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

(Pon. 1981).

A seaman's contract claim against the owner of the vessel upon which he served would be regarded as falling within the FSM Supreme Court's exclusive admiralty and maritime jurisdiction. FSM Const. art. XI, § 6(a). Lonno v. Trust Territory (I), 1 FSM R. 53, 68-71 (Kos. 1982).

The FSM Development Bank is an instrumentality of the national government and part of the national government for the purposes of FSM Constitution article XI, section 6(a), giving the trial division of the Supreme Court exclusive jurisdiction over cases in which the national government is a party. FSM Dev. Bank v. Estate of Nanpei, 2 FSM R. 217, 221 (Pon. 1986).

In an action on a delinquent promissory note brought by an instrumentality of the national government which seeks to foreclose the mortgage securing the payment of the note, prior to the filing of an answer no interest in land is at issue, and therefore, the motion to dismiss on the ground that the court lacked jurisdiction is denied. FSM Dev. Bank v. Mori, 2 FSM R. 242, 244 (Truk 1987).

A dispute arising out of injury sustained by a passenger on a vessel transporting passengers from Kosrae to Pohnpei, at a time when the vessel is 30 miles from Kosrae, falls within the exclusive admiralty jurisdiction of the FSM Supreme Court. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

The FSM Supreme Court's grant of original and exclusive jurisdiction in admiralty and maritime cases implies the adoption of admiralty or maritime cases as of the drafting and adoption of the FSM Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 59 (Truk 1989).

The enforcement of ships' mortgages does not come within the admiralty jurisdiction of the FSM Supreme Court. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 60 (Truk 1989).

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).

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 framers of the Constitution made clear that the term "exclusive" in article XI, section 6(a) of the FSM Constitution means that for the types of cases listed in that section, the trial division of the FSM Supreme Court is the only court of jurisdiction. Faw v. FSM, 6 FSM R. 33, 35 (Yap 1993).

A state law cannot divest the FSM Supreme Court of exclusive jurisdiction in cases arising under article XI, section 6(a) of the FSM Constitution. Faw v. FSM, 6 FSM R. 33, 36-37 (Yap 1993).

The FSM Supreme Court has exclusive jurisdiction in actions by the national government to enforce the terms of fishing agreements and permits to which it is a party. FSM v. Hai Hsiang No. 63, 7 FSM R. 114, 116 (Chk. 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).

Only the FSM Supreme Court has original and exclusive jurisdiction over admiralty and maritime and certain other cases under the Constitution. The other national courts authorized by the Constitution, but which Congress has never created, are only authorized to entertain cases of concurrent jurisdiction, and thus could never exercise jurisdiction over admiralty and maritime cases. Maritime jurisdiction can reside only in one national court – the Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 460 n.2 (App. 1996).

Actions to enforce *in personam* civil penalties for violations of state fishing laws are within the exclusive admiralty and maritime jurisdiction of the FSM Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 464-65 (App. 1996).

The FSM Supreme Court has original and exclusive jurisdiction over a suit on an FSM Development Bank promissory note because the national government is a party. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001).

Jurisdiction over admiralty and maritime cases resides exclusively with the FSM Supreme Court trial division. The language of the FSM Constitution is clear and unambiguous in this regard. Robert v. Sonis, 11 FSM R. 31, 33 (Chk. S. Ct. Tr. 2002).

The exclusive nature of the national court jurisdiction is such that the FSM Supreme Court appellate division has held that it does not have the power to abstain from admiralty and maritime cases. Robert v. Sonis, 11 FSM R. 31, 33 (Chk. S. Ct. Tr. 2002).

Plaintiffs cannot rely on a default judgment entered in excess of the trial court's jurisdiction in another case as conferring jurisdiction on the court in their cases. Robert v. Sonis, 11 FSM R. 31, 33 (Chk. S. Ct. Tr. 2002).

The only time the FSM Supreme Court does not have original and exclusive jurisdiction over the types of cases enumerated in Section 6(a) is in those specific cases where the national government is a party and an interest in land is at issue. Gilmete v. Adams, 11 FSM R. 105, 108 (Pon. 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).

In contrast to Section 6(b), Section 6(a) of Article XI provides that the Supreme Court trial division has original and exclusive jurisdiction in cases affecting officials of foreign governments, disputes between states, admiralty or maritime cases, and in cases in which the national government is a party except where an interest in land is at issue. Section 6(a) names four different types of cases: 1) those affecting officials of foreign governments; 2) those involving disputes between states; 3) those that are admiralty or maritime in character; and 4) those where the national government is a party. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 148 (App. 2005).

Section 6(a) carves out a specific exception for cases involving land – the trial division has original and

exclusive jurisdiction in cases in which the national government is a party except where an interest in land is at issue. Or to cast this as a negative, the trial division does not have original and exclusive jurisdiction in a case in which the national government is a party and an interest in land is at issue. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 148 (App. 2005).

A case involving the hazardous duty pay claims of fifty-eight port operators and seamen employed by the defendants on Federated States of Micronesia Class III vessels comes before the FSM Supreme Court on the court's exclusive jurisdiction in admiralty and maritime cases. Zion v. Nakayama, 13 FSM R. 310, 312 (Chk. 2005).

When the FSM Government is a party defendant, the court has subject matter jurisdiction under Article XI, § 6(a) of the Constitution, which provides that the FSM Supreme Court trial division has original and exclusive jurisdiction in cases in which the national government is a party. Emmanual v. Kansou, 13 FSM R. 527, 529 (Chk. 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).

The FSM Supreme Court has exclusive and original subject matter jurisdiction over a case in admiralty. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

The FSM Supreme Court trial division has original and exclusive jurisdiction in admiralty or maritime cases but the exact scope of admiralty and maritime jurisdiction is not defined in the Constitution or elsewhere. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 507-08 (Pon. 2006).

The article XI, section 6(a) maritime jurisdiction extends to all cases which are maritime in nature. Since a maritime cause of action is one arising on the sea, ocean, great lakes, or navigable rivers, or from some act or contract concerning the commerce and navigation thereof, and when, although the plaintiffs attempt to characterize the issue as one of state law, they are essentially complaining about loss of business as a result of the penalties imposed by the port authority on the vessels resulting from the port authority's maritime-related activities, it is a maritime case and will not be remanded to state court. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 508 (Pon. 2006).

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).

In a collection case based on a defaulted loan, no interest in land was ever at issue when the fee simple ownership of the parcel was never at issue and when the bank's registered mortgage lien was not at issue, so the jurisdictional language in section 6(a) is not applicable. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 (Chk. 2011).

The FSM Supreme Court clearly has jurisdiction over the FSM Development Bank's two causes of action – 1) to collect an unpaid promissory note and 2) to foreclose the chattel mortgage and apply the proceeds to the unpaid loan – because, under section 6(a), the court has exclusive jurisdiction in a case where a party is an instrumentality of the national government and the FSM Development Bank is an instrumentality of the national government. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 93 (Yap 2011).

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).

The FSM Development Bank is an instrumentality of the national government and part of the national government for the purposes of FSM Const. art. XI, § 6(a), which gives the FSM Supreme Court trial division exclusive jurisdiction over cases in which the national government is a party. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

When the property was lawfully transferred and this transfer is not a part of what is being appealed because the appellants are appealing the minimum sale price and when the mortgagee does not have title to the land but only a lien, the court will reject the appellants' claim of lack of subject-matter jurisdiction based on the exception for where an interest in land is at issue. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

The FSM Supreme Court's subject-matter jurisdiction cannot be determined by reference to the Constitution's detailed command to the Public Auditor about the breadth and depth of the tasks that the Public Auditor must undertake. The exclusive jurisdiction that the FSM Supreme Court exercises when the national government is a party cannot be avoided, and was never meant to be avoided, by the mere device of naming a branch, or a department, or an agency, or a statutory authority of the national government as a party instead of naming the national government itself as a party. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

If the FSM national government is a party to the case and an interest in land is not at issue, the FSM Supreme Court trial division has exclusive jurisdiction. If an interest in land is at issue, the FSM Supreme Court may still have jurisdiction but it will not be exclusive. 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).

While the restructured FSM Development Bank differs from its earlier incarnation, it does not differ enough for it to be considered no longer an FSM national government instrumentality for Section 6(a) purposes because it is still imbued with a public purpose; it is still governed by a special act at title 30 of the FSM Code, rather than by the general banking statutes at title 29; there is still no private ownership of the Bank; 98.7%, of its shares are owned by the national government, making the FSM national government the shareholder that chooses the board of directors, with the exception of the Bank's president who is an ex officio member of the board and who is chosen by the other board members; the Bank is thus still under the control of the FSM national government that created it and still submits annual reports to the national government although now this is in the national government's capacity as a shareholder; and because in every fiscal year but one, Congress has appropriated funds for the restructured Bank's use. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

The restructured FSM Development Bank is fiscally independent of the national government as are a number of other national government instrumentalities and agencies – FSM Social Security Administration; National Fisheries Corporation; FSM Telecommunications Corporation; MiCare Health Insurance; and FSM Petroleum Corporation. This fiscal autonomy removes these FSM national government instrumentalities from the national government's every day political influence and control, but these instrumentalities were created by the national government and are still under its control, first as a shareholder or the shareholder, and second since Congress can, at any time, amend the statutes that created the restructured Bank, or any of these other instrumentalities, to exert or enforce some new national policy preference. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

That the national government is not legally responsible for the FSM Development Bank's debts, does not prevent the bank from being a national government instrumentality since other national government

instrumentalities have similar status. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

As befits a national government agency or instrumentality, the FSM Development Bank is exempt from any taxes (except import taxes) or assessments on its property or operations, and similar statutory provisions exist for other national government instrumentalities and agencies. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

The restructured FSM Development Bank remains, regardless of the name given it and the other details of form, subject to the article XI, § 6(a) constitutional provision and, as with similar national government instrumentalities, it should be treated as part of the national government for jurisdiction purposes because it is an organization created by the national government for a public purpose and over which the national government can exercise control when it chooses. It is not an organization that the national government merely licensed or authorized to operate for private purposes. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

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).

The FSM Development Bank is an instrumentality of the national government, and should be treated as if the national government itself is the actor. It, therefore, has an independent basis for jurisdiction under the Constitution article XI, § 6(a) and the national forum is available to it. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014).

The FSM Development Bank may fully adjudicate many matters in the national court until land is at issue. At that time, unless, a separate and additional source of jurisdiction can be found, the case must be dismissed and returned to the state court, or alternately, held in abeyance until the land issue is certified. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014).

As an instrumentality of the government, the FSM Development Bank is, under Civil Rule 17's third party beneficiary clause, a real party in interest for the purposes collecting judgments from a party, limited by the land clause exception in article XI, § 6(a), and whenever "land is at issue" the national forum is no longer available so that if and when title to the land is disputed by the parties, the proceedings on that issue must be dismissed, or alternatively, the issue may be certified to the state court. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 435-36 (App. 2014).

If an independent basis creates exclusive jurisdiction in the national courts, the action must be removed from the state court, and adjudicated in the national forum. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

When the defendant has failed to substantiate a legally recognizable possessory interest in the land on which he has settled and for which the FSM has a certificate of title and absent any such indicia that an interest in land is present, the FSM Supreme Court has subject matter jurisdiction. FSM v. Falan, 20 FSM R. 59, 61-62 (Pon. 2015).

Subject matter jurisdiction is proper for the FSM Supreme Court when the defendant has not adequately shown a possessory interest, much less an ownership interest, to reflect a case or dispute where an interest in land is at issue as the matter involves the defendant's entry upon land to which the FSM holds a certificate of title and the pending trespass cause of action therefore concerns one for an alleged violation of possession, not for challenge to title. FSM v. Falan, 20 FSM R. 59, 62 (Pon. 2015).

A mortgage foreclosure generally does not constitute an interest in land being at issue because in a

mortgage foreclosure the interests in land are not in dispute – the parties all agree who owns the land and who holds the mortgage. The mortgagee just seeks to foreclose the mortgage which a mortgagor has pledged as security for a debt and which the mortgagor earlier agreed, when he signed the mortgage, could be sold if the debt remained unpaid. Thus, the Exception Clause does not preclude jurisdiction. Sam v. FSM Dev. Bank, 20 FSM R. 409, 416 (App. 2016).

A seaman's contract claim against the owner of the vessel on which he served falls within the FSM Supreme Court's exclusive admiralty and maritime jurisdiction. Gilmete v. Peckalibe, 20 FSM R. 444, 448 & n.3 (Pon. 2016).

Cases involving claims for wages by seamen are maritime cases. Gilmete v. Peckalibe, 20 FSM R. 444, 448 (Pon. 2016).

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).

Since the FSM Supreme Court has jurisdiction over all cases which are maritime in nature including all maritime contracts, torts, and injuries, it has jurisdiction over a seaman's claims for breach of contract and negligence. Gilmete v. Peckalibe, 20 FSM R. 444, 449 (Pon. 2016).

Although an aggrieved seaman, employed by the FSM, may file a petition at the administrative level, he, as a contract employee not covered under the FSM Public Service System, is free instead, to file suit in the FSM Supreme Court, which has exclusive jurisdiction over admiralty and maritime claims. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

Because of the unique classification of seamen and their rights as employees, along with the limitations when it comes to the termination of their employment, and because this class of FSM national government employees is distinct, and in line with FSM Constitution Article XI, § 6(a), the FSM Supreme Court should exercise its exclusive jurisdiction over the matter rather than confer authority to an administrative body. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

Since the FSM Development Bank was formed by the national government to undertake a public purpose and is subject to its creator's control, the reconfigured FSM Development Bank constitutes a national government instrumentality within Article XI, § 6(a), and is accorded the status equivalent to that of the national government. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 515 (App. 2016).

The FSM Supreme Court's exclusive jurisdiction over cases in which the national government is a party is not paralleled in the United States, and such differences presumably reflect a conscious effort by the framers to select a road other than that paved by the United States Constitution. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 (App. 2016).

The FSM Development Bank is a national government instrumentality under Section 6(a) of Article XI. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 518 (App. 2016).

When the FSM was not a successor-in-interest to the lands in question because, as a matter of law, the Trust Territory government never transferred to the FSM national government any of the Trust Territory's interest in that land; when the only basis, asserted or apparent, for the FSM Supreme Court's jurisdiction is that the FSM national government is a party; and when the FSM was never properly a party because it had no interest in the land, the plaintiff has not stated a claim over which the FSM Supreme Court can exercise jurisdiction or for which it can grant relief and the FSM's motion to dismiss will therefore be granted and the FSM is dismissed and since the court never had jurisdiction over the case, it is dismissed without prejudice to any proceeding in a court of competent jurisdiction. Chuuk v. Weno Municipality, 20 FSM R. 582, 585 (Chk. 2016).

That the FSM Development Bank seeks to sell land of undisputed ownership does not divest the court

of jurisdiction when it otherwise has jurisdiction. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 612 (Pon. 2016).

The FSM Supreme Court trial division has original and exclusive jurisdiction over admiralty and maritime cases. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 131 (Pon. 2017).

– In Rem

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).

In order to exercise *in rem* jurisdiction the thing over which jurisdiction is to be exercised (or its substitute, *e.g*., a bond) must be physically present in the jurisdiction and under the control of the court. In re Kuang Hsing No. 127, 7 FSM R. 81, 82 (Chk. 1995).

Where *in rem* jurisdiction over a vessel has not been established and its owner has not been made a party to the action an *in rem* action that includes a claim against the vessel's owner may be dismissed without prejudice. In re Kuang Hsing No. 127, 7 FSM R. 81, 82 (Chk. 1995).

The FSM Constitution, by its plain language, grants exclusive and original jurisdiction to the FSM Supreme Court trial division for admiralty and maritime cases. It makes no exceptions. Therefore all *in rem* actions against marine vessels, even those by a state seeking forfeiture for violation of its fishing laws, must proceed in the trial division of the FSM Supreme Court. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 463 (App. 1996).

Generally, to complete a court's jurisdiction in an in rem action, the res must be seized and be under the court's control. In other words, jurisdiction of the res is obtained by a seizure under process of the court, whereby it is held to abide such order as the court may make concerning it. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 370 (Kos. 2000).

When a vessel has not been seized and is not in the FSM, the court has not obtained jurisdiction over it and the complaint as to the vessel must be dismissed. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 370 (Kos. 2000).

When the complaint states that it is an admiralty and maritime action and that the plaintiffs are invoking the court's *in rem* and *in personam* jurisdiction, plaintiffs' failure to style their action against a vessel as *in rem* in the caption is merely a formal error and not a fatal defect, and the caption can always be amended to correct technical defects. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. The FSM Supreme Court may exercise *in rem* jurisdiction over a vessel for damage done by that vessel. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

In order for a court to exercise *in rem* jurisdiction, the thing (such as a vessel) over which jurisdiction is to be exercised (or its substitute, *e.g*., a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. Moses v. M.V. Sea Chase, 10 FSM R. 45, 51 (Chk. 2001).

When a vessel was never seized and brought under the court's jurisdiction and is no longer present in the jurisdiction, a court cannot exercise *in rem* jurisdiction over it and all such claims against the vessel will be dismissed without prejudice. Moses v. M.V. Sea Chase, 10 FSM R. 45, 52 (Chk. 2001).

In order for a court to exercise *in rem* jurisdiction, the thing over which jurisdiction is to be exercised must be physically present in the jurisdiction. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

The charterer under a demise is responsible for the proper performance of all agreements made with

third parties in connection with the ship's operation. The charterer, as owner *pro hac vice* is also potentially liable for collision, personal injuries to the master, crew, and third parties, pollution damages, and for loss or damage to the chartered vessel. The vessel owner normally has no personal liability, but the vessel may be liable *in rem*. The charterer, however, has an obligation to indemnify the vessel owner if the damage was incurred through the charterer's negligence or fault. Yap v. M/V Cecilia I, 13 FSM R. 403, 409 (Yap 2005).

When the proceeding against the defendant vessel is an *in rem* proceeding – the vessel's forfeiture is sought – a motion to release the vessel without any bond will be denied because in order to exercise *in rem* jurisdiction, the thing over which jurisdiction is to be exercised (or its substitute, *e.g*., a bond) must be physically present in the jurisdiction and under the court's control. FSM v. Kana Maru No. 1, 14 FSM R. 300, 302 (Chk. 2006).

When the government's complaint seeks, among other things, a vessel's forfeiture under 24 F.S.M.C. 801(1), the case is, in part, an *in rem* proceeding, albeit one created by the marine resources statute. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 (Chk. 2006).

In generally accepted admiralty practice, a letter of undertaking becomes the substitute *res* for a vessel in lieu of the vessel's seizure, providing the court with *in rem* subject matter jurisdiction. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. A court cannot exercise *in personam* jurisdiction over a vessel, but can entertain an *in personam* suit against a vessel's owner if the court has obtained personal jurisdiction over the owner. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

For a court to exercise *in rem* jurisdiction, the thing (*res*) over which jurisdiction is to be exercised (or its substitute) must be physically present in the jurisdiction and under the court's control where it will be held to abide further order. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

When a vessel was never seized and brought under the court's control and is not in, or is no longer in, the FSM, the court cannot exercise *in rem* jurisdiction over it and all claims against the vessel will be dismissed without prejudice unless a letter of undertaking or a bond has been made a substitute *res* for the vessel in lieu of the vessel's seizure, thus permitting the court to exercise *in rem* jurisdiction. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

When two vessels were never arrested or seized in the FSM and no substitute *res*, a bond or letter of undertaking, has been provided to the court so that the court can exercise *in rem* jurisdiction through the substitute, the court lacks jurisdiction over the vessels regardless of the service on the vessels' agent, and no default can be entered against either vessel. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

Vessels are not subject to service of process under Rule 4(d)(3) (service on corporations), but must be proceeded against *in rem* because they are things, not corporations. This is unlike the vessels' owner, which is a corporation. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

When the court has not acquired *in rem* jurisdiction over the two vessels and since service on an agent cannot create jurisdiction over a vessel, the complaint against the two vessels will be dismissed without prejudice. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 85 (Yap 2010).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is in rem, and in order for a court to exercise in rem jurisdiction, the vessel over which jurisdiction is to be exercised (or its substitute, *e.g*., a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it.

People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

If a vessel was never seized and brought under the court's control and is not in, or is no longer in, the FSM, the court has not acquired in rem jurisdiction over it and all claims against it will be dismissed without prejudice unless a letter of undertaking or a bond has been made a substitute *res* for the vessel in lieu of its seizure. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

When a tug is not present in the FSM and was not arrested when it was present and when no bond or letter of undertaking has been posted to provide a substitute res over which the court could exercise jurisdiction, the complaint against it must be dismissed without prejudice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

The FSM Supreme Court cannot exercise jurisdiction over any vessel unless that *in rem* defendant has been validly arrested in the FSM and brought under the court's actual control or under its constructive control through the provision of a substitute security. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

Unlike *in personam* defendants, who may under certain circumstances be validly served process in foreign countries, valid service of process on an *in rem* defendant can only be made within the court's territorial jurisdiction. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

A court cannot order an *in personam* defendant to bring a vessel into the jurisdiction so that a plaintiff may then have it arrested and brought within the court's jurisdiction and made a separate defendant *in rem* because a court's authority to exercise *in rem* jurisdiction does not carry with it a concomitant derivative power to enter *in personam* orders. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 465 (Yap 2012).

An *in rem* defendant ought not to be able to have the complaint against it dismissed for lack of service merely by keeping the *res* out of the court's jurisdiction for 120 days. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 (Yap 2012).

The time for the plaintiffs to serve process on an *in rem* defendant vessel may be enlarged so as to allow the plaintiffs to perfect service *in rem* on the vessel if, at any time before the *in personam* action goes to trial, the vessel may be found and arrested within the court's jurisdiction. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 461, 466 (Yap 2012).

The court can exercise jurisdiction only over vessels that are present in the FSM and that have been brought into the court's jurisdiction by arrest or over vessels for which an adequate substitute has been provided. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 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).

Criminal cases are in personam proceedings, and brought against a person rather than property. Only civil actions may be brought in rem, or "against a thing." FSM v. Kimura, 19 FSM R. 617, 619 n.1 (Pon. 2014).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. In order for a court to exercise *in rem* jurisdiction, the vessel over which jurisdiction is to be exercised (or its substitute, *e.g.*, a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it.

Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 (Pon. 2017).

For a court to exercise *in rem* jurisdiction, the thing (*res*) over which jurisdiction is to be exercised (or its substitute) must be physically present in the jurisdiction and under the court's control where it will be held to abide further order. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 (Pon. 2017).

For *in rem* actions, venue is jurisdictional. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 n.1 (Pon. 2017).

– Pendent

When the FSM Supreme Court has jurisdiction over a violation of the National Criminal Code, it cannot then take jurisdiction over a non-major crime, which arose out of the same transaction and formed part of the same plan, under the theory of ancillary jurisdiction. FSM v. Hartman, 1 FSM R. 43, 44-46 (Truk 1981).

Under article XI, section 6(b) of the FSM Constitution, it is proper to employ the rule of pendent jurisdiction over cases involving interpretations of the Constitution or national law, so that the court may resolve state or local issues involved in the same case. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 396 (Pon. 1984).

When a substantial constitutional issue is involved in a case, the national court may exercise pendent jurisdiction over state or local claims which derives from the same nucleus of operative fact and are such that the plaintiff would ordinarily be expected to try them all in one judicial proceeding. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 396 (Pon. 1984).

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).

A national court may exercise pendent jurisdiction over state law claims included in a plaintiff's cause of action if they arise out of a common nucleus of operative fact and are such that they ordinarily would be expected to be tried in one judicial proceeding, but its exercise of pendent jurisdiction will be limited so as to avoid needless decisions of state laws. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 116 (Pon. 1993).

The FSM Supreme Court can proceed on a mortgage foreclosure under its pendent jurisdiction because it arises from the same nucleus of operative fact as the promissory note (over which the FSM Supreme Court has exclusive jurisdiction) and is such that it would be expected to be tried in the same judicial proceeding. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

The FSM Supreme Court may exercise pendent jurisdiction over a state law wrongful death claim when it arises from the same nucleus of operative fact and is such that it would be expected to be tried in the same judicial proceeding as a plaintiff's national civil rights claims. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

A national court may exercise pendent jurisdiction over state law claims included in a plaintiff's complaint if they arise out of a common nucleus of operative fact and are such that they ordinarily would be expected to be tried in one judicial proceeding. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 205 (Pon. 2001).

The FSM Supreme Court has jurisdiction over state law claims of tortious interference with contractual relationships, defamation, and interference with prospective business opportunities when they are based on the same nucleus of operative facts as the claims under the national statute prohibiting anti-competitive practices. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 205 (Pon. 2001).

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

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

When an FSM constitutional issue is involved in a case, the FSM Supreme Court may exercise pendent jurisdiction over state law claims which derive from the same nucleus of operative fact and are such that the plaintiff would ordinarily be expected to try them all in one judicial proceeding. Mailo v. Chuuk, 12 FSM R. 597, 600 (Chk. 2004).

When a citizen of Pohnpei, sues Pohnpei and one of its agencies over a state law tort claim of false imprisonment and the remaining four counts of the amended complaint allege violations of the national civil rights law, and are based on the same facts that form the basis for the state law claim, or the same nucleus of operative fact, the FSM Supreme Court may exercise pendent jurisdiction over the state law claim. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 492 (Pon. 2005).

The FSM Supreme Court may exercise pendent jurisdiction over a state law cause of action when it arises from the same nucleus of operative fact and is such that it would be expected to be tried in the same judicial proceeding as the plaintiff's national civil rights claims. Thus, when the issue of a proclamation's validity arises from the same nucleus of operative fact as the plaintiffs' national civil rights claim, the court may exercise jurisdiction. Esa v. Elimo, 14 FSM R. 216, 220 (Chk. 2006).

The FSM Supreme Court may exercise pendent jurisdiction over a state law wrongful death action (or other state law cause of action) when it arises from the same nucleus of operative fact and is such that it would be expected to be tried in the same judicial proceeding as the plaintiff's national civil rights claim. Therefore if the plaintiffs' civil rights cause of action states a claim upon which the court may grant relief, the FSM Supreme Court will have subject matter jurisdiction over the other state law causes of action as well. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

Wrongful death is a state law cause of action created by a Trust Territory statute that is state law pursuant to the FSM and Chuuk Constitutions' transition clauses. The FSM Supreme Court exercises pendent jurisdiction over a wrongful death action when it arises from the same nucleus of operative fact and is such that it would be expected to be tried in the same judicial proceeding as the national civil rights claims. Lippwe v. Weno Municipality, 14 FSM R. 347, 352 (Chk. 2006).

When the court dismisses causes of action for the failure to state claims on which the FSM Supreme Court can grant relief and the remaining causes of action are all based in tort, which are properly the domain of state law, the court will grant the motion to dismiss with regard to the rest of the complaint because without at least one viable national law cause of action from which to hang, there is no pendent jurisdiction for the state law issues. Ladore v. Panuel, 17 FSM R. 271, 276 (Pon. 2010).

Arising from the same nucleus of operative fact is a requirement for the court's pendent jurisdiction. Stephen v. Chuuk, 18 FSM R. 22, 25 n.3 (Chk. 2011).

Ancillary jurisdiction is a court's jurisdiction to adjudicate claims and proceedings that arise out of a claim that is properly before the court. In re Suka, 18 FSM R. 554, 557 (Chk. S. Ct. Tr. 2013).

A court can employ ancillary jurisdiction as 1) to allow a single court to dispose of factually interdependent claims; and 2) to enable a court to function successfully, that is, to manage its proceedings,

vindicate its authority, and effectuate its decrees. When courts refer to the "inherent power" of a court to consider a claim, they refer to the latter of these two uses of ancillary jurisdiction. In re Suka, 18 FSM R. 554, 557 (Chk. S. Ct. Tr. 2013).

The FSM Supreme Court may exercise pendent jurisdiction over the state law causes of action that arise from the same nucleus of operative fact and are such that they would be expected to be tried in the same judicial proceeding as the plaintiff's national civil rights claims. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

When tort claims arising from the power re-connection do not arise from a nucleus of operative fact common to the plaintiff's due process claims arising from the power disconnection, pendent jurisdiction is unavailable and those tort claims will be dismissed without prejudice to any future state court litigation. Wainit v. Chuuk Public Utility Corp., 20 FSM R. 135, 137 (Chk. 2015).

– Personal

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

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

The purpose of the rules addressing process and service of process in civil cases is to assure that a defendant receives sufficient notice of all causes of action that are filed against him and thus has a fair and adequate opportunity to defend. Where a plaintiff fails to properly serve a defendant, the court does not have jurisdiction over that defendant, and the case may not proceed, but will be dismissed without prejudice. Berman v. Santos, 6 FSM R. 532, 534 (Pon. 1994).

The Chuuk State Supreme Court has personal jurisdiction in civil cases only over persons residing or found in the state and who have been duly summoned. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

For purposes of the motion to dismiss, the plaintiff has the burden of showing a prima facie case of personal jurisdiction, and the allegations in the complaint are taken as true except where controverted by affidavit, in which case any conflicts are construed in the non-moving party's favor. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 127 (Pon. 1999).

A court must be assured that it has acquired personal jurisdiction over a defendant before it enters a default against him, and a court does not have personal jurisdiction over a defendant unless or until he has been properly served. Medabalmi v. Island Imports Co., 10 FSM R. 32, 34 (Chk. 2001).

A venue provision that permits a civil action against a defendant who does not live in the FSM to be brought in a court within whose jurisdiction the defendant can be served or his property can be attached does not limit the FSM Supreme Court's subject matter jurisdiction, and does not render the long-arm statute superfluous. Such provisions do not preclude actions which are made procedurally possible by the long-arm statute, which gives litigants the means to effect service on entities not found within the FSM. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

To exercise jurisdiction, the court must also have personal jurisdiction over the parties. The Chuuk State Supreme Court has personal jurisdiction over all who reside or are found in the State of Chuuk and any who voluntarily appear before the court. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 538 (Chk. S.

Ct. Tr. 2002).

Lack of jurisdiction over the person is a defense that can be waived, whereas lack of subject matter cannot and requires dismissal. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 538 (Chk. S. Ct. Tr. 2002).

When a complaint and summons (the service of process) is not properly served on a defendant, the court does not have personal jurisdiction over that defendant. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 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).

Personal jurisdiction as a defense is waived only if the party raising it fails to raise it in a motion permitted by Rule 12(b), in his answer, or in an amendment to the answer permitted under Rule 15(a). Personal jurisdiction may not be raised in an amendment that requires leave of court. Yap v. M/V Cecilia I, 13 FSM R. 403, 407 (Yap 2005).

For purposes of a motion to dismiss for lack of personal jurisdiction over a defendant, the allegations of the complaint are accepted as true, except where those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. Allegations based on information and belief are insufficient to support in personam jurisdiction, except where the truth of those allegations are admitted in the responsive pleading. Yap v. M/V Cecilia I, 13 FSM R. 403, 407 (Yap 2005).

In analyzing a motion to dismiss for lack of personal jurisdiction, the court must undertake a particularized inquiry into the allegations that support personal jurisdiction. The complaint's allegations are accepted as true for a motion to dismiss, except where those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. Yap v. M/V Cecilia I, 13 FSM R. 403, 411 (Yap 2005).

In civil cases, a court has personal jurisdiction only over persons who have been duly summoned, that is, made a party by valid service of process. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

A court is not competent to rule on the validity of a certificate of title to land when the court does not have (by its own statement) subject matter jurisdiction over the case and does not have personal jurisdiction over indispensable parties (the titleholders) or give them notice or an opportunity to be heard. Its orders were void and an order invalidating a person's certificate of title may even be void on its face when it held that that person was an indispensable party who was not present in the case and then proceeded to invalidate his certificate of title without him having been made a party to the case. 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).

In civil cases, a court has personal jurisdiction only over persons who have been duly summoned, that is, made a party by valid service of process. Ruben v. Hartman, 15 FSM R. 100, 110 (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).

Personal jurisdiction is the court's power to bring a person into its adjudicative process. A court always has personal jurisdiction over a plaintiff because, by filing a case, the plaintiff has consented to the

court's jurisdiction over her person. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

When a defendant has been improperly served, the court lacks jurisdiction over the defendant and the case will be dismissed without prejudice, but, since a dismissal under Rule 12(b)(5) is without prejudice, a court will often quash service instead of dismissing the case so that only service need be repeated. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

Rule 4(j) provides that if service of the summons and complaint is not made on a defendant within 120 days after the filing of the complaint, the action will be dismissed as to that defendant without prejudice upon motion or on the court's own initiative, but dismissal for lack of service is also possible under Rule 41(b). A case against a defendant may be dismissed under Rule 41(b) for lack of personal jurisdiction over that defendant, that is, because that defendant was never properly served the summons and complaint and the court thus never acquired personal jurisdiction over that defendant. Dismissal under Rule 41(b) for lack of jurisdiction is without prejudice. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. A court cannot exercise *in personam* jurisdiction over a vessel, but can entertain an *in personam* suit against a vessel's owner if the court has obtained personal jurisdiction over the owner. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 84 (Yap 2010).

When the court file does not contain a return of service for a summons and for either the original complaint or the first amended complaint on two named defendants, the court has nothing before it from which it can conclude that the court has personal jurisdiction over either of them. The court will therefore give the plaintiff time to show that the court has personal jurisdiction over those two defendants; otherwise, they may be subject, under Civil Procedure Rule 4(j), to dismissal for lack of service of process on them. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 329 (Pon. 2011).

No ruling can be made against persons over whom the court does not have personal jurisdiction. Helgenberger v. Mai Xiong Pacific Int'l, Inc., 17 FSM R. 326, 332 (Pon. 2011).

Insufficient service of process only affects personal jurisdiction – jurisdiction over the person of the defendants or respondents who should have been served properly. It does not affect subject-matter jurisdiction. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

In analyzing a motion to dismiss for lack of personal jurisdiction, the court must undertake a particularized inquiry into the allegations that support personal jurisdiction. The complaint's allegations are accepted as true for a motion to dismiss, except when those allegations have been controverted by affidavit, in which event conflicts are construed in the non-moving party's favor. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 302 (Yap 2012).

When some defendants were never served with the complaint and summons, the court never had personal jurisdiction over them and the plaintiffs' case against them was considered abandoned and dismissed. William v. Kosrae State Hosp., 18 FSM R. 575, 579 n.1 (Kos. 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).

A court obtains personal jurisdiction over a defendant when service of process – service of the complaint and summons – is properly made on that defendant. A court must have personal jurisdiction over a party before its orders can bind that party. Nena v. Saimon, 19 FSM R. 317, 324 (App. 2014).

For personal service of a complaint and summons to be effective when a defendant refuses to accept the papers, the complaint and summons must be left with the defendant or where they might reasonably be found and the process server must make an attempt to describe generally the meaning of the papers in a language the defendant can understand. Nena v. Saimon, 19 FSM R. 317, 324-25 (App. 2014).

When a person refused to accept the complaint and summons and the papers were not left with him, he was not properly served with the complaint and summons and the court therefore did not acquire personal jurisdiction over him. Nena v. Saimon, 19 FSM R. 317, 325 (App. 2014).

A court that lacked personal jurisdiction over a person because the complaint and summons were not properly served on him later acquired personal jurisdiction over that person when he filed an answer in which he did not challenge personal jurisdiction over him although he did challenge the court's personal jurisdiction over "his immediate family" since none of them had been named or served. Nena v. Saimon, 19 FSM R. 317, 325 & n.1 (App. 2014).

Unlike personal jurisdiction, which a court can obtain upon the parties' consent or failure to object, the lack of subject-matter jurisdiction is never capable of being waived. In essence, the court either possesses it or it does not; it cannot assert it. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

– Personal – Long-Arm

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).

The FSM long-arm statute applies to persons without regard to their citizenship or residence. It may thus be applied to an FSM citizen. Alik v. Moses, 8 FSM R. 148, 150 (Pon. 1997).

To obtain personal jurisdiction over a non-resident defendant in a diversity action, a plaintiff must show that jurisdiction is consistent with the "long arm" statute, 4 F.S.M.C. §§ 203-04, and that the exercise of jurisdiction does not deny the defendant due process of law as guaranteed by article IV, section 3 of the FSM Constitution. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 128 (Pon. 1999).

Because Article IV, section 3 is based on the Due Process Clause of the United States Constitution, FSM courts can look to interpretations of the United States Due Process Clause to determine the extent to which the FSM long-arm statute may be used consistently with due process to exert jurisdiction over a non-forum defendant. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 128-29 (Pon. 1999).

Under the doctrine of minimum contacts a defendant must have certain minimum contacts with a forum such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. The FSM Supreme Court applies a minimum contacts analysis to determine the extent to which the FSM long-arm statute may be used consistently with due process to exert jurisdiction over a non-forum defendant. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 129 (Pon. 1999).

Except as provided for in 4 F.S.M.C. 204, 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. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 129 (Pon. 1999).

The FSM Supreme Court can exercise personal jurisdiction in civil cases over an individual or agent of a corporation as to any cause of action arising from the commission of a tortious act within the Federated States of Micronesia. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 129 (Pon. 1999).

The mere allegation that an out-of-state defendant has tortiously interfered with contractual rights or has committed other business torts that have allegedly injured a forum resident does not necessarily establish that the defendant possesses the constitutionally required minimum contacts. In order to resolve the jurisdictional question, a court must undertake a particularized inquiry as to the extent to which the defendant thus purposefully availed itself of the benefits of the forum's laws. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 129 (Pon. 1999).

Generalized legal conclusions in an affidavit have no bearing on the particularized inquiry, which a court must undertake in order to determine whether defendants have minimum contacts with the forum in order to make a prima facie case that the court has personal jurisdiction over the defendants. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999).

Two – possibly four – letters and unspecified phone calls sent into the FSM are insufficient in themselves to establish the minimum contacts necessary to establish personal jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999).

Personal jurisdiction is not established when the alleged tortious conduct resulted only in economic consequences in the FSM because mere economic injury suffered in the forum is not sufficient to establish the requisite minimum contacts so as to sustain long-arm jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 130 (Pon. 1999).

When the tortious conduct is not shown to have occurred in FSM, and the alleged harm flowing from the conduct cannot be said to have been "targeted" to the FSM, it does not persuade the court that the defendants have caused an "effect" in this forum sufficient to justify jurisdiction over them under the FSM long-arm statute. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 131 (Pon. 1999).

When the defendants are not parties to the contract they tortiously interfered with and have no meaningful presence in the FSM, although the economic harm was allegedly targeted to an FSM plaintiff, it is insufficient to establish personal jurisdiction over the defendants. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 132 (Pon. 1999).

Except as provided in 4 F.S.M.C. 204, the FSM 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. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 370 (Kos. 2000).

A "long-arm statute" is a legislative act that provides for personal jurisdiction over persons and corporations which are non-residents of a state or country, and which go in to a state or country voluntarily, directly or by agent, for limited purposes, and in which the claim is related to those purposes. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 n.2 (Pon. 2001).

A venue provision that permits a civil action against a defendant who does not live in the FSM to be brought in a court within whose jurisdiction the defendant can be served or his property can be attached does not limit the FSM Supreme Court's subject matter jurisdiction, and does not render the long-arm statute superfluous. Such provisions do not preclude actions which are made procedurally possible by the long-arm statute, which gives litigants the means to effect service on entities not found within the FSM. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

The long-arm statute provides how service may be effected, outside of the FSM Supreme Court's territorial jurisdiction, against those who have done certain acts which subject them to the personal jurisdiction of the FSM Supreme Court, and such service has the same force and effect as though it had been personally made within the FSM. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

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

Transacting business in the FSM, engaging in tortious activity within the FSM, and causing injury within the FSM related to sales of products within the FSM, are arguably sufficient to bring a foreign defendant under the personal jurisdiction of the FSM Supreme Court. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia,

10 FSM R. 200, 205 n.4 (Pon. 2001).

A long-arm statute does not by itself grant a court personal jurisdiction over those who fall within the statute's reach. What a long-arm statute does is to permit a court to acquire personal jurisdiction over those persons subject to the statute once they have been properly served with notice that comports with due process. Northern Marianas Housing Corp. v. Finik, 12 FSM R. 441, 444 (Chk. 2004).

The FSM Supreme Court has personal jurisdiction over persons residing or found in the FSM or who voluntarily appear. Exceptions to this general rule are found in the FSM long-arm statute, 4 F.S.M.C. 204, which specifies the conditions under which a defendant found outside the FSM may be hailed into court here. Yap v. M/V Cecilia I, 13 FSM R. 403, 410 (Yap 2005).

The FSM Supreme Court has personal jurisdiction, under 4 F.S.M.C. 204(1)(c), over a cause of action that arises from the operation of a vessel or craft within the FSM territorial waters. Yap v. M/V Cecilia I, 13 FSM R. 403, 410 (Yap 2005).

The reach of the FSM's long-arm statute is circumscribed by the constitutional requirement that the putative defendant must have "minimum contacts" with the forum so that requiring him to litigate there does not offend "traditional notions of fair play and substantial justice." Yap v. M/V Cecilia I, 13 FSM R. 403, 410-11 (Yap 2005).

When a vessel is the subject to a bareboat charter, the hallmark of which is that the charterer takes complete control of the vessel, mans it with his own crew, and is treated by law as its legal owner, the vessel's owner cannot be said to have undertaken the operation of a vessel or craft within the FSM territorial waters within the meaning of 4 F.S.M.C. 204(c), and personal jurisdiction over the vessel's owner will not lie on that basis. Yap v. M/V Cecilia I, 13 FSM R. 403, 411 (Yap 2005).

In analyzing the degree and extent of a defendant's business contacts with a forum jurisdiction, it is the nature and quality of acts and not their number that determines whether transactions of business have occurred. It does not mean that any single act suffices to allow personal jurisdiction. Yap v. M/V Cecilia I, 13 FSM R. 403, 411 (Yap 2005).

Being the recipient of a letter sent from a jurisdiction, without more, does not aid the personal jurisdiction analysis. Yap v. M/V Cecilia I, 13 FSM R. 403, 412 n.3 (Yap 2005).

The act of sending the single letter, which recites that the vessel remains under a bareboat charter and that the owner was put in a very bad position as a result of receiving only two charter payments over the course of two years and eight months, does not suggest a sufficient basis upon which to conclude that the owner was doing business in the FSM and subject to personal jurisdiction here, and neither does being the recipient of 60 e-mails or copies of e-mails sent to others. Yap v. M/V Cecilia I, 13 FSM R. 403, 412 (Yap 2005).

When no evidence exists that the charter agreement between the owner and the charterer created an obligation on the owner's part to engage in any business activity in the FSM, although the vessel operated in Yap waters beginning in April of 2001; allegedly discharged petroleum effluent into Yap waters; and ultimately grounded in the Yap harbor, the existence of the bareboat charter leads to the conclusion that personal jurisdiction over vessel owner does not lie under the doing business provision of the FSM long-arm statute notwithstanding the presence of the vessel here. Yap v. M/V Cecilia I, 13 FSM R. 403, 412 (Yap 2005).

When a vessel owner never purposefully availed himself of the privilege of conducting activities in the FSM because of the bareboat charter of his vessel, for the court to exercise in personam jurisdiction over the vessel owner would violate well established notions of fair play and substantial justice. The vessel owner's motion to dismiss will be granted and he will be dismissed as a defendant. Yap v. M/V Cecilia I, 13 FSM R. 403, 412 (Yap 2005).

The court has personal jurisdiction over a vessel's owner, charter, and manager, as each did business in the State of Yap with regard to the vessel's operation. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

Exploitation of any economic resources in the FSM, is one of the grounds for personal jurisdiction in the FSM's long-arm statute. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

A corporation submits itself to the personal jurisdiction of the FSM Supreme Court if by an agent it engages in the exploitation of economic resources within the FSM exclusive economic zone. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

While there is no statutory definition of exploitation of an economic resource, these words' plain meaning leads to the conclusion that it includes fishing because the FSM's fisheries are undoubtedly a natural resource, marine in character, that are subject to economic exploitation as a result of the market demand for fish. It follows that fishing in the FSM EEZ constitutes the exploitation of a natural resource that subjects a party to the personal jurisdiction of the FSM Supreme Court. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

The Trust Territory's long-arm statute for the Trust Territory courts' jurisdiction is 6 F.S.M.C. 131, which statute is thus obsolete. The FSM's long-arm statute is codified at 4 F.S.M.C. 204. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 302 n.2 (Yap 2012).

A motion to dismiss Yuh Yow Fishery will be denied when the allegations in the amended complaint are sufficient to show personal jurisdiction over Yuh Yow Fishery if the plaintiffs succeed in proving the alter ego allegations that Yuh Yow Fishery is the alter ego of the corporations that own the vessels since Yuh Yow Fishery would have operated vessels that are alleged to have caused damage while in FSM waters. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 302 (Yap 2012).

The FSM Supreme Court can exercise personal jurisdiction over persons not found in the FSM under the FSM "long-arm" statute so long as the exercise of jurisdiction does not deny the defendant due process of law as guaranteed by article IV, section 3 of the Constitution. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 54 (Yap 2013).

The FSM Supreme Court applies a minimum contacts analysis to determine the extent to which the FSM long-arm statute may be used consistently with due process to exert jurisdiction over a non-forum defendant. Under the minimum contacts doctrine a defendant must have certain minimum contacts with a forum such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 54 (Yap 2013).

The FSM Supreme Court has personal jurisdiction, under 4 F.S.M.C. 204(1)(c), over a cause of action that arises from the operation of a vessel or craft within the FSM territorial waters. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 54 (Yap 2013).

When a case or dispute is related to or "arises out of" a defendant's contacts with the forum, a relationship among the defendant, the forum, and the litigation is the essential foundation of in personam jurisdiction. A case or dispute arising out of contacts with the forum may be referred to as specific jurisdiction. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 55 (Yap 2013).

"Specific" jurisdiction requires a showing of three distinct elements: 1) the nonresident defendant must purposefully direct his activities or consummate some transaction with the forum or residents thereof: or perform some act by which he purposefully avails himself of the conducting activities in the forum, thereby invoking the benefits and protections of its laws; 2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and 3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable. People of Eauripik ex rel. Sarongelfeg v. F/V

Teraka No. 168, 19 FSM R. 49, 55 (Yap 2013).

When two of the defendants purposefully directed their activities to refloat a vessel stranded in FSM territorial waters and they purposefully availed themselves of the privilege of attempting salvage operations in FSM territorial waters for which the stranded vessel's owners hired them and when another defendant directed its vessel to FSM territorial waters to assist the stranded vessel and the plaintiffs' claims arise from that attempted assistance, the plaintiffs' claims against those defendants arise solely out of their activities in FSM territorial waters and the FSM Supreme Court's exercise of personal jurisdiction over those defendants is reasonable because, if for no other reason, it would be unreasonable for any other forum to exercise jurisdiction over the plaintiffs' claims. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 55 (Yap 2013).

When the defendants contend that the one time they were in FSM territorial waters they did not commit any tortious acts so that they do not have the minimum contacts necessary for the FSM Supreme Court to exercise jurisdiction over them, their argument is actually not a claim that they did not have minimum contacts needed for personal jurisdiction but rather that they did not commit the minimum acts necessary to have committed a tort within FSM territorial waters. This is a defense on the merits – that the plaintiffs cannot prove the tort's elements. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 55 (Yap 2013).

A defense that no damages can be proved and that no duty was breached is a defense on the merits. It is not a defense that the defendants lack the minimum contacts with the FSM so that the litigation against them would offend due process and traditional notions of fair play and substantial justice. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 55-56 (Yap 2013).

Under the FSM long-arm statute, while the defendants have sufficient minimum contacts with the FSM for the FSM Supreme Court to exercise personal jurisdiction over them since the plaintiffs' claims against the defendants arise from their actions within FSM territorial waters which allegedly caused damages to the interests of FSM citizens, this does not mean that the defendants might not prevail on a summary judgment motion or that the plaintiffs will be able to prove these defendants liable at trial, but in this instance it is proper for the court to exercise personal jurisdiction over them. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 56 (Yap 2013).

A "long-arm statute" is a legislative act that provides for personal jurisdiction over persons and corporations who are not residents of the state or country, and who go into a state or country voluntarily, directly or by an agent, for limited purposes, and for claims which are related to those purposes. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 209 n.1 (Yap 2015).

The FSM Supreme Court may exercise personal jurisdiction over non-residents for any cause of action that arises from the transaction of any business within the FSM, the commission of a tortious act within the FSM; and contracting to insure any person, property, or risk located within the FSM at the time of contracting. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 210 (Yap 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).

The court may not have personal jurisdiction over an insurer when the insurer did not sell insurance in the FSM and did not provide insurance-like services to its insureds when they were present in the FSM. 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).

The reach of the FSM's long-arm statute is circumscribed by the constitutional requirement that the putative defendant must have "minimum contacts" with the forum so that requiring him to litigate here does not offend traditional notions of fair play and substantial justice. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 212 (Yap 2015).

In analyzing the degree and extent of a defendant's business contacts with the forum jurisdiction, it is the nature and quality of acts and not their number that determines whether business transactions have occurred. It does not mean that any single act suffices to allow personal jurisdiction. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 212 (Yap 2015).

Two e-mails and a letter that the defendant sent to recipients in the FSM and a letter of undertaking in a civil action, are insufficient to establish the minimum contacts necessary to establish personal jurisdiction over the defendant. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 212 (Yap 2015).

When the FSM plaintiffs are not parties to the insurance contract that the defendant allegedly tortiously breached with its I-Kiribati or Taiwanese insured; when it was to that insured that the economic harm was targeted although that harm had a secondary effect in the FSM; when the insurer has no meaningful presence in the FSM; and when the tortious acts that the defendant is alleged to have committed, were directed toward and targeted its insured, not the plaintiffs, personal jurisdiction is not established over the defendant because, since the plaintiffs' claims against the defendant are claims assigned to the plaintiffs by the insured, the case, at its heart, is a dispute between the insured and the insurer over insurance coverage. While an insurer who issues a policy under which it has a duty to defend its insured anywhere in the world, must expect, if the need arises, to defend its insured against a third-party's claim in the FSM, it cannot reasonably expect to be sued by its insured anywhere in the world in a dispute over insurance coverage. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 212 (Yap 2015).

– Removal

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).

Prolonged delay in seeking removal, as well as affirmative steps, such as filing a complaint in the state court, or filing a motion aimed at obtaining a substantive state court ruling, should normally be regarded as signaling acquiescence of a party to state court jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 394 (Pon. 1988).

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).

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, 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).

A motion for removal will be denied where, in an action in eminent domain under Truk state law the only defense available are those relating to the taking, and the counterclaims asserted as a basis for national court jurisdiction do not fall within a defense to the taking. Chuuk v. Land Known as Mononong, 5 FSM R. 272, 273 (Chk. 1992).

Removal to the Supreme Court pursuant to article XI section 6(b) of the Constitution cannot be ordered if there is no diversity of citizenship among the parties to the case pending in the state court. Etscheit v. Adams, 5 FSM R. 339, 341 (App. 1992).

Where a party petitions for removal after denial of its motion to dismiss brought in state court and the motion to dismiss was filed in lieu of answering the compliant and was not argued by the parties, such action will be considered a defense to suit on procedural grounds rather than a consent to state court adjudication of the merits such that waiver of the right to remove may not be implied. Mendiola v. Berman (I), 6 FSM R. 427, 428 (Pon. 1994).

If the FSM national court takes jurisdiction in a removal case all prior state court orders would remain in effect and record of all prior proceedings in the state court may be required to be brought before the court. Pohnpei v. M/V Zhong Yuan Yu #606, 6 FSM R. 464, 466 (Pon. 1994).

An attorney disciplinary proceeding in state court for violations of state disciplinary rules may not be removed to the FSM Supreme Court. Berman v. Santos, 7 FSM R. 231, 241 (Pon. 1995).

FSM Supreme Court General Court Order 1992-2 sets forth the governing procedures for the removal of state court actions to the FSM Supreme Court. Removal is effected upon compliance with these procedures. The state court takes no further action following removal unless and until a case is remanded. Wilson v. Pohnpei Family Headstart Program, Inc., 7 FSM R. 411, 412 (Pon. 1996).

A petition for removal must be accompanied by a short and plain statement of the facts which entitle the party to removal together with a copy of all process, pleadings and orders served upon the parties in the action. Wilson v. Pohnpei Family Headstart Program, Inc., 7 FSM R. 411, 412 n.2 (Pon. 1996).

When a case has been removed from state court after improperly pleading as a party a diverse citizen, it will be remanded as improvidently removed. Wilson v. Pohnpei Family Headstart Program, Inc., 7 FSM

R. 411, 413-14 (Pon. 1996).

Another court's purported lack of subject matter jurisdiction over a case is not a basis for removing that case to the FSM Supreme Court. Rather, the basis for removing a state court case to the FSM Supreme Court is the FSM Supreme Court's jurisdiction to hear the case in question. Damarlane v. Harden, 8 FSM R. 225, 226 (Pon. 1998).

Any action brought in a state court of which the trial division of the FSM Supreme Court has jurisdiction may be removed by any party to the trial division of the FSM Supreme Court. This includes cases involving parties of diverse citizenship. Damarlane v. Harden, 8 FSM R. 225, 226 (Pon. 1998).

In order to remove a case from a state court to the FSM Supreme Court, the moving party must file a verified petition with the FSM Supreme Court within sixty days from the date that the party receives, through service or otherwise, a copy of an initial or amended pleading, motion, order or other paper from which it may first be ascertained that the case is removable. The petition for removal must contain a short and plain statement of the facts which entitle the party to removal along with a copy of all process, pleadings and orders served upon or by the moving party in such action. Damarlane v. Harden, 8 FSM R. 225, 227 (Pon. 1998).

A case may be removed from a municipal court to the FSM Supreme Court when diversity of citizenship exists. Damarlane v. Harden, 8 FSM R. 225, 227 (Pon. 1998).

Removal to the FSM Supreme Court is effected when, promptly after filing a verified removal petition together with copies of all state court process, pleadings and orders, the party seeking removal has given written notice thereof to all parties and has filed a copy of the petition with the clerk of the state court. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 436, 438 (Chk. 1998).

When removing a case to the FSM Supreme Court, a careful attorney ought to promptly notify the FSM Supreme Court when a copy of the removal petition has been filed with the state court clerk so as to avoid any confusion or delay. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 436, 438 (Chk. 1998).

An opposition to a removal petition, regardless of how it is styled, is actually a motion to remand the case to state court on the ground that it was improvidently removed. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 436, 438 (Chk. 1998).

The FSM Supreme Court may require a petition for removal of an action to be accompanied by a bond, but the bond requirement is discretionary with the court. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 465 (Chk. 1998).

Actions taken by a state court prior to removal remain in effect when the case is removed until dissolved or modified by the FSM Supreme Court trial division. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 465-66 (Chk. 1998).

When an FSM court rule, such as General Court Order 1992-2 governing removal, has not be construed by the FSM Supreme Court and is similar or nearly identical to a U.S. counterpart, the court may look to U.S. practice for guidance. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466 n.1 (Chk. 1998).

A removal petition must be filed within sixty days after the receipt by any party, through service or otherwise, of a copy of an initial or amended pleading, motion, order or other paper from which it may first be ascertained that the case is removable. Proper service is not required for the sixty-day period to start running – only receipt, which may be through service or otherwise. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466 (Chk. 1998).

There is no obstacle to the removal of a defaulted case so long as it is done within the time limit set by

the General Court Order 1992-2. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466 (Chk. 1998).

Although removal after a default judgment is proper if done within time, it cannot be taken to supersede the default judgment which must be regarded as valid until set aside. Porwek v. American Int'l Co. Micronesia, 8 FSM R. 463, 466-67 (Chk. 1998).

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).

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).

After the filing of a removal petition, removal is effected by giving all parties written notice and by filing a copy of the petition with the state court clerk. Enlet v. Bruton, 10 FSM R. 36, 39 (Chk. 2001).

A case that is improvidently removed from a state court must be remanded to that state court. A case is improvidently removed when it has been removed to the FSM Supreme Court and either the FSM Supreme Court did not have subject-matter jurisdiction over the case at the time of its removal, or the party removing the case has waived its right to proceed in the FSM Supreme Court. Enlet v. Bruton, 10 FSM R. 36, 39 (Chk. 2001).

FSM GCO 1992-2, § II(B), similar to 28 U.S.C. § 1446(b), states that the removal petition must be filed within sixty days after the receipt by any party, through service or otherwise, of a copy of an initial or amended pleading, motion, order or other paper from which it may first be ascertained that the case is removable. 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).

For the parties' diversity of citizenship or other grounds to be the basis for removal, it must be present at the time the case is removed. Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

A state court filing that does not show diverse parties or other basis for FSM Supreme Court jurisdiction is not a paper from which it may be ascertained that the case is removable. Enlet v. Bruton, 10 FSM R. 36, 40-41 (Chk. 2001).

Delay in effecting a case's removal by not filing a copy of the removal petition with the state court clerk until some days after the sixty days had run might prove fatal to the removal. Enlet v. Bruton, 10 FSM R.

36, 41 (Chk. 2001).

Acts taken before a case first becomes removable cannot be the basis for an implied waiver of the right to remove because there is as yet no right to remove to waive. Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

National courts, in removal cases, do not lightly find a waiver of right to invoke its jurisdiction. Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

A state court pleading, order, or motion, or amended pleading that is filed much later than the complaint can be a paper "from which it may first be ascertained that the case is removable." Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

On remand for improvident removal the state court receives the case in the posture (with pending motions) and state it was in the FSM Supreme Court when that court remanded it. Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

A party may file a request in the FSM Supreme Court for its just costs incurred by the improvident removal of a case. Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 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 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).

The procedure for removal of state court cases to the FSM Supreme Court is controlled by General Court Order 1992-2, adopted pursuant to Article XI, section 9(d) of the Constitution. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

To invoke national court jurisdiction in a diversity case in state court, 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).

The FSM Supreme Court Admission Rules apply to all cases properly before the national courts, regardless of where the case originated. There is no exception to these rules, express or implied, for legal representatives whose cases are removed to the national court from a state court. Nett Dist. Gov't v. Micronesian Longline Fishing Corp., 10 FSM R. 520, 521-22 (Pon. 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).

A plaintiff's opposition to a petition to remove, regardless of how it was styled, is actually a motion to remand the case to the state court on the ground that it was improvidently removed. Gilmete v. Adams, 11 FSM R. 105, 107 & n.1 (Pon. 2002).

Removal of state court actions to the FSM Supreme Court is effected upon compliance with the procedures in FSM Supreme Court GCO 1992-2. The state court takes no further action following removal unless and until a case is remanded. Gilmete v. Adams, 11 FSM R. 105, 109 (Pon. 2002).

In order to remove a case from a state court to the FSM Supreme Court, the moving party must file a verified petition with the FSM Supreme Court within sixty days from the date that the party receives, through service or otherwise, a copy of an initial or amended pleading, motion, order or other paper from which it may first be ascertained that the case is removable. The petition for removal must contain a short and plain statement of the facts which entitle the party to remove along with a copy of all process, pleadings and orders upon or by the moving party in such action. Gilmete v. Adams, 11 FSM R. 105, 109 (Pon. 2002).

When diverse citizenship does not appear to be present on the record in a removed case and when, although defendants have argued that a diverse company is a necessary party, they have not joined it, the case will be remanded to the state court. Defendants may file another petition for removal when diversity of citizenship exists between the parties of record. Gilmete v. Adams, 11 FSM R. 105, 110 (Pon. 2002).

When a case has been properly removed from a municipal court where no complaint was filed, the FSM Supreme Court will require the plaintiff to file a complaint and allow the case to proceed therefrom. Damarlane v. Sato Repair Shop, 11 FSM R. 343, 344 (Pon. 2003).

When a party desires to remove a case from a state court to the FSM Supreme Court trial division, the requirements of General Court Order 1992-2 must be met. A petitioner cannot remove certain causes of action – that is, certain discrete legal issues and claims pertaining to petitioner – that are imbedded in a state court case. Bifurcation of a case is not anticipated nor authorized by GCO 1992-2, which pertains to the transfer of civil actions in their entirety. In re Estate of Helgenberger, 11 FSM R. 599, 600 (Pon. 2003).

Removal is effected when a copy of the verified petition of removal was filed with the state court clerk and the parties were served with written notice thereof. Mailo v. Chuuk, 12 FSM R. 597, 599 (Chk. 2004).

A verified petition for removal must contain a short and plain statement of the facts that entitle the party to removal along with a copy of all process, pleadings and orders served upon or by the moving party in such action. Mailo v. Chuuk, 12 FSM R. 597, 599 (Chk. 2004).

A case is improvidently removed when it has been removed to the FSM Supreme Court and either the FSM Supreme Court did not have subject-matter jurisdiction over the case at the time of its removal, or the party removing the case has waived its right to proceed in the FSM Supreme Court. A case that is improvidently removed from a state court must be remanded to that state court. Mailo v. Chuuk, 12 FSM R. 597, 600 (Chk. 2004).

In deciding whether a case has been improvidently removed from a state court to the FSM Supreme Court, the court must base its decision on whether subject matter jurisdiction existed at the time of removal and not on matter first raised in the case in papers filed in the FSM Supreme Court after removal. Subject matter jurisdiction must be present at the time of removal. Mailo v. Chuuk, 12 FSM R. 597, 600 (Chk. 2004).

When a plaintiff's complaint filed in state court states a cause of action as a violation of his right under the equal protection clause of the FSM Constitution, it asserts a claim that arises under the FSM Constitution, and the FSM Supreme Court had subject-matter jurisdiction when the case was removed. Mailo v. Chuuk, 12 FSM R. 597, 600 (Chk. 2004).

Under FSM General Court Order 1992-2, Section II(D), the filing of a petition for removal to the FSM Supreme Court itself effects removal so long as the specified requirements are met. Shrew v. Sigrah, 13 FSM R. 30, 32 (Kos. 2004).

An opposition to a verified petition to remove is a motion to remand because an opposition to a removal petition, regardless of how it is styled, is actually a motion to remand the case to state court on the ground that it was improvidently removed. Etscheit v. McVey, 13 FSM R. 477, 479 (Pon. 2005).

A case is improvidently removed when it has been removed to the FSM Supreme Court and either the FSM Supreme Court did not have subject-matter jurisdiction over the case at the time of its removal, or the party removing the case had waived its right to proceed in the FSM Supreme Court. Etscheit v. McVey, 13 FSM R. 477, 479 (Pon. 2005).

When the plaintiffs having clearly pled a cause of action arising under national law, they cannot, once the case has been removed to national court, change their minds and say that it was a mistake, that the complaint did not mean what it said, and that instead they really meant to plead a state law cause of action. The court must take the plaintiffs' pleadings at face value. Etscheit v. McVey, 13 FSM R. 477, 480 (Pon. 2005).

A case stands removed to the FSM Supreme Court trial division when the party seeking removal files in the FSM trial division a verified petition for removal along with all the papers served on or by the removing party. The removing party must file the petition within 60 days of being served with any paper from which it is first ascertainable that the case is removable. San Nicholas v. Neth, 16 FSM R. 70, 71 (Pon. 2008).

A motion to dismiss under Rule 12(b) proceeds on the assumption that the allegations of the complaint are true. Similarly, the complaint's allegations are deemed true for purposes of a motion to remand a removed case to the state court on the basis that the FSM Supreme Court lacks subject matter jurisdiction. San Nicholas v. Neth, 16 FSM R. 70, 72 (Pon. 2008).

When the complaint's allegations do not point to any specific actions that a defendant took on the national government's behalf for which the national government should be held to account; when neither a descriptive allegation that a defendant was a Congress representative nor any other allegation alleges that he was acting as an agent of the FSM national government when he entered into the contract alleged; when the complaint alleges that the contract's purpose was to further the defendant's personal interest by facilitating his reelection to Congress; when the relief requested seeks nothing from the national government, but rather is a request for a joint and several judgment against the defendants individually, looking to the complaint's allegations and considering those as true, the complaint alleges that the defendant was acting for himself personally at relevant times that he allegedly entered into the contract and not as an agent of the national government. Since the only apparent basis for subject matter jurisdiction in this court is that the defendant was an agent of the national government at relevant times, the FSM Supreme Court lacks subject matter jurisdiction and the plaintiff's motion to remand will be granted. San Nicholas v. Neth, 16 FSM R. 70, 72 (Pon. 2008).

If at any time before final judgment it appears that a case was removed from state court improvidently and without jurisdiction, the FSM Supreme Court trial division must remand the case, and the clerk of court will mail a certified copy of the remand order to the state court. San Nicholas v. Neth, 16 FSM R. 70, 73 (Pon. 2008).

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).

If an independent basis creates exclusive jurisdiction in the national courts, the action must be removed from the state court, and adjudicated in the national forum. FSM Dev. Bank v. Estate of Edmond,

19 FSM R. 425, 436 (App. 2014).

Under FSM GCO 1992-2, § II(D), a party has effected removal of a case to the FSM Supreme Court when written notice thereof has been given to all parties and a copy of the petition has been filed with the clerk of the state court. The removal is thus accomplished automatically without any FSM Supreme Court action. Saimon v. Nena, 19 FSM R. 608, 610 (Kos. 2014).

Regardless of how it is styled, an opposition to a verified petition to remove can only be a motion to remand the case to the state court it came from on the ground that it was improvidently removed. Saimon v. Nena, 19 FSM R. 608, 610 (Kos. 2014).

A party may remove a case from state court to the FSM Supreme Court if the case is one over which the FSM Supreme Court would have subject-matter jurisdiction if the case had originally been filed in the FSM Supreme Court; if the removal was effected within 60 days after the receipt by any party, through service or otherwise, of a copy of an initial or amended pleading, motion, order or other paper from which it may first be ascertained that the case is removable; and if the party removing the case has not previously waived the its right to remove. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 2014).

A case arises under the FSM Constitution or national law when the FSM Constitutional issue or the national law issue is an essential element of one or more of the plaintiff's causes of action, and 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, and it may not be inferred from a defense asserted or one expected to be made, and the national law issue must be a substantial one. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 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).

When the Pohnpei Supreme Court granted the FSM Development Bank's motion to intervene, the bank was clearly a party to the action and therefore, entitled to remove the action to the FSM Supreme Court contingent upon the jurisdictional criteria being satisfied. Setik v. Perman, 21 FSM R. 31, 35 (Pon. 2016).

Subject-matter jurisdiction in the FSM Supreme Court is proper in a case involving an FSM Development Bank mortgage foreclosure, on any one of the following as an independent basis: 1) the bank's classification as an instrumentality of the national government; 2) the parties' diversity of citizenship; and 3) the implied challenge to the superiority of FSM Supreme Court; hence a case arising under the FSM Constitution or national law. As such, removal of such a state court case to the FSM Supreme Court is deemed appropriate. Setik v. Perman, 21 FSM R. 31, 37 (Pon. 2016).

– Subject-Matter

Where the Trust Territory High Court improperly retained a case for four years after the FSM Supreme Court was certified, and continued to hold the case more than a year after the Truk State Court was established, issuing a judgment based upon filed papers, without there ever having been a trial, let alone an active trial, in the case, by the time judgment was issued the subject matter of the litigation was so plainly beyond the High Court's jurisdiction that its entertaining the action was a manifest abuse of authority. United Church of Christ v. Hamo, 4 FSM R. 95, 119 (App. 1989).

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).

The Chuuk State Supreme Court has subject matter jurisdiction to hear suits alleging that the legislature has exercised its power to be the sole judge of the qualifications of its members in an unconstitutional manner in violation of the constitutional prohibitions against ex post facto laws. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 265 (Chk. S. Ct. Tr. 1993).

Although, ordinarily, an issue must be raised at the trial level for it to be preserved for appeal, whether a court has subject matter jurisdiction is an issue that may be raised at any time. Hartman v. FSM, 6 FSM R. 293, 296 (App. 1993).

When it appears that the court lacks subject matter jurisdiction the case will be dismissed. Trance v. Penta Ocean Constr. Co., 7 FSM R. 147, 148 (Chk. 1995).

The Chuuk State Supreme Court is a court of general jurisdiction with concurrent original subject matter jurisdiction with other courts to try all civil cases except those matters that are within the exclusive jurisdiction of the national courts. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

A court with both subject matter jurisdiction of the case and personal jurisdiction over the defendant has complete jurisdiction of the matter. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

Whether a court has subject matter jurisdiction is an issue that may be raised at any time. Abraham v. Kosrae, 9 FSM R. 57, 59 (Kos. S. Ct. Tr. 1999).

Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. Thus subject matter jurisdiction may never be waived, and may be raised at any time, even after judgment. Island Dev. Co. v. Yap, 9 FSM R. 220, 222 (Yap 1999).

A venue provision that permits a civil action against a defendant who does not live in the FSM to be brought in a court within whose jurisdiction the defendant can be served or his property can be attached does not limit the FSM Supreme Court's subject matter jurisdiction, and does not render the long-arm statute superfluous. Such provisions do not preclude actions which are made procedurally possible by the long-arm statute, which gives litigants the means to effect service on entities not found within the FSM. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 204 (Pon. 2001).

The Pohnpei Supreme Court is a court of general jurisdiction, which has subject matter jurisdiction over a landlord/tenant dispute. Pernet v. Woodruff, 10 FSM R. 239, 242 (App. 2001).

A court may raise the issue of jurisdiction at any time because it is the court's duty to insure that jurisdiction exists. Jack v. Paulino, 10 FSM R. 335, 336 (Kos. S. Ct. Tr. 2001).

When an action was filed as an appeal under Kosrae State Code § 11.614, which provides that a Land Commission determination of ownership is subject to appeal, but there was no determination of ownership issued, the Kosrae State Court does not have subject matter jurisdiction to hear it as an appeal. When it appears that the court lacks subject matter jurisdiction, the case will be dismissed. Jack v. Paulino, 10 FSM R. 335, 336 (Kos. S. Ct. Tr. 2001).

Subject matter jurisdiction can be raised at any time by any party or by the court, and if it appears that subject matter jurisdiction does not exist then the case must be dismissed. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 537 (Chk. S. Ct. Tr. 2002).

The Chuuk State Supreme Court is a court of general jurisdiction and has concurrent original jurisdiction to try all civil cases. As such, it may exercise, subject to the principle of forum non conveniens,

jurisdiction over contract cases generally, regardless of where the contract was formed, unless exclusive jurisdiction for that particular contract resides in some other court. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 537 (Chk. S. Ct. Tr. 2002).

Lack of jurisdiction over the person is a defense that can be waived, whereas lack of subject matter cannot and requires dismissal. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 538 (Chk. S. Ct. Tr. 2002).

When a court has both subject matter and personal jurisdiction over a case, a motion to dismiss on jurisdictional grounds will be denied. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 538 (Chk. S. Ct. Tr. 2002).

The question of subject matter jurisdiction can be raised at any point in the proceeding. Alafanso v. Suda, 10 FSM R. 553, 554 (Chk. S. Ct. Tr. 2002).

The presence or lack of subject matter jurisdiction can be raised at any time by any party or by the court. Once raised, it must be considered. This is because a decision by a court without subject matter jurisdiction is void, and such occurrences should be avoided. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

Subject matter jurisdiction cannot be waived, and must be considered no matter how late in the proceeding it is raised. Bualuay v. Rano, 11 FSM R. 139, 145 (App. 2002).

The Chuuk State Supreme Court trial division has original and exclusive jurisdiction over disputes between municipalities and cases arising under the Chuuk Constitution, and, except for those matters which fall under the FSM Supreme Court's exclusive jurisdiction, it has concurrent original jurisdiction to try all civil, criminal, probate, juvenile, traffic and land cases, disputes over the waters in Chuuk, cases involving state laws, and cases in which the state government is a party. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 579 (Chk. S. Ct. Tr. 2003).

Whether a court has subject matter jurisdiction is an issue which may be raised at any time, even after judgment. Ben v. Chuuk, 11 FSM R. 649, 651 (Chk. S. Ct. Tr. 2003).

A statute of limitations is one of the expressly stated affirmative defenses to an action under Civil Rule 8(c). As such, it may be waived. On the other hand, a defect in subject matter jurisdiction may never be waived, and may be raised at any time, even after judgment. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 80 (Kos. 2003).

Subject matter jurisdiction may never be waived and may be raised at any time. Heirs of Palik v. Heirs of Henry, 12 FSM R. 415, 422 (Kos. S. Ct. Tr. 2004).

When, viewing the allegations in the light most favorable to the plaintiffs, the complaint does not state a civil rights cause of action and when no other basis for subject matter jurisdiction, such as diversity of citizenship, is alleged, the complaint does not state a claim upon which the FSM Supreme Court can grant relief, and the defendant's motion to dismiss will be granted. Harper v. William, 14 FSM R. 279, 282 (Chk. 2006).

When a Rule 12(b)(1) motion to dismiss raised a preliminary issue, the court's subject matter jurisdiction, the court had to address that before any trial on the merits could proceed or any decision on the merits could be made. The motion even had to be ruled upon before the defendants could be required to answer the complaint and thus put the case at issue on the merits. Murilo Election Comm'r v. Marcus, 15 FSM R. 220, 224 (Chk. S. Ct. App. 2007).

A motion to dismiss for lack of standing is a claim that the court lacks subject matter jurisdiction and is properly filed in lieu of an answer under Rule 12(b)(1), or as a motion to dismiss under Rule 12(h)(3), which can be raised at any time, even after judgment. It is the plaintiff's burden to show that the court has

jurisdiction, and that a colorable claim exists. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 217 (Chk. S. Ct. Tr. 2008).

It is within the court's discretion to allow or disallow affidavits and other matters outside the pleadings to be brought in when considering a motion to dismiss challenging the court's subject matter jurisdiction. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 217 (Chk. S. Ct. Tr. 2008).

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).

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).

A court's subject-matter jurisdiction may be raised at any time by a party or by the court. Nelson v. FSM Nat'l Election Dir., 16 FSM R. 414, 419 (App. 2009).

If all the answers to the subject-matter analytical construct questions are no, then subject-matter jurisdiction must be in some (most likely the state) court other than the FSM Supreme Court. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

The FSM Constitution vests the FSM Supreme Court with jurisdiction over a matter when the FSM Development Bank, an instrumentality of the FSM government, is a party. A Pohnpei state law cannot divest the court of that subject matter jurisdiction. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

Subject-matter jurisdiction can be raised at any time. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (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).

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).

Lack of subject-matter jurisdiction is a defense that can be raised at any time by any party or by the court. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

A suit for any damage allegedly caused by a neighbor's pigs would have to be made against the pigs' owner or custodian, and, unless there was diversity of citizenship between the plaintiff and the pigs' owner (an unlikely occurrence), the FSM Supreme Court would not have any jurisdiction over such a claim.

Palasko v. Pohnpei, 20 FSM R. 90, 95 (Pon. 2015).

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).

Subject-matter jurisdiction is jurisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 (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).

Whenever it appears by suggestion of the parties or otherwise, including being raised as an affirmative defense in the answer, that the court lacks jurisdiction of the subject matter the court must dismiss the action. Eperiam v. FSM, 20 FSM R. 351, 354 & n.1 (Pon. 2016).

Subject-matter jurisdiction entails a court's power to entertain and adjudicate a given type of case. The fundamental requirement for subject matter jurisdiction is a power derived from the FSM Constitution that specifies the class of cases the FSM Supreme Court is granted authority to hear. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506-07 (App. 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).

Like *res judicata*, the concept of jurisdiction over the subject matter is based upon public policy: one dictates the finality of judgments and the other requires litigation to be addressed in the proper forum. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

While courts do not have the power to extend their subject matter jurisdiction, as a practical matter, they must have the power to interpret and determine whether they have subject matter jurisdiction. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

Unlike personal jurisdiction, which a court can obtain upon the parties' consent or failure to object, the lack of subject-matter jurisdiction is never capable of being waived. In essence, the court either possesses it or it does not; it cannot assert it. 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).

A party may not waive subject matter jurisdiction. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

Existence of jurisdiction can only be exclusive or non-exclusive/concurrent. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

Exclusive and concurrent jurisdiction cannot be simultaneously present. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 518 (App. 2016).

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

632, 639 (Pon. 2016).

Subject-matter jurisdiction in the FSM Supreme Court is proper in a case involving an FSM Development Bank mortgage foreclosure, on any one of the following as an independent basis: 1) the bank's classification as an instrumentality of the national government; 2) the parties' diversity of citizenship; and 3) the implied challenge to the superiority of FSM Supreme Court; hence a case arising under the FSM Constitution or national law. As such, removal of such a state court case to the FSM Supreme Court is deemed appropriate. Setik v. Perman, 21 FSM R. 31, 37 (Pon. 2016).

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

A dismissal for lack of subject-matter jurisdiction does not preclude a second action on the same claim. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

While limited, the Kosrae Land Court's subject-matter jurisdiction is broad enough to encompass factual determinations of fraud and misrepresentation to the extent that they affect the validity of titles or conveyances of land. Indeed, that is the Land Court's very purpose. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

When the Kosrae Land Court itself is implicated in the allegations of fraud, that court is not competent to adjudicate the subject matter. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

MANDAMUS AND PROHIBITION

The party seeking a writ of mandamus has the burden of showing that its right to issuance of the writ is clear and indisputable. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

A denial of a motion to recuse may be reviewed by means of a petition for a writ of prohibition or mandamus. The standard of review is whether the trial judge abused his discretion in denying the motion to recuse. The petitioner must show that the trial judge clearly and indisputably abused his discretion when he denied the motion to disqualify. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 4 (App. 1997).

Although mandamus cases usually involve judges and arise out of pending cases, a case may arise out of an administrative procedure and the public official may be a clerk instead of a judge or justice. Nonetheless the same principles apply, and mandamus may be the appropriate remedy where there is undue delay. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

The standards governing the issuance of a writ of mandamus are well-recognized. The exact formulations may, however, differ somewhat. Federated Shipping Co. v. Trial Division, 9 FSM R. 270, 272 (App. 1999).

The power to grant the writ is discretionary. Federated Shipping Co. v. Trial Division, 9 FSM R. 270, 273 (App. 1999).

The party seeking the writ of mandamus has the burden of showing that its right to the writ's issuance is clear and undisputable. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

Merely being a case of first impression does not automatically make a petition not frivolous. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 440-41 (App. 2004).

Rule 38 sanctions will not be awarded when the petition was not wholly without merit or was frivolous since the constitutional issues relating to a privacy right had not been previously ruled upon. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 441 (App. 2004).

Rule 38 damages may be awarded when a mandamus petition is frivolous. FSM Dev. Bank v. Yinug, 12 FSM R. 450, 452 (App. 2004).

A writ of procedendo is a high prerogative writ of extraordinary nature that is an order from a superior court to an inferior court to proceed to judgment without trying to tell the inferior court what its judgment should be. It was the earliest remedy for refusal or neglect of justice by the courts, and, in many jurisdictions, the writ has become obsolete, and a writ of mandamus may be sought instead. Mori v. Hasiguchi, 16 FSM R. 382, 385 n.1 (Chk. 2009).

FSM Appellate Rule 21 is a nearly verbatim adoption of U.S. Federal Appellate Rule 21, and so special consideration should be given to United States decisions regarding application of Appellate Rule 21. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

The rules do not stay trial division proceedings while a writ of mandamus or prohibition is sought. The trial division is therefore free to act unless a stay has been specifically ordered. A writ applicant may seek a stay, first from the trial division, and if unsuccessful there, from the appellate division. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

When no stay was ever issued (and none apparently ever sought), the trial division justice may, while a petition for a writ of prohibition to disqualify that justice is pending in the appellate division, continue to make such orders, and do all acts, not inconsistent with law or with the rules of procedure and evidence as may be necessary for the due administration of justice. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

The Kosrae State Court has the power to issue all writs and other process, and may entertain a petition for a writ of mandamus. Tilfas v. Kosrae, 21 FSM R. 81, 93 (App. 2016).

– Authority and Jurisdiction

The FSM Supreme Court has inherent constitutional power to issue all writs; this includes the traditional common law writ of mandamus. 4 F.S.M.C. 117. Nix v. Ehmes, 1 FSM R. 114, 118 (Pon. 1982).

That the FSM Supreme Court has the general power to issue writs of mandamus is beyond controversy. 4 F.S.M.C. 117. However, exercise of such power must be tempered by sober judgment, for it is equally settled that the writ of mandamus is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear non-discretionary duty. Damarlane v. Santos, 6 FSM R. 45, 46 (Pon. 1993).

Chuuk State Supreme Court has the power to issue all writs for equitable and legal relief including writs of mandamus and prohibition. Election Comm'r v. Petewon, 6 FSM R. 491, 496 (Chk. S. Ct. App. 1994).

The Supreme Court has the power to issue writs of prohibition or of mandamus but may only do so if the petitioner has met its burden to show that its right to the writ is clear and indisputable. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 4 (App. 1997).

Writs of mandamus are issued in aid of the court's appellate jurisdiction. The court's authority is not confined to issuance of writs in aid of a jurisdiction already acquired by appeal but extends to those cases which are within its appellate jurisdiction although no appeal has been perfected. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

For the purposes of writs of mandamus an inferior court is one that is either placed under the supervisory or appellate control of the other court or is one whose jurisdiction is limited and confined. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The historic use of writs of prohibition and mandamus directed by an appellate court to an inferior court has been to exert the revisory appellate power over the inferior court. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The FSM Supreme Court trial division is not a superior tribunal to the Pohnpei Supreme Court, although in certain circumstances the FSM Supreme Court appellate division is such a superior tribunal. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

If it were proper to issue a writ of mandamus directed to the Pohnpei Supreme Court appellate division, it could only be done upon application to the FSM Supreme Court appellate division, not to the trial division. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The FSM Supreme Court trial division is without jurisdiction to issue a writ of mandamus directed to the Pohnpei Supreme Court. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 120 (Pon. 2001).

The Kosrae State Court has the power to issue writs of mandamus but may only do so if the petitioner has met its burden to show that its rights to the writ is clear and undisputable. The writ of mandamus is an extraordinary remedy, the object of which is to require an official to carry out a clear, non-discretionary duty. Jackson v. Kosrae, 10 FSM R. 198, 199 (Kos. S. Ct. Tr. 2001).

The Kosrae State Court has jurisdiction to issue writs and other process. Sigrah v. Speaker, 11 FSM R. 258, 260 (Kos. S. Ct. Tr. 2002).

The statutory basis for Appellate Procedure Rule 21(a), which provides for application for a writ of prohibition, is 4 F.S.M.C. 117, which provides that the Supreme Court and each division thereof will have power to issue all writs. Urusemal v. Capelle, 12 FSM R. 577, 585 (App. 2004).

While none of the FSM Rules of Civil Procedure appear to govern the disposition of a mandamus petition filed before the trial division, the power of the FSM Supreme Court trial division to entertain a petition for such a writ is beyond dispute. In reaching a disposition of a pending petition, the court will proceed analogously with Appellate Rule 23(b), which governs mandamus petitions before the appellate division, and provides that if the court is of the opinion that the writ clearly should not be granted, the court will deny the petition even before an answer has been filed. Shrew v. Sigrah, 13 FSM R. 30, 34 (Kos. 2004).

The Chuuk State Supreme Court appellate division has the power to issue writs of prohibition in the appropriate case. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

The Cuuk State Supreme Court derives its authority to issue writs of prohibition from Chk. S.L. No. 190-08, § 4, and Chk. App. R. 21(a). Ruben v. Petewon, 14 FSM R. 177, 182 (Chk. S. Ct. App. 2006).

The FSM Supreme Court has inherent constitutional power to issue all writs, including writs of mandamus and writs of prohibition. The extraordinary writ of mandamus is used to compel public officials to perform a duty ministerial in nature and not subject to the official's own discretion while the extraordinary writ of prohibition is used to prevent a trial court from exceeding its jurisdiction and exercising unauthorized judicial or quasi-judicial power. The writs of mandamus and prohibition are similar in that the former commands the trial court to do something, while the latter commands the trial court not to do something. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

A court that has the power to issue writs of prohibition may only do so if the petitioner has met its burden to show that its right to the writ is clear and indisputable. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

Courts frequently, in addition to prohibiting a specified action, impose affirmative directions or

commands found essential to adequate relief. When the lower tribunal is completely without jurisdiction to act, the court has the authority to not only prevent the lower tribunal's excesses but to also correct the results thereof. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

The Chuuk State Supreme Court has the authority to issue a writ of mandamus in a proper case. The Chuuk Judiciary Act gives all state courts the power to issue all writs for equitable and legal relief. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

Unlike a notice of appeal, there are no jurisdictional time frames for filing a petition for a writ of prohibition or for other extraordinary writs. The Appellate Rule 4 time limits for filing notices of appeal do not apply to petitions for extraordinary writs under Appellate Rule 21. In re Sanction of George, 19 FSM R. 131, 132 (App. 2013).

The only procedure available to seek restraint of or injunctive relief against an FSM Supreme Court trial division justice is to be found in Rule 21 of the FSM Rules of Appellate Procedure. It is established in this jurisdiction that a writ of prohibition must be directed to a court or tribunal inferior in rank to the one issuing the writ. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

The structure of the FSM Court system dictates that as a practical matter a writ against a trial division court may only be issued by the appellate division. Therefore, a writ of mandamus or prohibition, even if characterized as an "injunction" or "setting aside an order" may not be issued by one trial division justice against another FSM Supreme Court trial division justice. Appellate Rule 21 writs of prohibition are the sole procedure available for seeking restraint of a trial court judge's actions in a pending case. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257-58 (Pon. 2014).

The FSM Supreme Court trial division has the authority to issue writs of mandamus and prohibition as they may be necessary for the due administration of justice because the Supreme Court and each division thereof has power to issue all writs and other process not inconsistent with law or with the rules of procedure and evidence established by the Chief Justice, as may be necessary for the due administration of justice. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 288 (App. 2014).

Since a writ of mandamus issues from a higher tribunal to an inferior tribunal, the trial division may issue a writ of mandamus to compel a public official to perform a duty ministerial in nature and not subject to the official's own discretion. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 288 (App. 2014).

An appellate court considers whether a lower court also has original jurisdiction to issue mandamus with the appellate court. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 288 (App. 2014).

The FSM Supreme Court trial division is a tribunal superior to an FSM administrative agency. It has original jurisdiction over writs of mandamus directed to administrative agencies, and may in an appropriate case issue a writ of mandamus directed to the Secretary of Finance and Administration. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 288 (App. 2014).

The FSM Supreme Court appellate and trial divisions have concurrent original jurisdiction to issue writs of mandamus directed to administrative agencies. Though courts of last resort are given original jurisdiction to issue writs of mandamus it does not follow that such courts whose principal function is to exercise appellate or supervisory jurisdiction, will assume original jurisdiction in all cases in which their aid may be sought and which otherwise may be a proper case for the use of the remedy. When concurrent original jurisdiction exists, the petitioner ought to show why it is essential or proper that the writ issue from the appellate court rather than from the lower court, and in the absence of such a showing the appellate court may refuse to issue the writ. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 288-89 (App. 2014).

Although the FSM Supreme Court appellate division and the trial division have concurrent original jurisdiction over the issuance of a writ of mandamus directed to FSM administrative agencies, absent special circumstances, the writ should be sought first in the trial division and any petition for the writ filed in

the appellate division should be dismissed without prejudice to any future filing in the trial division. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App. 2014).

Normally a petition for a writ of mandamus filed in the appellate division when the trial division has concurrent original jurisdiction should be dismissed without prejudice to a future petition filed in the trial division, but when it is obvious that the writ clearly should not be granted, the appellate division can deny it. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 290 (App. 2014).

Since a writ of prohibition can only issue from a superior court against an inferior court, when, although the plaintiffs' complaint requested injunctive relief rather than specifically requesting a writ of prohibition, it is clear that they in actuality were requesting a writ of prohibition, any possibility of relief is plainly foreclosed. Ehsa v. FSM Dev. Bank, 19 FSM R. 367, 371-72 (Pon. 2014).

The Pohnpei Supreme Court trial division does not have appellate jurisdiction over Pohnpei municipal or local courts, and therefore the Pohnpei Supreme Court appellate division lacks jurisdiction over a petition for a writ of mandamus directed to a municipal court. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 402 (App. 2014).

A writ of prohibition directed to the Nett District Court trial division must first be sought in the Nett District Court appellate division since that is the tribunal with immediate supervisory power over the Nett District Court trial division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

The FSM Supreme Court appellate division may exercise jurisdiction over an appeal from the Nett District Court to the extent that it is an appeal from the Nett District Court appellate division and it may consider a petition for a writ of prohibition if a writ of prohibition has already been sought and denied in the Nett District Court appellate division or to the extent that it is a petition for a writ of prohibition directed to the Nett District Court appellate division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

When the Chief Justice of the Nett District Court was acting as a Nett District Court trial division judge, a writ of prohibition directed against him must first be sought from the Nett District Court appellate division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

Under 4 F.S.M.C. 117, the FSM Supreme Court has a constitutional power to issue all writs, including writs of prohibition. Halbert v. Manmaw, 20 FSM R. 245, 248 (App. 2015).

– Nature and Scope

The writ of mandamus is used to compel public officials to perform a duty ministerial in nature and not subject to the official's own discretion. Nix v. Ehmes, 1 FSM R. 114, 118 (Pon. 1982).

The writ of mandamus is an extraordinary remedy, the object is not to cure a mere legal error or to serve as a substitution for appeal, but to require an official to carry out a clear non-discretionary duty. In re Raitoun, 1 FSM R. 561, 562 (App. 1984).

Only under special circumstances that render the matter rare and exceptional should the Federated States of Micronesia Supreme Court appellate division issue a writ of mandamus to alter a trial judge's conduct before the trial court has completed proceedings and reached a final decision. In re Raitoun, 1 FSM R. 561, 562-63 (App. 1984).

The finality requirement and its underlying rationale mandate appellate court restraint and preclude issuance of writs of mandamus and prohibition on an interlocutory basis except in those rare and exceptional circumstances when the precise requirements for issuance of the writ are met and the appellate court in its discretion determines that immediate relief is called for. In re Main, 4 FSM R. 255, 258 (App. 1990).

The writ of mandamus is an extraordinary remedy issued to require a public official to carry out a clear non-discretionary duty. Office of the Public Defender v. FSM Supreme Court, 4 FSM R. 307, 309 (App. 1990).

The writ of mandamus is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear non-discretionary duty. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

A writ of mandamus may only force a ministerial act or prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

Mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support issuance of the writ of mandamus. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

The purpose of a writ of mandamus is to compel a judicial or other public officer who has failed or refused to perform a non-discretionary act which results from his official station or from operation of law. In re Failure of Justice to Resign, 7 FSM R. 105, 108-09 (Chk. S. Ct. App. 1995).

The determination of whether the power to grant a writ of mandamus should be exercised entails a court's full recognition of the extraordinary nature of the relief requested. Though the power is curative, it is strong medicine and its use must therefore be restricted to the most serious and critical ills. Federated Shipping Co. v. Trial Division, 9 FSM R. 270, 272-73 (App. 1999).

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until final judgment has been rendered by the trial court. Hence the party requesting a writ of prohibition or mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review before final judgment below. Federated Shipping Co. v. Trial Division, 9 FSM R. 270, 273 (App. 1999).

A writ of mandamus is used to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so. This is similar to a writ of prohibition, which, instead of commanding an inferior tribunal to do something, commands it not to do something. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 119-20 (Pon. 2001).

A writ of mandamus is an extraordinary remedy the purpose of which is to cause a public official to carry out his or her clear, nondiscretionary duty. FSM Dev. Bank v. Director of Commerce & Indus., 10 FSM R. 317, 319 (Kos. 2001).

Given the nature of the remedy of mandamus, and the caution exercised in affording it, it is important that the right sought to be enforced be clear and certain. There must be an immediate right to have the act in question performed, and such right must be specific, well defined, and complete, so as not to admit of any reasonable controversy. FSM Dev. Bank v. Director of Commerce & Indus., 10 FSM R. 317, 319 (Kos. 2001).

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available. Each of these five requirements must be satisfied. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the

respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 568 (Kos. S. Ct. Tr. 2002).

The writ of mandamus is an extraordinary remedy, the object is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear nondiscretionary duty. The writ's purpose is to compel a judicial or other public officer who has failed or refused to perform a non-discretionary act which results from his official station or from the operation of law. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

A non-discretionary or ministerial act may be established by the Constitution, by state law or by regulation. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 568 (Kos. S. Ct. Tr. 2002).

The writ of mandamus is an extraordinary remedy, the object of which is not to cure a legal error or to serve as a substitute for appeal, but to an official to carry out a clear non-discretionary duty. A writ of mandamus may only force a ministerial act or prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409 n.3 (App. 2003).

A writ of mandamus is an extraordinary remedy, the object of which is not to cure a legal error or to serve as a substitute for appeal, but to require an official to carry out a clear non-discretionary duty. The writ may only force a ministerial act or prevent a clear abuse of power; it cannot be used to test or overrule a judge's exercise of discretion. It issues only where there is no other adequate remedy available. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

Issuance now of a writ of mandamus cannot serve as a substitute for the pending appeal. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

A mandamus action is an extraordinary remedy that is to be reserved for rare and exceptional circumstances. The requirements for mandamus relief are that 1) the respondent must be a public official; 2) the action sought to be compelled must be nondiscretionary or ministerial; 3) the respondent must be under a clear duty to perform the act; 4) the respondent must have failed or refused to do the act; and 5) no other remedy must exist. Shrew v. Sigrah, 13 FSM R. 30, 33 (Kos. 2004).

In order to state a claim for mandamus relief, a petitioner must allege that the respondent official owes him or her a duty so plainly described as to be free from doubt. Shrew v. Sigrah, 13 FSM R. 30, 33 (Kos. 2004).

Presumption and belief, irrespective of who makes the assumption or holds the belief, are insufficient to support allegations entitling a petitioner to mandamus relief. Shrew v. Sigrah, 13 FSM R. 30, 34 (Kos. 2004).

The general requirements for the issuance of a writ of prohibition are that: a court or officer is about to exercise judicial or quasi-judicial power, and the exercise of power is unauthorized and will result in damage or injury for which there is no plain, speedy or adequate legal remedy. Ordinarily, the writ will not issue unless the petitioner has objected in the lower court to that court's exercise of jurisdiction. Ruben v. Petewon, 14 FSM R. 177, 182 (Chk. S. Ct. App. 2006).

The court is mindful of its duty to issue the extraordinary writ of prohibition with great caution and is also mindful that it is especially important to exercise the writ in those cases where it is necessary to confine a lower court to its proper function. Ruben v. Petewon, 14 FSM R. 177, 187 (Chk. S. Ct. App. 2006).

The FSM Supreme Court has inherent constitutional power to issue all writs, including writs of mandamus and writs of prohibition. The extraordinary writ of mandamus is used to compel public officials to perform a duty ministerial in nature and not subject to the official's own discretion while the extraordinary writ of prohibition is used to prevent a trial court from exceeding its jurisdiction and exercising unauthorized judicial or quasi-judicial power. The writs of mandamus and prohibition are similar in that the former

commands the trial court to do something, while the latter commands the trial court not to do something. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

A writ of mandamus or prohibition is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear, nondiscretionary duty. Such a writ may only force a ministerial act or prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. Mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support the issuance of a writ of mandamus or prohibition. The issuance of writs is discretionary and must be used with great caution. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

Only under special circumstances that render the matter rare and exceptional should the FSM Supreme Court appellate division issue a writ of mandamus or prohibition to alter a trial judge's conduct before the trial court has completed the proceedings and reached a final decision. The finality requirement and its underlying rationale mandate appellate court restraint, and preclude issuance of writs of mandamus and prohibition on an interlocutory basis, except in those rare and exceptional circumstances when the precise requirements for issuance of the writ are met and the appellate court, in its discretion, determines that immediate relief is necessitated. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

The FSM Supreme Court's exercise of its power to issue writs of mandamus and prohibition must be tempered by sober judgment, since such writs are extraordinary remedies. The determination whether to grant a writ of mandamus or prohibition involves the court's full recognition of the extraordinary nature of the relief requested. Though the power is curative, it is strong medicine and its use must be restricted to the most serious and critical ills. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

The five elements that must be present in order for the FSM Supreme Court to exercise its discretion to issue a writ of mandamus or prohibition are: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available. Each of these five elements must be satisfied. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

The party seeking a writ of mandamus has the burden of showing that its right to issuance of the writ is clear and indisputable. Since a prerequisite to the issuance of a writ of mandamus or prohibition is the existence of a clear duty that is being violated by the trial court, no writ will issue when the petitioner has not established that the trial court had any duty, much less a clear duty. Etscheit v. Amaraich, 14 FSM R. 597, 600 (App. 2007).

The general requirements for the issuance of an extraordinary writ of prohibition are that a court or an officer is about to exercise judicial or quasi-judicial power, that the exercise of such power is unauthorized or the inferior tribunal is about to act without or in excess of jurisdiction which may or will result in damage or injury for which there is no plain, speedy or adequate legal remedy. Nikichiw v. Petewon, 15 FSM R. 33, 37 (Chk. S. Ct. App. 2007).

The single issue presented by a petition for a writ of prohibition is whether or not an inferior court or tribunal is without jurisdiction or is about to act in excess of its jurisdiction. The general requirements for the issuance of an extraordinary writ of prohibition are that a court or an officer is about to exercise judicial or quasi-judicial power and that the exercise of such power is unauthorized or the inferior tribunal is about to act without or in excess of jurisdiction which may or will result in damage or injury for which there is no plain, speedy or adequate legal remedy. Albert v. O'Sonis, 15 FSM R. 226, 231 (Chk. S. Ct. App. 2007).

A writ of prohibition is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal. Such a writ may only prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. Mere legal error by a judge, even gross legal error

in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support the issuance of a writ of prohibition. The issuance of writs is discretionary and must be used with great caution. Albert v. O'Sonis, 15 FSM R. 226, 231 (Chk. S. Ct. App. 2007).

A writ of mandamus is used to confine an inferior tribunal to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so, which is similar to a writ of prohibition that, instead of commanding an inferior tribunal to do something, commands it not to do something. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20-21 (Chk. S. Ct. Tr. 2011).

The historic use of writs of prohibition and mandamus directed by an appellate court to an inferior tribunal has been to exert the revisory appellate power over the inferior tribunal. For the purpose of a writ of mandamus an inferior tribunal is one that is either placed under the supervisory or appellate control of the other court or is one whose jurisdiction is limited and confined. The Chuuk State Election Commission is an agency or tribunal inferior to the Chuuk State Supreme Court. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21 (Chk. S. Ct. Tr. 2011).

The five elements that must be present before the court can exercise its discretion to issue a writ of mandamus are: 1) the respondent must be a judicial or other public officer or body, 2) the act to be compelled must be non-discretionary or ministerial, 3) the respondent must have a clear legal duty to perform the act, 4) the respondent must have failed or refused to perform the act, and 5) there must be no other adequate legal remedy available. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 21 (Chk. S. Ct. Tr. 2011).

A writ of prohibition is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal. Such a writ may only prevent a clear abuse of power and cannot be used to test or overrule a judge's exercise of discretion. Mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support the issuance of a writ of prohibition. Ehsa v. Johnny, 19 FSM R. 175, 177 (App. 2013).

For the FSM Supreme Court to exercise its discretion to issue a writ of mandamus or prohibition: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available, and each of these five elements must be satisfied. A writ of mandamus or prohibition is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear, non-discretionary duty or prevent a clear abuse of power. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

The issuance of writs of mandamus or prohibition must be done with great caution and cannot be used to test or overrule a judge's exercise of discretion, and a mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, will not suffice to support the issuance of a writ of prohibition. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

The single issue presented by a writ of prohibition is whether an inferior court or tribunal is without jurisdiction or is about to act in excess of its jurisdiction. The extraordinary writ of prohibition is proper to prevent an inferior tribunal acting without or in excess of jurisdiction which may result in a wrong, damage, and injustice when there is no plain, speedy, and adequate legal remedy otherwise available. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

A writ of prohibition cannot be used as a substitute for a pending appeal of attorney sanctions that is currently being briefed, especially when the sanctions have been stayed while that appeal proceeds. That is an adequate legal remedy for the attorney sanctions. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

Five elements must be present in order for the FSM Supreme Court to exercise its discretion to issue a writ of mandamus or prohibition: 1) the respondent must be a judicial or other public officer; 2) the act to be

compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194 (App. 2013).

A writ of prohibition is an extraordinary remedy, the object of which is not to cure a mere legal error or to serve as a substitute for appeal, but to require an official to carry out a clear, non-discretionary duty. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194 (App. 2013).

A writ cannot be used to test or overrule a judge's exercise of discretion, and mere legal error by a judge, even gross legal error in a particular case, as distinguished from a calculated and repeated disregard of governing rules, does not suffice to support the issuance of a writ of prohibition. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194 (App. 2013).

The single issue presented by a petition for a writ of prohibition is whether an inferior court or tribunal is without jurisdiction or is about to act in excess of its jurisdiction. The extraordinary writ of prohibition is proper to prevent an inferior tribunal acting without or in excess of jurisdiction which may result in a wrong, damage, and injustice when there is no plain, speedy, and adequate remedy otherwise available. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194 (App. 2013).

The only procedure available to seek restraint of or injunctive relief against an FSM Supreme Court trial division justice is to be found in Rule 21 of the FSM Rules of Appellate Procedure. It is established in this jurisdiction that a writ of prohibition must be directed to a court or tribunal inferior in rank to the one issuing the writ. Ehsa v. FSM Dev. Bank, 19 FSM R. 253, 257 (Pon. 2014).

When a case has languished in the Pohnpei Supreme Court trial division since 1991, any party, instead of filing suit in the FSM Supreme Court, could have sought from the Pohnpei Supreme Court appellate division a writ of mandamus or a writ of procedendo as a remedy for the lower Pohnpei state court's refusal or neglect of justice. Such a writ would order the trial court to make a decision in the case without telling the lower court what its decision should be. Carius v. Johnson, 20 FSM R. 143, 145-46 (Pon. 2015).

A writ of prohibition is an extraordinary remedy and may only prevent a clear abuse of discretion; it may not be used to overrule a trial judge's sound exercise of discretion. Halbert v. Manmaw, 20 FSM R. 245, 248-49 (App. 2015).

The determination of whether to grant a writ of mandamus or prohibition involves the court's full recognition of the extraordinary nature of the relief requested, and no writ will issue if the petitioner has not first established that the trial judge had a duty and violated it. Though the power is curative, it is strong medicine and its use must be restricted to the most serious and critical ills. Halbert v. Manmaw, 20 FSM R. 245, 249 (App. 2015).

– Procedure

The proper method to obtain a writ of prohibition to disqualify a member of an appellate panel is to move for disqualification before that member, and, if the recusal motion is denied, to file a petition for a writ of prohibition as a separate matter to be considered by an appellate panel constituted pursuant to Appellate Rule 21(a). Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

The Office of the Attorney General is not a public officer – it is a public office. In order to meet the mandamus requirement of a public officer, the Attorney General should have been named as a respondent. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 568 (Kos. S. Ct. Tr. 2002).

When an amended petition for writ of mandamus is filed, the petitioner will be limited to briefing the issues raised in its original petition for writ of mandamus, not the issues raised in its amended petition, and the amended petition will be designated as a case with a different docket number. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409 (App. 2003).

An amended petition for a writ of mandamus is considered a separate petition for writ of mandamus involving the same parties. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 440 (App. 2003).

When an application has been made for a writ of mandamus or prohibition directed to an FSM Supreme Court judge the remaining article XI, section 3 FSM Supreme Court justice(s), acting as the appellate division, are eligible to consider the petition. If the remaining fulltime justice(s) are of the opinion that the writ clearly should not be granted, they shall deny the petition. Otherwise, they shall order that an answer be filed. McIlrath v. Amaraich, 11 FSM R. 502, 504 (App. 2003).

The rules do not stay trial division proceedings when a writ of mandamus is sought. FSM v. Wainit, 12 FSM R. 201, 203 (Chk. 2003).

It has been a principle of long standing that a stay will not be granted in a criminal matter while the defendant is seeking a writ of mandamus unless there is a substantial likelihood he will prevail. The court cannot see any reason why the standard should be lower when the defendant has also filed an interlocutory notice of appeal as well as a petition for a writ of mandamus. FSM v. Wainit, 12 FSM R. 201, 204 (Chk. 2003).

Rule 38 damages may be awarded when a mandamus petition is frivolous. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 440 (App. 2004).

When the court refused to allow the original petition for a writ of mandamus to be amended and provided that the amended petition would be considered a separate petition involving the same parties, the petitioners' pursuit of the petition after the order denying amendment did not make the original petition frivolous. FSM Dev. Bank v. Yinug, 12 FSM R. 437, 440 (App. 2004).

The FSM Supreme Court Director of Court Administration is a court officer who may properly be the subject of a writ of prohibition when no other adequate remedy presents itself since a specially assigned justice's handling of cases specially assigned to him is not possible in the absence of certain administrative steps on the Director's part. Accordingly, the Court Director can properly be named a respondent. Urusemal v. Capelle, 12 FSM R. 577, 585 (App. 2004).

While none of the FSM Rules of Civil Procedure appear to govern the disposition of a mandamus petition filed before the trial division, the power of the FSM Supreme Court trial division to entertain a petition for such a writ is beyond dispute. In reaching a disposition of a pending petition, the court will proceed analogously with Appellate Rule 23(b), which governs mandamus petitions before the appellate division, and provides that if the court is of the opinion that the writ clearly should not be granted, the court will deny the petition even before an answer has been filed. Shrew v. Sigrah, 13 FSM R. 30, 34 (Kos. 2004).

A respondent justice, as is his right under Appellate Procedure Rule 21(b), may file a letter that he does not wish to participate further in the prohibition proceeding against him. Nikichiw v. O'Sonis, 13 FSM R. 132, 134-35 (Chk. S. Ct. App. 2005).

A writ of prohibition directed to a Chuuk State Supreme Court trial division justice is not a matter that the justice is barred from hearing when it was not heard by such justice in the Chuuk State Supreme Court trial division, and in an FSM Supreme Court case, the justice was careful not to decide anything on the merits. Not having expressed an opinion on the merits or done more than issue a preliminary injunction, a justice is not precluded from sitting on a panel considering a petition for writ of prohibition. Ruben v. Petewon, 14 FSM R. 141, 145 (Chk. S. Ct. App. 2006).

A motion to stay proceedings pending consideration of a petition for a writ of mandamus concerning a lawyer's representation is denied when there: 1) is no substantial possibility that an appellate panel would grant the writ, 2) is no showing of irreparable harm if the stay is denied, and 3) are no equities presented

that favor a stay. McVey v. Etscheit, 14 FSM R. 268, 271 (Pon. 2006).

When a petition addressed to an appellate justice asking that he disqualify himself has been denied by that justice, the party may file a petition for a writ of prohibition to prevent that justice from continuing to sit on the appeal. When the other two panel justices are of the opinion that the writ of prohibition clearly should not be granted, they will deny the petition. Goya v. Ramp, 14 FSM R. 303, 304 (App. 2006).

A petition for a preemptory writ, such as prohibition or mandamus, is an expedited procedure that does not usually require the certification of a trial court record, or extended briefing, or even a transcript, or oral argument. Amayo v. MJ Co., 14 FSM R. 355, 363 (Pon. 2006).

It is unclear whether a complaint and summons must be served with a petition for a writ of mandamus, but, service of the petition was defective because a summons should have been issued and served. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 19 (Chk. S. Ct. Tr. 2011).

The Legislature is not an indispensable party when a petition seeks a writ commanding the State Election Commission to perform an act, not the Legislature to perform an act. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

When parties seek relief from a final order and interlocutory relief in the nature of relief usually sought by a petition for a writ of prohibition, the two are deemed to be two separate appellate cases with the appeal from the final order proceeding on the usual course of an appeal on the merits and with the petition for a writ of prohibition proceeding separately under a different docket number on the Rule 21 expedited procedure pertinent to that form of relief. In re Sanction of George, 19 FSM R. 131, 133 (App. 2013).

Under Appellate Rule 21, if the appellate division is of the opinion that a writ of prohibition clearly should not be granted, it must deny the petition. Otherwise, it must order that an answer be filed. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194 (App. 2013).

The party seeking a writ of mandamus has the burden of showing that its right to issuance of the writ is clear and indisputable. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App. 2014).

The FSM Supreme Court appellate division may, in the interest of judicial economy, determine if a petition for a writ of mandamus that should have been filed in the trial division clearly should not be granted. If it is of the opinion that the writ clearly should not be granted, it will deny the petition, but if there is any doubt, it will dismiss the petition without prejudice so that the petitioner could file in the trial division. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App. 2014).

A writ of prohibition directed to the Nett District Court trial division must first be sought in the Nett District Court appellate division since that is the tribunal with immediate supervisory power over the Nett District Court trial division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

When the Chief Justice of the Nett District Court was acting as a Nett District Court trial division judge, a writ of prohibition directed against him must first be sought from the Nett District Court appellate division. Loyola ex rel. Edmund v. Hairens, 19 FSM R. 401, 403 (App. 2014).

A writ of mandamus petition will be dismissed without prejudice when the named respondent is the Chuuk State Supreme Court trial division because it is not a public officer – it is a public office. To meet the mandamus requirement of a public officer, the trial judge should be the named respondent. Irons v. Chuuk State Supreme Court Tr. Div., 19 FSM R. 654, 655 (Chk. S. Ct. App. 2015).

A petition for a writ of mandamus will be dismissed when the named respondent is the Chuuk State Election Commission because it is not a public officer – it is a public office. In order to meet the mandamus requirement of a public officer, the Director and Commissioners should have been named as respondents. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

A petition for a writ of prohibition to disqualify a trial court judge is procedurally deficient when it includes a lone exhibit which reflects the trial judge's order; when there is no affidavit stating the reasons for the belief that grounds for disqualification exist; when it lacks a memorandum of points and authorities; and when it includes a motion to stay that does not properly belong before the appellate division since it should have been filed in the trial court. Halbert v. Manmaw, 20 FSM R. 245, 249 (App. 2015).

A petitioner for a writ of prohibition must allege facts that show an appearance of partiality. Without a supporting affidavit, the purported facts underpinning the allegation are absent, and only the petitioner's subjective assertions remain, and when the petitioner's unsupported allegations that the judge is not impartial are purely speculative, they are insufficient to support his disqualification. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

When there are too many procedural deficiencies to overlook because the application for a writ of prohibition's certificate of service shows service only on the respondent judge at her office; because the real parties in interest were not served and were not named as real parties in interest in the application or in the case caption; because the petition does not contain a copy of the respondent judge's order denying her recusal, if there was a written order, or a transcript of the denial on the record if the denial was made orally; and because, although the relevant judicial disqualification statute requires that an application to disqualify a justice be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist, no affidavit accompanied the petition although an "affidavit attached hereto" is mentioned in the application, the petition for a writ of prohibition will be denied without prejudice to any future application in which all of the procedural deficiencies have been cured. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 563, 564 (App. 2016).

When the previous application for a writ of prohibition was denied without prejudice because of various deficiencies in the application and a second application for a writ of prohibition is filed, the court clerks will assign it the next available appellate docket number since it is a new application. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 578 (App. 2016).

When membership in the Mwoalen Wahu Ileile En Pohnpei is limited to the traditional paramount chiefs of Pohnpei and the paramount chiefs are only those persons who hold the title of either Nanmwarki or Nahnken and when the justice's father, as Wasahi Sokehs, is not a paramount chief and is therefore not now a member of the plaintiff Mwoalen Wahu Ileile En Pohnpei, and, unless one day he attains the title of Nanmwarki Sokehs, will never be a member of that council, a writ of prohibition, directed to the trial justice, clearly should not be granted. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 579 (App. 2016).

The appellate rules require that a petition for a writ of prohibition be accompanied by proof of service on the respondent judge or justice and on all parties to the action in the trial court. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

Since Appellate Rule 21(a) requires that a petition for a writ of prohibition contain copies of any order or opinion or parts of the record which may be essential to an understanding of the matters set forth in the petition, that would, at a minimum, be the trial judge's written order denying her recusal and the reasons for that denial or, if the denial was oral, a transcript of that denial. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

The relevant judicial disqualification statute requires that an application to disqualify a justice, be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

When the procedural deficiencies in a petition for a writ of prohibition are too many to overlook, the petition will be denied without prejudice to any future petition in which these procedural deficiencies have all been cured. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

When a new FSM Supreme Court associate justice has taken the oath of office and is not disqualified, he, as the remaining article XI, section 3 FSM Supreme Court justice is eligible to consider a petition for a writ of prohibition and he alone could deny that petition. But when a specially assigned justice has already sat on the appeal case since his designation in March 2016, both the specially assigned justice and the remaining article XI, section 3 justice will constitute the appellate division for the case. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

When the trial court clearly considered the petition for a writ of mandamus, it did not deprive the petitioner of his procedural due process by denying the writ without first having a hearing. Tilfas v. Kosrae, 21 FSM R. 81, 93 (App. 2016).

– When May Issue

Where there is no evidence of arbitrary or capricious conduct, the Pohnpei Supreme Court will decline to issue a writ of mandamus compelling the State Legislature to exercise discretionary legislative functions, even though the State Constitution expressly commands the performance of those functions. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 11 (Pon. S. Ct. Tr. 1985).

When a justice is called upon to alter the conduct of a trial judge in a state court before that court has completed proceedings and reached a final decision in a case, the pertinent inquiry is whether or not special circumstances exist so as to render the matter rare and exceptional for issuance of a writ of mandamus. Damarlane v. Santos, 6 FSM R. 45, 46-47 (Pon. 1993).

A request for mandamus so as to avoid a long and costly appeal does not present rare and exceptional circumstances so as to warrant issuance of a writ of mandamus. Damarlane v. Santos, 6 FSM R. 45, 47 (Pon. 1993).

Where the most the petitioner alleges is that the trial justice committed gross legal error and where the matter is already on appeal a writ of mandamus will not issue because it was not shown that the trial justice breached a duty, ministerial in nature, or that he had engaged in a clear abuse of power. Senda v. Trial Division, 6 FSM R. 336, 338 (App. 1994).

In order to overturn the trial judge's denial of a motion to recuse an appellant must show an abuse of the trial judge's discretion. The same standard of review applies to a petition for a writ of prohibition ordering a judge to recuse himself. Nahnken of Nett v. Trial Division, 6 FSM R. 339, 340 (App. 1994).

Since a prerequisite to the issuance of a writ of mandamus is the existence of a clear duty that is being violated by the trial court, no writ will issue when the petitioner has not established that the trial court had any duty, much less a clear duty. Gimnang v. Trial Division, 6 FSM R. 482, 485 (App. 1994).

The single issue presented by a writ of prohibition is whether or not an inferior court or tribunal is without jurisdiction or is about to act in excess of its jurisdiction. Election Comm'r v. Petewon, 6 FSM R. 491, 496 (Chk. S. Ct. App. 1994).

The general requirements for the issuance of a writ of prohibition are that a court or officer is about to exercise judicial or quasi-judicial power, that the exercise of such power is unauthorized and will result in damage or injury for which there is no plain, speedy or adequate legal remedy. Generally, the writ will not be issued unless the petitioner has objected in the inferior court to that court's exercise of jurisdiction in order to allow the lower court the opportunity to rule properly on the question of its own jurisdiction. Election Comm'r v. Petewon, 6 FSM R. 491, 497 (Chk. S. Ct. App. 1994).

The extraordinary writ of prohibition is proper to prevent an inferior tribunal acting without or in excess of jurisdiction which may result in wrong, damage, and injustice and there is no plain, speedy and adequate remedy otherwise available. Election Comm'r v. Petewon, 6 FSM R. 491, 497 (Chk. S. Ct. App. 1994).

The principal and fundamental purpose of the writ of prohibition is to prevent an encroachment, excess,

usurpation or assumption of jurisdiction on the part of an inferior court or tribunal. The issuance of the writ is discretionary and used with great caution for the furtherance of justice and to secure order and regularity in judicial proceedings. Election Comm'r v. Petewon, 6 FSM R. 491, 497 (Chk. S. Ct. App. 1994).

It is proper to issue a writ of prohibition to restrain a co-equal court or justice from proceeding in a matter that was already pending before another court or justice. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

Where a properly filed notice of appeal has transferred jurisdiction to the appellate court and the trial court is about to conduct either a hearing on a preliminary injunction or a trial on the merits of the case which is the same as those on appeal, it is proper for an appellate court to issue a writ of prohibition to prevent further action by the lower court. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (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).

Where an inferior court has acted in excess of its jurisdiction a writ of prohibition is proper to confine it to its proper role. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

When a court has concluded that the inferior court has acted or is about to act in excess of its jurisdiction the next requirement for the writ of prohibition to issue is that a harm or injury will result from the inferior court's action. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

Where the Election Commissioner is in the untenable position of being subject to the inconsistent orders of two trial division courts because either order he chooses to obey will cause him to be in violation of the other order and where one trial court's assumption of jurisdiction also interferes with the order and regularity of the judicial proceedings because the same issues affecting the same parties cannot be decided at the same time by a trial division court and the appellate division, it is proper for a writ of prohibition to issue. Election Comm'r v. Petewon, 6 FSM R. 491, 500 (Chk. S. Ct. App. 1994).

When the Election Commissioner is caught between the two competing and inconsistent orders of courts of the same rank, and has pursued the only legal remedy available to him by objecting to the second court's jurisdiction, it is proper for a writ of prohibition to issue to confine the second court to its proper role because the Commissioner has no other plain, speedy or adequate legal remedy. Election Comm'r v. Petewon, 6 FSM R. 491, 501 (Chk. S. Ct. App. 1994).

The writ of mandamus is an extraordinary remedy designed to prevent public officials from committing clear abuses of power. As such, mandamus relief cannot be used as a precaution against future events that may never occur. Damarlane v. Pohnpei State Court, 6 FSM R. 561, 563-64 (Pon. 1994).

A writ of mandamus is an extraordinary remedy issued to require a public official to carry out a clear non-discretionary duty to which the petitioner has an indisputable right, and it may not be issued for the purpose of requiring a public official to carry out an act that is not within his authority. Katau Corp. v. Micronesian Maritime Auth., 6 FSM R. 621, 622 (Pon. 1994).

Because the Micronesian Maritime Authority has discretion in negotiating and entering into foreign fishing agreements and because statutorily a fishing permit cannot be issued without a signed agreement a court cannot issue a writ of mandamus to compel issuance of a fishing permit because it cannot order performance of a statutorily forbidden act. Katau Corp. v. Micronesian Maritime Auth., 6 FSM R. 621, 624 (Pon. 1994).

A writ of prohibition will only issue to prevent an inferior court or tribunal from acting without or in excess of its jurisdiction. It must be directed to a court or tribunal inferior in rank to the one issuing the writ. As a general rule, it cannot issue from one court to another of equal rank. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

A writ of prohibition is an extraordinary writ and cannot be issued when there is a plain, speedy and adequate remedy otherwise available that has not been exhausted. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

A writ of prohibition will not issue to disqualify an FSM Supreme Court justice where the party seeking disqualification has not filed a motion to disqualify or recuse to be considered by the justice whose disqualification is sought. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

In order for a writ of prohibition to issue to require a judge to recuse himself it must be an abuse of discretion for the judge not to recuse himself. Where it is not apparent what interest of the judge could be substantially affected by the outcome of the proceeding or that the judge is biased or prejudiced the writ will not issue. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 10 (App. 1995).

The central issues of law presented by an application for a writ mandamus are whether the act sought to be compelled is one that is ministerial or non-discretionary and whether the act is one which the respondent as a judicial or other public officer has a clear legal duty to perform. In re Failure of Justice to Resign, 7 FSM R. 105, 108 (Chk. S. Ct. App. 1995).

The five elements that must be present before the court can exercise its discretion to issue a writ of mandamus are: 1) the respondent must be a judicial or other public officer, 2) the act to be compelled must be non-discretionary or ministerial, 3) the respondent must have a clear legal duty to perform the act, 4) the respondent must have failed or refused to perform the act, and 5) there must be no other adequate legal remedy available. In re Failure of Justice to Resign, 7 FSM R. 105, 109 (Chk. S. Ct. App. 1995).

Pursuant to the Chuuk Judiciary Act judges in Chuuk have a clear ministerial, non-discretionary duty to resign from judicial office upon becoming a candidate for a non-judicial office. A writ of mandamus is the specific remedy to compel the performance of such a legally required ministerial act. In re Failure of Justice to Resign, 7 FSM R. 105, 110 (Chk. S. Ct. App. 1995).

Although the Chuuk Constitution does subject members of the judiciary to removal from office by impeachment, the court need not decide if this is the sole method a judge may be removed from office because the issuance of a writ of mandamus is not a removal action. All the court did by issuing the writ is to require the judge to follow the applicable law and remove himself from office by resignation when he became a political candidate. In re Failure of Justice to Resign, 7 FSM R. 105, 110 (Chk. S. Ct. App. 1995).

Because a judge has a ministerial, non-discretionary duty to state on the record his reasons for denying a motion to disqualify himself a writ of prohibition may issue to prevent him from proceeding further on a case until he has done so. Ting Hong Oceanic Enterprises v. Trial Division, 7 FSM R. 642, 643 (App. 1996).

Mandamus will lie to require the performance of a clear non-discretionary duty, or to prevent a clear abuse of power, but it does not lie to control judicial discretion, except when that discretion has been abused. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

As with other extraordinary writs, mandamus will not issue unless no other adequate remedy is available. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

When there is no right of appeal from the Chief Clerk's deferral of an applicant's certification as an attorney entitled to practice law before the FSM Supreme Court, and no other remedy exists, and when the deferral was without giving the applicant a hearing, and the deferral was continued during an unexplained, lengthy delay in the subsequent disciplinary proceeding, constituting an abuse of the discretion allowed by the admission rules, a writ of mandamus will lie to compel the certification of the applicant. In re Certification of Belgrove, 8 FSM R. 74, 78 (App. 1997).

When the Kosrae State Code Section 18.506 requires a branch head to make and transmit his final decision to the Director of Administration and the appellant within 14 days of receipt of the committee's recommendation and more than 14 days have elapsed since the branch head's receipt with no final decision by him, the branch head has failed to carry out his clear, non-discretionary duty to issue and transmit his final decision within the time period provided by law. The petitioner's right to the writ of mandamus is thus clear and undisputable and the writ will issue. Jackson v. Kosrae, 10 FSM R. 198, 199 (Kos. S. Ct. Tr. 2001).

When a petition for mandamus to order the respondent to sell land does not identify the property, the right which the writ seeks to enforce is not sufficiently specific, well defined, and complete to justify the extraordinary remedy of mandamus. FSM Dev. Bank v. Director of Commerce & Indus., 10 FSM R. 317, 319 (Kos. 2001).

Mandamus lies to compel a public official to perform a clear, nondiscretionary duty. When the petition is devoid of any allegation that the respondent is acting in an official capacity, when the Kosrae deed of trust statute does not confer on the respondent either the obligation or the express power to act as a trustee under a deed of trust, and when the petition is silent as to any other mechanism or source of authority by which the respondent in his official capacity has assumed the duties of the trustee under the deed of trust at issue so as to make the performance of those duties a "clear and nondiscretionary," mandamus is not available. FSM Dev. Bank v. Director of Commerce & Indus., 10 FSM R. 317, 319 (Kos. 2001).

When there is no constitutional provision which specifies the type of food to be provided to inmates and no statutory or regulatory provisions which specify the type of food to be provided to inmates, there is no clear ministerial duty of the Chief of Police which states the type of food to be provided to inmates. Talley v. Timothy, 10 FSM R. 528, 530 (Kos. S. Ct. Tr. 2002).

A court may issue a writ of mandamus when the petitioner has met its burden to show that its right to the writ is clear and undisputable. The writ of mandamus is an extraordinary remedy issued to require a public official to carry out a clear non-discretionary duty. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 568 (Kos. S. Ct. Tr. 2002).

Because no statute or regulation requires the Attorney General or Director of Administration to explain his decision to deny the request for hazardous pay differential, it is not a non-discretionary or ministerial act. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 569 (Kos. S. Ct. Tr. 2002).

Mandamus will be denied when there is another adequate legal remedy available to the petitioners – to file a grievance on their hazardous pay differential claim and proceed through the administrative process. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 569 (Kos. S. Ct. Tr. 2002).

The finality requirement and its underlying rationale mandate appellate court restraint and preclude issuance of writs of mandamus on an interlocutory basis except in those rare and exceptional cases when the precise requirements for issuance of the writ are met and the appellate court in its discretion determines that immediate relief is called for. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409 n.3 (App. 2003).

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until the trial court has rendered final judgment. Hence the party requesting a writ of mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review before a final judgment is entered below. FSM Dev. Bank v. Yinug, 11 FSM R. 405, 409 n.3 (App. 2003).

The finality requirement and its underlying rationale mandate appellate court restraint and preclude issuance of writs of mandamus on an interlocutory basis except in those rare and exceptional cases when the precise requirements for issuance of the writ are met and the appellate court in its discretion determines that immediate relief is called for. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

Only under special circumstances should the Appellate Division issue a writ of mandamus to alter the conduct of the trial judge before the trial court has completed proceedings and reached a final decision. The object of the requirement is to prevent piecemeal litigation which would result from the use of interlocutory appeals. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 n.4 (App. 2003).

Appellate review, in all but narrowly defined, exceptional circumstances, should be postponed until final judgment has been rendered by the trial court. Hence the party petitioning for a writ of mandamus has the burden of showing a clear and indisputable right thereto, and must show exceptional circumstances necessitating review before a final judgment is entered below. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

When, although a review of the record would appear to indicate that adequate notice and opportunity to be heard were provided, the issue of whether the petitioner had notice and an opportunity to be heard is one that is properly raised on appeal from a final judgment or order. That is its remedy at law and the petition will be denied when petitioner has not shown that this remedy is unavailable or inadequate, or that the extraordinary circumstances exist for the issuance of a peremptory writ and it has not provided compelling justification and the court does not find the exceptional circumstances that would justify the issuance of the extraordinary writ of mandamus necessitating review before a final judgment below. FSM Dev. Bank v. Yinug, 11 FSM R. 437, 441 (App. 2003).

A writ of prohibition may issue when a court or court officer is about to engage in judicial or quasi-judicial action that is unauthorized and when there is no other adequate remedy to address the injury that will result from the unauthorized conduct. Urusemal v. Capelle, 12 FSM R. 577, 585 (App. 2004).

Since the sole issue before an appellate panel considering a writ of prohibition directed against one judge is whether the petitioner has established that that judge must be prohibited from acting in a particular case, not whether some other judge may also be disqualified, a challenge to another judge's authority to act must be brought up in some other proceeding. Nikichiw v. O'Sonis, 13 FSM R. 132, 136-37 (Chk. S. Ct. App. 2005).

The sole issue before the state appellate court on a petition for writ of mandamus is whether the petitioner has established that the trial judge must be prohibited from acting in a certain case, not whether some other judge may also be disqualified. The national government's removal of that case to the FSM Supreme Court does not affect the court's jurisdiction because the court has no way of knowing whether the required procedural steps to effect removal to that court were completed, or, even if they were, whether it might be remanded; because the state appellate proceeding is not an appeal from the civil action since the issue is whether the trial judge properly sit on the case and because since the purported removal action started, the trial judge has issued another preliminary injunction that does not name the national government as a party being restrained. Therefore the later "removal" did not deprive the appellate court of jurisdiction over the original action for a writ of prohibition. Nikichiw v. O'Sonis, 13 FSM R. 132, 137 (Chk. S. Ct. App. 2005).

The general requirements for the issuance of an extraordinary writ of prohibition are that a court or officer is about to exercise judicial or quasi-judicial power, that the exercise of such power is unauthorized or the inferior tribunal is about to act without or in excess of jurisdiction which may or will result in damage or injury for which there is no plain, speedy or adequate legal remedy. The writ will usually not issue unless the petitioner has objected in the lower court to that court's exercise of jurisdiction. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

One instance where it is appropriate to issue a writ of prohibition is when a trial court justice is about to exercise unauthorized power without or in excess of his jurisdiction by exercising jurisdiction over a case where another judge already has jurisdictional priority over the parties and the issues. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

When a trial judge's presiding over a case is in excess of his jurisdiction since another trial division justice had jurisdictional priority over the parties and the issues in that case to the exclusion of all other trial

division justices, when the petitioner objected to that judge's exercise of jurisdiction from the start, and when the petitioner will be injured if the writ does not issue since he will be subject to conflicting and contradictory orders from two different trial division justices, there is no plain, speedy, or adequate remedy otherwise available and the writ of prohibition will accordingly issue. Nikichiw v. O'Sonis, 13 FSM R. 132, 138-39 (Chk. S. Ct. App. 2005).

A due process violation may be remedied through means other than a writ of prohibition, such as a direct appeal. A writ of prohibition is not a writ of right and cannot lie when there is a plain, speedy, and adequate remedy otherwise available which has not been exhausted. The court's job is simply to determine whether the respondent has acted without, or in excess of, his jurisdiction. Ruben v. Petewon, 14 FSM R. 177, 183 n.2 (Chk. S. Ct. App. 2006).

In order for the extraordinary writ of prohibition to issue when a justice has denied a motion to recuse or disqualify, it must be an abuse of discretion for a justice not to recuse him- or herself. Ruben v. Petewon, 14 FSM R. 177, 184 (Chk. S. Ct. App. 2006).

If the extraordinary writ of prohibition may issue where a justice has abused his discretion in ruling on a disqualification motion, it must likewise issue where a justice has patently disregarded a mandate which stripped him of any discretion to act in the first instance. Ruben v. Petewon, 14 FSM R. 177, 184 (Chk. S. Ct. App. 2006).

A Chuuk State Supreme Court justice exceeds his jurisdiction when he refuses to refer a recusal motion to another trial division justice. Ruben v. Petewon, 14 FSM R. 177, 185 (Chk. S. Ct. App. 2006).

The extraordinary writ of prohibition will lie where a trial justice exercises jurisdiction over a case wherein another justice has jurisdictional priority over the parties and issues. Ruben v. Petewon, 14 FSM R. 177, 186 (Chk. S. Ct. App. 2006).

A writ of prohibition is proper when a trial justice interferes with the appellate division's jurisdiction. Ruben v. Petewon, 14 FSM R. 177, 186 (Chk. S. Ct. App. 2006).

A justice's acts after a single appellate justice issued a stay that were not acts taken in aid of the appeal, but were acts designed to frustrate or nullify the appeal process and the respondent justice's interference with the jurisdiction of, and blatant disregard for a stay entered by, a justice having greater jurisdictional authority supports the conclusion that he must be prohibited from taking any further action in the case. Ruben v. Petewon, 14 FSM R. 177, 186-87 (Chk. S. Ct. App. 2006).

When a justice excluded counsel from a chambers conference in a Pohnpei Supreme Court case where counsel was trying to appear to represent a different client, her exclusion from that conference is inadequate to, and cannot, show personal bias by that justice toward counsel since, typically, only the judge and court personnel, the parties, and their counsel are permitted to attend a chambers conference and that counsel was not admitted to practice before the Pohnpei Supreme Court and her motion to appear pro hac vice in that case had not been granted. A petition for writ of prohibition will therefore be denied. Goya v. Ramp, 14 FSM R. 303, 304-05 (App. 2006).

When a party has filed a writ of prohibition directed to disqualify one appellate justice, the remaining members of the appellate panel may deny that petition if it clearly should not be granted. Goya v. Ramp, 14 FSM R. 305, 308 n.2 (App. 2006).

Since a trial court's decision to disqualify an attorney from participation in a given case is a decision falling within a trial court's inherent discretionary powers, and since a petition for a writ of mandamus fails when it seeks appellate review that is explicitly beyond the curative parameters of mandamus or prohibition, the petition will be denied. The trial court had no legal duty to admit an attorney in the case, since the challenged disqualification was wholly within the trial court's discretion. Etscheit v. Amaraich, 14 FSM R. 597, 601 (App. 2007).

An attempt to use a petition for writ of prohibition or mandamus to obtain a preemptory disqualification of an attorney not presently involved in the case is misplaced because, given the nature of the remedy of mandamus and prohibition and the caution exercised in affording it, the right sought to be enforced must be clear and certain. There must be an immediate right to have the act in question performed, and such right must be specific, well defined, and complete, so as not to admit of any reasonable controversy. As such, mandamus or prohibition relief cannot be used as a precaution against future events that may never occur. Etscheit v. Amaraich, 14 FSM R. 597, 601 n.1 (App. 2007).

The general requirements for the issuance of an extraordinary writ of prohibition are that a court or an officer is about to exercise judicial or quasi-judicial power, that the exercise of such power is unauthorized or the inferior tribunal is about to act without or in excess of jurisdiction which may or will result in damage or injury for which there is no plain, speedy or adequate legal remedy. Nikichiw v. Petewon, 15 FSM R. 33, 37 (Chk. S. Ct. App. 2007).

A writ of prohibition will usually not be issued such a unless the petitioner has objected in the lower court to that court's exercise of jurisdiction. Nikichiw v. Petewon, 15 FSM R. 33, 37 (Chk. S. Ct. App. 2007).

A court that has the power to issue writs of prohibition may only do so if the petitioner has met its burden to show that its right to the writ is clear and indisputable. Nikichiw v. Petewon, 15 FSM R. 33, 37 (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).

The extraordinary writ of prohibition is to be issued with great caution, but it is especially important to exercise the writ in those cases where it is necessary to confine a lower court to its proper function. Nikichiw v. Petewon, 15 FSM R. 33, 39 (Chk. S. Ct. App. 2007).

When certain issues raised are merely allegations of gross legal error which may be properly addressed by an appeal (and are already the subject of an appeal) and since a writ of prohibition can only be issued to confine a lower tribunal to its proper jurisdiction and is not a substitute for an appeal, those issues are not the proper subject for a petition for a writ of prohibition. A writ of prohibition will not lie to correct those alleged legal errors no matter how gross the error or how meritorious the petitioners' legal arguments. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

Since an order in aid of judgment to seize municipally-owned vehicles acted as an execution on public property, it is clearly and indisputably an attempt to exercise power in excess of the court's jurisdiction, that is, it is a power specifically denied to courts by the Chuuk Judiciary Act. Since the trial court justice had no discretion in the matter – he had no power to order the vehicles' seizure and since the petitioners have no plain, speedy or adequate legal remedy for this judicial act in excess of the court's jurisdiction and writ of prohibition will issue. Albert v. O'Sonis, 15 FSM R. 226, 232 (Chk. S. Ct. App. 2007).

When issuance of a writ of prohibition without a further affirmative command to return the unlawfully seized property to the registered owner would not constitute adequate relief, and would leave the petitioner without any plain, speedy or adequate legal remedy and since the trial court was completely without jurisdiction to issue an order in aid of judgment executing on public property, to correct the results of that excess, the appellate court must order the return of the seized property. Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

When a trial justice makes no rulings on the motion to stay before him, he fails to exercise whatever discretion he may have had to rule on it because a court abuses its discretion by an unexplained failure to

exercise its discretion within a reasonable time and since the trial judge neglected his duties by ignoring the motion to stay and further abused his discretion by failing to rule on it before issuing an order in aid of judgment, the appellate court issuing a writ of prohibition barring the order in aid of judgment will stay any enforcement of the judgment until the appeal of the judgment has been decided. Albert v. O'Sonis, 15 FSM R. 226, 233 (Chk. S. Ct. App. 2007).

A trial judge's calculated and repeated disregard of governing rules of orders in aid of judgment would also support the issuance of a writ of prohibition that the trial judge issue no further orders in aid of judgment without complying with the statute and without first ruling on the pending motion to stay. Albert v. O'Sonis, 15 FSM R. 226, 234 (Chk. S. Ct. App. 2007).

Whether sufficient funds are already appropriated to conduct a runoff election is not a ground to deny the petition. The lack of funds to perform a required duty is a problem to be solved by the political branches of government, not the court. 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).

A writ of prohibition may issue when a court is about to engage in judicial action that is unauthorized and when there is no other adequate remedy to address the injury that will result from the unauthorized conduct. Whether to grant a writ of prohibition involves the court's full recognition of the extraordinary nature of the relief requested. Ehsa v. Johnny, 19 FSM R. 175, 177 (App. 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 there is no basis for the court to depart from the procedures established for a stay to be put in place pending an appeal since the petitioner has other adequate remedies to obtain what he seeks and since the petitioner, who is also seeking an extraordinary writ of prohibition, has not met his burden to show that his right to the writ is clear and indisputable, the petition for a writ of prohibition will be denied. Ehsa v. Johnny, 19 FSM R. 175, 178 (App. 2013).

A petition for a writ of prohibition will be denied when any legal error or even gross legal error in striking the response brief is correctable by a pending or a future appeal. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

When the respondent Kosrae State Court Chief Justice has not acted without jurisdiction or in excess of his jurisdiction, a writ of prohibition clearly should not be granted. Tilfas v. Aliksa, 19 FSM R. 181, 184 (App. 2013).

The Kosrae State Court Chief Justice is not acting in excess of his jurisdiction by appointing himself to sit as a temporary judge on a Land Court case when all the Land Court judges are disqualified when the Land Court is an inferior court within a unified state court system and since there is no constitutional impediment to a Kosrae statute authorizing a Kosrae State Court justice to sit as a temporary justice in another (inferior) court within the unified Kosrae state court system. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 194-95 (App. 2013).

When there appears to be no legal grounds, let alone a clear duty that the Kosrae Chief Justice not appoint himself a Land Court temporary judge to preside over a Land Court case, a writ of prohibition clearly should not be granted. Heirs of Tulenkun v. Aliksa, 19 FSM R. 191, 195 (App. 2013).

A petition for a writ of mandamus clearly should not be granted when a factual record will need to be developed and questions of fact are best determined in the trial division; when the voluntary payment rule may bar the recovery of taxes; when the FSM may also be able to prove statute of limitations defenses for some or all of the tax payments; when the petitioner has appealed the Secretary's denial of the relief sought and that appeal should afford it a plain, speedy, and adequate remedy and a forum in which it may prove its right to relief and the extent of that relief; and because a writ of prohibition is an extraordinary writ and cannot be issued when there is a plain, speedy, and adequate remedy otherwise available that has not been exhausted. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App. 2014).

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus: 1) the respondent must be a judicial or other public officer, 2) the act to be compelled must be non-discretionary or ministerial, 3) the respondent must have a clear legal duty to perform the act, 4) the respondent must have failed or refused to perform the act, and 5) there must be no other adequate legal remedy available. Irons v. Chuuk State Supreme Court Tr. Div., 19 FSM R. 654, 655 (Chk. S. Ct. App. 2015).

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus: 1) the respondent must be a judicial or other public officer, 2) the act to be compelled must be non-discretionary or ministerial, 3) the respondent must have a clear legal duty to perform the act, 4) the respondent must have failed or refused to perform the act, and 5) there must be no other adequate legal remedy available. Narruhn v. Chuuk State Election Comm'n, 20 FSM R. 36, 38 (Chk. S. Ct. App. 2015).

In order for the Supreme Court to issue an extraordinary writ of prohibition overruling a trial judge's denial of a motion to disqualify, the trial judge's ruling must be an abuse of discretion. Halbert v. Manmaw, 20 FSM R. 245, 248, 250 (App. 2015).

The court may issue a writ of prohibition only when the party seeking a writ has met his burden to show that his right is clear and indisputable. Halbert v. Manmaw, 20 FSM R. 245, 249, 250 (App. 2015).

A petitioner seeking a writ of prohibition to disqualify a trial judge must show an abuse of discretion, as the appellate court will not merely substitute its judgment for that of the trial judge. Halbert v. Manmaw, 20 FSM R. 245, 250 (App. 2015).

A petition for a writ of prohibition to disqualify a trial judge will be denied when it neither meets the burden of showing the that the judge harbors bias or prejudice nor shows that any disqualifying knowledge was derived from an extrajudicial source since the mere fact that the judge made an adverse evidentiary ruling and declared a mistrial does not mean the judge's impartiality might reasonably be questioned. Halbert v. Manmaw, 20 FSM R. 245, 251 (App. 2015).

When there are too many procedural deficiencies to overlook because the application for a writ of prohibition's certificate of service shows service only on the respondent judge at her office; because the real parties in interest were not served and were not named as real parties in interest in the application or in the case caption; because the petition does not contain a copy of the respondent judge's order denying her recusal, if there was a written order, or a transcript of the denial on the record if the denial was made orally; and because, although the relevant judicial disqualification statute requires that an application to disqualify a justice be accompanied by an affidavit stating the reasons for the belief that grounds for disqualification exist, no affidavit accompanied the petition although an "affidavit attached hereto" is mentioned in the application, the petition for a writ of prohibition will be denied without prejudice to any future application in which all of the procedural deficiencies have been cured. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 563, 564 (App. 2016).

When membership in the Mwoalen Wahu Ileile En Pohnpei is limited to the traditional paramount chiefs of Pohnpei and the paramount chiefs are only those persons who hold the title of either Nanmwarki or Nahnken and when the justice's father, as Wasahi Sokehs, is not a paramount chief and is therefore not now a member of the plaintiff Mwoalen Wahu Ileile En Pohnpei, and, unless one day he attains the title of Nanmwarki Sokehs, will never be a member of that council, a writ of prohibition, directed to the trial justice, clearly should not be granted. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 577, 579 (App. 2016).

A petition for a writ of prohibition will be denied when the petitioner's new points do not buttress its position, but instead further support the court's earlier denial of its previous petition. Young Sun Int'l Trading Co. v. Anson, 20 FSM R. 585, 588 (App. 2016).

A party seeking the extraordinary and exceptional remedy of a writ of prohibition must show that the party's right to the writ is clear and indisputable and that all of the following five elements are satisfied: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to have performed that act; and 5) there must be no other adequate legal remedy available. Peterson v. Anson, 20 FSM R. 657, 658-59 (App. 2016).

A writ of prohibition clearly should not be granted based on a judge's adverse ruling that did not even remain adverse when the justice changed her mind and on factors that arose as part of the give and take during a contentious oral hearing on a controversial topic. Peterson v. Anson, 20 FSM R. 657, 659 (App. 2016).

When the procedural deficiencies in a petition for a writ of prohibition are too many to overlook, the petition will be denied without prejudice to any future petition in which these procedural deficiencies have all been cured. Miju Mulsan Co. v. Carl-Worswick, 20 FSM R. 660, 662 (App. 2016).

MARINE RESOURCES

While the FSM and Pohnpei foreign fishing statutes pose no specific requirements as grounds for the

search of a fishing vessel, the power to seize is carefully conditioned upon illegal use of the vessel. Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

Any attempt to grant statutory authority to permit seizure of a fishing vessel upon a lesser standard than probable cause would raise serious questions of compatibility with article IV, sections 3 and 4 of the Constitution. Such an interpretation should be avoided unless clearly mandated by statute. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

Seizure under the FSM and Pohnpei foreign fishing statutes must be based upon probable cause, that is, grounds to believe it is more likely than not that a violation of the act has occurred and that the vessel was used in that violation. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

The fact that a fishing vessel approaches a reef is by itself some basis for some suspicion that it may intend to engage in fishing. Ishizawa v. Pohnpei, 2 FSM R. 67, 78 (Pon. 1985).

Negotiations between the FSM National Government and a U.S. owned fishing vessel reflect the new role of the national government and the methods by which the people of the Federated States of Micronesia govern their relations with other members of the community of nations. In this context, it is entirely appropriate to draw on principles of common law for guidance. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

Congress intended that the prohibitions of 23 F.S.M.C. 105 extend throughout all the waters of the FSM. FSM v. Oliver, 3 FSM R. 469, 478 (Pon. 1988).

23 F.S.M.C. 105(3) is national law, at least as it applies beyond the twelve mile limit. FSM v. Oliver, 3 FSM R. 469, 479 (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).

Regulation of the Exclusive Economic Zone rests exclusively with the Micronesian Maritime Authority, 24 F.S.M.C. 301-02. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 69 (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).

Conditions on commercial fishing permits issued by the Micronesian Maritime Authority need not be "reasonable" as with recreational permits. 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).

The issue of whether all vessels in a purse seiner group can be held liable for the illegal fishing of one of the vessels inside the twelve mile territorial sea is not reached when there is insufficient evidence to prove by a preponderance of the evidence that one vessel was searching for fish inside the twelve mile limit. FSM v. Kotobuki Maru No. 23 (II), 6 FSM R. 159, 165 (Pon. 1993).

The regulation of foreign commercial fishing in state waters – within a limit of twelve miles, is a matter of state law. Pohnpei v. M/V Zhong Yuan Yu #606, 6 FSM R. 464, 465 (Pon. 1994).

A fishing vessel involved in criminal violations of FSM fishing laws is subject to forfeiture to the

government in a civil proceeding against the vessel itself. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 587 (Pon. 1994).

The government has probable cause to detain a fishing vessel for illegal fishing when the evidence and information indicate that the vessel was conducting fishing operations within the FSM Exclusive Economic Zone, there was freshly caught fish aboard, and the permit provided to the officers contained a name different from the actual name of the vessel. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 590-91 (Pon. 1994).

A vessel defined as a foreign fishing vessel for permitting purposes must enter into a foreign fishing agreement prior to receiving any fishing permits. Katau Corp. v. Micronesian Maritime Auth., 6 FSM R. 621, 623 (Pon. 1994).

Because the Micronesian Maritime Authority has discretion in negotiating and entering into foreign fishing agreements and because statutorily a fishing permit cannot be issued without a signed agreement a court cannot issue a writ of mandamus to compel issuance of a fishing permit because it cannot order performance of a statutorily forbidden act. Katau Corp. v. Micronesian Maritime Auth., 6 FSM R. 621, 624 (Pon. 1994).

A party entitled to apply for a fishing permit must file an application on prescribed forms; otherwise the Micronesian Maritime Authority cannot issue a fishing permit. An applicant may be given an opportunity to cure any defects in a filed permit application. Katau Corp. v. Micronesian Maritime Auth., 6 FSM R. 621, 625 (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).

A person may be held criminally liable for violating any provision of Title 24 or of any regulation or permit issued pursuant to Title 24, or any provision of, or regulation under, an applicable domestic-based or foreign fishing agreement entered into pursuant to Title 24, or any condition of any permit issued in accordance with Title 24 and any regulations made under Title 24, respectively. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 211 (Pon. 1995).

A defendant may be held criminally liable for failure to maintain a daily English language catch log as required under the terms of its foreign fishing agreement and the Harmonized Minimum Terms and Conditions. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 211-12 (Pon. 1995).

A party to a foreign fishing agreement voluntarily assumes primary liability and responsibility for its own failure to comply with the law, and for similar failures on the part of its fishing vessels and vessel operators within the FSM. Such a party also assumes a legal duty to ensure that the operators of its licensed vessels comply with all applicable provisions of FSM law. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 212 (Pon. 1995).

A defendant may be held criminally liable for failure to have a radio capable of monitoring VHF channel 16, the international safety and calling frequency, as required under the terms of its foreign fishing agreement. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 213-14 (Pon. 1995).

A defendant may be held criminally liable for exceeding the crew size authorized under the terms of its foreign fishing permit which is a term that the permit holder cannot unilaterally alter by use of the notification of changes provision in the permit. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 214 (Pon. 1995).

A defendant cannot be held criminally liable for failure to properly stow all fishing gear aboard a vessel in such a manner that it would not be readily available for use in fishing when the vessel was in an area in

which it was authorized to fish. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 215 (Pon. 1995).

A defendant may be held criminally liable for knowingly shipping, transporting, or having custody, control, or possession of any fish taken or retained in violation of Title 24 or any regulation, permit, or foreign fishing agreement or any applicable law even when the vessel is operating under a valid permit. FSM v. Cheng Chia-W (II), 7 FSM R. 205, 216 (Pon. 1995).

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).

Where a fuel tanker illegally fueled a fishing vessel and then loaded on more fuel cargo, only the amount of fuel cargo on the tanker before it reloaded is "cargo used" in violation of Title 24 subject to forfeiture. FSM v. Skico, Ltd. (I), 7 FSM R. 550, 552 (Chk. 1996).

As defined in 24 F.S.M.C. 102(22) "fishing" includes refueling or supplying fishing vessels. FSM v. Skico, Ltd., 8 FSM R. 40, 41 (Chk. 1997).

A company that stores its fuel cargo in a tanker, stations a cargo supervisor aboard the tanker, and sends messages that tell the tanker where to go to sell the company's fuel to fishing vessels needing refueling is an operator of the tanker within the meaning of Title 24. FSM v. Skico, Ltd., 8 FSM R. 40, 42-43 (Chk. 1997).

Section 404 of Title 24 sets forth certain minimum terms that all foreign fishing agreements must contain. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 84 (Pon. 1997).

A party's failure to "ensure" its vessel's compliance with FSM law constitutes a breach of its foreign fishing agreement. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 86 (Pon. 1997).

A contract between a foreign fishing agreement party and the owner of vessels permitted under that agreement that the vessels' owner will be responsible for criminal and civil charges for fishing violations merely provides the foreign fishing agreement party with a contractual right of indemnity against the vessels' owner and does not bar the government's imposition of penalties for fishing agreement violations on the foreign fishing agreement party. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 89 (Pon. 1997).

When the fishing statute sets forth a list of prohibited acts in the disjunctive, commission of any one of the listed acts is unlawful, and the government may pursue separate civil penalties for each. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 90 (Pon. 1997).

While MMA is authorized to issue, deny, cancel, suspend or impose restrictions on FSM fishing permits for fishing law violations, this is not the government's exclusive remedy because the FSM Attorney General is separately authorized to enforce violations of the foreign fishing agreement, Title 24 or the permit through court proceedings for civil and criminal penalties and forfeitures. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 92-93 (Pon. 1997).

Section 404 of Title 24 sets forth certain minimum terms that all foreign fishing agreements must contain. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 172 (Pon. 1997).

It is unlawful for any person to violate any provision of Title 24, or of any regulation or permit issued under it, or to violate any provision of, or regulation under, an applicable domestic-based or foreign fishing agreement entered into pursuant to 24 F.S.M.C. 401, 404-406. A person is any individual, corporation, partnership, association, or other entity, the FSM or any of the state governments, or any political

subdivision thereof, and any foreign government, subdivision of such government, or entity thereof. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 173-74 & n.2 (Pon. 1997).

While 24 F.S.M.C. 116(1) places a duty to maintain the daily catch log upon the vessel master, the statute does not make the vessel master's liability for failure to maintain that log exclusive. Therefore when a party to a foreign fishing agreement that says that party ensures that its authorized vessels will properly maintain such a log that party may be held liable. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 174 (Pon. 1997).

An authorized vessel's master's knowledge is attributable to its foreign fishing agreement party because knowledge held by an agent or employee of a corporation may be attributed to its principal. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 180 (Pon. 1997).

Revocation of a fishing permit is not the government's sole remedy for violation of the permit's terms. Civil and criminal penalties are also available. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181 (Pon. 1997).

MMA cannot contract to insulate a foreign fishing agreement signatory from criminal liability because to do so would violate 24 F.S.M.C. 404. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181 (Pon. 1997).

In fashioning an appropriate sentence for fishing violations, a court considers the nature, circumstances, extent, and gravity of the prohibited acts committed, the defendant's degree of culpability and history of prior offenses, whether other civil penalties or criminal fines have already been imposed for the specific conduct before the court, and such other matters as justice might require, keeping in mind the statutory purpose behind the provisions violated. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 181-82 (Pon. 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 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).

Certain issues are not of a local or traditional nature, and not amenable to determination based upon custom and tradition, such as issues related to business ventures in the FSM by non-citizens, foreign shipping agreements, and international extradition. Fishing fees derived from commercial fishing contracts, and collected primarily from foreign companies pursuant to agreements negotiated by the MMA are transactions and behaviors that are also distinctly non-customary and non-local. Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (Pon. 1998).

Traditional claims of exclusive ownership of marine resources have been recognized only in areas immediately adjacent to an island or submerged reef. Claims involving custom and tradition were recognized by the Constitution's drafters, but were restricted to areas within lagoons and near reef areas. Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (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 MMA can establish fees and other forms of compensation in foreign fishing agreements, which can include compensation in the field of refinancing, equipment and technology relating to the fishing industry, but no particular measure is set for the fishing fee in the FSM Code. Chuuk v. Secretary of Finance, 8 FSM R. 353, 380 (Pon. 1998).

The following factors are relevant to determining whether fishing fees are taxes: 1) the source of the levy – whether the entity imposing the tax is legislative or administrative; 2) the effect of the levy on the general public – whether the assessment is imposed upon a broad or narrow class; 3) the means by which the levy is made – whether it is voluntary, and produces a benefit to the payor which is commensurate with the payment; and 4) the relationship between the levy and government costs – whether the revenue generated bears a relationship to the costs of the government in administering the particular program. Chuuk v. Secretary of Finance, 8 FSM R. 353, 382-83 (Pon. 1998).

The level of fishing fees is set at a measure of the value of the asset to the payor, a percentage of the value of the estimated weighted catch. The measure of the value of the service to the payor can be an appropriate measure for a fee. That the value received by the government exceeds the cost of administration is not dispositive when a valuable resource is being removed from the government's control by fishing fees payors. The government is entitled to compensation for its asset like any private property owner. Chuuk v. Secretary of Finance, 8 FSM R. 353, 385-86 (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).

Revenues from natural resources are not taxes. The constitutional definition of tax was not meant to include amounts received by the national government from disposal of natural resources over which it has control. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386-87 (Pon. 1998).

A four-part analysis is applied to determine whether fishing fees are taxes: 1) the source of the levy, 2) the effect of the levy on the general public, 3) the means by which the levy is made, and 4) the relationship between the levy and government costs. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

Whether fishing fees are uniform is immaterial to a finding that fishing fees do not constitute a tax. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

How Congress appropriates fishing fees is irrelevant to whether they are a tax. Chuuk v. Secretary of

Finance, 9 FSM R. 99, 102 (Pon. 1999).

The FSM national government has the exclusive right to regulate and harvest living marine resources in the EEZ and is therefore entitled to a reasonable compensation from those whom it allows to share that right. A determination of ownership of the living marine resources does not affect the national government's right. Chuuk v. Secretary of Finance, 9 FSM R. 99, 102 (Pon. 1999).

Even if an FSM Foreign Fishing Agreement has a regulatory effect in banning fishing in state waters, Kosrae acceded to that regulation when the Kosrae Attorney General requested that "the FSM Department of Justice institute a prosecution of the vessel and her owners and operators for fishing within state waters in violation of national law and the terms of the vessel's permit." When Kosrae requested the FSM's assistance in enforcing the national statute criminalizing the Foreign Fishing Agreement's strictures on fishing in state waters, and failing to keep fishing gear stowed in those same waters, Kosrae ratified any FSM regulation of its waters in those two respects and on the occasion in question. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 421, 423 (Kos. 2000).

A criminal prosecution for fishing in state waters will not be dismissed when even if the Foreign Fishing Agreement were to be construed as regulating commercial fishing in Kosrae's waters, the cooperative law enforcement public policy weighs in favor of Kosrae's ability to expressly ratify any such regulation by a specific request to institute a prosecution where the ratification facilitated the enforcement of a national law criminalizing conduct proscribed in the Foreign Fishing Agreement. FSM v. Zhong Yuan Fishery Co., 9 FSM R. 421, 423 (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).

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).

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 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).

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).

Although fishing fees, as currently assessed, may be related to a percentage of the expected landed catch's value – projected income – there is no legal or constitutional requirement that they be calculated that way. They could be assessed on a flat amount per day or per voyage basis, or some other method not related to income. 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).

Although income-related, neither the fishing fees levied under Article IX, section 2(m) nor the social security taxes levied under Article IX, section 3(d) are income taxes within the meaning of Article IX, section 2(e) or national taxes within the meaning of section 5. Chuuk v. Secretary of Finance, 9 FSM R. 424, 435 (App. 2000).

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

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).

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).

The national government is free to distribute or disburse its fishing fee revenues through its normal legislative process. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

Fishing fees are not an income tax because they are not a tax. The national government has the exclusive sovereign right to control access to and exploitation of the natural resources in the FSM's exclusive economic zone and when it imposes fishing fees, the national government is selling access to the exclusive economic zone's living resources to its fishing licensees and it is selling the licensees the

opportunity to reduce some of those resources to the licensees' proprietary ownership. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

A fishing association is not liable under a general theory of agency when the complaint does not make a general agency allegation, and instead asserts liability based on an agreement's language, and nothing in the agreement renders the other defendants the agents of the fishing association such that the association is liable under the respondeat superior doctrine for the damages flowing from a vessel's alleged negligent operation. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

Fishing agreement provisions that refer to vessels' compliance with FSM law address statutory law violations, not conduct governed by tort law principles. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM R. 112, 115 (Kos. 2001).

When a fishing agreement requires that the signatory organizations must only take "necessary steps to ensure" that their members comply with the laws, regulations, and their permits and the government has made no allegation and introduced no evidence that the signatory has failed to take any of these "necessary steps," the government cannot seek to impose some sort of strict liability on the signatory for the actions of its members' employees because the fishing agreement's terms, without more, do not create liability for the signatory organizations for each and every violation of FSM fishery law or the foreign fishing agreement that their members commit. The government is therefore not entitled to summary judgment because, as a matter of law, the foreign fishing agreement's contractual terms do not impose vicarious liability on the signatory. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM R. 169, 173-74 (Chk. 2001).

As a result of the Pohnpei Executive Reorganization Act, the Department of Land and Natural Resources, not the Office of Economic Affairs, has the power to authorize the harvest and marketing of trochus in Pohnpei. Therefore, any actions taken by the Office of Economic Affairs with regard to publication of solicitations to bid, designating successful bidders, or entering into contracts on the state's behalf for the sale of trochus, were *ultra vires*, or without any legal authority. Nagata v. Pohnpei, 11 FSM R. 265, 270-71 (Pon. 2002).

When the FSM had no involvement in or authority over Pohnpei's decisions not to declare a trochus harvest, summary judgment in the FSM's favor is appropriate with respect to the alleged constitutional violations concerning the plaintiff's trochus business. AHPW, Inc. v. FSM, 12 FSM R. 114, 118-19 (Pon. 2003).

While the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is instituted in court, the court also has responsibility for assuring that actions thereafter taken are in the public interest; therefore criminal litigation can be dismissed only by obtaining leave of the court. In a fishing case where criminal and civil cases are filed together, and the dismissal of the criminal proceeding(s) is obviously "integral" to the settlement agreement for which court approval is sought, the same policy considerations apply to the settlement of the civil proceeding(s) as apply to the criminal dismissal. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 491 (Pon. 2004).

A purpose of Title 24 is to protect marine resources, which are vital to the people of the FSM, from abusive fishing practices. FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 492 (Pon. 2004).

Title 24 establishes agencies to conclude fishing agreements and establish regulations for the exploitation of FSM marine resources. In fishing cases, when the prosecution seeks a dismissal, the court should be presented with evidence that appropriate agencies have been involved in the resolution of the case(s). FSM v. Fu Yuan Yu 398, 12 FSM R. 487, 492 (Pon. 2004).

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Protecting marine resources from abusive fishing practices is an important goal. FSM v. Ching Feng 767, 12 FSM R. 498, 505 (Pon. 2004).

When the applicable statute permits the court take into account the possible fishing violation fines, but states that the bond should not exceed the value of the property to be released and when it also provides that notwithstanding that provision, the amount determined by the court for a bond must not be less than the fair market value of the property to be released or the aggregate minimum fine for each offense charged, whichever is greater, Congress has left the court no choice but to set the vessel's bond at the aggregate minimum fine when this exceeds the vessel's value. FSM v. Kana Maru No. 1, 14 FSM R. 300, 302 (Chk. 2006).

The statutory use of the phrase "offense charged," for fishing violations, while usually indicative of a criminal prosecution and not a civil suit (in civil cases, violations are alleged, not offenses charged), appears to be intended to cover both civil and criminal violations. FSM v. Kana Maru No. 1, 14 FSM R. 300, 302 (Chk. 2006).

When the government's complaint seeks, among other things, a vessel's forfeiture under 24 F.S.M.C. 801(1), the case is, in part, an *in rem* proceeding, albeit one created by the marine resources statute. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 (Chk. 2006).

The court will not direct that the government provide countersecurity under the admiralty rules for a defendant's counterclaims in an fishing boat seizure case. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 (Chk. 2006).

Under Yap traditional rights and ownership of natural resources and marine areas inside the Yap fringing reef – the rights to use and exploit, to the exclusion of all others, the marine resources of particular areas of the submerged lands inside the fringing reef around Yap – stem from a concept called a *tabinaw*. A *tabinaw* entails rights, duties and obligations for its members, and includes families and households. But a *tabinaw* is more than a concept. A *tabinaw* includes an estate in identifiable land and specific areas within the Yap fringing reef within which a *tabinaw* member can exploit the marine resources. A *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*. Each village includes a number of *tabinaw*. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 157 (Yap 2007).

Since a *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*, the court can and will redefine the class to include only those residents whose *tabinaw* membership gives them exclusive exploitation or use rights in the affected reef area, regardless of whether the state is the ultimate owner of the reef. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 157 (Yap 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 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).

The fishing permit requirement attaches to vessels, not helicopters. "Vessel" is defined as any water-going craft, and does not include helicopters. Thus the fact that a helicopter company does not have a fishing permit is not dispositive with regard to whether its helicopters engage in "fishing" as that term is defined by 24 F.S.M.C. 102(32). Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335 (Pon. 2007).

No person shall use any fishing vessel for, and the crew and operator of any fishing vessel shall not engage in, commercial or non-commercial fishing or related activities in the exclusive economic zone unless it is in accordance with a valid and applicable permit. FSM v. Katzutoku Maru, 15 FSM R. 400, 403 (Pon. 2007).

When the defendants' local agent – prior to defendants' fishing activities on August 18th, 19th, and 20th – had actual knowledge that NORMA would not be issuing the fishing permit, the knowledge of the defendants' agent is imputed to the defendants under the law of agency. FSM v. Katzutoku Maru, 15 FSM R. 400, 404 (Pon. 2007).

The Marine Resources Act of 2002 gives NORMA broad discretion in the processing and approval of fishing permits. NORMA does not have a legal duty to process, let alone approve, an application for a fishing permit within one day after the submission of the application. Under 24 F.S.M.C. 108, the Executive Director is to review each application submitted and may, at his discretion, solicit views from appropriate persons in the states and hold public hearings when and where necessary. NORMA also has the discretion to grant or deny a permit under various circumstances, including denying applications when the Executive Director determines that the issuance of a permit would not be in the FSM's best interests. FSM v. Katzutoku Maru, 15 FSM R. 400, 404 (Pon. 2007).

Because NORMA does not have a legal duty to issue a fishing permit by an applicant's preferred effective date, a defense of unjustified withholding of the license because it was not issued on the applicant's preferred date is without merit. FSM v. Katzutoku Maru, 15 FSM R. 400, 404 (Pon. 2007).

A defendant commits a separate violation of section 907(1) for each day he engages in commercial fishing without a valid fishing permit. FSM v. Katzutoku Maru, 15 FSM R. 400, 404-05 (Pon. 2007).

When assessing civil penalties for violations of the Marine Resources Act of 2002, the court is required to take into account several factors, including among other things, the degree of culpability, any history of

prior offenses, whether there are multiple violations which together constitute a serious disregard of conservation and management measure and such other matters as justice may require. FSM v. Katzutoku Maru, 15 FSM R. 400, 405 (Pon. 2007).

Before NORMA issues a fishing permit, it performs a review of various items, including, among other things, the country of registration of the vessel, insurance status, and court cases against the vessel. FSM v. Katzutoku Maru, 15 FSM R. 503, 505 (Pon. 2008).

The Marine Resources Act of 2002, requires the court to take into account several factors when assessing civil penalties for illegal fishing. These factors include the degree of culpability, any history of prior offenses, whether there are multiple violations which together constitute a serious disregard of conservation and management measures and such other matters as justice may require. 24 F.S.M.C. 901(2) sets a minimum civil penalty of $100,000 per violation and a maximum civil penalty of $1,000,000 per violation. FSM v. Katzutoku Maru, 15 FSM R. 503, 506, 507 (Pon. 2008).

When, although NORMA informed defendant's local agent that it would not issue a permit on August 17th, there is no evidence defendant's local agent communicated that information to defendant before defendant commenced fishing on August 18th, the defendant's degree of culpability does not warrant imposition of a civil penalty in the amount of $500,000, but the defendant should not have been fishing under the false and uninformed presumption that NORMA would issue the permit on August 17th so the defendant should be required to pay more than the minimum civil penalty. And when the defendant has no history of prior offenses and when the defendant did commit three separate violations by fishing without a permit for three consecutive days, but it appears that the defendant may simply have commenced fishing under the false and uninformed belief that NORMA, as in the past, would issue the permit on the requested preferred effective date, August 17th, and that defendant stopped fishing on August 20th when he found out the permit had not issued, the court determines that $400,000 is the appropriate civil penalty to apply. FSM v. Katzutoku Maru, 15 FSM R. 503, 507 (Pon. 2008).

The FSM is entitled to the proceeds of the sale of fish caught during defendant's illegal fishing activities. FSM v. Katzutoku Maru, 15 FSM R. 503, 507 (Pon. 2008).

A vessel owner is included within the definition of operator of a vessel and an operator is prohibited from fishing in the FSM's exclusive economic zone without a permit and is also mandated to keep fishing gear stowed except in an area where the vessel is permitted to fish. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

While there is no statutory definition of exploitation of an economic resource, these words' plain meaning leads to the conclusion that it includes fishing because the FSM's fisheries are undoubtedly a natural resource, marine in character, that are subject to economic exploitation as a result of the market demand for fish. It follows that fishing in the FSM EEZ constitutes the exploitation of a natural resource that subjects a party to the personal jurisdiction of the FSM Supreme Court. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

When a Rule 12(b)(6) movant points to no factual deficiencies in the complaint, whose allegations are deemed true for purposes of the motion to dismiss, and when, taking as true, the complaint's material allegation that the captain switched on the automatic locating device or transponder as the vessel was boarded, the transponder was not on at the time of boarding, which constitutes a violation of 24 F.S.M.C. 611(4), and the complaint thus states a claim for a 24 F.S.M.C. 611(4) violation. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

Whether or not to pursue a citation in lieu of arresting the vessel lies within the FSM's discretion. Failure to pursue an administrative penalty under the Administrative Penalties Regulations does not render an arrest wrongful. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

The National Oceanic Resources Management Authority has the authority to adopt regulations for the issuance of citations and assessment of administrative penalties consistent with chapter 7 of Title 24 and

for any violation of the statute or its regulations which would fall within section 920's penalty provisions, the Authority may, by regulation provide for an administrative penalty. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

Any person who commits a fishery violation for which no civil penalty is otherwise specified, is subject to a civil penalty of not less that $40,000 and not more than $100,000. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

NORMA's regulations provide for a discretionary system of citations and administrative penalties. The establishment of administrative penalties does not create any obligation on the part of the Authority or the Secretary to issue a citation instead of pursuing other legal remedies or to issue a citation prior to pursuing other legal remedies. Citations are issued by authorized officers, including Maritime Surveillance Officers, who may issue a citation under circumstances where the officer has a reasonable ground to believe that a violation has been committed. Anyone to whom a citation is issued may challenge it within 10 days of its receipt, and NORMA's executive director must issue a final decision on the challenge within 15 days thereafter. Any citation not so challenged is deemed final. FSM v. Koshin 31, 16 FSM R. 15, 19 (Pon. 2008).

With respect to the interplay between NORMA's Administrative Penalties Regulations and the FSM Code's Title 24, administrative penalties are those resulting from a citation issued by a Marine Surveillance Officer while civil penalties are those the FSM Supreme Court imposes in a civil lawsuit after a finding of liability for a Title 24 violation. The court has neither the authority nor the discretion to impose an administrative penalty for the violation in a civil lawsuit. FSM v. Koshin 31, 16 FSM R. 15, 19-20 (Pon. 2008).

While the fishing violations alleged in the complaint are subject to citation under the Administrative Penalties Regulations, the citation process is not mandatory. The citation process to assess an administrative penalty and a civil lawsuit for civil penalties proceed on two separate tracks. The fact that the FSM has not cited the vessel under the Administrative Penalty Regulations but instead has pursued Title 24 civil penalties is not a sufficient ground as a matter of law upon which to allege a cause of action for wrongful arrest against the FSM. FSM v. Koshin 31, 16 FSM R. 15, 20 (Pon. 2008).

The transponder-on violation in the Administrative Penalties Regulations is a violation of a condition of a fishing access agreement under the APRs' Violation Penalty section. Violation of an access agreement is something for which no specific penalty is provided under Title 24, and which falls within the catch-all provision of Section 920, and may be subject to administrative penalties. FSM v. Koshin 31, 16 FSM R. 15, 21-22 (Pon. 2008).

Under Yap traditional rights and ownership of natural resources and marine areas inside the Yap fringing reef – the rights to use and exploit, to the exclusion of all others, the marine resources of particular areas of the submerged lands inside the Yap fringing reef – stem from a concept called a *tabinaw*. A *tabinaw* entails rights, duties and obligations for its members, and includes families and households. But a *tabinaw* is more than a concept. A *tabinaw* includes an estate in identifiable land and specific areas within the Yap fringing reef within which a *tabinaw* member can exploit the marine resources. A *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*. Each village includes a number of *tabinaw*. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38 (Yap 2008).

In a lawsuit for damage to the reef in a Yap municipality, a plaintiff class of all municipal residents is not sufficiently definite when the rights to exploit the reef are vested in only certain *tabinaw* and the *tabinaw*'s members. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38-39 (Yap 2008).

A trial court case that when affirmed on appeal held that the decision – that the State of Pohnpei and not its municipalities owned the marine areas in Pohnpei – concerned only Pohnpei and not the other three FSM states, is clearly not controlling precedent for the resolving issues unique to the State of Yap, including

the interpretation of its Constitution and Code when, unlike Pohnpei, Yap not only repealed the relevant Trust Territory Code provision, but Yap's Constitution expressly recognizes the traditional rights and ownership over the natural resources and the marine space within the state of Yap. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

The State of Yap's ownership of public lands as provided for at 9 Y.S.C. 901, is not mutually exclusive with the traditional rights of ownership over these lands and related marine resources by the people of Yap through the *tabinaw*, as recognized in the Yap Constitution. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

The mere fact that there is someone outside the class who believes that they also have an interest in the damaged marine space would not preclude an award of damages to the class plaintiffs, provided the class could demonstrate that they had such an interest. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 60 (App. 2008).

When the class plaintiffs successfully pursued two separate causes of action arising from the same incident, negligence and nuisance, and were awarded compensatory damages, including damages for the physical damage to the reef and marine area as well as their loss of use of this resource, their purported discomfort and annoyance does not generate an additional, separate award of damages since the compensatory damages that were awarded, which flowed from the negligence claim, addressed the loss related to the use of property including any discomfort or annoyance that may have been experienced. Any additional award of damages for their nuisance claim would have resulted in a double recovery. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 63 (App. 2008).

An authorized vessel, which has a valid foreign fishing permit that provides that fishing operations must be conducted in strict accordance with the foreign fishing agreement under which the permit was issued, must maintain in working order on board an appropriate position fixing and identification equipment (i.e., a transponder or VMS), and that transponder must be on at all times while the vessel is in FSM fishery waters. FSM v. Koshin 31, 16 FSM R. 350, 354 (Pon. 2009).

When a licensed vessel's captain had forgotten to turn the transponder back on after he had fixed and restarted the generator and the vessel was not fishing at the time, the captain's failure to turn the transponder back on immediately after fixing the generator was neither intentional nor reckless, but, at most, it was negligent. Taking into account the nature, circumstances, extent and gravity of this prohibited act, the violator's degree of culpability and any history of prior offenses, the court will determine that the minimum civil penalty permissible ($100,000) is appropriate. FSM v. Koshin 31, 16 FSM R. 350, 354 (Pon. 2009).

Since the penalty for violating 24 F.S.M.C. 611 may be imposed on "any person," it, by statute, may be imposed only on a natural person or business enterprise or similar entity and not on a vessel. FSM v. Koshin 31, 16 FSM R. 350, 354 (Pon. 2009).

When Congress enacted Title 24 and engaged in an executive function by formally inserting itself into the execution and implementation of a portion of that act by vesting in itself the power to control how the law regarding fishing access agreements is executed when more than nine vessels are involved, this was impermissible under the separation of powers doctrine since negotiated access agreements are not approved and licenses are not issued until Congress acts (and the parties to the negotiations presumably know this and adjust their behavior accordingly) and since negotiation and approval of commercial transactions is ordinarily an Executive power. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

When, if the section of Title 24 requiring congressional approval of access agreements for more than nine vessels is struck down, that section is easily severed from the rest of Title 24, which would function perfectly well without it; that is, it would function just as it already does for access agreements for nine or fewer vessels, then that section is not so vital to the whole Title 24 regulatory scheme that it cannot be

severed from the rest of Title 24. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

If Congress feels that the current Title 24 statutory requirements for access agreements are too loose or are not in the nation's best interests and should be tightened, it can enact further and stricter requirements or it can provide for that review by creating a mechanism for further review in the executive branch, since Congress, through its investigatory powers, can always keep itself informed on the Executive's execution of the laws, and enact remedial legislation when it feels that the Executive needs further guidance in executing national policy that Congress has enacted. But Congress may not execute the laws itself. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

An "access agreement" is a treaty, agreement or arrangement entered into by the Authority pursuant to Title 24 in relation to access to the exclusive economic zone for fishing by foreign fishing vessels. But a fishing access agreement is usually not a treaty because treaties are compacts or agreements between sovereign nations and most fishing access agreements are commercial agreements between the FSM national government and a commercial enterprise. They are business deals – not treaties. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

Since the Constitution specifically delegates to Congress the power to ratify treaties but does not grant Congress the power to approve or reject fishing access agreements, ruling unconstitutional the statute that requires congressional approval for fishing access agreements for more than nine vessels would not impair Congress's ability to ratify treaties and to advise and consent to presidential appointments. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

Since approval of commercial fishing agreements is not a power that the Constitution confers on Congress, but a power that Congress has conferred upon itself by statute, the court's conclusion that that statute is unconstitutional does not have any effect on access agreements that are actually negotiated and concluded as treaties between sovereign nations because, just like any other treaty, the President would continue to submit those to Congress for ratification. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

The court's conclusion that requiring Congress to approve or reject fishing access agreements is unconstitutional has no effect on Congress's constitutional treaty-ratification and advice and consent powers. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

Since a government act in conflict with the Constitution is invalid to the extent of conflict, Congress's rejection of a successor access agreement was invalid because 24 F.S.M.C. 405 is in conflict with the Constitution. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

A party to a foreign fishing agreement is bound by statute and by the foreign fishing agreement to ensure that an authorized vessel complies with the FFA and all applicable FSM laws, rules, and regulations. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 (Chk. 2011).

"Fishery waters" includes the FSM Exclusive Economic Zone, territorial waters, and internal waters. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 n.2 (Chk. 2011).

A fishing boat operator must, by statute, ensure that appropriate position-fixing and identification equipment is installed and maintained in working order on each vessel, and thus, a fishing boat's transponder is required to be on at all times while it is within the FSM EEZ, even while in transit. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 (Chk. 2011).

The act or omission of any crew member of a fishing vessel or in association with a fishing vessel, is

deemed to be that of that fishing vessel's operator, and an "operator" is any person who is in charge of or directs or controls a fishing vessel, or for whose direct economic or financial benefit a vessel is being used, including the master, owner, and charterer. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 (Chk. 2011).

In determining the amount of a Title 24 civil penalty, the court must consider the nature, circumstances, extent and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, whether there are multiple violations which together constitute a serious disregard of conservation and management measures, and such other matters as justice requires. FSM v. Kana Maru No. 1, 17 FSM R. 399, 404 (Chk. 2011).

Congress, by setting a high minimum fine, considers a fishing boat's failure to have the ALC transponder on at all times while in the FSM EEZ to be a grave violation, but when the fishing boat's failure to have the transponder on does not appear to be intentional; when it did not have any history of prior offenses; when, even taken together with the other alleged violations, the multiple violations together do not constitute a serious disregard of conservation and management measures; when the fishing boat had a valid fishing license; and when it was not fishing at the time and had not been fishing within the FSM EEZ on that voyage, the court determines that the $100,000 minimum penalty under 24 F.S.M.C. 611(5) is appropriate. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

The statute imposes liability for a fishing civil penalty on "any person" and "person" is defined as any natural person or business enterprise or similar entity. It does not include a vessel *in rem*. The civil penalty is thus imposed jointly and severally against the fishing vessel operators only and not against the fishing vessel. But the vessel, or rather the bond posted for the vessel's release, may be considered the property or assets of an owner or operator from which a judgment against the owner or operator may be satisfied. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

By statute, a fishing vessel's operator must ensure the continuous monitoring of the international distress and call frequency 2182 kHz (HF) or the international safety and call frequency 156.8 MHz (channel 16, VHF-FM) to facilitate communication with the fisheries management, surveillance and enforcement authorities, and both the Foreign Fishing Agreement and the foreign fishing permit also require that the vessel continuously monitor either of two radio frequencies. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 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).

By statute, and as required by both the foreign fishing agreement and the fishing permit, a fishing boat operator must prominently display any permit issued for the vessel in the vessel's wheelhouse. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

Because "display" means a fixed display such as being posted on a bulkhead, not being produced and displayed on demand, the FSM has proven a violation of the requirement to prominently display a fishing permit in the vessel's wheelhouse when the displayed permit had expired and was thus invalid, and the captain, only when asked for a current permit, promptly displayed one. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405-06 (Chk. 2011).

When no specific civil penalty is provided for a Title 24 violation it is subject to a civil penalty of not less than $40,000 and not more than $100,000. FSM v. Kana Maru No. 1, 17 FSM R. 399, 406 (Chk. 2011).

A statute that purports to allow Congress to step around the bill-making process and approve fishing

access agreements by resolution, is surely unconstitutional because under the Constitution, Congress may make law only by statute, and may enact statutes only by bill. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 546 (App. 2011).

Congress's decision to approve or disapprove fishing access agreements is legislation that must be enacted by the bill-making process. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 547 (App. 2011).

Because an access agreement does not give exclusive rights either to negotiate permits on behalf of all foreign vessels or to exploit the FSM's EEZ, it is more properly a permit or license. Administration of a permit or license scheme is, by its nature, administrative, and thus an executive branch function. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 549 (App. 2011).

If Congress is truly concerned by the amount of debt carried by proposed agents, it may be more specific by creating new minimum requirements for eligibility. But once Congress delegates power to the executive, it cannot have it both ways – it cannot then take back that power or modify the extent of that delegation without amending the statute through the bill-making process. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 550 (App. 2011).

Under 24 F.S.M.C. 121, all of the Marine Resources Act's components are severable. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 551 (App. 2011).

Since operators, owners, and agents are defined separately in the statute, the 24 F.S.M.C. 109 and 122 restrictions that apply to owners do not apply to agents for foreign fishing vessels. Congress v. Pacific Food & Servs., Inc., 18 FSM R. 76, 77 (App. 2011).

Title 24 imposes criminal liability on any person who commits an act prohibited by that title. A person is defined as any natural person or business enterprise or similar entity. It does not include a vessel in rem. By statute, a person specifically includes a corporation, partnership, cooperative, association, or government entity. Although not an actual, living person, the law treats a company as a person for the purposes of liability. FSM v. Kimura, 19 FSM R. 617, 619 n.1 (Pon. 2014).

Where he has reasonable cause to believe that an offense against the provisions of Title 24 or any regulations made thereunder has been committed, any authorized officer may, with or without a warrant or other process, stop, board and search inside the fishery waters, or outside after hot pursuit, any fishing vessel which he believes has been used in the commission of that offense and he may, within the fishery waters, arrest any person if he has reasonable cause to believe that such person has committed a Title 24 offense and seize any fishing vessel involved, its fishing gear, furniture, appurtenances, stores, cargo, and fish, and seize any fish which he reasonably believes to have been taken in violation of Title 24. FSM v. Kimura, 19 FSM R. 630, 633-34 (Pon. 2015).

All licensed fishing vessels are required to send their position to NORMA when they enter or exit the FSM EEZ, and when in the FSM EEZ, the vessels are required to activate their transponder, broadcasting a unique signal to the FSM's Vessel Monitoring System which regularly records its location. FSM v. Kimura, 19 FSM R. 630, 634 (Pon. 2015).

Whether cumulative statutory penalties are permissible is properly determined by seeking out the legislative intent as expressed in the statute's language. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

Clear legislative intent for cumulative penalties can be indicated by provisions providing for separate penalties for each day of a violation, as found section 901(2) of the Marine Resources Act, or where a separate penalty is expressly imposed for each violation. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

Congress would have reasonably intended to restrict to the scope of 24 F.S.M.C. 611(5) and its civil penalty of $100,000 to $500,000, to only those acts of interference that would result in a failure to ensure transmission of required information from a transponder, and that an act of interference that falls short of that standard would be penalized under the catch-all provision in 24 F.S.M.C. 920, and would be punishable by a lesser fine of between $40,000 and $100,000. FSM v. Kuo Rong 113, 20 FSM R. 27, 32 (Yap 2015).

24 F.S.M.C. 611(5) imposes strict liability for failure to comply with certain requirements of subsection (1), which reflects the legislative purpose to require that fishing vessels undertake all the various actions necessary to transmit required information continuously, accurately and effectively. To this end, a vessel's operator is required to install a transponder, maintain it in good working order, and ensure the effective transmission of required information. FSM v. Kuo Rong 113, 20 FSM R. 27, 32 (Yap 2015).

Read in proper context, 24 F.S.M.C. 611(1)(b) and (c) are aimed at similar types of wrongdoing and uphold a public interest of the same nature. Thus, a vessel's failure to maintain its transponder in good working order, and its consequent failure to ensure transmission of required information from the transponder, is a solitary act that caused only one injury and therefore 24 F.S.M.C. 611(5) should not be construed to authorize cumulative penalties. FSM v. Kuo Rong 113, 20 FSM R. 27, 32 (Yap 2015).

Since Subsection (1) allows NORMA to require that operators perform an integrated act which, when completed in its entirety, ensures transmission of required information from a vessel's transponder and this is reflected in the use of the word "and" between 24 F.S.M.C. 611(1)(b) and (c); since the failure to perform any one part of the integrated act required under subsection 611(1) is sufficient to frustrate entirely the purpose of the subsection; and since a failure to perform multiple component parts of the act required under the subsection is no more frustrating to the statute's purpose than failure to perform only one part, the court will, in the absence of clear legislative intent to impose cumulative penalties, construe 24 F.S.M.C. 611(5) to impose only a single penalty for the failure to comply with the integrated requirements imposed on them under 24 F.S.M.C. 611(1). FSM v. Kuo Rong 113, 20 FSM R. 27, 33 (Yap 2015).

When the FSM's initial reliance on section 906(2) was in error but that mistake was merely a technical error in pleading since the catch-all cause of action under 24 F.S.M.C. 920 applied, and when granting leave to amend would not prejudice the defendants because the revised cause of action does not place any new facts in dispute, would not result in the need for additional discovery and would not otherwise delay the case's disposition, leave to amend the prayer for relief in four counts to seek a fine in the maximum amount of $100,000 under 24 F.S.M.C. 920 instead of $500,000 under 24 F.S.M.C. 906(2) will be granted. FSM v. Kuo Rong 113, 20 FSM R. 27, 33 (Yap 2015).

To prove a violation of section 611(1), the government has to show that a defendant: 1) entered into an access agreement or secured a fishing permit; 2) that the access agreement or permit required the defendant to conform to the requirements that NORMA is authorized to impose under section 611(1), and 3) that the defendant failed to comply with these requirements. It follows that a defendant's failure to comply with section 611(1), will, ipso facto, constitute a violation of a permit or access agreement as proscribed by section 906(1)(a),(c). FSM v. Kuo Rong 113, 20 FSM R. 27, 34 (Yap 2015).

In the absence of clear legislative intent to impose cumulative penalties against a single violative act, the court will construe 24 F.S.M.C. 611(5), 906(1) and 920 to impose only one penalty for failure to comply with the integrated requirements imposed as a condition of a permit or access agreement pursuant to 24 F.S.M.C. 611(1). But since 24 F.S.M.C. 901(2) evinces clear legislative intent for the imposition of cumulative penalties by making each day of a continuing violation a separate offense for violations of subtitle I and since the entire Marine Resources Act of 2002 constitutes FSM Code Title 24, Subtitle I, it is proper to impose a separate penalty for each of the four days between April 27, 2013 and April 30, 2013, inclusive, during which the vessel violated a provision of that Act. FSM v. Kuo Rong 113, 20 FSM R. 27, 34-35 (Yap 2015).

Whether an administrative penalty could have been imposed in lieu of a civil action in a fishing case is irrelevant to the case's disposition because the citation process by which administrative penalties are

imposed is not mandatory and the citation process to assess an administrative penalty and a civil law suit for civil penalties proceed on two separate tracks. That the FSM has not cited a vessel under the Administrative Penalty Regulations, but has instead pursued Title 24 civil penalties is not sufficient as a matter of law to warrant summary judgment for defendants, nor does it present a material question of fact to be reserved for trial. FSM v. Kuo Rong 113, 20 FSM R. 27, 35 (Yap 2015).

Although penalties can only be assessed against persons – natural persons or business enterprises or similar entities – and the definition of person does not include a vessel *in rem*, the vessel or a bond posted for the vessel's release, may be considered the property or assets of an owner or operator from which a judgment against the owner or operator may be satisfied so that the vessel, as security for the bond, is therefore properly a party to the action. FSM v. Kuo Rong 113, 20 FSM R. 27, 35 (Yap 2015).

No one may commercially harvest, commercially process, or commercially export sea cucumbers without having a valid permit issued by Kosrae Island Resource Management Authority. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

Anyone, regardless of citizenship, is required to obtain the same sea cucumber permit because the permit requirement is part of a regulatory scheme to properly manage an important marine resource and avoid its depletion. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

Kosrae Island Resource Management Authority is statutorily required to adopt regulations necessary for the protection and sustainable commercial harvesting, commercial processing, and commercial exportation of sea cucumbers, and to effect this regulatory scheme, the statute vests KIRMA with the authority to issue commercial sea cucumber permits and requires that those making commercial use of sea cucumbers to obtain KIRMA permits. Making persons who have a foreign investment permit also get a KIRMA permit is consistent with this regulatory scheme because if a foreign investment permit holder did not also need to obtain a KIRMA permit, then KIRMA would be unable to effectively manage or regulate the sea cucumber resource since it would not have any contact with or knowledge of the foreign investment permit holder's activities and thus be unable to effectively regulate the resource. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

A foreign investment permit holder must also hold a Kosrae Island Resource Management Authority permit in order to commercially harvest, process, or export sea cucumbers. 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).

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).

Exclusive Economic Zone, the FSM must prove not only that the contamination occurred but also where it occurred since it is unlikely that the contamination took place when the vessel was at a location where trash thrown overboard could contaminate both the territorial sea and the EEZ. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

Only those fisheries management agreements that require the FSM to enforce, on a reciprocal basis, the fisheries laws of foreign countries against persons who have violated the fisheries law of that foreign country, must, under 24 F.S.M.C. 120(2), implemented by National Oceanic Resource Management Authority regulation. FSM v. Kimura, 20 FSM R. 297, 304 (Pon. 2016).

A fisheries management agreement is any agreement, arrangement, or treaty in force to which the FSM is a party, not including any access agreement, which has as its primary purpose cooperation in or coordination of fisheries management measures in all or part of the region. Such an agreement, by its nature, would not be self-executing. FSM v. Kimura, 20 FSM R. 297, 304 (Pon. 2016).

FSM citizens and FSM-flagged fishing vessels are required, on the high seas or in an area designated by a fisheries management agreement, to comply with any applicable law or agreement. FSM v. Kimura, 20 FSM R. 297, 304 (Pon. 2016).

A person holding a current and valid foreign investment permit is qualified to register a vessel in the FSM, and qualified persons may register in the FSM any vessel they wholly own. An FSM-registered vessel must fly the FSM national flag. FSM v. Kimura, 20 FSM R. 297, 304-05 (Pon. 2016).

Newly-ratified fisheries management agreement can be made part of FSM domestic law by statute, or by National Oceanic Resource Management Authority regulation under 24 F.S.M.C. 204(1)(d). FSM v. Kimura, 20 FSM R. 297, 305 (Pon. 2016).

Irreparable harm may be threatened when, once the sea cucumber population is significantly impacted, it will take several years for the population to recover, if at all, and when the very nature of the surrounding ecosystem will suffer negative consequences as a result. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

The Administrator of the Pohnpei Office of Fisheries and Aquaculture is granted the power to establish seasons for the harvesting of sea cucumbers from their natural marine habitat, and he or she shall do so with the aim of balancing the exploitation of sea cucumbers as an economic resource and the preservation of sea cucumbers as a renewable resource. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

When a temporary restraining order enjoins the conduct, endorsement, or coordination of any further commercial sea cucumber harvesting in Pohnpei waters and the sale or purchase of sea cucumbers harvested in Pohnpei waters, it may also provide that any sea cucumber already harvested before the order's date may be sold and purchased pursuant to the laws and regulations and that any sea cucumber coming into the buyer's possession which was harvested before the order's date may be handled accordingly so as to prevent the unnecessary waste of those sea cucumbers. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 553 (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).

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

NAMES

In *in personam* actions, there is no authority to proceed against unknown persons in the absence of a statute or rule, and the FSM has no rule or statute permitting the use of fictitious names to designate defendants. Accordingly, John Doe defendants will be dismissed. Foods Pacific, Ltd. v. H.J. Heinz Co.

Australia, 10 FSM R. 409, 412 n.1 (Pon. 2001).

A court decree is required to document a change of name, even for spelling changes. In re Phillip, 11 FSM R. 301, 302 (Kos. S. Ct. Tr. 2002).

The court is unaware of any tradition or custom within Chuukese society for a child, or even an adult, to carry the last name of his or her step-father or step-mother, and finds and concludes that no such tradition or custom exists. In re Suda, 11 FSM R. 564, 566 (Chk. S. Ct. Tr. 2003).

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

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

The lack of statutory procedures for name changes in Chuuk has led to a great variety of allegations in petitions for change of name, such as incorrect allegations regarding Chuukese tradition and custom. It is clearly more preferable that the Legislature act to provide statutory requirements for name change petitions. In the absence of such statutory regulation, it is prudent for the court to establish minimum requirements for name change petitions in Chuuk. In re Suda, 11 FSM R. 564, 566 (Chk. S. Ct. Tr. 2003).

A petition for change of name must include: 1) the petitioner's current name and place of residence; 2) the petitioner's birth date and age, and place of birth; 3) the petitioner's citizenship, unless the petitioner is an FSM citizen; 4) the petitioner's marital status; 5) the names and ages of petitioner's children, if any; 6) a statement as to the absence or status of petitioner's criminal record; 7) a statement regarding the absence or existence of petitioner's status as a debtor, including the names and addresses of petitioner's creditors, if any; 8) the petitioner's proposed name, and a brief statement of the reasons, if any, for the requested name change; and 9) in the case of a petition for change of name of a minor child, parental consent to the change of name. The petition must contain a prayer for change of name, be signed by the petitioner or the petitioner's attorney or trial counselor, and the petition must be verified. In addition to these minimum requirements, the petitioner must give the general public notice of the petition sufficient to permit those who might object to appear and make written objection. In re Suda, 11 FSM R. 564, 567 (Chk. S. Ct. Tr. 2003).

Given the difficulties of notice in Chuuk, for any petition for name change filed with the Chuuk State Supreme Court, the Clerk of the Court will prepare a radio announcement to be read on V6AK radio, containing the petitioner's name, the date the petition was filed, and requiring any objections to the name change to be filed with the court within four (4) weeks of the petition's filing date. In re Suda, 11 FSM R. 564, 567 (Chk. S. Ct. Tr. 2003).

No hearing on a name change petition will normally be required, unless objections to the petition are properly filed with the court within the time period required. If objections are filed, the court will schedule a hearing at the earliest possible opportunity, and the Clerk of the Court shall give notice of the hearing by the best means available to apprize the objectors of the hearing's date and time. In the absence of objection, and upon confirmation that the name change petition contains all necessary information, the court will grant the petition without hearing, and will give notice to the petitioner that the petition has been granted. In re Suda, 11 FSM R. 564, 567 (Chk. S. Ct. Tr. 2003).

The court would prefer that the Chuuk Legislature adopt statutory procedures for name change petitions, as well as petitions for adoption and other matters involving family status. Name change petitions must contain the court-required minimum provisions only so long as the Legislature chooses not to enact a statutory scheme for such matters. In re Suda, 11 FSM R. 564, 567 (Chk. S. Ct. Tr. 2003).

NOTARIES

While the majority of notaries are employed by the state government, several are employed by other offices and by private entities. The duties of a notary public are the same, regardless of where they are employed. A notarization performed by a court employee carries the same weight as a notarization performed by a privately employed individual. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

A notary only confirms that the person appeared before him or her, was identified by the notary, and signed the affidavit (or other document) in the presence of the notary. Identity is confirmed by personal knowledge or by appropriate documentation. The identity and signature of the person signing the affidavit are verified by the notary public, and so noted on the document. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

A notary cannot and does not verify or confirm the statements in the affidavit because the notary does not have personal knowledge of those statements. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

Notarization of a document does not establish truth to the statements made in the document: notarization only verifies the identity and signature of the person who signed the document. Consequently, notarization of a document by a court employee does not represent any court endorsement or certification of the statements made in the document. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

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).

Before a notary can apply the notary seal to an affidavit, the notary must confirm that the affiant has personally appeared to sign the affidavit before the notary, the affiant must be identified at that time by the notary, and the affiant must sign the affidavit in the notary's presence. The notary confirms the affiant's identity by personal knowledge or by reviewing appropriate documentation. When applying the notary seal, the notary notes on the affidavit that the affiant's identity and signature have been verified. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The act of notarizing a document is in itself a verification of the identity and signature of the person who signed the document. If an affiant is not present, however, the notary cannot make the necessary verifications and should under no circumstances notarize the document, and is subject to liability for misconduct of a notary public. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

Generally, a notarized signature is presumed to be authentic. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

Until a party has become aware of operative facts to discover that the signature may have been forged, that party is entitled to rely on the authenticity of the notarized signature. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

A party is ordinarily entitled to rely on the notarized signature on an agreement when it sues on that agreement, but if the party knows before filing suit that the defendant claims not to have signed the agreement or to know anything about the agreement, the plaintiff cannot base his suit on the presumption arising from the notarized signature. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581 (Pon. 2014).

When the attorney signing the complaint was unaware of operative facts to discover that the notarized signature of one of the defendants was not hers, the attorney made, under the case's circumstances, a reasonable inquiry before the complaint was signed and filed, and, a reasonable inquiry having been made, the defendants' motion for Rule 11 sanctions for filing the complaint will be denied. FSM Dev. Bank v. Ehsa, 19 FSM R. 579, 581-82 (Pon. 2014).

The false notarization of a guaranty does not affect the guaranty's substantive provisions as it relates to the signer when the signer admits that he did sign the guaranty. This is because the purpose of notarization is to verify the identity and signature of the person who signed the document. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 & n.8 (Pon. 2016).

Under both the Pohnpei and FSM statutes, a notary public has the privilege and is authorized to receive proof and acknowledgments of writings and all copies of certification under his or her hand and the notarized seal shall be received as evidence of such transaction. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

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).

By virtue of having affixed the notary seal, a notary acknowledges the identity and signature of the individual who signed the document. This is because the notary receives proof of identity and signature before giving his or her imprimatur, as evidenced by the seal. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

Recognition of a notarized signature as indicia of reliability, is consistent with the governing statute(s), the rules of evidence, and case law; thereby meeting the reasonable inquiry requirement set forth in Rule 11. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

PROPERTY

The fact that one may have general privilege to enter property does not necessarily mean that the privilege may be exercised at all times and in every conceivable manner. FSM v. Ruben, 1 FSM R. 34, 39 (Truk 1981).

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).

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).

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 framers of the Constitution 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 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 decision of 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 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).

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).

Governmental bodies' adjudicatory decisions affecting property rights are subject to the procedural due process requirements of article IV, section 3 of the Constitution. Etpison v. Perman, 1 FSM R. 405, 422-23 (Pon. 1984).

There is a substantial state interest in assuring that land disputes are decided fairly because of the fundamental role that land plays in Micronesia. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 98 (Kos. S. Ct. Tr. 1987).

A claim that decision-makers in a land adjudication were biased raises serious statutory and constitutional issues and is entitled to careful consideration. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 99 (Kos. S. Ct. Tr. 1987).

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).

In an action brought to enforce an agreement among three parties to "meet and divide up" land which is the subject of an ownership dispute, the court will enforce the agreement and, where there is no evidence to establish that any party is entitled to a larger share than the others, the court will presume that they intended to divide the land equally. Tauleng v. Palik, 3 FSM R. 434, 436 (Kos. S. Ct. Tr. 1988).

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).

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

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).

The FSM Constitution terminated all existing indefinite term land use agreements five years after the effective date of the Constitution. After that date, without a new lease agreement the occupier becomes a trespasser on the land. Billimon v. Chuuk, 5 FSM R. 130, 132 (Chk. S. Ct. Tr. 1991).

Because of the special importance land has in Micronesian society the state has a substantial interest in assuring that land disputes are settled fairly. Nena v. Kosrae, 5 FSM R. 417, 424 (Kos. S. Ct. Tr. 1990).

When a landowner voluntarily enters into a statement of intent to grant the state an easement the state has not violated the landowner's constitutional rights by "taking" his property without just compensation, and is not liable for trespass. Nena v. Kosrae, 5 FSM R. 417, 425 (Kos. S. Ct. Tr. 1990).

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).

Because land ownership determinations in the FSM are conducted using different procedures and

resources than in the United States, it is not appropriate to adopt the same legal prerequisites to title employed by U.S. jurisdictions. Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

The issue of indefinite parcel boundaries can be resolved by the state Land Commission subsequent to a declaration of title by the court. Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

The traditional remedy for the original landowners in an "ammot" transaction when the grantee no longer used the land for the purpose for which it was given was repossession of the land and nothing more. Wito Clan v. United Church of Christ, 6 FSM R. 129, 134 (App. 1993).

Patrilineal descendants – or *afokur* – have no rights to lineage land in Chuuk. They only enjoy permissive rights of usage from the members of the lineage. Mere usage of lineage land by *afokur* does not constitute title of any sort even if the usage lasts a lifetime. Transfer of lineage land to any descendants of male members requires the clear agreement of the Clan. Chipuelong v. Chuuk, 6 FSM R. 188, 196 (Chk. S. Ct. Tr. 1993).

It is an established principle of Chuukese land tenure, that lineage land is owned by the matrilineal descendants and not by the patrilineal descendants or "afokur." Chipuelong v. Chuuk, 6 FSM R. 188, 197 (Chk. S. Ct. Tr. 1993).

When land is granted for "for so long as it is used for missionary purposes," the original grantors retain a reversionary interest. Dobich v. Kapriel, 6 FSM R. 199, 201 (Chk. S. Ct. Tr. 1993).

Land granted for "for so long as it is used for missionary purposes," is not a constitutionally prohibited indefinite land use agreement because the length of the term of the land use will continue, with all certainty, as long as a court determines that the land is still being used for missionary purposes. The term is definite, because its termination can be determined with certainty. Dobich v. Kapriel, 6 FSM R. 199, 202 (Chk. S. Ct. Tr. 1993).

The Constitutional prohibition against indefinite land use agreements does not apply to an agreement where none of the parties are a non-citizen, a corporation not wholly owned by citizens, or a government. Dobich v. Kapriel, 6 FSM R. 199, 202 (Chk. S. Ct. Tr. 1993).

The sanction imposed on one who controls and manages the land of a group who does not fairly and according to custom concern himself with the rights of the other members or another member of the group is the censure of the community. In re Estate of Hartman, 6 FSM R. 326, 328 (Chk. 1994).

When the children of a landowner with full title to land inherit the land they form a land-owning group ("corporation"). The senior male, the *mwäänii chi*, is required to manage the property in the interest of the "corporation." The corporation owns the land even if one part or another is allotted to a member for his use. In re Estate of Hartman, 6 FSM R. 326, 329 (Chk. 1994).

Where a party has merely alleged inadequate notice at the time of the title determination by the Land Commission but has offered no evidence the a court must conclude the certificate of title is valid, especially when the party only entered the property nine years after the determination process and offers no evidence of interest in property dating back to the time of the determination process. Ponape Enterprises Co. v. Soumwei, 6 FSM R. 341, 344 (Pon. 1994).

Where the T.T. High Court found that a particular parcel of land was not public land in a suit brought by the Nanmwarki and Nahnken of Nett on behalf of all their constituents and subjects the doctrine of res judicata bars a party from presenting that issue as a counterclaim or defense. Ponape Enterprises Co. v. Soumwei, 6 FSM R. 341, 344 (Pon. 1994).

An action for damages for negligent surveying is not an action for the recovery of an interest in land, for which the twenty year statute of limitation would apply, therefore it may be barred by the lesser statue of

limitations. Damarlane v. United States, 6 FSM R. 357, 361 (Pon. 1994).

German land reforms instituting the rule of primogeniture and prohibiting sale of land without approval of the Governor and the Nanmwarki and requiring a certain number of days of free labor to the Nanmwarki applied only to the public lands that were taken from the Nanmwarkis and given to the ethnic Pohnpeians actually farming them and not to lands already individually owned. Etscheit v. Adams, 6 FSM R. 365, 374-75 (Pon. 1994).

Japanese land law on Pohnpei disregarded the rule of primogeniture instituted by the Germans and often allowed the division of land and ownership by women. Etscheit v. Adams, 6 FSM R. 365, 376-77 (Pon. 1994).

Under the Trust Territory government the rule of primogeniture was only applied to land held under the standard German form deeds which stated the rule, and even then the courts frequently made exceptions to the restrictions. Etscheit v. Adams, 6 FSM R. 365, 377-80 (Pon. 1994).

Because the customary Pohnpeian title system was primarily matrilineal and the court's decisions should be consistent with local custom, the primogeniture provisions of the standard form German deeds should be given narrow application and not applied more broadly than it was by the German, Japanese, or Trust Territory governments. Etscheit v. Adams, 6 FSM R. 365, 381 (Pon. 1994).

Where the rule of primogeniture was not in effect when the land was individually acquired in 1903, was never fully in effect at any time, was largely ignored by the Japanese when the land was passed by will contrary to primogeniture, and has been repudiated by the state government, and where the person who would have inherited if primogeniture had applied never made that claim, and where primogeniture appears contrary to custom, the court must conclude that primogeniture never applied to the land in question. Etscheit v. Adams, 6 FSM R. 365, 381-82 (Pon. 1994).

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).

A U.S. statute requiring aliens to dispose of landholdings within ten years of acquisition never applied in the Trust Territory because the Trust Territory never had the status of a U.S. territory and the U.S. Congress never specifically extended its application to the Trust Territory. Nahnken of Nett v. United States (III), 6 FSM R. 508, 524-25 (Pon. 1994).

A party who has not disturbed the natural contours of the land is not liable for loss of lateral support for removing fill pushed over the common boundary by the other party when the other party created the need for lateral support by altering the natural contours of the land at their common boundary. Setik v. Sana, 6 FSM R. 549, 553 & n.3 (Chk. S. Ct. App. 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).

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).

On Kosrae, *usru* is a gift of land by a parent to one's children, and *kewosr* is an outright gift of land from a man to a favored lover. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 36 (Kos. S. Ct. Tr. 1997).

Under Kosraen custom one does not openly declare that a *kewosr* has taken place, but simply acts,

with a witness present, in a certain fashion. A *kewosr* is a secret way of giving land that only the man and woman involved know about. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 36 (Kos. S. Ct. Tr. 1997).

In Kosrae, land ownership determinations are conducted using different procedures and resources than those in the United States. It is not appropriate to adopt the same legal reasoning employed in U.S. jurisdictions. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 37 n.6 (Kos. S. Ct. Tr. 1997).

Although transfer of land by *kewosr* fell out of favor after the arrival of Christianity on Kosrae, *kewosr* did continue afterward. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 37 (Kos. S. Ct. Tr. 1997).

Profit à prendre, the right to enter land for cultivation and to take the products of such cultivation, is an interest separate from ownership. It may be created by either grant or prescription. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

The FSM Supreme Court does not need to rule on whether to recognize to recognize the legal doctrine of *profit à prendre* when the claimant cannot satisfy the elements of that doctrine. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

The ownership of realty carries with it, as an incident thereto, the prima facie presumption of the ownership of both the natural products of the land and the annually sown crops. Nelson v. Kosrae, 8 FSM R. 397, 404 (App. 1998).

The criminal law is not to be used to settle conflicting claims to property. Property disputes in Micronesia strain the social fabric of the communities in which they occur. The filing of a criminal action injects an element of criminality into a matter which is, at its core, civil, and increases that strain. Nelson v. Kosrae, 8 FSM R. 397, 406 (App. 1998).

Trust Territory Code Title 67 remains in effect in Chuuk through the Chuuk Constitution Transition Clause. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

When a traditional and customary settlement provides a life estate in property, the land reverts to the grantor or his heirs upon the life estate's owner's demise. Muritok v. William, 8 FSM R. 574, 576 (Chk. S. Ct. Tr. 1998).

A person may only transfer such title to land as that person lawfully possesses. Muritok v. William, 8 FSM R. 574, 576 (Chk. S. Ct. Tr. 1998).

If the seller had no authority to sell property, plainly, the buyer acquired no title to the property. Mere possession is not probative of title, because one in possession acquires no better title than his seller. Muritok v. William, 8 FSM R. 574, 576 (Chk. S. Ct. Tr. 1998).

A party who purchased the land from the life estate owner only purchased a life estate and upon the seller's death has no further title or interest in the land. Muritok v. William, 8 FSM R. 574, 576 (Chk. S. Ct. Tr. 1998).

Actions for the recovery of land or any interest therein must be commenced within twenty years after the cause of action accrues. Hartman v. Chuuk, 9 FSM R. 28, 31 (Chk. S. Ct. App. 1999).

A dedication is generally defined as the appropriation of land by the owner for the use of the public. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

An owner may be deemed to have dedicated his property based on his actions, which included throwing the property open to the public and his acquiescence in the property's maintenance by the municipality. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

In land cases, notice requirements must be followed. Failure to serve actual notice is a violation of due process of law and contrary to law. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94 (Kos. S. Ct. Tr. 1999).

The purpose of a quiet title action is to determine, as between the parties to the proceeding, who has the better title. Elaija v. Edmond, 9 FSM R. 175, 179 (Kos. S. Ct. Tr. 1999).

Implicit in the concept of ownership of property is the right to exclude others; that is, a true owner of land exercises full dominion and control over it and possesses the right to expel intruders. Elaija v. Edmond, 9 FSM R. 175, 179 (Kos. S. Ct. Tr. 1999).

The fact that a claimant's name is shown on the 1932 Japanese survey map of Kosrae is not dispositive as to the land's ownership. Ownership will be determined on the basis of all the evidence. Elaija v. Edmond, 9 FSM R. 175, 180 (Kos. S. Ct. Tr. 1999).

Determination of land ownership rests primarily with the Land Commission. After a designation of any registration area has been filed, a court will entertain only those land title cases where there is a showing of special cause why action by a court is desirable. Simina v. Rayphand, 9 FSM R. 508, 509 (Chk. S. Ct. Tr. 2000).

The German Land Code of 1912 applies only to land on Pohnpei, not to submerged areas. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 64 (Pon. 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).

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).

When a trespass action is not an action to set boundaries or to determine the ownership of any particular property and when the defendant never directly asserts an ownership interest in the land on which he allegedly trespasses, but rather asserts the rights of third parties, who (and any claims they may have) are not currently before the court, it is not an "action with regard to interests in land" within the meaning of 67 TTC 105 requiring 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. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 180 (Pon. 2001).

A case that appears to rest on the assertion that the Land Commission gave title to the land in question to a clan will be dismissed when the Determination of Ownership names a person as the sole owner of the land. Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2001).

Trust Territory Code Title 67 remains in effect in Chuuk through the Chuuk Constitution Transition Clause. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 369 (Chk. 2001).

It is a well-recognized rule of law in Chuuk that lineage land cannot be transferred, distributed or sold by an individual member of the lineage without the consent or acquiescence of all adult members of that lineage, and it is assumed that this rule of law applies to "transfers" by lease as well. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389 (Chk. 2001).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389 (Chk. 2001).

In Kosrae, due to the customs regarding land inheritance and the delays in adjudicating title to land,

many parcels are possessed and used by persons who do not have title to land. Land use agreements may be made in writing, but when the agreements involve family members, the agreements are usually verbal. James v. Lelu Town, 10 FSM R. 648, 649 (Kos. S. Ct. Tr. 2002).

The consent of all adult members of the lineage is needed to sell lineage land. Marcus v. Truk Trading Corp., 11 FSM R. 152, 159 (Chk. 2002).

Community censure is the sanction imposed on one who controls and manages the land of a group who does not fairly and according to custom concern himself with the rights of other members or another member of the group. That is not a sanction that a court can order or relief that a court could grant. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Customary and traditional use rights to an island are a form of property right. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

"Color of title" is susceptible to ready definition: Any instrument having a grantor and a grantee, and containing a description of the lands intended to be conveyed, and apt words for their conveyance, gives a color of title to the lands described. When the College had color of title to the property because it held a quitclaim deed to the property, that recognition served as a means of assessing and comparing the quality of the respective possessory interests claimed by it and another. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 359 (App. 2003).

A trial court can hold that, as between the parties to the case, who had the better claim to ownership, but that is all the trial court could have decided regarding ownership. Its ruling could not apply to any claims to ownership by non-parties or to other claims not raised in the pleadings or at trial. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

When the parties' position at trial, and on this appeal (until now), was that it was a dispute over ownership, the trial court's decision was limited to who among the parties had a better claim to ownership and did not include a claim that no one owned Fayu. Thus the claim that Fayu was owned by no one was not before the trial court. The appellate court's affirmance of the trial court thus does not preclude a non-party from later successfully maintaining a claim that no one owns Fayu. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

The transfer of a void title to another does not make the title any more valid when the other also had notice that the title was being challenged on appeal. In re Lot No. 014-A-21, 11 FSM R. 582, 591 (Chk. S. Ct. Tr. 2003).

Acheche is traditionally a gift of land at the time of the birth of the first son so there could not have been any acheche of the land later because the transfer would have had to have taken place when the son was born. In re Lot No. 014-A-21, 11 FSM R. 582, 593 (Chk. S. Ct. Tr. 2003).

A party can have no legal interest in a lot when she never alleged that she purchased the lot from the true landowning group. In re Lot No. 014-A-21, 11 FSM R. 582, 595 (Chk. S. Ct. Tr. 2003).

The law presumes that an owner of land knows his own property and truly represents it. Tulenkun v. Abraham, 12 FSM R. 13, 17 (Kos. S. Ct. Tr. 2003).

When the Chuuk Legislature has made no effort to repeal, supersede or amend the Trust Territory Code regarding land tenure in Chuuk, pursuant to Article XV, § 9 of the Chuuk Constitution, the Trust Territory Code provisions still apply to land disputes. Chuuk v. Ernist Family, 12 FSM R. 154, 158 n.3 (Chk. S. Ct. Tr. 2003).

When determinations of ownership for adjoining land show that title to those lands is held not only by the named parties but by their brothers and sisters as well, these persons should be named in a boundary

dispute and trespass case's pleadings and at least once in the caption, because as co-owners, they may be indispensable parties. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 248 (Chk. 2003).

A party who seeks to quiet title to a piece of land must join all known persons who are claiming title in order to settle the property's ownership without additional litigation. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

All co-tenants are indispensable parties to the litigation when someone else claims complete ownership of the land. Otherwise, the co-tenants would either be deprived of their property interest without due process of law or they would be forced to share their property with a hostile co-owner who believes he should be the sole owner. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

An appeal will be dismissed for the lack of indispensable parties because an appellant's failure to join all the co-owners as parties is fatal to his appeal. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

All co-tenants would not be indispensable parties if a litigant were claiming only one co-tenant's share and not the other shares. Then only that co-tenant need be joined. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

When there is no clear evidence in the record that anyone else had significant involvement with the parcel, and given the trial court's judgment as to the witness's credibility, there is no significant evidence to overcome even "some evidence" of Timothy's ownership as presented by the 1932 Japanese Map. George v. Nena, 12 FSM R. 310, 318 (App. 2004).

Whether or not someone had a valid claim of land ownership arising out of his alleged purchase in 1959, he lost any claim he may have had to it by failing to raise the claim or perfect his interest prior to the issuance of a Certificate of Title for it in 1981. Hartman v. Chuuk, 12 FSM R. 388, 400 (Chk. S. Ct. Tr. 2004).

A claim to land clearly could not be renewed when the statute of limitations on an action to recover land or an interest therein is twenty years and more than twenty years have passed since the Certificate of Title in another's favor was issued and since the court decision affirming ownership. Any subsequent attempt to litigate the land's ownership is barred by the statute of limitations. Hartman v. Chuuk, 12 FSM R. 388, 400 (Chk. S. Ct. Tr. 2004).

The law of Chuuk provides that lineage land is owned by the matrilineal members of the lineage. Lineage land may only be transferred with the consent of the lineage, and since the land is owned by the matrilineal members of the lineage, their consent is necessary. Hartman v. Chuuk, 12 FSM R. 388, 401 (Chk. S. Ct. Tr. 2004).

Interests in land include fee simple ownership, easements, rights of way and leases. Sigrah v. Kosrae, 12 FSM R. 531, 535 (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).

Implicit in the concept of ownership of property is the right to exclude others; that is a true owner of land exercises full dominion and control over it and possesses the right to expel intruders. Benjamin v. Youngstrom, 13 FSM R. 72, 76 (Kos. S. Ct. Tr. 2004).

Fee simple title to land which is held by a group of heirs is held as tenants-in-common. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

Co-owners of land are generally considered indispensable parties to any litigation involving the land. A party who seeks to quiet title to a piece of land must join all known persons who are claiming title in order to settle the property's ownership. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

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).

Land use agreements involving family members are usually verbal. Norita v. Tilfas, 13 FSM R. 424, 426 (Kos. S. Ct. Tr. 2005).

Customary land use rights, such as for burials and gravesites, are a form of property right. Norita v. Tilfas, 13 FSM R. 424, 426 (Kos. S. Ct. Tr. 2005).

It is difficult to see how the after-acquired title doctrine could be any other way. The general rule is that a person may only transfer such title to land as that person lawfully possesses. However, if a person should transfer more than he lawfully possesses and then later comes to lawfully possess what he purported to transfer, it is only fair and just that he and the law honor his prior transfer. If a person should transfer an interest that he mistakenly believes he holds and then it is discovered that he does not hold it, the law should encourage him to cure this defective transfer and acquire the interest so that the innocent transferee continues to receive the benefit of his bargain and quietly enjoy what he has leased or bought. If the doctrine of after-acquired title (also called estoppel by deed and estoppel by lease for sales and leases respectively) were not the rule, an innocent transferee would be deprived of the benefit of his bargain, while permitting the after-acquiring transferor to unfairly benefit by disregarding the sale or lease although he has now acquired the right he earlier claimed that he had. Mailo v. Chuuk, 13 FSM R. 462, 469 (Chk. 2005).

A person may only transfer such title to land as that person lawfully possesses. If the seller had no authority to sell property, plainly the buyer acquired no title to the property. Mere possession is not probative of title, because one in possession acquired no better title than his seller. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

All causes of action arising out of the same event (and all defenses to a cause of action) must be raised in one case or else they are barred. A plaintiff cannot file one suit claiming title based on a will and then be allowed to file a second lawsuit for title to the same land claiming fraud and breach of contract. He must raise all causes of action for title to the land in the same case. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 496 (Kos. S. Ct. Tr. 2006).

Japanese survey maps, alone, contain no assurance of who should be shown as owners as they were primarily concerned with boundaries but when the Trust Territory Court cases relied on them, along with the other evidence, in reaching their decisions, the Japanese survey maps, along with the sketches and boundary descriptions, may be used to give effect to those decisions. Heirs of Livaie v. Palik, 14 FSM R. 512, 516 (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).

It is generally recognized that in order to sell lineage land in Chuuk, lineage heads need the lineage members' consent. Nakamura v. Moen Municipality, 15 FSM R. 213, 218 (Chk. S. Ct. App. 2007).

Lineage members' consent or acquiesce to the sale of lineage land can be shown by affirmative assent, or an acquiescence, or by ratification of the act. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. 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).

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).

The bona fide, or "innocent," purchaser rule arises from the statutory recording requirements for interests in real estate. For all real estate in each district, the clerk of court is required to make and keep in a permanent record a copy of all documents submitted to him for recording. No transfer of or encumbrance upon title to real estate or any interest therein, other than a lease for a term not exceeding one year, is valid against any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer or encumbrance, or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded. Mori v. Haruo, 15 FSM R. 468, 472 (Chk. S. Ct. App. 2008).

The "registration" of interests in land, pursuant to 67 TTC 119 "has the same force and effect as to such land as a recording" under 57 TTC 301. In order for a subsequent, bona fide, or "innocent," purchaser to have valid title against a prior holder of an interest in the same real estate the subsequent purchaser must "register" or "record" the interest before the prior holder. Mori v. Haruo, 15 FSM R. 468, 472 (Chk. S. Ct. App. 2008).

A buyer is not a bona fide purchaser for value without notice when she executes a purchase agreement with an individual seller when an earlier determination of ownership was notice to the world, and thus to her, of the lineage's interest in the property. Mori v. Haruo, 15 FSM R. 468, 473 (Chk. S. Ct. App. 2008).

Lineage heads need the adult lineage members' consent for transfers of lineage land. Mori v. Haruo, 15 FSM R. 468, 474 (Chk. S. Ct. App. 2008).

The rule of law that has gained precedence in Chuuk based on customary practice, and which the court is bound to apply, does not provide for any legally recognizable means to assure that the sale of lineage land will be valid other than by proving that all living, adult members of the lineage have consented to the sale. Mori v. Haruo, 15 FSM R. 468, 474-75 (Chk. S. Ct. App. 2008).

When adult lineage members did not consent to the sale of their interest, as lineage members, in lineage land and the buyer had notice of the lineage's ownership through the February 10, 1976 determination of ownership and therefore was not a bona fide purchaser without notice, the lineage head's transfer of the property was not valid since the lineage members did not ratify the unauthorized transfer of lineage land. Mori v. Haruo, 15 FSM R. 468, 475 (Chk. S. Ct. App. 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).

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).

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).

When the appellate court does not find anything in the trial court record to suggest that the trial court should have found, by a preponderance of the evidence, that appellants were granted any an alleged enduring, customary right, the trial court's finding was not clearly erroneous. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

The bona fide, or "innocent," purchaser rule arises from the statutory recording requirements for interests in real estate. For all real estate in each district, the clerk of court is required to make and keep in a permanent record a copy of all documents submitted to him for recording. No transfer of or encumbrance upon title to real estate or any interest therein, other than a lease for a term not exceeding one year, is valid against any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer or encumbrance, or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded. The "registration" of interests in land has the same force and effect as to such land as a recording. Therefore, a subsequent, bona fide, or "innocent," purchaser has valid title against a prior holder of an interest in the same real estate if one "registers" or "records" the interest before the prior holder. Setik v. Ruben, 16 FSM R. 158, 164-65 (Chk. S. Ct. 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).

A tenancy in common is a form of co-ownership where two or more persons have equal and undivided shares in the whole with each having an equal right to the whole, but no right of survivorship. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 372 n.1 (Kos. S. Ct. Tr. 2009).

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).

In resolving a land claim, it is irrelevant whether *kewosr* is a legally-recognized tradition with the force of law today when the *kewosr* land transfer at issue occurred about 1912. The relevant question would thus be whether *kewosr* was a tradition when the *kewosr* occurred. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375 (Kos. S. Ct. Tr. 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).

When the boundaries described in two May 9, 1957 land use agreements, one in which Kun Mongkeya granted about ¾ hectare for use by the Kusaie Intermediate School, and in the other in which Allen Mackwelung (and Daniel Aliksa) granted four hectares for the same purpose, and which were both signed not only by the grantors but also by a Tafunsak village chief, the Chief Magistrate of Kusaie, and five members of the Land Advisory Committee of Seven, including the District Administrator and the clerk of courts, abut each other; when the Land Commission-ordered "subdivision" reflects the boundary

descriptions in both agreements; and when the boundary location was corroborated by witnesses who had been present in 1957 when the boundary was marked on the ground as personally directed by Allen Mackwelung, this all constitutes substantial evidence in support of the Land Court finding that the 1957 land use agreements reflect the true ownership of the land. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 377-78 (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).

There is no property right that is recognized by the law of the FSM as "damages." Damages is a legal term of art that refers generally to a remedy which may be granted by the court to a party in a civil action. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 456 (Pon. 2009).

A land title determination that someone is "the sole owner" means just that – she is the sole owner and that the land is individually owned by her and any further language in the determination identifying the individual's lineage and lineage head is a means of identifying further who the individual is, particularly if she did not have a surname. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 554 (Chk. S. Ct. App. 2009).

Generally, what constitutes property and interests in property is purely a matter of state law. Narruhn v. Chuuk, 16 FSM R. 558, 562 (Chk. 2009).

Lineage rights descend through the female lineage members and that patrilineal descendants, as afokur, have only permissive use rights in lineage land. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Once all the lineage members died, the intervener, as an afokur to the lineage ceased having even permissive rights to lineage lands because once the lineage was extinct, all lineage rights ceased. The lands were then validly acquired by another person and her descendants, not as lineage members, but as heirs. Peter v. Jessy, 17 FSM R. 163, 175-76 (Chk. S. Ct. App. 2010).

A court does not need the presence of all owners of all property abutting the land's purported boundaries, and any other landowners in the vicinity whose property or property lines would have to appear on a certified survey map to decide the limited issue raised by a plaintiff's cause of action for trespass, that is, to decide whether the defendant is trespassing or occupying land to which the plaintiff church has a better right to possess or occupy. The court does not need to (and without the other necessary parties cannot) determine where all of the other boundaries lie because the only issue properly before the court, and the only issue the court may rule upon without violating the due process rights of non-parties, is whether it is more likely than not that the land the plaintiff leased was owned by the lessor and because the determination of boundaries of any other parts of the land which the plaintiff does not claim a leasehold or of the boundaries of any other parcels of land in the area is not before the court. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233-34 (Chk. 2010).

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 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).

A person may acquire a vested interest in his living parent's land in many ways, such as by a gift, by becoming a trustee, by becoming a beneficiary, or by being named in a registered or otherwise evidenced will or other testamentary device. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

In Chuuk, lineage land cannot be transferred, distributed, or sold by an individual member of the lineage without the consent of all adult members of that lineage. Setik v. Ruben, 17 FSM R. 465, 474 (App. 2011).

The bona fide purchaser rule is a rule of property law, and as such is a question of state law. Setik v. Ruben, 17 FSM R. 465, 475 (App. 2011).

Good faith is an objective standard. Setik v. Ruben, 17 FSM R. 465, 475 (App. 2011).

The bona fide purchaser rule does not apply when the land was lineage land which the seller had no authority to convey since the courts have historically been wary of applying the rule where the purported seller has no authority to sell, and when the Land Commission's determination of ownership was invalid for lack of notice to the occupants since a certificate of title must be based on a valid determination of ownership. Setik v. Ruben, 17 FSM R. 465, 476 (App. 2011).

When an earlier trial court decision and the appellate opinion affirming it clearly stated in no uncertain terms that that case only concerned a tideland and did not concern the adjacent filled land; when the appellate opinion court noted that the owner of dry land is not necessarily the owner of the adjacent tideland; and when that entire proceeding was premised on the supposition that certain persons owned the filled land that they were living on, no plausible reading of the earlier decision can support a claim that it ruled that another was the owner of the filled land because only the most twisted logic could pervert that decision, in which the filled land's ownership was presumed undisputed, into a decision that awarded title of that land to that other. Phillip v. Moses, 18 FSM R. 247, 251 (Chk. S. Ct. App. 2012).

The Constitution does not create property interests, property interests are created and their dimensions are defined by existing rules or understandings that stem from an independent source, such as state law, that secure certain benefits and that support claims of entitlement to those benefits. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

The hallmark of property is an individual entitlement grounded in state law, which cannot be removed except for cause. Once that characteristic is found, the types of interests protected as "property" are varied and, as often as not, intangible, relating to the whole domain of social and economic fact. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

Property is more than mere ownership. It includes the right to acquire, use, enjoy, and dispose of acquisitions subject only to the law of the land. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

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).

Traditionally, when someone no longer had the right to reside on another's land, he would be allowed to dismantle the house he had built and take the materials to rebuild somewhere else because he owned the building materials. This is usually not feasible with modern houses. Killion v. Nero, 18 FSM R. 381, 385 n.3 (Chk. S. Ct. Tr. 2012).

Chuukese custom generally follows the rule that a person who makes improvements on property has full title to these improvements even though he does not hold title to the property on which they are made. Killion v. Nero, 18 FSM R. 381, 385 n.4 (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).

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).

The court will not award the plaintiff the land's rental value as well as its sale price when there was no evidence before the court that the plaintiff would have or would have been able to rent that land to someone else if the defendant was not occupying it because to recover both the sale price and the rental value would be a double recovery. Double recovery is not permissible. Killion v. Nero, 18 FSM R. 381, 387 (Chk. S. Ct. Tr. 2012).

Land does not "earn" interest. It may increase or appreciate in value, in which case, the current fair market value includes the increase or appreciation. Killion v. Nero, 18 FSM R. 381, 387 (Chk. S. Ct. Tr. 2012).

Real property is land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. Real property can be either corporeal (soil and buildings) or incorporeal (easements). A factory building is thus real property. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 597 (Kos. 2013).

When, although the factory building is real property to which the secured party does not have a right to pre-judgment possession, the secured party must be afforded access to the building so that it may take

possession of the chattels to which it does have a right of pre-judgment possession. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

When, if the buyer had diligently inquired into or investigated the matter, all he would have found would have been a Pohnpei Supreme Court final distribution probate order transferring title to all the shares to the seller and stating that this was the final disposition of the case at bar, it was sufficient to create a prima facie case that the buyer was without notice of any prior adverse claims to seller's ownership of the shares and since the buyer paid good and valuable consideration for the shares he was a bona fide purchaser for value. Mori v. Hasiguchi, 19 FSM R. 16, 22 (Chk. 2013).

– Adverse Possession

Adverse possession must continue unabated for 20 years in order for the doctrine of adverse possession to be applicable in a land case. Similarly, the common law doctrine of prescriptive right is inapplicable if the 20-year statutory period is not completed. Etpison v. Perman, 1 FSM R. 405, 416 (Pon. 1984).

There was not the kind of consistent assertion of ownership, as distinguished from right of use, that would allow the doctrine of adverse possession to apply in this case. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM R. 465, 468 (Kos. S. Ct. Tr. 1988).

For the state to acquire an easement by prescription, the state's use must by open, notorious, hostile, and continuous for the statutory period under a claim of right. Palik v. Kosrae, 5 FSM R. 147, 154 (Kos. S. Ct. Tr. 1991).

In order for an action over an interest in land to be barred by the statute of limitations, the cause of action must arise more than twenty years before the action is brought. If the claim could have been made over twenty years before it was actually made, then the action can no longer be maintained, no matter how meritorious. Chipuelong v. Chuuk, 6 FSM R. 188, 194 (Chk. S. Ct. Tr. 1993).

When 38 years have elapsed since the determination of ownership of a tract of land in the Wito Clan, when there have been public notices posted concerning the determination and concerning its later lease to the Trust Territory; two separate High Court decisions and three determinations of ownership concerning the land, and when construction activity on he land began 36 years ago; this constitutes both constructive and actual notice of the Wito Clan's claim to the land to another clan whose numerous members lived on the same small island. Chipuelong v. Chuuk, 6 FSM R. 188, 195 (Chk. S. Ct. Tr. 1993).

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously and under a claim of right, and the owner does not challenge such action until after the statute of limitations has run. Etscheit v. Adams, 6 FSM R. 365, 389 (Pon. 1994).

Because the Trust Territory statute of limitations did not go into effect until May 28, 1951 the 20-year period of unchallenged possession necessary to make out a claim for title to land under adverse possession cannot be met if possession was challenged before May 28, 1971. Etscheit v. Adams, 6 FSM R. 365, 389 (Pon. 1994).

It is a general principle that members of a family may not acquire adverse possession against each other in the absence of a clear, positive, and continued disclaimer and disavowal of title, and an assertion of adverse right brought home to the true owner a sufficient length of time to bar him under the statute of limitations from asserting his rights. Etscheit v. Adams, 6 FSM R. 365, 390 (Pon. 1994).

For adverse possession to be shown, the statute of limitations under which a challenge to possession can be made must have expired. Etscheit v. Adams, 6 FSM R. 365, 390 (Pon. 1994).

Adverse possession is a method, which is not favored, of acquiring title to property, which has been defined as the open and notorious possession and occupation of real property under an evident claim or color of right. This possession must be exclusive and in opposition to the true owner of the land. Usually adverse possession is controlled by statute, including the length of time needed to qualify, which is often the same as the statute of limitation. Cheni v. Ngusun, 6 FSM R. 544, 547 (Chk. S. Ct. App. 1994).

One may not claim adverse possession against the government. Cheni v. Ngusun, 6 FSM R. 544, 548 (Chk. S. Ct. App. 1994).

Where government title to the tidelands reverted to the traditional owners in 1989, and because the right to bring an action for trespass or ejection must be available to the owner before the time period for adverse possession has run, whether the doctrine of adverse possession exists in Chuukese land law need not be decided because the twenty-year statute of limitations did not start to run until 1989. Cheni v. Ngusun, 6 FSM R. 544, 548 (Chk. S. Ct. App. 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).

Adverse possession refers to the acquisition of the full benefit of a piece of property, whereas *profit à prendre* refers to the acquisition of a right of entry and the right to remove and take from the land the designated products or profits. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 393 n.3 (Pon. 1996).

In addition to actual possession for the twenty-year statutory period, adverse possession requires the possessor's occupancy to have been open and notorious, exclusive, continuous and under a claim of right. Thus, a party claiming property rights based on adverse possession must demonstrate that he came onto the land with the intent of taking complete and exclusive control of the property. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 395 (Pon. 1996).

Parties that claim they entered the land with permission to do exactly what they were doing, and did not take any affirmative steps to assert outright ownership, cannot be said to have been in "adverse" possession of the land in dispute. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 396 (Pon. 1996).

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously and under claim of right, and the owner does not challenge such action until after the statute of limitations has run. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

The applicable statute of limitations period for adverse possession is twenty years. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

The adverse possession element of "under claim of right" means that the claimant intends to hold the land as his own to the exclusion of all others. It has the same meaning as "hostile." Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

When the requisite element of hostility is absent from a party's assertion of adverse possession it is irrelevant whether the party had occupied the land for twenty years before the certificate of title was issued because their occupation was not hostile. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

The FSM Supreme Court does not acknowledge that ownership in land can be gained by adverse possession because when a party cannot satisfy elements to make out claim of adverse possession it is unnecessary to decide whether to recognize that doctrine. Even in those jurisdictions in which adverse possession is recognized, it is not favored as a method of acquiring title. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

An argument that a certificate of title is invalid because of an adverse possession claim must fail when

the twenty years necessary for adverse possession has not passed. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

When parties' claim to possession of land changes from permission of someone without authority to give permission to hostility an adverse possession claim will fail if the period of hostility has not yet run twenty years. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

Profit à prendre, the right to enter land for cultivation and to take the products of such cultivation, is an interest separate from ownership. It may be created by either grant or prescription. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

Acquisition by prescription of the right to *profit à prendre* requires the same claim of right or hostility as required to gain ownership by adverse possession. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

When a party's possession of land was not hostile so as to give rise to an adverse possession or to a *profit à prendre* claim, failure to give the party notice is not a violation of the party's due process rights. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

A party's claim to land after a municipality has continued its open, notorious, exclusive and hostile occupation of the land for a period of 27 years before he files suit is barred by the twenty-year statute of limitations, and the municipality is the true and lawful owner of title to the land in dispute on the theory of adverse possession. Hartman v. Chuuk, 9 FSM R. 28, 31 (Chk. S. Ct. App. 1999).

Adverse possession is an acknowledged doctrine under the common law which is fully applicable in Chuuk state court. Hartman v. Chuuk, 9 FSM R. 28, 31 (Chk. S. Ct. App. 1999).

The presumptive rights in land arising from long possession and use, together with delay on the part of the lawful owner in asserting his title, have often been found to be sufficient grounds for taking title from a legal owner and granting it to the user. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

The doctrine of adverse possession provides that long-continued peaceful possession under claim of right is a strong indication of ownership. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

If a person of full age and sound mind stands by, or he and his predecessors in interest together have stood by, for twenty years or more and let someone else openly and actively use land under claim of ownership for that period or more, the person who so stood by will ordinarily be held to have lost whatever rights he may previously have had in the land and the courts will not, and should not, assist him in regaining such rights. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

To avoid trouble, a person who believes he owns certain land and raises no objection to someone else using it, should at least obtain some clear and definite acknowledgment of his ownership by the user's word or acts at intervals of less than twenty years. If he cannot obtain such an acknowledgment, he should bring the matter to the court for determination before the use has continued for more than twenty years either from the time it began or from the time of the last such acknowledgment. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

When in 1968 the Trust Territory entered the land in question and, pursuant to 6 TTC 302, acquired title by adverse possession 20 years later in 1988, Chuuk is the successor to the title. Sefich v. Chuuk, 9 FSM R. 517, 519 (Chk. S. Ct. Tr. 2000).

When the defendants have failed to show the elements of adverse possession have been met and have thus failed to show that they own or have a right to possess the property they presently occupy, the defendants' claim of long use and occupation of the land does not create a genuine issue as to a material fact since the defendants failed to establish that they acquired ownership or a right to possession. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 103 (Pon. 2002).

An adverse possession claim will never prevail over a validly-issued certificate of title. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

Since someone claiming land by adverse possession must prove that his possession was open, notorious, hostile, continuous, and exclusive for the required statutory (twenty-year) time limit, failure to prove any one of these elements causes the whole claim to fail. A court's conclusion concerning another's continuous use of the land can only mean that the claimant, at a minimum, failed to show that his claimed possession was "exclusive" for any twenty-year period. His failure to prove that element is enough so that the lower court did not need to further discuss adverse possession because his adverse possession claim had failed at that point. Anton v. Cornelius, 12 FSM R. 280, 288 (App. 2003).

Adverse possession is not a claim that can be made against registered land, or land that has been one step (determination of boundaries) away from being registered land since 1981, and the filing of a trespass suit tolls (suspends) any running of the time period needed to assert an adverse possession claim. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e (Chk. 2004).

The doctrine of adverse possession does not apply when the use of the land was made with the owner's permission. Heirs of Nena v. Sigrah, 14 FSM R. 283, 286 (Kos. S. Ct. Tr. 2006).

The doctrine of adverse possession requires continuous use of the land for at least twenty years. An adverse possession claim must fail when the twenty years necessary for adverse possession has not passed. Heirs of Nena v. Sigrah, 14 FSM R. 283, 286 (Kos. S. Ct. Tr. 2006).

In order to successfully assert a claim that property rights have been acquired through adverse possession, a party must establish that he entered the land at issue and remained in possession of the land for the entire statutory period of 20 years. In addition to actual possession for the statutory period, adverse possession requires the possessor's occupancy to have been open and notorious, exclusive, continuous and under a claim of right. Thus, a party claiming property rights based on adverse possession must demonstrate that he came onto the land with the intent of taking complete and exclusive control of the property. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

Persons claiming land by adverse possession must show they had actual, exclusive, continuous, open and notorious possession under a claim of right for the statutory period of limitations, twenty years, before successfully asserting ownership of the land under this doctrine. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

Once a claim is filed in court, the time set under a statute of limitations stops running. This means that a claim for adverse possession does not include the time after an action has been filed in a court. Therefore, the 20-year period for the claimants to occupy land openly, notoriously, exclusively, continuously, and under a claim of right must run prior to the time claims were filed. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

The appellants did not cite any facts in the record to show that they exclusively and continuously possessed the land for any twenty year period prior to the time the claims were filed when the testimony showed that the appellees gave permission for others to use the land, that the appellees sometimes occupied the land, and that the appellees placed markers claiming ownership at the time of the survey. This evidence shows that the appellants did not have exclusive and continuous possession of the land. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

All elements of adverse possession must be demonstrated before title is issued based on this doctrine and when the appellants did not prove all of the elements, their claim of ownership based on adverse possession could not be upheld. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

Adverse possession is a disfavored method or doctrine of acquiring title to land. To prove a adverse possession claim, a claimant must demonstrate that the occupation was without the owner's permission, the land was used openly, notoriously, exclusively, continuously and under claim of right, and that the owner did not challenge such action until after the statute of limitations had run. A claimant must prove all elements of adverse possession before title is issued based on the doctrine. Setik v. Ruben, 16 FSM R. 158, 165 (Chk. S. Ct. App. 2008).

The adverse possession element of "under claim of right" means that the claimant intends to hold the land as his own to the exclusion of all others. It has the same meaning as "hostile." Adverse possession does not apply when the use of the land is with the owner's permission. The consistent assertion of ownership necessary for a claim of adverse possession must, therefore, be distinguished from a mere right of use. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

When the requisite element of hostility is absent from a party's assertion of adverse possession, it is irrelevant whether the party had occupied the land for twenty years before the certificate of title was issued because the occupation was not hostile. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

A trial court finding that the appellants occupied the land during the prior ownership under a right of use will not be overruled unless it is clearly erroneous, and when there is nothing in the record to indicate that the appellants ever challenged the ownership of the land, the court will not overturn the trial court's ruling against the claim for adverse possession without anything to indicate error in the trial court's finding that the appellants' use was permissive. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

An adverse possession claim will never prevail over a validly issued certificate of title. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously, and under claim of right, and the owner does not challenge such action until after the statute of limitations has run. Setik v. Ruben, 17 FSM R. 465, 476 (App. 2011).

For an adverse possession claim, the occupation must be without permission, open, notorious, and exclusive. Thus when the occupation of the land was permissive and non-hostile, the occupants have not adversely possessed the land. Setik v. Ruben, 17 FSM R. 465, 476-77 (App. 2011).

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously and under claim of right, and the owner does not challenge such action until after the statute of limitations has run. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 (App. 2011).

Land Court proceedings are the time and place adverse possession can and should be raised since Land Court jurisdiction includes all matters concerning the title of land and any interests therein. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 (App. 2011).

Land has a "true owner" or a rightful owner or a legal owner before any Land Court proceedings have been conducted even though it may be uncertain until the proceedings have concluded just who that owner is. A land occupant asserting adverse possession would have to prove that all the elements of adverse possession were satisfied against whoever would be the true owner or against all persons who could possibly be the true owner. Some authorities state that the possessor does not hold adversely unless he intends to hold against the whole world, including the rightful owner, but the really significant fact is that he hold against, that is, not in subordination to the rights of the legal owner. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Once an owner has a certificate of title to land, that ownership can never be lost through adverse possession. Under a Torrens land title registration system, such as the one in Kosrae, an adverse

possession claim will never prevail over a validly-issued certificate of title. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Claims founded on adverse possession or prescription, are not permitted to come into existence once the title has been registered. Once a title is registered, it is impossible thereafter to acquire title to the registered land by holding adversely to the registered owner. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

One of the attractions of a land registration system (as opposed to a land recordation system) and one of the great benefits of land title registration (as opposed to title recordation) is that once a landowner has gone through the laborious process of validly registering title to land, that landowner and that landowner's successors can never lose that land to an adverse possession claim. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

The proper time and place to make adverse possession claims, if a land occupant has one, is in a Land Court (or other) proceeding before the land title has been registered. Afterward is too late. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Adverse possession is a disfavored method or doctrine for acquiring title to land and a claimant must prove all the elements of adverse possession before title can be issued based on that doctrine. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Adverse possession is a doctrine under which one can acquire ownership of land if that individual, absent the owner's permission, uses the land openly, notoriously, exclusively, continuously and under claim of right, coupled with a requirement that the owner does not challenge such action until after the statute of limitation has run. The applicable statute of limitation period for adverse possession is twenty years. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58 (App. 2016).

In order to successfully assert a claim that property rights have become vested through adverse possession, a claimant must establish that he entered the land in issue and remained in possession of it for the entire twenty-year statutory period, and such possession, pursuant to a claim of right, must be continuous (i.e. uninterrupted, as far as being challenged by the owner). Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58 (App. 2016).

When, in 1990, the Land Commission conducted preliminary and formal hearings, with contested ownership claims in order to determine ownership rights; when others expanded their boundaries, encroaching, and overlapping on the land in 2005; and when there were Land Court status conferences conducted to determine ownership rights during 2011, the requisite twenty-year "continuous" unchallenged time period needed for adverse possession was suspended by these interludes. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58-59 (App. 2016).

In order to uphold a claim of ownership based on adverse possession, all elements of adverse possession must be demonstrated. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 59 (App. 2016).

– Deeds

Where two clauses within an agreement are inconsistent, the court should attempt to interpret the agreement so that each provision has meaning, but the paramount rule is that the deed must be construed so as to give effect to the intention of the parties as collected from the whole instrument. Melander v. Kosrae, 3 FSM R. 324, 327 (Kos. S. Ct. Tr. 1988).

A court interpreting a deed should attempt to determine the meaning of the words used rather than what the signatory later says he intended. Melander v. Kosrae, 3 FSM R. 324, 328 (Kos. S. Ct. Tr. 1988).

Where fraud or mistake are involved, the court can reform or cancel a deed, but relief will be denied in either situation if the misunderstanding of the aggrieved party was caused by his unexplained failure to read

the necessary documents. Melander v. Kosrae, 3 FSM R. 324, 329 (Kos. S. Ct. Tr. 1988).

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).

Where there is an issue of fact regarding the authenticity of a deed, summary judgment will not be granted to the parties claiming under the deed, and both sides will be allowed to present evidence on the issue. Etscheit v. Adams, 6 FSM R. 365, 389 (Pon. 1994).

When a deed may be legally insufficient to transfer a property because of an inaccurate recitation of its size it may still be relied on as an expression of the intent of the parties at the time. Nakamura v. Moen Municipality, 7 FSM R. 375, 379 (Chk. S. Ct. Tr. 1996).

On Pohnpei, German land deeds were issued only for land taken from the Nahnmwarkis and distributed to ethnic Pohnpeians. The lack of a German land deed for land acquired in another way and thus not subject to German deeds is not an infirmity of title. Nahnken of Nett v. United States, 7 FSM R. 581, 588 (App. 1996).

A court interpreting a deed should attempt to determine the meaning of the words used. Isaac v. Palik, 13 FSM R. 396, 399 (Kos. S. Ct. Tr. 2005).

A court interpreting a deed should attempt to determine the meaning of the words used rather than what the signatory or a relative later says he intended. Benjamin v. Youngstrom, 13 FSM R. 542, 547 (Kos. S. Ct. Tr. 2005).

When a quitclaim deed conveys all of the seller's rights, title and interest in a parcel to a buyer, his children and all his future heirs; when there is no reference made to the plaintiffs or to reservation of any rights for the plaintiffs; and when the quitclaim deed clearly indicates the parties' intent: the sale of all rights, title and interest in the parcel for $3000; the quitclaim deed was not made especially for the benefit of third persons. As the plaintiffs were not the intended beneficiaries on the contract, and do not satisfy the requirements of third party beneficiaries, they cannot recover on the breach of contract claim. Benjamin v. Youngstrom, 13 FSM R. 542, 547 (Kos. S. Ct. Tr. 2005).

When there is no reference to a "portion" or "part" or "subdivision" of a parcel in a deed and no language in it that would suggest the grantor's intent to transfer only a portion of the parcel to the grantees although it recites 682 square meters as the area, the clear inference drawn is that the Kosrae Land Court analyzed the deeds and determined that the grantor's intent was to transfer the entire parcel and not just a portion thereof, the Kosrae Land Court, in issuing the certificates of title utilized the full area of the parcel, as reflected in the prior grantor's certificate of title and as reflected in the cadastral plat map. The title to the entire 958 square meter parcel was effectively and validly transferred by the quitclaim deed. Benjamin v. Youngstrom, 13 FSM R. 542, 548 (Kos. S. Ct. Tr. 2005).

Deeds, in describing or identifying the land affected in the transaction, may simply reference an appropriate parcel number on the official map. Benjamin v. Youngstrom, 13 FSM R. 542, 549 (Kos. S. Ct. Tr. 2005).

A deed is effective when it is delivered. Benjamin v. Youngstrom, 13 FSM R. 542, 549 (Kos. S. Ct. Tr. 2005).

When a certificate of title was never issued to Tulpe Alokoa for parcel 006-K-07 and she was never determined by a Land Commission proceeding to be the title holder of that parcel and therefore could not transfer title to land that she did not own, her deed of gift was invalid, and should have been rejected for filing by the Land Commission. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

A deed of gift that only described the gifted land as a "portion of 006-K-07" with no description of boundaries, no reference to a map or drawing of the portion, and no designation of the area of the portion on the deed of gift, is defective due to its failure to adequately describe or identify the affected land because a deed, to be valid, must describe or otherwise identify the land affected. George v. Abraham, 14 FSM R. 102, 108-09 (Kos. S. Ct. Tr. 2006).

A land purchase agreement's intent and effect was to transfer title to the lot to the State upon execution of the agreement; otherwise there would have been no need to include a clause requiring that the land be deeded back to the seller if she was not paid in full by a date certain. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

Forfeitures are abhorrent to the law, and are construed strictly. Because the law abhors a forfeiture, the language effecting defeasance in a deed must clearly spell that fact out. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

Since under Chuukese customary law, any contract may be oral, that the deed was an inadequate writing to convey land is irrelevant. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

When credible evidence in the record more clearly supported the conclusion that Naau, Fonomu, and Ipis were three separate and distinct parcels of land, a 1910 German administration deed indicating the ownership of Naau was not germane since it did not involve the disputed island, Fonomu. Narruhn v. Aisek, 16 FSM R. 236, 241 (App. 2009).

When the deed conveying the land to the national government, only required it to "commence" development within five years, an argument that development of the land was not "completed" within that finite period of time, is without merit. FSM v. Falan, 20 FSM R. 59, 61 (Pon. 2015).

– Easements

Read in the light of its legislative history, article XIII, section 5 of the Constitution of the Federated States of Micronesia was intended to cover leases, not easements, and therefore an easement that is indefinite in term does not violate this constitutional section. Melander v. Kosrae, 3 FSM R. 324, 330 (Kos. S. Ct. Tr. 1988).

For the state to acquire an easement by prescription, the state's use must by open, notorious, hostile, and continuous for the statutory period under a claim of right. Palik v. Kosrae, 5 FSM R. 147, 154 (Kos. S. Ct. Tr. 1991).

Utility poles do not constitute trespass on land when the owner consented to their placement, accepted compensation for crop damage, and signed an agreement which effectively granted an easement for placement of utility poles. Palik v. Kosrae, 5 FSM R. 147, 155-56 (Kos. S. Ct. Tr. 1991).

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).

Easements are not indefinite land use agreements prohibited by the Constitution because "indefinite land use agreement" is a term of art referring to Trust Territory leases for an indefinite term. Nena v. Kosrae, 5 FSM R. 417, 423 (Kos. S. Ct. Tr. 1990).

An easement for a road is not an indefinite land use agreement prohibited by the Constitution because it is perpetual. It is not indefinite in that it is effective into perpetuity. Nena v. Kosrae (I), 6 FSM R. 251, 254 (App. 1993).

An easement may be created for a permanent duration, or, as it is sometimes stated, in fee, which will ordinarily continue in operation and be enforceable forever. The grant of a permanent easement is for as definite a term as the grant of a fee simple estate. Both are permanent and not for a definite term. Nena v. Kosrae (II), 6 FSM R. 437, 439 (App. 1994).

A grant of a permanent or perpetual easement is definite in the same sense that a grant of a fee simple estate is definite – it is a permanent transfer of an interest in land. Nena v. Kosrae (III), 6 FSM R. 564, 568 (App. 1994).

Although no Trust Territory statute expressly authorizes easements, they are recognized by clear implication in the Trust Territory Code. Island Cable TV v. Gilmete, 9 FSM R. 264, 266 (Pon. 1999).

Under Kosrae State Code § 11.615(3), land held under a certificate of title may be subject to a right of way whether or not the right of way is stated in the certificate of title. Sigrah v. Kosrae, 12 FSM R. 513, 518 (Kos. S. Ct. Tr. 2004).

A pre-existing right of way, such as an access road, passes with and remains necessarily attached to a parcel until it is cut off in a lawful manner Sigrah v. Kosrae, 12 FSM R. 513, 518-19 (Kos. S. Ct. Tr. 2004).

A holder or user of an existing right of way does not have the right to widen or modify the right of way without the landowner's consent. Sigrah v. Kosrae, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

An easement by prescription is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively and continuously for the statutory period under a claim of right. The statutory period for easement by prescription, which is an action for the recovery for an interest in land, is twenty years. Sigrah v. Kosrae, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

A preexisting easement or other right appurtenant to the land remains appurtenant, even if it is not described in the certificate of title. Norita v. Tilfas, 13 FSM R. 424, 426 (Kos. S. Ct. Tr. 2005).

When, pursuant to state law, parties were granted and therefore maintain a permanent land use right to access a parcel and use a portion thereof for maintenance of their existing gravesites, this permanent land use right passes with the parcel until it is extinguished in a lawful manner independent of the certificate of title. Norita v. Tilfas, 13 FSM R. 424, 427 (Kos. S. Ct. Tr. 2005).

When the subject parcel was utilized for gravesites pursuant to a verbal land use right, prior to the certificate of title's issuance, and the land was utilized by the defendants for many years without interference by the plaintiff, the land use right granted to the defendants for their burial sites was necessarily a permanent right. When the permission granted to the defendants to utilize the parcels included construction of permanent burial sites and necessarily included permission for continuing access and care of the burial sites, by virtue of the permanent nature of burial sites, the defendants' rights pertaining to access and care for the burial sites are rights appurtenant to the parcel and pass with the parcel. Akinaga v. Heirs of Mike, 14 FSM R. 91, 93 (Kos. S. Ct. Tr. 2006).

A permissive land use right, often referred to as an easement or right of way, constitutes a valid property interest in Kosrae. Land use rights in Kosrae are frequently granted verbally, particularly when the land use agreements are between family members. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397 (App. 2007).

Kosrae State Code § 11.615(4), which governs the issuance of certificates of title, establishes that a preexisting easement or other right of way over the land remains appurtenant even if it is not described in the certificate; and passes with the land until cut off or extinguished in a lawful manner independent of the certificate. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397 (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).

In general, an easement granted without a specified term is considered to be of permanent duration and may continue in operation forever and is not extinguished by the grantor's death. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

A grant of a right of way does not constitute a trespass because trespass laws are intended to protect those who have a right to possess and use land, and the doctrine of trespass does not act to prohibit the grantees' usage of land provided that they stay within the easement or right of way granted to them. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

When the appellees' general right to enter the land to tend to existing burial sites is established by the undisputed facts but the same cannot be said of the ten-foot buffer zone that was ordered to be maintained around the exiting burial sites since the trial court did not elaborate as to the exact operation of this "perimeter"; when the undisputed facts which establish the right of way do not support such a precisely defined area being designated; when the case relied upon by the trial court is factually distinguishable and does not alone justify the trial court's mandate of such a large buffer zone; and when the invocation of custom remains as the only basis for the trial court's order but the trial court was not provided supporting evidence of a custom or tradition involving such a specifically demarcated perimeter around burial sites, this single issue will be remanded to the trial court with instructions to strike the portion of its order that provides a 10-foot perimeter around the existing burial sites. The trial court may then receive supporting evidence of custom or tradition about the size of perimeters around graves and thereafter may enter an amended order based upon its findings. Akinaga v. Heirs of Mike, 15 FSM R. 391, 399 (App. 2007).

A proposed settlement is unimportant and only confuses the issues since even if the settlement made no issue of ingress or egress, the November 1997 court order ruled in favor of the appellant's right of way through the subject parcel onto his land behind it, ordering the appellee and his family members to refrain from any acts that may interfere with ingress or egress of appellant and his family members on the subject parcel. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

"Rights of way" over land are such things as roads, footpaths, and utility easements. A "right of way" is the right to pass through property owned by another or the strip of land subject to a nonowner's right to pass through. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

The Kosrae Land Court is entitled to determine an easement or right of way, because the land registration process is, with certain exceptions, supposed to determine all interests in the land, not just ownership interests. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

By statute, a certificate of title must show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year and the certificate is conclusive upon all persons who have had notice of the proceedings and all those claiming under them. A "right of way" over land is a thing such as a road, or footpath, or utility easement. A "right of way" is the right to pass through property owned by another or the strip of land subject to a nonowner's right to pass through. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

Any rights of way there may be over the land in question need not be stated in the certificate of title. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

A certificate of title's failure to mention the roadway or government right of way cannot extinguish the government's ownership of the roadway right of way. That right remained vested in the state government.

When the government owned a right of way across the land that predated the current owners' ownership of the land, that right of way existed on the land when the land was homesteaded and thus still existed after a later buyer bought part of that homestead lot. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

The certificate of title statute does not exempt mineral rights if they are not mentioned. Iwo v. Chuuk, 20 FSM R. 652, 655 n.1 (Chk. 2016).

The government owners and users of a right of way across land are not liable for the landowners' neighbors' alleged encroachment on the land. Any remedy for that alleged encroachment, the landowners must seek from their neighbors. Iwo v. Chuuk, 20 FSM R. 652, 656 (Chk. 2016).

– Eminent Domain

A motion for removal will be denied where, in an action in eminent domain under Truk State law the only defense available are those relating to the taking, and the counterclaims asserted as a basis for national court jurisdiction do not fall within a defense to the taking. Chuuk v. Land Known as Mononong, 5 FSM R. 272, 273 (Chk. 1992).

The acquisition of interests in private land by the state for a public purpose without the consent of the interested parties is permitted under the Kosrae Constitution, Article XI, § 5, which requires specific procedures to be followed, which are set forth in Kosrae State Code § 11.103. The state must first negotiate with each interested party, provide a written statement of the public purpose for which the interest is sought and negotiate in good faith. If the negotiations are not successful, the state may begin a court action to acquire the interest in land. Sigrah v. Kosrae, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

Since the state's statutory authority to acquire interests in land through court action has never been utilized to forcibly purchase an interest in private land for a public purpose, the court cannot conclude that the state is likely to prevail on the merits of its claim due to a complete absence of court decisions applying or interpreting this authority. Sigrah v. Kosrae, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

Under the Chuuk Eminent Domain statute, the applicable Rules of Civil Procedures for the Chuuk State Supreme Court govern the procedure for the condemnation of private lands under the power of eminent domain, except as otherwise provided in the statute. In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

When the only relief pleaded by the respondent in his answer that could possibly be considered a counterclaim was his prayer for attorney's fees and costs and when the eminent domain statute precludes this type of relief, even if this part of the respondent's prayer for relief is considered a counterclaim, it is a counterclaim that the statute clearly forbids and therefore should not hinder a dismissal under Rule 41(a)(2). In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

In an eminent domain case, just compensation must be fully tendered before a taking may occur and the Chuuk government must deposit in court, for the benefit of the landowners entitled thereto, the amount of just compensation stated in the declaration. In re Lot No. 029-A-47, 18 FSM R. 456, 458 (Chk. S. Ct. Tr. 2012).

The statutory provision adopting the Asian Development Bank Valuation System in the Governor's Executive Order 04-2007 and recognizing it as the prevailing land valuation system for all government land transactions only applied to land values without regard to any permanent structures that the landowner may also own on the condemned property. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

The Chuuk eminent domain statute and its provision allowing the court to increase (or decrease) a land's valuation by 10% applies only to the taking of the land and the land valuation and it does not apply to permanent structures erected on the land that the state is taking. The 10% increase possible for any other reasonable factor could include such improvements to the land itself such as the installation of a drainage

system, or leveling the land in preparation for building, or adding retaining walls or lateral support. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

Even if the Trust Territory statute requiring payment for the improvements on land taken by eminent domain, 67 TTC 453 and 454, has been repealed by implication (it was not expressly repealed), the constitutional provision requiring just compensation for property taken would require compensation for a permanent structure on the land at its fair market value. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

Since, under the Transition Clause, a statute in force in the State of Chuuk on the effective date of the Chuuk Constitution continues in effect to the extent it is consistent with the Chuuk Constitution or until it is amended or repealed, both 67 TTC 453 and 454 remain as Chuuk state law until amended or repealed since both are consistent with the Chuuk Constitution which requires "just compensation," and since they have not been repealed by implication because they occupy gaps in the recently enacted Chuuk eminent domain statute. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

An award of reasonable relocation or business interruption expenses may be the better view since such damages could be calculated with greater certainty than "lost profits," which would be too speculative. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

When the parties, by their settlement agreement, have liquidated all damages and compensation claims between them including the respondent's lost profits claim, the issue of whether the respondent in an eminent domain action can obtain damages for lost profits is moot. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

A respondent in an eminent domain action cannot recover attorney's fees under a private attorney general theory since the court's ruling monetarily benefits only him. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

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

Since the Chuuk eminent domain statute specifically prohibits an award for the expenses of litigation for either side in an eminent domain case, no attorney's fees or other costs of litigation can be awarded in an eminent domain case. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

– Gifts

On Kosrae, *usru* is a gift of land by a parent to one's children, and *kewosr* is an outright gift of land from a man to a favored lover. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 36 (Kos. S. Ct. Tr. 1997).

There must be a clear, unmistakable, and unequivocal intention on the part of a donor to make a gift of his property in order to constitute a valid, effective gift inter vivos. Elaija v. Edmond, 9 FSM R. 175, 180 (Kos. S. Ct. Tr. 1999).

Gifts inter vivos must be fully and completely executed – that is, there must be a donative intent to transfer title to the property, a delivery by the donor, and an acceptance by the donee. The intention to make a gift must be executed by a complete and unconditional delivery. Elaija v. Edmond, 9 FSM R. 175, 180 (Kos. S. Ct. Tr. 1999).

Gifts inter vivos, during the life of the owner, must be fully and completely executed. In other words, there must be donative intent to transfer title to the property, a delivery by the donor, and an acceptance by

the donee. The intention to make a gift must be executed by a complete and unconditional delivery. George v. Abraham, 14 FSM R. 102, 106 (Kos. S. Ct. Tr. 2006).

When the certificate holder and owner, did not complete or submit any document of transfer for the subject portion of the parcel to the defendant and he did not survey or arrange for the survey of the subject portion of the parcel claimed by the defendant, there was no compliance with the statutory provisions governing a transfer of interest in land or transfer of interest in a portion of parcel by the certificate holder, and therefore, pursuant to state law, there was no gift of land made from the certificate holder to the defendant. George v. Abraham, 14 FSM R. 102, 107 (Kos. S. Ct. Tr. 2006).

– Improvements

Where the court cannot compel the state to honor an illegal and/or unconstitutional lease it can order the state to restore the illegally held land, with any and all public improvements removed, to its rightful owner who may also be entitled to damages. Billimon v. Chuuk, 5 FSM R. 130, 137 (Chk. S. Ct. Tr. 1991).

Individuals have full title to the improvements (as distinguished from the soil) made upon land owned by a land-owning group or "corporation." In re Estate of Hartman, 6 FSM R. 326, 330 (Chk. 1994).

Under Pohnpei law, damage to reefs or soil under the high water mark resulting from dredging activities, the object of which is for public purposes, does not justify compensation to abutting land owners. If the Pohnpei Public Land Board of Trustees had granted certain rights in writing to an individual or group of individuals, and acting on that grant the grantees erected or constructed certain improvements, including fish maii (fish trap) in shallow waters, and if destroyed or value reduced as a result of state dredging activities, the owners thereof may be entitled to just compensation in accordance with the Pohnpei Constitution. Damarlane v. United States, 7 FSM R. 56, 69 (Pon. S. Ct. App. 1995).

A person may make improvements to land he possesses even if he does not own the land. The issue of making improvements is a matter between the owner of the land and possessor of the land. James v. Lelu Town, 10 FSM R. 648, 649 (Kos. S. Ct. Tr. 2002).

Individuals may have full title to the improvements (as distinguished from the soil) they make upon land not owned by them. Bank of the FSM v. Aisek, 13 FSM R. 162, 166 (Chk. 2005).

The Pohnpei Development Leasehold Act says that every development lease must contain a covenant stating that the lessor shall have the rights of future benefit to the improvements placed on the land by or on behalf of the lessee and that, upon the lease's termination, existing improvements thereon shall become the property of the lessor thereof or his successor in interest without further cost or condition to be met by the lessor, the property's title holder or any successor in interest to said property. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 225 n.1 (Pon. 2005).

Plaintiff landowners should not be permitted to unjustly enrich themselves through obtaining a house and other improvements built at the defendant's expense. Heirs of Nena v. Sigrah, 14 FSM R. 283, 286 (Kos. S. Ct. Tr. 2006).

Individuals may have full title to the improvements (as distinguished from the soil) they make upon land not owned by them and thus may be entitled to compensation if it is determined that they do not own the land on which the improvements were made and cannot remove those improvements to another site. Phillip v. Moses, 18 FSM R. 247, 251 (Chk. S. Ct. App. 2012).

– Land Commission or Land Court

Under Kosrae state statute KC 11.614, which says appeals will be heard "on the record" unless "good cause" exists for a trial of the matter, the court does not have statutory guidance as to the standard to be used in reviewing the Land Commission's decision and therefore, in reviewing the commission's procedure

and decision, normally should merely consider whether the commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 395, 398 (Kos. S. Ct. Tr. 1988).

When the land commission concludes that a traditional gift of land, a "kewosr," has been made, but is unable to determine who made the gift, and when, and does not explain any details about the customary gift sufficient to explain how it has determined that a kewosr was made, the opinion does not reflect proper resolution of the legal issues or reasonable assessment of the evidence and therefore must be set aside. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 395, 402 (Kos. S. Ct. Tr. 1988).

Kosrae State Land Commission properly relied on the decision of the Trust Territory High Court in Civil Action No. 47 (1953) as establishing that a person's name on the Japanese Survey of Kosrae was not conclusive evidence of ownership in 1932 of the land indicated. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM R. 465, 468 (Kos. S. Ct. Tr. 1988).

Kosrae State Land Commission was not required as a matter of law to accept as true the Japanese Survey's designation of Fred Likiaksa as owner, in 1932, of certain lands called Limes, in Lelu, parcel No. 050-K-00. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM R. 465, 468 (Kos. S. Ct. Tr. 1988).

Kosrae State Land Commission properly relied on the decision of the Trust Territory High Court in Civil Action No. 47 (1953) as establishing that no rights given to plaintiff's family could have extended beyond the death of Nena Kuang in 1970. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM R. 465, 468 (Kos. S. Ct. Tr. 1988).

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).

Land Commission procedures result in a determination of ownership wherein title to registered land is settled and declared by the government. The certificate of title issued by the government shows the state of the title and in whom it is vested. Chipuelong v. Chuuk, 6 FSM R. 188, 196 (Chk. S. Ct. Tr. 1993).

Where a certificate of title issued by the Land Commission goes beyond the findings of its own determination of ownership as affirmed by the court's findings, the certificate of title is invalid to the extent that it goes beyond the determination. Chipuelong v. Chuuk, 6 FSM R. 188, 197 (Chk. S. Ct. Tr. 1993).

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).

Once a section of land is considered for registration the Land Commission undertakes a five-step program: 1) survey and establish tentative boundaries, 2) notice and conduct preliminary inquiry, 3) notice and conduct formal hearing, 4) notice and issue determination of ownership, and 5) issue certificate of title.

These duties are both administrative and adjudicative. Palik v. Henry, 7 FSM R. 571, 574 (Kos. S. Ct. Tr. 1996).

Before a preliminary inquiry is conducted, the Land Commission must notify any person who claims a portion of the area in dispute so that they might attend the inquiry and be heard. Palik v. Henry, 7 FSM R. 571, 575 (Kos. S. Ct. Tr. 1996).

It is critical that the Land Commission post notice on the land, at the municipal office, and at the principal village meeting place and serve notice on all interested parties at least thirty days in advance of a formal hearing and give similar notice of its determination of ownership. Notice is required because it gives a chance to be heard. Palik v. Henry, 7 FSM R. 571, 576 (Kos. S. Ct. Tr. 1996).

Judgments of the Land Commission are void when it has failed to serve notice as required by law. Palik v. Henry, 7 FSM R. 571, 576-77 (Kos. S. Ct. Tr. 1996).

The Land Commission is required by statute to give actual, not constructive notice for hearings to all interested parties and to post notice on the land, at the municipal office and principal meeting place at least thirty days in advance of the hearing. Palik v. Henry, 7 FSM R. 571, 577 (Kos. S. Ct. Tr. 1996).

Without a claim to the land in question there is no right to notice of a land commission proceeding or finding. Nahnken of Nett v. United States, 7 FSM R. 581, 589 (App. 1996).

An appeal from the land commission will be on the record unless the court finds good cause for a trial of the matter. At a trial de novo the parties may offer any competent evidence, including the record of proceedings before the land commission, but the question of whether the commission considered the evidence submitted to it is not normally a part of judicial scrutiny. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 35 (Kos. S. Ct. Tr. 1997).

On appeal the court should not substitute its judgment for those well-founded findings of the land commission, but questions of law are reserved to the court. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 35 (Kos. S. Ct. Tr. 1997).

Chuuk land commissioners have considerable adjudicatory powers under 67 TTC 109. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

State law specifically prohibits persons with an interest from being members of a land registration team, but no such statute specifically requires the disqualification of land commissioners with an interest from reviewing the registration team's determination. This brings constitutional due process concerns into play. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Adjudicatory decisions affecting property rights are subject to the procedural due process requirements of article IV, section 3 of the Constitution. Due process demands impartiality on the part of adjudicators, including quasi-judicial officials, such as land commissioners. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Grounds that require a person's recusal from the land registration team also require his disqualification as a land commissioner reviewing the land registration team's adjudication. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

When the statute requires the signature of at least two land commissioners in order to constitute an action of the commission and only two commissioners signed the section 109 review, and at least one of those should have disqualified himself, the review is void. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Review of a land registration team's decision should, in the first instance, be done by the Land

Commission, not a court. A land commission review that is void will therefore be remanded for a new review. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

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).

The standard required for the review of a Land Commission decision by the Chuuk State Supreme Court trial division is whether the decision of the Land Commission is supported by substantial evidence. Nakamura v. Moen Municipality, 8 FSM R. 552, 554 (Chk. S. Ct. App. 1998).

When a court case containing a count for trespass and injunctive relief raises the issue of who holds title to the land in question, the case will be transferred to the Chuuk Land Commission for adjudication of the parties' claims to ownership pursuant to its administrative procedure. Choisa v. Osia, 8 FSM R. 567, 568 (Chk. S. Ct. Tr. 1998).

Administrative agencies in the form of Registration Teams and the Land Commission are created and an administrative procedure are provided for the purpose of determining the ownership of land and the registration thereof. Choisa v. Osia, 8 FSM R. 567, 568 (Chk. S. Ct. Tr. 1998).

When a person, who has applied for registration of land included within the boundaries of an area on which hearings are held and who, based upon his application, was, as required by 67 TTC 110, entitled to be served notice of the hearings, was not served notice of the hearings and was also not served a copy of the Determination of Ownership, there was no substantial compliance with the notice requirements specified by law. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties, and is required to post notice on the land, at the municipal office and principal meeting place at least thirty days in advance of the hearing. Failure to provide notice to an interested party is violation of due process. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

The policy reasons supporting actual notice of hearings to land claimants, as required by law, are very important. There is a substantial interest in assuring that land disputes are decided fairly because of the fundamental role that land plays in Kosrae and throughout Micronesia. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94-95 (Kos. S. Ct. Tr. 1999).

In reviewing the Land Commission's decision, the Kosrae State Court should merely consider whether the Land Commission exceeded its constitutional or statutory authority, has conducted a fair proceeding, has properly resolved any legal issues and has reasonably assessed the evidence presented. Isaac v. Benjamin, 9 FSM R. 258, 259 (Kos. S. Ct. Tr. 1999).

It is critical that before a preliminary inquiry is conducted, the Land Commission must serve notice at least thirty days in advance of a formal hearing on any person who claims a portion of the area in dispute so that they might attend the inquiry and be heard. Notice is required because it gives a chance to be heard. Isaac v. Benjamin, 9 FSM R. 258, 259 (Kos. S. Ct. Tr. 1999).

The Land Commission is required by statute to give actual, not constructive notice for hearings to all

interested parties at least thirty days in advance of the hearing. Judgments of the Land Commission are void when it has failed to serve notice as required by law. Isaac v. Benjamin, 9 FSM R. 258, 259 (Kos. S. Ct. Tr. 1999).

When the record reflects that the Kosrae State Land Commission failed to serve notice, as required by law, on the appellants for the preliminary and formal hearings on adjoining parcels to which the appellants are interested parties its failure to serve notice as required by law makes its judgments void. The Kosrae State Court will vacate and remand to the Land Commission to, as necessary, give proper notice and conduct preliminary inquiries and formal hearings and take evidence from appellants and other interested parties regarding the boundaries and issue any new Determinations of Ownership. Isaac v. Benjamin, 9 FSM R. 258, 259-60 (Kos. S. Ct. Tr. 1999).

Because a Kosrae Land Commission determination of ownership is subject to appeal to the Kosrae State Court within one hundred twenty days from the date of receipt of notice of the determination, when that time has passed and someone claims that he was never given notice of the original Kosrae Land Commission title determination proceedings as required under KC 11.609, his remedy lies with the Kosrae State Court. If he wishes to pursue that remedy on a lack of notice basis, he must file a complaint seeking to set aside the title determinations. His remedy is not to pursue his claims either within the confines of an earlier case concerning other land, or with the Land Commission. Palik v. Henry, 9 FSM R. 309, 312 (Kos. S. Ct. Tr. 2000).

Under the Chuuk Constitution's transition clause, Trust Territory Code Title 67, which authorizes and empowers land commissions to determine the ownership of any land in its district, applies in Chuuk. In re Lot No. 014-A-21, 9 FSM R. 484, 490 (Chk. S. Ct. Tr. 1999).

A land commission may appoint one or more land registration teams and may designate the area or areas for which each team shall be responsible. Each land registration team is responsible for adjudicating claims to land within that area. In re Lot No. 014-A-21, 9 FSM R. 484, 490 (Chk. S. Ct. Tr. 1999).

Land registration teams may administer oaths to witnesses, take testimony under oath and subpoena witnesses. Once a decision is reached on any claim where a dispute has arisen, the land registration team shall include in the team's record the substance of all pertinent testimony it took. Land registration teams are to be guided by the civil procedure and evidence rules, and their determinations are subject to review by the land commission. In re Lot No. 014-A-21, 9 FSM R. 484, 490 (Chk. S. Ct. Tr. 1999).

Land registration teams may decline to adjudicate a disputed claim and instead refer it to the land commission along with any record, including the substance of all pertinent testimony, taken by the team. The land commission may then adjudicate the claim or refer it to court. In re Lot No. 014-A-21, 9 FSM R. 484, 490 n.2 (Chk. S. Ct. Tr. 1999).

The land commission, upon receipt of a land registration team adjudication and the record upon which it is based, may accept the land registration team's determination or reject it, and if it rejects the team's determination, the land commission may either remand the matter to the land registration team or itself hold further hearings and make its own determination of ownership. In re Lot No. 014-A-21, 9 FSM R. 484, 490, 492 (Chk. S. Ct. Tr. 1999).

If the land commission rejects a land registration team determination and instead holds further hearings, it may administer oaths to witnesses, take testimony under oath and subpoena witnesses, and it is to be guided by the civil procedure and evidence rules. In re Lot No. 014-A-21, 9 FSM R. 484, 490 (Chk. S. Ct. Tr. 1999).

Any aggrieved party may appeal a land commission determination of ownership at any time within 120 days from the date of determination. If it is not appealed within 120 days, then the land commission shall issue a certificate of title which is conclusive evidence of ownership of the land as to all persons who received notice of the land commission's action. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr.

1999).

The Chuuk State Supreme Court trial division may review decisions of an administrative agency, including the land commission. The court reviews the whole record and gives due account to the rule of prejudicial error. The court may conduct a *de novo* review of an administrative determination when the agency action was adjudicative in nature and the fact finding procedures employed by the agency were inadequate. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

A court reviewing a land commission determination must have before it a full and complete record upon which the land commission's final decision on the parties' claims was based. An agency action is subject to *de novo* review when the agency action is adjudicative in nature and its fact finding procedures are inadequate. In re Lot No. 014-A-21, 9 FSM R. 484, 492 (Chk. S. Ct. Tr. 1999).

Just as the courts in the judiciary confirm their role in society by adjudicating claims in civil matters, so to must the land commission. When a court fails to provide an adequate record of its proceedings, the role of the judiciary fails. Because claims over land are of no lesser importance than claims in civil matters, the requirement of a full and complete record applies to the land commission. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

Not only is a full and complete record of the land commission's action needed for court review, but the Trust Territory Code requires that there be a full and complete record of any land commission determinations. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

Although the land commission may appoint a land registration team to conduct hearings and adjudicate the parties' competing claims, the land registration team's determination, including the record upon which it is based, is not the final determination of ownership. Rather, it is the subsequent action of the land commission that establishes a determination of ownership and which is, in turn, subject to judicial review. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

If the land commission approves the land registration team's report, either initially or after remand for further hearings, and issues a determination, it is the land registration team's record that will be subject to judicial review. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

When the land commission conducts its own hearings and reaches a determination of ownership, it must be based upon the record from the land registration team along with the record from the land commission's hearings. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

When the land commission has made a determination that results in a reversal of a land registration team's earlier determination, the record must also include an adequate basis supporting the land commission rationale for rejecting the land registration team's earlier findings. The absence of such information in the record gives the appearance that the land commission has acted arbitrarily in reaching its determination and has employed inadequate fact finding procedures. In re Lot No. 014-A-21, 9 FSM R. 484, 494 (Chk. S. Ct. Tr. 1999).

Without a full and complete record of the land commission's determination, a reviewing court cannot conduct a fair and meaningful review of the land commission's actions. In re Lot No. 014-A-21, 9 FSM R. 484, 494 (Chk. S. Ct. Tr. 1999).

When the land commission's determination provides no explanation as to why it apparently rejected the land registration team's determination or how it reached its own determination, when the absence of a complete record makes it impossible for the court to review the land commission's determination, and when even if the court were to review the matter giving due regard for the rule of prejudicial error, the land commission's decision would be set aside for its failure to observe procedures required by the Trust Territory Code, the court, given the land commission's failure to prepare a complete record and the time elapsed, will conduct a *de novo* review of the land commission action. In re Lot No. 014-A-21, 9 FSM R. 484, 494-95 (Chk. S. Ct. Tr. 1999).

The Chuuk State Supreme Court will not set aside a Land Commission determination on the ground that members of the land registration team were not residents of Weno when that issue was not raised and argued before the Land Commission. O'Sonis v. Sana, 9 FSM R. 501, 502 (Chk. S. Ct. Tr. 2000).

Jurisdiction of the Chuuk State Supreme Court trial division in appeals from the Land Commission is limited to a review of the Land Commission record and is not a trial de novo. O'Sonis v. Sana, 9 FSM R. 501, 502-03 (Chk. S. Ct. Tr. 2000).

Determination of land ownership rests primarily with the Land Commission. After a designation of any registration area has been filed, a court will entertain only those land title cases where there is a showing of special cause why action by a court is desirable. Simina v. Rayphand, 9 FSM R. 508, 509 (Chk. S. Ct. Tr. 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).

One method to claim an interest in a parcel is to file a written claim with the Land Commission before the hearing. A verbal claim is invalid. Jonas v. Paulino, 9 FSM R. 513, 516 (Kos. S. Ct. Tr. 2000).

It is the claimant's duty to submit a written claim to the Land Commission. The Land Commission does not have any statutory obligation to write down a claimant's verbal claim. Jonas v. Paulino, 9 FSM R. 519, 521 (Kos. S. Ct. Tr. 2000).

The court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Nena v. Heirs of Melander, 9 FSM R. 523, 524-25 (Kos. S. Ct. Tr. 2000).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice to an interested party is violation of due process. Nena v. Heirs of Melander, 9 FSM R. 523, 525 (Kos. S. Ct. Tr. 2000).

The registration team is required to serve actual notice of the hearing upon all parties shown by the preliminary inquiry to have an interest in the parcel either by personal service or registered air mail. It is also required to serve actual notice of a determination of ownership upon all persons shown to have an interest in the parcel. Nena v. Heirs of Melander, 9 FSM R. 523, 525 (Kos. S. Ct. Tr. 2000).

When the land commission voids one person's certificate of title and issues a new certificate of title covering the same land to another person without notice to the first person and affording the first person an opportunity to be heard, it is a denial of due process and the certificates of title will be vacated and the case remanded to the land commission to conduct the statutorily-required hearings. Enlet v. Chee Young Family Store, 9 FSM R. 563, 564-65 (Chk. S. Ct. Tr. 2000).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Anton v. Heirs of Shrew, 10 FSM R. 162, 164 (Kos. S. Ct. Tr. 2001).

On appeal the Kosrae State Court should not substitute its judgment for those well-founded findings of the Land Commission because it is primarily the task of the Land Commission, and not the reviewing court, to assess the witnesses' credibility and resolve factual disputes, since it is the Land Commission, and not

the court, who is present during the testimony. Therefore, the Kosrae State Court should review the Land Commission record and determine whether the Land Commission reasonably assessed the evidence presented, with respect to factual issues. Anton v. Heirs of Shrew, 10 FSM R. 162, 164 (Kos. S. Ct. Tr. 2001).

A Land Commission opinion must reflect a proper resolution of the legal issues. If it does not, the decision must be set aside. Anton v. Heirs of Shrew, 10 FSM R. 162, 164 (Kos. S. Ct. Tr. 2001).

When the Land Commission reasonably assessed the evidence with respect to who owned the land, its findings are not clearly erroneous, and when those findings are that Ittu never took back ownership of the land, the Land Commission did not reach the issue of applying Kosrae tradition and thus properly resolved that legal issue and did not exceed its constitutional authority. That Land Commission decision will be affirmed. Anton v. Heirs of Shrew, 10 FSM R. 162, 165 (Kos. S. Ct. Tr. 2001).

When a person who has asserted a claim to land was not given notice of the registration proceedings as required by law, the Determination of Ownership for that land is not conclusive as upon him. Kun v. Kilafwakun, 10 FSM R. 214, 216 (Kos. S. Ct. Tr. 2001).

When a person had asserted a claim to a parcel and was identified as a claimant early in the Land Commission proceedings and also testified in support of his boundary dispute at several hearings, but was not served notice of the formal hearing and was also not served a copy of the Determination of Ownership for the parcel, the Determination of Ownership for the parcel is not conclusive upon him. Kun v. Kilafwakun, 10 FSM R. 214, 216 (Kos. S. Ct. Tr. 2001).

In land cases, statutory notice requirements must be followed. Personal service of the notice of hearing and the Determination of Ownership upon all parties shown by the preliminary inquiry to have an interest in the parcel is required. Failure to serve actual notice on a claimant is a denial of due process and violation of law, which will cause a Determination of Ownership to be set aside as void, and the case remanded to the Land Commission to hold the formal hearings and to issue the determination of ownership for that parcel. Kun v. Kilafwakun, 10 FSM R. 214, 216 (Kos. S. Ct. Tr. 2001).

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).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

The Land Commission does not conduct a fair proceeding when it issues a determination of ownership without compliance with statutory notice requirements. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice to an interested party is violation of due process. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

The registration team is required to service actual notice of the hearing, either by personal service or registered air mail, upon all parties shown by the preliminary inquiry to have an interest in the parcel, and is also required to serve actual notice of a determination of ownership upon all persons shown to have an interest in the parcel. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

When the land registration team was informed at the preliminary inquiry that someone was an

interested party due to his boundary dispute, but the land registration team failed to serve him actual notice of the formal hearing and the determination of ownership issued for the parcel, there was no substantial compliance with the notice requirements specified by law, and due to the violations of the statutory notice requirement, the determinations of ownership for both adjoining parcels must be set aside as void and remanded to the Land Commission. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

Once land has been declared part of a registration area a court cannot entertain any action with regard to interests in land within that registration area without a showing of special cause why court action is desirable before it is likely a determination can be made on the matter by the land commission. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 369 (Chk. 2001).

Boundary determination in designated registration areas is a statutory function of the Land Commission. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

When the plaintiffs have not shown any special cause why action by a court is desirable before the land commission can determine the boundary between the plaintiffs' and the defendants' land and when there is a case pending before the Land Commission concerning the land, the issue of the land's boundaries will be remanded to the Land Commission. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

Under the doctrine of primary jurisdiction it is for the Land Commission, not the court, to decide land boundaries, and the Land Commission must be given the chance to conclude its administrative process. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

Adjudicatory decisions of governmental bodies affecting property rights are subject to the procedural due process requirements of the Constitution. Due process requirements are applicable to the proceedings of the Kosrae Land Commission. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 447 (Kos. S. Ct. Tr. 2001).

When a party was not given an opportunity to comment or rebut the evidence presented by the adverse claimants at the formal Land Commission hearing, and was not given an opportunity to cross examine adverse witnesses or an opportunity to present his own testimony to rebut adverse claims, this procedural failure is a violation of the due process protection provided by the Kosrae Constitution; and the issued determination of ownership will be set aside, and held null and void and the matter remanded to the Land Commission. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 448 (Kos. S. Ct. Tr. 2001).

When the Senior Land Commissioner failed to disqualify himself after the parcel was recorded for adjudication, took part in the hearing and consideration of the parcel by appointing the two pro-tempore members of the registration team, and failed to disqualify himself from the matter until after the two Associate Land Commissioners had concurred on the findings and decision, awarding ownership of the parcel to his family, his actions violated Kosrae State Code, Section 11.602 and the due process protection provided by the Kosrae Constitution. Langu v. Heirs of Jonas, 10 FSM R. 547, 549 (Kos. S. Ct. Tr. 2002).

Due process demands impartiality on the part of adjudicators, such as land commissioners. Langu v. Heirs of Jonas, 10 FSM R. 547, 549 (Kos. S. Ct. Tr. 2002).

It is a land commissioner's duty to disqualify himself when necessary, as soon as the commissioner is aware of the grounds for his disqualification. Langu v. Heirs of Jonas, 10 FSM R. 547, 549-50 (Kos. S. Ct. Tr. 2002).

When there has been a violation of law or a denial of due process, a determination of ownership must be vacated and the matter remanded for further proceedings. Land Commission judgments are void when the Land Commission has failed to follow the requirements of the law. Langu v. Heirs of Jonas, 10 FSM R. 547, 550 (Kos. S. Ct. Tr. 2002).

When the Land Commission has not served an interested party statutory notice, the law is clear. Determinations of ownership and certificates of title have been held void and vacated when proper notice was not given pursuant to statute. Actual notice by personal service to an interested party is required. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 174 (Kos. S. Ct. Tr. 2002).

When an interested party was never served proper statutory notice of the formal hearings or Determinations of Ownership issued for the land in question, the 120-day appeal period never began to run and has never expired. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 174 (Kos. S. Ct. Tr. 2002).

The twenty year statute of limitation does not apply to claims against the Land Commission for violation of due process, violation of statute and for failure to apply an earlier judgment as they are not claims for the recovery of land. These claims are subject to a limitations period of six years and are barred by the statute of limitations and will be dismissed when the Land Commission actions all occurred more than six years ago. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 175 (Kos. S. Ct. Tr. 2002).

The law is clear when the Land Commission knew of a civil action judgment and that a person was a claimant and interested party for the parcels, which were the subject of the judgment and later the subject of Land Commission proceedings, but that person was not served personal notice of the formal hearings or the Determinations of Ownership for the parcels. Pursuant to established precedent, Determinations of Ownership and Certificates of Title will be held void and vacated when proper notice was not given pursuant to statute. Actual notice to an interested party is required by personal service. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 246, 248 (Kos. S. Ct. Tr. 2002).

The law does not require notice to potential adverse claimants in completing the preliminary inquiry. The preliminary inquiry's purpose was to record all claims for a parcel, so that the claimants would be on record and would then be notified of the formal hearing. Heirs of Henry v. Palik, 11 FSM R. 419, 422 (Kos. S. Ct. Tr. 2003).

The Land Commission may withdraw a disputed claim from a registration team. If that withdrawal takes place, then the Land Commissioners must hold the hearing, hear the evidence and make an adjudication. Heirs of Henry v. Palik, 11 FSM R. 419, 422 (Kos. S. Ct. Tr. 2003).

When testimony presented at the first formal hearing was not heard by the full panel of adjudicators due to a Land Commissioner's late disqualification and the addition of temporary adjudicators, only one person of the adjudication panel heard that testimony. This resulted in a due process violation because the testimony was not heard by the full adjudication panel when the acting replacement commissioners did not hear the testimony, yet they participated in the findings of fact, opinion and decision. The Land Commission exceeded it constitutional and statutory authority by the adjudication panel's failure to hear all the evidence presented at the hearings. Heirs of Henry v. Palik, 11 FSM R. 419, 422 (Kos. S. Ct. Tr. 2003).

When the Land Commission has not followed statutory requirements for the formal hearings and there was no substantial compliance with the requirements specified by law, the Kosrae State Court must set aside the Determination of Ownership as void and remanded to Kosrae Land Court for further proceedings. Heirs of Henry v. Palik, 11 FSM R. 419, 423 (Kos. S. Ct. Tr. 2003).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice as required by law to an interested party is violation of due process. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

The registration team is required to serve actual notice of the hearing upon all parties shown to have an interest in the parcel either by personal service or registered air mail. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

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 no detailed findings of fact are included either in the Land Commission Registration Team's two decisions or in the full Land Commission's one decision; when the full Land Commission gave no reason for reversing the Registration Team's determinations and supports its decision with nothing but a mere conclusion; when the newly-discovered Land Commission hearing transcripts do not assist the court in determining how the Land Commission reached its decision; and when there is no indication in the Land Commission record that witness testimony was taken under oath, or that the admitted exhibits were properly authenticated and identified and the exhibits were not contained within the record, there was no basis for the court to review the Land Commission's actions, and a trial de novo was necessary. In re Lot No. 014-A-21, 11 FSM R. 582, 589 (Chk. S. Ct. Tr. 2003).

De novo review is appropriate when reviewing an administrative hearing when the action is adjudicative in nature and the fact finding procedures employed by the agency are inadequate. In re Lot No. 014-A-21, 11 FSM R. 582, 589 (Chk. S. Ct. Tr. 2003).

Since the Land Commission only has authority to issue a certificate of title after the time for appeal from a Land Commission determination of ownership has expired without any notice of appeal having been filed, when a notice of appeal was timely filed with the Chuuk State Supreme Court and the appellee had notice of the appeal, she is precluded from using the certificate of title against the appellant, and its issuance has no conclusive effect because once a notice of appeal had been filed, the Land Commission acted ultra vires, or outside of its authority, when it issued the certificate of title. The certificate is thus void. In re Lot No. 014-A-21, 11 FSM R. 582, 590 (Chk. S. Ct. Tr. 2003).

Where the provisions of former Kosrae State Code, Title 11, Chapter 6, were applicable to the Land Commission proceedings now on appeal, the court will apply the provisions of former Kosrae State Code, Title 11, Chapter (repealed) to its review of the Land Commission's procedure and decision in the matter. Tulenkun v. Abraham, 12 FSM R. 13, 15-16 (Kos. S. Ct. Tr. 2003).

The court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Tulenkun v. Abraham, 12 FSM R. 13, 16 (Kos. S. Ct. Tr. 2003).

When the determined parcels' boundaries are clear by either permanent markers or by readily recognizable natural features, the Land Commission is not required to give written notice to the claimants before planting monuments. The planting of monuments is an administrative task and is completed pursuant to the Land Commission's instructions. The Division of Survey's planting of monuments, by itself, does not establish boundaries for purposes of an appeal. Tulenkun v. Abraham, 12 FSM R. 13, 16 (Kos. S. Ct. Tr. 2003).

When the Land Commission did not exceed its constitutional or statutory authority, and did conduct a fair proceeding for determination of title, there was no violation of state law and no violation of constitutional and statutory due process based upon the Land Commission's failure to notify the appellant in writing of the planting of monuments. Tulenkun v. Abraham, 12 FSM R. 13, 16 (Kos. S. Ct. Tr. 2003).

The Kosrae State Court, on appeal, will not substitute its judgment for the Land Commission's well-founded evidentiary findings. An appellate court will not reweigh the evidence presented at the hearing. When the court, in reviewing the Land Commission's record and decision in a matter, concludes that the Commission has reasonably assessed the evidence presented regarding the parcel's size, the Land Commission's factual finding of the parcel's size is adequately supported by substantial evidence in the record, and its findings of fact are not clearly erroneous and will not be disturbed on appeal. Tulenkun

v. Abraham, 12 FSM R. 13, 17 (Kos. S. Ct. Tr. 2003).

If the land registration team deems that consideration of a disputed claim will seriously interfere with accomplishment of the purpose of land registration, it may refer the claim to the Land Commission without the team's making any decision thereon and if a Land Commission deems that a team is spending an undesirable amount of time on a particular disputed claim, it may withdraw that claim from the team's consideration. In either of these situations, the Land Commission may then proceed itself to hear the parties and witnesses and make a determination on the claim or it may refer the claim to Chuuk State Supreme Court trial division for adjudication without any determination by the Commission. Chuuk v. Ernist Family, 12 FSM R. 154, 158 (Chk. S. Ct. Tr. 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).

In order for the Land Commission to exercise its discretion pursuant to statute and send a dispute to the trial division, either the land registration team must conclude that the dispute is interfering with the purpose of the law, and send the dispute to the Land Commission, or the Land Commission must determine that the land registration team is spending too much time on a particular dispute, and take control over the dispute from the land registration team. Chuuk v. Ernist Family, 12 FSM R. 154, 159 (Chk. S. Ct. Tr. 2003).

The Land Commission's decision to refer a dispute to the court was not arbitrary and capricious when the land registration team failed to resolve the dispute over the twenty-eight years since the first claim to the land was presented and when the Land Commission's request for transfer recited the problems in resolving the dispute and the lack of sufficient Land Commissioners (due to disqualification) to render a decision. Chuuk v. Ernist Family, 12 FSM R. 154, 160 (Chk. S. Ct. Tr. 2003).

In an appeal from a Land Commission determination of ownership, the reviewing court will apply the clearly erroneous standard of review. If the agency decision is a considered judgment, arrived at on the basis of a full record and careful reflection, the court is more likely to rely on the agency's knowledge and judgment and to restrict the scope of review. Chuuk v. Ernist Family, 12 FSM R. 154, 160 (Chk. S. Ct. Tr. 2003).

The Land Commission has primary jurisdiction to determine and register land titles. Once an area has been designated as a land registration area, courts cannot entertain any action regarding land titles in that area unless special cause has been shown. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

The statute authorizes only the Land Commission to declare a land registration area. No authority has been identified that would permit a court to designate a land registration area, or to order the Land Commission to designate one. The statute leaves that to the Land Commission's discretion based upon its determination of desirability and practicability, which is uniquely within its expertise and authority to make. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

While the Land Commission has the statutory authority to determine and register land titles, whether the Land Commission has the legal authority and the technical ability to determine, survey, and register tidelands is an unanswered question. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

The 120-day statutory time limit to appeal from the Kosrae Land Commission to the Kosrae State Court is jurisdictional because deadlines set by statute, especially deadlines to appeal including those from administrative agency decisions, are generally jurisdictional. Anton v. Heirs of Shrew, 12 FSM R. 274, 278

(App. 2003).

An assertion that a Land Commission decision was tainted and a party denied due process because various members of the Land Commission and Land Registration Team were close relatives of the appellee or the appellee's wife is a serious allegation that, if true, would usually be enough to vacate the decision and remand the case to the Land Court for new proceedings with a new determination to be made by impartial adjudicators. Anton v. Cornelius, 12 FSM R. 280, 284 (App. 2003).

Since the Kosrae State Court has not been shy in vacating and remanding Land Commission decisions for due process violations, including involvement of commissioners who should have disqualified themselves, Kosrae's social configuration should not prevent an appellant from timely raising the issue of disqualification of persons in the Land Commission proceedings. Anton v. Cornelius, 12 FSM R. 280, 285 (App. 2003).

The Kosrae State Court must hear an appeal from the Land Commission on the record unless it finds good cause exists for a trial of the matter. The Land Commission's failure to follow the Kosrae Rules of Evidence does not constitute good cause for a trial *de novo* because those rules do not apply in the Land Commission. Anton v. Cornelius, 12 FSM R. 280, 286 (App. 2003).

That the Land Commission did not properly consider certain evidence, is an issue the Kosrae State Court may properly consider under its standard of review without the need for a trial *de novo*, and, if the appellant should prevail, it can order a remand. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

The statute contemplates that judicial review of a Land Commission appeal would be the norm and that a trial *de novo* would be held only in the uncommon event that the Kosrae State Court had found good cause for one. When that court did not, and when there has been no showing that would warrant a conclusion of good cause, the Kosrae State Court has not abused its discretion by not holding a trial *de novo*. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

The Kosrae State Court, in reviewing Land Commission appeals, properly uses the following standard of review – it considers whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Under this standard, that court cannot substitute its judgment for the Land Commission's well-founded findings, but questions of law are reserved to it. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

It violates due process for the Land Commission to hold a hearing and adjudicate ownership of a parcel of land without giving notice to a party with a demonstrated interest in that land. George v. Nena, 12 FSM R. 310, 316 (App. 2004).

When title to land in a designated registration area becomes an issue in a case involving damage claims for trespass, a court may remand the question of ownership to the land commission to be determined within a limited time. Once the land commission has determined ownership, the court may proceed because more than an interest in land is at stake, and the land commission can only adjudicate interests in land. Kiniol v. Kansou, 12 FSM R. 335, 336 (Chk. 2004).

When the plaintiffs have not shown any special cause why court action is desirable before the land commission can determine the boundary between the plaintiffs' and the defendants' land, the issue of the land's boundaries will be remanded to the land commission. Kiniol v. Kansou, 12 FSM R. 335, 336 (Chk. 2004).

When the issue of the location of the boundary between the plaintiffs' land and the defendant's land is remanded to the Chuuk Land Commission, the owner of the tower on the land with the defendant's permission is not a party to the remanded Land Commission proceedings as that proceeding only concerns title, not trespass to or possession of, land. But it remains a party to the trespass action in court. Kiniol v.

Kansou, 12 FSM R. 335, 337 (Chk. 2004).

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 someone offers no evidence of irregularity in the Land Commission proceedings and no evidence that her father (through whom she claims the land) was deprived in some way of participating in the proceedings, and when, to the contrary, documents establish that the Land Commission followed all statutory requirements regarding notice of the proceedings involving the land, any action taken thereafter must be conclusively presumed valid. Hartman v. Chuuk, 12 FSM R. 388, 400 (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).

A Land Commission determination of ownership is subject to appeal to the Kosrae State Court within 120 days from the date of receipt of notice of the determination. If the determination was not received, then the appeal time limit of 120 days never began to run. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. S. Ct. Tr. 2004).

When a partial transcript's inclusion in the record for a parcel infers the Land Commission's reliance upon that transcript in making its Determination of Ownership for that parcel and when the partial transcript contains evidence that was not properly before the Land Commission because the appellants were not provided statutory notice of that hearing, and were not provided an opportunity to participate in the hearing and cross-examine a witness on his testimony regarding the parcel, the Land Commission did not conduct a fair proceeding because it did not comply with statutory notice requirements and because it considered evidence not properly before the Commission. Heirs of Wakap v. Heirs of Obet, 13 FSM R. 418, 420 (Kos. S. Ct. Tr. 2005).

When title to land in a designated registration area or its boundaries becomes an issue in a trespass case, a court may remand the ownership question to the Land Commission for it to determine within a limited time. If no special cause has been shown why court action is desirable before the Land Commission can make its boundary determination, the boundary issue should be remanded to the Land Commission. Once the Land Commission has determined ownership or boundaries, the court may proceed when more than an interest in land is at stake, and the Land Commission can only adjudicate interests in land. Kiniol v. Kansou, 13 FSM R. 456, 458 (Chk. 2005).

Determination of property boundaries is generally the responsibility of the state land commission because under the primary jurisdiction doctrine it is for the Land Commission, not the court, to decide land boundaries, and the Land Commission must be given the chance to conclude its administrative process. Kiniol v. Kansou, 13 FSM R. 456, 459 (Chk. 2005).

When the plaintiffs have not shown that the Land Commission committed an error of law or that its findings lacked a substantial factual basis, the court will accept the Land Commission's finding that no part of the tower is on the plaintiffs' property. Kiniol v. Kansou, 13 FSM R. 456, 459 (Chk. 2005).

The Kosrae State Land Commission was never a court nor an instrumentality of the Kosrae state judiciary. Isaac v. Saimon, 14 FSM R. 33, 36 (Kos. S. Ct. Tr. 2006).

A six years' statute of limitations applies to all claims to which neither the specific twenty-year, or two-year statutes, apply. Claims against the Land Commission for violation of due process, as they are not claims for the recovery of land (twenty-year statute of limitation), are subject to a six-year limitations period

and are barred and will be dismissed when the Land Commission actions are all over six years old since a complaint against the Land Commission cannot assert a claim for the recovery of an interest in land against the defendant Land Commission because it does not own any interest in the land at issue. Dereas v. Eas, 14 FSM R. 446, 456 n.5 (Chk. S. Ct. Tr. 2006).

The Land Court took over the Land Commission's responsibilities and is required by statute to give effect to determinations issued by the Land Commission. It does not have the discretion to ignore a Land Commission determination because it is handwritten or because it has not yet been served on the parties. The Land Court's duty is to take over, or "succeed" to the Land Commission's responsibilities, not re-hear matters previously decided by it. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

In reviewing a Land Commission decision, the Kosrae State Court considers whether the Land Commission exceeded its constitutional or statutory authority, has conducted a fair proceeding, has properly resolved any legal issues, and has reasonably assessed the evidence presented. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

When creating the Land Court, the Kosrae Legislature provided for the transition of cases from the Land Commission to the Land Court and the Land Court succeeded to all Land Commission responsibilities, registers, properties and assets and Land Commission land determinations and registrations are equivalent to Land Court title determinations and registrations. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 558 (Kos. S. Ct. Tr. 2007).

Since The Land Court took over the Land Commission's responsibilities and is required by statute to give effect to Land Commission determinations, it does not have the discretion to ignore a Land Commission determination even when the Commissioners signed an adjudication to indicate their decision rather than issue a separate document. The Land Court does not have the discretion to ignore a Land Commission determination because it has not yet been served on the parties. The Land Court's duty is to take over, or "succeed" the Land Commission's responsibilities, not re-hear matters previously decided by them. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 559 (Kos. S. Ct. Tr. 2007).

That the Land Commission determination was not timely served on the parties since it was signed in 1990 and not served until the Land Court took action to complete the matter in January 2006, is not a ground to set aside the determination or to ignore the record made by the Land Commission because Kosrae Code § 11.616 requires that the Land Court treat the Land Commission's determinations as equivalent to its own determinations and there is no language setting a time restriction on this requirement. Despite the extended delay in service, the Land Court correctly gave force and effect to the Land Commission's determination. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 559 (Kos. S. Ct. Tr. 2007).

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).

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).

Since the trial court stated that it was using a "clearly erroneous" standard of review on the Land Commission's findings, it would have had to examine, as one of the three possible ways to satisfy the clearly erroneous standard, whether the Land Commission decision was supported by substantial evidence in the record, the standard that the statute requires. Thus, although it may not have correctly named the standard, the trial court did use the proper standard of review as part of its review. Nakamura v. Moen

Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

When the matter is remanded to the trial court for it to rule on whether the lineage members consented or acquiesced to the sale of the land in question and if the trial court is unable to determine whether the requisite consent or acquiescence was shown in the Land Commission proceeding or determines that the record is inadequate to make that determination, the trial court shall then remand the matter to the Land Commission for it to make further findings of fact on whether such consent or acquiescence or ratification was made. The Land Commission may rely on the record and transcript and may take further evidence if it is necessary to make the inquiry. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

The Land Commission is vested with the authority to register land. The Commission's statutory powers and duties include designating land to be registered, surveying the land and establishing boundaries, and determining title and adjudicating disputed claims through investigation, notice, and public hearings. Mori v. Haruo, 15 FSM R. 468, 471 (Chk. S. Ct. App. 2008).

Adjoining landowners, even if not claimants, would, because of their common boundaries, be interested parties, along with anyone else who holds some interest in the land, such as a mortgagee, an easement holder, or a holder of a covenant running with the land. But even if the adjoining landowners were not interested parties, Land Court notice to them is not contrary to law. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Because of the conclusive nature of a certificate of title, the Land Court should give the adjoining landowners notice of the formal hearing so that the resulting boundaries will be conclusive against them. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Notice of land registration hearings must be given to the public in general. The hearings are public, and anyone may attend. Land Court proceedings are not ones which only the known claimants may attend. One purpose of public notice at various stages of the registration process is to reach as many persons as possible so that, at the end, the certificate of title will be conclusive against as many persons as possible, which is to the certificate holder's considerable benefit. The statute requiring that actual notice be given to claimants, is a minimum requirement, not the maximum permissible. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

The Kosrae Land Assessor must prepare one or more preliminary sketches clearly marking the land and the boundaries claimed by each claimant, and a qualified surveyor must make a survey based on the preliminary sketch, do the survey, and prepare a preliminary map, which the Land Assessor is required to post the preliminary map so that it will be visible to the presiding judge and any witness on the witness stand. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

Once a new claim arose, the other claimants were entitled to notice of it and to have a preliminary map showing the claims in dispute posted during a formal hearing. Due process requires that the new claim be surveyed, a new preliminary map prepared showing the overlapping claims, and a new, or second, formal hearing held with the new preliminary map posted. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

The process due to land claimants under the Kosrae Land Court Rules requires that a preliminary map showing all claims be posted at a formal hearing so that the presiding judge and the witnesses can view it and the claimants have an opportunity to be heard on any disputes. When the Land Court based its decision on a map prepared long after the formal hearing and on which the appellants had no opportunity to comment and no map showing the overlapping claims was available at the hearing, a second formal hearing should have been held once the new (second) preliminary map was prepared showing both sides' claims. The matter will therefore be remanded to the Land Court for that court to hold another formal hearing at which a map showing all the claimed boundaries must be posted and at which the parties will have the opportunity to be heard on the matter of the overlapping claims and the two preliminary maps and for which the Land Court will give actual notice to all claimants and to all interested parties. Interested

parties shall be interpreted to include the adjoining landowners. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 573 (App. 2008).

Claims against the Land Commission for negligence, violation of due process and failing to apply statutes are actions against the government which fall within the limitations period of six years. Allen v. Allen, 15 FSM R. 613, 619 (Kos. S. Ct. Tr. 2008).

The Kosrae Land Court is statutorily created as an inferior court within the State Court. It was created for specific purposes – title investigation, title determination, and the registration of interests in lands within Kosrae and to provide one system of filing all recorded interests in land. Thus, it is a court granted specific, limited jurisdiction. It is not a court of general jurisdiction. 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).

The Land Commission's statutory powers and duties include designating land to be registered, surveying the land and establishing boundaries, and determining title and adjudicating disputed claims through investigation, notice, and public hearings. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

The Land Court's "subdivision" of land was not reversible error nor was it arbitrary when the original 1982 Land Commission determination of ownership explicitly divided the unsurveyed part of the land in its determination and since this division recognized the different history (with different evidence) for the two parts. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375-76 (Kos. S. Ct. Tr. 2009).

There was no reversible error when the parties certainly had adequate notice of a "subdivision" before the October 18, 2005 Land Court hearing since they knew of it before the 2003 appeal and the 2005 remand and hearing; when one side's assertion that they were not "given the chance to stake out their claims" before the land was subdivided would be a cause of concern if they had claimed less than the entire land, but they claimed the whole unsurveyed land, as did the other side; and since, if the Land Commission erred, it was harmless error because neither side can show that they were prejudiced by this "subdivision" and both sides had the opportunity to assert and to prove their respective claims to both parcels and because the "subdivision" did not prevent or hinder either side from claiming, and trying to prove, that they had title to both parcels. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 376 (Kos. S. Ct. Tr. 2009).

A court instruction to the Land Commission to take further action consistent with its decision, including a preliminary survey, and such preliminary and formal hearings as might be necessary to make a determination of ownership, would not be necessary on remand if all that Land Commission was required to do was issue a determination of ownership in a calmant's favor with a certificate of title to follow. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 376 (Kos. S. Ct. Tr. 2009).

Since a determination of ownership for the unsurveyed portion of Yekula was not before the court when it rendered its 1997 decision on the other parcels involved in the dispute between the claimants, the State Court's 1997 instructions to Land Commission about Yekula can only be considered further guidance

(beyond and in addition to that given in 1988) to the Land Commission on how it ought to proceed in resolving the remainder of the dispute. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 376-77 (Kos. S. Ct. Tr. 2009).

Even if the Land Commission thinks it is only correcting its own error, due process still requires that it give notice and an opportunity to be heard to any party which the "correction" might appear to adversely affect. Although the Land Commission may think it is only correcting its own error, it is always possible that its "correction" could be an error. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 554 (Chk. S. Ct. App. 2009).

When an owner of any interest in registered land dies, the Land Commission's duty is to cancel the original and duplicate certificates and issue new ones in the name(s) of the decedent's devisees or heirs. A certificate of title cannot be issued in the name of a person already deceased. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 555 (Chk. S. Ct. App. 2009).

When the owner of registered land is deceased, it is the Land Commission's statutory responsibility to make a determination of the devisee or devisees or heir or heirs and the interests or respective interests to which each are entitled, and, to make this determination, the Land Commission must conduct a hearing at which evidence shall be heard for the purpose of determining the heir or heirs or devisee or devisees entitled to the decedent's land. Proper notice must be given for the hearing, and within 30 days after the hearing's conclusion, the Land Commission should issue its finding as to the heir or heirs or devisee or devisees and the respective interest or interests to which each are entitled. Once the Land Commission has issued its determination, it cannot issue any certificates of title unless and until after one hundred twenty days – the time to appeal – has passed, and only then, if the 120 days have passed without an appeal or if an appeal has been taken and decided, can the Land Commission issue certificates of title. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 555 (Chk. S. Ct. App. 2009).

A suit against the Land Commission (or successor institution) cannot end with a land title transferred to a successful plaintiff. Only a successful suit against the current titleholder, a necessary and indispensable party to any suit over title, could result in the transfer of the land title to the successful plaintiff although a successful suit against a Land Commission might result in a money damages award. Allen v. Allen, 17 FSM R. 35, 40 (App. 2010).

Determination of a land's exact boundaries, certification of a survey map for the area, and the issuance of a certificate of title for the land, are all acts that a court is legally unable to do when the court would need before it all the current owners of the part of the land not claimed by the plaintiff, all owners of all property abutting the land's purported boundaries, and any other landowners in the vicinity whose property or property lines would have to appear on a certified survey map for the land and when none of these necessary parties, with the exception of the defendant are before the court and because the court cannot make rulings that would affect or determine their rights without their presence or participation. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233 (Chk. 2010).

A court will not order the Land Commission to issue a certificate of title when that would require a determination of the current lessor(s), that is, who the lessor's heirs are since a Land Commission heirship proceeding is needed to determine current owners before an certificate of title can issue. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 235 (Chk. 2010).

The court will not order the Land Commission to certify a survey map when that would require the determination of boundary lines to properties whose owners and claimants are not before the court. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 235 (Chk. 2010).

Before a land registration team commences hearing with respect to any claim, the Land Commission must provide notice at least thirty (30) days in advance. Specific notice must be served upon all parties shown by the preliminary inquiry to be interested. Setik v. Ruben, 17 FSM R. 465, 473 (App. 2011).

In failing to make a reasonable inquiry as to the Setiks' occupation of the land, in failing to provide notice to the Setiks of the determination of ownership hearing, and in issuing the determination of ownership to another without an application by her, the Land Commission deprived the Setiks of due process. The determination of ownership was thus not valid, and the matter must be remanded to the Land Commission for a new determination. Setik v. Ruben, 17 FSM R. 465, 474 (App. 2011).

Due process demands impartiality on the part of the adjudicators, including Kosrae Land Court judges. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 (App. 2011).

By statute, the standard under which the Kosrae State Court must review Land Court decisions is by applying the "substantial evidence rule." And, if the State Court finds the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-hearing the matter in its entirety or such portions of the case as may be appropriate. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655 (App. 2011).

When reviewing a Land Court decision, the State Court, applying the substantial-evidence rule, does not determine where, in its view, the preponderance of the evidence lies. Under the substantial-evidence rule, the court's sole obligation is to review the entire record and determine whether the evidence as a whole is such that reasonable minds could have reached the same conclusion. The State Court thus must determine if the record contained evidence supporting the Land Court decision that was more than a mere scintilla or even more than some evidence. If there was, the State Court must affirm the Land Court decision even if the evidence would not, in the State Court's view, amount to a preponderance of the evidence but would be somewhat less and even if the State Court would have decided it differently. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655-56 (App. 2011).

The Kosrae State Court cannot assume the role of fact-finder. The statute mandates that the standard of review that the State Court must apply to a Land Court decision is whether there was substantial evidence in the record to support it, not whether the Land Court "reasonably assessed" the evidence. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

The Kosrae Legislature has mandated that the State Court must use the substantial-evidence rule when it reviews all Land Court decisions. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 (App. 2011).

Land Court proceedings are the time and place adverse possession can and should be raised since Land Court jurisdiction includes all matters concerning the title of land and any interests therein. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 (App. 2011).

The proper time and place to make adverse possession claims, if a land occupant has one, is in a Land Court (or other) proceeding before the land title has been registered. Afterward is too late. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 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 statute does not give the State Court the power to reverse the Land Court and order it to enter a decree the opposite of the Land Court's original decision, but it does allow the State Court to vacate the Land Court decision and to give the Land Court such instructions and guidance that may result in a reversal after the Land Court re-hearing. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 660 (App. 2011).

A Land Court case is in fact a title dispute rather than a boundary dispute when the case was remanded to the lower court specifically directed a party's boundary claim be heard and in order to have the claim on

display for the hearing, the lower court gave the party the opportunity to stake out his claim on subject land parcel and the party staked out his boundary claim as encompassing the entire parcel rather than just a portion of it. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

When a party claimed a boundary to subject land, but now claims the entire parcel, that caused the court to find and conclude that the party was uncertain as to what he was claiming and because of the inconsistencies the land court questioned his credibility. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

Due regard must be given to the trial judge's opportunity to weigh the witnesses' credibility. In considering whether the decision is based upon substantial evidence, the reviewing court recognizes that it is primarily the Land Court's task to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

Land Court findings of fact will not be set aside unless clearly erroneous. To reverse its findings of fact, the appellate court must find that 1) its findings are not supported by substantial evidence; 2) there was an erroneous conception by the Land Court of the applicable law; and 3) the appellate court has a definite and firm conviction that a mistake has been made. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

A proposed settlement is unimportant and only confuses the issues since even if the settlement made no issue of ingress or egress, the November 1997 court order ruled in favor of the appellant's right of way through the subject parcel onto his land behind it, ordering the appellee and his family members to refrain from any acts that may interfere with ingress or egress of appellant and his family members on the subject parcel. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

A land case was a boundary dispute until the appellant claimed the entire parcel. Ittu v. Ittu, 19 FSM R. 258, 263, 264 (Kos. S. Ct. Tr. 2014).

It is primarily the Land Court's task to assess the admissibility of evidence and when it was reasonably assessed, the reviewing court will accept its finding. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

The Land Court's finding is based on substantial evidence in the record and not clearly erroneous when the appellant spends most of his argument repeating the same point that this matter is a boundary dispute within a parcel and not a title dispute but he not only claimed the entire parcel before the lower court, but he also surreptitiously asks for the Certificate of Title for the parcel in the same brief in which he calls for it boundary dispute. The appellant's repeated arguments are disingenuous. Ittu v. Ittu, 19 FSM R. 258, 264 (Kos. S. Ct. Tr. 2014).

Under the res judicata effect as enshrined by Kosrae statute, a Land Court justice must not adjudicate a matter previously decided by a court between the same parties or those under whom the parties claim which dispute involves the same parcel. The Kosrae Land Court must accept prior judgments as res judicata and determine those issues without evidence. Andrew v. Heirs of Seymour, 19 FSM R. 331, 339 (App. 2014).

When a previous court case has res judicata effect and status, it is conclusive only between the parties to the case and those claiming under them and no one else. But there could be persons who were not parties to the court case and who do not claim under those parties but who have their own claim to the land. The Land Court must still go through all of its usual procedures to determine if there are other claimants and, if there are, adjudicate their claims, before it can issue a determination of ownership and, if there is no appeal or if its decision is affirmed on appeal, a certificate of title. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 367 (App. 2014).

A view that only successful land claimants have to be notified of the Land Commission's determination of ownership is gross legal error. All claimants to a parcel of land must be notified of the determination of ownership for that parcel, and if boundary determinations are involved, the adjoining landowners must also

be notified. Aritos v. Muller, 19 FSM R. 533, 536 & n.1 (Chk. S. Ct. App. 2014).

When the Trust Territory Code Title 67, chapter three, which includes 67 TTC 115, was repealed and replaced by a similar Chuuk state law in 2004, and since the Land Commission acts complained of took place in 1998, and the trial division case was filed in 2000, the Trust Territory Code, Title 67, chapter 3 is the applicable law, but the 2004 Chuuk state statute enacted will apply to the further proceedings on remand. Aritos v. Muller, 19 FSM R. 533, 537 n.2 (Chk. S. Ct. App. 2014).

There is no time limit to seek relief from a void Land Commission decision. To rule otherwise would leave an interested party without any recourse even though that party was unconstitutionally deprived of notice and an opportunity to be heard at the Land Commission formal hearing or was denied the opportunity to file a timely appeal of an adverse determination of ownership of which they never had timely notice. This is similar to the principle that 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 a court has no discretion but must grant relief from a void judgment whenever relief is sought. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. 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).

By statute, the Chuuk State Supreme Court trial division jurisdiction in appeals from the Land Commission is limited to a review of the Land Commission record and cannot act as a trier of fact unless it grants a trial de novo. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

When the case was not an appeal from a Land Commission determination of ownership because it was filed too late for that and when it was not, at least initially, a trial court action with regard to interests in land within that registration area before it is likely a determination can be made on the matter by the Land Commission because the Land Commission had already made a decision, the trial court action was, instead, an action to collaterally attack (an allegedly) void Land Commission final decision. Once the trial court had determined that the Land Commission decision was void for the lack of due process, then the statute applied to the case before it and if the trial court wanted to proceed on the merits it had to first find special cause existed. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

When, while the trial court might have been able to make out a showing of special cause, it never did so, the appellate court must vacate the trial court determination of ownership and remand the matter to the Land Commission for it to conduct the formal hearing after at least 30 days notice to all interested parties and notice to the general public on the island. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

An answer or a Rule 12(b) motion is not untimely and will not be disregarded or stricken when no default has yet been requested and entered. Killion v. Chuuk, 19 FSM R. 539, 540 (Chk. 2014).

When, while the trial court might have been able to make out a showing of special cause, it never did so, the appellate court must vacate the trial court determination of ownership and remand the matter to the Land Commission for it to conduct the formal hearing after at least 30 days notice to all interested parties and notice to the general public on the island. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

The Chuuk Constitution provides that the trial division of the State Supreme Court has "concurrent original jurisdiction with other courts to try all civil, criminal, probate, juvenile, traffic, and land cases." The word "concurrent" modifies the term "original jurisdiction" and when jurisdiction is concurrent, the appropriate court may be prescribed by statute. The appropriate court for land cases in declared land registration areas was prescribed by statute as an administrative agency, the Chuuk Land Commission. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

While it is a matter of some concern, whether the Land Commission will be able to decide the case in a timely manner because of certain vacancies on the Commission, it is not a ground on which the appellate court can base its decision whether to remand to the Land Commission. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

The Chuuk Land Commission is not a court as that word is used in the Chuuk Constitution. It is an administrative agency that functions as a quasi-judicial tribunal. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The Chuuk Legislature, by statute, has determined that a land case in a declared land registration area must first go through the Land Commission procedure before it can become a land case in the Chuuk State Supreme Court trial division. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The constitutional grant of original court jurisdiction does not prevent the Legislature from prescribing by statute that certain land cases must first go to an administrative agency, the Chuuk Land Commission, before the trial court can exercise its original jurisdiction over them. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The Kosrae Land Court is entitled to determine an easement or right of way, because the land registration process is, with certain exceptions, supposed to determine all interests in the land, not just ownership interests. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

While limited, the Kosrae Land Court's subject-matter jurisdiction is broad enough to encompass factual determinations of fraud and misrepresentation to the extent that they affect the validity of titles or conveyances of land. Indeed, that is the Land Court's very purpose. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

When the Kosrae Land Court itself is implicated in the allegations of fraud, that court is not competent to adjudicate the subject matter. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

The Kosrae Land Court's written decision must be served on all claimants who appeared at the hearing, pursuant to the State Court rules prescribing service requirements. Esau v. Penrose, 21 FSM R. 75, 80 (App. 2016).

Any subsequent transfer from a registered owner, does not require notice, much less a hearing, to determine ownership anew or a written decision. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 102 (App. 2016).

– Land Registration

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).

Where parties had no claims to the land at the time the title was determined they were not entitled to notice. The lack of notice to them does not raise a genuine issue of material fact as to the validity of a Certificate of Title. Where a court proceeding determined title, the lack of a record of notice in the Land Commission files does not raise a genuine issue of material fact as to the validity of the Certificate of Title because the Land Commission did not conduct the hearing on title and so would not have any record of notice. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 49 (App. 1995).

FSM courts must consider customary law where relevant to a decision, but it is not error for a court to consider custom and find that it is not relevant to its decision because a Certificate of Title had been issued for the land. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 50 (App. 1995).

While, as a general rule, res judicata applies only to parties, and their privies, to an earlier proceeding, a Torrens system land registration Certificate of Title is, by statute, prima facie evidence of ownership stated therein as against the world, and conclusive upon all persons who had notice and those claiming under them. As a general rule a Certificate of Title can be set aside only on the grounds of fraudulent registration. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 50-51 (App. 1995).

A Certificate of Title issued by a state land commission precludes a claim by the state that the land is public land. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 51 (App. 1995).

A court need not decide whether a party who is being sued for trespass, and who does not claim ownership, may raise as an affirmative defense a challenge to the validity of a plaintiff's Certificate of Title issued under the Torrens land registration system when the issues raised by the defendant are insufficient to challenge the Certificate of Title. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 51-52 (App. 1995).

Certificates of Title to real property are conclusive upon all persons who have had notice of the proceedings that resulted in the issuance of the certificates, and all those claiming under them, and are prima facie evidence of ownership as therein stated against the world. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 392 (Pon. 1996).

Because Certificates of Title are prima facie evidence of ownership as therein stated against the world, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 394 (Pon. 1996).

Once a Designation of Land Registration Area is made, courts should not entertain actions with regard to interests in such land unless special cause is shown for so doing. Iriarte v. Etscheit, 8 FSM R. 231, 238 (App. 1998).

The statutory provisions required for notice to those the land registration team might find from preliminary inquiry to have claims includes both actual service on known claimants and posting. Iriarte v. Etscheit, 8 FSM R. 231, 238 (App. 1998).

When a court makes the determination of ownership the Land Commission is not relieved from giving notice of that determination prior to issuing the certificate of title. Iriarte v. Etscheit, 8 FSM R. 231, 238 (App. 1998).

An argument that a certificate of title is invalid because of an adverse possession claim must fail when the twenty years necessary for adverse possession has not passed. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

Because Certificates of Title are prima facie evidence of ownership as therein stated against the world, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

As a general rule, a Torrens system land registration Certificate of Title is, by statute, prima facie evidence of ownership stated therein as against the world, and conclusive upon all persons who had notice and those claiming under them; but when a person has asserted a claim to the land and was not given notice of the registration proceedings as required by law, the Determination of Ownership and the Certificate of Title for that land is not conclusive as upon him. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

In land cases, notice requirements shall be followed. Failure to serve actual notice on a claimant is a denial of due process and violation of law. Due to the violations of the statutory notice requirement, Determinations of Ownership and Certificates of Title will be set aside as void. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 95 (Kos. S. Ct. Tr. 1999).

Any aggrieved party may appeal a land commission determination of ownership at any time within 120 days from the date of determination. If it is not appealed within 120 days, then the land commission shall issue a certificate of title which is conclusive evidence of ownership of the land as to all persons who received notice of the land commission's action. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

A Certificate of Title is prima facie evidence of ownership and is conclusive upon a person who appeared as a witness at the formal hearing and those claiming under her. Jonas v. Paulino, 9 FSM R. 513, 516 (Kos. S. Ct. Tr. 2000).

As a general rule, a Torrens system land registration Certificate of Title is, by statute, prima facie evidence of ownership stated therein as against the world, and conclusive upon all persons who had notice and those claiming under them. However, when a person has asserted a claim to the land and was not given notice of the registration proceedings as required by law, the Determination of Ownership and the Certificate of Title for that land is not conclusive as upon him. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

A Determination of Ownership is not conclusive upon a claimant who was identified early in the Land Commission proceedings and who also testified in support of his claim at the formal hearing but was not served a copy of the Determination of Ownership. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

In land cases, statutory notice requirements must be followed. Failure to serve actual notice on a claimant is a denial of due process and violation of law. Due to the violations of the statutory notice requirement, Determinations of Ownership and Certificates of Title will be set aside as void. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

When a party, who had shown an interest in the parcel, was not served the Determination of Ownership as required by law, the parcel's Determination of Ownership and the Certificate of Title will, due to the violations of the statutory notice requirement, be vacated and set aside as void and remanded to the Land Commission to again issue and serve the Determination of Ownership for the parcel in accordance with statutory requirements. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

Someone who by her written request transferred the Certificate of Title to her daughter is no longer the fee owner of that parcel, and therefore has no rights to the parcel and no standing to bring an action concerning the parcel. Jack v. Paulino, 10 FSM R. 335, 336 (Kos. S. Ct. Tr. 2001).

The issuance of a Determination of Ownership is not the final step in the land registration process. Issuance of a Certificate of Title is. Generally, certificates of title are to be issued shortly after the time to appeal a determination of ownership has expired or shortly after an appeal has been determined. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

A Certificate of Title must, with exception of rights of way, taxes, and leases of less than one year, set forth the names of all persons or groups of persons holding interest in the land, and should include a description of the land's boundaries. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

When a Determination of Ownership has been issued but no Certificate of Title has been issued, the Land Commission's ownership determination process has been started but has not been completed. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

A plaintiff with a certificate of title for a parcel clearly has greater possessory interest to the disputed property so that a defendant is liable for trespass on the plaintiff's parcel when he has entered, cleared and planted crops inside the established boundaries of the plaintiff's parcel without the plaintiff's consent.

Shrew v. Killin, 10 FSM R. 672, 674 (Kos. S. Ct. Tr. 2002).

Certificates of title are by statute, prima facie evidence of ownership stated therein as against the world. Because of this, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Stephen v. Chuuk, 11 FSM R. 36, 41 (Chk. S. Ct. Tr. 2002).

Because certificates of title to real property are prima facie evidence of ownership as stated therein against the world, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. A party challenging the certificates' validity thus bears the burden of proving that they are not valid or authentic. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 101 (Pon. 2002).

When to dispute the plaintiffs' ownership of the property, the defendants have the burden of showing that the plaintiffs' certificates of title are not valid or authentic, or that the relevant certificate of title does not cover the land the defendants occupy, whether the land the defendants occupy was part of the land in a 1903 auction is not a genuine issue of material fact because the defendants' unsupported contention does not dispute the validity of the certificates showing the plaintiffs to be the property's owners. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 101 (Pon. 2002).

That a later survey was performed and another certificate of title issued for the same land does not somehow dilute the certificate holders' ownership of the property, or make defendants' claim to it any more substantial. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 102 (Pon. 2002).

Whether a certificate of title issued in 1983 was voidable is not a genuine issue as to a material fact which would prevent the granting of summary judgment because the plaintiffs presently hold a certificate of title for the property defendants presently occupy. The party challenging the certificate's validity bears the burden of proving that it is not valid or authentic, and when the defendants have failed to show that the relevant certificate of title is invalid, their argument does not create a genuine issue of material fact. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 104 (Pon. 2002).

Courts are required to attach a presumption of correctness to a certificate of title. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158 (Chk. 2002).

It would seem that due process would require that in any lawsuit to remove someone's name from a certificate of title that that person would be an indispensable party to the action. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158 n.4 (Chk. 2002).

When the plaintiffs are entitled to continued use of a parcel on a permanent land use basis pursuant to a land use grant made in 1974 by the defendant's now decreased father, title to the parcel will be issued in the defendant's name as fee simple owner, but the Certificate of Title to that parcel must also reflect the plaintiffs' permanent land use right. Robert v. Semuda, 11 FSM R. 165, 168 (Kos. S. Ct. Tr. 2002).

The law is clear when the Land Commission knew of a civil action judgment and that a person was a claimant and interested party for the parcels, which were the subject of the judgment and later the subject of Land Commission proceedings, but that person was not served personal notice of the formal hearings or the Determinations of Ownership for the parcels. Pursuant to established precedent, Determinations of Ownership and Certificates of Title will be held void and vacated when proper notice was not given pursuant to statute. Actual notice to an interested party is required by personal service. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 246, 248 (Kos. S. Ct. Tr. 2002).

When the plaintiff was never served statutory notice of the formal hearings or Determinations of Ownership issued for the parcels, those Determinations of Ownership and Certificates of Title must be vacated and set aside as void and the matter remanded for further proceedings consistent with statute. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 246, 248 (Kos. S. Ct. Tr. 2002).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. A mortgage can and must show on the certificate to be effective against third parties. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 n.2 (Chk. 2003).

When a person, entitled to be served notice of the hearing, was not served actual notice of the hearing by personal service, there was no substantial compliance with the notice requirements specified by law and when there was no substantial compliance with the notice requirements specified by law, the Certificate of Title and the Determination of Ownership will be vacated and set aside as void, and the matter remanded to Kosrae Land Court for further proceedings. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. Therefore a mortgage can and must be shown on the certificate of title to be perfected and thus effective against third parties. If the property has not been issued a certificate of title, then the mortgage must be properly recorded in the chain of title so that someone searching the Land Commission files would expect to find it. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

The proper way to record a mortgage under the Torrens land registration system in use in Chuuk is for the mortgage and the landowner's [duplicate] certificate of title to be submitted to the Land Commission at the same time. The mortgage document is then recorded; the mortgage is endorsed on the certificate of title permanently on file at the Land Commission; and then a (new) duplicate certificate of title, showing the endorsement of the newly-recorded mortgage, is given (or returned) to the landowner. If this is done, then the security interest is perfected and the mortgage is valid and enforceable against all the world and has priority over all other claims to the proceeds from the sale of the mortgaged property. If all these steps are not done, then the security interest is not perfected and the mortgage does not carry priority over and is not effective against parties without notice of it – it is a disfavored secret lien. In re Engichy, 11 FSM R. 520, 531 (Chk. 2003).

A party must comply strictly with the Torrens land registration system's procedures in order to claim its benefits. In re Engichy, 11 FSM R. 520, 531 (Chk. 2003).

Since the Land Commission only has authority to issue a certificate of title after the time for appeal from a Land Commission determination of ownership has expired without any notice of appeal having been filed, when a notice of appeal was timely filed with the Chuuk State Supreme Court and the appellee had notice of the appeal, she is precluded from using the certificate of title against the appellant, and its issuance has no conclusive effect because once a notice of appeal had been filed, the Land Commission acted ultra vires, or outside of its authority, when it issued the certificate of title. The certificate is thus void. In re Lot No. 014-A-21, 11 FSM R. 582, 590 (Chk. S. Ct. Tr. 2003).

It is fairly clear that a purchaser who has actual knowledge of some adverse claim to the land will take subject to it, even though the certificate of title fails to memorialize it. In re Engichy, 12 FSM R. 58, 67 n.4 (Chk. 2003).

On registered land encumbrances such as a mortgage must be endorsed upon the certificate of title. In re Engichy, 12 FSM R. 58, 68 (Chk. 2003).

American common law authorities are applicable in the Federated States of Micronesia, if they are applicable at all, only to "recorded" land – to land that has not been issued a certificate of title. Land with a certificate of title is not part of a land recordation system but is part of a Torrens land registration system. In re Engichy, 12 FSM R. 58, 68 (Chk. 2003).

A Torrens land registration system is a legal concept completely foreign to American common law and the related recording statutes. Common law precedents and procedures do not apply to registered land. Land registration is wholly statutory. In re Engichy, 12 FSM R. 58, 68-69 (Chk. 2003).

The purpose and benefit of the lengthy procedure and notice requirements needed to register land is that a certificate of title, once issued, is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and shall be prima facie evidence of ownership as therein stated against the world. This is unlike a "conventional" recording system, which makes no averments to the public about the state of title to any parcel of land. Instead it merely invites searchers to inspect the copies of the instruments which it contains and to draw their own conclusions as to title. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

The ownership as stated in the certificate of title is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and prima facie evidence against the world. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

No lengthy title searches, which may fail to turn up important claims, need be done on registered land because all transfers and encumbrances of any interest in the land covered by a certificate of title must be noted thereon or therewith except for rights of way over the land, taxes on the land due within the two years prior to the certificate's issuance, and leases or use rights of less than one year. One only needs to consult the Land Commission's original certificate of title, which will show at a glance the ownership of, and the encumbrances on, the property, and the title searcher need then only read and evaluate the documents referred to by the current endorsements. No historical search of the title is ever necessary or relevant. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

An adverse possession claim will never prevail over a validly-issued certificate of title. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

The benefits of land registration all flow from the adherence to the Torrens land registration statutes and people's ability to rely on the certificate of title. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

The Chuuk Real Estate Mortgage Law confirms and adopts by reference rather than modifying or repealing the Title 67 provisions applicable to the endorsement of mortgages on certificates of title. In re Engichy, 12 FSM R. 58, 70 (Chk. 2003).

It is the owner's duty in requesting any transfer or upon notice that an involuntary transfer has been effected to submit his owner's duplicate certificate for proper endorsement or cancellation, if it is physically practicable for him to do so and if the owner is unable to physically submit the certificate because it has been lost or destroyed, there is a method whereby he may obtain a new duplicate certificate for submission. In re Engichy, 12 FSM R. 58, 70 (Chk. 2003).

Although preferable, endorsements on certificates of title are not required to be typewritten. Hand printing would suffice. In re Engichy, 12 FSM R. 58, 70 (Chk. 2003).

In some Torrens land registration system jurisdictions, considering that the purpose of land registration acts is to allow confident reliance upon the land registration agency's original certificate of title, the absence of even an obvious encumbrance (or an encumbrance of which there is actual knowledge) from the certificate is fatal because the certificate itself is conclusive. In re Engichy, 12 FSM R. 58, 70-71 (Chk. 2003).

A mortgage endorsed on a certificate of title cannot be given retroactive effect. To do so would destroy the purpose of the land registration system – that the original certificate of title at the Land Commission is conclusive and if there are no endorsements anyone searching the state of the title need look nowhere else for mortgages and for the other encumbrances that, with certain exceptions, are required to be listed there. In re Engichy, 12 FSM R. 58, 71 (Chk. 2003).

A mortgagee will have a secured interest in any future funds that from the sale of the mortgaged land when, although the mortgage was not endorsed on the certificate of title before the case was consolidated

with other judgment-creditors', all of the necessary documents for the Land Commission to endorse the mortgage had been submitted to the Land Commission by then. In re Engichy, 12 FSM R. 58, 71 (Chk. 2003).

The Land Commission has primary jurisdiction to determine and register land titles. Once an area has been designated as a land registration area, courts cannot entertain any action regarding land titles in that area unless special cause has been shown. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

The statute authorizes only the Land Commission to declare a land registration area. No authority has been identified that would permit a court to designate a land registration area, or to order the Land Commission to designate one. The statute leaves that to the Land Commission's discretion based upon its determination of desirability and practicability, which is uniquely within its expertise and authority to make. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

A 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 usually 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. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

No court could grant as relief a sweeping request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Heirs of Shrew, 12 FSM R. 274, 277 (App. 2003).

Courts must attach a presumption of correctness to a certificate of title. Anton v. Heirs of Shrew, 12 FSM R. 274, 277 (App. 2003).

Co-owners of land are generally considered indispensable parties to any litigation involving that land. This should be especially true when full title to the land is at stake, and even more important when the land will be registered and a certificate of title issued for it because a certificate of title, once issued, is conclusive upon a person who had notice of the proceedings and a person claiming under him and is prima facie evidence of ownership. This is because a cotenant cannot be divested of his interest by a proceeding against all the co-owners of the common property unless he is made a party to the proceeding and served with legal process. Anton v. Heirs of Shrew, 12 FSM R. 274, 278-79 (App. 2003).

No court could grant as relief a far-reaching request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Cornelius, 12 FSM R. 280, 288-89 (App. 2003).

Properly issued certificates of title are by statute *prima facie* evidence of the ownership stated therein as against the whole world, and a court is required to attach a presumption of correctness to them. Hartman v. Chuuk, 12 FSM R. 388, 400 (Chk. S. Ct. Tr. 2004).

Under Kosrae State Code § 11.615(3), land held under a certificate of title may be subject to a right of way whether or not the right of way is stated in the certificate of title. Sigrah v. Kosrae, 12 FSM R. 513, 518 (Kos. S. Ct. Tr. 2004).

Certificates of title are prima facie evidence of ownership as therein stated against the world. Therefore the court, pursuant to established precedent and in accordance with Kosrae's Torrens system land registration process, must attach a presumption of correctness to a certificate of title for a parcel,

including its ownership and its boundaries. Sigrah v. Kosrae, 12 FSM R. 531, 533-34 (Kos. S. Ct. Tr. 2004).

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).

Certificates of title are prima facie evidence of ownership as therein stated against the world, and a court is required to attach a presumption of correctness to them when considering challenges to their validity. Since a certificate of title issued to the defendant carries a presumption of correctness, it must be presumed that the defendant is the true owner of the parcel. Benjamin v. Youngstrom, 13 FSM R. 72, 75 (Kos. S. Ct. Tr. 2004).

Someone who has transferred the certificate of title to another person is no longer the fee owner of the parcel and therefore has no rights to the parcel. Benjamin v. Youngstrom, 13 FSM R. 72, 75 (Kos. S. Ct. Tr. 2004).

The Land Commission has no authority to reopen a 1981 determination of ownership that is final and res judicata, but it must determine the land's exact boundaries before it can issue a certificate of title. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e (Chk. 2004).

Adverse possession is not a claim that can be made against registered land, or land that has been one step (determination of boundaries) away from being registered land since 1981, and the filing of a trespass suit tolls (suspends) any running of the time period needed to assert an adverse possession claim. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e (Chk. 2004).

In light of the appellate court's insistence that the Land Commission should have the primary responsibility for determining, surveying, and certifying the land's exact final boundary, and the court's general unsuitability to perform those functions, the court will remand the case to the Land Commission to perform this work. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e (Chk. 2004).

Since a certificate of title must describe the land's exact boundaries, the Land Commission must, before it can issue a certificate of title, locate, survey, and certify all of the boundaries, which must be as they existed when its determination of ownership was made. The certificate must also show that it is subject to a 99-year lease, if that lease was, is, or becomes properly recorded. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99f (Chk. 2004).

Under 67 TTC 106, upon the designation of a registration area, the district surveyor's duty was to cause an accurate survey to be made of the area's exterior bounds and thereafter to make such surveys of plots or claims and place such markers within the area as the commission may direct; and under former Kosrae State Code Section 11.605 (repealed) upon designation of a registration area, a qualified person designated by the Land Commission made an accurate survey of the area's exterior bounds and claimed parcels within the area, placing markers at the Commission's direction. The Land Commission and surveyors were to recognize and mark claims made within a designation area. Sigrah v. Heirs of Nena, 13 FSM R. 192, 197-98 (Kos. S. Ct. Tr. 2005).

Nothing in former Title 11 of the Kosrae State Code required that the boundaries of Japanese Lots be maintained during the registration process, and it was the Land Commission's established practice of recognizing claims for plots and portions of Japanese Lots, and partitioning Japanese Lots into smaller parcels during the registration process. Sigrah v. Heirs of Nena, 13 FSM R. 192, 198 (Kos. S. Ct. Tr. 2005).

The partitioning of Japanese Lots into smaller parcels for the land registration process has been a continuing Land Commission practice, and is completed in accordance with statutory mandates for the recognition of claims of plots made within a designation area. No statutes or regulations prohibit the

partitioning of Japanese Lots into smaller parcels for the land registration process. Sigrah v. Heirs of Nena, 13 FSM R. 192, 198 (Kos. S. Ct. Tr. 2005).

The Kosrae Land Commission was required by Trust Territory law and by Kosrae state law to recognize and survey claims of plots made within a registration area. Sigrah v. Heirs of Nena, 13 FSM R. 192, 198 (Kos. S. Ct. Tr. 2005).

Since a certificate of title is prima facie evidence of ownership and courts are required to attach a presumption of correctness to a certificate of title, a plaintiff with a certificate of title is presumed to be an owner of the subject parcels and thus the factor of the likelihood of success on the merits weighs in the plaintiffs' favor. Akinaga v. Heirs of Mike, 13 FSM R. 296, 299 (Kos. S. Ct. Tr. 2005).

A certificate of title is prima facie evidence of ownership, and courts are required to attach a presumption of correctness to a certificate of title. Norita v. Tilfas, 13 FSM R. 321, 323 (Kos. S. Ct. Tr. 2005).

Certificates of title are prima facie evidence of ownership. Norita v. Tilfas, 13 FSM R. 424, 426 (Kos. S. Ct. Tr. 2005).

A preexisting easement or other right appurtenant to the land remains appurtenant, even if it is not described in the certificate of title. Norita v. Tilfas, 13 FSM R. 424, 426 (Kos. S. Ct. Tr. 2005).

When, pursuant to state law, parties were granted and therefore maintain a permanent land use right to access a parcel and use a portion thereof for maintenance of their existing gravesites, this permanent land use right passes with the parcel until it is extinguished in a lawful manner independent of the certificate of title. Norita v. Tilfas, 13 FSM R. 424, 427 (Kos. S. Ct. Tr. 2005).

The law regarding the validity of certificates of title is well established in Kosrae and the FSM. Certificates of title are prima facie evidence of ownership as stated against the world. A court is required to attach a presumption of correctness to them when there are challenges to their validity. Benjamin v. Youngstrom, 13 FSM R. 542, 546 (Kos. S. Ct. Tr. 2005).

The Kosrae Constitution permits certain conveyances of land to be subject to conditions. Article II, Section 3 provides that any conveyance of land from a parent or parents to a child or children, may be subject to such conditions as the parent or parents deem appropriate, provided, that such conditions are in writing at the time of conveyance and duly reflected in the certificate of title. Benjamin v. Youngstrom, 13 FSM R. 542, 546 (Kos. S. Ct. Tr. 2005).

It is the Kosrae Land Court's statutory duty to issue certificates of title. Benjamin v. Youngstrom, 13 FSM R. 542, 548 (Kos. S. Ct. Tr. 2005).

A cause of action based upon a claim of defective certificate of title, must fail when the issuing entity, the Kosrae Land Court, is not a party to this action. Benjamin v. Youngstrom, 13 FSM R. 542, 548 (Kos. S. Ct. Tr. 2005).

The notice required by state law is intended to reach all parties, claimants and provide notice to the general public on the schedule of proceedings. The statutory notice required includes notice to the public: posting of the notice in at least three conspicuous places or at least two areas of public access and further notice to the public is required by posting at the municipal building of the municipality where the property is located and through announcements on the Kosrae radio station on several occasions. Notice to parties, claimants, and public is provided by at least two separate postings of the notice in different locations, and notice by radio broadcast. These substantial requirements for notice of land proceedings reflect the Kosrae Land Court's calculated goal to reach as many claimants, parties and members of the general public as possible. Kun v. Heirs of Abraham, 13 FSM R. 558, 561 (Kos. S. Ct. Tr. 2005).

A party challenging a certificate of title bears the burden of proving that the certificate of title is not valid or authentic, and when the party has failed to show that the relevant certificate of title is invalid, their argument does not create a genuine issue of material fact. Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

Generally, Kosrae State Code, Title 11, former Chapter 6 (repealed) specified the former Kosrae State Land Commission's duties and responsibilities, and the procedures for determination and registration of interests in land. It did not specify any duties of private party claimants, or govern the conduct of private party claimants. When the defendants are individuals and private parties, Kosrae State Code, Title 11, including former Chapter 6, does not create a cause of action against the defendants. Kinere v. Sigrah, 13 FSM R. 562, 570 (Kos. S. Ct. Tr. 2005).

When the complete absence of any map or sketch from the entire Land Court record raises grave concerns as to the correct identification of the subject parcel, area and boundaries at the hearing; as to the parties' potential confusion; and regarding notice to the claimants of the area and boundaries of the subject parcel, and when the parties were not, as required, provided the map or sketch with the Land Court's memorandum of decision, this failure resulted in inadequate notice of the decision to the parties, and was contrary to law. The memorandum of decision must thus be vacated and the matter remanded to the Land Court for further proceedings. Heirs of Weilbacher v. Heirs of Luke, 14 FSM R. 99, 101 (Kos. S. Ct. Tr. 2006).

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).

Before noting a transfer of interest in a parcel, the Land Commission was required to determine that the document of transfer was in proper form, including a correct description of the parcel and for a transfer of a portion of a parcel, the Land Commission may require that the certificate holder have the transferred portion be surveyed at his expense. George v. Abraham, 14 FSM R. 102, 106 (Kos. S. Ct. Tr. 2006).

When the certificate holder and owner, did not complete or submit any document of transfer for the subject portion of the parcel to the defendant and he did not survey or arrange for the survey of the subject portion of the parcel claimed by the defendant, there was no compliance with the statutory provisions governing a transfer of interest in land or transfer of interest in a portion of parcel by the certificate holder, and therefore, pursuant to state law, there was no gift of land made from the certificate holder to the defendant. George v. Abraham, 14 FSM R. 102, 107 (Kos. S. Ct. Tr. 2006).

Certificates of Title must show all interests in the land except for with rights of way, taxes due and lease or use rights of less than one year. George v. Abraham, 14 FSM R. 102, 107 (Kos. S. Ct. Tr. 2006).

When the owner did not execute nor record any lease for a portion of the parcel in the defendant's favor, any lease granted to the defendant in excess of one year did not comply with law as it was not recorded on the certificate of title, and since legal recognition of a grant of a permanent land use right also requires written documentation to be executed by the grantor, there was no permanent land use right granted by the owner in the defendant's favor. George v. Abraham, 14 FSM R. 102, 107 (Kos. S. Ct. Tr. 2006).

Since the Land Commission is required to make a determination of lawful devisees or heirs and their respective interests following a hearing, when the Land Commission did not hold any hearing to determine the devisees or heirs and their interests following the owner's death, and when the Registrar's personal evaluation of the owner's oral will and determination of its validity was contrary to law, it is therefore vacated and the certificate of title issued based upon the invalid oral will is therefore also invalid. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

When a certificate of title was never issued to Tulpe Alokoa for parcel 006-K-07 and she was never

determined by a Land Commission proceeding to be the title holder of that parcel and therefore could not transfer title to land that she did not own, her deed of gift was invalid, and should have been rejected for filing by the Land Commission. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

Certificates of Title are prima facie evidence of ownership as therein stated against the world. Heirs of Nena v. Sigrah, 14 FSM R. 283, 285 (Kos. S. Ct. Tr. 2006).

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

Certificates of title are by statute, prima facie evidence of ownership stated therein as against the world, and because of this, a court must attach a presumption of correctness to them when considering challenges to their validity or authenticity. Dereas v. Eas, 14 FSM R. 446, 454 (Chk. S. Ct. Tr. 2006).

No court can grant as relief a request to set aside or nullify a certificate of title to a person who is not a party before the court and effectively award someone else ownership to some or all of the land for which the certificate of title was issued because that would have the court void a certificate of title in a manner that would violate every notion of due process of law. Dereas v. Eas, 14 FSM R. 446, 454 (Chk. S. Ct. Tr. 2006).

In any lawsuit to remove someone's name from a certificate of title, that is, to deprive a person of ownership of the registered land that the certificate represents, due process requires that that person is an indispensable party to the action. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

No court can set aside, void, nullify, invalidate, or alter a person's certificate of title to land without that person first having been made a party to the action before the court. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

As a general rule, a certificate of title can be set aside only on the grounds of fraudulent registration. While the Land Commission may be a necessary party to such an action, the titleholder is an indispensable party to any action to set aside, void, nullify, or alter the titleholder's certificate of title who must be joined, or any ensuing adjudication is void. Dereas v. Eas, 14 FSM R. 446, 455 n.3 (Chk. S. Ct. Tr. 2006).

A court is not competent to rule on the validity of a certificate of title to land when the court does not have (by its own statement) subject matter jurisdiction over the case and does not have personal jurisdiction over indispensable parties (the titleholders) or give them notice or an opportunity to be heard. Its orders were void and an order invalidating a person's certificate of title may even be void on its face when it held that that person was an indispensable party who was not present in the case and then proceeded to invalidate his certificate of title without him having been made a party to the case. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

When the one person's certificate of title was voided and a new certificate of title covering the same land issued to another person without notice to the first person and affording the first person an opportunity to be heard, it was a denial of due process and that action was void. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

A person's certificate of title on file at the Chuuk Land Commission constituted notice to the world of that person's ownership of all of the land it was for and that certificate and the Plat No. cited constituted notice of the boundaries of the ownership. Dereas v. Eas, 14 FSM R. 446, 457 (Chk. S. Ct. Tr. 2006).

When no court with jurisdiction to do so has ever invalidated or altered a person's certificate of title to a lot and the statute of limitations bars any further action to invalidate that certificate, the presumption of that certificate's correctness has not been overcome and the titleholder's motion to quiet title to that lot will be granted. Dereas v. Eas, 14 FSM R. 446, 458 (Chk. S. Ct. Tr. 2006).

The registration process for Land Court is designed to ensure all interested parties and claimants receive notice. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 496 (Kos. S. Ct. Tr. 2006).

When title to land is at issue, all known persons who are claiming title must be joined in order to settle ownership without additional litigation. The policy supporting this rule is that all persons needed for a full, fair, and just adjudication should be part of the case and have an opportunity to be heard. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 496 (Kos. S. Ct. Tr. 2006).

Trust Territory Court decisions are valid and binding, consistent with the Kosrae constitutional provisions on transition of government. The doctrine of res judicata applies and Trust Territory Court decisions must be upheld. Therefore, the Land Court lacked jurisdiction to receive additional evidence and issue a new decision in a case where the Trust Territory Court, in three previous cases, had established the ownership and boundaries of the land in question. Heirs of Livaie v. Palik, 14 FSM R. 512, 516 (Kos. S. Ct. Tr. 2006).

A Land Court decision is contrary to law when it failed to give effect to the decisions in previous Trust Territory Court cases, and will therefore be remanded to the Kosrae Land Court with instructions and guidance to re-survey the parcels, if needed to issue a memorandum of decision consistent with the Trust Territory Court decisions. Heirs of Livaie v. Palik, 14 FSM R. 512, 516 (Kos. S. Ct. Tr. 2006).

In any lawsuit to, in effect, remove someone's name from a certificate of title, that is, to change the registered ownership of the land that the certificate represents and deprive the certificate titleholder of the titleholder's property interest, due process requires that that person is an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has already been issued, must, at a minimum, name the registered titleholder as a party. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year and are conclusive upon all persons who have had notice of the proceedings and all those claiming under them and are prima facie evidence of ownership as stated therein against the world. Ruben v. Hartman, 15 FSM R. 100, 112-13 (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).

Title is prima facie proof of ownership and is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and it is prima facie evidence of ownership as therein stated against the world. But when the plaintiff filed his request for a subdivision of the parcels with the Land Commission but never had notice of any proceedings or an opportunity to be heard on his claim, the title issued in 2002 was not conclusive as to his interest. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

For the process of issuing title to be fair and rational, it must address all claimed interests in title. If a person claims an interest in land, that claim must be considered before title is issued to someone else. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

When, before issuing title to someone else, the Land Court never gave the plaintiff notice or an opportunity to be heard on his claim of ownership based on a subdivision and since having notice and an opportunity to be heard are the core requirements of due process and fundamental fairness, the Land Commission and Land Court deprived the plaintiff of his right to due process when title was issued in 2002 without giving the plaintiff notice or an opportunity to be heard on his claim of ownership filed with the Land

Commission in 1987, and therefore, the 2002 title is not valid as to the plaintiff. Siba v. Noah, 15 FSM R. 189, 194-95 (Kos. S. Ct. Tr. 2007).

A certificate of title is conclusive upon any person who had notice of the proceedings and all those claiming under that person and is prima facie evidence of ownership against all others. Thus, the land registration statute creates conclusive title, a title that cannot be challenged, as to anyone who had notice of the proceedings and as to anyone whose interest is derived from a person with notice. As to the world at large this statute creates a presumption of ownership. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

For a person who has asserted a claim to the land and was not given notice of the registration proceedings as required by law, the determination of ownership and the certificate of title for that land is not conclusive as upon him. When that person is claiming ownership of land, another person has title, and the appeals period has expired, then that person now claiming ownership must at least show enough facts to establish that the previous ownership decision is incorrect. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

When a plaintiff failed to submit evidence that he was entitled to notice in the previous Land Commission proceedings and testimony shows that he was not entitled to notice in the proceedings, and when the plaintiff's interests are derived from someone who received notice and participated and the record even suggests that the plaintiff himself was present at the hearing, the issued certificate of title is conclusive title and cannot be challenged by the plaintiff. Even if the plaintiff had submitted sufficient evidence showing he was entitled to notice and did not receive it, he must also show enough facts to establish the previous ownership decision was incorrect, and when he submitted no evidence on this issue, he has not carried his burden of proof on claims of ownership of land and he is not entitled to the requested relief. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

The need for finality in litigation is particularly important for claims to land. The statute covering designation of registration areas, recognizes this need and provides 1) that a justice must not adjudicate a matter previously decided by a court between the same parties or those under whom the parties claim which dispute involves the same parcel and 2) that the Land Court must accept prior judgments as res judicata and determine those issues without receiving evidence. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

When an earlier civil action heard and determined the subject land's ownership and the plaintiff was in privity to one of the parties, he cannot relitigate the subject land's ownership. The earlier case determined ownership in a final judgment and, based on res judicata, the plaintiff is barred from re-litigating that case again. The Land Commission was statutorily created to address disputes about ownership and to issue a Torrens Title that is conclusively correct as to the parties and presumptively correct as to everyone else. When the plaintiff's interests are derived from a party in the Land Commission proceedings, that title is conclusive as to his interests and he is barred, under the statutorily adopted doctrine of res judicata, from relitigating an ownership claim already determined. Andon v. Shrew, 15 FSM R. 315, 321-22 (Kos. S. Ct. Tr. 2007).

Kosrae State Code § 11.615(4), which governs the issuance of certificates of title, establishes that a preexisting easement or other right of way over the land remains appurtenant even if it is not described in the certificate; and passes with the land until cut off or extinguished in a lawful manner independent of the certificate. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397 (App. 2007).

The current system of land registration in Chuuk dates from the Trust Territory period. Title 67 of the Trust Territory Code, governing land registration, has been retained by the Chuuk. Mori v. Haruo, 15 FSM R. 468, 471 (Chk. S. Ct. App. 2008).

Land registration is based on the Torrens system of land registration, whereby land ownership is conclusively determined and certified by the government and thereby is easy to determine. The certificate

of title issued by the government shows the state of the title and the person in whom it is vested. Determination of title is the system's basic requirement. To that end, the Land Commission holds a proceeding to settle and declare the state of the title. Once the Commission completes its inquiry and conducts a public hearing, it must issue a determination of ownership, pursuant to which a certificate of title is issued. Determinations of ownership are appealable to the Chuuk State Supreme Court trial division. Mori v. Haruo, 15 FSM R. 468, 471 (Chk. S. Ct. App. 2008).

A party claiming ownership of 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. Mori v. Haruo, 15 FSM R. 468, 471 (Chk. S. Ct. App. 2008).

When a determination of ownership was issued to a party, but no certificate of title was issued, and there has been no allegation that the determination of ownership was incorrect, the court proceeds as if a certificate of title had been issued. Mori v. Haruo, 15 FSM R. 468, 472 (Chk. S. Ct. App. 2008).

The "registration" of interests in land, pursuant to 67 TTC 119 "has the same force and effect as to such land as a recording" under 57 TTC 301. In order for a subsequent, bona fide, or "innocent," purchaser to have valid title against a prior holder of an interest in the same real estate the subsequent purchaser must "register" or "record" the interest before the prior holder. Mori v. Haruo, 15 FSM R. 468, 472 (Chk. S. Ct. App. 2008).

Individual lineage members are not required to register their interest in their individual names in order to protect their interests as lineage members in the property. There is no legal requirement that the individual names of the lineage members appear in a registration or recording in order to give notice of their interest or otherwise protect their legal interest in lineage property. Such a requirement would be impracticable under the system of lineage land ownership. If such a requirement existed, each new member of the lineage would be required to seek an amendment of the ownership documents to the lineage land in order to obtain a legally protected right in the disposition of the land. Mori v. Haruo, 15 FSM R. 468, 472-73 (Chk. S. Ct. App. 2008).

The identification of a person as the lineage head in a determination of ownership was for the purpose of clarifying the identification of the lineage. It is not the Land Commission's function to vest, in any particular person, the authority to sell lineage land. Mori v. Haruo, 15 FSM R. 468, 473 (Chk. S. Ct. App. 2008).

A buyer is not a bona fide purchaser for value without notice when she executes a purchase agreement with an individual seller when an earlier determination of ownership was notice to the world, and thus to her, of the lineage's interest in the property. Mori v. Haruo, 15 FSM R. 468, 473 (Chk. S. Ct. App. 2008).

The statute requires that a notice of a land registration hearing be given to all interested parties and claimants, and to the public. "Interested parties" is not defined. Claimants are presumably those persons who are known to have filed a claim to register the land. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

In a Torrens land registration system, it is in the land owner's interest for notice to be given as broadly as possible since the certificate of title the landowner gets at the end of the process is conclusive upon any person who had notice of the proceedings and all those claiming under that person, but only prima facie evidence of ownership against all others. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Adjoining landowners, even if not claimants, would, because of their common boundaries, be interested parties, along with anyone else who holds some interest in the land, such as a mortgagee, an easement holder, or a holder of a covenant running with the land. But even if the adjoining landowners were not interested parties, Land Court notice to them is not contrary to law. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Because of the conclusive nature of a certificate of title, the Land Court should give the adjoining landowners notice of the formal hearing so that the resulting boundaries will be conclusive against them. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Notice of land registration hearings must be given to the public in general. The hearings are public, and anyone may attend. Land Court proceedings are not ones which only the known claimants may attend. One purpose of public notice at various stages of the registration process is to reach as many persons as possible so that, at the end, the certificate of title will be conclusive against as many persons as possible, which is to the certificate holder's considerable benefit. The statute requiring that actual notice be given to claimants, is a minimum requirement, not the maximum permissible. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

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).

In order to ensure the legal protection of any right they had in the land, parties are required to register that interest. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

Land registration is based on the Torrens system of land registration, whereby land ownership is conclusively determined and certified by the government and thereby is easy to determine. The certificate of title issued by the government shows the state of the title and the person in whom it is vested. Determination of title is the basic requirement of the system. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

Certificates of title are prima facie evidence of ownership as stated therein against the world. 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. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008).

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. As a general rule, a certificate of title can be set aside only on the grounds of fraudulent registration. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008).

Land claimants are not exempted from the registration and recording requirements due to their alleged rights being of a customary nature. The preservation of customary rights, as with other enduring rights in property, requires that it be registered. A certificate of title must show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year and are conclusive upon all persons who have had notice of the proceedings and all those claiming under them. A claim of customary interest in land will not be implicitly recognized in a land registration, but must be explicitly identified. In cases where a certificate of title has been issued, therefore, it is not clearly erroneous for a trial court to disregard the existence of a purported customary right arising prior to the certificate of title's issuance. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008).

Under Chuuk's statutory system of land registration, which is designed to ensure good title through the land registration proceedings, it is not for the appellate court to determine whether or not someone had a valid claim of land ownership arising prior to the issuance of a certificate of title, if the claim was never raised or perfected. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008).

When neither the 1989 determination of ownership nor the 2000 certificate of title identifies any customary rights in appellants; when in order to preserve the customary rights the appellants contend they were granted in 1973, they were required to register them; when the appellants do not contend that there was anything fraudulent in the registration of the land or that they were in any way deprived of their rights through the registration proceedings; when the appellants do not otherwise present any basis for setting aside the 1989 land registration proceedings; and when they appellants do not present any reason to justify why they failed to assert their alleged customary rights when the land was registered and recorded that might provide a basis to set aside the Land Commission's determination, the 1989 determination of ownership was therefore conclusive as between appellants and appellees. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008).

The bona fide, or "innocent," purchaser rule arises from the statutory recording requirements for interests in real estate. For all real estate in each district, the clerk of court is required to make and keep in a permanent record a copy of all documents submitted to him for recording. No transfer of or encumbrance upon title to real estate or any interest therein, other than a lease for a term not exceeding one year, is valid against any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer or encumbrance, or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded. The "registration" of interests in land has the same force and effect as to such land as a recording. Therefore, a subsequent, bona fide, or "innocent," purchaser has valid title against a prior holder of an interest in the same real estate if one "registers" or "records" the interest before the prior holder. Setik v. Ruben, 16 FSM R. 158, 164-65 (Chk. S. Ct. App. 2008).

The purpose and benefit of the lengthy procedure and notice requirements needed to register land is that a certificate of title, once issued, is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and is prima facie evidence of ownership as therein stated against the world. This is unlike a "conventional" recording system, which makes no averments to the public about the state of title to any parcel of land but merely invites searchers to inspect the copies of the instruments which it contains and to draw their own conclusions as to the state of title. Rather, Chuuk's statutory system of land registration is designed to ensure that buyers can rely on the determination of ownership as a representation of good title. Setik v. Ruben, 16 FSM R. 158, 165 (Chk. S. Ct. App. 2008).

When the appellants' claim is based on a customary grant in 1973 and the grantors' successors in interest registered the land when the Land Commission issued a determination of ownership to them in 1989 and when the Land Commission issued a certificate of title in 2000 to the appellees based on the 1989 determination of ownership and the appellees' 1999 purchase of the property from the grantors' successors in interest; and when the appellants did not object that they failed to receive notice of the Land Commission proceedings or that they were entitled to notice, the appellees, as purchasers, were entitled to rely on the 1989 determination of ownership as conclusive evidence of all interests in the property since the appellants were, in order to preserve any rights they had to the property with respect to appellees, required to assert those rights prior to appellees' registering or recording their interest. When there is no evidence to suggest the appellants ever attempted to register or record their alleged interest, it will not be recognized implicitly and the appellees were therefore bona fide purchasers without notice of appellants' claim when they sought and received a certificate of ownership in 2000. Setik v. Ruben, 16 FSM R. 158, 165 (Chk. S. Ct. App. 2008).

An adverse possession claim will never prevail over a validly issued certificate of title. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

The Kosrae Land Court is required to set forth on every certificate of title the names of all persons holding an interest in the land. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 535, 536 (Kos. S. Ct. Tr. 2009).

The Kosrae Land Court must make orders and decisions which determine any claim of heirship to a deceased person's title or interest in the lands, and once the Land Court heirship proceeding has

determined the names of all persons who are heirs to a parcel, it may then issue a certificate of title for that parcel. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 535, 536 (Kos. S. Ct. Tr. 2009).

When there were no valid certificates of title for the land at the time of the Land Commission decision, the decision was a determination from which any party aggrieved thereby had 120 days to appeal, and, as such, the Chuuk State Supreme Court's trial division could exercise review jurisdiction over a timely appeal from that Land Commission decision, and the appellate division could exercise review jurisdiction over a timely appeal from the trial division review decision. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 553 (Chk. S. Ct. App. 2009).

The issuance of a certificate of title is generally not appealable, but since the Land Commission is not authorized to issue certificates of title until after the 120-day appeal period has passed or until after an appeal has been duly taken and decided, certificates of title issued before then are prematurely issued and are thus invalid and may be canceled. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 553 (Chk. S. Ct. App. 2009).

When an owner of any interest in registered land dies, the Land Commission's duty is to cancel the original and duplicate certificates and issue new ones in the name(s) of the decedent's devisees or heirs. A certificate of title cannot be issued in the name of a person already deceased. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 555 (Chk. S. Ct. App. 2009).

When the owner of registered land is deceased, it is the Land Commission's statutory responsibility to make a determination of the devisee or devisees or heir or heirs and the interests or respective interests to which each are entitled, and, to make this determination, the Land Commission must conduct a hearing at which evidence shall be heard for the purpose of determining the heir or heirs or devisee or devisees entitled to the decedent's land. Proper notice must be given for the hearing, and within 30 days after the hearing's conclusion, the Land Commission should issue its finding as to the heir or heirs or devisee or devisees and the respective interest or interests to which each are entitled. Once the Land Commission has issued its determination, it cannot issue any certificates of title unless and until after one hundred twenty days – the time to appeal – has passed, and only then, if the 120 days have passed without an appeal or if an appeal has been taken and decided, can the Land Commission issue certificates of title. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 555 (Chk. S. Ct. App. 2009).

A 1986 determination of ownership in the Land Commission's records constituted notice to the world that the named owner owned the land, and that if any potential purchaser of the land had sought to buy it from the plaintiff, the purchaser would be charged with notice that named owner, and not the plaintiff, owned the parcel. Allen v. Allen, 17 FSM R. 35, 41 (App. 2010).

In any lawsuit that, in effect, seeks to change the registered ownership of the land that a certificate of title represents and deprive the certificate titleholder of the titleholder's property interest, due process would require that that person be an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has been issued, must, at a minimum, name the registered titleholder as a party. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 306 (Chk. 2010).

Certificates of title are by statute, prima facie evidence of ownership stated therein as against the world. Because of this, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Truk Trading Co. v. John, 17 FSM R. 382, 384 (Chk. S. Ct. Tr. 2010).

When the defendants do not dispute the veracity of the certificates of title provided, nor have they presented or offered any relevant or even meaningful evidence that would support a claim that the plaintiff uses or occupies or has otherwise encroached upon land it does not own, the court, accepting the certificates of title as prima facie evidence, will find that the land ownership is certain and a remand to the Land Commission for the purpose of establishing ownership is not warranted because ownership is not at issue. Truk Trading Co. v. John, 17 FSM R. 382, 384 (Chk. S. Ct. Tr. 2010).

A certificate of title must, with exception of rights of way, taxes, and leases of less than one year, set forth the names of all persons or groups of persons holding interest in the land and should include a description of the land's boundaries. Truk Trading Co. v. John, 17 FSM R. 382, 384 (Chk. S. Ct. Tr. 2010).

If the plaintiff requires a description of the boundaries of lots that he unquestionably owns, then it behooves him to obtain the relevant documentation from Land Commission directly, especially in light of its trespass accusations since it has demonstrated no special circumstances that would justify or otherwise necessitate the court ordering the Land Commission to re-survey the lots. Truk Trading Co. v. John, 17 FSM R. 382, 384 (Chk. S. Ct. Tr. 2010).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral, but in some situations, a customary oral transfer must be registered to be enforceable. The reason is not that the Torrens land registration system must supplant custom and tradition. Rather, the reason is one of evidence because certificates of title are prima facie evidence of ownership as stated therein against the world. Setik v. Ruben, 17 FSM R. 465, 472 (App. 2011).

Land Commission determinations of ownership are meant to dispose of all competing claims to land. When a customary oral transfer has been confirmed in a writing, that writing constitutes tangible prima facie evidence of the claim, which preserves the claim, and as such assists any tribunal, including the Land Commission, before which the claim is raised. Setik v. Ruben, 17 FSM R. 465, 472 (App. 2011).

A determination of ownership is presumed valid and cannot be set aside unless a challenger proves by a preponderance of the evidence that there has been fraud in the registration process. Setik v. Ruben, 17 FSM R. 465, 472 (App. 2011).

Chuuk has retained Title 67 of the Trust Territory Code, governing land registration, which is based on the Torrens system. Setik v. Ruben, 17 FSM R. 465, 473 (App. 2011).

The purpose and benefit of the lengthy procedure and notice requirements needed to register land is that a certificate of title, once issued, is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and shall be prima facie evidence of ownership as therein stated against the world. Setik v. Ruben, 17 FSM R. 465, 475 (App. 2011).

The bona fide purchaser rule does not apply when the land was lineage land which the seller had no authority to convey since the courts have historically been wary of applying the rule where the purported seller has no authority to sell, and when the Land Commission's determination of ownership was invalid for lack of notice to the occupants since a certificate of title must be based on a valid determination of ownership. Setik v. Ruben, 17 FSM R. 465, 476 (App. 2011).

Since a certificate of title must be based on a valid determination of ownership, the invalidity of a determination of ownership means that the subsequent certificate of title is likewise invalid and thus cannot be conclusive against the world. Setik v. Ruben, 17 FSM R. 465, 476 (App. 2011).

A certificate of title is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and is prima facie evidence of ownership as stated therein against the world. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 607-08 (Chk. 2011).

Title 67 of the Trust Territory Code remains Chuuk state law pursuant to the Chuuk Constitution's Transition Clause and because it has not been amended or repealed. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 n.2 (Chk. 2011).

When the land is registered land, the interests in it that are registered are the only interests that exist. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 (Chk. 2011).

Once an owner has a certificate of title to land, that ownership can never be lost through adverse possession. Under a Torrens land title registration system, such as the one in Kosrae, an adverse possession claim will never prevail over a validly-issued certificate of title. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Claims founded on adverse possession or prescription, are not permitted to come into existence once the title has been registered. Once a title is registered, it is impossible thereafter to acquire title to the registered land by holding adversely to the registered owner. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

One of the attractions of a land registration system (as opposed to a land recordation system) and one of the great benefits of land title registration (as opposed to title recordation) is that once a landowner has gone through the laborious process of validly registering title to land, that landowner and that landowner's successors can never lose that land to an adverse possession claim. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

The proper time and place to make adverse possession claims, if a land occupant has one, is in a Land Court (or other) proceeding before the land title has been registered. Afterward is too late. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Certificates of title that state that the owners are the heirs of a person, who died three years before the certificates were issued and who has now been dead for twenty-eight years, have remained for too long in what should only be a very temporary designation because the Kosrae Land Court, like the Land Commission before it, has the power to make orders and decisions which determine any claim of heirship to a deceased person's title or interest in lands. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

Certificates of title naming the heirs of someone as the owners do not conform to the statutory requirement that a certificate of title must set forth the names of all persons holding an interest in the land. None of the co-owners' names are set forth on the certificates of title, although all of their names should be set forth on the certificates, when the only name on the certificate is that of a person who does not hold an interest in the land since he is deceased. For those persons who are the deceased's true and only heirs, their names, only their names, should be on the certificates of title. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

One of the purposes of a Torrens land registration system, such as Kosrae's, is that one document – the certificate of title – names every person who has an interest in the parcel covered by that certificate and describes the extent of that interest without the need to consult other sources to determine who the owners and the interest holders are and the interests they hold. That purpose is defeated if the ownership interests are listed as held by unnamed persons whose identity can only be determined by consulting birth and death records or the decedent's will, if there was one. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

The issuance of certificates of title to "the Heirs of" should be done only sparingly, if at all, and the Land Court should determine who the heirs are and name them and the interest they hold on any certificates of title it issues. A certificate that designates "the Heirs of" as the owners does not set forth the name of any person, let alone the names of all persons, holding an interest in the land and that phrase does not name an "entity." It just designates a group of unnamed persons whose identities and interests will presumably be identified at some later time. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

The presence of others on the land for over 60 years who had never been notified of the land registration proceedings would lessen the plaintiffs' likelihood of success on the merits of a trespass action because persons who have been openly residing on land for a long time are persons who must be given notice of any land registration proceedings for that land, otherwise the determination of ownership (and any subsequent certificate of title) is not valid – when a person has a claim to the land and was not given notice

of the registration proceedings as required by law, the determination of ownership and the certificate of title for that land is not conclusive as upon him. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

The argument that someone who had occupied or used the land for a long did not have to be given notice because they did not own the land must be rejected because the determination of who the land owners are is made at the end of the land registration process, not before it has started. Their long-term presence on the land entitled them to notice of the land registration proceeding for the land. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

The land registration process is, with certain exceptions, supposed to determine all interests in the land, not just ownership interests. Thus, even if someone does not own the land, they may hold some other interest, such as a use interest exceeding one year, that has to be determined and included in the certificate of title. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

A Trust Territory High Court case that renders a judgment about ownership of land between certain parties does not, by itself, entitle one of those parties (or a party claiming under that party) to a certificate of title for that land because there may be other persons who have claims, even better claims to ownership than the parties in the Trust Territory case. Andrew v. Heirs of Seymour, 19 FSM R. 331, 340 (App. 2014).

When a previous court case has res judicata effect and status, it is conclusive only between the parties to the case and those claiming under them and no one else. But there could be persons who were not parties to the court case and who do not claim under those parties but who have their own claim to the land. The Land Court must still go through all of its usual procedures to determine if there are other claimants and, if there are, adjudicate their claims, before it can issue a determination of ownership and, if there is no appeal or if its decision is affirmed on appeal, a certificate of title. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 367 (App. 2014).

A view that only successful land claimants have to be notified of the Land Commission's determination of ownership is gross legal error. All claimants to a parcel of land must be notified of the determination of ownership for that parcel, and if boundary determinations are involved, the adjoining landowners must also be notified. Aritos v. Muller, 19 FSM R. 533, 536 & n.1 (Chk. S. Ct. App. 2014).

The Chuuk State Supreme Court trial division certainly has jurisdiction to consider an attack on a Land Commission determination of ownership as void due to the lack of notice of the formal hearings and lack of notice of the issuance of the determination of ownership because the Chuuk State Supreme Court has jurisdiction to review administrative agency decisions as provided by law, its trial division can exercise appellate review of Land Commission decisions. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. App. 2014).

When the case was not an appeal from a Land Commission determination of ownership because it was filed too late for that and when it was not, at least initially, a trial court action with regard to interests in land within that registration area before it is likely a determination can be made on the matter by the Land Commission because the Land Commission had already made a decision, the trial court action was, instead, an action to collaterally attack (an allegedly) void Land Commission final decision. Once the trial court had determined that the Land Commission decision was void for the lack of due process, then the statute applied to the case before it and if the trial court wanted to proceed on the merits it had to first find special cause existed. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

Courts must attach a presumption of correctness to a Certificate of Title. FSM v. Falan, 20 FSM R. 59, 61 (Pon. 2015).

By statute, a certificate of title must show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year and the certificate is conclusive upon all persons who have had notice of the proceedings and all those claiming under them. A "right of way" over land is a thing such as a road, or footpath, or utility easement. A "right of way" is the right to pass through property owned by

another or the strip of land subject to a nonowner's right to pass through. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

Any rights of way there may be over the land in question need not be stated in the certificate of title. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

A certificate of title's failure to mention the roadway or government right of way cannot extinguish the government's ownership of the roadway right of way. That right remained vested in the state government. When the government owned a right of way across the land that predated the current owners' ownership of the land, that right of way existed on the land when the land was homesteaded and thus still existed after a later buyer bought part of that homestead lot. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

The certificate of title statute does not exempt mineral rights if they are not mentioned. Iwo v. Chuuk, 20 FSM R. 652, 655 n.1 (Chk. 2016).

Since a seller cannot sell more than he owns, when a purchaser bought land with a roadway right of way across it, that right of way remained even though the right of way was not mentioned in the later issued certificate of title. Iwo v. Chuuk, 20 FSM R. 652, 656 (Chk. 2016).

The government owners and users of a right of way across land are not liable for the landowners' neighbors' alleged encroachment on the land. Any remedy for that alleged encroachment, the landowners must seek from their neighbors. Iwo v. Chuuk, 20 FSM R. 652, 656 (Chk. 2016).

A valid certificate of title constitutes *prima facie* evidence of ownership. Courts must attach a presumption of correctness to a certificate of title. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

There is no need for the Pohnpei Court of Land Tenure to go through the whole process of having to designate the land, serve notice of the hearing, conduct a hearing, determine ownership and service notice of an issuance of this new title when the land already had a certificate of title and the FSM Supreme Court had issued an order transferring that title. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

A "registration area," is any area, which has been designated for treatment by the Kosrae Land Court, to determine boundaries and ownership interests. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 101 (App. 2016).

When registered land is later transferred by deed, there is no need to again designate, serve notice, hold hearings, and determine ownership, in order to issue a certificate of title to the new owner. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 101 (App. 2016).

Any subsequent transfer from a registered owner, does not require notice, much less a hearing, to determine ownership anew or a written decision. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 102 (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).

– Leases

Although the court is powerless to compel Chuuk State to honor its lease agreement it has full power to restore unlawfully held property to its rightful owner as a remedy for forcible entry and unlawful detainer. Billimon v. Chuuk, 5 FSM R. 130, 136-37 (Chk. S. Ct. Tr. 1991).

Where a party purchases land subject to prior liens and a lease is a prior lien noted on the title the

purchase was made subject to the lease. Chipuelong v. Chuuk, 6 FSM R. 188, 198 (Chk. S. Ct. Tr. 1993).

A person, who acquires leased land from the lessees and the houses the lessees built on it, has no rights superior to the rights given the lessees in the lease. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

When a lease provides that lessees may build "such buildings as they see fit" on the land and that such buildings will become the lessor's property when the lease ended, the lessor has a vested future interest in the buildings if they are built. The interest is executory, resulting from a springing use, the event of which is when and if the lessees built structures. The lessor has a vested future interest in the buildings, once built, which ripens into possession at the lease's termination. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

A lessor's vested future interest in houses may be protected from an alteration which would change the structures' character. A wrongful eviction counterclaim based on the lessor's refusal to allow the houses to be turned into a bar will therefore be dismissed. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

When a lease provides that the lessees have the right to build such structures as they see fit with the buildings to become the lessor's property upon the lease termination and the lessees built two houses, they built such structures as they saw fit, and in doing so defined the nature of those structures. Once built, those structures became the lessor's property, although not until the lease's termination. At that time, the lessor was entitled to find himself the owner of dwellings, not a bar. He was within his rights to prevent the houses from being renovated for use in that manner. Wolphagen v. Ramp, 9 FSM R. 191, 195 (App. 1999).

It is a well-recognized rule of law in Chuuk that lineage land cannot be transferred, distributed or sold by an individual member of the lineage without the consent or acquiescence of all adult members of that lineage, and it is assumed that this rule of law applies to "transfers" by lease as well. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389 (Chk. 2001).

It would seem that for a long-term land lease (especially one that could last two or three or more generations) the level of lineage members' consent needed should be equivalent to that needed for a sale. Marcus v. Truk Trading Corp., 11 FSM R. 152, 160 (Chk. 2002).

When a lineage as a whole has accepted all of the benefits of a lease – all of the payments that the lessee was required to make – up to the present and even beyond, it cannot now reject the burden of the lessee exercising its options to renew. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Under the after-acquired title doctrine as it applies to leases, if a lessor purports to make a lease at a time when the lessor does not have title to the realty that is subject to that lease but then subsequently acquires legal title to the realty, such after-acquired title will inure to the lessee's benefit by means of estoppel and will be subject to the lessee's rights under the lease. Mailo v. Chuuk, 13 FSM R. 462, 468 (Chk. 2005).

The after-acquired title doctrine may be applied in favor of one holding the lease under an assignment from the original lessee, because an assignee of a landlord or tenant by estoppel stands in as good a position as his assignor and may sue on the lease's covenants. Mailo v. Chuuk, 13 FSM R. 462, 469 (Chk. 2005).

A lease agreement entered into by the parties was a valid contract because the promise to pay rent in exchange for exclusive use of the property constituted an offer, acceptance, and consideration and the agreement's terms were definite and enforceable. Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014).

– Mortgages

In an action on a delinquent promissory note brought by an instrumentality of the national government which seeks to foreclose the mortgage securing the payment of the note, prior to the filing of an answer no interest in land is at issue, and therefore, the motion to dismiss on the ground that the court lacked jurisdiction is denied. FSM Dev. Bank v. Mori, 2 FSM R. 242, 244 (Truk 1987).

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).

When loan collateral is in the lender's possession and the borrower has made a reasonable request that the lender liquidate the collateral to preserve its value, the lender should do so; but there is no duty in law requiring the lender to take possession of the collateral and foreclose on property at the borrowers' request when that property is not in the lender's possession, unless there is a provision in the mortgage requiring it. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 607 (Chk. 2000).

A mortgage foreclosure generally does not involve a dispute over who owns the land, but rather the mortgagor's undisputed ownership being transferred, often involuntarily, to a buyer or to the mortgagee to satisfy the mortgagor's debt. 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).

Only two courts have jurisdiction over the territory of Chuuk – the Chuuk State Supreme Court and the FSM Supreme Court. A mortgage foreclosure on land in Chuuk therefore could not be in any court other than those two. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

Mandamus lies to compel a public official to perform a clear, nondiscretionary duty. When the petition is devoid of any allegation that the respondent is acting in an official capacity, when the Kosrae deed of trust statute does not confer on the respondent either the obligation or the express power to act as a trustee under a deed of trust, and when the petition is silent as to any other mechanism or source of authority by which the respondent in his official capacity has assumed the duties of the trustee under the deed of trust at issue so as to make the performance of those duties a "clear and nondiscretionary," mandamus is not available. FSM Dev. Bank v. Director of Commerce & Indus., 10 FSM R. 317, 319 (Kos. 2001).

A statute that requires the creditor to give written notice to the debtor of the creditor's intention to foreclose prior to foreclosing on the property, is inapplicable to setoffs because foreclosures and setoffs are very different things. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

A foreclosure is a legal proceeding to terminate a mortgagor's interest in property, instituted by the lender (the mortgagee) either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

Generally, money deposited in a bank account is a debt that the bank owes to the depositor – the bank is obligated to repay the money to the depositor, either on demand or at a fixed time. Money deposited in a bank account is thus not property mortgaged to the bank. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

If a judgment-creditor were to attempt to execute against a piece of land for which there was a certificate of title and that certificate showed an outstanding mortgage on the land, or if there was no certificate of title for the land but a mortgage had been duly and properly recorded at the Land Commission

so that anyone searching the records there should necessarily find it, then that would be a security interest that was not a secret lien and therefore valid against third parties. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 (Chk. 2003).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. A mortgage can and must show on the certificate to be effective against third parties. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 n.2 (Chk. 2003).

A buyer would usually expect to buy land without a mortgage or, if the land carries a mortgage, that a part of his purchase price will be used to pay off the mortgage so that he receives title free and clear of any mortgage. (Alternatively, a buyer might reduce his offer by the mortgage's outstanding balance and then pay off the mortgage himself.). In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

If a creditor's judgment is secured by a mortgage, it would have priority over the other unsecured judgment-creditors for the proceeds from the sale of the mortgaged property. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

If a judgment-creditor were to attempt to execute against a piece of land for which there was a certificate of title and that certificate showed an outstanding mortgage on the land, or if there was no certificate of title for the land but a mortgage had been duly and properly recorded at the Land Commission so that anyone searching the records there should necessarily find it, then that would be a security interest that was not a secret lien and therefore valid against third parties. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. Therefore a mortgage can and must be shown on the certificate of title to be perfected and thus effective against third parties. If the property has not been issued a certificate of title, then the mortgage must be properly recorded in the chain of title so that someone searching the Land Commission files would expect to find it. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

A perfected security interest in land (the mortgage either shown on the certificate of title, or if no certificate, properly recorded) would have priority over any unsecured judgment-creditors, even those with writs of execution, should the mortgaged property be sold to satisfy the landowners' debts. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

The proper way to record a mortgage under the Torrens land registration system in use in Chuuk is for the mortgage and the landowner's [duplicate] certificate of title to be submitted to the Land Commission at the same time. The mortgage document is then recorded; the mortgage is endorsed on the certificate of title permanently on file at the Land Commission; and then a (new) duplicate certificate of title, showing the endorsement of the newly-recorded mortgage, is given (or returned) to the landowner. If this is done, then the security interest is perfected and the mortgage is valid and enforceable against all the world and has priority over all other claims to the proceeds from the sale of the mortgaged property. If all these steps are not done, then the security interest is not perfected and the mortgage does not carry priority over and is not effective against parties without notice of it – it is a disfavored secret lien. In re Engichy, 11 FSM R. 520, 531 (Chk. 2003).

Failure to perfect a security interest does not affect the mortgage's validity and enforceability between the parties to it. In re Engichy, 11 FSM R. 520, 531 (Chk. 2003).

A social security tax lien has priority over a mortgage because section 607 grants social security tax liens priority over all other liens regardless of whether the other liens arose earlier. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

Under the general rule a mortgage first in time has superior right in the absence of the applicability of a

statutory provision to the contrary. Section 607 is a statutory provision to the contrary because it grants social security tax liens priority over all other liens regardless of whether the other liens arose earlier. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

A mortgagee's due process rights are not violated by a statute making another lien superior to its mortgage when the statute was enacted prior to the mortgage's execution. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

By state statute, a mortgage creates a lien on the land, but does not pass title to the mortgagee. In re Engichy, 12 FSM R. 58, 68 (Chk. 2003).

Any land may be mortgaged by its owners, and such a mortgage may be recorded. But a mortgage on unregistered land can only be recorded, not registered because no certificate of title had been issued for it. In re Engichy, 12 FSM R. 58, 68 (Chk. 2003).

The Chuuk Real Estate Mortgage Law confirms and adopts by reference rather than modifying or repealing the Title 67 provisions applicable to the endorsement of mortgages on certificates of title. In re Engichy, 12 FSM R. 58, 70 (Chk. 2003).

A mortgage endorsed on a certificate of title cannot be given retroactive effect. To do so would destroy the purpose of the land registration system – that the original certificate of title at the Land Commission is conclusive and if there are no endorsements anyone searching the state of the title need look nowhere else for mortgages and for the other encumbrances that, with certain exceptions, are required to be listed there. In re Engichy, 12 FSM R. 58, 71 (Chk. 2003).

A mortgagee will have a secured interest in any future funds that from the sale of the mortgaged land when, although the mortgage was not endorsed on the certificate of title before the case was consolidated with other judgment-creditors', all of the necessary documents for the Land Commission to endorse the mortgage had been submitted to the Land Commission by then. In re Engichy, 12 FSM R. 58, 71 (Chk. 2003).

While a mortgagee bank may have policies and rules it must follow that require it to inquire into the purported collateral or security and require ownership documents and certified maps of the property's location when land is used as collateral or security for its loans, it has not been shown that violation of these policies and rules creates a duty to a stranger to the mortgage. They may create a duty to the bank's shareholder, and failure to follow them may result in the bank holding worthless security, but the bank has not been shown to have a general duty to all landowners not to accept a mortgage to land one of them might later claim. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127-28 (Chk. 2005).

The result of "negligence" in failing to properly record a mortgage on unregistered land is that the mortgage is ineffective against third parties – someone other than the mortgagor who had no notice of the mortgage (and the result is the same for registered land when a mortgage is not properly endorsed on the certificate of title). Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 & n.4 (Chk. 2005).

A mortgagor can only mortgage an interest in land that he owns at the time the mortgage is granted. If the mortgagors held no interest in the land they mortgaged, the bank would never be able to foreclose the mortgage (essentially it holds no security) since it can only foreclose the interests that the mortgagors held and mortgaged. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

There is some authority that a mortgagor can mortgage land that he does not own but will own in the future and that the mortgage then becomes effective when he acquires the land. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 n.5 (Chk. 2005).

A mortgagee that fails to ascertain the mortgagor's true interest in the mortgaged property does so at its own risk. Its punishment, if it can be called that, is that it has no security for the debt it is owed. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

When a plaintiff's determination of ownership is for a lot with one number and the bank holds mortgages on lots with other numbers, the bank does not have a mortgage for the plaintiff's lot and there is no proximate cause between the bank acquiring the mortgage and any later alleged damage to the plaintiff's lot. Whether the mortgage was properly recorded is immaterial. If the plaintiff was damaged, the mortgage did not cause it. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

Since a bank owed no duty of care to a plaintiff when it took a mortgage to secure a loan to another, and that mortgage, even if it is unenforceable, was not the proximate cause of the plaintiff's alleged damages, the bank is entitled to summary judgment as a matter of law on the plaintiff's negligence and void mortgage causes of action. Additional reasons for this are that the bank has not attempted to foreclose its mortgage and that the mortgage does not cover the lot for which the plaintiff has a determination of ownership. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

Holding a mortgage to property in which the mortgagor had no interest cannot be taking dominion over property. A mortgagee may take dominion over a mortgaged property only when it has foreclosed on the property and either taken title to it itself or had it sold to another. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129 (Chk. 2005).

By taking a mortgage, a mortgagee does not claim title to (or dominion over) the property. A mortgage creates a lien on the land, but does not pass title to the mortgagee. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129 n.6 (Chk. 2005).

A mortgagee, is not an insurer or guarantor of the mortgagor's actions. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129 (Chk. 2005).

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).

Public policy cannot abide by the perverse result that would never leave a title quiet if the court were to recognize an indefinite expectancy right for a person to inherit his living parent's land and require a complainant to name all the landowner's children. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

When a landowner's children do not have a vested interest in the land, the foreclosure statute does not require a judgment creditor to name them as defendants. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

In a collection case based on a defaulted loan, no interest in land was ever at issue when the fee simple ownership of the parcel was never at issue and when the bank's registered mortgage lien was not at issue, so the jurisdictional language in section 6(a) is not applicable. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 (Chk. 2011).

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

The court will enforce a forum selection clause when the bank drafted the real estate mortgage and the bank chose to include the forum selection clause as one of the terms it insisted upon in the preprinted mortgage form it used to execute the mortgage; when a mortgagor not only does not expressly waive the bank's forum selection but he affirmatively insists upon the forum selection clause's enforcement; and when

no other valid reason is apparent or has been asserted by the bank that would allow the clause's waiver. The bank may thus assert its real estate mortgage foreclosure remedy in the Yap State Court, the forum it chose, and the mortgagor may raise his defenses to the mortgage's validity there and the FSM Supreme Court will adjudicate the bank's action on the promissory note and on the chattel mortgage. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

A mortgagee does not have title to the land, only a lien. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

A mortgagee under the provisions of a chattel mortgage covering all the personal property of the insolvent may, on default, be entitled to take possession of the property and sell it to satisfy his claim. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 (Kos. 2013).

Since the Secured Transactions Act does not apply to the transfer of an interest in real property except as provided with respect to fixtures, crops, timber to be cut, or minerals to be extracted, a lender cannot have perfected a security interest in a factory building unless it had obtained a mortgage on the factory building (and presumably the land underneath it or an easement) and recorded that mortgage. The lender is therefore not entitled to pre-judgment possession of the factory building since it does not have a perfected security interest in it under the Act. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 597 (Kos. 2013).

The Pohnpei Mortgage Law requires that the complaint name all persons having or claiming an interest in the property subordinate to the mortgage interest. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

When there are no transfers or encumbrances registered against the mortgaged parcels except for the bank's mortgages and a separate conveyance of a property interest in the land to the bank; when all the parties with an interest in the parcels are parties to the litigation; and when it is undisputed that the named defendants were duly served with a summons and complaint, an argument that the bank failed to comply with the statutory notice requirements must fail. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

A mortgage foreclosure generally does not involve a dispute over who owns the land, but rather the mortgagor's undisputed ownership being transferred, often involuntarily, to a buyer or to the mortgagee to satisfy the mortgagor's debt. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 432 (App. 2014).

When the subject mortgage required that the mortgagor not only refrain from removing or demolishing the buildings on the premises but also maintain the structures in good repair, as well as assign to the mortgagee all rents and profits derived from same, this language reflects that the buildings, and not just the land they were on, were expressly contemplated, in ascribing the respective value to the mortgage, as security for the underlying loan. FSM Dev. Bank v. Setik, 20 FSM R. 85, 88 (Pon. 2015).

When the previously court-appointed land sales agent has died and the mortgagee has proposed a successor agent and when the defendants have failed to cite any legal authority in support of their opposition to this proposed successor, the court will confirm the successor since he is familiar with the case's operative facts and is an employee of the mortgagee whose services would thus require no additional compensation. FSM Dev. Bank v. Setik, 20 FSM R. 85, 90 (Pon. 2015).

A mortgage foreclosure generally does not constitute an interest in land being at issue because in a mortgage foreclosure the interests in land are not in dispute – the parties all agree who owns the land and who holds the mortgage. The mortgagee just seeks to foreclose the mortgage which a mortgagor has pledged as security for a debt and which the mortgagor earlier agreed, when he signed the mortgage, could be sold if the debt remained unpaid. Thus, the Exception Clause does not preclude jurisdiction. Sam v. FSM Dev. Bank, 20 FSM R. 409, 416 (App. 2016).

When security, such as a guaranty, is given as part of the same transaction that created the debt to the

bank, no further or independent consideration is needed. The loan itself is sufficient consideration. This principle holds true when a mortgage is the security given for a loan to a third party. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

The consideration for a mortgage may consist of a loan to a third person. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

It is not essential to a mortgage's validity that the mortgagor should have received the consideration. It is sufficient that the mortgagee parted with consideration. The consideration need not go directly from the mortgagee to the mortgagor. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

When a parcel was pledged as collateral for a loan in an executed security instrument and when the borrowers defaulted on the loan and the lender bank instituted enforcement proceedings and was allowed to enforce the mortgage's terms, the borrowers surrendered their ownership interest in this parcel and the ultimate transfer of ownership, as approved by the FSM Supreme Court, cannot be categorized as "wrongful or unauthorized," or a "frozen asset," when the borrowers had earlier obtained a Pohnpei Court of Land Tenure determination of heirship for the parcel that named them as the legal heirs to the property. Setik v. Perman, 21 FSM R. 31, 37-38 (Pon. 2016).

– Personal

Because farming of short term crops, such as sugar cane, on someone else's land is not uncommon in Kosrae, the fruits of such farming are considered the personal property of the person planting them. Kosrae v. Tolenoa, 4 FSM R. 201, 204 (Kos. S. Ct. Tr. 1990).

The property owned in full title by one who dies is inherited by the children of the deceased. Personal property suited for use by women is inherited by daughters and sisters. In re Estate of Hartman, 6 FSM R. 326, 330 (Chk. 1994).

Personal property is property other than land or interests in land. House of Travel v. Neth, 7 FSM R. 228, 229 (Pon. 1995).

Personal property is property other than land or interests in land. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

When a judgment-creditor has requested a writ and no motion for an order in aid of judgment is pending, he is entitled to a writ of execution against the judgment-debtor's non-exempt personal property. Personal property is property other than land or interests in land. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

A mortgagee under the provisions of a chattel mortgage covering all the personal property of the insolvent may, on default, be entitled to take possession of the property and sell it to satisfy his claim. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 (Kos. 2013).

Fixtures are goods that are fixed to real property, or are intended to become fixed to real property in a manner that causes a property right to arise in the goods under the prevailing law. Goods are all things that are movable when a security interest attaches and the term includes fixtures. Readily removable factory machines, office machines, and domestic appliances are not fixtures. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

A bona fide purchaser for value is someone who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims. Mori v. Hasiguchi, 19 FSM R. 16, 21-22 (Chk. 2013).

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).

– Personal – Bailment

Bailment occurs when one person has lawfully acquired possession of another's personal property; the bailor retains ownership, but the bailee has lawful possession and exclusive control over the property for the duration of the term of the lease. Vehicle rental agreements are bailment leases. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 305 (Pon. 2004).

A bailment is created by the delivery of personal property by one person to another, in trust for a specific purpose, pursuant to an express or implied contract to fulfill the trust. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

The delivery of property to another under an agreement to repair is a bailment. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

The bailee, having custody of the bailor's property, has the obligation to exercise due care to protect the property from loss, damage or destruction. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

A presumption arises that a bailee who has sole actual and exclusive possession of the goods has been negligent if he cannot explain the loss, disappearance or damage of the bailed property, its parts or contents. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

A bailee is liable for all repairs and replacement for the bailed property that are necessary due to his neglect or lack of care. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 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).

– Public Lands

Basic notions of fair play, as well as the Constitution, require that Public Lands Authority decisions be made openly and after giving appropriate opportunity for participation by the public an interested parties. Etpison v. Perman, 1 FSM R. 405, 420-21 (Pon. 1984).

When there is reason to believe that provisions of a public land lease may have been violated by the lessee, and where another person has notified the Public Lands Authority of his claim of a right to have the land leased to him, the Public Lands Authority may not consider itself bound by the lease's renewal

provision but is required to consider whether it has a right to cancel the lease and, if so, whether the right should be exercised. These are decisions to be made after a rational decision-making process in compliance with procedural due process requirements of article IV, section 3 of the FSM Constitution. Etpison v. Perman, 1 FSM R. 405, 421 (Pon. 1984).

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).

The Pohnpei Public Lands laws do not provide for the disposal or lease of public lands in Kolonia Town by the Pohnpei Public Lands Authority. Micronesian Legal Servs. Corp. v. Ludwig, 3 FSM R. 241, 247 (Pon. S. Ct. Tr. 1987).

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).

Plaintiff's due process rights were not violated where the government did not use condemnation procedures specified in 67 TTC 451, but followed land registration procedures to obtain title and treated the plaintiff fairly and in the same way it treated other landowners. Palik v. Kosrae, 5 FSM R. 147, 152-54 (Kos. S. Ct. Tr. 1991).

Where the alleged trespassers did not claim to have an interest in the land at the time of the determination of ownership they cannot now raise as a defense a claim that the land in question is public land when that issue was decided in the determination of ownership process and certificates of title issued. In re Parcel No. 046-A-01, 6 FSM R. 149, 156-57 (Pon. 1993).

A Certificate of Title issued by a state land commission precludes a claim by the state that the land is public land. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 51 (App. 1995).

Since under 67 TTC 1 public lands were lands situated within the Trust Territory as the government of the Trust Territory had acquired or would acquire for public purposes, in Chuuk public lands are those lands located in Chuuk that the state has acquired or will acquire for public purposes. Sana v. Chuuk, 7 FSM R. 252, 254 (Chk. S. Ct. Tr. 1995).

In Chuuk the leasing of private land by the government for public purposes is an exercise of the state's eminent domain power because the Chuuk Constitution requires that the state should negotiate a voluntary lease, sale or exchange, if possible, instead of an involuntary taking. Sana v. Chuuk, 7 FSM R. 252, 254 (Chk. S. Ct. Tr. 1995).

In Chuuk land leased by the government for a public purpose is public land for the duration of the term of the lease. Sana v. Chuuk, 7 FSM R. 252, 255 (Chk. S. Ct. Tr. 1995).

Early termination of a lease for which the State of Chuuk has fully paid is a disposal of public land which the governor cannot do without the advice and consent of the legislature. Sana v. Chuuk, 7 FSM R. 252, 255 (Chk. S. Ct. Tr. 1995).

Prior to the effective date of the Chuuk Constitution the ownership of the filled marineland was with the Japanese government and that title was transferred to the Trust Territory pursuant to 67 TTC §§ 1 and 2 and later to Truk State. Atin v. Eram, 7 FSM R. 269, 271 (Chk. S. Ct. Tr. 1995).

A forced sale of land under duress to the Japanese government does not make that land public land. Nahnken of Nett v. United States, 7 FSM R. 581, 588 (App. 1996).

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

A claim that no one owned an island is in the nature of a claim that the island is public land. Generally, but not always, it is the state government that would assert that some land is public land. Rosokow v. Bob, 11 FSM R. 454, 457 & n.2 (Chk. S. Ct. App. 2003).

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

The Board of Trustees of the Pohnpei Public Lands Trust is the sole entity empowered and authorized to execute a lease agreement in regard to Pohnpei public lands, and when the Board has executed a residential lease agreement, the holder of the residential lease for the property is the present tenant and enjoys privity of contract and privity of estate in relation to that parcel. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 212 (Pon. 2003).

Under Pohnpei law, an executory interest in the assignment of a public lands leasehold expires on the grantor's death. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 212 (Pon. 2003).

When an assignment of public land was never approved by the Board and by the form lease agreement's terms, the tenant could not sublease, transfer or assign any interest in the premises without the Board's prior written consent, the assignment could not become a possessory interest until the Board gave its written approval. Upon the assignor's death, the leasehold interest became part of the assignor's estate, and the assignment was extinguished. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 213 (Pon. 2003).

The doctrine of equitable estoppel operates to preclude a party from asserting a right he otherwise might have had, based upon his previous conduct. Equitable estoppel is applied to governments in the FSM when this is necessary to prevent manifest injustice and where the interests of the public will not be significantly prejudiced. Equitable estoppel thus applies to prevent (or estop) the Board of Trustees from claiming that a party had no existing right to a lot when it had given that party a lease (which was duly recorded at the State Land Registry) to that lot and had taken that party's lease payments for years. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 462 (Pon. 2006).

When a party had some right to a lot, it was, at a minimum, entitled to notice that the Board of Trustees believed the party's lease was invalid and that the Board intended to revoke the lease and put that lot up for public bid. The party was also entitled to notice and an opportunity to be heard on the issue of the lease's validity before the Board revoked the lease. When the Board did not give the party any notice and revoked its lease and issued a lease to another, this lack of notice to the party would thus make the later issuance of a lease invalid. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 462 (Pon. 2006).

Since in 2004 the plaintiff held an unexpired, recorded lease to Lot No. 014-A-08 for which the lease payments were current and up to date, it was entitled to notice and an opportunity to be heard before the Board of Trustees could disregard or void that lease and advertise Lot No. 014-A-08 for immediate lease or could lease Lot No. 014-A-08 to another. This is true even if the Board considered the lease "illegal" due to omissions in the approval process. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 109 (Pon. 2010).

When the plaintiff's lease had not been voided after notice and an opportunity to be heard before its leased lot was advertised for immediate commercial lease, the Board violated the plaintiff's civil rights because it denied the plaintiff the due process of law when it did not give the plaintiff prior notice and an opportunity to be heard on the validity of its lease. This is because notice and an opportunity to be heard

are the essence of due process of law. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

A public land lease is void when it was issued without any prior notice to the then current lessee of record and without any opportunity for the current lessee to be heard and when it was issued without any prior notice to the then current lessee during the term of the lease held by the then current lessee and since it was set to start on a date during the term of the lease held by the then current lessee. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

When no one holds a valid lease for a lot, no one owes any lease payments for the lot. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 111 (Pon. 2010).

A public land lease that has a provision that a holdover by a lessee does not give rise to any right to a renewal of the lease by the holdover lessee, indicates that any right to renew would not be automatic. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 111 (Pon. 2010).

Since one of the Board's purposes is to administer, manage and regulate the use of public lands for the people of Pohnpei, this purpose is not served by leaving a lot without a lessee and not in productive use, especially when, the Pohnpei Legislature has directed that public lands in the cadastral plat including that lot be leased in an expeditious manner with the intent that all public land within that plat should be fully leased. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 111 (Pon. 2010).

When a plaintiff, based on its paid-up and unexpired prior lease, had a right superior to a later lessee to possess or occupy a public land lot No. 014-A-08, when the later lessees occupied that lot, they were trespassing. This is because the issue in a trespass action is who among the parties has the superior right to possession. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

It cannot be said that consequential damages were contemplated for the termination of a lease five months early when the leased land had remained undeveloped for a long while and when it is difficult to see what development could have taken place in those five months that would have earned the plaintiff a profit during those five months, that is, whether there would be any consequential damages because the plaintiff was deprived of the use of an undeveloped lot for the last five months of its lease. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

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

When, if specific performance were ordered, the court would order that the plaintiff be allowed to resume possession of a lot for five more months, but when, because that lot was undeveloped and did not generate any revenue, five months of resumed occupation by the plaintiff would not affect the plaintiff's income and thus specific performance of the last five months of the lease would seem pointless, a money award for actual damages should suffice. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 378 (Pon. 2014).

The Pohnpei Residential Shoreline Act of 2009 outlines procedures to be followed in applying for a residential leasehold from the Chief of the Division of Public Land of the Department of Land and Natural Resources. It mandates that, upon the receipt of an application pursuant to the Act, the Chief of the Division of Public Land shall orchestrate a survey of the filled land for which the application has been submitted, and upon satisfaction that the applicant and the land meet the Act's criteria, the Chief must issue a certificate of eligibility for a residential leasehold to the applicant. Damarlane v. Damarlane, 19 FSM R. 519, 529 (Pon. 2014).

Under Pohnpei state law, submerged public trust lands to a distance of not more than 150 feet

extending seaward from a residential shoreline that have been filled for the purpose of constructing all or a portion of a residence thereon before December 31, 2008 are designated as available for residential lease. Damarlane v. Damarlane, 19 FSM R. 519, 529 (Pon. 2014).

When the court cannot establish that the plaintiffs' pending application under the Pohnpei Residential Shoreline Act of 2009 complies with the Act's requirements, the plaintiffs have not demonstrated an inchoate possessory interest over the landfill by virtue of their pending application for a leasehold interest, and since the plaintiffs do not have title or a leasehold interest in the landfill and cannot demonstrate an inchoate possessory interest under the Act, they cannot demonstrate a legally cognizable property right to exclusive possession of the landfill and therefore their trespass claim must fail. Damarlane v. Damarlane, 19 FSM R. 519, 530 (Pon. 2014).

Under a plain reading of Secretarial Order 2969, Trust Territory public lands were transferred to the respective Trust Territory districts, and thus Trust Territory public lands on Weno were earlier transferred to the Truk District government. Although, on July 12, 1979, when the FSM Constitution took effect, any Trust Territory government interest in property was transferred to the FSM for retention or distribution in accordance with the FSM Constitution, public land on Weno was not Trust Territory government property since all Trust Territory public land there had already been transferred to the Truk district government. It would thus have been Truk district government property. Chuuk v. Weno Municipality, 20 FSM R. 582, 584-85 (Chk. 2016).

In Pohnpei, all marine areas below the ordinary high watermark belong to the government, and such lands are a part of the Pohnpei Public Lands Trust with certain exceptions reestablishing customary rights to the people in areas below the high watermark. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641 (Pon. 2016).

By law, public land cannot be subdivided for homesteading or development unless public roads were laid out or established insuring public access to each new lot or parcel. Iwo v. Chuuk, 20 FSM R. 652, 654 (Chk. 2016).

Under Secretarial Order 2969, Amendment No. 1, Trust Territory public lands in Chuuk were conveyed to the Chartered Truk District Government, and the Chuuk state government is the legal successor to the Truk district government. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

– Tidelands

The people of Chuuk have always considered themselves to have rights and ownership of the tidelands, and thereby hold the property rights in them, throughout all of the several foreign administrations. These traditional and customary claims came down from time immemorial. Nimeisa v. Department of Public Works, 6 FSM R. 205, 208 (Chk. S. Ct. Tr. 1993).

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

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

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

The reversion of reefs, tidelands and other submerged lands to private owners granted by article IV, section 4 of the Chuuk Constitution does not apply to any tidelands that were previously filled or reclaimed.

Nena v. Walter, 6 FSM R. 233, 236 (Chk. S. Ct. Tr. 1993).

Tideland is land below the ordinary high water mark. Filled or reclaimed land, by its nature, is not land below the ordinary high water mark, and it cannot be considered tideland or submerged land. Nena v. Walter, 6 FSM R. 233, 236 (Chk. S. Ct. Tr. 1993).

Where government title to the tidelands reverted to the traditional owners in 1989, and because the right to bring an action for trespass or ejection must be available to the owner before the time period for adverse possession has run, whether the doctrine of adverse possession exists in Chuukese land law need not be decided because the twenty-year statute of limitations did not start to run until 1989. Cheni v. Ngusun, 6 FSM R. 544, 548 (Chk. S. Ct. App. 1994).

The Chuuk State Constitution, effective on October 1, 1989, recognizes traditional rights over all reefs, tidelands, and other submerged lands. Tidelands, including man-made islands, that were filled prior to this effective date are no longer classed as tidelands and have become dry land. Sellem v. Maras, 7 FSM R. 1, 3-4 (Chk. S. Ct. Tr. 1995).

Tidelands traditionally are those lands from the dry land to the deep water at the edge of the reef, and must be shallow enough for Chuukese women to engage in traditional methods of fishing. Sellem v. Maras, 7 FSM R. 1, 4 (Chk. S. Ct. Tr. 1995).

A deep water passage through a reef too deep for Chuukese women to engage in their traditional fishing methods is not a tideland. While under Chuukese tradition and custom channels may have been owned, the constitution does not recognize traditional rights over channels. The state thus retains ownership of the channels, as was the situation prior to the adoption of the Chuuk Constitution. Sellem v. Maras, 7 FSM R. 1, 5 & n.9 (Chk. S. Ct. Tr. 1995).

Tidelands within the meaning of article IV, section 4 of the Chuuk Constitution are those marine lands from the shore to the face of the reef that are shallow enough for traditional fishing activity by women. The constitutional recognition of traditional rights in tidelands does not include deep water channels or tidelands that have become dry land prior to the effective date of the constitution, through filling or other activity that raised the level of the marine lands above the mean high tide mark. Sellem v. Maras, 7 FSM R. 1, 7 (Chk. S. Ct. Tr. 1995).

Under Pohnpei state law, owners of the land adjacent to the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land. Damarlane v. United States, 7 FSM R. 56, 59-60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law persons simply possessing a permit in the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land unless there has been some affirmative action such as prior written approval from the appropriate authority and effecting some development in the area in question. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a reef is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are not entitled to a payment of just compensation for the depreciation of the value of the reef and fishing grounds. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a fish maii [trap] is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are entitled to a payment of just compensation for the damage to a fish maii which they had constructed in the lagoon, if the fish maii was constructed pursuant to the dictate of customary law as a joint enterprise of the villagers,

supervised by the village chief, managed, maintained and owned in common by the villagers; or, if an individual constructed the fish maii, prior written permission from the District Administrator, now the Pohnpei Public Land Board of Trustees, was obtained. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

The rights of citizens of Pohnpei in areas below the high watermark are prescribed by 67 TTC 2. Damarlane v. United States, 7 FSM R. 56, 63-64 (Pon. S. Ct. App. 1995).

Under Pohnpei law, damage to reefs or soil under the high water mark resulting from dredging activities, the object of which is for public purposes, does not justify compensation to abutting land owners. If the Pohnpei Public Land Board of Trustees had granted certain rights in writing to an individual or group of individuals, and acting on that grant the grantees erected or constructed certain improvements, including fish maii (fish trap) in shallow waters, and if destroyed or value reduced as a result of state dredging activities, the owners thereof may be entitled to just compensation in accordance with the Pohnpei Constitution. Damarlane v. United States, 7 FSM R. 56, 69 (Pon. S. Ct. App. 1995).

Prior to the effective date of the Chuuk Constitution the ownership of the filled marineland was with the Japanese government and that title was transferred to the Trust Territory pursuant to 67 TTC §§ 1 and 2 and later to Truk State. Atin v. Eram, 7 FSM R. 269, 271 (Chk. S. Ct. Tr. 1995).

Any filling of marineland prior to the effective date of the Chuuk Constitution is dry land and has become part of the land adjacent to the fill activity. Atin v. Eram, 7 FSM R. 269, 271 (Chk. S. Ct. Tr. 1995).

An owner of dry land that erodes has no legal basis to claim ownership of tideland. Mailo v. Atonesia, 7 FSM R. 294, 295 (Chk. S. Ct. Tr. 1995).

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).

Traditional claims of exclusive ownership of marine resources have been recognized only in areas immediately adjacent to an island or submerged reef. Claims involving custom and tradition were recognized by the Constitution's drafters, but were restricted to areas within lagoons and near reef areas. Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (Pon. 1998).

The waters, land, and other natural resources within the marine space of Kosrae are public property, the use of which the state government shall regulate by law in the public interest, subject to the right of the owner of land abutting the marine space to fill in and construct on or over the marine space. Jonah v. Kosrae, 9 FSM R. 335, 340 (Kos. S. Ct. Tr. 2000).

All marine areas below the ordinary high water mark belong to the Kosrae state government. Jonah v. Kosrae, 9 FSM R. 335, 340 (Kos. S. Ct. Tr. 2000).

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

A Kosrae state regulation that covers all persons wanting to fill in and construct on or over land below the ordinary high water mark does not provide any private right of action and cannot be the basis of a claim against the state for violation of law or regulation even if it did not have a specific plan for the seawall that was part of a road-widening project for which it had an overall plan. Jonah v. Kosrae, 9 FSM R. 335, 342-43 (Kos. S. Ct. Tr. 2000).

The customary and traditional rights of municipalities, clans, families and individuals to engage in subsistence fishing, and to harvest fish and other living marine resources from reef areas are recognized, but a municipality is not directly entitled to compensation when resources in a particular reef area of Pohnpei are damaged. Thus, absent any damage to municipal property besides the reef itself or the living marine resources, the municipality is entitled only to that amount which Pohnpei appropriates to the municipality to compensate it for damage to its traditional subsistence fishing rights. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 60-61 (Pon. 2001).

The state owns the submerged reef areas, but this ownership carries with it certain responsibilities with respect to the people in whose trust these areas are held. It must preserve and respect the traditionally recognized fishing rights of the people of Pohnpei. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 61 (Pon. 2001).

Submerged reef areas are government lands which passed from the Trust Territory to Pohnpei, and the rights of the municipalities to use these areas are subject to the state's ownership rights. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 61 (Pon. 2001).

Under the Trust Territory Code the state has the power to control all marine areas below the ordinary high water mark, subject to a few notable exceptions. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 62 (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).

Pohnpei has legal ownership of the submerged reef area as long as none of the relevant exceptions to 67 TTC 2 are applicable. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 63 (Pon. 2001).

The assertion that municipalities own submerged reef areas is not sound because 67 TTC 2(1) expressly states that the law established by the Japanese administration was that all marine areas below the ordinary high watermark belong to the government and because a finding that the municipalities were the underlying owners of all submerged reef areas, would render the statute granting them the right to use marine resources there superfluous and inconsistent with the rest of the statute. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 64 (Pon. 2001).

The German Land Code of 1912 applies only to land on Pohnpei, not to submerged areas. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 64 (Pon. 2001).

The Japanese owned all areas below the high water mark during their administration, then ownership of this land passed to the Trust Territory, and subsequently to the State of Pohnpei. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 65 (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).

Because the state has assumed the duty of regulating exploration, exploitation and conservation of natural resources within the 12 mile zone from island baselines, and it is presumably the state which bears the costs associated with enforcing state laws related to such natural resources within state waters, it is logical that the state should recover the damages flowing from injury to these resources. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 65 (Pon. 2001).

Title 67, Section 2 of the Trust Territory Code continues in effect under the transition clause of the FSM Constitution, is consistent with other provisions in the FSM and Pohnpei Constitutions, and clearly confirms

that all marine areas below the ordinary high water mark belong to the government. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

Pohnpei does not have a proprietary ownership interest in the tideland, as it is public land which is intended to benefit the public. Thus, Pohnpei may not sell submerged reef areas, or destroy or waste these resources with impunity because such actions would violate the public trust, and any damages recovered by Pohnpei should be returned in kind to the people in accordance with Pohnpei's obligation to protect and preserve the natural resources for the people's use. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

The ownership of submerged land and marine resources has a public character, being held by all of the people for purposes in which all of the people are interested. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

The people of Pohnpei's traditional and customary rights to freely navigate the reef, engage in subsistence fishing in that area, and control the use of and materials in that marine environment is recognized in 67 TTC 2(1)(e), in the FSM Constitution, and the Pohnpei Constitution. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

A municipality is precluded from recovering damages for injury to the submerged lands and living marine resources damaged by a fishing vessel grounding, but will be provided an opportunity at trial to prove any damage to other municipal resources. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 67 (Pon. 2001).

When tidelands were never properly divided during the father's lifetime, the logical conclusion is that those tidelands remain lineage or family property according to Chuukese tradition and custom and cannot be transferred without the consent of all male adults of the lineage, subject only to the traditional rights of afokur as consented to. Lukas v. Stanley, 10 FSM R. 365, 366 (Chk. 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 owner of dry land is not necessarily the owner of the adjacent tideland. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

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

Since traditional rights in tideland were not recognized in the law until October 1, 1989, no prior assertion of ownership over filled land could affect the traditional tideland rights. Phillip v. Moses, 10 FSM R. 540, 545 (Chk. S. Ct. App. 2002).

Any assertion of ownership over the filled land in a different case could not affect the continuing traditional rights in the adjacent tidelands. Phillip v. Moses, 10 FSM R. 540, 545 (Chk. S. Ct. App. 2002).

Prior to the effective date of the Chuuk Constitution, all tidelands were owned by the government. When the Chuuk Constitution became effective, traditional tideland rights were restored over only those areas that were still tidelands on that date (Oct. 1, 1989). Stephen v. Chuuk, 11 FSM R. 36, 41 (Chk. S. Ct. Tr. 2002).

The tideland that is subject to traditional claims of ownership does not include deep water. Stephen v. Chuuk, 11 FSM R. 36, 42 n.2 (Chk. S. Ct. Tr. 2002).

While the Land Commission has the statutory authority to determine and register land titles, whether the Land Commission has the legal authority and the technical ability to determine, survey, and register tidelands is an unanswered question. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

During the German Administration, it was widely known on Ponape that all property from high-water mark out was considered to belong to the German Government with the exception of three private mangrove reserves. Subsequently, the Japanese claimed everything below the high water mark. In due course this passed to the Trust Territory, which shortly before the Trust Territory broke up, granted its rights to the several districts. In the area that became the Federated States of Micronesia, the districts became states. Pohnpei thus became the owner of the marine areas below the high water mark. Such ownership rests with the sovereign, and in this case the sovereign is the State of Pohnpei. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 508 (App. 2005).

The national government does not own or control tidelands, reefs, or natural resources within 12 nautical miles of the island baselines. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 509 (App. 2005).

Chuuk, in its Constitution, retroceded tideland rights to their traditional holders. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 509 (App. 2005).

When the people of Kitti, as opposed to the municipal government, were not parties to the case, the trial court decision did not affect were the traditional rights of the people of the various municipalities to fish in the submerged reef areas. These rights of the people to marine resources remain unaffected and are protected by Trust Territory statute. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 509 (App. 2005).

The Yap Constitution provides that the state recognizes traditional rights and ownership of natural resources and areas within the marine space of the State within 12 miles from island baselines and Yap statutory law provides that traditionally recognized fishing rights wherever located within the State Fishery Zone and internal waters must be preserved and respected and also preserves existing private rights of action for civil damages, for damage to coral reefs, seagrass areas, and mangroves. Thus 67 TTC 2 is no longer Yap state law. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

Under Yap traditional rights and ownership of natural resources and marine areas inside the Yap fringing reef – the rights to use and exploit, to the exclusion of all others, the marine resources of particular areas of the submerged lands inside the fringing reef around Yap – stem from a concept called a *tabinaw*. A *tabinaw* entails rights, duties and obligations for its members, and includes families and households. But a *tabinaw* is more than a concept. A *tabinaw* includes an estate in identifiable land and specific areas within the Yap fringing reef within which a *tabinaw* member can exploit the marine resources. A *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*. Each village includes a number of *tabinaw*. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

When a vessel's grounding and subsequent oil spill was an unreasonable interference with the interests in the affected marine resources, resulting in significant damage, and resulted in physical injury to the reef and mangroves, and other features of the lagoon environment, a significant harm, and when the plaintiffs have suffered an injury special in kind from other Yap residents because of their traditional ownership and use interests in the particularly affected natural resources, the defendants are thus liable to plaintiffs on the theory of both public and private nuisance since the court considers the interest of the Yapese in exclusive use and exploitation of the submerged lands inside the fringing reef analogous to interests in dry land in other common law countries. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

A trial court case that when affirmed on appeal held that the decision – that the State of Pohnpei and not its municipalities owned the marine areas in Pohnpei – concerned only Pohnpei and not the other three FSM states, is clearly not controlling precedent for the resolving issues unique to the State of Yap, including the interpretation of its Constitution and Code when, unlike Pohnpei, Yap not only repealed the relevant Trust Territory Code provision, but Yap's Constitution expressly recognizes the traditional rights and ownership over the natural resources and the marine space within the state of Yap. M/V Kyowa Violet v.

People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

The State of Yap's ownership of public lands as provided for at 9 Y.S.C. 901, is not mutually exclusive with the traditional rights of ownership over these lands and related marine resources by the people of Yap through the *tabinaw*, as recognized in the Yap Constitution. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

FSM admiralty law recognizes a cause of action for nuisance. The Yapese interest in exclusive use and exploitation of their submerged lands on and within the fringing reef is analogous to interests in dry land. A nuisance is a substantial interference with the use and enjoyment of another's land (either dry or submerged in Yap) resulting from intentional and unreasonable conduct or caused unintentionally by negligent or reckless conduct. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

The Pohnpei Residential Shoreline Act of 2009 outlines procedures to be followed in applying for a residential leasehold from the Chief of the Division of Public Land of the Department of Land and Natural Resources. It mandates that, upon the receipt of an application pursuant to the Act, the Chief of the Division of Public Land shall orchestrate a survey of the filled land for which the application has been submitted, and upon satisfaction that the applicant and the land meet the Act's criteria, the Chief must issue a certificate of eligibility for a residential leasehold to the applicant. Damarlane v. Damarlane, 19 FSM R. 519, 529 (Pon. 2014).

Under Pohnpei state law, submerged public trust lands to a distance of not more than 150 feet extending seaward from a residential shoreline that have been filled for the purpose of constructing all or a portion of a residence thereon before December 31, 2008 are designated as available for residential lease. Damarlane v. Damarlane, 19 FSM R. 519, 529 (Pon. 2014).

A plaintiff whose tideland is being dredged by another is threatened with irreparable harm because once a tideland has been dredged its very nature is altered and cannot easily be restored and because, analogously, harm to land is often considered irreparable since land is unique. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

Harm to land is often considered irreparable because land is unique. The same should hold true of the reef and surrounding environment where harvesting is to occur as well as the precious population of sea cucumbers. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

In Pohnpei, all marine areas below the ordinary high watermark belong to the government, and such lands are a part of the Pohnpei Public Lands Trust with certain exceptions reestablishing customary rights to the people in areas below the high watermark. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641 (Pon. 2016).

PUBLIC CONTRACTS

When the state's letter says that the bid was incomplete and that the contract was awarded to another bidder, it is a fair inference that the bid was rejected. International Bridge Corp. v. Yap, 9 FSM R. 362, 364 (Yap 2000).

Rejection of a contractor's bid on the basis it was incomplete is a final administrative determination which confers on the bidder the right to judicial review. International Bridge Corp. v. Yap, 9 FSM R. 362, 365 (Yap 2000).

A suit for injunctive relief is the appropriate vehicle by which to challenge a contract award under public bidding statutes because as a general rule, a declaratory judgment and an injunction are the only adequate means of protecting the public interest, the integrity of the competitive bidding process, and the individual bidder's rights. International Bridge Corp. v. Yap, 9 FSM R. 390, 394 (Yap 2000).

A court must fully take into account the discretion that is typically accorded an official in the procurement agencies by statutes and regulations. Such discretion extends not only to the evaluation of bids submitted in response to a solicitation but also to the agency's determination with respect to the application of technical, and often esoteric, regulations to the complicated circumstances of individual procurement. International Bridge Corp. v. Yap, 9 FSM R. 390, 396 (Yap 2000).

Under 9 Y.S.C. 528, all Yap state government contracts must be in writing and be executed by the agency which is authorized to let contracts in its own name and must be made with the lowest responsible bidder. The lowest responsible bidder is the lowest bidder whose offer adequately responds in quality, fitness, and capacity to the particular requirements of the proposed work called for by the contract. The lowest responsible bidder may be the bidder who submits the lowest price, but not necessarily. International Bridge Corp. v. Yap, 9 FSM R. 390, 397 (Yap 2000).

All state contracts shall be in writing and made with the lowest responsible bidder. If the lowest bid is rejected, the contracting officer may, at his discretion, award the contract to the lowest remaining responsible bidder or advertise anew for bids. In each instance the officer, at his discretion, after determining the lowest responsible bidder, may negotiate with that bidder, and that bidder only, to reduce the scope of work and to award the contract at a price which reflects the reduction in the scope of work. International Bridge Corp. v. Yap, 9 FSM R. 390, 397 (Yap 2000).

While the better procedure under 9 Y.S.C. 528 would have been for Public Works to formally select the second lowest bidder as the lowest responsible bidder before beginning negotiations with it to reduce the scope of work, and consequent price, the essential point is that the state had legally sufficient reasons for rejecting the lowest bidder's bid when it did so. As a result, no substantial right of the lowest bidder was violated by the state's failure to strictly conform to the statutory procedure. The court therefore will not reverse, modify, or remand the case for further proceedings pursuant to 10 Y.S.C. 165 on the basis of the state's negotiations with the second lowest bidder. International Bridge Corp. v. Yap, 9 FSM R. 390, 398 (Yap 2000).

The state must provide contract bidders with substantial, material, and detailed information necessary for a bidder to make a knowing and fully informed bid. International Bridge Corp. v. Yap, 9 FSM R. 390, 399 (Yap 2000).

Materials provided by the state, however denominated, must provide sufficient specificity to permit real competition between the bidders on contracts, and fair comparison among the several bids. The state-provided specifications may be sufficient to provide real competition and a fair comparison although the bid form requires the bidder to provide additional specifications. International Bridge Corp. v. Yap, 9 FSM R. 390, 400 (Yap 2000).

When the state's bid documents provided specifications for metal buildings in extreme detail it could properly require a contract bidder to provide the brand name and additional specifications for the metal buildings as part of its bid, and could reject the bid on this basis when those items were not provided. International Bridge Corp. v. Yap, 9 FSM R. 390, 401-02 (Yap 2000).

The lowest responsible bidder is the lowest bidder whose offer adequately responds in quality, fitness, and capacity to the particular requirements of the proposed work called for by the contract. International Bridge Corp. v. Yap, 9 FSM R. 390, 403 (Yap 2000).

The lowest responsible bidder for a contract for public work is one who is responsible and the lowest in price on the advertised basis. The term "responsible" as thus used is not limited in its meaning to financial resources and ability. Authorizations of this kind invest public authorities with discretionary power to pass upon the bidder's experience and his facilities for carrying out the contract, his previous conduct under other contracts, and the quality of his previous work, and when that discretion is properly exercised, the courts will not interfere. A bidder's experience in his field of expertise is a valid factor which may be considered in

evaluating competing bids in order to determine the lowest responsible bidder. International Bridge Corp. v. Yap, 9 FSM R. 390, 403 (Yap 2000).

In addition to the names of any joint or subcontractors and the work they will do, all bids for state contracts must include any other materially relevant information the contracting officer may require, and any bid which does not comply with the advertisement's requirements or the statutory provisions shall be rejected. International Bridge Corp. v. Yap, 9 FSM R. 390, 403 (Yap 2000).

It is not for the court to second-guess the state's determination that a bidder's related experience was insufficient to qualify it as the lowest responsible bidder because a court has no warrant to set aside agency actions as arbitrary or capricious when those words mean no more than that the judge would have handled the matter differently had he been an agency member. International Bridge Corp. v. Yap, 9 FSM R. 390, 404 (Yap 2000).

The state may reject a contract bid when the bidder has not supplied the names and curriculum vitae of its key personnel which was materially relevant information required by the bidding documents. International Bridge Corp. v. Yap, 9 FSM R. 390, 404 (Yap 2000).

When the subcontractors' professional experience was not required under the terms of the bid documents themselves, nor was its submission a customary practice, a bidder's failure to submit them was not properly a basis for the rejection of its bid. International Bridge Corp. v. Yap, 9 FSM R. 390, 405 (Yap 2000).

When the statute provides that any bid which does not comply with the bid advertisement's requirements or the statutory provisions shall be rejected, and when the bidder's qualification statement makes it clear that failure to provide any of the information requested may result in the contracting officer's rejection of the bid, the lack of materially relevant information required by the bid documents was a sufficient basis upon which to reject the bid. International Bridge Corp. v. Yap, 9 FSM R. 390, 405 (Yap 2000).

Although the statute requires the state to determine before a bid is submitted whether a potential bidder's financial ability to perform the work and its experience in performing similar work, the state may also require that a bidder provide, as part of its bid package, additional information regarding the qualifications of those specific individuals within its organization who would be working on the project. International Bridge Corp. v. Yap, 9 FSM R. 390, 406 (Yap 2000).

A contract for public work or public property or supplies must be executed on the public body's behalf by some officer or officers possessed of the power to contract on behalf of the governmental body which they represent. The fundamental rule is that a public officer, who has only such authority as is conferred upon him by law, may make for the government he represents only such contracts as he is authorized by law to make. Nagata v. Pohnpei, 11 FSM R. 265, 271 (Pon. 2002).

The terms and conditions of a contract with a successful bidder for public contracts where competitive bidding is required are to be gathered from the terms and specifications of the advertisement or solicitation for bids. Nagata v. Pohnpei, 11 FSM R. 265, 271 (Pon. 2002).

When the plaintiffs have shown that the state has acted *ultra vires* with regard to soliciting bids, designating successful bidders, and entering into contracts for trochus, and has acted arbitrarily in determining what constitutes evidence of available funds and in attaching other conditions to the contract awards which were not included in the solicitation to bid documents, they have demonstrated that they will be irreparably injured if the trochus harvest is permitted to proceed, as the bid solicitation and contract award processes were contrary to Pohnpei state law. The plaintiffs are thus entitled to a declaratory judgment that the defendants' trochus harvest activities are illegal and to a permanent injunction, prohibiting the defendants from proceeding with any trochus harvest until the state has implemented procedures to conduct a fair and transparent bidding process for trochus, through the department authorized by law to conduct it. Nagata v. Pohnpei, 11 FSM R. 265, 272 (Pon. 2002).

A fair and transparent bidding process requires that regulations for soliciting bids, designating successful bidders, and awarding contracts for trochus be properly noticed, published, and distributed by the authorized department and that the department's solicitations to bid set forth in clear terms each and every term and condition of the contract to be formed with a successful bidder for a trochus harvest, which terms may not be varied by the state after a bid is awarded. Nagata v. Pohnpei, 11 FSM R. 265, 272 (Pon. 2002).

The statutory provision entitled "State Acquisition of Land" applies to the state's acquisition of interests in private land, which includes purchases of land in fee simple, and also other interests such as leases, easements for access roads and rights of way. Sigrah v. Kosrae, 12 FSM R. 513, 521-22 (Kos. S. Ct. Tr. 2004).

When the timing and manner in which a parcel was selected for a state quarry site, and when the negotiations were conducted and a lease agreement executed without public notice, without bidding procedures and without testing the suitability of the rock therein for aggregate production, it raises issues of public trust, transparency of government operations and propriety of the these actions under state law. Sigrah v. Kosrae, 12 FSM R. 513, 522 (Kos. S. Ct. Tr. 2004).

The Kosrae Financial Management Regulations, Section 4.2(b) requires free, open and competitive bidding for purchases more than $25,000. Sigrah v. Kosrae, 12 FSM R. 531, 534 (Kos. S. Ct. Tr. 2004).

The Financial Management Regulations, Section 4.17 provides the requirements for an exemption from open bidding when the Governor, in the event of an emergency affecting public health, safety, or convenience so declares in writing, describing the nature of the emergency and danger, an exemption to open bidding will be made to the extent necessary to avoid the stated danger. Sigrah v. Kosrae, 12 FSM R. 531, 534 (Kos. S. Ct. Tr. 2004).

The State of Kosrae acquires an interest in private land at the direction of the Governor through negotiation or through a procedure for acquisition of an interest in private land through court proceedings. Sigrah v. Kosrae, 12 FSM R. 531, 535 (Kos. S. Ct. Tr. 2004).

If the state's lease interest in parcels of which the Governor as a co-owner was acquired at the Lt. Governor's direction, or at the direction of any person other than the Governor, then it appears that lease interest was acquired in violation of Kosrae State Code, Section 11.103(1), but if the lease interest in the parcels was acquired at the Governor's direction, in compliance with Section 11.103, then it appears that the lease interest was acquired in violation of the Kosrae State Ethics Act. Sigrah v. Kosrae, 12 FSM R. 531, 535 (Kos. S. Ct. Tr. 2004).

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).

All contracts for the purchase of personal property involving $50,000 or more made on behalf of any national government agency must be let by free and open competitive bidding. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 655 (Pon. 2008).

When the FSM assumed the responsibility for arranging for insurance coverage for the vessels owned by the FSM including those operated by the four states, and the broker, Chuuk, and the FSM knew that the vessels' operators would be responsible for paying for the insurance for their respective vessels, the public bidding statute, as a matter of law, does not create liability on the FSM's part to the broker for Chuuk's premiums. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 655 (Pon. 2008).

When none of the questions to be decided by the court directly touch upon treaty relations between the

FSM and the United States, the FSM Supreme Court may determine whether the FSM wrongfully provided false information to U.S. officials, whether, if proven, those actions were actionable, and if so, what damages the defendant-counterclaimant suffered since the court can also decide the issue of whether either party breached the contract, and if so, who owes what sums to the other. The mere existence of a funding mechanism agreed to by two sovereign nations cannot strip the court of jurisdiction to issue a decision on the merits of this case. Nor does the Compact intend to so hobble the court. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 484 (Pon. 2009).

When a public law's statutory language seems to speak only in prospective terms and certainly does not expressly state or clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously show legislative intent to make the statute retroactive or for it to be applied retrospectively to previously-awarded public contracts, the movant is entitled to summary judgment and a declaration that the public law does not apply to the parties' earlier contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

Chuuk cannot escape liability when the plaintiff did not accept the risk that Chuuk might not be able to find funds and was not promised payment only when and if funds were available; when the plaintiff was told on November 24, 1995, that Chuuk was still awaiting the Chuuk Department of Treasury's issuance of a check for full payment of the insurance premium which Chuuk hoped would be within a week, and was asked to "Please bear with us your usual patient [sic] and understanding"; when the plaintiff would have had every reason to believe that the funds had been appropriated and, apparently like in previous years, Chuuk was waiting for them to become available and the paperwork done to cut the check; when the same should be true for fiscal 1997, when Chuuk informed the plaintiff that it had submitted a requisition to Chuuk Finance for $84,000 and was making daily follow-up; and when the judgment was not on a breach of contract theory. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 119 (App. 2011).

There is no authority that a party to a government contract has a duty to inquire and determine for itself whether the funds to pay for the contract have been properly appropriated and are certified as available, although there is plenty of authority that the government cannot create an obligation to pay unless there has been an appropriation and certification. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 119 (App. 2011).

Governments are generally not liable on contracts unless there has been an appropriation and a certification of availability of funds, and Chuuk, by its own Financial Management Act, Truk S.L. No. 5-44, has similar statutory requirements. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 119 (App. 2011).

The public interest factor favors the plaintiffs since the public interest should favor a fair and thorough, but not rushed, evaluation of the power generation bids which ends with the PUC Board of Directors approving a contract with the bidder with the best plan because it involves proposals for a long-term improvement of PUC's power generation capacity and the expenditure of a large sum. The public interest also favors adherence to the Pohnpei statutes that govern an independent public corporation such as PUC, rather than a blatant disregard of PUC's independent nature. Perman v. Ehsa, 18 FSM R. 432, 440 (Pon. 2012).

The public interest favors a bidding process that is fair and transparent. It also favors that foreign investors be seen to be treated fairly and thus encouraged to invest in Pohnpei to the State's benefit. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 568 (Pon. 2013).

A declaratory judgment and an injunction are the only adequate means of protecting the public interest, the integrity of the competitive bidding process, and the individual bidder's rights to challenge a contract award under the public bidding statutes. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 563, 568 (Pon. 2013).

The successful bidder on a public contract is a necessary and indispensable party to litigation by an unsuccessful bidder that challenges the public bidding process. Luen Thai Fishing Venture, Ltd. v.

Pohnpei, 18 FSM R. 573, 575 (Pon. 2013).

The mandate of 55 F.S.M.C. 221(2) prohibits any employee of the FSM to authorize an expenditure or create or authorize an obligation in advance of the availability of funds. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 223 (Pon. 2015).

When the applicable regulations require that any public contracts awarded under those regulations are subject to mandatory alternative dispute methods; when the movants have filed a complaint and thereby "invoked the litigation machinery"; when the parties availed themselves of an alternative dispute method by virtue of a mediation session but the settlement agreement thus reached was unenforceable because it did not receive the required Presidential approval; and when the government is not disposed to resume alternative dispute resolution, the plaintiff's motion to compel arbitration will be denied. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 224-25 (Pon. 2015).

PUBLIC OFFICERS AND EMPLOYEES

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 to be 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).

The National Public Service system Act plainly manifests a congressional intention that, where there is a dispute over a dismissal, the FSM Supreme Court should withhold action until the administrative steps have been completed. 52 F.S.M.C. 157. Suldan v. FSM (I), 1 FSM R. 201, 206 (Pon. 1982).

Due process may well require that, in a National Public Service system employment dispute, the ultimate decision-maker review the record of the ad hoc committee hearing, at least insofar as either party to the personnel dispute may rely upon some portion of the record. 52 F.S.M.C. 156. Suldan v. FSM (I), 1 FSM R. 201, 206 (Pon. 1982).

Government employment that is "property" within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Suldan v. FSM (II), 1 FSM R. 339, 351-52 (Pon. 1983).

The National Public Service System Act's provisions create a mutual expectation of continued employment for national government employees and protect that employment right by limiting the permissible grounds, and specifying necessary procedures, for termination. This, in turn, is sufficient protection of the employment right to establish a property interest. Suldan v. FSM (II), 1 FSM R. 339, 353-54 (Pon. 1983).

The government's right to discipline an employee for unexcused absence is not erased by the fact that annual leave and sick leave were awarded for the days of absence. Suldan v. FSM (II), 1 FSM R. 339, 357 (Pon. 1983).

The highest management official must base his final decision on a national government employee's termination, under section 156 of the National Public Service System Act, upon the information presented at the ad hoc committee hearing and no other information. Suldan v. FSM (II), 1 FSM R. 339, 359-60 (Pon. 1983).

If, pursuant to section 156 of the National Public Service system Act, the highest management official declines to accept a finding of the ad hoc committee, the official will be required by statutory as well as constitutional requirements to review those portions of the record bearing on the factual issues and to submit a reasoned statement demonstrating why the ad hoc committee's factual conclusion should be

rejected. Suldan v. FSM (II), 1 FSM R. 339, 360-61 (Pon. 1983).

The National Public Service System Act, by implication, requires final decisions by unbiased persons. Suldan v. FSM (II), 1 FSM R. 339, 362 (Pon. 1983).

The highest management officials cannot be said to be biased as a class and they cannot be disqualified, by virtue of their positions, from final decision-making as to a national government employee's termination under section 156 of the National Public Service System Act, without individual consideration. Suldan v. FSM (II), 1 FSM R. 339, 363 (Pon. 1983).

The high public office of state prosecutor may be the most powerful office in our system of justice. The prosecutor invokes and implements the sovereign powers of the state in the justice system and is given a wide degree of discretion in so doing. Rauzi v. FSM, 2 FSM R. 8, 13 (Pon. 1985).

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

Some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. Rauzi v. FSM, 2 FSM R. 8, 16 (Pon. 1985).

The emphasis in governmental tort liability cases has been on the special status of government, its functions and its officials rather than on the degree of control tests commonly employed in nongovernmental cases. Even those commentators who specifically note that the *respondeat superior* doctrine applies to the government analyze governmental liability issues in terms of public policy considerations rather than through a degree of control analysis which distinguishes between closely supervised and high-ranking officials. Rauzi v. FSM, 2 FSM R. 8, 16 (Pon. 1985).

There is a common law of taxation which addresses the status of public officials as employees. Rauzi v. FSM, 2 FSM R. 8, 17 (Pon. 1985).

A taxpayer who held the high public office of Chief of Finance, whose contract gave him a wide degree of discretion in carrying out governmental powers; and who was not an outside consultant who could merely suggest or advise but was an integral part of the governmental operation is a governmental official, therefore an employee for purposes of the FSM Income Tax Law. Heston v. FSM, 2 FSM R. 61, 65 (Pon. 1985).

All government officials are employees of the government within the meaning of the Federated States of Micronesia Income Tax Law. Heston v. FSM, 2 FSM R. 61, 65 (Pon. 1985).

Defendants were not acting as police officers or under the direction of police officers so as to make their conduct lawful where the record reveals generally that the defendants' actions were not those of police officers acting in good faith to enforce the law, but were taken on their own behalf to punish and intimidate their victims. Teruo v. FSM, 2 FSM R. 167, 171 (App. 1986).

The National Public Service System Act and the FSM Public Service System Regulations establish an expectation of continued employment for nonprobationary national government employees by limiting the permissible grounds and specifying procedures necessary for their dismissal; this is sufficient protection of the right to continued national government employment to establish a property interest for nonprobationary employees which may not be taken without fair proceedings, or "due process." Semes v. FSM, 4 FSM R. 66, 73 (App. 1989).

In the absence of statutory language to the contrary, the National Public Service System Act's mandate may be interpreted as assuming compliance with the constitutional requirements, because if it purported to

preclude constitutionally required procedures, it must be set aside as unconstitutional. Semes v. FSM, 4 FSM R. 66, 74 (App. 1989).

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

A basic premise of public employment law is that the rights of a holder of public office are determined primarily by reference to constitutional, statutory and regulatory provisions, not by the principles of contract which govern private employment relationships. Sohl v. FSM, 4 FSM R. 186, 191 (Pon. 1990).

Subject to constitutional limitations, the public has the power, through its laws, to fix the rights, duties and emoluments of public service, and the public officer neither bargains for, nor has contractual entitlements to them. Sohl v. FSM, 4 FSM R. 186, 191 (Pon. 1990).

The power of the President to appoint executive branch officers is not absolute, but is subject to check by the advice and consent of Congress. Sohl v. FSM, 4 FSM R. 186, 197 (Pon. 1990).

If someone constitutionally ineligible for appointment, is appointed a judge then his status is that of a de facto judge. A de facto judge is one who exercises the duties of the judicial office under the color of an appointment thereto. Where there is an office to be filled, and one, acting under color of authority, fills the office and discharges its duties, his actions are those of an officer de facto, and binding on the public. Hartman v. FSM, 6 FSM R. 293, 298-99 (App. 1993).

The Title 51 provision barring nonresident workers from gainful employment for other than the employer who has contracted for him does not apply to national government employees because the national government is not an employer for the purposes of Title 51 of the FSM Code and does not contract with the Chief of the Division of Labor for employment of nonresident workers. FSM v. Moroni, 6 FSM R. 575, 578 (App. 1994).

Title 51 does not preclude nonresident national government employees from engaging in off-hours, secondary, private sector employment, but simply means that in order to engage in secondary employment nonresident national government employees must comply with its statutory provisions covering the private sector employment of nonresidents. FSM v. Moroni, 6 FSM R. 575, 579 (App. 1994).

A permanent employee has a one year probationary period after a promotion or transfer. A probationary employee has all of the rights of a permanent employee except the right to appeal from removal from the new position. Once the probationary period expires, an employee becomes a permanent employee in the new position. No adverse action (including a demotion) may be taken against a permanent employee except as prescribed by regulations which entitle the employee to notice of the action taken and a hearing regarding the merits of the action before an ad hoc committee if the employee appeals. Isaac v. Weilbacher, 8 FSM R. 326, 332 (Pon. 1998).

Title 52 F.S.M.C. 151-57 and PSS Regulation 18.4 establish an expectation of continuous employment for nonprobationary national government employees by limiting the permissible grounds, and specifying necessary procedures, for their dismissal. This is sufficient to establish a "property interest" for the nonprobationary employee which cannot be taken without fair proceedings, or "due process." Isaac v. Weilbacher, 8 FSM R. 326, 333 (Pon. 1998).

When there is no applicable FSM precedent on the point, it is helpful to look to U.S. law in order to formulate general principles for use in resolving legal issues bearing upon the rights of public employees and officers because the public employment structures within the FSM are based upon comparable

government models existing in the United States. Isaac v. Weilbacher, 8 FSM R. 326, 333 (Pon. 1998).

A provisionally or temporarily appointed individual is not ordinarily entitled to a permanent civil service position merely by reason of his or her retention beyond the probation period prescribed for regular appointees. At least two conditions must be present before a temporary appointment may become permanent, so as to entitle an affected employee to the procedures in the PSS Act and Regulations, regarding adverse action against permanent employees: 1) the employee must have been among the first three on the eligible list at the time of the appointment, so as to be qualified and capable of receiving the appointment, and 2) there must have been a vacancy. Isaac v. Weilbacher, 8 FSM R. 326, 334 (Pon. 1998).

A court finding that an employee, who held an acting position for four years and was certified as qualified or eligible for the vacant position, had been permanently promoted, does not take away management discretion in hiring and establish for employees a legal right to promotion. Rather, it recognizes the reality of the employee's employment situation, and prevents the government from circumventing the procedural requirements of the PSS Act and Regulations. Isaac v. Weilbacher, 8 FSM R. 326, 334 (Pon. 1998).

The PSS Act's purpose is to provide employees with just opportunities for promotion, reasonable job security (including the right to appeal), and tenure in positions. 52 F.S.M.C. 113, 115. If the national government is allowed to "temporarily" promote employees for indefinite periods of time and subsequently return them to their previous positions, the government can effectively circumvent all of the Act's merit and tenure principles. Isaac v. Weilbacher, 8 FSM R. 326, 334-35 (Pon. 1998).

Under the PSS Act and Regulations, a permanent employee after a promotion or transfer is a probationary employee who becomes permanent and non-probationary at the end of a maximum one year probationary period. Thereafter, an action returning the employee to his previous pay level is a demotion, an adverse action. Isaac v. Weilbacher, 8 FSM R. 326, 335 (Pon. 1998).

The protections afforded a permanent employee include: 1) notification of the adverse action, containing a full and detailed statement of the reasons for the action; 2) notification of his right to appeal the adverse action; 3) the right to appeal the adverse action and have his appeal heard publicly by an ad hoc committee; and 4) the right to receive a written report from the ad hoc committee containing findings of fact and written recommendations concerning the adverse action. Isaac v. Weilbacher, 8 FSM R. 326, 335, 337 (Pon. 1998).

An employee receiving a temporary promotion must be informed in advance and must agree in writing that at the expiration of the temporary promotion, he will be returned to the former salary (grade and step) that he would be receiving had he remained in his former position. But such a written agreement has no effect if the promotion has become permanent. Isaac v. Weilbacher, 8 FSM R. 326, 335 (Pon. 1998).

A permanent employee cannot be demoted to his former position based on a regulation which, by its terms, only applies to a temporary promotion. A permanent employee's constitutional right to due process is violated by the national government when it has thus demoted him. Isaac v. Weilbacher, 8 FSM R. 326, 335 (Pon. 1998).

Every permanent and probationary employee is to receive an annual written rating of performance. Employees who receive "Satisfactory" or "Exceptional" ratings are eligible for step increases within their pay level. Employees who receive "Less than Satisfactory" ratings are not eligible. The absence of a performance evaluation gives rise to the presumption that the individual was performing at a "Less than Satisfactory" level. Pay and step increases are discretionary. Isaac v. Weilbacher, 8 FSM R. 326, 336-37 (Pon. 1998).

Because Congress has not explicitly made employment contracts which violate 11 F.S.M.C. 1305 unenforceable, the FSM Supreme Court may properly decide whether a contravention of public policy is

grave enough to warrant unenforceabillty. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

When there is no national precedent on the issue of the enforcement of an employment contract term which was violative of public policy, and there is no custom or tradition governing the matter, the FSM Supreme Court may look to the common law of the United States. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

Although there was a public interest in denying enforcement because the hiring violated public policy, this is outweighed by the special public interest of the government's failure to provide any hearing or opportunity to be heard concerning its failure to pay the employee or take any steps to terminate the contract, thus constituting a violation of due process rights; the employee's justified expectations of being paid; and the substantial forfeiture would result if enforcement were to be denied. Therefore the trial court did not abuse its discretion in its weighing of the factors on the issue of enforceability. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

An illegally-hired public employee has a constitutionally protected interest in employment because the Secretary of Finance must give notice and an opportunity to be heard after taking the action to withhold his pay, and the government must terminate his employment after it determines his hiring had violated public policy, giving him notice and an opportunity to be heard. Failure to take such steps violated the employee's due process rights. FSM v. Falcam, 9 FSM R. 1, 5 (App. 1999).

Trust Territory Code Title 61 governed the Public Employment System during 1978, and provided that the grievance procedures would hear and adjudicate grievances for all employees where the employees would be free from coercion, discrimination or reprisals and that they might have a representative of their own choosing. Skilling v. Kosrae, 10 FSM R. 448, 451 (Kos. S. Ct. Tr. 2001).

In 1978, the Trust Territory Public Service Grievance System covered all Public Service employees and covered any matter of concern or dissatisfaction to an eligible employee, unless exempted. Skilling v. Kosrae, 10 FSM R. 448, 451 (Kos. S. Ct. Tr. 2001).

An employee had to complete the informal grievance procedure before presenting the grievance to the Trust Territory Personnel Board. The employee was required to present a grievance concerning a particular act or occurrence within fifteen calendar days of the date of the act or occurrence. The informal grievance procedure permitted presentation of the grievance orally. The Regulations also provided a formal grievance procedure, which the employee may have utilized and which had to be done in writing, if his grievance was not settled to his satisfaction under the informal grievance procedure. The formal grievance procedure was not mandatory upon employees. Skilling v. Kosrae, 10 FSM R. 448, 451-52 (Kos. S. Ct. Tr. 2001).

The Trust Territory Public Service System Regulations did not require an employee grievance be heard by the Personnel Board in the formal grievance procedure prior to filing suit in court on that grievance. There was no limitation on judicial review of grievances imposed by the Public Service System Regulations, as long as the informal grievance procedure was completed. Skilling v. Kosrae, 10 FSM R. 448, 452 (Kos. S. Ct. Tr. 2001).

After a Trust Territory employee's cause of action accrued in 1980 when he completed the informal grievance procedure with his supervisor, he had two options: follow the formal grievance procedure for review by the Personnel Board; or file suit in court for judicial review of his grievance. Since his right to sue was complete then, a suit, filed in 2000, will be barred by the six-year statute of limitations and dismissed. Skilling v. Kosrae, 10 FSM R. 448, 452-53 (Kos. S. Ct. Tr. 2001).

The over-obligation of funds statute, 55 F.S.M.C. 220(3), was not intended to create a basis for private parties to sue government officials, but for the government to be able to punish employees and officials who are found to be misusing public funds. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 634 (Pon. 2002).

Under the FSM criminal code a "public servant" is any officer or employee of, or any person acting on behalf of, the FSM, including legislators and judges, and any person acting as an advisor, consultant, or otherwise, in performing a governmental function; but the term does not include witnesses. FSM v. Wainit, 12 FSM R. 105, 110 (Chk. 2003).

The common and approved usage in the English language of the term "public officer" is a person holding a post to which he has been legally elected or appointed and exercising governmental functions. "Public officer" is not a legal term of art but carries only its common, ordinary, and unambiguous English language meaning as found in the dictionary. FSM v. Wainit, 12 FSM R. 105, 110-11 (Chk. 2003).

Strictly construing the term "public officer" by using only its plain, ordinary, and unambiguous meaning (or in the code's terms "its common and approved usage"), a mayor falls within the public officer exception to the criminal statute of limitations. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

The plain, unambiguous, and ordinary meaning of "public officer," an ordinary term for which no construction is required, is that the term includes any person holding a post to which he has been legally elected or appointed and exercising governmental functions. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

The ad hoc committee is required to prepare a full written statement of its findings of fact and its recommendations for action within seven calendar days after the close of its hearing. Maradol v. Department of Foreign Affairs, 13 FSM R. 51, 54 (Pon. 2004).

The English language's common and approved usage of the term "public officer" is a person holding a post to which he has been legally elected or appointed and exercising governmental functions or one holding office under the government of a municipality, state, or nation. FSM v. Wainit, 13 FSM R. 532, 538 (Chk. 2005).

The plain, unambiguous, and ordinary meaning of "public officer," an ordinary term for which no construction is required, is that the term includes any person holding a post to which he has been legally elected or appointed and exercising governmental functions. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

Section 105(3)(b) "public officer" exception to the statute of limitations applied to persons based upon their status as public officers – persons holding posts and exercising governmental functions. It did not matter whether that status was defined and bestowed upon a person by the national government or by another level of government. It only mattered that the person held that status. That the term "public officer" cannot possibly refer to state and municipal public officials since the national government lacks the constitutional power to define those offices and to determine or install those officials is a frivolous and misplaced contention because national laws are often applied to persons based on their status, even when that status is defined solely by another government. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

When an FSM statute defines a public servant as an officer or employee of the FSM, that section did not include within its definition of public servant all public officers. It only included those that were officers of the FSM national government. FSM v. Wainit, 13 FSM R. 532, 540 (Chk. 2005).

Qualified immunity is not a defense to a criminal prosecution. "Qualified immunity" partially shields public officials performing discretionary functions from civil liability and damages. Public officials are not immune or exempt from criminal liability and prosecution. FSM v. Wainit, 14 FSM R. 51, 55 (Chk. 2006).

A law enforcement officer is one whose duty is to preserve the peace. A mayor has the duty to faithfully implement the municipality's laws and ordinances, but he does not have the power of arrest, and even if he were a law enforcement officer, he would not be immune from prosecution because a law enforcement officer may be prosecuted for an offense committed while he was arresting someone. FSM v. Wainit, 14 FSM R. 51, 55 (Chk. 2006).

National police officers are public officials. FSM v. Wainit, 14 FSM R. 51, 60 (Chk. 2006).

A public officer is not denied due process of law by the abolition of his office before his term expires or by his removal or suspension according to law. Esa v. Elimo, 14 FSM R. 216, 218 (Chk. 2006).

While the defendant's position as Weno mayor would not satisfy the FSM officer or employee element in sections 55 F.S.M.C. 221(3) and 223, the defendant's service as the project manager on a project for which the national government supplied all the funding, for the purpose of that project, would because he was subject to the national government's control and supervision concerning the project he was manager of, and in that capacity, he performed a national government function – expending national government funds. Spending national government funds is an exercise of the national government's sovereign power. FSM v. Nifon, 14 FSM R. 309, 314-15 (Chk. 2006).

For the purpose of that project, a project manager of a national government project funded by national government funds, is an officer of the national government since he was exercising powers on the national government's behalf. FSM v. Nifon, 14 FSM R. 309, 315 (Chk. 2006).

As a project manager for the Compact funds, a defendant was a national government officer (for that purpose only) because he was exercising powers on the national government's behalf over national government money in a national government project. FSM v. Nifon, 14 FSM R. 309, 315 (Chk. 2006).

The term "officer or employee of any government of the FSM" in 55 F.S.M.C. 313(2) includes municipal mayors. FSM v. Nifon, 14 FSM R. 309, 315 (Chk. 2006).

The term "officer or employee of any State" in 55 F.S.M.C. 338 includes municipal officers and employees. FSM v. Nifon, 14 FSM R. 309, 316 (Chk. 2006).

Currently each of the states and the FSM national government have hiring preference laws. Berman v. Lambert, 17 FSM R. 442, 449 n.4 (App. 2011).

Sovereign immunity should not be confused with official immunity for public officers. Government officials who are performing their official duties are generally shielded from civil damages, and the court has previously recognized that some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. Marsolo v. Esa, 18 FSM R. 59, 64 (Chk. 2011).

A qualified official immunity applies to public officials. An official who simply enforces a presumptively valid statute will rarely thereby lose his or her immunity from suit. Absent extraordinary circumstances, liability will not attach for executing the statutory duties one was appointed to perform. Marsolo v. Esa, 18 FSM R. 59, 65 (Chk. 2011).

When no extraordinary circumstances are present in a suit over the enforcement of a statute, public officers, in their individual capacities, will be dismissed from the suit, but since injunctive relief can be had against them in their official capacities, they will not be dismissed in their official capacities. Marsolo v. Esa, 18 FSM R. 59, 65 (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).

Disciplinary actions of government employees are not subject to judicial review until the administrative remedies have been exhausted and are not subject to such review thereafter except on the grounds of

violation of law or regulation or of denial of due process or of equal protection of the laws. Poll v. Victor, 18 FSM R. 235, 238 (Pon. 2012).

The statute requiring that the ad hoc committee hearing be conducted within the 15 calendar days of the receipt of the employee's appeal is directory and not mandatory, as the statute does not prescribe what happens if the prescribed time period is not adhered to. Poll v. Victor, 18 FSM R. 235, 246 (Pon. 2012).

While rights are often freely assignable, duties are not freely delegated. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

If chiefs were considered state officers and thus a state authority and were permitted to espouse the Receiver of Wreck's claims, then they would have claims that they do not share with the other class members and since a person whose claims are not common to the class would have to be removed as class representatives of, and membership in, the certified class and some other person(s), who could adequately protect the class interests, would have to be named as class representative(s), the chiefs would then not be permitted to participate in, or receive, or share any of the damages awarded to the certified class. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

Since a statutory receiver or public officer cannot, even with a court's approval, delegate his powers or duties, or surrender assets which the law compels him to administer and since the Receiver of Wreck is both a statutory receiver and a public officer (the Secretary of Transportation and Communications), the delegation of the Receiver's duties to private persons (the class plaintiffs) would be unlawful because the statute only permits delegation to "relevant state authority" and cannot be approved as a class action settlement agreement. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232-33 (Yap 2013).

The Public Service System Act delineates procedures that must be followed in terminating an employee for unsatisfactory performance and mandates that no dismissal or demotion of a permanent employee is effective until the management official transmits to the employee a written notice setting forth the specific reasons for the dismissal or demotion and the employee's rights of appeal and it further mandates that any regular employee who is dismissed may appeal through an administrative review process. A crucial part of the administrative review process is a hearing before an ad hoc committee, and subsequent preparation of a full written statement of findings of fact. Manuel v. FSM, 19 FSM R. 382, 386 (Pon. 2014).

In reviewing a government employee's termination under Title 52, the FSM Supreme Court will review factual findings insofar as necessary to determine whether there is evidence to establish that there were grounds for discipline. Manuel v. FSM, 19 FSM R. 382, 386 (Pon. 2014).

Under Title 52, since the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of the factual findings is limited to determining whether substantial evidence in the record supports the administrative official's conclusion that a violation of the kind justifying termination has occurred. The statute evinces a clear congressional intent that the courts avoid serving as finders of fact. When there are non-frivolous disputes about the grounds for termination, the decision of the ad hoc committee should identify and address those grounds with specificity, and when they have not, the court will remand the case to the ad hoc committee to prepare a full written statement of its findings of fact. Manuel v. FSM, 19 FSM R. 382, 386-87 (Pon. 2014).

The court's role is not to serve as a finder of fact substituting its judgment for that of the ad hoc committee and the President. Rather, the court's role is to determine whether the administrative review process was conducted in accordance with statutory guidelines and in a manner that protects the plaintiff's right to due process. Manuel v. FSM, 19 FSM R. 382, 387 n.2 (Pon. 2014).

The National Public Service System Act and the Public Service System Regulations establish continued employment for non-probationary national government employees by limiting the permissible grounds, and specifying the necessary procedures for their dismissal. This is sufficient protection of the

right to continued employment to establish a property interest for non-probationary employees which may not be taken without due process, including notice and an opportunity to be heard. Manuel v. FSM, 19 FSM R. 382, 390 (Pon. 2014).

The Public Service System Act is designed to further the public interest in hiring the most qualified employees, and the public and the government are the losers and public policy is violated when the public service system procedures, which are designed to obtain the best qualified public employees, are not followed. FSM v. Halbert, 20 FSM R. 42, 47 (Pon. 2015).

As the managing official under 52 F.S.M.C. 135(1), the Secretary has the discretion to ask the Personnel Officer to certify a new eligible list if the current list has no one that is "available or acceptable," and a letter, in which the Secretary stated that, as a result of the interviews, no one was found to be suitable for the position, fulfills the requirement that the list be rejected in writing, but if the Personnel Officer finds the reasons for rejection inadequate, the same list will be returned and an appointment made from the list. Panuelo v. FSM, 20 FSM R. 62, 67 (Pon. 2015).

Because no one shall report to work nor receive a salary unless that person has been previously certified on an appropriate eligible list by the Personnel Officer or his authorized representative, and selected by a Department or agency head, an applicant is not entitled to declaratory relief that he should be hired when, although he was placed on the eligible list, the Secretary, as the result of interviews, found, in writing, no one was available or acceptable and the Personnel Officer did not find the Secretary's reasons inadequate and return the list. Panuelo v. FSM, 20 FSM R. 62, 67-68 (Pon. 2015).

Since the full rights of continued employment only vest upon appointment, when an applicant was not selected from the certified list, was never appointed to the position he applied for, and no agreement for employment was entered into between the parties, he was never a public employee, and therefore his due process rights never vested. Panuelo v. FSM, 20 FSM R. 62, 68 (Pon. 2015).

Because specific performance is a remedy in equity under contract law, an applicant's claim for specific performance is unenforceable when no valid agreement exists between the applicant and the government since, for the court to order the Secretary to hire the applicant based on an invalid contract, through specific performance, would be unlawful and a violation of public policy. Panuelo v. FSM, 20 FSM R. 62, 69 (Pon. 2015).

The express language of Title 52 creating the National Public Service System Act, requires that the exhaustion of remedies doctrine be applied. Ramirez v. College of Micronesia, 20 FSM R. 254, 261 (Pon. 2015).

The National Public Service System Act created a system of personnel administration based on merit principles and accepted personnel methods governing the classification of positions and the employment, conduct, movement, and separation of public officers and employees. Eperiam v. FSM, 20 FSM R. 351, 354 (Pon. 2016).

The FSM Supreme Court cannot entertain Public Service System disputes until all administrative remedies have been exhausted, and, without a final decision, the court has no authority to hear the dispute. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

A former employee may still pursue a grievance through the public service system administrative procedure if the grievance arose while the employee was a public service system member, especially if the grievance was pending at the time the employee left the public service system since access to the administrative procedure is not precluded even though the aggrieved party is no longer a public service system employee. Eperiam v. FSM, 20 FSM R. 351, 355 (Pon. 2016).

A permanent employee is an employee who has been appointed to a position in the public service who has successfully completed a probation period. Eperiam v. FSM, 20 FSM R. 351, 355 n.2 (Pon. 2016).

Declaratory judgment is the least intrusive judicial remedy. Usually it is enough that the courts advise the agency on the law and allow the agency the flexibility to determine how best to bring itself into compliance. Notably, under the arbitrary and capricious standard, as required by the Public Service System Act, the court must be very careful to fashion a relief so as not to inappropriately infringe on the function of the agency. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

Every new employee must successfully serve a probation period before becoming a regular employee, and the Public Service System Regulations require that the probationary period last at least six months and that it can be extended to up to one year. Alexander v. Hainrick, 20 FSM R. 377, 379 (App. 2016).

A Presidential administrative order about vehicle use cannot be applied to the Public Auditor because, under the Constitution, the Public Auditor is independent of administrative control. Alexander v. Hainrick, 20 FSM R. 377, 382 (App. 2016).

When a person's employment is established pursuant to shipping articles, which is a contract between the FSM national government and seamen, it is unlike employment positions protected under the Public Service System, since there is no continued expectation of employment because the shipping articles have a one-year duration, and may be renewed upon expiration. Gilmete v. Peckalibe, 20 FSM R. 444, 450 (Pon. 2016).

A seaman employed by the FSM is a contract employee and therefore does not fall under the purview of Title 52 and would not be required to have his grievance reviewed at the administrative level before filing suit in the FSM Supreme Court. Gilmete v. Peckalibe, 20 FSM R. 444, 450 (Pon. 2016).

Although an aggrieved seaman, employed by the FSM, may file a petition at the administrative level, he, as a contract employee not covered under the FSM Public Service System, is free instead, to file suit in the FSM Supreme Court, which has exclusive jurisdiction over admiralty and maritime claims. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

Because of the unique classification of seamen and their rights as employees, along with the limitations when it comes to the termination of their employment, and because this class of FSM national government employees is distinct, and in line with FSM Constitution Article XI, § 6(a), the FSM Supreme Court should exercise its exclusive jurisdiction over the matter rather than confer authority to an administrative body. Gilmete v. Peckalibe, 20 FSM R. 444, 451 (Pon. 2016).

Government employment that is property within the meaning of the due process clause cannot be taken without due process. To be property protected under the FSM Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. These assurances may come from various sources, such as statute, formal contract, or actions of a supervisory person with authority to establish terms of employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

Although a governmental entity's breach of contract, without more, does not constitute a civil rights or due process violation, a person who has been employed for twelve years under a series of one year contracts could prove that by that length of employment, there was an unwritten claim to continued employment. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

When the executive branch was substantially responsible for conducting administrative tasks in relation to the plaintiffs' employment as well as assigning work to them; when the person with the power to renew and approve their contracts was the allottee, the FSM President, who designated a sub-allottee; when the past contracts were also signed by the FSM Attorney General and for each of the plaintiffs' past periods of employment were prepared by procuring a form from the Attorney General's office and working with the suballottee's employees to complete, after which the FSM Attorney General and the suballottee would sign them; when no one in Congress ever signed any of the plaintiffs' contracts; and when the

completed time sheets were submitted, reviewed and approved and signed by the suballottee and forwarded to the Department of Finance for disbursement of wages, the preponderance of the evidence supports the conclusion that the plaintiffs were executive branch employees. There was substantial evidence to confirm that the plaintiffs were performing work to execute the laws passed by Congress by implementation of public projects. That is to say that the plaintiffs' work was executive in nature. Linter v. FSM, 20 FSM R. 553, 560 (Pon. 2016).

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Courts may not speculate as to the powers and duties of the office of the Attorney General, but must look to the wording of the relevant law, and further, may not speculate as to the probable intent of the legislature apart from the words. Truk v. Robi, 3 FSM R. 556, 562 (Truk S. Ct. App. 1988).

The Truk Attorney General represents the government in legal actions and is given the statutory authority pursuant to TSL 5-32 to conduct and control the proceedings on behalf of the government and, in absence of explicit legislative or constitutional expression to the contrary, possesses complete dominion over litigation including power to settle the case in which he properly appears in the interest of the state. Truk v. Robi, 3 FSM R. 556, 561-63 (Truk S. Ct. App. 1988).

Under Rule 1.11 of the Truk State Code of Professional Responsibility, a lawyer may not represent a private client in connection with a matter in which the lawyer participated "personally and substantially" as a public officer or employee, unless the appropriate government agency consents after consultation. Nakayama v. Truk, 3 FSM R. 565, 570 (Truk S. Ct. Tr. 1987).

For purposes of Rule 1.11, an attorney who, as a government attorney, signs his name to a lease agreement, approving the lease "as to form," is personally and substantially involved. Nakayama v. Truk, 3 FSM R. 565, 571 (Truk S. Ct. Tr. 1987).

An attorney holding public office should avoid all conduct which might lead the layman to conclude that the attorney is utilizing his former public position to further his subsequent professional success in private practice. Nakayama v. Truk, 3 FSM R. 565, 572 (Truk S. Ct. Tr. 1987).

The Governor, as all public officials, occupies a fiduciary relationship to the state he serves, may not use his official power to further his own interest, and shall cooperate with any legislative investigating committee. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

It is unreasonable for a public official, required by law to cooperate with legislative investigating committees, to have an expectation of privacy in matters that are linked to his performance in office, and it is unreasonable for a public official, such as the Governor, who is a trustee of the state's finances and who owes a fiduciary duty to the state to expect that his personal finances will be kept private if there is some reason to believe he has violated his trust. In re Legislative Subpoena, 7 FSM R. 261, 267 (Chk. S. Ct. Tr. 1995).

All citizens generally have the duty to, and state officials are obligated by statute to, cooperate with legislative investigations. These obligations of citizenship and public office are linked with the assumption that the legislature will respect individuals' constitutional rights, including the right of privacy. In re Legislative Subpoena, 7 FSM R. 328, 333-34 (Chk. S. Ct. App. 1995).

All Chuuk public officers are statutorily required to cooperate with legislative investigations, but an officer being tried in the Senate on a case of impeachment after the House of Representatives has voted a bill of impeachment is no longer required to cooperate. In re Legislative Subpoena, 7 FSM R. 328, 336 (Chk. S. Ct. App. 1995).

A commitment in a personnel action form for permanent employment without the existence of an appropriation to fund such a position violates the Truk Financial Management Act. Hauk v. Terravecchia, 8

FSM R. 394, 396 (Chk. 1998).

Granting of permanent employment without advertisement, examination (if required) and the preparation of a eligible list by the Personnel Officer violates the Truk State Public Service System Act. Hauk v. Terravecchia, 8 FSM R. 394, 396 (Chk. 1998).

Principles of contract are inapplicable to employment cases when the proper issue is whether plaintiff has shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Hauk v. Terravecchia, 8 FSM R. 394, 396 (Chk. 1998).

The regulations provide in part that overtime must be requested by the immediate supervisor and approved by his superior or the department head. Osi v. Chuuk, 8 FSM R. 565, 566 (Chk. S. Ct. Tr. 1998).

Government employees who worked overtime during inaugural ceremonies are not entitled to recovery when there is no convincing evidence that they were directed to work overtime by the proper authority such as would entitle them to overtime pay. Osi v. Chuuk, 8 FSM R. 565, 566 (Chk. S. Ct. Tr. 1998).

Overtime voluntarily performed is not compensable. Osi v. Chuuk, 8 FSM R. 565, 566 (Chk. S. Ct. Tr. 1998).

The Governor of Chuuk has no constitutional or statutory power or authority to appoint an acting Executive Director of the Board of Education or head of the Education Department other than as provided for in section 4, article X, Chuuk Constitution and that any other appointment to that position is void. Welle v. Walter, 8 FSM R. 572, 573-74 (Chk. S. Ct. Tr. 1998).

Only the lawful Director or Head of Education is entitled to all the rights, powers, privileges and emoluments thereof, including the benefits of office. Welle v. Walter, 8 FSM R. 572, 574 (Chk. S. Ct. Tr. 1998).

The Chuuk Attorney General has no duty to act on a successful plaintiff's behalf in collecting the plaintiff's judgment against the state. Judah v. Chuuk, 9 FSM R. 41, 41-42 (Chk. S. Ct. Tr. 1999).

A public employee who explained that he would be absent because he contested the demotion, was not absent without explanation as required by the Public Service regulations and statute for abandonment of his job. Marar v. Chuuk, 9 FSM R. 313, 315 (Chk. 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 prevailing rule is that when the Constitution provides no direct authority to establish qualifications for office in excess of those imposed by the Constitution, such qualifications were unconstitutional by their very terms and under equal protection, due process, and freedom of speech and assembly. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

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).

A person entering upon a public office is generally required to qualify by performing all the steps customarily or legally required to hold the office. This includes the taking of an oath of office and attendance upon the duties of the office. Songeni v. Fanapanges Municipality, 10 FSM R. 308, 309 (Chk. S. Ct. Tr. 2001).

When the plaintiffs have never qualified for the public office for which they seek compensation, their case will be dismissed. Songeni v. Fanapanges Municipality, 10 FSM R. 308, 309 (Chk. S. Ct. Tr. 2001).

When the state has not paid plaintiff employees as mandated by its state law and has alleged as affirmative defenses that a supervening cause prevented performance and that funds intended to pay lapsed, frustrating performance, these are defenses of payment, not liability, and the plaintiffs are entitled to judgment as a matter of law, the liability or obligation resting on the public law of the defendant state itself with the affirmative defenses being inadequate as a matter of law as to liability. Saret v. Chuuk, 10 FSM R. 320, 322-23 (Chk. 2001).

Since the Oneisomw municipal constitution provides for succession in the event of a mayor's death or disability, that document, not Article VI, § 1, nor Article XIII, § 1 of the Chuuk Constitution, governs succession to the position of Mayor of Oneisomw upon the mayor's passing. In re Oneisomw Election, 11 FSM R. 89, 92 (Chk. S. Ct. Tr. 2002).

Neither Article VI, § 1, nor Article XIII, § 1 of the Chuuk Constitution provides authority to the Governor to appoint any person to any municipal office. Absent any state law authorizing the Governor to so act, he is without power to affect municipal political offices in any manner. In re Oneisomw Election, 11 FSM R. 89, 92 (Chk. S. Ct. Tr. 2002).

Under Article XIII, § 5 of the Chuuk Constitution, if rules of succession to the office of municipal mayor in the event of the mayor's death or disability are to be found anywhere, they are to be found in the municipality's constitution and laws. In re Oneisomw Election, 11 FSM R. 89, 92 (Chk. S. Ct. Tr. 2002).

The Governor cannot interfere with the political rights of a municipality's people by appointing a mayor when the municipal constitution has provided for the orderly succession of an elected official to that office. Such an appointment is void. In re Oneisomw Election, 11 FSM R. 89, 93 (Chk. S. Ct. Tr. 2002).

While under normal circumstances exhaustion of administrative remedies is a pre-requisite to bringing an action in court challenging the constitutionality of personnel actions, an exception to this general rule exists. When exhaustion of administrative remedies is rendered futile, due to the bad faith, improper actions or predetermination of the administrative body itself, exhaustion of the administrative process is not required, and redress may be immediately sought in the courts. Tomy v. Walter, 12 FSM R. 266, 270 (Chk. S. Ct. Tr. 2003).

When it is clear that any attempt by plaintiff to obtain relief through the Public Service Act would have been futile, the court has jurisdiction to hear the plaintiff's claims. Tomy v. Walter, 12 FSM R. 266, 270 (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).

A plaintiff, who failed to prove monetary damages, is still entitled to a permanent injunction, against the Governor, the Director of Personnel, the Director of Budget, and any designee acting on their behalf or in their stead, permanently enjoining them from interfering in any way or manner with plaintiff's lawful exercise of all of the duties, obligations and responsibilities of his office. Tomy v. Walter, 12 FSM R. 266, 273 (Chk. S. Ct. Tr. 2003).

Statutes clearly prohibit Chuuk state employees from engaging in any outside employment not compatible with the discharge of the employee's duties to the state. Hartman v. Chuuk, 12 FSM R. 388, 396 (Chk. S. Ct. Tr. 2004).

Under the Reorganization Act, gubernatorial nomination and senatorial advice and consent is required for principal officers or directors, deputy directors, principal advisors, and other officials in positions requiring such advice and consent as prescribed by statute. Chiefs (division heads) are not designated as officials subject to senatorial advice and consent, although the Legislature could easily have included all (or some) of them, if it so desired. Robert v. Simina, 14 FSM R. 257, 260 (Chk. 2006).

Considering the provisions making chiefs out of former department or office heads division heads against the entire reorganization act's background to arrive at an interpretation consistent with the act's other provisions and with its general design, the court can only conclude that the Legislature's intent when it reorganized the executive branch was that none of the positions designated as chiefs were principal officers or were subject to senatorial advice and consent. Robert v. Simina, 14 FSM R. 257, 260 (Chk. 2006).

The Chuuk personnel regulations permit the hiring of person through non-competitive examinations when the positions require rare or special qualifications which did not permit competition. Robert v. Simina, 14 FSM R. 257, 261 (Chk. 2006).

When the affidavit of the former Chief of the Division of the Personnel was conclusory and potentially self-serving affidavit since his employment situation and termination is the same as the plaintiffs' and when it averred that the plaintiffs were hired in their public service system positions as chiefs without the usual competitive examination because they were the only persons qualified for their jobs and that their positions required rare or special qualifications which did not permit competition and when there is no evidence presented that a non-competitive examination of any of the plaintiffs was ever held, the affidavit is thus insufficient to show that there is no genuine issue of material fact that, after the reorganization statute had abolished their former positions that the plaintiffs were lawfully hired to fill the new public service positions. Robert v. Simina, 14 FSM R. 257, 261 (Chk. 2006).

The public and the state are the losers and public policy is violated when the public service system procedures, which are designed to obtain the best qualified public employees, are not followed. Robert v. Simina, 14 FSM R. 438, 445 (Chk. 2006).

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).

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).

The purpose of a personnel action form is to implement government policies and regulations as well as contractual arrangements. The personnel action form reflects and implements rights derived from other sources. It does not independently establish rights. Billimon v. Refit, 16 FSM R. 209, 212 (Chk. 2008).

Government employment contracts contain the terms of employment, regardless of what is contained in the corresponding personnel action form. In other words, the contract speaks for itself, and the personnel action form cannot be used to modify the terms of the contract. Billimon v. Refit, 16 FSM R. 209, 212 (Chk. 2008).

A personnel action form cannot modify the terms of a person's employment to make him a permanent employee if his position was an exempt or contract employee and he had not gone through the proper statutory procedures to become a permanent employee under the Truk State Public Service System Act. Billimon v. Refit, 16 FSM R. 209, 212 (Chk. 2008).

A state employee who has been hired to fill a "permanent" position, must first successfully serve a

probationary period. Billimon v. Refit, 16 FSM R. 209, 212 (Chk. 2008).

Any "permanent" designation in a new hire's first personnel action form is suspect because it, if the person were hired for a position covered by the Truk Public Service System, should designate his status as probationary, with a later personnel action form changing his status from probationary to permanent. Billimon v. Refit, 16 FSM R. 209, 212 (Chk. 2008).

The Truk Public Service System Act requires that its covered employees be paid a differential for work performed at night, on holidays, or for overtime. Weriey v. Chuuk, 16 FSM R. 329, 331 (Chk. 2009).

A public service system employee's claim or disagreement over the employee's pay, working conditions, or status is a grievance for which the Truk Public Service System Act requires that regulations prescribe a system for hearing. The Truk Public Service Regulations provide for a Truk Public Service Grievance System that covers any employment matter of concern or dissatisfaction to an eligible employee. The regulations contain two grievance procedures, an informal grievance procedure, and a formal grievance procedure. An employee must show evidence of having pursued the employee's grievance informally before the employee can utilize the formal grievance procedure. Weriey v. Chuuk, 16 FSM R. 329, 331 (Chk. 2009).

If an employee's immediate supervisor does not settle a grievance to the employee's satisfaction, then the employee may forward the grievance in writing to the State Personnel Officer and request review by a formal panel. The formal panel will then be provided with the necessary government records, hear the grievance, and make its recommendation to the Governor. The Governor then resolves the grievance. The administrative procedure does not include asking the Director of the Department of Administrative Services to resolve the matter (unless the Director is the aggrieved employee's immediate supervisor). Weriey v. Chuuk, 16 FSM R. 329, 331 (Chk. 2009).

When an employee has made no attempt to seek redress through the administrative procedure although she apparently did seek payment directly from the Department of Administrative Services, which is not part of the administrative grievance procedure, she has not exhausted her administrative remedies before she filed suit because neither the Department of Administrative Services nor its Director is the arbiter of administrative grievances. Weriey v. Chuuk, 16 FSM R. 329, 332 (Chk. 2009).

An employee has not shown that trying to obtain relief for unpaid wages through the administrative process would have been futile when the only evidence is the Director of Administrative Services's letter that applied only to employees in another department whose paychecks were not processed since there is no evidence that funds were not available to pay employees in the employee's department or that liability would be denied for any just claim for unpaid wages on the ground no funding was then available, especially since a claimed inability to pay is not a defense to liability. Thus, whether the state had funds to pay has no bearing on whether it is liable for payment. Weriey v. Chuuk, 16 FSM R. 329, 332 (Chk. 2009).

The Chuuk Constitution only requires that legislation changing the transitional salaries take effect after the general election. Doone v. Simina, 16 FSM R. 487, 489 n.1 (Chk. S. Ct. Tr. 2009).

The Constitution set the transitional salaries of the Governor ($25,000) and Lieutenant Governor ($22,000). The transitional salaries were to remain in effect until after the first general election in March of 1990. Then, new salaries could be statutorily prescribed. Under the new Constitution, salaries of the presiding members of the Legislature, Governor and Lieutenant Governor could only be increased by voter referendum and only by an amount not to exceed $2,000 for each officer. Doone v. Simina, 16 FSM R. 487, 490 (Chk. S. Ct. Tr. 2009).

Constitutional, statutory, and regulatory provisions determine a public officer's right to a given salary. A public officer may only collect and retain such compensation as authorized by law. Doone v. Simina, 16 FSM R. 487, 490 (Chk. S. Ct. Tr. 2009).

Statutes setting salaries of public officials, like any other statutes, are presumed constitutional, and it is the court's duty to determine whether statutes conform to the Constitution, and if they do not, they will be treated as null and void. Doone v. Simina, 16 FSM R. 487, 490 (Chk. S. Ct. Tr. 2009).

The Chuuk Legislature was constitutionally authorized to initially set post-transitional salaries without a voter referendum. Doone v. Simina, 16 FSM R. 487, 491 (Chk. S. Ct. Tr. 2009).

The salaries of the governor and lieutenant governor were set by Chuuk Constitution article XV, section 10 during the transition period, and those salaries were only effective, according to that provision, until prescribed by statute. Doone v. Simina, 16 FSM R. 487, 491 (Chk. S. Ct. Tr. 2009).

As with the salaries of legislative member salaries, the salaries of the governor and lieutenant governor were only subject to the referendum provision once they had been initially set from the transitional salaries and since Chk. S.L. No. 6-91 was the first law under the new government to set the salaries of the governor and lieutenant governor, Chk. S.L. No. 6-91 validly set the salaries of the governor and lieutenant governor. Doone v. Simina, 16 FSM R. 487, 491 (Chk. S. Ct. Tr. 2009).

The court can find no provision in the public service system regulations that precludes a former state public service system employee from pursuing a grievance that arose during the state employee's period of employment through the public service system administrative grievance procedure even though the aggrieved party is no longer a public service system employee. Indeed, if the grievance involved termination, the regulations specifically provide for it. Aake v. Mori, 16 FSM R. 607, 609 (Chk. 2009).

It would seem incongruous, if a public service system employee could avoid the administrative grievance procedure and have an immediate right to resort to court action merely by retiring, resigning, or otherwise leaving public service system employment (especially if a grievance were pending at the time the employee left the public service system). A former state employee may still pursue a grievance through the public service system administrative procedure if the grievance arose while the former employee was a member of the public service system. Aake v. Mori, 16 FSM R. 607, 609 (Chk. 2009).

A position is either filled by a person identified on an eligibility list or a promotional list and the requirements for filling a position depend on the list. No requirement exists in the Chuuk Public Service System Act that an individual slated for promotion need to submit to an examination or that the position to which he or she is promoted be advertised. Simina v. Kimeuo, 16 FSM R. 616, 621, 623 (App. 2009).

Once an employee of the Public Service System reaches the age of sixty years, he must retire from the Public Service within thirty days. Simina v. Kimeuo, 16 FSM R. 616, 622 (App. 2009).

The Chuuk Board of Education has eight members who are appointed by the Governor with the advice and consent of the Senate. The Education Department head, who is also appointed by the Governor with the advice and consent of the Senate, serves as the Board's executive director. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

A vacancy on the Board of Education occurs when a member dies; resigns; is removed from the Board; has been incapacitated or disabled; or becomes a Department of Education employee or staff, except the member who represents the public school system, and, if there is a vacancy, the Governor appoints a replacement member who serves for the duration of the departed member's term. The vacancy provision's plain meaning is that temporary appointments are only be made when a vacancy occurs for one of the enumerated reasons; otherwise, an incumbent's term must expire and a new appointee must first be confirmed by the Senate before the new incumbent can sit on the Board. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

The Director's responsibilities to the Board of Education include duties and functions as assigned by the Board, attendance at Board meetings, and providing logistical and administrative needs to the Board and other needs as declared by the Board, and the Board is the only authority that may remove the Director,

which is by a majority vote of all Board members for misconduct, incompetency, neglect of duty, or other good cause. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

Since the expiration of a board member's term is not one of the enumerated occurrences giving rise to a vacancy, it follows that during any interim after the expiration of the incumbent's term and the confirmation of a new appointment, no vacancy is created. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

The Board of Education Act should be read so that its provisions are internally consistent and sensible and each provision should be considered against the entire Act's background so as to arrive at a reasonable interpretation consistent with other specific provisions and the Act's general design. Since the Board's statutorily-mandated purpose is to provide control and direction and to formulate policy for the Chuuk educational system, if the Act were construed so as to render the Board unable to perform its duties each time members' terms expired without replacements having been confirmed, the Board's ability to discharge its duties would be severely handicapped and its purpose to act towards the betterment of education in Chuuk would be undermined and since the Act contemplates an independent board with the power to perform its functions without interruption, construing the provisions for filling vacancies and appointments, and taking into account the Board's statutory purpose and the Act's overall intent, holdover incumbents continue to hold their seat until there are new incumbents. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

When no provision is made by law for an official's holdover, the official is regarded as a de facto official. A holdover official's de facto authority ends when the office is filled by appointment or election, as provided by law. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 62 (Chk. S. Ct. Tr. 2010).

A de facto officer is one who is in possession of an office, and discharging its duties, under color of authority. In the context of incumbent de facto officials, "under color of authority" means authority derived from an election or appointment, however irregular or informal, so that the incumbent is not a mere volunteer. The principle of de facto authority is based on the public's interest in having a safeguard against unnecessary interruption of public governance. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 62 (Chk. S. Ct. Tr. 2010).

The generally applied rule is that where a term of office is fixed by law simply for a period of time and no particular date is established for the beginning or ending of the term, each incumbent takes a term running from the date of his appointment equal in duration to the period of time fixed; and a new term does not begin at the end of the preceding term but only when the new incumbent is appointed, or holdover incumbent is reappointed. Thus, in the absence of a constitution or statue providing otherwise, an officer is entitled to hold his office until his successor is appointed or elected and has qualified. In this context, the term "holding over" when applied to an officer, implies that the office has a fixed term and the incumbent is holding the office into the succeeding term. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 62 (Chk. S. Ct. Tr. 2010).

The de facto doctrine is applied even in cases of executive branch officials so long as it is not otherwise expressly, or by clear implication, prohibited by law. The reasons for the application of the de facto doctrine to independent board members appears to be even stronger than other executive branch officials, since they are statutorily mandated to exercise their duties and powers independently. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 62 (Chk. S. Ct. Tr. 2010).

In instances where there is no FSM precedent, the court may consider cases from other jurisdictions in the common law tradition. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 62 n.2 (Chk. S. Ct. Tr. 2010).

What is clear from the Board of Education Act is that a term's expiration does not create a vacancy and, other than the confirmation of new members, there is otherwise no provision that would allow the Board to proceed uninterrupted after the expiration of board member terms and since the Act does not set a fixed date for the beginning and ending of Board member terms but only for staggered five year terms and

because the underlying public policy for the application of the de facto doctrine is especially applicable when the Board of Education's purpose is to provide uninterrupted educational services to the Chuuk public, a holdover incumbent Board member exercises de facto authority until there is a new incumbent. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 63 (Chk. S. Ct. Tr. 2010).

Board members were due compensation and benefits while they continued discharging their duties as holdover members. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 63 (Chk. S. Ct. Tr. 2010).

When Chuuk has acknowledged that any further pursuit by the employee of his administrative remedies would be futile, Chuuk cannot, since futility is a legal exception to the exhaustion of administrative remedies doctrine, prevail on its defense that the employee has failed to exhaust his administrative remedies or on the ground that the court lacks subject-matter jurisdiction because that ground was based on the failure to exhaust his administrative remedies. Aunu v. Chuuk, 18 FSM R. 48, 50 (Chk. 2011).

Since, by statute, a governor must send a nomination to the Senate within 45 days of a vacancy in an office requiring the Senate's advice and consent and since a resignation is an act or an instance of surrendering or relinquishing of an office or a formal notification of relinquishing an office or position, when cabinet officers and special assistants have submitted "courtesy resignations," those offices are vacant and new nominations (or renominations) must be submitted. The court cannot discern any difference (in result) between a "courtesy resignation" and a resignation for other reasons since a resignation is a resignation. Senate v. Elimo, 18 FSM R. 137, 140 (Chk. S. Ct. Tr. 2012).

A state employee's speech that concerns genuine public issues is protected speech. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

Since the Executive Director of the Department of Education is an office uniquely created by the Chuuk Constitution, and since both the Chuuk Constitution and the applicable statute provide the sole means by which an Executive Director may be removed, the court must conclude that the general statutory provisions of the Administrative Procedures Act do not apply to the removal of the head of the Education Department. When it comes to the Executive Director's removal, there is no higher administrative agency than the Board of Education. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648-49 (Chk. S. Ct. Tr. 2015).

– Chuuk – Termination

While the principal officers and advisors serve during the current term of the appointing Governor unless sooner removed by the Governor, the dismissal of non-policy making employees from public employment solely on the ground of political affiliation is not permissible. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 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 public employer may not discharge either a tenured or a non-tenured employee for the reasonable exercise of constitutional rights such as freedom of speech. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

Termination resulting from the decision of any government employee (other than a "principal officer" or "advisor") to run for public office violates that employee's free speech and association rights as guaranteed by the Chuuk Constitution, as well as depriving the employee of a property interest (his right to continued employment) without due process of law. Tomy v. Walter, 12 FSM R. 266, 271-72 (Chk. S. Ct. Tr. 2003).

When plaintiffs sue the state for wrongful termination, the proper issue is whether the plaintiffs have shown a legal entitlement to permanent employment under the Truk State Public Service System Act. But when none of the proper procedures were followed to hire any of the plaintiffs before (or after) the Governor

appointed them to fill the permanent chief positions; when no competitive process was involved when the plaintiffs became chiefs, none of the plaintiffs have shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Robert v. Simina, 14 FSM R. 438, 442 (Chk. 2006).

The Truk Public Service System Regulation that allows persons whose public service system positions have been abolished by a reduction in force to be reassigned, without the loss of permanent status, to another vacant public service position for which they are qualified applies only to persons who held permanent public service system positions before their positions were abolished. It does not apply to political appointees whose exempt advice-and-consent positions are abolished by the Legislature. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

Even when a reduction in force of the public service system is necessary, a competitive process is mandated to assure equitable competition, recognition of merit, and the public interest. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

When, even though discharged state employees held their position without legal entitlement, they are entitled to compensation for any work done for which they were not paid. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

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

When 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).

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

There is no authority, precedent, or principle of law that would require the state to obtain judicial approval before terminating an employee. Robert v. Simina, 14 FSM R. 438, 445 (Chk. 2006).

When plaintiffs sue the state for wrongful termination, the proper issue is whether the plaintiffs have shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Kimeuo v. Simina, 15 FSM R. 664, 666 (Chk. 2008).

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).

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).

When, in a wrongful termination case, no evidence of physical pain or a physical manifestation of suffering was introduced, no damages can be awarded for pain and suffering because the rule is well settled that to award damages for pain and suffering, such must be the result of physical injury or of a physical manifestation of emotional distress. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

When a plaintiff sues the State of Chuuk (and its officers) for wrongful termination, the proper issue is whether the plaintiff has shown a legal entitlement to permanent employment under the Truk State Public Service System Act. But when the proper statutory procedures were not followed to hire the plaintiff as a "permanent" employee, the plaintiff has not shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Billimon v. Refit, 16 FSM R. 209, 211 (Chk. 2008).

Since the State Public Service System applies to all state government employees unless the employee is exempt, when a state employee's position as a division chief was a lawful non-exempt position under the Executive Branch Organization Act, the proper issue for consideration regarding a wrongful termination matter is whether the plaintiff had a legal entitlement to permanent employment under the Public Service System Act. Simina v. Kimeuo, 16 FSM R. 616, 620-21 (App. 2009).

Removal of a Public Service System employee is a disciplinary action or termination and the employee must be given at least five work days advance written notice before removal. The action taken must be for good and justifiable cause and must be appropriate to the infraction, if there was one. The employee must also be informed of his appeal rights. Simina v. Kimeuo, 16 FSM R. 616, 622, 623-24 (App. 2009).

When the state employee was not given the required five business days' notice concerning removal/dismissal from permanent employment but was notified that effective immediately he was dismissed and replaced pursuant to an Executive Order and was not given notice of his appeal rights, this did not comply with the protections afforded a Public Service System classified employee and he was thus not afforded due process of law and was thus wrongfully terminated. Simina v. Kimeuo, 16 FSM R. 616, 622 (App. 2009).

A Public Service System classified employee has a legal entitlement to permanent employment under the Public Service System Act and should be afforded due process rights not available to an exempt political appointee. Termination of an exempt political appointee and non-exempt Public Service System employee are not handled the same way. Simina v. Kimeuo, 16 FSM R. 616, 623 (App. 2009).

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).

Being forced to resign a Chuuk public service system job on December 2, 2002, because the employee was going to run for a seat in the Chuuk House of Representatives, was, as a matter of law, illegal because the statute and regulations requiring such resignations had already been held unconstitutional. Dungawin v. Simina, 17 FSM R. 51, 53 (Chk. 2010).

It would have been futile for Chuuk public service system employees, who were forced to resign in December 2002 because they wished to be candidates in the 2003 election, to pursue their administrative remedies before proceeding to court. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

The applicable limitations period for a wrongful termination suit against the State of Chuuk is six years (subject to statutory tolling provisions). Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

Even if the Board of Education had the authority to terminate the Director, the Board was still required to adhere to appropriate procedures and requirements for the termination to be effective. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 63 (Chk. S. Ct. Tr. 2010).

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).

A wrongfully discharged government employee has a duty to mitigate his damages by actively looking for and accepting any reasonable offer of employment; otherwise back pay damages cannot be awarded. If the former government employee obtains other employment, the amount he is awarded in back pay must be reduced by the amount he mitigated his damages – by the amount he received from the other employment – since otherwise he could recover a windfall, which would violate the principles of compensatory damages. Sandy v. Mori, 17 FSM R. 92, 94 (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).

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).

Reinstatement to his former position (or its equivalent) is the usual remedy for a state public service system employee who has shown that he was wrongfully discharged. This is true even though the former position has been filled by another employee since if the existence of a replacement constituted a complete defense against reinstatement, then reinstatement could be effectively blocked in every case simply by immediately hiring an innocent third-party after the unlawful discharge has occurred, thus rendering the reinstatement remedy's deterrent effect a nullity. Sandy v. Mori, 17 FSM R. 92, 96 (Chk. 2010).

Since the appropriateness of an equitable remedy of reinstatement is determined by current conditions rather than past conditions, the court may reinstate a wrongfully-discharged state employee provided that the former employee is ready, willing, and able to work and is ready for assignment. Sandy v. Mori, 17 FSM R. 92, 96 (Chk. 2010).

In a case alleging a retaliatory discharge, the plaintiff bears the burden to demonstrate that his conduct is both constitutionally protected and a substantial or motivating factor in his government employer's decision to discharge him. If the employee has met this burden, then the burden shifts to the employer to demonstrate that it would have taken the same action in the absence of the protected conduct. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

A plaintiff has not met his burden to prove that his protected speech was a substantial or motivating factor in his termination when he was not terminated because he engaged in protected speech about a patient's treatment but his termination occurred many months later and after a much more substantial ground and the more likely motivating factor – his behavior during the USNS *Mercy* visit and because his work performance while a probationary employee was not up to the level of professionalism expected of a practical nurse as shown by the series of incidents of unprofessional conduct. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

A plaintiff's termination or discharge was not unlawful when, even if he had been able to prove that his constitutionally-protected conduct had been a substantial or motivating factor in his termination and the burden had have shifted to the defendants, he still would not prevail because the defendants demonstrated

that they would have taken the same action in the absence of the protected conduct because of his probationary status and his unsatisfactory and unprofessional conduct prevented him from being converted from a probationary employee to a permanent employee and he would have been terminated anyway. Tither v. Marar, 18 FSM R. 303, 306 (Chk. 2012).

The Director of Education does not serve at the Board's, or the Governor's, pleasure. The Governor cannot remove the Director from office. Only the Board, by majority vote, can remove the Director, and then only for one or more of four reasons: misconduct, incompetency, neglect of duty, or other good cause. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

When at a minimum, the Education Director should have been given notice of the allegations and evidence on which the Board based its resolution to terminate her, and she should have been given an opportunity to respond or to explain her actions or omissions and to rebut any false allegations but was not, her likelihood of success on her due process claim seems almost certain because this is the essence of due process – notice and an opportunity to be heard. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

When an agency action gives the court no record to review, the better course in most instances, and the most likely course of action is that the matter would be remanded to the administrative agency – in this case, the Board of Education – for it to give the terminated employee notice of which of her actions and omissions it considers might be grounds for her removal and to give her an opportunity to respond and explain or justify or rebut the allegations against her before it votes on whether to remove her. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 649 (Chk. S. Ct. Tr. 2015).

– Compensation

When an individual begins working for a federal government agency, he is justified in believing that he will be allowed to hold that position until terminated by a supervisor and in believing that he will be compensated for his work. Falcam v. FSM, 3 FSM R. 194, 198 (Pon. 1987).

An expectation of being paid for work already performed is a property interest qualifying for protection under the Due Process Clause of the FSM Constitution. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

Any withholding of private property, such as a government employee's paycheck, without a hearing can be justified only so long as it take the authorized payor to obtain a judicial determination as to the legality of the payment being withheld. Falcam v. FSM, 3 FSM R. 194, 200 (Pon. 1987).

The amount of compensation a public employee receives is not based on quasi-contract doctrines such as quantum meruit or unjust enrichment, but instead is set by law, even if the actual value of the services rendered by a public officer is greater than the compensation set by law. Sohl v. FSM, 4 FSM R. 186, 192 (Pon. 1990).

Public employees are only entitled to receive the benefits prescribed by law for positions to which they have been duly appointed, even if an officer or employee has performed duties or services above and beyond those of the appointed office. Sohl v. FSM, 4 FSM R. 186, 192 (Pon. 1990).

A public officer claiming certain compensation or other benefits must show a clear legal basis for his right to these emoluments; hopes and expectations, even reasonable ones, are not enough to create that legal entitlement, nor are any moral obligations which may be incurred, without clear warrant of law. Sohl v. FSM, 4 FSM R. 186, 193 (Pon. 1990).

The compensation of public officials in the FSM is not determined by a contract for specific services, express or implied, but by the judgment of the people, through their elected representatives and executive officials who properly exercise delegated power pursuant to statutory or other authorization; specifically, the FSM Constitution and statutes establish how a person may attain public office, and the National Public

Service System Act and regulations thereunder set the compensation to be paid to holders of the respective offices. Sohl v. FSM, 4 FSM R. 186, 194 (Pon. 1990).

Where a public official claims additional compensation, it is inappropriate to ask whether he received compensation equal to the value of his services to the public, but instead the court must inquire whether he received the amount that was due to him by law or whether he can demonstrate a clear legal entitlement to the office which would have provided the compensation he now seeks. Sohl v. FSM, 4 FSM R. 186, 194 (Pon. 1990).

A temporarily-promoted employee is compensated at the step in the new pay level which is next above his current pay, and the employee must be informed in advance and must agree in writing that at the end of the temporary promotion, he will be returned to the former salary (grade and step) that he would be receiving had he remained in his former position. No temporary promotion can exceed one year. Isaac v. Weilbacher, 8 FSM R. 326, 332 (Pon. 1998).

Every permanent and probationary employee is to receive an annual written rating of performance. Employees who receive "Satisfactory" or "Exceptional" ratings are eligible for step increases within their pay level. Employees who receive "Less than Satisfactory" ratings are not eligible. The absence of a performance evaluation gives rise to the presumption that the individual was performing at a "Less than Satisfactory" level. Pay and step increases are discretionary. Isaac v. Weilbacher, 8 FSM R. 326, 336-37 (Pon. 1998).

Because Congress has not explicitly made employment contracts which violate 11 F.S.M.C. 1305 unenforceable, the FSM Supreme Court may properly decide whether a contravention of public policy is grave enough to warrant unenforceabillty. FSM v. Falcam, 9 FSM R. 1, 4 (App. 1999).

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).

Under 52 F.S.M.C. 164(3),overtime is determined by a three-prong test: 1) the employee is directed to work; 2) the employee does work; and 3) the employee has first worked forty hours straight time in the same week and more than eight hours on any single day. "Directed to work," indicates that an employee cannot work overtime on his own initiative, but must be instructed to work or have received prior approval by a supervisor or government official. "Does work," indicates that overtime compensation only accrues when an employee worked outside regular working hours, in accordance with instructions or directions given by the supervising authority. And an employee cannot begin to accrue overtime hours until and unless the employee first worked a minimum of forty hours in a regularly scheduled workweek and more than eight hours on any single day worked. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 76 (Pon. 2013).

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).

A calculation of actual hours worked may not include imputed hours because the meaning of the pertinent statutes regarding overtime is plain and unambiguous that overtime compensation will be allotted for actual hours worked only. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

Because overtime is based on actual hours worked, the automatic two-hour credit provision under the regulations is inconsistent with the statute and is, therefore, null and void. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

When Congress enacted unambiguous statutes it chose what the public policy is – that the FSM national government be paid in full for its expenses in clearing the ships and planes after hours and that those ships and planes pay for actual overtime work. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

When no one ever notified the plaintiffs that they must stop working in their respective positions or that they would not be paid for the work done from October 2014 to April 2015; when the government continued to assign them projects and retained the benefits conferred by their work, but did not compensate them for the work; when the plaintiffs never received notification from the government that their contracts had not or would not be renewed although the plaintiffs eventually became aware that the Project Control Documents that controlled their contracts were unsigned; when the government's consistent delay in renewing the contracts and disbursing wages was a common occurrence experienced by the plaintiffs during their previous years' contracts; and when the government continued to accept, approve, sign, and maintain the plaintiffs' submitted time sheets thereby implying assurances of forthcoming wages, the evidence, viewed in its entirety, presents a situation whereby the plaintiffs had a reasonable justified expectation to continued employment and, therefore, payment for those services rendered to the government's benefit between October 2014 and April 2015. Linter v. FSM, 20 FSM R. 553, 558 (Pon. 2016).

A government employee's pay is a form of property that a government cannot deprive the employee of without due process. Linter v. FSM, 20 FSM R. 553, 559 (Pon. 2016).

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

When the 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).

– Impeachment

Although the Chuuk Constitution does subject members of the judiciary to removal from office by impeachment, the court need not decide if this is the sole method a judge may be removed from office because the issuance of a writ of mandamus is not a removal action. All the court did by issuing the writ is to require the judge to follow the applicable law and remove himself from office by resignation when he became a political candidate. In re Failure of Justice to Resign, 7 FSM R. 105, 110 (Chk. S. Ct. App. 1995).

The Chuuk House of Representatives possesses the sole authority and power to pass a Bill of Impeachment seeking to remove those state officials responsible for misfeasance or malfeasance. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

The Chuuk House of Representatives has no criminal prosecution function. It is limited to passing laws and under the proper circumstance bringing bills of impeachment, which are not criminal in nature. In

re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

A committee of the legislative house constitutionally charged with the function of impeachment whose authorizing resolution empowered it to investigate the state's insolvency and the executive branch officers' misfeasance, malfeasance, or failure to carry out their duties and responsibilities, presented with evidence that the governor has illegal sources of income that may involve state funds is seeking relevant material related to its function when it seeks to subpoena the governor's bank records. In re Legislative Subpoena, 7 FSM R. 328, 333 (Chk. S. Ct. App. 1995).

All Chuuk public officers are statutorily required to cooperate with legislative investigations, but an officer being tried in the Senate on a case of impeachment after the House of Representatives has voted a bill of impeachment is no longer required to cooperate. In re Legislative Subpoena, 7 FSM R. 328, 336 (Chk. S. Ct. App. 1995).

A criminal information filed against a legislator who is the chairman of an impeachment committee while there is an article of impeachment currently being investigated will not be dismissed on the basis of a statute that provides criminal penalties for attempting to interfere with the impeachment process since the statute could not provide a blanket protection against prosecution for any member of an impeachment proceeding or it would lead to the absurd result that a member of an impeachment proceeding could commit any crime with impunity. Chuuk v. Robert, 15 FSM R. 419, 425 (Chk. S. Ct. Tr. 2007).

When an official has been impeached, a trial on criminal charges is not foreclosed by the principle of double jeopardy. Helgenberger v. U Mun. Court, 18 FSM R. 274, 279 (Pon. 2012).

Under ancient English practice, impeachment was a criminal proceeding to which "jeopardy of life or limb" attached; that is, anciently criminal punishment could be imposed in the impeachment proceeding but now a conviction on impeachment affects only the right to hold office and does not include criminal punishment or other public remedy. Helgenberger v. U Mun. Court, 18 FSM R. 274, 279 (Pon. 2012).

Under the practice in the FSM that has been inherited from the U.S., the extraordinary remedy by impeachment does not prevent an indictment and conviction thereunder, and does not extend beyond a removal from office and a disqualification to hold office. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

The remedy of impeachment has the single role of affecting only the right to hold office and is not intended to bar or delay another remedy for a public wrong. The other remedy is often a criminal prosecution. This is because the remedy of impeachment is not exclusive of any other public remedy for the same misbehavior, and if the cause for which the officer is punished is a public offense, he may also be indicted, tried, and punished. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

A single act of misconduct may offend the public interest in a number of areas and call for the appropriate remedy for each hurt. Thus it may require removal from office. It may also require criminal prosecution. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

Impeachment and removal from office is not criminal punishment under the FSM Constitution's double jeopardy clause. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

A government official's misconduct does not present a government with an irrevocable choice to either criminally prosecute the official or to impeach and try to remove that official from office. If the offending official has not resigned from office first, the government may do, and is usually expected to do, both. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

A former government official cannot claim he was subjected to double jeopardy because he was convicted of public offenses and then impeached and removed from office for those same offenses. Nor could he have claimed double jeopardy if he had first been impeached and removed from office and then

prosecuted for the same public offenses. Helgenberger v. U Mun. Court, 18 FSM R. 274, 280 (Pon. 2012).

Since, in a criminal case, a court is not constitutionally required to allow defense counsel to withdraw or to be replaced at a strategic moment in the proceedings, the right to counsel of an official who wanted to switch trial counsel before the end of his impeachment trial has not been violated even if that official had a constitutional right to counsel during his impeachment trial. Helgenberger v. U Mun. Court, 18 FSM R. 274, 281 (Pon. 2012).

While an impeachment conviction may not be appealable, a contempt conviction certainly is. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 n.6 (Pon. 2012).

– Kosrae

Written notice in a letter giving a limited-term employee three days' notice of the reasons for his two week suspension from work is sufficient compliance with the requirement of 61 TTC 10(15)(a), which provides that a suspended employee must receive notice of the reasons for suspension, and is also sufficient compliance with the notice requirements of due process under the Kosrae Constitution. Taulung v. Kosrae, 3 FSM R. 277, 279 (Kos. S. Ct. Tr. 1988).

To be property protected under the Constitution, the employment right must be supported by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Taulung v. Kosrae, 3 FSM R. 277, 280 (Kos. S. Ct. Tr. 1988).

A public officer's right to a given salary is based primarily upon constitutional, statutory, and regulatory provisions. Edwin v. Kosrae, 4 FSM R. 292, 298 (Kos. S. Ct. Tr. 1990).

The Kosrae Code contemplates the problem of persons performing services in excess of their prescribed duties, and KC 5.427 provided a means for compensating such extra labor. Edwin v. Kosrae, 4 FSM R. 292, 299 (Kos. S. Ct. Tr. 1990).

When a Kosrae state employee makes a claim for additional compensation or benefits, on grounds that he has been temporarily assigned to a position by detail, "acting" assignment, or temporary promotion and is performing services in excess of prescribed duties, the burden is on the employee to show that a clear legal basis exists for the employee's right to those emoluments. Edwin v. Kosrae, 4 FSM R. 292, 299 (Kos. S. Ct. Tr. 1990).

There is no provision in the laws of Kosrae that provides that Kosrae State is entitled to reimbursement of salary paid over and above a state employee's pay level. Edwin v. Kosrae, 4 FSM R. 292, 300 (Kos. S. Ct. Tr. 1990).

Representations by officials with authority to set and change salaries can alter the general rule that salaries are set by law and not contract. Edwin v. Kosrae, 4 FSM R. 292, 300 (Kos. S. Ct. Tr. 1990).

In order for a Kosrae state employee's salary to be set by contract and not law, it must be shown that direct representations were made to the employee regarding the fixing of a salary not otherwise determined by law and made by an official with legal discretion to do so. Edwin v. Kosrae, 4 FSM R. 292, 300 (Kos. S. Ct. Tr. 1990).

In Kosrae, a permanent employee has the right to hold his position during good behavior, subject to suspension, demotion, reduction-in-force, or dismissal, except when an employment contract provides otherwise. Edwin v. Kosrae, 4 FSM R. 292, 302 (Kos. S. Ct. Tr. 1990).

The right of Kosrae State to demote an employee is limited to disciplinary reasons based on good cause. Edwin v. Kosrae, 4 FSM R. 292, 303 (Kos. S. Ct. Tr. 1990).

Kosrae State has the right and the power to adjust its employment scheme according to the availability of funds and work. Edwin v. Kosrae, 4 FSM R. 292, 303 (Kos. S. Ct. Tr. 1990).

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

The public service system applies to all state employees except for listed exemptions, which include positions of a temporary nature. Taulung v. Kosrae, 8 FSM R. 270, 273 (App. 1998).

A regular or permanent state employee is an employee who has been appointed to a position in the public service in accordance with the statute and who has successfully completed an initial probation period of not less than six months nor more than one year. Taulung v. Kosrae, 8 FSM R. 270, 273 (App. 1998).

A state employee appointed to successive, discrete six-month temporary positions with terminations at the end of some of them, is not a permanent state employee or a member of the public service system. Taulung v. Kosrae, 8 FSM R. 270, 273-74 (App. 1998).

A management official may not suspend any employee without pay for a period of three working days or more, unless the management official gives the employee a written notice setting forth the specific reasons upon which the suspension is based and files a copy of the statement with the director. Taulung v. Kosrae, 8 FSM R. 270, 274 (App. 1998).

A limited-term employee does not have an assurance of continual employment in the sense of continuing indefinitely in time without interruption, but he is assured of employment until the end of his limited term, and of dismissal for only specified reasons, namely, when the good of the service will be served thereby. Taulung v. Kosrae, 8 FSM R. 270, 275 (App. 1998).

The procedural due process requirements of notice and an opportunity to be heard are met when Kosrae provides a limited-term employee being suspended for two weeks the notice mandated by 61 TTC 10(15)(a) and an opportunity to be heard by the official suspending him. Taulung v. Kosrae, 8 FSM R. 270, 275 (App. 1998).

A salient feature of Chapter 5 of Title 5 of the 1985 Code drew a distinction between the employees whose compensation was determined according to specific contract, which the sections anticipate and authorize, and those permanent state employees whose salary was determined according to the base salary schedule contained in § 5.502. Chapter 4 conferred a wide range of rights on permanent employees that contract employees did not enjoy, such as the right given by § 402 to continued employment "during good behavior." Cornelius v. Kosrae, 8 FSM R. 345, 350-51 (Kos. S. Ct. Tr. 1998).

There is a dichotomy between employees whose salaries are set by statute – "as prescribed by law" – and those whose salaries are subject to individual contract. Certain individuals or groups are subject to individual contracts, and excluded from the Public Service System. The Public Service System gives substantial rights to permanent employees that are denied contract employees. Cornelius v. Kosrae, 8 FSM R. 345, 351 (Kos. S. Ct. Tr. 1998).

Kosrae law has historically recognized a permanent work force of employees given specified rights whose compensation is statutorily determined; and a second group of employees who do not have the specified rights given permanent employees, who serve for a contract term, and whose compensation is determined by those contracts. It is this former group whose salaries were subject to reduction by S.L. No. 6-132. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" as it appears in article VI, section 5, means those employees whose salaries are "prescribed by law." Only those employees whose salaries are set in the

first place by statute are the employees to whom subsequent statutory reductions should apply. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" means employees whose compensation is determined by statute, and does not include those employees who have individual contracts with Kosrae. Therefore a state law reducing state public service system employees' pay can constitutionally be applied to a Kosrae State Court justice's pay. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

In reviewing appeals from the Executive Service Appeals Board, the Kosrae State Court is empowered to overturn or modify the ESAB's decision if it finds a violation of law or regulation, but the court is precluded from re-weighing the ESAB's factual determinations. If there is any factual basis for the ESAB's decision, it will be upheld, assuming no other violation or law or regulation. Langu v. Kosrae, 8 FSM R. 427, 432 (Kos. S. Ct. Tr. 1998).

The statutory and regulatory authorities in effect during the time the employees' grievances took place will be applied to the decision. Langu v. Kosrae, 8 FSM R. 427, 432 (Kos. S. Ct. Tr. 1998).

Upon successfully completing probation, an employee becomes a permanent employee. Positions in the Executive Service are either permanent or temporary. Permanent positions are authorized to last longer than one year. Temporary positions are authorized to last up to twelve months. Permanent employment may be part-time, so long as the work time exceeds sixty hours per month. Temporary or limited-term appointments may be either full-time or part-time. Langu v. Kosrae, 8 FSM R. 427, 432 (Kos. S. Ct. Tr. 1998).

When employees were classified as permanent employees on their Personnel Action Forms, their scheduled work time during the school year was full-time, and their bi-weekly salaries were full-time base salaries, the employees were full-time permanent employees of the Kosrae Executive Service System. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

Permanent employees have the right to hold their position during good behavior, subject to suspension, demotion, reduction-in-force or dismissal, unless an employment contract provides otherwise. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

Suspension and demotion of a permanent employee are actions that may be taken only for disciplinary reasons based on good cause. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

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).

A state employee's right to a given salary is based primarily upon constitutional, statutory and regulatory provisions. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

A permanent Kosrae government employee's right to hold his position during good behavior is not subject to a "lay off" because neither the term "lay off," nor the concept of a "lay off" is present anywhere in Title 5. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

Leave with pay (annual leave) must be requested by the employee in advance on a written form. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

Leave without pay may be granted to an employee if the reason is sufficient and is in the best interests of the Executive. The maximum is thirty calendar days. Leave without pay is not a disciplinary tool to be imposed upon an employee who has not requested it; instead it is a benefit to be granted to the employee in appropriate circumstances. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

There is no authority that permits the Kosrae government to impose annual leave or leave without pay

upon its permanent employees. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

When state employees have been required to apply for annual leave, if it was available, and did receive their salary during the annual leave, the employees have not suffered any monetary damages with respect to their annual leave. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

The state's imposition upon its employees of leave without pay violated the Kosrae State Code, Title 5, and deprived them of their right to continued employment and salary. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

The Kosrae State Court cannot substitute its judgment for that of the Executive Service Appeals Board, but in reviewing the ESAB's findings it may examine all of the evidence in the record in determining whether the factual findings are clearly erroneous, and if it is left with the definite and firm conviction that a mistake has been committed with respect to the findings, it must reject the findings as clearly erroneous. Langu v. Kosrae, 8 FSM R. 427, 435 (Kos. S. Ct. Tr. 1998).

Permanent state employees are subject to the laws and regulations implementing the Executive Service System, and a finding that some were exempted from all regulations and policies applicable to Kosrae government employees is clearly erroneous. Langu v. Kosrae, 8 FSM R. 427, 435 (Kos. S. Ct. Tr. 1998).

Although the statutory time periods are directory and not mandatory, a significant delay in proceedings can deprive the Executive Service Appeals Board procedure of its meaningfulness, in violation of the due process rights protected by the Constitution. Langu v. Kosrae, 8 FSM R. 427, 435 (Kos. S. Ct. Tr. 1998).

State employees are entitled to recover the base salary that they would have received during the periods of time that they were placed on leave without pay because the state's imposition of a "lay off" and leave without pay violated the employees' right to continued employment under the Kosrae Constitution and the Kosrae State Code. Langu v. Kosrae, 8 FSM R. 427, 436 (Kos. S. Ct. Tr. 1998).

Employee grievances were subject to judicial review by the Kosrae State Court, following the completion of certain administrative procedures, specifically review by the Executive Service Appeals Board. The court may reverse or modify ESAB's decision only if finds a violation of law or regulation. Langu v. Kosrae, 8 FSM R. 455, 457, 458 (Kos. S. Ct. Tr. 1998).

Under Kosrae state law, a "grievance" is an employee action to present and resolve a difficulty or dispute arising in the performance of his duties and not from a disciplinary action. Abraham v. Kosrae, 9 FSM R. 57, 61 (Kos. S. Ct. Tr. 1999).

There are no provisions in Title 18 that prohibit an the filing of a civil action by non-employee for a grievance based upon facts which occurred during his or her employment with the Kosrae state government. For employees, Title 18 provides that an administrative procedure must be followed first, as prescribed by their branch heads. Abraham v. Kosrae, 9 FSM R. 57, 61 (Kos. S. Ct. Tr. 1999).

Disciplinary actions, suspensions, demotions and dismissals, taken in conformance with Title 18 are in no case subject to review in the courts until the administrative remedies have been exhausted. Grievances are not disciplinary actions. Title 18 does not provide any limitations on the court's review of grievances or grievance appeals. There is no limitation of judicial review with respect to grievances. Abraham v. Kosrae, 9 FSM R. 57, 61 (Kos. S. Ct. Tr. 1999).

Under Title 18, there is no limitation on the court's jurisdiction to hear claims based upon a grievance filed by a former employee of the Executive Branch. Abraham v. Kosrae, 9 FSM R. 57, 61 (Kos. S. Ct. Tr. 1999).

Under the Executive Services Regulations when they were in effect, a Kosrae state employee may

present a grievance concerning a continuing practice or condition at any time. Kosrae v. Langu, 9 FSM R. 243, 246 & n.1 (App. 1999).

Under the Executive Service Regulations, when they were in effect, an appeal from a grievance was identical to that for an appeal from a disciplinary action, and was made to the Executive Service Appeals Board. Kosrae v. Langu, 9 FSM R. 243, 246 (App. 1999).

An appeal from the Executive Service Appeals Board's decision to the Kosrae State Court was available for state employee grievances. The Kosrae State Court trial division's jurisdiction to reverse or modify a finding of the ESAB was limited under Kosrae State Code section 5.421(2) to violations of law or regulation. In this regard, the state court acted as an appellate tribunal. Kosrae v. Langu, 9 FSM R. 243, 246 & n.2 (App. 1999).

On an appeal from the Executive Service Appeals Board's decision it was not within the authority of the Kosrae State Court to make new factual determinations in light of the express stricture in section 5.421(2) that the state court could reverse or modify an ESAB finding only if it finds a violation of law or regulation. Kosrae v. Langu, 9 FSM R. 243, 248 (App. 1999).

Although an inquiry whether state employees were not exempt, but were permanent employees under section 5.409, is fact driven – the court or other administrative body must determine material facts before it can apply the statute to those facts – the final determination whether an individual falls within a specific category defined by statute is necessarily one of law, not fact. Kosrae v. Langu, 9 FSM R. 243, 248 (App. 1999).

Issues of law, such as whether cooks were permanent state employees in the legal sense such that they were entitled to all the protections afforded to them under the statute and regulations, are reviewed de novo on appeal. Kosrae v. Langu, 9 FSM R. 243, 248 (App. 1999).

Kosrae state employees must fall within one of three categories – exempt, i.e., exempt from the protections afforded to state employees by the Kosrae Executive Service as it was then structured; probationary; or permanent. Kosrae v. Langu, 9 FSM R. 243, 248 (App. 1999).

A permanent state employee has the right to hold his position during good behavior, subject to suspension, demotion, reduction-in-force, or dismissal, except when an employment contract provides otherwise. Kosrae v. Langu, 9 FSM R. 243, 249 (App. 1999).

A summer layoff of school cooks that required the cooks to take annual leave first, then leave without pay when school was not in session was not a reduction-in-force because a reduction-in-force means an employee's termination. Kosrae v. Langu, 9 FSM R. 243, 250 (App. 1999).

Once the Kosrae State Court has correctly determined that placing cooks on unpaid leave was a violation of law or regulation, the appropriate factfinder for the determination of cooks' back pay, which constitutes their damages, is the Executive Service Appeals Board or its successor, not the state court. Kosrae v. Langu, 9 FSM R. 243, 250 (App. 1999).

When an administrative procedure and ensuing appeal has afforded parties complete relief for their grievances pursuant to statutes and regulations and the parties' constitutional claims are not the basis for any separate or distinct relief, the constitutional issue need not be reached. Kosrae v. Langu, 9 FSM R. 243, 250-51 (App. 1999).

Under Kosrae State Code, Title 18, there is no limitation on the Kosrae State Court's jurisdiction to hear claims based upon a grievance, filed by a former Executive Branch employee. There is no limitation on a plaintiff's right, as a former employee, to file suit on his grievance and his right to file suit on his grievance arose in 1997, when he took early retirement and terminated his state employment. Skilling v. Kosrae, 9 FSM R. 608, 612-13 (Kos. S. Ct. Tr. 2000).

While the plaintiff was a state employee, he was subject to the administrative procedures specified for grievances, but when his administrative action was still pending when he retired in 1997, because his grievance had never been ruled on, he was no longer an employee required to comply with the administrative procedures. His right to bring suit on his claim did not become complete and his cause of action therefore did not accrue his early retirement resulted in termination from state government employment. 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).

A public officer's right to a given salary is based primarily upon constitutional, statutory, and regulatory provisions. The amount of compensation a public employee receives is set by law. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

Because the Tafunsak Municipal Constitution requires that salaries for elected Council members be established by ordinance and because a public officer's right to compensation depends entirely upon him being able to show clear authority of law entitling him to remuneration for performance of public duties, Tafunsak public officials' salaries must be appropriated by municipal ordinance. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

Compensation for a public officer's official services depends entirely upon the law. A public officer may only collect and retain such compensation as is specifically provided by law. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

When no Tafunsak municipal ordinance has been enacted to establish and pay salary for council members, other municipal officers and employees, there is no authority, as required by the municipal constitution, to pay salaries to Tafunsak municipal public officers and employees. A municipal council member is thus not entitled to receive unpaid salary, particularly when no evidence has been presented of a Tafunsak municipal ordinance enacted for appropriation of funds for payment of salaries for the 4th quarter of 1998 and when the municipal constitution requires that all payments from the municipal treasury be made according to appropriation by ordinance. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

Any payments for salaries of elected officials and staff made from the Tafunsak municipal treasury without the authority of a municipal ordinance establishing such salary and appropriating funds for the payment of such salary have been made in violation of the municipal constitution. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

While it appears that elected officials and staff of Tafunsak municipal government have been paid and continue to be paid salaries without authority of law, the Kosrae State Court cannot approve or order any salary to be paid to a Tafunsak Municipal Council member in violation of the municipal constitution. Palsis v. Mayor of Tafunsak, 10 FSM R. 141, 144 (Kos. S. Ct. Tr. 2001).

When the Kosrae State Code Section 18.506 requires a branch head to make and transmit his final decision to the Director of Administration and the appellant within 14 days of receipt of the committee's recommendation and more than 14 days have elapsed since the branch head's receipt with no final decision by him, the branch head has failed to carry out his clear, non-discretionary duty to issue and transmit his final decision within the time period provided by law. The petitioner's right to the writ of mandamus is thus clear and undisputable and the writ will issue. Jackson v. Kosrae, 10 FSM R. 198, 199 (Kos. S. Ct. Tr. 2001).

Because the Oversight Board has not adopted any policies, rules or regulations, the Director of Administration, who is responsible for administration of the Public Service System consistent with Title 18, and any policies, rules and regulations adopted by the Oversight Board, must implement all the Speaker's

decisions pertaining to the Legislative Branch's public service employees, as long as the decision is not inconsistent with Kosrae State Code, Title 18. Seventh Kosrae State Legislature v. Abraham, 10 FSM R. 299, 302 (Kos. S. Ct. Tr. 2001).

When two legislative branch employees, effective October 1, 1998, had met the statutory requirements to qualify for performance increases, but the personnel action forms to implement the increases were never submitted to the Department of Administration for processing due to administrative oversight at the Legislature; when in June 2001, the Speaker ordered the Director of Administration to implement the performance increases effective October 1, 1998 and backdated personnel action forms were submitted on both employees' behalf; when the personnel action forms contemplate an effective date that may be different than the approval date; when backdating of personnel action forms was a common practice in all three branches of state government and are routinely processed and implemented by the Department of Administration; when the Department's refusal to process the backdated personnel actions deprives both employees of the performance increases they qualified for and are entitled to by law; and when backdating employees' personnel action forms is consistent with all three state government branches' accepted and continuing practice and is not inconsistent with Kosrae State Code, Title 18; the Director of Administration is required to implement the performance increase, retroactive to October 1, 1998, and subsequent pay level adjustments ordered by the Speaker. Seventh Kosrae State Legislature v. Abraham, 10 FSM R. 299, 302-03 (Kos. S. Ct. Tr. 2001).

The Kosrae Executive Service System provides for the systemic classification of positions and for one pay level for each class of positions, and the state's action in assigning two different pay levels to the same class of positions was a violation of Kosrae State Code §§ 5.401(6), 5.410(1) and 5.506(1). Jonas v. Kosrae, 10 FSM R. 441, 444 (Kos. S. Ct. Tr. 2001).

When plaintiffs should have been classified at the time the state hired them in 1997 at the same pay level as the medical officers who the state hired as Staff Physicians I prior to the plaintiffs and when the plaintiffs' grievances were granted increasing their pay in 2000 only partially corrected the situation from May 1, 2000 forward, the plaintiffs are entitled to summary judgment for a retroactive adjustment to their entrance salary. Jonas v. Kosrae, 10 FSM R. 441, 444-45 (Kos. S. Ct. Tr. 2001).

Pre-judgment interest is rarely awarded as an element of damages. Because tort claims are generally "unliquidated" in that the defendant does not know the precise amount he will be obligated to pay, most courts will not award interest on unliquidated monetary claims, which amount cannot be computed without a trial. Jonas v. Kosrae, 10 FSM R. 441, 445 (Kos. S. Ct. Tr. 2001).

There is no Kosrae statute allowing or directing the court to award pre-judgment interest in public employment cases involving violation of law or regulations, and although pre-judgment interest has been allowed in certain contract and conversion cases, it has not been awarded in these type of cases and will be denied. Jonas v. Kosrae, 10 FSM R. 441, 445 (Kos. S. Ct. Tr. 2001).

The Kosrae State Court's standard of review in its judicial review of State Public Service System final decisions is that the court will decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action, and the court is authorized to compel, or hold unlawful and set aside agency actions. Jonas v. Kosrae, 10 FSM R. 453, 458 (Kos. S. Ct. Tr. 2001).

Former Kosrae State Code, Title 5 (repealed) and Regulation 11 (repealed) are applicable to positions within the Executive Service System from 1990 through 1992. Jonas v. Kosrae, 10 FSM R. 453, 458 (Kos. S. Ct. Tr. 2001).

An employee was required to present a grievance related to a particular act or occurrence within 15 calendar days of the date of occurrence or the date when the employee should have become aware of it had he been exercising reasonable diligence. Jonas v. Kosrae, 10 FSM R. 453, 459-60 (Kos. S. Ct. Tr. 2001).

The time limits prescribed in the Executive Service Laws and Regulations are directory and not mandatory because the law and the regulations do not prescribe what happens if the prescribed time limits are not met. Jonas v. Kosrae, 10 FSM R. 453, 459 (Kos. S. Ct. Tr. 2001).

Because the regulation that an employee grievance be presented no later than 15 days after the subject action is directory and not mandatory, a plaintiff's late presentation of his grievance after the specified 15 day period does not bar his claim. Jonas v. Kosrae, 10 FSM R. 453, 459 (Kos. S. Ct. Tr. 2001).

An Executive Service position is a defined set of work responsibilities in the Executive. Jonas v. Kosrae, 10 FSM R. 453, 460 (Kos. S. Ct. Tr. 2001).

Each Executive Service position was required to be classified by the Director of the Department of Personnel and Employment Services and all executive branch employee positions fall within the Executive System and Kosrae State Code, Title 5, chapters 4 and 5, unless exempted under section 5.101(18). When the Director failed to classify the Head Teacher position before, during, or after the plaintiff was moved into that position, he did not perform his duties as required, and therefore violated state law. Jonas v. Kosrae, 10 FSM R. 453, 460 (Kos. S. Ct. Tr. 2001).

If an employee performs duties in addition to those stated in the classification plan for his regular position and the compensation for the position which normally includes the additional duties is greater than his regular salary, he receives the greater salary during the period of performance. Jonas v. Kosrae, 10 FSM R. 453, 460 (Kos. S. Ct. Tr. 2001).

There are several types of salary adjustment for additional duties: detail, acting assignment and temporary promotion. Jonas v. Kosrae, 10 FSM R. 453, 460 (Kos. S. Ct. Tr. 2001).

A detail is an employee's temporary assignment to a different position for a specified period, with the intention that the employee will return to his regular position and duties at the end of the detail. A position is not filled by detail, as the employee continues to the incumbent of the position from which detailed. A teacher's temporary assignment to the different position of Head Teacher for a maximum period of one year, with the intention that he would return to his regular position of Classroom Teacher II at the end of the detail no later than one year later, is a detail. Jonas v. Kosrae, 10 FSM R. 453, 461 (Kos. S. Ct. Tr. 2001).

An employee who is temporarily assigned to a position by detail will be compensated at the step in the new pay level which is equivalent to a two step increase above his regular salary. A one step increase is unlawful and is therefore set aside. Jonas v. Kosrae, 10 FSM R. 453, 461 (Kos. S. Ct. Tr. 2001).

The term demotion means reduction to lower rank or grade, or to lower type of position, or to lower pay scale. For disciplinary reasons based upon good cause a management official may demote an employee. An employee's demotion is not effective for any purpose until a management official gives the employee written notice stating the reasons for the demotion and the employee's right of appeal. Demotion for a non-disciplinary reason is a statutory violation. Jonas v. Kosrae, 10 FSM R. 453, 461-62 (Kos. S. Ct. Tr. 2001).

A regulation that permits demotions for non-disciplinary reasons is in conflict with Kosrae State Code § 5.418 and is therefore an impermissible extension of the statute. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

The state's failure to give an employee the required written notice of his demotion and his right of appeal is a statutory violation, and makes the demotion ineffective for any purpose. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

After successfully serving a maximum probation period of one year, an employee may be converted to a permanent employee. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

A position which is established to meet continuing government need and which is authorized to last longer than one year, must be identified as a permanent position. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

When an employee successfully served the full one year probationary period as Head Teacher, his position as Head Teacher with its higher pay level, became a permanent position when the probationary period expired. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

When a state employee's demotion was unlawful and is set aside, his salary will be established as if the demotion never occurred. Jonas v. Kosrae, 10 FSM R. 453, 462 (Kos. S. Ct. Tr. 2001).

The Kosrae State Court's standard of review in its judicial review of State Public Service System final decisions is that the court will decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action, and the court is authorized to compel, or hold unlawful and set aside agency actions. Tolenoa v. Kosrae, 10 FSM R. 486, 489 (Kos. S. Ct. Tr. 2001).

Former Kosrae State Code, Title 5 (repealed) and Regulation 11 (repealed) are applicable to positions within the Executive Service System from 1990 through 1997. Tolenoa v. Kosrae, 10 FSM R. 486, 489 (Kos. S. Ct. Tr. 2001).

An Executive Service position is a defined set of work responsibilities in the Executive. Tolenoa v. Kosrae, 10 FSM R. 486, 490 (Kos. S. Ct. Tr. 2001).

Each Executive Service position was required to be classified by the Director of the Department of Personnel and Employment Services and all executive branch employee positions fall within the Executive System and Kosrae State Code, Title 5, chapters 4 and 5, unless exempted under section 5.101(18). When the Director failed to classify the Head Teacher position before, during, or after the plaintiff was moved into that position, he did not perform his duties as required, and therefore violated state law. Tolenoa v. Kosrae, 10 FSM R. 486, 490 (Kos. S. Ct. Tr. 2001).

If an employee performs duties in addition to those stated in the classification plan for his regular position and the compensation for the position which normally includes the additional duties is greater than his regular salary, he receives the greater salary during the period of performance. Tolenoa v. Kosrae, 10 FSM R. 486, 490 (Kos. S. Ct. Tr. 2001).

There are several types of salary adjustment for additional duties: detail, acting assignment and temporary promotion. Tolenoa v. Kosrae, 10 FSM R. 486, 491 (Kos. S. Ct. Tr. 2001).

A detail is an employee's temporary assignment to a different position for a specified period, with the intention that the employee will return to his regular position and duties at the end of the detail. A position is not filled by detail, as the employee continues to the incumbent of the position from which detailed. A teacher's temporary assignment to the different position of Head Teacher for a maximum period of one year, with the intention that he would return to his regular position of Classroom Teacher II at the end of the detail no later than one year later, is a detail. Tolenoa v. Kosrae, 10 FSM R. 486, 491 (Kos. S. Ct. Tr. 2001).

An employee who is temporarily assigned to a position by detail will be compensated at the step in the new pay level which is equivalent to a two step increase above his regular salary. A one step increase is unlawful and is therefore set aside. Tolenoa v. Kosrae, 10 FSM R. 486, 491 (Kos. S. Ct. Tr. 2001).

When the plaintiff did not assume all of the administrative duties of the Vice Principal position and did not assume the duties of a vacant position, he was not assigned a "temporary promotion" to the position of Vice Principal. Tolenoa v. Kosrae, 10 FSM R. 486, 491-92 (Kos. S. Ct. Tr. 2001).

When an employee was given added duties as a Head Teacher, the state will be required to classify the position of head teacher, including position description and pay level, and to pay compensation equivalent to a two-step increase. Tolenoa v. Kosrae, 10 FSM R. 486, 492 (Kos. S. Ct. Tr. 2001).

The law does not require that a supervisor (Director or Governor) implement a hazardous pay differential decision made by a subordinate employee, such as the Administrator of Division of Personnel. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 569 (Kos. S. Ct. Tr. 2002).

Mandamus will be denied when there is another adequate legal remedy available to the petitioners – to file a grievance on their hazardous pay differential claim and proceed through the administrative process. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 569 (Kos. S. Ct. Tr. 2002).

Any decision made by the Director's subordinate, the Administrator of Personnel, would only be deemed as advice to the Director, and not binding on the Director of Administration and Finance. Ultimately, it is the Director who is responsible for administering the Public Service System, consistent with Title 18 and applicable regulations. Benjamin v. Attorney General Office Kosrae, 10 FSM R. 566, 569-70 (Kos. S. Ct. Tr. 2002).

Since a state employee classification plan that identifies class specifications for each class, including appropriate pay levels, must be approved by the Oversight Board, of which the Chief Justice is a member, it would be improper for the Chief Justice to order a classification of a position that would ultimately be reviewed and approved by him as an Oversight Board member. The court will therefore delete from its order the requirement that the state must create Head Teacher position classification. Tolenoa v. Kosrae, 11 FSM R. 179, 185 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court's standard of judicial review of final decisions made under the State Public Service System is that the court will decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The court is authorized to compel, or hold unlawful and set aside agency actions. Jackson v. Kosrae, 11 FSM R. 197, 199 (Kos. S. Ct. Tr. 2002).

A position in the Executive Service is a defined set of work responsibilities in the Executive, and if an employee performs duties in addition to those stated in the classification plan for his regular position and the compensation for the position which normally includes the additional duties is greater than her regular salary, she receives the greater salary during the period of performance. Jackson v. Kosrae, 11 FSM R. 197, 200 (Kos. S. Ct. Tr. 2002).

When the duties performed by the plaintiff in the Diabetic and Hypertension Program were regular duties of the Head Nurse position pursuant to the classification plan and were not in addition to those stated in the classification plan for the Head Nurse position, the plaintiff is not entitled to additional compensation or a higher salary during the time she performed those duties. Jackson v. Kosrae, 11 FSM R. 197, 200 (Kos. S. Ct. Tr. 2002).

The state was not required to change the plaintiff's position to the CDC Coordinator when her duties did not substantially change after she was assigned to perform some of the CDC Coordinator duties and when it was not a "temporary promotion" to the position of CDC Coordinator because she did not assume all or nearly all of the CDC Coordinator duties, which were shared and completed by four employees including her. Jackson v. Kosrae, 11 FSM R. 197, 200 (Kos. S. Ct. Tr. 2002).

A state employee's government service is governed by law, first by the Kosrae State Code, Title 5, the Executive Service Law, and later by Title 18, the State Public Service System Law. A public service employee does not have any contractual entitlements, and thus a state employee's contract claim against the state is without merit and will be dismissed. Jackson v. Kosrae, 11 FSM R. 197, 201 (Kos. S. Ct. Tr. 2002).

When, despite several tries by counsel, a state employee's 1987 written grievance was never acted upon due to the state's inaction throughout the administrative process although the applicable statutes entitled him to a written response, the employee's cause of action accrued and the statute of limitations began to run only when he left state employment in 1997. The state's own inaction cannot be used to run against the six-year statute of limitations. Kosrae v. Skilling, 11 FSM R. 311, 316-17 (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).

When a state employee would not have been entitled to payment at his usual hourly rate for unused sick leave since he was never injured or ill and denied sick leave, he cannot claim that he has suffered a loss when he lost his accumulated hours of sick leave. Sam v. Chief of Police, 12 FSM R. 587, 589 (Kos. 2004).

A new law that results in a state employee's loss of his accumulated sick leave hours is not unconstitutional and a deprivation of property without due process because the right to take payment for sick leave to be taken in the future is a mere expectancy, and does not constitute a vested right entitling the employee to compensation. "Vested" means having the character or given the rights of absolute ownership. Sam v. Chief of Police, 12 FSM R. 587, 589 (Kos. 2004).

For the period of 1993-97, the law and regulations for the Executive Service System are applicable. For the period of 1997 to 2002, the law and regulations for the Kosrae State Public Service System are applicable. Former Kosrae State Code, Title 5, Chapter 4 (repealed) governed the Executive Service System during a portion of the relevant period, from 1993 to 1997. Sigrah v. Kosrae, 13 FSM R. 315, 319 (Kos. S. Ct. Tr. 2005).

Since the then applicable law limited compensation for additional duties only when the additional duties performed were duties for a position with a greater salary and the plaintiff's tasks were duties of another classified position that, in the position classification plan, was compensated at the same as his, the plaintiff is not entitled to additional compensation for the additional tasks that he performed from 1993 to 1998. Sigrah v. Kosrae, 13 FSM R. 315, 319 (Kos. S. Ct. Tr. 2005).

For additional compensation, the "additional duties" performed by the public employee must be the duties of a position that has a greater salary than the employee's regular salary. When the journeyman tradesman (refrigeration mechanic) plaintiff's "additional duties" are the duties of another journeyman tradesman position (i.e. electrician or plumber) which has the same salary as the plaintiff's regular salary, the plaintiff is not entitled to additional compensation for the additional duties since all journeyman tradesman positions, regardless of specialization, are classified at pay level 7. Sigrah v. Kosrae, 13 FSM R. 315, 319 (Kos. S. Ct. Tr. 2005).

The Kosrae State Public Service System establishes a state-wide public service system applicable to all branches of government and is governed by Kosrae State Code, Title 18. The PSS applies to all Kosrae state employees and positions except for those employees and positions which are specifically exempted. Specific exemptions include "contract employees." Allen v. Kosrae, 13 FSM R. 325, 329-30 (Kos. S. Ct. Tr. 2005).

There are no limitations on the "contract employees" exemption: all contract employees are exempt from application of the Public Service System under Kosrae State Code, Title 18. There are no limitations imposed through any other state law upon the hiring of state government employees pursuant to ungraded, PSS exempt contracts. The State is permitted to hire ungraded, PSS exempt employees by contract, in its

discretion, subject only to funding and budgetary limitations. Allen v. Kosrae, 13 FSM R. 325, 331 (Kos. S. Ct. Tr. 2005).

There are no provisions in state law which prohibit the state government from hiring employees by contract for positions which are also classified under the Public Service System classification plan. Allen v. Kosrae, 13 FSM R. 325, 331 (Kos. S. Ct. Tr. 2005).

Kosrae State Code, § 18.104, which provides a preference to FSM citizens and Kosrae state residents in making appointments to positions within the PSS is not applicable to the contract position of Chief of Secondary Education. Allen v. Kosrae, 13 FSM R. 325, 331 (Kos. S. Ct. Tr. 2005).

Kosrae State Code, section 18.302, which provides that the position classification plan must classify all positions subject to the provisions of the State Public Service System according to their duties and responsibilities, is not applicable to the contract position of Chief of Secondary Education since that position was not one classified within the PSS at the time of the contract hiring. Allen v. Kosrae, 13 FSM R. 325, 331 (Kos. S. Ct. Tr. 2005).

Regardless of the reason for a Public Service System position vacancy or the length of time for the position vacancy, there is no statutory or constitutional requirement for the State to fill any vacancies of Public Service System positions. Allen v. Kosrae, 13 FSM R. 325, 332 (Kos. S. Ct. Tr. 2005).

Once a property interest is found to exist, the next step is to determine if due process rights were violated. The court looks at whether the procedures used to apply the disciplinary action were fair based on the circumstances of the case; procedures must assure a rational decision making process. Municipal defendants are not required to follow the State of Kosrae's Public Service System laws and regulations and are not required to adopt their own written procedures, but they must be fair considering all the circumstances and use a rational decision making process. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

Kosrae State Code Title 18 creates the comprehensive Public Service System. An integral part of this system is a classification plan for all state positions subject to the plan. The position classification plan classifies all positions subject to the State Public Service System provisions according to their duties and responsibilities. Positions that are classified under the plan are filled by examination. Allen v. Kosrae, 15 FSM R. 18, 21 (App. 2007).

The Kosrae Public Service System applies to all employees and positions in the state government with fourteen different categories, including contract employees, exempted from its provisions. There are no restrictions on the exemptions that would foreclose or prohibit the Kosrae Department of Education from hiring teachers or a Chief of Secondary Education on a PSS-exempt, contract basis. In the absence of any such limitations, the contract employee exemption applies. Allen v. Kosrae, 15 FSM R. 18, 21-22 (App. 2007).

When the Legislature has altered the statutory framework only to increase, and not decrease, Kosrae's hiring discretion for contract employees by removing the single qualification that it had placed on the contract employees exemption, the court cannot limit the hiring discretion thus conferred by the Kosrae Legislature in the absence of a statutory basis for doing so since it is the Kosrae Legislature's role to consider and determine the public policy that supports a statute, and to enact legislation that reflects that public policy. Allen v. Kosrae, 15 FSM R. 18, 22 (App. 2007).

When the Kosrae statute defines "public service" as all offices and positions in the state government not exempted by Section 18.107, the requirement that preference be given to FSM citizens with a view to insuring full participation by FSM citizens and state residents in its public service means that the preference will apply to the hiring of individuals for non-exempt, Public Service System positions. Thus, when the position for which another was hired was exempt from the PSS because it was filled on a contract basis, the preference had no application to the hiring. Allen v. Kosrae, 15 FSM R. 18, 23 (App. 2007).

The statute does not specifically require a good cause standard to be met when dismissing or demoting an employee. A management official may, for disciplinary reasons, dismiss or demote an employee when he determines that the good of the public service will be served thereby. Palsis v. Kosrae, 16 FSM R. 297, 305, 311 (Kos. S. Ct. Tr. 2009).

For the due process clause to apply, a life, property, or liberty interest must be implicated. In an employment case, to be property protected under the Constitution, the employment right must be supported by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

Any regular employee who is suspended for more than the three working days, demoted, or dismissed may appeal to the branch head or his designee within fifteen days after written notice of the suspension, demotion or dismissal has been transmitted to him, and upon receiving such appeal, the branch head, or his designee, shall form an ad hoc hearing committee of three members. Palsis v. Kosrae, 16 FSM R. 297, 312 (Kos. S. Ct. Tr. 2009).

Since the court is required to set aside agency action if unwarranted by the facts, the court must also consider the additional evidence submitted at the trial de novo. Palsis v. Kosrae, 16 FSM R. 297, 313 (Kos. S. Ct. Tr. 2009).

Under Kosrae state law, a "grievance" is an employee action to present and resolve a difficulty or dispute arising in the performance of his duties but not a disciplinary action. Grievances are not disciplinary actions and Title 18 does not provide any limitations on the Kosrae State Court's review of grievances or grievance appeals although the Kosrae State Court does not have jurisdiction to review grievances of employees who do not first comply with the required administrative procedure. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

Failure to exhaust administrative remedies and failure to timely file a suit for judicial review are both affirmative defenses which have to be asserted in the answer otherwise that affirmative defense is waived. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

The Kosrae State Court has original jurisdiction in all cases except those within the exclusive and original jurisdiction of inferior courts and it has jurisdiction to review all decisions of inferior courts. Since no inferior court is assigned original jurisdiction over state employee grievances, the Kosrae State Court has jurisdiction over state employees' claims for pay once they have exhausted their administrative remedies. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

Kosrae's contention that the plaintiffs could not use the public service system appeals process because they were contract employees should mean that they could (or had to) file a court suit to obtain relief but if, Kosrae contends that they never became vice-principals, then they remained elementary school teachers and were thus public service system employees eligible to use the appeals process. Kosrae's reasoning is circular and leads nowhere. Kosrae v. Edwin, 18 FSM R. 507, 513 (App. 2013).

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

When the appellees did not officiously thrust their services as vice-principals on Kosrae but had applied for the vice-principal position; thought they had been hired for the position (and did not know their contracts were invalid); and then performed the duties required by that position and as they were instructed by their superiors, Kosrae was unjustly enriched and therefore should compensate the appellees. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

An illegally-hired government employee is entitled to be paid for the work he actually performed.

Kosrae v. Edwin, 18 FSM R. 507, 516 (App. 2013).

A cause of action to collect salary or wages accrues when an employee has a right to collect the money allegedly owed to him. Tilfas v. Kosrae, 21 FSM R. 81, 89 (App. 2016).

A school teacher could not have successfully maintained a cause of action for improper salary classification as of the date of his initial hiring when he had not submitted documentation to the government proving his educational background, thereby giving him a right to collect the higher salary allegedly owed to him. His cause of action began to accrue when, if ever, he submitted the relevant documents necessary to prove he should have been placed at the higher pay level. Tilfas v. Kosrae, 21 FSM R. 81, 89 (App. 2016).

If a public employee does not prevail on his grievance, then he could have sought judicial review of the decision within the applicable six-year statute of limitations, but when the employee received a decision in his favor, the statute of limitations was immediately suspended and the State's own inaction thereafter cannot be used to run the six-year statute of limitations. Tilfas v. Kosrae, 21 FSM R. 81, 90 (App. 2016).

The statute of limitations cannot be said to have continued to run as against a public employee's claim when the administrative decision was issued in his favor and the administrative grievance process was still pending as to a determination of damages. Tilfas v. Kosrae, 21 FSM R. 81, 90 (App. 2016).

The statute of limitations does not to continue to run against a state employee when a favorable decision was rendered to him. To come to such a conclusion would mean any agency could immunize itself from judicial review simply by extending delay for six years or until the statute of limitations has run. Therefore, the statute of limitations was suspended when the favorable decision was rendered on December 12, 2001 until the January 22, 2015 decision to overturn the first determination, and thus a petition for writ of mandamus filed in Kosrae State Court on April 1, 2015 was, as a result of the tolled period, well within the six-year limitations period. Tilfas v. Kosrae, 21 FSM R. 81, 91 (App. 2016).

When a state employee's claim for wrongful probation status accrued, at the very latest, on August 26, 1989, because that was when the event triggering the cause of action occurred and when he could have first successfully maintained a suit on his claim since he remained classified as a probationary employee despite working, as of then, one day longer than one year. Thus, when that employee first exercised his administrative remedies and filed a grievance on April 30, 1997, his action for wrongful probationary status is time-barred because his grievance and the initiation of this lawsuit clearly fall outside the six-year statute of limitations. Tilfas v. Kosrae, 21 FSM R. 81, 92 (App. 2016).

– Kosrae – Termination

When shortage of work or funds requires the dismissal of a Kosrae state employee the Executive should consider an employee's individual merit, qualifications through education, training, and experience and the employee's seniority. Edwin v. Kosrae, 4 FSM R. 292, 303 (Kos. S. Ct. Tr. 1990).

Title III of the Kosrae State Court manual of administration permits dismissal of a government employee if the employee is convicted of felony. In the case of non-felonies, section 11(5)(c) permits dismissal only if it is shown that the employee's "criminal conduct . . . is detrimental to the performance of the duties and responsibilities of his position." Palsis v. Kosrae State Court, 5 FSM R. 214, 217 (Kos. S. Ct. Tr. 1991).

An employee may not be dismissed for conviction of a misdemeanor unless the nature of the conduct leading to the conviction is itself detrimental to the performance of the employee's duties. Palsis v. Kosrae State Court, 5 FSM R. 214, 218 (Kos. S. Ct. Tr. 1991).

When a law enforcement officer during performance of his duties reveals an unacceptable lack of respect for legal authority such as obstructing another officer from performing similar duties, the nature of his conduct is itself detrimental to the performance of his duties and his dismissal is justified. Palsis v.

Kosrae State Court, 5 FSM R. 214, 218 (Kos. S. Ct. Tr. 1991).

An employee may be terminated without notice and an opportunity to be heard if she has abandoned her job. If not, the state must provide written notice stating the reasons for the dismissal and an opportunity to present mitigating circumstances, defenses, or other positions in opposition to the proposed disciplinary action. Klavasru v. Kosrae, 7 FSM R. 86, 89-90 (Kos. 1995).

It is an impermissible extension of the reach of the statute for the executive service regulation to define abandonment of public office as absent without authorization for two weeks. Klavasru v. Kosrae, 7 FSM R. 86, 91 (Kos. 1995).

A public employee, who supplied an explanation for her absence from work and who made clear, both before and after the absence that she did not intend to take permanent leave of her position, cannot be terminated for abandonment of office or disciplined without the statutory safeguard of notice and an opportunity to be heard. Klavasru v. Kosrae, 7 FSM R. 86, 92 (Kos. 1995).

Government employment that is property with the meaning of the Due Process Clause cannot be taken without due process. Only if an employment arrangement has an entitlement based upon governmental assurances of continual employment or dismissal for only specified reasons does the FSM Constitution require procedural due process as a condition to its termination. Taulung v. Kosrae, 8 FSM R. 270, 274 (App. 1998).

A permanent employee may be dismissed for disciplinary reasons based upon good cause or the employee may be dismissed within a reduction-in-force. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

Kosrae's right and power to adjust its employment scheme according to the availability of funds and work is not unlimited. When the shortage of funds require dismissal of an employee, certain procedures are to be followed to ensure that seniority and qualifications are given due consideration. The government must give employees written notice that he has been reached by a reduction-in-force and that his services shall be terminated. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

Termination of employment means a complete severance of the relationship of employer and employee. Reductions-in-force mean dismissal or termination of employees. Langu v. Kosrae, 8 FSM R. 427, 433 (Kos. S. Ct. Tr. 1998).

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).

When the administrative steps essential for court review of employment terminations have not yet been completed, the court cannot review the termination. Abraham v. Kosrae, 9 FSM R. 57, 60 (Kos. S. Ct. Tr. 1999).

When the statutory provisions intend and ensure that an entity is run as a corporation with its own management and employees, and not as a Kosrae state government agency and when, although the state government remains its sole shareholder, the state government does not assume its debts, does not own its assets, and has no control over its day to day operations, it is not a "state actor," and its termination of an employee is therefore not a "state action." Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 666-67 (Kos. S. Ct. Tr. 2002).

Employment is a property right protected by the Kosrae Constitution when there is an assurance of continued employment or when dismissal is allowed for specified reasons. An employee's personal hope of continued employment or the expiration of a contract with no provisions for renewal does not give rise to a property interest. Thus, when the Tafunsak Constitution states that the position of Treasurer is a four-year term and the plaintiff's employment was terminated before the term's end, this is sufficient to show an

assurance of continued employment and gives rise to a property right protected by due process under the Kosrae Constitution. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

Where the plaintiff claims that he was not given an administrative remedy and did not have an opportunity to meet or rebut the allegations against him and when the defendants began by giving the plaintiff written notice listing specific issues and specifying their concerns about the plaintiff's failure to perform his duties and gave the plaintiff several months until late February 2004 to correct his behavior; when the plaintiff did not change his behavior to perform his job responsibilities and he spoke with the defendants about resigning from employment during this time period, thus demonstrating that he met with the defendants and had an opportunity to rebut the first letter's allegations; the Council gave him a copy of its March 2004 letter to the Mayor recommending termination of his employment; when the Mayor's letter to the plaintiff based on this recommendation again gave him an opportunity to bring forth any grievances, this procedure consistently gave the plaintiff notice of the defendants' specific reasons for concern and gave him several opportunities to meet and rebut allegations and bring forth grievances and was thus fair based on the circumstances and was based on a rational decision-making process. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520 (Kos. S. Ct. Tr. 2006).

The Tafunsak Constitution provisions about the Treasurer's employment do not conflict with the provision that the Council can terminate a municipal employee with a ¸ vote. Palsis v. Tafunsak Mun. Gov't, 14 FSM R. 517, 520-21 (Kos. S. Ct. Tr. 2006).

The statute does not specifically require a good cause standard to be met when dismissing or demoting an employee. A management official may, for disciplinary reasons, dismiss or demote an employee when he determines that the good of the public service will be served thereby. Palsis v. Kosrae, 16 FSM R. 297, 305, 311 (Kos. S. Ct. Tr. 2009).

Although Kosrae statutes do not specifically state that a pre-dismissal hearing is required, constitutional due process in the FSM does require that a governmental, non-probationary employee be given some opportunity to respond to the charges against him before his dismissal may be implemented, which includes: oral or written notice of the charges against him, an explanation of the employer's evidence and an opportunity to present his side of the story. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

Although Kosrae statutes do not specifically state that a pre-dismissal hearing is required, once it is determined that the statute establishes a property right subject to protection under the due process clause, constitutional principles determine what process is due as a minimum. Palsis v. Kosrae, 16 FSM R. 297, 306 (Kos. S. Ct. Tr. 2009).

The constitution is consistent with the Kosrae State Code and the Public Service System statutes which will not be set aside as contrary to due process since, in the absence of statutory language to the contrary, the statutory mandate may be interpreted as assuming compliance with the constitutional requirements. Thus, when the Kosrae State Code states that written notice setting forth the specific reasons for the dismissal or demotion and the employee's rights of appeal must be transmitted to the employee but is silent as to whether a dismissal may be implemented before some kind of hearing is provided, this is not read as an attempt to authorize immediate dismissal for all purposes without giving the employee a right to respond but instead as an indication of solicitude, demonstrating the intention to assure that employees' rights be observed. Palsis v. Kosrae, 16 FSM R. 297, 306-07 (Kos. S. Ct. Tr. 2009).

When, at the time of her termination, the plaintiff was a permanent state employee and since a "regular employee" or "permanent employee" means an employee who has been appointed to a position in the public service and who has successfully completed a probation period, the plaintiff's claim to employment was supported by more than her mere personal hope of employment and the state had a legal obligation to employ the plaintiff. Thus, the plaintiff had a property right which was protected by the due process clause. Procedural due process requires notice and an opportunity to be heard, so as to protect the employee's rights and insure that discipline is not enforced in an arbitrary manner. Palsis v. Kosrae, 16 FSM R. 297,

307 (Kos. S. Ct. Tr. 2009).

A state employee with a property right is entitled to a pre-termination hearing that includes notice and an opportunity to be heard. The employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Palsis v. Kosrae, 16 FSM R. 297, 307 (Kos. S. Ct. Tr. 2009).

An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and an opportunity for hearing appropriate to the nature of the case. This requires some type of hearing prior to the discharge of an employee who has a constitutionally-protected interest in his or her employment. The pre-termination hearing, though necessary, need not be elaborate. The formality and procedural requisites for the hearing can vary, depending upon the importance of the interest involved and the nature of the subsequent proceedings that are available. In general, something less than a full evidentiary hearing is sufficient prior to adverse administrative action. The pre-termination hearing does not definitively resolve the propriety of discharge, but is an initial check against mistaken decisions. The essential requirements are notice and an opportunity to respond. The state employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story and to require more than this prior to termination would intrude to an unwarranted extent on the government's interest in quickly removing an unsatisfactory employee. Palsis v. Kosrae, 16 FSM R. 297, 309 (Kos. S. Ct. Tr. 2009).

Since a state employee's pre-termination hearing need not be elaborate and since a notice of a hearing can be oral and is highly informal, given that the employee is given the opportunity for a post-deprivation hearing, where the employee was given notice on August 7, 2007 when she received a notice-of-dismissal letter and the dismissal did not become effective until August 30, 2007 and thus she was not deprived of benefits until then, an August 7, 2007 meeting constituted a pre-termination hearing as did a later August 15, 2007 meeting because, at both meetings, she was given an opportunity to respond to the charges against her and she had not yet been deprived of benefits and because the meetings served as an initial check of the charges since she was given an opportunity to explain her side of the story and the Director discussed the evidence for dismissal as stated in the termination letter and was open to questions regarding the reasons for dismissal. Also, when, at the August 15, 2007 meeting, her representative took the opportunity to be heard on her behalf, asked questions to the Director; tried to negotiate a settlement; and presented her side of the story, the requirements of notice and an opportunity to respond were met. Because she had notice and an opportunity to be heard prior to dismissal, her due process rights were not violated as a pre-termination hearing was held. Palsis v. Kosrae, 16 FSM R. 297, 311 (Kos. S. Ct. Tr. 2009).

The good of the public service is served by an employee's dismissal if the management official determines that the employee has had 1) three consecutive performance evaluation reports with less than satisfactory ratings in any category; or 2) a total of three suspensions, whether imposed as minor discipline or disciplinary action; or 3) a conviction of any crime that the management official determines makes the employee unfit for his job; or 4) more than eight working days in two years that the employee has been taken unauthorized leave; or 5) a determination has been made that the applicant was not truthful on his employment application; or 6) the employee ceases work without explanation for more than 6 consecutive working days; or 7) any other grounds causing the management official to justifiably believe that the good of the public service will be served by dismissal. Palsis v. Kosrae, 16 FSM R. 297, 311-12 (Kos. S. Ct. Tr. 2009).

If the agency abused its discretion, or acted arbitrarily or capriciously, then the employee dismissal should be set aside. Palsis v. Kosrae, 16 FSM R. 297, 313 (Kos. S. Ct. Tr. 2009).

The standard is that a dismissal can occur if it is done for the good of the public service and the court will set aside the agency decision if it finds that the decision was arbitrary, capricious, and abuse of discretion or that the decision was unwarranted by the facts. When, in analyzing the facts, the court finds that each complaint and factor as a reason for dismissal alone does not rise to the level that would allow a

management official to terminate an employee, but when the culmination of all of the factors and complaints does rise to a level where dismissal was a viable option and at the management official's discretion, the good of the public service was served by her dismissal since the health care industry is vital to the Kosrae community and nurses affect the well being of all citizens of Kosrae. Palsis v. Kosrae, 16 FSM R. 297, 314-15 (Kos. S. Ct. Tr. 2009).

When a terminated state employee, since she was given an immediate opportunity to respond and another opportunity to respond one week later, had two opportunities to be heard after being informed of the reasons for her dismissal, and when after these two opportunities, she had two full post-termination evidentiary hearings that analyzed the Hospital's decision to terminate her employment, her procedural due process rights were not violated. Palsis v. Kosrae, 17 FSM R. 236, 242 (App. 2010).

Since a Kosrae public service system management official may, for disciplinary reasons, dismiss an employee when he determines that the good of the public service will be served thereby but since no dismissal of a permanent employee is effective for any purpose until the management official transmits to the employee, by the most practical means, a written notice setting forth the specific reasons for the dismissal and the employee's rights of appeal, the employee must be provided with notice that specifically identifies the reasons for dismissal and the employee's rights of appeal, which is the opportunity to be heard. When the trial court's findings of fact indicate that these specific mandates were satisfied, the appellate court is unable to find that the State Court's reasoning was clearly erroneous. Palsis v. Kosrae, 17 FSM R. 236, 242 (App. 2010).

– Pohnpei

A Pohnpei state government official is an employee for purposes of the Federated States of Micronesia Income Tax Law. Rauzi v. FSM, 2 FSM R. 8, 12 (Pon. 1985).

Working for the Pohnpei state government, whose policy of public service is based explicitly on the merit, is merely a privilege which can be withheld subject to the due process of law. Paulus v. Pohnpei, 3 FSM R. 208, 217 (Pon. S. Ct. Tr. 1987).

The right to governmental employment in Pohnpei is not a fundamental right, constitutionally protected, requiring invoking a strict scrutiny test. Paulus v. Pohnpei, 3 FSM R. 208, 217 (Pon. S. Ct. Tr. 1987).

The Pohnpei State Government has discretion in hiring or firing employees, but that discretion does not carry with it the right to its arbitrary exercise. Paulus v. Pohnpei, 3 FSM R. 208, 217 (Pon. S. Ct. Tr. 1987).

Section 14(1) of the State Public Service System Act of 1981 (2L-57-81), prohibiting any person who has been convicted of a felony and is currently under sentence from being considered for any public employment or from continuing to hold any previously attained public service position, operates to effect double punishment on persons classified as felons, by preventing such individuals' attempts at rehabilitation, and as such this statute does not support Pohnpei State Government's policy of rehabilitating persons who are convicted of crimes. Paulus v. Pohnpei, 3 FSM R. 208, 219 (Pon. S. Ct. Tr. 1987).

Section 14(1) of the State Public Service System Act of 1981 (2L-57-81) is impermissibly arbitrary and irrationally unfair in its blanket prohibition of employment of any person who has been convicted of a felony and is currently under sentence; such statutory prohibition fails to tailor its impact to those convicted felons who otherwise lack the habits of industry. Consequently, this section of the statute is violative of the Equal Rights Clause of the Pohnpei Constitution by failing to demonstrate that the exclusion of all felons is necessary to achieve the articulated state goal. Paulus v. Pohnpei, 3 FSM R. 208, 220 (Pon. S. Ct. Tr. 1987).

A statute providing that any person who has been convicted of a felony and who is currently under sentence shall be terminated from public employment, constitutes an unconstitutional deprivation of procedural due process by allowing for an affected individual's termination without a hearing, and thus must

be struck down. Paulus v. Pohnpei, 3 FSM R. 208, 221-22 (Pon. S. Ct. Tr. 1987).

Each division of the Pohnpei Department of Treasury and Administration, except in instances where the director maintains direct management of the division, has a division chief. Smith v. Nimea, 17 FSM R. 284, 287 (Pon. 2010).

When the Department Director held a hearing, he could conceivably have been acting as the *de facto* chief of PL&MD, or, if PL&MD did have a chief then, the Director may not have had implied authority, unless he was the division chief's designee. Smith v. Nimea, 17 FSM R. 284, 287 (Pon. 2010).

All powers statutorily granted to PL&MD are necessarily a subset of those powers granted to the Pohnpei Department of Treasury and Administration, particularly in light of the statute wherein a department director may assume a division chief's responsibilities and the statute which empowers a division chief to designate another person to act in his stead. Smith v. Nimea, 17 FSM R. 284, 287-88 (Pon. 2010).

Pohnpei Code Title 9, chapter 2, section 105 states that preference shall be given to qualified legal residents of Pohnpei in making appointments and promotions and providing opportunities for training in the public service, but the term "legal residents" is not defined in Title 9. Berman v. Lambert, 17 FSM R. 442, 446 (App. 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).

Pohnpei Code Title 9 provides for a promotion preference, as well as a hiring preference. It offers two tiers of hiring and promotion preferences. A higher hiring and promotion preference is given to legal residents of Pohnpei, and the lower hiring and promotion preference for all FSM citizens who are not legal residents of Pohnpei. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

If the legislature wanted the statute to provide a hiring and promotion preference to Pohnpeian or FSM citizens, then the legislature would have used "citizen" rather than "legal resident." By not defining the term "legal residents" the term's meaning must be the term's common, recognized definition. 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).

Unless the regulations directly violate a national statute or are found to be unconstitutional, Pohnpei is free to regulate its own public service system. Berman v. Lambert, 17 FSM R. 442, 449 (App. 2011).

The right to work for the Pohnpei state government is not a constitutionally protected right, and, although there is a right to seek employment, there is no fundamental right for employment particularly to public employment. Berman v. Lambert, 17 FSM R. 442, 450 (App. 2011).

– Termination

It is inappropriate for the FSM Supreme Court to consider a claim that a government employee's termination was unconstitutional when the administrative steps essential for review by the court of employment terminations have not yet been completed. 52 F.S.M.C. 157. Suldan v. FSM (I), 1 FSM R.

201, 202 (Pon. 1982).

The National Public Service System Act fixes two conditions for termination of a national government employee. Responsible officials must be persuaded that: 1) there is "cause," that is, the employee has acted wrongfully, justifying disciplinary action; and 2) the proposed action will serve "the good of the public service." 52 F.S.M.C. 151-157. Suldan v. FSM (II), 1 FSM R. 339, 353 (Pon. 1983).

In reviewing the termination of national government employees under the National Public Service System Act, the FSM Supreme Court will review factual findings insofar as necessary to determine whether there is evidence to establish that there were grounds for discipline. Semes v. FSM, 4 FSM R. 66, 71 (App. 1989).

Under the National Public Service System Act, where the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of factual findings is limited to determining whether substantial evidence in the record supports the conclusion of the administrative official that a violation of the kind justifying termination has occurred. Semes v. FSM, 4 FSM R. 66, 72 (App. 1989).

The National Public Service System Act places broad authority in the highest management official, authorizing dismissal based upon disciplinary reasons when the official determines that the good of the public service will be served thereby. Semes v. FSM, 4 FSM R. 66, 73 (App. 1989).

The National Public Service System Act and the FSM Public Service System Regulations establish an expectation of continued employment for nonprobationary national government employees by limiting the permissible grounds and specifying necessary procedures for their dismissal; this is sufficient protection of the right to continued national government employment to establish a property interest for nonprobationary employees which may not be taken without fair proceedings, or "due process." Semes v. FSM, 4 FSM R. 66, 73 (App. 1989).

Constitutional due process requires that a nonprobationary employee of the national government be given some opportunity to respond to the charges against him before his dismissal may be implemented; including oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Semes v. FSM, 4 FSM R. 66, 76 (App. 1989).

Implementation of the constitutional requirement that a government employee be given an opportunity to respond before dismissal is consistent with the statutory scheme of the National Public Service System Act, therefore the Act need not be set aside as contrary to due process. Semes v. FSM, 4 FSM R. 66, 77 (App. 1989).

A person whose temporary promotion became permanent has the right to be discharged only for cause, and is entitled to all of the other protections afforded a permanent employee. Isaac v. Weilbacher, 8 FSM R. 326, 337 (Pon. 1998).

A timely appeal by a public employee of his termination by submitting a letter brief to the Assistant Secretary for Personnel Administration entitles him to a hearing on his appeal within fifteen calendar days after the Personnel Officer receives the appeal, unless the appellant requests a delay. A postponement longer than that by the government not consented to by the appellant is not in compliance with the law. Maradol v. Department of Foreign Affairs, 13 FSM R. 51, 52-53 (Pon. 2004).

When there are non-frivolous disputes about the grounds for termination, the decision of the ad hoc committee should identify and address those grounds with specificity, and when they have not, the court will remand the case to the ad hoc committee to prepare a full written statement of its findings of fact to be forwarded to the President for his final review. If, after the President completes his final review, any party believes such action is necessary and appropriate, the party may file a motion to reinstitute the judicial proceedings. Maradol v. Department of Foreign Affairs, 13 FSM R. 51, 54-55 (Pon. 2004).

Under Title 52, when the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory, and constitutional violations, review of the factual findings is limited to determining whether substantial evidence in the record supports the administrative official's conclusion that a violation justifying termination has occurred. The court is thus required to uphold the President's findings of fact if there is substantial evidence in the record to support them. Poll v. Victor, 18 FSM R. 235, 239 (Pon. 2012).

The court will limit itself to reviewing the ad hoc committee's decision and not deal with the issue of job abandonment when the committee's decision is affirmed since there is no need for a review of a further ground for the employee's termination. Additionally, the employee was accorded his right to appeal and did so. If he was terminated for job abandonment he would have no right to appeal. Poll v. Victor, 18 FSM R. 235, 241 n.5 (Pon. 2012).

When the court has found substantial evidence in the record to support all three grounds for an employee's termination and is not left with the definite and firm conviction that a mistake has been committed, no mistake was committed by the ad hoc committee's findings and recommendation, and the President's affirmance. Poll v. Victor, 18 FSM R. 235, 243 (Pon. 2012).

The National Public Service System Act and the Public Service System Regulations establish continued employment for non-probationary national government employees by limiting the permissible grounds and specifying the necessary procedures for their dismissal. This is sufficient protection of the right to continued national government employment to establish a non-probationary employee's property interest which may not be taken without due process, including notice and an opportunity to be heard. Poll v. Victor, 18 FSM R. 235, 244 (Pon. 2012).

When an employee's termination, effectuated on October 28, 2009, could not have taken effect before he was given an opportunity to be heard, which he later received at the ad hoc committee hearing, his termination would be effective, at the earliest, on the December 21, 2009 date of the ad hoc committee's decision because the ad hoc committee hearing was his first opportunity to respond to the charges against him. Poll v. Victor, 18 FSM R. 235, 245 (Pon. 2012).

When there was evidence of the terminated employee receiving approval of an advance leave request of 60 hours, but there was no evidence of how much of this advance leave was actually used, how much had already been paid back, and how much was still outstanding, the court will deny the government's request to offset the employee's pay to cover for the advance leave still owed since there is a lack of evidence on this matter. Poll v. Victor, 18 FSM R. 235, 245 (Pon. 2012).

52 F.S.M.C. 146 does not provide for administrative remedies or administrative appeals of any kind in abandonment of employment cases. Manuel v. FSM, 19 FSM R. 382, 386 (Pon. 2014).

Since an employee who abandons his position does not have the right to an administrative appeal, a court reviewing an agency decision to terminate a plaintiff's employment for reason of abandonment will be unable to limit its role to reviewing factual findings developed during an administrative appeal. A court evaluating the merits of an abandonment claim must instead conduct a trial *de novo* to determine whether there is substantial evidence to support an agency decision to terminate a plaintiff's employment for reason of abandonment. Manuel v. FSM, 19 FSM R. 382, 386 (Pon. 2014).

The Public Service System Act delineates procedures that must be followed in terminating an employee for unsatisfactory performance and mandates that no dismissal or demotion of a permanent employee is effective until the management official transmits to the employee a written notice setting forth the specific reasons for the dismissal or demotion and the employee's rights of appeal and it further mandates that any regular employee who is dismissed may appeal through an administrative review process. A crucial part of the administrative review process is a hearing before an ad hoc committee, and subsequent preparation of a full written statement of findings of fact. Manuel v. FSM, 19 FSM R. 382, 386 (Pon. 2014).

In reviewing a government employee's termination under Title 52, the FSM Supreme Court will review factual findings insofar as necessary to determine whether there is evidence to establish that there were grounds for discipline. Manuel v. FSM, 19 FSM R. 382, 386 (Pon. 2014).

Under Title 52, since the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of the factual findings is limited to determining whether substantial evidence in the record supports the administrative official's conclusion that a violation of the kind justifying termination has occurred. The statute evinces a clear congressional intent that the courts avoid serving as finders of fact. When there are non-frivolous disputes about the grounds for termination, the decision of the ad hoc committee should identify and address those grounds with specificity, and when they have not, the court will remand the case to the ad hoc committee to prepare a full written statement of its findings of fact. Manuel v. FSM, 19 FSM R. 382, 386-87 (Pon. 2014).

When a discharged employee was denied an opportunity to engage in the administrative review process, the court is left without a record to review, and therefore the government's decision to terminate the plaintiff's employment on the grounds of unsatisfactory performance is not supported by substantial evidence in the record. Manuel v. FSM, 19 FSM R. 382, 387 (Pon. 2014).

If the government wants to terminate an employee for unsatisfactory job performance, it must follow the procedures established in the National Public Service System Act and accompanying regulations, including providing the employee with notice of his right to file an administrative appeal. If, after an administrative appeal, the employee is terminated for unsatisfactory performance then the employee may appeal to the FSM Supreme Court, and the court will evaluate the administrative appeal's record to determine if the decision to terminate the employee for unsatisfactory job performance is supported by substantial evidence. Manuel v. FSM, 19 FSM R. 382, 387 n.3 (Pon. 2014).

If an employee ceases work without explanation for not less than six consecutive working days, the management official shall file with the personnel officer a statement showing termination of employment because of abandonment of position. Manuel v. FSM, 19 FSM R. 382, 389 (Pon. 2014).

When an employee's supervisor is contacted with a request for leave due to illness, the supervisor is on notice that the requesting employee is absent for a reason other than a desire to abandon his employment; when any senior management official who read the departmental attendance log and saw LWOP beside the employee's name should have understood that the employee did not wish to resign, but rather that his absences were approved; when it is clear that the employee did not cease work without explanation for six consecutive days and at worst only four of the six absences were without explanation, the employee did not cease work without explanation for six consecutive days and the court must conclude that a finding that the employee abandoned his employment is not supported by substantial evidence. Manuel v. FSM, 19 FSM R. 382, 389-90 (Pon. 2014).

It is well established that a plaintiff seeking an award of back pay as damages for wrongful termination has a duty to mitigate damages by actively seeking alternative employment. Manuel v. FSM, 19 FSM R. 382, 391 (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).

Reinstatement to his former position and back pay from the date of termination to the date of reinstatement are remedies generally available to an employee who has shown wrongful discharge. However, the amount of back pay must be reduced to the extent that the plaintiff has mitigated his damages

by securing other employment. Manuel v. FSM, 19 FSM R. 382, 391-92 (Pon. 2014).

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

An aggrieved employee is entitled to the administrative process regardless of his or her current employment status if it emerges from an employment dispute that was existing at the time the employee left, or if the termination itself is the reason that the person left the public service system. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

It is without jurisdictional significance that a person may, or may not be, covered under the Public Service System Act in her current employment position. It is enough that she indisputably was and that she properly began that grievance process and has the right to see it through to completion. Eperiam v. FSM, 20 FSM R. 351, 356 (Pon. 2016).

When the plaintiff has in good faith requested the resumption of the administrative process and the agency has verbally denied that request, the court may grant relief to the extent that the plaintiff requests declaratory relief requiring the administrative proceedings' resumption, but to the extent that the plaintiff has requested further declaratory relief regarding the validity of her termination, or the legality of a settlement offer, the court cannot grant that relief because that determination is within the administrative agency's exclusive jurisdiction and it is inappropriate for the court to unnecessarily encroach on the administrative domain. Eperiam v. FSM, 20 FSM R. 351, 356-57 (Pon. 2016).

A pattern of untruthfulness that had preceded the probationary employee's lying about posting comments on a website, along with his disrespectful and insubordinate attitude to his supervisor, were more than sufficient to terminate a probationary employee, even if he had not posted any comments. Alexander v. Hainrick, 20 FSM R. 377, 383 (App. 2016).

If the preponderance of evidence shows that a government employee would have been terminated even in the absence of the protected free speech conduct, then the employee's termination should be upheld. Alexander v. Hainrick, 20 FSM R. 377, 383 (App. 2016).

To grant a wrongfully discharged probationary employee a substantial back pay award would be to convert him from the probationary employee he was to a regular or permanent employee, and he cannot be treated as a regular employee since he did not successfully complete his probationary period before he was terminated. Thus, the most a court could do would be to reinstate him as a probationary employee. Alexander v. Hainrick, 20 FSM R. 377, 383 (App. 2016).

A complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face, but a plaintiff's allegation that there was a "sheer possibility" that her termination was based on petty and insufficient grounds, is inadequate, as far as withstanding a Rule 12(b)(6) challenge. Solomon v. FSM, 20 FSM R. 396, 401 (Pon. 2016).

The FSM Supreme Court's review of an agency decision is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of factual findings is limited to determining whether substantial evidence in the record supports the administrative official's conclusions that a violation of the kind justifying the termination has occurred. Solomon v. FSM, 20 FSM R. 396, 402 (Pon. 2016).

When the plaintiff's reasoning neglects to cite what constituted an alleged illegal termination since the only factual averments which depict allegedly untoward conduct on the defendants' part, albeit nebulous, only apply to one defendant, the requisite nexus to support a substantive due process violation is wanting.

Solomon v. FSM, 20 FSM R. 396, 402 (Pon. 2016).

– Yap

Section 23 of Yap State Law 1-35, affecting resignation and abandonment of employment positions, does not provide for administrative remedies or administrative appeal of any kind. Dabchur v. Yap, 3 FSM R. 203, 205 (Yap S. Ct. App. 1987).

Abandonment of a public office is a voluntary form of resignation wherein the employee's intention to relinquish his position must be clear, either through declaration or overt acts. Dabchur v. Yap, 3 FSM R. 203, 207 (Yap S. Ct. App. 1987).

Where the statute in question classifies "constructive" abandonment as an employee ceasing work "without explanation" for not less than six consecutive working days, any explanation from the employee, written or verbal, would suffice to indicate the employer that the employee does not intend to relinquish his position absolutely. Dabchur v. Yap, 3 FSM R. 203, 207 (Yap S. Ct. App. 1987).

An employee who contests the factual allegation of voluntary abandonment is not entitled to any administrative remedies or administrative appeal, and has recourse only in the court. Dabchur v. Yap, 3 FSM R. 203, 208 (Yap S. Ct. App. 1987).

Once Yap's Director of Education took over control of YHS, appointed a DOE employee as the YHS Acting Director, and exercised the power to terminate a YHS employee on a Yap Assistant Attorney General's advice, YHS employees are then state employees since when an individual or entity exercises the power to fire an employee, they become an employer of that employee. Reg v. Falan, 14 FSM R. 426, 436 (Yap 2006).

– Yap – Termination

No dismissal or demotion of a permanent Yap state employee is effective for any purpose until the management official transmits to the employee, by the most practical means, a written notice setting forth the specific reasons for the dismissal or demotion and the employee's rights of appeal. The rights of appeal that the employee should be informed of include: 1) an appeal through the Chief of Division of Personnel, 2) a hearing before an ad hoc committee where the plaintiff has a right to be heard and evidence is taken and recorded, and 3) a full written report of findings and recommendations to the highest management official at the agency. Reg v. Falan, 14 FSM R. 426, 436 (Yap 2006).

When the termination letter sent to the plaintiff stated the reason for his termination, but did not set forth his appeal rights, the plaintiff's dismissal from state employment was not effective. Reg v. Falan, 14 FSM R. 426, 436 (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).

PUBLIC UTILITIES

Only the PUC Board of Directors can terminate PUC's general manager. The Governor has no such power under any circumstance. If the PUC Board lacks a quorum, the Governor's power extends only to nominating new Board members who, if confirmed, would allow the Board to have a quorum and thus to

transact business. Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

The Pohnpei Governor has neither the power nor the authority to exercise any of the powers vested exclusively in the PUC Board. Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

Pohnpei Utility Corporation is not part of the executive branch of the Pohnpei state government or part of either of the other two branches. It is an independent agency not subject to or under any of the three branches of government. Perman v. Ehsa, 18 FSM R. 432, 440 (Pon. 2012).

REMEDIES

Although retroactive application of a decision holding a state tax unconstitutional would impose hardship on a state where funds collected under the tax have already been committed, such a result is not inequitable where the state legislature pushed on with the tax act despite the strong resistance of business people to the tax in the form of petition and establishment of an escrow account to hold contested payments, and a veto message by the governor of the state, and there is no indication that the legislature seriously considered the constitutionality of the legislation. Innocenti v. Wainit, 2 FSM R. 173, 186 (App. 1986).

A promissory note executed by a governor, not authorized by law, and for which no appropriation of funds was made, and which failed to meet the requirements of the state financial management act is unenforceable against the state. Truk v. Maeda Constr. Co. (I), 3 FSM R. 485, 487 (Truk 1988).

A promissory note executed by the governor which is unenforceable against the state is not ratified although the legislature appropriated funds for a state debt committee which included the amount of the note, since the committee is not required to pay the promisee of the note, and since the promisee is not the allottee of the appropriation. Truk v. Maeda Constr. Co. (I), 3 FSM R. 485, 487 (Truk 1988).

Although the court is powerless to compel Chuuk State to honor its lease agreement it has full power to restore unlawfully held property to its rightful owner as a remedy for forcible entry and unlawful detainer. Billimon v. Chuuk, 5 FSM R. 130, 136-37 (Chk. S. Ct. Tr. 1991).

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 the court cannot compel the state to honor an illegal and/or unconstitutional lease it can order the state to restore the illegally held land, with any and all public improvements removed, to its rightful owner who may also be entitled to damages. Billimon v. Chuuk, 5 FSM R. 130, 137 (Chk. S. Ct. Tr. 1991).

The equitable remedy of specific performance is one where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff – when damages cannot be computed or when a substitute cannot be purchased. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 126 (Pon. 1993).

Where 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).

Where a remedy exists, the FSM Supreme Court has general power under the Judiciary Act of 1979 to effect that remedy. Amayo v. MJ Co., 10 FSM R. 433, 435 (Pon. 2001).

It is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it. AHPW, Inc. v. FSM, 12 FSM R. 114,

122 (Pon. 2003).

There is no property right that is recognized by the law of the FSM as "damages." Damages is a legal term of art that refers generally to a remedy which may be granted by the court to a party in a civil action. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 456 (Pon. 2009).

Injunctive relief is a remedy available in proper cases. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 486 (Pon. 2009).

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).

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).

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).

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

Since the plaintiff formed a series of valid and enforceable contracts with the defendant, the plaintiff cannot find relief in equity. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 478 (Pon. 2014).

Under a trespass cause of action, the trespasser is liable for his intentional failure to remove from the land a thing he has a duty to remove. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78 (Pon. 2015).

When no valid contract exists between the parties because of a lack of definite terms, a party may recover for the benefit conferred upon another pursuant to other legal remedies under the law of contracts. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

– Election of Remedies

Under the doctrine of election of remedies, a plaintiff cannot pursue two or more remedies which are inconsistent with each other, i.e. the assertion of one remedy directly contradicts or repudiates the other. The test is whether the assertion of one remedy involves the negation or repudiation of the other at a time when full knowledge of the facts would indicate a choice between the forms of redress. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 183 (Pon. 1993).

Election of remedies as a bar to a plaintiff's action does not apply in a case where plaintiff had no knowledge or reason to know of fraud affecting his choice of action or where his original choice was based unknowingly on false information. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 184 (Pon. 1993).

– Quantum Meruit

In an action by a party who performed work for the benefit of the state and who seeks quantum meruit relief because no valid obligation of state funds existed, that relief by summary judgment cannot be granted when the party's own authorities show that the party must overcome the presumption of knowledge of the requirements of government contracting to demonstrate good faith, and no evidence on this issue was included in the motion for summary judgment, even though the work done and the charges made were reasonable, and even though there was no evidence of bad faith, collusion or fraud. Truk v. Maeda Constr. Co. (II), 3 FSM R. 487, 489 (Truk 1988).

A party completing projects is not entitled to quantum meruit recovery against the state when the contracts were done at the instance of the governor who had no authority to obligate the funds of the state, when the contracts did not purport to obligate the funds of the state, in which the governor promised to use his best efforts to find funds to pay for work performed, when the party accepted the risk that the governor might not be able to find funds, and when the governor promised payment when and if funds were available, even though the work performed was satisfactory, the charges were reasonable, and the work benefitted the state. Truk v. Maeda Constr. Co. (III), 3 FSM R. 489, 493-94 (Truk 1988).

The amount of compensation a public employee receives is not based on quasi-contract doctrines such as quantum meruit or unjust enrichment, but instead is set by law, even if the actual value of the services rendered by a public officer is greater than the compensation set by law. Sohl v. FSM, 4 FSM R. 186, 192 (Pon. 1990).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

A claim for unjust enrichment will not lie where a party's efforts to reclaim the family's land were necessary in order for him to preserve any claim he personally had to that land and there is no evidence that he expended additional efforts or expense for the rest of the family beyond what he had to do to protect his own interests. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

Quantum meruit is an equitable doctrine, based upon the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

The essential elements of recovery under quantum meruit include: 1) valuable services rendered or materials furnished; 2) to a person sought to be charged; 3) which services or material were used and enjoyed by the person sought to be charged; and 4) under such circumstances as reasonably notified the person sought to be charged that the person performing the services expected payment. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

As a matter of law, the presence of an express written contract, which clearly sets forth the obligations of the parties, precludes a party from bringing a claim under quantum meruit. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

The settled rule that the statute of limitations begins to run upon the accrual of a cause of action applies in actions on implied and quasi contracts. When compensation for services is to be made on a certain date, the statute of limitations on an implied or quasi contract begins to run at that time. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 559 (Pon. 2000).

Quantum meruit is an equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby; under those circumstances, the law implies a promise to pay a reasonable amount for the labor and materials furnished, even absent a specific contract

therefor. The doctrine of unjust enrichment has been recognized in the FSM. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

A motion to amend a complaint to add an unjust enrichment claim will be denied when it is based upon a defendant's failure to abide by the alleged agreements' terms because these are express agreements, and unjust enrichment is a theory applicable to implied contracts. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 232 (Pon. 2002).

The doctrine of unjust enrichment only applies where there is no enforceable contract; the doctrine of restitution may not be applied where there is a contract; and the doctrines of implied contract and quantum meruit do not apply where there is an enforceable written contract. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 436 (Kos. S. Ct. Tr. 2004).

If a defendant had had capabilities and resources equal to the transaction it undertook – then when it did not perform its contract, the plaintiff may well have had an adequate remedy in suing it on its contract to supply outboard motors, but when it was never a viable business entity, but a shell enterprise the purpose of which was to funnel the money to the other defendant, under all the case's facts and circumstances, the plaintiff should be permitted to "follow the money." Precluding the plaintiff from doing so would result in the other defendant's unjust enrichment at the plaintiff's expense. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 516 (App. 2005).

Quantum meruit, or unjust enrichment, is the equitable doctrine that in the absence of an enforceable contract, someone who receives something from another at the expense of the one conferring the benefit should either pay for it or return it. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651 (Pon. 2008).

Unjust enrichment relates to the doctrine of implied contracts, which is to say that the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact in order to avoid unjust enrichment. Neither the concept of unjust enrichment or the closely associated idea of an implied contract apply where there is an enforceable written contract, since an express contract and implied contract for the same thing cannot govern a legal relationship at the same time. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651-52 (Pon. 2008).

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).

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).

6 F.S.M.C. 702(3) waives the FSM's sovereign immunity only for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM. But, although the equitable doctrine of unjust enrichment operates in the absence of an enforceable contract when a party has received something of value and neither paid for it or returned it, unjust enrichment is a theory applicable to implied contracts. Thus, depending upon the facts of a case, 6 F.S.M.C. 702(3) does not bar an unjust enrichment claim since it does waive the FSM's sovereign immunity for implied (as well as express) contract claims. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

If there was a valid contact, a court cannot use an implied contract and an unjust enrichment analysis because the doctrines of unjust enrichment and implied contract do not apply when there is a valid, enforceable written contract. The unjust enrichment doctrine applies only when there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or other reason and is based on the idea one person should not be permitted to unjustly enrich himself at another's expense. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

Unjust enrichment is an equitable doctrine that relates to the doctrine of implied contracts in that the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact in order to avoid unjust enrichment. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

When the trial court concluded that Kosrae was liable because there was an implied contract and because Kosrae was unjustly enriched, it must necessarily have also concluded that there was no valid enforceable contract since if there were an express contract, the implied contract and unjust enrichment doctrines would not apply. Kosrae v. Edwin, 18 FSM R. 507, 514 (App. 2013).

When the appellees did not officiously thrust their services as vice-principals on Kosrae but had applied for the vice-principal position; thought they had been hired for the position (and did not know their contracts were invalid); and then performed the duties required by that position and as they were instructed by their superiors, Kosrae was unjustly enriched and therefore should compensate the appellees. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

As a matter of law, the presence of an express written contract, which clearly sets forth the parties' obligations, precludes a party from bringing a claim under quantum meruit. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 12 (Pon. 2013).

When there are two express written contracts in which the parties' obligations are clearly set out: 1) the salvage contract between the vessel owner and the salvor and 2) the contract between insurer and the salvor that the insurer would pay the salvor the amounts due under the salvage contract on the presentation of an invoice and when there are additional, probably oral contracts for the $26,607.50 preparation work the salvor agreed to do that was outside the salvage contract's scope of work, the defendants are, with the exception of the $26,607.50 preparation work, entitled to summary judgment on the salvor's quantum meruit claims. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 12 (Pon. 2013).

As a matter of law, the presence of an express written contract, which clearly sets forth the parties' obligations, precludes a party from bringing a claim in equity under quantum meruit. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

to fashion a remedy under the restitution doctrine. The unjust enrichment doctrine also applies when there is an unenforceable contract. It is based upon the idea that one person should not be permitted unjustly to enrich himself at the expense of another. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM

R. 14, 18 (Pon. 2016).

The unjust enrichment doctrine is based on the idea that one person should not be permitted unjustly to enrich himself at another's expense. The generally accepted elements of an unjust enrichment cause of action are: 1) the plaintiff conferred a benefit on the defendant, who has knowledge of the benefit, 2) the defendant accepted and retained the conferred benefit, and 3) under the circumstances it would be inequitable for the defendant to retain the benefit without paying for it. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

– Restitution

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).

Restitution is a remedy which returns the benefits already received by a party to the party who gave them where the court can find no contract. Jim v. Alik, 4 FSM R. 198, 201 (Kos. S. Ct. Tr. 1989).

The doctrine of unjust enrichment has been expanded to cover cases where there is an implied contract, but a benefit officiously thrust upon one is not considered an unjust enrichment and restitution is denied in such cases. Etscheit v. Adams, 6 FSM R. 365, 392 (Pon. 1994).

The purpose of the remedy of restitution is not to compensate the non-breaching party for reliance expenditures, but rather to prevent unjust enrichment of the breaching parties by forcing them to give up what they have received under the contract. Therefore defendants who breached an enforceable option agreement must return the $12,500 consideration, not because it is a loss attributable to the breach, but because the defendants would be unjustly enriched if they were allowed to keep the consideration after failing to live up to their end of the option agreement. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM R. 502, 507 (Pon. 1994).

As a general rule, where money is paid under a mistake of fact, and payment would not have been made had the facts been known to the payor, such money may be recovered even though the person to whom the money was paid under a mistake of fact was not guilty of deceit or unfairness, and acted in good faith, nor does the payor's negligence preclude recovery. The fact that money paid by mistake has been spent by the payee is generally insufficient to bar restitution to the payor. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

Restitution is a quasi-contract action based on a tort that is an alternative remedy to a tort action for damages. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

Refund of taxes paid pursuant to an unconstitutional ordinance is an action for restitution, not damages. The principles governing recovery of payment which preclude recovery of voluntary payments are applicable to the recovery of tax payments. The "voluntary payment rule" has barred recovery in restitution. The general rule is that money paid voluntarily under a claim of right to the payment, and with knowledge of the facts by the person making the payment, cannot be recovered back on the ground that the claim was illegal. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 125 (Chk. 1997).

The reason the voluntary payment rule bars recovery in restitution of unlawful taxes is that litigation should precede payment. It thus does not apply to payments made after the commencement of litigation because the rule ceases with the reason on which it is founded. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 125-26 (Chk. 1997).

A person who has discharged more than his proportionate share of a duty owed by himself and another, as to which neither had a prior duty of performance, and who is entitled to contribution from the other is entitled to reimbursement, limited to the proportionate amount of his net outlay properly expended. Senda v. Semes, 8 FSM R. 484, 495 (Pon. 1998).

Contribution is an equitable doctrine based on principles of fundamental justice. When any burden ought, from the relationship of the parties to be equally borne and each party is in aequali jure, contribution is due if one has been compelled to pay more than his share. The right to contribution is not dependent on contract, joint action, or original relationship between the parties; it is based on principles of fundamental justice and equity. Senda v. Semes, 8 FSM R. 484, 495 (Pon. 1998).

The right to sue for contribution does not depend upon a prior determination that the defendants are liable. Whether they are liable is the matter to be decided in the suit. To recover a plaintiff must prove both that there was common burden of debt and that he has, as between himself and the defendant, paid more than his fair share of the common obligations. 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).

Allowing a contribution claim between parties who are relatives, and who are equally liable under a duly promulgated regulation for a corporation's debts, is consistent with the customary principle that relatives should assist one another. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

A contention that custom and tradition as a procedural device may prevent an equitable claim for contribution based on violation of a regulation governing the formation of corporations is an insufficient defense as a matter of law. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

The date of accrual for a contribution cause of action is the day the judgment was entered. Obviously a prerequisite to any successful contribution action based on a judgment is the judgment itself. The limitations period for a contribution action is six years. Senda v. Semes, 8 FSM R. 484, 500-01 (Pon. 1998).

In the case of indemnity the defendant is liable for the whole damage springing from contract, while in contribution the defendant is chargeable only with a ratable proportion founded not on contract but upon equitable factors measured by equality of burden. Senda v. Semes, 8 FSM R. 484, 505 (Pon. 1998).

A party jointly and severally liable for a corporation's debts is not liable for contribution for a subsidiary's debt paid by a guarantor when the corporation was not a coguarantor of the subsidiary's loan. Senda v. Semes, 8 FSM R. 484, 506 (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).

When C.P.A. Reg. 2.7 imposes the same degree of liability on all incorporators, and the parties' plan from the beginning was to share profits equally, balancing the equities favors a three-way, equal split of the debt burden on a contribution claim. Senda v. Semes, 8 FSM R. 484, 507-08 (Pon. 1998).

A person who has discharged more than his proportionate share of a duty owed by himself and another and who is entitled to contribution from the other is entitled to reimbursement limited to the proportionate amount of his net outlay properly expended. When incurred interest expense is part of his net outlay properly expended, the other should contribute toward the interest expense. Senda v. Semes, 8 FSM R. 484, 508 (Pon. 1998).

Where no contract existed, a court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract. It

requires a party to either return what has been received or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 195 (Kos. S. Ct. Tr. 2001).

Restitution is a remedy which returns the benefits already received by a party to the party who gave them where the court can find no contract. 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).

Claimed expenditures for food and beverages will not be awarded when the purchase and consumption of these items was not dependent upon the defendant's promise, and labor costs will not be allowed as damages when there was no evidence presented at trial that the plaintiff paid any person a specific sum for labor. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

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).

Where no contract existed for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Youngstrom v. Mongkeya, 11 FSM R. 550, 554 (Kos. S. Ct. Tr. 2003).

The court has wide discretion in the award of damages in restitution cases to achieve fairness. Once a claimant's entitlement to damages is established, the amount of damages is an issue for the finder of fact. Youngstrom v. Mongkeya, 11 FSM R. 550, 555 (Kos. S. Ct. Tr. 2003).

When the plaintiff has already paid the full amount of costs for which both the plaintiff and defendant are equally responsible, the defendant is liable to the plaintiff for half of those costs. Youngstrom v. Mongkeya, 11 FSM R. 550, 555 (Kos. S. Ct. Tr. 2003).

When the parties have failed to make an enforceable contract due to the lack of definite terms, the court may use its equity power to grant a remedy under the doctrine of restitution. Restitution is a remedy which returns the benefits already received to the party who gave those benefits. Livaie v. Weilbacher, 11 FSM R. 644, 648 (Kos. S. Ct. Tr. 2003).

Restitution is a doctrine by which the court returns the benefits received by one party. Livaie v. Weilbacher, 11 FSM R. 644, 648 (Kos. S. Ct. Tr. 2003).

When the plaintiff is entitled to restitution for the value of landfill hauled from his property, he will be paid at the market value per cubic yard. Livaie v. Weilbacher, 11 FSM R. 644, 648 (Kos. S. Ct. Tr. 2003).

The unjust enrichment doctrine is based on the idea that one person should not be permitted unjustly to enrich himself at another's expense. The generally accepted elements of an unjust enrichment cause of action are: 1) the plaintiff conferred a benefit on the defendant, who has knowledge of the benefit, 2) the

defendant accepted and retained the conferred benefit, and 3) under the circumstances it would be inequitable for the defendant to retain the benefit without paying for it. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 345 (Pon. 2004).

Unjust enrichment is an equitable remedy, and generally requires that the party who accepted and retained a benefit pay that benefit back to the party who conferred it. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346 (Pon. 2004).

While the doctrine of unjust enrichment has not been explicitly discussed or adopted, Pohnpei state law and Micronesian custom and tradition dictate that a party who has benefitted unjustly from another should, under certain circumstances, be made to repay that benefit. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346 (Pon. 2004).

There is no impediment to a plaintiff recovering for unjust enrichment, when the plaintiff has proven that one or more defendant knowingly accepted a benefit from the plaintiff and was unjustly enriched at plaintiff's expense. The plaintiff was undoubtedly wronged when it paid $54,000 for 27 outboard motors, and only received 13 of the motors, and since the defendants received this money and converted it to other purposes, it would be unjust to permit them to retain that benefit. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346 (Pon. 2004).

Even though there is evidence of a contract between the plaintiff and a defendant, the equitable remedy of unjust enrichment will be applied to permit the plaintiff to recover from another defendant, when it is apparent that the first defendant was created only to circumvent second's obligations under its distributorship agreement and the second defendant ultimately was the party that received the bulk of the money. It would be unjust indeed to permit it to retain a benefit it received, merely because it received the benefit through a shell company that was created merely so that the plaintiff's check could be cashed and the money paid over to it. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346 (Pon. 2004).

When individuals were unjustly enriched by the plaintiff in the amount of $3,500, and the plaintiff elected to sue on an equitable claim of unjust enrichment, rather than for breach of contract, and when, by their own testimony, the individuals personally made money on the transaction, and the plaintiff received only one-half of the motors it purchased, it would be inappropriate to not hold the defendants responsible, as individuals and as the company's principals, for their dealings with the plaintiff which damaged the plaintiff. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346-47 (Pon. 2004).

When a defendant admitted that it had been "paid in full" for the 27 outboard motors the plaintiff purchased, but it only delivered 13 of the motors, the defendant has been unjustly enriched in the amount the plaintiff paid for 14 of the 27 motors, minus the amount that was converted by others. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 347 (Pon. 2004).

The doctrine of unjust enrichment only applies where there is no enforceable contract; the doctrine of restitution may not be applied where there is a contract; and the doctrines of implied contract and quantum meruit do not apply where there is an enforceable written contract. Esau v. Malem Mun. Gov't, 12 FSM R. 433, 436 (Kos. S. Ct. Tr. 2004).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 130 (Chk. 2005).

The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at another's expense and this doctrine has been expanded to cover cases where there is an implied contract. The generally accepted elements of an unjust enrichment cause of action are: 1) the plaintiff conferred a benefit on the defendant, who has knowledge of the benefit, 2) the defendant accepted

and retained the conferred benefit, and 3) under the circumstances it would be inequitable for the defendant to retain the benefit without paying for it. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 130 (Chk. 2005).

The classic situation to which the unjust enrichment doctrine is applied is where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and the doctrine requires a party to either return what has been received under the contract or pay the other party for it. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 130 (Chk. 2005).

There was no classic unjust enrichment situation when there was no contract, unenforceable or otherwise, between the plaintiff and the bank and no implied contract between the two and when the plaintiff did not confer a benefit on the bank that the bank had knowledge of, accepted and retained, because not only was there no contract between the plaintiff and the bank, but also because the plaintiff had no contact with the bank at all and was not in privity with the bank. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 130 (Chk. 2005).

When a borrower did not pay the money to the bank under the mistaken belief that it owed the bank money because it actually did owe the bank money and when it did not mistakenly pay to the bank money that it owed to another, the money was not paid to the bank by mistake as that term is used in unjust enrichment cases – often referred to as an action for money had and received. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 130 (Chk. 2005).

There is a certain limited instance where a plaintiff may recover under an unjust enrichment theory from a third party with which he has had no contact, either directly or through its agents. The requisite "privity" does exist between a plaintiff and such a defendant when that defendant has received money from another fraudulently obtained by the latter only when the recipient was aware of the fraud. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 130-31 (Chk. 2005).

Money received in the regular course of business from one who fraudulently or feloniously obtained it from another may not be recovered by the true owner from the recipient, even though the latter received it in payment of an antecedent debt and parted with no new consideration for the same, if he had no knowledge of the fraud or of the felony. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 131 (Chk. 2005).

A defendant bank, having received money from a debtor to it in the regular course of business to pay an antecedent debt which the debtor unquestionably owed to it and having no reason to believe or knowledge that the money might have been fraudulently obtained, is not liable to pay restitution to the plaintiff under the unjust enrichment doctrine. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 131 (Chk. 2005).

When no contract exists for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Restitution is the proper remedy when no enforceable contract exists. It requires the benefitted party to return what was received or to pay the other party for it. Livaie v. Weilbacher, 13 FSM R. 139, 143 (App. 2005).

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 no contract exists for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution and where no contract exists for lack of an agreed sale price, restitution is applicable. The doctrine of unjust enrichment generally applies when there is an unenforceable contract. It is based on the idea that one person should not be permitted unjustly to enrich himself at the expense of another. DJ Store v. Joe, 14 FSM R. 83, 85 (Kos. S. Ct. Tr. 2006).

When the defendant took the cement mixer in April 2001 and has maintained continuous possession and use for nearly five years without any payment to the plaintiff, the defendant has unjustly enriched himself through continued possession and use of the cement mixer, especially in his construction business, which has generated income for defendant. The defendant is thus liable to the plaintiff for restitution of the cement mixer's value. DJ Store v. Joe, 14 FSM R. 83, 85-86 (Kos. S. Ct. Tr. 2006).

When no contract exists for lack of definite terms, the court may use its equity power to fashion a remedy under the doctrine of restitution. The doctrine of unjust enrichment also applies where there is an unenforceable contract. It is based upon the idea that one person should not be permitted unjustly to enrich himself at the expense of another. Heirs of Nena v. Sigrah, 14 FSM R. 283, 285 (Kos. S. Ct. Tr. 2006).

When the defendant's expenses are equivalent to the defendant's rental income, the defendant has not been unjustly enriched and is therefore not liable to the plaintiffs under the doctrines of restitution and unjust enrichment. Heirs of Nena v. Sigrah, 14 FSM R. 283, 286 (Kos. S. Ct. Tr. 2006).

When the parties have failed to make an enforceable contract due to the lack of definite terms, the court may use its equity power to grant a remedy under the doctrine of restitution. Restitution is a remedy which returns the benefits already received to the party who gave those benefits. Once a claimant's entitlement to damages is established, the amount of damages is an issue of fact for the finder of fact. The trial court has wide discretion in determining the amount of damages in quasi-contract and contract cases involving equitable doctrines, such as restitution. Hartman v. Krum, 14 FSM R. 526, 531 (Chk. 2007).

When a plaintiff makes a claim for damages, he has a duty to mitigate those damages, which means that a plaintiff who has taken reasonable steps to minimize the amount of his damages may recover the amount of those expenses. A court will not compensate an injured party for a loss that he could have avoided by making appropriate efforts, in the eyes of the court, to the circumstances. Under the general principle of mitigation of damages, a plaintiff is not encouraged to maximize his recovery by siting on his rights. Hartman v. Krum, 14 FSM R. 526, 531 (Chk. 2007).

When the defendant is responsible for returning a cement mixer to the plaintiffs in a similar condition as when he took it, but it would be too difficult to have the cement mixer fixed, the court must look at an alternative and award the plaintiffs an amount for the replacement of their used cement mixer. Hartman v. Krum, 14 FSM R. 526, 531 (Chk. 2007).

When there is no enforceable contract, a court may use its inherent equity power to fashion a remedy under doctrines such as unjust enrichment or detrimental reliance. The doctrine of unjust enrichment is based on the idea that one person should not be unjustly enriched at the expense of another. It usually applies when a party has partly performed under a contract that is later void for mistake, fraud, illegality, impossibility, or some other reason, or where there is an implied contract. Generally, the person must either return what has been received under the contract or pay for it. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

When the 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).

When the court concludes that there was a contract between the plaintiff and the defendant, it will do not address the plaintiff's alternative claims under unjust enrichment and promissory estoppel. George v. George, 15 FSM R. 270, 273 (Kos. S. Ct. Tr. 2007).

When the court concludes that there was a contract between the plaintiff and the defendant, it will do not address the plaintiff's alternative claims under unjust enrichment and promissory estoppel. George v. Albert, 15 FSM R. 323, 326 (Kos. S. Ct. Tr. 2007).

An unjust enrichment or restitution claim cannot be maintained until money has been paid to or received by the person alleged to be unjustly enriched or has been paid in error to someone who should not retain it. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 6 (Pon. 2011).

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).

If, when a judgment that a party has paid is reversed on appeal or otherwise set aside, that party then has a restitution or unjust enrichment cause of action, then it follows that when a judgment has been affirmed on appeal and not otherwise set aside, that party does not have cause of action for restitution or unjust enrichment for sums paid on the judgment. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7 (Pon. 2011).

If a plaintiff has not had the judgment set aside or reversed, then the plaintiff's unjust enrichment claim fails to state a claim on which relief can be granted since the plaintiff cannot allege that it would be inequitable for the defendant to retain the benefit without paying for it because the plaintiff cannot truthfully allege that the judgment has been set aside. 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).

Plaintiffs who did not make any payments of their own cannot seek the restitution of any funds or allege unjust enrichment since they have not paid any funds. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 7-8 (Pon. 2011).

A constructive trust is a remedy for an unjust enrichment or restitution cause of action and when the plaintiffs fail to state a claim for unjust enrichment or restitution, there can be no basis to employ a constructive trust remedy. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 8 (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).

Some authorities indicate that after a judgment is reversed a timely demand for restitution of the judgment payment must first be made and that its refusal is a prerequisite for an unjust enrichment suit. This is sensible because the courts should not be burdened with an unjust enrichment lawsuit if the former judgment holder will return the payment after a demand for it. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 8 n.3 (Pon. 2011).

An unjust enrichment claim has not accrued (and may never accrue) when the prerequisite for the unjust enrichment claim – having an earlier judgment set aside – still has not occurred and may never

occur. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 9 (Pon. 2011).

A trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution and the plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

When the equities involved include that the plaintiff falsely informed Chuuk that the marine insurance policy was not in effect when, in fact, it was in effect because the net premium had been paid to the insurer, promissory estoppel may instead be a better measure of the damages than implied contract or unjust enrichment. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

Lawyers are accustomed to seeing the word "restitution" in connection with the "rescission" or cancellation of a contract because when a contract is rescinded, each party is entitled to be restored what he gave the other, or in other words, is entitled to restitution. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

Rescission will normally be accompanied by restitution on both sides. It is the general rule that rescission will be granted only on the condition that the party asking it restore to the other party, substantially, the consideration received. Killion v. Nero, 18 FSM R. 381, 385 (Chk. S. Ct. Tr. 2012).

When rescinding a contract, ordering substitutionary restitution is possible – the defendant can often be made to return the money value of the property he obtained because, on rescission, a plaintiff is entitled to the return of her property or to its value if its reconveyance cannot be had. Killion v. Nero, 18 FSM R. 381, 385-86 (Chk. S. Ct. Tr. 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).

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).

Unjust enrichment is a theory applicable to implied contracts. The unjust enrichment doctrine covers cases where there is an implied contract. But if a benefit is officiously thrust upon another, it is not considered an unjust enrichment and restitution is denied in such cases. Kosrae v. Edwin, 18 FSM R. 507, 515 (App. 2013).

The equitable doctrine of unjust enrichment operates in the absence of an enforceable contract. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

Unjust enrichment relates to the doctrine of implied contracts, which is to say that in order to avoid unjust enrichment the court will, in the absence of a legally enforceable contract, imply a contract in law in the absence of a contract in fact. Neither the concept of unjust enrichment or the closely associated idea of an implied contract apply when there is an enforceable written contract, since an express contract and implied contract for the same thing cannot govern a legal relationship at the same time. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

The doctrine of unjust enrichment does not apply when there is a legally binding agreement in the form of life and cancer insurance policies that the parties agreed to and executed. Johnny v. Occidental Life Ins., 19 FSM R. 350, 360 (Pon. 2014).

Money withheld from wages for social security and income taxes does not count as restitution to the FSM of funds fraudulently converted from Compact sector grant money. FSM v. Muty, 19 FSM R. 453, 461 (Chk. 2014).
to fashion a remedy under the restitution doctrine. The unjust enrichment doctrine also applies when there is an unenforceable contract. It is based upon the idea that one person should not be permitted unjustly to enrich himself at the expense of another. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

The unjust enrichment doctrine is based on the idea that one person should not be permitted unjustly to enrich himself at another's expense. The generally accepted elements of an unjust enrichment cause of action are: 1) the plaintiff conferred a benefit on the defendant, who has knowledge of the benefit, 2) the defendant accepted and retained the conferred benefit, and 3) under the circumstances it would be inequitable for the defendant to retain the benefit without paying for it. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

When the court can find no contract, restitution is a remedy which returns the benefits already received by a party to the party who gave them. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

When the parties have failed to make an enforceable contract due to the lack of definite terms, the court may use its equity power to grant a remedy under the restitution doctrine. Restitution is a remedy which returns the benefits already received to the party who gave those benefits. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 18 (Pon. 2016).

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).

SEARCH AND SEIZURE

The article IV, section 5 right to be secure against searches is not absolute. The Constitution only protects against unreasonable searches. FSM v. Tipen, 1 FSM R. 79, 82 (Pon. 1982).

No right is held more sacred, or is more carefully guarded by the common law than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. FSM v. Tipen, 1 FSM R. 79, 86 (Pon. 1982).

The constitutional protection of the individual against unreasonable searches and limitation of powers of the police apply wherever an individual may harbor a reasonable expectation of privacy. FSM v. Tipen, 1 FSM R. 79, 86 (Pon. 1982).

Constitutional protection against unreasonable searches extends to the contents of closed containers within one's possession and to those items one carries on one's person. FSM v. Tipen, 1 FSM R. 79, 86 (Pon. 1982).

A citizen is entitled to protection of the privacy which he seeks to maintain even in a public place. FSM v. Tipen, 1 FSM R. 79, 86 (Pon. 1982).

The burden is on the government to justify a search without a warrant. FSM v. Tipen, 1 FSM R. 79, 87

(Pon. 1982).

The legality of a search must be tested on the basis of the information known to the police officer immediately before the search began. FSM v. Tipen, 1 FSM R. 79, 88 (Pon. 1982).

When investigating officers have reason to believe that somebody on private premises may have information pertaining to their investigation, they may enter those private premises, without a warrant or prior judicial authorization, to make reasonably nonintrusive efforts to determine if anybody is willing to discuss the substance of their investigations. FSM v. Mark, 1 FSM R. 284, 288 (Pon. 1983).

It is generally agreed that for actions to constitute a search, there must be: 1) an examination of premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in prosecution of a criminal action. FSM v. Mark, 1 FSM R. 284, 298 (Pon. 1983).

Mere observation does not constitute a search. The term "search" implies exploratory investigation or quest. FSM v. Mark, 1 FSM R. 284, 289 (Pon. 1983).

Police officers who in the performance of their duty enter upon private property without an intention to look for evidence but merely to ask preliminary questions of the occupants cannot be said to be conducting a search within the meaning of the Constitution. FSM v. Mark, 1 FSM R. 284, 289 (Pon. 1983).

Wide ranging and unwarranted movement of police officers on private land may constitute an unreasonable invasion of privacy, or establish that the investigation had evolved into a search. FSM v. Mark, 1 FSM R. 284, 290 (Pon. 1983).

The starting point and primary focus of legal analysis for a claim of unreasonable search and seizure should normally be the Constitution's Declaration of Rights, not the statutory "Bill of Rights." FSM v. George, 1 FSM R. 449, 455 (Kos. 1984).

The principal difference between FSM Constitution article IV, section 5 and 1 F.S.M.C. 103 is that the Constitution, in addition to prohibiting unreasonable searches and seizures also contains a prohibition against invasions of privacy. FSM v. George, 1 FSM R. 449, 455 n.1 (Kos. 1984).

While the existence of probable cause to believe that a crime has been committed and that a particular person has committed it is not in itself sufficient to justify a warrantless search, the establishment of probable cause is nevertheless critical to any unconsented search. FSM v. George, 1 FSM R. 449, 460-61 (Kos. 1984).

Without probable cause, no search warrant may be obtained and no unconsented search may be conducted. FSM v. George, 1 FSM R. 449, 461 (Kos. 1984).

Constitutional prohibitions against unreasonable searches, seizures or invasions of privacy must be applied with full vigor when a dwelling place is the object of the search. FSM v. George, 1 FSM R. 449, 461 (Kos. 1984).

Article IV, section 5 of the FSM Constitution, based upon the fourth amendment of the United States Constitution, permits reasonable, statutorily authorized inspections of a fishing vessel in FSM ports, under various theories upheld under the United States Constitution, when the vessel is reasonably suspected of having engaged in fishing activities. Ishizawa v. Pohnpei, 2 FSM R. 67, 74 (Pon. 1985).

It is extraordinarily difficult for law enforcement authorities to police the vast waters of the Federated States of Micronesia. Yet, effective law enforcement to prevent fishing violations is crucial to the economic interests of this new nation. Accordingly, the historical doctrines applied under the United States Constitution which expand the right to search based upon border search, administrative inspection and

exigent circumstances theories, appear suitable for application to fishing vessels within the Federated States of Micronesia. Ishizawa v. Pohnpei, 2 FSM R. 67, 74 (Pon. 1985).

Searches and seizures both constitute a substantial intrusion upon the privacy of an individual whose person or property is affected, but a seizure often imposes more onerous burdens. Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

A temporary seizure is itself a significant taking of property, depriving the owner of possession, an important attribute of property. Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

While the power to seize a vessel is crucial to the interests of the Federated States of Micronesia and its states, there are also compelling factors demanding that seizures take place only where fully justified and that procedures be established and scrupulously followed to assure that the power to seize is not abused. Ishizawa v. Pohnpei, 2 FSM R. 67, 75 (Pon. 1985).

It is normally required that a hearing be held prior to seizure of a property. In extraordinary situations a seizure may take place prior to hearing, but the owner must be afforded a prompt post-seizure hearing at which the person seizing the property must at least make a showing of probable cause. Unreasonable delay in providing a post-seizure hearing may require that an otherwise valid seizure be set aside. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

Where a seizure is for forfeiture rather than evidentiary purposes, the constitutional prohibitions against taking property without due process come into play. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

The general requirement under article IV, section 5 of the Constitution is that before a search or seizure may occur there must exist "probable cause," that is, a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed and that the item to be seized has been used in the crime. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

Any attempt to grant statutory authority to permit seizure of a fishing vessel upon a lesser standard than probable cause would raise serious questions of compatibility with article IV, sections 3 and 4 of the Constitution. Such an interpretation should be avoided unless clearly mandated by statute. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

Where defendants accompanied police officers, then defendants entered their homes and obtained the stolen goods and turned them over to the police, the question of whether there has been an unreasonable seizure in violation of article IV, section 5 of the Constitution turns on whether the defendants' actions were voluntary. FSM v. Jonathan, 2 FSM R. 189, 198-99 (Kos. 1986).

The prohibition in article II, section 1(d) of the Constitution of Kosrae against any unreasonable search and seizure is to assure the individual of his fundamental right to the possession of and control over his own person and property. Kosrae v. Alanso, 3 FSM R. 39, 42 (Kos. S. Ct. Tr. 1985).

Because the Kosrae State Constitution does not provide an exact standard for determining whether a search is "reasonable," this court will first turn to the framers' intent. In the absence of an official journal of the First Constitutional Convention, this court will then look to FSM and U.S. judicial decisions interpreting the search and seizure provision in their respective constitutions. Kosrae v. Alanso, 3 FSM R. 39, 42 (Kos. S. Ct. Tr. 1985).

Few rights are more important than the freedom from unreasonable governmental intrusion into a citizen's privacy and courts must protect this right from well-intentioned, but unauthorized, governmental action. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

An individual's home, even one located on public land, qualifies for constitutional protection against warrantless searches. FSM v. Rodriquez, 3 FSM R. 385, 386 (Pon. 1988).

The protection in article IV, section 5 of the Constitution of the Federated States of Micronesia against unreasonable search and seizure is based upon the comparable provision in the fourth amendment of the United States Constitution. FSM v. Rodriquez, 3 FSM R. 385, 386 (Pon. 1988).

Although an individual acting without state authorization has constructed a sleeping hut and has planted crops on state-owned public land, state police officers may nevertheless enter the land without a search warrant to make reasonable inspections of it and may observe and seize illegally possessed plants in open view and plainly visible from outside the sleeping hut. FSM v. Rodriquez, 3 FSM R. 385, 386 (Pon. 1988).

When investigators, acting without a search warrant on advance information, conduct searches in privately owned areas beyond the immediate area of a dwelling house, and seize contraband, they do not thereby violate the prohibitions in article IV, section 5 of the Constitution of the Federated States of Micronesia against unreasonable search and seizure. FSM v. Rosario, 3 FSM R. 387, 388-89 (Pon. 1988).

The standard for engaging in a search of private property is less exacting than the standard required for seizing such property. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 588 n.4 (Pon. 1994).

For purposes of article IV, section 5 protection, a search is any governmental intrusion into an area where a person has a reasonable expectation of privacy. Thus, the constitutional protections do not attach unless the search or seizure can be attributed to governmental conduct *and* the defendant had a reasonable expectation of privacy in the items searched. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 142 (Pon. 1995).

Administrative searches designed to aid in the collection of taxes rightly owing to the government must be conducted according to the same requirements laid down for other searches and seizures. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 142 (Pon. 1995).

An administrative agency may either request certain records be provided or formally subpoena the desired information, rather than obtain a court-ordered search warrant. In either situation, the subject of the inspection may decide whether to refuse or cooperate with the government's request. Only when a person refuses to permit the requested search does the Constitution prohibit the administrative agency from coercing that person to turn over records without first obtaining a valid search warrant. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 143 (Pon. 1995).

Where a person refuses to cooperate with the inspection requests of the administrative agency, the government will be required to demonstrate to a neutral and detached magistrate that the requested material is reasonable to the enforcement of the administrative agency's statutory responsibilities and that the inspection is being conducted pursuant to a general and neutral enforcement plan in order to obtain the required search warrant. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 143 (Pon. 1995).

Where a vessel has been arrested pursuant to a warrant, a post-seizure hearing is required by the constitutional guarantee of due process. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 257 (Chk. 1995).

An owner of seized property cannot challenge the statute it was seized under as unconstitutional because the statute fails to provide for notice and a hearing, if procedural due process, notice and a right to a hearing, are provided. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 258 (Chk. 1995).

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

It is unreasonable for a public official, required by law to cooperate with legislative investigating committees, to have an expectation of privacy in matters that are linked to his performance in office, and it is unreasonable for a public official, such as the Governor, who is a trustee of the state's finances and who owes a fiduciary duty to the state to expect that his personal finances will be kept private if there is some reason to believe he has violated his trust. In re Legislative Subpoena, 7 FSM R. 261, 267 (Chk. S. Ct. Tr. 1995).

Persons are secure in their persons, houses, and possessions against an unreasonable invasion of privacy. An invasion of privacy occurs when the government intrudes into any place where the individual harbors a reasonable expectation of privacy. A claim to privacy must be viewed in the specific context in which it arises. In re Legislative Subpoena, 7 FSM R. 328, 334 (Chk. S. Ct. App. 1995).

An person's expectation that his bank records will remain private is not reasonable because bank records are not the person's private papers, but are the bank's business records. This does not mean that such records are open to unrestrained production and inspection. For such records to be produced or inspected, the purpose of the intrusion must not be unreasonable. In re Legislative Subpoena, 7 FSM R. 328, 335 (Chk. S. Ct. App. 1995).

Apprehension of a person suspected of committing a crime by use of deadly force is a seizure, but the shooting of a bystander, who is not a suspect, by the police is not. Davis v. Kutta, 7 FSM R. 536, 547 (Chk. 1996).

A person can only complain of an unlawful search or seizure if it is his own rights which have been violated, such as when the person had ownership or a possessory right to the place searched, or was the owner of the items seized. A person also has standing to challenge a search and seizure of items as illegal when possession is an element of the crime charged, or when the person is legitimately on the premises searched and fruits of the search are to be used against him. FSM v. Skico, Ltd. (I), 7 FSM R. 550, 553 (Chk. 1996).

A vessel arrested pursuant to a warrant has, upon request, a right to a post-seizure hearing to contest the warrant and any deficiency in the arrest proceeding. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 556 (Chk. 1996).

The Due Process Clause does not require an immediate post-seizure probable cause hearing in advance of a civil forfeiture trial. It only requires that the government begin the forfeiture action within a reasonable time of the seizure. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 557 (Chk. 1996).

A civil forfeiture statute is not unconstitutional in failing to set out a requirement for a post-seizure hearing and a notice of that right nor is the government constitutionally required to inform the defendant of such notice and a right to a hearing. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 557 (Chk. 1996).

A court may suppress evidence obtained by an unlawful search and seizure. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

When a warrantless search or seizure is conducted the burden is on the government to justify the search or seizure, but when the search or seizure is conducted pursuant to a judicially-issued warrant the burden rests with the defendant to prove the illegality of the search or seizure. FSM v. Joseph, 9 FSM R. 66, 69 (Chk. 1999).

When no search or arrest warrant had been issued or sought and the defendant moves to suppress the evidence seized, although it is the defendant's suppression motion, it is the government's burden to prove that the searches were reasonable and therefore lawful under section 5 of article IV of the FSM Constitution. FSM v. Joseph, 9 FSM R. 66, 69 (Chk. 1999).

The border search doctrine is suitable for application to fishing vessels in the FSM. The principle

should be the same for aircraft. FSM v. Joseph, 9 FSM R. 66, 70 n.2 (Chk. 1999).

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).

An agriculture quarantine inspector's duty is to enforce the provisions of plant and animal quarantine controls, quarantines, and regulations, the purpose of which is to protect the agricultural and general well-being of the people of the FSM from injurious insects, pests, and diseases. Goods entering or transported within the FSM can be inspected. Those goods known to be, or suspected of being, infected or infested with disease or pests may be refused entry into or movement within the FSM, and anything attempted to be brought into or transported within the FSM in contravention of the agricultural inspection scheme shall be seized and may be destroyed. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

Customs officers have the right to examine all goods subject to customs control, and it is unlawful to import into the FSM any goods whose use, possession or import is prohibited or contrary to restrictions imposed by the FSM or the state into which the goods are imported. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

Border searches and searches at the functional equivalent of a border are an exception to the warrant requirement of section 5 of the FSM Declaration of Rights. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

Passing through security screening and boarding a foreign-registered airplane in Pohnpei that has arrived from a foreign country without it and its cargo having cleared customs in the FSM and whose passengers have not cleared immigration in the FSM, unless they deplaned, is passing out of and across a functional border of the FSM. The same passenger landing in Chuuk and entering the customs inspection area is crossing a functional equivalent of a border back into the FSM. FSM v. Joseph, 9 FSM R. 66, 70-71 (Chk. 1999).

Because entering the Chuuk International Airport customs inspection area after deplaning from a through flight is crossing the functional equivalent of a border a warrantless search there is reasonable under section 5 of the FSM Declaration of Rights. This analysis is consistent with the geographical configuration of Micronesia, with the statutory schemes of agricultural inspection, and customs inspection. FSM v. Joseph, 9 FSM R. 66, 71 (Chk. 1999).

An airport inspection of arriving passengers and their luggage does not violate an FSM citizen's right to travel within the FSM and the right to privacy. FSM v. Joseph, 9 FSM R. 66, 71 (Chk. 1999).

A search and seizure at the police station of an arrestee's possessions is not the unlawful fruit of the poisonous tree when the arrest was lawful. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

The protection in article IV, section 5 of the FSM Constitution against unreasonable search and seizure is based upon the comparable provision in the U.S. Constitution's fourth amendment. FSM v. Inek, 10 FSM R. 263, 265 (Chk. 2001).

When no search or arrest warrant had been issued or sought and the defendant moves to suppress the evidence seized, although it is the defendant's suppression motion, it is the government's burden to prove that the searches were reasonable and therefore lawful under section 5 of article IV of the FSM Constitution. FSM v. Inek, 10 FSM R. 263, 265 (Chk. 2001).

Once the police have a reasonable suspicion that a person may be armed and dangerous they may do a patdown search of or frisk that person for weapons in order to protect themselves and others from possible danger. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

When the police received the information from a known independent source that a person was carrying

a handgun, the police not only had a reasonable suspicion that he was armed and carrying a handgun, they also had probable cause to believe that he was, and it was constitutionally permissible for the police to conduct a patdown search of or to frisk him for weapons. Such a warrantless search is reasonable. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

In order for a warrant or a criminal summons to issue, the affidavits, or affidavits and exhibits, attached to a criminal information should make a prima facie showing of probable cause, not proof beyond a reasonable doubt. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

The search and seizure provision of the FSM Constitution's Declaration of Rights is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. FSM v. Wainit, 11 FSM R. 424, 434 (Chk. 2003).

Few rights are more important than the freedom from unreasonable governmental intrusion into a citizen's privacy. The FSM Supreme Court, mindful of these principles, must protect these rights from well-intentioned, but unauthorized, government action. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 250 (Pon. 2003).

Article IV, section 5 of the FSM Constitution states that "[t]he right of the people to be secure in their persons, houses, papers, and other possessions against unreasonable search, seizure or invasion of privacy may not be violated." For article IV, section 5 purposes, a search is any governmental intrusion into an area where a person has a reasonable expectation of privacy. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 250 (Pon. 2003).

When an officer has made a warrantless arrest by relying upon a tip from an informant, the reviewing court will evaluate the tip based upon the totality of the circumstances, including the informant's truthfulness and reliability, and the basis of his or her knowledge. Deficiency in one prong may be compensated for by a strong showing of the other. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

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

When a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it, such policeman may arrest the person without a warrant, but there may be one exception to this rule, however, and that is when a routine felony arrest takes place inside the suspect's home and there are no exigent circumstances (an emergency or a dangerous situation) to overcome the warrant requirement. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 496 n.4 (Pon. 2005).

The prohibition in Article II, Section 1(d) of the Kosrae State Constitution against any unreasonable search and seizure is to assure the individual of his fundamental right to the possession of and control over his own person and property. Kosrae v. Noda, 14 FSM R. 37, 40 (Kos. S. Ct. Tr. 2006).

It is generally agreed that for actions to constitute a search, there must be: 1) an examination of premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in prosecution of a criminal action. Kosrae v. Noda, 14 FSM R. 37, 40 (Kos. S. Ct. Tr. 2006).

The constitutional protection against unreasonable searches and limitation of powers of the police apply wherever an individual may harbor a reasonable expectation of privacy. The burden is on the

government to justify a search without a warrant and the search's legality must be tested on the basis of the information known to the police officer immediately before the search began. Kosrae v. Noda, 14 FSM R. 37, 40 (Kos. S. Ct. Tr. 2006).

When all warrants, monitoring orders, and subpoenas duces tecum were served or executed on either the Bank of Guam or the Bank of the Federated States of Micronesia, a defendant's motion to suppress those warrants, monitoring orders, and subpoenas duces tecum and any evidence seized pursuant to those search warrants as the fruits of illegal searches will be denied since the defendant lacks standing to challenge the searches of those bank records because he lacks an expectation of privacy therein. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

The protection in article IV, section 5 of the FSM Constitution against unreasonable search and seizure is based upon and drawn from the comparable provision in the U.S. Constitution's fourth amendment. The addition of the phrase "invasion of privacy" to the FSM version was not intended to expand the search and seizure protections in the FSM any further. It was intended to more adequately express its meaning. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

Evidence obtained as the result of violations of Title 12 is not admissible against an accused. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

The Declaration of Rights protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution. The constitutional provision barring the invasion of a person's privacy only protects persons from governmental intrusion into their affairs, not from intrusions by private persons. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

For actions to constitute a search, there must be: 1) an examination of premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; and 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in prosecution of a criminal action. FSM v. Louis, 15 FSM R. 348, 351 (Pon. 2007).

In order for a search to take place the police officers' intention to discover contraband or evidence is not enough. There also must be 1) an examination of premises or a person and 2) in a manner encroaching upon one's reasonable expectation of privacy. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

When the evidence before the court plainly shows that the officers did not conduct an examination of any premises or person but approached the funeral at a neighbor's house, asked for Louis, and Louis came out and then Louis directed the officers to his office in Palikir and upon arrival in Palikir, the police remained in the vehicle, while Louis went to his office and returned with the handgun. Under these facts, a search cannot be said to have taken place. It also cannot be said that the officers encroached upon Louis's reasonable expectation of privacy. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

Various arguments concerning a lack of probable cause, including the discrepancy in the dates cited for his arrest – either January 5, 2005, as cited in the accompanying affidavit, or January 6, 2005, as cited in the police reporter introduced as evidence during the hearing are simply misplaced at this point. FSM v. Tosy, 15 FSM R. 463, 465-66 (Chk. 2008).

Where the court finds that an accused's statement was voluntarily made after he had been informed of, and understood his rights, and chose to waive those rights, that will not end the analysis if the accused has established a relationship between unlawful police activity and the evidence sought to be suppressed, because the burden is on the prosecution to show that the evidence is still admissible. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

When the defendant's advice of rights form waiving his rights was dated the day after his arrest and when the government presented no evidence as to the time of day on that the defendant made his statement on the day following his arrest or as to whether the statement was made within 24 hours of his arrest, the statement will be suppressed because once the defendant has established the government's

unlawful act, it is the government's burden to show that the challenged evidence was not the result of that unlawful act. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

When no search or arrest warrant had been issued or sought and the defendant moves to suppress the evidence seized, although it is the defendant's suppression motion, it is the government's burden to prove that the seizures were reasonable and therefore lawful under section 5 of article IV of the FSM Constitution. FSM v. Sato, 16 FSM R. 26, 29 (Chk. 2008).

When a search or seizure is conducted without a warrant the burden is on the government to justify the search or seizure, but when the search or seizure is conducted pursuant to a judicially-issued warrant the burden rests with the defendant to prove the illegality of the search or seizure. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

A motion to suppress the evidence against an accused on the ground that the evidence was obtained as the result of "an arrest that was not in compliance with the law" is not sufficiently particular since it does not indicate the reason(s) why the accused asserts that the arrest was illegal. A suppression movant must articulate in his motion with sufficient particularity the specific reason on which he bases his claim that the seizure was illegal, and a written motion to suppress evidence must specify with particularity the grounds upon which the motion is based. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

Grounds for relief in broad and literal conclusory terms, such as a conclusory statement in an accused's suppression motion that his arrest was not in compliance with the law, are, without more, insufficient to raise a suppression question. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

A motion to suppress is, in effect, a pleading to the extent that it frames the issues to be determined in a pretrial hearing on the motion. The fundamental role of a pleading is to give an opposing party notice of the pleader's position concerning the facts and law so that the opposing party can begin to prepare his defense. A pleading thus both defines and limits the areas of consideration at a trial or other evidentiary hearing. Furthermore, the pleading assists the court in the conduct of the hearing. For example, by enabling the court to determine the relevance of the offered evidence. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

At least as much specificity should be required in a pretrial objection to the admissibility of evidence, i.e., a motion to suppress, as is required in an oral objection made during the course of a trial. In fact, even more specificity could reasonably be required because the pretrial objection can be researched and written under relatively calm circumstances, as distinguished from an extemporaneous objection made in the heat of trial. Broadly worded and vague objections are inappropriate in either context. FSM v. Aiken, 16 FSM R. 178, 185 (Chk. 2008).

When, after the accused had been questioned for some time without being informed of his rights, the accused went into his residence, retrieved a handgun and five shells, and came out and turned the gun and ammunition over to the officer, the firearm was not seized as the result of an illegal search because the police officer did not conduct a search of the residence or even enter it, but since the accused's surrender of the handgun and ammunition was the result of the officer's questioning and the incriminating statements made when the accused was interrogated without having been informed of his rights, the handgun and ammunition are thus inadmissible as they are the fruit of the poisonous tree. FSM v. Sippa, 16 FSM R. 247, 249 (Chk. 2009).

An individual's constitutional protection against unreasonable searches and the limitation of police powers apply wherever an individual may harbor a reasonable expectation of privacy. For actions to constitute a search, there must be: 1) an examination of premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in prosecution of a criminal action. FSM v. Sapusi, 16 FSM R. 315, 317 (Chk. 2009).

When the police officer did not enter the accused's home or any house in which he was staying; when there was no evidence that the accused had an expectation of privacy in anything present in another's house that was entered; when there was no evidence that the accused resided there, or that he stayed there intermittently, or that he had permission to leave any personal items there, or that he had permission or authority to enter and use the house, or even that the bag seized was his; when there is also no evidence about how the other came to have possession of the pistol and ammunition; when the accused does not claim a property interest in the pistol and ammunition or the bag; and when the accused also was not present in the house when the police officer entered it, the accused lacks standing to object to the entry of the house and the seizure of the pistol and ammunition after the other gave the bag it was in the the officer. FSM v. Sapusi, 16 FSM R. 315, 317 (Chk. 2009).

Exigent circumstances may make it necessary or constitutionally reasonable to proceed with a search without first obtaining a warrant. Exigent circumstances are present when a police officer has heard three gunshots fired in a residential area since people's lives could have been in danger if more shots were fired and when the officer did not know who was firing and had no reason to know whether more would be fired. Thus, exigent circumstances existed that required the officer to investigate the possible sources of the gunfire. FSM v. Sapusi, 16 FSM R. 315, 318 (Chk. 2009).

Since the FSM Constitution's Declaration of Rights protection against unreasonable search and seizure is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, U.S. authority may be consulted to understand its meaning. FSM v. Aliven, 16 FSM R. 520, 527 n.2 (Chk. 2009).

For the purposes of FSM Constitution article IV, § 5, a search is any governmental intrusion into an area where a person has a reasonable expectation of privacy. For actions to constitute a search, there must be: 1) an examination of a premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in the prosecution of a criminal action. FSM v. Phillip, 17 FSM R. 413, 421 (Pon. 2011).

The FSM Constitution guarantees that the right of the people to be secure in their persons, houses, papers, and other possessions against unreasonable search, seizure, or invasion of privacy may not be violated. This protection prohibits the police from making a warrantless and nonconsenual entry into a suspect's home in order to make a routine felony arrest. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

When an FSM Declaration of Rights provision is patterned after a U.S. Constitution provision (such as Section Five of the Declaration of Rights which is patterned after the U.S. Constitution's Fourth Amendment), U.S. authority may be consulted to understand its meaning. Alexander v. Pohnpei, 18 FSM R. 392, 398 n.4 (Pon. 2012).

Merely entering a person's property is often not enough to violate a person's right to be secure in her house. For instance, if the police do not enter the home but wait for the occupant to emerge from the house before effecting an arrest, the right is not violated. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

A test for whether a particular area is constitutionally protected from unreasonable searches and seizures is whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by. Under this test, section five certainly protects a person's shower house area as the nature of its use is one in which there is a high expectation of privacy. Alexander v. Pohnpei, 18 FSM R. 392, 398 n.5 (Pon. 2012).

When the officers told the plaintiff, while she was still in her shower house, that they were there to arrest her and once the officers told her that that was what they were there for, she was not free to leave except in their custody. In other words, the police arrested her while she was in her shower house even though they were outside. Alexander v. Pohnpei, 18 FSM R. 392, 398 (Pon. 2012).

It is the location of the arrested person, and not the arresting agents, that determines whether an arrest occurs within a home. When the plaintiff was arrested while she was in an area protected by Section five of the Declaration of Rights (her shower house) and when the police did not have a warrant, her arrest was illegal because the police needed a warrant to arrest her where they did and they did not have one. Alexander v. Pohnpei, 18 FSM R. 392, 398-99 (Pon. 2012).

When the government had not complied with 12 F.S.M.C. 218 by releasing or charging the defendant within 24 hours of his arrest, the statements made and evidence retrieved thereafter until he was released will be suppressed because evidence obtained as a result of a violation of 12 F.S.M.C. 218 is not admissible against an accused. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

Although evidence and statements lawfully obtained from an accused before he has been detained over 24 hours will be admissible, the accused is entitled to the suppression of any evidence of statements obtained from him after the first 24 hours of his detention. FSM v. Edward, 18 FSM R. 444, 451 (Pon. 2012).

Due process would seem to require a prompt post-seizure hearing before the administrative agency that has administratively levied execution of unpaid taxes. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

The Chuuk Legislature can grant a state administrative agency the power to levy in the manner of a levy of an execution for statutory liens held by the state so long as due process concerns are addressed by such mechanisms as a prompt post-levy (or post-execution) hearing being available. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

– By Consent

The Ponape state consent statute does not authorize the search of a nonconsenting bar or restaurant customer. Pon. Code. ch. 3, §§ 3-13. FSM v. Tipen, 1 FSM R. 79, 81 (Pon. 1982).

Under Ponape state law, a bar or restaurant patron's denial of an authorized person's request to search the person of the patron merely subjects the patron to exclusion from the establishment. Pon. Code ch. 3, §§ 3-13. FSM v. Tipen, 1 FSM R. 79, 81 (Pon. 1982).

The government bears the burden of proving the existence of voluntary consent. Acquiescence in the desire of law enforcement personnel to search will not be presumed but must be affirmatively demonstrated. FSM v. George, 1 FSM R. 449, 456 (Kos. 1984).

A demand, even if courteously expressed, is different from a request, and a citizen's compliance with a police officer's demand, backed by apparent force of law, is perhaps subtly, but nonetheless significantly, different from voluntary consent to a request. FSM v. George, 1 FSM R. 449, 458 (Kos. 1984).

On matters relating to a warrantless search, it is for the court to decide whether voluntary consent, as opposed to passive submission to legal authority, occurred. The government must put before the court facts, not mere conclusions of police officers, which will permit the judge to decide whether consent was given. FSM v. George, 1 FSM R. 449, 458 (Kos. 1984).

The unconsented and warrantless entry into defendant's house, without any subsequent action on the officer's part to impress upon the defendant that they could be influenced by his wishes as to whether a search might be conducted, erases any possibility of finding any aspect of the search in the house or the resultant seizure of evidence, to be either consented to or untainted. FSM v. George, 1 FSM R. 449, 459 (Kos. 1984).

Officers entering a house by consent for purposes of a search must keep in mind the eventual

likelihood that they will need to establish that consent was voluntary. FSM v. George, 1 FSM R. 449, 463 (Kos. 1984).

Only under rare circumstances would the FSM Supreme Court likely find that a homeowner who neither says nor does anything to indicate affirmative consent has consented to a warrantless search of his house. FSM v. George, 1 FSM R. 449, 463 (Pon. 1984).

To determine whether a search is reasonable, the Kosrae State Court will be guided by the principle that, with the exception of a few carefully defined types of cases, any search of private property without proper consent is unreasonable, unless previously authorized by a valid search warrant. Kosrae v. Alanso, 3 FSM R. 39, 43 (Kos. S. Ct. Tr. 1985).

The Kosrae State Court, consistent with U.S. and FSM precedent, recognizes consent as a valid exception to the need for a search warrant. However, consent is understood to be an informed and voluntary relinquishment of a known right and the burden will be on the government to show that there was consent. Kosrae v. Alanso, 3 FSM R. 39, 43 (Kos. S. Ct. Tr. 1985).

To protect the right to be free from unreasonable search and seizure, this court requires clear proof, not merely that consent was given, but also that a right was knowingly and voluntarily waived. It is fundamental that a citizen be aware of the right he is giving up in order for consent to be found. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

Consent, given in the face of a police request to search without the consenting person having been informed of his right to refuse consent, and without any written evidence that consent was voluntarily and knowingly given, renders such consent inadequate to permit a warrantless search absent probable cause. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

In an administrative agency inspection, as in any other governmental search and seizure, a warrant is unnecessary where the government obtains the voluntary consent of the party to be searched. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 143 (Pon. 1995).

If a police officer had permission to search a home, then no warrant was necessary; if he needed a warrant, then he did not have permission to enter the house. Consent to conduct a search must be proven by a preponderance of the evidence. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 497 (Pon. 2005).

When no search took place, it is unnecessary for the court to decide whether the defendant gave his consent. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

The FSM Constitution's prohibition against "unreasonable searches and seizures" generally requires the police to obtain a search warrant by showing probable cause to believe that a search will uncover evidence of contraband or a crime. However, there are certain well delineated exceptions to having a valid warrant prior to commencing a search under FSM Const. art. IV, § 5. One such exception arises when a person authorized to give consent does so prior to the initiation of the search. FSM v. Phillip, 17 FSM R. 413, 421 (Pon. 2011).

FSM Constitution article IV, § 5 requires the police to prove that consent to perform a search was given voluntarily and was not the product of duress or coercion. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

FSM Constitution article IV, § 5 protects FSM citizens against unreasonable searches and seizures. There is a legitimate need, under certain circumstances, for FSM law enforcement officers to perform searches based on an individual's voluntary consent since such searches are often the only means available to obtain important and reliable evidence, and may result in considerably less inconvenience for the subject of the search than other means by which to obtain the sought-after evidence. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

A search pursuant to consent often occurs under informal conditions in which the due process considerations inherent in a custodial interrogation or criminal trials do not apply. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

FSM Constitution article IV, § 5 contains no requirement that law enforcement officers inform a consenting individual that he has the right to refuse to give consent. Instead, to ensure that consent not be coerced, by explicit or implicit means, by implied threat or covert force, the court will consider the "totality of the circumstances" to determine whether a criminal defendant's consent was voluntarily given. In doing so, any searches that are the product of law enforcement coercion can be filtered out without undermining the continuing validity of consent searches. FSM v. Phillip, 17 FSM R. 413, 423-24 (Pon. 2011).

When, of foremost importance, an officer asked the defendant whether they could look inside the backpack, he said, "Yes"; when there was insufficient evidence showing that the officers involved intimidated or harassed the defendant into making his response; when the officers did not brandish weapons, threaten him, or make any intimidating movements; when they were dressed in street clothes, not public safety uniforms, and were not carrying weapons; when the officers were also known to the defendant; and when, while the officers did not advise the defendant that he could refuse consent, that knowledge of the right to refuse consent is not mandatory for a valid consent search to occur, the court will find, based on its examination of the totality of the circumstances, that the defendant voluntarily consented to the search of the backpack. FSM v. Phillip, 17 FSM R. 413, 424 (Pon. 2011).

In situations where law enforcement have some evidence of illegal activity but lack probable cause to arrest or search, a search authorized by a valid consent may be the only means of obtaining important and reliable evidence. FSM v. Phillip, 17 FSM R. 413, 424 (Pon. 2011).

When, under the circumstances, it was objectively reasonable for the officers to believe that the scope of the suspect's consent permitted them to remove items from the his backpack and open closed containers because a reasonable person would have believed that to "look inside" a backpack may well necessitate the removal of certain items from the backpack; when the defendant gave his consent to also search the Tupperware container and there was no evidence to suggest that he attempted to limit the scope of the officers' search when they began removing items from the backpack; when the defendant was present when the search was conducted; and when the officers were searching for marijuana, and a reasonable person may be expected to know that marijuana is generally transported in some form of container, the officers' search of the Tupperware container within the defendant's backpack was reasonable because the defendant gave his consent to search the Tupperware container and failed to place any limitation on the scope of the search. FSM v. Phillip, 17 FSM R. 413, 425 (Pon. 2011).

When it is determined that the searches were conducted with the defendant's voluntary consent, the defendant's claims of a violation of his right not to incriminate himself pursuant to FSM Const. art. IV, § 7 also fail because a confession's voluntariness is determined by reference to the totality of surrounding circumstances. FSM v. Phillip, 17 FSM R. 413, 425 (Pon. 2011).

The possibility that Micronesians may be more apt to acquiesce when asked to give their consent by an authority figure may be one of the factors that a court may consider in evaluating the "totality of the circumstances" to determine whether consent was voluntarily given. Such an assessment must be performed on a case-by-case basis, and the court would be overly presumptive to assume that all Micronesians would respond to police questioning in the same manner. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

While the court may be sensitive to the possibility of a Micronesian suspect's simple submission to what is considered the authority or the power of the state to search, a tendency by individuals to accede to the demands of authority figures is not unique to Micronesia. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

A consent search simply does not rise to the level of a custodial interrogation or trial, both situations in which a defendant must be specifically informed of his rights. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

A warning is required when a custodial interrogation takes place and a suspect has been deprived of his freedom in a significant way. This differs from the situation where there was some evidence of illegal activity prior to the search, but it did not meet the probable cause standard necessary to arrest or search. In this type of situation, a search authorized by valid consent may be the only method by which evidence may be obtained. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

If the court were to impose an explicit proof of knowledge requirement in determining the reasonableness of consent searches, it would seriously limit police officers' ability to use consent searches at all, as it would be very difficult for the prosecution to ever show that a suspect affirmatively knew of his right to refuse consent. Under such a standard, defendants could simply fail to admit that they knew of their right to refuse consent, creating an unrealistically high burden for prosecutors seeking to introduce evidence obtained as a result of a consent search. FSM v. Phillip, 17 FSM R. 595, 600 (Pon. 2011).

Explicit knowledge of the right to refuse consent is not mandatory for a valid consent search to occur. FSM v. Phillip, 17 FSM R. 595, 601 (Pon. 2011).

When, based on the totality of the circumstances, the court finds that the defendant voluntarily consented to the search of his backpack, his motion to suppress evidence will be denied. FSM v. Phillip, 17 FSM R. 595, 601 (Pon. 2011).

– Exclusionary Rule

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).

This court will apply the exclusionary rule on a case-by-case basis. The exclusionary rule has been devised as a necessary device to protect the right to be free from unreasonable search and seizure. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

Under the exclusionary rule, any evidence obtained through an illegal search and seizure, whether physical or verbal, is a fruit of the illegal search and seizure, is tainted by illegality, and must be excluded. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

Generally, whatever evidence is obtained pursuant to an unlawful arrest may be suppressed. One exception to the general rule is when the government obtains the evidence based on an independent source. If knowledge of such facts is gained from an independent source they may be proved like any others. FSM v. Inek, 10 FSM R. 263, 265 (Chk. 2001).

Exclusion of evidence obtained as a result of a violation of one's constitutional rights has no applicability to evidence obtained by the prosecution from sources factually unrelated to violations of a defendant's rights. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

Society's interest in deterring unlawful police conduct and the public interest in having factfinders receive all probative evidence of a crime are properly balanced by putting the police in the same, not a worse, position than they would have been if no police error or misconduct had occurred. When the challenged evidence has an independent source, exclusion of such evidence would put the police in a worse position than they would have been in absent any error or violation. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

When the police received information that the defendant was carrying a handgun from a known informant with whom they knew the defendant had lived for three years while he was in Nema, and when their conduct of the ensuing search was based on that and not on the prior unlawful arrest, that independent

tip makes the search reasonable because the information given the police while the defendant was detained was a source independent from the unlawful arrest. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

Whoever suffers the imposition of an unlawful police search has the assurance that any evidence so acquired is rendered inadmissible in a subsequent criminal trial by the exclusionary rule and that damage remedies are available for violations of constitutional rights stemming from either an unlawful search or arrest. Both these remedies are present in the FSM. FSM v. Wainit, 11 FSM R. 424, 435 (Chk. 2003).

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

The exclusionary rule is well established in the FSM. FSM v. Benjamin, 19 FSM R. 342, 348 (Pon. 2014).

The court will apply the exclusionary rule on a case-by-case basis. The exclusionary rule has been devised as a necessary device to protect right to be free from unreasonable search and seizure. FSM v. Benjamin, 19 FSM R. 342, 348 (Pon. 2014).

Under the exclusionary rule, any evidence obtained through an illegal search and seizure, whether physical or verbal, is a fruit of the illegal search and seizure and is tainted by illegality, and must be excluded. FSM v. Benjamin, 19 FSM R. 342, 348 (Pon. 2014).

When admissions have been obtained in the course of questioning that violated 12 F.S.M.C. 218, statutory policy calls for a presumption that subsequent admissions were obtained as a result of the violation. Statements made by a person being questioned by police without being advised of all his rights violates 12 F.S.M.C. 218. A statement so obtained is rendered inadmissible by 12 F.S.M.C. 220. FSM v. Benjamin, 19 FSM R. 342, 348-49 (Pon. 2014).

When some evidence was obtained by means sufficiently distinguishable to be purged of the primary taint, it will not be suppressed, and therefore the court will not quash the information. FSM v. Benjamin, 19 FSM R. 342, 350 (Pon. 2014).

The usual remedy for a person's failure to be informed of his rights is the suppression of any evidence against him that resulted from that failure. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

– Incident to an Arrest

A constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. Ludwig v. FSM, 2 FSM R. 27, 32 (App. 1985).

A police officer making an arrest has a limited right to conduct a search incident to that arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Although the right to search is of limited scope, it plainly authorizes a reasonable search of the person being arrested. Ludwig v. FSM, 2 FSM R. 27, 34 (App. 1985).

An officer making an arrest has a limited right to conduct a warrantless search incident to that arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Yinmed v. Yap, 8 FSM R. 95, 100 (Yap S. Ct. App. 1997).

A search incident to valid arrest must be confined to the person and the area from within which he or she might have reached weapons or destructible evidence and be done on the spot or later at the place of detention. Yinmed v. Yap, 8 FSM R. 95, 100 (Yap S. Ct. App. 1997).

When the police, after arresting the accused and while he was being escorted away, returned to seize items that had been lying next to him when arrested did make the seizure, they did no more than they were entitled to do incident to the usual custodial arrest, and the accused was no more imposed upon than he would have been had the seizure taken place simultaneously with his arrest. The seizure was thus valid under the search incident to lawful arrest exception to the warrant rule. Yinmed v. Yap, 8 FSM R. 95, 100-01 (Yap S. Ct. App. 1997).

A search that was not done at the place of the arrest and at the time of the arrest or immediately thereafter is not a valid search incident to a lawful arrest. FSM v. Aki, 9 FSM R. 345, 348 (Chk. 2000).

The most basic principle underlying a warrantless search incident to a lawful arrest is that the arrest itself must be justified, and when the arrest is invalid, the search is invalid. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 496-97 (Pon. 2005).

When the police had probable cause to arrest the defendant because he was intoxicated and in a public place, a bag seized from the defendant was therefore seized pursuant to a lawful arrest. The search of the bag was thus not unreasonable because a constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

A police officer making an arrest has a limited right to conduct a search incident to that arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Although the right to search is of limited scope, it plainly authorizes a reasonable search of the person being arrested. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

Searches incidental to a lawful arrest, and inventory searches, are exceptions to the Constitution's warrant requirement, and, as such, do not violate the Constitution's prohibition of unreasonable searches. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

Generally, a constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. With respect to dwellings, an officer may conduct a warrantless search with validly obtained consent and, if evidence is discovered, the officer may seize it pursuant to the plain view doctrine. Chuuk v. Sipenuk, 15 FSM R. 262, 265-66 n.3 (Chk. S. Ct. Tr. 2007).

It is not unreasonable for the police, as part of the routine incident to an arrest, to search any container or article in the arrestee's possession or in his vicinity. The justification for such searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search. FSM v. Tosy, 15 FSM R. 463, 467 (Chk. 2008).

Where a taxi driver was arrested and taken into custody and the zippered waist bag that he had was searched incident to his arrest because the bag was in close proximity to him when he was arrested and the officers discovered the bag and searched it, the search of that bag was not only reasonable, but lawful and the accused's assertion that the police lacked probable cause to search the bag is simply immaterial to the reason that such a search was even conducted and the accused's motion to suppress the weapon and ammunition that were found in the bag will be denied. FSM v. Tosy, 15 FSM R. 463, 467 (Chk. 2008).

Persons are constitutionally protected from unreasonable searches and seizures. But when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a

contemporaneous incident of that arrest, search that automobile's passenger compartment. It follows from this conclusion that the police may also examine the contents of any containers found within the passenger compartment for if the passenger compartment is within reach of the arrestee, so also will the containers in it be within his reach. FSM v. Aliven, 16 FSM R. 520, 527 (Chk. 2009).

An officer making an arrest has a limited right to conduct a warrantless search incident to that arrest and this right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

A search incident to valid arrest is confined to the person and the area from within which he or she might have reached weapons or destructible evidence and may be done on the spot or even later at the place of detention. Such incidental searches include a vehicle's passenger compartment, even after the occupants have been ordered out and are standing nearby. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

When the police had a reasonable belief that there was a firearm in the vehicle, a search of the vehicle incident to an arrest might also be viewed as reasonable if it were done for the purpose of protecting the general public from a firearm that was believed to be in the vehicle and that might fall into the wrong hands. FSM v. Aliven, 16 FSM R. 520, 528 (Chk. 2009).

– Inventory Search

It is not unreasonable for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures. The justification for such searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

A standardized procedure for inventorying an arrestee's possessions at the stationhouse is an entirely reasonable administrative procedure that not only deters an arrestee's false claims of missing or damaged property but also inhibits theft or careless handling of the arrestee's property and protects people from any dangerous instrumentalities that may be found. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

An inventory search is reasonable when police follow standardized procedures and are not acting in bad faith or for the sole purpose of investigation. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

Standardized or established routine must govern inventory searches because an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

Because the police also looked for contraband while doing an inventory that does not mean that the search was done in bad faith or for the sole purpose of investigation. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

To be valid, an inventory search must be governed by a standardized or established routine and not be a general rummaging to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory. The purpose of a standardized inventory procedure is to deter an arrestee's false claims of missing or damaged property, to inhibit theft or careless handling of an arrestee's property, and to protect against any dangerous instrumentalities that may be found. FSM v. Aki, 9 FSM R. 345, 348-49 (Chk. 2000).

When the police did not follow their own standard procedure for an inventory search of a vehicle and no inventory of the sedan's contents was made, and no listing of the sedan's description and owner made, it

can only be described as a warrantless search for evidence, and as such was an illegal search. FSM v. Aki, 9 FSM R. 345, 349 (Chk. 2000).

It is not unreasonable for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures. The justification for such searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

Searches incidental to a lawful arrest, and inventory searches, are exceptions to the Constitution's warrant requirement, and, as such, do not violate the Constitution's prohibition of unreasonable searches. FSM v. Menisio, 14 FSM R. 316, 319 (Chk. 2006).

– Investigatory Stop

Under Kosrae statute, following commission of an offense a police officer who has reasonable grounds to believe that a particular person has committed the offense may arrest the person. This establishes the standard for the arrest of a person, but it does not establish the standard for the police to conduct an investigatory stop of a vehicle. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Reasonable suspicion is required for police officers to make an investigatory stop of a vehicle. "Reasonable suspicion" is a particularized and objective basis for suspecting that a person is engaged in a criminal activity. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Generally, an anonymous tip is not sufficient justification for a stop by the police. Police need sufficient reasonable articulated suspicion. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Once the police have reasonable suspicion that the defendant has committed a criminal offense, they may conduct an investigatory stop, which is a temporary stop to confirm or dispel the suspicion which initially induced the investigatory stop. Investigatory stops are based upon less than probable cause and are temporary in nature. The information gained at the investigatory stop is then used to confirm or dispel the initial suspicion, and then either arrest or release the defendant. Kosrae v. Tosie, 12 FSM R. 296, 300 (Kos. S. Ct. Tr. 2004).

A criminal prosecution for driving under the influence will not be dismissed when the police officers had sufficient reasonable suspicion to conduct an investigatory stop of the defendant because the reasonable suspicion was supplied by an informant, whose identity, credibility, reputation and reliability were known. When at the investigatory stop, the police observed signs of the defendant's alcohol impairment, these signs provided grounds for the police to administer the field sobriety tests to the defendant, and when the defendant failed two field sobriety tests, it gave the police reasonable grounds and probable cause for defendant's commission of driving under the influence and probable cause to arrest the defendant. Kosrae v. Tosie, 12 FSM R. 296, 300 (Kos. S. Ct. Tr. 2004).

Warrantless arrests are, under certain situations, lawful and authorized by statute. Arrest by police without a warrant is authorized when a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it, or a policeman, even when it is not certain that a criminal offense has been committed, may detain for examination persons who may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit a felony. FSM v. Aliven, 16 FSM R. 520, 527 (Chk. 2009).

When the police knew that a crime had been committed and had either reasonable grounds to believe that the vehicle's occupants had committed the offense or reasonable suspicion that one or more of the vehicle's occupants had committed a felony and when the police knew that someone in that vehicle had fired a handgun from that vehicle, a search of the vehicle's passenger compartment is reasonable under such circumstances. FSM v. Aliven, 16 FSM R. 520, 527 (Chk. 2009).

Once the police have reasonable suspicion that a suspect has committed a criminal offense, they may conduct an investigatory stop. An investigatory stop is a temporary stop of a car and its passengers that is used to confirm or dispel the suspicion that caused the investigatory stop. These stops are based on less than probable cause. Information gathered at the stop can be used to arrest or release the suspects. Berman v. Pohnpei, 16 FSM R. 567, 573-74 (Pon. 2009).

Reasonable suspicion, not probable cause, is all that is required for police officers to make an investigatory stop of a vehicle. "Reasonable suspicion" is a particularized and objective basis for suspecting that a person is engaged in a criminal activity. Investigatory stops are based upon less than probable cause and are temporary in nature, and the information gained at the investigatory stop is used to confirm or dispel the initial suspicion, and then either arrest or release the person stopped. Berman v. Pohnpei, 17 FSM R. 360, 369-70 (App. 2011).

A law enforcement officer may perform an investigatory stop, also known as a field interrogation, if he has reasonable suspicion, based on specific facts, that the suspect has committed or is about to commit a crime. The officers may perform an investigatory stop when swift action is necessary based upon the law enforcement officer's observations. FSM v. Phillip, 17 FSM R. 413, 419 (Pon. 2011).

The question of whether an investigatory stop is a reasonable exception to the prohibition in FSM Const. art. IV, § 5 against unreasonable seizures is whether the facts available to the officers at the moment of the seizure would lead a person of reasonable caution to believe that the action was appropriate. When such situations arise, a warrant is not necessary because there is an element of urgency or speed requiring action while the suspect is present and engaged in suspicious activity. FSM v. Phillip, 17 FSM R. 413, 419 (Pon. 2011).

When officers received a tip that someone was planning to transport marijuana to Pohnpei's outer islands in late December, 2009 and the informant provided the description of a vehicle and a vehicle check revealed that the defendant owned it; when, on arrival at the dock, investigating officers observed the defendant board the *Voyager* with a backpack and disembark a short time later without the backpack; when, at first the defendant denied having a backpack, but after being told that he had been seen carrying a backpack on board, he admitted to having a backpack and told officers that he had given the backpack to another person; and when a check of that person revealed that he had never encountered the defendant on the *Voyager*, these specific facts and the rational inferences drawn from them justified the officers' reasonable suspicion that the defendant had deposited a backpack possibly containing contraband on board the *Voyager*. Under these circumstances, with the *Voyager* scheduled to disembark, there was an element of urgency or speed requiring the officers' immediate action. The officers were entitled to perform an investigatory stop of the defendant to determine whether he had or was about to commit a crime because the officers had reasonable suspicion, based on specific facts, that the defendant had committed or was about to commit a crime. FSM v. Phillip, 17 FSM R. 413, 419-20 (Pon. 2011).

When the officers' investigatory stop of the defendant and their questioning him about suspicious circumstances did not constitute an arrest, the officers were not required to advise the defendant of his right to remain silent when they first approached him on the dock. FSM v. Phillip, 17 FSM R. 413, 420 (Pon. 2011).

A law enforcement officer may perform an investigatory stop, also known as a field interrogation, if he has reasonable suspicion that the suspect has committed or is about to commit a crime. The reasonable suspicion standard requires police officers to identify "specific and articulable facts" justifying the stop, rather than a mere hunch. Reasonable suspicion must exist before the investigatory stop occurs for the stop to be valid. FSM v. Phillip, 17 FSM R. 595, 598 (Pon. 2011).

An anonymous tip received regarding the defendant's possible actions to transport contraband to Pingelap, the defendant's appearance at the dock with a backpack, and the defendant's disembarkation from the vessel without the backpack, were sufficient specific and articulable facts that supported the

officers' reasonable suspicion that a crime had occurred or was about to occur. FSM v. Phillip, 17 FSM R. 595, 598 (Pon. 2011).

A valid investigatory stop requires only reasonable suspicion, based on specific and articulable facts, that the suspect has committed or is about to commit a crime. FSM v. Phillip, 17 FSM R. 595, 598 (Pon. 2011).

When the specific facts available to the police officers, namely, the informant's tip; that this tip was corroborated when the defendant, who was known to the officers, arrived at the dock carrying a backpack and boarded the vessel; and that some of the officers witnessed the defendant disembark from the ship without his backpack, were more than sufficient to establish reasonable suspicion, the officers were entitled to perform an investigatory stop of the defendant to determine whether he had or was about to commit a crime. FSM v. Phillip, 17 FSM R. 595, 598-99 (Pon. 2011).

The police did not go beyond the scope of an investigatory stop and compel incriminating testimonial evidence because the defendant voluntarily consented to a police request that he assist them in locating a backpack when the officers that approached the defendant were dressed in street clothes, not in uniform; when the police officers were unarmed; when the questioning occurred in a public location; when there was no evidence of any coercion or forceful language being used; and when some of the police officers and the defendant had met each other before and were acquainted with each other. FSM v. Phillip, 17 FSM R. 595, 599 (Pon. 2011).

When the officers had reasonable suspicion, based on specific and articulable facts, to perform an investigatory stop of the defendant after he disembarked from the *Voyager* on December 27, 2009, and when the defendant was not compelled to make an explicit or implicit disclosure of incriminating testimonial information since he volunteered to help the officers locate his backpack, he was not at that time, entitled to a privilege against self-incrimination under FSM Const. art. IV, § 7. FSM v. Phillip, 17 FSM R. 595, 599 (Pon. 2011).

– Plain View

A warrant is not necessary to authorize seizure when marijuana is in plain view of a police officer who has a right to be in the position to have that view. FSM v. Mark, 1 FSM R. 284, 294 (Pon. 1983).

An officer who, while standing on a road, sees a marijuana plant in plain view on top of a nearby house has not thereby engaged in an unlawful search. Kosrae v. Paulino, 3 FSM R. 273, 276 (Kos. S. Ct. Tr. 1988).

Even on public premises a person may retain an expectation of privacy, but where a person residing on public land makes no effort to preserve the privacy of marijuana plants and seedings, entry of police on the premises and seizure of contraband that is plainly visible from outside the residence is not an unconstitutional search and seizure. FSM v. Rodriquez, 3 FSM R. 368, 370 (Pon. 1988).

The "open fields" exception requires the evidence to be in plain view from a public place. But when the police viewed the open can of beer in the defendant's hand solely as the result of an illegal roadblock at which the car was stopped and would not have viewed the can of beer if the car had not been stopped at the roadblock, the can of beer was not in plain view from a public place and the "open fields" exception is not applicable. Kosrae v. Sikain, 13 FSM R. 174, 177 (Kos. S. Ct. Tr. 2005).

Under the plain view exception to the warrant requirement, if a police officer has a right to be in a specific place, and has a plain view of items subject to seizure, then he may seize those objects and they may be introduced into evidence in a subsequent criminal proceeding, but when the officer could not have seen the gun from his position on the porch and only obtained the rifle only after he had entered the house and conducted a search lasting 5 to 6 minutes, the search violated the right to be free from unreasonable searches and seizures. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 498 (Pon. 2005).

A warrant is not necessary to authorize seizure when marijuana is in plain view of a police officer who has a right to be in the position to have that view. Kosrae v. Noda, 14 FSM R. 37, 40 (Kos. S. Ct. Tr. 2006).

The plain view doctrine has been recognized as an exception to the search warrant requirement, and the application of the plain view doctrine and the legality of the search must be analyzed upon the information known to the police immediately before the search began. Kosrae v. Noda, 14 FSM R. 37, 40 (Kos. S. Ct. Tr. 2006).

The analysis of warrantless seizure and application of the plain view doctrine proceeds with three requirements: First, the police officer must lawfully make the initial intrusion or lawfully be in a position to view a particular area. Second, the officer must discover the incriminating evidence inadvertently (not know in advance the location of certain evidence). Third, it must be immediately apparent to the police that the items they observe are either evidence of a crime or contraband. Kosrae v. Noda, 14 FSM R. 37, 40-41 (Kos. S. Ct. Tr. 2006).

When a police officer conducted a routine investigation of a vehicle involved in an accident and, since the vehicle had been abandoned and the driver had voluntarily left the scene of the accident with a bystander, was looking for the registration card to determine the vehicle's ownership (a proper action within the state's governmental authority and police power); when the officer discovered the marijuana roaches in the ashtray inadvertently while looking for the vehicle's registration card; and when the officer, upon viewing the marijuana cigarette roaches in the ashtray, immediately recognized those items as contraband, the requirements for the application of the plain view doctrine have been satisfied and the warrantless search conducted of the defendant's vehicle was within the state's governmental authority and police power and was not unreasonable and the marijuana evidence will not be suppressed. Kosrae v. Noda, 14 FSM R. 37, 41-42 (Kos. S. Ct. Tr. 2006).

Generally, a constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. With respect to dwellings, an officer may conduct a warrantless search with validly obtained consent and, if evidence is discovered, the officer may seize it pursuant to the plain view doctrine. Chuuk v. Sipenuk, 15 FSM R. 262, 265-66 n.3 (Chk. S. Ct. Tr. 2007).

A warrant is not necessary to authorize seizure and the seizure is therefore reasonable when the contraband or the instrument of a crime is in plain view of a police officer who has a right to be in the position to have that view so that when the handgun, and the bag the officer saw the accused put the gun into, were in the officers' plain view because they were responding to an emergency call and were thus in a place where they had a right to be the motion to suppress the seizure of the handgun will be denied. FSM v. Sato, 16 FSM R. 26, 29-30 (Chk. 2008).

Despite the fact that the defendant and the backpack was in a public place, it is clear that the defendant had a reasonable expectation of privacy in the backpack's contents. FSM v. Phillip, 17 FSM R. 413, 421 (Pon. 2011).

There is no protected privacy interest in items exposed to public view. It is not a "search" if police observe what may be seen by any member of the general public. Thus, when a backpack was in a public location, in public view, the police were entitled to locate the backpack on the *Voyager* even without the defendant's consent. FSM v. Phillip, 17 FSM R. 413, 421 n.1 (Pon. 2011).

– Probable Cause

While the existence of probable cause to believe that a crime has been committed and that a particular person has committed it is not in itself sufficient to justify a warrantless search, the establishment of probable cause is nevertheless critical to any unconsented search. FSM v. George, 1 FSM R. 449, 460-61

(Kos. 1984).

Without probable cause, no search warrant may be obtained and no unconsented search may be conducted. FSM v. George, 1 FSM R. 449, 461 (Kos. 1984).

The standard announced in the second sentence of FSM Constitution article IV, section 5 for issuance of a warrant must be employed in determining the reasonableness of a search or seizure. Imposition of a standard of probable cause for issuance of a warrant in article IV, section 5 implies that no search or seizure may be considered reasonable unless justified by probable cause. Ludwig v. FSM, 2 FSM R. 27, 32 (App. 1985).

It is normally required that a hearing be held prior to seizure of a property. In extraordinary situations a seizure may take place prior to hearing, but the owner must be afforded a prompt post-seizure hearing at which the person seizing the property must at least make a showing of probable cause. Unreasonable delay in providing a post-seizure hearing may require that an otherwise valid seizure be set aside. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

The general requirement under article IV, section 5 of the Constitution is that before a search or seizure may occur there must exist "probable cause," that is, a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed and that the item to be seized has been used in the crime. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

Any attempt to grant statutory authority to permit seizure of a fishing vessel upon a lesser standard than probable cause would raise serious questions of compatibility with article IV, sections 3 and 4 of the Constitution. Such an interpretation should be avoided unless clearly mandated by statute. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

In probable cause determinations the court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Ishizawa v. Pohnpei, 2 FSM R. 67, 77 (Pon. 1985).

Consent, given in the face of a police request to search without the consenting person having been informed of his right to refuse consent, and without any written evidence that consent was voluntarily and knowingly given, renders such consent inadequate to permit a warrantless search absent probable cause. Kosrae v. Alanso, 3 FSM R. 39, 44 (Kos. S. Ct. Tr. 1985).

Probable cause is not proof of guilt, but shows that a reasonable ground for suspicion, sufficiently strong to warrant a cautious man to believe that the accused is guilty of the offense, exists. Kosrae v. Paulino, 3 FSM R. 273, 276 (Kos. S. Ct. Tr. 1988).

Because the purpose of article IV, section 5 of the Constitution is to protect the privacy rights of individuals against unreasonable and unauthorized searches and seizures by government officials it has been interpreted to require that an individual suspected of a crime be released from detention unless the government can establish "probable cause" to hold that individual. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 588 (Pon. 1994).

The standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. The probable cause determination must be made by the deliberate, impartial, judgment of a judicial officer. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 588-89 (Pon. 1994).

Often the determination of probable cause is made by a competent judicial officer upon the issuance of

an arrest warrant, but where an arrest is not made pursuant to a warrant the arrested is entitled to a judicial determination as to whether there is probable cause to detain the accused. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 589 (Pon. 1994).

A probable cause hearing is an informal, non-adversarial proceeding in which the formal rules of evidence and the requirement of proof beyond a reasonable doubt do not apply. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 589 (Pon. 1994).

An individual whose property has been seized pursuant to a civil forfeiture proceeding is entitled to a post-seizure hearing in order to determine whether there is probable cause to seize and detain that property. The probable cause standard in a civil forfeiture case is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation has occurred and that the property was used in that violation. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 589-90 (Pon. 1994).

The government has probable cause to detain a fishing vessel for illegal fishing when the evidence and information indicate that the vessel was conducting fishing operations within the FSM Exclusive Economic Zone, there was freshly caught fish aboard, and the permit provided to the officers contained a name different from the actual name of the vessel. FSM v. Zhong Yuan Yu No. 621, 6 FSM R. 584, 590-91 (Pon. 1994).

In a post-seizure probable cause hearing in a civil forfeiture case the standard for finding that the FSM has probable cause to seize a fishing vessel is defined by reference to 24 F.S.M.C. 513(2). FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 302 n.1 (Kos. 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).

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).

The Due Process Clause does not require an immediate post-seizure probable cause hearing in advance of a civil forfeiture trial. It only requires that the government begin the forfeiture action within a reasonable time of the seizure. FSM v. Skico, Ltd. (II), 7 FSM R. 555, 557 (Chk. 1996).

A search warrant may not issue except on probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

To determine probable cause, the question is whether a substantial probability exists in the mind of a cautious person which leads him or her to conclude that the items to be seized that are the evidence of a crime are in a particular place at the time the warrant is issued – probable cause upon which a valid search warrant must be based must exist at the time at which the warrant is issued, not at some earlier time. FSM v. Santa, 8 FSM R. 266, 269 (Chk. 1998).

Although crucial, the time lapse is not considered in isolation from other factors when determining probable cause. The passage of time is not necessarily a controlling factor in determining the existence of probable cause because a court should also evaluate the nature of the criminal activity and the kind of property for which authorization is sought. FSM v. Santa, 8 FSM R. 266, 269 (Chk. 1998).

First-hand information from a reliable informant that firearms were left in a particular building and other firearms were packed and shipped to that address months earlier will establish probable cause of illegal possession of firearms because firearms are something that do not deteriorate or pass away just through the passage of time and are usually left in just one position where kept and rarely, if ever, used, and delivery and then continued possession after receipt as a continuing matter may be inferred. FSM v. Santa, 8 FSM R. 266, 269 (Chk. 1998).

It is not unreasonable for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures. The justification for such searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search. FSM v. Joseph, 9 FSM R. 66, 72 (Chk. 1999).

The police had probable cause to stop a sedan and detain its driver when they found it headed northbound a short time after it almost collided with a police car while it was speeding southbound and passing another southbound vehicle because the sedan had tinted windows and the police had no reason to believe that the sedan had switched drivers in the short time since they had last seen it. FSM v. Aki, 9 FSM R. 345, 348 (Chk. 2000).

When the police received the information from a known independent source that a person was carrying a handgun, the police not only had a reasonable suspicion that he was armed and carrying a handgun, they also had probable cause to believe that he was, and it was constitutionally permissible for the police to conduct a patdown search of or to frisk him for weapons. Such a warrantless search is reasonable. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

Probable cause is a higher standard than reasonable suspicion. FSM v. Inek, 10 FSM R. 263, 266 (Chk. 2001).

Probable cause exists when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

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).

A probable cause determination must be made by the deliberate, impartial, judgment of a judicial officer. FSM v. Wainit, 10 FSM R. 618, 622 (Chk. 2002).

The statute of limitations is no part of any definition of probable cause. Probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. That the violation of law occurred within the statute of limitations is not an element that must be shown for probable cause to exist. FSM v. Wainit, 12 FSM R. 105, 108 (Chk. 2003).

Before a search or seizure may occur, there must exist "probable cause," that is, a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed and that the item to be seized has been used in the crime. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 251 (Pon. 2003).

Probable cause has not been provided that a crime has been committed and an application for a search warrant will be denied when the criminal law cited requires a showing that an individual threaten harm to a public official "with purpose to influence" a public official in a decision making capacity and the e-mails' language is ambiguous, and does not necessarily threaten harm to any public official and do not reference any decision, opinion, recommendation, vote, or other exercise of discretion by any FSM Immigration personnel and even if the court were to read the e-mails as serious threats to do harm, there is no connection between the threatened harm and any action by Immigration officials that could possibly be

influenced. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 251 (Pon. 2003).

A police officer may, as a general rule, consider any evidence in determining whether reasonable suspicion or probable cause exists. The information may be provided by an informer. Police should consider the underlying circumstances from which the informer drew his conclusion. Some of the underlying circumstances must show that the informant was reliable. However, evidence to establish reasonable suspicion or probable cause may be entirely based upon hearsay. The general rule is that virtually any evidence may be considered. Kosrae v. Tosie, 12 FSM R. 296, 299 (Kos. S. Ct. Tr. 2004).

Reasonable grounds or probable cause exist when factors and circumstance within the arresting officer's knowledge are sufficient to warrant a man of reasonable caution to believe an offense has been committed. For the offense of driving under the influence, these circumstances include odor of alcohol, results of the field sobriety tests, appearance and mannerism of intoxication, slurring of speech, and unsteady movement. Kosrae v. Tosie, 12 FSM R. 296, 300 (Kos. S. Ct. Tr. 2004).

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).

An illegal search cannot justify a later arrest, and an arrest cannot be justified by a subsequent search. A search's legality must be tested on the basis of the information known to the police officer immediately before the search began. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 497 (Pon. 2005).

In accordance with the Chuuk Constitution provision against unreasonable searches, seizures, and invasions of privacy, no warrant may be issued but upon probable cause, supported by affidavit, specifically describing the place to be searched and the persons or things to be seized. An individual suspected of a crime must be released from detention unless the government can establish probable cause to hold that individual. Chuuk v. Chosa, 16 FSM R. 95, 97 (Chk. S. Ct. Tr. 2008).

The standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. As a general rule, any evidence may be considered in determining whether reasonable suspicion or probable cause exists, and the finding of probable cause may be based upon hearsay evidence in whole or in part. Chuuk v. Chosa, 16 FSM R. 95, 97-98 (Chk. S. Ct. Tr. 2008).

A probable cause determination must be made by a deliberate, impartial judicial officer. Often the determination of probable cause is made by a judicial officer upon the issuance of an arrest warrant, but when an arrest is not made pursuant to a warrant, an arrested person is entitled to a judicial determination as to whether there is probable cause to detain him. Chuuk v. Chosa, 16 FSM R. 95, 98 (Chk. S. Ct. Tr. 2008).

When informants are used to establish probable cause, the investigating officers should consider the underlying circumstances from which the informer drew his conclusion. Some of the underlying circumstances must show that the informant was reliable. When the court makes its determination as to whether probable cause was proven, it must regard the evidence from the vantage point of law enforcement officers acting on the scene, but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Chuuk v. Chosa, 16 FSM R. 95, 98 (Chk. S. Ct. Tr. 2008).

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).

A counsel's affidavit used to establish probable cause places counsel in the position of being called as a witness in the case and detracts from the evidence's reliability because it merely adds another layer of hearsay. In that instance, counsel would be in apparent violation of Model Rule of Professional Conduct 3.7 (1983), which, subject to limited exceptions, prohibits counsel from being an advocate at a trial in which counsel is likely to be called as a witness. Chuuk v. Chosa, 16 FSM R. 95, 99 (Chk. S. Ct. Tr. 2008).

Although, there may be cases when an affidavit containing multiple layers of hearsay is deemed sufficiently reliable to prove probable cause, when the affidavit fails even a minimal level of reliability that might be justified by exigent circumstances, which, in any case, were not present, the affidavit filed with the information was not reliable enough to prove probable cause and the defendant's motion to suppress the affidavit of probable cause and for dismissal was therefore granted, and the case was dismissed. Chuuk v. Chosa, 16 FSM R. 95, 99 (Chk. S. Ct. Tr. 2008).

Once the police have reasonable suspicion that a suspect has committed a criminal offense, they may conduct an investigatory stop. An investigatory stop is a temporary stop of a car and its passengers that is used to confirm or dispel the suspicion that caused the investigatory stop. These stops are based on less than probable cause. Information gathered at the stop can be used to arrest or release the suspects. Berman v. Pohnpei, 16 FSM R. 567, 573-74 (Pon. 2009).

The police have a right to conduct a routine traffic stop, and when they, in order to investigate and confirm or refute their suspicions, stopped a car in which there was a passenger who they suspected had abandoned his Honda after driving it off the road while intoxicated, they did not conduct any unlawful search or seizure. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

Typically, before an arrest can be made, a warrant must be issued for that arrest. A warrant requires a showing of probable cause, and probable cause exists when there is evidence and information sufficiently persuasive such that a cautious person would believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

Pohnpei state law authorizes policemen to make an arrest without a warrant when 1) a breach of the

peace or other criminal offense has been committed, and the offender is shall endeavoring to escape, he may be arrested by virtue of an oral order of any official authorized to issue a warrant, or without such order if no such official be present; 2) anyone is in the act of committing a criminal offense; 3) a criminal offense has been committed, and a policeman has reasonable ground to believe that the person to be arrested has committed it; and 4) even in cases where it is not certain that a criminal offense has been committed, arrest and detain for examination persons who may be found under such circumstances as justify a reasonable suspicion that they have committed or intend to commit a felony. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

A person arrested for obstructing justice because she refused to give the police officers access to her car and interfered with their peaceful attempts to talk with her husband, whom she locked inside the car, is arrested for an offense committed in the police officers' presence, and, that being the case, a warrant did not need to be issued prior to the arrest. Since the officers correctly determined that they had probable cause to arrest without a warrant because her conduct fell within the Pohnpei state law definition of obstruction of justice, they did not conduct an unlawful or false arrest of her. Berman v. Pohnpei, 16 FSM R. 567, 574 (Pon. 2009).

A traffic stop, no matter how brief, is a seizure. But this seizure is not a warrantless arrest such that probable cause is needed and the person stopped must immediately be advised of his or her rights. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

When the police had information from an off-duty police officer that gave them reason to suspect that a person had been involved in a car accident and that he was intoxicated, these facts equate to reasonable suspicion to stop him and investigate. Berman v. Pohnpei, 17 FSM R. 360, 370 (App. 2011).

Probable cause exists when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. In probable cause determinations, a court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

Since the police may arrest without a warrant persons who are in the process of committing an offense in their presence, when the trial court found as fact that a person had, in the presence of the police, been argumentative; had prevented them from gaining access to her husband, who they had reasonable suspicion to stop and to whom they wanted to talk about a car abandonment; and that when a sergeant arrested her it was for obstructing justice and for pushing him in the chest and when these facts remain the facts on appeal, the facts, viewed from the law enforcement officers' vantage point, would constitute probable cause for an arrest on an obstructing justice charge. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

That the police had probable cause for an arrest on an obstructing justice charge does not mean that the arrestee was guilty beyond a reasonable doubt of that charge or that there was sufficient evidence to convict her on that charge; it only means that the police had enough to arrest her. Berman v. Pohnpei, 17 FSM R. 360, 371 (App. 2011).

A finding of probable cause may be based upon hearsay since the general rule is that virtually any evidence may be considered. A police officer may consider any evidence in determining whether reasonable suspicion or probable cause exists. The information may be provided by an informer. Police should consider the underlying circumstances from which the informer drew his conclusion and some of the underlying circumstances must show that the informant was reliable. However, evidence to establish reasonable suspicion or probable cause may be based entirely upon hearsay. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

Probable cause exists when there is evidence and information sufficiently persuasive such that a cautious person would believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

When the affidavit in support of the information is simply too vague, it does not contain any evidence or factual information that might lead a cautious person to believe it likely that defendant committed a crime prior to being arrested and searched. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

When the nature of the complaint that law enforcement received and responded to is unspecified either by hearsay or any other kind of evidence; when the accused is said to have been arrested and brought to DPS for processing as a result of police action triggered by the complaint but that arrest's details and circumstances are also unsubstantiated; and when the affidavit reads as a cursory afterthought to the arrest, incarceration, search, and ultimate seizure perpetrated by law enforcement on the accused, it could not, in and of itself, have supported a finding of probable cause prior to the arrest. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

When a factually-sufficient information is unsupported by an affidavit showing probable cause but at the motion hearing the State, although neither was the affiant, elicited testimony from an officer involved in the actual arrest and another involved in defendant's search and booking and the arresting officer provided sufficient detail to remedy the affidavit's defects; when the accused was given the opportunity, and in fact did, cross-examine both witnesses; when the court finds their testimony credible and is satisfied that ample probable cause existed for accused's arrest; and when there is nothing before the court to indicate that the accused would in any way be prejudiced if the sworn testimony elicited at the hearing were admitted for the purposes of demonstrating that law enforcement had probable cause to arrest and subsequently search the accused incident to his arrest, at the time he was arrested, the information's charging portion remains unaffected and the accused's motion to suppress will be denied. Chuuk v. Alluki, 17 FSM R. 385, 388 (Chk. S. Ct. Tr. 2011).

A probable cause finding may be based upon hearsay evidence in whole or in part. FSM v. Esefan, 17 FSM R. 389, 395 (Chk. 2011).

Because the FSM Supreme Court has previously looked to the principles underlying the U.S. Constitution's Fourth Amendment when analyzing the requirements necessary to establish consent sufficient to justify a warrantless search in the FSM, the court may engage in that analysis again. FSM v. Phillip, 17 FSM R. 413, 423 (Pon. 2011).

When the three officers' affidavits are sufficient to establish facts which, if proven, may support the defendant's conviction on the charges brought; when the connection between a customs officer and an informant, to the extent that it exists, is not necessary to show probable cause to arrest the defendant; and when the affidavits support the discovery of significant quantities of a leafy substance resembling marijuana in the defendant's backpack, as well as further tests of that substance which revealed that it was marijuana, these affidavits provide probable cause to believe that a crime was committed, and the defendant's motion to dismiss the information will be denied. FSM v. Phillip, 17 FSM R. 413, 426 (Pon. 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).

A police officer may, as a general rule, consider any evidence in determining whether reasonable suspicion or probable cause exists. An informer may provide the information. Police should consider the underlying circumstances from which the informer drew his conclusion. Some of the underlying circumstances must show that the informant was reliable. However, evidence to establish reasonable suspicion or probable cause may be entirely based upon hearsay since the general rule is that virtually any

evidence may be considered. 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).

When the court makes its determination as to whether probable cause was proven, it must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Chuuk v. Hauk, 17 FSM R. 508, 512-13 (Chk. S. Ct. Tr. 2011).

When the affidavit identifies its author as a Chuuk State Public Safety Department police detective and indicates that the detective was assigned to investigate the offenses alleged in the information; when the affidavit does not identify informants but describes facts uncovered during the course of the investigation; and when the defendant admits that the affiant formed his conclusions based upon the alleged victim's representations, the affiant's failure to name sources of information does not render the affidavit defective, in part because the defendant admits that the affiant gathered information directly from the victim. The affidavit does not suffer from multiple layers of hearsay because the affiant identifies himself and attests to personally investigating the criminal violations alleged. Chuuk v. Hauk, 17 FSM R. 508, 513 (Chk. S. Ct. Tr. 2011).

It is difficult to imagine how the vast majority of criminal prosecutions might proceed without using hearsay: it is the exception rather than the norm that court testimony underpins probable cause determinations. Any statements made to the affiant by the alleged victim are by definition hearsay and hearsay may, in whole or in part, form the basis of probable cause determinations, as may virtually any kind of evidence. Chuuk v. Hauk, 17 FSM R. 508, 513 (Chk. S. Ct. Tr. 2011).

Generally speaking, a prudent and thorough investigation likely would involve questioning the defendant before a probable cause determination is made, but the court is not in the business of investigating criminal allegations; law enforcement officials are and whether and to what extent the officer determined that such questioning was unnecessary and whether the omission somehow weakens the State's case is a factual issue to be determined at trial. Nothing in FSM or Chuuk state law provides that every investigating officer in every criminal case must question all or any criminal suspects before making a probable cause determination. Chuuk v. Hauk, 17 FSM R. 508, 513-14 (Chk. S. Ct. Tr. 2011).

Although there are civil remedies for the wrongs alleged, the possible existence of civil remedies in no way negates the fact that the legislature has criminalized the behavior alleged. The court's task in a probable cause determination is to determine whether the criminal allegations have merit, not to contemplate the propriety of the legal venue. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

When the court finds nothing to indicate that information obtained from the alleged victim is unreliable; when it does not seem reasonable or realistic to expect an alleged victim to remain neutral and unbiased regarding his claims about being victimized; and when the defendant admits that there was a financial arrangement of some sort between himself and the complainant and that the agreement itself is part of the nexus of facts leading up to this prosecution, the defendant has failed to demonstrate that from the investigating officer's perspective, information obtained during the course of the investigation is insufficient to justify a probable cause finding. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

The time to raise issues regarding probable cause is immediately after arrest, preferably at the initial appearance, arraignment, or, upon motion, at a probable cause hearing. It is not approximately one month before trial is scheduled to begin. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

When the information alleges that the accused presented checks to merchants knowing that those

checks were false documents, those factual allegations, supported by affidavit, establish probable cause that the accused violated 11 F.S.M.C. 529(1)(b). FSM v. Sorim, 17 FSM R. 515, 522 (Chk. 2011).

Since the existence of an agreement forming a conspiracy may be proven entirely by circumstantial evidence, circumstantial evidence can be sufficient to establish probable cause that such an agreement existed. FSM v. Sorim, 17 FSM R. 515, 524 (Chk. 2011).

Redaction is not required for a defendant's statement when it is used to help establish probable cause since hearsay may be used to establish probable cause. FSM v. Sorim, 17 FSM R. 515, 524 n.2 (Chk. 2011).

An arrest warrant or summons may issue 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. The probable cause finding may be based upon hearsay evidence in whole or in part. Chuuk v. Mitipok, 17 FSM R. 552, 553 (Chk. S. Ct. Tr. 2011).

Since the general rule is that virtually any evidence may be considered, a police officer may consider any evidence in determining whether reasonable suspicion or probable cause exists and the evidence to establish reasonable suspicion or probable cause may be entirely based upon hearsay. The police officers' determination of reasonable grounds and probable cause is based upon their training and understanding of conduct which forms the basis of criminal offenses. Chuuk v. Mitipok, 17 FSM R. 552, 553-54 (Chk. S. Ct. Tr. 2011).

Probable cause exists when there is evidence and information sufficiently persuasive such that a cautious person would believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Chuuk v. Mitipok, 17 FSM R. 552, 554 (Chk. S. Ct. Tr. 2011).

When, although the affiant does not identify sources of information in his affidavit, the court finds that the description he includes regarding the results of his investigation are enough to enable a cautious person to believe it is more likely than not that a violation of the laws charged in the information occurred; when if the affiant obtained information from the statements of any witnesses, as hearsay it is permissible in making the probable cause determination; when it appears from the affidavit that the officer was able to observe damage to a vehicle that the defendant caused, the court will find that probable cause existed to support the information's charges and that defendant's motion to dismiss the information is without merit and will be denied. Chuuk v. Mitipok, 17 FSM R. 552, 554 (Chk. S. Ct. Tr. 2011).

The government must make a probable cause showing at a hearing before pretrial restraints on a defendant's liberty can be granted. This is because a fair and reliable determination of probable cause is a condition for any significant pretrial restraint of liberty, and this determination must be made by a judicial officer either before or promptly after arrest. Affidavits can be used, if properly introduced, as evidence at that hearing to make the probable cause showing. In re Anzures, 18 FSM R. 316, 320 n.7 (Kos. 2012).

Probable cause is a constitutional requirement for a warrant. In re Anzures, 18 FSM R. 316, 320 (Kos. 2012).

An individual suspected of a crime must be released from detention unless the government can establish "probable cause" to hold that individual. The standard for determining "probable cause" is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. In re Anzures, 18 FSM R. 316, 324 (Kos. 2012).

A finding of probable cause may be based upon hearsay evidence in whole or in part. In re Anzures, 18 FSM R. 316, 324 n.12 (Kos. 2012).

Probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the

accused committed that violation. A court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience would consider it more likely than not that a violation has occurred. Chuuk v. Akapito, 19 FSM R. 13, 15 (Chk. S. Ct. Tr. 2013).

Probable cause existed when the affidavit of probable cause includes such facts that the court can find that the detective had sufficient information to believe that it was more likely than not a violation of the law had occurred involving the defendant. Chuuk v. Akapito, 19 FSM R. 13, 15 (Chk. S. Ct. Tr. 2013).

Article IV, § V protects individuals against illegal search and seizures, which can only be done based on probable cause. The standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. The probable cause determination must be made by the deliberate, impartial judgment of a judicial officer. FSM v. Benjamin, 19 FSM R. 342, 346-47 (Pon. 2014).

The protection in article IV, § 5 of the FSM Constitution against unreasonable search and seizure is based on a comparable provision in the fourth amendment of the U.S. Constitution. FSM v. Benjamin, 19 FSM R. 342, 347 n.4 (Pon. 2014).

When the defendant was found in the area after hours and his answers to the officer's questions were inconsistent, that and the surrounding circumstances rise to the level of reasonable suspicion, but not the higher standard of probable cause, which is needed for a lawful arrest. "Reasonable suspicion" is formed by specific, articulable facts which, together with objective and reasonable inferences, form the basis for suspecting that the particular person detained is engaged in criminal activity. FSM v. Benjamin, 19 FSM R. 342, 347 & n.5 (Pon. 2014).

In adopting the Declaration of Rights as part of the FSM Constitution and therefore the supreme law of the land, the people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause. Probable cause has been defined as a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed. FSM v. Ezra, 19 FSM R. 497, 514 (Pon. 2014).

In probable cause determinations, the court must regard evidence from vantage point of law enforcement officers acting on scene but must make its own independent determination as to whether, considering all facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Thus, an officer's prior training and experience is a valid source of consideration when making a probable cause determination. FSM v. Ezra, 19 FSM R. 497, 515 n.13 (Pon. 2014).

The finding of probable cause may be based upon hearsay evidence in whole or in part. As a general rule, a police officer may consider virtually any evidence in determining whether reasonable suspicion or probable cause exists. FSM v. Ezra, 19 FSM R. 497, 515 (Pon. 2014).

Probable cause existed when the police knew a crime had occurred because they received a call reporting a break-in at the Chinese Embassy; when there was reason to believe that a crime had occurred inside the Chinese Embassy compound; when based partly on the victim's statement and the Chinese Embassy's video surveillance, the police brought in two suspects whose statements implicated another; and when even though some of the evidence used by the police in determining that the other was a suspect to that crime was hearsay, a cautious person, based on the evidence the police already had in their possession, would have had reason to bring him in for questioning or to make an arrest without further questioning. The police have the discretion to formally arrest someone or to gather more information as they deem necessary. FSM v. Ezra, 19 FSM R. 497, 516 (Pon. 2014).

Probable cause is a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed. FSM v. Kimura, 19 FSM R. 630, 634 (Pon. 2015).

In probable cause determinations, a court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. FSM v. Kimura, 19 FSM R. 630, 634 (Pon. 2015).

Under the collective knowledge doctrine is a specific application called the "Fellow-Officer Rule," which expresses the principle that an investigative stop or an arrest is valid even if the law-enforcement officer lacks personal knowledge to establish reasonable suspicion or probable cause as long as the officer is acting on the knowledge of another officer and the collective knowledge of the law-enforcement office. FSM v. Kimura, 19 FSM R. 630, 635 (Pon. 2015).

A probable cause hearing is an informal, non-adversarial proceeding in which the formal rules of evidence do not apply. Thus, the finding of probable cause may be based upon hearsay evidence in whole or in part. This is not however, an open invitation to completely ignore the FSM Rules of Evidence, and the court must discount evidence that is inherently untrustworthy or suspicious. FSM v. Kimura, 19 FSM R. 630, 635 (Pon. 2015).

In a criminal case, a prosecutor may not, at a probable cause hearing, rely solely on hearsay testimony when competent evidence is readily available from perceiving witnesses. A probable cause hearing is a matter of limited purpose, and procedural and evidentiary rules are relaxed. But hearsay evidence alone will not suffice when other, more competent testimony is available. Thus, although the strict guidelines against the admission of hearsay evidence do not apply in a probable cause hearing, the court may discount unreliable hearsay. FSM v. Kimura, 19 FSM R. 630, 635 (Pon. 2015).

Establishing probable cause on the basis of hearsay alone should only be resorted to when the testimony of a perceiving witness is unavailable or when it is demonstrably inconvenient to summon witnesses able to testify to facts from personal knowledge. FSM v. Kimura, 19 FSM R. 630, 636 (Pon. 2015).

Hearsay provided by other law enforcement officers is often reliable without requiring any additional showing. Ultimately, hearsay from the police, or other government agencies involved in law enforcement, should not be treated the same as hearsay from an unknown informant or an anonymous tip. In short, who the informant is affects how the court weighs credibility behind the allegations supporting probable cause. FSM v. Kimura, 19 FSM R. 630, 636 (Pon. 2015).

Even though admiralty and maritime cases arrests are often made without an arrest warrant, the defendant is nonetheless entitled to a judicial determination as to whether there is probable cause to detain the accused. In this hearing, the government bears the burden of proving it had probable cause to seize the vessel. FSM v. Kimura, 19 FSM R. 630, 636 (Pon. 2015).

There is a substantial difference between the quantum of proof necessary to constitute sufficient evidence to establish probable cause and that necessary to support a conviction. FSM v. Kimura, 19 FSM R. 630, 636, 638 (Pon. 2015).

When, although no one officer had all of the information, collectively the agency did; when one or more government officers had the actual knowledge of each fact necessary to support the belief; when government officers are entitled to rely on representations from fellow officers if those representations are corroborated upon investigation and do not show the indicia of error; when similarly, the government may rely on hearsay derived from other investigative agencies, specifically NORMA observers; and when, regardless of the number of hearsay layers, these intermediaries should all be presumed reliable, the information and evidence was sufficient to support probable cause by the government at the time of the

arrest. FSM v. Kimura, 19 FSM R. 630, 638 (Pon. 2015).

Probable cause must be made from a reasonable person's perspective, using the fellow-officer rule, to include all of the information that collectively the government had in its possession at the time of the arrest, and not merely any one particular officer's actual knowledge. FSM v. Kimura, 19 FSM R. 630, 638 (Pon. 2015).

Hearsay can be used to support a probable cause finding, if it has the indicia of reliability. Assessments on the reliability of hearsay should include a consideration for the integrity, training, and the experience of police officers, or other law enforcement agents, from whom it comes. If, after a reasonable investigation under the circumstances, which includes the knowledge of the source, this hearsay is corroborated, it should be considered by the court and weighed accordingly. FSM v. Kimura, 19 FSM R. 630, 638 (Pon. 2015).

An arrest based upon probable cause does not violate the constitutional right to due process. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

An individual suspected of a crime must be released from detention unless the government can establish "probable cause" to hold that individual. The standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

The police had probable cause to arrest a person and that arrest was lawful when they knew that he had someone else's pigs and that he would not release them to their owner. Since his arrest was lawful, the resulting overnight detention was lawful and was not false imprisonment. Palasko v. Pohnpei, 20 FSM R. 90, 96 (Pon. 2015).

Probable cause exists when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

In probable cause determinations, a court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

The report of a trained and experienced fisheries observer on the scene and his later deposition testimony is more than sufficient to show probable cause – that it was more likely than not that a violation occurred – when, although the observer never actually saw a crew member throw the trash overboard, the court can infer from the circumstantial evidence that it is more likely than not that that is what occurred. Whether the government will be able to prove that beyond a reasonable doubt, a higher standard, is a matter left for trial. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

– Traffic Stop

Stopping motorists on a public road is reasonable, even if there is no particularized suspicion of crime, but police roadblocks must be designed to advance a specific purpose, such as eradication of drunken driving, and the court must determine whether the roadblock was reasonable, through consideration of several factors: the importance of the state's interest served by the roadblock; the effectiveness of the roadblock in advancing the public interest, and the degree to which the roadblock interferes with the motorist. Kosrae v. Sigrah, 11 FSM R. 249, 254 (Kos. S. Ct. Tr. 2002).

When a roadblock's purpose was to check motorists for valid driver's licenses and vehicle registrations,

the roadblock was designed to advance a specific state and public interest of assuring that drivers are properly licensed to drive, and to assure that the vehicle being driven meets minimum safety standards by being registered, and it addressed problems which were associated with the persons stopped. When a roadblock was designed to advance a specific public interest and was effective in advancing that public interest because motorists were detained for a temporary and brief period of time, interfering with them only to a minimal degree, the roadblock was reasonable under the Kosrae Constitution and a warrant was not required to conduct it nor was a warrant required for the police to stop a person at the roadblock. Kosrae v. Sigrah, 11 FSM R. 249, 254 (Kos. S. Ct. Tr. 2002).

When a motorist, detained at routine traffic stop for a temporary and brief period, was not arrested and was not in custody at the time he was questioned regarding his driver's license, the police questioning at the roadblock was routine questioning, conducted by government agents as part of their roadblock procedure and did not require Miranda warnings. Therefore, based upon the totality of the circumstances, that motorist was not compelled into giving incriminating evidence against himself, his right against self-incrimination was not violated by the roadblock, and the evidence thus obtained will not be suppressed. Kosrae v. Sigrah, 11 FSM R. 249, 255 (Kos. S. Ct. Tr. 2002).

The requirements that a person's driver's license be in the immediate possession of the operator, and that the operator display his license to a police officer upon demand do not violate the Kosrae Constitution. Kosrae v. Sigrah, 11 FSM R. 249, 257 (Kos. S. Ct. Tr. 2002).

A roadblock stop where all oncoming traffic was stopped is not an arrest. Just as indubitably, such a stop is a "seizure" within the meaning of the proscription against unreasonable search and seizures. Sigrah v. Kosrae, 12 FSM R. 320, 328 (App. 2004).

The standard by which the actions of law enforcement personnel is to be measured in conducting a traffic stop is one of reasonableness. To ensure against the arbitrary invasion of an individual motorist's security and privacy interests, the stop may not involve the discretionary exercise of authority by the officers who are actually on the scene and making the stops. The stops may not be made on an ad hoc basis, but must be implemented by public safety administrative personnel as part of a legitimate, rational program intended to make the state's roads safer, and not as a means of circumventing either the probable cause or reasonable, articulable suspicion, standards that would otherwise apply to the stop of an individual motorist. The manner of stopping must be in a rational, predetermined way. Either all motorists must be stopped, or the stops must occur in a specified incremental manner, such as every second, every fifth, etc., motorist. To insure the arbitrary, discretionary conduct is not merely shifted from the officer in the field to the public safety administrator responsible for the planning and implementation of the stops, the public must be given advance notice by means of radio announcement that the stops will be held. With these safeguards in place, the state's interest in promoting roadway safety more than outweighs the intrusion upon the privacy of and momentary inconvenience to the stopped motorists. Sigrah v. Kosrae, 12 FSM R. 320, 329 (App. 2004).

A checkpoint stop constitutes a mechanism for enforcing applicable laws. The roadblock itself, together with its prior announcement, is a means of causing people to take action to comply with applicable laws. When the stop is conducted in such a way that the rights conferred upon citizens under both Article II, § 1(d) of the Kosrae Constitution and Article IV, § 5 of the FSM Constitution are afforded adequate protection, the roadblock stop is not an unreasonable seizure. Sigrah v. Kosrae, 12 FSM R. 320, 330 (App. 2004).

It is sufficiently plain that automobiles by their intrinsic nature implicate safety concerns. Thus it does not take a statistical analysis to make the point that they are powerful mechanical devices that must be operated in a responsible manner, and that the operation of an automobile that is not roadworthy creates a hazard for other motorists and pedestrians, and a statistical analysis, however useful it might prove, is not a critical predicate to a finding that Kosrae's program of roadway safety roadblocks is constitutional. Sigrah v. Kosrae, 12 FSM R. 320, 330 (App. 2004).

A roadblock traffic stop may not involve the discretionary exercise of authority by the officers who are actually on the scene and making the stops. The stops may not be made on an ad hoc basis, but must be implemented by public safety administrative personnel as part of a legitimate rational program. To insure the arbitrary, discretionary conduct is not merely shifted from the officer in the field to the public safety administrator responsible for the planning and implementation of the stops, the public must be given advance notice by means of radio announcement that the stops will be held. Kosrae v. Robert, 13 FSM R. 109, 111 (Kos. S. Ct. Tr. 2005).

The purpose of a roadblock, with proper advance notice, is a means to cause people to take action to comply with applicable laws. Kosrae v. Robert, 13 FSM R. 109, 111 (Kos. S. Ct. Tr. 2005).

The state's radio announcements made from October 11 through 19, 2004, which stated that roadblocks would be implemented "throughout the year" without specifying the dates of the roadblocks, constituted a failure to announce the date or dates of the scheduled roadblocks necessarily and did not provide adequate advance notice to the public thus resulting in discretionary conduct by giving the public safety administrator and the police officers unfettered discretion to determine the dates of the roadblocks. This arbitrary and discretionary exercise of authority is not permissible. The advance notice and the roadblock held on October 22, 2004 did not provide the necessary constitutional protections and therefore all evidence obtained by the state against the defendant as a result of the roadblock is suppressed and not admissible at trial. Kosrae v. Robert, 13 FSM R. 109, 112 (Kos. S. Ct. Tr. 2005).

A roadblock stop may not involve the discretionary exercise of authority by the officers who are actually on the scene and making the stops. To insure the arbitrary, discretionary conduct is not merely shifted from the officer in the field to the public safety administrator responsible for the planning and implementation of the stops, the public must be given advance notice by means of radio announcement that the stops will be held. Kosrae v. Sikain, 13 FSM R. 174, 174 (Kos. S. Ct. Tr. 2005).

The purpose of a roadblock, with proper advance notice is a means to cause people to take action to comply with applicable laws. Kosrae v. Sikain, 13 FSM R. 174, 176 (Kos. S. Ct. Tr. 2005).

There are two purposes for requiring advance notice of a roadblock to the public: first, to eliminate arbitrary and discretionary conduct by the officers, and second, to cause people to take action to comply with applicable law. Accordingly, the general public, including passengers, and not just drivers, must be given advance notice. Kosrae v. Sikain, 13 FSM R. 174, 176-77 (Kos. S. Ct. Tr. 2005).

– Return of Seized Property

For a court to order property seized pursuant to a search warrant to be returned, the defendants' burden is to show both that there has been an illegal seizure by the state and that they have a claim of lawful possession to the property. Chuuk v. Mijares, 7 FSM R. 149, 150 (Chk. S. Ct. Tr. 1995).

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

For a party to have a valid claim of lawful possession of alcohol seized by the state that party must have paid the possession tax on the seized items. Chuuk v. Mijares, 7 FSM R. 149, 150 (Chk. S. Ct. Tr. 1995).

Where a defendant's motion is one for the return of seized property and he has failed to meet his burden to show a right to lawful possession, a court need not reach the issue of the illegal seizure and suppression of the evidence. Chuuk v. Mijares, 7 FSM R. 149, 151 (Chk. S. Ct. Tr. 1995).

Because a Rule 41(e) motion for return of seized property is predicated on the seizure's illegality and the showing of a right to possession, return of unregistered firearms is improper because possession of unregistered firearms is unlawful there is thus no right to possession. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

A criminal defendant has the right to move for the return of his property pursuant to Rule 41(e). This offers prompt and adequate relief for his grievance. FSM v. Joseph, 8 FSM R. 469, 470 (Chk. 1998).

The government may retain property seized from a criminal defendant that is not contraband or subject to forfeiture when it intends to offer the items in evidence at trial, and has a plausible reason for so intending. FSM v. Joseph, 8 FSM R. 469, 470 (Chk. 1998).

The court shall receive evidence on any issue of fact necessary to decide a motion for return of property. FSM v. Aki, 9 FSM R. 345, 349 (Chk. 2000).

A Rule 41(e) motion to return seized property the government claims it never had will be treated as a civil proceeding and may be entertained post-judgment or prejudgment. FSM v. Aki, 9 FSM R. 345, 349-50 (Chk. 2000).

To prevail in his motion the defendant must show that the seizure of the property was illegal, and that he is entitled to lawful possession. The burden of persuasion as to the possession is by a preponderance of the evidence. FSM v. Aki, 9 FSM R. 345, 350 (Chk. 2000).

When the defendant has established by a preponderance of the evidence that the $900 existed, that it was in his briefcase, that it was taken from his briefcase sometime after the police obtained the briefcase and before it was returned, and that he is entitled to lawful possession of the $900.00, a motion to return will be granted and since that money is not in the possession of the government, the defendant shall have judgment against the state for $900.00. FSM v. Aki, 9 FSM R. 345, 350 (Chk. 2000).

– Warrants

Police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure. FSM v. Tipen, 1 FSM R. 79, 85 (Pon. 1982).

Without probable cause, no search warrant may be obtained and no unconsented search may be conducted. FSM v. George, 1 FSM R. 449, 461 (Kos. 1984).

Police officers desiring to conduct a search should normally obtain a search warrant. This requirement serves to motivate officers to assess their case and to obtain perspective from the very start. FSM v. George, 1 FSM R. 449, 461-62 (Kos. 1984).

The standard announced in the second sentence of FSM Constitution article IV, section 5 for issuance of a warrant must be employed in determining the reasonableness of a search or seizure. Imposition of a standard of probable cause for issuance of a warrant in article IV, section 5 implies that no search or seizure may be considered reasonable unless justified by probable cause. Ludwig v. FSM, 2 FSM R. 27, 32 (App. 1985).

The Constitution does not protect a person against a "reasonable" search and/or seizure and a search is reasonable where a search warrant has been obtained prior to the search. Kosrae v. Paulino, 3 FSM R. 273, 275 (Kos. S. Ct. Tr. 1988).

Issuance of a search warrant is indisputedly within the FSM Supreme Court's jurisdiction. Jano v. King, 5 FSM R. 388, 392 (Pon. 1992).

When a search or seizure is conducted without a warrant the burden is on the government to justify the search or seizure, but when the search or seizure is conducted pursuant to a judicially-issued warrant the burden rests with the defendant to prove the illegality of the search or seizure. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

One reason for limiting the government's right to discovery is the many other means the government

has for obtaining needed information, such as the search warrant. FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

Frequently, a search warrant is used at the start of an investigation before charges are brought. But no statute, rule, legal principle, or constitutional provision bars its use at a later stage in the proceeding. FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

Rule 16(b) only concerns the limited amount of information that the government may, in very limited circumstances, seek by discovery. It is not concerned with what the government may seek to obtain through the use of a search warrant – search warrants are not "discovery." FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

Persons executing search warrants are required to promptly file a return with an inventory of the property seized. FSM v. Wainit, 11 FSM R. 1, 10 (Chk. 2002).

In light of the prompt filing requirement for search warrant inventories, it would be unreasonable to expect the government's inventory to list every document when there are numerous documents. FSM v. Wainit, 11 FSM R. 1, 10-11 (Chk. 2002).

Generally, the failure to promptly file a return with an inventory is a ministerial violation which does not void an otherwise valid search in the absence of a showing of prejudice. FSM v. Wainit, 11 FSM R. 1, 11 (Chk. 2002).

The ostensible purpose of the inventory requirement is to enable the court to determine, on the face of the warrant, return and inventory, whether the seizure was properly limited to the property identified in the warrant. FSM v. Wainit, 11 FSM R. 1, 11 (Chk. 2002).

An inventory which lists four file folders and how each folder is labeled, but which does not individually list each document in the 600 pages of documents in the folders, does not show the prejudice that would void an otherwise valid search. If the inventory were found to be inadequate, the most likely remedy would be an order for the government to file a more detailed inventory, not suppression. FSM v. Wainit, 11 FSM R. 1, 11 (Chk. 2002).

The inadvertent omission of a document from the search warrant inventory would, in itself, not be grounds to suppress that document. FSM v. Wainit, 11 FSM R. 1, 11 (Chk. 2002).

Rule 41 only requires that a return be made promptly and be accompanied by a written inventory, not that the seized property itself be brought before the court. FSM v. Wainit, 11 FSM R. 1, 12 (Chk. 2002).

A defendant is entitled to a protective order barring the admission of any of the seized items that were outside the search warrant's scope. But when there is no indication that the government intends to offer any of them in evidence, the court will not inspect each item seized and rule on its relevance and whether it was outside the warrant's scope. FSM v. Wainit, 11 FSM R. 1, 12 (Chk. 2002).

As long as probable cause still exists, it is generally accepted that a warrant need only be executed within a reasonable time after its issuance, notwithstanding the presence of "forthwith" language in the warrant. FSM v. Wainit, 11 FSM R. 424, 432 (Chk. 2003).

To "execute" a search warrant does not mean a fully completed search but to "execute" is in that instance synonymous with to serve a search warrant. FSM v. Wainit, 11 FSM R. 424, 433 (Chk. 2003).

Even if a search warrant was valid for execution only until 4 p.m., on September 5, 2002, the government having executed, that is served, the search warrant and begun its search before 4 p.m. on September 5th, could have continued its search after 4 p.m. on the 5th until done, even if it ran over onto the 6th. The court does not see much difference between that and securing the site with police present inside

to resume physically searching the next morning. FSM v. Wainit, 11 FSM R. 424, 433 (Chk. 2003).

The historical reason for restricting searches to daytime hours was that invasion of private premises in the small hours of the night and abrupt intrusion upon sleeping residents in the dark was more likely to create terror that precipitated violence. That reason does not apply to a search started in daytime that continues after dark. FSM v. Wainit, 11 FSM R. 424, 433 (Chk. 2003).

Normally, a search warrant's validity is brought into question by a motion to suppress the evidence seized as a result of the questioned warrant. FSM v. Wainit, 11 FSM R. 424, 434 (Chk. 2003).

The reasoning behind the principle barring physical resistance to an invalid search warrant is that while society has an interest in securing for its members the right to be free from unreasonable searches and seizures, society also has an interest in the orderly settlement of disputes between citizens and their government and it has an especially strong interest in minimizing the use of violent self-help in the resolution of those disputes particularly when a proper accommodation of those interests requires that a person claiming to be aggrieved by a search conducted pursuant to an allegedly invalid warrant test that claim in a court of law and not forcibly resist the warrant's execution at the place of search. This reasoning resonates even more strongly in Micronesia, where society has customarily prized peaceful and orderly resolution of disputes much higher than in the United States. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

At the time the FSM Constitution was framed and adopted, the prevailing U.S. constitutional analysis of its constitutional search and seizure provision, which the FSM constitutional provision was modeled after, was that persons had no right to resist a search warrant even if that warrant was invalid. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

Two old (1937 and 1924) cases that do not reflect U.S. constitutional analysis and practice at the time the FSM Constitution was drafted and adopted in the last half of the 1970's cannot be a basis for an FSM constitutional analysis of provisions adopted from and similar to a provision in the U.S. Constitution's Bill of Rights when those cases differ significantly from the constitutional analysis current in the 1970's. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

Process "void on its face" usually means process that the court did not have jurisdiction to issue or that was in excess of its jurisdiction. Since the FSM Supreme Court has the jurisdiction to issue search warrants anywhere in the FSM, and the island of Udot is within the FSM's territorial jurisdiction, and on September 4, 2002, the court had jurisdiction to issue a search warrant that would be valid on September 6, 2002, a search warrant used on Udot on September 6, 2002 was not void on its face. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

A defective search warrant is not a defense to a prosecution for resisting the defective warrant. FSM v. Wainit, 11 FSM R. 424, 436 (Chk. 2003).

Under FSM constitutional jurisprudence, a person has no right, with some possible narrow exception, to resist a court-issued search warrant even if that search warrant turns out to be invalid. A person's remedies for being subjected to a search with an invalid search warrant are the suppression of any evidence seized, and, in the proper case, a civil suit for damages. The self-help of resistance is not a remedy and because of the Micronesian customary preference for the peaceful resolution of disputes, this conclusion is consistent not only with the FSM Constitution, but also with the social configuration of Micronesia as is required by the Constitution's Judicial Guidance Clause. FSM v. Wainit, 11 FSM R. 424, 436-37 (Chk. 2003).

The issue of a search warrant's validity is not a central, or even major issue in a case of resisting a search. It is not an available defense. FSM v. Wainit, 11 FSM R. 424, 437 (Chk. 2003).

A subscriber to an internet service in the FSM may have a reasonable expectation of privacy in the

content of e-mails that are stored on the server at the FSM Telecom's offices. Even though e-mails are computer generated, digital images, they are "papers and possessions" that a person reasonably expects will be kept private, and they should not be subject to unchecked governmental intrusion or seizure. Thus, before the court can issue a warrant, it must find that there is evidence sufficiently strong to warrant a cautious person to believe that a crime has been committed. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM R. 248, 251 (Pon. 2003).

The reasoning behind the principle barring physical resistance to an invalid search warrant is that society has an interest in securing for its members the right to be free from unreasonable searches and seizures. Society also has an interest, however, in the orderly settlement of disputes between citizens and their government; it has an especially strong interest in minimizing the use of violent self-help in the resolution of those disputes. A proper accommodation of those interests requires that a person claiming to be aggrieved by a search conducted by a peace officer pursuant to an allegedly invalid warrant test that claim in a court of law and not forcibly resist the execution of the warrant at the place of search. This reasoning resonates even more strongly in Micronesia, where society has customarily prized peaceful and orderly resolution of disputes much higher than in the United States. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

At the time the FSM Constitution was framed and adopted, the prevailing U.S. constitutional analysis of its constitutional search and seizure provision, which the FSM constitutional provision was modeled after, was that persons had no right to resist a search warrant even if that warrant was invalid. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

In the FSM, a person has no right to resist the execution of a search warrant by police or government agents even if the search warrant is later shown to be invalid. Consequently, a defendant may not assert as a defense that he has no liability and may resist a search warrant if he believes it is, or if it is, an invalid warrant. The law does not permit this. The search warrant's validity is irrelevant to the case and the court will refuse to hear testimony concerning it. FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

As a matter of law, a search warrant's invalidity is not a defense under 11 F.S.M.C. 107(1) because it is not a fact or set of facts which removes or mitigates penal liability. Even a belief that a search warrant is invalid does not remove or mitigate penal liability. If a person believes that he has a legal right to resist an invalid search warrant that is a mistake or ignorance of law, not a mistake (or ignorance) of fact, and that is not a defense under section 301A(3). FSM v. Wainit, 13 FSM R. 433, 446 (Chk. 2005).

A search warrant's invalidity, or a belief it is invalid, is not a defense to charges stemming from resistance to the search warrant's execution. FSM v. Wainit, 13 FSM R. 433, 447 (Chk. 2005).

Under FSM constitutional jurisprudence, a person has no right, with some possible narrow exception which the court has not decided whether it is a viable defense, to resist a court-issued search warrant even if that search warrant turns out to be invalid. FSM v. Wainit, 13 FSM R. 433, 448 (Chk. 2005).

If the building to be searched is closed, the person executing the search warrant shall first demand entrance in a loud voice and state that he desires to execute a search warrant, and if the doors, gates, or other bars to the entrance are not immediately opened, he may force an entrance, by breaking them if necessary. Thus, since the defendant's residence was completely vacant at the time with no one there to grant them entry, the national police had every right to force an entry into the residence. FSM v. Wainit, 14 FSM R. 51, 56-57 (Chk. 2006).

Once a search has been completed, the policeman taking property under a search warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or shall leave the copy and receipt at the place from which the property was taken. But, although termed "caretakers" of the property, when the municipal police did not occupy the property and could they provide entry to the residence, they were thus not persons from whom or from whose premises the property was taken and upon whom a copy of the search warrant had to be served, and since

the search was not finished on September 5, 2002, whether a copy of the search warrant was left with the municipal police on September 5, 2002 is irrelevant. FSM v. Wainit, 14 FSM R. 51, 57 (Chk. 2006).

The mere presence of prosecutors during a search is not *per se* improper. A prosecutor may assist in a search to provide legal advice. The reason a prosecutor might not want to participate in investigative matters such as executing a search warrant is that prosecutors only enjoy a limited immunity from civil liability when participating in investigative acts, unlike the absolute immunity from civil liability that prosecutors enjoy for their actions connected with their role in judicial proceedings. FSM v. Wainit, 14 FSM R. 51, 57 (Chk. 2006).

Although a person has a right to be present while his residence is searched as long as he does not interfere with the search, members of the public and others who entered the residence after the owner had no right to be present during the residence's search. FSM v. Wainit, 14 FSM R. 51, 59 (Chk. 2006).

Although the remedy of self-help or resistance to a search thought to be unlawful is barred, the court has not decided whether there are some unlawful searches, with or without warrant, the circumstances of which would be so provocative to a reasonable man that the seriousness of the offense of resistance ought to be mitigated as a result of such provocation, and when the defendant had the opportunity to put on such evidence at trial but no such showing (by a preponderance of the evidence), was made, the court did not need to decide whether such an exception could be permitted since the search warrant execution attempt was neither provocative nor was the force used unreasonable. FSM v. Wainit, 14 FSM R. 51, 59-60 (Chk. 2006).

A person whose residence is being searched would, of course, be within his rights to tell the search party that if it insisted upon continuing its search it could do so over his protest, but that, in his view, the search warrant was invalid or expired and he would pursue every available civil remedy and suppression motion available to him so that the search party might want to reconsider whether it wanted to continue. FSM v. Wainit, 14 FSM R. 51, 60 n.8 (Chk. 2006).

A search warrant should be issued in the state where the property sought to be seized was alleged to be located. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

A return of the items seized pursuant to a search warrant must be made even if nothing is found or seized. FSM v. Kansou, 14 FSM R. 136, 138 (Chk. 2006).

When the defendant's arrest was by warrant, the burden of showing its supposed illegality rested with the defendant. When the defendant failed to meet that burden and when the motion's other ground that witnesses were not given required legal warnings is legally unsound, the government's failure to produce evidence at the hearing was not fatal and the motion to suppress is accordingly denied. FSM v. Aiken, 16 FSM R. 178, 185 (Chk. 2008).

The FSM Supreme Court has the authority to issue a search warrant only upon probable cause supported by affidavit and the search warrant application must particularly identify the specific property or persons to be seized and naming or describing the person or place to be searched. In re Search Warrant Application, 19 FSM R. 399, 400 (Pon. 2014).

The search warrant's particularity requirement prohibits general searches and exploratory rummaging while looking for evidence of a crime. The constitutional protection of the individual against unreasonable searches and the limitations of powers of the police apply wherever an individual may harbor a reasonable expectation of privacy. In re Search Warrant Application, 19 FSM R. 399, 400 (Pon. 2014).

When the search warrant application adequately establishes probable cause as required but is unreasonably broad in its request to search the suspect's dwelling, an adjacent house owned by his mother-in-law but believed to be used as an alternative residence, and his vehicle, the court will grant the warrant to search the suspect's dwelling and his vehicle but deny the request to search the mother-in-law's

home. The breadth of the application is not supported by the facts therein because the mere belief that the suspect uses the other home as a residence is not sufficient, nor is it reason to believe that the evidence sought will be found there. The Department of Justice may file another application, or applications, supported by additional evidence, if that location is determined to be necessary to the investigation. In re Search Warrant Application, 19 FSM R. 399, 400 (Pon. 2014).

SEPARATION OF POWERS

When Congress has passed a statute, executive branch and judiciary branch members may not decide among themselves to reassign the decision-making responsibilities set forth in the statute. Suldan v. FSM (I), 1 FSM R. 201, 205 (Pon. 1982).

While the Judiciary must resolve disputes legitimately placed before it, it may not usurp legislative functions by making declarations of policy or law beyond those necessary to resolve disputes nor undertake administrative functions of the kind normally consigned to the Executive Branch where this is not necessary to carry out the judicial function. In re Sproat, 2 FSM R. 1, 4 (Pon. 1985).

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

Although the internal management of a jail or prison is, subject to compliance with constitutional requirements, a function of the executive branch, the legislature controls the overall sentencing scheme through statute. Soares v. FSM, 4 FSM R. 78, 82 (App. 1989).

In the absence of legislative action saying otherwise, it is the sentencing order, not the jailer or any member of the executive branch, which determines whether the prisoner is to be confined, and for how long. Soares v. FSM, 4 FSM R. 78, 82 (App. 1989).

A national senator has no power to release national prisoners confined for violation of laws enacted by the national Congress. Soares v. FSM, 4 FSM R. 78, 83 (App. 1989).

The Joint Law Enforcement Agreement between the State of Truk and the national government in no way affects the ability of a national court to require a jailer who has accepted custody of a prisoner to act in conformity with the sentencing order governing the confinement of the prisoner. Soares v. FSM, 4 FSM R. 78, 84 (App. 1989).

To the extent that Secretarial Order 3039 can be read as permitting the Trust Territory High Court to continue, after the FSM Supreme Court had begun functioning, to control cases assigned by the FSM Constitution to the FSM Supreme Court, that exercise by Congress of the transitional power under the Constitution could run counter to other specific provisions of the Constitution, especially the judiciary article, and to fundamental principles of the separation of powers; any extension by the Trust Territory High Court of the powers assigned to it under Secretarial Order 3039 would violate those same constitutional provisions and principles. United Church of Christ v. Hamo, 4 FSM R. 95, 106 (App. 1989).

The power of the President to appoint executive branch officers is not absolute, but is subject to check by the advice and consent of Congress. Sohl v. FSM, 4 FSM R. 186, 197 (Pon. 1990).

The determination of whether stockholders and directors should be protected at the expense of the general public and the employees of the corporation is, at the bottom, a policy choice of the kind that legislatures are better equipped than courts to make. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 385 (Pon. 1990).

Where the record fails to reflect that the functions of the judiciary have been prevented or substantially impaired by the financial management and fiscal powers exercised by the Secretary of Finance, the judiciary has not been deprived of its essential role and constitutional independence. Mackenzie v. Tuuth,

5 FSM R. 78, 84 (Pon. 1991).

The Constitution mandates that the Chief Justice by rule may govern the admission to practice of attorneys, but a rule which differentiates between FSM citizens and noncitizens inherently relates to the regulation of immigration and foreign relations which are powers expressly delegated to the other two branches of government. Berman v. Pohnpei, 5 FSM R. 303, 305 (Pon. 1992).

The Chief Justice has the constitutional authority to make rules for the appointment of special judges, and Congress has the constitutional authority to amend them. Congress has provided the Chief Justice with the statutory authority to appoint temporary justices. Where Congress has acted pursuant to its constitutional authority to provide statutory authority to the court, the court need not have exercised its concurrent rule-making authority. Jano v. King, 5 FSM R. 326, 331 (App. 1992).

Congress and the President respectively have the power to regulate immigration and conduct foreign affairs while the Chief Justice may make rules governing the admission of attorneys. Therefore a rule of admission that treats aliens unequally promulgated by the Chief Justice implicates powers expressly delegated to other branches. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 366 (Pon. 1992).

Without a rational valid basis for the rule limiting the number of times an alien may take the bar exam it will be held unconstitutional even if it would be constitutional if the regulation were made by Congress or the President. Berman v. FSM Supreme Court (I), 5 FSM R. 364, 367 (Pon. 1992).

Conduct of foreign affairs and the implementation of international agreements are properly left to the non-judicial branches of government. The judicial branch has the power to interpret treaties. In re Extradition of Jano, 6 FSM R. 93, 103 (App. 1993).

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).

In order for a Congressional statute to give the court valid authority in those areas which the Constitution grants the Chief Justice rule-making powers the Chief Justice does not first have to promulgate a rule before Congress may legislate on the same subject. Hartman v. FSM, 6 FSM R. 293, 297 (App. 1993).

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).

Courts and administrative agencies alike may not encroach upon the lawmaking responsibility reserved to the legislature. Klavasru v. Kosrae, 7 FSM R. 86, 91 (Kos. 1995).

Congress has not unconstitutionally delegated its authority to define crimes by delegating to an executive agency the power to enter into fishing agreements because congressional approval is needed for these agreements to take effect. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 127 (Pon. 1995).

When Congress has specifically given Social Security, not the courts, the discretion to levy a penalty and limited that discretion to $1,000 a quarter and Social Security has exercised its discretion by levying a penalty less than that allowed by the statute, the court is generally bound to enforce it. The courts cannot usurp the power Congress granted to another governmental body. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 133 (App. 1997).

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).

When a Senator tells a public agency what projects are approved and the agency then carries out his decisions, it is Congress, not the executive, that is executing and implementing the public law. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

Specific powers are given to each branch of the government. When Congress is executing and implementing a national law, a power expressly delegated to the executive branch, it abridges the executive's power to execute and implement national laws. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

While FSM Supreme Court may determine the constitutionality under the FSM Constitution of a specific legislative act, there is no authority where a court has either ordered a legislative body to perform a specified legislative function, or held such a body in contempt for not performing that function. Davis v. Kutta, 10 FSM R. 98, 99 (Chk. 2001).

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

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

Specific powers are given to each branch of the government and a public law that abridges the executive's power to execute and implement national laws may be enjoined. Udot Municipality v. FSM, 10 FSM R. 354, 357 (Chk. 2001).

Because Congress has the statutory authority to name allottees other than the President or his designee, the court will deny a request for an order prohibiting defendants from ever again being allottees of FSM money. Udot Municipality v. FSM, 10 FSM R. 354, 359 (Chk. 2001).

The constitutional principle of separation of powers is still violated when the public law only requires that those seeking funds for improvement projects must consult with the relevant congressman before the funds are obligated instead of requiring consultation and approval by the congressman. Udot Municipality v. FSM, 10 FSM R. 354, 359 (Chk. 2001).

Congress can give as much guidance as it wishes in the appropriation legislation about which projects will be funded, and much of this guidance will, no doubt, be the product of individual congressmen's consultation with their constituents. But this consultation takes place before the appropriation bill becomes law, not afterwards. After the appropriation bill has become law, it is the duty of those who execute the law and administer the funds to follow the guidance Congress has given them by consulting the language Congress put in the public law, and any applicable regulations, not by consulting individual congressmen. Udot Municipality v. FSM, 10 FSM R. 354, 359-60 (Chk. 2001).

Fund categories that were formulated as the result of an unconstitutional "consultation" process with congressmen may effectively be disregarded whenever a new process is implemented to determine in a constitutionally proper manner where, how, and what to spend the improvement project money on. Udot Municipality v. FSM, 10 FSM R. 354, 360 (Chk. 2001).

As a matter of law, some official government action is required before a violation of the doctrine of separation of powers can occur. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 630 (Pon.

2002).

The concept of separation of powers is inherent in the FSM Constitution's structure. Each branch of the FSM government has specific powers and duties enumerated in the Constitution's text. Thus, each branch should restrain itself to exercise only those powers which the people of the FSM have granted to it in the Constitution: any power exercised by a branch of the government that is beyond that which the Constitution granted to that branch violates the Constitution and is null and void. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 630 (Pon. 2002).

Any attempt by one branch to usurp the powers that the FSM Constitution explicitly grants to another branch violates the FSM Constitution and is invalid. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 631 (Pon. 2002).

The essence of the separation of powers concept is that each branch, acting within the sphere of its defined powers and subject to the distinct institutional responsibilities of the others, is essential to the liberty and security of the people. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 631 (Pon. 2002).

The separation of powers among the three branches is intended to be a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of another. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 631 (Pon. 2002).

Acts of individual senators can result in a public law being declared unconstitutional in its application. However, at a minimum, the acts of individual senators must be acts done in their official capacities as senators to establish any constitutional violation. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 631 (Pon. 2002).

The doctrine of separation of powers is not violated every time a person, who happens to be a senator, allegedly misuses property that is traceable to an appropriation made under national law. If a senator takes a car, boat, desk, computer, or pen that rightfully is in the possession of another person or entity, he should bear the same responsibility and consequences as any other person: he could be charged criminally, or sued in a civil action by the rightful owner for conversion of that property. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 632 (Pon. 2002).

The separation of powers doctrine provides that in the tripartite government structure – i.e., the legislative, executive, and judiciary branches – that prevails at the state and national levels in the FSM, each branch may exercise only the particular powers with which it has been constitutionally endowed. Through history and practice, this has meant that the legislature enacts the laws, the executive executes or enforces the laws, and the judiciary, by resolving disputes that come before it in specific cases, interprets the laws. Sigrah v. Speaker, 11 FSM R. 258, 260 (Kos. S. Ct. Tr. 2002).

The separation of powers doctrine fortifies the government's constitutional makeup by requiring that each government branch exercise its assigned powers independently of the other two branches. Sigrah v. Speaker, 11 FSM R. 258, 260 (Kos. S. Ct. Tr. 2002).

While the naked right to legislate may not be delegated, the power to enforce legislation and to enlarge on standards defined in a statute can be delegated if the statute contains reasonable guidance and reasonable definition of the standards to be employed and the matter that is to be regulated. In order for the delegation of legislative authority to pass constitutional muster, there must be a delineation of policy, a designation of the agency to implement it, and a statement of the outer boundaries of the authority delegated. Sigrah v. Speaker, 11 FSM R. 258, 261 (Kos. S. Ct. Tr. 2002).

Our Constitution commits to the executive branch the conduct of foreign affairs, just as it vests the judicial power in the Supreme Court and such other courts as may be established by statute. Although these powers are categorically assigned, they are not in their exercise subject to the same degree of precision. Foreign sovereign immunity is inescapably a part of foreign affairs, but it can be offered as a

defense in a lawsuit. Inter-branch comity is the means by which these parallel, if not competing, concerns are recognized and integrated. McIlrath v. Amaraich, 11 FSM R. 502, 506 (App. 2003).

Interbranch comity may manifest itself in the judicial branch's deference to the executive branch on the issue of foreign sovereign immunity. Some mechanism must be available to implement this procedure. The appellate division is disinclined to view the trial court's language that "ordered" the Department of Foreign Affairs to file the amicus curiae brief as transforming comity into a coercion that divested the Department of its discretion. McIlrath v. Amaraich, 11 FSM R. 502, 506-07 (App. 2003).

When all that the order required was that the Department of Foreign Affairs file an amicus curiae brief, it did not require the Department to decide the issue one way or another, or for any opinion at all. But what it did do was elicit a minimal degree of interaction between the two branches involved so that the executive branch's position, or even lack of one, would become known to the judicial branch. McIlrath v. Amaraich, 11 FSM R. 502, 507 (App. 2003).

Inter-branch comity is a two-way street. Just as the trial court's order recognized that the question of the foreign sovereign immunity putatively enjoyed by the defendants in the underlying case was appropriately decided by the executive branch's Department of Foreign Affairs, so the executive branch should participate in this process by giving its opinion on the matter, even if this means stating that it has no opinion. McIlrath v. Amaraich, 11 FSM R. 502, 507 (App. 2003).

The doctrine of separation of powers among the three branches of the national government is built into the Constitution by its very structure and the explicit language in Articles IX, X, and XI. These articles provide each branch its own specific powers and this structure provides for the independence of each branch in a system of checks and balances wherein no one branch of government may encroach upon another's domain. FSM v. Udot Municipality, 12 FSM R. 29, 48 (App. 2003).

On its most fundamental plane, the separation of powers doctrine protects the whole constitutional structure by requiring that each branch retain its essential powers and independence. FSM v. Udot Municipality, 12 FSM R. 29, 48 (App. 2003).

The standard for determining whether there is an improper interference with or delegation of the independent power of a branch is whether the alteration prevents or substantially impairs performance by the branch of its essential role in the constitutional system. FSM v. Udot Municipality, 12 FSM R. 29, 48 (App. 2003).

Once a public law is enacted, the responsibility for the execution and implementation of the law rests with those who have a duty to execute and administer the law, and Senators can have no further role in its execution. FSM v. Udot Municipality, 12 FSM R. 29, 49 (App. 2003).

The execution and implementation of the laws is an executive rather than a legislative function. FSM v. Udot Municipality, 12 FSM R. 29, 50 (App. 2003).

A public law that specifically provides that a Congressional delegation must be consulted on the most appropriate usage of the funds before an obligation could occur runs afoul of the Constitution because it empowers the Congressional delegation to engage in an executive function by formally involving itself in executing and implementing the appropriation. Congress cannot pass laws and vest in itself or its members the power to control how that law is executed. FSM v. Udot Municipality, 12 FSM R. 29, 50 (App. 2003).

The constitutional demarcation of powers to the three branches of the national government was established with deliberate design and purpose. The intended effect was to create a system of checks and balances between the national government's branches such that no one branch could encroach upon the power of another branch and thereby dominate the others. FSM v. Udot Municipality, 12 FSM R. 29, 51 (App. 2003).

The standard for determining whether there is an improper interference with the independent power of a branch of government is whether the action of one branch substantially impairs another branch's performance of its essential role in the constitutional system. FSM v. Udot Municipality, 12 FSM R. 29, 51 (App. 2003).

Congress's enactment preventing obligation of funds unless and until the allottees engaged in "consultation" with the relevant Congressional delegation, substantially impaired the allottees' performance in executing and implementing the law, which is the executive's essential and exclusive role under our Constitution. By legislating "consultation" before obligation requirement into the law, the Congress encroached upon an executive function and assumed more power than it is allowed in our constitutional system of checks and balances, thus violating the separation of powers doctrine. FSM v. Udot Municipality, 12 FSM R. 29, 51 (App. 2003).

A President's reason for vetoing the bills passed during the Fourteenth Congress's Second Special Session is a non-justiciable issue because when the Constitution has a textually demonstrable commitment of an issue to a coordinate branch of government, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Christian v. Urusemal, 14 FSM R. 291, 294 (App. 2006).

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

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

The Constitution permits the Chief Justice to promulgate civil procedure rules, which Congress may amend by statute. Since Congress has the authority to amend or create procedural rules by statute, when Congress has enacted a procedural rule, it is valid. The Chief Justice does not have the authority to amend Congressionally-enacted statutes. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Tipingeni v. Chuuk, 14 FSM R. 539, 542 n.1 (Chk. 2007).

Presentment to, that is transmittal to, the mayor is a prerequisite for a bill to become an ordinance, either by the mayor then signing it, or vetoing it and having his veto overridden, or by the mayor's failure to act within the prescribed time period. Thus, no bill can become law without first being transmitted to the mayor for his possible action. Esa v. Elimo, 15 FSM R. 198, 203 n.2 (Chk. 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).

A court exercising only its inherent power would need a very extraordinary and compelling case to expunge or seal not only the judicial branch's conviction records but also the arrest records maintained by the executive branch since that would implicate separation of powers concerns. FSM v. Erwin, 16 FSM R. 42, 44 (Chk. 2008).

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

The concept of separation of powers is inherent in the FSM Constitution's structure. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

The FSM Constitution's separation-of-powers structure is derived from that in the U.S. Constitution. The similarities of the FSM and the U.S. Constitutions mandate that the FSM Supreme Court will give particular consideration to U.S. constitutional analysis, especially at the time of the Micronesian Constitutional Convention and of the Constitution's adoption. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 n.1 (Pon. 2009).

State policy-making and legislating are functions of the political branches of state government. Narruhn v. Chuuk, 16 FSM R. 558, 563 (Chk. 2009).

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

The separation-of-powers concept is inherent in the FSM Constitution's structure and any power exercised by a government branch that is beyond that which the Constitution grants to that branch violates the Constitution and is null and void. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

The concept of separation of powers is inherent in the FSM Constitution's structure, and any power exercised by a government branch that is beyond that which the Constitution grants to that branch violates the Constitution and is null and void. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 548 (App. 2011).

Articles IX, X, and XI of the Constitution provide each branch of the national government with its own specific powers and this structure provides for each branch's independence in a system of checks and balances wherein no one branch may encroach upon another's domain. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 n.2 (App. 2013).

If the trial court had taken the large step of making U.S. military retirement and U.S. social security benefits paid to FSM citizens in the FSM exempt from all legal process, that would be a judicial encroachment on Congress's power to enact laws and set public policy because those recipients would then (along with U.S. veterans) have greater judicial protection than Congress has legislated for persons (regardless of citizenship) who receive FSM social security benefits. Whether foreign retirement benefits should carry equal or greater protection from legal process than FSM social security benefits is a public

policy decision to be made by the people's elected representatives in Congress, not by the unelected court. Dison v. Bank of Hawaii, 19 FSM R. 157, 161-62 (App. 2013).

When the legislature, by enacting a statute, declares the public policy, the judicial branch must defer to that pronouncement. Thus, when the legislature has declared, by law, the public policy, the judicial department must remain silent, and if a modification or change in such policy is desired the law-making department must be applied to, not the judiciary whose function is to declare the law but not to make it. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

– Chuuk

A Chuuk state statute authorizing Chuuk state senators to designate the particular projects to be financed from state funds for their own election districts was violative of the separation of powers between the executive and legislative branches of the state government, and of the right of municipalities to select their own development projects, all as provided in the Chuuk Constitution. Akapito v. Doone, 4 FSM R. 285, 286 (Chk. S. Ct. Tr. 1990).

The ultimate interpretation of any provisions of the Chuuk State Constitution is within the sole authority of the Chuuk State Supreme Court, as the ultimate interpreter of the Constitution, and that includes the authority to interpret the meaning of whether a matter has been committed by the Constitution to another branch of government, or whether the action of that branch exceeds its authority. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 264 (Chk. S. Ct. Tr. 1993).

The constitutional provision making the House the sole judge of the qualification of its members does not automatically preclude the Chuuk State Supreme Court from having jurisdiction to decide if a member-elect of the legislature has been excluded from membership on unconstitutional grounds; nor is the court's jurisdiction over alleged unconstitutional applications of the Legislature's powers necessarily precluded by the political question doctrine. The court ultimately has the power to determine if the Legislature has exercised its powers in an unconstitutional and invalid manner. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 264-65 (Chk. S. Ct. Tr. 1993).

Policy determinations by other branches of the government are always to be given wide latitude when under judicial review, and policy determinations within the constitution itself must therefore receive the widest possible latitude when under review. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 269 (Chk. S. Ct. Tr. 1993).

Courts will not attempt to interfere with or control the exercise of discretionary powers, in the absence of any controlling provisions in the law conferring the power. The fact that the exercise of a power may be abused is not a sufficient reason for denying its existence. Thus, it is a firmly established rule that the judiciary will not interfere with executive officers in the performance of duties which are discretionary in their nature or involve the exercise of judgment. Chipen v. Reynold, 9 FSM R. 148, 150 (Chk. S. Ct. Tr. 1999).

The principle of avoiding constitutional questions was conceived out of considerations of sound judicial administration and is in accord with the principle of separation of powers of government. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

Neither the Director of Treasury nor the Governor may use or direct the use of monies appropriated to pay judgments against the state for any purpose other than to pay judgments. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

Money appropriated to pay judgments against the state may not be used to pay "settlements" or "claims" against the state which have not been reduced to judgment. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

The separation of powers doctrine precludes the Chuuk State Supreme Court from exercising

jurisdiction over the claims that the plaintiff should be speaker of a municipal legislature and will dismiss the action. Anopad v. Eko, 11 FSM R. 287, 290 (Chk. S. Ct. Tr. 2002).

Whether sufficient funds are already appropriated to conduct a runoff election is not a ground to deny the petition. The lack of funds to perform a required duty is a problem to be solved by the political branches of government, not the court. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

The political authority of Chuuk is divided into legislative, executive, and judicial powers. The powers delegated to the three branches are functionally identifiable, distinct, and definable. These three powers must be separate and acting independently with the intent being to prevent the concentration of power and provide for checks and balances. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

The legislative branch is responsible for enacting the laws of the state and appropriating the money necessary to operate the government; the executive branch is responsible for implementing and administering the public policy enacted and funded by the legislative branch while the judicial branch is responsible for interpreting the constitution and laws and applying those interpretations to controversies brought before it. 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).

The Legislature raises funds by enacting tax legislation and the executive collects those funds. Under the Chuuk Constitution's separation of powers scheme, the executive branch, the Governor, proposes the state's budget and how to spend the state's money, and the Legislature appropriates the funds that were or will be raised and directs the executive how to spend the appropriated funds. Kama v. Chuuk, 20 FSM R. 522, 530 (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).

Chuuk State Law No. 190-08, § 4 does not bar the issuance of an order in aid of judgment addressed to the state, but does bar the issuance of any order in aid of judgment that acts as an attachment, execution, or garnishment of public property. The general rule is that statutes (and case law) barring the issuance of such writs against public property are a constitutionally valid expression of the separation of powers doctrine recognizing the legislative branch's power to appropriate funds and the judicial branch's lack of power to appropriate funds. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

The judicial branch can, consistent with the state's waiver of sovereign immunity, declare the amount of the state's liability, but while the Chuuk State Supreme Court is empowered to declare the rights as between a judgment creditor and the government, it cannot enforce payment of the judgment absent legislative appropriation. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

Even when a state consents to be sued, its waiver of sovereign immunity does not allow its courts to force it to make an appropriation to satisfy a judgment in the absence of consent to the appropriation. When a money judgment has been rendered, the state's liability has been ascertained, but then the court's power ends. Kama v. Chuuk, 20 FSM R. 522, 531-32 (Chk. S. Ct. App. 2016).

When Chuuk not only has not expressly waived its sovereign immunity to writs of attachment,

execution, and garnishment, but has also gone further and affirmatively enacted legislation emphatically notifying the public and potential litigants that it has not waived its immunity to those writs, that statute is a valid expression of the separation of powers doctrine enshrined in the Chuuk Constitution. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

– Chuuk – Executive Powers

The governor does not have free rein to use the Attorney General's Office to litigate private matters outside the scope of his duties as governor, but until such time as he ceases to be able to act as governor pursuant to a bill of impeachment or other constitutional process he may utilize that office's services to litigate such matters as concern his acts as governor. In re Legislative Subpoena, 7 FSM R. 259, 261 (Chk. S. Ct. Tr. 1995).

For the Chuuk Governor to veto a bill he must both disapprove it and return it to the house in the legislature in which it originated within ten days of it being presented to him. Otherwise it becomes law in like manner as if he had signed it. Chuuk State Supreme Court v. Umwech (I), 7 FSM R. 600, 601 (Chk. S. Ct. Tr. 1996).

The Chuuk Governor's constitutional power to declare an emergency is discretionary. Whether an abuse exists is determined by an "arbitrary and capricious" standard. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 280 (Chk. S. Ct. Tr. 1998).

The validity of the action taken following the declaration of emergency is determined by whether it was taken in good faith and in the honest belief of its necessity. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 280 (Chk. S. Ct. Tr. 1998).

Executive orders must meet constitutional standards the same as acts of legislative bodies. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 2001).

While the principal officers and advisors serve during the current term of the appointing Governor unless sooner removed by the Governor, the dismissal of non-policy making employees from public employment solely on the ground of political affiliation is not permissible. Lokopwe v. Walter, 10 FSM R. 303, 306 (Chk. S. Ct. Tr. 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).

The executive power is the power to execute, or carry the laws into effect, as distinguished from the power to make the laws and the power to judge them. All executive power is granted by the constitution, and the executive branch can exercise no power not derived from it. Lokopwe v. Walter, 10 FSM R. 303, 307 (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).

Neither the Director of Treasury nor the Governor may use or direct the use of monies appropriated to pay judgments against the state for any purpose other than to pay judgments. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

Money appropriated to pay judgments against the state may not be used to pay "settlements" or "claims" against the state which have not been reduced to judgment. Narruhn v. Chuuk, 11 FSM R. 48, 54 (Chk. S. Ct. Tr. 2002).

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).

Neither the constitutional nor the statutory provision directs the Governor to implement the provisions that each municipality adopt its own constitution. The direction is aimed at the others – the municipalities and the Legislature. Buruta v. Walter, 12 FSM R. 289, 294 (Chk. 2004).

No authority, constitutional or statutory, grants the Governor the power to appoint (or to remove) municipal officials. Executive orders must meet constitutional standards, the same as acts of legislative bodies. Buruta v. Walter, 12 FSM R. 289, 294 (Chk. 2004).

The Chuuk Governor's constitutional power to declare an emergency is discretionary. Whether an abuse of discretion exists is determined by the arbitrary and capricious standard. The validity of an action taken following the declaration of emergency is determined by whether it was taken in good faith and in the honest belief of its necessity. Buruta v. Walter, 12 FSM R. 289, 294 (Chk. 2004).

A Governor's proclamation that finds that it was the intentional failure of the incumbent mayor and council that caused the lack of a municipal constitution and funding for the 2003 municipal election, but which continues those officials in office indefinitely until a constitution is adopted and an election is held but with no incentive to do either of those things and with every incentive not to, can only be termed arbitrary and capricious. Since the proclamation is arbitrary and capricious and exercises powers for which the Governor has no apparent authority, it is void. Buruta v. Walter, 12 FSM R. 289, 294 (Chk. 2004).

A Governor's proclamation that continues municipal officials in office indefinitely, violates the people's rights to substantive due process, in that they have no say in their municipal government since all of its officials are now appointed by and now hold office due to the Governor; and to equal protection of the laws, in that the municipal citizens are treated differently based on their ancestry (they and their ancestors are from Romalum) from citizens of other Chuuk municipalities in not being allowed an elected municipal government. Buruta v. Walter, 12 FSM R. 289, 295 (Chk. 2004).

The Governor's constitutional power to declare an emergency may be exercised only at a time of extreme emergency caused by civil disturbance, natural disaster, or immediate threat of war or insurrection and to issue appropriate decrees. This power is discretionary and whether the Governor (or the Lieutenant Governor acting as Governor) abused his discretion is determined by an "arbitrary and capricious" standard. Esa v. Elimo, 14 FSM R. 262, 265 (Chk. 2006).

The court cannot conclude that the Lieutenant Governor's declaration of an emergency was invalid in itself. It is within the Governor's constitutional power to determine whether there is a civil disturbance creating an extreme emergency. The court cannot question that. It is his, not a court's, power to determine. Esa v. Elimo, 14 FSM R. 262, 265 (Chk. 2006).

The second aspect of the issue is the propriety of the actions which the Lieutenant Governor's proclamation directed to be taken, or, stated another way, whether the Lieutenant Governor issued appropriate decrees. The validity of the action taken following the declaration of emergency is determined by whether it was taken in good faith and in the honest belief of its necessity. Esa v. Elimo, 14 FSM R. 262, 265 (Chk. 2006).

The Lieutenant Governor's proclamation was not an appropriate decree because it could not have been taken in good faith and with the honest belief of its necessity since, having determined that an emergency existed because of civil disturbances caused by disputes "between the Party of Kisauo Esa and

the Party of Amando [sic] Marsolo," the proclamation then removed Esa from office and installed Marsolo. If civil disturbances between the two parties was causing an extreme emergency, this was an arbitrary and capricious method to address the emergency and cannot be an act taken in good faith that it would prevent further civil disturbance. Esa v. Elimo, 14 FSM R. 262, 265-66 (Chk. 2006).

An emergency proclamation that orders the Chuuk Division of Finance to identify and locate funds to fund an election and to obligate those funds for that purpose would have been an inappropriate decree if it involved the expenditure of unappropriated funds and was not approved by the Chuuk Legislature because the Chuuk Constitution provides that a gubernatorial emergency decree may not involve the expenditure of unappropriated public funds unless approved by the Legislature. Esa v. Elimo, 14 FSM R. 262, 266 (Chk. 2006).

Within 15 days after the gubernatorial declaration of emergency, the Legislature must convene at the call of the Speaker of the House of Representatives and the President of the Senate or at the Governor's call to consider the declaration's revocation, amendment, or extension. Unless it expires by its own terms or is revoked or extended, a declaration of emergency is effective for 15 days. Esa v. Elimo, 14 FSM R. 262, 266 (Chk. 2006).

When an emergency declaration was never extended and the Chuuk Legislature never met to consider the emergency declaration's revocation, amendment, or extension, although the Governor (and presumably the Lieutenant Governor if he was still Acting Governor) had the power to call the Legislature into session to consider the emergency declaration and to approve the expenditure of funds, the failure to call the Legislature into session raises further doubts that the declaration was made in the honest belief of its necessity. Esa v. Elimo, 14 FSM R. 262, 266 (Chk. 2006).

The Chuuk Constitution is clear and unambiguous that when referring to the Governor's office, a Governor's "term" is a fixed four-year period. Thus, the phrase "current term" clearly means that if a governor is re-elected for a second four-year term, new nominations (or re-nominations) must be submitted to the Senate but otherwise a cabinet official may remain in office for a full four years unless the Governor earlier removes him (or he is impeached or he resigns). But when a new governor fills out the remainder of his predecessor's unexpired term, the new governor may retain the existing cabinet officials and special assistants without submitting their names for reconfirmation. Senate v. Elimo, 18 FSM R. 137, 139-40 (Chk. S. Ct. Tr. 2012).

Since, by statute, a governor must send a nomination to the Senate within 45 days of a vacancy in an office requiring the Senate's advice and consent and since a resignation is an act or an instance of surrendering or relinquishing of an office or a formal notification of relinquishing an office or position, when cabinet officers and special assistants have submitted "courtesy resignations," those offices are vacant and new nominations (or renominations) must be submitted. The court cannot discern any difference (in result) between a "courtesy resignation" and a resignation for other reasons since a resignation is a resignation. Senate v. Elimo, 18 FSM R. 137, 140 (Chk. S. Ct. Tr. 2012).

– Chuuk – Judicial Powers

The Chuuk State Supreme Court has constitutional jurisdiction to review the actions of any state administrative agency, and decide all relevant questions of law, interpret constitutional and statutory provisions and determine the meaning or applicability of the terms of an agency action. Robert v. Mori, 6 FSM R. 178, 179 (Chk. S. Ct. Tr. 1993).

The ultimate interpretation of any provisions of the Chuuk State Constitution is within the sole authority of the Chuuk State Supreme Court, as the ultimate interpreter of the Constitution, and that includes the authority to interpret the meaning of whether a matter has been committed by the Constitution to another branch of government, or whether the action of that branch exceeds its authority. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 264 (Chk. S. Ct. Tr. 1993).

The constitutional provision making the House the sole judge of the qualification of its members does

not automatically preclude the Chuuk State Supreme Court from having jurisdiction to decide if a member-elect of the legislature has been excluded from membership on unconstitutional grounds; nor is the court's jurisdiction over alleged unconstitutional applications of the Legislature's powers necessarily precluded by the political question doctrine. The court ultimately has the power to determine if the Legislature has exercised its powers in an unconstitutional and invalid manner. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 264-65 (Chk. S. Ct. Tr. 1993).

The Chuuk State Supreme Court has the subject matter jurisdiction to hear suits alleging that the legislature has exercised its power to be the sole judge of the qualifications of its members in an unconstitutional manner in violation of the constitutional prohibitions against ex post facto laws. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 265 (Chk. S. Ct. Tr. 1993).

A court should not order a traditional apology, compensation, and settlement when none has been offered voluntarily because traditional settlements are customarily non-adversarial and arrived at without outside coercion and court decisions must be consistent with custom. Alafonso v. Sarep, 7 FSM R. 288, 290-91 (Chk. S. Ct. Tr. 1995).

A party may seek declaratory relief from the Chuuk State Supreme Court even though it may have another available remedy, but there must be an actual controversy between the parties and the matter must be within the court's jurisdiction. The court has discretion to entertain such actions if appropriate. Truk Shipping Co. v. Chuuk, 7 FSM R. 337, 339, 342 (Chk. S. Ct. Tr. 1995).

It is the duty of the court in the proper case to determine whether an act of the government, including acts of the Legislature, is in conformance with the supreme law of the state. Any such act that violates the Chuuk Constitution violates the supreme law of Chuuk and must be treated as null and void. Sauder v. Chuuk State Legislature, 7 FSM R. 358, 361 (Chk. S. Ct. Tr. 1995).

At least three justices hear all appeals in the Chuuk State Supreme Court appellate division with the decision by a concurrence of a majority of the justices sitting on the appellate panel, but a single justice may make necessary orders concerning failure to take or prosecute the appeal in accordance with applicable law and procedure. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

In the Chuuk Constitution there is a distinction between a "decision," which must be by a majority of the appellate justices assigned to hear the case, and "orders," which a single appellate justice may make. A "decision" means the final determination of the appeal. Wainit v. Weno, 9 FSM R. 160, 162 (App. 1999).

An action of a Chuuk State Supreme Court single appellate justice may be reviewed by the court. This provides a means whereby a single justice "order" may become the appellate panel's dispositive "decision." Wainit v. Weno, 9 FSM R. 160, 162-63 (App. 1999).

The court lacks jurisdiction over the subject matter or the complaint does not state a claim or cause of action upon which relief can be granted when it asks the court to hold the removal of the Speaker and Vice-Speaker null and void. Christlib v. House of Representatives, 9 FSM R. 503, 506-07 (Chk. S. Ct. Tr. 2000).

No branch of the Chuuk state government is supreme, but it is the duty of the court in each case to determine if the powers of any branch of the government have been exercised in conformity with the constitution, and if they have not, to treat their acts as null and void. Udot Municipality v. Chuuk, 9 FSM R. 586, 588 (Chk. S. Ct. Tr. 2000).

Because the constitutional provision states that only one Chuuk State Supreme Court justice may hear or decide an appeal, and because "may" is permissive, not mandatory language, the Constitution contemplates that there may be an occasion when no Chuuk State Supreme Court justice would hear an appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 151 (Chk. S. Ct. App. 2001).

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

With regard to grants of legislative and judicial power by state constitutions, and especially regarding the principle barring implied limitations on such powers, the whole of such legislative and judicial power reposing in the sovereignty is granted to those bodies, except as it may be restricted in the same instrument. Thus the state courts have and should maintain vigorously all the inherent and implied powers necessary to function properly and effectively as a separate department in the scheme of government. Kupenes v. Ungeni, 12 FSM R. 252, 262-63 (Chk. S. Ct. Tr. 2003).

Since the constitution must be interpreted in such a way as to carry out is purposes and since the purpose of the unified judiciary must be to ensure that fair and impartial justice be provided to every citizen of Chuuk, in a case where all sitting justices are disqualified, unavailable, or have recused themselves, fair and impartial justice will be unavailable unless the Chief Justice has some method available to ensure a fair and impartial hearing. Kupenes v. Ungeni, 12 FSM R. 252, 263 (Chk. S. Ct. Tr. 2003).

Since the constitution must be liberally, not restrictively, construed, any attempt to place limitations on the Chief Justice's power, where no words of limitation appear, would require a restrictive interpretation of the constitution, and would violate the rules of interpretation as applied to judiciaries. Kupenes v. Ungeni, 12 FSM R. 252, 263 (Chk. S. Ct. Tr. 2003).

Interpreting the Chief Justice's rule-making authority and his authority to "appoint and prescribe duties of other officers and employees, as prohibiting the appointment of a special trial justice unless the appointee meets the Article VII, § 9 qualifications of associate justices, would invite invalidity and chaos. Instead, the principle of acquiescence controls. Kupenes v. Ungeni, 12 FSM R. 252, 263-64 (Chk. S. Ct. Tr. 2003).

A gubernatorial emergency declaration is free from judicial interference for fifteen days after it is made. Esa v. Elimo, 14 FSM R. 262, 266 n.3 (Chk. 2006).

The Legislature is a co-equal branch of government and the court does not have the authority or power to order it to take a discretionary act of appropriating funds. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

The judiciary cannot usurp the other branches' powers by appropriating and spending the state's money without any regard to the Chuuk Constitution's separation of powers. Kama v. Chuuk, 20 FSM R. 522, 530 (Chk. S. Ct. App. 2016).

The Chuuk State Supreme Court cannot issue an order directing the payment of money by Chuuk State absent an appropriation therefor. Kama v. Chuuk, 20 FSM R. 522, 530 (Chk. S. Ct. App. 2016).

The judicial branch does not have the power to appropriate money. The judicial branch cannot enact statutes or prescribe by statute. The Legislature is a co-equal branch of government and the court does not have the authority or power to order it to appropriate funds. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

For a money judgment against the state to be paid there must be an appropriation by the Legislature and the courts have no power to compel an appropriation. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

– Chuuk – Legislative Powers

The Chuuk State Legislature is limited to judging only those qualifications of its elected members that

are explicitly listed within the Chuuk State Constitution. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 264 (Chk. S. Ct. Tr. 1993).

Each house of the Chuuk State Legislature may exercise its power as the sole judge of the qualifications of its members so long as it is done in a manner that is rationally and reasonably related to the plain ordinary meaning of the text in order to comply with the state and federal requirements of due process, and not in any arbitrary or capricious manner, or in any other manner that would otherwise violate the state or national constitutions. This power may be exercised only in regard to the qualifications that explicitly appear in the constitution itself. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 266 (Chk. S. Ct. Tr. 1993).

No house of the legislature is bound by the decisions or determinations of a previous house. One duly elected legislature's determination of a member-elect's constitutional qualifications or disqualification to sit is not binding as legal precedent on any subsequently and duly elected legislatures, and each newly elected legislature is free to determine the meaning of constitutional qualifications and apply it in a manner that is different from that of previous legislatures, so long as its application is in conformity with the state and national constitutions. Robert v. Chuuk State House of Representatives, 6 FSM R. 260, 272 (Chk. S. Ct. Tr. 1993).

The power to investigate and issue subpoenas is expressly granted the legislature by the constitution. In re Legislative Subpoena, 7 FSM R. 261, 265 (Chk. S. Ct. Tr. 1995).

In determining whether the Legislature has the power to subpoena personal financial records of a public official in a legislative investigation, a court must consider the right to privacy as it specifically applies to a public official. In re Legislative Subpoena, 7 FSM R. 261, 265 (Chk. S. Ct. Tr. 1995).

The power to investigate has historically been found to be an inherent power of the legislative process and a power that is very broad. It comprehends probes into departments of the government to expose corruption, inefficiency or waste, and may not be unduly hampered. In re Legislative Subpoena, 7 FSM R. 261, 265 (Chk. S. Ct. Tr. 1995).

The legislative power to investigate is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the legislature, and the right to privacy embodied in Article III, section 3 of the Chuuk Constitution is a restraint on the investigative power of the legislature. In re Legislative Subpoena, 7 FSM R. 261, 265 (Chk. S. Ct. Tr. 1995).

The legislature's investigative powers are greatest when it is inquiring into and publicizing corruption, maladministration or inefficiency in the agencies or branches of government. In re Legislative Subpoena, 7 FSM R. 261, 265 (Chk. S. Ct. Tr. 1995).

The Chuuk House of Representatives possesses the sole authority and power to pass a Bill of Impeachment seeking to remove those state officials responsible for misfeasance or malfeasance. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

The Chuuk House of Representatives has no criminal prosecution function. It is limited to passing laws and under the proper circumstance bringing bills of impeachment, which are not criminal in nature. In re Legislative Subpoena, 7 FSM R. 261, 266 (Chk. S. Ct. Tr. 1995).

The Chuuk State Legislature has the express constitutional power to conduct investigations and to issue subpoenas in aid of an investigation. Each house has all the authority and attributes inherent in legislative assemblies. In re Legislative Subpoena, 7 FSM R. 328, 331 (Chk. S. Ct. App. 1995).

Constitutional protections are a restraint on legislative investigations. In re Legislative Subpoena, 7 FSM R. 328, 331 (Chk. S. Ct. App. 1995).

Any committee formed by a house of the legislature is restricted to the missions delegated to it, i.e., to acquire certain data to be used in coping with a problem that falls within the house's legislative sphere. This jurisdictional concept requires that material sought by the committee be pertinent or relevant to this function in order to compel disclosure from an unwilling witness. In re Legislative Subpoena, 7 FSM R. 328, 332 (Chk. S. Ct. App. 1995).

A court must presume that an action of a legislative body was taken with a legitimate object if it is capable of being so construed, and has no right to assume that the contrary was intended. In re Legislative Subpoena, 7 FSM R. 328, 332-33 (Chk. S. Ct. App. 1995).

A committee of the legislative house constitutionally charged with the function of impeachment whose authorizing resolution empowered it to investigate the state's insolvency and the executive branch officers' misfeasance, malfeasance, or failure to carry out their duties and responsibilities, presented with evidence that the governor has illegal sources of income that may involve state funds is seeking relevant material related to its function when it seeks to subpoena the governor's bank records. In re Legislative Subpoena, 7 FSM R. 328, 333 (Chk. S. Ct. App. 1995).

All citizens generally have the duty to, and state officials are obligated by statute to, cooperate with legislative investigations. These obligations of citizenship and public office are linked with the assumption that the legislature will respect individuals' constitutional rights, including the right of privacy. In re Legislative Subpoena, 7 FSM R. 328, 333-34 (Chk. S. Ct. App. 1995).

Once the First Chuuk Legislature has set the salaries of it members by statute, no increase in their salaries is effective until after approval by the voters in a referendum. Sauder v. Chuuk State Legislature, 7 FSM R. 358, 361 (Chk. S. Ct. Tr. 1995).

Expense allowances for a member of the Chuuk Legislature may not exceed 20% of his salary. Sauder v. Chuuk State Legislature, 7 FSM R. 358, 362 (Chk. S. Ct. Tr. 1995).

Salary and expense allowances for members of the Chuuk Legislature cannot exceed ¾ of the equivalent the Governor is entitled to. Sauder v. Chuuk State Legislature, 7 FSM R. 358, 362-63 (Chk. S. Ct. Tr. 1995).

Any form of legislative remuneration, compensation or reimbursement for Chuuk legislators is limited to 1/5 of a legislator's salary. An unrestricted "representation allowance" is an unconstitutional form of compensation. Sauder v. Chuuk State Legislature, 7 FSM R. 358, 364 (Chk. S. Ct. Tr. 1995).

Even in the absence of a general reduction of the pay of all state employees which would allow the Chuuk Legislature to reduce the pay of judges, the legislature has authority to reduce the pay of other judiciary employees. When there is no general reduction of salaries, a law reducing the Chuuk State Supreme Court justices' salaries is invalid. Chuuk State Supreme Court v. Umwech (II), 7 FSM R. 630, 632 (Chk. S. Ct. Tr. 1996).

Reading the constitutional provision barring impairment of contracts in harmony with the provision allowing general reduction of salaries, the exclusion of contract employees does not preclude the Chuuk Legislature from enacting a general reduction of salaries. Chuuk State Supreme Court v. Umwech (II), 7 FSM R. 630, 632 (Chk. S. Ct. Tr. 1996).

Because the provision permitting an automatic increase back to their former salaries by the Governor, Lieutenant Governor, and the members of the legislature, is severable, it thus may be ruled unconstitutional without affecting the validity of the rest of the statute. Chuuk State Supreme Court v. Umwech (II), 7 FSM R. 630, 632 (Chk. S. Ct. Tr. 1996).

A state legislative body has the power to choose its own speaker from its own members and to appoint its own officers. Christlib v. House of Representatives, 9 FSM R. 503, 505 (Chk. S. Ct. Tr. 2000).

A state legislative body, having the power to choose its own speaker from its own members, also has the inherent power to remove such officer at its will or pleasure. Christlib v. House of Representatives, 9 FSM R. 503, 506 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution requires that every 2 years when a new Legislature convenes, each house shall organize by the election of one of its members as presiding officer, but it does not require that he remain in office throughout his term. Christlib v. House of Representatives, 9 FSM R. 503, 507 (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).

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).

Temporary Chuuk State Supreme Court justices, appointed for the limited purpose of hearing the appeal, may be a justice of the FSM Supreme Court, a judge of a court of another FSM state, or a qualified attorney in the State of Chuuk. FSM citizenship is not a constitutional requirement to be a temporary Chuuk State Supreme Court appellate justice and the Legislature cannot add it by statute. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 152 (Chk. S. Ct. App. 2001).

When the Constitution sets forth the requirements for office and does not authorize the Legislature to add further requirements, it is barred from doing so. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 152 (Chk. S. Ct. App. 2001).

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

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).

An order to show cause to the entire Chuuk Legislature requiring it to demonstrate why it should not be held in contempt for failing to pay the judgment will not be issued because it is not for the court to intrude in this manner into areas committed to the province of the state legislature. Estate of Mori v. Chuuk, 11 FSM R. 535, 540 (Chk. 2003).

The Chuuk state government's legislative power is vested in the Legislature, and extends to all rightful

subjects of legislation not inconsistent with the Chuuk or FSM Constitutions. Ceasar v. Uman Municipality, 12 FSM R. 354, 357 n.1 (Chk. S. Ct. Tr. 2004).

All public expenditures are required to be for a defined public purpose and the procedures for demonstrating entitlement to public expenditures are implemented through the Financial Management Act. Chuuk v. Robert, 16 FSM R. 73, 79 & n.5 (Chk. S. Ct. Tr. 2008).

Funds appropriated under the Speaker and Staff Travel Fund Act provide for the official travel of the Speaker and Legislature employees and enable members to attend various public functions, as specified in the act. The Speaker administers the fund and authorizes selected persons to receive monies, subject to the act's limitations and appropriations to carry out the purposes of the act are authorized from the General Fund. Chuuk v. Robert, 16 FSM R. 73, 79 (Chk. S. Ct. Tr. 2008).

The Legislature is a co-equal branch of government and the court does not have the authority or power to order it to take a discretionary act of appropriating funds. Narruhn v. Chuuk State Election Comm'n, 18 FSM R. 16, 20 (Chk. S. Ct. Tr. 2011).

The legislative branch's filing of a lawsuit is not an attempt to execute a statute when the lawsuit attempts to obtain a judicial interpretation of the statute's effect or meaning. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

The judicial branch does not have the power to appropriate money. The judicial branch cannot enact statutes or prescribe by statute. The Legislature is a co-equal branch of government and the court does not have the authority or power to order it to appropriate funds. Kama v. Chuuk, 20 FSM R. 522, 531 (Chk. S. Ct. App. 2016).

– Executive Powers

Under our Constitution the Executive Branch is expressly delegated the power to faithfully execute and implement all national laws. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

Specific powers are given to each branch of the government. When Congress is executing and implementing a national law, a power expressly delegated to the executive branch, it abridges the executive's power to execute and implement national laws. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

The Constitution gives Congress the authority to appropriate public funds, but the Executive Branch is expressly delegated the power to faithfully execute and implement all national laws and a public law that appropriates public funds is a national law. Udot Municipality v. FSM, 10 FSM R. 354, 357 (Chk. 2001).

The national government's executive power is vested in the President of the Federated States of Micronesia and expressly includes the power to faithfully execute and implement the provisions of the Constitution and all national laws. FSM v. Udot Municipality, 12 FSM R. 29, 48 (App. 2003).

Congress has its constitutional role of carrying out its legislative power by enacting national laws. Once national laws are enacted, the Executive Branch then has its constitutional role of carrying out its executive power by seeing to the execution and implementation of these laws. FSM v. Udot Municipality, 12 FSM R. 29, 51 (App. 2003).

Allottees, either specifically designated in an appropriations law or in the Financial Management Act, have their role in administering the law. Allottees' role in the execution, implementation, and administration of the law is executive in nature and must be considered as such. FSM v. Udot Municipality, 12 FSM R. 29, 51 (App. 2003).

The power to faithfully execute and implement the Constitution's provisions and all national laws is

expressly delegated to the President. Urusemal v. Capelle, 12 FSM R. 577, 583 (App. 2004).

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).

The FSM president is not only the head of a co-equal branch of government, but is also both the FSM's head of state and head of government. The vice president functions either as an acting president or as one in waiting, who is keeping himself informed and prepared should some unfortunate event occur that would require him to act as president. 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).

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).

Once a public law is enacted, the responsibility for the execution and implementation of the law rests with those who have a duty to execute and administer the law. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 188 (Pon. 2010).

Once a public law is enacted, the responsibility for the execution and implementation of the law rests with those who have a duty to execute and administer the law, and Senators can have no further role in its execution. The basic constitutional principle involved is that the execution and implementation of the laws is an executive rather than a legislative function. The Constitution affords the Congress great latitude in making policy decisions through the process of enacting legislation, but once Congress enacts legislation, its role ends: Congress can thereafter formally affect the execution of its enactment only by enacting appropriate new legislation. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 548 (App. 2011).

Because an access agreement does not give exclusive rights either to negotiate permits on behalf of all foreign vessels or to exploit the FSM's EEZ, it is more properly a permit or license. Administration of a permit or license scheme is, by its nature, administrative, and thus an executive branch function. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 549 (App. 2011).

The power to appoint and confirm members of the Social Security Board is vested in the national

government's Executive and Legislative branches. To halt the Board's function when all vacancies are not filled would adversely affect the Social Security's function as a whole, and would be detrimental to the livelihood of social security benefit recipients. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

– Judicial Powers

The FSM Supreme Court has broad rule-making powers under the Constitution. FSM Const. art. XI, § 9. FSM v. Albert, 1 FSM R. 14, 17 (Pon. 1981).

The Constitution unmistakably places upon the judicial branch ultimate responsibility for interpretation of the Constitution. Suldan v. FSM (II), 1 FSM R. 339, 343 (Pon. 1983).

By using the United States Constitution as a blueprint, the framers created a presumption that they were adopting such a fundamental American Constitutional principle as judicial review, found to be inherent in the language and very idea of the United States Constitution. Suldan v. FSM (II), 1 FSM R. 339, 348 (Pon. 1983).

The power to issue declaratory judgments is within the judicial power vested in the FSM Supreme Court by article XI, section 1 of the Constitution and confirmed by the Judiciary Act of 1979. The FSM Supreme Court may exercise jurisdiction over an action seeking a declaratory judgment so long as there is a "case" within the meaning of article XI, section 6(b). Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 400 (Pon. 1984).

An attorney's professional activities are individually subject to regulation by the judiciary, not by the administrators of the Foreign Investment Act. Michelsen v. FSM, 3 FSM R. 416, 427 (Pon. 1988).

The Constitution places control over admission of attorneys to practice before the national courts, and regulation of the professional conduct of the attorneys, in the Chief Justice, as the chief administrator of the national judiciary. Carlos v. FSM, 4 FSM R. 17, 27 (App. 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).

The FSM Constitution provides no authority for any courts to act within the Federated States of Micronesia, other than the FSM Supreme Court, inferior courts to be established by statute, and state or local courts. United Church of Christ v. Hamo, 4 FSM R. 95, 105 (App. 1989).

The provisions of the FSM Constitution spelling out jurisdiction and vesting the entire judicial power of the national government in the FSM Supreme Court are self-executing, and the judicial power of the FSM Supreme Court is not dependent upon congressional action. United Church of Christ v. Hamo, 4 FSM R. 95, 105-06 (App. 1989).

The Supreme Court of the FSM has the constitutional power and obligation to review legislative enactments of Congress and to set aside national statutes to the extent they violate the Constitution. Constitutional Convention 1990 v. President, 4 FSM R. 320, 324 (App. 1990).

Although judiciaries are vested with power to require or authorize initiation of criminal contempt proceedings, and may appoint private counsel to prosecute those proceedings, judiciaries typically attempt to appoint for that purpose government attorneys who are already responsible for public prosecutions. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 62, 66 (Pon. 1991).

The legislative enactment of the Financial Management Act does not conflict with the constitutional provision stating the Chief Justice is the chief administrator of the national judiciary. Mackenzie v. Tuuth, 5 FSM R. 78, 80 (Pon. 1991).

The constitutional provision making the Chief Justice the chief administrator of the national judiciary was not intended to establish a separate administration of funds allotted to the judiciary; it is not so specific as to overcome the presumption of the constitutionality of the Financial Management Act as it relates to the judiciary. Mackenzie v. Tuuth, 5 FSM R. 78, 82-83 (Pon. 1991).

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

The Chief Justice has the constitutional authority to make rules for the appointment of special judges, and Congress has the constitutional authority to amend them. Congress has provided the Chief Justice with the statutory authority to appoint temporary justices. Where Congress has acted pursuant to its constitutional authority to provide statutory authority to the court, the court need not have exercised its concurrent rule-making authority. Jano v. King, 5 FSM R. 326, 331 (App. 1992).

The Chief Justice may appoint an acting chief justice if he is unable to perform his duties. "Unable to perform his duties" refers to a physical or mental disability of some duration, not to the legal inability to act on one particular case. Jano v. King, 5 FSM R. 326, 331 (App. 1992).

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

The Chief Justice, in making rules, is performing a legislative function and is immune from an action for damages. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

The grant of immunity to the Chief Justice while performing his rule-making authority is to protect the independence of one exercising a constitutionally granted legislative power. Berman v. FSM Supreme Court (II), 5 FSM R. 371, 374 (Pon. 1992).

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).

A judge cannot adopt a procedure not provided for by the rules because the Constitution grants the Chief Justice, and Congress, the power to establish rules of procedure. FSM v. M.T. HL Achiever (II), 7 FSM R. 256, 258 (Chk. 1995).

No court, municipal, state, or otherwise, has the jurisdiction to question the internal workings of a legislative body. Anopad v. Eko, 11 FSM R. 287, 290 (Chk. S. Ct. Tr. 2002).

The Supreme Court has the power to review Congress's legislative enactments and the implementation of those enactments, and it has the responsibility to set aside any national statute to the extent that it violates the Constitution. FSM v. Udot Municipality, 12 FSM R. 29, 47 (App. 2003).

When a party before the court insists that a particular national law contains provisions contrary to the Constitution, the court is required by the Constitution to consider that assertion. If it determines that the statutory provision is indeed repugnant to the Constitution, it may not enforce the statutory provision nor permit its enforcement by others. FSM v. Udot Municipality, 12 FSM R. 29, 47 (App. 2003).

The national government's judicial power is vested in a Supreme Court and inferior courts established by statute. FSM v. Udot Municipality, 12 FSM R. 29, 48 (App. 2003).

The Constitution permits the Chief Justice to promulgate rules, including criminal procedure rules, which Congress may amend by statute. Congress has the authority to amend or create procedural rules by statute, and when Congress has enacted a procedural rule, it is valid. The Chief Justice does not have the authority to amend Congressionally-enacted statutes. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. FSM v. Wainit, 12 FSM R. 376, 383 (Chk. 2004).

The Constitution contemplates that administrative duties are an integral part of the Chief Justice's role, and in this regard they are manifestly judicial. He may delegate those duties pursuant to express constitutional authority, and they do not become nonjudicial because they are performed by the Chief Justice's designee. The contrary is the case, especially in light of the fact that the office of court administrator is one of only a handful of public offices specifically referred to in the Constitution. The administration of the court is an essential activity without which the court cannot function. Urusemal v. Capelle, 12 FSM R. 577, 585 (App. 2004).

If there is a conflict between the Supplemental Admiralty and Maritime Rules and Title 24, then Title 24 must prevail because the Constitution permits the Chief Justice to promulgate procedural rules, which Congress may amend by statute and since Congress has the authority to amend or create procedural rules by statute (and when Congress has enacted a procedural rule, it is valid) and the Chief Justice does not have the authority to amend Congressionally-enacted statutes, if the statute applies and the statute and the rule conflict, the statute must prevail. FSM v. Kana Maru No. 1, 14 FSM R. 365, 367 n.1 (Chk. 2006).

The Constitution unmistakably places upon the judicial branch the ultimate responsibility for interpretation of the Constitution and for determining the constitutionality of statutes. It is the special province and duty of the courts, and the courts alone, to say what the law is and to determine whether a statute is constitutional. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 187 (Pon. 2010).

While all public officials are sworn to uphold the Constitution, the Constitution places upon the courts the ultimate responsibility for interpreting the Constitution. The court is forsworn by the Supremacy Clause from enforcing national laws or treaties contrary to the Constitution itself. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 187 (Pon. 2010).

The question of a statute's constitutionality is not a nonjusticiable political question textually reserved to Congress. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 187 (Pon. 2010).

A statute takes precedence over the procedural rules because while the chief justice has the power to promulgate procedural rules, the rules may be amended by statute, and since the chief justice does not have the power to amend a statute, when Congress has enacted a procedural rule, it is valid. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

The court may hold the political branches to account for violations of the Constitution, but it cannot force them to choose one constitutional method over another. Damarlane v. Damarlane, 18 FSM R. 177, 180 (Pon. 2012).

It is the special province and duty of the courts, and of the courts alone, to say what the law is and to determine whether a statute is constitutional. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

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).

Congress has the authority to amend or create procedural rules by statute (and when Congress enacts a procedural rule, it is valid) but the Chief Justice does not have the power to amend Congressionally-enacted statutes. Thus, if a statute applies and the statute and the admiralty rule conflict, the statute must prevail. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

While Congress has the authority to amend rules by statute, the Chief Justice does not have the authority to amend statutes by creating rules. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 595 (Kos. 2013).

The separation-of-powers doctrine enshrined in the Constitution bars the FSM Supreme Court from legislating. The court has the ultimate responsibility in interpreting the law and in deciding what the law is and it has the ability to set aside any statute to the extent that the statute violates the Constitution. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

The FSM Supreme Court lacks the power to make persons granted a pardon of a felony conviction eligible for election to Congress because the Constitution reserves that power to Congress, and the court cannot exercise a power that only Congress has. FSM v. Innocenti, 20 FSM R. 293, 296 (Pon. 2016).

The Supreme Court has the power to review legislative enactments of the Congress, and the implementation of those enactments, and it has the responsibility to set aside any national statute to the extent that it violates the Constitution. Linter v. FSM, 20 FSM R. 553, 560 (Pon. 2016).

The court should not and cannot make choices that the Constitution assigns to Congress. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

– Kosrae

The doctrine of separation of powers does not prevent courts from modifying sentences even though the effect of modification may be the same as commuting the sentence. Kosrae v. Mongkeya, 3 FSM R. 262, 263-64 (Kos. S. Ct. Tr. 1987).

The executive authority to grant clemency is a function of the separation of powers between the executive and the judiciary to check sometimes mechanical jurisprudence which might work harsh results in individual cases. Kosrae v. Mongkeya, 3 FSM R. 262, 264 (Kos. S. Ct. Tr. 1987).

It is an inconsistency and a conflict with the legislative role in the Kosrae government when a member of the Legislature is made an allottee of funds for a purpose other than the operation of the legislature. Siba v. Sigrah, 4 FSM R. 329, 339 (Kos. S. Ct. Tr. 1990).

The legislature has some discretion as to who it may make an allottee and complete discretion as to the purpose and policies behind the allotment, but the function of the allottee is definitely not legislative in character. Siba v. Sigrah, 4 FSM R. 329, 340 (Kos. S. Ct. Tr. 1990).

The Legislature may make a delegation of power to specified officials, or administrative agencies within the executive branch. This necessarily includes the Governor, and such a delegation is appropriate because a proper, limited delegation of power confers on the delegatee the power to bring about a result that has already been legislated. Sigrah v. Speaker, 11 FSM R. 258, 261 (Kos. S. Ct. Tr. 2002).

A delegation of power that passes constitutional muster confers specified powers on the executive to execute and enforce the law. This is the executive branch's acknowledged role, and the governor's inclusion on a board that promulgates Public Service System rules and regulations confers on him specific powers to facilitate what is already the Governor's province to do, i.e., to execute and enforce state laws. Thus the governor's inclusion as a member of the board does not, per se, give rise to a constitutional infirmity. Sigrah v. Speaker, 11 FSM R. 258, 261 (Kos. S. Ct. Tr. 2002).

The Legislature may not by legislative act create a board to implement the Kosrae Public Service System and at the same time retain a degree of control over the board by appointing the Speaker as one of its members. Delegation of legislative authority may not proceed by half measures. To do so is to violate the separation of powers doctrine. Sigrah v. Speaker, 11 FSM R. 258, 261-62 (Kos. S. Ct. Tr. 2002).

The inclusion of the Kosrae State Court Chief Justice and the Kosrae Legislature Speaker on the Kosrae Public Service System Oversight Board is an impermissible delegation of legislative authority, violating the separation of powers doctrine. The Governor's inclusion on the board does not per se contravene that same principle. Sigrah v. Speaker, 11 FSM R. 258, 262 (Kos. S. Ct. Tr. 2002).

– Kosrae – Executive Powers

If required to preserve the public peace, health, or safety, at a time of extreme emergency caused by civil disturbance, natural disaster, or immediate threat of war or insurrection, the Governor may declare a state of emergency and issue appropriate decrees. Although a declaration of emergency may not impair the power of the judiciary, it may impair a civil right to the extent actually required for the preservation of peace, health, or safety. Unless it expires by its own terms, is revoked or extended, a declaration of emergency is effective for thirty days. Kosrae v. Nena, 13 FSM R. 63, 66 (Kos. S. Ct. Tr. 2004).

– Kosrae – Judicial Powers

A fundamental precept of judicial independence is that the judiciary must not be dependent upon other branches of government in order to carry out judicial responsibilities. Article VI, section 8 of the Kosrae Constitution expressly confirms that the judicial branch is to control its own administration. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 96 (Kos. S. Ct. Tr. 1987).

The Kosrae Constitution contemplates that justices of the FSM Supreme Court may decide cases which arise within Kosrae and fall under the original jurisdiction of the Kosrae State Court. In addition, the Kosrae Constitution vests in the Kosrae Chief Justice the power to include the resources and justices of the FSM Supreme Court as resources of the Kosrae State Court, insofar as that is consistent with the duties of the FSM Supreme Court under the FSM Constitution. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 97 (Kos. S. Ct. Tr. 1987).

– Kosrae – Legislative Powers

The power of the legislature is to decide what the law shall be, to determine public policy and to frame the laws to reflect that public policy. Siba v. Sigrah, 4 FSM R. 329, 336 (Kos. S. Ct. Tr. 1990).

It is an inconsistency and a conflict with the legislative role in the Kosrae government when a member of the Legislature is made an allottee of funds for a purpose other than the operation of the legislature. Siba v. Sigrah, 4 FSM R. 329, 339 (Kos. S. Ct. Tr. 1990).

The legislature has some discretion as to who it may make an allottee and complete discretion as to the purpose and policies behind the allotment, but the function of the allottee is definitely not legislative in character. Siba v. Sigrah, 4 FSM R. 329, 340 (Kos. S. Ct. Tr. 1990).

Kosrae state legislators are, in all cases except felony or breach of peace, privileged from arrest during their attendance at sessions or committee meetings of the Legislature, and in going to and returning from the same. Kosrae v. Sigrah, 11 FSM R. 249, 253 (Kos. S. Ct. Tr. 2002).

A practice which has been engaged in by a government for a significant period of time is entitled to great weight in establishing the constitutionality of that practice. Thus, when the licensing of vehicle operators and that the license be in the immediate possession of the driver has been required for at nearly forty years, this significant period of time and therefore the licensing and possession requirement is entitled to great weight in establishing the constitutionality of that practice. Kosrae v. Sigrah, 11 FSM R. 249, 256

(Kos. S. Ct. Tr. 2002).

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

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

Within thirty days after the declaration of emergency, the Legislature must convene at the call of the Speaker or the Governor to consider revocation, amendment or extension of the declaration. Kosrae v. Nena, 13 FSM R. 63, 66 (Kos. S. Ct. Tr. 2004).

A declaration of a state of emergency requires a time of "extreme emergency" caused by civil disturbance, natural disaster or immediate threat of war or insurrection. The word "emergency" is a sudden unexpected happening or an unforeseen occurrence or condition. Kosrae v. Nena, 13 FSM R. 63, 66 (Kos. S. Ct. Tr. 2004).

A civil disturbance or civil disorder is a public disturbance involving acts of violence by a group of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of any other individual. Suicides and suicide attempts, as they have occurred in Kosrae State during 2003 and 2004, do not rise to the level of a civil disturbance or civil disorder. Kosrae v. Nena, 13 FSM R. 63, 66 (Kos. S. Ct. Tr. 2004).

A nuisance is an activity which arises from unreasonable or unlawful use by a person of his own property, and that disturbs another in possession of his property, or an offensive, unpleasant, or obnoxious thing or practice, especially a continuing or repeated invasion or disturbance of another's right. While it is undisputed that suicides and suicide attempts are events which disturb others, particularly family members and friends, and possibly a large number of persons in the community on a small island such as Kosrae, these events cannot be classified as public nuisances. Kosrae v. Nena, 13 FSM R. 63, 66-67 (Kos. S. Ct. Tr. 2004).

The issuance of an Executive Decree, pursuant to Kosrae Constitution, Article V, section 13, is an extraordinary power which may be applied only in extreme emergency situations. The issuance of an Executive Decree may not be utilized as a tool to remedy a state of affairs which does not meet the definition of extreme emergency, and which may be addressed by legislation. Kosrae v. Nena, 13 FSM R. 63, 67 (Kos. S. Ct. Tr. 2004).

The Governor's issuance of Declaration of Temporary State of Emergency and the Executive Decree, which prohibited the issuance of drinking permits, possession and consumption of alcoholic drinks by persons under the age of 35 and revoked drinking permits which had been issued to persons under the age of 35, exceeded the authority granted to him by the Kosrae Constitution, Article V, Section 13 because there was no civil disturbance, riot, typhoon, natural disaster or immediate threat of war or insurrection which constituted an "extreme emergency" and the Decree was therefore unconstitutional and void. Any criminal charges which have been based upon violation of the Executive Decree must be dismissed. Kosrae v. Nena, 13 FSM R. 63, 67 (Kos. S. Ct. Tr. 2004).

– Legislative Powers

It is doubtful that Congress would have the power to require that all criminal prosecutions be in the name of the Federated States of Micronesia. FSM v. Boaz (II), 1 FSM R. 28, 31 (Pon. 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).

The tax on gross revenues falls squarely within the constitutional authorization given to Congress by article IX, section 2(e) to tax income. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM R. 124, 126 (Pon. 1985).

That Congress may tax "gross income" is plainly and unmistakably provided for in the words of article IX, section 2(e) of the Constitution. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM R. 124, 127 (Pon. 1985).

Congress enacted Public Law No. 1-72 and confirmed the legislative power of state governments to supersede Trust Territory statutes within the scope of their exclusive powers. Pohnpei v. Mack, 3 FSM R. 45, 54 (Pon. S. Ct. Tr. 1987).

While Congress may have the power to prohibit the taking of and killing of turtles within the twelve mile area as a matter of national law, it should lie with Congress, and not the court, to determine whether the power should be exercised. FSM v. Oliver, 3 FSM R. 469, 480 (Pon. 1988).

Once Congress has set a policy direction, barring constitutional violation, it is the duty of this court to ascertain and follow that guidance. In re Cantero, 3 FSM R. 481, 484 (Pon. 1988).

Primary responsibility, perhaps even sole responsibility, for affirmative implementation of the Professional Services Clause, FSM Const. art. XIII, § 1, must lie with Congress. Carlos v. FSM, 4 FSM R. 17, 29 (App. 1989).

The fixing of voting requirements is a uniquely political task and falls within the purview of the political arms of the government, so long as no legal rights are violated by a particular method selected. Constitutional Convention 1990 v. President, 4 FSM R. 320, 324 (App. 1990).

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

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

The legislative enactment of the Financial Management Act does not conflict with the constitutional provision stating the Chief Justice is the chief administrator of the national judiciary. Mackenzie v. Tuuth, 5 FSM R. 78, 80 (Pon. 1991).

The legislative passage of the Financial Management Act rests upon the provisions of the Constitution, pursuant to which the Department of Finance and the General Fund were established to oversee the national administration and management of public money. Mackenzie v. Tuuth, 5 FSM R. 78, 81 (Pon.

1991).

Historically the concept of a single, general fund administered by one person is found in laws enacted by the Congress of Micronesia. The enactment of the Financial Management Act reflects a continuity of purpose and statutory consistency. Mackenzie v. Tuuth, 5 FSM R. 78, 82 (Pon. 1991).

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 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).

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

Congress has not unconstitutionally delegated its authority to define crimes by delegating to an executive agency the power to enter into fishing agreements because congressional approval is needed for these agreements to take effect. FSM v. Cheng Chia-W (I), 7 FSM R. 124, 127 (Pon. 1995).

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 gives Congress the authority to appropriate public funds. Udot Municipality v. FSM, 9 FSM R. 418, 420 (Chk. 2000).

The national government is free to distribute or disburse its fishing fee revenues through its normal legislative process. Chuuk v. Secretary of Finance, 9 FSM R. 424, 436 (App. 2000).

The Constitution gives Congress the authority to appropriate public funds, but the Executive Branch is expressly delegated the power to faithfully execute and implement all national laws and a public law that appropriates public funds is a national law. Udot Municipality v. FSM, 10 FSM R. 354, 357 (Chk. 2001).

Congress can give as much guidance as it wishes in the appropriation legislation about which projects will be funded, and much of this guidance will, no doubt, be the product of individual congressmen's consultation with their constituents. But this consultation takes place before the appropriation bill becomes law, not afterwards. After the appropriation bill has become law, it is the duty of those who execute the law and administer the funds to follow the guidance Congress has given them by consulting the language Congress put in the public law, and any applicable regulations, not by consulting individual congressmen.

Udot Municipality v. FSM, 10 FSM R. 354, 359-60 (Chk. 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).

Once the Congress has enacted a law appropriating money for certain purposes, the Congress cannot retain, for itself or for individual senators, the power to determine how that appropriated money is spent, beyond what is spelled out in the law itself, and Congress also does not have the authority to dictate the voting requirements for a Constitutional Convention. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 631 (Pon. 2002).

The power to organize is inherent in each legislature or general assembly. This includes the power of selecting its own presiding officer. Observance of a legislative body's rules which regulate the passage of statutes is a matter entirely within legislative control and discretion, not subject to review by the courts. Anopad v. Eko, 11 FSM R. 287, 290 (Chk. S. Ct. Tr. 2002).

Only the legislature has authority over its organization. Its acts in this regard are not subject to review by the courts. Anopad v. Eko, 11 FSM R. 287, 290 (Chk. S. Ct. Tr. 2002).

The remedy for one who believes he was improperly removed as speaker of a municipal legislature is to attend the legislature's next regular session and seek to reorganize the legislature again, and reclaim his position as speaker. Anopad v. Eko, 11 FSM R. 287, 290 (Chk. S. Ct. Tr. 2002).

Just as a legislature has the power to elect its leaders from among the members, it has an equal power to remove its leaders, and to select new leadership, at any time it so chooses. Anopad v. Eko, 11 FSM R. 287, 290 (Chk. S. Ct. Tr. 2002).

It is Congress that determines the qualifications for candidates for membership in that legislative body. Trust Territory v. Edgar, 11 FSM R. 303, 308 (Chk. S. Ct. Tr. 2002).

The Constitution assigns Congress the authority to enact bankruptcy laws and thus to determine when a judgment against an insolvent person should be discharged without either full payment or the parties' agreement. In re Engichy, 11 FSM R. 520, 525-26 (Chk. 2003).

The national government's legislative power is vested in the Congress of the Federated States of Micronesia. FSM v. Udot Municipality, 12 FSM R. 29, 48 (App. 2003).

Once a public law is enacted, the responsibility for the execution and implementation of the law rests

with those who have a duty to execute and administer the law, and Senators can have no further role in its execution. FSM v. Udot Municipality, 12 FSM R. 29, 49 (App. 2003).

A public law that specifically provides that a Congressional delegation must be consulted on the most appropriate usage of the funds before an obligation could occur runs afoul of the Constitution because it empowers the Congressional delegation to engage in an executive function by formally involving itself in executing and implementing the appropriation. Congress cannot pass laws and vest in itself or its members the power to control how that law is executed. FSM v. Udot Municipality, 12 FSM R. 29, 50 (App. 2003).

The Constitution affords the Congress great latitude in making policy decisions through the process of enacting legislation. However, once Congress enacts legislation, its role ends: Congress can thereafter formally affect the execution of its enactment only by enacting appropriate new legislation. FSM v. Udot Municipality, 12 FSM R. 29, 50 (App. 2003).

While Congress may inform itself on how legislation is being implemented through the normal means of legislative oversight, public hearing, and investigation, it cannot directly insert a Congressional delegation into the process of executing and implementing the law. FSM v. Udot Municipality, 12 FSM R. 29, 50 (App. 2003).

Making obligation of appropriated funds contingent upon consultation with members of Congress presented some of the same dangers that arose with permitting Congressional member(s) to control the approval of specific projects and the break down of the funding amounts under the line-item involved without going through the constitutional legislative process. The formal legislative process set forth in the Constitution's text requires formulating and introducing an appropriations bill, passing that bill in two separate readings, and then transmitting that bill to the President for approval or veto. To permit congressmen to effectively legislate without following constitutionally mandated procedures eliminates any transparency in the governmental process, and reduces the accountability of the congressmen to those whom they represent. FSM v. Udot Municipality, 12 FSM R. 29, 50-51 (App. 2003).

Congress has its constitutional role of carrying out its legislative power by enacting national laws. Once national laws are enacted, the Executive Branch then has its constitutional role of carrying out its executive power by seeing to the execution and implementation of these laws. FSM v. Udot Municipality, 12 FSM R. 29, 51 (App. 2003).

Congress's enactment preventing obligation of funds unless and until the allottees engaged in "consultation" with the relevant Congressional delegation, substantially impaired the allottees' performance in executing and implementing the law, which is the executive's essential and exclusive role under our Constitution. By legislating "consultation" before obligation requirement into the law, the Congress encroached upon an executive function and assumed more power than it is allowed in our constitutional system of checks and balances, thus violating the separation of powers doctrine. FSM v. Udot Municipality, 12 FSM R. 29, 51 (App. 2003).

The Constitution permits the Chief Justice to promulgate rules, including criminal procedure rules, which Congress may amend by statute. Congress has the authority to amend or create procedural rules by statute, and when Congress has enacted a procedural rule, it is valid. The Chief Justice does not have the authority to amend Congressionally-enacted statutes. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. FSM v. Wainit, 12 FSM R. 376, 383 (Chk. 2004).

If a specially assigned justice may be removed for any reason at Congress's discretion after serving 90 days of service in a case, then the justice is not independent. His rulings are subject to the legislative branch's supervision. The Constitution's framers intended to prevent this result by providing that a justice may only be removed for cause under the procedures set out in Article IX, Section 7. Urusemal v. Capelle, 12 FSM R. 577, 587 (App. 2004).

Congress may not remove at its discretion a justice temporarily assigned to a case any time after that justice has served 90 days because any such resolution and the statute upon which it is based, 4 F.S.M.C. 104(2) violate Article IX, Section 7 of the Constitution. Urusemal v. Capelle, 12 FSM R. 577, 587 (App. 2004).

If a congressman has a conflict of interest and did not take steps to avoid that conflict, that is an ethical lapse that Congress, not the court, has the authority to consider and, if proper, impose sanctions or discipline on the congressman. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 186 n.2 (Pon. 2010).

When Congress enacted Title 24 and engaged in an executive function by formally inserting itself into the execution and implementation of a portion of that act by vesting in itself the power to control how the law regarding fishing access agreements is executed when more than nine vessels are involved, this was impermissible under the separation of powers doctrine since negotiated access agreements are not approved and licenses are not issued until Congress acts (and the parties to the negotiations presumably know this and adjust their behavior accordingly) and since negotiation and approval of commercial transactions is ordinarily an Executive power. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

When, if the section of Title 24 requiring congressional approval of access agreements for more than nine vessels is struck down, that section is easily severed from the rest of Title 24, which would function perfectly well without it; that is, it would function just as it already does for access agreements for nine or fewer vessels, then that section is not so vital to the whole Title 24 regulatory scheme that it cannot be severed from the rest of Title 24. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

If Congress feels that the current Title 24 statutory requirements for access agreements are too loose or are not in the nation's best interests and should be tightened, it can enact further and stricter requirements or it can provide for that review by creating a mechanism for further review in the executive branch, since Congress, through its investigatory powers, can always keep itself informed on the Executive's execution of the laws, and enact remedial legislation when it feels that the Executive needs further guidance in executing national policy that Congress has enacted. But Congress may not execute the laws itself. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189 (Pon. 2010).

Since the Constitution specifically delegates to Congress the power to ratify treaties but does not grant Congress the power to approve or reject fishing access agreements, ruling unconstitutional the statute that requires congressional approval for fishing access agreements for more than nine vessels would not impair Congress's ability to ratify treaties and to advise and consent to presidential appointments. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

The court's conclusion that requiring Congress to approve or reject fishing access agreements is unconstitutional has no effect on Congress's constitutional treaty-ratification and advice and consent powers. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

A statute takes precedence over the procedural rules because while the chief justice has the power to promulgate procedural rules, the rules may be amended by statute, and since the chief justice does not have the power to amend a statute, when Congress has enacted a procedural rule, it is valid. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

A statute that purports to allow Congress to step around the bill-making process and approve fishing access agreements by resolution, is surely unconstitutional because under the Constitution, Congress may make law only by statute, and may enact statutes only by bill. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 546 (App. 2011).

Congress's decision to approve or disapprove fishing access agreements is legislation that must be enacted by the bill-making process. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 547 (App. 2011).

Once a public law is enacted, the responsibility for the execution and implementation of the law rests with those who have a duty to execute and administer the law, and Senators can have no further role in its execution. The basic constitutional principle involved is that the execution and implementation of the laws is an executive rather than a legislative function. The Constitution affords the Congress great latitude in making policy decisions through the process of enacting legislation, but once Congress enacts legislation, its role ends: Congress can thereafter formally affect the execution of its enactment only by enacting appropriate new legislation. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 548 (App. 2011).

If Congress is truly concerned by the amount of debt carried by proposed agents, it may be more specific by creating new minimum requirements for eligibility. But once Congress delegates power to the executive, it cannot have it both ways – it cannot then take back that power or modify the extent of that delegation without amending the statute through the bill-making process. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 550 (App. 2011).

Congress has the authority to amend or create procedural rules by statute (and when Congress enacts a procedural rule, it is valid) but the Chief Justice does not have the power to amend Congressionally-enacted statutes. Thus, if a statute applies and the statute and the admiralty rule conflict, the statute must prevail. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 539 (Yap 2013).

While Congress has the authority to amend rules by statute, the Chief Justice does not have the authority to amend statutes by creating rules. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 595 (Kos. 2013).

By its nature, a statute is a declaration of public policy. Congress determines and declares public policy by enacting statues. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

A majority of the Congress members constitutes a quorum for the transaction of business. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 642 (Pon. 2015).

The power to appoint and confirm members of the Social Security Board is vested in the national government's Executive and Legislative branches. To halt the Board's function when all vacancies are not filled would adversely affect the Social Security's function as a whole, and would be detrimental to the livelihood of social security benefit recipients. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

The FSM Supreme Court lacks the power to make persons granted a pardon of a felony conviction eligible for election to Congress because the Constitution reserves that power to Congress, and the court cannot exercise a power that only Congress has. FSM v. Innocenti, 20 FSM R. 293, 296 (Pon. 2016).

The formal involvement by Congress in the implementation and execution of the laws is unconstitutional. Linter v. FSM, 20 FSM R. 553, 561 (Pon. 2016).

The court does not have the constitutional power to make persons granted a pardon of a felony conviction eligible for election to Congress because the Constitution reserves that power to Congress, and the court cannot exercise a power that only Congress has. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

The Constitution permits Congress, and only Congress, to change, by statute, the constitutional provision disqualifying a person convicted of a felony from membership in Congress, and Congress so far has not seen fit to alter this qualification. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

The court should not and cannot make choices that the Constitution assigns to Congress. FSM v. Fritz, 20 FSM R. 596, 600 (Chk. 2016).

Congress itself always has the final say over the election and qualification of its members, and, unless Congress acts to change the qualifications, a person convicted of a felony and later pardoned is still ineligible for Congress membership. FSM v. Fritz, 20 FSM R. 596, 600-01 (Chk. 2016).

– Pohnpei

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).

A characteristic feature, and one of the cardinal and fundamental principles of the Pohnpei State Constitutional system, is that the governmental powers are divided among the three departments of this government, the legislative, executive, and judicial, and that each of these is separate from the others. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 9 (Pon. S. Ct. Tr. 1985).

Pohnpei Utility Corporation is not part of the executive branch of the Pohnpei state government or part of either of the other two branches. It is an independent agency not subject to or under any of the three branches of government. Perman v. Ehsa, 18 FSM R. 432, 440 (Pon. 2012).

– Pohnpei – Executive Powers

When the Pohnpei Legislature, exercising its power under Pohnpei Constitution Article 13, § 9(3), revoked Emergency Executive Order 01-12 in its entirety and retroactive to September 3, 2012, because the situation stated in the Emergency Executive Order did not rise to the level of an emergency as defined in the Pohnpei Constitution Article 13, § 9(1), Emergency Executive Order 01-12 and all later acts done pursuant to it became nullities. Perman v. Ehsa, 18 FSM R. 432, 436 (Pon. 2012).

Only the PUC Board of Directors can terminate PUC's general manager. The Governor has no such power under any circumstance. If the PUC Board lacks a quorum, the Governor's power extends only to nominating new Board members who, if confirmed, would allow the Board to have a quorum and thus to transact business. Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

The Pohnpei Governor has neither the power nor the authority to exercise any of the powers vested exclusively in the PUC Board. Perman v. Ehsa, 18 FSM R. 432, 438 (Pon. 2012).

– Pohnpei – Judicial Powers

Under the system of constitutional government of the State of Pohnpei, among the most important functions entrusted to the judiciary are the duty to interpret the State's Constitution and the closely connected duty to determine whether or not laws and acts of the state legislature are contrary to the State Constitution. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 10 (Pon. S. Ct. Tr. 1985).

When called on to review and control the acts of an officer or a coordinate branch of the government, the court should proceed with extreme caution, and the right to exercise the power must be manifestly clear. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 10 (Pon. S. Ct. Tr. 1985).

It is within the special province and duty of the courts, and the courts alone, to say what the law is and to determine whether a statute or ordinance is constitutional. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 8-9 (Pon. S. Ct. Tr. 1985).

The Pohnpei Constitution provides that single appellate justice orders are subject to review by a full appellate panel of justices hearing the appeal. This constitutional provision is self-executing. Damarlane

v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

A single justice order in the Pohnpei Supreme Court appellate division is not a final decision of the Pohnpei Supreme Court because it is subject to review by a full appellate panel of the Pohnpei Supreme Court. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

A motion to reconsider a single justice appellate order in the Pohnpei Supreme Court is an application for review by a full appellate panel. Damarlane v. Pohnpei, 9 FSM R. 114, 118 (App. 1999).

SETTLEMENT

Customary settlements do not require court dismissal of criminal proceedings if no exceptional circumstances are shown. FSM v. Mudong, 1 FSM R. 135, 140 (Pon. 1982).

In an action brought to enforce an agreement among three parties to "meet and divide up" land which is the subject of an ownership dispute, the court will enforce the agreement and, where there is no evidence to establish that any party is entitled to a larger share than the others, the court will presume that they intended to divide the land equally. Tauleng v. Palik, 3 FSM R. 434, 436 (Kos. S. Ct. Tr. 1988).

Conflicting affidavits show that the circumstances surrounding the execution of a document allegedly reflecting plaintiffs acceptance of a settlement and her release of defendant and others from liability for the death of her late husband are not sufficiently clear to permit summary judgment either as to the efficacy of that document or as to the application to the plaintiff's claims of the statute of limitations found at 6 F.S.M.C. 503(2). Sarapio v. Maeda Road Constr. Co., 3 FSM R. 463, 464 (Pon. 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).

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).

The discretion vested in the office of the Attorney General to settle a civil action brought against Truk State is provided for by law, which does not require consent of the Governor before the Attorney General may settle a civil suit against Truk State. Truk v. Robi, 3 FSM R. 556, 561-63 (Truk S. Ct. App. 1988).

The discretion vested in the office of the Attorney General to settle a civil action brought against Truk State is provided for by law, which does not require consent of the Governor before the Attorney General may settle a civil suit against Truk State. Truk v. Robi, 3 FSM R. 556, 561-63 (Truk S. Ct. App. 1988).

A valid compromise and settlement is as final, conclusive and binding upon the parties and upon those who knowingly accept its benefit as if its terms were embodied in a judgment and, regardless of what the actual merits of the antecedent claim may have been, they will not afterward be inquired into and examined. Truk v. Robi, 3 FSM R. 556, 564 (Truk S. Ct. App. 1988).

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).

Since the judicial system and customary settlement in Truk are fundamentally different and serve different goals, the primary concern of customary settlement being community harmony rather than compensation for loss, the use of one should not prevent the use of the other. Suka v. Truk, 4 FSM R. 123, 128 (Truk S. Ct. Tr. 1989).

Offers or acceptances of customary settlement should neither be used in court to prove liability on the part of the wrongdoer, nor be deemed the same as a legal release on the part of the plaintiff. Suka v. Truk,

4 FSM R. 123, 129 (Truk S. Ct. Tr. 1989).

To the extent that customary settlements are given any binding effect at all, they should be only binding as to those persons that are part of custom; state agencies and non-Trukese persons are not part of that system. Suka v. Truk, 4 FSM R. 123, 129 (Truk S. Ct. Tr. 1989).

The parties, not their attorneys, have ultimate responsibility to determine the purposes to be served by legal representation. Thus, clients always have the right, if acting in good faith, to agree to settle their own case, with or without the consultation or approval of counsel, even when their attorneys have failed to settle. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 334 & n.1 (Pon. 1994).

Counsel's own dissatisfaction with the settlement agreement reached by his clients without counsel's consultation or approval does not take precedence over the clients' rights to settle their claims themselves. Iriarte v. Micronesian Developers, Inc., 6 FSM R. 332, 334-35 (Pon. 1994).

It is settled doctrine that the power vested in the office of the Attorney General empowers settlement of litigation in which the Attorney General has supervision and control. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

The court will not enforce a written settlement agreement as a verbal contract against a defendant who has not signed it when because of conflicting affidavits the court finds that the settlement terms were not sufficiently definite to constitute an enforceable contract and when there are questions as to whether the settlement was freely and fairly negotiated by the parties thereto. Bank of Hawaii v. Helgenberger, 9 FSM R. 260, 262 (Pon. 1999).

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).

Settlement negotiations are not adequate grounds for dismissal of a matter. Generally when parties do settle a matter, they jointly request the court for dismissal. Talley v. Talley, 10 FSM R. 570, 573 (Kos. S. Ct. Tr. 2002).

When the defendants did not sign the settlement agreement between the other parties, they are not bound by it or by the court's confirmation of it because the defendants were not parties to the settlement agreement. A settlement agreement will not bind those not a party to it. Stephen v. Chuuk, 11 FSM R. 36, 42 (Chk. S. Ct. Tr. 2002).

When an order confirming a settlement agreement did not adjudicate the rights and liabilities of all parties, but only of the tideland claimants against each other, it may be revised because in the absence of a properly entered partial final judgment, 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 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. Stephen v. Chuuk, 11 FSM R. 36, 43 (Chk. S. Ct. Tr. 2002).

The grant or denial of a motion to set aside a settlement agreement lies within the sound discretion of the court and will not be disturbed on appeal except for a clear abuse of discretion. Stephen v. Chuuk, 11 FSM R. 36, 43 (Chk. S. Ct. Tr. 2002).

As a contract, a valid settlement agreement requires offer and acceptance, consideration, and parties who have the capacity and authority to settle. Stephen v. Chuuk, 11 FSM R. 36, 43 (Chk. S. Ct. Tr. 2002).

In order for a settlement to be fully binding, a person signing a settlement agreement must have the capacity and the authority to do so. Stephen v. Chuuk, 11 FSM R. 36, 43 (Chk. S. Ct. Tr. 2002).

When affidavits show that the one person who purportedly signed the settlement on the affiants' behalf

did not have the authority to do so and there is no admissible evidence to the contrary, only the unsupported assertion of counsel that the signer said she had the authority to sign for her older sisters, and when there is no basis to conclude that they ratified the settlement or that they should now be estopped from claiming that they are not bound by it, the movants have shown good cause that the settlement agreement must be held invalid. Stephen v. Chuuk, 11 FSM R. 36, 43 (Chk. S. Ct. Tr. 2002).

Even if there was no authority to bind a party to a compromise, he may nevertheless be bound on the basis of ratification or estoppel if he retains benefits derived from the compromise. Stephen v. Chuuk, 11 FSM R. 36, 43-44 (Chk. S. Ct. Tr. 2002).

The usual effect of the invalidation of a settlement is to restore the parties to where they were before the defective settlement or compromise was made, or at least to prevent the defective settlement from being enforced. Stephen v. Chuuk, 11 FSM R. 36, 44 (Chk. S. Ct. Tr. 2002).

Trial judges are expected to suggest the desirability of possible settlement. That is a normal part of their job. Bualuay v. Rano, 11 FSM R. 139, 148 (App. 2002).

The filing of the appeal over land was not a breach of the defendant's condition and was not a breach of a customary settlement when the appeal was filed before the customary settlement and condition were made; and when the appeal was not decided in the defendant's favor, the defendant's condition regarding his promised grant of a portion of land was satisfied and the customary settlement and the defendant's promise were therefore enforceable. Robert v. Semuda, 11 FSM R. 165, 168 (Kos. S. Ct. Tr. 2002).

When the parties settled rather than go to trial on damages a contract was formed between the parties – the defendant offered specific performance to fill land and in exchange, the plaintiff accepted the offer and agreed to not go to trial on the issue of damages. There was thus an offer and acceptance, consideration, and mutual assent by both parties. James v. Lelu Town, 11 FSM R. 337, 339 (Kos. S. Ct. Tr. 2003).

When a settlement contract for landfill of Muraka was formed between the parties that was not dependent on the case's active status, the contract is still enforceable because the case's status (pending or dismissed) was not part of the agreement. Therefore, the defendant is still liable to the plaintiff because the case's dismissal did not affect the parties' contract or the court's order when the court's order was based upon the parties' agreement and not upon any trial on damages. James v. Lelu Town, 11 FSM R. 337, 339-40 (Kos. S. Ct. Tr. 2003).

While the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is instituted in court, the court also has responsibility for assuring that actions thereafter taken are in the public interest; therefore criminal litigation can be dismissed only by obtaining leave of the court. In a fishing case where criminal and civil cases are filed together, and the dismissal of the criminal proceeding(s) is obviously "integral" to the settlement agreement for which court approval is sought, the same policy considerations apply to the settlement of the civil proceeding(s) as apply to the criminal dismissal. FSM v. Ching Feng 767, 12 FSM R. 498, 502, 504 (Pon. 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 plaintiff's claim based upon defendant's breach of the settlement agreement reached in an earlier court case, is not based upon the merits of the claim presented in that case because that case's merits were resolved by settlement between the parties, and based upon that settlement, that case was dismissed. George v. Phillip, 13 FSM R. 520, 521 (Kos. S. Ct. Tr. 2005).

When a settlement agreement was reached by the parties in a case, it represents a new agreement between the parties. The failure to comply with the settlement agreement is a new claim, separate and

independent of the original claim. Settlement agreements are contracts which are enforceable by a court. Therefore, the doctrine of res judicata does not apply to a settlement agreement and accordingly a motion for dismissal must be denied. George v. Phillip, 13 FSM R. 520, 521 (Kos. S. Ct. Tr. 2005).

When the parties, by their settlement agreement, have liquidated all damages and compensation claims between them including the respondent's lost profits claim, the issue of whether the respondent in an eminent domain action can obtain damages for lost profits is moot. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

While the court encourages settlement whenever possible and is always willing, if necessary, to allow time for settlement to occur, a request by only one party that is too amorphous to determine even whether a settlement attempt can or will be made must be denied when insufficient grounds have been shown to suspend the litigation in a vague hope that settlement may occur. The parties are still encouraged to pursue all settlement possibilities. Eot Municipality v. Elimo, 19 FSM R. 290, 293 (Chk. 2014).

In order for a settlement agreement to be binding, it must be definite and certain as to the terms and requirements, as well as identify the subject matter and spell out each party's essential commitments. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 223 (Pon. 2015).

A court should endeavor to determine the meaning of a contractor's words, rather than rely on what a signatory later says was intended. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 223-24 (Pon. 2015).

When the parties to a proposed contract have agreed that the contract is not to be effective or binding until certain conditions are performed or occur, no binding contract will arise until the conditions specified have occurred or been performed. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 224 (Pon. 2015).

A settlement agreement that was subject to the President's approval and Congress's appropriation of funds, was not enforceable when the President rejected it. Pacific Int'l, Inc. v. FSM, 20 FSM R. 220, 224 (Pon. 2015).

SIGNATURES

"Forgery" is a signature of a person that is made without the person's consent and without the person otherwise authorizing it. Signing another's signature with authorization is not forgery. Individual Assurance Co. v. Iriarte, 16 FSM Intrm. 423, 440 (Pon. 2009).

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 Intrm. 340, 352 (App. 2012).

A signature affixed by a judge by rubber stamp is valid because a signature is a person's name or mark written by that person or at the person's direction, or any name, mark, or writing used with the intent of authenticating a document – also termed a legal signature. George v. Palsis, 20 FSM R. 157, 159 (Kos. 2015).

In the absence of any provision in the FSM Code, Rules of Civil Procedure, or General Court Order, mandating a handwritten signature on an order issued by a justice, an argument that a judge's signature is deficient because it appears to be "rubber-stamped," is devoid of merit. FSM Dev. Bank v. Christopher Corp., 20 FSM R. 225, 228 (Chk. 2015).