. FSM Dev. Bank v. Carl, 20 FSM R. 70, 72 (Pon. 2015).

Rule 60(b)(6) motions are reserved for extraordinary circumstances. Since Rule 60(b)(6), which delineates "any other reason justifying relief" and the other Rule 60(b) subsections are mutually exclusive, Rule 60(b)(6) cannot be utilized to circumvent the one-year time limit for motions seeking relief from judgment under Rule 60(b)(1), (2), and (3). FSM Dev. Bank v. Setik, 20 FSM R. 85, 88 (Pon. 2015).

Relief from judgment will not be granted when the defendants' arguments brought pursuant to subsections 60(b)(1), (2), and (3) are well outside the one-year time constraint and are thus untimely and when the defendants' remaining affirmations fail to demonstrate any other reason justifying relief. FSM Dev. Bank v. Setik, 20 FSM R. 85, 88 (Pon. 2015).

An April 4, 2014 motion for relief from a September 23, 2009 default judgment is well outside the time constraint for arguments based on Rule 60(b) subsections (1), (2), and (3), and as such, is untimely. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 102 (Chk. 2015).

A factor to be considered in determining whether Rule 60(b) relief has been sought within a reasonable time, is whether a good reason has been presented for failure to act sooner. Courts have been unyielding in requiring that a party show good reason for the failure to take appropriate action sooner. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 102 (Chk. 2015).

Since Rule 60(b)(6) relief is reserved for extraordinary circumstances and the language delineated therein: "any other reason justifying relief," cannot be utilized to circumvent the one-year time limit for motions brought pursuant to Rule 60(b) subsections (1), (2), and (3). FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 102 (Chk. 2015).

The defendants have not proffered any rationalization for the inordinate delay in seeking relief from judgment when they have not opposed or otherwise responded to the entry of the default judgment, the order(s) in aid of judgment, or the writ of garnishment that they now move to set aside and when, although they allege that they were not privy to the respective hearing dates, the record denotes that their previous counsel was in receipt of the motions and had notice of the relevant proceedings. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 98, 103 (Chk. 2015).

As grounds for post-judgment relief, motions raised under either Rule 60(b)(3) (for a fraud claim) or Rule 60(b)(1) (for mistake, inadvertence, surprise, or excusable neglect) must be made within a reasonable time, not more than one year after the judgment, and will be denied as untimely when the one-year time limit has long since passed. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 n.4 (Pon. 2016).

Relief from judgment for an adverse party's fraud, such as fraud in the inducement, or misrepresentation is a motion that can only be made under Rule 60(b)(3) and that has a one-year deadline.

FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 291 (Pon. 2016).

The only type of fraud not subject to the one-year limitation for relief from judgment is fraud on the court. This is because Rule 60(b) does not limit the time in which the court may set aside a judgment for fraud on the court. Fraud on the court is a lawyer's or party's misconduct so serious that it undermines or is intended to undermine the integrity of the judicial proceeding. A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or counsel's fabrication of evidence, and must be supported by clear, unequivocal, and convincing evidence. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 291 (Pon. 2016).

A Rule 60(b) motion must be made within a reasonable time. A factor to consider in determining whether Rule 60(b) relief has been sought within a reasonable time is whether good reason has been presented for failure to act sooner. In re Contempt of Jack, 20 FSM R. 452, 460 (Pon. 2016).

If a court's legal error were considered a "mistake" under Rule 60(b)(1), or if relief is sought under Rule 60(b)(6) for error involved a fundamental misconception of law, the "reasonable time" for a motion of this kind may not exceed the time in which appeal might have been taken a reasonable time for a motion to relief cannot exceed the 42-day time limit provided by FSM Appellate Rule 4(a)(1). Rule 60(b)(6)'s broad power is not for the purpose of relieving a party from free, calculated, and deliberate choices he or she has made. It is ordinarily not permissible to use a Rule 60(b) motion to remedy a failure to take an appeal. In re Contempt of Jack, 20 FSM R. 452, 460-61 (Pon. 2016).

The reason for there being no time limit on relief from a void judgment is obvious. If a judgment is void when issued, it is always void. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

Under Rule 60(b)(1), (2), or (3), a movant must file the motion within one year from the entry of final judgment. Otherwise, no specific time period is set forth, except that under Rule 60(b)(4), (5), or (6), the motion must be made within a "reasonable time." What constitutes a reasonable time, depends on the facts of each case. The relevant considerations include, whether the parties have been prejudiced by the delay and good reason presented for failing to take action sooner. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 508 (App. 2016).

Even when the motion for relief from judgment was not filed within the prescribed reasonable time, the court's analysis will not conclude, because if the judgment was void, relief may nevertheless be granted under Rule 60(b)(4). Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

Unlike its counterparts, Rule 60(b)(4), which provides relief from void judgments, is not subject to any time limitation. If a judgment is void, it is a nullity from the outset and any Rule 60(b)(4) motion for relief is therefore filed within a reasonable time. However, the concept of void judgments is narrowly construed. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

When the movants have failed to cite any reasons for the elongated delay in filing their motion for relief from judgment, much less extraordinary circumstances that would warrant having their Rule 60(b)(4) motion supersede the doctrine of *res judicata*, prejudice would invariably inure to the judgment creditor, in light of its justified reliance on the relevant December 28, 2007 default judgment's finality. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509-10 (App. 2016).

– Stipulated

Judgment entered pursuant to compromise and settlement is treated as a judgment on the merits barring any other action for the same cause. Truk v. Robi, 3 FSM R. 556, 564 (Truk S. Ct. App. 1988).

Default judgments and stipulated or agreed judgments against the State of Chuuk are to be subjected to close scrutiny by the court. Kama v. Chuuk, 9 FSM R. 496, 499 (Chk. S. Ct. Tr. 1999).

The movant for relief from judgment must keep in mind that generally the standard for reopening a

consent final judgment is a strict one. Kama v. Chuuk, 10 FSM R. 593, 600 (Chk. S. Ct. App. 2002).

Rule 60(b) may not allow a party in whose favor a judgment is entered to seek relief from that judgment because stipulated judgments, while they are judicial acts, also have many attributes of voluntarily-undertaken contracts, and when the parties have made a freely calculated, deliberate choice to submit to an agreed upon judgment rather than seek a more favorable litigated outcome (or risk a less favorable litigated outcome), the burden under Rule 60(b) is probably more formidable than had they litigated and lost. Farata v. Punzalan, 11 FSM R. 175, 178 (Chk. 2002).

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).

Although parties are free to stipulate to factual matters, they may not stipulate to conclusions of law to be reached by the court. FSM Social Sec. Admin. v. Jonas, 13 FSM R. 171, 173 (Kos. 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).

Even if the judgment was based on the parties' agreement, when there is no suggestion of fraud, lack of jurisdiction, or other serious injustice; only that the appellants themselves failed to timely pursue their case in the past and they claim that this should not be held against them but they recognize that they had two previous opportunities to pursue their case and that their own inaction led to the prior appeal's dismissal, under these circumstances, the policy supporting finality of judgments should apply and the earlier stipulated judgment should be treated as a final judgment precluding relitigation of ownership. Heirs of Tulenkun v. Heirs of Seymour, 15 FSM R. 342, 347 (Kos. S. Ct. Tr. 2007).

When the parties stipulate to a judgment, the judgment is not a decision by the court. FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 46 (Chk. 2008).

Rule 58 does not, by its terms, apply to stipulated or consent judgments because such judgments are not decisions by the court. FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 46 (Chk. 2008).

A stipulated judgment is not a judicial determination, but is a contract between the parties making the stipulation. FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 47 (Chk. 2008).

A stipulated judgment (also called a consent decree) although enforceable like any other judicial decree, is not a judicial determination of any litigated right but may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. It does not constitute a resolution of parties' rights but is a mere recordation of their private agreement and 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. FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 47 (Chk. 2008).

Strict compliance with Rule 58 is unnecessary in the case of a stipulated judgment, but the better practice may be for the clerk to enter a judgment that reflects the parties' stipulation as approved by the court. FSM Dev. Bank v. Kaminanga, 16 FSM R. 45, 47 (Chk. 2008).

A stipulated judgment may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611 (Chk. 2011).

A stipulated judgment is a contract between the parties entering into the stipulation that has been approved by the court. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611 (Chk. 2011).

The parties' stipulated judgment in a state court action for breach of an easement agreement constituted a new contract – a new easement agreement – between the parties because it was a contract or agreement that was inconsistent with the original contract or agreement, especially when the amount stipulated to, $50,000, greatly exceeded the value of the undelivered 40 cubic yards of sand and 40 cubic yards of aggregates that constituted the breach. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611-12 (Chk. 2011).

While a stipulated judgment may not give rise to the doctrine of res judicata, a later court contemplating a civil action based on the same underlying facts may adopt the findings of fact in the stipulated judgment and any conclusions of law in the order granting the stipulated judgment, and in so doing finally adjudicate the matter. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 156 (Pon. 2012).

While a stipulated judgment does represent a private agreement and not a judicial determination, it is a judicial act, binding on the parties. Thus, contract defenses are not available to a judgment debtor in a proceeding to enforce a money judgment. FSM Dev. Bank v. Carl, 20 FSM R. 70, 73 (Pon. 2015).

Preclusive effect is given to many decisions that have not actually been litigated on the merits – for example if it is the subject of a stipulation between the parties, or a judgment entered by confession, or consent, or default, where none of the issues is actually litigated. Waguk v. Waguk, 21 FSM R. 60, 72 (App. 2016).

– Void

Any judicial act, that has been done pursuant to a statute that does not confer the power to do that act, is void on its face. A judgment that is void on its face may be set aside by the court on its own motion. In re Jae Joong Hwang, 6 FSM R. 331, 331-32 (Chk. S. Ct. Tr. 1994).

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).

Since any judgment *in personam* against an unknown defendant would be void, the court will dismiss John Doe defendants. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 412-13 n.1 (Pon. 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).

With the exception of void judgments under Rule 60(b)(4), the grant or denial of Rule 60 relief rests with the trial court's sound discretion. The discretion is not an arbitrary one to be capriciously exercised, but a sound legal discretion guided by accepted legal principles. Amayo v. MJ Co., 10 FSM R. 371, 377 (Pon. 2001).

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).

When a party moves for relief from judgment under Civil Procedure Rule 60(b)(4) on the ground that the judgment was void, there is no requirement, as is usual when a default judgment is attacked under Rule 60(b), that the movant show that he has a meritorious defense. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

Unlike other grounds under Rule 60(b), the court does not have any discretion when relief from judgment is sought on the ground that the judgment was void because either a judgment is void or it is valid. A judgment is not void merely because it is erroneous. It is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

When an amended complaint asserted additional factual claims, the defendant had to be served a summons with the amended complaint and the service had to be effected as would the service of any complaint and summons, and since he was served by ordinary mail, he was not properly served the amended complaint. The judgment based on the amended complaint is thus void as to him and a motion for relief from judgment will therefore granted as to him. Lee v. Lee, 13 FSM R. 252, 258 (Chk. 2005).

There is no time limit on relief from a void judgment. The reason for this is obvious. If a judgment is void when issued, it is always void. When relief is sought from a void judgment, a court has no discretion but must grant relief from judgment. Ruben v. Petewon, 13 FSM R. 383, 389 (Chk. 2005).

If it appears that the court lacks subject matter jurisdiction, the case must be dismissed since any judgment rendered by a court without subject matter jurisdiction would be void. Harper v. William, 14 FSM R. 279, 281 (Chk. 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).

A judgment is void when the court lacked subject matter jurisdiction or when indispensable parties were not joined or when a certificate of title had previously been issued for the land and that certificate or the validity of the process that resulted in that certificate was never challenged. Ruben v. Hartman, 15 FSM R. 100, 109-10 (Chk. S. Ct. App. 2007).

When neither the Wito Clan nor the Rubens were ever duly summoned in Civil Action No. 64-98 before the August 20, 1998 judgment was issued so that court never had personal jurisdiction over them, the judgment, as to any interest either of them might have, is void. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

There is no time limit to seek relief from a void judgment because if a judgment is void when issued, it is always void, and when relief is sought from a void judgment, a court has no discretion but must grant relief from judgment. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

In any action where a party seeks relief that would result in that party being declared the winner of an election rather than some other person, that other person is an indispensable party whose absence would make any judgment void and subject to collateral attack. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Arthur, 15 FSM R. 625, 633 (Pon. 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).

Since any judgment *in personam* against an unknown defendant would be void, the retention of "John Doe" defendants is pointless. Berman v. Pohnpei, 17 FSM R. 360, 366 n.1 (App. 2011).

Civil Procedure Rule 60(b)(4) provides for the relief from judgment when the judgment is void. Unlike other grounds for relief from judgment under Rule 60(b), the court does not have any discretion when the relief is sought because the judgment is void since a judgment is either void or it is valid and if it is void the court must vacate it. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

If a judgment is void when issued, it is always void. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

Although the court has no discretion and must grant the relief when relief is sought from a void judgment, a judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 613 (Pon. 2013).

The court cannot give any weight to the argument that the passage of time is enough to bar vacating a void judgment. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

When a judgment has been entered against a party without notice or an opportunity to be heard, it is void and is subject to direct or collateral attack at any time. A judgment cannot be collaterally attacked merely because it is wrong. It can only be attacked on the grounds of lack of jurisdiction or due process violations that make the judgment void. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 304 (App. 2014).

A judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 289 (Pon. 2016).

Whether a judgment is joint and several or not has no affect on whether the court has subject-matter jurisdiction. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 (Pon. 2016).

A judgment in a default case that awards relief that either is more than or different in kind from that requested originally is null and void. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 (Pon. 2016).

A judgment rendered without the requisite subject-matter jurisdiction is void *ab initio*. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

A void judgment is a legal nullity. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507, 509 (App. 2016).

Although the term "void" describes a result, rather than the conditions that render a judgment unenforceable, a void judgment is one so affected by a fundamental infirmity that the infirmity may be raised after the judgment becomes final. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

The reason for there being no time limit on relief from a void judgment is obvious. If a judgment is void when issued, it is always void. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

In the interests of finality, the concept of void judgments is narrowly construed. A judgment is not void merely because it may be erroneous or because the precedent upon which it was based is later altered or even overruled. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507-08 (App. 2016).

A judgment is void and therefore subject to relief under Rule 60(b)(4), only if the court that rendered judgment lacked jurisdiction or in circumstances in which the court's action amounted to a plain usurpation of power constituting a violation of due process. The total want of jurisdiction must be distinguished from an error in the exercise of jurisdiction and only rare instances of a clear usurpation of power will render a judgment void. In other words, a court has the power to determine its own jurisdiction and an error in that determination will not render the judgment void. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 508 (App. 2016).

Even when the motion for relief from judgment was not filed within the prescribed reasonable time, the court's analysis will not conclude, because if the judgment was void, relief may nevertheless be granted under Rule 60(b)(4). Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

Unlike its counterparts, Rule 60(b)(4), which provides relief from void judgments, is not subject to any time limitation. If a judgment is void, it is a nullity from the outset and any Rule 60(b)(4) motion for relief is therefore filed within a reasonable time. However, the concept of void judgments is narrowly construed. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

Since the requirement of subject matter jurisdiction is never capable of being waived, judgments rendered without such allocation of authority are void *ab initio* and can be attacked at any time. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

When the movants have failed to cite any reasons for the elongated delay in filing their motion for relief from judgment, much less extraordinary circumstances that would warrant having their Rule 60(b)(4) motion supersede the doctrine of *res judicata*, prejudice would invariably inure to the judgment creditor, in light of its justified reliance on the relevant December 28, 2007 default judgment's finality. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509-10 (App. 2016).

A manifest abuse of authority, a judgment obtained unfairly or working a serious injustice, fraud or collusion by a court, fraud, and lack of jurisdiction have been considered grounds to ignore a judgment's validity. Validity fundamentally includes the court's competence to adjudicate the matter with regard to subject-matter jurisdiction, territorial jurisdiction, and notice. Waguk v. Waguk, 21 FSM R. 60, 71 (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).

JURISDICTION

The burden is always on the one who seeks the exercise of the power of the court in her behalf to establish that the court does have jurisdiction. Neimes v. Maeda Constr. Co., 1 FSM R. 47, 47 (Truk 1982).

The Secretary of the Interior has the power to terminate the Trust Territory High Court's exclusive

jurisdiction over suits against the Trust Territory because that jurisdiction was originally conferred upon the High Court by authority emanating from the Department of Interior. Lonno v. Trust Territory (I), 1 FSM R. 53, 65-67 (Kos. 1982).

The Trust Territory High Court's former exclusive jurisdiction over lawsuits against the Trust Territory government has been delegated to the constitutional governments covered by Secretarial Order 3039. Within the Federated States of Micronesia, the allocation of this former exclusive High Court jurisdiction between the Supreme Court of the Federated States of Micronesia an the various state courts will be determined on the basis of jurisdictional provisions within the Constitution and laws of the Federated States of Micronesia and its respective states. Lonno v. Trust Territory (I), 1 FSM R. 53, 68 (Kos. 1982).

The FSM Supreme Court is empowered to exercise authority in probate matters where there is an independent basis for jurisdiction under the Constitution. In re Nahnsen, 1 FSM R. 97, 104 (Pon. 1982).

There is no statutory limitation on the FSM Supreme Court's jurisdiction; the Judiciary Act of 1979 plainly contemplates that that court will exercise all the jurisdiction available to it under the Constitution. 4 F.S.M.C. 201-208. In re Nahnsen, 1 FSM R. 97, 106 (Pon. 1982).

The allocation of judicial authority is made on the basis of jurisdiction, generally without regard to whether state or national powers are at issue. In re Nahnsen, 1 FSM R. 97, 108 (Pon. 1982).

The Constitution contemplates that decisions affecting the people of the Federated States of Micronesia will be decided by courts appointed by the constitutional governments of the Federated States of Micronesia. This in turn requires an expansive reading of the FSM Supreme Court's jurisdictional mandate while we await establishment of functioning state courts. In re Nahnsen, 1 FSM R. 97, 111 (Pon. 1982).

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 FSM Constitution is similar to that of the United States. Etpison v. Perman, 1 FSM R. 405, 414 (Pon. 1984).

The standard method of obtaining a determination from the FSM Supreme Court as to its jurisdiction over specific parties or issues is to file a civil or criminal action with the FSM Supreme Court trial division. Koike v. Ponape Rock Products Co., 1 FSM R. 496, 500 (Pon. 1984).

The jurisdictional language in the FSM Constitution is patterned upon the United States Constitution. In re Sproat, 2 FSM R. 1, 4 n.2 (Pon. 1985).

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).

Because the FSM Constitution states that the judicial power "is vested" in the Supreme Court, and the trial division "has" jurisdiction over certain cases – unlike the jurisdictional provisions of the United States Constitution, which are not self-executing – determinations as to the jurisdiction of the FSM courts are based on constitutional interpretation rather than statutory construction, and therefore it cannot be assumed that United States court holdings will yield the correct result under FSM jurisdictional provisions. FSM Dev. Bank v. Estate of Nanpei, 2 FSM R. 217, 219 n.1 (Pon. 1986).

As a general rule the FSM Supreme Court trial division is obliged to exercise its jurisdiction and may not abstain simply because unsettled issues of state law are presented. Edwards v. Pohnpei, 3 FSM R. 350, 360 (Pon. 1988).

State courts do not normally look to the national Constitution as a source of jurisdictional authority, but

instead typically rely upon state constitutions and state law for their authorization to act, so in considering whether a state court may exercise jurisdiction in a case the proper question is not whether the national Constitution authorizes, but whether it bars state court jurisdiction. Bank of Guam v. Semes, 3 FSM R. 370, 377 (Pon. 1988).

Article XI, section 6(c) of the Constitution places authority to prescribe jurisdiction only in the national Congress, and not in state legislatures. Bank of Guam v. Semes, 3 FSM R. 370, 379 (Pon. 1988).

Failure to mention national courts in section 25 of the Pohnpei State Real Property Mortgage Act should not be read as an attempt to deprive litigants of access to the FSM Supreme Court's trial division. Bank of Guam v. Semes, 3 FSM R. 370, 380 (Pon. 1988).

FSM Supreme Court's trial division does not lose jurisdiction over a case merely because land issues are involved, but if such issues are presented, certification procedures may be employed to avoid encroachment upon state decision making prerogatives. Bank of Guam v. Semes, 3 FSM R. 370, 381 (Pon. 1988).

The Constitution's jurisdictional provisions are self-executing. U Corp. v. Salik, 3 FSM R. 389, 394 (Pon. 1988).

The determination of jurisdiction itself normally qualifies for protection under the common law principle of res judicata, requiring a second court to presume that the court which issued the judgment did properly exercise its own jurisdiction, but plain usurpation of power by a court which wrongfully extends its jurisdiction beyond the scope of its authority, is outside of the doctrine and does not qualify for res judicata protection. United Church of Christ v. Hamo, 4 FSM R. 95, 107-08 (App. 1989).

In light of the Trust Territory High Court's insistence on maintaining control over cases within the Federated States of Micronesia in disregard of Secretarial Order 3039 and to the exclusion of the new constitutional courts, its characterizations of Joint Rule No. 1 as "simply a memorandum" and of the words "active trial" in Secretarial Order 3039 as merely "administrative guidance," its acceptance of appeals after it was precluded from doing so by Secretarial Order 3039, its decision of appeals after Secretarial Order 3039 was terminated and its continued remand of cases to the High Court trial division for further action even after November 3, 1986, there can be no doubt that for purposes of res judicata analysis, the High Court was a court lacking capacity to make an adequately informed determination of a question concerning its own jurisdiction United Church of Christ v. Hamo, 4 FSM R. 95, 118 (App. 1989).

Although final judgment in a case has been entered by the Trust Territory High Court, because any effort by a party to have the High Court consider its own jurisdiction would have been futile, it is procedurally fair to later afford the party an opportunity to question that jurisdiction. United Church of Christ v. Hamo, 4 FSM R. 95, 118-19 (App. 1989).

Where the Trust Territory High Court's exercise of jurisdiction was a manifest abuse of authority, allowing the judgment of the High Court to stand would undermine the decision-making guidelines and policies reflected in the judicial guidance clauses of the national and state constitutions and would thwart the efforts of the framers of the Constitution to reallocate court jurisdiction within the Federated States of Micronesia by giving local decision-makers control over disputes concerning ownership of land. United Church of Christ v. Hamo, 4 FSM R. 95, 119 (App. 1989).

The decision as to jurisdiction is one to be made by the court, and counsel may not by agreement, confer upon a court jurisdiction that it does not have by law. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 369 (App. 1990).

The maritime jurisdiction conferred on the FSM Supreme Court by the Constitution is not to be decided with reference to the details of United States cases and statutes concerning admiralty jurisdiction but instead with reference to the general maritime law of seafaring nations of the world, and to the law of

nations. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 374 (App. 1990).

The FSM Supreme Court has jurisdiction over all cases which are maritime in nature including all maritime contracts, torts and injuries. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 374 (App. 1990).

The question of the enforceability of ship mortgages is a matter that falls within the maritime jurisdiction of the FSM Supreme Court under article XI, section 6(a) of the Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 376 (App. 1990).

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).

Under traditional constitutional analysis, taxpayers' efforts to recover tax moneys unlawfully extracted from them by a state may be relegated to state procedures and decision-makers so long as there is a reasonable procedure under state law whereby the taxpayer may obtain meaningful relief. Gimnang v. Yap, 5 FSM R. 13, 23-24 (App. 1991).

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).

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).

Issuance of a search warrant is indisputedly within the FSM Supreme Court's jurisdiction. Jano v. King, 5 FSM R. 388, 392 (Pon. 1992).

A maritime contract cannot be converted into a non-maritime one by stipulation of the parties so as to divest the court of its admiralty jurisdiction. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 4 (Pon. 1993).

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).

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).

The FSM Supreme Court will not interfere in a pending state court proceeding where no authority has been cited to allow it to do so, where the case has not been removed from state court, where it has not been shown that the national government is a party to the state court proceeding thereby putting the case within the FSM Supreme Court's exclusive jurisdiction, and where it has not been shown that the movants are parties to the state court proceeding and thus have standing to seek national court intervention. Pohnpei v. Kailis, 6 FSM R. 460, 463 (Pon. 1994).

A court may *sua sponte* raise the issue of jurisdiction at any time because it is the duty of the courts and counsel to insure that jurisdiction exists. Barker v. Paul, 6 FSM R. 473, 475 (Chk. S. Ct. App. 1994).

Actions concerning the determination of land titles rest primarily with the Land Commission, which is statutorily charged with the registration and determination of land ownership. When the Land Commission has designated a registration area the courts cannot entertain any action with regard to interests in land within that registration area without a showing of special cause, although any determination of the Commission may be appealed to the Trial Division of the Chuuk State Supreme Court. Otherwise, it becomes final and conclusive. Barker v. Paul, 6 FSM R. 473, 475-76 (Chk. S. Ct. App. 1994).

Absent a finding of "special cause" on the record the trial court had no jurisdiction to entertain an action asserting an interest in land located within a designated registration area. Barker v. Paul, 6 FSM R. 473, 476 (Chk. S. Ct. App. 1994).

When the Land Commission has issued a Determination of Ownership which has become final upon the lapse of the time to appeal, the trial court has no authority or power to alter the final determination of ownership and boundaries. Barker v. Paul, 6 FSM R. 473, 476 (Chk. S. Ct. App. 1994).

The Chuuk State Supreme Court is a unified court system with two constitutionally mandated divisions – the trial division and the appellate division. All justices are members of both divisions, but a justice does not serve in the appellate division until he has been designated by the Chief Justice to be the presiding justice on a specific case. The trial division is the state's court of general jurisdiction. Election Comm'r v. Petewon, 6 FSM R. 491, 497 (Chk. S. Ct. App. 1994).

All justices in the trial division have concurrent jurisdiction, but once a case has been assigned to a particular justice, that justice has exclusive jurisdiction over the parties and issues of the case until the case is terminated in the trial division. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

A properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

The nonexclusive constitutional grant to the states of regulatory power over marine resources located within twelve miles of island baselines cannot be read as creating exclusive state court jurisdiction over marine resources within the twelve mile limit. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 598-99 & n.7 (Pon. 1994).

The state and national courts have concurrent jurisdiction over cases involving state regulation of marine resources located within twelve miles of island baselines. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 602 (Pon. 1994).

Parties cannot confer or divest a court of jurisdiction by stipulation or by assumption. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 45 (App. 1995).

It is the duty of the court to insure jurisdiction exists. The fact that the defendant has not challenged the allegation of jurisdiction does not confer jurisdiction on the court if none exists. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

The FSM Supreme Court has jurisdiction over a suit against the national government by the states alleging that under the Constitution the states are entitled to 50% of all revenues from the EEZ because the FSM Supreme Court has the ultimate responsibility for interpretation of the Constitution. Chuuk v. Secretary of Finance, 7 FSM R. 563, 567 (Pon. 1996).

A trial court has jurisdiction to issue an order assessing costs, even though it was issued after the notice of appeal was filed. Damarlane v. United States, 8 FSM R. 14, 17 (App. 1997).

A policy of judicial economy dictates against allowing further piecemeal appeals when the appeal in question arises from the same civil action and involves the same or similar questions of law. Damarlane v.

United States, 8 FSM R. 14, 17 (App. 1997).

The FSM Supreme Court's jurisdiction is derived from the FSM Constitution which grants the appellate division the jurisdiction to review cases heard in state or local courts if they require interpretation of the FSM Constitution, and a state constitution cannot deprive the FSM Supreme Court of this jurisdiction. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 26-27 (App. 1997).

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).

When the state election law requiring election appeals to go directly to the state court appellate division has a provision applying the law to municipal elections if the municipal constitution or law so provides and there is no such municipal provision, then jurisdiction over the election appeal does not lie in the state court appellate division in the first instance. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

A case challenging the Governor's authority to take certain actions where the Governor has cited the state constitution as his authority and where the issues are serious and substantial is clearly a case arising under the state constitution over which the state court trial division has original and exclusive jurisdiction. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

When the state judiciary act gives the state court trial division authority to review all actions of an agency of the government, the trial division has jurisdiction over an appeal of the state election commissioner's denial of a petition to set aside a municipal election. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division had jurisdiction to hear an election appeal from an election conducted, pursuant to the governor's emergency declaration, under a state law providing for such jurisdiction. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 280 n.1 (Chk. S. Ct. Tr. 1998).

Once land has been declared part of a registration area, courts shall not entertain any action with regard to interests in land within that registration area without a showing of special cause why action by a court is desirable before it is likely the land commission can make a determination on the matter. Pau v. Kansou, 8 FSM R. 524, 526-27 (Chk. 1998).

When title to land in a designated registration area becomes an issue in a case involving damage claims for trespass, and there is no pending case before the land commission concerning this land or a previous final determination of ownership, a court may remand the question of ownership to the land commission to be determined within a limited time. Once ownership is determined, the court may proceed because more than an interest in land is at stake, and the land commission can only adjudicate interests in land. Pau v. Kansou, 8 FSM R. 524, 527 (Chk. 1998).

Venue does not refer to jurisdiction at all. Jurisdiction of the court means the inherent power to decide a case, whereas venue designates the particular county or city in which a court with jurisdiction may hear and determine the case. On the other hand, forum means a place of jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

A foreign government is an entity over whom the FSM Supreme Court may exercise jurisdiction if it engages in certain acts. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 371 n.1 (Kos. 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).

Because a court is without jurisdiction to entertain an action asserting an interest in land located within a designated registration area and because all such actions must first be filed with the Chuuk State Land Commission, a quiet title action filed in the Chuuk State Supreme Court will be transferred to the Land Commission for consideration of ownership. Simina v. Rayphand, 9 FSM R. 508, 509 (Chk. S. Ct. Tr. 2000).

When the court's jurisdiction is placed at issue, it is the plaintiff's burden to show that the Supreme Court does have jurisdiction, and that a colorable claim exists. Udot Municipality v. FSM, 9 FSM R. 560, 562 (Chk. 2000).

The FSM Development Bank is an instrumentality of the national government and part of the national government for purposes of Article XI, Section 6(a) of the Constitution. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001).

The Constitution does appear not to bar the FSM Supreme Court from exercising jurisdiction over FSM Development Bank mortgage foreclosures. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

In order for a court to have jurisdiction over an action involving real property, particularly an action involving title, the real property must be within that court's territorial jurisdiction. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

Under the Chuuk Constitution, article VII, § 3(c), the Chuuk State Supreme Court has only appellate or review jurisdiction over the Land Commission, and thus a motion for review de novo of matters not raised before the Land Commission must be denied. Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2001).

When plaintiffs ask the Chuuk State Supreme Court trial division to interpret a statute in light of various Chuuk Constitution provisions because in their view the statute unconstitutionally delegates the power to conduct elections to the municipalities themselves, it is a constitutional question of significant magnitude, given the past history of the conduct of elections in general in Chuuk. Given the clear jurisdictional mandate in the Chuuk Constitution for the court to determine issues regarding the state constitution and laws, the court has jurisdiction over the case, and a motion to dismiss for lack of subject matter jurisdiction must therefore be denied. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 579-80 (Chk. S. Ct. Tr. 2003).

The statutory prohibition on issuing writs against public property is jurisdictional. Since the statute deprives a court of jurisdiction to issue any such writ, the parties may not by agreement confer jurisdiction upon a court when a statute affirmatively deprives the court of jurisdiction. Ben v. Chuuk, 11 FSM R. 649, 651 (Chk. S. Ct. Tr. 2003).

To read the language that a petitioner shall by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part, to mean that the 60 day time period is absolute, which is to say jurisdictional, would be to read the statute as limiting the trial division's jurisdiction to hear such appeals. Statutes which limit a court's jurisdiction are to be construed narrowly. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

While ordinarily the court does not have jurisdiction over claims arising in land registration areas subject to the Land Commission's jurisdiction, an exception is that whenever the Land Commission, in its discretion, makes either of the determinations set forth in 67 TTC 108(1) or (2), it may refer the claim to the Chuuk State Supreme Court trial division for adjudication without itself making any determination. The statute thus expressly confers jurisdiction on the court upon a matter's referral from the Land Commission whenever cause appears pursuant to 67 TTC 108(1) or (2). The "special cause" is established by the statute, and the trial division clearly has jurisdiction if the circumstances meet the statute's requirements. Chuuk v. Ernist Family, 12 FSM R. 154, 159 (Chk. S. Ct. Tr. 2003).

A default judgment must be vacated when the Chuuk State Supreme Court never had jurisdiction over the action to determine ownership of real property in the first place because, despite being framed as a declaratory relief action, the case sought a determination of ownership of land lying within a land registration area and only the Land Commission has jurisdiction to determine ownership of land within a land registration area. Hartman v. Chuuk, 12 FSM R. 388, 398-99 (Chk. S. Ct. Tr. 2004).

When the land in question clearly lies in a Land Commission registration area; when the action seeks a declaration that a party is the owner of the land and it does not allege, nor prove, that the Land Commission referred the matter to the court for resolution, and when she does not assert any "special cause" why the court should assert jurisdiction over the land claim, the court is statutorily deprived of jurisdiction over any action with regard to interests in land. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

The courts have a duty to examine issues regarding their jurisdiction. Jurisdiction of the court may be raised at any time, even after judgment. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

Acts in excess of a court's jurisdiction are void. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

Questions regarding interests in land must be raised before the Land Commission. The Chuuk State Supreme Court has no jurisdiction to hear or decide such claims. The court can only refer the matter to the Land Commission, so that the Land Commission can resolve the dispute. Hartman v. Chuuk, 12 FSM R. 388, 401-02 (Chk. S. Ct. Tr. 2004).

Any case over which the trial division has jurisdiction may be heard by any of the justices as assigned by the Chief Justice. Once a case has been assigned to a particular justice, that justice has jurisdictional priority over the parties and issues of the case to the exclusion of all other trial division justices. This exclusive jurisdiction continues until the case is terminated in the trial division. While the case is pending, the priority extends to any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

When the parties are identical in two civil actions and the plaintiffs sought the same relief in both civil actions – that the contents of certain ballot boxes not be counted and tabulated because of election irregularities and when the only difference in the later civil action was that the plaintiffs were contesting only two of the five boxes they contested in the first civil action and that the irregularities alleged in the later case were discovered during and in the course of the litigation of the first civil action (that is, during the counting and tabulating ordered by the judge in the first civil action), such irregularities would be expected to be brought immediately before the judge on the case in which they were discovered. When they were not, but were instead filed as a separate case, once the trial judge on the first case became available, the case should have been left to him to act upon. Therefore the second trial judge's presiding over the second civil action was in excess of his jurisdiction since the first trial division justice had jurisdictional priority over the parties and the issues in that case to the exclusion of all other trial division justices. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

A claim that civil matters should be dealt with in the defendant's country and that since both he and the plaintiff were Koreans, the court should dismiss this case is an assertion of forum non conveniens. Forum non conveniens is not a claim that the court lacks jurisdiction over the case, but is a doctrine that the court may, as a matter of its discretion, decline jurisdiction and dismiss a case when the parties' and the witnesses' convenience and the ends of justice would be better served if the action were brought and tried in another forum in which the action could be heard. Lee v. Lee, 13 FSM R. 252, 257 n.5 (Chk. 2005).

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).

Because the Kosrae State Court only has the authority to hear appeals from Land Court and it cannot act until the Land Court has adjudicated the matter and an appeal has been filed, a case concerning a claim of title to land filed in the Kosrae State Court will be dismissed without prejudice to allow the plaintiffs to file their claim in the Land Court, whose jurisdiction includes all matters concerning the title of land and any interests therein. Alanso v. Pridgen, 14 FSM R. 479, 480 (Kos. S. Ct. Tr. 2006).

Courts have no jurisdiction to hear cases with regard to interests in land in land registration areas unless there has been a showing of special cause, and a finding by the court, that action by a court is desirable or the Land Commission has asked the court to assume jurisdiction without the Land Commission having made a determination. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

When an order awarded attorneys' fees on the private attorney general theory and those fees are added to the judgment to be borne by the defendants, the issue of whether the fee award under the private attorney general theory will also stand as the fee award to plaintiffs' counsel in a final distribution is an issue that is not now before the court and will not be before the court until a proposal for a final distribution is before the court. Until then, anything the court might say would be in the nature of an advisory opinion, and the court does not have the authority to issue advisory opinions. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 133, 134-35 (Yap 2007).

The FSM Supreme Court trial division lacks jurisdiction over an election contest in a Chuuk state election since jurisdiction over election contests rests purely on statutory and constitutional provisions, and courts otherwise have no inherent power to determine election contests, and since the determination of such contests is a judicial function only when and to the extent that the determination is authorized by statute. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

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 decision as to the court's jurisdiction over an action is one to be made by the court, and the election commission is not empowered to assume or confer whether a court has jurisdiction. The election commission is limited to determining its own jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

Although the court will not judge the actions of the U.S. government, when the case's disposition does not require the court to judge those actions, the court can and will judge the actions of the parties to the case if there are satisfactory criteria to do so. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485 (Pon. 2009).

Chuuk Election Code, section 138 clearly contemplates that the FSM Supreme Court appellate division may exercise jurisdiction over a Chuuk state election contest even after the candidates that have been declared the winners have been sworn in. Chuuk State Election Comm'n v. Chuuk State Supreme Court App. Div., 16 FSM R. 614, 615 (App. 2009).

The section 6(a) phrase "except where an interest in land is at issue," does not preclude the FSM Supreme Court from exercising jurisdiction in a case where the national government entity is a party and land is involved. It does preclude the court from exercising exclusive jurisdiction – the jurisdiction becomes concurrent and a competent state court could instead entertain the matter. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 93 (Yap 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 can exercise jurisdiction in a case where an interest in land is at issue if there is another basis for jurisdiction. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

Although pleading requirements are interpreted liberally, it is the plaintiff's responsibility to see that his complaint states the grounds of jurisdiction. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

If the case involves officials of foreign governments, or disputes between states, or admiralty or maritime matters, no further analysis is needed. The FSM Supreme Court trial division has exclusive jurisdiction. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

If the FSM Supreme Court does not have exclusive jurisdiction, the analysis will not end there. It proceeds to the next set of questions about the FSM Supreme Court's concurrent jurisdiction. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

The FSM Supreme Court either has exclusive jurisdiction over a case or it has concurrent jurisdiction. It cannot have both simultaneously because a court's jurisdiction over a case cannot be both exclusive and non-exclusive (concurrent) at the same time. It is either exclusive or it is not. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

The movants have not shown that there are any jurisdictional steps that the plaintiff failed to take or any jurisdictional deadlines that it failed to meet when the statute and attendant regulations that the movants rely on apply only to Pohnpei state government procurement contracts – bidding for contracts where the vendor bidders are competing to sell goods or services – personal property and, in this case, the bidders were not seeking to sell anything to Pohnpei, but were seeking to acquire real estate rights – to lease government land and fish processing facilities (not personal property) from the state government. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 656-57 (Pon. 2013).

The Constitution does not mandate such a sweeping expansion of the FSM Supreme Court's jurisdiction over probate cases as would result if creditors were considered parties for jurisdictional purposes. The better view is that only the heirs, potential heirs, or devisees in a probate case be considered parties for jurisdictional purposes and that, in the usual case, the decedent's creditors would file their claims in a state court probate proceeding. This view comports with the proper respect due to the state courts as courts of general jurisdiction that should normally resolve probate and inheritance issues. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

For jurisdictional purposes, the parties in a probate case are those who have a claim that they are heirs. Creditors are not to be considered parties for jurisdictional purposes. This reasoning is suitable for the FSM. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

A creditor may open a probate case in state court without destroying the state court's jurisdiction because a creditor is not an heir. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

State laws vesting state courts with exclusive jurisdiction cannot divest the FSM Supreme Court of its constitutional responsibilities. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

When no defendant has started a case under bankruptcy law, the defendants cannot have the case dismissed because bankruptcy law would provide the legal framework for the case. FSM Dev. Bank v. Setik, 19 FSM R. 233, 236 (Pon. 2013).

The probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes the national courts from disposing of property that is in a state probate court's custody. But it does not bar the national courts from adjudicating matters outside of those confines and otherwise within national court jurisdiction. FSM Dev. Bank v. Estate of Edmond, 19

FSM R. 425, 430 (App. 2014).

Interference with the property of the estate, and the probate exception should be read narrowly so as not to bar national court jurisdiction over preliminary matters, or ancillary matters, such as in personam actions and equitable intervention for fraud, maladministration, or non-administration of the estate. In those matters, the national court may appoint an administrator or an administrator pendente lite on behalf of third party interests before, or while, the action is pending in state court. These actions are outside of the scope of the probate exception, but they should not be confused with direct challenges to the validity of the will itself, in interpreting the language of the will, or equitable charges of fraud, undue influence, or tortious interference with the testator's intent which are core matters within the probate exception. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 430 (App. 2014).

Ultimately, the bulk of probate matters are to remain with the states, but an express constitutional exception is carved out when the national government is a party to the suit. Furthermore, the Constitution's framers created a constitutional limitation on the national government's jurisdiction under the land clause exception of article XI, § 6(a). FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014).

Courts have no jurisdiction to hear cases about interests in land in land registration areas unless there has been a showing of special cause, and a court finding, that action by a court is desirable or that the Land Commission has asked the court to assume jurisdiction without the Land Commission having made a determination. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

Under 11 F.S.M.C. 104(7)(b)(i), the FSM Supreme Court has jurisdiction over any crime committed in the FSM Exclusive Economic Zone. FSM v. Kimura, 19 FSM R. 630, 633 (Pon. 2015).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

For purposes of jurisdiction, since the College of Micronesia was created by national statute, and given the nature of its structure and functions, it is an instrumentality or agency of the FSM national government. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

A state statute that vests exclusive jurisdiction over certain cases in a state court (such as the Pohnpei statute requiring all judicial actions for a mortgage foreclosure to be brought in the Pohnpei Supreme Court trial division), cannot deprive the FSM Supreme Court of jurisdiction or have any effect on its jurisdiction. Sam v. FSM Dev. Bank, 20 FSM R. 409, 416 (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).

A state law vesting exclusive jurisdiction in a state court cannot divest the FSM Supreme Court of jurisdiction over a matter it would otherwise have jurisdiction, as mandated by the FSM Constitution. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 613 (Pon. 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).

A manifest abuse of authority, a judgment obtained unfairly or working a serious injustice, fraud or collusion by a court, fraud, and lack of jurisdiction have been considered grounds to ignore a judgment's validity. Validity fundamentally includes the court's competence to adjudicate the matter with regard to subject-matter jurisdiction, territorial jurisdiction, and notice. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

A court of competent jurisdiction is a court that has the power and authority to do a particular act; one recognized by law as possessing the right to adjudicate a controversy. Waguk v. Waguk, 21 FSM R. 60, 71 n.14 (App. 2016).

A court has no more right to decline the exercise of jurisdiction which is given, than it does to usurp that which is not given. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

– Arising Under

The repealer clause of the National Criminal Code repealed those provisions of Title 11 of the Trust Territory Code above the monetary minimum of $1,000 set for major crimes. Where the value is below $1,000, section 2 does not apply because it is not within the national court jurisdiction. FSM v. Hartman, 1 FSM R. 43, 46 (Truk 1981).

The Seaman's Protection Act, originally enacted for the entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under article IX, section 2 of the Constitution, and has therefore become a national law of the Federated States of Micronesia under article XV. That being so, a claim asserting rights under the Act falls within the FSM Supreme Court's jurisdiction under article XI, section 6(b) of the Constitution as a case arising under national law. 19 F.S.M.C. 401-437. Lonno v. Trust Territory (I), 1 FSM R. 53, 72 (Kos. 1982).

Title 11 of the Trust Territory Code, before the effective date of the National Criminal Code, is not a national law because its criminal jurisdiction was not expressly delegated to the national government, nor is the power it confers of indisputably national character; therefore, it is not within the FSM Supreme Court's jurisdiction. Truk v. Otokichy, 1 FSM R. 127, 130 (Truk 1982).

The FSM Supreme Court has jurisdiction to try Title 11 Trust Territory Code cases if they arise under a national law. Title 11 of the Trust Territory Code is not a national law. It was not adopted by Congress as a national law and it did not become national law by virtue of the transition article. Truk v. Hartman, 1 FSM R. 174, 178 (Truk 1982).

Exclusive national government jurisdiction over major crimes is not mandated by the Constitution; such jurisdiction would be exclusive in any event only if criminal jurisdiction was a power of indisputably national character. Truk v. Hartman, 1 FSM R. 174, 181 (Truk 1982).

The National Government has exclusive jurisdiction over crimes arising under national law. 11 F.S.M.C. 901. Truk v. Hartman, 1 FSM R. 174, 181 (Truk 1982).

Sections of Title 11 of the Trust Territory Code covering matters within the jurisdiction of Congress owe their continuing vitality to section 102 of the National Criminal Code. Thus, the criminal prosecutions thereunder are a national matter and fall within the FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102. In re Otokichy, 1 FSM R. 183, 185 (App. 1982).

Section 102(2), the savings clause of the National Criminal Code, authorizes prosecutions of Title 11 Trust Territory Code offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102(2). In re Otokichy, 1 FSM R. 183, 190 (App. 1982).

Presumably, Congress inserted no specific jurisdictional provision in section 102 of the National Criminal Code because Congress recognized that the FSM Supreme Court would have jurisdiction over all cases arising under national law by virtue of article XI, section 6(b) of the Constitution. 11 F.S.M.C. 102. In re Otokichy, 1 FSM R. 183, 193 (App. 1982).

The Trust Territory Weapons Control Act is not inconsistent with any provision of the Constitution. It therefore continued in effect. When the National Criminal Code was enacted, and major crimes were defined, the Trust Territory Weapons Control Act became national law and trials for violations thereof were within the FSM Supreme Court's jurisdiction. 11 F.S.M.C. 1201-1231. FSM v. Nota, 1 FSM R. 299, 302-03 (Truk 1983).

When petitioners raise serious and substantial constitutional claims supported by authorities and reasoning of legal substance, the case falls within the FSM Supreme Court's jurisdiction under article XI, section 6(b) of the Constitution. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 391 (Pon. 1984).

Article XI, section 6(a) of the Constitution places jurisdiction in the Federated States of Micronesia Supreme Court over cases in which the national government is a party. Panuelo v. Pohnpei (I), 2 FSM R. 150, 153 (Pon. 1986).

National civil rights claims under 11 F.S.M.C. 701 furnish a jurisdictional basis for the case to be heard by the FSM Supreme Court. Panuelo v. Pohnpei (I), 2 FSM R. 150, 153 (Pon. 1986).

Activities and organizations created and controlled by the national government should remain subject to FSM Constitution article XI, section 6(a), but organizations merely authorized or licensed by the national government which operate for private purposes, with little governmental involvement or control, should not be treated as a part of the national government. FSM Dev. Bank v. Estate of Nanpei, 2 FSM R. 217, 219-20 (Pon. 1986).

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).

The FSM Supreme Court trial division is required to decide all national law issues presented to it. Certification to state court is only proper for state or local law issues. Edwards v. Pohnpei, 3 FSM R. 350, 354 (Pon. 1988).

In the absence of any special limitation, issues that arise under any state or national law within the particular state may fall within the jurisdiction of the state and local courts of that state through state constitutional and statutory provisions which place the "judicial power of the state" within those courts. Gimnang v. Yap, 5 FSM R. 13, 17 (App. 1991).

Article XI, section 6(b) and 8 of the FSM Constitution places primary responsibility in the national courts for the kind of cases arising under the constitution or requiring interpretation of the Constitution, national law or treaties; and in disputes between a state and a citizen of another state, between state, citizen, of different states, and between a state or a citizen, a foreign state, citizen, or subject but they do not prohibit state court jurisdiction over issues of national law or cases which arise under national law. Gimnang v. Yap, 5 FSM R. 13, 18 (App. 1991).

Issues that arise under any state or national law within the particular state may fall within the jurisdiction of the state and local courts of that state through state constitutional and statutory provisions which place the "judicial power of the state" within those courts, subject to the possibility that state or local courts may sometimes be barred from exercising jurisdiction in some such cases by the action of Congress, of this court, or of the state legislature. Gimnang v. Yap, 5 FSM R. 13, 18 (App. 1991).

Article XI, section 8 of the FSM constitution does not bar state courts from exercising jurisdiction over cases which arise under national law within the meaning of Article XI, section 6(b). Gimnang v. Yap, 5 FSM R. 13, 18 (App. 1991).

Full abstention is not appropriate where claims are not essentially state law claims, and are made against another nation, thus falling within the national court's primary jurisdiction. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67E (Pon. 1991).

Abstention may be appropriate for causes of action that raise issues of state law only, but may not be where substantive issues of national law are raised. A national court may not abstain from deciding a national constitutional claim. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67E (Pon. 1991).

The intent of the Constitutional Convention is that major crimes, as defined by Congress and committed prior to voter ratification, fall within the jurisdiction of the national government and may be prosecuted pursuant to the national law after the effective date of the amendment. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

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).

Where the crimes charged are no longer those expressly delegated to Congress to define, or are not indisputedly of a national character the FSM Supreme Court has no subject matter jurisdiction. FSM v. Jano, 6 FSM R. 9, 11 (Pon. 1993).

The FSM Supreme Court has jurisdiction over a suit against the national government by the states alleging that under the Constitution the states are entitled to 50% of all revenues from the EEZ because the FSM has waived its sovereign immunity in cases to recover illegally collected taxes and for claims arising out of improper administration of FSM statutory law. Chuuk v. Secretary of Finance, 7 FSM R. 563, 568 (Pon. 1996).

A plaintiff's complaint, stating two causes of action for breach of fiduciary duty (both existing under common law), does not arise under the national laws of the FSM so as to confer original jurisdiction on the FSM Supreme Court or show on its face an issue of national law thereby creating removal jurisdiction. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

That a corporation chartered under the laws of the FSM is involved in a lawsuit does not necessarily mean that the interpretation of national laws will be required or that the state court is not otherwise equipped to hear the case. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

To determine whether a controversy arises under national law, the issue of national law must be an essential element of one or more of the plaintiff's causes of action, it must be disclosed upon the face of the complaint, unaided by the answer, the petition for removal or any pleadings subsequently filed in the case, it may not be inferred from a defense asserted or one expected to be made, and the issue of national law raised must be a substantial one. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

When a case has been removed from state court on the ground that it arose under national law but the plaintiff's complaint only relies upon common law principles of breach of fiduciary duty and as such does not

arise under national law because no issue of national law appears on the face of the complaint and no substantial issue of national law is raised, the case will be remanded to the state court where it was initially filed. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

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).

Determination of whether a case arises under the Constitution, national law, or a treaty is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001).

National law defenses do not constitute a basis for arising under national law jurisdiction pursuant to section 6(b). FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001).

Determination of whether a case arises under the Constitution, national law, or a treaty is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 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).

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).

A party to a dispute within the scope of article XI, section 6(b) has a constitutional right to invoke the jurisdiction of the FSM Supreme Court. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

Although national law provides for the reciprocal enforcement of child support orders, case law supports the conclusion that FSM Supreme Court should abstain from exercising its jurisdiction at least until the state court has had the opportunity to rule on the issues. Villazon v. Mafnas, 11 FSM R. 309, 310 (Pon. 2003).

When the plaintiff has alleged that his termination from the Head Start Program violated his rights secured under the FSM Constitution, the FSM Supreme Court has concurrent original jurisdiction over the matter. Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

A motion to dismiss for lack of jurisdiction will be denied when the plaintiffs' complaint alleges claims that arise under national law and the national constitution because the FSM Supreme Court exercises jurisdiction over such cases, and, although state courts may also exercise jurisdiction over such cases, the plaintiffs have a constitutional right to bring such cases in the FSM Supreme Court if they so desire. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

A cross-claim cannot form a basis for the FSM Supreme Court's jurisdiction because determination of whether a case arises under the Constitution, national law, or a treaty is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. Mailo v. Chuuk, 12 FSM R. 597, 600 (Chk. 2004).

The national courts, including the trial division of the Supreme Court, have concurrent original jurisdiction in cases arising under national law. National courts are the trial division of the FSM Supreme

Court and any other national courts that might be established by statute, and not state courts. Shrew v. Sigrah, 13 FSM R. 30, 32 (Kos. 2004).

When a state law makes a specific reference to a national statute, any interpretation of that state law must simultaneously present a question of national law. The FSM Supreme Court would have subject matter jurisdiction over such a case. Shrew v. Sigrah, 13 FSM R. 30, 32 (Kos. 2004).

Section 6(b) of Article XI of the FSM Constitution provides that the national courts, including the Supreme Court trial division, have concurrent original jurisdiction in cases arising under the Constitution, national law or treaties, and in disputes between a state and a citizen of another state, between citizens of different states, and between a state or citizen thereof, and a foreign state, citizen, or subject. The national courts referred to in this section are the FSM Supreme Court trial division and any other national courts which may be established in the future. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 147 (App. 2005).

Determination of whether the FSM Supreme Court has subject matter jurisdiction over a case is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. McVey v. Etscheit, 13 FSM R. 473, 476 (Pon. 2005).

Determination of whether a case arises under the Constitution, national law, or a treaty is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. Etscheit v. McVey, 13 FSM R. 477, 479 (Pon. 2005).

To determine whether a case arises under national law, the issue of national law must be an essential element of one or more of the plaintiff's causes of action, it must be disclosed upon the face of the complaint, unaided by the answer, the petition for removal or any pleadings subsequently filed in the case, it may not be inferred from a defense asserted or one expected to be made, and the issue of national law raised must be a substantial one. Etscheit v. McVey, 13 FSM R. 477, 479 (Pon. 2005).

When the plaintiffs' fifth cause of action is expressly entitled "Violation of the FSM Anti-competitive Practices Law" and the text specifically states that it alleges violations of the "Federated States of Micronesia Anti-competitive Practices Act" and cites 32 F.S.M.C. §§ 302-306 twice and when no Pohnpei state law or the Trust Territory predecessor statute is cited, this is thus clearly a cause of action arising under national law. The FSM Supreme Court has jurisdiction over cases arising under national law. Since the issue raised is a substantial one, the case was therefore not improvidently removed from the Pohnpei Supreme Court. Etscheit v. McVey, 13 FSM R. 477, 479-80 (Pon. 2005).

A case that came before the court based on the court's exclusive jurisdiction over cases when the national government is a party and where the plaintiff's asserted claims primarily arose under national law, is not a diversity case where state law provides the rules of decision. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

When the case was first filed in the FSM Supreme Court as an action for civil rights and due process and certain fact-finding functions were referred to the Pohnpei Board of Trustees because it was best able, at least initially, to make those determinations, the remand or reference to the Board did not divest the court of jurisdiction because in making that remand or reference, the court was not transferring this case to the Board of Trustees and the Board does not have the authority to grant much of the relief sought in the case – damages for civil rights and due process violations and for trespass and injunctive relief. Jurisdiction over the case remained with the court the whole time. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 156-57 (Pon. 2006).

When the remand or reference to the Board of Trustees was analogous to this court's power to appoint a special master to make factual findings, which the court may or may not adopt as its own findings and was also similar to those cases that were initiated in the FSM Supreme Court in Chuuk and then "remanded" to the Chuuk Land Commission for certain factual determinations and those cases then either "appealed" back to, or referred back to, the FSM Supreme Court trial division when those determinations were either

completed or some other issue came up that required court determination, and when the Board, in effect, acted as a special master – a court-designated fact finder. When the FSM Supreme Court had subject-matter jurisdiction over the complaint's allegations when it was filed, the court still retained that jurisdiction and the remand or reference is thus not a ground upon which to grant dismissal. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 157 (Pon. 2006).

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).

When, accepting the plaintiffs' allegations as true, which the court must on a Rule 12(b)(6) motion to dismiss, the plaintiffs state a claim that their civil rights were violated by an illegal act under the color of law, their case will not be dismissed. A determination of whether a case arises under the national constitution or national law is based on the plaintiff's statement of his case in his complaint, and, although a state court may exercise jurisdiction over such cases, a plaintiff has the constitutional right to bring such claims in the national court. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

A claim of denial of the right to suffrage in a state election because no revote was ordered is not a claim arising under the national constitution or law. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

When the parties are of diverse citizenship and when some of the plaintiff's claims arise under a treaty to which the FSM is a party, the FSM Supreme Court would, on either ground, have subject-matter jurisdiction over the case if an actual case or dispute exists. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 157 (Chk. 2010).

When a plaintiff clearly bases his cause of action on 11 F.S.M.C. 701, the national civil rights statute, it is obvious that he is invoking the FSM Supreme Court's jurisdiction over the case as one arising under FSM national law. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611 (Chk. 2011).

National law is not at issue in a case when the plaintiffs, in the complaint or in their initial motion for injunction, do not cite a particular national law at issue and their only mention of any sort of national law is in their October 19, 2011 "Notice of Terminology" and their October 31, 2011 "Supplement to Pending Motion for Injunction," where they cite only twenty-year-old "findings" of the FSM Secretary of Health and Human Services, and the FSM Earthmoving Regulations, neither of which apply to the defendants named in the complaint. Damarlane v. U Mun. Gov't, 18 FSM R. 96,98-99 (Pon. 2011).

When the plaintiff alleges that the state took his property without just compensation, but he only cites to the Chuuk Constitution provision barring Chuuk from taking property without just compensation and does not allege that Chuuk's alleged acts violated any FSM Constitutional provision, his complaint does not appear to allege claims arising under national law and thus does not show FSM Supreme Court jurisdiction. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

A writ of habeas corpus may be used in situations involving an individual incarcerated without probable cause. In re Anzures, 18 FSM R. 316, 320 (Kos. 2012).

The FSM Supreme Court has the power to issue all writs and must consider a petition for a writ of habeas corpus alleging imprisonment of the petitioner in violation of his rights under the FSM Constitution. In re Anzures, 18 FSM R. 316, 321 (Kos. 2012).

In the absence of any statutory restrictions, the FSM Supreme Court will, under the proper circumstances, consider applications for a writ of habeas corpus on the grounds that a person is in custody in violation of the FSM Constitution. The overriding purpose of such a writ is to protect an individual's right

to be free from wrongful intrusions and restraints upon their liberty. In re Anzures, 18 FSM R. 316, 322 (Kos. 2012).

It is within the FSM Supreme Court's province to determine whether a Chuuk statute, as applied, runs afoul of the FSM Constitution. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

If the case arises under the FSM Constitution, national law, or treaties, then the FSM Supreme Court trial division has concurrent jurisdiction over the subject-matter. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

For some cases arising under national law, Congress has placed exclusive jurisdiction in the FSM Supreme Court trial division. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 n.1 (Pon. 2013).

The determination of whether a case is one "arising under" the FSM Constitution, national law, or treaties is derived from the plaintiff's cause of action, not inferred from any possible defenses. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

Since the Constitution explicitly grants the FSM Supreme Court trial division concurrent and original jurisdiction over any cases arising under treaties and since a breach of the inviolability of the embassy premises is a direct violation of an international treaty and international law, the FSM Supreme Court trial division has original jurisdiction over a prosecution for a misdemeanor trespass and theft committed in a foreign embassy. FSM v. Ezra, 19 FSM R. 486, 491-92 (Pon. 2014).

As a defense raised in the answer to the original complaint, a defendant's due process claims would not make it a case over which the FSM Supreme Court would have jurisdiction because it would not be considered a case arising under the FSM Constitution or national law. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 2014).

The determination of whether a case is one "arising under" the FSM Constitution, national law, or treaties is derived from the plaintiff's cause of action, not inferred from any possible defenses that are or that might be raised. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 2014).

Since a cross-claim cannot form a basis for the FSM Supreme Court's jurisdiction because determination of whether a case arises under the Constitution, national law, or a treaty is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raise, a third-party claim should not create subject-matter jurisdiction in the FSM Supreme Court either. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 2014).

When the case is not a case arising under the FSM Constitution or national laws, the only grounds asserted for jurisdiction, the FSM Supreme Court does not have subject-matter jurisdiction over it, and when the FSM Supreme Court does not have any subject-matter jurisdiction over a case, the case will be dismissed without prejudice to any later adjudication in a state court. Isamu Nakasone Store v. David, 20 FSM R. 53, 58 (Pon. 2015).

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).

Article XI, Section 6(b) grants the national courts concurrent original jurisdiction in cases arising under national law and these forums include the FSM Supreme Court trial division and any other national courts which might be established by statute, but not state courts. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

"Arising under" jurisdiction was limited to those matters, in which four factors exist: 1) a national law issue is an essential element of the cause of action; 2) the issue of national law is disclosed upon the complaint's face; 3) the issue of law is not inferred from a defense which is asserted and 4) the issue of law is a substantial one. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 (App. 2016).

The framers' intent was that "arising under" jurisdiction extend to cases involving the enforcement of a right protected or created by the national constitution, national law, or treaty and cases involving the construction or interpretation of the national constitution, national law, or treaty. 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).

Arising under jurisdiction enables the FSM Supreme Court to explicate the meaning of our Constitution's jurisdictional grants and thereby ensure an appropriate level of uniformity in the applicability thereof. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 518 (App. 2016).

Concurrent jurisdiction properly exists given the diverse citizenship of the parties or when consonant with the "arising under" constitutional provision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 518 (App. 2016).

– Diversity

The Trust Territory is not a foreign state such as to give the FSM Supreme Court diversity jurisdiction over a suit against the Trust Territory. Neimes v. Maeda Constr. Co., 1 FSM R. 47, 51 (Truk 1982).

Under the present state of affairs, the Trust Territory government cannot be considered a foreign state, citizen or subject thereof within the meaning of article XI, section 6(b) of the Constitution. Lonno v. Trust Territory (I), 1 FSM R. 53, 74 (Kos. 1982).

The Federated States of Micronesia Supreme Court is specifically given jurisdiction over disputes between citizens of a state and foreign citizens. FSM Const. art. XI, § 6(b). The jurisdiction is based upon the citizenship of the parties, not on the subject matter of the dispute. In re Nahnsen, 1 FSM R. 97, 101 (Pon. 1982).

The Constitution places diversity jurisdiction in the Supreme Court, despite the fact that the issues involve matters within state or local, rather than national, legislative powers. In re Nahnsen, 1 FSM R. 97, 102 (Pon. 1982).

A primary purpose of diversity jurisdiction is to minimize any belief of the parties that a more local tribunal might favor local parties in disputes with "outsiders." In re Nahnsen, 1 FSM R. 97, 102 (Pon. 1982).

A requirement for complete diversity among all parties has no constitutional support as a prerequisite to FSM Supreme Court jurisdiction. In re Nahnsen, 1 FSM R. 97, 105-06 (Pon. 1982).

When jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative powers of states (*e.g.,* probate, inheritance and land issues) may be involved. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 392-93 (Pon. 1984).

Diversity of citizenship is determined as of commencement of the action. Where diversity existed between the parties at the date and time the suit commenced, diversity will not be defeated by later developments. Etpison v. Perman, 1 FSM R. 405, 414 (Pon. 1984).

Where there is diversity of citizenship between the parties, litigation involving domestic relations issues, including custody and child support, falls within the jurisdiction of the FSM Supreme Court. Mongkeya v. Brackett, 2 FSM R. 291, 292 (Kos. 1986).

For purposes of diversity jurisdiction under article XI, section 6(b) of the Constitution, a corporation is considered a foreign citizen when any of its shareholders are not citizens of the Federated States of Micronesia. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 260 (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).

Lack of mention of state and local courts in FSM Constitution article XI, section 6(b) reveals that national courts are to play the primary role in handling the kinds of cases, identified in that section, but nothing in article XI, section 6(b) may be read as absolutely preventing state courts from exercising jurisdiction over those kinds of cases. Bank of Guam v. Semes, 3 FSM R. 370, 379 (Pon. 1988).

Parties to a dispute in which there is diversity have a constitutional right to invoke the jurisdiction of a national court, but if all parties agree, and if state law permits, a state court may hear and decide the kinds of cases described in article XI, section 6(b) of the Constitution. Bank of Guam v. Semes, 3 FSM R. 370, 379 (Pon. 1988).

Only national courts are given jurisdiction by article XI, section 6(b) of the Constitution and the concurrent jurisdiction referred to there is between the trial division of the FSM Supreme Court, and any other national courts which may be established in the future. Bank of Guam v. Semes, 3 FSM R. 370, 377 (Pon. 1988).

The Trust Territory of the Pacific Islands, which still exists and has governmental powers in the Republic of Palau, is now "foreign" to the Federated States of Micronesia and a corporation organized under the laws of the Trust Territory may itself be regarded as foreign for purposes of diversity of citizenship jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 392 (Pon. 1988).

The Constitution requires only that one plaintiff has citizenship different from one defendant for there to be diversity jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 392 (Pon. 1988).

The national Constitution does not prohibit state courts from hearing cases described in article XI, section 6(b) if all parties accept state court jurisdiction, but parties to a dispute within scope of article XI, section 6(b) have a constitutional rights to invoke jurisdiction of FSM Supreme Court trial division. U Corp. v. Salik, 3 FSM R. 389, 392 (Pon. 1988).

Intent of framers of the Constitution was that national courts would handle most types of cases described in article XI, section 6(b) of the Constitution and national courts therefore should not lightly find a waiver of right to invoke its jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 394 (Pon. 1988).

A party named as a defendant in state court litigation which falls within the scope of article XI, section 6(b) of the Constitution may invoke national court jurisdiction through a petition for removal and is not required to file a complaint. U Corp. v. Salik, 3 FSM R. 389, 394 (Pon. 1988).

The Truk State Court will not assert jurisdiction in a diversity case because the "The national courts, including the trial division of the Supreme Court, have concurrent original jurisdiction . . . in disputes between a state and a citizen of another state, between citizens of different states, and between a state or a citizen thereof, and a foreign state, or subject." FSM Const. art. XI, § 6(b). Flossman v. Truk, 3 FSM R. 438, 440 (Truk S. Ct. Tr. 1988).

State courts are not prohibited by article XI, section 6(b) of the FSM Constitution from hearing and determining cases where the defendants are from FSM states other than the prosecuting state. Jurisdiction over criminal matters between the national and state governments is determined by the severity of the crime; not diversity of citizenship. Pohnpei v. Hawk, 3 FSM R. 543, 554 (Pon. S. Ct. App. 1988).

"Concurrent jurisdiction" as used in article XI, section 6(b) of the FSM Constitution means concurrent jurisdiction between national courts, including the trial divisions of the FSM Supreme Court and of the four state courts. Pohnpei v. Hawk, 3 FSM R. 543, 554-55 (Pon. S. Ct. App. 1988).

When all of the parties are citizens of foreign states there is no diversity of citizenship subject matter jurisdiction under article XI, section 6(b). International Trading Co. v. Hitec Corp., 4 FSM R. 1, 2 (Truk 1989).

A joint venture, without the powers to sue or be sued in the name of the association and without limited liability of the individual members of the association, is not a citizen of Truk State for diversity purposes even though its principal place of business is in Truk State. International Trading Corp. v. Hitec Corp., 4 FSM R. 1, 2 (Truk 1989).

A cautious, reasoned use of the doctrine of abstention is not a violation of the FSM Supreme Court's duty to exercise diversity jurisdiction, or of the litigants' constitutional rights, under article XI, section 6(b) of the FSM Constitution. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 39 (Pon. 1989).

While the FSM Constitution provides initial access to the FSM Supreme Court for any party in article XI, section 6(b) litigation, the court may, having familiarized itself with the issues, invoke the doctrine of abstention and permit the case to proceed in a state court, since the power to grant abstention is inherent in the jurisdiction of the FSM Supreme Court, and nothing in the FSM Constitution precludes the court from abstaining in cases which fall within its jurisdiction under article XI, section 6(b). Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 42-43 (Pon. 1989).

No jurisdiction is conferred on state courts by article XI, section 6(b) of the FSM Constitution, but neither does the diversity jurisdiction of section 6(b) preclude state courts from acting under state law, unless or until a party to the litigation invokes national court jurisdiction. Hawk v. Pohnpei, 4 FSM R. 85, 89 (App. 1989).

It is consistent with the broad plan of the framers of the FSM Constitution that the Constitution would not require that diversity jurisdiction be available in criminal proceedings. Hawk v. Pohnpei, 4 FSM R. 85, 94 (App. 1989).

Although the purpose of diversity jurisdiction is to provide parties who are not citizens of the state where a matter arises with a national forum for which the federation of states is responsible, the need to safeguard the legitimate rights of a noncitizen in a state forum must be balanced against the understandable concern of the society of that state to control standards of behavior in accordance with its own set of values. Hawk v. Pohnpei, 4 FSM R. 85, 94 (App. 1989).

The diversity jurisdiction provisions of article XI, section 6(b) of the FSM Constitution do not apply to criminal proceedings. Hawk v. Pohnpei, 4 FSM R. 85, 94 (App. 1989).

Jurisdiction based upon diversity of citizenship between the parties is concurrent in the Supreme Court and the national courts, and therefore a party to state court litigation where diversity exists has a constitutional right to invoke the jurisdiction of the national court. In re Estate of Hartman, 4 FSM R. 386, 387 (Chk. 1989).

Issues concerning land usually fall into state court jurisdiction, but if there are diverse parties having

bona fide interests in the case or dispute, the Constitution places jurisdiction in the national courts even if interests in land are at issue. Etscheit v. Adams, 5 FSM R. 243, 246 (Pon. 1991).

When an estate is a party it is the citizenship of the estate representative that is to be considered for diversity purposes. Etscheit v. Adams, 5 FSM R. 243, 246 (Pon. 1991).

Where, for six and a half years after the national court had come into existence the noncitizen petitioners made no attempt to invoke the national court's jurisdiction, the noncitizen petitioners affirmatively indicated their willingness to have the case resolved in court proceedings, first in the Trust Territory High Court and later in Pohnpei state court, and thus have waived their right to diversity jurisdiction in the national courts. Etscheit v. Adams, 5 FSM R. 243, 247-48 (Pon. 1991).

The fact that a "tactical stipulation," made in 1988 to eliminate all noncitizens as parities to the litigation and thus place the litigation within the sole jurisdiction of the state court, may have been violated in 1991, does not retroactively change the effect of the stipulation for purposes of jurisdiction. Etscheit v. Adams, 5 FSM R. 243, 248 (Pon. 1991).

National courts can exercise jurisdiction over divorce cases where there is diversity of citizenship although domestic relations are primarily the subject of state law. Youngstrom v. Youngstrom, 5 FSM R. 335, 336 (Pon. 1992).

In a diversity of citizenship case the FSM Supreme Court will normally apply state law. Youngstrom v. Youngstrom, 5 FSM R. 335, 337 (Pon. 1992).

For purposes of diversity jurisdiction a corporation is considered a foreign citizen when any of its shareholders are not FSM citizens. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 44 (App. 1995).

For purposes of diversity jurisdiction a joint venture is considered a foreign citizen when the parties to it are not FSM citizens. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 44 (App. 1995).

For purposes of diversity jurisdiction it is the citizenship of the estate administrator that is to be considered for determining citizenship of a decedent's estate. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 44 (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 FSM Supreme Court has diversity jurisdiction only in disputes between a state and a citizen of another state, between citizens of different states, and between a state or a citizen thereof, and a foreign state, citizen, or subject. Diversity jurisdiction thus does not exist when all the parties are foreign citizens, even though they may be citizens of different foreign nations. In such cases, the court's subject matter jurisdiction must be based on some other ground. Trance v. Penta Ocean Constr. Co., 7 FSM R. 147, 148 (Chk. 1995).

For the purposes of diversity jurisdiction the citizenship of a corporation is considered foreign if any of its shareholders are not FSM citizens or if it was organized under the laws of a foreign government. The citizenship of a corporation formed in the FSM and wholly owned by FSM citizens is in the state of its principal place of business. Ladore v. U Corp., 7 FSM R. 296, 298 (Pon. 1995).

In a diversity case, a litigant may avail himself of the FSM Supreme Court's jurisdiction even though state law may determine the outcome of the litigation. Island Dev. Co. v. Yap, 9 FSM R. 18, 22 (Yap 1999).

There is no statutory or decisional authority in the FSM which would permit a joint venture to be considered a citizen of the state where its principal place of business is located. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

A corporation that has any foreign ownership at all is a noncitizen of the FSM for diversity purposes. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

Any business entity in which any ownership interest is held by a person who is not a citizen of the FSM is a non-citizen. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 & n.1 (Yap 1999).

A general partnership is a foreign citizen for diversity purposes when a any ownership interest is held by a foreign citizen. Island Dev. Co. v. Yap, 9 FSM R. 220, 223-24 (Yap 1999).

In order to invoke the FSM Supreme Court's diversity jurisdiction under article XI, section 6(b) of the FSM Constitution, only one plaintiff need have citizenship different from one defendant. Island Dev. Co. v. Yap, 9 FSM R. 288, 290 (Yap 1999).

Since the FSM Supreme Court can decide a land issue under its diversity jurisdiction, the mere addition of the national government as another party to a diversity case should not divest the FSM Supreme Court of jurisdiction. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

In determining the question of jurisdiction based on the parties' citizenship, the FSM Supreme Court must look only to the parties of record. Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

When diverse citizenship was not present on the record in a case when it was removed, it cannot be created by the FSM Supreme Court's order when the court lacks the jurisdiction to issue any but procedural orders. Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

When the FSM Supreme Court does not have subject-matter jurisdiction in a case, it does not have the authority or jurisdiction to issue an order joining a diverse party, and any such order it did issue would be void for want of jurisdiction. Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

A state court joinder of a diverse party does not deprive the state court of jurisdiction, it merely makes its jurisdiction concurrent with the FSM Supreme Court. Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

The FSM Supreme Court does not have diversity jurisdiction under Article XI, section 6(b) over disputes between two foreign citizens, even if they are citizens of different countries. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 203 (Pon. 2001).

The FSM Constitution grants the FSM Supreme Court jurisdiction over disputes between a citizen of an FSM state and a citizen of a foreign state. Pernet v. Woodruff, 10 FSM R. 239, 242 (App. 2001).

No jurisdiction is conferred on state courts by article XI, section 6(b) but neither does section 6(b) diversity jurisdiction preclude state courts from acting under state law, unless or until a party to the litigation invokes national court jurisdiction. Pernet v. Woodruff, 10 FSM R. 239, 242 (App. 2001).

Both a state court and a national court may have jurisdiction over a case where, absent diversity considerations, the case is otherwise properly before the state court. Pernet v. Woodruff, 10 FSM R. 239, 242 (App. 2001).

In a diversity case, a plaintiff, as the party initiating suit, can file her action in either state or national court, and if she files in state court, the defendant has two alternatives, either to litigate on the merits in state court or to remove the matter to national court. Pernet v. Woodruff, 10 FSM R. 239, 242-43 (App. 2001).

The benefit the Constitution secures to diverse parties is the right to litigate in national court. Pernet v.

Woodruff, 10 FSM R. 239, 243 (App. 2001).

The fact of the parties' diversity, without more, does not preclude a suit in state court because to invoke national court jurisdiction so as to divest a state court of jurisdiction means to remove the action to national court. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

A motion to dismiss a state court case because of diversity neither divests the state court of jurisdiction nor invokes the FSM Supreme Court's diversity jurisdiction. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

To invoke national court jurisdiction in a diversity case, a removal petition must be filed within 60 days of a party's receipt of papers from which his right to remove the case may first be ascertained. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

Failure to file a removal petition within the time requirements of FSM General Court Order 1992-2 constitutes a waiver of the right to invoke national court jurisdiction in cases involving parties of diverse citizenship. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

In diversity cases, state courts otherwise having jurisdiction pursuant to state law are not divested of jurisdiction unless or until a removal petition is timely filed, prompt written notice of such filing is served upon all parties, and a copy of the petition is filed with the state court clerk. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

Section 6(b) does not grant the FSM Supreme Court exclusive jurisdiction over diversity cases. Section 6(b) does not bar a state court from exercising jurisdiction over a case in which the parties are of diverse citizenship, if the state court otherwise has jurisdiction. First Hawaiian Bank v. Berdon, 10 FSM R. 538, 539 (Chk. S. Ct. Tr. 2002).

If diverse parties wished to have a case in the Chuuk State Supreme Court heard in the FSM Supreme Court, they should have removed the case to the FSM Supreme Court using the procedure outlined in FSM General Court Order 1992-2. When they have not, a motion to dismiss filed in the Chuuk State Supreme Court will not invoke that court's jurisdiction. First Hawaiian Bank v. Berdon, 10 FSM R. 538, 539 (Chk. S. Ct. Tr. 2002).

There is no requirement of complete diversity of parties for the FSM Supreme Court to have jurisdiction over a matter. The FSM Constitution requires only that one plaintiff has citizenship different from one defendant for there to be diversity jurisdiction. Ambros & Co. v. Board of Trustees, 11 FSM R. 17, 23 (Pon. 2002).

For purposes of diversity jurisdiction under article XI, section 6(b) of the Constitution, a corporation is considered a foreign citizen when any of its shareholders are not citizens of the FSM. Ambros & Co. v. Board of Trustees, 11 FSM R. 17, 24 (Pon. 2002).

When jurisdiction exists by virtue of the parties' diversity, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the states' legislative powers (e.g., probate, inheritance and land issues) may be involved. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

In property cases, if there are diverse parties having bona fide interests in the case or dispute, the FSM Constitution places jurisdiction in the FSM Supreme Court, and this is so even if interests in land are at issue in the litigation. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

A party to a dispute within the scope of article XI, section 6(b) has a constitutional right to invoke the jurisdiction of the FSM Supreme Court. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

The FSM Supreme Court has concurrent jurisdiction along with the state courts to hear cases where diversity of citizenship of the parties exists. Gilmete v. Adams, 11 FSM R. 105, 108 (Pon. 2002).

It is well settled that the FSM Supreme Court may hear cases based on diversity even when land is at issue. Gilmete v. Adams, 11 FSM R. 105, 108 (Pon. 2002).

The FSM Supreme Court cannot imply or create diversity of citizenship in a case. If it does not have subject matter jurisdiction in a case, it does not have the authority or jurisdiction to issue an order joining another party. Gilmete v. Adams, 11 FSM R. 105, 110 (Pon. 2002).

Diversity jurisdiction does not exist when all the parties are foreign citizens, even though they may be citizens of different foreign nations. In such cases, the FSM Supreme Court's subject matter jurisdiction must be based on some other ground. Kelly v. Lee, 11 FSM R. 116, 117 (Chk. 2002).

A motion to dismiss for lack of diversity jurisdiction will be denied when the plaintiff's complaint does not plead diversity jurisdiction (found in section 6(b) of article XI of the Constitution), but clearly pleads that the court's jurisdiction under section 6(a), and when a fair reading of the plaintiff's claim is that it is based on the defendant's alleged breach of a maritime contract – the plaintiff's employment contract as a ship's captain. This, coupled with the complaint's allegation that the court has jurisdiction based on section 6(a), which provides for FSM Supreme Court exclusive jurisdiction over certain cases including admiralty and maritime cases, indicates that the plaintiff did not base his jurisdictional plea on the parties' citizenship, but upon the case's alleged maritime nature. Kelly v. Lee, 11 FSM R. 116, 117 (Chk. 2002).

A corporation partly owned by non-FSM citizens, is a foreign citizen for diversity jurisdiction purposes because a corporation is deemed a foreign citizen when any of its shareholders are not FSM citizens. Marcus v. Truk Trading Corp., 11 FSM R. 152, 155 (Chk. 2002).

If diversity of citizenship among the parties were not present and there were no other basis of jurisdiction, the FSM Supreme Court would be without subject matter jurisdiction, and any judgment it might render would be void and without any res judicata effect because all proceedings that had taken place would have been for naught, and the plaintiffs would have to start all over again in state court if they still wished to pursue the matter. Marcus v. Truk Trading Corp., 11 FSM R. 152, 155 n.1 (Chk. 2002).

It is well established that the FSM Supreme Court has jurisdiction as a result of the parties' diversity of citizenship. Villazon v. Mafnas, 11 FSM R. 309, 310 (Pon. 2003).

It is well established that diversity is determined as of the commencement of the action. Once diversity jurisdiction attaches, or vests, it is not defeated by later developments, such as a party's later change of domicile or the dismissal of a party due to partial settlement. Island Homes Constr. Corp. v. Pohnpei Transp. Auth., 12 FSM R. 128, 129 (Pon. 2003).

When a consolidated case is before the FSM Supreme Court trial division under its diversity jurisdiction – because of the parties' diverse citizenship – state law will usually provide the rules of decision. This is especially true in real property cases. Enlet v. Bruton, 12 FSM R. 187, 189 (Chk. 2003).

In a diversity case, the FSM Supreme Court trial division has no greater and no lesser power than the state court would have if it were hearing the case. It may exercise whatever powers the state court could have if the case been before that court. Enlet v. Bruton, 12 FSM R. 187, 189 (Chk. 2003).

It has been a principle of long standing that, for purposes of diversity jurisdiction under the Constitution's article XI, section 6(b), a corporation or a joint venture is considered a foreign citizen when any of its shareholders are not FSM citizens. Its place of incorporation is irrelevant. Geoffrey Hughes (Export) Pty, Ltd. v. America Ducksan Co., 12 FSM R. 413, 414 (Chk. 2004).

When all parties to an action are foreign citizens, even if they are citizens of different foreign countries,

the FSM Supreme Court does not have diversity jurisdiction. Geoffrey Hughes (Export) Pty, Ltd. v. America Ducksan Co., 12 FSM R. 413, 415 (Chk. 2004).

Section 6(b) of Article XI of the FSM Constitution provides that the national courts, including the Supreme Court trial division, have concurrent original jurisdiction in cases arising under the Constitution, national law or treaties, and in disputes between a state and a citizen of another state, between citizens of different states, and between a state or citizen thereof, and a foreign state, citizen, or subject. The national courts referred to in this section are the FSM Supreme Court trial division and any other national courts which may be established in the future. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 147 (App. 2005).

Section 6(a) contains a single jurisdictional exception limited in scope to a case involving the national government as a party. In contrast, Section 6(b) contains no exception of any kind. This admits of no conclusion other than the obvious one: the Framers intended that the limited exception stated in Section 6(a) apply to cases involving an interest in land in which the national government is a party, and with equal force intended that no such exception apply to any of the kinds of cases specified in Section 6(b). Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 148 (App. 2005).

The adoption of Committee Proposal No. 01-5 by the Third Constitutional Convention does not act as a check upon the exercise of the FSM Supreme Court's diversity jurisdiction in land cases because the proposed amendment was not ratified by the people. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 150 (App. 2005).

Parties to a dispute within the scope of article XI, section 6(b) have a constitutional right to invoke the jurisdiction of the FSM Supreme Court and it is the solemn obligation of the court and all others within the Federated States of Micronesia to uphold that constitutional right to invoke national court jurisdiction under Article XI, Section 6(b). To accept the contention that the FSM Supreme Court trial division has no jurisdiction in diversity cases involving land would defeat the exercise of that right. The court upholds the right of litigants who fall within the scope of Article XI, Section 6(b) to invoke the FSM Supreme Court's jurisdiction in cases involving land issues. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 150 (App. 2005).

If in the complaint, a plaintiff asserts a contractual cause of action over which the FSM Supreme Court may exercise diversity jurisdiction, whether the defendants might ultimately prevail on one or more of their defenses does not deprive the FSM Supreme Court of subject matter jurisdiction. McVey v. Etscheit, 13 FSM R. 473, 476 (Pon. 2005).

Minimal diversity of citizenship, not complete diversity, is the rule in the Federated States of Micronesia. Lee v. Han, 13 FSM R. 571, 576 (Chk. 2005).

Diversity jurisdiction gives concurrent original jurisdiction to the state and national courts. FSM GCO 1992-2 provides for removal of diversity cases from the state to national courts and is directed solely to the issue of the transfer of cases between the state and national courts. It provides a procedure for removal, not authority for dismissal from state court. Muller v. Enlet, 16 FSM R. 92, 94 (Chk. S. Ct. Tr. 2008).

A motion to dismiss filed in the Chuuk State Supreme Court asserting non-consent to the court's jurisdiction will not, by its invocation of the FSM court's jurisdiction, deprive the Chuuk State Supreme court of its jurisdiction. Rather, in diversity cases, state courts otherwise having jurisdiction pursuant to state law are not divested of jurisdiction unless or until a removal petition is timely filed, prompt written notice of such filing is served upon all parties, and a copy of the petition is filed with the state court clerk. Thus, when an action is originally filed in state court, the state court retains its jurisdiction, despite the diversity of parties, so long as the same action is not filed in or removed to the FSM court. An allegation of diversity jurisdiction is not a proper basis for a defendant's motion to dismiss. Muller v. Enlet, 16 FSM R. 92, 94 (Chk. S. Ct. Tr. 2008).

When the parties are of diverse citizenship and when some of the plaintiff's claims arise under a treaty to which the FSM is a party, the FSM Supreme Court would, on either ground, have subject-matter jurisdiction over the case if an actual case or dispute exists. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 157 (Chk. 2010).

Since national court jurisdiction is proper when the parties are diverse, a Kosrae statute that requires a foreclosure action to be filed in Kosrae State Court cannot divest the FSM Supreme Court of its constitutionally mandated jurisdiction under the FSM Constitution. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

Minimal diversity, not complete diversity, is the rule in the Federated States of Micronesia. Damarlane v. U Mun. Gov't, 18 FSM R. 96, 98 (Pon. 2011).

When a fair reading of the complaint does not show a cause of action against the one diverse defendant, that person is thus merely a nominal party present only so that the plaintiff can plead the court's diversity jurisdiction. When the plaintiff has, for the sole purpose of attempting to create diversity of citizenship, named a person as a defendant against whom he asserts no cause of action or claim for relief, the court will dismiss the nominal diverse defendant from the case as improperly joined and then dismiss the complaint for lack of subject-matter jurisdiction because there was no actual diversity of citizenship when the case was filed. Hauk v. Mijares, 18 FSM R. 185, 187 (Chk. 2012).

The court does not believe that it can exercise jurisdiction over every credit dispute between a customer and a local business merely because that business has a foreign accountant (or manager) who a plaintiff can name as a nominal, but diverse, defendant. Hauk v. Mijares, 18 FSM R. 185, 187 (Chk. 2012).

A Chuukese plaintiff in a suit against a Chuukese business or other Chuukese entity cannot create jurisdiction in the FSM Supreme Court merely by adding the defendant's non-citizen employees as co-defendants when the plaintiff's claims are only against the employer. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 (Chk. 2012).

Even though a court must exercise its discretion liberally to grant leave to amend a complaint, the court should deny a motion to amend when it would be futile to amend the complaint to add diverse parties from whom no relief can be obtained since they are not statutorily liable to plaintiff. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 (Chk. 2012).

If the case involves parties of diverse (different) citizenship, then the FSM Supreme Court trial division has concurrent jurisdiction, unless all the parties are foreign citizens. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

Only minimal, not complete, diversity of citizenship is required for subject-matter jurisdiction in the FSM Supreme Court. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

If a party is a corporation, the corporation's citizenship is the citizenship of its shareholders and, for purposes of diversity jurisdiction, a corporation is considered a foreign citizen when any of its shareholders are not FSM citizens. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

Even if the FSM Development Bank were not an FSM national government agency, the FSM Supreme Court would still have subject-matter jurisdiction over the case as one between a plaintiff corporation with Chuuk and Kosrae citizenship and Pohnpei citizen defendants. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

Complete diversity of citizenship is not a requirement for the FSM Supreme Court to have subject-matter jurisdiction in a diversity case; only minimal diversity is required. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 656 (Pon. 2013).

The FSM Supreme Court is empowered to exercise authority in probate matters when there is an independent basis for jurisdiction under the Constitution, and the court has found such an independent basis when there was a diversity of citizenship among the heirs. In re Estate of Edmond, 19 FSM R. 59, 61 (Kos. 2013).

Parties to a dispute within the scope of article XI, section 6(b) diversity jurisdiction have a constitutional right to invoke the FSM Supreme Court's jurisdiction and it is the solemn obligation of the court and all others within the Federated States of Micronesia to uphold the constitutional right to invoke national court jurisdiction under article XI, section 6(b). Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

The FSM Supreme Court's solemn obligation to consider the interests and protect the rights of those who wish to invoke its constitutional jurisdiction counsels against the unfettered use of abstention. The benefit the Constitution secures to diverse parties is the right to litigate in national court. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

A diverse party's constitutional right to litigate in the FSM Supreme Court should not lightly be disregarded, and the FSM Supreme Court's discretionary power to abstain must be exercised carefully and sparingly. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

Diversity cases where the causes of action are state law are not subject to abstention and dismissal at a judge's whim. That would make the constitutional right for diverse parties to litigate in the FSM Supreme Court an empty one. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

When jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative powers of states (e.g., probate, inheritance and land issues) may be involved. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 431 (App. 2014).

A long line of precedents supports diversity jurisdiction as a proper independent basis for national jurisdiction of probate matters. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 431 (App. 2014).

The Constitution only requires minimal diversity. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 431 n.2 (App. 2014).

When the legal issue of whether the foreign citizen CPUC Chief Executive Officer could be a defendant in a lawsuit by the Chuuk Health Care Plan to collect unpaid health insurance premiums, thereby creating diversity jurisdiction, was previously litigated and a final decision rendered concluding that it could not be done; when the time to appeal that decision has expired; and when the same parties are present, res judicata bars the action in the FSM Supreme Court and the case will be dismissed without prejudice to any action in the Chuuk State Supreme Court. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 (Chk. 2016).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders and only minimal diversity need exist. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

Concurrent jurisdiction properly exists given the diverse citizenship of the parties or when consonant with the "arising under" constitutional provision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 518 (App. 2016).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders and only minimal diversity need exist. Setik v. Perman, 21 FSM R. 31, 36 (Pon. 2016).

– Exclusive FSM Supreme Court

The National Criminal Code places in the FSM Supreme Court exclusive jurisdiction over allegations of violations of the Code. No exception to that jurisdiction is provided for juveniles, so charges of crimes leveled against juveniles are governed by the National Criminal Code. FSM v. Albert, 1 FSM R. 14, 15