SOCIAL SECURITY

The FSM social security program's purpose is to provide a means whereby employees may be ensured a measure of financial security in their old age and be given an opportunity for leisure without hardship and complete loss of income, and, further, to provide survivors' insurance for wage earners and their dependents. 53 F.S.M.C. 602. The program is funded by joint contributions from employers and employees. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 137, 141 (Pon. 1995).

The FSM Social Security Administration has the power to sue and be sued, and since its power to hold hearings is discretionary it may file suit without having held a hearing. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 282-83 (Yap 1995).

Social Security's lofty public purpose is to provide for retirees, their dependents, and their surviving spouses and dependants. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

Any person aggrieved by a Social Security Board final order may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 79-80 (Kos. 2003).

While section 204 of Title 53 provides that the Social Security Board shall receive and maintain files and records of all employers and all employees subject to this Title, no specific Social Security rule or regulation requires that the Board's final decision take the form of an "order," or that it be "entered" in some specifically defined way. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 103 (Kos. 2003).

Section 203(2) of Title 53 provides that the Social Security Board may hold hearings or make decisions upon hearings delegated to others for the purpose of determining any question involving any right, benefit, or obligations of any person subject to Title 53. Thus Social Security has in part a quasi-judicial function. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 103 (Kos. 2003).

Since "enter" means to place anything before a court, or upon or among the records, in a formal and regular manner, and usually in writing, and since common sense must play a part in the way that an agency's statutorily mandated procedures are interpreted, a letter from the Social Security Board stating that it is a final decision by the Board, and that the petitioner has the option of appealing to the FSM Supreme Court, is a final, entered order within the meaning of 53 F.S.M.C. 208. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 103-04 (Kos. 2003).

Since the Social Security Board has the power to delegate duties and responsibilities to such employees as it deems feasible and desirable to carry out the provisions of Title 53, a letter that begins with "[o]n behalf of the FSMSSA Board of Trustees . . . ." and continues with "the Board has denied your client's appeal," and which is signed by the Administrator, is properly signed. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 104 (Kos. 2003).

The court will not add additional time for a petitioner to seek judicial review when the social security statute gives 60 days and this is a considerable amount of time, and when even given the exigencies of mail service in Micronesia, equitable considerations do not require that additional time be given. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 104 (Kos. 2003).

An appeal from a Social Security Board decision will be determined on the record below and not on a trial de novo because, under 53 F.S.M.C. 708, the Board must certify and file in court a copy of the record. The Board's findings as to the facts, if supported by competent, material, and substantial evidence, will be conclusive. If either party applies for leave to adduce additional material evidence, and shows to the court's satisfaction that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives and that such evidence is competent, material, and substantial, the court may order the Board to take the additional evidence to be adduced upon the hearing

in such manner and upon such conditions as the court considers proper. Clarence v. FSM Social Sec. Admin., 12 FSM R. 635, 636 (Kos. 2004).

By failing to respond to Social Security's motion in limine that seeks to preclude the plaintiff from adducing any further evidence on appeal beyond that which is part of the record of proceedings before the Social Security Board, the plaintiff has not shown that there were reasonable grounds for failure to adduce competent, material, and substantial evidence before the Board and that this evidence should be (but is not) part of the record of the proceedings, and thus the motion will be granted. Clarence v. FSM Social Sec. Admin., 12 FSM R. 635, 637 (Kos. 2004).

Although preserving the integrity of the FSM social security system is a matter of concern to all FSM citizens, when Social Security has offered no argument why the court should depart from the general rule that municipal entities are immune from garnishment, a motion for issuance of a writ of garnishment directed toward the assets of a municipality will be denied. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

An appeal under 53 F.S.M.C. 708 to the FSM Supreme Court trial division from a Social Security Board final order is on the record except when a person aggrieved by such an order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the court for leave to adduce additional material evidence. When no such showing is made of a reasonable failure to elicit evidence, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence. If the court so concludes, then the findings of fact are conclusive. The trial court's disposition of the appeal on the record is final, subject to review by the Supreme Court appellate division. Clarence v. FSM Social Sec. Admin., 13 FSM R. 150, 152 (Kos. 2005).

Although, it would have been desirable for the claimant to have undergone vision testing as contemplated by the Board, the question under 53 F.S.M.C. 708 is whether there are now facts of record, supported by competent, material, and substantial evidence, sufficient for the findings of the Board to be deemed conclusive and when on a review of the record, the court finds that there is sufficient evidence in the record to deny the disability claim, it will affirm the Board's final decision in its entirety. Clarence v. FSM Social Sec. Admin., 13 FSM R. 150, 153 (Kos. 2005).

The existence of employees without social security numbers cannot relieve an employer of liability for social security contributions for those employees. Ensuring that all employees have, or acquire, properly issued social security numbers, is the employer's responsibility. An employer cannot avoid liability for social security contributions by not reporting an employee's social security number or by employing someone without a social security number. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 547 (Chk. 2007).

When the court reviews appeals from Social Security decisions, the findings of the Social Security Board as to the facts will be conclusive if supported by competent, material, and substantial evidence. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 (Kos. 2009).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These Administrative Procedures Act provisions apply to all agency action unless Congress by law provides otherwise and it applies to the Social Security Administration appeals because no part of the Social Security Act provides otherwise. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 (Kos. 2009).

A claims denial made before the due date to submit supporting documents is arbitrary and capricious and will be vacated by the court and remanded for further proceedings. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 277 (Kos. 2009).

The timeframe in which to appeal a decision of the FSMSSA Board is governed by 53 F.S.M.C. 708, which provides that any person aggrieved by a final order of the Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Palikkun v. FSM Social Sec. Admin., 19 FSM R. 314, 316 (Kos. 2014).

When the Social Security Board's decision was entered on August 27, 2013, and was received by the plaintiff on September 17, 2013, the 60-day deadline would fall on October 26, 2013, which would have given the plaintiff 39 days to file her claim after service of the Board's decision. She thus had adequate time to file her claim, and when she failed to file her claim in time pursuant to 53 F.S.M.C. 708, the court is unwilling to extend the timeframe to file a claim when the statute's language is clear, and the complaint will dismissed based on its filing being untimely under 53 F.S.M.C. 708. Palikkun v. FSM Social Sec. Admin., 19 FSM R. 314, 317 (Kos. 2014).

When three of the five appointed Social Security Board members are present this constitutes a valid quorum or a simple majority, and when, in adding the *ex officio* administrator, four out of the six total members are in attendance, it gives the Board valid authority to transact business. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

The Social Security Board is competent to execute its duties and responsibilities with the absence of two of the total five members. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

The FSM social security program's purpose is to provide a means whereby employees may be ensured a measure of financial security in their old age and be given an opportunity for leisure without hardship and complete loss of income, and, further, to provide survivors' insurance for wage earners and their dependents. It is funded by joint contributions from employers and employees. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

Social Security's public purpose is to provide for retirees, their dependents, and their surviving spouses and dependents. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (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).

When three members are present along with the Administrator, the Social Security Board is competent to transact business. Neth v. FSM Social Sec. Admin., 19 FSM R. 639, 643 (Pon. 2015).

Under 53 F.S.M.C. 708, an appeal to the FSM Supreme Court trial division from a Social Security Board final order is on the record except when a person aggrieved by the order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the court for leave to adduce additional material evidence. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

When no showing is made of a reasonable failure to elicit evidence before the Social Security Board, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence. If the court so concludes, then the findings of fact are conclusive. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

The trial court's disposition of a Social Security appeal on the record is final, subject to review by the appellate division. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

When the court reviews appeals from Social Security decisions, the Social Security Board's findings as to the facts are conclusive if supported by competent, material, and substantial evidence. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 200 (Pon. 2015).

Under 53 F.S.M.C. 708, an appeal to the FSM Supreme Court trial division from a Social Security Board final order is on the record except when the person aggrieved by the order makes a showing that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives. In that event, the party may apply to the court for leave to adduce additional material evidence. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

When no showing is made of a reasonable failure to elicit evidence before the Social Security Board, the question that remains is whether the Board's final order rests on findings of fact that are supported by competent, material, and substantial evidence, and if the court so concludes, then the findings are conclusive. The trial court's disposition of the appeal on the record is final, subject to review by the appellate division. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These APA provisions apply to all agency action unless Congress by law provides otherwise and they apply to the Social Security Administration appeals because no part of the Social Security Act provides otherwise. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271 (Pon. 2015).

When the court reviews appeals from Social Security decisions, the Social Security Board's findings as to the facts are conclusive if supported by competent, material, and substantial evidence. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 272 (Pon. 2015).

Social Security regulations allow wage earners to adopt after their 55th birthday under extremely limited circumstances. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 365 n.1 (Pon. 2016).

Any person aggrieved by a final order of the Social Security Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition must be served on the Board, by service on its secretary or other designated agent, and thereupon the Board must certify and file in court a copy of the record upon which the order was entered. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

The Social Security Board's findings as to the facts, if supported by competent, material, and substantial evidence, is conclusive. If either party applies to the court for leave to adduce additional material evidence and shows to the court's satisfaction that there were reasonable grounds for failure to adduce the evidence in the hearing before the Board or its authorized representatives, and that such evidence is competent, material, and substantial, the court may order the Board to take additional evidence to be adduced in the hearing in such manner and upon such conditions as the court considers proper. The Board may modify its findings and order after receipt of further evidence together with any modified or new findings or order. The court's judgment on the record shall be final, subject to review by the Supreme Court appellate division on any aggrieved party's petition, including the Board's, within 60 days from judgment. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366, 372 (Pon. 2016).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. These Administrative Procedures Act provisions apply to all agency action unless Congress by law provides otherwise and it applies to Social Security Administration appeals because no part of the Social Security Act provides otherwise. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 366 (Pon. 2016).

In a matter of first impression, the court may look to case law of other jurisdictions, particularly the United States, for comparison and guidance. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 (Pon. 2016).

Regulations may be promulgated to assure efficiency, accuracy, and proficiency in carrying out the objectives of Title 53. These regulations also provide restrictions to prevent abuse and to regulate violations in order to protect the Social Security system. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

FSM Social Security's statutory scheme is not unconstitutional. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 369 (Pon. 2016).

Parties who appeal decisions of the Social Security Board may enter additional evidence for the court's consideration. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 370 (Pon. 2016).

The Social Security Administrator is responsible for the general administration of the Social Security System, and has a wide range of discretion as part of his or her administrative powers. Decisions made pursuant to the Administrator's discretionary power are also subject to the Social Security Board's review. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 371-72 (Pon. 2016).

Any person aggrieved by a final order of the Social Security Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

On an appeal from an FSM administrative agency, the court, under the Administrative Procedures Act, must hold unlawful and set aside agency actions and decisions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or contrary to constitutional right, power, privilege, or immunity; or without substantial compliance with the procedures required by law. This applies to all agency action unless Congress by law provides otherwise and it applies to the Social Security Administration appeals since no part of the Social Security Act provides otherwise. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 478 (Pon. 2016).

Social Security's statutory scheme is not unconstitutional, and the exercise of its investigatory functions, which would include the request for evidence of dependency in adoption matters, is lawful as long as it is authorized by law. Thus, Social Security regulations are not *ultra vires*. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

Parties who appeal Social Security Board decisions are allowed to enter additional evidence for the court's consideration. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 480 (Pon. 2016).

The Social Security Administrator is given a wide range of discretion as part of his or her administrative powers. Decisions made under the Administrator's discretionary power are also subject to the review by the Board, as well as the FSM Supreme Court. In addition to this discretionary authority, the regulations detail different criteria that the Administrator may follow in forming a decision. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 481 (Pon. 2016).

An appeal from a Social Security Board decision will be determined based on the administrative hearing record, other documents as submitted by the parties, and the oral arguments as presented before the court and not on a trial de novo. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 482 (Pon. 2016).

Uunder 53 F.S.M.C. 708, the court's review of Social Security decisions is limited to issues determined on the record at the administrative level. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 482 (Pon. 2016).

Since, by statute, the findings of the Social Security Board as to the facts, if supported by competent, material, and substantial evidence, are conclusive, the statute thus requires that the court use the "substantial evidence" or "reasonableness" standard of review. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

– Claims and Benefits

Social Security benefits are not subject to execution, attachment, or garnishment and are not assignable except as provided in the FSM Social Security Act. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 377 (App. 2003).

When the judgment-debtor's Social Security retirement benefits are received by him and have not been subjected to any sort of direct levy, allotment or garnishment or any execution, attachment, or assignment of these benefits and when these benefits may be commingled with any other income the debtor may have available to him, and from these funds he meets his living expenses and his other obligations, the trial court's order in aid of judgment does not require that the payment come from any particular source of income. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 379 (App. 2003).

When 53 F.S.M.C. 604 does not contain the broader language of, "or other legal processes," it cannot be interpreted in a manner identical to the U.S. statute that does. The FSM provision is more restrictive than the U.S. provision, as it protects Social Security benefits only from execution, attachment, garnishment, and assignment and not from other legal processes. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 379 (App. 2003).

There is no violation of the 53 F.S.M.C. 604 susceptibility of benefits rule, when there has been no execution, attachment, garnishment, or assignment of the judgment-debtor's Social Security retirement benefits and when the trial court's order in aid of judgment specifically found that the judgment-debtor would have sufficient funds for his and his dependents' basic support. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 380 (App. 2003).

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

Actual dependency upon the adoptive parent is a prerequisite for the adopted minor to receive surviving child Social Security benefits after the adoptive parent's death. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 276 n.2 (Kos. 2009).

Social Security does not have to wait 2½ years for claimants to supply supporting documentation for a benefits claim before it may rule on an application. Nor is Social Security to be at the mercy of claimants who promise supporting documents at some indefinite future date but fail to provide them with reasonable promptness. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 277 (Kos. 2009).

If it is determined that the father and mother lived in the same household as the grandfather and grandmother and that the father's income was greater than the grandfather's and the father contributed to the support of the household, Social Security would be completely justified in finding that there was no dependency by the grandsons upon the grandfather. Alokoa v. FSM Social Sec. Admin., 16 FSM R. 271, 277 (Kos. 2009).

The FSM social security non-assignment of benefits statute, 53 F.S.M.C. 604, does not bar legal process such as orders in aid of judgment from reaching FSM social security benefits. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (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).

Surviving spouse benefit payments are paid for each month starting with the month of death of the fully insured spouse and ending with the month preceding the month in which the surviving spouse dies or remarries. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 199 (Pon. 2015).

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

When the Social Security Board's final order denying the plaintiff benefits because of remarriage rests on findings of fact that are supported by competent, material, and substantial evidence and does not violate 17 F.S.M.C. 111(3)(b), its decision will be affirmed. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 274 (Pon. 2015).

A Social Security benefit is any retirement (old age), disability, dependent's, survivor's, or other insurance benefit prescribed in the Act. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 n.2 (Pon. 2016).

Social Security benefits are not vested in a property sense, in that they are subject to defeasance by act of Congress so long as that action is not arbitrary. Changing economic conditions may require that the program be modified. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 (Pon. 2016).

The current Social Security scheme does not automatically disburse benefits to a dependent of a wage earner who has been contributing to Social Security once a claim is made. A claimant becomes "entitled" to benefits once he or she has applied and has provided convincing evidence of entitlement. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 (Pon. 2016).

Because a claimant must go through the process of applying for benefits and meet certain requirements to be deemed eligible, Social Security benefits are not a property right. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 367 (Pon. 2016).

The FSM Social Security program's purpose is to provide a means whereby employees may be ensured a measure of financial security in their old age and be given an opportunity for leisure without hardship and complete loss of income, and, further, to provide survivors' insurance for wage earners and their dependents. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

A valid claim for Social Security benefits as an adopted child requires proof of adoption and of dependency of the adopted child on the wage earner. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Changed circumstances may require the adopted child to move away and to no longer be dependent on the adopted parent. In these situations, the child no longer depends on the wage earner for support, and the child would fall outside of Social Security's statutory scheme. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Since, if benefits are distributed by virtue of only an adoption decree, not only will this affect the financial stability and well-being of the Social Security program, Social Security would be vulnerable to abuse, exploitation, and misconduct. Therefore, the Social Security regulations that limit when benefits can be paid to adoptees are not *ultra vires*. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

A claimant who alleges that he has a child in his care who is living with him must provide the Social Security Administration with a signed statement to that effect when applying for benefits. If the child is under 16 or mentally incompetent, Social Security will need no more information, unless it doubts the truth of the statement. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 370 (Pon. 2016).

Social Security has the regulatory authority to request additional proof of dependency and the claimant is required to submit such proof. Actual dependency upon the adoptive parent is a prerequisite for an adopted minor to receive surviving child Social Security benefits after the adoptive parent's death. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 370-71 (Pon. 2016).

Social Security benefits are not a property right and do not disburse automatically once a claim is filed. A potential beneficiary must fulfill the requirements as set forth in Title 53 of the FSM Code and Social Security regulations before being deemed eligible to receive benefits. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

FSM Social Security benefits are not a property right that automatically vests upon the wage earner's death and upon the filing of a claim. The proper procedure under Title 53 and the FSM Social Security Regulations must be adhered to before a claimant may be deemed eligible for benefits. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

A valid claim for adopted child benefits requires proof of adoption and of the adopted child's dependency on the wage earner. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

Social Security has the regulatory authority to request additional proof of dependency and the claimant is required to submit such proof. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 480 (Pon. 2016).

For Social Security benefit purposes, a disability is the inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. Substantial gainful employment is not only an inability to engage in the applicant's previous occupation or work, but also means that based on the applicant's education, experience, and limitations, there are no other occupations that the applicant could perform. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

Persons are entitled to Social Security disability benefits if they are currently and fully insured, are disabled and have been so for at least three full calendar months, and have filed a complete application with the Social Security Administrator for disability insurance. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

A Social Security claimant becomes entitled to benefits once he or she has applied and has provided convincing evidence of entitlement. A Social Security benefit applicant is responsible for providing the evidence needed to prove his or her entitlement to Social Security benefits. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

When a Social Security decision was supported by competent, material, and substantial evidence that the applicant was not disabled because he was capable of engaging in his former occupation or a similar occupation, that finding is conclusive as to the fact that, when Social Security and later the Social Security Board made their determinations, the applicant was not sufficiently impaired to qualify as disabled for Social

Security disability benefits. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

– Taxes, Liens, and Penalties

For Social Security purposes, wages means payment, salary, or compensation for employment, whether received in cash or a medium other than cash, such as meals. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 284 (Yap 1995).

Social Security contributions are taxed from both employer and employee, and the employer is responsible for assessing the employee's contribution and withholding it from wages as and when paid. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 285 (Yap 1995).

The cash value of meals provided by the employer, even if provided for the convenience of the employer, constitute wages subject to the social security tax. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 288 (Yap 1995).

Both employer and employee must pay a tax or contribution to the social security trust fund. It is the employer's responsibility to deduct the employee's contribution from the wages it pays. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 367 (Yap 1996).

Social security taxes are a percentage calculated from the wages actually received by the employee not from the amount in the employment contract. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 367 (Yap 1996).

The maximum statutory penalty that may be assessed for failure to pay social security taxes is $1000. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 368 (Yap 1996).

Interest on unpaid social security taxes is assessed at 12% from date due until paid even if part of a court judgment and even though court judgments normally bear a 9% interest rate. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 370 (Yap 1996).

The Social Security Administration is entitled to its reasonable attorney's fees and costs when a court determines that a contribution is due. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 370 (Yap 1996).

Under 53 F.S.M.C. 605(3) an employer is delinquent each quarter that it fails to both file a report and pay within ten days after the end of the quarter. Therefore an employer may be subject to the maximum penalty of $1,000 each time (quarter) it is delinquent. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 132 (App. 1997).

Both interest, 53 F.S.M.C. 605(4), and penalties, 53 F.S.M.C. 605(3), may be applied to an employer who is delinquent, as was intended by Congress. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 132-33 (App. 1997).

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).

A trial court may, pursuant to 53 F.S.M.C. 605(4), award attorney's fees and collection costs, including fees for a successful appeal, to the Social Security Administration. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 134 (App. 1997).

Social security taxes, although imposed on actual earned income, are levied pursuant to a

constitutional authority other than that to impose taxes on income. Thus, although social security taxes are an "income" tax, they are not "national taxes" that the national government must pay half of to the state where collected. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434-35 (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).

The social security tax lien arises by operation of law whenever social security taxes become due and are not paid. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

Under 53 F.S.M.C. 607, Social Security taxes specifically take priority over other tax liens. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

As Congress clearly intended, social security tax liens must be given priority over all other claims and liens and paid first. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

Interest on unpaid social security taxes continues to accrue at 12% until paid, even though a judgment normally bears interest at 9%. FSM Social Sec. Admin. v. Lelu Town, 13 FSM R. 60, 62 (Kos. 2004).

Social Security taxes do have a priority over all other claims and liens. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89 (Pon. 2011).

Even when the court is reluctant to refer the dispute for prosecution on contempt and social security tax evasion charges, Social Security itself may direct the matter to the FSM Department of Justice's attention for investigation and further action, including possible prosecution. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 128, 130 (Pon. 2015).

SOVEREIGN IMMUNITY

The Trust Territory Government is not immune from suit in the Truk State Court because the High Court has overturned the doctrine of sovereign immunity accepted by that court in the past. Suda v. Trust Territory, 3 FSM R. 12, 14 (Truk S. Ct. Tr. 1985).

The Trust Territory of the Pacific Islands is a political entity possessing many of the attributes of an independent nation, and is to be regarded as a sovereign for the purpose of the statute of limitations. FSM Dev. Bank v. Yap Shipping Coop., 3 FSM R. 84, 86 (Yap 1987).

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

Courts lack authority to establish sovereign immunity to general tort claims through judicial action. Edwards v. Pohnpei, 3 FSM R. 350, 363 (Pon. 1988).

Since the Constitution's Professional Services Clause is a promise that the national government will take every step "reasonable and necessary" to provide health care to its citizens, a court should not lightly accept a contention that 6 F.S.M.C. 702(4), which creates a $20,000 ceiling of governmental liability, shields the government against a claim that FSM government negligence prevented a person from receiving necessary health care. Leeruw v. FSM, 4 FSM R. 350, 362 (Yap 1990).

The Federated States of Micronesia, as a sovereign nation, may bestow immunity upon civilian employees of another nation in order to obtain benefits for this nation's citizens. Samuel v. Pryor, 5 FSM R. 91, 98 (Pon. 1991).

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

The FSM Supreme Court has jurisdiction over a suit against the national government by the states alleging that under the Constitution the states are entitled to 50% of all revenues from the EEZ because the FSM has waived its sovereign immunity in cases to recover illegally collected taxes and for claims arising out of improper administration of FSM statutory law. Chuuk v. Secretary of Finance, 7 FSM R. 563, 568 (Pon. 1996).

The government has no sovereign immunity from suits seeking to prevent the improper administration of FSM statutes and regulations. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

Courts lack the authority to establish sovereign immunity to general tort claims through judicial action. Conrad v. Kolonia Town, 8 FSM R. 183, 194 (Pon. 1997).

The purpose of 6 F.S.M.C. 701 *et seq.* is to permit and define certain specific causes of action against the FSM. The statute creates specified causes of action, not sovereign immunity. Louis v. Kutta, 8 FSM R. 312, 321 n.6 (Chk. 1998).

Creation of a doctrine of sovereign immunity of the FSM from garnishment should be left to the specific, unambiguous, and explicit action of Congress. The court will not create such a doctrine by judicial action. Louis v. Kutta, 8 FSM R. 312, 321 (Chk. 1998).

The question of proper service is different from the question of the validity of an immunity defense. The issue of sovereign immunity does not involve a jurisdictional defect in the same sense as does improper service of process. Rather, the sovereign immunity defense technically comes into consideration only after jurisdiction is acquired and simply provides a ground for relinquishing jurisdiction previously acquired. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 372 n.2 (Kos. 2000).

The determination of whether Tonga and its agents are immune from suit is a decision that is better made by the FSM government's executive branch because the FSM Constitution expressly delegates the power to conduct foreign affairs to the President and because whether a party claiming immunity from suit has the status of a foreign sovereign is a matter for the executive branch's determination and is outside the competence of the courts. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 (Kos. 2000).

International organizations, their property, and their assets wherever located, and by whomsoever held, are accorded the same immunity from suit and every form of judicial process by the Federated States of Micronesia government that it accords to foreign governments, but the nature of the immunity the FSM affords foreign governments is still an open question. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373 n.5 (Kos. 2000).

Proceedings in a suit against a foreign government may be postponed in order to give the FSM Department of Foreign Affairs the opportunity to decide whether the court should recognize the foreign government's sovereign state immunity from suit. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 373-74 (Kos. 2000).

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

A suit over an incident involving a foreign vessel, will not be dismissed when the vessel was engaged in commercial activity, and not in sovereign acts. Kosrae v. Kingdom of Tonga, 9 FSM R. 522, 523 (Kos. 2000).

National government sovereign immunity is waived for claims for injunction arising out of alleged improper administration of FSM statutory laws, or any regulations issued pursuant to such statutory laws. Udot Municipality v. FSM, 10 FSM R. 354, 359 (Chk. 2001).

The FSM has waived sovereign immunity for claims for damages, injunction, or mandamus arising out of alleged improper administration of Federated States of Micronesia statutory laws, or any regulations issued pursuant to those laws. FSM v. Udot Municipality, 12 FSM R. 29, 53 (App. 2003).

When the claims advanced fall within the FSM's statutory waiver of sovereign immunity, the court need not decide whether defendant allottees are part of the national government and cloaked with sovereign immunity. FSM v. Udot Municipality, 12 FSM R. 29, 54 (App. 2003).

On a motion to dismiss brought by the FSM Development Bank, the bank's claim of sovereign immunity will be considered first since, if the bank prevails on this ground, the merits of the bank's other claims need not be considered. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 125 (Chk. 2005).

Generally, sue-and-be-sued clauses in statutes creating or empowering a governmental corporation or agency are waivers of immunity, and waivers by Congress of governmental immunity in case of such instrumentalities should be liberally construed. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 126 (Chk. 2005).

The sue-and-be-sued language in 30 F.S.M.C. 105(3) is a general waiver of sovereign immunity so that when Congress launched the FSM Development Bank into the commercial world and endowed it with the power "to sue and be sued," the bank was as amenable to a civil suit as a private enterprise would be under like circumstances. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 126 (Chk. 2005).

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

When whether 6 F.S.M.C. 702(2), which does not limit the FSM's liability to a certain dollar amount, or 6 F.S.M.C. 702(4), which limits recovery on an individual claim in that subsection to $20,000, applies, must await the presentation of facts not yet in evidence and requires that certain facts be proven and certain rulings of law made before it can be resolved, the claims against the FSM of over $20,000 will not be dismissed for failure to state a claim. FSM v. Kana Maru No. 1, 14 FSM R. 368, 373 (Chk. 2006).

Chapter six of Title Six is the Trust Territory of the Pacific Islands sovereign immunity statute. If it ever had any application to the FSM, it would have been supplanted or repealed by implication when the FSM Congress enacted a sovereign immunity statute, FSM Pub. L. No. 1-141, specifically applicable to the FSM national government. It remained part of the FSM Code because, at the time the FSM laws were codified, the Trust Territory government retained vestigial functions and authority in the FSM. By its terms, chapter six relates only to the Trust Territory government's liability and not to the liability of any of the FSM constitutional governments. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 604 (Pon. 2009).

Although the FSM Constitution's framers initially intended that there be no sovereign immunity in the FSM, they decided that that policy was too absolute and that the Constitution should remain silent on the subject so that the FSM Congress could decide which actions should be permitted against the government.

FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 604 (Pon. 2009).

From the wording of the chapter seven policy statement, 6 F.S.M.C. 701, it is clear that Congress's intent was that chapter seven contained the FSM national government's entire assertion of, and limited waiver of, its sovereign immunity, and that Title Six, chapter six does not grant any, and has no effect on, the FSM national government's sovereign immunity. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 604 (Pon. 2009).

6 F.S.M.C. 702(3) waives the FSM's sovereign immunity only for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM. But, although the equitable doctrine of unjust enrichment operates in the absence of an enforceable contract when a party has received something of value and neither paid for it or returned it, unjust enrichment is a theory applicable to implied contracts. Thus, depending upon the facts of a case, 6 F.S.M.C. 702(3) does not bar an unjust enrichment claim since it does waive the FSM's sovereign immunity for implied (as well as express) contract claims. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

The FSM has waived its sovereign immunity for suits seeking to prevent the improper administration of FSM statutes and for injunctions to prevent that improper administration. Marsolo v. Esa, 18 FSM R. 59, 64 (Chk. 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).

The FSM cannot raise a sovereign immunity defense when it has statutorily waived its sovereign immunity for damages arising out of the improper administration of FSM statutory laws and when a sound basis for the FSM's waiver of sovereign immunity may be the waiver for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM because the Memorandum of Understanding between Chuuk and the FSM provides that the FSM handles, processes, and pays the Chuuk Special Education Program payroll. Since that express contract obligates the FSM to make all properly obligated withholdings from the employees' pay, the Chuuk Health Care Plan is, by statute, an intended third-party beneficiary of the contract between the FSM and Chuuk so that the Plan's claim is therefore a claim based on Chuuk's contract with the FSM. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 497 (Chk. 2013).

Since the Federated States of Micronesia has waived its sovereign immunity only to the extent of the first $20,000 in damages, when a plaintiff's actual damages exceed that amount, judgment shall be entered in her favor for $20,000. Lee v. FSM, 19 FSM R. 80, 83, 86 (Pon. 2013).

The court will not recharacterize damages as a part of the uninjured spouse's loss-of-consortium claim and alter the nature of the damages claim solely to circumvent the FSM's statutory limited waiver of its sovereign immunity that prevents the injured spouse from being awarded the full amount of the damages she suffered. The court will comply with Congress's policy choice and its intent in enacting the limited waiver. Lee v. FSM, 19 FSM R. 80, 85 (Pon. 2013).

Since 6 F.S.M.C. 702(2) specifically waives the FSM's sovereign immunity for claims for damages, injunction, or mandamus arising out of alleged improper administration of FSM laws, the FSM has waived its sovereign immunity for a suit by a state alleging that the FSM failed to comply with the FSM Constitution's mandate that not less than 50% of the national tax revenues be paid into the treasury of the state where collected. Chuuk v. FSM, 20 FSM R. 373, 375 (Chk. 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).

A sovereign's judicial power does not extend to lawsuits against the sovereign unless the sovereign has waived its immunity to suit and then only to the extent that it has waived its immunity. Kama v. Chuuk, 20 FSM R. 522, 532 (Chk. S. Ct. App. 2016).

– Chuuk

The court will not judicially create the right of sovereign immunity from suit for Chuuk State. This is a legislative function. Epiti v. Chuuk, 5 FSM R. 162, 166-67 (Chk. S. Ct. Tr. 1991).

A plaintiff may not as a matter of law recover punitive damages from the State of Chuuk. Kaminaga v. Chuuk, 7 FSM R. 272, 274 (Chk. S. Ct. Tr. 1995).

The State of Chuuk is immune from civil suits for damages arising out of malicious prosecution. Kaminaga v. Chuuk, 7 FSM R. 272, 274-75 (Chk. S. Ct. Tr. 1995).

The Trust Territory Code provisions for orders in aid of judgment are not available as against Chuuk because, when it barred the courts' power of attachment, execution and garnishment of public property, the clear legislative intent was to supersede or repeal all provisions of the Trust Territory Code, Title 8 insofar as they allowed seizure of Chuuk state property. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

Proceedings in aid of a judgment are supplementary proceedings to enforce a judgment, the same as attachment, execution and garnishment, and as against Chuuk State public property, are prohibited by § 4 of the Chuuk Judiciary Act. Kama v. Chuuk, 9 FSM R. 496, 498 (Chk. S. Ct. Tr. 1999).

When state law clearly provides that no action shall be brought against the state for any actions or omissions of the Chuuk Coconut Authority and that the Authority's debts or obligations shall not be debts or obligations of the Legislature or state government, and neither will be responsible for the same, the state and the governor will be dismissed as defendants from a suit against the Authority because as a matter of law no action lies against the state and no liability attaches. Konman v. Adobad, 11 FSM R. 34, 35 (Chk. S. Ct. Tr. 2002).

A plaintiff may not as a matter of law recover punitive damages from the State of Chuuk. This principle has been modified somewhat by the enactment section 6 of the Chuuk State Sovereign Immunity Act of 2000, but that Act did not become law until January 25, 2001, and it does not apply to damage claims before that time. Zion v. Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

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

None of the FSM Code statutory exemptions to garnishment and execution provide an exception to execution or garnishment when the debtor is a state government. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

The FSM Constitution's supremacy clause does not permit a state law to prevent the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM

Constitution and to advance the principles of unity upon which the Constitution is founded. Barrett v. Chuuk, 16 FSM R. 229, 234-35 (App. 2009).

A cause of action against the State of Chuuk accrues or arises and the limitations period starts running from the date on which the event triggering the cause of action occurred. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

Since sovereign immunity implicates a court's subject matter jurisdiction, the defense of sovereign immunity can be raised at any time, either by a party or by the court. The law is well established that counsel for the State or one of its agencies may not by failure to plead the defense, waive the defense of governmental immunity in the absence of express statutory authorization. Eot Municipality v. Elimo, 20 FSM R. 7, 10-11 (Chk. 2015).

Even when there is no provision in the state's constitution or its statutes expressing the immunity of the state from liability for interest payments not assented to, such immunity is an attribute of sovereignty and is implied by law for the state's benefit. Eot Municipality v. Elimo, 20 FSM R. 7, 11 (Chk. 2015).

Statutes, 6 F.S.M.C. 1401; 8 TTC 1, that read: "Every judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is entered" are statutes of general application to money judgments and not statutes that specifically address judgments against sovereign defendants. Eot Municipality v. Elimo, 20 FSM R. 7, 11 (Chk. 2015).

Logically, when the Commonwealth of the Northern Marianas also has an identically-worded statute derived from the same source as the FSM Code and Chuuk state law – the Trust Territory Code, the statutes would be interpreted and applied against their respective sovereigns in the same manner. Eot Municipality v. Elimo, 20 FSM R. 7, 11 (Chk. 2015).

In the absence of an express statutory waiver of immunity against post-judgment interest, the Chuuk government is not liable for such interest even though there is a statute of general application imposing 9% post-judgment interest on money judgments, but Chuuk is liable for the 5% interest it agreed to on a loan. Eot Municipality v. Elimo, 20 FSM R. 7, 11-12 (Chk. 2015).

Since the Chuuk Sovereign Immunity Act permits suits against the state government for claims, whether liquidated or unliquidated, that are made upon an express or implied agreement with the State of Chuuk or with any of its political subdivisions, it does not bar a suit to recover funds that, by agreement, were to be passed on by the state government to the municipal governments. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

Sovereign immunity does bar the imposition of interest as part of or on a judgment against the State of Chuuk. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

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).

– Kosrae

The phrase "may assume liability is incurred by the chartered State Government," Kos. Const. art. XVI, § 7, is ambiguous because there are no guidelines for when the state is supposed to consent to being sued and when it is not. Seymour v. Kosrae, 3 FSM R. 537, 541 (Kos. S. Ct. Tr. 1988).

Article VI, section 9 of the Kosrae State Constitution provides no basis for assuming that sovereign immunity is inherent in the Kosrae State Constitution because sovereign immunity was a creation of Trust Territory common law. Seymour v. Kosrae, 3 FSM R. 537, 541 (Kos. S. Ct. Tr. 1988).

Determinations as to whether claims of citizens against the previous Kosrae state chartered government may now be upheld against the constitutional state government are to be made by the judiciary on the basis of: 1) when the cause of action arose; 2) the identity of the officer or person whose action created the liability; and 3) the place where the original action creating the liability occurred. Seymour v. Kosrae, 3 FSM R. 539, 542-43 (Kos. S. Ct. Tr. 1988).

– Pohnpei

Customary and traditional practices within a state should be considered in determining whether the people of that state would expect their state government to be immune from court action. Panuelo v. Pohnpei (I), 2 FSM R. 150, 159 (Pon. 1986).

Neither the Pohnpei Constitution, laws, custom nor tradition, nor the common law, grant the Pohnpei State Government sovereign immunity from all unconsented suits against the state. Panuelo v. Pohnpei (I), 2 FSM R. 150, 161 (Pon. 1986).

The Pohnpei Government Liability Act immunizes the State of Pohnpei and its employees from suit unless the claim underlying the suit is specifically authorized by the Act or some other state law, and even with respect to those claims, the Act imposes a variety of restrictions and limitations on the maintenance of those suits. The Act's definition of State of Pohnpei includes all branches of government, any corporation, and other person or entity primarily acting as instrumentalities or agencies of the government, and all boards, commissions, public corporations, authorities, departments, divisions or offices of the government and this definition is more than broad enough to encompass the Pohnpei Port Authority. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 226 & n.2 (Pon. 2005).

Tort claims, tax claims, contract claims, breach of fundamental rights, claims for damages, injunctive relief or writ of mandamus arising from the alleged unconstitutionality or improper administration of Pohnpei statutes or regulations, any other civil action or claim against the state founded upon any law or any regulation, or upon any express or implied contract with the Pohnpei government or for liquidated or unliquidated damages in cases not sounding in tort, and actions for collection of judgments based on claims allowed against the State of Pohnpei can be sued upon within two years of the date on which they accrue. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 226-27 (Pon. 2005).

Since, by its own terms, the Pohnpei Government Liability Act statute of limitations is applicable only to those claims identified in Section 4 of that Act, which identifies a number of different claims, including claims based on violation of Pohnpei state law such as the Pohnpei Constitution, but does not expressly identify claims that are based upon national law or the National Constitution, the plaintiff's claim for declaratory judgment based on violation of the National Constitution and its claim for damages for civil rights violations under 11 F.S.M.C. 701(3) are not subject to the Act's statute of limitations and will not be dismissed on the ground that they are time barred by that statute of limitations. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 227-28 (Pon. 2005).

STATUTES

A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. FSM v. Nota, 1 FSM R. 299, 304 (Truk 1983).

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

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be punished but the right to be informed of the nature of the accusation does not require absolute precision of perfection of criminal statutory language. Laion v. FSM, 1 FSM R. 503, 507 (App. 1984).

The right to be informed of the nature of accusation requires that a statute be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Laion v. FSM, 1 FSM R. 503, 507 (App. 1984).

The required degree of precision under the right to be informed of the nature of the accusation may be affected by considerations such as limits upon the capacity for human expression and difficulties inherent in attempts to employ alternative methods of stating the concept. Laion v. FSM, 1 FSM R. 503, 508 (App. 1984).

Some generality may be inescapable in proscribing conduct but the standard of precision required under the right to be informed of the nature of the accusation is greater in criminal statutes than in civil statutes. Laion v. FSM, 1 FSM R. 503, 508 (App. 1984).

Since the Trust Territory High Court and District Courts were still active at the time of codification, provisions in the FSM Code referring only to them quite likely were intended only to regulate those courts. Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

Public Law No. 2-48, promulgating the codification of the FSM statutes and speaking only of "All enacted law of the Interim Congress of Micronesia . . . and all enacted law of the Congress of the Federated States of Micronesia" as "readopted and reenacted as positive law of the Federated States of Micronesia," may not be interpreted as an attempt to repeal or purge the Trust Territory law from the law of the Federated States of Micronesia. Joker v. FSM, 2 FSM R. 38, 43 (App. 1985).

In approving the current codification of laws, the Congress "readopted and reenacted as positive law" those portions of the Code relating to laws enacted by the FSM Congress or the Interim Congress of the Federated States of Micronesia. For such laws then the Code itself indisputably is the official version. In the event of conflict between the Code and the language of the statute as reported in other sources, including congressional journals, the Code would be deemed accurate and would prevail. FSM v. George, 2 FSM R. 88, 91 (Kos. 1985).

In declining to "reenact" in Public Law No. 2-48 provisions originating with High Commissioners or Congress of Micronesia, Congress seems to have been motivated by transitional considerations rather than a desire to withhold official status from those laws. FSM v. George, 2 FSM R. 88, 92 (Kos. 1985).

The FSM Code was adopted by Congress to facilitate "law making and legal research," since Congress recognized that a "single body of laws" was "needed to organize all applicable statutes into one source." FSM v. George, 2 FSM R. 88, 92 (Kos. 1985).

The Code of the Federated States of Micronesia is intended by Congress to be regarded as the official and controlling version of the language of any legislation reported in the Code. FSM v. George, 2 FSM R. 88, 92 (Kos. 1985).

Where the legislature has a rational basis for a statutorily non-suspect classification, the court will not

inquire into the wisdom of that statute. Paulus v. Pohnpei, 3 FSM R. 208, 218 (Pon. S. Ct. Tr. 1987).

Determination as to whether a statute is a state or national law must be made on a statute-by-statute or a section-by-section basis. Edwards v. Pohnpei, 3 FSM R. 350, 355 (Pon. 1988).

The fact that Congress included a particular law in the FSM Code does not indicate conclusively whether the law is to be applied by this court as part of national law, for some parts of the Code were intended to apply only to the Trust Territory High Court in its transitional role until state courts were established. Edwards v. Pohnpei, 3 FSM R. 350, 356 (Pon. 1988).

When there is no statement in an act or implication in its regulative history that Congress intended court deference to administrative interpretations of the statute, courts make their own independent determination as to the meaning of the statute. Michelsen v. FSM, 3 FSM R. 416, 421 (Pon. 1988).

It may not simply be assumed that a reference in a carryover statute to the district administrator always translates directly to governor, or that high commissioner always means president. FSM v. Oliver, 3 FSM R. 469, 475 (Pon. 1988).

Unchartered and unincorporated municipalities in Truk State have authority to enact curfew ordinances as long as they do not conflict with Truk State laws. David v. Fanapanges Municipality, 3 FSM R. 495, 497 (Truk S. Ct. App. 1988).

Although FSM Public Law 2-33, regarding usury, did not appear in the 1982 codification of FSM statutes, it remained effective as did every other law which took effect after October 1, 1981 and it is currently in effect as codified in the 1987 supplement to the FSM Code at 34 F.S.M.C. 201-207. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 36 (App. 1989).

A claim that the FSM liaison office did not fulfill its medical referral obligations as required by law falls within the embrace of 6 F.S.M.C. 702(2), which authorizes damage claims against the government for alleged improper administration of statutory laws or regulations. Leeruw v. FSM, 4 FSM R. 350, 363 (Yap 1990).

Under national law, the governor of a state is the allottee for all Compact of Free Association funds unless he delegates in writing his right to be allottee, so where a state statute allots such funds to the legislative branch without written delegation from the governor, the statute violates national law. Gouland v. Joseph, 5 FSM R. 263, 265 (Chk. 1992).

Where a statute creates a cause of action and then places exclusive, original jurisdiction over all controversies arising from that cause of action in a particular court, another court will have no jurisdiction to entertain claims under that statute. Damarlane v. United States, 6 FSM R. 357, 360 (Pon. 1994).

Criminal statutes in effect on the effective date of the State of Chuuk Constitution (Oct. 1, 1989) that are consistent with the Constitution continue in effect. Chuuk v. Arnish, 6 FSM R. 611, 613 (Chk. S. Ct. Tr. 1994).

When an ordinance is not void upon its face, but its invalidity is dependent upon facts, it is incumbent upon the party relying upon the invalidity to aver and prove the facts which make it so. It is also the rule that one who seeks to overthrow an ordinance on the ground that it was not regularly or properly enacted has the burden of proving that fact. Esechu v. Mariano, 8 FSM R. 555, 556 (Chk. S. Ct. Tr. 1998).

Trust Territory statutes continue in effect except to the extent they are inconsistent with the Constitution, or are amended or repealed. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 62 (Pon. 2001).

When a state has not enacted laws in an area within its jurisdiction such as child support, national law is applicable to the state court proceeding, because the Trust Territory Code reciprocal support enforcement provisions, now codified at 6 F.S.M.C. 1711, are imputed to be state law under the FSM

Constitution's Transition Clause. Under that clause, Trust Territory statutes that were applicable to the states became part of the states' laws regardless of whether they were published thereby. They stand as the laws of the states until amended, superseded or repealed. Anson v. Rutmag, 11 FSM R. 570, 572 (Pon. 2003).

Foreign law is a fact which must be pled and proven. But state law does not need to be expressly pled, because the court may take judicial notice of any state law. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

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).

Under the FSM Constitution's Supremacy Clause, a national statute must control over a conflicting state statute. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619 (Chk. 2011).

By its terms, a statute enacted by the U.S. Congress that permits declarations in place of affidavits affects only U.S. rules and regulations. When the FSM Congress has not enacted an equivalent statute and no procedural rule has been promulgated to bring about the same result, an unsworn declaration, even when the declarant avers or asserts that it is made "under the penalty of perjury," is not the equivalent of an affidavit required by the FSM rules. This is not a matter of interpreting an FSM procedural rule similar to a U.S. rule, but is rather a matter of not applying a foreign statute that has no FSM counterpart. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 300 & n.1 (Yap 2012).

A statute in force in Chuuk on the Chuuk Constitution's effective date continues in effect to the extent it is consistent with the Chuuk Constitution or until it is amended or repealed. Thus 1TTC 103 is still effective statutory law in Chuuk. Ruben v. Chuuk, 18 FSM R. 425, 430 n.1 (Chk. 2012).

Custom does not divest Congress of its power to regulate shipping and commerce or render the limitation of liability statute, 19 F.S.M.C. 1101-1108, unconstitutional. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

While foreign law is a fact which must be pled and proven, national (or state law) does not need to be expressly pled since the court may take judicial notice of any national (or state) law. Thus, the FSM salvage contract statute's application cannot be avoided by trying to characterize a salvage contract as some other kind of contract. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

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).

– Construction

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

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

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

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

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

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

It is a settled rule of statutory construction that a statute adopted from another jurisdiction is presumed to have been adopted as construed by the courts of that jurisdiction. Andohn v. FSM, 1 FSM R. 433, 441 (App. 1984).

Commonly accepted meanings arising out of prior court interpretations in the jurisdictions from which statutes are borrowed may be considered in testing claim that the statute is unconstitutionally vague. Laion v. FSM, 1 FSM R. 503, 509-10 (App. 1984).

Interpretations by other jurisdictions may be considered in determining the meaning of language borrowed from those other jurisdictions. Laion v. FSM, 1 FSM R. 503, 517 n.7 (App. 1984).

The statutory construction rule of lenity reflects the reluctance of courts to increase or multiply punishments absent a clear and definite legislative direction. Laion v. FSM, 1 FSM R. 503, 528 (App. 1984).

Where possible, statutory provisions should be interpreted in such a way as to avoid any potential conflicts between the statute and the Constitution of the Federated States of Micronesia. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

The Code will determine the content of statutory language to be enforced, although other sources such as congressional journals and even the original version of the statute might be consulted to indicate legislative intent when the language in the Code is ambiguous. FSM v. George, 2 FSM R. 88, 92 (Kos. 1985).

Interpretations which strip clauses of substance and effect run against the norms of interpretation and are greatly disfavored. FSM v. George, 2 FSM R. 88, 94 (Kos. 1985).

Where there is a conflict between a statute of general application to numerous agencies or situations, such as the APA, and a statute specifically aimed at a particular agency or procedure, such as the National Election Code, the more particularized provision will prevail. This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the affected agency and procedure. Olter v. National Election Comm'r, 3 FSM R. 123, 129 (App. 1987).

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

A cardinal principle of statutory interpretation is to avoid interpretations which might bring into question the constitutionality of the statute. Edwards v. Pohnpei, 3 FSM R. 350, 359 (Pon. 1988).

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

Where legislative history does not conclusively establish which meaning Congress intended, the statutory provision must be considered against the background of the entire act to arrive at an interpretation consistent with other provisions and with the general design of the act. Michelsen v. FSM, 3 FSM R. 416, 422 (Pon. 1988).

Unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result. Michelsen v. FSM, 3 FSM R. 416, 426 (Pon. 1988).

Statutory provisions designed to enhance the capacity of the government to enforce penalties for failure to pay taxes are penal, not remedial, and should be strictly construed. In re Island Hardware, Inc., 3 FSM R. 428, 432 (Pon. 1988).

Courts should not broaden statutes beyond the meaning of the law as written, even if it means that gambling devices just as harmful socially as slot machines, such as poker machines, will be excluded from statutory prohibition of slot machines. In re Slot Machines, 3 FSM R. 498, 500-01 (Truk S. Ct. Tr. 1988).

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).

Since Congress used the Trust Territory Investment Act as the overall model in drafting the FSM Foreign Investment Act and adopted language similar to that employed in the Trust Territory statute for describing the activities to be covered in the FSM law, analysis of the new Act must begin with a presumption that Congress intended that the FSM Foreign Investment Act would regulate essentially the same activities as those covered by the Trust Territory Investment Act. Carlos v. FSM, 4 FSM R. 17, 26 (App. 1989).

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

Because the FSM statute is based upon the United States model, the FSM Supreme Court should look to United States' court decisions under 42 U.S.C. § 1983 for assistance in determining the liability of a governmental body under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 204 (Pon. 1991).

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

The plain meaning of a statutory provision must be given effect whenever possible. Setik v. FSM, 5 FSM R. 407, 410 (App. 1992).

Where a statute of general application conflicts with a statute of more particular application concerning the same subject matter, the more particularized provision prevails. However, remedial provisions that are merely cumulative and not duplicative apply equally. Setik v. FSM, 5 FSM R. 407, 410 (App. 1992).

That certain provisions of a general statute are overridden by a more specific statute does not imply that the general statute in its entirety is superseded. Setik v. FSM, 5 FSM R. 407, 411 (App. 1992).

When the language in the Code is ambiguous, other sources such as congressional journals may be consulted. Bank of the FSM v. FSM, 6 FSM R. 5, 7 (Pon. 1993).

Statutes should be interpreted so that they are internally consistent. Provisions should be considered against the background of the entire act so as to arrive at a reasonable interpretation consistent with other specific provisions and the general design of the act. Bank of the FSM v. FSM, 6 FSM R. 5, 8 (Pon. 1993).

Where licenses are to be issued to each bank branch, and each bank branch must be scrutinized as to its qualifications for a license, it is a reasonable statutory interpretation that the regulatory license fee must be paid for each bank branch. Bank of the FSM v. FSM, 6 FSM R. 5, 8 (Pon. 1993).

Where the FSM statute governing extradition proceeding is silent on the appealability of extradition proceedings and where the statute has been borrowed from another jurisdiction where extradition proceedings are not appealable it is presumed that the meaning and application of the statute is as it was interpreted by the courts of the source. In re Extradition of Jano, 6 FSM R. 23, 25 (App. 1993).

A long-standing norm of statutory construction holds that provisions of law must be read so as to be internally consistent and sensible. McCaffrey v. FSM Supreme Court, 6 FSM R. 279, 281 (App. 1993).

Pronouncements by a later legislature concerning the meaning of actions taken by an earlier legislature are generally unreliable, especially when the later legislative body is a part of an entirely different government. Etscheit v. Adams, 6 FSM R. 365, 381 (Pon. 1994).

Courts prefer to read different sections of the same statute in a manner that permits them to be consistent with each other rather than to be inconsistent or at cross purposes. FSM v. Moroni, 6 FSM R. 575, 579 (App. 1994).

The intention of the legislature as to whether a provision is mandatory or not is determined from the language used. The use of the word shall is the language of command and considered mandatory. In re Failure of Justice to Resign, 7 FSM R. 105, 109 (Chk. S. Ct. App. 1995).

Statutes and constitutional provisions must be read together when the statutes are pre-constitution and because they are only effective to the extent they are not in conflict with the Chuuk Constitution. Sana v. Chuuk, 7 FSM R. 252, 254-55 (Chk. S. Ct. Tr. 1995).

Provisions of a law must be read so as to be internally consistent and sensible, and where a term in a statute is unambiguous and dispositive, a court should not examine other materials that might indicate legislative intent. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 284 (Yap 1995).

When the statute is not ambiguous there is no need to examine legislative intent, but when the language of the Code is ambiguous, other sources, such as Congressional journals or the original version of the statute may be consulted to give an indication of Congressional intent. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 286 (Yap 1995).

Where FSM Code provisions are based on U.S. law FSM courts may, in order to shed light on legislative intent, consider statutory interpretations by U.S. courts without being bound by those cases, but cases interpreting sections of the U.S. Code that were not enacted into the FSM Code are not relevant as an indication of the intent of the FSM Congress. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 286 (Yap 1995).

A statute that imposes a penalty is subject to strict construction, particularly where a penalty may be imposed without requiring a finding of a culpable state of mind. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 368 (Yap 1996).

The unambiguous words of a statute which imposes criminal penalties cannot be altered by judicial construction to punish someone not otherwise within its reach, no matter how much he deserves punishment. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

A general section in a statute cannot expand the class of principals to whom the more specific sections are directed. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 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).

Statutes authorizing attachment must be construed strictly. In general, attachment is available only in certain kinds of actions and then only upon a showing of special grounds. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 662 (Pon. 1996).

The legislature's intention as to whether a provision is mandatory is determined from the language used. The use of the word shall is the language of command and considered mandatory. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670 (App. 1996).

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).

A court should construe a statute as the legislature intended. Legislative intent is determined by the wording of the statute. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Thus a court must give effect to the plain meaning of a statutory provision whenever possible. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 131 (App. 1997).

A provision of law must be read so as to be internally consistent and sensible. Courts should read different sections of the same statute, or even the two sentences that form one subsection, in a manner that permits them to be consistent with each other rather than to be inconsistent or at cross purposes. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 131-32 (App. 1997).

Basing legal analysis on dictionary definitions can be an uncertain proposition. This is particularly so where Congress has explicitly defined the term in the statute. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 132 n.2 (App. 1997).

When Congress has determined that the application of two subsections together would deter tax delinquencies, it is not a court's function to make a contrary determination. A court's function is to apply the statute as Congress intended unless doing so would violate the Constitution. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 133 (App. 1997).

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

Because of the verbs in the statute, only "carry" is defined in the Weapons Control Act, "possess" is given its usual meaning of taking into one's possession, and possession means to have in one's control. FSM v. Fal, 8 FSM R. 151, 155 (Yap 1997).

An obligation of the state to pay a litigant a sum in exchange for dismissal of claims sought that arises from the judgment of dismissal of that case is not contrary to the legislative intent expressed in any provision of the Financial Management Act. Otherwise, no settlement of litigation requiring payment by the state could ever be made. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

It is the purpose of the Financial Management Act to ensure that public funds are only used or

promised in a manner provided by law and a judgment of the Chuuk State Supreme Court trial division is a manner provided by law. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

When interpreting a statute, the plain meaning of the statutory provision must be given meaning whenever possible. Courts should not broaden statutes beyond the meaning of the law as written. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM R. 306, 310 (Pon. 1998).

A court should avoid unnecessary constitutional adjudications. When interpreting a statute, courts should, where possible, avoid selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. If construction of a statute by which a serious doubt of constitutionality may be avoided is fairly possible, a court should adopt that construction. Cornelius v. Kosrae, 8 FSM R. 345, 348 (Kos. S. Ct. Tr. 1998).

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

It is a well settled rule of law that an ordinance will be presumed to be valid, unless the contrary appears on its face. Esechu v. Mariano, 8 FSM R. 555, 556 (Chk. S. Ct. Tr. 1998).

Via the analogy implicated by the Transition Clause, under a statute carried over from the Trust Territory which speaks in terms of the Trust Territory and any of its political subdivisions as being persons, Pohnpei is also a person to the same extent that a Trust Territory political subdivision was a person under the statute's prior incarnation. AHPW, Inc. v. FSM, 9 FSM R. 301, 305 (Pon. 2000).

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

When a case's disposition and the plaintiffs' sought relief do not require construction of statute as to its constitutionality, courts will not undertake a decision based upon a constitutional issue. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

The court will not rule on a statute's constitutionality when it can limit the case's disposition to interpretation of the statute's language as it applies to the question. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

When an act lists 23 different and distinct prohibited gaming devices, including "slot machines," but makes no mention of "poker machines" whatsoever, by its failing to list "poker machines" in an extended list of prohibited items, the legislature excluded such machines from the application of the law, and the court will not include the machines into the proscription of the statute something which the Legislature intended to exclude. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 547 (Chk. S. Ct. Tr. 2000).

Without a separate statute of limitations in the act creating a public corporation, the state legislature obviously intended for suit to be brought against the corporation within the same time period that suit must be brought against the state and its various related entities even though the corporation may act on its own and sue and be sued in its own name. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

The generally recognized rule is that interest should not bear interest, but compound interest may be awarded if authorized by statute. When the statute reads "nine percent a year" it is not an express authorization to compound interest annually, but is instead, without more, merely a statement of the rate of simple interest. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Title 6, chapter 10, subchapter 1 of the FSM Code is replete with references to officials who either do not exist now or who no longer carry out the functions with which they are identified in the statute, and when confronted with such language in a section thereof, the FSM Supreme Court has generally ruled that the section applies only to the Trust Territory High Court. FSM v. Kuranaga, 9 FSM R. 584, 586 (Chk. 2000).

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

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

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

The plain meaning of a statutory provision must be given effect whenever possible. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 62 n.7 (Pon. 2001).

When statutes are pre-constitution, the statutes and constitutional provisions must be read together because the statutes are only effective to the extent they are not in conflict with the constitution. 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).

A long-standing norm of statutory construction states that provisions of law must be read so as to be internally consistent and sensible. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 64 (Pon. 2001).

Generally, statutes and enactments in derogation of the common law – existing law – are to be strictly construed. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 122 (Pon. 2001).

Although it is generally agreed that a statute in the derogation of the common law must be strictly construed, this rule of statutory construction cannot be used to defeat the obvious purpose of the legislature, nor to lessen the scope plainly intended to be given the statute. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 122 (Pon. 2001).

When a Pohnpei statute does not show any legislative intent to abolish the well-established principle of absolute judicial immunity for the judicial act of timing the issuance of court decisions and to allow a private suit for damages in such cases, a court can only conclude that the Pohnpei Legislature did not intend to abolish absolute judicial immunity in this instance and did not intend to create a right for damage suits against judges if their decisions were not timely. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 122 (Pon. 2001).

When the statute requires that a statement of contest must be filed within five days "after declaration of the result of the election by the body canvassing the returns" and also provides that upon "tabulation of each of the precinct votes, the Commission shall tabulate or cause to be tabulated the cumulative results, including the total of election results for each nominee, and make these results known to the public," the

declaration is when the results are made known to the public. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

If a current law is unconstitutional, the previous law generally applies. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 154 (Chk. S. Ct. App. 2001).

Generally, statutes and enactments in derogation of the common law, or existing law, are to be strictly construed. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

The court's task is to apply the law in the manner the Legislature intended as evidenced by the language it used in the statute. If this is unfair, it is a matter for the Legislature to correct, not the court. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

FSM Code provisions must be construed with a view to effect their object. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 334 (Pon. 2001).

Generally, a provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. Jonas v. Kosrae, 10 FSM R. 453, 459 (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).

Statutes which do not, by their terms, provide private citizens with a cause of action for money damages cannot be the basis for private damages claims. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 634 (Pon. 2002).

The court will not infer the existence of a private cause of action in the absence of a clear intent expressed in the statute that such a private cause of action be created. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 634 (Pon. 2002).

The court must begin with the presumption that acts of Congress are constitutional. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

Acts of the Kosrae Legislature are presumed to be constitutional. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

Courts should avoid, where possible, selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. Accordingly, a defendant is burdened with a high standard of proof in establishing the unconstitutionality of a state law. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

The word "demand" means "ask as by right." When a police officer did request and ask as by right for the defendant's driver's license, even though the officer did not use the word "demand," the officer's request to the defendant for his driver's license satisfies the statute's "demand" requirement. Kosrae v. Sigrah, 11 FSM R. 263, 264 (Kos. S. Ct. Tr. 2002).

The plain meaning of a statutory provision must be given effect whenever possible. Courts should not broaden statutes beyond the meaning of the law as written. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 378 (App. 2003).

The court's role is to construe the relevant statute as the legislature intended. Legislative intent is determined, first and foremost, by the statute's wording. The statute's text is considered the best evidence

of legislative intent or will. The court must give effect to the plain meaning of a statutory provision whenever possible. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 379 (App. 2003).

When 53 F.S.M.C. 604 does not contain the broader language of, "or other legal processes," it cannot be interpreted in a manner identical to the U.S. statute that does. The FSM provision is more restrictive than the U.S. provision, as it protects Social Security benefits only from execution, attachment, garnishment, and assignment and not from other legal processes. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 379 (App. 2003).

The nation's laws are presumed to be constitutional, and when possible, statutory provisions should be interpreted in such a way as to avoid any potential conflicts between the statute and the Constitution. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

Statutes are presumed constitutional until challenged, and the burden is on the challenger to clearly demonstrate that a statute is unconstitutional. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

A court should construe a statute as the legislature intended. Legislative intent is determined by the statute's wording. What a legislature says in the statute's text is considered the best evidence of the legislative intent or will. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

The Legislature has granted the appellate division "all powers necessary to make the determination" of the contested election. The Legislature's intent when it said "all powers" was that the court could consider all relevant and admissible evidence properly offered. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

All statutes are presumed to be constitutional and if there is any other way of disposing of an issue other than on a constitutional ground, then the court should decide the issue in that manner. Thus the court addresses a statute's constitutionality only with reluctance. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

The conclusion that the statute is unconstitutional to the extent that it denies payment of judgments based on civil rights violations at least implies that the statute may be judicially tailored in application to make the statute otherwise workable. Estate of Mori v. Chuuk, 12 FSM R. 3, 12 (Chk. 2003).

A statutory provision repugnant to the Constitution, would be invalid to the extent of the conflict. FSM v. Udot Municipality, 12 FSM R. 29, 47 (App. 2003).

One principle of statutory construction is that the specific provision prevails over the more general. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

If two statutes conflict, the more recent expression of the legislature's will (that is, the most recently enacted statute) prevails over the earlier to the extent of the conflict. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

Generally, a specific statutory provision will control rather than a general statute to the extent that they conflict. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

Since "enter" means to place anything before a court, or upon or among the records, in a formal and regular manner, and usually in writing, and since common sense must play a part in the way that an agency's statutorily mandated procedures are interpreted, a letter from the Social Security Board stating that it is a final decision by the Board, and that the petitioner has the option of appealing to the FSM Supreme Court, is a final, entered order within the meaning of 53 F.S.M.C. 208. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 103-04 (Kos. 2003).

When there is an apparent, or even putative, conflict between a statute of general application like the Administrative Procedures Act, and a statute directed toward a particular agency, the more specific provisions will apply. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 104 (Kos. 2003).

Although statutes of limitation on criminal prosecutions must be accorded a rational meaning in harmony with the obvious intent and purpose of the law, such statutes must be liberally construed in favor of the accused, and exceptions from the benefits of such statutes must be construed narrowly or strictly against the government. The rule of strict construction will not justify an unreasonable interpretation – one contrary to the law's intent. The rule of strict construction simply means that ordinary words are to be given their ordinary meaning. FSM v. Wainit, 12 FSM R. 105, 109-10 (Chk. 2003).

By deliberately using a different term in 11 F.S.M.C. 105(3)(b) from the one defined in 11 F.S.M.C. 104(11), the drafters can only have intended that the meaning be different, and, by not defining it, that the term's meaning should be the common, ordinary English language meaning of the term because words and phrases as used in the code must be read with their context and be construed according to the common and approved usage of the English language. 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).

A statute's policy is to be found in the legislative intent, and it is the cardinal rule in the construction of statutes that such intent is, itself, to be found solely in the statute's words if they are free from ambiguity and express a sensible meaning. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

A court should construe a statute as the legislature intended. Legislative intent is determined by the statute's wording. What a legislature says in a statute's text is considered the best evidence of the legislative intent or will. Thus a court must give effect to the plain meaning of a statutory provision whenever possible. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

When the statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

When the statute's drafters deliberately chose the term "public officer" in an exception to the criminal statute of limitations instead of using the term "public servant," as they did in so many other criminal code sections, the statute's object and the drafters' intent was to apply this exception to all public officers, not just to those the criminal code defined as "public servants." This is the statute's plain and unambiguous meaning. If the drafters had intended to restrict the exception to just those persons that had been defined as "public servants," they could easily have inserted that term instead. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

FSM Code provisions are to be construed according to the fair construction of their terms, with a view to effect its object and to promote justice. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

A national statute whose term "public officer" refers to state and municipal public officials as well as national officials does not raise a constitutional issue involving the allocation of powers between the two sovereigns – state and national – and the three levels of government – national, state, and local because it applies to persons based upon their status as public officers – persons holding posts and exercising governmental functions. It does not matter whether that status is defined and bestowed upon a person by the national government or by another level of government in the FSM. It only matters that the person

holds that status. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

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).

The question of whether a statute acts retrospectively or only prospectively is one of legislative intent. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

An Act was not intended to be retroactive when it provided that the Act's "revision" should "not be construed to extinguish any rights or remedies of any party which may have arisen prior to such revision, unless specifically provided otherwise." Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

When the statute does not provide for an alternative, the court may not read into a statute words which do not exist therein. Chuuk v. Ernist Family, 12 FSM R. 154, 160 (Chk. S. Ct. Tr. 2003).

Basing legal analysis on dictionary definitions can be an uncertain proposition. Not the least of such concerns is that a comprehensive dictionary aims at setting out all meanings of a word, while a court must determine the precise intended meaning of a word or phrase in a specified context. AHPW, Inc. v. FSM, 12 FSM R. 164, 166 (Pon. 2003).

Even where a litigant may have concerns over its ability to realize on a judgment against the state defendant, that concern alone does not serve to enlarge the scope of a statute to create liability for the national government, against which a judgment may be more collectible. Such issues are for the legislature. AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 2003).

There is no meaningful distinction between the terms "compulsory acquisition" and "expropriation." AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 2003).

The court cannot read words into a statute that are not there. AHPW, Inc. v. FSM, 12 FSM R. 164, 167-68 (Pon. 2003).

National laws are often applied to persons based on their status, even when that status is defined solely by another government. FSM v. Wainit, 12 FSM R. 201, 205 (Chk. 2003).

Words and phrases as used in the FSM code shall be construed according to the common and approved usage of the English language. FSM v. Wainit, 12 FSM R. 201, 205 (Chk. 2003).

The legislature's intention as to whether a statutory provision is mandatory is determined from the language used. Generally, a provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. Buruta v. Walter, 12 FSM R. 289, 293 (Chk. 2004).

A cardinal principle of statutory construction is to avoid an interpretation which may call into question the statute's, or the rule's, constitutionality. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 353 (Pon. 2004).

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

The nation's laws are presumed to be constitutional. A fundamental principle of statutory

interpretation is that where a statute can be read in two ways, one raising constitutional issues and the other interpreting the language as affecting matters clearly within Congress's constitutional reach, the latter interpretation should prevail so that the constitutional issue is avoided. Jano v. FSM, 12 FSM R. 569, 572-73 (App. 2004).

Courts should, where possible, avoid selecting interpretations of a statute which may bring into doubt that statute's constitutionality. Jano v. FSM, 12 FSM R. 569, 573 (App. 2004).

Statutes are presumptively constitutional. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

Decisions of the United States courts have been consulted by our nation's courts when the language of the FSM Constitution or statute is comparable to language of the United State Constitution, but when there has been no showing that the Kosrae statutory language is comparable to the language addressed by the United States Supreme Court, those decisions will not be considered, especially when the FSM Supreme Court appellate division has addressed the issue. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

When a state law makes a specific reference to a national statute, any interpretation of that state law must simultaneously present a question of national law. The FSM Supreme Court would have subject matter jurisdiction over such a case. Shrew v. Sigrah, 13 FSM R. 30, 32 (Kos. 2004).

When under the plain language of 30 F.S.M.C. 202(1), only unobligated funds are subject to the Governor's request for distribution and while Kosrae State Law No. 8-17 does not make reference to obligated funds, it makes a specific reference to 30 F.S.M.C. 202(1), there is no conflict between the two laws, because the Kosrae statute, by reference to the national statute, incorporates the qualification for distribution contained in the national statute that only unobligated funds are subject to distribution. A statute must be given its plain meaning wherever possible, and when that plain meaning is derived by looking to the national statute specifically referred to in the state statute, the Governor has an obligation to request the distribution of only unobligated funds. Shrew v. Sigrah, 13 FSM R. 30, 33 (Kos. 2004).

An otherwise valid national statute must control over a state statute. AHPW, Inc. v. FSM, 13 FSM R. 36, 43 (Pon. 2004).

In considering a challenge to a statute's constitutionality, the initial premise upon which the court must begin is that acts of the Kosrae State Legislature and the state's laws are presumed to be constitutional. The court should avoid selecting an interpretation of a statute which may bring into doubt that statute's constitutionality. Kosrae v. Phillip, 13 FSM R. 285, 288 (Kos. S. Ct. Tr. 2005).

A practice which has been followed by a government for a significant period of time is entitled to great weight in establishing that practice's constitutionality. The party that raises the issue has the burden of proof as to the statute's unconstitutionality. Kosrae v. Phillip, 13 FSM R. 285, 288 (Kos. S. Ct. Tr. 2005).

The standard for consideration whether a statute is unconstitutionally vague is that a criminal statute must give fair notice of what acts are criminal conduct and subject to punishment; and the statute must be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that person of common intelligence must necessarily guess at its meaning. However, it is accepted that some generality may be necessary in describing the prohibited conduct. Kosrae v. Phillip, 13 FSM R. 285, 289 (Kos. S. Ct. Tr. 2005).

When the language of the Kosrae statute and the United States statute are similar, it is appropriate to look to interpretations by United States courts. Kosrae v. Phillip, 13 FSM R. 285, 289 (Kos. S. Ct. Tr. 2005).

When interpreting the FSM Code, words and phrases must be read with their context and must be construed according to the common and approved usage of the English language. FSM v. Wainit, 13 FSM

R. 532, 537, 538, 540 (Chk. 2005).

By deliberately using a different term, "public officer," in 11 F.S.M.C. 105(3)(b) from the ones defined in 11 F.S.M.C. 104(11) and in 11 F.S.M.C. 1301(2), the drafters can only have intended that the meaning be different, and, by not defining it, that the term's meaning should be its common, ordinary English language meaning. FSM v. Wainit, 13 FSM R. 532, 538 (Chk. 2005).

A statute's policy is to be found in the legislative intent. And it is the cardinal rule in the construction of statutes that such intent is, itself, to be found solely in the statute's words, if they are free from ambiguity and express a sensible meaning. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

A court should construe a statute as the legislature intended. Legislative intent is determined by the statute's wording. What a legislature says in a statute's text is considered the best evidence of the legislative intent or will. Thus a court must give effect to a statutory provision's plain meaning whenever possible. In other words, when the statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

The views of a later Congress about what an earlier Congress intended carry little or no weight. As a matter of law, such evidence can only be given little or no weight. FSM v. Wainit, 13 FSM R. 532, 540 (Chk. 2005).

Since by statute, the classification of the titles, chapters, subchapters, and sections of the FSM Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and since Congress has specifically prohibited that any implication, inference, or presumption of a legislative construction be drawn therefrom, the court can give no weight or credence to and must reject any argument, implication, inference, or presumption to be draw from a subchapter's heading or from a subsection's arrangement in that subchapter. FSM v. Wainit, 14 FSM R. 51, 54 (Chk. 2006).

Since a statutory provision's plain meaning must be given effect whenever possible and courts should not broaden statutes beyond the meaning of the law as written, when there is no requirement in Section 13.201's express language that the accused be absent at the time the offense was committed, absence is thus not an essential element of the offense of accessory. Nena v. Kosrae, 14 FSM R. 73, 82 (App. 2006).

Generally, when the word "district" appears in an FSM Code provision carried over from the Trust Territory Code by virtue of the Constitution's Transition Clause, "state" will be read in its place. FSM v. Kansou, 14 FSM R. 136, 138 n.1 (Chk. 2006).

An FSM Code provision is to be construed according to the fair construction of its terms, with a view to effect its object and to promote justice. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 n.1 (Pon. 2006).

When the plaintiff has a claim de jure that the power conferred (on the court to treble damages) should be exercised because it had proved its right to damages under 32 F.S.M.C. 301 *et seq.* and when, considering the whole anticompetitive practices statute and its nature and object, Congress's intent was to impose a positive duty to treble damages, not a discretionary power to do so, the court will therefore award treble damages. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

When the defendant's anticompetitive acts did not just harm the plaintiff's business, but those acts put it out of business, even if treble damages were discretionary, there would be no more appropriate a case to exercise the discretion to treble damages than one where the anticompetitive acts put the plaintiff out of business. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

The court's obligation is to construe the statute to implement the legislature's intent and the best evidence of its intent is the words used (or not used) in the statute. Robert v. Simina, 14 FSM R. 257, 260 (Chk. 2006).

By deliberately using a different term in 11 F.S.M.C. 105(3)(b) from the one defined in 11 F.S.M.C. 104(11), the drafters must have intended that the meaning be different, and, by not defining it, that the term's meaning should be its common, ordinary English language meaning because words and phrases as used in the FSM Code must be read with their context and be construed according to the common and approved usage of the English language. FSM v. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

The common and approved English language 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. 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 tolling provision to the criminal statute of limitations, since 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. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

Words and phrases, as used in the FSM Code or in any act of the Congress or in any regulation issued pursuant thereto must be read with their context and must be construed according to the common and approved usage of the English language. FSM v. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

Under the English language's common and approved usage, words and phrases that modify other words or phrases are positioned as closely as possible to the word or phrase they modify because referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent. FSM v. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

When the maximum possible penalty for an alleged offense is ten years and the limitations period for offenses "punishable by imprisonment for ten years or more" is six years, the applicable limitations period is six years. The phrase, "ten years or more" does not mean that the maximum possible sentence must be more than ten years. The disjunctive "or" clearly means that, for subsection 105(2) to apply, a maximum possible sentence of only ten years is enough. FSM v. Nifon, 14 FSM R. 309, 314 (Chk. 2006).

Words and phrases, as used in the FSM Code or in any act of the Congress must be read with their context and shall be construed according to the common and approved usage of the English language. FSM v. Sam, 14 FSM R. 328, 334 n.2 (Chk. 2006).

Court-promulgated rules are interpreted using the principles of statutory construction. FSM v. Petewon, 14 FSM R. 463, 466 (Chk. 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).

If the current law is unconstitutional, the previous law generally applies. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 588 (Chk. S. Ct. App. 2007).

A specific statutory provision prevails over a general provision. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

The legislature's intention as to whether a statutory provision is mandatory is determined from the language used. Generally, a provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. FSM v. Zhang Xiaohui, 14 FSM R. 602, 611 (Pon. 2007).

Although Section 1306 of Title 19 of the FSM Code authorizes the Secretary of the Department of

Transportation, Communication and Infrastructure to investigate violations, there is no provision in Title 19 that prescribes what action shall be taken if an investigation is not undertaken. As such, the requirement that an investigation be undertaken prior to the filing of an information is not mandatory. FSM v. Zhang Xiaohui, 14 FSM R. 602, 611 (Pon. 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 Bankruptcy Act states the debtor's estate consists of "all property owned by the debtor on the date of the application," the Act should not be interpreted to mean something other than what it says. "All" means "all." Since statutes are to be interpreted according to their plain meaning, and when a statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. The meaning of "all" is plain and unambiguous." In re Panuelo, 15 FSM R. 23, 27 (Pon. 2007).

Words and phrases used in the FSM Code (of which the Bankruptcy Act is a part) must be read with their context and must be construed according to their common and approved English language usage. In re Panuelo, 15 FSM R. 23, 27 n.1 (Pon. 2007).

Since the FSM Code provisions are construed according to the fair construction of their terms with a view to effect its object and to promote justice, to construe the phrase "all property," to include the debtor's property outside the FSM would construe the Bankruptcy Act and 31 F.S.M.C. 203(1)(a) according to the fair construction of their terms or with a view to effect the Bankruptcy Act's object and to promote justice. In re Panuelo, 15 FSM R. 23, 28 (Pon. 2007).

Statutes are presumed to be constitutional. FSM v. Masis, 15 FSM R. 172, 175 (Chk. 2007).

Courts observe a strict rule of construction against a retrospective operation, and indulge in the presumption that the legislature intended statutes, or amendments thereof, enacted by it, to operate prospectively only, and not retroactively. A contrary determination will be made only when the legislature's intention to make a statute retroactive is stated in express terms, or is clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously shown. Esa v. Elimo, 15 FSM R. 198, 204-05 (Chk. 2007).

It is generally considered violative of the constitutional right to due process to apply a law retroactively that would divest someone of a vested right or property interest. Esa v. Elimo, 15 FSM R. 198, 205 (Chk. 2007).

Since the courts are the final authority on issues of statutory construction, when, based on the undisputed record and reasonable inferences drawn therefrom, the court concludes that the plaintiff is not selling imported items, the case is ripe for summary judgment on the issue of whether the tax statute applies to locally produced aggregate. K&I Enterprises v. Francis, 15 FSM R. 414, 418 (Chk. S. Ct. Tr. 2007).

When "first sale" is defined as "the sale first made after the date of receipt in Chuuk State of taxable tangible items, a tax on first sale in the State of Chuuk of all tangible items, except gasoline and unprocessed and unpackaged items, means that in order for an item to be taxable, there must be "receipt of the item" in Chuuk. The only reasonable inference to be drawn from the definition of "first sale" is that items which have never left Chuuk, that is, locally produced goods are not subject to the statute because they have no "date of receipt" in Chuuk. K&I Enterprises v. Francis, 15 FSM R. 414, 418 (Chk. S. Ct. Tr. 2007).

The time periods running from "discovery" of the offense and the date the offense was committed are

subject to the qualifier, "whichever is longer." The court will not read into the statute a qualifier of "whichever is shorter" because this would be directly contrary to the statute's plain meaning. The longer of the two possible calculations of the statutory limitations period applies. FSM v. Narruhn, 15 FSM R. 530, 533 (Chk. 2008).

Although it is a settled rule of statutory construction that a statute adopted from another jurisdiction is presumed to have been adopted as construed by the courts of that jurisdiction, when the statute's substance departs from the other jurisdiction's statute, the result will also differ. In re Panuelo, 15 FSM R. 640, 641 (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 criminal liability is explicitly imposed for the use of a firearm "in connection with or in aid of the commission of any crime against the laws of the Federated States of Micronesia," the use of the term "laws of the Federated States of Micronesia" does not make the statute unconstitutionally vague. This term refers to any or all criminal laws in the Federated States of Micronesia, national, state, or local because if it were otherwise, it would not be possible for the statute to have its obviously intended purpose and effect – to discourage the use of, and to punish the use of, firearms during the commission of other crimes. The plural form of the word "laws" further compels this conclusion. FSM v. Aiken, 16 FSM R. 178, 183 (Chk. 2008).

The appellate division should avoid unnecessary constitutional adjudication, and when interpreting statutes should try to avoid interpretations which may bring the constitutionality of the statute into doubt. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 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).

A statutory construction that ends in an absurd result must be rejected. This is because a provision of law must be read so as to be internally consistent and sensible. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

Congress has mandated that words and phrases in the FSM Code must be read with their context, and that statutory provisions must be construed according to the fair construction of their terms, with a view to effect its object and to promote justice. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

Statutes are to be construed as Congress intended, which is first and foremost determined by the statute's language. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 604 (Pon. 2009).

Because issues of statutory construction and constitutional construction are issues of law, courts have final authority over them, and the issues are ripe for summary judgment, which will be granted to the party that is entitled to it as a matter of law. In ruling on these issues of law, the language of the statutory and constitutional provisions is controlling and the court will construe and give effect to the provisions' plain meaning. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

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).

11 F.S.M.C. 1023(7), which prohibits firearms use in connection with or in aid of the commission of "any crime against the laws of the Federated States of Micronesia," does not restrict liability for firearms use to only those crimes defined in the FSM Code because the term "any crime against the laws of the Federated States of Micronesia," when read in context must refer to any or all criminal laws in the Federated States of Micronesia, national, state, or local, since, if it were otherwise, it would not be possible for the statute to have its obviously intended purpose and effect – to discourage the use of, and to punish the use of, firearms during the commission of other crimes. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

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).

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).

While the court is mindful that a practice which has been engaged in by a branch of the government for a long period of time is entitled to great weight in establishing the constitutionality of that practice, the passage of time does not automatically make a practice (or a statute) constitutional. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

The Chuuk wrongful death statute phrases the class of persons entitled to recovery in the conjunctive ("and"), not the disjunctive ("or"). Generally the use of the conjunctive "and" instead of the disjunctive "or" would mean that all three named beneficiaries – surviving spouse, children, and next of kin – are within the class of persons for whose benefit a wrongful death action may be brought and construing "and" according to its common and approved English usage would mean that all three groups, spouse, children, and next of kin, compose a single class of beneficiaries in a wrongful death action. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

Words and phrases as used in the Trust Territory Code must be read with their context and must be construed according to the common and approved usage of the English language. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

There is no evidence that the Trust Territory Congress of Micronesia's legislative intent in the wrongful death statute was that "other next of kin" meant only those who would inherit under intestate succession acts, especially since, at the time the Trust Territory wrongful death statute was enacted, there were no intestate succession acts. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

Trust Territory Code provisions must be construed according to the fair construction of their terms, with a view to effect its object and to promote justice. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

When there is a conflict between a statute of general application and a statute specifically aimed, the more particularized provision will prevail. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 324 (Kos. 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).

Before starting an analysis of arguments concerning a statute's constitutionality, it is necessary to review any issues of statutory interpretation which may obviate the need for a constitutional ruling. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

Although parties may stipulate to factual matters, they may not stipulate to interpretations of law. Berman v. Lambert, 17 FSM R. 442, 446, 450-51 (App. 2011).

It is not competent for the parties or their attorneys to determine by stipulation questions as to the existence or proper construction or application of a statute. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

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

Statutes must be interpreted to remain internally sensible and consistent. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

A cardinal rule of statutory construction is that, where possible, courts avoid interpreting a law which may bring its constitutionality into doubt. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

In interpreting a statute, the statutory provision's plain meaning must be given full effect whenever possible. Berman v. Lambert, 17 FSM R. 442, 448 (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).

A court should not interpret a statute in a way that would cause a question as to the statute's constitutionality. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

If a statutory provision is unconstitutional and can be severed from the rest of the legislative act, only that provision will be struck down. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 551 (App. 2011).

A legal conclusion that a statute is unconstitutional implies that it may be judicially tailored to make the statute otherwise workable. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 551 (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).

The question of whether a statute acts retrospectively or only prospectively is one of legislative intent. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

Courts observe a strict rule of construction against a statute's retrospective operation, and indulge in the presumption that a legislature intends the statutes it enacts, or amendments thereto, to operate prospectively only, and not retroactively. A contrary determination can be made only when the

legislature's intention to make a statute retroactive is stated in express terms, or is clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously shown. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

It generally violates the constitutional right to due process to apply a law retroactively that would divest someone of a vested right or property interest. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

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).

The term "Trust Territory" in statutes carried over from the Trust Territory Code should generally be read as meaning "Federated States of Micronesia" when the power involved is a national power. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619 n.1 (Chk. 2011).

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

A central principle of statutory interpretation is that, when a statute lends itself to two or more readings, a court shall choose the interpretation that is clearly constitutional. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 31 (Pon. 2011).

Generally, when the word "district" appears in an FSM Code provision carried over from the Trust Territory Code by virtue of the Constitution's Transition Clause, "state" will be read in its place. Likewise, "Trust Territory" should be read as "Federated States of Micronesia." Marsolo v. Esa, 18 FSM R. 59, 66 n.5 (Chk. 2011).

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

Under a plain reading of the statute, the FSM Development Bank is not required to obtain permission on a case-by-case basis before starting collection actions for Federated Development Authority loans, and the court will not broaden the statute beyond the meaning of the law as written. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

Statutes are not to be construed by singling out a particular phrase, because the court must construe the words and terms at issue in the context of the other language used in the statute. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

A common maxim of statutory construction is that the expression of one thing means the exclusion of others. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

When both general and specific statutes address a matter, the specific controls the subject. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

A plain reading of the statutes, in context, includes a case-by-case requirement for refinancing FDA loans and by its specific inclusion excludes that requirement from collection efforts. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

When the FSM civil rights statute is not as expansive as 42 U.S.C. § 1988 because it allows an attorney's fee award only in an action brought under 11 F.S.M.C. 701(3) and when an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement). It authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3). Poll v. Victor, 18 FSM R. 402, 405 (Pon. 2012).

Statutes are presumed constitutional. In re Lot No. 029-A-47, 18 FSM R. 456, 458 (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).

A statute that provides only that the Plan's Board "may prescribe" or "may establish" differing premium amounts based on the number of the enrollee's dependants, or on their risk factors, does not appear to require that differing premium amounts be set. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

When an FSM secured transactions statute mirrors and appears to have been drawn from a U.S. statute, U.S. caselaw construing the U.S. statute may be consulted for guidance in construing the FSM statute. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 & n.6 (Kos. 2013).

The FSM Development Bank is not defunct because if the public law that restructured it were unconstitutional, then the previous FSM Development Bank statute would apply. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

Congressionally-enacted statutes are presumed to be constitutional. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

Wording in the FSM Code or in statutes enacted by Congress must be construed according to the English language's common and approved usage. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

When the people's intent as voiced through its duly elected Congress is expressed in a statute, a court must give effect to the statutory provision's plain meaning whenever possible. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

It is a canon of construction that statutes that are *in pari materia* may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

The court will not recharacterize damages as a part of the uninjured spouse's loss-of-consortium claim and alter the nature of the damages claim solely to circumvent the FSM's statutory limited waiver of its sovereign immunity that prevents the injured spouse from being awarded the full amount of the damages she suffered. The court will comply with Congress's policy choice and its intent in enacting the limited waiver. Lee v. FSM, 19 FSM R. 80, 85 (Pon. 2013).

Congress enacted an exemption statute, 6 F.S.M.C. 1415, and courts cannot broaden statutes beyond their original meaning. Nor do courts have the power to amend a statute. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

Generally, a statutory provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 188 (Chk. 2013).

When the statute is silent about what result should follow if the Health Care Board does not submit draft legislation for the selection of its members by citizen enrolles and when that statute only directs the submission of draft legislation but does not require (nor could it) its enactment, the Board's failure to comply does not render the Board's composition illegal or its acts ultra vires. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 188 (Chk. 2013).

When the statute provides only that the Chuuk Health Care Plan's Board "may prescribe" or "may establish" differing premium amounts based on the number of the enrollee's dependants or on their "risk" factors, the statute does not require it, but leaves it to the Board's discretion, the Board may choose to assess premiums in a different manner. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 189 (Chk. 2013).

When the word "district" appears in an FSM Code provision carried over from the Trust Territory Code by virtue of the Constitution's Transition Clause, "state" will be read in its place. Mori v. Hasiguchi, 19 FSM R. 222, 224 (Chk. 2013).

The statute's use of the indefinite article "a" before the word "court" instead of the definite article "the" indicates that in this particular instance no specific court is referred to and thus other tribunals are included in § 11.612(6)'s reference to "a court." Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 301-02 (App. 2014).

The phrase "whether or not acting under color of law" in the civil rights criminal statute plainly means that Congress, by enacting the statute, made it a crime for a private person to willfully deprive another of, or injure, oppress, threaten, or intimidate the other in the free exercise of his or her rights under the FSM Constitution or laws. FSM v. Tipingeni, 19 FSM R. 439, 445 (Chk. 2014).

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 statute declares public policy. If that statute is constitutional it can never be declared to be against public policy. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

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).

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).

If the appellants believe that their arguments reflect a public policy better than the one Congress adopted by statute, they can apply to Congress for a modification or change in the statutes. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

When there is a conflict between a statute of general application to numerous agencies or situations, such as an Administrative Procedures Act, and a statute specifically aimed at a particular agency or procedure the more particularized provision will prevail. This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the

affected agency and procedure. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Generally, a statutory provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 25 (App. 2015).

The legislature's intention as to whether a statutory provision is mandatory is determined from the language used. Generally, a provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result that should follow if those actions are not completed. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 25 n.6 (App. 2015).

Despite the usage of the word "shall," FSM case law dictates that if the statute does not advise what will happen if the action is not carried out, then the statutory provision is directory rather than mandatory. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 25 (App. 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).

A statute imposing a penalty is to be strictly construed against the government and in favor of one against whom penalties are sought to be imposed. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

When a penalty provision's statutory language is ambiguous, this ambiguity should be resolved against punishing the same action under two different statutes. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (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).

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).

That the criminal offense of contempt of court statute is in Title 4, instead of Title 11, is meaningless and no inference that it is not a crime can be drawn from it. This is because the classification of the titles, chapters, subchapters, and sections of the FSM Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference, or presumption of a legislative construction can be drawn therefrom. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

The addition of the language "in the same manner as the levy of an execution" in 54 F.S.M.C. 153 shows that a different meaning was intended than if the statute had read "by writ of execution." Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

Statutes are to be interpreted as the legislature intended and a statute's words are the best indication of what the legislature intended. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

It is presumed that words included in a statute are not meaningless surplusage because it is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

Since the nation's statutes are presumed to be constitutional, a bank is not required to challenge, on a depositor's behalf, the tax lien statute's constitutionality. The bank may rely on the statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

Since, in interpreting Kosrae State Code sections, the singular can mean the plural, therefore "permit" can mean permits if the law otherwise requires more than one permit. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

The court should construe a statute as the legislature intended. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

Since 4 F.S.M.C. 124(1) is based on the United States model and its statutory language is verbatim thereto, the court should consider United States legal authority under 28 U.S.C. § 455 for guidance in determining 4 F.S.M.C. 124's meaning concerning recusal as a result of a financial relationship with a lending institution. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 46 (App. 2016).

Generally, when the word "district" appears in an FSM Code provision carried over from the Trust Territory Code by virtue of the Constitution's Transition Clause, the word "state" will be read in its place. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 131 (Pon. 2017).

– Construction – Adoption by Reference

Under general rules of statutory construction, when a statute adopts a provision by reference, it adopts that provision as it was at the time of adoption and any later changes to the referred provision will have no effect on the statute unless the statute specifically so provides or strongly implies. A statutory provision adopted by reference thus cannot be altered except by further action of the adopting legislature. That is because once the legislature has adopted a provision by reference, it makes that referenced provision its own law just as if it had entirely enacted the provision itself. No other rule would furnish any certainty as to what is the law. Anton v. Cornelius, 12 FSM R. 280, 285 n.1 (App. 2003).

Under the principles of statutory construction, when a statute adopts a provision by reference, it adopts that provision as it was at the time of adoption and any later changes to the referred provision will have no effect on the statute unless the statute specifically so provides or strongly implies. Otherwise, a statutory

provision adopted by reference cannot be altered except by further action of the adopting legislature. That is because once the legislature has adopted a provision by reference, it makes that referenced provision its own law just as if it had entirely enacted the provision itself and because no other rule would furnish any certainty as to what is the law. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 629 & n.4 (Yap 2013).

When the FSM statute specifically defines the "Limitation of Liability Convention" as "the Convention on Limitation of Liability for Maritime Claims done at London on November 19, 1976 as modified by its protocols and as amended from time to time, " 19 F.S.M.C. 106(11), the statute specifically provides that later changes to the Liability Convention will be part of FSM law without further action by Congress. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 629 (Yap 2013).

– Construction – "May" and "Shall"

The use of the word shall in a statute is the language of command and considered mandatory. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

While it is true in construction of statutes and rules that the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, the context in which the word appears must be the controlling factor. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

While it is true in construction of statutes that the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, the context in which the word appears must be the controlling factor. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20-21 (App. 2006).

In construction of statutes the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, but the context in which the word appears must be the controlling factor. The fact that the word "may" was used is not conclusive, since it is well settled that permissive words may be interpreted as mandatory where such construction is necessary to effectuate the legislative intent. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 190 (Pon. 2006).

Treble damages were proper when the discretion denoted by the word "may" in the statute lies with the injured party and not the court – the injured party "may" sue and recover treble damages – and when Congress's intent was to give the injured party treble damages if it sues and proves its case. The statute's context compels this conclusion. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 190-91 (Pon. 2006).

When, from the consideration of the whole statute, and its nature and object, it appears that the legislature's intent was to impose a positive duty rather than a discretionary power, the word "may" will be held to be mandatory. A mandatory construction will usually be given to the word "may" when public interests are concerned, and the public or third persons have a claim de jure that the power conferred should be exercised, or whenever something is directed to be done for the sake of justice or for the public good; but never for the purpose of creating a right. In a proper case the word "may" will be construed as "must" or "shall." AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

In construing statutes, the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, but the context in which the word appears must be the controlling factor. When, from the consideration of the whole statute, and its nature and object, it appears that the legislature's intent was to impose a positive duty rather than a discretionary power, the word "may" will be held to be mandatory. A mandatory construction will usually be given to the word "may" when public interests are concerned, and the public or third persons have a claim de jure that the power conferred should be exercised, or whenever something is directed to be done for the sake of justice or for the public good; but never for the purpose of creating a right. Accordingly, in a proper case the word "may" will be construed as "must" or "shall." Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

When discretionary language "may" is used, which indicates that the insurance board has the power to

consider these factors when assessing the insurance premiums and may exercise the power of applying these factors in the future, the discretion to do so is left with the board, and not with the court. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 26 (App. 2015).

– Presumptions

Since by statute, the classification of the titles, chapters, subchapters, and sections of the FSM Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and since Congress has specifically prohibited that any implication, inference, or presumption of a legislative construction be drawn therefrom, the court can give no weight or credence to and must reject any argument, implication, inference, or presumption to be draw from a subchapter's heading or from a subsection's arrangement in that subchapter. FSM v. Wainit, 14 FSM R. 51, 54 (Chk. 2006).

A "mini bag," which is an easily-transportable article similar in that nature to a purse, handbag, brief case, attache case, or backpack, is not an "enclosed customary depository" within the meaning of the statutory exception to the statutory presumption that a firearm, dangerous device, or ammunition found in a vehicle or vessel, is prima facie evidence that such firearm, dangerous device, or ammunition is in the possession of all persons in the vehicle or vessel. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

Statutory presumptions come in three types: permissive inference, mandatory rebuttable presumption, and conclusive mandatory presumption. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

Under the permissive inference type of criminal statutory presumptions, the prosecution is not relieved of the burden of persuasion since the presumption is effective only so long as there is no substantial evidence contradicting the conclusion flowing from the presumption, and the factfinder is left free to accept or reject the inference. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

A presumption in a criminal statute creates a permissive inference. Because this permissive presumption leaves the trier of fact free to credit or reject the inference and does not shift the burden of proof, it affects the application of the "beyond a reasonable doubt" standard only if, under the facts of the case, there is no rational way the trier could make the connection permitted by the inference. This is the manner in which the FSM Supreme Court should and will handle a criminal presumption that is "prima facie evidence." FSM v. Aliven, 16 FSM R. 520, 533-34 (Chk. 2009).

The 6 F.S.M.C. 801 provision that: "[a] judgment of any court shall be presumed to be paid and satisfied at the expiration of twenty years after it is rendered" reflects the common-law rebuttable presumption of payment after a lapse of twenty years. It can therefore be implied that the 20-year statute of limitations for enforcing a judgment is a rule that creates a rebuttable presumption of payment. Kama v. Chuuk, 18 FSM R. 326, 336 (Chk. S. Ct. Tr. 2012).

The doctrine of prescription or presumption of payment of a judgment does not apply when 20 years has not yet elapsed. Kama v. Chuuk, 18 FSM R. 326, 336 (Chk. S. Ct. Tr. 2012).

Statutory presumptions come in three types: permissive inference, mandatory rebuttable presumption, and conclusive mandatory presumption. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

Under a mandatory rebuttable presumption, once the predicate facts have been proven, the burden of persuasion shifts to the defense to rebut the presumption, although the burden of proving guilt beyond a reasonable doubt remains with the prosecution, or in a civil case, liability by the preponderance of the evidence. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

Under the permissive inference type of statutory presumptions, the state is not relieved of the burden of persuasion since the presumption is effective only so long as there is no substantial evidence contradicting the conclusion flowing from the presumption, and the fact-finder is left free to accept or reject the inference.

Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

Unless a cigarette importer produces evidence to overcome the Chuuk tax act's presumption that the cigarettes were sold after importation, the statutory presumption that he sold the cigarettes he brought into Chuuk would stand and he therefore would be liable to the state for the sales tax he should have collected from the buyers when the cigarettes were sold. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

The statutory presumption that judgments over twenty years old have been satisfied is a rebuttable presumption. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

A statutory rebuttable presumption that an FSM passport-holder that has had his or her passport renewed twice in a row, has renounced the citizenship of another nation and that he or she is solely an FSM citizen, has been overcome when a person has conceded that he has not formally renounced any claim he may have to U.S. citizenship and does not wish to do so now. Hartmann v. Department of Justice, 20 FSM R. 619, 623 (Chk. 2016).

– Repeal

Amendment or repeal of a Trust Territory statute by Congress need not be explicit to be effective. If a Trust Territory statutory provision is inconsistent or in conflict with a statutory provision enacted by Congress, that provision is repealed by implication. FSM v. Albert, 1 FSM R. 14, 15-16 (Pon. 1981).

Under article XV, section 1 of the Constitution, a Trust Territory Code provision is repealed by a subsequent statutory provision enacted by the Congress only if the statutory provisions in question are inconsistent or in conflict. Even if certain provisions are repealed, other provisions of that same statute may remain intact if the statute, without the deleted provision, is self-sustaining and capable of separate enforcement. FSM v. Boaz (II), 1 FSM R. 28, 29 (Pon. 1981).

The fact that Congress repealed many provisions of Title 11 of the Trust Territory Code by implication does not lead to the conclusion that all provisions of Title 11 are repealed. FSM v. Boaz (II), 1 FSM R. 28, 29 (Pon. 1981).

Since the national government does not have major crimes jurisdiction over Title 11 Trust Territory Code assaults calling for imprisonment of no more than six months, the repealer clause of the National Criminal Code would not appear to repeal those sections. FSM v. Boaz (II), 1 FSM R. 28, 30 (Pon. 1981).

The repealer clause of the National Criminal Code repealed those provisions of Title 11 of the Trust Territory code above the monetary minimum of $1,000 set for major crimes. Where the value is below $1,000, section 2 does not apply because it is not within the national court jurisdiction. FSM v. Hartman, 1 FSM R. 43, 46 (Truk 1981).

At common law, repeal of a criminal statute abated all criminal prosecutions which had not reached final disposition in the highest court authorized to review them. In re Otokichy, 1 FSM R. 183, 189-90 n.4 (App. 1982).

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

The test to determine whether the 1991 constitutional amendment repealed a statute by implication is: Does Congress, under the current constitutional provision, have the present right to enact a statute substantially like the statute in question? FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

Because the repeal of a statutory prohibition against usury releases any penalties imposed and permits enforcement of the debtor's obligation in accordance with the parties' agreement, it follows that as to a

usury defense, the parties' agreement is governed by the law existing when the agreement is enforced. Bank of the FSM v. Mori, 11 FSM R. 13, 15 (Chk. 2002).

When the constitutional amendment to article IX, § 2(p) was ratified, it eliminated Congress's power to define major crimes and repealed by implication Title 11's major crimes provisions. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

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

When the state statute authorizing municipal tax powers reserved the state's right to enact legislation to assess, levy and collect taxes on any subject for which a tax has been assessed and levied by municipal ordinance and provided that in the event that the state enacted legislation on that same subject, the enactment would repeal the ordinance on the same subject, and when the state has in fact enacted legislation imposing fees on businesses engaged in alcoholic beverage sales, any municipal ordinance imposing business license fees on businesses engaged in alcoholic beverage sales is repealed and a municipality does not have the authority to impose business license fees or taxes on alcoholic beverage sellers. Ceasar v. Uman Municipality, 12 FSM R. 354, 358-59 (Chk. S. Ct. Tr. 2004).

The final test in determining whether a statute is repealed by implication by a new constitutional provision is: Has the legislature, under the new constitutional provision, the present right to enact statutes substantially like the statutes in question? Jano v. FSM, 12 FSM R. 569, 574 (App. 2004).

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).

STATUTES OF LIMITATION

It is inappropriate to deny a defendant the right to assert a statute of limitations defense by way of punishment for tardiness in filing its answer. Lonno v. Trust Territory (III), 1 FSM R. 279, 280 (Kos. 1983).

When there are significant issues of fact which may affect the defendant's statute of limitations defense in a civil action, a motion to dismiss on statute of limitations grounds must be denied. Lonno v. Trust Territory (III), 1 FSM R. 279, 281-82 (Kos. 1983).

There is no provision in the Public Service Act nor in the Public Service System Regulation that establishes a time limit for seeking judicial review of agency action. For this reason, the court adopts the six-year statute of limitations established in 6 TTC 305 and holds that the petition for judicial review was filed in a timely manner. Amor v. Pohnpei, 3 FSM R. 28, 33 (Pon. S. Ct. Tr. 1987).

The general rule is that statutes of limitations do not run against the sovereign. FSM Dev. Bank v. Yap Shipping Coop., 3 FSM R. 84, 86 (Yap 1987).

The Trust Territory of the Pacific Islands is a political entity possessing many of the attributes of an independent nation, and is to be regarded as a sovereign for the purpose of the statute of limitations. FSM Dev. Bank v. Yap Shipping Coop., 3 FSM R. 84, 86 (Yap 1987).

In the absence of any law or regulation in the Federated States of Micronesia which provides a specific

limitation on actions to collect unpaid stock subscriptions, the applicable period is six years. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

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

The applicable period of limitations on actions arising under the Corporations, Partnerships and Associations Regulations is six years. 6 F.S.M.C. 805. Mid-Pacific Constr. Co. v. Semes (I), 6 FSM R. 171, 174 (Pon. 1993).

The twenty year statute of limitation to contest land title did not take effect until 1951 so that it could not be asserted as a defense until 1971. Chipuelong v. Chuuk, 6 FSM R. 188, 194 (Chk. S. Ct. Tr. 1993).

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).

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).

Under section 24(1) of the Pohnpei Government Liability Act of 1991, the statute of limitations on a cause of action brought pursuant to the Act is not suspended during the period of administrative review required by the statute. Abraham v. Lusangulira, 6 FSM R. 423, 425 (Pon. 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).

Subsequent to the effective date of the Compact the two-year statute of limitations applies to trespass and nuisance suits against the Trust Territory of the Pacific Islands. Jurisdiction over claims for acts or omissions of the government of the Trust Territory of the Pacific Islands is limited to those arising prior to the effective date of the Compact of Free Association. Damarlane v. United States, 7 FSM R. 167, 168 (Pon. 1995).

The statute of limitation for a claim against the State of Chuuk based upon the act or omission of a policeman in connection with the performance of his official duties is two years after the cause of action accrues. Kaminaga v. Chuuk, 7 FSM R. 272, 274 (Chk. S. Ct. Tr. 1995).

For actions for the recovery of land or any interest therein the statute of limitations is twenty years after the cause of action accrues, which is when a suit may first be successfully maintained thereon. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 488-89 & n.1 (App. 1996).

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

Any attempt to breathe new life into tort claims time barred by the relevant and analogous statutes should be approached with caution because they are the type of personal claims for money damages that become increasingly difficult of proof and difficult to defend with the passage of time. Ordinarily such claims are resolved by political and diplomatic efforts. Alep v. United States, 7 FSM R. 494, 498 (App. 1996).

The statute of limitations has run on claims of mismanagement of the Micronesian Claims Act unless there was continuing unlawful conduct that would create a basis for equitable tolling of the statute of limitations. Alep v. United States, 7 FSM R. 494, 499 (App. 1996).

An action for damages for loss of land is subject to a six-year statute of limitations unlike the twenty-year statute of limitations for recovery of an interest in land. Nahnken of Nett v. United States, 7 FSM R. 581, 590 (App. 1996).

As a general rule, the statute of limitations may be invoked by a successor in right. Thus a later transfer of land cannot resurrect a time-barred claim. Nahnken of Nett v. United States, 7 FSM R. 581, 590 (App. 1996).

After November 25, 1986, a claim for recovery of taxes paid under an unconstitutional Yap statute is subject to a two-year statute of limitations. Gimnang v. Yap, 7 FSM R. 606, 607, 611 (Yap S. Ct. Tr. 1996).

An action on a judgment may be maintained up to twenty years after the date of entry of the judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 672 (App. 1996).

The applicable statute of limitations period for adverse possession is twenty years. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 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 Chuuk State Supreme Court, a hearing for judgment after a default is entered that is held to allow the plaintiff to present to the court further evidence to establish the plaintiff's right to a claim or relief, includes the court's determination of whether the action was brought within the limitation period provided by law. Sipia v. Chuuk, 8 FSM R. 557, 558, 560 (Chk. S. Ct. Tr. 1998).

Actions for trespass shall be commenced within six years after the cause of action accrues. Sipia v. Chuuk, 8 FSM R. 557, 558 (Chk. S. Ct. Tr. 1998).

For trespass the period of limitation begins to run when the project causing the damage is completed, if substantial damage has already occurred, or when the first substantial injury is sustained. Sipia v. Chuuk, 8 FSM R. 557, 559 (Chk. S. Ct. Tr. 1998).

The cause of action arises, and the general statute of limitations begins to run on tort actions for injury to property at the time the injury is sustained. Sipia v. Chuuk, 8 FSM R. 557, 559 (Chk. S. Ct. Tr. 1998).

When the plaintiff claims the state trespassed on her property by installing poles, a road and pipes

sometime before the end of 1987 but did not file suit until 1994, recovery will be barred by the six year statute of limitations. Sipia v. Chuuk, 8 FSM R. 557, 559-60 (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 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).

The statute of limitations for an action to collect the balance due on an open account is six years from the accrual date of the cause of action. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

A suit filed on March 18, 1997 for a cause of action with a six-year statute of limitation that accrued on March 18, 1991 was filed on the very last day for doing so because in computing any time period the day of the act, event, or default from which the designated time period begins to run is not included. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

A sewer overflow case filed within six years of the first overflow is not barred by the statute of limitations. David v. Bossy, 9 FSM R. 224, 225 (Chk. S. Ct. Tr. 1999).

The two year limitation applies to tort actions for both negligence and wilful conduct. David v. Bossy, 9 FSM R. 224, 225 (Chk. S. Ct. Tr. 1999).

All actions in Kosrae State Court must be commenced within the time period stated in Kosrae State Code, title 6, chapter 25. Jonah v. Kosrae, 9 FSM R. 335, 343 (Kos. S. Ct. Tr. 2000).

An action for damages for loss of land is subject to a six-year statute of limitations. Jonah v. Kosrae, 9 FSM R. 335, 343 (Kos. S. Ct. Tr. 2000).

Breach of contract claims against Pohnpei state have a two year statute of limitations. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 557 (Pon. 2000).

Without a separate statute of limitations in the act creating a public corporation, the state legislature obviously intended for suit to be brought against the corporation within the same time period that suit must be brought against the state and its various related entities even though the corporation may act on its own and sue and be sued in its own name. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

Because a trespass claim has either a twenty-year or a six-year statute of limitations, the statute of limitations on a trespass starting November, 1999 will not run for many years. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

An action upon a judgment must be commenced within 20 years after the cause of action accrued. Walter v. Chuuk, 10 FSM R. 312, 316 (Chk. 2001).

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).

When there is a two year statute of limitations for actions for injury to or for the death of one caused by the wrongful act or neglect of another, when the plaintiff, who was an adult at the time she was injured, filed

her complaint over seven years after the injury, and when the testimony yields no information why the statute of limitations had not run two years after the date of the accident, a motion to dismiss based on the statute of limitations will be granted. Adolip v. Mobil Oil Micronesia, Inc., 10 FSM R. 587, 589 (Pon. 2002).

In Kosrae, actions on a judgment and actions for the recovery of land or an interest in land have a twenty year statute of limitations. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 174 (Kos. S. Ct. Tr. 2002).

An action on a judgment filed more than twenty years after the judgment was announced, but less than twenty years after the written judgment was served on the parties is timely filed and not barred by the statute of limitations. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 174 (Kos. S. Ct. Tr. 2002).

The accrual of a cause of action for recovery of land begins when a suit may successfully be maintained upon. Where a cause of action for recovery of land accrued when the Determinations of Ownership were served and when the complaint was filed within twenty years of service, the cause of action for the recovery of land falls within the twenty year limitations period and is not barred by the statute of limitations. 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 statute of limitations is an affirmative defense which must be raised in the defendant's answer, and when it has not been, the defendant has waived its statute of limitations defense. Tolenoa v. Kosrae, 11 FSM R. 179, 185 (Kos. S. Ct. Tr. 2002).

When the applicable statute of limitations is six years and the construction agreement between the Permans and Felix is dated January 10, 1997 and other operative events occurred in September and October 1997, a July 23, 2002 motion to amend the complaint to add Felix and claims against him is not time barred. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 233 (Pon. 2002).

The review of legal errors is *de novo*. The questions of when a statute of limitations begins to run, and whether a claim is barred by the statute of limitations, are questions of law and to be reviewed *de novo*. Kosrae v. Skilling, 11 FSM R. 311, 315 (App. 2003).

Laches and the statute of limitations are two different defenses. The statute of limitations defense has only one element, which is the passage of a specific statutorily set amount of time. The equitable defense of laches has two elements. One element is the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and the other element is the resulting prejudice to the defendant. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

Unlike statutes of limitation, which bar an action after a fixed period of time, laches depends upon considerations of fairness, justice, and equity, and is invoked when the applicable statute of limitations has not yet passed. Kosrae v. Skilling, 11 FSM R. 311, 318 (App. 2003).

A statute of limitations defense is not one of the enumerated defenses that may be brought by motion under Rule 12(b), but rather is one of the specific defenses named in Rule 8(c) where a party must set forth affirmatively in the answer, the statute of limitations and any other matter constituting an avoidance or affirmative defense. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

When claims for food, lodging, and transportation costs could have been first sued upon as of March, 1996, the six year limitations period on those claims expired before the July 4, 2002 complaint was filed. Segal v. National Fisheries Corp., 11 FSM R. 340, 343 (Kos. 2003).

That alleged contracts may have extended from June 5, 1995, to July 5, 1996, does not permit the plaintiffs to pursue all of their alleged claims in a complaint filed on July 4, 2002. The relevant inquiry is when the alleged contract breaches occurred and the consequent causes of action accrued, not when the alleged contracts expired. When all of the claims except those for wages first payable on or after July 4, 1996, accrued more than six years from the filing of the complaint, the complaint will be dismissed, but without prejudice to the filing of an amended complaint for any wage claims that accrued on or after July 4, 1996. Under Civil Rule 15(c), the filing of any such amended complaint will relate back to July 4, 2002, the original complaint's filing date. Segal v. National Fisheries Corp., 11 FSM R. 340, 343 (Kos. 2003).

6 TTC 305 establishes a period of 6 years in which to bring an action for negligent damage to real property. Ben v. Chuuk, 11 FSM R. 649, 650 (Chk. S. Ct. Tr. 2003).

The creation of laws relating to contracts is not identified in the Constitution as falling within the national government's powers. Rather, it is generally presumed to be a power of the state. Accordingly, state law determines the statute of limitations in a contract case. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

Pohnpei state law specifies limitation periods of two and twenty years for certain delineated causes of action and provides that all other actions – including contracts – must be commenced within six years after the cause of action accrues. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

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).

To read the language that a petitioner shall by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part, to mean that the 60 day time period is absolute, which is to say jurisdictional, would be to read the statute as limiting the trial division's jurisdiction to hear such appeals. Statutes which limit a court's jurisdiction are to be construed narrowly. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

Given the absence in the statute of any express language limiting the court's jurisdiction, the 60 day period for filing a petition in the FSM Supreme Court trial division to appeal a final order of the Social Security Administration is a statute of limitations. As such, it is one of the specifically enumerated defenses under FSM Civil Rule 8(c) that may be raised in the answer. The time limit does not affect the court's subject matter jurisdiction. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

A denial of a motion to dismiss for lack of jurisdiction is without prejudice to Social Security's right to raise the statute of limitations defense by motion pursuant to FSM Civil Rule 12(c). Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

A statute of limitations defense is an issue for trial when questions of fact exist. AHPW, Inc. v. FSM, 12 FSM R. 114, 123-24 (Pon. 2003).

When the Pohnpei Foreign Investment Board's letter states that the plaintiff is ordered to cease and desist from engaging in business and must surrender her Foreign Investment Permit, the clear implication of the Board's letter is that its revocation decision is effective immediately with no indication that those "orders" would take effect only at the expiration of a 20-day period. Thus, having failed to inform plaintiff of the 20-day waiting period, and having improperly indicated that its revocation decision was immediately effective, the Board cannot rely on the 20-day statutory period to appeal as a basis for dismissing this appeal. To the extent that it functions as a statute of limitation, it begins to run when a permit holder is notified of a Board decision and informed that the decision will become effective in 20 days if not appealed. Cuipan v. Pohnpei Foreign Inv. Bd., 12 FSM R. 184, 186 (Pon. 2003).

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).

When no applicable limitations period is specified in the national statute under which a plaintiff has proceeded, the court will apply the most closely analogous state law limitations period so long as doing so does not frustrate or interfere with national policy. AHPW, Inc. v. FSM, 12 FSM R. 544, 553 (Pon. 2004).

The continuing tort doctrine is well-settled law, and dictates that when there is an ongoing pattern of tortious activity where no single incident may be fairly identified as the cause of the harm suffered, then it is appropriate to regard the total effect of the conduct as actionable, and the statute of limitations does not begin to run until the conduct has ceased. In order to invoke the continuing tort doctrine, there must be continuing unlawful acts, and not merely continuing effects from a single original act. AHPW, Inc. v. FSM, 12 FSM R. 544, 553 (Pon. 2004).

The rationale behind the principle that the statute of limitations does not begin to run on a continuing wrong until the wrong is over and done with is that the principle strikes a balance between the plaintiff's interest in being spared having to bring successive suits, and the two distinct interests, that statutes of limitations serve. One is evidentiary – to reduce the error rate in legal proceedings by barring litigation over claims relating to the distant past. The other is repose – to give people the assurance that after a fixed time they can go about their business without fear of having their liberty or property taken through the legal process. When an unlawful course of conduct's final act occurs within the statutory period, these purposes are adequately served, in balance with the plaintiff's interest in not having to bring successive suits, by requiring the plaintiff to sue within the statutory period but letting him reach back and get damages for the entire duration of the alleged violation. Some of the evidence, at least, will be fresh. And the defendant's uncertainty as to whether be will be sued at all will be confined to the statutory period. His uncertainty about the extent of his liability may be greater, but that is often true in litigation. AHPW, Inc. v. FSM, 12 FSM R. 544, 553 (Pon. 2004).

When a determination of ownership by the Land Commission is subject to appeal to the Court within 120 days from the date of receipt of notice of the determination and when it is alleged that the plaintiff never received notice of the determination of ownership, accepting the alleged facts as true, then the appeal time limit of 120 days never began to run. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

Kosrae State Code, Title 6, Chapter 25 establishes the statutes of limitations which are applicable to specific types of civil actions. All actions in Kosrae State Court must be commenced within the time period stated therein. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

Claims against the Land Commission for violation of statute and violation of due process are subject to a limitations period of six years. When claims against the Land Commission based upon Land Commission actions which took place in 1984 and before occurred more than six years ago, they are barred by the statute of limitations and should be dismissed. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

A complaint against the Land Commission does not assert a claim for the recovery of land or recovery of an interest in land against the defendants, as the defendants have not been granted ownership of the land. Therefore the twenty year statute of limitations for recovery of an interest in land does not apply to claims against the Land Commission for violation of due process and violation of statute. These claims are subject to a limitations period of six years. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

The statute of limitations is an affirmative defense which must be raised in either the answer or in a

motion to dismiss. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. 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).

Kosrae State Code, Title 6, Chapter 25 establishes three different statutes of limitations which are applicable to specific types of actions: 2 years, 6 years, and 20 years. Most types of actions are subject to the 6 year statute of limitations established by Kosrae State Code § 6.2506. All actions in Kosrae State Court must be commenced within the time period stated in Title 6, Chapter 25. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. S. Ct. Tr. 2004).

When the allegations made in the complaint are for causes of action that accrued more than seven years ago, and when claims against the Kosrae State Land Commission for violation of statute and violation of due process are subject to a limitations period of six years, the claims based upon Land Commission actions which took place in 1997 are therefore barred by the statute of limitations and defendants Kosrae State Land Commission and Kosrae state government will be dismissed from the action. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 81 (Kos. S. Ct. Tr. 2004).

The six-year statute of limitations applies and the twenty year statute of limitations for the recovery of an interest in land does not when no interest in land is at issue because the land title case is pending in state court, and since the real property mortgage has never been enforced, no foreclosure proceedings have ever taken place. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127 (Chk. 2005).

The six-year statute of limitations cannot bar an action when all the payments that the plaintiff seeks to recover appear to have taken place within the six years before the complaint was filed. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127 (Chk. 2005).

Tort claims, tax claims, contract claims, breach of fundamental rights, claims for damages, injunctive relief or writ of mandamus arising from the alleged unconstitutionality or improper administration of Pohnpei statutes or regulations, any other civil action or claim against the state founded upon any law or any regulation, or upon any express or implied contract with the Pohnpei government or for liquidated or unliquidated damages in cases not sounding in tort, and actions for collection of judgments based on claims allowed against the State of Pohnpei can be sued upon within two years of the date on which they accrue. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 226-27 (Pon. 2005).

Since, by its own terms, the Pohnpei Government Liability Act statute of limitations is applicable only to those claims identified in Section 4 of that Act, which identifies a number of different claims, including claims based on violation of Pohnpei state law such as the Pohnpei Constitution, but does not expressly identify claims that are based upon national law or the National Constitution, the plaintiff's claim for declaratory judgment based on violation of the National Constitution and its claim for damages for civil rights violations under 11 F.S.M.C. 701(3) are not subject to the Act's statute of limitations and will not be dismissed on the ground that they are time barred by that statute of limitations. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 227-28 (Pon. 2005).

Because the allegations of the plaintiff's own complaint demonstrate that certain of its claims are subject to the defense of statute of limitations, the court may chose to dismiss those claims on the statute of limitations, although it is an affirmative defense. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 228 (Pon. 2005).

The statute of limitations on contract or unpaid wage claims is six years. Zion v. Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

The continuing tort principle dictates that when there is an ongoing pattern of tortious activity where no

single incident may be fairly identified as the cause of the harm suffered, then it is appropriate to regard the total effect of the conduct as actionable, and the statute of limitations does not begin to run until the conduct has ceased. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 17 (App. 2006).

Laches has two elements – the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Laches is always applied separate from and irrespective of the statute of limitations. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 18 (App. 2006).

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 statute of limitations bars a claim to an interest in land if the cause of action arose 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 the claim. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

Actions for the recovery of land or any interest therein must be started within twenty years after the cause of action accrues. A claim to land clearly cannot be renewed when the statute of limitations on an action to recover an interest in land is twenty years and more than twenty years have passed since the certificate of title in another's favor was issued. Any subsequent attempt to litigate the land's ownership is barred by the statute of limitations. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

If an action accrued to a predecessor in interest, the twenty years statute of limitations is computed when the action first accrued to the predecessor. The statute of limitations does not start to run all over again each time there is a new successor in interest. Dereas v. Eas, 14 FSM R. 446, 457 (Chk. S. Ct. Tr. 2006).

The statute of limitations is an affirmative defense which must be raised in a responsive pleading, such as an answer. It is an expressly stated affirmative defense to an action under Civil Rule 8(c), and as such, it is waived if it is not pled, or if it is not raised in a Rule 12(b)(6) motion for failure to state a claim. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 546 (Chk. 2007).

When the defendant has waived any statute of limitations defense, the limitations statute will not, as a matter of law, bar a summary judgment for the plaintiff. FSM Social Sec. Admin. v. Fefan Municipality, 14 FSM R. 544, 547(Chk. 2007).

The statute of limitations foreclosed the intervenor's claim, no matter how meritorious it might have been, in 2001 because the statute of limitations started to run in 1981 when the plaintiff was issued his certificate of title and that certificate of title constituted notice to the world of the plaintiff's claim to ownership of Lot No. 029-A-23, especially since the intervenor and the defendant both knew in 1991 that the plaintiff claimed to own the lot, or as the intervenor put it, that the certificate of title in the plaintiff's favor was not correct. Dereas v. Eas, 15 FSM R. 135, 139 (Chk. S. Ct. Tr. 2007).

When the twenty-year statute of limitations for the recovery of land or an interest therein did not expire until 2001 and since during the ten years from 1991, the latest date by which the intervenor and the defendant knew of the plaintiff's certificate of title, neither ever sued the plaintiff, that statute has now become a bar to any claim to Lot No. 029-A-23 by either the defendant or the intervenor. Dereas v. Eas, 15 FSM R. 135, 139 (Chk. 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 statute of limitations for an action by a decedent's estate does not apply when the plaintiff is not alleging that she represents the estate, but alleges that she is an insurance policy beneficiary. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

When the plaintiff alleges that she is the third-party beneficiary of an insurance contract, the six-year statute of limitations for breach of contract generally applies. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

The statute of limitations is generally an affirmative defense that may be pled in the answer. A statute of limitations defense is not one of the enumerated defenses under Rule 12(b), but rather is one of the specific defenses named in Rule 8(c), where a party must set forth affirmatively in the answer, the statute of limitations and any other matter constituting an avoidance or affirmative defense. The statute of limitations defense may, however, be raised by a Rule 12(b)(6) motion, or, if affidavits are filed with the motion, by a Rule 56 summary judgment motion, as well as by answer, but if there is a question of fact about the defense's existence, the issue then cannot be determined on affidavits, and must be raised in the answer. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171-72 (Chk. 2007).

If a statutory remedy provides as a condition precedent to enforce the remedy that it must be started within a prescribed time, it is jurisdictional and the statute of limitations may be raised in a Rule 12(b)(6) motion to dismiss. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 172 (Chk. 2007).

The affirmative defense of statute of limitations is to be raised affirmatively in the responsive pleading; it is not a defense that may be brought by a Rule 12(b) motion. George v. George, 15 FSM R. 270, 273 (Kos. S. Ct. Tr. 2007).

The statute of limitations for an action on an open account is six years and when the testimony at trial shows transactions on the open account within the six-year statutory period a motion to dismiss on statute of limitations will be denied. George v. George, 15 FSM R. 270, 273 (Kos. S. Ct. Tr. 2007).

A claim for negligence against the Land Commission and its government employee has a six-year statute of limitations. When, if there was any negligence, the cause of action accrued at the time the certificate of title was issued in 1997 and more than six years have passed, the plaintiff's claim of negligence against the Land Commission and its employee fails. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

For claims relating to ownership of land, the twenty-year statute of limitations found in Kosrae Code section 6.2503 would apply. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

The two-year statute of limitations applies to causes of action for slander. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

Because the causes of action for libel and interference with contract and prospective economic advantage are not covered in sections 801 to 804 of title 6, the six-year limitation period set forth in section 805 of Title 6 applies to those causes of action. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

State law, and not the national law, provides the controlling limitations period for the causes of action, such as libel and slander and the tort of interference with contract and prospective economic advantage, that arise under state law. Jano v. Fujita, 15 FSM R. 494, 496 (Pon. 2008).

The two-year statute of limitations applies to causes of action for libel. Jano v. Fujita, 15 FSM R. 494,

497 (Pon. 2008).

A cause of action for interference with contract and prospective economic advantage must be commenced within six years after the cause of action accrues. Jano v. Fujita, 15 FSM R. 494, 497 (Pon. 2008).

Kosrae State Code § 6.2506 provides that any action not governed by the limitations of actions stated in other sections is governed by a six-year statute of limitations. Allen v. Allen, 15 FSM R. 613, 619 (Kos. S. Ct. Tr. 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 twenty-year statute of limitations under Kosrae State Code § 6.2503 covers actions for the recovery of land or an interest in land and the time period begins when the cause of action accrues. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

The statute of limitations for filing an action is different and distinct from the time limits for filing an appeal from a Land Court or Land Commission decision. An appeal from a Land Court or Land Commission decision is a statutorily-created right. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

A statute of limitations is an independent bar to an action, separate from any opportunity to appeal that might be granted by a statute. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

A conflict of interest claim is that the determination of ownership must be set aside because one of the team members, later became a Land Commission member and was one of the concurring commissioners on the parcel's determination is a claim against the government is an action covered by Kosrae State Code § 6.2601 and falls within the six-year statute of limitations. Allen v. Allen, 15 FSM R. 613, 621 (Kos. S. Ct. Tr. 2008).

The statutory limitation period on the breach of contract claim for an unpaid bank loan is six years after the cause of action accrues since a breach of contract cause of action, or an unpaid bank loan, is not covered in the specific limitations periods set forth in FSM Code, Title 6, sections 801 to 804. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

When the statute of limitations has expired on all loan instalment payments that became due before July 20, 2001 and when only two instalment payments were due after that date, the lender is, as a matter of law, entitled to judgment for only those two payments. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

The court will not apply the three-year statute of limitations found in the Uniform Commercial Code without a showing that this statute of limitations has been enacted into law in this jurisdiction. The court is at a loss as to what authority would permit it to do this. It cannot legislate. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

A statute of limitation establishes a time limit for suing in a civil case, based on the date when the claim accrued. The purpose of such a statute is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

A statute of limitation will bar the maintenance of a cause of action, no matter how meritorious the claim, when it is brought too long after the cause of action arose. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

Under Kosrae law, a six-year statute of limitation applies to all civil suits not covered by the twenty-year statute of limitation (actions on a judgment or for recovery of land or an interest in land) or by the two-year statutes of limitation (actions for assault and battery, false imprisonment, defamation, against the police for wrongful acts or omissions, medical malpractice, injury or death caused by wrongful act, by a depositor against a bank for a forged or altered check, and wrongful death or an action by or against an estate). Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

When none of a plaintiff's causes of action are covered by the two-year statutes of limitation and when a complaint against the Land Commission cannot be a claim for the recovery of land from the Land Commission because the Land Commission does not own an interest in the claimed land, any negligence or due process claim against the Land Commission is subject to a six-year limitations period and will be time-barred and dismissed when the Land Commission actions or omissions are all over six years old. Allen v. Allen, 17 FSM R. 35, 39-40 (App. 2010).

When the plaintiff's causes of action arose or accrued in 1986 since, assuming he proved his case, he could have sued successfully for the recovery of the land then, and since no fraud is alleged or apparent, the plaintiff had twenty years within which to seek recovery of the land. Since that time period expired in 2006, the plaintiff's February 2007 complaint is thus time-barred. Allen v. Allen, 17 FSM R. 35, 40-41 (App. 2010).

When a statute of limitations provides a two-year limitation period for actions for injury to one caused by the wrongful act or neglect of another, the applicable statute of limitations for a negligent infliction of emotional distress claim is two years negligent infliction of emotional distress requires a physical injury or manifestation. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

When a two-year limitations period applies to injuries caused by the wrongful act or neglect of another, it applies to intentional infliction of emotional distress because intentional infliction of emotional distress is caused by a wrongful act – conduct that is extreme and outrageous. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

An emotional distress claim, whether inflicted intentionally or negligently, is barred by the two-year statute of limitations. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (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).

When the six-year statute of limitations started in December 2002, and expired in December 2008, a case filed on March 23, 2009, was filed too late. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

If Pohnpei had managed to breach contracts – the 1993 loan agreement and the guaranty – that it had never been a party to, it would have had to have done it well before 1999 when the plaintiff filed suit. In which case, the statute of limitations on that claim expired long before this action was filed in 2010 since, under Pohnpei state law, the limitations period on contract actions against the State of Pohnpei is two years. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 9 (Pon. 2011).

Tort actions against Pohnpei are subject to a two-year limitations period. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 9 n.4 (Pon. 2011).

A breach of contract counterclaim by loan guarantors against the bank would have a six-year limitation period. But, as that would have been a Civil Rule 13(a) compulsory counterclaim, the guarantors had to raise it in their earlier lawsuit or that claim was waived. AHPW, Inc. v. Pohnpei, 18 FSM R. 1, 9 (Pon. 2011).

If it were clear that the allegations in the plaintiff's own complaint demonstrate that his claims are

subject to the defense of statute of limitations, the court may dismiss those claims as time-barred even though the statute of limitations is an affirmative defense. But when there are significant factual issues that may affect the defendant's statute of limitations defense, a motion to dismiss on statute of limitations grounds must be denied. Aunu v. Chuuk, 18 FSM R. 48, 50-51 (Chk. 2011).

The statute of limitation is 20 years for causes of action that impact land as such. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 157 (Pon. 2012).

When the original loan documents were executed over fourteen years ago, the statute of limitations has run on a cause of action based on deception in their execution. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 157-58 (Pon. 2012).

Leave to amend a complaint must be freely given if justice so requires, but the court must deny leave to amend when the amendment would be futile. One reason an amendment would be futile is if the claims are barred by the relevant statute of limitations. Iwo v. Chuuk, 18 FSM R. 252, 254 (Chk. 2012).

When no applicable limitations period is specified in the national statute under which the plaintiff has proceeded, the court will apply the most closely analogous state law limitations period so long as doing so does not frustrate or interfere with national policy. Tarauo v. Arsenal, 18 FSM R. 270, 272-73 (Chk. 2012).

The applicable limitations period for a civil rights action based on mistreatment at Chuuk State Hospital would be two years since that is the limitations period for errors committed by medical practitioners employed by the state and for personal injury actions against the state. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

While a statute of limitations bars a claim after the passage of a specified time, the common-law rebuttable presumption of payment is, on the other hand, used as evidence, based on the lapse of time, to create a rebuttable inference that the debt has been paid or otherwise satisfied. The presumption is based on the assumption that a person, before the passage of twenty years, would have recovered what belonged to that person unless prevented by some impediment. The persuasiveness of the presumption may be strengthened or diminished by evidence supporting or contradicting the significance of the lapse of time. Kama v. Chuuk, 18 FSM R. 326, 335 (Chk. S. Ct. Tr. 2012).

Borrowing a foreign statute of limitations that bars judicial relief has no basis in law when the claim arose from acts on Pohnpei and Pohnpei state law sets a limitation period. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

When a breach of contract cause of action arose on Pohnpei, Pohnpei's statute of limitations should be used. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 354 (App. 2012).

The two-year limitation period for a depositor's action against a bank or similar institution for the payment of a forged or raised check which bears a forged or unauthorized endorsement does not apply when the defendant is a retail (and wholesale) store and not a bank or a similar financial institution and the plaintiff is not a "depositor" in the defendant "institution." Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

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

The purpose of a statute of limitations is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh. Aunu v. Chuuk, 18 FSM R. 467, 469 n.2 (Chk. 2012).

The most frequent attorney error that may be the subject of a successful legal malpractice action is the attorney's failure to comply with a statute of limitation. Aunu v. Chuuk, 18 FSM R. 467, 469 n.2 (Chk. 2012).

When by the time the case was filed on January 14, 2010, the six-year statute of limitations would, even though it had been tolled by the filing of an earlier case, bar any claims arising before September 6, 2003, and when it is undisputed that all of the plaintiff's overtime claims were for 2002, the state has good grounds for and is entitled to summary judgment on its statute of limitations defense. Aunu v. Chuuk, 18 FSM R. 467, 470 (Chk. 2012).

The applicable statute of limitations for a salvage contract bars any recovery after the two-year period statutory period. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

The two-year statute of limitations in 19 F.S.M.C. 928 applies only to salvage contracts and does not apply to a contract between a salvor and the insurer that is not a salvage contract but is instead a contract of guaranty or a surety or to answer for the liability of another and which may be subject to the six-year statute of limitations for contracts in general. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

The statute of limitations is an affirmative defense which, if not pled, is waived. Bank of Hawaii v. Susaia, 19 FSM R. 66, 69 n.2 (Pon. 2013).

The applicable statute of limitation period for an installment contract is six years. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 (Pon. 2013).

The statute of limitations period for a breach of contract claim against the State of Chuuk is six years. Eot Municipality v. Elimo, 19 FSM R. 290, 294 (Chk. 2014).

When, since the State of Chuuk and its Governor cannot prevail on their limitations defense, the plaintiffs' motion for partial summary judgment will be granted against the defendant state because Chuuk was the borrower on the airport renovation loan but since the Governor is not liable on the loan partial summary judgment will not be granted against him. Eot Municipality v. Elimo, 19 FSM R. 290, 295-96 (Chk. 2014).

The timeframe in which to appeal a decision of the FSMSSA Board is governed by 53 F.S.M.C. 708, which provides that any person aggrieved by a final order of the Board may obtain a review of the order in the FSM Supreme Court trial division by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. Palikkun v. FSM Social Sec. Admin., 19 FSM R. 314, 316 (Kos. 2014).

When the Social Security Board's decision was entered on August 27, 2013, and was received by the plaintiff on September 17, 2013, the 60-day deadline would fall on October 26, 2013, which would have given the plaintiff 39 days to file her claim after service of the Board's decision. She thus had adequate time to file her claim, and when she failed to file her claim in time pursuant to 53 F.S.M.C. 708, the court is unwilling to extend the timeframe to file a claim when the statute's language is clear, and the complaint will dismissed based on its filing being untimely under 53 F.S.M.C. 708. Palikkun v. FSM Social Sec. Admin., 19 FSM R. 314, 317 (Kos. 2014).

When the allegations of the plaintiff's own complaint demonstrate that its claims are subject to the statute of limitations defense, the court may dismiss those claims on the statute of limitations ground, even though it is an affirmative defense. Palikkun v. FSM Social Sec. Admin., 19 FSM R. 314, 317 (Kos. 2014).

Under Rule 15(c), whenever the claim or defense asserted in an amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. Rule 15(c) is based on the notion that once litigation involving particular conduct or a given transaction or occurrence has been instituted, the parties are not entitled to the protection of the statute of limitations against the later assertion by amendment of defenses or claims that arise out of the same conduct, transaction, or occurrence as set forth in the original pleading. Chuuk Health Care Plan v. Department of Educ., 19 FSM R. 435, 438-39 (Chk. 2014).

When, if claims for health insurance premium contributions due before March 16, 2006, had been included in the original complaint and if the FSM had asserted the six-year statute of limitations defense, the statutory defense would have barred their recovery, the proposed amended complaint's relation back to the original filing date of March 16, 2012, cannot revive those claims. The court will therefore permit the proposed amended complaint but bar the plaintiff from seeking any health insurance premium contributions due before March 16, 2006. Chuuk Health Care Plan v. Department of Educ., 19 FSM R. 435, 439 (Chk. 2014).

The general rule is that statutes of limitations do not run against the sovereign. The policy behind the rule is that the public interest should not be prejudiced by the negligence of public officials. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

Conversion has a six-year statute of limitations. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

When the complaint was filed on November 26, 2014, the six-year statute of limitations would bar the plaintiffs' claims unless their cause of action accrued on or after November 26, 2008, or some event or action tolled the running of the limitations period so that the six years did not end until November 26, 2014 or later. Thus, events that took place in 2007, cannot successfully overcome a statute of limitations affirmative defense. Onanu Municipality v. Elimo, 20 FSM R. 535, 545 (Chk. 2016).

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).

Even though it is an affirmative defense, a court may choose to dismiss claims based on the statute of limitations, when the allegations of the plaintiff's own complaint demonstrate that certain of its claims are subject to the defense. Tilfas v. Kosrae, 21 FSM R. 81, 87 (App. 2016).

When it is clear that the allegations in the plaintiff's own complaint demonstrate that his claims are subject to the statute of limitations defense, the court may dismiss those claims as time-barred even though the statute of limitations is an affirmative defense. But when there are significant factual issues that may affect the defendant's statute of limitations defense, a motion to dismiss on statute of limitations grounds must be denied. Tilfas v. Kosrae, 21 FSM R. 81, 91 (App. 2016).

When a complaint's allegations are subject to the defense that the statute of limitation has lapsed, a court may choose to dismiss the action, even though it is an affirmative defense. Lonno v. Heirs of Palik, 21 FSM R. 103, 107 (App. 2016).

– Accrual of Action

A statute of limitation begins to run when the cause of action accrues. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

In an action to enforce an unpaid stock subscription, the statute of limitations begins to run against the creditors when it runs against the corporation. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

When a stock subscription specifies the date of payment, including payment in installments at specified times, the corporation has no cause of action until the date specified and at that time the statute of limitations begins to run. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 159 (Pon. 1989).

Stock subscriptions which are silent as to the date and terms of payment do not become due until a call has been issued by the corporation or, if the corporation becomes insolvent without ever issuing such a call,

then the cause of action to collect unpaid subscriptions accrues when the creditors, by authority of the court, first demand payment. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM R. 157, 161 (Pon. 1989).

A cause of action accrues, and the statute of limitations begins to run, when a suit may be successfully maintained thereon. Where a note is payable in instalments, each instalment is a distinct cause of action and the statute of limitations begins to run against each instalment from the time it becomes due, that is, from the time when an action might be brought to recover it. Waguk v. Kosrae Island Credit Union, 6 FSM R. 14, 17 (App. 1993).

Since the statute of limitations does not commence running until after the cause of action accrues a prerequisite to determining the when the cause of action accrues is a precise clarification of the cause of action. Mid-Pacific Constr. Co. v. Semes (I), 6 FSM R. 171, 174 (Pon. 1993).

In general, a cause of action accrues when the right to bring suit on a claim is complete – the true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. Mid-Pacific Constr. Co. v. Semes (I), 6 FSM R. 171, 176 (Pon. 1993).

In cases where a cause of action is contingent on a condition precedent, the statute of limitations does not begin to run until the condition has occurred, and as to a continuing injury until damages are actually sustained. Mid-Pacific Constr. Co. v. Semes (I), 6 FSM R. 171, 176 (Pon. 1993).

A cause of action based on violation of Corporations, Partnerships, and Associations Regulation 2.7 accrues from the point of insolvency of the corporation. Mid-Pacific Constr. Co. v. Semes (I), 6 FSM R. 165, 176-77 (Pon. 1993).

In general, the statute of limitations in an action for fraud begins to run from the time of discovery of the fraud, or when reasonable diligence should have led to discovery of the fraud. Mid-Pacific Constr. Co. v. Semes (I), 6 FSM R. 171, 177 (Pon. 1993).

Claims for torts that took place before 1951 accrued, at the latest, when the applicable Trust Territory statute took effect in 1951. Unless tolled, the statutes of limitation bar the FSM courts from adjudicating such claims. Alep v. United States, 6 FSM R. 214, 219-20 (Chk. 1993).

For actions for the recovery of land or any interest therein the statute of limitations is twenty years after the cause of action accrues, which is when a suit may first be successfully maintained thereon. Nahnken of Nett v. Pohnpei, 7 FSM R. 485, 488-89 & n.1 (App. 1996).

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 an action brought to recover the balance due upon a mutual and open account, or upon a cause of action on which partial payments have been made, the cause of action shall be considered to have accrued at the time of the last item proved in the account. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM R. 75, 78 (Kos. 1999).

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

A cause of action accrues, and the statute of limitations begins to run, when a suit may be successfully maintained thereon. Jonah v. Kosrae, 9 FSM R. 335, 344 (Kos. S. Ct. Tr. 2000).

The statute of limitations does not begin to run as to a continuing injury until damages are sustained. Jonah v. Kosrae, 9 FSM R. 335, 344 (Kos. S. Ct. Tr. 2000).

The general rule applicable to negligence actions is that the statue of limitations runs from the time of the negligent act or omission, even though the total damage cannot be ascertained until a later date. Jonah v. Kosrae, 9 FSM R. 335, 344 (Kos. S. Ct. Tr. 2000).

When the original cause of injury is permanent in nature, and the damages may be recovered in one action, then the statute of limitations generally attaches at the time the act complained of is done. Jonah v. Kosrae, 9 FSM R. 335, 344 (Kos. S. Ct. Tr. 2000).

A plaintiff's claim for payment arises at the time that the payment became due because a cause of action arises when the right to bring suit on a claim is complete: the true test in determining when a claim arose is based upon when the plaintiff first could have maintained the action. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 556-57 (Pon. 2000).

When under the parties' contract, the defendant was to pay plaintiff within one year from the time that the defendant accepted the plaintiff's Master Plan and the Master Plan was accepted on October 3, 1994, the plaintiff's claim against defendant arose one year later on October 4, 1995. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 557 (Pon. 2000).

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).

In general, a cause of action accrues when the right to bring suit on a claim is complete. The true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. Skilling v. Kosrae, 9 FSM R. 608, 611 (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).

For purposes of determining when the statute of limitations ran, a plaintiff's claim for payment arose at the time that the payment became due. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 405 (Pon. 2001).

When payment became due on October 4, 1995 and the statute of limitations would run on October 4, 1997, a March, 1997 letter demanding arbitration in accordance with the contract was within the statute of limitations. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM R. 400, 407 (Pon. 2001).

The accrual of a cause of action for recovery of land begins when a suit may successfully be maintained upon. Where a cause of action for recovery of land accrued when the Determinations of Ownership were served and when the complaint was filed within twenty years of service, the cause of action for the recovery of land falls within the twenty year limitations period and is not barred by the statute of limitations. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 174 (Kos. S. Ct. Tr. 2002).

A cause of action accrues when the right to bring suit to a claim is complete. This is established at the time when the plaintiff could have first maintained the action to a successful conclusion. Kosrae v. Skilling, 11 FSM R. 311, 315 (App. 2003).

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).

The statute of limitations begins to run from the time that the cause of action accrues, which is to say from the time that a plaintiff first could have initiated a lawsuit on the cause of action alleged. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

In an installment contract setting, the statute of limitations begins to run from the time that each installment is due. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

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

When, if the plaintiffs' March, 1996 termination of employment was permitted by the terms of their respective contracts, then no wage claims accrued after their; if the terminations violated the contracts, then wage claims would have continued to accrue from then until the contracts ended by their terms on July 5, 1996, but any wage claims that had accrued – i.e., claims for wages that had become due and payable – before the July 4, 1996 complaint was filed, are time barred. Segal v. National Fisheries Corp., 11 FSM R. 340, 342-43 (Kos. 2003).

Given that a cause of action accrues when a suit can be successfully maintained thereon, it is indisputable that if the construction was in fact defective, a suit could have been maintained from the date that construction was completed. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

Under the Pohnpei statute of limitations, if anyone who is liable to any action fraudulently conceals the cause of action from the knowledge of the person entitled to bring it, the action may be commenced at any time within the times limited within the statute after the person who is entitled to bring the same shall discover or shall have had reasonable opportunity to discover that he has such cause of action, and not afterwards. Youngstrom v. NIH Corp., 12 FSM R. 75, 77 (Pon. 2003).

If a plaintiff fraudulently conceals allegedly defective construction methods, the six-year limitations period does not begin to run until the date on which the defendant discovered or had a reasonable opportunity to discover the alleged defect. It is not appropriate for the court, at the juncture of a motion to dismiss, to rule on an essentially factual matter. The trial's purpose will be to determine whether the construction methods that are alleged were, in fact, utilized; whether those methods were improper; and if they were, at what point the defendant knew or should have known of them. Youngstrom v. NIH Corp., 12 FSM R. 75, 77-78 (Pon. 2003).

A cause of action accrues when the right to bring suit on a claim is complete. The true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. Skilling v. Kosrae State Land Comm'n, 13 FSM R. 16, 19 (Kos. S. Ct. Tr. 2004).

A cause of action accrues when the right to bring suit on a claim is complete. The true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 81 (Kos. S. Ct. Tr. 2004).

A claim against Pohnpei has accrued when all of the facts comprising said claim exist, regardless of whether said facts are known or have been discovered by the claimant. Mobil Oil Micronesia, Inc. v.

Pohnpei Port Auth., 13 FSM R. 223, 227 (Pon. 2005).

Applying the Pohnpei Government Liability Act statue of limitations, as well as its test for determining when a claim accrues, Mobil's cause of action for contract reformation accrued on September 30, 1997 when it signed the lease agreement underlying this lawsuit since all facts comprising its cause of action for reformation existed at that time whether Mobil knew it or not. Accordingly, Mobil was required to file its claim for reformation by no later than September 30, 1999. Because it did not do so, the claim will be dismissed. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 227 (Pon. 2005).

If an action accrued to a predecessor in interest, the twenty years statute of limitations is computed when the action first accrued to the predecessor. The statute of limitations does not start to run all over again each time there is a new successor in interest. Dereas v. Eas, 14 FSM R. 446, 457 (Chk. S. Ct. Tr. 2006).

The statute of limitations for claiming a violation of due process by the government is covered by the six-year period found in Kosrae Code section 6.2506. Thus, claims against the Land Commission for violation of due process and for failing to apply statutes are governed by the six year statute of limitations. Since the statute of limitations begins to run when a cause of action accrues, when, if there was a violation of due process, the latest time it accrued was when the certificate of title was issued in 1997, and since more than six years passed before the plaintiff asserted his claim, any claim based on a violation of his right to due process fails because it was not filed within the six-year period and will be dismissed. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

Whether a plaintiff's cause of action for slander is time-barred depends on when that cause of action accrued. In general, a cause of action accrues when the right to bring suit on a claim is complete – the true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

As a general rule, a cause of action for libel or slander accrues, so as to start the running of limitations, at the time of publication, and not on the date of discovery of the wrong, or when the alleged injury occurred. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

A cause of action for libel accrues, so as to start the running of limitations, at the time of publication, and not on the date of discovery of the wrong, or when the alleged injury occurred. Jano v. Fujita, 15 FSM R. 494, 497 (Pon. 2008).

The statute of limitations begins to run when a cause of action accrues. When claims against the Land Commission of negligence, violations of due process and for failing to apply statutes accrued either at the time the determination of ownership was issued or when the certificate of title was issued in February 1986, more than six years has passed since those claims accrued and therefore, the statute of limitations has run and those claims must be dismissed. Allen v. Allen, 15 FSM R. 613, 619-20 (Kos. S. Ct. Tr. 2008).

The time for filing an appeal from a Land Commission determination of ownership is not the starting point for the statute of limitations. The starting point for the statutes of limitation set out in Kosrae State Code §§ 6.2503-2306 is the time the action accrued. An action accrues for recovery of land at the time a suit may have been successfully maintained upon, which is when the determination of ownership was issued. It is not related to the service of the determination of ownership. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

When a promissory note is payable in instalments, each instalment is a distinct cause of action and the statute of limitations begins to run against each instalment from the time it becomes due, that is, from the time when an action might be brought to recover it. FSM Dev. Bank v. Chuuk Fresh Tuna, Inc., 16 FSM R. 335, 338 (Chk. 2009).

A cause of action arises or accrues when the right to bring suit on a claim is complete; that is, when the plaintiff could have first maintained the action to a successful conclusion. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

A cause of action does not accrue for the purposes of a statute of limitations until all elements are present, including damages. Allen v. Allen, 17 FSM R. 35, 39 (App. 2010).

When a plaintiff's claims against the Land Commission are all based on either allegations that he had not received notice of the 1983 and 1984 Land Commission hearings or on the allegation that the Land Commission failed to serve him the February 1986 determination of ownership, his cause of action accrued in February 1986 (or within a reasonable time thereafter to allow for the service he alleges was required) and any claims about lack of notice for the earlier hearings also accrued then because that is when the last element of his several causes of action – damages – occurred. Up until then he could not allege that he had suffered any damages because no one had yet been determined the owner of the parcel. Allen v. Allen, 17 FSM R. 35, 40 (App. 2010).

Although service of a determination of ownership was a necessary condition precedent to start the statutory 120-day time period within which a Land Commission determination can be appealed, this does not have a bearing on a plaintiff's cause of action when he asserts that he was never a party in the Land Commission proceedings and he was not served notice of the hearing or of the determination of ownership since the plaintiff could have sued the named owner anytime after February 25, 1986 determination of ownership, or at the latest, after the March 4, 1986 service on the family representative, because all of the elements of his alleged causes of action were present by then. Allen v. Allen, 17 FSM R. 35, 40 (App. 2010).

Courts have characterized the date from which a limitations period starts running as from when the cause of action accrues and that a cause of action accrues when a suit may first be successfully maintained thereon. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

A cause of action against the State of Chuuk accrues or arises and the limitations period starts running from the date on which the event triggering the cause of action occurred. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

When a state employee was forced to leave state employment in December 2002, the six-year statute of limitations for claims against the state started running then because it was the date on which the event triggering the cause of action occurred and it was also the time when he could have first successfully maintained a suit on his claim he should not have been forced to resign. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

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 cause of action arises or accrues when the right to bring suit on a claim is complete; that is, when the plaintiff could have first maintained the action to a successful conclusion. Iwo v. Chuuk, 18 FSM R. 252, 254 (Chk. 2012).

A cause of action on a salvage contract accrues and the statute of limitations period starts to run on the day on which the salvage operations are terminated or the vessel and any part of the cargo is delivered to a safe port. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 11 (Pon. 2013).

By Pohnpei statute, in an action brought to recover the balance due upon a mutual and open account, or upon a cause of action upon which partial payments have been made, the cause of action is considered to have accrued at the time of the last item proved in the account. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 n.3 (Pon. 2013).

A cause of action accrues and the statute of limitations begins to run, when a suit may be successfully maintained thereon. When a note is payable in installments, each installment is a distinct cause of action and the statute of limitations begins to run against each installment from the time it becomes due, that is, from the time when an action might be brought to recover it. Bank of Hawaii v. Susaia, 19 FSM R. 66, 70 (Pon. 2013).

In an action brought to recover the balance due upon a mutual and open account, or upon a cause of action on which partial payments have been made, the cause of action shall be considered to have accrued at the time of the last item proved in the account. Eot Municipality v. Elimo, 19 FSM R. 290, 294-95 (Chk. 2014).

When it is unclear from what the court has before it exactly when Chuuk made a loan repayment but it must have been some time after April 2005, otherwise that payment would have reduced the loan principal by some degree and since that partial loan repayment was also an acknowledgment of the debt Chuuk owed the municipalities for the airport renovation loan, the plaintiffs' cause of action could not have first accrued and the statute of limitations could not have started to run in 1999 when the loan was made or in 2002 when the loans, as per the memorandum of understanding between Chuuk and its municipalities, started to earn interest. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

Since a partial payment constitutes an acknowledgment of the debt, it is implicitly treated as a new promise to pay, and a new promise to pay has the effect of starting any limitations period all over again. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

When repayment of the airport renovation loan was due a reasonable time after the $500,104.65 partial payment and when, without identifying the exact date that would constitute a reasonable time after the partial payment that the repayment should be complete, the court is confident that, based on the attendant circumstances, that time frame would be within the six-year period before suit was filed on January 24, 2012. Eot Municipality v. Elimo, 19 FSM R. 290, 295 (Chk. 2014).

In general, the statute of limitations in an action for fraud begins to run from the time of discovery of the fraud or when reasonable diligence should have led to discovery of the fraud. FSM v. Muty, 19 FSM R. 453, 460-61 (Chk. 2014).

The true test in determining when a claim arose, is based upon when the plaintiff first could have maintained the action. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

For purposes of determining when the statute of limitations ran, it is well established, that the plaintiffs' claim for payment arose at the time the relevant payment became due. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

A cause of action accrues when the right to bring suit is complete. This is established at the time when the plaintiff could have first maintained the action to a successful conclusion. Setik v. Mendiola, 20 FSM R. 236, 243 (Pon. 2015).

The true test in determining when a claim arose, is based upon when the plaintiff first could have maintained the action. Setik v. Mendiola, 20 FSM R. 320, 326 (Pon. 2016).

The applicable statute provides that in an action brought upon a cause of action on which partial payments have been made, the cause of action is considered to have accrued at the time of the last item proved in the account. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

A cause of action does not accrue for the purposes of a statute of limitations until all elements are present, including damages. Eot Municipality v. Elimo, 20 FSM R. 482, 490 (Chk. 2016).

In a cause of action on which partial payments have been made, the cause of action is considered to

have accrued at the time of the last item proved in the account. Pacific Fin. Corp. v. David, 21 FSM R. 5, 6 (Chk. 2016).

When no admissible evidence is submitted to prove the last item alleged in the defendant's account – an alleged October 21, 2011 payment – and when the plaintiff has submitted affidavits by its attorney and by its vice-president, that interest of 23.75% has accrued on the June 15, 2000 principal balance of $1,075.17 equaling $4,164.70 between then and October 6, 2016, the reasonable inference can be drawn that there were no payments on the defendant's promissory note after June 15, 2000. The plaintiff has thus failed to show that there are no genuine issues as to any material fact on the defendant's affirmative defense of statute of limitations. Pacific Fin. Corp. v. David, 21 FSM R. 5, 6 (Chk. 2016).

The questions of when a statute of limitations begins to run, whether and when the statute is tolled, and whether a claim is barred by the statute of limitations are questions of law to be reviewed de novo. Tilfas v. Kosrae, 21 FSM R. 81, 86 (App. 2016).

A cause of action accrues, and the statute of limitations begins to run, when a suit may be successfully maintained thereon – when the plaintiff could have first maintained the action to a successful conclusion. Tilfas v. Kosrae, 21 FSM R. 81, 87, 89 (App. 2016).

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).

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).

– Tolling

The Federated States of Micronesia tolling statute, 6 F.S.M.C. 806, applies to persons "entitled to a cause of action," including minors for whom wrongful death actions may be brought. Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 113-14 (Pon. 1985).

The two-year period proclaimed in 6 F.S.M.C. 503(2) is subject to the tolling provisions of 6 F.S.M.C. 806. Accordingly, the statute of limitations has not run against the minor children in this case. Sarapio v. Maeda Road Constr. Co., 3 FSM R. 463, 464 (Pon. 1988).

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

The statute of limitations has run on claims of mismanagement of the Micronesian Claims Act unless there was continuing unlawful conduct that would create a basis for equitable tolling of the statute of limitations. Alep v. United States, 7 FSM R. 494, 499 (App. 1996).

Because leave to amend a pleading shall be freely given when justice so requires, a plaintiff may be granted leave to amend its complaint to present its argument that the statute of limitations may have been

tolled based upon its request that the parties submit their dispute to arbitration when the defendant has not presented any arguments that would show any injustice if the plaintiff amended its complaint. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 559 (Pon. 2000).

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).

When the plaintiffs have not put forward any grounds that could toll the running of the statute of limitations although they have had an adequate opportunity to do so since the defendants' answer put them on notice that the statute of limitations defense would be asserted and when the plaintiffs were thus not prejudiced by the defendants' failure to bring a separate motion asserting the defense because they had been on notice that they would be required to show why or which of their claims would not be barred by the statute of limitations, summary judgment for the defendants will be granted on the issue of statute of limitations. Zion v. Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

A defendant's wrongful conduct may toll or suspend the running of the statute of limitations as a form of estoppel – a defendant is estopped from raising the defense of statute of limitations because by his wrongful conduct he induced the plaintiff not to sue until the statute of limitations had run out. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 18 n.3 (App. 2006).

A statue of limitation may be tolled (suspended) if the person who is liable to any action fraudulently conceals the cause of action from the knowledge of a person entitled to bring the action. Dereas v. Eas, 14 FSM R. 446, 457-58 (Chk. S. Ct. Tr. 2006).

Generally, filing a lawsuit tolls a statute of limitations. However, for a lawsuit to toll a statute of limitation, that lawsuit must be against the proper party. Dereas v. Eas, 15 FSM R. 135, 139 (Chk. S. Ct. Tr. 2007).

A suit against one person does not arrest the running of the statute of limitations period against another. Dereas v. Eas, 15 FSM R. 135, 139 (Chk. S. Ct. Tr. 2007).

A suit begun against a stranger, or one who sustains no such relation to the proper defendant that a judgment against him would bind such defendant, can have no effect on the operation of the statute of limitations in favor of the party against whom the cause of action properly exists. Dereas v. Eas, 15 FSM R. 135, 139 (Chk. S. Ct. Tr. 2007).

When neither a 1996 lawsuit nor a 2002 lawsuit included any party, that if a judgment were rendered against that party, the judgment would bind the non-movant, and when the non-movant was not a party to either lawsuit, those 1996 and 2002 lawsuits could not have tolled the operation of the statute of limitations in non-movant's favor. Dereas v. Eas, 15 FSM R. 135, 139 (Chk. S. Ct. Tr. 2007).

There are circumstances where a statute of limitations may be tolled, or temporarily suspended. For example, statutory language may include such an exception by stating that an action accrues when a person has knowledge of or discovered the action that caused the injury. This kind of exception is commonly called the "discovery rule." The Kosrae statutes do not include exceptions, but in some jurisdictions, courts apply this exception even though it is not specifically included in the statute of limitations. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

The service of a notice or the failure to serve a notice does not suspend the operation of a statute of limitation. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

If the Kosrae State Court were to allow a plaintiff to initiate an action beyond the statute of limitations deadline, a plaintiff would have to demonstrate extraordinary circumstances and would carry the burden of

proving the plaintiff was entitled to an exception to the statute. Allen v. Allen, 15 FSM R. 613, 620 (Kos. S. Ct. Tr. 2008).

Chuuk's inaction in responding to a former state employee's February 17, 2006 request for payment of lost wages does not toll statute of limitation on the former employee's cause of action for wrongful termination in December 2002. Dungawin v. Simina, 17 FSM R. 51, 54 (Chk. 2010).

Generally, pending litigation will toll the running of any statutory limitations periods. Aunu v. Chuuk, 18 FSM R. 48, 51 (Chk. 2011).

The running of a statute of limitations can be tolled – suspended – by certain events. A defendant's wrongful conduct can, as a form of estoppel, toll or suspend the running of a statute of limitations – for instance, a defendant would be estopped from raising a statute of limitations defense when, by his wrongful conduct, he induced the plaintiff not to sue until the statute of limitations had run out. Iwo v. Chuuk, 18 FSM R. 252, 254 (Chk. 2012).

When a defendant's alleged promise of compensation and its alleged subsequent repudiation of that promise may have tolled the running of the statute of limitations are undated, the plaintiff's cause of action might not, depending on the circumstances, be time-barred, and thus his proposed amended complaint is not futile on its face. Iwo v. Chuuk, 18 FSM R. 252, 255 (Chk. 2012).

A statute of limitations runs against the claims of infants in the absence of a contrary statute or provision. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

A two-year statute of limitations will tolled by statute in favor of a minor for whose benefit the action has been brought. Tarauo v. Arsenal, 18 FSM R. 270, 273 (Chk. 2012).

When the original lawsuit was filed on August 7, 2008, the statute of limitations would have barred recovery for any claims for overtime hours worked before August 7, 2002, but while that lawsuit was pending, any further running of the statute of limitations would have been tolled (suspended) for any overtime claims after August 7, 2002. Aunu v. Chuuk, 18 FSM R. 467, 469 (Chk. 2012).

For a lawsuit to toll a statute of limitation, that lawsuit must be against the proper party. Aunu v. Chuuk, 18 FSM R. 467, 470 (Chk. 2012).

A contention that if a creditor, which was receiving partial payments, had wanted to recover the entire debt it would have to sue on each of the missed installment payments before the installment was six years old, makes no sense. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

Under the partial payment rule – that partial payment on the whole debt will toll the running of the statute of limitations – an acknowledgment or promise to perform a previously defaulted contract obligation is effectual, whether oral or in writing, at least in certain types of cases, to start the statute of limitations running anew. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

Whether a partial payment constitutes unequivocal acknowledgment of the whole debt from which an unconditional promise to pay can be implied thereby tolling the statute of limitations is a question for the trier of fact. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

When a letter signed by both parties clearly states that the partial payments were a "repayment plan for the outstanding balance of the loan," it cannot be interpreted in any way other than as an acknowledgment of the whole debt and that the agreed $100 payments were partial payments on the whole debt. Sam v. FSM Dev. Bank, 20 FSM R. 409, 418 (App. 2016).

When a debtor had made partial payments within the limitations period, under both the common law and statutory law (Pohnpei statutory law taking precedence), the statute of limitations will not bar the

creditor from proceeding against the debtor for the entire outstanding balance. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

There is substantial authority for the proposition that partial payments by a principal debtor do not toll the statute of limitations as to the note's guarantors. The rationale behind this general rule is that a guarantor's consent to the debtor's future conduct may not be presumed merely on the basis of the original guarantee. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

The general rule is that a payment by the principal before the action is time-barred, operates as a renewal as to the principal, and to a surety, but not to a guarantor. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

A payment by the principal debtor will not operate to toll the statute of limitations as to a guarantor of the debt, even though it might do so as to a surety. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

When the trial court correctly decided that the statute of limitations was tolled by the debtor's partial payments, but did not separately determine whether those partial payments also tolled the statute of limitations with respect to the guarantor mortgagors, the appellate court will vacate the trial court judgment against the mortgagors and remand the matter for the trial court to conduct further proceedings to make that determination since that determination may need factual findings about whether the mortgagors were aware that the debtor was making partial payments and whether they acquiesced to the acknowledgment of the debt, and the trial court is the place to address those factual issues. Sam v. FSM Dev. Bank, 20 FSM R. 409, 419 (App. 2016).

The statutory sixty-day period to appeal a Kosrae Land Court decision is tolled until proper service is made. Serving notice of a Land Court adjudication or decision, is required in order to give the party a chance to appeal, and if a party is not properly served the Land Court's written determination of ownership, the statutory sixty-day appeals period does not run against that party. Esau v. Penrose, 21 FSM R. 75, 81 (App. 2016).

The questions of when a statute of limitations begins to run, whether and when the statute is tolled, and whether a claim is barred by the statute of limitations are questions of law to be reviewed de novo. Tilfas v. Kosrae, 21 FSM R. 81, 86 (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 running of a statute of limitations can be tolled – suspended – by certain events. A defendant's wrongful conduct can, as a form of estoppel, toll or suspend the running of a statute of limitations. 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).

TAXATION

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

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).

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).

The FSM Income Tax Law's distinction between employees and businesses obviously reflects congressional expectation that businesses and employees are generally distinguishable on the basis of whether generation of their income would require substantial expenditures by them. Rauzi v. FSM, 2 FSM R. 8, 19 (Pon. 1985).

The Federated States of Micronesia Income Tax Law confirms that it is the nature of the services performed and the person performing the services, rather than the stated identity of the contracting party, which determines the tax treatment for the compensation under the contract. It is of no import that the "contractor" was identified as a corporation rather than as an individual when the contract makes clear that the primary services to be rendered were those of an individual and the corporation was merely a name under which the individual conducted business. Heston v. FSM, 2 FSM R. 61, 64 (Pon. 1985).

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).

Although plaintiff incurred expense in carrying out his obligations under contract, they were well below ten percent of the amount he received under the contract. Such expenditures are insufficient to alter plaintiff's status from an "employee" to a "business" under the FSM Income Tax Law. Heston v. FSM, 2 FSM R. 61, 66 (Pon. 1985).

The statement in 54 F.S.M.C. 144(2) that penalties provided in chapter 1 will apply to the gross revenue tax law does not preclude the penalty specified in 54 F.S.M.C. 902 from applying. FSM v. George, 2 FSM R. 88, 91 (Kos. 1985).

Public Law No. 3-32, the predecessor of 54 F.S.M.C. 902 is subject to the interpretation that it was to be a catch-all provision applicable to all taxes which subsequently might be established by Congress. FSM v. George, 2 FSM R. 88, 94 (Kos. 1985).

The penalty provisions of 54 F.S.M.C. 902 apply to failure to make timely payment of the gross revenue tax imposed under 54 F.S.M.C. 141. FSM v. George, 2 FSM R. 88, 94 (Kos. 1985).

The gross revenue tax levied by the national government under 51 F.S.M.C. §§ 141-44 is distinguishable from a sales tax in several ways. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM R. 124, 127 (Pon. 1985).

The power granted to Congress by FSM Constitution article IX, section 2(e) "to impose taxes on

income" includes the power to tax gross revenue. Afituk v. FSM, 2 FSM R. 260, 264 (Truk 1986).

The gross revenue tax as enacted by the Congress of Micronesia continued in effect in the Federated States of Micronesia by virtue of the transition article of the FSM Constitution but, because it was subsequently amended by the FSM Congress and was included in the codification of FSM statutes, may now be considered a law enacted by Congress. Afituk v. FSM, 2 FSM R. 260, 264 (Truk 1986).

Statutory provisions designed to enhance the capacity of the government to enforce penalties for failure to pay taxes are penal, not remedial, and should be strictly construed. In re Island Hardware, Inc., 3 FSM R. 428, 432 (Pon. 1988).

On a claim for declaratory relief from an unconstitutional excise tax, the FSM Supreme Court trial division will not abstain, where the issue could later be certified to the FSM Supreme Court appellate division and result in delay, where the trial court has already retained the case longer than contemplated, where the issue is narrowly posed and not capable of varying resolutions, and where it appears that a greater service may be provided by deciding the issue. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

In the Federated States of Micronesia Income Tax Law, 54 F.S.M.C. 111 *et seq.*, cooperatives are not singled out in any way within the definition of business and there is no indication in the tax law that cooperatives are to be treated differently than corporations or any other forms of businesses. KCCA v. Tuuth, 5 FSM R. 68, 70 (Pon. 1991).

Each exclusion from the definition of "gross revenue" in 54 F.S.M.C. 112(5) seems to represent one or another of three possible purposes: to prevent dual taxation of revenue of a single taxpayer, to make allowances for special situations, or to exclude funds received by the taxpayer on behalf of another such as refunds and rebates, moneys held in a fiduciary capacity, cash discounts taken on sales, or proceeds of sales of goods returned by customers when the sale price was refunded in cash or by credit. KCCA v. Tuuth, 5 FSM R. 68, 70-71 (Pon. 1991).

Patronage refunds paid by a cooperative to its members are not refunds within the meaning of 54 F.S.M.C. 112(5)(a) and are not excludable from gross revenue under the FSM Tax Law. KCCA v. Tuuth, 5 FSM R. 68, 71 (Pon. 1991).

A sales tax is oriented toward individual transactions, not total income, and is tied to the price of the goods sold, rather than to the overall success of the taxpayers. Youngstrom v. Kosrae, 5 FSM R. 73, 76 (Kos. 1991).

An income tax typically applies to practically all income, with rates payable based on the total income of the taxpayer, after giving allowance to certain exemptions, and normally extends to all forms of income, including wages and salaries, interest, royalties, fees and returns on capital, as well as income realized through the sale of goods. Youngstrom v. Kosrae, 5 FSM R. 73, 76 (Kos. 1991).

Limitation of the definition of "business" under the FSM income tax law to "all activities . . . carried on within the Federated States of Micronesia" strongly implies that activities carried on elsewhere by a business functioning within the Federated States of Micronesia are not subject to FSM income tax. 54 F.S.M.C. 112(1). Bank of the FSM v. FSM, 5 FSM R. 346, 348 (Pon. 1992).

While there is a presumption that all revenue of a business is derived from sources within the Federated States of Micronesia, the presumption may be rebutted and the tax "levied only on that portion which is earned or derived from sources or transactions within the Federated States of Micronesia." 54 F.S.M.C. 142. Bank of the FSM v. FSM, 5 FSM R. 346, 349 (Pon. 1992).

The statutory scheme emphasizes the location of the business activity which generates the revenue in question. Therefore revenue derived from banking investment transactions in Honolulu and Chicago are not taxable since they are not derived from sources or transactions within the Federated States of Micronesia. Bank of the FSM v. FSM, 5 FSM R. 346, 349 (Pon. 1992).

Where regulations existed referring to a patronage refund as a "bonus or refund" at the time Congress enacted the statute excluding refunds from the definition of gross revenue, the statute unambiguously excludes patronage refunds from gross revenue. KCCA v. FSM, 5 FSM R. 375, 379-80 (App. 1992).

Patronage refunds are not voluntarily paid refunds because the regulations compel the allocation of patronage refunds. Therefore they are properly excludable from gross revenue. KCCA v. FSM, 5 FSM R. 375, 380 (App. 1992).

Under 54 F.S.M.C. 902, a monthly penalty is imposed on delinquent payment of any tax specified in Title 54, including gross revenue tax. Setik v. FSM, 5 FSM R. 407, 409 (App. 1992).

54 F.S.M.C. 143(2) mandates that all businesses compute gross revenue tax liability using the accrual accounting method. NIH Corp. v. FSM, 5 FSM R. 411, 413 (Pon. 1992).

By statute, a taxpayer is liable for penalties and interest on any underpayment of his gross revenue tax liability regardless of the reason for underpayment, unless some other principle of law applies to afford the taxpayer relief. NIH Corp. v. FSM, 5 FSM R. 411, 413-14 (Pon. 1992).

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

Moneys held in a fiduciary capacity are specifically excluded by statute from the definition of gross revenue. 54 F.S.M.C. 112(5)(b). The term "fiduciary capacity" is not restricted to technical or express trusts, but extends to money that is not the taxpayer's own, but which is handled for the benefit of another. NIH Corp. v. FSM, 5 FSM R. 411, 416 (Pon. 1992).

A taxpayer who owes social security taxes to the government as employer contributions under the FSM Social Security Act is liable for reasonable attorney's fees if the tax delinquency is referred to an attorney for collection; however, the court may exercise discretion in determining the reasonableness of the fees assessed in light of the particular circumstances of the case. FSM Social Sec. Admin. v. Mallarme, 6 FSM R. 230, 232 (Pon. 1993).

Among the factors which the court may consider in determining the amount of attorney's fees recoverable in an action brought under 53 F.S.M.C. 605 is the nature of the violation, the degree of cooperation by the taxpayer, and the extent to which the Social Security Administration prevails on its claims. FSM Social Sec. Admin. v. Mallarme, 6 FSM R. 230, 232-33 (Pon. 1993).

Rents are income taxable under the FSM Income Tax Statute, and a state tax on gross rental receipts combines to create vertical multiple taxation of a form of income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 119 (App. 1995).

The name given a tax by a taxing authority is not necessarily controlling as to the type of tax it is. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 119 (App. 1995).

The interval in which a tax is reported and collected and whether it is imposed without regard to profit or loss does not alter whether it is an income tax. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 119 (App. 1995).

The Social Security Administration is entitled to summary judgment for unpaid taxes when it supported its motion with an affidavit detailing the a taxpayer's audit and other evidence indicating the taxpayer's liability, and the taxpayer has provided no evidence to indicate otherwise. FSM Social Sec. Admin. v.

Weilbacher, 7 FSM R. 442, 445-46 (Pon. 1996).

The Social Security Administration is entitled to a penalty of not more than $1,000 and interest of 12% on unpaid taxes. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 446-47 (Pon. 1996).

A taxpayer is liable to the Social Security Administration for reasonable attorney's fees and costs when unpaid taxes are referred to an attorney for collection to the extent which the Social Security Administration prevails on its claims. FSM Social Sec. Admin. v. Weilbacher, 7 FSM R. 442, 447 (Pon. 1996).

It is unavailing in tax cases, except in special circumstances, to seek a preliminary injunction against enforcement or to have the taxes escrowed pending the outcome. This is in order not to disrupt the financial stability of the governmental unit. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 127 (Chk. 1997).

Under 53 F.S.M.C. 605(3) an employer is delinquent each quarter that it fails to both file a report and pay within ten days after the end of the quarter. Therefore an employer may be subject to the maximum penalty of $1,000 each time (quarter) it is delinquent. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 132 (App. 1997).

Both interest, 53 F.S.M.C. 605(4), and penalties, 53 F.S.M.C. 605(3), may be applied to an employer who is delinquent, as was intended by Congress. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 132-33 (App. 1997).

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).

Cases distinguishing between taxes and fees often examine the source of the levy as an indicator of whether the particular payment should be considered a tax or a fee. An assessment imposed directly by the legislature is more likely to be a tax than one imposed by an administrative agency. The classic tax is imposed by a legislature upon many, or all citizens; the classic regulatory fee is imposed by an agency on those subject to its regulation. Chuuk v. Secretary of Finance, 8 FSM R. 353, 383 (Pon. 1998).

Courts also consider whether a governmental levy is directed at the general public, or whether it is imposed on a discrete subsection of the public, in distinguishing between a tax and a fee. An assessment imposed on a broad class of parties is more likely to be a tax than one imposed on a narrow class. One distinguishing characteristic of a fee is that the public agency normally may exact a fee for a grant which, presumably, bestows a benefit on the applicant, not shared by other members of society. Chuuk v. Secretary of Finance, 8 FSM R. 353, 383 (Pon. 1998).

Another distinction between a tax and a fee is whether the levy is exacted voluntarily in exchange for a benefit to the payor. Taxation is a legislative function, and Congress, which is the sole organ for levying taxes, may act arbitrarily and disregard benefits bestowed by the Government on a taxpayer and go solely on ability to pay, based on property or income. A fee, however, is incident to a voluntary act, *e.g.*, a request that a public agency permit an applicant to practice law or medicine or construct a house or run a broadcast station. Chuuk v. Secretary of Finance, 8 FSM R. 353, 384 (Pon. 1998).

A fee for use of property which is controlled by the government is not necessarily a tax, because the government is entitled to receive the benefits of its property just like any private landowner. As a sovereign, the government levies taxes, but as property owner it may charge fees for the use of its property. These fees are paid by choice and in exchange for a particular benefit, the use of government property, just

as rents are freely paid for the use of private property. Chuuk v. Secretary of Finance, 8 FSM R. 353, 385 (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).

Although the government is not precluded from charging and trying, in one information, violations of two or more separate provisions of the FSM codes which arise from the same course of conduct, but when the case involves conduct specifically addressed by the tax code (which has comprehensive civil and criminal penalties established for a clearly stated purpose) the government cannot also seek to charge the defendant with alternative violations of criminal code sections providing for criminal penalties up to ten times greater than those allowed under the tax code and which were not clearly intended to apply to tax crimes. FSM v. Edwin, 8 FSM R. 543, 546 (Pon. 1998).

The legislative history of Title 54 indicates that it was created as a system primarily aimed at recovering revenue rather than punishing wrongdoers with lengthy prison sentences and that the fines and criminal penalties adopted in it were thought to be commensurate with the specified wrongdoing. FSM v. Edwin, 8 FSM R. 543, 547 (Pon. 1998).

There is no clearly expressed Congressional intent for the criminal code to be used to prosecute tax crimes. Since the FSM had existing laws with comprehensive civil and criminal penalties applicable to tax crimes at the time the criminal code was adopted, the implication is that the criminal code was not intended for the purpose of prosecuting such crimes. FSM v. Edwin, 8 FSM R. 543, 549 (Pon. 1998).

The penalties applicable to criminal mischief pertain to deterring the commission of the crime not for the primary purpose of raising revenue as with the tax code which has comprehensive civil and criminal penalties designed specifically for that purpose. FSM v. Edwin, 8 FSM R. 543, 549 (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).

For tax purposes, the FSM Telecommunications Corp. is deemed part of the national government thereby making it exempt from a state use tax. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 292, 294 (Pon. 1999).

Because a Congressional statute set up Telecom to serve the public interest and foster economic development, because Telecom may seek appropriations from Congress and, to the extent approved by the President, grants from sources outside of the FSM, because Telecom's board of directors must submit an annual report reflecting its activities, including financial statements, to the government, and because Telecom has no independent shareholders and is fully owned by the national government, Telecom is deemed, for taxation purposes, to be a part of the national government, and its efforts to carry out its mission should not be hindered by any state's efforts to tax its business activities. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 385 (Pon. 2000).

By making the taxing powers allocated between the national and state governments of Micronesia exclusive and distinct and allocating the exclusive power to tax income and imports, the Constitution's framers sought to avoid vertical multiple taxation and ensure a consistent fiscal policy for Micronesia. FSM

Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 387-89 (Pon. 2000).

A normal English language reading of the phrase "the revenues" in article IX, section 5's second sentence necessarily refers to those revenues mentioned in section 5's first sentence – national taxes. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

The Constitution delegates to the national government the power to impose only two types of taxes – that based on imports and that on income. Money collected through these forms of taxation are the revenues of which half must be paid into the treasury of the state where collected. Chuuk v. Secretary of Finance, 9 FSM R. 424, 434 (App. 2000).

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).

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).

Gross revenue is defined as the gross receipts of the taxpayer derived from trade, business, commerce, or sales and business is defined to mean any undertaking carried on for pecuniary profit carried on within the FSM for economic benefit either direct or indirect. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 29 (Pon. 2001).

Once the Secretary of Finance determines that a taxpayer has failed to pay the gross revenue tax it owes, he notifies the taxpayer and demands that the tax be paid. If the taxpayer fails within 30 days to make and file a return and pay the tax which has been assessed, it is appropriate for the Secretary to make a return for the taxpayer from the information available to the Secretary and to assess that amount against the taxpayer. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

Pursuant to 54 F.S.M.C. 152(3), the Secretary's gross revenue tax assessment is be presumed to be correct unless and until it is proved incorrect by the person, business, or employer disputing the amount of the assessment. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

When the taxpayer has failed to meet its the burden of showing that the Secretary's assessment was incorrect and has failed to put forth competent evidence in opposition to the Secretary's summary judgment motion and its lengthy opposition contained only legal argument, the taxpayer has failed to submit evidence establishing that the Secretary's assessment was incorrect and summary judgment in the Secretary's favor is appropriate. Ting Hong Oceanic Enterprises v. Ehsa, 10 FSM R. 24, 31 (Pon. 2001).

Import taxes are an exclusive national power, and as such it is a power that is prohibited to the states. MGM Import-Export Co. v. Chuuk, 10 FSM R. 42, 44 (Chk. 2001).

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

When "first sale" is defined as "the sale first made after the date of receipt in Chuuk State of taxable tangible items, a tax on first sale in the State of Chuuk of all tangible items, except gasoline and unprocessed and unpackaged items, means that in order for an item to be taxable, there must be "receipt of the item" in Chuuk. The only reasonable inference to be drawn from the definition of "first sale" is that items which have never left Chuuk, that is, locally produced goods are not subject to the statute because they have no "date of receipt" in Chuuk. K&I Enterprises v. Francis, 15 FSM R. 414, 418 (Chk. S. Ct. Tr. 2007).

The Chuuk service tax is to be paid by the customer, person, company, or entity obtaining the services, and must be collected by the person, company, or entity providing the services. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 156 (Chk. 2010).

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

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

The unconditional 50% transfer of national taxes to the state treasuries is part of the constitutional framework that, through mandatory revenue sharing, allows the states a high degree of fiscal autonomy while at the same time avoiding undesirable vertical multiple taxation. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 530 n.3 (Chk. 2011).

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

Pohnpei's first commercial sales tax is assessed against the seller on the first commercial sale within the state. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 31 (Pon. 2011).

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

When a procurement contract clearly contemplated that the transaction would not be complete until Chuuk had had a chance to inspect, certify, and verify the goods which were the subject of the contract, and thereby accept them; when the procurement contract secured this by withholding payment of the final 25% of the contract amount until acceptance; when the risk of loss remained with the Pohnpei seller until the goods were duly delivered and accepted in Chuuk; and when, although Chuuk eventually paid for the shipping, the seller took on the initial burden and risk by paying for it up front, the locus of performance of the contract was in Chuuk. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 33-34 (Pon. 2011).

Retailers pass on sales taxes to their customers at the cash register, which is commonly and appropriately known as the point of sale. In such retail operations, a customer takes delivery of the goods and perhaps even inspects them at the point of sale. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 34 (Pon. 2011).

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

When the buyer, did not pay in full until it had a chance to inspect the goods at one of two specified warehouses in Chuuk and the seller did not complete performance until it had delivered the goods there, the goods were not sold until both performances were completed. Since the locus of performance was Chuuk, the locus of the transaction was likewise in Chuuk – *i.e.*, the goods were sold in Chuuk and because the goods were sold in Chuuk, the Pohnpei state sales tax could not attach to the transaction. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 34 (Pon. 2011).

The Chuuk cigarette tax is part of a tax on the first sale in Chuuk of all tangible items, except unprocessed and unpackaged items. Cigarettes are taxed at the rate of two dollars per pack of 20 cigarettes or at a rate of 10 cents per one cigarette. The statute requires that all sellers keep accurate sales records of taxable sales and that they are to compute their tax liability from those records, and cigarettes are presumed sold within four months of receipt in Chuuk unless the importer can prove the contrary. The importer has the burden of overcoming this statutory presumption and proving that there were no taxable sales. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153-54 (Chk. 2013).

Unless a cigarette importer produces evidence to overcome the Chuuk tax act's presumption that the cigarettes were sold after importation, the statutory presumption that he sold the cigarettes he brought into Chuuk would stand and he therefore would be liable to the state for the sales tax he should have collected from the buyers when the cigarettes were sold. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

The Chuuk State Tax Act of 2012 provides that if the taxes it imposes are due and unpaid, including penalties charged, the taxes are debts to the state and will constitute liens in favor of the state on all property belonging to the person, business, association, or corporation liable for the tax, and such taxes and penalties may be collected by levy upon such property in the manner as the levy of an execution. 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).

The determination of whether an assessment is a tax or a fee involves a three-part test that looks to different factors: 1) what entity imposes the charge; 2) what population is subject to the charge; and 3) what purposes are served by the use of the monies obtained by the charge. The classic tax is imposed by a legislature upon many, or all, citizens. It raises money contributed to a general fund, and spent for the benefit of the entire community. The classic regulatory fee is imposed by an agency upon those subject to its regulation. It may serve regulatory purposes indirectly by, for example, raising money placed in a special fund to help defray the agency's regulation-related expenses. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

When the health care assessments or premiums are not imposed by the Chuuk Legislature but are imposed by a public corporation, the Chuuk Health Care Plan through its Board and when the assessments or premiums are not deposited in the Chuuk General Fund but into a special trust fund, these attributes of the premium assessments are characteristic of a classic fee and the opposite of a classic tax. Even

though the funds raised will be spent, at least indirectly, for the benefit of the entire Chuuk community since the funds will be spent for the benefit of people needing or using health care services, which is nearly everyone in Chuuk at one time or another, the premium assessments lie nearer the fee end of the spectrum than the tax end. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

Courts facing cases that lie near the mid-point of the spectrum between the classic tax and the classic fee have tended to emphasize the revenue's ultimate use, asking whether it provides a general benefit to the public of a sort often financed by a general tax, or whether it provides more narrow benefits to regulated companies or defrays the agency's costs of regulation. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

When the health insurance premiums and assessments are not raised for general revenue purposes and cannot be used for any Chuuk state government activity and can only be used for the purposes of the Health Care Plan Act and when the premiums or assessments help defray the cost of providing medical care, the benefits they provide are not of the sort often financed by a general tax. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

Generally, an assessment may be a fee rather than a tax when it is not used for general purposes but is used to defray the expense of performing the duties imposed on the agency and for the general purposes and expense of carrying an act into effect. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

A "fee" is a charge fixed by law for services of public officers and is regarded as compensation for services rendered, but a charge having no relation to services rendered, assessed to provide general revenue rather than compensation, is a "tax." Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

Any payment exacted by the state or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where special benefits derived from their performance are merged in general benefit, is a "tax," while a "fee" is generally regarded as a charge for some particular service. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

The primary purpose of a "tax" is to obtain revenue for the government, while the primary purpose of a "fee" is to cover expense of providing a service or of regulation and supervision of certain activities. In distinguishing fees from taxes, fees are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22-23 (App. 2015).

There is a three-part test to determine whether an assessment is a tax or a fee: 1) what entity imposes the charge; 2) what population is subject to the charge; and 3) what purposes are served by the use of the monies obtained by the charge. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

Fees that are paid into the general public treasury, and disbursable for general public expenses, are taxes. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

If the premiums collected were a tax, the funds would be deposited into the Chuuk treasury, which can only be appropriated by law for a public purpose. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

When all revenues received under a system of medical or health insurance, and all other revenues received by the Health Department as payment for medicine and medical services, must be separated from any general fund established by the Legislature and used only for medical purposes, this supports the position that premiums collected by the insurance plan do not fall under the characteristics of a tax because the funds collected are mandated to be separated from other funds collected. Mailo v. Chuuk Health Care

Plan, 20 FSM R. 18, 23-24 (App. 2015).

When, although it is the employed residents of Chuuk who are making health insurance premium contributions, the benefit of medicines and medical services are applied to the general public this would favor considering the payments a tax instead of a fee. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 24 (App. 2015).

Generally, an assessment may be a fee rather than a tax when it is not used for a general purpose but is used to defray the expense of performing the duties imposed on the agency and for the general purpose and expense of carrying an act into effect. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 24 (App. 2015).

The statutory scheme grants the national government the authority to determine the amount of tax due and to collect those taxes. Under 54 F.S.M.C. 152(3), the Secretary of Finance's assessment of the tax amount is presumed correct unless and until it is proven incorrect. The statutory scheme also permits a tax levy on the lien created by 54 F.S.M.C. 153. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125-26 (Pon. 2015).

It is not a bank's duty to challenge the tax authorities' assessment of the amount of tax due from a taxpayer depositor. It is the taxpayer's responsibility to dispute any tax assessed that it disagrees with and for the taxpayer to resolve the issue with the FSM tax authorities. It also is not the bank's responsibility to challenge the constitutionality of 54 F.S.M.C. 153 or the FSM's interpretation of that statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

Usually, notice and an opportunity to be heard is given prior to deprivation, but a government does not need to follow this in the case of taxes. The government must, however, provide a post-deprivation opportunity to challenge the tax and a clear and certain remedy. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

Judicial review of an adverse Secretary of Finance decision may be had by an aggrieved taxpayer filing a petition naming the Secretary or his successor in office as the defendant and setting forth assignments of all errors alleged to have been committed by the Secretary in his determination of the tax assessment, the facts relied upon to sustain such assignments of errors, and a prayer for appropriate relief. It will not be dismissed merely because it was labeled a "Complaint" and not called a "Petition" because, regardless of what a party has chosen to call the papers they have filed, those papers are what they are based on their function or the relief they seek, and the court must treat them as such. Fuji Enterprises v. Jacob, 20 FSM R. 279, 280 (Pon. 2015).

When a complaint meets 54 F.S.M.C. 156(1)'s procedural requirements for judicial review of a tax assessment and when the relief that is prayed for is permitted by 6 F.S.M.C. 702(1) (claims for recovery of taxes and penalties) and possibly 6 F.S.M.C. 702(2), (4), and (5) (claims for damages from governmental actions), the court cannot say that it fails to state a claim for which the court can grant relief. Fuji Enterprises v. Jacob, 20 FSM R. 279, 281 (Pon. 2015).

Since 6 F.S.M.C. 702(2) specifically waives the FSM's sovereign immunity for claims for damages, injunction, or mandamus arising out of alleged improper administration of FSM laws, the FSM has waived its sovereign immunity for a suit by a state alleging that the FSM failed to comply with the FSM Constitution's mandate that not less than 50% of the national tax revenues be paid into the treasury of the state where collected. Chuuk v. FSM, 20 FSM R. 373, 375 (Chk. 2016).

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

– Constitutionality

State excise tax which levies tax at the port of entry on items imported into a state and which must be paid prior to release of those items from the port of entry, is an import tax within the meaning of FSM Constitution article IX, section 2(d). Wainit v. Truk (II), 2 FSM R. 86, 87 (Truk 1985).

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).

The national power to impose taxes based on imports is exclusive, and not shared by the states. Innocenti v. Wainit, 2 FSM R. 173, 182 (App. 1986).

Taxes imposed on goods because of their entry into a port of entry of the State of Truk, levied at the port of entry in amounts based upon the quality or value of imported goods, and which must be paid to the Division of Revenue prior to release of the items from the port of entry, are taxes based on imports. Such a tax represents an effort to exercise powers expressly delegated to the national government, is beyond the powers of the state, and is null and void. Innocenti v. Wainit, 2 FSM R. 173, 183-84 (App. 1986).

Although retroactive application of a decision holding a state tax unconstitutional would impose hardship upon 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 a 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 evidence that the legislature seriously considered the constitutionality of the legislation. Innocenti v. Wainit, 2 FSM R. 173, 186 (App. 1986).

Taxation of gross revenue of business at different amounts and rates depending upon the amount of each business's annual gross revenue is rationally related to the legitimate legislative purposes of requiring businesses who receive less to pay lower tax and of administrative simplicity and therefore does not violate the due process or equal protection provisions of the FSM Constitution. Afituk v. FSM, 2 FSM R. 260, 263 (Truk 1986).

The power granted to Congress by FSM Constitution article IX, section 2(e) "to impose taxes on income" includes the power to tax gross revenue. Afituk v. FSM, 2 FSM R. 260, 264 (Truk 1986).

There is no evidence in the journal of the Constitutional Convention that the phrase "to impose taxes on income" in FSM Constitution, article IX, section 2(e) was derived from the sixteenth amendment of the United States Constitution which permits the United States Congress to "lay and collect taxes on income" so in determining the meaning of the Federated States of Micronesia constitutional provision, no particular weight should be given to the United States cases. Afituk v. FSM, 2 FSM R. 260, 264 (Truk 1986).

A state excise tax imposed on imports is unconstitutional, regardless of the manner of tax payment. Gimnang v. Yap, 4 FSM R. 212, 215 (Yap 1990).

When the record is barren of any relationship between the license fee imposed and the business regulation or licensing objectives and the fee is exacted for the sole purpose of granting a business permission to do business and possesses no attributes of a licensing statute, a municipality's power and authority to impose tax on the income of a business are foreclosed. Bruton v. Moen, 5 FSM R. 9, 12 (Chk. 1991).

The power of the national government under article IX, section 2(e) of the Constitution, "to impose taxes on income," is an exclusive national power that may not be exercised by the states. Youngstrom v. Kosrae, 5 FSM R. 73, 74 (Kos. 1991).

The Kosrae transaction tax of KC 9.301 is a selective tax rather than an income tax and is not an encroachment upon the national government's exclusive power to tax income. Youngstrom v. Kosrae, 5 FSM R. 73, 76 (Kos. 1991).

A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. Actouka v. Kolonia Town, 5 FSM R. 121, 122 (Pon. 1991).

The national government has the exclusive power to tax income and imports. The power to levy other taxes, unless specifically barred by the Constitution, is an exclusive state power. Sigrah v. Kosrae, 6 FSM R. 168, 169-70 (App. 1993).

A transaction tax oriented toward individual transactions and not total income, and only triggered by the transactions it covers, even though paid by the vendor, is analogous to a selective sales tax and is not an unconstitutional encroachment on the national government's exclusive power to tax income. Sigrah v. Kosrae, 6 FSM R. 168, 170 (App. 1993).

A Chuuk state tax on a lessor or landowner who rents or leases land, building or housing unit, for residential, or office space, or other use is not an unconstitutional encroachment on the national government's exclusive power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 6 FSM R. 310, 311 (Chk. 1994).

The Constitution prohibits state and local governments from imposing taxes which restrict interstate commerce. Stinnett v. Weno, 6 FSM R. 312, 313 (Chk. 1994).

Since, given the social and geographic configuration of the State of Chuuk and the structure of the transportation services available, a travel agency would necessarily be essentially interstate commerce, a tax aimed solely at a travel agency restricts or is restrictive of interstate commerce and therefore may not be levied by a state or local government. Stinnett v. Weno, 6 FSM R. 312, 313-14 (Chk. 1994).

Only the national government may constitutionally tax income. The states' taxing power does not include the power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 119 (App. 1995).

If a state wishes to obtain funding from a consumption tax, it can avoid a constitutional confrontation by making the taxable incident the sale or rental transaction, and by expressing the requirement that the tax be paid by the consumer. Therefore a state tax on the gross rental receipts of a landlord is an unconstitutional tax on income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 120 (App. 1995).

The general grant of the taxing power to the state, which allows taxing power to be delegated to the municipalities, is not an exclusive grant preventing municipalities from levying taxes. Wainit v. Weno, 7 FSM R. 121, 123 (Chk. S. Ct. Tr. 1995).

A municipality in Chuuk has the power to tax so long as the state has not preempted the area. Wainit v. Weno, 7 FSM R. 121, 123 (Chk. S. Ct. Tr. 1995).

The power to tax is vested in the state which may delegate certain taxing powers to a municipality. Without such delegation a municipality has no power to tax. Stinnett v. Weno, 7 FSM R. 560, 561 (Chk. 1996).

A municipal ordinance levying taxes did not continue in effect after the effective date of the Chuuk Constitution because it is inconsistent with that Constitution. Stinnett v. Weno, 7 FSM R. 560, 562 (Chk. 1996).

A litigant may seek a declaratory judgment without first exhausting its administrative remedies where the jurisdiction of the taxing authorities is challenged on the ground that the statute is unconstitutional or that the statute by its own terms does not apply in a given case. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM R. 111, 115 (Chk. 1997).

The language, "and may delegate certain taxing powers to the municipal governments by statute," contemplates that municipal governments are invested with the power to tax only insofar as they receive that power from the state government. Without express delegation to a municipality of the authority to tax, the municipality lacked this power. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

The Chuuk Constitution provides for the creation of the state taxing power and its delegation, as the state government may elect, to the municipal governments. Article XIII, section 1 of the Chuuk Constitution provides that the two levels of government are state and municipal. As between these two levels of government the one holding the right to delegate is superior. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

Because the express provision for delegation of the taxing authority is inconsistent with the notion that municipalities already had this power, in the absence of specific legislative action authorizing a municipality to impose taxes, the municipality does not have the authority to impose business license fees. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

When the Chuuk Constitution says the state "may delegate certain taxing powers to the municipal governments by statute," it is plain that "certain" in this context means nothing more, and nothing less, than that the state government may delegate such of its taxing powers as it sees fit – the point is that the option is the state government's. Weno v. Stinnett, 9 FSM R. 200, 207 (App. 1999).

The only conclusion to be fairly drawn from the deletion of a sentence giving the municipal governments the exclusive power to levy head taxes and business license fees from the proposal as adopted is that the Chuuk Constitution's framers did not intend that the municipal governments should have the power to levy head taxes and business license fees. Weno v. Stinnett, 9 FSM R. 200, 208 (App. 1999).

Because a man who denies the legality of a tax should have a clear and certain remedy, justice may require that he should be at liberty to pay promptly and bring suit on his side. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

The filing of a suit to contest the legality of a tax, which the trial court found to be the plaintiffs' only remedy, obviates the need for demonstrating duress and notice of protest, as required by the common law, for payments made after suit is instigated. The filing of suit is protest of the most emphatic sort, and allowing a claim for recovery for payments made thereafter without regard to duress recognizes the "implied duress" under which contested taxes are paid. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

Duress and protest need not be shown to state a claim for recovery of tax payments extracted under an unconstitutional enactment when the plaintiffs seek refund of payments made after instigation of suit in a court having jurisdiction over the parties, and when such a lawsuit is the plaintiff's only remedy. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

The taxing authority, if it opts not to provide predeprivation process, must by way of postdeprivation process provide a clear and certain remedy for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one. A clear and certain remedy is one designed to render the opportunity to challenge a tax meaningful by preventing any permanent unlawful deprivation of property. Weno v. Stinnett, 9 FSM R. 200, 213 (App. 1999).

When deciding the question of retroactivity of a decision declaring a tax unconstitutional, a court considers three factors: 1) whether a decision enunciates a new and unanticipated principle; 2) whether retroactive application to this case would promote implementation of the rule at issue, taking into consideration the rule's history; and 3) the equities of the case as they are associated with retroactive application. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

Because the Chuuk Constitution is clear that only the state government has the power to tax, it cannot be said that such a resolution could not be predicted. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

To permit taxes to be retained that were extracted under an unconstitutional statute would have the effect of prolonging the viability of an ordinance that runs afoul of the Chuuk Constitution, at the expense of establishing the correct rule. The better course is to permit recovery of the taxes. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

When litigation over the constitutionality of a municipality's taxes was pending for five years, the municipality was put on notice early on that the taxes collected under the ordinances were subject to a claim for refund, and nothing prevented the municipality from planning for this eventuality. Having failed to do so, it cannot now claim hardship. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

A state use tax is a tax on imports which impermissibly interferes with interstate commerce such that the use tax is in violation of the FSM Constitution, FSM Const. art. IX, §§ 2(d), 2(g); FSM Const. art. VIII, § 3. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 292, 294 (Pon. 1999).

For tax purposes, Telecom is deemed to be part of the national government and is exempt from any and all state tax liability because it functions are so closely intertwined with the national government that it is appropriate to view it as a national government agency for the purpose of taxation and because, although the FSM Constitution does not specifically delegate the power to establish a telecommunications network to the national government, the circumstances presently existing in the FSM support a conclusion that such a power is of an indisputably national character beyond the control of any state. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 384 (Pon. 2000).

Because the FSM Constitution expressly delegates to Congress the power to regulate interstate commerce and because the existence, availability and quality of telecommunication services in the FSM clearly impacts on interstate commerce, the FSM government is constitutionally authorized to establish the FSM Telecommunications Corporation and may similarly exempt it from taxes or assessments. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 384 (Pon. 2000).

A state "use tax" that instead of collecting the tax at the port in order to release the goods, requires the taxpayer to fill out a form prior to release of the goods after which collection of the assessment is deferred for sixty days, is, despite its name, a tax on imports and an unauthorized action to usurp the national government's exclusive power to impose taxes, duties, and tariffs based on imports. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 386 (Pon. 2000).

A state "use tax" calculated on the value of items brought into the state plus the cost of shipping, handling, insurance, labor or service cost, transportation charges or any expenses whatsoever, has nothing to do with benefits provided by the state associated with the use of the item and cannot be justified as having a substantial nexus with the state. It only serves as an unauthorized burden on interstate commerce. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 386 (Pon. 2000).

Imposing taxes, duties, and tariffs based on imports is a power expressly delegated to Congress. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 579 (App. 2000).

When "commencement of use or consumption" equals importation as it applies to the nonexempt merchandise subject to a use tax, any semantic distinction resulting from making the tax payable upon

"commencement of use or consumption" does not render it any less a tax on imports because the name given a tax by a taxing authority is not controlling and because extending the time for payment to 60 days after importation does not change the nature of the tax. The Pohnpei use tax violates the constitutional reservation to Congress of the power to tax imports. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 581 (App. 2000).

As to interstate commerce, Article VIII, section 3 contains the negative counterpart to Article IX, section 2(g)'s positive grant of power by prohibiting state and local governments from imposing taxes which restrict interstate commerce. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

Since the event triggering the Pohnpei use tax is the unqualified "use or consumption" in Pohnpei of nonexempt goods, the statute applies to goods brought into Pohnpei from Yap, Chuuk, and Kosrae, as well as from locations outside the FSM. It is thus clear that the statute directly regulates or restricts interstate commerce in the same way it does imports. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

As to goods making their way from any of the other three states into Pohnpei, the direct nexus between the simultaneous arrival of the goods and imposition of the Pohnpei use tax points to direct regulation of interstate commerce. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 582 (App. 2000).

Even assuming that the Pohnpei use tax apportionment clause could be interpreted to remedy concerns about discrimination against interstate commerce, the fact remains that the use tax is indissolubly linked to the event of importation, and no semantic calisthenics liberate the tax from this inherent defect. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 583 (App. 2000).

A state tax that is unconstitutional as an import tax, if applied to interstate commerce, is also restrictive of interstate commerce. The Constitution does not permit a state to erect tax barriers to the free movement of goods among the states. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 583 (App. 2000).

A state use tax that is a tax on imports in violation of Article IX, section 2(d); and that regulates and restricts interstate commerce in violation of Article IX, Section 2(g), and Article VIII, section 3, respectively of the FSM Constitution contravenes the Constitution. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 583 (App. 2000).

A state alcoholic beverage possession tax for which liability is triggered by the act of importation although actual payment may be delayed five days, is an import tax, and as such unconstitutional. MGM Import-Export Co. v. Chuuk, 10 FSM R. 42, 44 (Chk. 2001).

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

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

When Chuuk made the taxable incident the purchase of a plane ticket or of freight service and made the tax payable by the purchaser, it avoided one constitutional confrontation – the service tax is not an income tax since the service tax is a tax on the buyer, not the seller. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

A service tax on plane passengers does not have only an incidental effect on foreign commerce; its only effect is on foreign commerce. A tax on shipping cargo or freight affects only foreign commerce or

interstate commerce since the airline does not fly to anywhere in Chuuk except Weno. Since state and local governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that the tax is imposed on freight or cargo shipped from Chuuk to other FSM states, would appear to be specifically barred by the Constitution and to the extent it is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – in effect, an export tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

When the FSM Supreme Court appellate division has held that if a state wishes to obtain funding from a consumption tax, it can avoid a constitutional confrontation by making the taxable incident the sale or rental transaction, and by expressing the requirement that the tax be paid by the consumer and when the Chuuk service tax makes the taxable incident the purchase of a plane ticket or the purchase of freight service and expresses the requirement that the tax be paid by the purchaser, the Chuuk service tax, as applied to Continental, is not an unconstitutional income tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531 (Chk. 2011).

The Chuuk service tax on plane passengers does not have only an incidental effect on foreign commerce. Its main effect (and its sole intended effect) is on foreign commerce. By its terms, it is to be imposed only on those passengers whose "final destination" would be "outside of the FSM." The Chuuk service tax on outgoing paying airline passengers is thus an unconstitutional regulation of foreign commerce. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 531-32 (Chk. 2011).

The tax on shipping air cargo or air freight on Continental affects only foreign commerce or interstate commerce, and since state governments are prohibited from imposing taxes which restrict interstate commerce, to the extent that it is imposed on freight or cargo shipped from Chuuk to other FSM states, the Chuuk service tax would be specifically barred by the Constitution, and to the extent the tax is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – an export regulation and tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

Even if the Chuuk service taxes on air passenger tickets and courier services were not unconstitutional taxes, they would still be invalid when the regulatory enforcement and interpretation of the service tax statute exceeded or limited that statute's reach. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533 (Chk. 2011).

Even if Pohnpei cannot assess a first commercial sale tax against a business and that business benefits from the business environment which the State of Pohnpei has provided, Pohnpei may recoup the costs of providing infrastructure and business environment through the gross revenue tax. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 32 (Pon. 2011).

Since the term "within the state" in the Pohnpei tax statute modifies the term "sold commercially," the tax would attach only to those sales that are completed within the state. Under such an interpretation the tax would attach only to in-state commercial transactions and the impact on interstate commerce would be minimal and the statute therefore constitutional. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 33 (Pon. 2011).

Because sales taxes paid to Nett under protest depend on the validity of the Pohnpei state tax, Nett and Pohnpei are, jointly and severally, liable for the amount paid to Nett under protest, plus statutory interest. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 34 (Pon. 2011).

Generally, the court avoids unnecessary constitutional adjudication. Thus, when the court has resolved the underlying administrative appeal without the need to address the constitutionality of Pohnpei's tax statute, any declaratory relief as to the tax statute's constitutionality would be inappropriate. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 35 (Pon. 2011).

A tax computed as a percentage of any form of income is a tax on that income. Only the national government can impose a tax on income. A state cannot impose a tax on income. Mailo v. Chuuk Health

Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

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

Only the national government can impose taxes on imports and no state may impose taxes that restrict interstate commerce. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153 (Chk. 2013).

Since imported cigarettes are not taxable unless sold (or presumed sold) and may be nontaxable if not, the Chuuk cigarette tax appears to be a sales tax and not an import tax because the taxable event is their sale not their importation. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

If the Chuuk cigarette tax is imposed on the buyer (customer) and collected by the seller from the buyer for remittance to the state, then the tax statute was carefully crafted to avoid constitutional infirmity. The hallmark of a constitutionally sound state sales tax is that the sale is the taxable incident and the tax is paid by the buyer – the customer or consumer – and not the seller; otherwise it is an unconstitutional income tax. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

Since the Chuuk health care premium assessments are used for the care of the ill and injured and for the general purpose and expense of carrying the Chuuk Health Care Plan Act into effect and since, weighing all the attributes of the Plan's current assessment of Chuuk health care premiums and looking at the totality of the circumstances, the Plan's payroll assessment, even though calculated as a percentage of wages and salaries, is a fee and not a tax. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 190 (Chk. 2013).

When the purpose of the collected funds is specifically for health and medical services and the Chuuk Legislature cannot appropriate the funds collected as premiums and use those funds for other public purposes and when, although the medical services are applied to the general public, the insurance premiums collected are not a tax and thus the method used to calculate premiums is not an unconstitutional tax on income. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 24 (App. 2015).

Taxing income and taxing imports are both powers reserved exclusively to the national government, and therefore forbidden to municipal governments. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

When a hotel owner with 10 rooms pays the same $50 business license fee annually regardless of how much or how little income is derived from that hotel; when a hotel owner with 31 rooms pays the same $300 regardless of how much or how little income those 31 rooms actually generate; and when, if the owner of a 31-room hotel adds five more rooms and generates even more income, the owner would still pay only $300 annually for a business license, the license fees, even though those license fees are actually taxes, are not taxes on income. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

A municipal "road service" fee is not a tax on imports since it does not vary based on the amount or value of the goods brought into the municipality and since it does it vary based on the origin of those goods. It is a flat annual fee or a tax that does not violate the Constitution's prohibition of local taxes which restrict interstate commerce because the road service fee does not restrict or hinder interstate commerce or impose an import tax, but it does restrict or hinder intrastate or inter-municipal commerce, a type of commerce the FSM Constitution does not grant the national government the power to regulate. Isamu Nakasone Store v. David, 20 FSM R. 53, 57-58 (Pon. 2015).

– License and Permit Fees

A municipality may legislate and impose licensing fees to regulate activities within its jurisdiction subject to a requirement that the licensing fee at least tends to promote the public health, morals, safety or welfare. Bruton v. Moen, 5 FSM R. 9, 12 (Chk. 1991).

When the record is barren of any relationship between the license fee imposed and the business regulation or licensing objectives and the fee is exacted for the sole purpose of granting a business permission to do business and possesses no attributes of a licensing statute, a municipality's power and authority to impose tax on the income of a business are foreclosed. Bruton v. Moen, 5 FSM R. 9, 12 (Chk. 1991).

A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. Actouka v. Kolonia Town, 5 FSM R. 121, 122 (Pon. 1991).

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).

Cases distinguishing between taxes and fees often examine the source of the levy as an indicator of whether the particular payment should be considered a tax or a fee. An assessment imposed directly by the legislature is more likely to be a tax than one imposed by an administrative agency. The classic tax is imposed by a legislature upon many, or all citizens; the classic regulatory fee is imposed by an agency on those subject to its regulation. Chuuk v. Secretary of Finance, 8 FSM R. 353, 383 (Pon. 1998).

Courts also consider whether a governmental levy is directed at the general public, or whether it is imposed on a discrete subsection of the public, in distinguishing between a tax and a fee. An assessment imposed on a broad class of parties is more likely to be a tax than one imposed on a narrow class. One distinguishing characteristic of a fee is that the public agency normally may exact a fee for a grant which, presumably, bestows a benefit on the applicant, not shared by other members of society. Chuuk v. Secretary of Finance, 8 FSM R. 353, 383 (Pon. 1998).

Another distinction between a tax and a fee is whether the levy is exacted voluntarily in exchange for a benefit to the payor. Taxation is a legislative function, and Congress, which is the sole organ for levying taxes, may act arbitrarily and disregard benefits bestowed by the Government on a taxpayer and go solely on ability to pay, based on property or income. A fee, however, is incident to a voluntary act, *e.g.*, a request that a public agency permit an applicant to practice law or medicine or construct a house or run a broadcast station. Chuuk v. Secretary of Finance, 8 FSM R. 353, 384 (Pon. 1998).

One characteristic of a fee is that it must be no greater than the government's costs, but in considering costs it is appropriate to consider the government's "real cost," which is not limited to the government's actual expenditures. Chuuk v. Secretary of Finance, 8 FSM R. 353, 384 (Pon. 1998).

A fee for use of property which is controlled by the government is not necessarily a tax, because the government is entitled to receive the benefits of its property just like any private landowner. As a sovereign, the government levies taxes, but as property owner it may charge fees for the use of its property. These fees are paid by choice and in exchange for a particular benefit, the use of government property, just as rents are freely paid for the use of private property. Chuuk v. Secretary of Finance, 8 FSM R. 353, 385 (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 Constitution contains a provision by which the net revenues from offshore mineral resources are to be divided equally between the states and the national government, FSM Const. art. IX, § 6. There would be no need to specify the division of income from such resources if such revenues were taxes to be automatically divided under article IX, section 5. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 (Pon. 1998).

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).

Chuuk municipalities are barred from imposing taxes except as specifically permitted by state statute. Municipalities have been delegated, by statute, the authority to require persons to obtain and pay for a business license before engaging or continuing in a business within the municipality in which the business is located. Ceasar v. Uman Municipality, 12 FSM R. 354, 358 (Chk. S. Ct. Tr. 2004).

When the state statute authorizing municipal tax powers reserved the state's right to enact legislation to assess, levy and collect taxes on any subject for which a tax has been assessed and levied by municipal ordinance and provided that in the event that the state enacted legislation on that same subject, the enactment would repeal the ordinance on the same subject, and when the state has in fact enacted legislation imposing fees on businesses engaged in alcoholic beverage sales, any municipal ordinance imposing business license fees on businesses engaged in alcoholic beverage sales is repealed and a municipality does not have the authority to impose business license fees or taxes on alcoholic beverage sellers. Ceasar v. Uman Municipality, 12 FSM R. 354, 358-59 (Chk. S. Ct. Tr. 2004).

A "fee" is a charge fixed by law for services of public officers and is regarded as compensation for services rendered, but a charge having no relation to services rendered, assessed to provide general revenue rather than compensation, is a "tax." Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

Any payment exacted by the state or its municipal subdivisions as a contribution toward the cost of maintaining governmental functions, where special benefits derived from their performance are merged in general benefit, is a "tax," while a "fee" is generally regarded as a charge for some particular service. Mailo

v. Chuuk Health Care Plan, 20 FSM R. 18, 22 (App. 2015).

The primary purpose of a "tax" is to obtain revenue for the government, while the primary purpose of a "fee" is to cover expense of providing a service or of regulation and supervision of certain activities. In distinguishing fees from taxes, fees are collected not to raise revenues but to compensate the governmental entity providing the services for its expenses. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 22-23 (App. 2015).

There is a three-part test to determine whether an assessment is a tax or a fee: 1) what entity imposes the charge; 2) what population is subject to the charge; and 3) what purposes are served by the use of the monies obtained by the charge. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

Fees that are paid into the general public treasury, and disbursable for general public expenses, are taxes. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

If the premiums collected were a tax, the funds would be deposited into the Chuuk treasury, which can only be appropriated by law for a public purpose. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23 (App. 2015).

When all revenues received under a system of medical or health insurance, and all other revenues received by the Health Department as payment for medicine and medical services, must be separated from any general fund established by the Legislature and used only for medical purposes, this supports the position that premiums collected by the insurance plan do not fall under the characteristics of a tax because the funds collected are mandated to be separated from other funds collected. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 23-24 (App. 2015).

When, although it is the employed residents of Chuuk who are making health insurance premium contributions, the benefit of medicines and medical services are applied to the general public this would favor considering the payments a tax instead of a fee. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 24 (App. 2015).

Generally, an assessment may be a fee rather than a tax when it is not used for a general purpose but is used to defray the expense of performing the duties imposed on the agency and for the general purpose and expense of carrying an act into effect. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 24 (App. 2015).

Pohnpei state law provides that wholesalers and taxi services operating in more than one local government jurisdiction do not have to pay a fee in other than the local jurisdiction where their business establishment is located and that local governments cannot levy business license fees on businesses that do not have any business establishment located within their territory. A "business establishment" is a permanent physical structure operating as a business, and a vehicle does not constitute a business establishment unless such vehicle is fixed in a permanent location. Isamu Nakasone Store v. David, 20 FSM R. 53, 56 (Pon. 2015).

A characteristic of a fee is that it must be no greater than the government's costs – the government's "real cost," which is not limited to the government's actual expenditures. Taxation is a legislative function generally to raise revenue, and the legislature may act arbitrarily and disregard benefits bestowed by the government on a taxpayer and go solely on the taxpayer's ability to pay. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

When a municipality's business license fees are set arbitrarily at the municipal legislature's prerogative and go on the fee-payer's ability to pay, the license fees are revenue-raising taxes. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

When a hotel owner with 10 rooms pays the same $50 business license fee annually regardless of how much or how little income is derived from that hotel; when a hotel owner with 31 rooms pays the same $300 regardless of how much or how little income those 31 rooms actually generate; and when, if the owner of a 31-room hotel adds five more rooms and generates even more income, the owner would still pay only $300 annually for a business license, the license fees, even though those license fees are actually taxes, are not taxes on income. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

A municipal "road service" fee is not a tax on imports since it does not vary based on the amount or value of the goods brought into the municipality and since it does it vary based on the origin of those goods. It is a flat annual fee or a tax that does not violate the Constitution's prohibition of local taxes which restrict interstate commerce because the road service fee does not restrict or hinder interstate commerce or impose an import tax, but it does restrict or hinder intrastate or inter-municipal commerce, a type of commerce the FSM Constitution does not grant the national government the power to regulate. Isamu Nakasone Store v. David, 20 FSM R. 53, 57-58 (Pon. 2015).

– Recovery of Taxes

The question whether taxes paid by plaintiffs under a taxing statute subsequently found to be unconstitutional may be refunded to them turns upon whether the tax was voluntarily paid. Innocenti v. Wainit, 2 FSM R. 173, 187 (App. 1986).

Where taxpayers informed the government that they protested the tax as unconstitutional, and had to pay the tax in order to receive the taxed property, the payments are coerced, not voluntary, and taxpayers are entitled to the refund of all amounts paid. Innocenti v. Wainit, 2 FSM R. 173, 187 (App. 1986).

The FSM Supreme Court will abstain from a claim for recovery of taxes where the defendant state requests abstention, the claim is for monetary relief, and the state has endeavored to develop a body of law in the areas of excise taxes and sovereign immunity. Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

Under traditional constitutional analysis, taxpayers' efforts to recover tax moneys unlawfully extracted from them by a state may be relegated to state procedures and decision-makers so long as there is a reasonable procedure under state law whereby the taxpayer may obtain meaningful relief. Gimnang v. Yap, 5 FSM R. 13, 23-24 (App. 1991).

Prior to November 25, 1986, a plaintiff had a common law right to recover taxes paid pursuant to an unconstitutional Yap statute if he could show payment was made under duress and under protest. Gimnang v. Yap, 7 FSM R. 606, 607, 610-11 (Yap S. Ct. Tr. 1996).

After November 25, 1986, a claim for recovery of taxes paid under an unconstitutional Yap statute is subject to a two-year statute of limitations. Gimnang v. Yap, 7 FSM R. 606, 607, 611 (Yap S. Ct. Tr. 1996).

The general rule is that to entitle a taxpayer to a refund of a tax paid pursuant to an unconstitutional law, the tax must have been paid under duress and protest. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 125 (Chk. 1997).

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).

Normally, notice and an opportunity to be heard is given prior to governmental deprivation of property, but governments need not follow this in the case of taxes. Governments must, however, provide a post-deprivation opportunity to challenge the tax and a clear and certain remedy. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 126 (Chk. 1997).

It is unavailing in tax cases, except in special circumstances, to seek a preliminary injunction against enforcement or to have the taxes escrowed pending the outcome. This is in order not to disrupt the financial stability of the governmental unit. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 127 (Chk. 1997).

Refund of taxes unlawfully paid after commencement of suit is favored by the Innocenti guidelines concerning retrospective application of court decisions where the court decision was clearly foreshadowed by the Chuuk Constitutional provision, where there was no merit to be found in preventing the taxpayers from recovering unlawful taxes paid after the institution of litigation, and where the equitable considerations favor the taxpayers. Chuuk Chamber of Commerce v. Weno, 8 FSM R. 122, 127-28 (Chk. 1997).

For a plaintiff to recover payments made under an unconstitutional tax statute, he must demonstrate that he made those payments under both duress and notice of protest. Weno v. Stinnett, 9 FSM R. 200, 211 (App. 1999).

Because a man who denies the legality of a tax should have a clear and certain remedy, justice may require that he should be at liberty to pay promptly and bring suit on his side. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

The filing of a suit to contest the legality of a tax, which the trial court found to be the plaintiffs' only remedy, obviates the need for demonstrating duress and notice of protest, as required by the common law, for payments made after suit is instigated. The filing of suit is protest of the most emphatic sort, and allowing a claim for recovery for payments made thereafter without regard to duress recognizes the "implied duress" under which contested taxes are paid. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

Duress and protest need not be shown to state a claim for recovery of tax payments extracted under an unconstitutional enactment when the plaintiffs seek refund of payments made after instigation of suit in a court having jurisdiction over the parties, and when such a lawsuit is the plaintiff's only remedy. Weno v. Stinnett, 9 FSM R. 200, 212 (App. 1999).

The taxing authority, if it opts not to provide predeprivation process, must by way of postdeprivation process provide a clear and certain remedy for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one. A clear and certain remedy is one designed to render the opportunity to challenge a tax meaningful by preventing any permanent unlawful deprivation of property. Weno v. Stinnett, 9 FSM R. 200, 213 (App. 1999).

Because the Chuuk Constitution is clear that only the state government has the power to tax, it cannot be said that such a resolution could not be predicted. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

To permit taxes to be retained that were extracted under an unconstitutional statute would have the effect of prolonging the viability of an ordinance that runs afoul of the Chuuk Constitution, at the expense of establishing the correct rule. The better course is to permit recovery of the taxes. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

When litigation over the constitutionality of a municipality's taxes was pending for five years, the municipality was put on notice early on that the taxes collected under the ordinances were subject to a claim for refund, and nothing prevented the municipality from planning for this eventuality. Having failed to do so, it cannot now claim hardship. Weno v. Stinnett, 9 FSM R. 200, 214 (App. 1999).

If a taxing authority chooses not to provide a pre-deprivation process, it must by way of a post-deprivation process provide a clear and certain remedy for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one. A clear and certain remedy is one designed to render the opportunity to challenge a tax meaningful by preventing any permanent unlawful deprivation of property. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 158 (Chk. 2010).

There is no meaningful clear and certain post-deprivation remedy available to a Chuuk taxpayer when Chuuk's financial situation and its general inability to satisfy any court judgment make any purported post-deprivation remedy very unlikely. Thus any unlawful deprivation of a taxpayer's property would essentially be permanent and the opportunity to later contest the service tax would not be a meaningful one. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 158 (Chk. 2010).

When, under the State Tax Act, amounts paid under protest must be kept and deposited in a separate and restricted account which must be returned to the taxpayer if he prevails and since any funds levied by the state to pay the movant's assessed tax liability are rightly considered partial payments under protest and are therefore deposited into "a separate and restricted account," it does not seem that the movant will be irreparably harmed if an injunction does not issue because the return of his money would seem to adequately compensate him. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153 (Chk. 2013).

A statute that permits a taxpayer to file an action in court to recover any challenged taxes is likely an inadequate substitute for a prompt post-seizure hearing before the tax authorities that might resolve the matter without the need for court proceedings and from which a still aggrieved taxpayer may then resort to a court suit. It may be that such an administrative hearing is available through the statute governing administrative hearings although that is not entirely clear. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 155 (Chk. 2013).

Under the voluntary payment rule, illegal taxes cannot be recovered unless they were paid under duress and under protest. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 285, 289 (App. 2014).

Title 17, which codifies the Administrative Procedures Act, applies to challenges of administrative decisions raised under Title 54, which codifies the tax law. GMP Hawaii, Inc. v. Ikosia, 19 FSM R. 551, 554 (Pon. 2014).

– Tax Liens

Liens under 54 F.S.M.C. 135 have priority even over liens which arose earlier in time. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 108 (Pon. 1987).

The statute 54 F.S.M.C. 153 does not require the government to give notice of its lien claims to any other creditors or even to the taxpayer. This statute, then, authorizes a lien which may be kept secret from interested parties. The effect of such a lien would be determined against the background of the strong general policy against secret liens. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 108 (Pon. 1987).

A section 153 lien should be treated as an equitable lien, its effect to be determined on a case-by-case basis with a view toward equitable considerations, especially when the government has taken reasonable and timely action to notify such other parties to the government's claims based upon tax delinquency. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 108 (Pon. 1987).

Any lien rights of the government under section 135(2) supersede even preexisting lien rights of any other party. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R. 105, 110 (Pon. 1987).

The priority lien rights provided for the government in section 135(2) relate only to wage and salary tax claims and not to gross revenue taxes or other taxes. Bank of Guam v. Island Hardware, Inc. (II), 3 FSM R.

105, 111 (Pon. 1987).

Under 54 F.S.M.C. 135(2), no other payment to creditors may be made from execution sale proceeds until all amounts owing for wage and salary taxes are paid in full to the government. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 297 (Pon. 1988).

Priority of national government's lien for unpaid business gross revenue taxes under 54 F.S.M.C. 153 is subject to requirement that government take reasonable and timely action to notify other parties of the government's claim, but filing of litigation is sufficient notification to all parties under 54 F.S.M.C. 153. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 297 (Pon. 1988).

53 F.S.M.C. 104 does not establish lien rights in the Trust Territory Social Security Board, and gives the board no lien or priority claim of any kind. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 299 (Pon. 1988).

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

Attachment and seizure create statutory and possessory lien rights which will be unaffected by subsequent writs of execution, but will be subject to national government's wage and salary tax lien claims under 54 F.S.M.C. 135(2), to wage claims of low level employees and laborers, and to pre-existing national government lien rights under 54 F.S.M.C. 153. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 303 (Pon. 1988).

Under 54 F.S.M.C. 135(2), the government's judgment for wages and salary taxes constitutes a lien that is entitled to highest priority. In re Island Hardware, 3 FSM R. 332, 337 (Pon. 1988).

In order for the government's judgment for gross revenue taxes to have a highest priority lien, notice that the tax payments are overdue, not just that tax liability has accrued must be given. In re Island Hardware, 3 FSM R. 332, 338 (Pon. 1988).

Amounts owing for penalties and interest under the tax law, 54 F.S.M.C. 155 and 902, do not qualify for lien treatment under 54 F.S.M.C. 135 or 153. In re Island Hardware, Inc., 3 FSM R. 428, 433 (Pon. 1988).

Where the government is entitled to a lien on the debtor's assets as of the date it gave notice of its claim for those taxes the lien also becomes effective as of that date. In re Pacific Islands Distrib. Co., 3 FSM R. 575, 585 (Pon. 1988).

Language in 54 F.S.M.C. 135(2) that the amount of wage and salary taxes formed "a lien on the employer's entire assets, having priority over all other claims and liens" meant that this statutory lien superseded the general rule of first in time, first in right. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

All Social Security taxes, including penalties and interest, constitute a lien upon any property of the employer, having priority over all other claims and liens including liens for other taxes. This creates a lien for social security taxes that has priority over even other tax liens, such as the wage and salary tax liens given first priority in Island Hardware and Pacific Islands Distributing. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

The social security tax lien arises by operation of law whenever social security taxes become due and are not paid. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

Under 53 F.S.M.C. 607, Social Security taxes specifically take priority over other tax liens. In re Engichy, 12 FSM R. 58, 65 (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).

Social Security's statutory priority tax lien is consistent with the general rule that acknowledges that the first-in-time priorities are also subject to legislative action that restructures the normal priorities. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

Social Security's tax lien priority is statutory, not equitable. Statutory law, as enacted by Congress, not equitable principles fashioned by the court, applies. The statute, 53 F.S.M.C. 607, expressly gives Social Security a tax lien superior to all other liens. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

As Congress clearly intended, social security tax liens must be given priority over all other claims and liens and paid first. In re Engichy, 12 FSM R. 58, 66 (Chk. 2003).

Social Security taxes do have a priority over all other claims and liens. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89 (Pon. 2011).

Before garnishing tenants' rental payments to pay the lessor's tax liens, the court should be provided with information concerning the building, including current interests in the building, current leases, and any other facts that the court might require to rule on the garnishment request and any information on the defendant's dependence on the monthly rental income and other income at her disposal so that the court may order with particularity a writ of garnishment. FSM Social Sec. Admin. v. Yamada, 18 FSM R. 88, 89-90 (Pon. 2011).

Since, by statute, all taxes imposed or authorized under Title 54, chapter 1 are a lien upon any property of the person or business obligated to pay those taxes and since, by statute, those taxes may be collected by levy upon such property in the same manner as the levy of an execution, the statute does not require a court-issued writ of execution or a court judgment before issuance. Instead, it permits a levy in the same manner as the levy of an execution. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

The addition of the language "in the same manner as the levy of an execution" in 54 F.S.M.C. 153 shows that a different meaning was intended than if the statute had read "by writ of execution." Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

Since 54 F.S.M.C. 153 authorizes a tax levy to be made "in the same manner as the levy of an execution," it does not require a court-issued writ of execution. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

The statutory scheme grants the national government the authority to determine the amount of tax due and to collect those taxes. Under 54 F.S.M.C. 152(3), the Secretary of Finance's assessment of the tax amount is presumed correct unless and until it is proven incorrect. The statutory scheme also permits a tax levy on the lien created by 54 F.S.M.C. 153. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125-26 (Pon. 2015).

Since the nation's statutes are presumed to be constitutional, a bank is not required to challenge, on a depositor's behalf, the tax lien statute's constitutionality. The bank may rely on the statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

It is not a bank's duty to challenge the tax authorities' assessment of the amount of tax due from a taxpayer depositor. It is the taxpayer's responsibility to dispute any tax assessed that it disagrees with and for the taxpayer to resolve the issue with the FSM tax authorities. It also is not the bank's responsibility to challenge the constitutionality of 54 F.S.M.C. 153 or the FSM's interpretation of that statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

As long as the notice of levy and execution from the Division of Customs and Tax Administration is regular on its face, a bank is obligated to honor it. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

Usually, notice and an opportunity to be heard is given prior to deprivation, but a government does not need to follow this in the case of taxes. The government must, however, provide a post-deprivation opportunity to challenge the tax and a clear and certain remedy. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

A writ of execution applies to all the judgment debtor's business assets and personal property under 53 F.S.M.C. 607. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

When the tax lien on a sole proprietorship's property was effectuated under 53 F.S.M.C. 607, well before the business transformed and became incorporated, the court will not create an avenue where an individual operating as a business avoids debt by simply morphing into an entity with the same name, albeit a different structure and characteristics. For the court to allow this would be detrimental to statutorily created entities attempting to collect taxes owed. FSM Social Sec. Admin. v. Reyes, 20 FSM R. 276, 278 (Pon. 2015).

TORTS

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

Roughly stated, the general principle is that one person may be liable in tort to another only if the first intentionally or negligently violates a duty owed to the other, and the other is injured as a result. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 142 (Pon. 1985).

According to the Pohnpeian view of civil wrongs, if one damages another's property, he must repair or replace it; if one injures another person, he must apologize and provide assistance to the injured person and his family; if one kills another person, he must provide the assistance that the victim would have provided and may have to offer another person to take the place of victim in his family. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 70-71 (Pon. S. Ct. Tr. 1986).

Primary lawmaking powers for the field of torts lie with the states, not with the national government, but the national government may have an implied power to regulate tort law as part of the exercise of other general powers. Edwards v. Pohnpei, 3 FSM R. 350, 359 (Pon. 1988).

Although the FSM Supreme Court has often decided matters of tort law without stating explicitly that state rather than national law controls, there has been acknowledgment that state law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Edwards v. Pohnpei, 3 FSM R. 350, 360 n.22 (Pon. 1989).

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

Ct. Tr. 1991).

Claims for torts that took place before 1951 accrued, at the latest, when the applicable Trust Territory statute took effect in 1951. Unless tolled, the statutes of limitation bar the FSM courts from adjudicating such claims. Alep v. United States, 6 FSM R. 214, 219-20 (Chk. 1993).

Where a statute creates a cause of action and then places exclusive, original jurisdiction over all controversies arising from that cause of action in a particular court, another court will have no jurisdiction to entertain claims under that statute. Damarlane v. United States, 6 FSM R. 357, 360 (Pon. 1994).

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

Since state law generally controls the resolution of tort issues the duty of the FSM Supreme Court in a diversity case involving tort law is to try to apply the law the same way the highest state court would. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 455 (Chk. 1994).

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

A tort is a wrong for which the harm that resulted, or is about to result, is capable of being compensated in an action at law. The purpose is to afford compensation for injuries sustained by one person as the result of the unreasonable or socially harmful conduct of another. Primo v. Refalopei, 7 FSM R. 423, 430 n.13 (Pon. 1996).

Any attempt to breathe new life into tort claims time barred by the relevant and analogous statutes should be approached with caution because they are the type of personal claims for money damages that become increasingly difficult of proof and difficult to defend with the passage of time. Ordinarily such claims are resolved by political and diplomatic efforts. Alep v. United States, 7 FSM R. 494, 498 (App. 1996).

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

Should Pohnpeian custom and tradition not be determinative, the FSM Supreme Court will look to its earlier holding and decisions of United States courts for guidance as to relevant common law tort principles, and will evaluate the persuasiveness of the reasoning in these decisions against the background of pertinent aspects of Micronesian society and culture in Pohnpei. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 253 (Pon. 1998).

The general principle is that one person may be liable in tort to another only if the first intentionally or negligently violates a duty owed to the other, and the other is injured as a result. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 293, 294 (Pon. 1998).

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

State law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way

the highest state court would. When no existing case law is found the FSM Supreme Court must decide issues of tort law by applying the law as it believes the state court would. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294-95 (Pon. 1998).

A tort is a wrong for which the harm that resulted is capable of being compensated in an action at law. The purpose is to afford compensation for injuries sustained by one person as the result of the unreasonable or socially harmful conduct of another. Generally, one person may be liable in tort to another only if the first intentionally or negligently violates a duty owed to the other, and the other is injured as a result. Asher v. Kosrae, 8 FSM R. 443, 449 (Kos. S. Ct. Tr. 1998).

The states' role in tort law is predominant. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 158 (App. 1999).

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

The statute, 30 F.S.M.C. 104, does not impose a duty upon the FSM Development Bank to provide technical assistance to debtors to whom it has already made a loan, nor to assignees of those debtors. Nor does it give rise to a private cause of action. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 76-77 (Pon. 2001).

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

State law generally determines tort issues, and the FSM Supreme Court in diversity cases must attempt to apply the law in the manner that the highest state court would. Amayo v. MJ Co., 10 FSM R. 244, 253-54 (Pon. 2001).

A given for tort causes of action is that the alleged actor have some interest in or control over the instrumentality that brought about the tortious conduct. Kosrae v. Worswick, 10 FSM R. 288, 291 (Kos. 2001).

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

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).

Statutes which do not, by their terms, provide private citizens with a cause of action for money

damages cannot be the basis for private damages claims. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 634 (Pon. 2002).

The court will not infer the existence of a private cause of action in the absence of a clear intent expressed in the statute that such a private cause of action be created. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 634 (Pon. 2002).

The Pohnpei state criminal statutes were intended to provide for criminal penalties for those who commit certain acts which are prohibited by the Act. The Pohnpei Crimes Act is not intended to create a basis for private parties to sue other parties, but to enable the Pohnpei state government to be able to punish those persons who violate provisions of the Act. Statutes which do not by their terms provide citizens with a cause of action for money damages cannot be the basis for private damages claims. Ambros & Co. v. Board of Trustees, 11 FSM R. 17, 25 (Pon. 2002).

The general purpose of tort law is to afford a victim compensation for the injuries or damages sustained as the result of another's unreasonable or socially harmful conduct. In other words, a purpose of tort law is to make the victim whole. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

The continuing tort doctrine is well-settled law, and dictates that when there is an ongoing pattern of tortious activity where no single incident may be fairly identified as the cause of the harm suffered, then it is appropriate to regard the total effect of the conduct as actionable, and the statute of limitations does not begin to run until the conduct has ceased. In order to invoke the continuing tort doctrine, there must be continuing unlawful acts, and not merely continuing effects from a single original act. AHPW, Inc. v. FSM, 12 FSM R. 544, 553 (Pon. 2004).

The rationale behind the principle that the statute of limitations does not begin to run on a continuing wrong until the wrong is over and done with is that the principle strikes a balance between the plaintiff's interest in being spared having to bring successive suits, and the two distinct interests, that statutes of limitations serve. One is evidentiary – to reduce the error rate in legal proceedings by barring litigation over claims relating to the distant past. The other is repose – to give people the assurance that after a fixed time they can go about their business without fear of having their liberty or property taken through the legal process. When an unlawful course of conduct's final act occurs within the statutory period, these purposes are adequately served, in balance with the plaintiff's interest in not having to bring successive suits, by requiring the plaintiff to sue within the statutory period but letting him reach back and get damages for the entire duration of the alleged violation. Some of the evidence, at least, will be fresh. And the defendant's uncertainty as to whether be will be sued at all will be confined to the statutory period. His uncertainty about the extent of his liability may be greater, but that is often true in litigation. AHPW, Inc. v. FSM, 12 FSM R. 544, 553 (Pon. 2004).

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

A plaintiff's state law claims will not be dismissed because he is seeking a large amount of damages. The amount of damages sought does not determine whether a claim is to be dismissed. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 156 (Pon. 2005).

A tort is any civil cause of action not based on contract. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

While tort law, especially common law torts like negligence, is primarily a state responsibility, the national government may create tort law when legislating in an area that the Constitution has expressly delegated to Congress the power to legislate. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

General maritime law has long recognized causes of action in maritime tort for damages resulting from groundings and oil spills. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

The general purpose of tort law is to afford a victim compensation for the injuries or damages sustained as the result of another's unreasonable or socially harmful conduct. In other words, tort law's purpose is to make the victim whole. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 418 (Yap 2006).

A cause of action based on tort will not be lost or abated because of the death of the tort-feasor or other person liable. An action thereon may be brought or continued against the deceased person's personal representative, but punitive or exemplary damages may not be awarded nor penalties adjudged in the action. Dereas v. Eas, 15 FSM R. 446, 448 (Chk. S. Ct. Tr. 2007).

A tort cause of action survives the defendant's death and continues against his personal representative. Dereas v. Eas, 15 FSM R. 446, 448 (Chk. S. Ct. Tr. 2007).

Chuuk has adopted common law tort principles as the law of Chuuk when no specific constitutional or traditional impediment to their adoption existed. Dereas v. Eas, 15 FSM R. 446, 448-49 (Chk. S. Ct. Tr. 2007).

A claimed inability to pay is not a defense to liability. Weriey v. Chuuk, 16 FSM R. 329, 332 (Chk. 2009).

A plaintiff has not met her burden of showing that the state is liable to her for "summary punishment" when she did not disclose what specific conduct she believed constituted summary punishment and her complaint was silent on that point as well. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

Since, absent a showing of impairment, FSM law is currently silent as to how a court is to define and determine whether an injury is permanent, the court may consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

Torts are primarily areas of state law, and should the FSM Supreme Court take up tort issues, it would apply state law. Ladore v. Panuel, 17 FSM R. 271, 275 (Pon. 2010).

Pohnpei generally follows the Restatement approach in its law concerning tort issues. Peniknos v. Nakasone, 18 FSM R. 470, 485 (Pon. 2012).

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

For either a trespass cause of action or a cause of action against a municipal government for due process violations, the plaintiffs did not have to prove title or ownership, just a greater right to possession. Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

Criminal law and the law of torts (more than any other form of civil law) are related branches of the law; yet in a sense they are two quite different matters. Criminal law's aim is to protect the public against harm, by punishing harmful results of conduct or at least situations (not yet resulting in actual harm) which are likely to result in harm if allowed to proceed further. Tort law's function is to compensate someone who is injured for the harm he or she has suffered. FSM v. Tipingeni, 19 FSM R. 439, 446 (Chk. 2014).

Frequently a defendant's conduct makes him both civilly and criminally liable. FSM v. Tipingeni, 19

FSM R. 439, 446 (Chk. 2014).

– Abuse of Process

Whether interference with the efforts of a non-FSM citizen engaged in business within the Federated States of Micronesia is an abuse of process is not an issue which may be resolved by reference to traditional or customary principles. Mailo v. Twum-Barimah, 2 FSM R. 265, 268 (Pon. 1986).

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

Abuse of process occurs where one uses legal process against another's person or property to accomplish an ulterior purpose for which the process was not designed. Mailo v. Twum-Barimah, 2 FSM R. 265, 268 (Pon. 1986).

The process contemplated for the tort of abuse of process is issuance by an official body of some legal document or order which affects the victim's person or property. Mailo v. Twum-Barimah, 2 FSM R. 265, 268 (Pon. 1986).

One of the elements of abuse of process is that the process be used for an improper, ulterior purpose. An ulterior purpose is one in which coercion is used to obtain a collateral advantage not properly involved in the proceeding. The tort typically involves some form of extortion. Some definite act not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required. Bank of Guam v. O'Sonis, 9 FSM R. 106, 111 (Chk. 1999).

When an order and writ are manifestly improper, but their purpose was not collateral to the process used, one of the elements of the tort of abuse of process is not satisfied. Bank of Guam v. O'Sonis, 9 FSM R. 106, 111 (Chk. 1999).

The tort of abuse of process requires some legal process – the use of legal process emanating from an official body. An allegation, that the FSM used the audit process to wrongfully terminate a contract and that the memorandum issued by the U.S. Department of Interior was part of an official legal process authorized and instituted under the Compact, does not meet the requirements of legal process since, as a matter of law, the audit procedure and the memorandum cannot be the process on which an allegation of abuse of process rests. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485 (Pon. 2009).

When each party vigorously pursues opposite sides of a legitimate dispute (who breached a contract), neither party can seriously argue that either the complaint or the counterclaim constitutes abuse of process. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485 (Pon. 2009).

– Anticompetitive Practices

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

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

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

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

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

When Pohnpei's refusal to hold a trochus harvest allegedly stemmed from environmental concerns, but all of the reports addressing this issue recommended that a trochus harvest be held and the concern was not that there would be too little trochus, but that there would be too much, nothing stood in the way of reasonable limitations on the harvest that could have harmonized both Pohnpei's legitimate environmental concerns and the national law requirement that it not limit the production of any commodity. Failure to do so violated 32 F.S.M.C. 302(2). AHPW, Inc. v. FSM, 12 FSM R. 544, 552 (Pon. 2004).

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

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

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

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

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

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

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

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

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

Any person who proves a violation of 32 F.S.M.C. 302 or 32 F.S.M.C. 303 may recover reasonable attorney's fees. AHPW, Inc. v. FSM, 13 FSM R. 36, 39 (Pon. 2004).

A state is a person under the FSM anticompetitive practices statute when it acts as a participant or competitor in commerce but not when it acts as a regulator of commerce. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 15 (App. 2006).

A Pohnpei state law exempting it from anticompetitive practices liability does not apply to a case brought under the national anticompetitive practices statute since the lawsuit is based on a cause of action created by the national, not the state, statute covering an activity – foreign and interstate commerce – over which the national government may legislate. It would, of course, apply to an action brought under the state anticompetitive practices statute. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

When the anticompetitive practices statute requires that one or more persons create or use an existing combination of capital, skill, or acts the effect of which is anticompetitive and when the trial court made findings that would show a combination, since the statute is clear that only one "person" can provide the needed "combination," a contention that the trial court had to, and failed to, find that the defendant acted in combination with someone else has no merit. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

Generally, statutes authorizing multiple damages are remedial and nonpunitive, particularly in anti-trust cases. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 (App. 2006).

The treble damages clause in the FSM Anti-competitive practices statute is remedial and not punitive. The multiple portion of the damages – that part in excess of the lost profits the trial court determined as actually proven – is imposed by a national statute enacted in an area in which the national government may legislate. Since this is not a state law tort case in which state law applies and this is a statutory tort created by a national statute, the national, not the state, statute therefore controls. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 (App. 2006).

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

The trial court should state some reason for trebling damages other than just stating the anticompetitive practices statute allows it. Compelling justification is not needed or required. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 21 (App. 2006).

The anticompetitive practices statute itself provides the basis for the plaintiff to recover damages together with reasonable attorneys' fees and the costs of suit. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 21 (App. 2006).

Fifteen years' worth of "damages" of lost profits is obviously too long for any reasonably certain future projections. Too many unexpected possible variables could occur. The trial court thus did not abuse its discretion by limiting the damage award to four years of lost profits. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 24-25 (App. 2006).

The anticompetitive practices statute authorizes treble damages. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 190 (Pon. 2006).

Treble damages were proper when the discretion denoted by the word "may" in the statute lies with the injured party and not the court – the injured party "may" sue and recover treble damages – and when Congress's intent was to give the injured party treble damages if it sues and proves its case. The statute's context compels this conclusion. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 190-91 (Pon. 2006).

When the plaintiff has a claim de jure that the power conferred (on the court to treble damages) should be exercised because it had proved its right to damages under 32 F.S.M.C. 301 *et seq.* and when, considering the whole anticompetitive practices statute and its nature and object, Congress's intent was to impose a positive duty to treble damages, not a discretionary power to do so, the court will therefore award treble damages. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

When the defendant's anticompetitive acts did not just harm the plaintiff's business, but those acts put it out of business, even if treble damages were discretionary, there would be no more appropriate a case to exercise the discretion to treble damages than one where the anticompetitive acts put the plaintiff out of business. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

– Assault

Battery is the harmful or offensive contact with a person, resulting from an act intended to cause that contact, while an assault refers to the apprehension of that offensive contact. Once the court is satisfied from the evidence that an actual injury has occurred then it need not consider the separate tort of assault. Conrad v. Kolonia Town, 8 FSM R. 183, 191 (Pon. 1997).

Battery is a harmful, offensive contact with a person resulting from an act intended to cause the contact, while an assault has to do with the apprehension of the offensive contact; when the court determines that a battery has occurred, it need not consider the separate tort of assault. Elymore v. Walter, 9 FSM R. 450, 458 (Pon. 2000).

When there was no evidence that any policemen had an intent to cause an arrestee physical or bodily harm, the state is not liable to her under either theory of assault or battery. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

A trial court errs as a matter of law by using, in a civil case, a criminal statute to determine the torts' elements and whether the plaintiff was an assault and battery victim. Because it was not a criminal prosecution, the trial court should have looked to Pohnpei tort law and used the elements of the torts of assault and of battery. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

Privilege is a legal defense to the torts of assault and battery and may be based upon the fact that the touching is a necessity to protect some private or public interest which is of such importance as to justify the threatened harm. A lawful arrest is just such a privilege and a valid defense to the assault claim and to the battery claim so long as excessive force is not used. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

– Battery

A battery or an assault is not determined by the presence or absence of injury; battery is a harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff to suffer such contact, while assault refers to the apprehension of imminent contact. Paul v. Celestine, 4 FSM R. 205, 207 (App. 1990).

When the evidence clearly establishes that plaintiff suffered injuries as a result of intentional direct contact by the defendant the court need only consider the tort of battery, not the separate tort of assault. Meitou v. Uwera, 5 FSM R. 139, 142 (Chk. S. Ct. Tr. 1991).

Despite the finding of battery, defendant will not be found liable for damages if plaintiff consented to battery, of if defendant was in some way privileged to inflict harmful or offensive contact. Meitou v. Uwera, 5 FSM R. 139, 143 (Chk. S. Ct. Tr. 1991).

A person is liable to another for battery if he acts intending to cause harmful contact with a third person or an imminent apprehension of such contact, and a harmful contact indirectly results. Davis v. Kutta, 7 FSM R. 536, 544 (Chk. 1996).

An actor is privileged to use reasonable force, not intended or likely to cause death or serious bodily harm, to defend himself against the unprivileged harmful or offensive contact or other bodily harm which he reasonably believes another is about to inflict intentionally upon him, but the means used must be proportionate to the danger threatened. Davis v. Kutta, 7 FSM R. 536, 544-45 (Chk. 1996).

Even though police may be privileged to use force to prevent the commission of a crime, the battery of an innocent bystander is not privileged. Davis v. Kutta, 7 FSM R. 536, 545 (Chk. 1996).

Civil liability for a battery is not limited to the direct perpetrator of the act charged, but extends to any person who by any means encourages or incites the battery, or aids and abets it. Davis v. Kutta, 7 FSM R. 536, 545 (Chk. 1996).

Where a number of people fired weapons and others encouraged them to fire or surrendered their weapon so another could fire it, all are jointly and severally liable for battery on an innocent bystander as the person who fired the bullet that struck her. Davis v. Kutta, 7 FSM R. 536, 545 (Chk. 1996).

The commission of the intentional tort of battery by police officers in the scope of their employment is a denial of due process of law. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

Battery is the harmful or offensive contact with a person, resulting from an act intended to cause that contact, while an assault refers to the apprehension of that offensive contact. Once the court is satisfied from the evidence that an actual injury has occurred then it need not consider the separate tort of assault. Conrad v. Kolonia Town, 8 FSM R. 183, 191 (Pon. 1997).

Civil liability for a battery is not limited to the direct perpetrator of the act charged. It extends to any

person who by any means encourages or incites the battery, or aids and abets it. Each officer who encouraged any other officer to become involved in the fight with plaintiff, either by direct command, by statements or by providing the means for another officer to become involved, is as liable for the battery on plaintiff as the person who actually delivered the kick to his leg. Conrad v. Kolonia Town, 8 FSM R. 183, 192 (Pon. 1997).

The tort of battery is an intentional tort; therefore none of the defenses to negligence such as assumption of risk, comparative negligence, contributory negligence and last clear chance apply to intentional actions on the part of the defendants. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

Privilege is a legal defense to the tort of battery and may be based upon the consent of the person who is the one affected by the touching, or the fact that the touching is a necessity to protect some private or public interest which is of such importance as to justify the threatened harm or, that the touching is one which the actor must cause in the exercise of some action for which freedom of action is essential. Conrad v. Kolonia Town, 8 FSM R. 183, 193 (Pon. 1997).

The commission of the intentional tort of battery by the police officers in the scope of their employment is a denial of due process of law. Physical abuse committed by police officers may violate a prisoner's right to due process of law. The right to due process of law is violated when a police officer batters a person. The public at large has the right to be free of invasions of their person and personal security by any government agent and suspects have the right to be free from the use of excessive force during their arrest. Conrad v. Kolonia Town, 8 FSM R. 183, 195 (Pon. 1997).

A municipality is liable for battery by its police officers when it has ratified their actions by failing to charge them and the lack of any internal discipline whatsoever. Conrad v. Kolonia Town, 8 FSM R. 183, 195 (Pon. 1997).

It is not a manifest error of law or fact requiring a new trial that the court held police officers liable for battery without determining exactly which officer's action caused plaintiff's injury when the court found that each of the defendants had participated in plaintiff's arrest, the court discussed the issues of justifiable force and privilege throughout its decision, and found that defendants had acted with intent to bring about a harmful or offensive contact with plaintiff, which was not justified under the circumstances. Conrad v. Kolonia Town, 8 FSM R. 215, 217-18 (Pon. 1997).

Although under Pohnpeian custom it is inappropriate for a parent, or an individual who stands in the place of a parent, to see his daughter come home late at night with a boyfriend, it is not a corollary that that person is justified under custom in inflicting a battery on the boyfriend, or damaging car he is driving. Elymore v. Walter, 9 FSM R. 450, 456 (Pon. 2000).

When there was no evidence to suggest that a parent's customary privilege to discipline ran beyond the daughter to encompass her boyfriend as well, when there was no evidence to suggest that when the boyfriend dropped the daughter off he was threatening or in any other way posing a danger of physical harm to her such that the parent was entitled to inflict a battery upon the boyfriend in order to defend the daughter as he may have been obligated to do under custom, and when there was no evidence that under custom a parent could attack the car driven by the daughter's boyfriend with the baseball bat as a way of demonstrating his displeasure with the boyfriend for his role in keeping her out late, and in dropping her off under circumstances where he would see them together, Pohnpeian custom does not constitute a defense to either the battery or property damage claims. Elymore v. Walter, 9 FSM R. 450, 456 (Pon. 2000).

Battery is a harmful, offensive contact with a person resulting from an act intended to cause the contact, while an assault has to do with the apprehension of the offensive contact; when the court determines that a battery has occurred, it need not consider the separate tort of assault. Elymore v. Walter, 9 FSM R. 450, 458 (Pon. 2000).

It is enough to constitute a battery that the defendant sets a force in motion which ultimately produces

the result, such as striking a glass door so that the plaintiff is hit with the fragments. Elymore v. Walter, 9 FSM R. 450, 458 (Pon. 2000).

Punitive damages are awarded as a punishment to the defendant for his wrongful act and as a warning and example to deter him and others from committing similar acts in the future. As a general rule, punitive damages are allowed for an assault and battery committed wantonly, maliciously, or under circumstances of aggravation. Since battery usually is a matter of the worst kind of intentions, it frequently justifies punitive damages. Elymore v. Walter, 9 FSM R. 450, 459 (Pon. 2000).

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

The state, as employer of a police trainee, is responsible for the battery committed by the trainee while acting within the scope of that employment. Atesom v. Kukkun, 10 FSM R. 19, 22 (Chk. 2001).

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

Excessive force is defined as the use of unreasonable force by a person having the authority to arrest. A person who has been arrested has the right to be free of excessive force and use of excessive force may constitute battery. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

When there was no evidence that any policemen had an intent to cause an arrestee physical or bodily harm, the state is not liable to her under either theory of assault or battery. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

Defenses to negligence, such as comparative negligence, which might lessen an award of damages, do not apply to the intentional tort of battery. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

A trial court errs as a matter of law by using, in a civil case, a criminal statute to determine the torts' elements and whether the plaintiff was an assault and battery victim. Because it was not a criminal prosecution, the trial court should have looked to Pohnpei tort law and used the elements of the torts of assault and of battery. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

Under Pohnpei tort law, a battery is a harmful, offensive contact with a person resulting from an act intended to cause the contact, while an assault has to do with the apprehension of the offensive contact. When a court is satisfied from the evidence that an actual injury has occurred, that is, determined that a battery has occurred, it need not consider the separate tort of assault. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

Privilege is a legal defense to the torts of assault and battery and may be based upon the fact that the touching is a necessity to protect some private or public interest which is of such importance as to justify the threatened harm. A lawful arrest is just such a privilege and a valid defense to the assault claim and to the battery claim so long as excessive force is not used. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

Whether the Pohnpei police injured an arrestee through the use of excessive force and thus battered her is a question of fact. Thus, when the trial court found as fact that the arrestee had caused her own injuries by struggling with the handcuffs during the travel from the arrest site to the police station, which resulted in the handcuffs tightening further around her wrists and that the handcuffs' tightening was not the result of an officer's conduct, but rather was the result of her own movements, the police did not cause her injury and no use-of-excessive-force battery could have occurred. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

– Breach of Fiduciary Duty

Where the defendant has breached her fiduciary duty, and converted to her own personal use funds of

others, has made no claim of right to any of the funds or offered any defense, and blame thus lies wholly with the defendant, the plaintiff will be allowed to recover its attorney's fees in order to make the victim whole. This is a narrowly drawn exception to the general rule parties will bear their own attorney's fees. Bank of Guam v. Nukuto, 6 FSM R. 615, 617-18 (Chk. 1994).

A financial institution, such as a credit union, that holds money from depositors does have an on-going fiduciary duty to its depositors. Wakuk v. Kosrae Island Credit Union, 7 FSM R. 195, 197 (Kos. S. Ct. Tr. 1995).

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).

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).

FSM case law has not acknowledged the existence of the tort of breach of fiduciary duty in the context of insurance or any other context except banking. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308 (Pon. 2004).

In a narrowly drawn exception to the general rule that the parties will bear their own attorney's fees, attorney's fees have been awarded as part of costs when a defendant has breached her fiduciary duty to the plaintiff. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

An employee or agent is liable to a third person for injuries resulting from the breach of any duty which the employee or agent owes directly to such third person, and is not liable to a third person for injuries resulting from a breach of duty which the employee or agent owes only or solely to his employer. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438-39 (Pon. 2009).

Since insurance agents are required to exercise the utmost good faith, loyalty, and honesty toward the insurer during the times that they acted as the insurer's agents, by cashing the premium checks, and thereby failing to send the checks on to the insurer, they breached this duty. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

A defense that the plaintiff should have made a claim against its errors and omissions policy is without merit even if such a policy existed, because the contract expressly addresses what happens. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

Damages for an insurer's claim for breach of fiduciary duty are the same as those for its contract claim, since the breach of fiduciary duty claim is also based on the breach of the agency contracts that the insurer had with its agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 446 (Pon. 2009).

Generally, a party bears its own attorney's fees, and this rule is the proper foundation upon which the system in the FSM should be built. An exception to this general rule is that attorney's fees have been awarded for a breach of fiduciary duty. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 449 (Pon. 2009).

Agency is the fiduciary relation which results from one person's manifestation of consent to another that the other shall act on his behalf and subject to his control, and consent by the other to so act, and fiduciary is defined as relating to or founded upon a trust or confidence. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

An agent is a fiduciary with respect to the matters within the scope of his agency and the agent is bound to the exercise of the utmost good faith, loyalty, and honesty toward his principal. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

Since handling the principal's premium checks was within the scope of their agency and since the agents did not exercise the utmost good faith, loyalty, and honesty toward the principal when they were its agents because they did not immediately remit all premium checks to the principal, the agents breached the fiduciary duty they owed to the principal and were properly found liable under a breach of fiduciary duty theory. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

– Breach of Implied Covenant of Good Faith

Breach of an implied covenant of good faith and fair dealing is a common law cause of action, which is a tort claim that arises out of a contractual relationship between the parties. The implied covenant of good faith and fair dealing rests on the premise that whenever a party's cooperation is necessary for the performance of a contractual promise, there is a condition implied that the cooperation will be given. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 307 (Pon. 2004).

Contracts impose on the parties thereto a duty to do everything necessary to carry them out, and there is an implied undertaking in every contract on each party's part that he will not intentionally and purposely do anything to prevent the other party from carrying out his part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract, and the FSM Supreme Court will entertain such claims in the context of insurance contracts, where the insurer possesses greater sophistication, can be expected to assist local insureds in understanding the relevant legal terminology, and has a specialized role in processing claims. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 307 (Pon. 2004).

The court cannot say that an insurance claims process which consumed between 3 and 4 months from the filing of the claim to the issuance of a denial is so lengthy, so egregious, as to constitute bad faith as a matter of law. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308 (Pon. 2004).

Courts have permitted attorney's fee awards under the vexatious conduct exception when the plaintiff has proven the defendant's breach of the implied covenant or implied duty of good faith and fair dealing (also called the bad faith tort). If a plaintiff were to prevail on a bad faith tort claim against an insurer, the insurer would be liable to him for reasonable attorney's fees that are proximately caused by the bad faith conduct. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

Since contracts impose upon the parties an implied undertaking that each party will not intentionally or purposefully do anything to prevent the other party from carrying out its part of the agreement, breach of an implied covenant of good faith is a common law tort claim that arises out of a contractual relationship between the parties. The court has not yet extended this doctrine's application to contracts beyond insurance contracts. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

Subject to proof at trial, a breach of an implied covenant of good faith claim may sound, at least in part, in contract rather than in tort. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

Breach of an implied covenant of good faith and fair dealing is a common law cause of action, which is a tort claim that arises out of a contractual relationship between the parties. The implied covenant of good faith and fair dealing rests on the premise that whenever a party's cooperation is necessary for the performance of a contractual promise, there is a condition implied that the cooperation will be given. Johnny v. Occidental Life Ins., 19 FSM R. 350, 361 (Pon. 2014).

Contracts impose on the parties a duty to do everything necessary to carry them out, and there is an implied undertaking in every contract on each party's part that he will not intentionally and purposely do

anything to prevent the other party from carrying out his part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. The FSM Supreme Court will entertain such claims in the context of insurance contracts, when the insurer possesses greater sophistication, provides the policy, can be expected to assist insureds in understanding the relevant terminology in the policy, and has a specialized role in processing claims. Johnny v. Occidental Life Ins., 19 FSM R. 350, 361-62 (Pon. 2014).

The duty of good faith and fair dealing is implied in the performance and enforcement of all contracts. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

Under the circumstances of an insurance case, there may be a duty to disclose information, based on a relationship of confidence or trust between the parties, or based on one party's superior knowledge or means of knowledge. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

As used in the insurance context, bad faith does not refer to misconduct of a malicious or immoral nature. Rather, the bad faith concept emphasizes unfaithfulness to an agreed common purpose or to the justifiable expectations of the other party to the contract. In short, a showing of bad faith requires that insurers not act unreasonably or arbitrarily when dealing with their insureds. Johnny v. Occidental Life Ins., 19 FSM R. 350, 362 (Pon. 2014).

The breach of an implied covenant of good faith and fair dealing is a common law tort claim that arises out of a contractual relationship between the parties because contracts impose upon the parties an implied undertaking that each party will not intentionally or purposefully do anything to prevent the other party from carrying out its part of the agreement. FSM courts, however, have not yet extended this doctrine's application to contracts other than insurance contracts. George v. Palsis, 19 FSM R. 558, 568 (Kos. 2014).

When the court has ruled that the plaintiff's right to payment for accrued annual leave hours was contingent on him giving at least two weeks' written notice of his resignation and that since he was terminated involuntarily those events never occurred, the defendants are entitled to summary judgment on the plaintiff's breach of an implied covenant of good faith and fair dealing cause of action insofar as it applies to the plaintiff's accrued annual leave hours claim. George v. Palsis, 19 FSM R. 558, 568 (Kos. 2014).

When the court has not held that the implied covenant of good faith and fair dealing could never be applied to an employment contract, the court, at the summary judgment stage of the proceeding, will not dismiss this cause of action as it might apply to the plaintiff's claim for wrongful termination in violation of his employment contract. George v. Palsis, 19 FSM R. 558, 568 (Kos. 2014).

An injured claimant may not sue an insurer for breach of the duty of good faith and fair dealing. The duty is a product of the fiduciary relationship created by the contract between the insurer and its insured. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 213 (Yap 2015).

An insured's cause of action for the insurer's breach of the covenant of good faith and fair dealing is assignable to the injured third-party claimant, and the assignee may sue on it. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 213 (Yap 2015).

The breach of an implied covenant of good faith and fair dealing is a common law tort claim that arises out of a contractual relationship between the parties because contracts impose upon the parties an implied undertaking that each party will not intentionally or purposefully do anything to prevent the other party from carrying out its part of the agreement. This tort requires some sort of bad faith on the defendant's part. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 428 (App. 2016).

Not every mistake by an insurer or its agent rises to the level of bad faith – is automatically

unreasonable or arbitrary. An insurance agent's misrepresentation, particularly an unintentional misrepresentation, may breach the agent's duty of care toward the insured rather than constitute bad faith and unreasonable and arbitrary conduct towards an insured. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 428 (App. 2016).

When the insurance agents' failure to differentiate between the insured's life and cancer policies was careless, but not arbitrary and unreasonable, and did not deprive the insured of her bargained-for benefit, the trial court's conclusion that the insurers breached the implied covenant of good faith and fair dealing or that they engaged in bad faith conduct was reversible error. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 428-29 (App. 2016).

– Causation

The excavation of large holes on the land of private citizens, in areas where children play, and near a public road, is inherently dangerous and calls for special precautions. One who causes such work to be undertaken may not escape liability simply by employing an independent contractor to do the work. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 25 (App. 1985).

Medical malpractice by hospital staff does not relieve a tortfeasor of his responsibility for damages, because any injuries that might have been caused by the staff flowed naturally from his own acts. Primo v. Refalopei, 7 FSM R. 423, 429 (Pon. 1996).

The proximate cause of an injury is the primary or moving cause which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. Primo v. Refalopei, 7 FSM R. 423, 429 (Pon. 1996).

Medical actions of a hospital staff do not constitute an efficient intervening cause that would break the causal link between a tortfeasor's attack and the plaintiff's injuries. Primo v. Refalopei, 7 FSM R. 423, 429 (Pon. 1996).

The employment of a police officer with ten-year old charges and or convictions for violent behavior is insufficient to hold a municipality liable for negligent hiring because the charges and or convictions were too remote and attenuated to be the proximate cause of the plaintiff's injury. Conrad v. Kolonia Town, 8 FSM R. 183, 194 (Pon. 1997).

Proximate cause is the primary or moving cause, or that which, in a natural and continuous sequence; unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. Conrad v. Kolonia Town, 8 FSM R. 183, 194 (Pon. 1997).

Failure to use due care under the circumstances in maintaining a telephone pole guy wire is the proximate cause of an eye injury resulting from a collision with the defective wire because the injury was one that might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. Asher v. Kosrae, 8 FSM R. 443, 450-51 (Kos. S. Ct. Tr. 1998).

The plaintiff has not shown a causative link between the alleged contamination and her injury sufficient to withstand the defendants' summary judgment motion when, as between contaminated and uncontaminated kerosene, a reasonable trier of fact could not exclude the latter so as to conclude that it was the former that caused her injury. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 586 (Pon. 2002).

Speculation, guess and surmise may not be substituted for competent evidence, and where there are several possible causes of one accident, one or more of which a defendant is not responsible for, a plaintiff cannot recover without proving that the injury was sustained wholly or in part by a cause for which the

defendant was responsible. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 587 (Pon. 2002).

When a reasonable trier of fact could not exclude the plaintiff's playing with matches and uncontaminated – as opposed to contaminated – kerosene as the cause of her injuries, it follows that the record taken as a whole could not lead a rational trier of fact to find for her and that the defendants' summary judgment motion must be granted. William v. Mobil Oil Micronesia, Inc., 10 FSM R. 584, 587 (Pon. 2002).

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).

Causation and damages can appropriately be proven on a class basis when the basis for each resident's claim is the same: a shared traditional ownership of the right to use the marine natural resources appertaining to the municipalities of which each is resident and each class member is seeking to recover for a trespass or nuisance injury to their shared use right interest and the type of injury is common to all class members, such as inability to use or consume marine resources from the inner lagoon because of the necessary government ban on these and injury to particular resources because of the grounding and oil spill, *i.e.*, the reef and mangrove areas. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

Causation in maritime tort law is similar to the common law causation principle. A defendant's act or omission must be the proximate cause of the plaintiff's injury. An injury is proximately caused by an act, or failure to act, whenever it appears from the evidence that the act or omission played a substantial part in bringing about or actually causing the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

Causation and damages can appropriately be proven on a class basis when the basis for each person's claim is the same. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

The circumstantial evidence proves proximate cause even though exactly how the reef was damaged – whether anchors and/or chains were dragged on the reef; or whether a detached or slack cable or chain used to connect the barge to the tugboat struck the reef; or whether one or both of the vessels struck the reef; or whether some combination of these was responsible – is undetermined since the damages occurred while the two vessels were on the site (or while just the barge was there) and since no other vessels were present at the time and the damage was of the type that must have been caused by one or more of the methods described. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 174-75 (Yap 2012).

When it was the decedent's own actions that were the proximate cause of his death, the causation element of wrongful death cannot be proven. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

When the delay before a referral to an off-island medical facility, regardless of who caused it, did not proximately cause the patient's death, it cannot be the basis to hold anyone liable for her death. William v. Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

When the insurance carrier approved the patient's off-island referral within two days and was ready to put her on the earliest possible flight but the patient did not leave until 20 days later and when this long delay was the proximate cause of the patient's death, the insurance carrier's actions were not the proximate cause of her death because the insurance carrier did not cause the delay. William v. Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

– Comparative Negligence

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

Apportionment of fault among several defendants in a personal injury case must be based on the Pohnpeian concept of "kaidehn peid sipal ieu dihp," which requires each wrongdoer to bear the consequences of his or her own fault. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 75 (Pon. S. Ct. Tr. 1986).

In keeping with the spirit of Pohnpeian custom, when defendants are at fault, they should share in the payment of damages based upon their share of liability. Koike v. Ponape Rock Products, Inc. (II), 3 FSM R. 182, 185 (Pon. S. Ct. Tr. 1987).

In apportioning damages among negligent parties, the Pohnpei Supreme Court will consider the following factors: the Pohnpei Constitution, custom and tradition, the degree of negligence of each party, other jurisdictions' efforts to abolish joint liability, the need to minimize the role of insurance companies given Pohnpei's stage of development, the example of the U.S. insurance crisis, other jurisdictions' efforts to modify the rules governing joint and several liability, and American judges' assessments of joint and several liability. Koike v. Ponape Rock Products, Inc. (II), 3 FSM R. 182, 185 (Pon. S. Ct. Tr. 1987).

The "pure system" of comparative negligence is available as a defense to defendants in Chuuk State. The defendant is entitled to a proportional reduction in any damage award upon proof that the plaintiff's negligence was in part the cause of his injuries. Epiti v. Chuuk, 5 FSM R. 162, 167-68 (Chk. S. Ct. Tr. 1991).

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

As a loss of consortium claim is derivative from a spouse's claim for damages an award for loss of consortium is properly reduced by the percentage of fault attributable to the spouse. Epiti v. Chuuk, 5 FSM R. 162, 170 (Chk. S. Ct. Tr. 1991).

The doctrine of comparative negligence is more consistent with life in Pohnpei in that the doctrine recognizes that injuries and damages are often caused through a combination of errors and misjudgments by more than one person. Nothing in Pohnpei custom absolves a party who caused injury to another from the customary obligations of apology and reconciliation because the injured party's negligence contributed to the injury. Alfons v. Edwin, 5 FSM R. 238, 242 (Pon. 1991).

Comparative negligence, unlike contributory negligence permits assessment of relative degrees of responsibility and allows awards on that basis. Alfons v. Edwin, 5 FSM R. 238, 242 (Pon. 1991).

Doctrine of comparative negligence is more consistent with custom and tradition on Pohnpei unless, and until the highest Pohnpei state court rules otherwise. Alfons v. Edwin, 5 FSM R. 238, 242-43 (Pon. 1991).

In order for a third party's negligent conduct to afford any relief to defendants by way of a contributory

(comparative) negligence theory, it must be demonstrated that the negligent act or omission somehow caused or contributed to the injury sustained and that there was not an independent or superseding cause. Ludwig v. Mailo, 5 FSM R. 256, 261 (Chk. S. Ct. Tr. 1992).

Under the "pure" form of comparative negligence, which is a defense available in Chuuk, a defendant is entitled to a proportional reduction in any damage award upon proof that the plaintiff's negligence was in part the cause of his injuries, but the plaintiff may still recover for all of the harm attributable to the defendant's wrongdoing even if plaintiff's negligence was greater than the defendant's. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 66 (Chk. 1997).

Comparative negligence, not assumption of risk, is the rule in Pohnpei. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

Comparative fault is a preferable doctrine to that of contributory negligence, and should be considered the law in Pohnpei until and unless the Pohnpei Supreme Court rules otherwise. Primo v. Semes, 11 FSM R. 324, 330 (Pon. 2003).

Under comparative fault principles, a defendant will only be held liable for the percentage of fault he is found responsible for, if any. Primo v. Semes, 11 FSM R. 324, 330 (Pon. 2003).

Comparative fault or comparative negligence is the rule in Chuuk. Under the "pure system" of comparative negligence, which has been recognized as an available defense in Chuuk, a defendant is entitled to a proportional reduction in any damage award upon proof that the plaintiff's negligence was in part the cause of the plaintiff's injuries. Kileto v. Chuuk, 15 FSM R. 16, 18 (Chk. S. Ct. App. 2007).

Neither contributory negligence nor comparative negligence is a defense to a conversion action. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 444-45 & n.5 (Pon. 2009).

Chuuk is a comparative negligence or comparative fault jurisdiction. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

The "pure system" of comparative negligence is applicable in Chuuk; that is, a defendant is liable only for the portion of the harm attributable to the defendant's wrongdoing. To illustrate, if the damage caused by a defendant was 12% greater than what the damage would have been, the defendant would be liable for no more than 12% of whatever actual monetary damages the plaintiffs could prove. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

Defenses to negligence, such as comparative negligence, which might lessen an award of damages, do not apply to the intentional tort of battery. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

Neither contributory nor comparative negligence is a defense against a common law action for conversion. For comparative negligence to be a defense, the plaintiff's cause of action must be one based on negligence. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356 (App. 2012).

Conversion is an intentional tort and not a cause of action based on negligence and thus comparative negligence cannot be a defense to conversion. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356 (App. 2012).

– Conspiracy

In a case in which the defendant proposes a standard of requiring clear and convincing evidence in civil conspiracy cases rather than a preponderance based upon conditions, customs and traditions in Micronesia, it is incumbent upon him to establish such conditions by evidence, because the court will not take judicial notice of such conditions, customs or traditions. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 164 (App. 1987).

In a case of civil conspiracy, the burden of proof is a preponderance of the evidence, not a clear and convincing standard, in order to establish the conspiracy. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 164 (App. 1987).

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. The preponderance of the evidence standard also applies to a civil action for conspiracy. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 456 (Pon. 2009).

Liability for civil conspiracy depends on performance of some underlying tortious act. The conspiracy is not independently actionable; rather, it is a means for establishing vicarious liability for the underlying tort. The mere common plan, design or even express agreement is not enough for liability in itself, and there must be acts of a tortious character in carrying it into execution. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457 (Pon. 2009).

When the plaintiff has not met his burden of showing that the defendant is liable on any underlying tort theory, his claim that the defendant conspired to commit such a tort must also fail. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457-58 (Pon. 2009).

Since civil conspiracy is not a cause of action unless an underlying civil wrong has been committed and caused damage, when certain tort counterclaims have survived dismissal motions, the civil conspiracy counterclaim, limited to those underlying torts, will survive a motion to dismiss. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 605 (Pon. 2009).

Liability for civil conspiracy depends on performance of some underlying tortious act and is not independently actionable; rather, it is a means for establishing vicarious liability for the underlying tort. Mori v. Hasiguchi, 19 FSM R. 222, 226 (Chk. 2013).

– Contribution

The right of contribution among tortfeasors, where two or more persons become jointly or severally liable in tort for the same injury to a person, is subject to certain limitations which are set out in the statute that creates the cause of action for contribution among joint tortfeasors. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM R. 306, 309 (Pon. 1998).

When a defendant's and plaintiff's prejudgment settlement, by its terms, did not extinguish or discharge a third-party defendant's potential liability to the plaintiff, the defendant's contribution action against the third-party defendant is barred, even though, since the statute of limitations had run, the settlement had the effect of extinguishing the plaintiff's potential claims against the third-party defendant. Under 6 F.S.M.C. 1202(4), for the defendant to be allowed to maintain a contribution action the settlement itself must either have discharged the common liability or extinguished the third-party defendant's liability. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM R. 306, 311 & n.4 (Pon. 1998).

Although the FSM Supreme Court has recognized claims for indemnity based on contractual provisions between two parties, and required precise clarity in the indemnification clause language, it is not prepared to create a common law indemnity claim. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM R. 306, 311 (Pon. 1998).

By statute, when two or more persons become jointly or severally liable in tort there is a right of contribution among them. Senda v. Semes, 8 FSM R. 484, 495 (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).

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).

By statute, a tort-feasor who enters into a settlement agreement is not entitled to recover contribution from another tort-feasor whose liability for the injury or wrongful death is not extinguished by the settlement. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 88 (App. 1999).

By statute, a tort-feasor, against whom there is no judgment, and who has agreed while the action was pending against him to discharge the common liability, may sue for contribution within one year of the agreement if he has paid the liability. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 88 (App. 1999).

6 F.S.M.C. 1202(4) bars a contribution claim when a settlement agreement does not extinguish another tort-feasor's liability because that liability had already been extinguished by the relevant statute of limitations. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 89 (App. 1999).

A defendant is barred from seeking contribution from a joint-tortfeasor when its settlement agreement with the plaintiffs recites that the release does not affect either the plaintiffs' or the defendant's claims against the joint tort-feasor. Tom v. Pohnpei Utilities Corp., 9 FSM R. 82, 89 (App. 1999).

When a defendant is granted summary judgment on the complaint against him, that defendant's cross-claim for contribution and indemnification from another defendant in the event that he is found liable on the complaint will be dismissed since he has no basis to seek indemnification or contribution because the summary judgment order dismissed the complaint against him. Kosrae v. Worswick, 10 FSM R. 288, 292 (Kos. 2001).

No right of contribution exists when a party has not paid more than his pro rata share of the common liability because there has not yet been any finding of liability against any party. Primo v. Semes, 11 FSM R. 324, 330 (Pon. 2003).

An action for contribution may be enforced by a separate action, or by motion when a judgment has been entered against two or more tort-feasors for the same injury or wrongful death, but when no judgment has yet been entered, claims for contribution are premature, and may not be brought by way of a counterclaim. Primo v. Semes, 11 FSM R. 324, 330 (Pon. 2003).

Although the FSM Supreme Court has recognized indemnity claims based on the parties' contractual provisions and has required precise clarity in the indemnification clause language, it has not been prepared to create a common law indemnity claim. Thus, when, even assuming the court were to find a defendant liable, there is no contractual provision for the plaintiff's indemnification by a defendant, a plaintiff's indemnity claim fails. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

Statutorily the right of contribution exists only in favor of a tort-feasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 364 (App. 2012).

When no party has paid any of the judgment, an appellate court cannot rule on whether parties would be liable for contribution to a co-defendant since there can be no actual case or dispute until the co-defendant has paid more than its pro rata share because anything the appellate court says now would be an advisory opinion and it does not have any jurisdiction to give advisory opinions. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 364 (App. 2012).

Although the double negative in the statute may make it difficult to quickly grasp the statute's plain

meaning, 6 F.S.M.C. 1202(4) bars a tort-feasor's contribution claim against another tort-feasor when the tort-feasor's settlement agreement does not extinguish the other tort-feasor's liability. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 15 (Pon. 2015).

The statute bars a party from seeking contribution from a joint-tortfeasor when its settlement agreement with the claimants does not extinguish the joint tort-feasor's liability. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

When 12 F.S.M.C. 1202(4) would permit the plaintiff to seek contribution from the defendant only if the plaintiff's settlement with the claimant had extinguished the defendant's potential liability and when the plaintiff's complaint clearly states that it did not, the defendant is entitled to judgment in its favor on the plaintiff's contribution claim. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

– Contributory Negligence and Assumption of the Risk

Comparative negligence, which has displaced contributory negligence in most jurisdictions in the United States, should be given careful consideration by courts even though the *Restatement (Second) of Torts* refers only to contributory negligence and is silent about comparative negligence. There is reason to doubt that the FSM Supreme Court is bound by 1 F.S.M.C. 203 pointing to the *Restatements* as a guide for determining and applying the common law. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 22 n.1 (App. 1985).

An employee who is performing a difficult task in one way and is given contrary instructions by his employer and who must be mindful of his employer's instructions or face a possible reprimand is not guilty of contributory negligence. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 66 (Pon. S. Ct. Tr. 1986).

Conduct on an employee's part, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection, constitutes contributory negligence. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 67 (Pon. S. Ct. Tr. 1986).

The common Pohnpeian custom of assisting a person in need should not be dispensed with in order to allow the defense of contributory negligence or assumption of risk to be raised. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 67 (Pon. S. Ct. Tr. 1986).

Assumption of risk typically involves one of the following situations: 1) plaintiff has given his consent in advance to relieve defendant of an obligation of conduct toward him, and to take his chances of injury from a known risk arising from what defendant is to do or leave undone; 2) plaintiff voluntarily enters into a relation with defendant, with knowledge that defendant will not protect him against the risk; 3) plaintiff is aware of a risk already created by defendant's negligence, but proceeds to encounter it by voluntarily taking part even after the danger is known to him. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 67-68 (Pon. S. Ct. Tr. 1986).

Contributory negligence of the owner of property is not a defense available to the wrongdoer in an action for conversion brought by the owner of the property. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 166 (App. 1987).

The doctrine of contributory negligence should not be adopted in Truk State in the absence of a statute because it is not in conformity with traditional Trukese concepts of responsibility; in Trukese custom, the wrongdoer cannot excuse his obligations to the injured person or the injured family by arguing that the injury was in part caused by the negligence of the injured party, or that someone else was also responsible. Suka v. Truk, 4 FSM R. 123, 127 (Truk S. Ct. Tr. 1989).

The absolute defenses of Assumption of the Risk and Contributory Negligence are contrary to the traditional Chuukese concepts of responsibility and shall not be available in Chuuk State. Epiti v. Chuuk, 5 FSM R. 162, 167 (Chk. S. Ct. Tr. 1991).

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

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

Comparative negligence, not assumption of risk, is the rule in Pohnpei. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

Comparative fault is a preferable doctrine to that of contributory negligence, and should be considered the law in Pohnpei until and unless the Pohnpei Supreme Court rules otherwise. Primo v. Semes, 11 FSM R. 324, 330 (Pon. 2003).

"Assumption of the risk" is a common law defense to negligence, which acts as a complete bar to the plaintiff's recovery because it relieves the defendant of any duty of care to the plaintiff. Kileto v. Chuuk, 15 FSM R. 16, 17-18 (Chk. S. Ct. App. 2007).

The assumption of the risk defense is contrary to the traditional Chuukese concepts of responsibility and is generally not available in Chuuk. Kileto v. Chuuk, 15 FSM R. 16, 18 (Chk. S. Ct. App. 2007).

Those who dash in to save their own property from a peril created by the defendant's negligence, do not assume the risk where the alternative is to allow the threatened harm to occur. Kileto v. Chuuk, 15 FSM R. 16, 18 (Chk. S. Ct. App. 2007).

"Assumption of the risk" usually describes a common law negligence or other tort defense that acts as a complete bar to the plaintiff's recovery because it relieves the defendant of any duty of care to the plaintiff. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 286 (Chk. 2009).

Neither contributory negligence nor comparative negligence is a defense to a conversion action. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 444-45 & n.5 (Pon. 2009).

Neither contributory nor comparative negligence is a defense against a common law action for conversion. For comparative negligence to be a defense, the plaintiff's cause of action must be one based on negligence. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356 (App. 2012).

– Conversion

Contributory negligence of the owner of property is not a defense available to the wrongdoer in an action for conversion brought by the owner of the property. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 166 (App. 1987).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Bank of Guam v. Nukuto, 6 FSM R. 615, 616 (Chk. 1994).

Where the defendant has breached her fiduciary duty, and converted to her own personal use funds of others, has made no claim of right to any of the funds or offered any defense, and blame thus lies wholly with the defendant, the plaintiff will be allowed to recover its attorney's fees in order to make the victim whole. This is a narrowly drawn exception to the general rule parties will bear their own attorney's fees. Bank of Guam v. Nukuto, 6 FSM R. 615, 617-18 (Chk. 1994).

The elements of an action for conversion are the plaintiffs' ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

The measure of damages in conversion is the property's market value at the time of conversion plus the legal rate of interest. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

When there has been no wrongful taking or disposal of the goods, and the defendant has merely come rightfully into possession and then refused to surrender them, demand and refusal are necessary to the existence of the tort of conversion. Continued silence and inaction can amount to a refusal. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

Punitive damages may be recoverable for conversion where the defendant's act was accompanied by fraud, ill will, malice, recklessness, wantonness, oppressiveness, willful disregard of the plaintiff's rights, or other circumstances tending to aggravate the injury, but defendant's mere failure to respond to an inquiry, or to answer a complaint is not a circumstance entitling a plaintiff to punitive damages. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

The elements of an action for conversion are the party's ownership and right to possession of the property, the other party's wrongful or unauthorized act of dominion over the property inconsistent with or hostile to the owner's right, and resulting damages. Jonas v. Paulino, 9 FSM R. 519, 521 (Kos. S. Ct. Tr. 2000).

A party's claim for conversion must fail and be dismissed when the has no ownership and rights to possession of the property because title has been confirmed in another. Jonas v. Paulino, 9 FSM R. 519, 521 (Kos. S. Ct. Tr. 2000).

An action for conversion requires proof of the following elements: 1) plaintiff's ownership and right to possession of the property, 2) defendant's wrongful or unauthorized action of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and 3) damages. Talley v. Lelu Town Council, 10 FSM R. 226, 235 (Kos. S. Ct. Tr. 2001).

When, although there is no dispute that the plaintiff's property was removed from its designated location without his consent and has not been recovered to date, the plaintiff did not prove by a preponderance of the evidence that either defendant converted the property by a wrongful act, the plaintiff cannot recover on his conversion claim. Talley v. Lelu Town Council, 10 FSM R. 226, 236 (Kos. S. Ct. Tr. 2001).

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).

A claim that some private party has taken or deprived someone of their property is, if it was personal property that was allegedly taken, a claim for conversion or for trespass to chattels, and, if it was real property that was allegedly taken by some private party, it is a claim for trespass (including actions for ejectment) or possibly for nuisance (interference with use and enjoyment of land). They are not due process or takings claims. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

Prejudgment interest has been allowed on conversion claims. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

The elements of an action for conversion are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128-29 (Chk. 2005).

When, viewing the facts in the light most favorable to the plaintiff and accepting his well-pled allegations (which remain to be proven) as true, a corporation (while under receivership) took dominion over the plaintiff's property; quarried it for rock; crushed the rock into aggregate; sold it; paid various expenses, including workers' wages, the operator's fees, and the receiver's fee; and then paid the royalties, to which the corporation was entitled, to the bank to reduce its indebtedness to the bank, the bank never took dominion over the property the plaintiff alleges is his and the bank is therefore entitled to summary judgment in its favor as a matter of law on the plaintiff's conversion and the "unauthorized sale of property" (the quarried aggregate) claims. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129 (Chk. 2005).

The elements of a conversion cause of action are: 1) the plaintiffs' ownership and right to possession of the personal property in question; 2) the defendant's unauthorized or wrongful act of dominion over the property that is hostile or inconsistent with the right of the owner; and 3) damages resulting from such action. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

Insurance agents took action inconsistent with and hostile to the insurer's ownership of premium checks when they cashed, or authorized the cashing of, the checks. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

An employee is herself jointly and severally liable with her employers for the checks she converted by cashing them while she was their employee because, under the doctrine of respondeat superior, an agent's act within the scope of his or her agency is the act of the principal, and the result is that both the principal and the agent are jointly and severally liable to the person injured by the wrongful act. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

Even as an insurance agency's employee, the employee had a duty not to cash premium checks without first confirming with the insurer that she had the authority to cash the checks. By failing to do so, the employee intentionally deprived the insurer of its property, and is thus liable for the conversion of the checks that she cashed while she was an the agency's employee. The employers and the employee are jointly and severally liable for the checks that the employee cashed during the time that the employers were acting as the insurer's general agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 439 (Pon. 2009).

"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 R. 423, 440 (Pon. 2009).

When a check is made out to a corporate payee; when the corporate payee's name was endorsed on the reverse side; when the defendant failed to take any steps to determine whether the endorsement was genuine and whether the purported "agent" seeking to cash the checks was authorized by the corporation to do so, the trust placed in the customer was misplaced. In cashing the checks without first verifying the authority of the one seeking to cash the checks, the defendant cashed the checks at its own peril and by depositing the checks into its bank account and receiving credits for those checks, the defendant exercised dominion and control over the checks and was therefore liable for conversion. The good faith of the one cashing the check does not enter into the picture. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 440 (Pon. 2009).

It is a corporation's usual practice to deposit checks payable to it in a bank account Given this consideration, when a person is asked to cash a check bearing a corporate endorsement he is put on his guard and should verify that the endorsement is authentic, and should take the necessary steps to make certain that the person attempting to cash the check is authorized to do so by the payee corporation. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 440 (Pon. 2009).

An actor may be liable for conversion when he has in fact exercised dominion or control and the actor's intention, good or bad faith, and his knowledge or mistake are immaterial. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

Punitive damages may be recovered for conversion when the defendant's acts were accompanied by fraud, malice, recklessness, oppressiveness, or willful disregard of the plaintiff's rights that aggravated the injury or loss inflicted by the defendant. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441-42 (Pon. 2009).

Although conversion by its nature involves wrongful acts that are hostile to an owner's interest in property, and although the defendants' actions in cashing premium checks were wrongful and showed a disregard of the plaintiff's property rights, that disregard was not sufficient to impose punitive damages because, when the checks were converted, they were converted in material part in the course of the agents' efforts to expedite services to the insurer's policy holders Nor will the court award punitive damages against the business cashing the checks because, while the business's actions in cashing the checks was wrongful, its employees relied in good faith on the insurance agents' representations that they were authorized to cash the checks. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 442 (Pon. 2009).

Conversion is the civil equivalent of theft. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 443 (Pon. 2009).

An insurer has no duty to its agents to undertake an investigation for the agents' benefit in order to stop the agents from converting the insurer's property. When the insurer's property was converted by the agents' intentional actions, the agents cannot argue that the insurer should have known that they were converting – stealing – the insurer's property, and that since the insurer should have stopped them but did not stop them from doing what they had no right to do, the agents should not have to pay back what they took. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 443 (Pon. 2009).

Neither contributory negligence nor comparative negligence is a defense to a conversion action. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 444-45 & n.5 (Pon. 2009).

A defendant cannot turn the tables on a plaintiff and conclude that the plaintiff was negligent for failing to detect and prevent the conversion earlier than it did. Such a rule, which the court will not adopt, would serve to blame the tort victim. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

A business that was presented, over a period of approximately three-and-a-half years, with checks amounting to over $400,000 that were made payable to a corporate payee, but that cashed the checks at the request of the individual cashing those checks without ever making any efforts to obtain independent confirmation that the individual presenting the check had the corporate payee's authority to do so, cannot rely on defenses of mitigation of damages or apparent authority or good faith commercial standards since the business had a duty to determine whether the individuals had the authority to cash the checks. The business cannot be said to have used good faith commercial business standards. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

A defense that the plaintiff should have made a claim against its errors and omissions policy is without merit even if such a policy existed, because the contract expressly addresses what happens. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

When there is no way of determining what portion of an amount deposited into a bank account was also converted by another defendant and since the plaintiff has the burden of proof, that other defendant will receive the benefit of the doubt created by this question and will not be held liable for the deposited sums. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 447 (Pon. 2009).

One whose property is converted is entitled to recover interest at the legal rate from the time the property is converted. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 448 (Pon. 2009).

Attorney's fees will not be awarded to the plaintiff insurer when the conversion arose as part of the insurer's agents' efforts to address customer concerns about the time it took for policy holders to receive their checks for loans taken out on their policies or for their policies' partial or full surrender value when a substantial amount of the cash obtained from the premium checks was distributed to policy holders and when, once the problem was identified, the current agent was cooperative in helping the insurer determine what sums were missing. Nor will attorney's fees be awarded against the business that cashed the checks, since it acted in reliance on the insurer's agents' representations when its employees cashed the checks. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 449 (Pon. 2009).

Neither contributory nor comparative negligence is a defense against a common law action for conversion. For comparative negligence to be a defense, the plaintiff's cause of action must be one based on negligence. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356 (App. 2012).

Conversion is an intentional tort and not a cause of action based on negligence and thus comparative negligence cannot be a defense to conversion. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356 (App. 2012).

As a matter of law, no type of negligence is a defense to the intentional tort of conversion. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356 (App. 2012).

In common law jurisdictions, conversion is an intentional tort giving rise to strict liability. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356 (App. 2012).

Conversion is a strict liability tort. The tort-feasor's intent and knowledge are irrelevant to his liability. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356 (App. 2012).

Conversion is a strict liability tort whereby the foundation of the action rests neither in the knowledge nor the intent of the defendant. Specifically, a defendant can be liable for conversion even when he acted in good faith, lacked knowledge of the conversion, or lacked motive to commit the tort. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 356-57 (App. 2012).

A conversion action is a species of strict liability in which the defendant's good faith, due care, ignorance or mistake are irrelevant and may not be set up as a defense. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 357 (App. 2012).

In a conversion suit, it is no defense that the defendant was not negligent or that the defendant acquired the plaintiff's property through the plaintiff's unilateral mistake, or that the defendant acted in complete innocence and perfect good faith. That is not to say that there are no defenses to a conversion action. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 357 (App. 2012).

A defendant may successfully defend a conversion action by proving that the plaintiff consented to the defendant's taking, or that the defendant had rights in the property superior to the plaintiff's, or that the plaintiff has waived its cause of action, or that the plaintiff is estopped from asserting any right to the property. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 357 (App. 2012).

It is not logical that any individual would have apparent authority to cash a check with a corporate payee, especially a foreign corporation. The corporation's agents may have had apparent authority to perform a number of acts on the corporation's behalf, but cashing checks with the corporation as the payee was not one of them. One who pays out on such a check does so at his own peril. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359 (App. 2012).

For a retail/wholesale store to cash checks with a corporate payee, particularly a large, off-island corporate payee with an off-island address printed on the check's face, with only an individual's personal endorsement and without written authorization from the corporate payee cannot possibly be considered a

good faith commercial business standard. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359 (App. 2012).

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

When an insurer, by its acts, ratified only the unauthorized agreements between its agents and its eligible policy-holders – the distribution of cash advances to eligible policy-holders, it "recovered" those funds from its policy-holders and since the insurer is not entitled to a double recovery, it cannot hold others liable for those sums and must give them credit for those sums. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

Although good faith and mistake are not defenses to an action for conversion, a plaintiff's damages will be reduced if the defendant returns the property or the plaintiff otherwise recovers the property. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

Negligence is not a defense to conversion. This includes negligence in hiring the agent who stole or negligence in not discovering the losses sooner. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 361 (App. 2012).

Barring the plaintiff from recovery for losses after it learned that its agent was continuing to cash its premium checks despite its explicit instructions not to, may have a certain appeal to it, but is untenable when the agent had earlier admitted to her stepfather, the defendant's principal, that she had been doing something she should not have, cashing the plaintiff's checks, because the defendant was thus on notice that it should not cash the plaintiff's checks any more. Yet it did. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

Since conversion is an action at law, laches is not a defense that can be used against a conversion claim. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 362 (App. 2012).

A corporation is not required to warn businesses not to cash checks that have the corporation as the payee since those business should not be cashing checks payable to a large, off-island corporation, anyway. The check casher has the duty to determine whether the person seeking to cash a check with a corporate payee is authorized by the corporation to do so, if it is going to cash the check. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

When prejudgment interest is awarded in a conversion case, the interest starts running on the date of the conversion. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

When even if a petitioner had not signed any of the converted checks, that would not alter the trial court's finding that she had authorized another to sign her name and thus the result would not change and the petitioners would still be liable to the appellee. Iriarte v. Individual Assurance Co., 18 FSM R. 406, 408 (App. 2012).

The elements of an action for conversion are: 1) the plaintiffs' ownership and right to possession of the personalty, 2) the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and 3) resulting damages. Ihara v. Vitt, 18 FSM R. 516, 529 (Pon. 2013).

When the employee's unauthorized issuance of one-way plane tickets resulted in a wrongful and unauthorized act of dominion over her employer's funds and was inconsistent with or hostile to its rights as owners of those funds since the employee's actions caused the employer to pay for the unauthorized tickets using company funds, all the elements for conversion are present and have been proven and that employee

is liable to her employer under the tort of conversion for conversion for all of the tickets that were issued by her for her mother and sister from Pohnpei to Charleston, South Carolina and return because she is the person who converted the funds. Ihara v. Vitt, 18 FSM R. 516, 530-31 (Pon. 2013).

Whatever arrangements regarding who would be responsible for the payment of the plane tickets that might have been made between an employee's mother and sister and an employee who charged plane tickets for her mother and her sister to her employer does not affect the employee's liability to her employer for all of the tickets because the employee cannot shift liability to another party without her employer's agreement although the employee will be credited for any payments she and her sister made since the employer is not entitled to double recovery. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

Conversion is the civil equivalent of theft. FSM v. Muty, 19 FSM R. 453, 457 n.1 (Chk. 2014).

Conversion has a six-year statute of limitations. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. FSM v. Muty, 19 FSM R. 453, 462 (Chk. 2014).

When it has been established that the plaintiff was contractually obligated to pay the sum specified in the invoice, the plaintiff's claim that the defendant's refusal to return his vehicle to his possession until the invoice was paid in full amounted to conversion must fail. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 478 (Pon. 2014).

The elements of an action for conversion are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

Although conversion has sometimes been called the civil equivalent of theft that is not an accurate description. It is not the same as theft. The crime of theft requires the intent to permanently deprive another of the property. Conversion only requires the defendant's wrongful or unauthorized act of dominion over the plaintiff's property be inconsistent with the owner's right. It does not require the intent to permanently deprive the owner of its property. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

A defendant's argument that she did not steal the property alleged converted and that no criminal case was filed is irrelevant. A conversion may occur even when the defendant has every intention of returning the property. Conversion is a strict liability tort whose foundation rests neither in the knowledge nor the intent of the defendant so a defendant can be liable for conversion even when he acted in good faith, lacked knowledge of the conversion, or lacked motive to commit the tort. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

When the factual finding that the employee took dominion over her employer's property (its money used to pay for tickets) without its permission is not clearly erroneous, and when the other elements of conversion are undisputed, the elements of conversion have been met. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

A defendant may successfully defend a conversion action by proving that the plaintiff consented to the defendant's taking, or that the defendant had rights in the property superior to the plaintiff's, or that the plaintiff has waived its cause of action, or that the plaintiff is estopped from asserting any right to the property. Ihara v. Vitt, 19 FSM R. 595, 603 (App. 2014).

Unlawful misappropriation of funds seems to be the same cause of action as conversion. Eot

Municipality v. Elimo, 20 FSM R. 482, 488 (Chk. 2016).

The elements of an action for conversion are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Eot Municipality v. Elimo, 20 FSM R. 482, 488 (Chk. 2016).

When, under prior precedent and the law of the case doctrine, the state government is immune from an interest award as a part of a judgment against the state unless the state has expressly consented to the imposition of interest and when the state government has not expressly consented, by statute or by contract, to the imposition of interest for claims or for a conversion claim, no interest will be permitted. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

The elements of an action for conversion are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Onanu Municipality v. Elimo, 20 FSM R. 535, 545 (Chk. 2016).

When the municipalities owned and had a right to possess, as their current account funds, the subject CI funds; when the state government's unauthorized use of those funds for its own purposes was an exercise of dominion over those funds inconsistent with the municipalities' right to them, and the municipalities were damaged, in the amount of their missing funds, by not being able to use those funds themselves, the municipalities have made out a prima facie case that they are entitled to summary judgment for the funds that the state government converted. Onanu Municipality v. Elimo, 20 FSM R. 535, 545 (Chk. 2016).

The elements of a conversion action are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Setik v. Perman, 21 FSM R. 31, 37 (Pon. 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).

– Damages

The Pohnpei Supreme Court will adhere to the common law rule followed by the former Trust Territory High Court that the wrongdoer in an automobile accident is not obliged to repair the damaged vehicle nor to pay its original cost; his only obligation is to pay the plaintiff-owner the amount of his loss. Phillip v. Aldis, 3 FSM R. 33, 37 (Pon. S. Ct. Tr. 1987).

To determine damages in a personal injury case, the Pohnpei Supreme Court will consider the victim's loss of income, as well as his inability to provide support through fishing and farming as a result of his disability. To determine the total loss of income, the court will assume that income would be earned until the age of sixty, which is the mandatory retirement age for government employees, though not for private employees. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 73 (Pon. S. Ct. Tr. 1986).

To determine a monetary value for loss of consortium, the Pohnpei Supreme Court will consider the social structure of the society and the extended family system, whereby other members of the family can be expected to provide some, albeit occasional, assistance. Koike v. Ponape Rock Products, Inc., 3 FSM R.

57, 74 (Pon. S. Ct. Tr. 1986).

The Pohnpei Supreme Court declines to adopt the "collateral source" rule, according to which alternative sources of income available to a victim are not allowed to be deducted from the amount the negligent party owes, because it does not want to discourage customary forms of family restitution. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 74 (Pon. S. Ct. Tr. 1986).

In apportioning damages among negligent parties, the Pohnpei Supreme Court will consider the following factors: the Pohnpei Constitution, custom and tradition, the degree of negligence of each party, other jurisdictions' efforts to abolish joint liability, the need to minimize the role of insurance companies given Pohnpei's stage of development, the example of the U.S. insurance crisis, other jurisdictions' efforts to modify the rules governing joint and several liability, and American judges' assessments of joint and several liability. Koike v. Ponape Rock Products, Inc. (II), 3 FSM R. 182, 185 (Pon. S. Ct. Tr. 1987).

In a wrongful death claim in Truk State, where the total pecuniary estimated loss was $15,288 and where an infant child lost his mother, there should be a finding for the plaintiff in the maximum amount allowed by law, $50,000. Asan v. Truk, 4 FSM R. 51, 56-57 (Truk S. Ct. Tr. 1989).

The mental anguish or grief aspect of a damage award reflects the loss of a broad range of mutual benefits each family member normally receives from others' continued existence, including love, affection, care, attention, companionship, comfort and protection. Suka v. Truk, 4 FSM R. 123, 130 (Truk S. Ct. Tr. 1989).

The term "pecuniary injury" as used in wrongful death statutes traditionally has been interpreted as including the probable support, services and other contributions that reasonably could have been expected by the beneficiaries had the decedent lived out her full life expectancy, all reduced to present worth. Leeruw v. FSM, 4 FSM R. 350, 365 (Yap 1990).

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).

Despite lack of evidence of medical expenses, either that medical treatment was necessary, or that medical treatment was obtained as a result of injuries the court is entitled to presume that some expenditures were made and finds that plaintiff should recover damages for those expenses, even in the absence of proof of purchase. Meitou v. Uwera, 5 FSM R. 139, 145 (Chk. S. Ct. Tr. 1991).

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

As a loss of consortium claim is derivative from a spouse's claim for damages an award for loss of consortium is properly reduced by the percentage of fault attributable to the spouse. Epiti v. Chuuk, 5 FSM R. 162, 170 (Chk. S. Ct. Tr. 1991).

A statutory cap on the amount and scope of recovery in a wrongful death action, lawfully enacted by the Kosrae legislature, does not interfere with traditional Kosraean or Micronesian compensation of a victim's family by the tortfeasor. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 361 (Kos. 1992).

Where a plaintiff makes damage claims in tort as well damage claims based on contract, contract clauses limiting the contract damages do not apply. McGillivray v. Bank of the FSM (I), 6 FSM R. 404, 409 (Pon. 1994).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Bank of Guam v. Nukuto, 6 FSM R. 615, 616 (Chk. 1994).

Where the defendant has breached her fiduciary duty, and converted to her own personal use funds of others, has made no claim of right to any of the funds or offered any defense, and blame thus lies wholly with the defendant, the plaintiff will be allowed to recover its attorney's fees in order to make the victim whole. This is a narrowly drawn exception to the general rule parties will bear their own attorney's fees. Bank of Guam v. Nukuto, 6 FSM R. 615, 617-18 (Chk. 1994).

Actual, not speculative, damages must be proven in order to award damages for wrongful restraint. Estimates of lost gross receipts are insufficient because a claimant is only entitled to lost profits. Sellem v. Maras, 7 FSM R. 1, 6 & n.10 (Chk. S. Ct. Tr. 1995).

Normally, the measure of damages in case of the purchase of personal property induced by misrepresentation is the difference between the fair market value of the property if the true condition were known and what the plaintiff paid for the property. Eram v. Masaichy, 7 FSM R. 223, 226 (Chk. S. Ct. Tr. 1995).

Failure of a creditor to notify the debtor of its failure to obtain insurance is negligence. As a consequence the creditor is liable to the debtor for the entire amount of the debtors' loss, otherwise the debtor is only entitled to return of full amount of insurance premiums paid. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

Where a defendant has trespassed on a plaintiff's land by constructing improvements thereon the measure of damages due the plaintiff is an amount equal to the fair market rental value of the land in the place located over the period of use, and also an amount for any damage to trees or food plants during the defendant's use of the property and for any conditions caused by the defendant's trespass and use such as the construction of a garbage dump. Ikanur v. Director of Educ., 7 FSM R. 275, 277 (Chk. S. Ct. Tr. 1995).

In a trespass case, a defendant who made improvements to the plaintiff's property is entitled to offset the value of the improvements against damages caused to the plaintiff's property during the trespass, but all improvements made by the defendant on land without the plaintiff's permission become the plaintiff's property and the defendant has no right to any further use of the improvements without the plaintiff's permission. Ikanur v. Director of Educ., 7 FSM R. 275, 277 (Chk. S. Ct. Tr. 1995).

Where a defendant's negligence proximately caused plaintiffs' home to be unsanitary and uninhabitable the measure of damages is the replacement value of the personal property lost and the fair market value of a replacement rental house for the time that the plaintiff's house was uninhabitable. Sandy v. Chuuk, 7 FSM R. 316, 318 (Chk. S. Ct. Tr. 1995).

An entry of default does not relieve a plaintiff of the burden of proving the damages that flowed from the liability thus established. Primo v. Refalopei, 7 FSM R. 423, 428 (Pon. 1996).

A tortfeasor is responsible for all damages flowing from his actions, including injuries related to medical care and treatment. Primo v. Refalopei, 7 FSM R. 423, 430 (Pon. 1996).

Damages for lost future earnings are not awardable where they are duplicative and speculative, but damages may be awarded for financial and emotional loss, and for loss, at present value, of customary services that a child would have preformed if not for her wrongful death. Primo v. Refalopei, 7 FSM R. 423, 433-34 (Pon. 1996).

Compensatory damages for personal injury may include medical expanses incurred, lost wages, impairment of future ability to earn, and other specific costs that accrued as a result of the injury. Davis v. Kutta, 7 FSM R. 536, 548 (Chk. 1996).

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

The measure of damages in conversion is the property's market value at the time of conversion plus the legal rate of interest. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

A specific claim for lost wages that accrued as a result of an injury at the hands of the defendants may be recovered as part of compensatory damages. Conrad v. Kolonia Town, 8 FSM R. 183, 195 (Pon. 1997).

Compensatory damages may be awarded a party who is deprived of civil rights. This award of damages includes reasonable attorney fees and costs of suit. Conrad v. Kolonia Town, 8 FSM R. 183, 196 (Pon. 1997).

Damages for waste are normally the difference in value of the property before and after the act of waste. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

The damages for waste committed are usually measured by the injury actually sustained and if the value of the premises has been improved by the acts complained of, the complainants will only recover nominal damages, if any, at law. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

Damages for waste can also be determined by the cost of repairing or replacing what was wasted when the damage is small in comparison to property's total value and the amount is readily ascertainable. Wolphagen v. Ramp, 8 FSM R. 241, 245 (Pon. 1998).

A lessor may not recover damages for waste when the removal of termite-infested lumber from uninhabitable houses while trying to turn the houses into a bar improved the value of the property, and because if the property had been abandoned without trying to turn the houses into a bar, the lessor would still have become the owner of two uninhabitable houses. Wolphagen v. Ramp, 8 FSM R. 241, 245 (Pon. 1998).

Where is little guidance in the prior decided opinions of the FSM Supreme Court for damage awards in privacy cases, the court will look to the reasoning of courts in other jurisdictions for guidance in assessing damages. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

A party that has established a cause of action for invasion of privacy is entitled to recover damages for the harm to his or her interest in privacy resulting from the invasion; mental distress proved to have been suffered if it is of a kind that normally results from such an invasion; and special damage of which the invasion is a legal cause. Special damages are demonstrable, direct economic losses resulting from the invasion of privacy. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 & n.1 (Pon. 1998).

The gist of the cause of action for invasion of privacy is for direct wrongs of a personal character which result in injury to the plaintiff's feelings, mental and emotional suffering are proper elements of damages. Substantial damages may be recovered, even if the only damages suffered resulted from mental anguish. These damages may include compensation for the wounded feelings, embarrassment, humiliation, and mental pain which a person of ordinary sensibilities would suffer under the circumstances. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

The measure of compensatory damages in a case involving commercial appropriation of one's name or likeness is the value of the benefit derived by the person appropriating the other's name, or the pecuniary loss suffered by the plaintiff whose name has been appropriated. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

In privacy cases in which a plaintiff also seeks damages for unjust enrichment, only one recovery is available because an invasion of another's right of privacy by a publication confers no right to share in the proceeds of such publication's sale of upon the ground that the author has thereby been unjustly enriched. It is inconsistent for the plaintiff to seek recovery for an invasion of the right of privacy, and in the same suit, to claim the right to participate in the profits of the publication. Mauricio v. Phoenix of Micronesia, Inc., 8

FSM R. 411, 414 (Pon. 1998).

When there is little instruction in previously decided FSM cases for assessing damages in an invasion of privacy case, privacy cases in other jurisdictions may provide some useful guidance. FSM cases awarding damages for mental pain and suffering outside the privacy context are also instructive. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 418 (Pon. 1998).

When there is no direct evidence of the amount of damages sustained, nor the amount of money that can compensate for an injury, the court, as trier of fact, must assess an appropriate level of compensatory damages for that injury. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 418 (Pon. 1998).

Compensatory damages for unjust enrichment will be not awarded when this claim conflicts with plaintiff's claim for compensatory damages for invasion of privacy because it is inconsistent for a plaintiff who wishes to recover for invasion of privacy to also claim the right to participate in the profits of publication and because when a privacy cause of action is brought together with another cause of action based on the same objectionable behavior under another theory, generally only one recovery may be awarded. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 418-19 (Pon. 1998).

Damages for lost future earnings are not awardable when they are duplicative and speculative. Asher v. Kosrae, 8 FSM R. 443, 454 (Kos. S. Ct. Tr. 1998).

Plaintiffs' children are not entitled to recover damages when they are not named as plaintiffs to the action. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 542 (Pon. 1998).

The measure of damages for impairment of earning capacity is the difference between the amount which the plaintiff was capable of earning before the injury and the amount which he or she is capable of earning thereafter. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 26 (Yap 1999).

Where the effect of an injury continues over time, earnings impairment will have two components: the loss sustained from the time of injury until time of trial, designated "loss of time" or lost wages, and the prospective loss that plaintiff will experience after trial due to the injury's on-going impact. The plaintiff has the burden of proof with respect to impairment, which must be demonstrated with a reasonable degree of certainty; however, proof of impairment of earning capacity does not require the specificity necessary to establish lost prospective wages. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 26 (Yap 1999).

A plaintiff must introduce evidence of his or her earning capacity prior to the injury. Even if there is no evidence of the extent of future loss, evidence of prior earnings warrants recovery for the impairment of future earning capacity which the injury would generally cause. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 27 (Yap 1999).

A plaintiff's education or lack of education may be considered in determining the amount of damages sustained by diminished earning capacity where the plaintiff has been engaged in manual labor and is incapacitated from doing that type of work. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 27 (Yap 1999).

Damages for reduction of future earning capacity are not for the wages themselves, but for the loss of the ability to earn money. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 27 (Yap 1999).

Limitation of employment opportunities resulting from lack of education is a specific factor which a court may consider in awarding damages for reduced earning capacity. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 27 (Yap 1999).

Damages for a sawmill employee's lost wages will be awarded only for the time period that the sawmill remained in business. When there is no evidence regarding other type of work that the plaintiff did prior to

his sawmill employment, the court will decline to award damages for other potential lost wages as being speculative. Sigrah v. Timothy, 9 FSM R. 48, 54 (Kos. S. Ct. Tr. 1999).

A plaintiff who is proud to participate in a ceremony can suffer embarrassment and emotional upset over the commercialization of a photograph of his participation in the ceremony. Because the two findings are not inconsistent and there is evidence in the record to support this conclusion, the damages awarded the plaintiff for invasion of privacy will be affirmed as not clearly erroneous. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 159 (App. 1999).

When a plaintiff has not been awarded damages, the question is not whether he made his case for damages with the requisite specificity, but whether he has shown entitlement to damages in the first instance. Wolphagen v. Ramp, 9 FSM R. 191, 193 (App. 1999).

In an action for damage to personal property, the plaintiff may recover the cost of the repairs to the damaged property. Elymore v. Walter, 9 FSM R. 450, 456 (Pon. 2000).

As a separate item of damages, and in addition to the cost of repairs, a plaintiff is entitled to be compensated for the loss of the use of the property. Customary rental charges are an adequate measure of damage for loss of use, and are awardable even when the plaintiff has not rented a substitute. The period for which the rental is allowed is the reasonable time that it would take to repair the damaged property. Elymore v. Walter, 9 FSM R. 450, 457 (Pon. 2000).

If loss-of-use damages is measured by either rental or replacement value and if repairs take a considerable period of time, damages should be measured not on the basis of rental value or replacement cost for the entire period, and not by the aggregate of the charges by the day or week. Elymore v. Walter, 9 FSM R. 450, 457 (Pon. 2000).

The damages for loss of use of property may not exceed the value of the property. Elymore v. Walter, 9 FSM R. 450, 457 (Pon. 2000).

An award for a car's loss of use for a sum substantially more than the car's original price – not to mention its value at the time of the incident – would, in addition to the money necessary to effect the repairs, result in a windfall to the plaintiffs and is not appropriate. Elymore v. Walter, 9 FSM R. 450, 457 (Pon. 2000).

When ten days is a reasonable time in which to obtain auto parts and two weeks is a reasonable time in which to make repairs once the parts have arrived, and when seven days is a reasonable time in which to arrange financing for the repairs, loss of use damages will be awarded for those days. Elymore v. Walter, 9 FSM R. 450, 457-58 & n.2 (Pon. 2000).

Since wrongful death actions are brought for the exclusive benefit of the deceased's "surviving spouse, the children and other next of kin," 6 TTC 202, when the deceased had no spouse or children, the damages are the next of kin's pecuniary injury. Estate of Mori v. Chuuk, 10 FSM R. 6, 15 (Chk. 2001).

When the state took prompt steps in accordance with medical advice to refer the plaintiff for off-island care and treatment, but the plaintiff abandoned the care mid-treatment to return to Chuuk, no damages for lost earnings or pain and suffering after he abandoned the health care will be awarded because there is no evidence as to what the plaintiff's degree of disability would have been had the expected prosthesis been fitted, nor the length of recovery and therapy following the fitting, nor the residual disfigurement, nor the loss, if any, of his future earnings would have been once a prothesis is fitted. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

Although a civil rights violation claim and a battery claim are separate causes of action, when they arise from the same incident and they cause the same personal injury and when the damage award for the civil rights violation fully compensates the plaintiff for his personal injury, the court cannot award additional

damages for the battery because such an award would constitute double recovery and would be a windfall and overcompensate the plaintiff. Atesom v. Kukkun, 10 FSM R. 19, 23 (Chk. 2001).

Compensatory damages are just that – compensation to make the victim whole again. Compensation for an injury is not doubled just because the plaintiff has two different causes of action on which to base that recovery. Only the injury itself is compensated. Moses v. M.V. Sea Chase, 10 FSM R. 45, 50 (Chk. 2001).

Regardless of the disposition of a punitive damages claim, plaintiffs are fully compensated by a damages award. Elymore v. Walter, 10 FSM R. 166, 168 (Pon. 2001).

When there is no direct evidence of the amount of damages sustained, nor the amount of money that can compensate for an injury, the court, as trier of fact, must assess the proper level of compensatory damages for that injury. Talley v. Lelu Town Council, 10 FSM R. 226, 238 (Kos. S. Ct. Tr. 2001).

Damages for harm to personal property is the difference between the value of the property before the tort and its value afterwards. Talley v. Lelu Town Council, 10 FSM R. 226, 238 (Kos. S. Ct. Tr. 2001).

In determining damages, the court may take judicial notice regarding the replacement costs for college transcripts and a college diploma, when they are easily ascertainable and available on the University of Guam Internet site and from the University of Guam Office of Admissions and Records. Talley v. Lelu Town Council, 10 FSM R. 226, 239 (Kos. S. Ct. Tr. 2001).

No additional damages will be awarded for the "sentimental value" of the lost items when the plaintiff's pain and suffering has already been compensated, because these damages already encompass the "sentimental value" of the lost items. Talley v. Lelu Town Council, 10 FSM R. 226, 239 (Kos. S. Ct. Tr. 2001).

Past and future lost wages, medical expenses, and pain and suffering are all compensable. Amayo v. MJ Co., 10 FSM R. 244, 251 (Pon. 2001).

A plaintiff totally disabled at age 42 can be compensated for the wages he would have earned until age 60. Amayo v. MJ Co., 10 FSM R. 244, 251 (Pon. 2001).

When the injuries sustained are plainly evident, the court is entitled to presume that expenditures for medical expenses were made. Amayo v. MJ Co., 10 FSM R. 244, 252 (Pon. 2001).

Travel and lodging are compensable as medical expenses when the expenditure results from defendant's fault; the charge is reasonable; and the expense serves a medical purposes. Amayo v. MJ Co., 10 FSM R. 244, 252 (Pon. 2001).

Various approaches exist for monetary valuation of damages to reefs: commodity value, which is posited on a sale of the components of the damaged area; tourism value, which is based on what visitors spend to visit the site; and replacement value involves, which is the cost of replacing the damaged corals by reseeding. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM R. 337, 339 (Yap 2001).

It is well established that medical expenses are properly a component of negligence damages and may be recovered from the tortfeasor. Amayo v. MJ Co., 10 FSM R. 371, 376 (Pon. 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).

Absent any evidence of the cost of repair of a bushcutter, damages for its repair cannot be awarded. Hauk v. Board of Dirs., 11 FSM R. 236, 242 (Chk. S. Ct. Tr. 2002).

Wrongful death actions are brought for the exclusive benefit of the deceased's surviving spouse, children and other next of kin. The pecuniary injury consists of funeral expenses (including a novena) and the earnings that the deceased would have used to support his family, had he lived. The future earnings calculation may be based on the victim's continued employment and earnings at the same rate until he reached the FSM retirement age of 60. Herman v. Municipality of Patta, 12 FSM R. 130, 138 (Chk. 2003).

No damages will be awarded for the cost of a loan to finish building a cement house started before the victim's death when the court has just awarded damages for lost earnings because any loan would have been repaid out of those earnings had the victim lived. Herman v. Municipality of Patta, 12 FSM R. 130, 138 (Chk. 2003).

Since a claim for negligent infliction of emotional distress cannot be sustained without evidence of actual physical illness resulting from the mental and emotional distress, a plaintiff who failed to provide evidence of actual physical illness resulting from the defendants' actions cannot obtain any monetary recovery on this claim. Tomy v. Walter, 12 FSM R. 266, 272 (Chk. S. Ct. Tr. 2003).

Prejudgment interest has been allowed on conversion claims. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

Prejudgment interest might rightfully be sought on what would appear to be a liquidated claim in the sense that it is capable of ascertainment by mathematical computation. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

The court is generally without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

When no statute or contractual provision has been put forth to support an attorney's fees award to a prevailing party, the basis for an award must be found in some exception to the general rule that the parties must pay their own attorney's fees. Such an exception is where attorney's fees are awarded as an element of costs when it is shown that such fees were traceable to the opposing party's unreasonable or vexatious actions, or when a party acts vexatiously, or in bad faith, presses frivolous claims, or employs oppressive litigation practices. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

Courts have permitted attorney's fee awards under the vexatious conduct exception when the plaintiff has proven the defendant's breach of the implied covenant or implied duty of good faith and fair dealing (also called the bad faith tort). If a plaintiff were to prevail on a bad faith tort claim against an insurer, the insurer would be liable to him for reasonable attorney's fees that are proximately caused by the bad faith conduct. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 471 (Pon. 2004).

In a narrowly drawn exception to the general rule that the parties will bear their own attorney's fees, attorney's fees have been awarded as part of costs when a defendant has breached her fiduciary duty to the plaintiff. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

In order to prove lost rental damages, a business should be prepared to show that all other similar available vehicles were rented and that the had to turn away customers who would otherwise had rented the damaged pickup, and the number of days it would have been rented. A long-term, ongoing business might show this by comparing the average of the total rental days of all pickups combined for each month

before the pickup was damaged with the average total rental days for each month after the accident. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

Under the traditional "new business rule," which applies to any business without a history of profits, it has been recognized that evidence of expected profits from a new business is too speculative, uncertain, and remote to be considered and does not meet the legal standard of reasonable certainty. But lost profits can be recovered by a new business when it is possible to show, by competent evidence and with reasonable certainty, that profits would have been made in the particular situation, and the amount of those profits. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

The proper measure of damages resulting from a business tort is lost profits as opposed to lost gross receipts. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

Any recovery for lost rental income may be limited in time until that point at which the plaintiff could have obtained a replacement for his rental business since if a plaintiff could have avoided the loss by purchasing a substitute item, profits are not the measure of the plaintiff's recovery even though profits were in fact lost. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

Consequential damages, of which economic loss such as lost profits may be an example, are available for negligent misrepresentation (deceit) claims if reasonably foreseeable. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

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

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

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

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

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

When the conduct's nature was discrete and specific, and would have been amenable to injunctive relief had the plaintiff sought it, once that relief had been awarded there could have been no prospective damages since the conduct giving rise to those damages would necessarily have ceased. There should

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

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

When a statute provides for attorney's fees to the prevailing party, a plaintiff need not receive all of the relief that he seeks in order to be eligible for attorney's fees so long as he prevails on a significant issue. AHPW, Inc. v. FSM, 13 FSM R. 36, 40 (Pon. 2004).

When improvements were made by a plaintiff for his own benefit to what the trial court ruled was his own property, the defendants are not liable for the improvements. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

For an emotional distress award there must be a foreseeable physical manifestation of the distress. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

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

Generally, statutes authorizing multiple damages are remedial and nonpunitive, particularly in anti-trust cases. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 (App. 2006).

The treble damages clause in the FSM Anti-competitive practices statute is remedial and not punitive. The multiple portion of the damages – that part in excess of the lost profits the trial court determined as actually proven – is imposed by a national statute enacted in an area in which the national government may legislate. Since this is not a state law tort case in which state law applies and this is a statutory tort created by a national statute, the national, not the state, statute therefore controls. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 (App. 2006).

The trial court should state some reason for trebling damages other than just stating the anticompetitive practices statute allows it. Compelling justification is not needed or required. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 21 (App. 2006).

The anticompetitive practices statute itself provides the basis for the plaintiff to recover damages together with reasonable attorneys' fees and the costs of suit. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 21 (App. 2006).

Fifteen years' worth of "damages" of lost profits is obviously too long for any reasonably certain future projections. Too many unexpected possible variables could occur. The trial court thus did not abuse its discretion by limiting the damage award to four years of lost profits. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 24-25 (App. 2006).

The anticompetitive practices statute authorizes treble damages. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 190 (Pon. 2006).

Treble damages were proper when the discretion denoted by the word "may" in the statute lies with the injured party and not the court – the injured party "may" sue and recover treble damages – and when Congress's intent was to give the injured party treble damages if it sues and proves its case. The statute's context compels this conclusion. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 190-91 (Pon. 2006).

When the plaintiff has a claim de jure that the power conferred (on the court to treble damages) should be exercised because it had proved its right to damages under 32 F.S.M.C. 301 *et seq.* and when, considering the whole anticompetitive practices statute and its nature and object, Congress's intent was to impose a positive duty to treble damages, not a discretionary power to do so, the court will therefore award treble damages. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

When the defendant's anticompetitive acts did not just harm the plaintiff's business, but those acts put it out of business, even if treble damages were discretionary, there would be no more appropriate a case to exercise the discretion to treble damages than one where the anticompetitive acts put the plaintiff out of business. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

Detrimental reliance damages are the actual expenses incurred in reliance on the representation and do not include depreciation. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

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

Wrongful death actions are brought for the exclusive benefit of the deceased's surviving spouse, the children and other next of kin. When the decedent had no spouse or children, the damages are the next of kin's pecuniary injury. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

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

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To obtain damages in a nuisance action, a person pursuing a private cause of action must have suffered significant harm. To maintain a damage action for public nuisance, a person must have suffered damage different in kind from that suffered by the general public. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

Compensatory damages are compensation to make the victim whole again. Compensation for an injury is not doubled just because the plaintiff has two different causes of action on which to base that recovery. Only the injury itself is compensated. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 418 (Yap 2006).

The plaintiffs must prove their damages to a reasonable certainty. Once the fact of damage is established with reasonable certainty, the amount of damages need only be shown with as much certainty as the tort's nature and the case's circumstances permit. In such cases, if it is uncertain and speculative whether damages have been incurred, then damages will be denied; however, if it is only the amount of the

damages that presents the uncertainty, then the court will allow recovery so long as there is proof of a reasonable basis from which the amount can be approximated or inferred. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 418 (Yap 2006).

When there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of emotional distress by the plaintiff, there can be no award of damages for mental distress or mental anguish. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 418-19 (Yap 2006).

When there was no cultural damage caused by a delay in the transfer of intergenerational knowledge of swimming and other water skills, even if it were possible to obtain money damages for "cultural" damages, which the court does not so hold, there was no cultural injury for which recovery might be sought. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

Inability to access the inner lagoon for bathing and swimming has an economic effect and damages may be awarded for that economic loss. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

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

Setoff implies that both the plaintiff and defendant have independent causes of action maintainable against the other, while mitigation (of damages) does not involve facts which constitute a cause of action in favor of the defendant, but facts that show that the plaintiff is not entitled to as large an amount as the plaintiff's showing would otherwise justify. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

Injured parties in maritime tort cases are typically awarded prejudgment interest. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420 (Yap 2006).

In those few cases in which the court has awarded prejudgment interest when it was not provided for by contract or statute, the court has always awarded the legal interest rate – 9% simple interest. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 420-21 (Yap 2006).

The general rule is that when there is no statutory or contractual basis for a request for attorney fees, each party will normally bear its own attorney's fees. One exception to this rule is the private attorney general theory. A party seeking attorney's fees under the private attorney general theory must demonstrate that it has vindicated a right that benefits a large number of people, that the right sought to be enforced required private enforcement, and it must prove that the right is of societal importance. The private attorney general theory applies in the FSM, provided that these criteria are strictly met. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

When a class action has vindicated rights that benefit a large number of people; when these rights required private enforcement since the State of Yap was not in the position to vindicate the private rights of the people of Rull and Gilman; when, considering Yapese society's heavy reliance on the inner lagoon's marine resources, the rights enforced were of great societal importance; and when Yapese society's dependence on the resources of the shoreline, inner reefs, and mangrove stands is a salient feature of Yap's social and geographical configuration; the use of the private attorney general theory conforms to the Constitution's Judicial Guidance Clause that court decisions are to be consistent with the social and geographical configuration of Micronesia. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (Yap 2006).

The usual method of determining reasonable attorney's fees awards is based on the fair hourly rate in the locality where the case was tried. Since any attorney's fees award must be based upon a showing and a judicial finding, that the amount of fees is reasonable, the plaintiffs must therefore submit detailed

supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 421 (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).

An attorney's fees award under a private attorney general theory can only be made, if at all, at the litigation's conclusion. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 161-62 (Yap 2007).

Civil rights plaintiffs are entitled damages for pain and suffering from a police beating and the arrested plaintiff is also entitled to damages for not being advised at the time of his arrest of the reason for his arrest, and for the time that he spent in police custody from the time of his arrest until his release six hours later. Hauk v. Emilio, 15 FSM R. 476, 480 (Chk. 2008).

When a plaintiff presents no evidence about any wages lost from being off work for a week, or about any cost for the local massage, she is not entitled to those damages. Hauk v. Emilio, 15 FSM R. 476, 480 (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).

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 law does not permit an injured party to recover double for the same damage. Compensatory damages are just that – compensation to make the victim whole again. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 62 (App. 2008).

Compensation for an injury is not doubled simply because the plaintiff has two different causes of action on which to base that recovery. Only the injury itself is compensated. However, if the specific damages in question are properly a component of the total damages resulting from negligence, then they be recovered from the tortfeasor, as a tortfeasor is responsible for all damages flowing from his actions. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 63 (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).

The private attorney-general doctrine makes no distinction in the award of attorney's fees based upon the overall amount of damages that are awarded, nor does it differentiate between an award of monetary damages from injunctive relief. Attorney's fees not otherwise awardable, may be awarded under the private attorney general doctrine only when the lawsuit has met certain requirements, including vindicating rights that benefit a large number of people, when the private parties were required to file suit to enforce those rights because a government authority was unable to do so, and when the rights enforced are of great social importance. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 65 (App. 2008).

When private citizens are pursuing purely civil claims – the tort of negligence – against other private citizens and the Yap government could not have undertaken any action to vindicate the plaintiffs' rights pursued, an award of attorney's fees under the private attorney-general doctrine is erroneous. It is thus an abuse of discretion for the trial court to award attorney's fees and costs under the private attorney-general doctrine in a case in which the government could not have taken any action to vindicate the rights of the people affected. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 65 (App. 2008).

The private attorney general theory permits government reimbursement of a party's attorney fees when it must hire its own attorney to enforce a right shared by a large number of people, when it is in the public interest. The theory recognizes that the government does not always adequately protect the rights of citizens, and that people who successfully defend the rights of the public at their own cost deserve to have their attorney fees paid for, as if they had been provided the services of a "private attorney general." M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 65 (App. 2008).

When the plaintiff's testimony on the element of damages is speculative, conclusory, and lacking in foundation, the plaintiff did not meet his burden of proof on the issue of damages and a judgment in the defendant's favor is therefore appropriate. Jano v. Fujita, 16 FSM R. 323, 328 (Pon. 2009).

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

The FSM is liable to a ship captain for the wrongful retention of his passport, and hence the wrongful detention of the captain himself, for the period that the captain was required to remain in Pohnpei after he had requested the release of his passport. While damages in such a case can be difficult to quantify, an award of damages in the amount of $120 per day is appropriate. FSM v. Koshin 31, 16 FSM R. 350, 355 (Pon. 2009).

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

An employee is herself jointly and severally liable with her employers for the checks she converted by cashing them while she was their employee because, under the doctrine of respondeat superior, an agent's act within the scope of his or her agency is the act of the principal, and the result is that both the principal and the agent are jointly and severally liable to the person injured by the wrongful act. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

Damages for an insurer's claim for breach of fiduciary duty are the same as those for its contract claim, since the breach of fiduciary duty claim is also based on the breach of the agency contracts that the insurer had with its agents. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 446 (Pon. 2009).

Both principal and agent are jointly and severally liable for the torts that the agent commits in the

course and scope of the work performed for the principal. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 446 (Pon. 2009).

When there is no way of determining what portion of an amount deposited into a bank account was also converted by another defendant and since the plaintiff has the burden of proof, that other defendant will receive the benefit of the doubt created by this question and will not be held liable for the deposited sums. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 447 (Pon. 2009).

One whose property is converted is entitled to recover interest at the legal rate from the time the property is converted. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 448 (Pon. 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 private party cannot seek an award under a private attorney general theory when it is suing for purely civil claims involving money damages that only vindicate the rights of just one plaintiff. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 606 (Pon. 2009).

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

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

When a plaintiff did not submit any evidence about his damages and therefore could not have proven damages, his negligence claim fails. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 123 (Chk. 2010).

A plaintiff must prove his damages to a reasonable certainty. Once damage is factually established to a legal reasonable certainty, the amount of damages need only be shown with as much certainty as the tort's nature and the case's circumstances permit. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

Compensatory damages aim to make the victim whole again. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

When there is no direct evidence of the amount of damages sustained, the court must assess an appropriate level of compensatory damages for that injury. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

In awarding compensatory damages, a court may consider past and future lost wages, medical expenses, and a plaintiff's pain and suffering. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

Permanent injuries are analyzed by the level of impairment the injury has caused to the whole person. When an injury's effect continues over time, earnings impairment will have two components: the loss sustained from the time of injury until time of trial, designated "loss of time" or lost wages, and the prospective loss that plaintiff will experience after trial due to the injury's on-going impact. The plaintiff has the burden of proof with respect to impairment, which must be demonstrated with a reasonable degree of certainty; however, proof of impairment of earning capacity does not require the specificity necessary to establish lost prospective wages. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

Since, absent a showing of impairment, FSM law is currently silent as to how a court is to define and

determine whether an injury is permanent, the court may consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

An injured plaintiff is entitled to be reimbursed for any lost-wages he might have reasonably been able to earn had the injury not occurred, that is, as a whole person. To justify reimbursement, a plaintiff must also show that he was unable, because of the injury, to acquire the monies sought as compensatory damages. When he was physically able to perform light duty work for his employer six months after the injury, at a minimum, he is entitled to receive the wages he could have earned during his months of incapacity. Higgins v. Kolonia Town, 17 FSM R. 254, 262 (Pon. 2010).

When, once the plaintiff was physically able to work he did not inform his employer of his ability because his assailant remained employed there in a position of authority and he was afraid of being harmed again by his assailant who still would have been in close physical proximity to his victim and when Kolonia Town stopped paying his salary without any notice to him, the plaintiff's fear of returning to work was reasonable, and therefore, finds he is entitled to receive his back wages for the 36 weeks he was not paid his salary before returning to his job. Higgins v. Kolonia Town, 17 FSM R. 254, 262 (Pon. 2010).

When the majority of the plaintiff's weakness and inabilities arose from the atrophy of his muscles through their disuse; when at the time of the trial, he was employed and earning a higher wage than before; and when there was no persuasive evidence about the permanence of his injuries or the loss of function, range of motion or strength in his extremities, and despite the absence of professional physical therapy treatment on Pohnpei, the court is unable to determine a permanent damage award. Higgins v. Kolonia Town, 17 FSM R. 254, 262 (Pon. 2010).

When the court has received no persuasive evidence that the care provided to the plaintiff at the Pohnpei State Hospital was negligent or harmful, or that the care provided in the Philippines was unique or necessary to making him whole or that the Pohnpei State Hospital is not adequately equipped and staffed to provide a sufficient standard of care to safely and properly remove the metal plate, the court is unable to find that a return to the Philippines is a reasonable expense necessary to making the plaintiff whole and include this expense in the damage award, but he is entitled to be reimbursed for the costs he incurred traveling to the Philippines and having the metal plate installed in his leg. Higgins v. Kolonia Town, 17 FSM R. 254, 262-63 (Pon. 2010).

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

A trial court may award damages only for successful claims. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 437 (App. 2011).

Under detrimental reliance, damages are the actual expenses incurred in reliance on the representation. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 120 (App. 2011).

Injured parties in maritime tort cases are typically awarded prejudgment interest. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 175 (Yap 2012).

While the FSM statute, 6 F.S.M.C. 1401, by its terms, applies solely to judgments from the date of entry, the court has judicially adopted 9% simple interest per annum as the legal interest rate to be applied when prejudgment interest is awarded and the interest rate has not been otherwise designated by statute or contract. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

It is error for a trial court to award $25,000 in compensatory damages without making any findings about actual damage or providing any reasoning on how it reached that figure or what evidence it relied on.

Phillip v. Moses, 18 FSM R. 247, 251 (Chk. S. Ct. App. 2012).

Courts often apportion liability on the party best able to prevent the loss. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 359 (App. 2012).

Once the insurer ratified its agents' unauthorized agreements with its eligible policy-holders, it was barred from recovering any of that money from others because that would be a double recovery since the insurer had already "recovered" those funds from its policy-holders. Plaintiffs are not permitted a double recovery. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 2012).

An insurer did not ratify its agents' check-cashing agreements with a business by giving the business credit for its agents' cash advances to its eligible policy-holders. It merely recognized that it was not entitled to double recovery. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 360 (App. 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).

An essential element of any tort is damages. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

When no evidence of special or particular damages was introduced at trial, the court can rely on previous case law to assess damages for the wrongful arrest and detention. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

When, regardless of the number of grounds on which the plaintiff's arrest was illegal, it was still only one illegal arrest, the court will make one damage award of $500 for the illegal arrest. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

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

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

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

When damages are calculated based on figures in statements made during closing argument, those damage amounts are not supported by evidence properly before the trial court, and, as such, any judgment based on them would be vacated and the court cannot take the "judicial notice" of the plaintiffs' requested figures. William v. Kosrae State Hosp., 18 FSM R. 575, 582-83 (Kos. 2013).

The court cannot award any damages for someone who is no longer a party and for whom no one has been substituted, even if the damages were adequately proven and could be determined with satisfactory certainty. William v. Kosrae State Hosp., 18 FSM R. 575, 583 (Kos. 2013).

Determination of damages is an essential element of the plaintiffs' causes of action. Trial is the time for plaintiffs to present evidence about the amount of their damages since, in civil cases, the plaintiff has the

burden of proving at trial each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to do so, judgment will be entered against the plaintiff. William v. Kosrae State Hosp., 18 FSM R. 575, 583 (Kos. 2013).

When a plaintiff does not submit any evidence about his damages and therefore cannot prove damages, the plaintiff's negligence claim fails. William v. Kosrae State Hosp., 18 FSM R. 575, 583 (Kos. 2013).

Since the Federated States of Micronesia has waived its sovereign immunity only to the extent of the first $20,000 in damages, when a plaintiff's actual damages exceed that amount, judgment shall be entered in her favor for $20,000. Lee v. FSM, 19 FSM R. 80, 83, 86 (Pon. 2013).

The general rule is that the uninjured spouse who loses income when he or she provides nursing care or maid service for the injured spouse is not entitled to recover damages equal to his or her lost income as part of a loss-of-consortium claim. Instead the damages are recoverable by the injured spouse and the measure of damages for nursing services supplied by a relative who leaves his or her employment to render such services is not the amount of lost earnings but rather is the reasonable value of the nursing services supplied. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

A tortfeasor who caused an automobile accident would expect to pay the market rate for the care provided to the injured party, not the wages of a stockbroker. Thus, if there is to be recovery of lost income, it cannot be part of the uninjured spouse's claim for loss of consortium because a loss-of-consortium claim is not based on economic damages. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

The uninjured spouse's loss-of-consortium claim is based upon the loss of services provided by the injured spouse before his or her injury. The uninjured spouse's income from his own employment is not a service that the injured spouse once provided. Thus, any recovery of damages for care provided to an injured spouse must be part of the injured spouse's claim. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

The uninjured spouse's lost income or the nursing or maid services performed by the uninjured spouse, even when calculated at the reasonable maid or nursing services rate, are not part of the uninjured spouse's loss-of-consortium claim but are rather a measure of the injured spouse's damages. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

While the better view may be that the dollar value in the judgment reflect the amount the Japanese yen is valued at on the day the court enters judgment because that is the only way the plaintiff would receive the Japanese yen amount equal to the yen she spent on necessary medical bills and other services, the court will not decide this issue when the plaintiff's damages total between $28,454.13 and $30,310.37 depending on the conversion date, and the FSM has waived its sovereign immunity only to the extent of the first $20,000 in damages so only a $20,000 judgment can be entered. Lee v. FSM, 19 FSM R. 80, 85-86 (Pon. 2013).

Damages for an automobile that was imported from Japan into Yap and destroyed on Yap, where the U.S. dollar is the medium of exchange and where the vehicle was valued in U.S. dollars when it was imported, will be computed in U.S. dollars, not Japanese yen. Lee v. FSM, 19 FSM R. 80, 86 (Pon. 2013).

When the defendants are liable for trespass, but the plaintiff failed to present any evidence of damages at trial, the plaintiff is entitled to nominal damages only, which will be set at one dollar. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

When the plaintiffs made two claims in their complaint – trespass and due process violation – and sought damages for both, but the trial court did not calculate any damages, neither claim has been fully adjudicated and therefore neither claim could be granted partial final judgment status under Rule 54(b). Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

Actual damages are an amount to compensate for a proven injury or loss; damages that repay actual losses and are also termed compensatory damages, or tangible damages, or real damages. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

An issue is not part of the trial mandated by the appellate court and that may not be appropriate for trial since there may not be disputed material facts, might be resolved by a summary adjudication \without the need of a trial so, rather than delay the mandated trial further, the court will separate the issue from the civil rights damages trial. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 379 (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).

Damages in defamation cases generally consider whether the allegedly defamatory statement: exposes the plaintiff to (public) hatred, contempt, ridicule or obloquy (shame or disgrace); causes people to shun or avoid the plaintiff; or has a tendency to injure the plaintiff in his occupation or adversely affect the plaintiff's trade or business. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

Damages for defamation are divided into three categories, 1) punitive damages or exemplary damages, where actual malice or recklessness is shown; 2) special damages such as the loss of business which are recoverable only on proof of loss of specific economic benefits; and 3) general damages which follow inevitably from the defamatory imputation. General damages can include loss of reputation, shame, mortification, and hurt feelings. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

Speculative injury is not enough, with regard to special injury, it must be demonstrably shown. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

Defamation per se follows the ordinary defamation analysis, except the requirement to show special injury is waived when the disparaging statements impute a 1) criminal offense; 2) a loathsome disease; 3) a matter incompatible with his business, trade, profession or office; 4) or sexual misconduct. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. FSM v. Muty, 19 FSM R. 453, 462 (Chk. 2014).

Generally, statutes authorizing multiple damages are remedial and nonpunitive, particularly in anti-trust cases. FSM v. Muty, 19 FSM R. 453, 462 n.4 (Chk. 2014).

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

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

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).

A statute imposing a penalty is to be strictly construed against the government and in favor of one against whom penalties are sought to be imposed. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

When a penalty provision's statutory language is ambiguous, this ambiguity should be resolved against punishing the same action under two different statutes. 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).

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).

The usual remedy for trespass to land (and when applicable nuisance and negligence claims are based on similar facts) is either a judgment for an amount equal to the diminution in the land's value or a judgment for an amount that would be needed to restore the land to its previous condition, whichever is the lesser amount. To award both would constitute an impermissible double recovery. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78-79 (Pon. 2015).

To grant a judgment against the state government for funds that the national government admits that it still holds and is willing to pay would permit double recovery. Eot Municipality v. Elimo, 20 FSM R. 482, 489 n.2 (Chk. 2016).

When, under prior precedent and the law of the case doctrine, the state government is immune from an interest award as a part of a judgment against the state unless the state has expressly consented to the imposition of interest and when the state government has not expressly consented, by statute or by contract, to the imposition of interest for claims or for a conversion claim, no interest will be permitted. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

To grant a judgment against the state government for funds that the national government admits that it still holds and is willing to pay would permit double recovery. Onanu Municipality v. Elimo, 20 FSM R. 535, 540 n.4 (Chk. 2016).

– Damages – Mitigation of

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. Elymore v. Walter, 9 FSM R. 450, 457 (Pon. 2000).

Failure to mitigate damages will usually not bar a claim but rather reduce any damages awarded, although in some cases it may reduce the damages to zero. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127 (Chk. 2005).

Under the general principle of mitigation of damages, a plaintiff should not be encouraged to maximize

his recovery by sitting on his rights. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 24 (App. 2006).

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

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

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

That a plaintiff has a duty to mitigate his damages is clear. He must take reasonable steps to minimize those damages. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

A business that was presented, over a period of approximately three-and-a-half years, with checks amounting to over $400,000 that were made payable to a corporate payee, but that cashed the checks at the request of the individual cashing those checks without ever making any efforts to obtain independent confirmation that the individual presenting the check had the corporate payee's authority to do so, cannot rely on defenses of mitigation of damages or apparent authority or good faith commercial standards since the business had a duty to determine whether the individuals had the authority to cash the checks. The business cannot be said to have used good faith commercial business standards. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 445 (Pon. 2009).

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).

One sound reason for the mitigation principle is that it makes commercial sense to discourage a plaintiff from sitting back and letting damages get larger instead of stemming further losses. But an innocent party cannot be expected to take steps to mitigate damages before it was aware of the breach. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 361 (App. 2012).

Any inaction before the date the plaintiff became aware of the breach cannot be a failure to mitigate damages because the plaintiff did not know it had any to mitigate. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 361 (App. 2012).

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).

– Damages – Nominal

The damages for waste committed are usually measured by the injury actually sustained and if the value of the premises has been improved by the acts complained of, the complainants will only recover nominal damages, if any, at law. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

The amount of damages to be awarded in invasion of privacy cases rests with the sound discretion of the trier of fact. The fact that damages may be difficult to ascertain, or that they cannot be measured by a pecuniary standard, is not a basis for denying all recovery even though there is no direct evidence of the amount of damage sustained. However, to recover substantial compensatory damages, the plaintiff must prove these damages. If there has been no material injury to the plaintiff, or if there is no evidence that damage has been sustained, or no evidence to serve as a basis for the calculation of damage, plaintiff will be awarded nominal damages only. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

When a plaintiff is entitled to punitive damages against a defendant because he acted with malice, but that defendant has no net worth and there was a substantial damage, fee and cost award only a nominal punitive damage award is proper. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

Nominal damages, or none at all, are awarded for ameliorating waste. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

When a defendant with no net worth and no income is liable for punitive damages in addition to a substantial damage award, only a nominal punitive damage award of $1 is proper. When the net worth and income of defendants is not known, but it is known that they are employed and thus have an income, it is appropriate to award more than just nominal punitive damages. Herman v. Municipality of Patta, 12 FSM R. 130, 139 (Chk. 2003).

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

A court may award a plaintiff reasonable attorney's fees in litigating a statutory cause of action that provides for award of attorney's fees to the prevailing party even though the plaintiff obtains only nominal damages. The fact that only nominal damages are awarded however may be considered in determining the amount of the attorney's fees. AHPW, Inc. v. FSM, 13 FSM R. 36, 39-40 (Pon. 2004).

Nominal damages are usually $1. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 25 n.8 (App. 2006).

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

merits of a claimant's substantive assertions, and because of the importance to organized society that procedural due process be observed, the denial of due process should be actionable for nominal damages without proof of actual injury. Robert v. Simina, 14 FSM R. 438, 444 (Chk. 2006).

Nominal damages are usually one dollar. Robert v. Simina, 14 FSM R. 438, 444 n.3 (Chk. 2006).

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

If a defendant's acts caused trespass on a plaintiff's land and chattels but no actual damages are proven, the plaintiff would be entitled to no more than nominal damages ($1). Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 50 (Chk. 2010).

If a defendant trespasses on a plaintiff's land but no actual damages can be proven, the plaintiff is entitled to nominal damages ($1). Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

In a successful trespass claim where no evidence exists of actual damages, the trial court will award nominal damages. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 437 (App. 2011).

When the defendants are liable for trespass, but the plaintiff failed to present any evidence of damages at trial, the plaintiff is entitled to nominal damages only, which will be set at one dollar. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

– Damages – Pain and Suffering

The Pohnpei Supreme Court recognizes pain and suffering as a principal element of damages in personal injury cases, but because there is no fixed formula to determine the monetary amount, the court has to use its discretion. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 73 (Pon. S. Ct. Tr. 1986).

In a wrongful death claim, parents of the deceased child are entitled to claim pecuniary damages and damages for their own pain and suffering from the loss of their child. Suka v. Truk, 4 FSM R. 123, 130 (Truk S. Ct. Tr. 1989).

Although in the usual case in Truk the damages for loss of income will be lower than, for instance, Guam or Hawaii because of the wage scale there, and medical expense damages will normally be greatly reduced because in the usual case the government absorbs the medical bills, there is no justification for reducing a mental pain and suffering award because of the citizenship of the parents or the geographic location of the accident causing the injury. Suka v. Truk, 4 FSM R. 123, 131 (Truk S. Ct. Tr. 1989).

To recover for pain and suffering a plaintiff need only show "suffering," not both "pain" and "suffering" as the term includes not only the physical pain but also fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal. Ludwig v. Mailo, 5 FSM R. 256, 262 (Chk. S. Ct. Tr. 1992).

Awarding damages for pain and suffering is one of the most difficult tasks of a court because the determination lies solely in the discretion of the trier of fact and no fixed rules exist to aid in the determination. Primo v. Refalopei, 7 FSM R. 423, 434 (Pon. 1996).

Compensatory damages for personal injury also include pain and suffering, past as well as the reasonable value of future pain and suffering. An award for pain and suffering is not reduced merely because the injury took place in Chuuk. The court must use its discretion in awarding it. Davis v. Kutta, 7

FSM R. 536, 549 (Chk. 1996).

A person injured by the intentional tort of another is entitled to an award for pain and suffering, including mental anguish. Davis v. Kutta, 7 FSM R. 536, 549 (Chk. 1996).

Calculating damages for pain and suffering is a difficult task because no fixed rules exist to aid in that determination which lies in the sole discretion of the trier of fact, and in making the calculation, it is proper to consider not only past pain but future pain. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 66 (Chk. 1997).

A person injured through the negligent or intentional tort of another is entitled to an award of damages for pain and suffering. Calculating the amount is difficult because there are no fixed rules to help in that determination. The determination lies in the sole discretion of the trier of fact. Asher v. Kosrae, 8 FSM R. 443, 453-54 (Kos. S. Ct. Tr. 1998).

Compensatory damages for personal injury include pain and suffering, past as well as the reasonable value of future pain and suffering. The court must use its discretion in awarding it. Pain and suffering includes mental anguish. Asher v. Kosrae, 8 FSM R. 443, 454 (Kos. S. Ct. Tr. 1998).

In determining pain and suffering, it is proper to consider not only past pain but future pain, and to consider the loss of enjoyment of life as an element of pain and suffering. Asher v. Kosrae, 8 FSM R. 443, 454 (Kos. S. Ct. Tr. 1998).

Awarding damages for pain and suffering does not present a facile endeavor, since this is a matter committed to the discretion of the court, and there are no established rules for making such an award. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM R. 23, 26 (Yap 1999).

Calculating the damages for pain and suffering is a difficult task because there are no fixed rules to aid in that determination, which lies in the sole discretion of the trier of fact. In determining pain and suffering, it is proper to consider not only past pain but future pain. It is also appropriate to consider loss of enjoyment of life as an element of pain and suffering. Sigrah v. Timothy, 9 FSM R. 48, 54 (Kos. S. Ct. Tr. 1999).

"Pain and suffering" includes fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal. A plaintiff is entitled to such damages as will fully compensate him for the injuries directly flowing from the alleged tort, including physical pain and suffering as well as the mental suffering caused by the tortious act. Elymore v. Walter, 9 FSM R. 450, 458 (Pon. 2000).

Calculating the appropriate monetary award for pain and suffering is difficult, because such an award is not subject to precise calculation, and the matter is committed to the court's entire discretion. The court in making an award for pain and suffering is guided by other cases in the FSM which have addressed this issue. Elymore v. Walter, 9 FSM R. 450, 459 (Pon. 2000).

A deceased's parent (or her estate) is entitled to damages that include her mental pain and suffering for the loss of her child that resulted from her child's wrongful death, without regard to provable pecuniary damages. Estate of Mori v. Chuuk, 10 FSM R. 6, 15 (Chk. 2001).

A person injured through the negligence of another is entitled to an award of damages for pain and suffering. Awarding damages for pain and suffering is one of a court's most difficult tasks because the determination lies solely in the discretion of the trier of fact and no fixed rules exist to aid in the determination. Talley v. Lelu Town Council, 10 FSM R. 226, 238 (Kos. S. Ct. Tr. 2001).

A person who is injured through the negligence of another is entitled to an award of damages for pain and suffering. To recover for pain and suffering a plaintiff need only show "suffering," not both "pain" and

"suffering" as the term includes not only the physical pain but also fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal. Talley v. Lelu Town Council, 10 FSM R. 226, 238 (Kos. S. Ct. Tr. 2001).

Past and future lost wages, medical expenses, and pain and suffering are all compensable. Amayo v. MJ Co., 10 FSM R. 244, 251 (Pon. 2001).

Pain and suffering serves as a convenient label under which a plaintiff may recover not only for physical pain but also for fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, terror, or ordeal. It covers disfigurement and deformity, impairment of ability to work or labor, anxiety or worry proximately attributable to an injury and mental distress caused by impairment of the enjoyment of life and it includes anxiety and embarrassment from disfigurement or limitations on activities. Amayo v. MJ Co., 10 FSM R. 244, 252 (Pon. 2001).

Determining damages for pain and suffering is difficult because there are no precise rules for determining the amount, which lies within the sole discretion of the trier of fact. Amayo v. MJ Co., 10 FSM R. 244, 252 (Pon. 2001).

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

The rule is well settled that to authorize damages for pain and suffering, such must be the result of physical injury. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

When there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of emotional distress by the plaintiff, an award of damages for pain and suffering must be set aside. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

Calculating damages for pain and suffering is difficult because no fixed rules exist to aid in that determination, which lies in the court's sole discretion. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

A decedent's mother as the deceased's parent is entitled to damages that include her mental pain and suffering for the loss of her child, without regard to provable pecuniary damages. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

When the plaintiffs asked for $5,000 for the raising of plaintiff's blood pressure and $5,000 for physical, mental, and emotional distress and for $5,000 for pain and suffering, but no evidence was placed before the court regarding these damage claims and no manifestation of physical injury was placed into evidence, these damages cannot be awarded. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

Civil rights plaintiffs are entitled damages for pain and suffering from a police beating and the arrested plaintiff is also entitled to damages for not being advised at the time of his arrest of the reason for his arrest, and for the time that he spent in police custody from the time of his arrest until his release six hours later. Hauk v. Emilio, 15 FSM R. 476, 480 (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 person is injured through the negligence of another, the victim is entitled to an award of damages for pain and suffering. Analyzing a damage request for pain and suffering is difficult, no fixed

rules exist to aid in the determination, and it is solely within the trier of fact's discretion. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

In awarding compensatory damages, a court may consider past and future lost wages, medical expenses, and a plaintiff's pain and suffering. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

To recover for pain and suffering a plaintiff need only show "suffering." The term includes not only physical pain but: fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal. When analyzing a pain and suffering award, it is proper to consider not only past pain, but also future pain and the loss of enjoyment of life. Higgins v. Kolonia Town, 17 FSM R. 254, 261 (Pon. 2010).

When the plaintiff's injury being knocked unconscious had caused him to suffer; when he spent one week in the Pohnpei State Hospital and approximately four months in a cast; when he was then required to leave his wife and new child to travel to the Philippines to undergo surgery where a metal plate was attached to his right tibia; when because of this treatment, his muscles atrophied since the unavailability of professional physical therapy left him unable to perform regular tasks for an unspecified time; and when the manner that his injuries were incurred and his subsequent condition also left him with a reasonable fear of Kolonia Town's Chief of Police, the plaintiff will be awarded $21,000 for pain and suffering. Higgins v. Kolonia Town, 17 FSM R. 254, 263 (Pon. 2010).

Awarding damages for pain and suffering is one of the most difficult tasks for a court because the determination lies solely in the court's discretion with no fixed rules exist to aid in the determination. In making that calculation, it is proper to consider not only past pain but future pain. Lee v. FSM, 19 FSM R. 80, 83 (Pon. 2013).

Pain and suffering serves as a convenient label under which a plaintiff may recover not only for physical pain but also for fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, terror, or ordeal and it covers disfigurement and deformity, impairment of ability to work or labor, anxiety or worry proximately attributable to an injury and mental distress caused by impairment of the enjoyment of life and it includes anxiety and embarrassment from disfigurement or limitations on activities, but to award damages for pain and suffering, such must be the result of physical injury. Lee v. FSM, 19 FSM R. 80, 83 (Pon. 2013).

A plaintiff will be awarded damages for pain and suffering when she suffered grievous physical injury along with disfigurement and fright and anxiety in addition to the pain from the injury. Lee v. FSM, 19 FSM R. 80, 83 (Pon. 2013).

– Damages – Punitive

An employer generally may not be held liable for punitive damages for the tortious acts of its employees. However, an employer may be held liable for punitive damages if 1) the employer authorized the act, 2) the employer knew the employee was unfit for the position at the time of the hiring, or 3) the employer ratified the tortious act of the employee. Meitou v. Uwera, 5 FSM R. 139, 146 (Chk. S. Ct. Tr. 1991).

There is no authority to award punitive damages against a foreign national government even when it is otherwise liable for damages. Damarlane v. United States, 6 FSM R. 357, 361 (Pon. 1994).

Punitive damages are not recoverable for ordinary negligence. Elwise v. Bonneville Constr. Co., 6 FSM R. 570, 572 (Pon. 1994).

Punitive damages merely constitute an element of recovery in an underlying cause of action. Therefore no punitive damages may be recovered without an underpinning independent cause of action. Urban v. Salvador, 7 FSM R. 29, 33 (Pon. 1995).

Punitive damages are a derivative, not an independent cause of action, and must rest upon some other, underlying cause of action because it is merely an element of damages in that cause of action. Thus, if all other causes of action are dismissed then punitive damages must necessarily also be dismissed. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

A plaintiff may not as a matter of law recover punitive damages from the State of Chuuk. Kaminaga v. Chuuk, 7 FSM R. 272, 274 (Chk. S. Ct. Tr. 1995).

Punitive damages may be awarded when a tort was committed with actual malice, or deliberate violence, or the acts complained of were wanton, reckless, malicious and oppressive and are given to enhance compensatory damages. Punitive damages depend on the existence of compensatory damages and cannot be awarded in the absence of compensatory damages. Primo v. Refalopei, 7 FSM R. 423, 435-36 & n.29 (Pon. 1996).

Punitive damages will not be awarded where the plaintiff has not claimed and proved that a defendant acted with actual malice or deliberate violence. Davis v. Kutta, 7 FSM R. 536, 546 (Chk. 1996).

Punitive damages may be recoverable for conversion where the defendant's act was accompanied by fraud, ill will, malice, recklessness, wantonness, oppressiveness, willful disregard of the plaintiff's rights, or other circumstances tending to aggravate the injury, but defendant's mere failure to respond to an inquiry, or to answer a complaint is not a circumstance entitling a plaintiff to punitive damages. Bank of Hawaii v. Air Nauru, 7 FSM R. 651, 653 (Chk. 1996).

Punitive damages are not recoverable for ordinary negligence. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 67 (Chk. 1997).

Punitive damages are typically given as an enhancement of compensatory damages because of the wanton, reckless, malicious or oppressive character of defendant's conduct, but will not be given when compensatory damages will deter similar future actions and the excessive force used on a person resisting arrest was not of such a character. Conrad v. Kolonia Town, 8 FSM R. 183, 196 (Pon. 1997).

Punitive damages may also be awarded where it is shown that the defendant acted with malice or with a gross disregard for plaintiff's right to privacy, in order to punish the defendant for its conduct and to deter the defendant and others from engaging in like conduct in the future. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

When the evidence presented shows that the defendant relied on what he believed was appropriate consent and had acted in accordance with what he thought was appropriate custom and had not acted with malice, with an intent to violate plaintiff's rights, punitive damages will not be awarded. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 417 (Pon. 1998).

Punitive damages will be rejected when the defendant conducted its blasting and quarrying activities with an intentional, reckless or wanton disregard of the of the plaintiffs' rights and safety. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 541 (Pon. 1998).

When a plaintiff is entitled to punitive damages against a defendant because he acted with malice, but that defendant has no net worth and there was a substantial damage, fee and cost award only a nominal punitive damage award is proper. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

Judicial immunity protects from liability for punitive damages. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

A defendant's financial condition is relevant to a punitive damages claim and a proper subject of discovery, if, under the applicable law, the defendant's financial condition has a bearing on the amount of

punitive damages to be awarded. Elymore v. Walter, 9 FSM R. 251, 253 (Pon. 1999).

If a defendant is found liable for punitive damages, a court cannot make an award having a meaningfully deterrent effect unless the court knows the extent of the defendant's wealth. The greater or lesser the degree of defendant's wealth, the greater or lesser would be the amount of the punitive award, since a small award relative to overall wealth would not meaningfully deter, whereas a large award relative to overall wealth would be unduly onerous. Elymore v. Walter, 9 FSM R. 251, 253 (Pon. 1999).

Punitive damages are recoverable for tortious acts which involve actual malice or deliberate violence, or where the conduct involved is shown to be wanton, reckless, malicious and oppressive. Elymore v. Walter, 9 FSM R. 251, 254 (Pon. 1999).

A trial judge abuses his discretion when he denies a motion to compel production of financial information in a case where punitive damages are claimed, if the plaintiff submits factual support for the claim and the defendant fails to demonstrate good cause for a protective order preventing discovery; but the defendant is usually entitled to a protective order that the information only be revealed to the discovering party's counsel or representative, that demands be limited only to information needed to determine the defendant's present net worth, and that the information be sealed or otherwise restricted to use in the current proceeding only. Elymore v. Walter, 9 FSM R. 251, 254 (Pon. 1999).

A defendant facing a claim for punitive damages may be required to answer discovery concerning current net worth, but cannot be compelled to reveal his financial status for the previous five years. The court may order plaintiffs' counsel not to divulge this information to anyone until such time as the court determines punitive damages liability, at which time the court will order what is to be done with the discovered information. Elymore v. Walter, 9 FSM R. 251, 254 (Pon. 1999).

Punitive damages are awarded as a punishment to the defendant for his wrongful act and as a warning and example to deter him and others from committing similar acts in the future. As a general rule, punitive damages are allowed for an assault and battery committed wantonly, maliciously, or under circumstances of aggravation. Since battery usually is a matter of the worst kind of intentions, it frequently justifies punitive damages. Elymore v. Walter, 9 FSM R. 450, 459 (Pon. 2000).

Punitive damages may be awarded for tortious acts that are committed with deliberate violence, as when a defendant waits at night with a baseball bat and then repeatedly swings the bat at a car's windshield and sunroof although he never saw the driver or knew who it was and the driver never saw the defendant or got out of the car. In such circumstances, an award of punitive damages is appropriate and the defendant, having been offended by that which he had made overt efforts to see, can scarcely be heard to complain of the offense or that the offense otherwise mitigates his conduct's consequences. Elymore v. Walter, 9 FSM R. 450, 459 (Pon. 2000).

When an award of punitive damages is appropriate, materials relating to the defendant's financial status must be submitted to the court before it will enter a punitive damages award. Elymore v. Walter, 9 FSM R. 450, 460 (Pon. 2000).

Punitive damages are not permitted against the State of Chuuk, but punitive damages may be awarded against a police officer trainee assigned as a jailer and which are justified by the wanton, malicious, deliberate and violent nature of his battery of a detainee. Atesom v. Kukkun, 10 FSM R. 19, 24 (Chk. 2001).

When six months have elapsed since the plaintiffs first asked for time to find new counsel and a court order explicitly stated what the consequences would be if new counsel did not file a notice of appearance by March 30, 2001, the plaintiffs' remaining punitive damages claim, absent a showing of good cause and excusable neglect, will be dismissed, and, given the purpose of punitive damages, a final judgment entered. Elymore v. Walter, 10 FSM R. 166, 168-69 (Pon. 2001).

The purpose of punitive damages is to punish the tortfeasor, not compensate the victim. Elymore v. Walter, 10 FSM R. 166, 168 (Pon. 2001).

Punitive damages are a windfall to the plaintiff and not a matter of right. Elymore v. Walter, 10 FSM R. 166, 168 (Pon. 2001).

Regardless of the disposition of a punitive damages claim, plaintiffs are fully compensated by a damages award. Elymore v. Walter, 10 FSM R. 166, 168 (Pon. 2001).

Punitive damages may be awarded when a tort was committed with actual malice, or deliberate violence, or the acts complained of were wanton, reckless, malicious and oppressive and are given to enhance compensatory damages. Punitive damages depend on the existence of compensatory damages and cannot be awarded in the absence of compensatory damages. Talley v. Lelu Town Council, 10 FSM R. 226, 239 (Kos. S. Ct. Tr. 2001).

Punitive damages are not recoverable for ordinary negligence. Talley v. Lelu Town Council, 10 FSM R. 226, 239 (Kos. S. Ct. Tr. 2001).

Ordinary negligence is not a basis for punitive damages. In order for negligence to constitute wantonness meriting imposition of punitive damages, the plaintiff must show that the one acting or failing to act realized the imminence of the danger and failed to take steps to prevent it because he was indifferent to whether the injury occurred. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

As a matter of public policy, governments are generally not liable for punitive damages. Herman v. Municipality of Patta, 12 FSM R. 130, 138 (Chk. 2003).

Under the Chuuk State Sovereign Immunity Act of 2000, punitive (or exemplary) damages not greater than the compensatory damages and of not more than $20,000 may be awarded against the state or a municipality only if the injury was as a result of a government employee or agent who, acting under color of authority, violated the individual rights secured by the Chuuk Constitution. But the Sovereign Immunity Act of 2000 is not retrospective – it does not apply to claims that arose before its enactment – and prior law bars any punitive damage awards against a municipal government. Herman v. Municipality of Patta, 12 FSM R. 130, 138 (Chk. 2003).

While punitive damages are not permitted against a municipality, they can be awarded and are justified against individuals for their wanton, malicious, and deliberately violent treatment of a victim in detention. Herman v. Municipality of Patta, 12 FSM R. 130, 139 (Chk. 2003).

Since the purpose of punitive damages is to punish the tortfeasor, not to compensate the victim, a defendant's financial condition is relevant to a punitive damages claim because the defendant's financial condition has a bearing on the amount of punitive damages to be awarded. Herman v. Municipality of Patta, 12 FSM R. 130, 139 (Chk. 2003).

When a defendant with no net worth and no income is liable for punitive damages in addition to a substantial damage award, only a nominal punitive damage award of $1 is proper. When the net worth and income of defendants is not known, but it is known that they are employed and thus have an income, it is appropriate to award more than just nominal punitive damages. Herman v. Municipality of Patta, 12 FSM R. 130, 139 (Chk. 2003).

Punitive damages may not be recovered from Chuuk State as a matter of law. Tomy v. Walter, 12 FSM R. 266, 272 (Chk. S. Ct. Tr. 2003).

While exceptions exist, the general rule is that punitive damages may not be awarded absent an award of monetary damages. Tomy v. Walter, 12 FSM R. 266, 272 (Chk. S. Ct. Tr. 2003).

In order to obtain an award of punitive damages, a plaintiff must establish that the defendant acted with

actual malice or deliberate violence. Tomy v. Walter, 12 FSM R. 266, 272 (Chk. S. Ct. Tr. 2003).

No punitive damages can be awarded when the plaintiff has not sustained his burden of demonstrating that the defendant's actions were intentional, wilful, and malicious, rather than merely negligent. Punitive damages may not be awarded for ordinary negligence. Tomy v. Walter, 12 FSM R. 266, 272 (Chk. S. Ct. Tr. 2003).

Continued disobedience of court judgments and orders or of any court decision, may be grounds for a finding in the future, that the disobedience of the court's orders and decisions is wilful, deliberate, and intended to cause harm to the victim. Punitive damages may be recoverable in the future against any government officer or employee who is found to have wilfully violated the court orders and judgments. Tomy v. Walter, 12 FSM R. 266, 273 (Chk. S. Ct. Tr. 2003).

It is well established that punitive damages are not recoverable for ordinary negligence. Such damages also will not be awarded unless it has been claimed and proved that the defendant acted with actual malice or deliberate violence. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 309 (Pon. 2004).

Since tort law generally is an area governed by state law, exemplary or punitive damages are not awardable against the State of Pohnpei under Pohnpei state law and a claim for exemplary damages against it will e dismissed. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 155 (Pon. 2005).

Punitive damages will be denied when the plaintiffs' complaint makes no allegations that the defendants' actions were willful, wanton, or malicious or alleges facts that could constitute willfulness, wantonness, or malice, and when the cause of action is contract. Punitive damages are not a contract remedy since only compensatory damages are allowed for breach. Zion v. Nakayama, 13 FSM R. 310, 313 (Chk. 2005).

A plaintiff may not as a matter of law recover punitive damages from the State of Chuuk. This principle has been modified somewhat by the enactment section 6 of the Chuuk State Sovereign Immunity Act of 2000, but that Act did not become law until January 25, 2001, and it does not apply to damage claims before that time. Zion v. Nakayama, 13 FSM R. 310, 314 (Chk. 2005).

Punitive damages may be awarded when a tort was committed with actual malice, or deliberate violence, or the acts complained of were wanton, reckless, malicious and oppressive and are given to enhance compensatory damages. But when the plaintiff has failed to sustain his burden of proof against the defendant on his cause of action based in tort: fraud, and therefore has not prevailed upon his fraud claim, punitive damages may not be imposed. Isaac v. Palik, 13 FSM R. 396, 402 (Kos. S. Ct. Tr. 2005).

The State of Pohnpei cannot be held liable for punitive damages. Annes v. Primo, 14 FSM R. 196, 206 (Pon. 2006).

Although punitive damages claims against the state will be dismissed, when the state is not the only defendant, an unchallenged punitive damage claim against a police officer will not be stricken. Annes v. Primo, 14 FSM R. 196, 206 (Pon. 2006).

Generally, punitive damages are not a contract remedy, because only compensatory damages are allowed for breach of contract. Nor can punitive damages be awarded under non-contract (i.e., tort) causes of action unless the defendant's actions were alleged and proven to be willful, wanton, and malicious or with deliberate violence. Hartman v. Krum, 14 FSM R. 526, 532 (Chk. 2007).

A cause of action based on tort will not be lost or abated because of the death of the tort-feasor or other person liable. An action thereon may be brought or continued against the deceased person's personal representative, but punitive or exemplary damages may not be awarded nor penalties adjudged in the action. Dereas v. Eas, 15 FSM R. 446, 448 (Chk. S. Ct. Tr. 2007).

When the defendants' counterclaim for wrongful arrest is dismissed and the defendants' claim for punitive damages is based on the claim for wrongful arrest, the punitive damages claim is likewise dismissed because punitive damages are derivative and must rest on another underlying cause of action. FSM v. Koshin 31, 16 FSM R. 15, 20 (Pon. 2008).

Although, for punitive damages to be awarded, there must be evidence of gross negligence, it is not necessary for such proof to be set forth in the complaint. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

Punitive damages are derivative, in the sense that they derive from and depend on a separate and independent cause of action. They may be awarded when the acts complained of are wanton, reckless, malicious, and oppressive, but punitive damages are not awardable for breach of contract, since only compensatory damages are allowed in contract cases. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441 (Pon. 2009).

Punitive damages may be recovered for conversion when the defendant's acts were accompanied by fraud, malice, recklessness, oppressiveness, or willful disregard of the plaintiff's rights that aggravated the injury or loss inflicted by the defendant. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 441-42 (Pon. 2009).

Although conversion by its nature involves wrongful acts that are hostile to an owner's interest in property, and although the defendants' actions in cashing premium checks were wrongful and showed a disregard of the plaintiff's property rights, that disregard was not sufficient to impose punitive damages because, when the checks were converted, they were converted in material part in the course of the agents' efforts to expedite services to the insurer's policy holders Nor will the court award punitive damages against the business cashing the checks because, while the business's actions in cashing the checks was wrongful, its employees relied in good faith on the insurance agents' representations that they were authorized to cash the checks. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 442 (Pon. 2009).

The purpose of punitive damages is not to compensate the plaintiff (since they are not a matter of right and are a windfall to the plaintiff), but to punish the tortfeasor. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

Punitive damages may be recoverable for tortious acts when the tortfeasor's act is accompanied by fraud, or involves ill will, actual malice, recklessness, wantonness, oppressiveness, willful disregard of the plaintiff's rights, or other circumstances tending to aggravate the injury. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

Punitive damages are not recoverable for ordinary negligence. For punitive damages to be awarded, there must be evidence of gross negligence. Gross negligence is the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

When there was no evidence before the court from which it could find that the defendant's contractor intentionally failed to perform a manifest duty in reckless disregard of the consequences or that its act was accompanied by fraud, ill will, actual malice, recklessness, wantonness, oppressiveness, or willful disregard of the plaintiffs' rights, a motion to dismiss the plaintiffs' punitive damages claim will be granted. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

When the court has dismissed the underlying causes of action for compensatory damages, the punitive damages claim must also be dismissed because punitive damages are not an independent cause of action but must rest upon some other, underlying cause of action as merely an element of damages in the underlying cause of action. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

Punitive damages cannot be imposed on the Board of Trustees of the Pohnpei State Public Lands Trust because the Pohnpei state government is statutorily immune from punitive damages and the Board is a Pohnpei government agency. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

Punitive damages are, by definition, not actual (compensatory) damages, but are a windfall. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

Punitive damages resulting from the alleged defamatory statement cannot, under the express malice standard, be shown by inferences. Inferences are not enough. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

Punitive damages may be recoverable for conversion when the defendant's act was accompanied by fraud, or when they are authorized by statute. FSM v. Muty, 19 FSM R. 453, 462 (Chk. 2014).

Liability for punitive damages is determined by the fact-finder after an evidentiary proceeding. This is in part because the tortfeasor's finances must be examined. Since the purpose of punitive damages is to punish the tortfeasor, not to compensate the victim, a defendant's financial condition is relevant to a punitive damages claim because the defendant's financial condition has a bearing on the amount of punitive damages that can be awarded. Punitive damages will therefore not be granted on summary judgment. FSM v. Muty, 19 FSM R. 453, 462 (Chk. 2014).

– Defamation

Tort claims for tortious interference with contractual relationships, defamation, and interference with prospective business opportunities are causes of action that arise under state law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 203 (Pon. 2001).

Until such time as the plaintiff demonstrates the allegedly defamatory nature of the publications at issue, either by way of trial or proper motion accompanied by admissible supporting evidence, a permanent injunction cannot lawfully issue against the publication of speech that the defendants contend is true and which involves matters of public concern. O'Sullivan v. Panuelo, 10 FSM R. 257, 262 (Pon. 2001).

The complainant's right to bring a civil suit against the defendant for the tort of defamation is not impaired by the court's dismissal of the criminal defamation charges against her. Kosrae v. Waguk, 11 FSM R. 388, 392 (Kos. S. Ct. Tr. 2003).

Although no definition of libel has ever been formulated that is sufficiently comprehensive to cover all cases, libel may be defined as a false and unprivileged publication by writing or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy or which cause him to be shunned or avoided or which has a tendency to injure him in his occupation. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 557 (Chk. 2005).

There are constitutional limitations on defamation actions when the action involves a public official, a public figure, or a matter of substantial public controversy. In such instances, knowledge that the defamatory statement was false, or malice, or a reckless disregard for the truth must be shown in addition to the other elements of libel or slander. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 557 (Chk. 2005).

When the plaintiff was the CEO of CPUC, an instrumentality of the State of Chuuk, he was a public figure, and he might also be considered a public official. The power situation on Weno is always a matter of substantial public controversy. Thus in a libel action, when a resolution and memorandum were part of the CPUC Board of Directors' and its Chairman's official duties, the higher public figure standard and the principle of absolute or qualified privilege would both apply to the Board's and Chairman's official communications as part of official duties. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 557 (Chk. 2005).

When the complaint did not plead that the defendant knew that its allegations were false, or that they were made with malice, or that they were made with a reckless disregard of the truth, and even taking the facts as pled in the complaint as true, the facts alleged are insufficient as a matter of law for the court to find the defendant liable for libel under the higher public figure standard, especially when the communications appear to be privileged. Liability for libel is not deemed established merely because the defendant defaulted. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 557 (Chk. 2005).

Mean-spirited, accusatory words designed to harm another person, without regard to their truth or falsity are the kind of words that may result in a civil suit for the tort of defamation. However, the current criminal statute, Kosrae State Code § 13.313, may not be used to pursue a criminal prosecution for defamation because it does not clearly specify what types of speech are prohibited. Kosrae v. Taulung, 14 FSM R. 578, 581 (Kos. S. Ct. Tr. 2007).

The two-year statute of limitations applies to causes of action for slander. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

Whether a plaintiff's cause of action for slander is time-barred depends on when that cause of action accrued. In general, a cause of action accrues when the right to bring suit on a claim is complete – the true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

As a general rule, a cause of action for libel or slander accrues, so as to start the running of limitations, at the time of publication, and not on the date of discovery of the wrong, or when the alleged injury occurred. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

State law, and not the national law, provides the controlling limitations period for the causes of action, such as libel and slander and the tort of interference with contract and prospective economic advantage, that arise under state law. Jano v. Fujita, 15 FSM R. 494, 496 (Pon. 2008).

The two-year statute of limitations applies to causes of action for libel. Jano v. Fujita, 15 FSM R. 494, 497 (Pon. 2008).

A cause of action for interference with contract and prospective economic advantage must be commenced within six years after the cause of action accrues. Jano v. Fujita, 15 FSM R. 494, 497 (Pon. 2008).

A cause of action for libel accrues, so as to start the running of limitations, at the time of publication, and not on the date of discovery of the wrong, or when the alleged injury occurred. Jano v. Fujita, 15 FSM R. 494, 497 (Pon. 2008).

Truth is a defense to libel. Smith v. Nimea, 16 FSM R. 186, 191 (Pon. 2008).

When the truth of the allegedly libelous letter is in dispute; when a factual dispute exists as to whether the allegedly libelous letter played a role in the denial of the plaintiff's application for a foreign investment permit, the business opportunity alleged to have been interfered with by the defendant; and when these factual disputes are material to the claim, both parties' summary judgment motions on the claim of libel and interference with business opportunity will be denied. Smith v. Nimea, 16 FSM R. 186, 191 (Pon. 2008).

When the plaintiff has alleged sufficient facts to support a defamation action and the defendants allege either that the statements were true, or for some defendants, that they did not make the statements, a factual dispute exists as to who said what about the plaintiff, and whether the statements were false. Under these circumstances, there are facts to be determined at trial and summary judgment motions will be denied. Yoruw v. Ira, 16 FSM R. 464, 465 (Yap 2009).

Defamatory statements would still qualify as slanderous if they were spoken but not committed to writing. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485 (Pon. 2009).

When the truth of alleged defamatory statements is at issue, the parties may litigate the issue of truth or falsity at trial. Pre-trial dismissal is not warranted. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485-86 (Pon. 2009).

Tort claims, including claims for tortious interference with contractual relationships, defamation, and interference with prospective business opportunities, are causes of action which arise under state law. Smith v. Nimea, 18 FSM R. 36, 45 (Pon. 2011).

The history of the law of defamation defies brief restatement. Smith v. Nimea, 18 FSM R. 36, 45 (Pon. 2011).

Libel is a subset of defamation, and as a cause of action is not well defined but FSM case law has at least once defined libel as a false and unprivileged publication by writing or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy or which causes him to be shunned or avoided or which has a tendency to injure him in his occupation. Smith v. Nimea, 18 FSM R. 36, 46 (Pon. 2011).

Considerations of constitutional law and free speech sometimes apply to defamation cases, as when the action involves a public official, a public figure, or a matter of substantial public controversy. In such cases, beyond the other elements of defamation, the plaintiff must show that the defendant knew that the defamatory statement was false, or acted with malice or a reckless disregard for the truth. Smith v. Nimea, 18 FSM R. 36, 46 (Pon. 2011).

Although falsity is included in the FSM's definition of defamation, falsity is not a traditional element of a plaintiff's prima facie case; rather, truth is an affirmative defense. Even so, a court must distinguish between statements of fact and assertions of opinion, because opinions, false or not, libelous or not, are constitutionally protected and may not be the subject of private damage actions, provided that the facts supporting the opinions are set forth. Smith v. Nimea, 18 FSM R. 36, 46 (Pon. 2011).

An allegedly defamatory statement was published when it was set forth in ink in the defendant's letter to the Foreign Investment Board. Smith v. Nimea, 18 FSM R. 36, 46 (Pon. 2011).

Libel and defamation in general consider whether the allegedly defamatory statement exposes the plaintiff to (public) hatred, contempt, ridicule, or obloquy (shame or disgrace); causes people to shun or avoid the plaintiff; or has a tendency to injure the plaintiff in his occupation or adversely affect the plaintiff's trade or business. Smith v. Nimea, 18 FSM R. 36, 47 (Pon. 2011).

A letter to the Foreign Investment Board which was not released to the public did not expose the plaintiff to hatred, contempt, ridicule, or obloquy, because if people could not learn of the letter, they could not derive from the letter a reason to shun or avoid him; nor could the letter have injured the plaintiff's occupation since he was no longer employed at the time of the defendant's letter; and nor did it harm his trade or business because his proposed software business was not in existence at the time of the letter and because the Foreign Investment Board's denial of his application was based not on the concerns raised in the letter, but on problems with capitalization. Smith v. Nimea, 18 FSM R. 36, 47 (Pon. 2011).

Opinions, even if objectionable, are not actionable as defamation. Were the court to recognize opinions as actionable defamation, the judiciary would be flooded with civil actions based on little more than the equivalent of schoolyard taunts. Smith v. Nimea, 18 FSM R. 36, 47 (Pon. 2011).

A court, in considering the context of the alleged defamatory statements, cannot ignore that the alleged defamatory letter came as a response to a public solicitation for comments initiated by the Foreign Investment Board and that the FIB's role as an administrative and investigatory agency strongly attenuates

what minimal defamatory effect the letter may otherwise have had. Smith v. Nimea, 18 FSM R. 36, 47 (Pon. 2011).

A cause of action for business libel must fail when the defendant did no more than respond to a solicitation for public comment by a government agency in a matter of public interest. Smith v. Nimea, 18 FSM R. 36, 48 (Pon. 2011).

Free speech is not a limitless right. One limitation comes from defamation law. FSM Dev. Bank v. Abello, 18 FSM R. 192, 196 (Pon. 2012).

Libel is a subset of defamation, and is defined as a false and unprivileged publication by writing or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy or which causes him to be shunned or avoided or which has a tendency to injure him in his occupation. FSM Dev. Bank v. Abello, 18 FSM R. 192, 197 (Pon. 2012).

A court considers whether the allegedly defamatory statement: exposes the plaintiff to (public) hatred, contempt, ridicule or obloquy (shame or disgrace); causes people to shun or avoid the plaintiff; or has a tendency to injure the plaintiff in his occupation or adversely affect the plaintiff's trade or business. FSM Dev. Bank v. Abello, 18 FSM R. 192, 197 (Pon. 2012).

Considerations of constitutional law and free speech sometimes apply in defamation cases, as when the action involves a public official, a public figure, or a matter of substantial public controversy. In such cases, beyond the other elements of defamation, the plaintiff must show that the defendant knew that the defamatory statement was false, or acted with malice or a reckless disregard for the truth. FSM Dev. Bank v. Abello, 18 FSM R. 192, 197 (Pon. 2012).

A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. Peniknos v. Nakasone, 18 FSM R. 470, 484 n.7 (Pon. 2012).

In order to establish a claim for defamation-republisher, the plaintiff must prove that the defendant republished: 1) defamatory statements; 2) a non-privileged communication to a third-party; 3) the falsity of that statement; 4) referencing the plaintiff; 5) at least negligence on the publisher's part; and 6) prove resulting injury. Peniknos v. Nakasone, 18 FSM R. 470, 485 (Pon. 2012).

One who repeats or otherwise republishes a defamatory matter is subject to liability as if he had originally published it. Peniknos v. Nakasone, 18 FSM R. 470, 485 (Pon. 2012).

Publication of a defamatory matter is its communication intentionally or by a negligent act to one other than the person defamed; and one who intentionally and unreasonably fails to remove defamatory matter that he knows to be exhibited on land or chattels in his possession or under his control is subject to liability for its continued publication. Peniknos v. Nakasone, 18 FSM R. 470, 485 (Pon. 2012).

A republication of the defamatory matter to a third person is essential to liability for defamation-republisher – in order to establish liability, there must be evidence that the defendant republished defamatory matter either intentionally or negligently to a third party other than the plaintiff. Peniknos v. Nakasone, 18 FSM R. 470, 485 (Pon. 2012).

In the case of slander, as opposed to libel, the act is usually the speaking of the words. Peniknos v. Nakasone, 18 FSM R. 470, 485 (Pon. 2012).

In an action for defamation, the plaintiff has the burden of proving, when the issues are properly raised 1) the communication's defamatory character, 2) its publication by the defendant, 3) its application to the plaintiff, 4) the recipient's understanding of the defamatory meaning, 5) the recipient's understanding of it as intended to be applied to the plaintiff, 6) special harm resulting to the plaintiff from its publication, 7) the

defendant's negligence, reckless disregard or knowledge regarding the truth or falsity and the communication's defamatory character, and 8) the abuse of a conditional privilege. Peniknos v. Nakasone, 18 FSM R. 470, 485-86 n.9 (Pon. 2012).

In an action for defamation-republisher, a plaintiff's statement of facts are insufficient to show the essential element of republication by the defendant when the plaintiff does not name the defendant's employee(s) that made the republication of any defamatory communication, or state when, where, and how the communication(s) occurred or who were the communication's recipients. Peniknos v. Nakasone, 18 FSM R. 470, 486 (Pon. 2012).

If a defendant repeats or otherwise republishes defamatory matter, it is subject to liability as if it had originally published the matter. A standard of proof similar to that which would be applied to the original publisher is required. Peniknos v. Nakasone, 18 FSM R. 470, 486 (Pon. 2012).

The tort of defamation includes libel and slander and generally embodies the public policy that individuals should be free to enjoy their reputations unimpaired by false and defamatory attacks. Zacchini v. Hainrick, 19 FSM R. 403, 411 (Pon. 2014).

The tort of libel may be defined as a false and unprivileged publication by writing or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule, or obloquy or which causes him to be shunned or avoided or which has a tendency to injure him in his occupation. Libel is a smaller subset of defamation – libel is written or visual defamation; slander is oral or aural defamation. Zacchini v. Hainrick, 19 FSM R. 403, 411 n.1 (Pon. 2014).

Defamation causes of action arise under state law. Pohnpei generally follows the Restatement approach in its law concerning tort issues. Zacchini v. Hainrick, 19 FSM R. 403, 411 (Pon. 2014).

A communication is defamatory if it tends so to harm the reputation of another so to lower him in the estimation of the community or to deter third persons from associating or dealing with him. Zacchini v. Hainrick, 19 FSM R. 403, 411 (Pon. 2014).

A threshold issue is whether a statement is objectively defamatory or merely subjectively offensive. The gravamen or gist of an action for defamation is it denigrates the opinion which others in the community have of the plaintiff and invades the plaintiff's interest in his reputation and good name. It is not based on any physical or emotional distress to the plaintiff that may result. Zacchini v. Hainrick, 19 FSM R. 403, 411-12 n.3 (Pon. 2014).

Four elements must be proven in a defamation claim: 1) false and defamatory statement concerning another; 2) an unprivileged publication to a third party; 3) fault amounting at least to negligence on part of the publisher; and 4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. The plaintiff thus has the burden to show falsity, publication, fault, and injury. Zacchini v. Hainrick, 19 FSM R. 403, 412 (Pon. 2014).

Since truth is an affirmative defense to a defamation action, the court must distinguish between statements of fact and assertions of opinion, because opinions, false or not, libelous or not, are constitutionally protected and may not be the subject of private damage actions, provided that the facts supporting the opinions are set forth. Zacchini v. Hainrick, 19 FSM R. 403, 412 (Pon. 2014).

Opinions, even if objectionable, are not actionable as defamation. An opinion is a personal comment about another's conduct, qualifications, or character that has some basis in fact, and whether a statement is an opinion, must be determined by the totality of the circumstances, including the forum in which the statement is made, the medium in which the statement was disseminated, and the audience to which it is published. Zacchini v. Hainrick, 19 FSM R. 403, 412 (Pon. 2014).

When, from the totality of the circumstances, it is clear that the nature of a job reference is to ask for an opinion about the employee's characteristics and conduct and the nature of the numerical scale for the

opinion is not objective; when the defendant's oral answers were either true or non-verifiable opinions; when any undisclosed imputation was not necessarily and unequivocally false and therefore could not be the subject of an implied defamation claim; and when it is clear that the interview question is asking for an employer's opinion about what his previous employee's weaknesses were, those weaknesses are not verifiable as either right or wrong, and thus cannot be the subject of a defamation claim. Zacchini v. Hainrick, 19 FSM R. 403, 414-15 (Pon. 2014).

Truth is an absolute bar to a defamation claim. Zacchini v. Hainrick, 19 FSM R. 403, 413 (Pon. 2014).

An inference of falsity cannot be extended to non-verifiable opinions. Zacchini v. Hainrick, 19 FSM R. 403, 413 (Pon. 2014).

Publication is a term of art, meaning that there was a communication to a third party person other than the person defamed. Zacchini v. Hainrick, 19 FSM R. 403, 413 (Pon. 2014).

Without communication to another person a statement is of no consequence, but a statement is published even if made only to one other person. Furthermore, the publication must also be "unprivileged." When the publication is invited, procured, or consented to by the plaintiff, the publication is generally not deemed sufficient. Zacchini v. Hainrick, 19 FSM R. 403, 413 (Pon. 2014).

Generally, establishing that the alleged defamatory statements were made to just one other person is enough, but when the statements were made to an employee of a reporting service that the plaintiff had hired, the plaintiff both invited and consented to the publication of the job references by signing up for the reporting service, and in doing so, requested that an agent procure the statements on his behalf, and legally, therefore, it cannot be said that the job reference was published to a third party under this term of art. Zacchini v. Hainrick, 19 FSM R. 403, 413-14 (Pon. 2014).

In the employment context, references are protected by a qualified privilege, also known as the "merchant's" privilege. Responses by past employers to inquiries from prospective employers raise a conditional privilege based on the performance of a private duty. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

A communication derogatory of an employee's character or attributes, or concerning the reasons for his discharge or circumstances surrounding the termination of his employment generally, may be qualified, or conditionally privileged if made in good faith, in a reasonable manner and for a proper purpose. To overcome the merchant's privilege the plaintiff must demonstrate "express malice," or in modern terms, actual malice. Actual malice means that statements were made with knowledge of its falsity or a reckless disregard for the truth by clear and convincing evidence. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

Damages in defamation cases generally consider whether the allegedly defamatory statement: exposes the plaintiff to (public) hatred, contempt, ridicule or obloquy (shame or disgrace); causes people to shun or avoid the plaintiff; or has a tendency to injure the plaintiff in his occupation or adversely affect the plaintiff's trade or business. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

Damages for defamation are divided into three categories, 1) punitive damages or exemplary damages, where actual malice or recklessness is shown; 2) special damages such as the loss of business which are recoverable only on proof of loss of specific economic benefits; and 3) general damages which follow inevitably from the defamatory imputation. General damages can include loss of reputation, shame, mortification, and hurt feelings. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

Punitive damages resulting from the alleged defamatory statement cannot, under the express malice standard, be shown by inferences. Inferences are not enough. Zacchini v. Hainrick, 19 FSM R. 403, 414 (Pon. 2014).

Speculative injury is not enough, with regard to special injury, it must be demonstrably shown. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

When, even considered in the light most favorable to the plaintiff, only one of the elements of defamation can be met, the inability to prove the other elements of the claim, necessarily requires that summary judgment be granted for the defendants with regard to the defamation claim. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

Defamation per se is words which on their face and without the aid of extrinsic proof are recognized as injurious. It is words that are obviously harmful without innuendo, colloquium, or explanation. The words must be susceptible of but one meaning, and that an opprobrious one. When the defamatory character of the statements is apparent on its face – that is when the words used are so obviously and materially harmful to the plaintiff that the injury to his or her reputation may be presumed. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

Defamation per se follows the ordinary defamation analysis, except the requirement to show special injury is waived when the disparaging statements impute a 1) criminal offense; 2) a loathsome disease; 3) a matter incompatible with his business, trade, profession or office; 4) or sexual misconduct. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

Summary judgment must be granted for the defendants on the plaintiff's defamation per se claim when, although the alleged defamatory remarks relate to the plaintiff's professional reputation, the business imputation is not apparent on the face of the words and the disparagement is only made by reference to the context and to innuendo to explain why those words are opprobrious. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

The defendants must be granted summary judgment on the plaintiff's defamation per se claim when the plaintiff cannot meet the legal standards necessary to prove the four elements of defamation at trial. The inability to prove even one element bars the claim. Zacchini v. Hainrick, 19 FSM R. 403, 415 (Pon. 2014).

Defamation is a false and unprivileged publication which exposes any person to hatred, contempt, ridicule, or obloquy or which causes him to be shunned or avoided or which has a tendency to injure him in his occupation. George v. Palsis, 19 FSM R. 558, 567 (Kos. 2014).

– Duty of Care

In a jurisdiction like Pohnpei, where individual and economic development is beginning to take place and people are not quite sophisticated about the uses or proper handling of certain machinery or equipment introduced into the community to support such development, the procurer, user, owner, or seller of such equipment or machinery must take precautionary measures to educate people, either through written or oral explanation, about the proper handling, operation or storing of such equipment or machinery, and to inform them about the harm that might result if such equipment or machinery is not properly handled, operated or stored. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 68 (Pon. S. Ct. Tr. 1986).

So long as a state retains its role as the primary provider of health care services in that state, it is legally obligated to make a reasonable effort to provide a health care system reasonably calculated to meet the needs of the people of the state, but the state may make decisions to limit the scope of medicines to be maintained, so long as the decisions are based upon sound medical judgment arrived at through consideration of the health needs and financial realities of the state. Amor v. Pohnpei, 3 FSM R. 519, 530-31 (Pon. 1988).

Once a state health services decision has been made that a particular medicine should be obtained for patients, the state health services staff and other responsible state officials are under a duty to take reasonable steps to obtain the medicine. Amor v. Pohnpei, 3 FSM R. 519, 531 (Pon. 1988).

The standard of care for doctors at the Truk State hospital is that they are to exercise professional judgment in the attempt to diagnose the illness of the patient, and then, consistent with available facilities and supplies, act on that diagnosis. Asan v. Truk, 4 FSM R. 51, 56 (Truk S. Ct. Tr. 1989).

When a person elects to operate a vehicle on the public streets he owes a duty to pedestrians and others using the road and adjacent areas to operate the vehicle in a safe and prudent manner. When the breach of this duty by driving in a fast and careless manner is the proximate cause of an injury the driver will be held liable. Ludwig v. Mailo, 5 FSM R. 256, 259 (Chk. S. Ct. Tr. 1992).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. Nena v. Kosrae, 5 FSM R. 417, 420 (Kos. S. Ct. Tr. 1990).

Everyone has a duty of care to act in such a way that other people are not harmed. Duties of care differ according to the circumstances and the exact parameters of each person's responsibilities towards others will be defined through time by judicial decisions and statutes. Nena v. Kosrae, 5 FSM R. 417, 421 (Kos. S. Ct. Tr. 1990).

The state, when building a road, has a duty of care to take precautions to avoid foreseeable harm, and it has a duty of care not to take undue advantage of a landowner's generosity and lack of understanding of his rights. Nena v. Kosrae, 5 FSM R. 417, 421 (Kos. S. Ct. Tr. 1990).

Generally, a breach of duty is proven by the testimony of witnesses who describe what a reasonable person, acting in compliance with the duty of care, would have done or not done in the same situation. In rare circumstances when the facts are indisputable and when they raise such a strong inference that all reasonable people agree on the duty of care, the court can decide, as a matter of law, the person has breached his duty of care. Nena v. Kosrae, 5 FSM R. 417, 421 (Kos. S. Ct. Tr. 1990).

When the state fails to tell a landowner that he has the option to refuse to grant the state an easement for a road, it has breached its duty of care. Nena v. Kosrae, 5 FSM R. 417, 421-22 (Kos. S. Ct. Tr. 1990).

In order to be liable for a breach of the duty of care the breach must cause damage. Nena v. Kosrae, 5 FSM R. 417, 422 (Kos. S. Ct. Tr. 1990).

A defendant must exercise due care not to cause others emotional distress that leads in turn to a foreseeable physical result. Eram v. Masaichy, 7 FSM R. 223, 226-27 (Chk. S. Ct. Tr. 1995).

Where there was no physical manifestation of the emotional distress that was foreseeable there can be no claim for negligent infliction of emotional distress. Eram v. Masaichy, 7 FSM R. 223, 227 (Chk. S. Ct. Tr. 1995).

To license police officers to carry firearms without adequate training breaches the duty of care of the state and the chief of police because the duty of care is heightened when the instrumentality given the police is a deadly one. Davis v. Kutta, 7 FSM R. 536, 547 (Chk. 1996).

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

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

Acts that do not provide for a private citizen's cause of action for monetary damages cannot be used to create a duty for the breach of which damages may be awarded. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM

R. 281, 292 (Pon. 1998).

The common law "incomplete privilege" of one to enter onto the land of another in times of private necessity is essentially codified by 19 F.S.M.C. 805(3), which states that "no person, including the owner or occupier of land may hinder or impede a rescuer." But it cannot have been the intent of 19 F.S.M.C. 805(3) to prevent law enforcement officials from carrying out their official duties in the face of an emergency rescue situation. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 292 (Pon. 1998).

The general principle is that one person may be liable in tort to another only if the first intentionally or negligently violates a duty owed to the other, and the other is injured as a result. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 293, 294 (Pon. 1998).

Everyone has a duty of care to act in such a way that other people are not harmed. Duties of care differ according to the circumstances. The exact parameters of each person's responsibilities towards others will be defined through time by judicial decisions and statutes. Asher v. Kosrae, 8 FSM R. 443, 449 (Kos. S. Ct. Tr. 1998).

There is a duty to take precautions in installing a telephone pole and wires to avoid foreseeable harm, for example, a child or another person walking into the dangling wire and causing injury. Asher v. Kosrae, 8 FSM R. 443, 449 (Kos. S. Ct. Tr. 1998).

Generally, a breach of duty is proven by the testimony of a witness who describes what a reasonable person, acting in compliance with the duty of care, would have done or not done in the same situation. Asher v. Kosrae, 8 FSM R. 443, 449 (Kos. S. Ct. Tr. 1998).

In determining liability for negligent injuries generally, electricity providers are required to use reasonable care in the construction and maintenance of their lines and apparatus, and will be responsible for any conduct falling short of this standard. Asher v. Kosrae, 8 FSM R. 443, 449 (Kos. S. Ct. Tr. 1998).

Electricity providers transmitting or using electricity are required to guard against events which can be reasonably foreseen or anticipated. The extent of the duty or standard of care is measured in the terms of foreseeability of injury from the situation created. It is not necessary that a power provider anticipate the precise injury to someone who had a right to be in the vicinity. Asher v. Kosrae, 8 FSM R. 443, 449-50 (Kos. S. Ct. Tr. 1998).

One in the business of generating and distributing electricity who engages to install electric equipment must exercise the care of a reasonably prudent person skilled in the practice and art of installing such equipment according to the state of the art or method generally used by persons engaged in a like business at the time the work is done. An electricity provider is also charged with the duty of maintaining their electrical equipment and appliances. Asher v. Kosrae, 8 FSM R. 443, 450 (Kos. S. Ct. Tr. 1998).

It is the imperative duty of electricity providers to make reasonable and proper inspection of their wires and other equipment and to use due diligence to discover and repair defects. A failure to perform such duty constitutes negligence. Asher v. Kosrae, 8 FSM R. 443, 450 (Kos. S. Ct. Tr. 1998).

An electricity provider must make reasonable and proper inspections of its appliances with such frequency as appears reasonably necessary, and use due diligence to discover and remedy defects so that injury will not result. The presence of a conspicuous defect or dangerous condition of the electrical appliance which has existed for a considerable length of time will create a presumption of constructive notice of the defect. Asher v. Kosrae, 8 FSM R. 443, 450 (Kos. S. Ct. Tr. 1998).

The provisions of the Kosrae State Code do not impose a duty upon the state to grant medical referrals to every person. Asher v. Kosrae, 8 FSM R. 443, 451 (Kos. S. Ct. Tr. 1998).

Although neither state law nor regulation imposes any duty upon the state to make a medical referral to every person, a volunteer who gratuitously offers to provide service or assistance to another, and causes

that other to rely upon the offer rather then to seek alternative ways of responding to the need, owes a duty to perform the donated services with reasonable care. Asher v. Kosrae, 8 FSM R. 443, 451 (Kos. S. Ct. Tr. 1998).

When the state volunteers to provide medical service or assistance and causes the someone to rely upon that offer, what constitutes reasonable action or assistance must be determined in light of the surrounding circumstances. Asher v. Kosrae, 8 FSM R. 443, 451 (Kos. S. Ct. Tr. 1998).

In order to impose a duty upon the state to return a patient to Pohnpei for treatment, the state must know about the need for further medical care. If the state was not informed, it cannot be charged with the knowledge or the duty to return a patient for further medical treatment. Asher v. Kosrae, 8 FSM R. 443, 451 (Kos. S. Ct. Tr. 1998).

One who carries on a dangerous activity must use care commensurate with the risk or danger of injury involved or suffer liability for resulting injuries. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 535 (Pon. 1998).

It is a breach of a duty of care to fail to warn persons known to be on nearby land when blasting will occur. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 540 (Pon. 1998).

The common law definition of negligence includes the failure to use such care as a reasonably prudent person would use in a similar situation. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

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

30 F.S.M.C. 104 does not require the FSM Development Bank to provide technical assistance to persons the bank loans money to, but simply permits it to provide such assistance. The bank has no duty to provide technical assistance. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 76 (Pon. 2001).

The statute, 30 F.S.M.C. 104, does not impose a duty upon the FSM Development Bank to provide technical assistance to debtors to whom it has already made a loan, nor to assignees of those debtors. Nor does it give rise to a private cause of action. FSM Dev. Bank v. Mudong, 10 FSM R. 67, 76-77 (Pon. 2001).

In order to be liable for a breach of duty of care, the breach must cause damage. Talley v. Lelu Town Council, 10 FSM R. 226, 236 (Kos. S. Ct. Tr. 2001).

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

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

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

When a general contractor had a duty to provide a safe work environment for the construction work to

be done at the second story heights and his duty in this regard ran not only to the employees of subcontractors, but to those that he employed directly as well, which included the plaintiff, and when his failure to provide any kind of safety equipment, precautions, instructions or supervision resulted in the plaintiff's fall and consequent injury, he is therefore liable for the damages suffered as a result of that injury. Amayo v. MJ Co., 10 FSM R. 244, 250-51 (Pon. 2001).

30 F.S.M.C. 104(b) does not create a duty for the FSM Development Bank to provide technical assistance, but rather authorizes the FSM Development Bank to provide such assistance as a part of its functions. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 345 (Chk. 2001).

Sellers of inflammable liquids owe a high duty toward consumers to exercise care in the sales of inflammable liquids to consumers. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

When, according to the complaint's allegations, the defendants' medical malpractice led to the deceased's death, and when, attached to the defendants' summary judgment motion is an affidavit of a medical doctor who is board certified in the field of family practice and the affidavit recites that the doctor has reviewed the medical records and that his opinion is that her diagnosed illness, tuberculosis of the spine, was so serious that in order to avoid paralysis, it would have been acceptable practice to administer the medications in question even if the deceased's treating doctors had been aware of her hepatitis history, the doctor's affidavit is relevant evidence based on an adequate foundation, that tends to show that the defendants did not violate the applicable standard of care. This evidence is of sufficient weight that left unopposed, no genuine issue of material fact exists under FSM Civil Rule 56, and the defendants are entitled to judgment as a matter of law. Since the plaintiffs have offered nothing to meet the evidence offered by the defendants, no genuine issues of material fact therefore exist, and the defendants are entitled to summary judgment in their favor. Joe v. Kosrae, 13 FSM R. 45, 47 (Kos. 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).

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).

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).

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).

Duties of care differ according to the circumstances. The test is whether the injury, under all the circumstances, might reasonably been foreseen by a person of ordinary intelligence and prudence. Phillip v. Kosrae, 14 FSM R. 109, 113 (Kos. S. Ct. Tr. 2006).

The municipality, chief, and jailer owed a prisoner a duty of care, had a duty to regularly observe his condition, breached that duty by failing to provide the required checks on his condition. These defendants are therefore liable under for the prisoner's death by neglect. The municipality, through its subsequent

conduct, effectively ratified its agents' conduct. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

"Assumption of the risk" is a common law defense to negligence, which acts as a complete bar to the plaintiff's recovery because it relieves the defendant of any duty of care to the plaintiff. Kileto v. Chuuk, 15 FSM R. 16, 17-18 (Chk. S. Ct. App. 2007).

"Assumption of the risk" usually describes a common law negligence or other tort defense that acts as a complete bar to the plaintiff's recovery because it relieves the defendant of any duty of care to the plaintiff. Bank of the FSM v. Truk Trading Co., 16 FSM R. 281, 286 (Chk. 2009).

An insurer has no duty to its agents to undertake an investigation for the agents' benefit in order to stop the agents from converting the insurer's property. When the insurer's property was converted by the agents' intentional actions, the agents cannot argue that the insurer should have known that they were converting – stealing – the insurer's property, and that since the insurer should have stopped them but did not stop them from doing what they had no right to do, the agents should not have to pay back what they took. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 443 (Pon. 2009).

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

Generally, one who undertakes to render professional service is under a duty to the person for whom the service is to be performed to exercise such care, skill, and diligence as men in that profession ordinarily exercise under like circumstances. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 579-80 (Pon. 2011).

The law imposes upon persons performing architectural, engineering, and other professional and skilled services the obligation to exercise a reasonable degree of care, skill and ability, which generally is taken and considered to be such a degree of care and skill as, under similar conditions and like surrounding circumstances, is ordinarily employed by their respective professions. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

Unless he represents that he has greater or less skill or knowledge, one who undertakes to render services in the practice of a profession or trade is required to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

The circumstances to be considered in determining the standard of care, skill, and diligence to be required of a professional include the terms of the employment agreement, the nature of the problem which the supplier of the service represented himself as being competent to solve, and the effect reasonably to be anticipated from the proposed remedies. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

Although a professional's duty of care exists independent of and is not created by contract, a contract may furnish the conditions for that duty's fulfilment. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

The reasonable care standards apply similarly to architects, engineers, doctors, lawyers, and like professionals engaged in furnishing skilled services for compensation and general negligence principles apply. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

Ordinarily, a determination that the care, skill, and diligence exercised by a professional engaged in furnishing skilled services for compensation was less than that normally possessed and exercised by members of that profession in good standing and that the damage sustained resulted from the variance

requires expert testimony to establish the prevailing standard and the consequences of departure from it in the case under consideration. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580-81 (Pon. 2011).

Because the fact-finder is not permitted to speculate as to the standard against which to measure the acts of the professional in determining whether he exercised a reasonable degree of care, expert testimony is required. Only in a few very clear and palpable cases can a court dispense with the expert testimony requirement to establish the parameters of professional conduct and find damages to have been caused by a professional's failure to exercise reasonable care, skill, and diligence. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

Vessels had a duty not to cause any damage to the reef and marine resources in Yap waters, which was breached by the vessels' failure to maintain a position off of Yap without causing damage to Yap's fringing reef and its attendant marine resources. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 174 (Yap 2012).

A corporation is not required to warn businesses not to cash checks that have the corporation as the payee since those business should not be cashing checks payable to a large, off-island corporation, anyway. The check casher has the duty to determine whether the person seeking to cash a check with a corporate payee is authorized by the corporation to do so, if it is going to cash the check. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

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

As a general rule, a person has no legal duty to control the conduct of another. An affirmative duty to aid or protect arises only when a special relationship exists between the parties. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

A special relationship creating a duty of care exists when a person is in police custody, but when an officer pursues but does not have any actual contact with the person pursued, that person was never seized or in custody. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

When a person was never in police custody, the "deliberate indifference" duty of care standard for the liability of law enforcement officials towards prisoners does not apply. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

When a person is in police custody, a special duty arises because the police would have then assumed responsibility for the person as he would not be able to protect himself. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

The police, by giving up their search for him and leaving the area, did not breach any special duty they might have had toward a person they had seen running away. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

When a person has created the dangerous situation himself, other persons have no duty to rescue him unless they had a special relationship with him – a special duty towards him. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

The police are generally not liable to a plaintiff who injures himself fleeing the police. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

When there is no factual basis for the existence of a special duty, the defendants' summary judgment motion should be granted since one of the essential elements of negligence cannot be proven. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

A doctor and the state hospital did not breach their duty to render professional medical services when they exercised such care, skill, and diligence as someone in that profession ordinarily exercises under like circumstances when they correctly diagnosed the patient's ailment, when they recommended her for off-island referral to an appropriate medical facility since they were unable to do the tests to confirm their diagnosis and since they were unable to offer all of the treatment options that might be needed, and when they offered her appropriate medical care as an in-patient until she could go to an off-island medical facility for her follow-up, but she refused admission. William v. Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

Since the state did not have a statutorily-created duty under Kosrae Code § 12.1103 to assist in paying for the family attendant's airfare, it did not have a statutorily-created duty to inform the family attendant that he could ask the State for financial assistance for his own airfare. William v. Kosrae State Hosp., 18 FSM R. 575, 582 (Kos. 2013).

The state cannot be said to have breached its duty when there was insufficient evidence before the court that it was state policy to pay for family attendant's airfare and to then seek repayment by wage or salary allotments; when there was no evidence about when this policy was implemented, by whom it was implemented, whether this policy was in existence in July 2001, the process used to apply for these funds, and whether there were any such funds available in late July 2001 that could have been used to immediately pay for the family attendant's ticket; when the statute barred the use of medical referral funds in a manner contrary to regulation; and when if no funds were available in July 2001, any request would have been futile and it would have been pointless to tell the family attendant that the State could assist. William v. Kosrae State Hosp., 18 FSM R. 575, 582 (Kos. 2013).

A 1991 memorandum of understanding between the insurer and the Kosrae State Hospital that required that the hospital provide all necessary health care services within Kosrae to all covered persons and that these services would include the cost of a medical or other attendant to accompany a covered person to a health care facility is an agreement that allocates the cost of attendants between the parties to the memorandum and it does not, by itself, allocate costs or create duties between the state and the insureds ("covered persons") and their families. William v. Kosrae State Hosp., 18 FSM R. 575, 582 (Kos. 2013).

While there may be no general duty to explain the type of insurance involved, insurance agents may be found to have additional duties when specifically questioned by the insured as to the appropriate level of insurance. Johnny v. Occidental Life Ins., 19 FSM R. 350, 358 (Pon. 2014).

When the plaintiff has not demonstrated that the defendant's actions reflect a standard of care that is unreasonable under the circumstances, the plaintiff's negligence claim must fail. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 478 (Pon. 2014).

– False Arrest

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).

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

When no evidence was presented at trial that the Director of Public Safety was personally involved in the plaintiff's arrest and jailing or that he directed its manner or timing, the court cannot presume that because his wife was the complainant that he ordered or directed that the plaintiff be arrested and jailed because, in the absence of evidence, an inference just as likely is that a zealous subordinate, believing it would curry favor with his superior, decided that a quick arrest and some jail time were in order. The court therefore will not hold the Director, in his personal capacity, liable to the plaintiff. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

When no evidence was presented that supports the liability of the Director of Public Safety in his official capacity, judgment for an illegal arrest by the Pohnpei state police will be entered solely against the Pohnpei state government. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

When no evidence of special or particular damages was introduced at trial, the court can rely on previous case law to assess damages for the wrongful arrest and detention. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

When, regardless of the number of grounds on which the plaintiff's arrest was illegal, it was still only one illegal arrest, the court will make one damage award of $500 for the illegal arrest. Alexander v. Pohnpei, 18 FSM R. 392, 401 (Pon. 2012).

– False Imprisonment

A redressible civil wrong is committed when a person is unlawfully detained against his will. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 295 (Pon. 1998).

The elements of false imprisonment are 1) detention or restraint of one against his or her will, and 2) the unlawfulness of such detention or restraint. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 295 (Pon. 1998).

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

Corrections officers' actions in holding the plaintiff in jail for more than 24 hours constituted tortious conduct, specifically the tort of false imprisonment. Since these actions were carried out within the scope of their employment rather than for their own personal purposes and the acts complained of were perpetrated in government buildings devoted to law enforcement purposes, under these circumstances, the governmental employer should be held responsible for what was done and thus, Pohnpei and its Department of Public Safety are liable for this tort. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491, 492-93 (Pon. 2005).

False imprisonment's elements are: 1) restraint or detention of one against his or her will and 2) unlawfulness of the restraint or detention. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 492 (Pon. 2005).

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

The FSM is liable to a ship captain for the wrongful retention of his passport, and hence the wrongful detention of the captain himself, for the period that the captain was required to remain in Pohnpei after he had requested the release of his passport. While damages in such a case can be difficult to quantify, an award of damages in the amount of $120 per day is appropriate. FSM v. Koshin 31, 16 FSM R. 350, 355

(Pon. 2009).

When no evidence was presented at trial that the Director of Public Safety was personally involved in the plaintiff's arrest and jailing or that he directed its manner or timing, the court cannot presume that because his wife was the complainant that he ordered or directed that the plaintiff be arrested and jailed because, in the absence of evidence, an inference just as likely is that a zealous subordinate, believing it would curry favor with his superior, decided that a quick arrest and some jail time were in order. The court therefore will not hold the Director, in his personal capacity, liable to the plaintiff. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

False imprisonment's elements are: 1) restraint or detention of one against his or her will and 2) unlawfulness of the restraint or detention. Kon v. Chuuk, 19 FSM R. 463, 466 (Chk. 2014).

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

The common law torts of false arrest and false imprisonment overlap a great deal and, in the usual case, a false arrest is followed by and becomes a part of a false imprisonment. However, there are those occasions where a lawfully executed initial arrest may be followed by an unlawful detention giving rise to liability for false imprisonment. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

When there was an initial lawful arrest followed by lawful confinement in the Chuuk state jail pursuant to Chuuk State Supreme Court orders, but once the prisoner's release date passed his lawful detention became unlawful detention without an arrest and it thus became false imprisonment without a false arrest. Kon v. Chuuk, 19 FSM R. 463, 467 (Chk. 2014).

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).

– Fraud

In general, the statute of limitations in an action for fraud begins to run from the time of discovery of the fraud, or when reasonable diligence should have led to discovery of the fraud. Mid-Pacific Constr. Co. v. Semes (I), 6 FSM R. 171, 177 (Pon. 1993).

The elements of fraud are 1) misrepresentations, 2) made to induce action by the plaintiffs, 3) with reliance by the plaintiffs upon the misrepresentations, 4) to their detriment. Pohnpei v. Kailis, 6 FSM R. 460, 462 (Pon. 1994).

Rule 9(b) requires that in allegations of fraud that the circumstances constituting the fraud shall be stated with particularity. The extent of the particularity is guided by Civil Rule 8(a) which requires a short and plain statement of the claim. Pohnpei v. Kailis, 6 FSM R. 460, 462 (Pon. 1994).

In order to make a prima facie case of intentional misrepresentation a plaintiff must produce some evidence of: 1) a misrepresentation by the defendant, 2) scienter or the defendant's knowledge that the statements were untrue, 3) intent to cause the plaintiff to rely on the misrepresentations, 4) causation or actual reliance by the plaintiff, 5) justifiable reliance by the plaintiff and 6) damages. The misrepresentation must be a false and material representation of a past or present fact. Eram v. Masaichy, 7 FSM R. 223, 225 (Chk. S. Ct. Tr. 1995).

A plaintiff is justified in relying on a defendant's representations of a vehicle's "good shape and

operation" where the defendant is a mechanic with superior knowledge of vehicles and this particular vehicle's condition. Eram v. Masaichy, 7 FSM R. 223, 225 (Chk. S. Ct. Tr. 1995).

When pleading fraud the pleader must state the time, place, and content of the false misrepresentation, the fact misrepresented and what was obtained as a consequence of the fraud. Pacific Agri-Products, Inc. v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 291, 293 (Pon. 1995).

The extent of the particularity required when pleading fraud is guided by FSM Civil Rule 8(a), which requires a "short and plain statement of the claim." Chen Ho Fu v. Salvador, 7 FSM R. 306, 309 (Pon. 1995).

The elements of fraud are 1) a misrepresentation, 2) made to induce action by plaintiff, 3) reliance by plaintiff on the misrepresentation, 4) to plaintiff's detriment. Chen Ho Fu v. Salvador, 7 FSM R. 306, 309 (Pon. 1995).

Because the elements of fraud are 1) misrepresentations, 2) made to induce action by the plaintiff, 3) with reliance by the plaintiff upon the misrepresentations, 4) to their detriment, a plaintiff must put on evidence that the misrepresentations were done to induce action by him, and that he relied on them to his detriment. Mid-Pacific Constr. Co. v. Semes, 7 FSM R. 522, 526 (Pon. 1996).

In Chuuk, the elements of fraud or intentional misrepresentation are: 1) a misrepresentation by the defendant, 2) scienter or the defendant's knowledge that the statements were untrue, 3) intent to cause the plaintiff to rely on the misrepresentations, 4) causation or actual reliance by the plaintiff, 5) justifiable reliance by the plaintiff and 6) damages. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 442 (Chk. 1998).

Actions or conduct, as well as words, can constitute the necessary misrepresentation for fraud. In some cases, the misrepresentations may be made by a failure to disclose information. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 443 (Chk. 1998).

In all averments of fraud the circumstances constituting fraud must be stated with particularity. Medabalmi v. Island Imports Co., 10 FSM R. 32, 35 (Chk. 2001).

Any proposed amended complaint seeking to add a civil fraud charge against a defendant must state the circumstances constituting fraud with particularity. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 333 (Pon. 2001).

When the plaintiff's complaint seems to plead fraud, and a defendant moves to dismiss for failure to state a claim but the argument is that this claim should be dismissed because it was not plead with particularity, the court may treat that as a request for a more definite statement, grant the request, and require the plaintiff to amend its complaint to state with greater clarity which facts it believes constitute fraud. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 92 (Pon. 2003).

In order to make a prima facie case of intentional misrepresentation, a plaintiff must produce some evidence of 1) a misrepresentation by the defendant, 2) scienter or the defendant's knowledge that the statements were untrue, 3) intent to cause the plaintiff to rely on the misrepresentations, 4) causation or actual reliance by the plaintiff, 5) justifiable reliance by the plaintiff and 6) damages. The misrepresentation must be a false and material representation of a past or present fact. Isaac v. Palik, 13 FSM R. 396, 401 (Kos. S. Ct. Tr. 2005).

In considering evidence relevant to misrepresentation, actions or conduct, as well as words, can constitute the necessary misrepresentation for fraud. In some cases, the misrepresentations may be made by a failure to disclose information. Isaac v. Palik, 13 FSM R. 396, 401 (Kos. S. Ct. Tr. 2005).

When the defendant, an elderly widow, unsophisticated in legal terminology and property transactions, in good faith believed that as owner of the two parcels, she had the authority to sell them to the plaintiff and

also believed, in good faith, that execution and filing of the "quitclaim deed" would be adequate documentation to transfer title to the plaintiff, the defendant did not have knowledge that her representations regarding her authority to sell the subject parcels were untrue or incorrect, the plaintiff has failed to sustain his burden of proof as to all elements required for the tort of intentional misrepresentation or fraud. Isaac v. Palik, 13 FSM R. 396, 401 (Kos. S. Ct. Tr. 2005).

The elements of the tort of fraud are: 1) misrepresentation by the defendant, 2) defendant's knowledge that the statements were untrue, 3) intent to cause the plaintiff to rely upon the misrepresentations, 4) actual reliance by the plaintiff, 5) justifiable reliance, and 6) damages. Benjamin v. Youngstrom, 13 FSM R. 542, 548 (Kos. S. Ct. Tr. 2005).

When the plaintiffs have not presented evidence of any misrepresentations made by the defendant to them, with intent to cause the plaintiffs to rely upon them, several elements of the tort of fraud have not been satisfied, the fraud causes of action must fail. Benjamin v. Youngstrom, 13 FSM R. 542, 549 (Kos. S. Ct. Tr. 2005).

Rule 9(b) requires that in allegations of fraud, the circumstances constituting the fraud be stated with particularity. The extent of particularity requires a short and plain statement of the claim. When pleading fraud, the pleader must state the time, place, and content of the false misrepresentation, the fact misrepresented, and what was obtained as a consequence of the fraud. Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

When the plaintiff has not satisfied the procedural requirements for pleading fraud because she has failed to state the time, place and content of the false misrepresentation made by the defendants, the fraud cause of action must fail due to the lack of pleading with particularity as required by Rule 9(b). Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

The elements of the tort of fraud are: 1) misrepresentation by the defendant, 2) defendant's knowledge that the statements were untrue, 3) intent to cause the plaintiff to rely upon the misrepresentations, 4) actual reliance by the plaintiff, 5) justifiable reliance, and 6) damages. Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

When the plaintiff failed to present any evidence that the defendant knew his statements were untrue and when the defendant's statements were presented to the Kosrae State Land Commission for their consideration of evidence and determination of ownership for the subject parcels, there was no actual or justifiable reliance by the plaintiff upon those statements and if there was any reliance, it was by the Land Commission in their consideration of the claims and evidence pertaining to ownership of the subject parcels. The plaintiff has thus failed to submit competent evidence in support of her fraud cause of action. Kinere v. Sigrah, 13 FSM R. 562, 568 (Kos. S. Ct. Tr. 2005).

The tort of "fraud-act of mistake" has not been recognized in Kosrae, but since this cause of action appears to sound in negligent misrepresentation, therefore an analysis of the action as the tort of negligence is appropriate. Kinere v. Sigrah, 13 FSM R. 562, 568 (Kos. S. Ct. Tr. 2005).

The elements of fraud or intentional misrepresentation in Chuuk are: 1) a misrepresentation by party, 2) scienter or the party's knowledge that the statements were untrue, 3) intent to cause another to rely on the misrepresentations, 4) causation or actual reliance by the other, 5) justifiable reliance by the other, and 6) damages. Dereas v. Eas, 14 FSM R. 446, 457 (Chk. S. Ct. Tr. 2006).

In all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity, although a person's malice, intent, knowledge, or other condition of mind may be averred generally. Dereas v. Eas, 14 FSM R. 446, 458 (Chk. S. Ct. Tr. 2006).

The elements of a cause of action for fraudulent misrepresentation are: 1) misrepresentations 2) made to induce action by the plaintiff 3) with reliance by the plaintiffs upon the misrepresentation 4) to their

detriment. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 442 (Pon. 2009).

An assurance that things were "going smooth – most of the time" is a type of generalized opinion that is not the sort of specific representation on which a hearer may reasonably rely. Reliance must be reasonable. Even when a fiduciary relationship existed between the parties, the parties to such a relationship may certainly communicate at times on a superficial, conventional level where the statements made do not give rise to reasonable reliance that could be the basis for a fraudulent misrepresentation cause of action. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 442-43 (Pon. 2009).

Because the elements of fraud are: 1) a knowing or deliberate misrepresentation by the defendant, 2) made to induce action by the plaintiff, 3) with justifiable reliance by the plaintiff upon the misrepresentations, 4) to the plaintiff's detriment, a plaintiff must show that the misrepresentations were done to induce action by him, and that he relied on them to his detriment. Arthur v. Pohnpei, 16 FSM R. 581, 597 (Pon. 2009).

Rule 9(b) requires that in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. The extent of the particularity is guided by Civil Rule 8(a) which requires a short and plain statement of the claim. When alleging fraud, a plaintiff must state with particularity the circumstances constituting fraud and must identify particular statements and actions and specify why they are fraudulent. Conclusory allegations do not satisfy Rule 9(b)'s requirements and subject the pleader to dismissal. Arthur v. Pohnpei, 16 FSM R. 581, 597 (Pon. 2009).

When, taking the guarantors' factual allegations as true – that the bank misrepresented to plaintiffs that the documents were in accord with the loan, caused plaintiffs to rely upon said representations and knew plaintiffs would so rely – it is difficult to see how the guarantors were harmed thereby because, if the bank had prepared all the documents correctly, the documents would have shown that a corporation was the borrower and that the guarantors were guarantors with the result that the guarantors would be liable on their guaranty, and since this result is no different than that in the judgment rendered in the former litigation, any alleged reliance on the bank's representation could not have been to the guarantors' detriment since they were in no worse position than if the loan documents were accurately prepared. Arthur v. Pohnpei, 16 FSM R. 581, 597-98 (Pon. 2009).

The elements of intentional misrepresentation are: 1) a misrepresentation by the defendant, 2) scienter or the defendant's knowledge that the statements were untrue, 3) intent to cause the plaintiff to rely on the misrepresentations, 4) causation or actual reliance by the plaintiff, 5) justifiable reliance by the plaintiff, and 6) damages; and since the elements of fraud are: 1) a knowing or deliberate misrepresentation by the defendant, 2) made to induce action by the plaintiff, 3) with justifiable reliance by the plaintiff upon the misrepresentations, 4) to the plaintiff's detriment, which means that a plaintiff must show that the misrepresentations were done to induce action by him, and that he relied on them to his detriment, a close reading indicates that the elements of fraud and of intentional misrepresentation are the same and they are the same cause of action. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 584-85 (Pon. 2011).

If the contractor had told the FSM that it done soil testing when it had not and if the FSM relied on that misrepresentation to its detriment, then that could have constituted an intentional material misrepresentation or fraud. But when the contractor informed the FSM that it had not done soil testing but had instead used the soil tests done elsewhere for its design preparations and the FSM then waived this requirement for these two projects; when the contractor included clauses in draft construction bid documents submitted to the FSM for its approval that the construction contractors conduct soil testing; and when, even if soil testing has been done in the design phase, soil testing is still necessary in the construction phase (and may have been particularly necessary here since the pre-design soil testing has been waived), there was thus no misrepresentation made to the FSM. The contractor is entitled to summary judgment on the FSM's fraud claim based on putting soil testing requirements in the bid documents. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 585 (Pon. 2011).

Since reliance upon a defendant's misrepresentation to one's detriment are essential elements of a

plaintiff's case for fraud or intentional misrepresentation, when the plaintiff has not identified any misrepresentation by the defendant upon which the plaintiff relied to its detriment, the plaintiff has failed to make a showing sufficient to establish the existence of elements essential to its case and summary judgment in the defendant's favor is appropriate. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 585 (Pon. 2011).

When the plaintiff does not identify any statement made during one incident that it detrimentally relied on or any damages caused by it and the other alleged incident is not properly before the court and was not pled with particularity, the defendant is entitled to summary judgment on the fraud or misrepresentation claim based on those allegations. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 585 (Pon. 2011).

A party cannot, by raising a new fraud claim in a summary judgment opposition, bypass the Rule 9(b) provision that the circumstances constituting fraud must be pled with particularity and effect a de facto amendment to its pleading. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 586 (Pon. 2011).

When a project was never put out to bid and its bid documents never used, the plaintiff cannot show elements essential to its claim – that it relied on those bid documents to its detriment. Accordingly, the defendant is entitled to summary judgment on the fraud or misrepresentation claim based on allegations that the bid documents prepared by the defendant contained terms that they should not have. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 586 (Pon. 2011).

When the plaintiff has not shown that it relied to its detriment on the exculpatory language in bid documents prepared by the defendant, elements essential to its fraud claim, the defendant will be granted summary judgment on the fraud or misrepresentation claim based on allegations that the defendant prepared bid documents with exculpatory language. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 586 (Pon. 2011).

Since the elements of fraud are: 1) a knowing or deliberate misrepresentation by the defendant, 2) made to induce action by the plaintiff, 3) with justifiable reliance by the plaintiff upon the misrepresentations, 4) to the plaintiff's detriment, a plaintiff must show that the misrepresentations were done to induce action by him, and that he relied on them to his detriment. Mori v. Hasiguchi, 17 FSM R. 630, 637 (Chk. 2011).

A party averring fraud or mistake must plead the circumstances constituting fraud or mistake with particularity. The extent of particularity is governed by Rule 8(a). Sorech v. FSM Dev. Bank, 18 FSM R. 151, 158 (Pon. 2012).

The elements of fraud are 1) a knowing or deliberate misrepresentation by the defendant 2) made to induce action by the plaintiff 3) with justifiable reliance by the plaintiff upon the misrepresentations 4) to the plaintiff's detriment. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 158 (Pon. 2012).

Collateral fraud, also known as extrinsic fraud, is a fraud that is collateral to the issues being considered in the case. Fraud is regarded as extrinsic when it prevents a party from having a trial or from presenting all of his case to the court, or when it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured, so that there is not a fair submission of the controversy. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 160 (Pon. 2012).

When, even assuming the plaintiffs' allegations are true, they do not state that a plaintiff relied upon the misrepresentations the plaintiffs allege to be the basis of the collateral fraud, much less that her reliance induced her to act to her detriment, and when they do not state that the defendant prevented her from having a trial or from presenting her case to the court, the court, viewing the facts and inferences in the light most favorable to the plaintiffs, cannot but conclude that the defendant is entitled to judgment as a matter of law. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 160 (Pon. 2012).

In general, the statute of limitations in an action for fraud begins to run from the time of discovery of the fraud or when reasonable diligence should have led to discovery of the fraud. FSM v. Muty, 19 FSM R.

453, 460-61 (Chk. 2014).

In order to make a prima facie case of intentional misrepresentation, a plaintiff must produce some evidence of: 1) a misrepresentation by the defendant; 2) scienter or the defendant's knowledge that the statements were untrue; 3) intent to cause the plaintiff to rely on the misrepresentations; 4) causation or actual reliance by the plaintiff; 5) justifiable reliance by the plaintiff; and 6) damages. The misrepresentation must be a false and material representation of a past or present fact. In some cases, the misrepresentations may be made by failure to disclose information. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 477 (Pon. 2014).

When the plaintiff proffered no evidence that would support a conclusion that the defendant knew the repairs suggested to the plaintiff were unnecessary or insufficient, the plaintiff failed to present evidence that would satisfy the scienter requirement for intentional misrepresentation and that claim must fail. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 477-78 (Pon. 2014).

Fraud in the inducement is a fraud occurring when a misrepresentation leads another to enter into a transaction with a false impression of the risks, duties, or obligations involved. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 291 (Pon. 2016).

The only type of fraud not subject to the one-year limitation for relief from judgment is fraud on the court. This is because Rule 60(b) does not limit the time in which the court may set aside a judgment for fraud on the court. Fraud on the court is a lawyer's or party's misconduct so serious that it undermines or is intended to undermine the integrity of the judicial proceeding. A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or counsel's fabrication of evidence, and must be supported by clear, unequivocal, and convincing evidence. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 291 (Pon. 2016).

The winning bidder at a court-ordered land sale auction and therefore the new owner of the property pursuant to a court order transferring title, did not commit fraud or misrepresentation when the bidder did not disclose, on the previous owners' behalf, an argument which had previously been rejected by the FSM Supreme Court. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

– Governmental Liability

Given the Memorandum of Understanding of December 31, 1979 between the President and the Trust Territory High Commissioner, its accompanying Functions Agreement No. 3, and the State-National Leader's Conference resolution on health and education (Sept. 28, 1979), and given the absence of assumption of functions agreements entered into by the states, whether the national government is immune from liability arising out of operation of the hospitals within the FSM is a question of fact. Manahane v. FSM, 1 FSM R. 161, 168-73 (Pon. 1982).

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).

The State of Pohnpei and its agencies may be held liable in tort subject to legislative restrictions that may be imposed and to certain other recognized common law exceptions. Panuelo v. Pohnpei (I), 2 FSM R. 150, 163 (Pon. 1986).

Courts lack authority to establish sovereign immunity to general tort claims through judicial action. Edwards v. Pohnpei, 3 FSM R. 350, 363 (Pon. 1988).

Any liability of the state for suffering or death caused by defective health care provided by the state must be based upon theories of negligence, not strict liability. Amor v. Pohnpei, 3 FSM R. 519, 534 (Pon. 1988).

Whether the relationship between U.S. National Health Service Corps doctors and the State of Pohnpei is such that the doctrine of *respondeat superior* may be applicable in an action for medical malpractice so that the state may be made to respond in damages for any negligence of the doctor has not been determined. Amor v. Pohnpei, 3 FSM R. 519, 536 (Pon. 1988).

A claim that the FSM liaison office did not fulfill its medical referral obligations as required by law falls within the embrace of 6 F.S.M.C. 702(2), which authorizes damage claims against the government for alleged improper administration of statutory laws or regulations. Leeruw v. FSM, 4 FSM R. 350, 363 (Yap 1990).

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).

When force is employed by a police officer in an apparent use of official authority, the governmental employer should be held responsible for what is done. Plais v. Panuelo, 5 FSM R. 179, 201 (Pon. 1991).

A state's ratification and acceptance of its employee's torts through its subsequent conduct is an independent ground for holding the state jointly and severally liable for those torts. Plais v. Panuelo, 5 FSM R. 179, 202-03 (Pon. 1991).

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

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

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

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

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

Since by statute the Trust Territory government would be liable to private litigants only under circumstances where a private person would be liable to the claimant for similar acts and because declaring title to the property could only be accomplished by an administering governmental authority there is no tort for loss of property for declaring title because private persons have no authority to declare title. Nahnken

of Nett v. United States (III), 6 FSM R. 508, 527 (Pon. 1994).

Any action of the Land Commission in excess of its statutory authority would be actionable only against the Commission itself, not the United States since it was not an agency of the U.S. government. Nahnken of Nett v. United States (III), 6 FSM R. 508, 528 (Pon. 1994).

The state, not the chief of police, is vicariously liable under the doctrine of respondeat superior for the torts of its police officers committed in the course and scope of their employment when force is employed in the use of even apparent official authority. Davis v. Kutta, 7 FSM R. 536, 545-46 (Chk. 1996).

The state is liable for injuries proximately caused by the employment of untrained or poorly trained police officers, and for the failure to adequately train them, and the chief of police is liable for any injury resulting from breach of duties connected with his office. Davis v. Kutta, 7 FSM R. 536, 546 (Chk. 1996).

Summary judgment will be granted on the issue of the state's liability for the its employee's act when there is no genuine issue of material fact that at the time of the accident the employee was negligent, that he was acting at the direction of his employer and within the scope of his employment, and that his conduct was not wanton or malicious. Glocke v. Pohnpei, 8 FSM R. 60, 61-62 (Pon. 1997).

Although a town government is not automatically liable for all the torts of its agents and employees, it is liable for those torts committed in the course and scope of employment under the doctrine of respondeat superior. When force is employed by police officers in use of even apparent official authority, the government employer should be held responsible for whatever results. Conrad v. Kolonia Town, 8 FSM R. 183, 192 (Pon. 1997).

The Pohnpei Governmental Liability Act, Pon. S.L. No. 2L-192-91, provides for no immunity for torts committed by governmental employees acting within the scope of their employment. Conrad v. Kolonia Town, 8 FSM R. 183, 194 (Pon. 1997).

Although a municipality would be liable for the injuries proximately caused by employment of poorly trained police officers, and for failure to adequately train them, there is no liability where the plaintiff has failed to prove by any competent evidence that the level of police training provided by the municipality was deficient, or that that level of training violated the proper standard of care in the community, or even what level of training would be appropriate giving due consideration to the social and geographical configuration of the Federated States of Micronesia. Conrad v. Kolonia Town, 8 FSM R. 183, 194 (Pon. 1997).

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

A municipality is liable for battery by its police officers when it has ratified their actions by failing to charge them and the lack of any internal discipline whatsoever. Conrad v. Kolonia Town, 8 FSM R. 183, 195 (Pon. 1997).

A complaint's allegations that officials' knowing interference prevented two ships from refloating their ship after it had grounded on a reef, that the ship's crew were arrested by the officials without cause, and that this actively and unreasonably prevented rescue the vessel's by other boats, and that that interference was the direct cause of the boat's damage, set forth a claim in negligence and are sufficient to survive a motion to dismiss. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294 (Pon. 1998).

The state, as employer of a police trainee, is responsible for the battery committed by the trainee while acting within the scope of that employment. Atesom v. Kukkun, 10 FSM R. 19, 22 (Chk. 2001).

When force is employed by a police officer in an apparent use of official authority, the governmental employer should be held responsible for what is done. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

As a matter of public policy, governments are generally not liable for punitive damages. Herman v. Municipality of Patta, 12 FSM R. 130, 138 (Chk. 2003).

Under the Chuuk State Sovereign Immunity Act of 2000, punitive (or exemplary) damages not greater than the compensatory damages and of not more than $20,000 may be awarded against the state or a municipality only if the injury was as a result of a government employee or agent who, acting under color of authority, violated the individual rights secured by the Chuuk Constitution. But the Sovereign Immunity Act of 2000 is not retrospective – it does not apply to claims that arose before its enactment – and prior law bars any punitive damage awards against a municipal government. Herman v. Municipality of Patta, 12 FSM R. 130, 138 (Chk. 2003).

While punitive damages are not permitted against a municipality, they can be awarded and are justified against individuals for their wanton, malicious, and deliberately violent treatment of a victim in detention. Herman v. Municipality of Patta, 12 FSM R. 130, 139 (Chk. 2003).

Even where a litigant may have concerns over its ability to realize on a judgment against the state defendant, that concern alone does not serve to enlarge the scope of a statute to create liability for the national government, against which a judgment may be more collectible. Such issues are for the legislature. AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 2003).

While § 219 of the Foreign Investment Laws admits of a cause of action for prospective, injunctive relief against the FSM, it does not permit an action for damages. Chapter 3 provides a remedy for damages, but notwithstanding the fact that the remedy is against Pohnpei, and not the FSM, it is nevertheless a remedy. If the plaintiff prevails, the conduct alleged will not go unsanctioned. AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 2003).

Since tort law generally is an area governed by state law, exemplary or punitive damages are not awardable against the State of Pohnpei under Pohnpei state law and a claim for exemplary damages against it will be dismissed. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 154, 155 (Pon. 2005).

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

Corrections officers' actions in holding the plaintiff in jail for more than 24 hours constituted tortious conduct, specifically the tort of false imprisonment. Since these actions were carried out within the scope of their employment rather than for their own personal purposes and the acts complained of were perpetrated in government buildings devoted to law enforcement purposes, under these circumstances, the governmental employer should be held responsible for what was done and thus, Pohnpei and its Department of Public Safety are liable for this tort. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM R. 483, 491, 492-93 (Pon. 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).

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).

Prison officials have a duty to protect the inmates' constitutional rights and the well-being. The

protection of the inmates' well-being requires that civilized treatment be provided to inmates, including reasonably sanitary conditions and medical care. Phillip v. Kosrae, 14 FSM R. 109, 113 (Kos. S. Ct. Tr. 2006).

Confining a prisoner in dangerously unsanitary conditions, which represent a broader government-wide policy of deliberate indifference to the prisoners' dignity and well-being, is a failure to provide civilized treatment, and renders the state liable to the injured inmate. Likewise, there is state liability by the arbitrary and purposeless denial of medical care to inmates, where such denial is based upon deliberate indifference to an inmate's medical needs. The standard of "deliberate indifference" is adopted to determine whether there is liability for the plaintiff's injuries which resulted from his fellow inmate's actions and the defendants' alleged failure to assure the plaintiff's well-being through civilized treatment. Phillip v. Kosrae, 14 FSM R. 109, 113 (Kos. S. Ct. Tr. 2006).

Liability for failure to protect a prisoner against harm from other inmates is measured against the standard of deliberate indifference. Deliberate indifference occurs when a prison official causes an inmate unnecessary and wanton infliction of pain by deliberately disregarding a serious threat to the prisoner's safety after actually becoming aware of that threat. Mere negligence or inadvertence is not sufficient to hold prison officials liable. Government liability for failure to protect an inmate from harm caused by other inmates may be established by showing that the prison officials knew that there was an imminent danger and consciously refused to do anything about the danger. Phillip v. Kosrae, 14 FSM R. 109, 114 (Kos. S. Ct. Tr. 2006).

When there was no evidence that the government defendants knew of the risk or threat, or had reason to know of the risk or threat that a certain inmate would throw hot water at the plaintiff, the defendants were not aware and could not have been reasonably aware of a threat of hot water being thrown at the plaintiff and thus did not deliberately disregard a threat towards the plaintiff and did not consciously refuse to do anything about the danger that they did not know about. Accordingly, the defendants' conduct did not meet the standard of deliberate indifference towards the plaintiff, and therefore did not breach the duty of care towards the plaintiff. Consequently the defendants are not liable to the plaintiff for his injuries and damages sustained from the hot water thrown at him by another inmate. Phillip v. Kosrae, 14 FSM R. 109, 114 (Kos. S. Ct. Tr. 2006).

Equitable estoppel is (and should be) applied to governments in the FSM when this is necessary to prevent manifest injustice and when the interests of the public will not be significantly prejudiced. But a party asserting equitable estoppel against the government must prove more than is required when it is asserted against a private entity. The government may not be estopped on the same terms as any other litigant. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 192 (Pon. 2006).

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

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

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

The doctrine of *respondeat superior* may be applied to impose liability upon a state for the negligent torts of its employees. The theory may also be applied to intentional torts when committed by a police officer or other official in an apparent use of official authority. In other words, a state may only be held liable for torts committed in the scope of employment. Annes v. Primo, 14 FSM R. 196, 204 (Pon. 2006).

Generally, the question of whether a police officer acted within the scope of employment is a question of fact, rather than a legal question, although, if the facts are undisputed and can support only one conclusion, the inquiry becomes legal. Thus to survive a defendant's motion to dismiss, it is enough that the plaintiff has alleged assault and battery by a government employee cloaked with the authority of the state. Annes v. Primo, 14 FSM R. 196, 204 & n.3 (Pon. 2006).

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

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

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

The State of Pohnpei cannot be held liable for punitive damages. Annes v. Primo, 14 FSM R. 196, 206 (Pon. 2006).

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

A motion to strike a punitive damages claim against the FSM on the ground that, under FSM law, punitive damages are not recoverable against the national government on any theory, although styled as a motion to strike under Rule 12(f), may more accurately be characterized as one (under Rule 12(b)(6)) to dismiss for failure to state a claim upon which relief can be granted. FSM v. Kana Maru No. 1, 14 FSM R. 368, 374 (Chk. 2006).

The elements of a negligence claim and a claim of violation of Constitutional rights against Kosrae and its employees are set out in Kosrae Code § 6.2601. Subsection (c) permits an action for loss of property caused by the negligent or wrongful act or omission by a government employee acting within the scope of their employment and under circumstances where a private person would be liable. Subsection (d) permits an action for injury resulting from the conduct of a government employee acting under color of authority and in violation of a right specified under Article II of the Kosrae Constitution. The right to due process is one of the specified rights. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

The statute of limitations for claiming a violation of due process by the government is covered by the six-year period found in Kosrae Code section 6.2506. Thus, claims against the Land Commission for violation of due process and for failing to apply statutes are governed by the six year statute of limitations. Since the statute of limitations begins to run when a cause of action accrues, when, if there was a violation of due process, the latest time it accrued was when the certificate of title was issued in 1997, and since more than six years passed before the plaintiff asserted his claim, any claim based on a violation of his right to due process fails because it was not filed within the six-year period and will be dismissed. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

A claim for negligence against the Land Commission and its government employee has a six-year statute of limitations. When, if there was any negligence, the cause of action accrued at the time the

certificate of title was issued in 1997 and more than six years have passed, the plaintiff's claim of negligence against the Land Commission and its employee fails. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

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

Where the plaintiffs were set upon and beaten by police officers and one plaintiff was arrested and no reason was provided to that plaintiff when the officers detained and arrested him, nor was any reason subsequently given although 12 F.S.M.C. 214(1) provides that any person making an arrest must, at or before the time of arrest, make every reasonable effort to advise the person arrested as to the cause and authority of the arrest, the plaintiff's detention for six hours was without any justification, precisely the sort of conduct that 11 F.S.M.C. 701 was meant to protect against. The assaulting police officers were acting under color of law and as agents of the defendant Chuuk Department of Public Safety, which is an agency of the defendant Chuuk state government. Thus these defendants are liable for the violation of the plaintiffs' civil rights under 11 F.S.M.C. 701. Hauk v. Emilio, 15 FSM R. 476, 479 (Chk. 2008).

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

A claimed inability to pay is not a defense to liability. Weriey v. Chuuk, 16 FSM R. 329, 332 (Chk. 2009).

Since the FSM civil rights statute is based on the U.S. model, the FSM Supreme Court should consider U.S. jurisprudence under 42 U.S.C. § 1983 and § 1988 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Sandy v. Mori, 17 FSM R. 92, 96 n.3 (Chk. 2010).

When a tort claim – trespass – that the state occupied and continues to occupy the plaintiff's property to the exclusion of all others rises to the level of a constitutional claim and a civil rights violation, it is a taking of the plaintiff's property without just compensation. Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011).

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).

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

A suit for damages against someone in his official capacity is a claim against the entity or agency that

employs that person. Hence, a suit against the Director of Public Safety in his official capacity is a claim against the Pohnpei Department of Public Safety. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

When no evidence was presented that supports the liability of the Director of Public Safety in his official capacity, judgment for an illegal arrest by the Pohnpei state police will be entered solely against the Pohnpei state government. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

When a person was never in police custody, the "deliberate indifference" duty of care standard for the liability of law enforcement officials towards prisoners does not apply. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

The police are generally not liable to a plaintiff who injures himself fleeing the police. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

Since supervisory liability requires proof of the underlying liability of the officers being supervised, when the officers on the scene cannot be held liable because they did not breach any duty owed to the decedent and because they were not the proximate cause of his death, the Director of Public Safety (and Chuuk as respondeat superior) cannot be held liable either. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

Pohnpei cannot be held liable for money damages for the actions of non-state actors. Berman v. Pohnpei, 19 FSM R. 111, 117 (App. 2013).

Punitive damages cannot be imposed on the Board of Trustees of the Pohnpei State Public Lands Trust because the Pohnpei state government is statutorily immune from punitive damages and the Board is a Pohnpei government agency. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

A Port Authority and a pilot are immune from any negligence claim for the pilot's acts or omissions in berthing a vessel, but not from a gross negligence claim. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

When, under prior precedent and the law of the case doctrine, the state government is immune from an interest award as a part of a judgment against the state unless the state has expressly consented to the imposition of interest and when the state government has not expressly consented, by statute or by contract, to the imposition of interest for claims or for a conversion claim, no interest will be permitted. Eot Municipality v. Elimo, 20 FSM R. 482, 489 (Chk. 2016).

– Immunity

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).

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 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).

A judge is generally granted absolute civil immunity from civil liability for acts done in the exercise of a judicial function. Jano v. King, 5 FSM R. 388, 391 (Pon. 1992).

A judge loses the cloak of judicial immunity in only two instances. A judge is not immune for actions not taken in the judge's judicial capacity, and a judge is not immune for actions, though judicial in nature, taken in the absence of all jurisdiction. Jano v. King, 5 FSM R. 388, 391 (Pon. 1992).

An act performed by a judge does not have to be an adjudicatory act in order for it to be a judicial act. Judges and justices of the courts of the Federated States of Micronesia are protected by the cloak of judicial absolute immunity for judicial functions performed unless they are in complete absence of jurisdiction. Jano v. King, 5 FSM R. 388, 392-93 (Pon. 1992).

Prosecutors enjoy absolute immunity from prosecution for their actions which are connected to their role in judicial proceedings, which include participation in hearings related to obtaining search warrants. Prosecutors do not, however, enjoy absolute immunity from prosecution for their role as an administrative or investigative officers, which includes participation in and giving advice regarding the execution of a search warrant. Jano v. King, 5 FSM R. 388, 396 (Pon. 1992).

Judges and justices of the FSM are protected by the cloak of absolute immunity for judicial functions performed, unless the functions were performed in the complete absence of jurisdiction. Issuance of a search warrant is within the jurisdiction of FSM courts. Therefore it is a judicial act to which immunity attaches. Liwi v. Finn, 5 FSM R. 398, 400-01 (Pon. 1992).

Prosecutors are absolutely immune from prosecution for their actions which are connected to their role in judicial proceedings, but do not enjoy absolute immunity from prosecution for their role as an administrative or investigative officer. Therefore prosecutors are absolutely immune for involvement in judicial proceedings to obtain a search warrant, but not for participation in and giving police advice regarding the execution of a search warrant. Liwi v. Finn, 5 FSM R. 398, 401 (Pon. 1992).

A chief justice's actions in reviewing an attorney's application for admission is a judicial function that is entitled to absolute immunity from suit for damages. Berman v. Santos, 7 FSM R. 231, 240 (Pon. 1995).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. A judge loses the cloak of judicial immunity in only two events: First, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

Absolute immunity affords complete protection from a damage award to a public official as long as the challenged act falls within the scope of the activity for which the immunity is conferred. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

The factors determining whether an act by a judge is a judicial one relate to the nature of act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether

they dealt with the judge in his judicial capacity. The second question in deciding whether immunity exists is whether the judge acted in complete absence of all jurisdiction. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

Judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly. A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors. Bank of Guam v. O'Sonis, 9 FSM R. 106, 112 (Chk. 1999).

Judicial immunity protects from liability for punitive damages. Bank of Guam v. O'Sonis, 9 FSM R. 106, 113 (Chk. 1999).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. Few doctrines were more solidly established at common law than the immunity of judges for damages for acts committed within their judicial jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

Judges lose their judicial immunity only for non-judicial actions (actions not taken in the judge's judicial capacity), or for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

Two factors, both relating to the nature of act itself, determine whether an act by a judge is a judicial one: whether it is a function normally performed by a judge, and whether the parties dealt with the judge in his judicial capacity. The second question in deciding whether immunity exists is whether the judge acted in complete absence of all jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 121 (Pon. 2001).

When a Pohnpei statute does not show any legislative intent to abolish the well-established principle of absolute judicial immunity for the judicial act of timing the issuance of court decisions and to allow a private suit for damages in such cases, a court can only conclude that the Pohnpei Legislature did not intend to abolish absolute judicial immunity in this instance and did not intend to create a right for damage suits against judges if their decisions were not timely. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 122 (Pon. 2001).

Under FSM caselaw, prosecutors enjoy absolute immunity from prosecution for their actions which are connected to their role in judicial proceedings, including participation in hearings related to obtaining search warrants. Prosecutors do not, however, enjoy absolute immunity for their role as administrative or investigative officers. Prosecutors are absolutely immune for involvement in judicial proceedings to obtain a search warrant, but not for participation in and giving police advice regarding the execution of a search warrant. Sipos v. Crabtree, 13 FSM R. 355, 366 (Pon. 2005).

A request for, appearance at, and the presentation of evidence related to obtaining a search warrant is considered part of a prosecutor's judicial function, for which the prosecutor enjoys absolute immunity. This is true even though no criminal information has been filed yet since search warrants are usually, but not always, sought before criminal charges are filed. The defendants therefore enjoy absolute immunity for all alleged wrongful acts related to obtaining search warrants or other pretrial orders of a similar nature. Sipos v. Crabtree, 13 FSM R. 355, 367 (Pon. 2005).

A prosecutor's actions in seeking (and obtaining) release conditions during an initial appearance in a criminal case, was a judicial function for which prosecutors enjoy absolute prosecutorial immunity. Sipos v. Crabtree, 13 FSM R. 355, 367 (Pon. 2005).

In order to determine whether a judge is liable for damages for his actions, the court asks whether the judge was performing judicial acts and whether his court had jurisdiction. When the answer to both

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

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).

The President has absolute immunity from damages liability for his official acts. Furthermore, the court does not have the jurisdiction to enjoin the President in the performance of his official duties such as enforcing a Congressionally enacted statute. Since suits contesting the actions of the executive branch should be brought against the President's subordinates, not against the President himself, a motion to dismiss the President will therefore be granted. Marsolo v. Esa, 18 FSM R. 59, 65 (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).

A qualified official immunity defense which requires a facially-valid arrest warrant, does not apply when there was no arrest warrant but only an eviction order. Jacob v. Johnny, 18 FSM R. 226, 231 (Pon. 2012).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. A judge loses the cloak of judicial immunity in only two events: First, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

Few doctrines were more solidly established at common law than the immunity of judges for damages for acts committed within their judicial jurisdiction. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

When analyzing whether a judge was performing judicial acts, the factors determining whether an act by a judge is a "judicial" one relate to the nature of act itself (whether it is a function normally performed by a judge) and to the expectations of the parties (whether they dealt with the judge in his judicial capacity). Issuing eviction orders, denying motions, and the like are all acts or functions normally performed by a judge. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

When the Pohnpei Supreme Court is a court of general jurisdiction and when it is undisputed that the Pohnpei Supreme Court has jurisdiction over cases that the plaintiff filed there since she filed those cases there for the very reason that that court had jurisdiction, the plaintiff cannot allege that a Pohnpei justice acted in complete absence of jurisdiction when he issued orders in her cases even though she clearly alleges that he acted in excess of his jurisdiction. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon. 2012).

Judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction and are alleged to have been done maliciously or corruptly, and a judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors. Jacob v. Johnny, 18 FSM R. 226, 232 (Pon.

2012).

Since a judge is absolutely immune from liability for his judicial acts even if those acts were done maliciously or corruptly or in excess of his jurisdiction or if his exercise of authority was flawed by the commission of grave procedural errors, he is thus immune from a plaintiff's compensatory damages claims. Jacob v. Johnny, 18 FSM R. 226, 233 (Pon. 2012).

Judicial immunity does not prevent a judge from being subject to prospective injunctive relief when the judge has acted, not in complete absence of jurisdiction, but in excess of jurisdiction. Judicial immunity does not apply against the imposition of prospective injunctive relief because no common law precedent ever granted such immunity. Jacob v. Johnny, 18 FSM R. 226, 233 (Pon. 2012).

When a Pohnpei Supreme Court judge is immune from suit and thus from the imposition of compensatory damages, the compensatory damages claims against him must be dismissed. But when the plaintiff's factual allegations against the judge, viewed in the light most favorable to the plaintiff, are claims that the judge acted in excess of his jurisdiction and violated the plaintiff's civil rights in doing so, the court will not dismiss her claims against the judge for injunctive relief and for 11 F.S.M.C. 701(3) reasonable attorney's fees and costs incurred in obtaining that relief, since she alleges sufficient facts which, if proven that the judge acted in excess of his jurisdiction, state a claim for which the FSM Supreme Court can grant her some relief. Jacob v. Johnny, 18 FSM R. 226, 233-34 (Pon. 2012).

Police officers have a qualified official immunity from civil liability when they arrest someone for whom they have a facially-valid arrest warrant. Helgenberger v. U Mun. Court, 18 FSM R. 274, 282 (Pon. 2012).

Judges are generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. Few common law doctrines were more solidly established than a judge's immunity for damages for acts committed within his judicial jurisdiction. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

A judge loses the cloak of judicial immunity in only two events: first, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity; and second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. The first question is whether the acts were judicial. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

The factors determining whether an act by a judge is a "judicial" one and therefore one for which the judge is immune from civil liability relate to the nature of act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity. The issuance of a bench warrant; the contempt finding; and, under U's constitutional setup, the impeachment trial, the conviction, the denial of the substitution of counsel, and the defendant's removal from office were all judicial acts, taken in a judicial capacity. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

The second question in deciding whether judicial immunity exists is whether the judge acted in complete absence of all jurisdiction because judges cannot be held civilly liable for their judicial acts, even when those acts were in excess of their jurisdiction, or are alleged to have been done maliciously or corruptly, and judges are also absolutely immune from civil liability when they committed grave procedural errors in their exercise of authority. Helgenberger v. U Mun. Court, 18 FSM R. 274, 283 (Pon. 2012).

"Facially valid" does not mean "lawful." An erroneous court order or a court order that is infirm or unlawful can be a facially valid order. Jacob v. Johnny, 20 FSM R. 612, 617 (Pon. 2016).

An official charged with the duty of executing a facially valid court order enjoys absolute immunity from liability for damages in a suit challenging conduct prescribed by that order. Because controversies sufficiently intense to erupt in litigation are not easily capped by judicial decree, the common law provided absolute immunity from subsequent damages liability for all persons – governmental or otherwise – who were integral parts of the judicial process. Jacob v. Johnny, 20 FSM R. 612, 617-18 (Pon. 2016).

Absolute immunity for officials assigned to carry out a judge's orders is necessary to insure that such officials can perform without the need to secure permanent legal counsel. Non-judicial officers whose official duties have an integral relationship with the judicial process are entitled to absolute immunity for their quasi-judicial conduct since it would be unfair to spare the judges who give orders while punishing the officers who obey them. Jacob v. Johnny, 20 FSM R. 612, 618 (Pon. 2016).

Tension between trial judges and those officials responsible for enforcing their orders would inevitably result were there not absolute immunity for both. If law enforcement officials assigned to carry out a judge's orders were not absolutely immune, they would then, for their own protection, need to scrutinize every court order and investigate its background before deciding whether to try to enforce it. The judicial system cannot function that way. Jacob v. Johnny, 20 FSM R. 612, 618 (Pon. 2016).

Enforcement officials must not be required to act as pseudo-appellate courts scrutinizing judges' orders. The public interest demands strict adherence to judicial decrees, and absolute immunity will ensure the public's trust and confidence in courts' ability to completely, effectively and finally adjudicate the controversies before them. Jacob v. Johnny, 20 FSM R. 612, 618 (Pon. 2016).

An official who is absolutely immune for a person's arrest and for her confinement to jail because those were acts prescribed by a judge's facially valid order, only has qualified immunity from civil liability arising from the conditions under which that person was held in jail. This is because absolute immunity extends only to acts prescribed by the judge's order, and the judge's order did not prescribe the person's treatment in jail. It only prescribed her arrest and confinement. Jacob v. Johnny, 20 FSM R. 612, 618 (Pon. 2016).

– Infliction of Emotional Distress

A defendant must exercise due care not to cause others emotional distress that leads in turn to a foreseeable physical result. Eram v. Masaichy, 7 FSM R. 223, 226-27 (Chk. S. Ct. Tr. 1995).

Where there was no physical manifestation of the emotional distress that was foreseeable there can be no claim for negligent infliction of emotional distress. Eram v. Masaichy, 7 FSM R. 223, 227 (Chk. S. Ct. Tr. 1995).

For a negligent infliction of emotional distress claim to be compensable, a physical manifestation is required. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

One of the elements of an intentional infliction of emotional distress claim is that the plaintiff must have suffered some physical manifestation of the alleged infliction of emotional distress. When the plaintiff neither alleged, nor proved at trial, any physical ailments or manifestations resulting from his termination from employment his claim must fail for lack of proof. Hauk v. Board of Dirs., 11 FSM R. 236, 241 (Chk. S. Ct. Tr. 2002).

Since a claim for negligent infliction of emotional distress cannot be sustained without evidence of actual physical illness resulting from the mental and emotional distress, a plaintiff who failed to provide evidence of actual physical illness resulting from the defendants' actions cannot obtain any monetary recovery on this claim. Tomy v. Walter, 12 FSM R. 266, 272 (Chk. S. Ct. Tr. 2003).

For an emotional distress award there must be a foreseeable physical manifestation of the distress. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

When there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of emotional distress by the plaintiff, an award of damages for pain and suffering must be set aside. Narruhn v. Aisek, 13 FSM R. 97, 99 (Chk. S. Ct. App. 2004).

A defendant must exercise due care not to cause others emotional distress that leads in turn to a

foreseeable physical result, but when there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of emotional distress by the plaintiff, no award of damages for can be made for emotional distress. Hauk v. Lokopwe, 14 FSM R. 61, 65 (Chk. 2006).

When the plaintiff presented no evidence that any of the defendants' acts that he complained of caused him any physical injury; when he did not present any evidence that any mental anguish or emotional distress he might have had resulted in any physical manifestation and, in fact, presented no evidence at all of any mental anguish or emotional distress on his part; and when he put on no evidence that anyone intended to inflict emotional distress upon him, the court had to dismiss his mental anguish and intentional infliction of emotional distress claims. Hauk v. Lokopwe, 14 FSM R. 61, 66 (Chk. 2006).

When there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of emotional distress by the plaintiff, there can be no award of damages for mental distress or mental anguish. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 418-19 (Yap 2006).

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

Common issues of law and fact do not predominate for an infliction of emotional distress claim because this cause of action involves personal injury. A claim for infliction of emotional distress cannot be sustained without evidence of physical injury to the plaintiff or of a foreseeable physical manifestation or physical illness resulting from the plaintiffs' mental and emotional distress. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

When the complaint does not allege that the class as a whole suffered a common physical injury, any compensable emotional distress must be each individual's physical manifestation or illness. Since the basis of each person's claim, and of the defendants' liability for that claim, is different for each class member and evidence of this necessary element for liability on an emotional distress claim would thus be highly individualized and unique to each class member and could only be proven on an individual basis, class certification of infliction of emotional distress claims would not be appropriate. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

When each person's individual infliction of emotional distress claim would require a separate mini-trial, no class can be certified for this cause of action and any claims for the personal injury of infliction of emotional distress will have to proceed on an individual basis. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160 (Yap 2007).

If the court is persuaded that no definable class is present, it may have the class allegations stricken and allow the action to proceed on an individual basis. Thus when no definable class is present for the infliction of emotional distress cause of action, the court will order that the complaint be amended to eliminate allegations that the named plaintiffs represent absent persons for any infliction of emotional distress claims and the named plaintiffs may proceed on their individual infliction of emotional distress claims, if they so choose. People of Weloy ex rel. Pong v. M/V CEC Ace, 15 FSM R. 151, 160-61 (Yap 2007).

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, in the original complaint, the plaintiffs sought damages for pain and suffering, they inartfully pled an emotional distress claim, and a clarification of this claim in an amended complaint will not prejudice the defendants. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

When there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of emotional distress by the plaintiff, no award of damages can be made for emotional distress. Berman v. Pohnpei, 16 FSM R. 567, 577 (Pon. 2009).

Physical injury to the plaintiff or the plaintiff's physical manifestation of emotional distress is a necessary element that must be proven for an award for infliction of emotional distress. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

When a statute of limitations provides a two-year limitation period for actions for injury to one caused by the wrongful act or neglect of another, the applicable statute of limitations for a negligent infliction of emotional distress claim is two years negligent infliction of emotional distress requires a physical injury or manifestation. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

Recovery for intentional infliction of emotional distress requires conduct that is extreme and outrageous. The tort of intentional infliction of emotional distress is sharply limited and only applies in the most egregious circumstances. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

When a two-year limitations period applies to injuries caused by the wrongful act or neglect of another, it applies to intentional infliction of emotional distress because intentional infliction of emotional distress is caused by a wrongful act – conduct that is extreme and outrageous. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

An emotional distress claim, whether inflicted intentionally or negligently, is barred by the two-year statute of limitations. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

When, weighing the evidence before the court, the defendant's alleged wrongful act – unblocking a culvert – was not extreme and outrageous conduct, the plaintiffs have not proven an element of the intentional infliction of emotional distress tort. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

A defendant must exercise due care not to cause others emotional distress that leads in turn to a foreseeable physical result. Poll v. Victor, 18 FSM R. 235, 246 (Pon. 2012).

One element of an intentional infliction of emotional distress claim is that the plaintiff must have suffered some physical manifestation of the alleged infliction of emotional distress, and when the plaintiff did not prove at trial any physical ailments or manifestations resulting from his employment termination, his claim must fail for lack of proof and no award of damages can be made for emotional distress. Poll v. Victor, 18 FSM R. 235, 246 (Pon. 2012).

Since a claim for negligent infliction of emotional distress cannot be sustained without evidence of actual physical illness resulting from the mental and emotional distress, a plaintiff who fails to provide evidence of actual physical illness resulting from the defendants' actions cannot obtain any monetary recovery on the claim. Peniknos v. Nakasone, 18 FSM R. 470, 490 (Pon. 2012).

When no specific evidence was brought forth to indicate that the plaintiff has suffered any physical manifestation of emotional distress and when the plaintiff presented no evidence that any of the defendant's acts she complained of caused her any physical injury; or that any mental anguish or emotional distress she might have had resulted in any physical manifestation; or that anyone intended or negligently inflicted emotional distress upon her, her infliction of emotional distress causes of action cannot withstand a summary judgment challenge. Peniknos v. Nakasone, 18 FSM R. 470, 490 (Pon. 2012).

When faced with a defendant's summary judgment motion, the court cannot give any heed to the nonmovant plaintiff's assertion that he intends to call witnesses at trial to support his emotional distress claim or to his assertion that a favorable judgment on his wrongful termination claims will amply support this claim because the plaintiff must show that he has admissible evidence to support his claim, and the time for

him to do that is now, or never. George v. Palsis, 19 FSM R. 558, 567 (Kos. 2014).

One element of an intentional infliction of emotional distress claim is that the plaintiff must have suffered some physical manifestation of the alleged infliction of emotional distress, and when the plaintiff has not shown any physical ailments or manifestations resulting from his employment termination, his claim must fail for lack of proof and the defendants are entitled to summary judgment on this cause of action. George v. Palsis, 19 FSM R. 558, 567 (Kos. 2014).

Physical injury to the plaintiff or the plaintiff's physical manifestation of emotional distress is a necessary element that must be proven for an award for infliction of emotional distress. Palasko v. Pohnpei, 20 FSM R. 90, 98 (Pon. 2015).

When the plaintiff did not plead any physical manifestation of emotional distress but did plead a physical injury – a battery – in connection with his arrest, whether that physical injury (battery) occurred (and also whether any emotional distress was inflicted) are a genuine issues of material fact precluding summary judgment on this claim. Palasko v. Pohnpei, 20 FSM R. 90, 98 (Pon. 2015).

The tort of infliction of emotional distress is sharply limited, only applying in the most egregious circumstances, and recovery for intentional infliction of emotional distress requires conduct that is extreme and outrageous. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

A plaintiff's allegation of a defendant's failure to respond to the plaintiff's salutations; of projecting "bad vibes;" of purportedly not assigning an adequate work load; of a disproportionate amount of scrutiny supposedly placed on her tardiness, in juxtaposition to fellow employees and allegedly noting the employee's requests for leave, hardly rise to the level of "extreme and outrageous" conduct on the defendants' part, and as a result, falls short of a claim on which relief might be granted. Solomon v. FSM, 20 FSM R. 396, 403 (Pon. 2016).

– Interference with a Contractual Relationship

Relief may be granted under the law of Pohnpei for a claim of tortious interference with a contractual relationship, when an individual's economic advantages obtained through dealings with others are knowingly jeopardized out of petty or malicious motives or by the improper or unjustified conduct of a third party. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 14 (Pon. 1989).

Where a defendant's allegedly offensive actions were taken in the course of a good faith effort to protect a legally cognizable interest, such actions do not constitute tortious interference with a contractual relationship under the law of Pohnpei. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM R. 3, 15 (Pon. 1989).

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).

Tort claims for tortious interference with contractual relationships, defamation, and interference with prospective business opportunities are causes of action that arise under state law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 203 (Pon. 2001).

Relief may be granted under Pohnpei law for a claim of tortious interference with a contractual relationship when an individual's economic advantages obtained through dealings with others are knowingly jeopardized out of petty or malicious motives, or by a third party's improper or unjustified conduct. In order to succeed on the merits of a tortious interference claim, a plaintiff will also have to demonstrate that her business was lawful, and that defendants' conduct was improper or unjustified. Yang v. Western Sales Trading Co., 11 FSM R. 607, 617 (Pon. 2003).

When the plaintiff alleges facts regarding a defendant having familial ties that gave him either inside information or favorable treatment in the proceeding below that dissolved the plaintiff's public land assignment, under the relevant standard of review, the tortious interference with contract claim cannot be dismissed at this point. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 92 (Pon. 2003).

Relief may be granted for a claim of tortious interference with a contractual relationship when an individual's economic advantages obtained through dealings with others are knowingly jeopardized out of petty or malicious motives, or by a third party's improper or unjustified conduct, but when a defendant's allegedly offensive actions were taken in the course of a good faith effort to protect a legally cognizable interest, such actions do not constitute tortious interference with a contractual relationship. Dereas v. Eas, 15 FSM R. 446, 449 (Chk. S. Ct. Tr. 2007).

When a defendant believed that he still owned ¾ or ¼ of a lot, he believed that he had a legally cognizable interest in some portion of that lot and thus his actions in asking the state not to pay the rent to the plaintiff and his actions in suing the state instead of the plaintiff, although wrong-headed or the result of poor legal advice or a misconception of the law, were taken in the good faith belief that he had a legally cognizable interest in the land. Therefore the plaintiff's motion for summary judgment on his tortious interference with a contractual relationship claim will be denied as a matter of law. Dereas v. Eas, 15 FSM R. 446, 449-50 (Chk. S. Ct. Tr. 2007).

When the non-moving defendants have a valid defense to the tortious interference with a contractual relationship claim and when the moving plaintiff had an adequate opportunity to show that they did not, summary judgment in the defendants' favor is appropriate. Dereas v. Eas, 15 FSM R. 446, 450 (Chk. S. Ct. Tr. 2007).

Claims of interference with contractual relations and interference with prospective business advantage, are both causes of action that arise under Pohnpei state law. Jano v. Fujita, 16 FSM R. 323, 326-27 (Pon. 2009).

It may be sufficient to impose liability that the defendant has acted intentionally to interfere with a known contract or prospect of economic advantage, that he has caused harm in so doing, and that he has acted in pursuit of some purpose considered improper. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

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

The individual elements of the cause of action for interference with contract are 1) a valid contract; 2) knowledge by the defendant of the contract; 3) intentional interference by the defendant which induces breach of the contract; 4) absence of justification on the part of the defendant; and 5) resulting damages. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

Both the cause of action for interference with contract and the cause of action for interference with prospective business require a showing of damages. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

When the plaintiff did not show by a preponderance of the evidence that the defendant knew of a specific contract or contracts that the plaintiff had with third parties, and that the defendant intentionally interfered with any such contract; when a letter was alleged as the interference with contract, but the plaintiff failed to prove by a preponderance of the evidence that the letter actually served as the means by which the defendant allegedly interfered with a specific contract that he knew the plaintiff had with a third party; when a later letter does not admit that the prior letter contained false statements but is a retraction of the prior letter; and when the retraction does not establish that the prior letter constituted an unjustified interference by the defendant with a specific contract to which the plaintiff was a party, the plaintiff is not entitled to

recover damages from the defendant on a claim for interference with contract. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

It may be sufficient to impose liability that the defendant has acted intentionally to interfere with a known contract or prospect of economic advantage, that he has caused harm in so doing, and that he has acted in pursuit of some purpose considered improper. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457 (Pon. 2009).

The specific elements of the causes of action for interference with contract are 1) a valid contract; 2) knowledge by the defendant of the contract; 3) intentional interference by the defendant which induces breach of the contract; 4) absence of justification on the part of the defendant; and 5) resulting damages. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457 (Pon. 2009).

Both the cause of action for interference with contract and the cause of action for interference with prospective business advantage require a showing of damages. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457 (Pon. 2009).

When the individual plaintiff did not have a valid contract with anyone or any entity, the first element required for proving interference – a valid contract – cannot be met and he cannot therefore recover against the defendant under an interference with contract theory. Even assuming that the plaintiff did have a valid contract with some entity relevant to the action, the court's ruling would remain the same because the plaintiff did not prove that the defendant took any action that could be reasonably interpreted as interference with a contract and failed to prove that the defendant had specific knowledge of any contract to which any of the plaintiff's various corporations were a party and since there was no showing of any intentional conduct which resulted in any interference or breach of contract and no showing that the plaintiff was harmed in any way by the alleged interference and since the scarce evidence provided on any purported damages for interference was unfounded and speculative. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457 (Pon. 2009).

Parties to a contract cannot, as a matter of law, tortuously interfere with their own contractual relations. Yoruw v. Ira, 16 FSM R. 464, 466 (Yap 2009).

Complaints to government officials are not sufficient to establish tortious interference with contractual relations. The tort requires that a defendant act intentionally with a known contract or prospect of economic advantage, that he has caused harm in so doing, and that he has acted in pursuit of some purpose considered improper. Yoruw v. Ira, 16 FSM R. 464, 466 (Yap 2009).

The elements of interference with contractual relations are 1) a valid contract; 2) knowledge by the defendant of the contract; 3) intentional interference by the defendant which induces breach of the contract; 4) absence of justification on the defendant's part; and 5) resulting damages. Jano v. Fujita, 16 FSM R. 502, 504 (Pon. 2009).

The elements of the cause of action for interference with contract are 1) a valid contract; 2) knowledge by the defendant of the contract; 3) intentional interference by the defendant which induces breach of the contract; 4) absence of justification on the part of the defendant; and 5) resulting damages. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

A bank's acts in trying to collect a loan repayment do not state a claim for relief under a cause of action for interference with prospective business advantage or expectancy or under a cause of action for interference with contract. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

– Interference with Customary Property Rights

A cause of action that alleges that the plaintiffs' customary and traditional rights to use an island might be better described as intentional interference with a customary and traditional property right than trespass. That the plaintiffs referred to it as a trespass should not, in itself, be an obstacle to them prevailing on this

point if the evidence warrants, because except for judgments rendered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

– Interference with Prospective Business Opportunity

Tort claims for tortious interference with contractual relationships, defamation, and interference with prospective business opportunities are causes of action that arise under state law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 203 (Pon. 2001).

State law, and not the national law, provides the controlling limitations period for the causes of action, such as libel and slander and the tort of interference with contract and prospective economic advantage, that arise under state law. Jano v. Fujita, 15 FSM R. 494, 496 (Pon. 2008).

Claims of interference with contractual relations and interference with prospective business advantage, are both causes of action that arise under Pohnpei state law. Jano v. Fujita, 16 FSM R. 323, 326-27 (Pon. 2009).

It may be sufficient to impose liability that the defendant has acted intentionally to interfere with a known contract or prospect of economic advantage, that he has caused harm in so doing, and that he has acted in pursuit of some purpose considered improper. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

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

The elements of a cause of action for interference with prospective business advantage or expectancy are 1) plaintiff's existing or reasonable expectation of economic benefit or advantage; 2) defendant's knowledge of that expectancy; 3) defendant's wrongful intentional interference with that expectancy; 4) reasonable probability that the plaintiff would have received anticipated economic benefit in absence of interference; and 5) damages resulting from interference. Jano v. Fujita, 16 FSM R. 323, 327, 327-28 (Pon. 2009).

Both the cause of action for interference with contract and the cause of action for interference with prospective business require a showing of damages. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

When a plaintiff did not show that the defendant knew of any reasonable expectancy that the plaintiff had and that the defendant wrongfully interfered with it and when the plaintiff failed to meet his burden of proof with respect to the element of damages, he cannot prevail on a claim for interference with prospective economic advantage. Jano v. Fujita, 16 FSM R. 323, 327-28 (Pon. 2009).

It may be sufficient to impose liability that the defendant has acted intentionally to interfere with a known contract or prospect of economic advantage, that he has caused harm in so doing, and that he has acted in pursuit of some purpose considered improper. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457 (Pon. 2009).

The elements of a cause of action for interference with prospective business advantage or expectancy are 1) plaintiff's existing or reasonable expectation of economic benefit or advantage; 2) defendant's knowledge of that expectancy; 3) defendant's wrongful intentional interference with that expectancy; 4) reasonable probability that the plaintiff would have received anticipated economic benefit in absence of interference; and 5) damages resulting from interference. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 457 (Pon. 2009).

Both the cause of action for interference with contract and the cause of action for interference with prospective business advantage require a showing of damages. Ehsa v. Kinkatsukyo, 16 FSM R. 450,

457 (Pon. 2009).

The elements of interference with prospective business advantage are 1) plaintiff's existing or reasonable expectation of economic benefit or advantage; 2) defendant's knowledge of that expectancy; 3) defendant's wrongful intentional interference with that expectancy; 4) reasonable probability that the plaintiff would have received anticipated economic benefit in absence of interference; and 5) damages resulting from interference. Jano v. Fujita, 16 FSM R. 502, 504 (Pon. 2009).

Generally, a plaintiff in a cause of action for interference with business opportunities must prove: 1) the plaintiff's existing or reasonable expectation of economic benefit or advantage; 2) the defendant's knowledge of that expectancy; 3) the defendant's wrongful intentional interference with that expectancy; 4) reasonable probability that the plaintiff would have received anticipated economic benefit in absence of interference; and 5) damages resulting from interference. This cause of action requires a showing of damages. Smith v. Nimea, 18 FSM R. 36, 45 (Pon. 2011).

A plaintiff has not met the burden of producing the preponderance of evidence required to show that the defendant interfered with his expectancy when he failed to show by a preponderance of the evidence that he would have received the anticipated economic benefit in the absence of the defendant's letter because the letter objected to the plaintiff's application on the grounds of his alleged technical shortcomings and his contentious nature but the Foreign Investment Board's denial cited the plaintiff's inadequate funds, not technical capabilities. Smith v. Nimea, 18 FSM R. 36, 45 (Pon. 2011).

Tort claims, including claims for tortious interference with contractual relationships, defamation, and interference with prospective business opportunities, are causes of action which arise under state law. Smith v. Nimea, 18 FSM R. 36, 45 (Pon. 2011).

The elements of a cause of action for interference with prospective business advantage or expectancy are 1) plaintiff's existing or reasonable expectation of economic benefit or advantage; 2) defendant's knowledge of that expectancy; 3) defendant's wrongful intentional interference with that expectancy; 4) reasonable probability that the plaintiff would have received anticipated economic benefit in absence of interference; and 5) damages resulting from interference. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

A bank's acts in trying to collect a loan repayment do not state a claim for relief under a cause of action for interference with prospective business advantage or expectancy or under a cause of action for interference with contract. Salomon v. Mendiola, 20 FSM R. 138, 141 (Pon. 2015).

– Invasion of Privacy

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).

While the constitutional provision barring invasion of privacy only protects persons from governmental intrusion into their affairs, not from intrusions by private persons, it does indicate a policy preference in favor of protection of privacy. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 455 (Chk. 1994).

Privacy law comprises four distinct kinds of invasion (although other forms may arise) of four different interests of the plaintiff, which are tied together by a common name, but otherwise have little in common except that each represents an interference with the right to be let alone. A plaintiff's privacy may be invaded in two or more of the four tortious ways and in those cases he may maintain his action for invasion of privacy on all of the grounds available. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 455-56 (Chk. 1994).

The elements of the privacy tort of unreasonable publicity given to the other's private life are: 1) there

must be a public disclosure; 2) the facts disclosed must be private facts, rather than public ones; and 3) the matter made public must be one that would be offensive and objectionable to a reasonable person of ordinary sensibilities. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 456 (Chk. 1994).

Whoever publicizes a matter about another that places the other in a false light before the public is liable for tortious invasion of privacy if the false light in which the other was placed would be highly offensive to a reasonable person, and the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 456 (Chk. 1994).

One is liable for intentional intrusion, physical or otherwise, upon the solitude or seclusion or private affairs or concerns of another if the intrusion would be highly offensive to the reasonable person. The unauthorized photographing of a person who is not in a public place will incur liability for the unreasonable intrusion upon the seclusion of another. Failure of the plaintiff to plead she was not in a public place when the photograph was taken means an essential element of the tort has not been pled. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 457 (Chk. 1994).

There may be liability for the tort of appropriation of another's name or likeness when one appropriates the name or likeness of another for his own use or benefit. The right is in the nature of a property right. Incidental use of a name or likeness does not incur liability. Plaintiff's name or likeness must have intrinsic commercial or value associated with it. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 457-58 (Chk. 1994).

There may be liability for unauthorized use of name or likeness when the plaintiff is identifiable from the appropriated name or likeness, the name or likeness is used for trade or advertising purposes, and the use is unauthorized. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 458-59 (Chk. 1994).

Consent is not effective beyond the scope for which it is given. Therefore consent to have one's photograph taken is not consent for its exhibition or publication. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 459 (Chk. 1994).

A court can find as a matter of law whether defendant's use of plaintiff's likeness was predominately commercial because the characterization of the nature of an alleged tortious publication or a defense to such a claim is often decided as a matter of law. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 459 (Chk. 1994).

In the invasion of privacy context courts interpret "advertising purposes" broadly to include the use of a person's name or picture for all types of promotional endeavors. Thus where a corporation widely distributed its calendar free to the public for use and display wherever it does business the court may conclude as a matter of law that the calendar was used for advertising or trade purposes. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 459 (Chk. 1994).

Incidental unauthorized use of a name or likeness is not actionable if the use was in the context of a public event or newsworthy item of public interest. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM R. 451, 459 (Chk. 1994).

Because the primary lawmaking powers for the field of torts lie with the states, not the national government, the FSM Supreme Court's duty in an invasion of privacy case on Pohnpei is to try to apply the law the same way the highest state court in Pohnpei would. This involves an initial determination of whether it is contrary to, or consistent with, Pohnpei state law to recognize a right of privacy and an action for that right's violation. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 251-52 (Pon. 1998).

Although Pohnpei has not adopted the Restatement (Second) of Torts as state law, Pohnpei state constitutional guarantees of freedom from certain intrusions indicate that a policy preference of the protection of privacy exists in Pohnpei, and there is no constitutional or traditional impediment to the

recognition of a right to privacy in Pohnpei. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 252-53 (Pon. 1998).

Although the FSM Supreme Court declines to adopt this formal three-pronged test for evaluating commercial appropriation invasion of privacy claims in Pohnpei, it notes that the following elements are present and create liability: 1) the plaintiff must be identifiable from the appropriated image or likeness; 2) the image or likeness must be used for trade or advertising purposes; and 3) the use must be unauthorized. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 259 (Pon. 1998).

Postcards produced for sale are produced for predominately commercial purposes, and when a person's image fills the entire frame of the postcard, his presence is not merely incidental to the illustration of the sakau ritual. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 259-60 (Pon. 1998).

Although a plaintiff may have implicitly consented to having his picture taken, that does not constitute consent to the use of that photograph in the form of a postcard for sale to the general public, because consent is not effective beyond the scope for which it is given. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 260 (Pon. 1998).

A nanmwarki does not have authority to authorize the commercial use of another person's image without that person's consent even though the photograph was taken at a traditional feast hosted by the nanmwarki. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 261 (Pon. 1998).

There is no recovery for false light invasion of privacy where the matter publicized is not untrue or highly offensive. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 262 (Pon. 1998).

A person's appearance on a postcard showing a sakau ceremony cannot be interpreted as support for the postcard maker's commercial services, or be interpreted as trivializing or demeaning to the Pohnpeian culture, when the photograph was taken at a public event and accurately depicts what occurred at that event. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 262 (Pon. 1998).

There is no impediment to recognition of a right to privacy in Pohnpei and therefore no impediment to recognition of a cause of action for violation of that right. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 413 (Pon. 1998).

Where is little guidance in the prior decided opinions of the FSM Supreme Court for damage awards in privacy cases, the court will look to the reasoning of courts in other jurisdictions for guidance in assessing damages. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

A party that has established a cause of action for invasion of privacy is entitled to recover damages for the harm to his or her interest in privacy resulting from the invasion; mental distress proved to have been suffered if it is of a kind that normally results from such an invasion; and special damage of which the invasion is a legal cause. Special damages are demonstrable, direct economic losses resulting from the invasion of privacy. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 & n.1 (Pon. 1998).

The gist of the cause of action for invasion of privacy is for direct wrongs of a personal character which result in injury to the plaintiff's feelings, mental and emotional suffering are proper elements of damages. Substantial damages may be recovered, even if the only damages suffered resulted from mental anguish. These damages may include compensation for the wounded feelings, embarrassment, humiliation, and mental pain which a person of ordinary sensibilities would suffer under the circumstances. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

Punitive damages may also be awarded where it is shown that the defendant acted with malice or with a gross disregard for plaintiff's right to privacy, in order to punish the defendant for its conduct and to deter the defendant and others from engaging in like conduct in the future. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

The amount of damages to be awarded in invasion of privacy cases rests with the sound discretion of the trier of fact. The fact that damages may be difficult to ascertain, or that they cannot be measured by a pecuniary standard, is not a basis for denying all recovery even though there is no direct evidence of the amount of damage sustained. However, to recover substantial compensatory damages, the plaintiff must prove these damages. If there has been no material injury to the plaintiff, or if there is no evidence that damage has been sustained, or no evidence to serve as a basis for the calculation of damage, plaintiff will be awarded nominal damages only. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

The measure of compensatory damages in a case involving commercial appropriation of one's name or likeness is the value of the benefit derived by the person appropriating the other's name, or the pecuniary loss suffered by the plaintiff whose name has been appropriated. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

In privacy cases in which a plaintiff also seeks damages for unjust enrichment, only one recovery is available because an invasion of another's right of privacy by a publication confers no right to share in the proceeds of such publication's sale of upon the ground that the author has thereby been unjustly enriched. It is inconsistent for the plaintiff to seek recovery for an invasion of the right of privacy, and in the same suit, to claim the right to participate in the profits of the publication. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 414 (Pon. 1998).

When there is little instruction in previously decided FSM cases for assessing damages in an invasion of privacy case, privacy cases in other jurisdictions may provide some useful guidance. FSM cases awarding damages for mental pain and suffering outside the privacy context are also instructive. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 418 (Pon. 1998).

When there is no direct evidence of the amount of damages sustained, nor the amount of money that can compensate for an injury, the court, as trier of fact, must assess an appropriate level of compensatory damages for that injury. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 418 (Pon. 1998).

Compensatory damages for unjust enrichment will be not awarded when this claim conflicts with plaintiff's claim for compensatory damages for invasion of privacy because it is inconsistent for a plaintiff who wishes to recover for invasion of privacy to also claim the right to participate in the profits of publication and because when a privacy cause of action is brought together with another cause of action based on the same objectionable behavior under another theory, generally only one recovery may be awarded. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 411, 418-19 (Pon. 1998).

A photograph that is used to make a postcard offered for sale is being used primarily for trade purposes. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 159 (App. 1999).

A plaintiff who is proud to participate in a ceremony can suffer embarrassment and emotional upset over the commercialization of a photograph of his participation in the ceremony. Because the two findings are not inconsistent and there is evidence in the record to support this conclusion, the damages awarded the plaintiff for invasion of privacy will be affirmed as not clearly erroneous. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM R. 155, 159 (App. 1999).

For invasion of privacy – false light, the theory is that someone who publicizes a matter about another that places the other in a false light before the public is liable for tortuous invasion of privacy if the false light in which the other was placed would be highly offensive to a reasonable person, and the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. Peniknos v. Nakasone, 18 FSM R. 470, 487 (Pon. 2012).

For liability to exist for false light invasion of privacy it is not necessary, although it is often the case, that the plaintiff be defamed; the plaintiff need only be subject to an unreasonable and highly objectionable false portrayal before the public based on the sensibilities of a reasonable person. Peniknos v. Nakasone, 18

FSM R. 470, 487 (Pon. 2012).

Whoever publicizes a matter about another that places the other in a false light before the public is liable for tortious invasion of privacy if the false light in which the other was placed would be highly offensive to a reasonable person, and the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. George v. Palsis, 19 FSM R. 558, 567-68 (Kos. 2014).

Publication is a necessary element of defamation and of the false light tort. George v. Palsis, 19 FSM R. 558, 568 (Kos. 2014).

Summary judgment will be granted for the defendants on the plaintiff's defamation and false light cause of action when the plaintiff has failed to make a sufficient showing on essential elements of his case with respect to which he has the burden of proof and when he, in his opposition to the summary judgment motion, has not shown that he has admissible evidence to support his claim, and the time for him to do that is now, or never. George v. Palsis, 19 FSM R. 558, 568 (Kos. 2014).

– Loss of Consortium

To determine a monetary value for loss of consortium, the Pohnpei Supreme Court will consider the social structure of the society and the extended family system, whereby other members of the family can be expected to provide some, albeit occasional, assistance. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 74 (Pon. S. Ct. Tr. 1986).

As a loss of consortium claim is derivative from a spouse's claim for damages an award for loss of consortium is properly reduced by the percentage of fault attributable to the spouse. Epiti v. Chuuk, 5 FSM R. 162, 170 (Chk. S. Ct. Tr. 1991).

The right to recover damages for loss of consortium is recognized in Pohnpei. Amayo v. MJ Co., 10 FSM R. 244, 253 (Pon. 2001).

Loss of consortium contemplates something more than loss of general overall happiness, and includes components of love and affection, society and companionship, sexual relations, right of performance of material services, right of support, aid and assistance, and felicity. Amayo v. MJ Co., 10 FSM R. 244, 253 (Pon. 2001).

Some qualifications that have placed on the right to recover for the loss of parental consortium, or the loss of the society and companionship of an injured parent, have been that the children must be minors, and that the injury to the parent must be serious, permanent, and disabling so as to render the parent unable to provide the love, care, companionship, and guidance to the child, and so overwhelming and severe that the parent-child relationship is destroyed or nearly destroyed. Amayo v. MJ Co., 10 FSM R. 244, 253 (Pon. 2001).

The Constitution admonishes that court decisions are to be consistent with the "social and geographical configuration of Micronesia," and a cause of action for loss of parental consortium is consistent with this admonition in that it acknowledges the important role played by the family in the many distinct cultures of Micronesia. Amayo v. MJ Co., 10 FSM R. 244, 253 (Pon. 2001).

Minor children have a right of recovery for the loss of their father's love, care, affection, companionship, and guidance (loss of parental consortium) which they have suffered as a result of the grievous injury to their father. Amayo v. MJ Co., 10 FSM R. 244, 254 (Pon. 2001).

Loss of consortium is more than the loss of general overall happiness and it includes components of love and affection, society and companionship, sexual relations, right of performance of material services, right of support, aid and assistance, and felicity. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

The general rule is that the uninjured spouse who loses income when he or she provides nursing care or maid service for the injured spouse is not entitled to recover damages equal to his or her lost income as part of a loss-of-consortium claim. Instead the damages are recoverable by the injured spouse and the measure of damages for nursing services supplied by a relative who leaves his or her employment to render such services is not the amount of lost earnings but rather is the reasonable value of the nursing services supplied. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

A tortfeasor who caused an automobile accident would expect to pay the market rate for the care provided to the injured party, not the wages of a stockbroker. Thus, if there is to be recovery of lost income, it cannot be part of the uninjured spouse's claim for loss of consortium because a loss-of-consortium claim is not based on economic damages. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

The uninjured spouse's loss-of-consortium claim is based upon the loss of services provided by the injured spouse before his or her injury. The uninjured spouse's income from his own employment is not a service that the injured spouse once provided. Thus, any recovery of damages for care provided to an injured spouse must be part of the injured spouse's claim. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

The performance of material services in a loss-of-consortium claim is for the non-economic services that the injured spouse used to perform for the uninjured spouse, not the services that the uninjured spouse later performed for the injured spouse. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

The uninjured spouse's lost income or the nursing or maid services performed by the uninjured spouse, even when calculated at the reasonable maid or nursing services rate, are not part of the uninjured spouse's loss-of-consortium claim but are rather a measure of the injured spouse's damages. Lee v. FSM, 19 FSM R. 80, 84 (Pon. 2013).

The court will not recharacterize damages as a part of the uninjured spouse's loss-of-consortium claim and alter the nature of the damages claim solely to circumvent the FSM's statutory limited waiver of its sovereign immunity that prevents the injured spouse from being awarded the full amount of the damages she suffered. The court will comply with Congress's policy choice and its intent in enacting the limited waiver. Lee v. FSM, 19 FSM R. 80, 85 (Pon. 2013).

– Malicious Prosecution

The five elements of the tort of malicious prosecution or wrongful or unjustified initiation of a civil suit are satisfied when: 1) the defendant initiated the civil litigation, 2) the litigation was resolved in the plaintiff's favor, 3) the defendant did not have probable cause to initiate the civil litigation, 4) the defendant exhibited malice or ill will, and 5) the litigation caused significant interference with the plaintiff's property. Island Cable TV-Chuuk v. Aizawa, 8 FSM R. 104, 106-07 (Chk. 1997).

When an accused's motion to dismiss alleges, in the complete absence of supporting facts or reference to any legal standard under which such facts might be analyzed, that there is probable cause to believe the State has intentionally and maliciously instituted criminal actions against him, the court will not take such an allegation lightly as it implicates the integrity of the Chuuk State Attorney General's office and will order the defendant to show cause for making the allegation. Chuuk v. Hauk, 17 FSM R. 508, 514 (Chk. S. Ct. Tr. 2011).

– Negligence

Where it is undisputed that the original employer had no right to control the workplace or the employee's actions at the time that plaintiff-employee was injured, exercised no actual control over the manner of work, knew nothing which would have increased the plaintiff's knowledge of the risk he was facing, and did nothing to cause the injury, the court may conclude as a matter of law that the defendant is not liable for plaintiff's injuries. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 144 (Pon. 1985).

The common law definition of negligence, which includes the failure to use such care as a reasonably

prudent person would use in a similar situation, is consistent with the Pohnpeian concept of civil wrong. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 66 (Pon. S. Ct. Tr. 1986).

The Pohnpei Supreme Court will apply an English principle to the situation of a joint enterprise such that when parties to a joint enterprise, or their agents, perform work on another man's property and cause damage to the other man or his property through failure to exercise due care, then they are liable. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 67 (Pon. S. Ct. Tr. 1986).

An employer who recognizes the potential danger of a work situation, but who fails to take steps to reduce the danger or warn his employees of the danger, is guilty of nonfeasance and negligence. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 69 (Pon. S. Ct. Tr. 1986).

A corporation and its shareholders are liable for the wrongful act of their employees under the doctrine of respondeat superior. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 70 (Pon. S. Ct. Tr. 1986).

In apportioning damages among negligent parties, the Pohnpei Supreme Court will consider the following factors: the Pohnpei Constitution, custom and tradition, the degree of negligence of each party, other jurisdictions' efforts to abolish joint liability, the need to minimize the role of insurance companies given Pohnpei's stage of development, the example of the U.S. insurance crisis, other jurisdictions' efforts to modify the rules governing joint and several liability, and American judges' assessments of joint and several liability. Koike v. Ponape Rock Products, Inc. (II), 3 FSM R. 182, 185 (Pon. S. Ct. Tr. 1987).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Amor v. Pohnpei, 3 FSM R. 519, 531 (Pon. 1988).

Any liability of the state for suffering or death caused by defective health care provided by the state must be based upon theories of negligence, not strict liability. Amor v. Pohnpei, 3 FSM R. 519, 534 (Pon. 1988).

The standard of care for doctors at the Truk State hospital is that they are to exercise professional judgment in the attempt to diagnose the illness of the patient, and then, consistent with available facilities and supplies, act on that diagnosis. Asan v. Truk, 4 FSM R. 51, 56 (Truk S. Ct. Tr. 1989).

In a case where a patient died following the normal delivery of her child, where the evidence fails to show any demonstrable effort at diagnosis and no treatment as a result of diagnosis, the standard of care expected of a doctor at the Truk State Hospital was not met and the evidence proves negligence. Asan v. Truk, 4 FSM R. 51, 56 (Truk S. Ct. Tr. 1989).

Where the driver of a vehicle dropped off a child and then failed to see that the way was clear before starting the vehicle in motion, the driver was negligent and is liable for the death of the child. Suka v. Truk, 4 FSM R. 123, 129-30 (Truk S. Ct. Tr. 1989).

One person may be liable to another if the first negligently violates a duty owed to the other and thereby causes the other to suffer injury or loss. Leeruw v. FSM, 4 FSM R. 350, 357 (Yap 1990).

A volunteer who gratuitously offers to provide service or assistance to another, and causes that other to rely upon the offer rather than to seek alternative ways of responding to the need, owes a duty to perform the donated services with reasonable care. Leeruw v. FSM, 4 FSM R. 350, 357 (Yap 1990).

The FSM liaison officers generally owe a duty, established by statutory authorizations and administrative directives, to exercise reasonable care and diligence in providing timely transportation services to medically-referred citizens, and when the FSM liaison office personnel are aware of facts which reveal that a medically-referred citizen is in serious condition and that the timing of her travel for further medical attention is crucial, those officials have a duty to inquire how long the stabilization procedure will take, when it will be appropriate for the citizen to travel and what, if any flights are available for the injured person. Leeruw v. FSM, 4 FSM R. 350, 358 (Yap 1990).

What constitutes reasonable action or assistance must be determined in light of the surrounding circumstances. Leeruw v. FSM, 4 FSM R. 350, 358 (Yap 1990).

One who has acted negligently may be held liable only for the damages proximately caused by that negligence. Leeruw v. FSM, 4 FSM R. 350, 361 (Yap 1990).

A claim that the FSM liaison office did not fulfill its medical referral obligations as required by law falls within the embrace of 6 F.S.M.C. 702(2), which authorizes damage claims against the government for alleged improper administration of statutory laws or regulations. Leeruw v. FSM, 4 FSM R. 350, 363 (Yap 1990).

Where the national government, through the Guam liaison office, undertook to assist in transporting persons being medically referred to other locations and then failed to provide competent and reasonable assistance, the failure to fulfill the duty owed was a failure of the government liaison office and not of just one or two staff members of that office. Leeruw v. FSM, 4 FSM R. 350, 364 (Yap 1990).

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).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. It is the failure to do what a person of ordinary prudence would have done under similar circumstances. Epiti v. Chuuk, 5 FSM R. 162, 166 (Chk. S. Ct. Tr. 1991).

Where any reasonable employer would have ordered all electrical power cut off while any work was being performed in close proximity to high voltage lines, the failure to do so is clearly negligent. Epiti v. Chuuk, 5 FSM R. 162, 166 (Chk. S. Ct. Tr. 1991).

When a person elects to operate a vehicle on the public streets he owes a duty to pedestrians and others using the road and adjacent areas to operate the vehicle in a safe and prudent manner. When the breach of this duty by driving in a fast and careless manner is the proximate cause of an injury the driver will by held liable. Ludwig v. Mailo, 5 FSM R. 256, 259 (Chk. S. Ct. Tr. 1992).

In order for a third party's negligent conduct to afford any relief to defendants by way of a contributory (comparative) negligence theory, it must be demonstrated that the negligent act or omission somehow caused or contributed to the injury sustained and that there was not an independent or superseding cause. Ludwig v. Mailo, 5 FSM R. 256, 261 (Chk. S. Ct. Tr. 1992).

Until proven contrary to Kosraean custom the Kosrae State Court will entertain actions for negligence as tort liability for negligence is consistent with Micronesian culture. Nena v. Kosrae, 5 FSM R. 417, 420 (Kos. S. Ct. Tr. 1990).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. Nena v. Kosrae, 5 FSM R. 417, 420 (Kos. S. Ct. Tr. 1990).

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).

Punitive damages are not recoverable for ordinary negligence. Elwise v. Bonneville Constr. Co., 6 FSM R. 570, 572 (Pon. 1994).

A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent performance of that duty or of duty to notify debtor if insurance not obtained. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

Failure of a creditor to notify the debtor of its failure to obtain insurance is negligence. As a consequence the creditor is liable to the debtor for the entire amount of the debtors' loss, otherwise the debtor is only entitled to return of full amount of insurance premiums paid. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 251 (Chk. 1995).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Davis v. Kutta, 7 FSM R. 536, 546 (Chk. 1996).

The state is liable for injuries proximately caused by the employment of untrained or poorly trained police officers, and for the failure to adequately train them, and the chief of police is liable for any injury resulting from breach of duties connected with his office. Davis v. Kutta, 7 FSM R. 536, 546 (Chk. 1996).

Because tort law is primarily state law a negligence action will be governed by the substantive state law and the FSM Supreme Court's duty is to try to apply the law the same way the highest state court would. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 64-65 (Chk. 1997).

Under Chuuk state law the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed, which may be summarized as: a duty of care, a breach of that duty, which breach proximately causes damages. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65 (Chk. 1997).

The employment of a police officer with ten-year old charges and or convictions for violent behavior is insufficient to hold a municipality liable for negligent hiring because the charges and or convictions were too remote and attenuated to be the proximate cause of the plaintiff's injury. Conrad v. Kolonia Town, 8 FSM R. 183, 194 (Pon. 1997).

The definition of "negligence," as the term is used in the common law countries, is applicable or similar to the Pohnpeian understanding of negligence. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 293 (Pon. 1998).

Negligence is the omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 293 (Pon. 1998).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 293 (Pon. 1998).

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

One who knows or has reason to know that a third person is giving or is ready to give to another aid necessary to prevent physical harm to him, and negligently prevents or disables the third person from giving such aid, is subject to liability for physical harm caused to the other by the absence of the aid for which he has prevented the third person from giving. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294 (Pon.

1998).

A complaint's allegations that officials' knowing interference prevented two ships from refloating their ship after it had grounded on a reef, that the ship's crew were arrested by the officials without cause, and that this actively and unreasonably prevented rescue the vessel's by other boats, and that that interference was the direct cause of the boat's damage, set forth a claim in negligence and are sufficient to survive a motion to dismiss. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 294 (Pon. 1998).

Under Chuuk state law the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 442 (Chk. 1998).

A negligence claim may be stated when a party has breached its duty to negotiate in good faith. Kaminanga v. FSM College of Micronesia, 8 FSM R. 438, 442 (Chk. 1998).

In determining liability for negligent injuries generally, electricity providers are required to use reasonable care in the construction and maintenance of their lines and apparatus, and will be responsible for any conduct falling short of this standard. Asher v. Kosrae, 8 FSM R. 443, 449 (Kos. S. Ct. Tr. 1998).

It is the imperative duty of electricity providers to make reasonable and proper inspection of their wires and other equipment and to use due diligence to discover and repair defects. A failure to perform such duty constitutes negligence. Asher v. Kosrae, 8 FSM R. 443, 450 (Kos. S. Ct. Tr. 1998).

The placing of a guy wire within areas that are traveled may constitute negligence where the wire is not guarded, covered, rendered easy to see, and a person is injured by a collision with it. An electricity provider can be held liable for injures sustained from a collision if it is shown that the company's negligence in the erection or the maintenance of such wire was the proximate cause of the injury. The test is whether the injury under all of the circumstances, might reasonably been foreseen by a person of ordinary intelligence and prudence. Asher v. Kosrae, 8 FSM R. 443, 450 (Kos. S. Ct. Tr. 1998).

It is reasonably foreseeable to a person of ordinary intelligence and prudence that a dangling, frayed wire could cause injury to passersby in the vicinity of the pole and wire. Asher v. Kosrae, 8 FSM R. 443, 450 (Kos. S. Ct. Tr. 1998).

A state will be liable for damages resulting from personal injury as a result of a collision with a guy wire when the state erected and maintained the guy wire to support a pole carrying its electric transmission wires, when for a considerable length of time prior to the accident it failed to make reasonable and proper inspections of the guy wire as necessary and failed to use due diligence to discover and remedy the defective guy wire so that that injury would not result, and when the type injury which occurred was reasonably foreseeable. Asher v. Kosrae, 8 FSM R. 443, 450 (Kos. S. Ct. Tr. 1998).

Negligence is a separate tort from nuisance. Although negligence is one kind of conduct upon which liability for nuisance may be based, negligence is not a necessary ingredient for a nuisance. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

Under Pohnpei law, negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. It is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 535 (Pon. 1998).

The elements of actionable negligence are: 1) a duty of care, 2) a breach of that duty, and 3) damages proximately caused by that breach. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 535 (Pon. 1998).

One who carries on a dangerous activity must use care commensurate with the risk or danger of injury involved or suffer liability for resulting injuries. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 535 (Pon. 1998).

The focus of a negligence analysis is on the actor's conduct, while the focus of an intentional nuisance analysis is on the resulting interference. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 541 (Pon. 1998).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. A plaintiff must show that the defendants owed the plaintiff a duty of care, and that the defendants breached this duty. The plaintiff must also show that his injuries were caused by the breach and that a value can be assigned to his injuries. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

The common law definition of negligence includes the failure to use such care as a reasonably prudent person would use in a similar situation. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

The two year limitation applies to tort actions for both negligence and wilful conduct. David v. Bossy, 9 FSM R. 224, 225 (Chk. S. Ct. Tr. 1999).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Duties of care differ according to the circumstances. The exact parameters of each person's responsibilities towards others will be defined through time by judicial decisions and statutes. Jonah v. Kosrae, 9 FSM R. 335, 341 (Kos. S. Ct. Tr. 2000).

The elements required to prevail on a negligence claim are: a duty of care, a breach of that duty, and damages proximately caused by that breach. Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. Jonah v. Kosrae, 9 FSM R. 335, 341 (Kos. S. Ct. Tr. 2000).

Because the state had a duty of care to construct the seawall in a manner which a reasonably careful person would have done in similar circumstances and a reasonably careful person would have constructed the seawall in accordance with accepted methods of seawall construction in Kosrae at that time during the late 1980s, and because at that time black rock was routinely used for seawall construction as the best method to dissipate wave energy from the ocean, the state did not breach its duty to, and is not liable to the plaintiff for negligence by using black rocks for erosion control measures and construction of the seawall. Jonah v. Kosrae, 9 FSM R. 335, 341 (Kos. S. Ct. Tr. 2000).

The general rule applicable to negligence actions is that the statue of limitations runs from the time of the negligent act or omission, even though the total damage cannot be ascertained until a later date. Jonah v. Kosrae, 9 FSM R. 335, 344 (Kos. S. Ct. Tr. 2000).

Under Chuuk state law the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed, which may be summarized as: a duty of care, a breach of that duty, which breach proximately causes damages. Estate of Mori v. Chuuk, 10 FSM R. 6, 14 (Chk. 2001).

Jailers, and their superiors, owe detainees a duty of care, which may include the duty to regularly observe a detainee's condition, and may breach that duty by failing to provide the required checks on his condition, had a duty of watchfulness when they are aware or should be aware of the effect on the detainee of the scolding he received and when these failures are the proximate cause of the plaintiff's death, these defendants are liable under 6 TTC 201(1) for the plaintiff's death by neglect. Estate of Mori v. Chuuk, 10 FSM R. 6, 14 (Chk. 2001).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and

determination of the value of the damage can there be a liability for negligence. A plaintiff must show that the defendants owed the plaintiff a duty of care, and that the defendants breached this duty. The plaintiff must also show that his injuries were caused by the breach and that a value can be assigned to his injuries. The common law definition of negligence includes the failure to use such care as a reasonably prudent person would use in a similar situation. Talley v. Lelu Town Council, 10 FSM R. 226, 236 (Kos. S. Ct. Tr. 2001).

Negligence may include a condition created by the negligent conduct of a government entity, or its employees, a condition which created a reasonably foreseeable risk of the kind of injury which afflicted the plaintiff, and that the injury proximately caused by the condition. Talley v. Lelu Town Council, 10 FSM R. 226, 236 (Kos. S. Ct. Tr. 2001).

When the act of losing the key, or providing the key to allow one or more unauthorized persons access to the municipal building and the office area breached the duty of care to protect the plaintiff's property and created a reasonably foreseeable risk that the property in the building would be moved, damaged or removed from the premises, and when the plaintiff's property was removed from its designated location, the loss of the key, or the providing it to unauthorized persons proximately caused the plaintiff's loss of his personal property, and the defendants are liable for tort of negligence. Talley v. Lelu Town Council, 10 FSM R. 226, 236 (Kos. S. Ct. Tr. 2001).

Punitive damages are not recoverable for ordinary negligence. Talley v. Lelu Town Council, 10 FSM R. 226, 239 (Kos. S. Ct. Tr. 2001).

Ordinary negligence is not a basis for punitive damages. In order for negligence to constitute wantonness meriting imposition of punitive damages, the plaintiff must show that the one acting or failing to act realized the imminence of the danger and failed to take steps to prevent it because he was indifferent to whether the injury occurred. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

The failure to exercise the degree of care that a reasonably prudent and careful person would use under the same circumstances constitutes negligence. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

When a general contractor had a duty to provide a safe work environment for the construction work to be done at the second story heights and his duty in this regard ran not only to the employees of subcontractors, but to those that he employed directly as well, which included the plaintiff, and when his failure to provide any kind of safety equipment, precautions, instructions or supervision resulted in the plaintiff's fall and consequent injury, he is therefore liable for the damages suffered as a result of that injury. Amayo v. MJ Co., 10 FSM R. 244, 250-51 (Pon. 2001).

When one company assigned its employee to work for another company, and the assigning company was effectively stripped of control over the way the work was done, and when the assigning company had no knowledge of facts unknown to the employee that would have affected the risk faced by him, and did nothing else to cause the employee's injury, there is no negligence liability on the part of the assigning company. Amayo v. MJ Co., 10 FSM R. 244, 251 (Pon. 2001).

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

Negligence consists of four essential elements: 1) a legal duty owed to the plaintiff by the defendant, 2) a breach of that duty, 3) injury to the plaintiff, and 4) a showing that the breach was the proximate cause of the injury. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 352-53 (Pon. 2001).

It is well established that medical expenses are properly a component of negligence damages and may be recovered from the tortfeasor. Amayo v. MJ Co., 10 FSM R. 371, 376 (Pon. 2001).

In determining whether conduct is negligent, the customs of the community, or of others under like circumstances, are factors to be taken into account, but are not controlling where a reasonable man would not follow them. Amayo v. MJ Co., 10 FSM R. 371, 384 (Pon. 2001).

It is not a defense to negligence to say that others engaged in the same conduct would have operated in the same way, without taking safety precautions, and were, or are on an ongoing basis, negligent. Amayo v. MJ Co., 10 FSM R. 371, 384 (Pon. 2001).

The construction of a multistory building using imported technology is not imbued with Pohnpeian custom and tradition so as to lend itself to an analysis in those terms. Amayo v. MJ Co., 10 FSM R. 371, 384 (Pon. 2001).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances, or the failure to do what a person of ordinary prudence would have done under similar circumstances. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

In order to prove negligence, a plaintiff must prove the existence of a duty, breach of the duty, and damages proximately caused by the breach. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

The plaintiff, in order to establish the defendant's negligence in failing to pay the sums due under the lease, has the burden of proving by a preponderance of the evidence the existence of a duty on the defendant's part to pay. But, given the lease's illegal nature, this essential fact cannot be proven as a matter of law. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

As a matter of law no reasonably prudent person would commit an act the consequence of which might result in that person's imprisonment. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

When a reasonably prudent person in the Director of Treasury's position would not willingly and intentionally violate Chuuk state laws, and when to pay sums purportedly due under the contract at issue would violate Chuuk state laws, subjecting the party authorizing payment to criminal penalties, the plaintiff cannot as a matter of law prove a material and indispensable element of her claim of negligence for failure to pay her because the sums are due her on an illegal contract. Billimont v. Chuuk, 11 FSM R. 77, 81 (Chk. S. Ct. Tr. 2002).

Each of the familiar elements of a cause of action for negligence – duty, breach of duty, proximate cause, and damages – should be alleged, and a negligence counterclaim that does not is deficient and a motion to dismiss it will be granted. Adams v. Island Homes Constr., Inc., 11 FSM R. 445, 449 (Pon. 2003).

6 TTC 305 establishes a period of 6 years in which to bring an action for negligent damage to real property. Ben v. Chuuk, 11 FSM R. 649, 650 (Chk. S. Ct. Tr. 2003).

No punitive damages can be awarded when the plaintiff has not sustained his burden of demonstrating that the defendant's actions were intentional, wilful, and malicious, rather than merely negligent. Punitive damages may not be awarded for ordinary negligence. Tomy v. Walter, 12 FSM R. 266, 272 (Chk. S. Ct. Tr. 2003).

Once a plaintiff has presented a *prima facie* case of entitlement to judgment on a cause of action, the burden shifts to the defendants to raise a question of material fact. Thus when the defendants have raised no such question, and where there is a duty of care, a breach of that duty, damage caused by the breach, and the value of the damage can be determined, liability as to the defendants' negligence has been established. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308 (Pon. 2004).

It is well established that punitive damages are not recoverable for ordinary negligence. Such damages also will not be awarded unless it has been claimed and proved that the defendant acted with actual malice or deliberate violence. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 309 (Pon. 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).

When the plaintiffs allege two separate claims for the same damages in this suit and one sounds in contract and alleges a breach of a purchase agreement since part of the plaintiffs' agreed share of the purchase price was not paid to them and the other claim sounds in tort and alleges that the defendant was negligent in wrongfully releasing the remaining balance to someone else without taking such precautionary measures that a reasonably prudent person would be expected to take as a holder of funds that plaintiffs were entitled to, the court will analyze the contract claim first and finding a breach of the purchase agreement, need not address the plaintiffs' negligence tort claims. Edgar v. Truk Trading Corp., 13 FSM R. 112, 117 (Chk. 2005).

Under Chuuk law, the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127 (Chk. 2005).

For a plaintiff to recover for negligence, the defendant must owe a duty of care to the plaintiff and have breached that duty. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127 (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).

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).

The tort of "fraud-act of mistake" has not been recognized in Kosrae, but since this cause of action appears to sound in negligent misrepresentation, therefore an analysis of the action as the tort of negligence is appropriate. Kinere v. Sigrah, 13 FSM R. 562, 568 (Kos. S. Ct. Tr. 2005).

Negligence consists of four essential elements: 1) legal duty owed to the plaintiff by the defendant, 2) breach of that duty, 3) injury to the plaintiff, and 4) showing that the breach was the proximate cause of the injury. Kinere v. Sigrah, 13 FSM R. 562, 568 (Kos. S. Ct. Tr. 2005).

When there is no competent evidence that a defendant breached a duty owed to the plaintiff since his duty was to represent his late father's interests before the Land Commission, summary judgment will be awarded the defendant on the plaintiff's "fraud-act of mistake" – negligent misrepresentation cause of action. Kinere v. Sigrah, 13 FSM R. 562, 568-69 (Kos. S. Ct. Tr. 2005).

Under Chuuk state law the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed. Hauk v. Lokopwe, 14 FSM R. 61, 65 (Chk. 2006).

Liability for the tort of negligence requires that there be a duty of care owed by the defendants to the plaintiff, a breach of this duty, damages caused by the breach, and a determination of the value of the damages. Generally, negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Phillip v. Kosrae, 14 FSM R. 109, 113 (Kos. S. Ct. Tr. 2006).

Under Chuuk state law the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed, which may be summarized as: a duty of care, a breach of that duty, which breach proximately causes damages. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

The elements of a maritime negligence cause of action are four: 1) existence of a duty requiring a person to conform to a certain standard of conduct in order to protect others against unreasonable risks; 2) breach of that duty by engaging in conduct that falls below the standard of conduct, which is usually called "negligence"; 3) a reasonably close causal connection between the unreasonable conduct and any resulting injury, often referred to as "proximate cause"; and 4) actual loss, injury or damage to another party. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

A genuine issue of material fact precluding summary judgment is whether, even if the Pohnpei construction industry's customary business practice did not include safety features that would have prevented or lessened the plaintiff's injuries, one or more of those safety feature(s) was so simple or so inexpensive in relation to the possible consequences that the Pohnpei construction industry ought to have adopted them and should be liable for the failure to adopt them. Amayo v. MJ Co., 14 FSM R. 487, 489 (Pon. 2006).

The elements of actionable negligence are the breach of a duty of care on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed. Kileto v. Chuuk, 15 FSM R. 16, 17 (Chk. S. Ct. App. 2007).

The plaintiffs' negligence claims fail when they failed to prove by a preponderance of the evidence that their homes would not have flooded with mud if the partially-blocked entrance to the Mt. Tonachau road culvert had remained partially blocked and when they also did not prove that the defendant's contractor, by restoring the Mt. Tonachau road and drainage system to its designed (and previous) state, breached its duty not to cause injury to residents and landowners downhill from the Mt. Tonachau roadwork. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 123 (Chk. 2010).

When a plaintiff did not submit any evidence about his damages and therefore could not have proven damages, his negligence claim fails. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 123 (Chk. 2010).

FSM admiralty law recognizes a cause of action for damages to coral reefs and marine resources caused by marine vessels. The elements of maritime negligence are: 1) the existence of a duty requiring conformance to a certain standard of conduct in order to protect others against unreasonable risks; 2) a breach of that duty by engaging in conduct that falls below the standard of conduct (usually called "negligence"); 3) a reasonably close causal connection between the unreasonable conduct and any resulting injury (often called "proximate cause"); and 4) an actual loss or injury to another party. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 174 (Yap 2012).

In Chuuk, the elements of actionable negligence are the breach of a duty of care on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to

whom the duty is owed. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

When a plaintiff has failed to make a showing sufficient to establish the existence of any element essential to its case on which it will bear the burden of proof at trial, summary judgment in the defendant's favor is appropriate. Ruben v. Chuuk, 18 FSM R. 425, 430 (Chk. 2012).

When there is no factual basis for the existence of a special duty, the defendants' summary judgment motion should be granted since one of the essential elements of negligence cannot be proven. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

Liability for the tort of negligence requires that there be a duty of care owed by the defendants to the plaintiff, a breach of this duty, damages caused by the breach, and a determination of the value of the damages. William v. Kosrae State Hosp., 18 FSM R. 575, 580 (Kos. 2013).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. The plaintiffs have the burden of proving each these elements in order to prevail on a negligence claim, and if the plaintiffs fail to prove any one element, judgment will be entered against them. William v. Kosrae State Hosp., 18 FSM R. 575, 580 (Kos. 2013).

When the delay before a referral to an off-island medical facility, regardless of who caused it, did not proximately cause the patient's death, it cannot be the basis to hold anyone liable for her death. William v. Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

When the insurance carrier approved the patient's off-island referral within two days and was ready to put her on the earliest possible flight but the patient did not leave until 20 days later and when this long delay was the proximate cause of the patient's death, the insurance carrier's actions were not the proximate cause of her death because the insurance carrier did not cause the delay. William v. Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

Since the state did not have a statutorily-created duty under Kosrae Code § 12.1103 to assist in paying for the family attendant's airfare, it did not have a statutorily-created duty to inform the family attendant that he could ask the State for financial assistance for his own airfare. William v. Kosrae State Hosp., 18 FSM R. 575, 582 (Kos. 2013).

The state cannot be said to have breached its duty when there was insufficient evidence before the court that it was state policy to pay for family attendant's airfare and to then seek repayment by wage or salary allotments; when there was no evidence about when this policy was implemented, by whom it was implemented, whether this policy was in existence in July 2001, the process used to apply for these funds, and whether there were any such funds available in late July 2001 that could have been used to immediately pay for the family attendant's ticket; when the statute barred the use of medical referral funds in a manner contrary to regulation; and when if no funds were available in July 2001, any request would have been futile and it would have been pointless to tell the family attendant that the State could assist. William v. Kosrae State Hosp., 18 FSM R. 575, 582 (Kos. 2013).

A 1991 memorandum of understanding between the insurer and the Kosrae State Hospital that required that the hospital provide all necessary health care services within Kosrae to all covered persons and that these services would include the cost of a medical or other attendant to accompany a covered person to a health care facility is an agreement that allocates the cost of attendants between the parties to the memorandum and it does not, by itself, allocate costs or create duties between the state and the insureds ("covered persons") and their families. William v. Kosrae State Hosp., 18 FSM R. 575, 582 (Kos. 2013).

When a plaintiff does not submit any evidence about his damages and therefore cannot prove damages, the plaintiff's negligence claim fails. William v. Kosrae State Hosp., 18 FSM R. 575, 583 (Kos.

2013).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 478 (Pon. 2014).

When the plaintiff has not demonstrated that the defendant's actions reflect a standard of care that is unreasonable under the circumstances, the plaintiff's negligence claim must fail. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 478 (Pon. 2014).

The focus of a negligence analysis is on the defendants' conduct, while the focus of an intentional nuisance analysis would be on the resulting interference. Damarlane v. Damarlane, 19 FSM R. 519, 531 (Pon. 2014).

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

Liability for the tort of negligence requires that there be a duty of care owed by the defendant to the plaintiff, a breach of the duty, damages caused by the breach (i.e. proximate cause), and a determination of the value of the damages. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

– Negligence – Gross Negligence

Gross negligence has been construed as requiring willful, wanton, or reckless misconduct, or such utter lack of care as will be evidence thereof. Hauk v. Lokopwe, 14 FSM R. 61, 65 (Chk. 2006).

A negligence cause of action may be amended to add a punitive damages claim subject to proof at trial and, in the absence of such proof, the defendants may move to disallow any punitive damages award. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

Punitive damages are not recoverable for ordinary negligence. For punitive damages to be awarded, there must be evidence of gross negligence. Gross negligence is the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 49 (Chk. 2010).

A Port Authority and a pilot are immune from any negligence claim for the pilot's acts or omissions in berthing a vessel, but not from a gross negligence claim. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

Gross negligence has been construed as requiring willful, wanton, or reckless misconduct, or such utter lack of care as will be evidence thereof. Gross negligence can thus occur in a wide range of circumstances. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16 (Pon. 2015).

There are a variety of circumstances in which a pilot's navigating too fast combined with other circumstances have equaled gross negligence on the pilot's part. Win Sheng Marine S. de R.L. v. Pohnpei Port Auth., 20 FSM R. 13, 16-17 (Pon. 2015).

A "gross negligence" claim lodged against the Pohnpei Court of Land Tenure that is predicated upon a purported failure to provide notice when it issued a new certificate of title, fails when, not only did the litigants have adequate notice, they took full advantage of an ability to be heard, as reflected in the numerous unsuccessful challenges that were mounted to the transfer of ownership, thereby contradicting this claim that notice was deficient. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

– Negligence – Medical Malpractice

Any causative factors not within the exclusive control of the alleged negligent party render res ipsa loquitur doctrine inapplicable to an action for medical malpractice. Amor v. Pohnpei, 3 FSM R. 519, 534-35 (Pon. 1988).

Whether the relationship between U.S. National Health Service Corps doctors and the State of Pohnpei is such that the doctrine of *respondeat superior* may be applicable in an action for medical malpractice so that the state may be made to respond in damages for any negligence of the doctor has not been determined. Amor v. Pohnpei, 3 FSM R. 519, 536 (Pon. 1988).

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

Medical malpractice by hospital staff does not relieve a tortfeasor of his responsibility for damages, because any injuries that might have been caused by the staff flowed naturally from his own acts. Primo v. Refalopei, 7 FSM R. 423, 429 (Pon. 1996).

When, according to the complaint's allegations, the defendants' medical malpractice led to the deceased's death, and when, attached to the defendants' summary judgment motion is an affidavit of a medical doctor who is board certified in the field of family practice and the affidavit recites that the doctor has reviewed the medical records and that his opinion is that her diagnosed illness, tuberculosis of the spine, was so serious that in order to avoid paralysis, it would have been acceptable practice to administer the medications in question even if the deceased's treating doctors had been aware of her hepatitis history, the doctor's affidavit is relevant evidence based on an adequate foundation, that tends to show that the defendants did not violate the applicable standard of care. This evidence is of sufficient weight that left unopposed, no genuine issue of material fact exists under FSM Civil Rule 56, and the defendants are entitled to judgment as a matter of law. Since the plaintiffs have offered nothing to meet the evidence offered by the defendants, no genuine issues of material fact therefore exist, and the defendants are entitled to summary judgment in their favor. Joe v. Kosrae, 13 FSM R. 45, 47 (Kos. 2004).

Summary judgment will be denied in a medical malpractice action when genuine issues of material fact exist with regard to the arrangements for the patient's follow-up after she returned to Kosrae and with regard to whether she took her medicine as directed that preclude judgment as a matter of law. William v. Kosrae State Hospital, 13 FSM R. 307, 309 (Kos. 2005).

Medical malpractice is negligence in rendering professional medical services. William v. Kosrae State Hosp., 18 FSM R. 575, 580 (Kos. 2013).

Generally, one who undertakes to render professional service is under a duty to the person for whom the service is to be performed to exercise such care, skill, and diligence as someone in that profession ordinarily exercises under like circumstances. William v. Kosrae State Hosp., 18 FSM R. 575, 580-81 (Kos. 2013).

A doctor and the state hospital did not breach their duty to render professional medical services when they exercised such care, skill, and diligence as someone in that profession ordinarily exercises under like circumstances when they correctly diagnosed the patient's ailment, when they recommended her for off-island referral to an appropriate medical facility since they were unable to do the tests to confirm their diagnosis and since they were unable to offer all of the treatment options that might be needed, and when they offered her appropriate medical care as an in-patient until she could go to an off-island medical facility for her follow-up, but she refused admission. William v. Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

Since a patient may always refuse medical treatment, the Kosrae defendants cannot be said to have breached their duty of care and be held liable for the results of the patient's refusal to remain at Kosrae State Hospital for treatment until she could leave for an off-island medical facility. William v. Kosrae State Hosp., 18 FSM R. 575, 581 (Kos. 2013).

The statute that provides that the state may not deny medical care available in the state to a person because of the inability to pay a fee and that makes no distinction in treatment or care because of inability to pay does not apply to off-island airfare because that is not a fee paid to the state government and is not a fee for medical services provided by the state and the off-island medical referral services are not medical care available in the state. William v. Kosrae State Hosp., 18 FSM R. 575, 581-82 (Kos. 2013).

– Negligence – Negligence per se

Violation of a statute creates a rebuttable presumption of negligence. Put another way, the unexcused violation of law which defines reasonable conduct is negligence in itself. Glocke v. Pohnpei, 8 FSM R. 60, 61 (Pon. 1997).

The FSM Supreme Court has never adopted the principle that the violation of a statute constitutes negligence per se giving rise to strict liability, but the court has held that negligence per se in the FSM means that the violation of a statute creates a rebuttable presumption of negligence. Even then, violations of statutory standards may form the basis of a claim of negligence per se only if the plaintiff is within the class of persons whom the statute was intended to protect and if the harm was of the type the enactment was intended to prevent. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 95 (Yap 2013).

The statutory basis for a negligence *per se* claim need not provide for a private right of action. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 95 (Yap 2013).

– Negligence – Professional Malpractice

A claim that a design contractor used the wrong coordinate system for a road survey work seems more like, or as much a professional malpractice claim as a breach of contract claim. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 577 n.9 (Pon. 2011).

FSM law has previously recognized professional malpractice as a cause of action for the profession of medicine (medical malpractice) and for the profession of law (legal malpractice). FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 579 (Pon. 2011).

Adopting the common law standard for professional malpractice (or recognizing it beyond just the medical and legal professions) is desirable, needed, and appropriate, and would be appropriate even if the FSM had an extensive regulatory and licensing regime for professionals. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 579 (Pon. 2011).

Generally, one who undertakes to render professional service is under a duty to the person for whom the service is to be performed to exercise such care, skill, and diligence as men in that profession ordinarily exercise under like circumstances. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 579-80 (Pon. 2011).

U.S. common law decisions are an appropriate source of guidance for the FSM Supreme Court for contract and tort issues unresolved by statutes, decisions of FSM courts, or FSM custom and tradition and professional malpractice may implicate both contract and tort issues. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 n.13 (Pon. 2011).

The law imposes upon persons performing architectural, engineering, and other professional and skilled services the obligation to exercise a reasonable degree of care, skill and ability, which generally is

taken and considered to be such a degree of care and skill as, under similar conditions and like surrounding circumstances, is ordinarily employed by their respective professions. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

Unless he represents that he has greater or less skill or knowledge, one who undertakes to render services in the practice of a profession or trade is required to exercise the skill and knowledge normally possessed by members of that profession or trade in good standing in similar communities. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

The circumstances to be considered in determining the standard of care, skill, and diligence to be required of a professional include the terms of the employment agreement, the nature of the problem which the supplier of the service represented himself as being competent to solve, and the effect reasonably to be anticipated from the proposed remedies. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

Although a professional's duty of care exists independent of and is not created by contract, a contract may furnish the conditions for that duty's fulfilment. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

Professional malpractice sounds in tort as a form of negligence. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

The reasonable care standards apply similarly to architects, engineers, doctors, lawyers, and like professionals engaged in furnishing skilled services for compensation and general negligence principles apply. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 (Pon. 2011).

Ordinarily, a determination that the care, skill, and diligence exercised by a professional engaged in furnishing skilled services for compensation was less than that normally possessed and exercised by members of that profession in good standing and that the damage sustained resulted from the variance requires expert testimony to establish the prevailing standard and the consequences of departure from it in the case under consideration. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580-81 (Pon. 2011).

Because the fact-finder is not permitted to speculate as to the standard against which to measure the acts of the professional in determining whether he exercised a reasonable degree of care, expert testimony is required. Only in a few very clear and palpable cases can a court dispense with the expert testimony requirement to establish the parameters of professional conduct and find damages to have been caused by a professional's failure to exercise reasonable care, skill, and diligence. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

Although the argument that acceptance of the 100% design and payment for it is waiver of any claims that the wastewater plant design was defective and that any alleged "defects" were not latent but were obvious and patent and known beforehand could prevail on a breach of contract claim, when this is a professional malpractice tort claim, the question is not whether the contractor breached the contract's terms but whether it violated its duty of reasonable care towards its client. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

When the court does not have before it evidence (and expert testimony would likely be needed) of what a design professional's duty entails when questions are raised about whether a proposal was over-designed or is unworkable under local conditions, the court will not speculate in that regard. The existence of these factual issues bars summary judgment on the professional malpractice allegation. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

When the court has nothing before it about what a design professional's duty is in relation to designing within a proposed budget, it will not speculate in that regard. Thus, whether the cost overruns in the design were such that they were the result of not exercising the reasonable care a professional in good standing would under similar conditions and like surrounding circumstances is a factual question barring summary

judgment. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 (Pon. 2011).

When the parties' contract creates the deadlines, the tardy submission of reports, except in the most egregious cases, may be less professional malpractice than a contract breach, although even then the breach might not be material. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 582 n.16 (Pon. 2011).

Even when there is no FSM regulatory or statutory requirement that final design plans be stamped or that certain professionals stamp only certain plans, the court will not speculate about the standard against which to measure the civil engineer's acts in determining whether he acted properly in stamping electrical designs to indicate they were the final version rather than having an electrical engineer do it or indicating it in some other manner since evidence, most likely expert, must be produced about the standard professionals should be expected to follow in the FSM – in this case, not whether plans should be stamped by a professional but whether a civil engineer's stamp on electrical engineering plans is contrary to the degree of care a civil engineer should exercise. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 583 (Pon. 2011).

When, because the only evidence it produced was not competent, the nonmovant has not overcome the movant's admissible evidence that all the required plans were left behind and when the nonmovant gave the movant no opportunity to cure its omission, if in fact it had failed to leave every plan it should have, the movant is entitled to summary judgment on the claim that it committed malpractice by failing to leave its plans behind. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 583-84 (Pon. 2011).

When the movant asked in discovery for how it was to have committed malpractice and the nonmovant did not mention assuring that construction contractors produced shop drawings, the nonmovant is limited to what instances of malpractice it alleged and disclosed and cannot seek to introduce in its summary judgment opposition another instance based on different facts and theory of liability. The movant is therefore entitled to summary judgment on the claim that it committed malpractice by failing to see that the construction contractors produced the required shop drawings. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 584 (Pon. 2011).

Generally, one who undertakes to render professional service is under a duty to the person for whom the service is to be performed to exercise such care, skill, and diligence as someone in that profession ordinarily exercises under like circumstances. William v. Kosrae State Hosp., 18 FSM R. 575, 580-81 (Kos. 2013).

– Negligent Misrepresentation

Negligent misrepresentation is established where the defendant made a false representation of fact which was either known by the defendant to be false or the defendant had an insufficient basis of information to make the factual representation; the representation is made with the intent to induce the plaintiff to act or refrain from acting, in reliance upon the misrepresentation; plaintiff has justifiably relied thereupon; and damage to plaintiff has resulted from such reliance. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308 (Pon. 2004).

Summary judgment on a negligent misrepresentation claim will be granted when the uncontroverted and dispositive fact is that the defendants misled the plaintiff to believe that his rental fleet would be covered by the insurance policy if the vehicles were damaged while driven by renters, but the defendants failed to bind the type of coverage that was both requested and promised and when the defendants have not attempted to meet their burden of showing that there is a genuine issue of fact as to this claim. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 308-09 (Pon. 2004).

A measure of damages for the tort of negligent misrepresentation (also called deceit) employs the benefit of the bargain rule when damages can be proved with reasonable certainty. Under this principle, the insurer would be entitled to its premium, which would be set off against what it owed its insured. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 469 (Pon. 2004).

Consequential damages, of which economic loss such as lost profits may be an example, are available for negligent misrepresentation (deceit) claims if reasonably foreseeable. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

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

It is clear that the plaintiff's claim for negligent misrepresentation must fail when the plaintiff cannot show that the defendant's representations were incorrect. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 478 (Pon. 2014).

The elements of negligent misrepresentation are: 1) false information is supplied as a result of the failure to exercise reasonable care or competence in communicating the information; 2) the person for whose benefit the information is supplied suffered the loss; and 3) the recipient relies upon the misrepresentation. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

For negligent misrepresentation, a plaintiff must establish: 1) negligence in making 2) a misrepresentation 3) that is material and 4) that causes detrimental reliance. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

The elements of negligent misrepresentation are: 1) justifiable and detrimental reliance on 2) information provided without reasonable care 3) by one who owed a duty of care. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

The essential elements of a claim for negligent misrepresentation are that plaintiffs justifiably relied to their detriment on information prepared without reasonable care by a person who owed the relying party a duty of care. Misrepresentation contains the elements of reasonable reliance and damages. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

When the plaintiff did not plead a negligent misrepresentation cause of action even though many of her factual allegations met all the tort's elements and when the evidence at trial proved that she was entitled to relief under that theory, the elements of which overlap those of the promissory estoppel and detrimental reliance theory that she pled and the trial court analyzed and granted her judgment on, the appellate court will affirm the trial court judgment on the ground that the plaintiff was entitled to relief for negligent misrepresentation because the record contained adequate and independent support that the plaintiff detrimentally relied on an agent's misrepresentation that her daughter was covered until age 25 "no matter what," and that that misrepresentation was material and made without reasonable care. Occidental Life Ins. Co. v. Johnny, 20 FSM R. 420, 430 (App. 2016).

– Nuisance

Nuisance is generally regarded as a substantial interference with the use and enjoyment of another's land caused by intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or the performance of an abnormally dangerous activity. A substantial interference is actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm, that affects the health, comfort, or property of those who live nearby. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

An intentional invasion of another's interest in the use and enjoyment of land is unreasonable if a) the gravity of the harm outweighs the utility of the actor's conduct, or b) the harm caused by the conduct is serious and the financial burden of compensating for it and similar harm to others would not force the

defendant out of business. In determining the gravity of harm, a court will consider the extent and character of the harm, the social value and suitability to the community of the use and enjoyment involved, and the burden on the person harmed of avoiding the harm. In determining the utility of the conduct, a court will consider the social value and suitability to the community of the conduct, and the impracticability of preventing or avoiding the invasion. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

Nuisances are classified as either permanent, continuing, recurring or temporary in nature. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

A permanent nuisance is one which may be expected to continue indefinitely, and is generally caused by a single act that permanently affects the property's value. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

A temporary, recurring or continuing nuisance is one which is intermittent or periodic and can be abated, such as an ongoing or repeated disturbance caused by noise, vibration or a foul odor. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

Nuisances that affect the public at large are classified as public nuisances, while those that affect an individual or a small number of individuals are classified as private nuisances. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

Negligence is a separate tort from nuisance. Although negligence is one kind of conduct upon which liability for nuisance may be based, negligence is not a necessary ingredient for a nuisance. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

There is no liability for nuisance when the structural damage to the plaintiffs' house was caused by the plaintiffs' improper construction, poor maintenance and general deterioration and not by vibrations from the defendant's nearby blasting. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 539 (Pon. 1998).

Defendant created a permanent nuisance with its creation of a cliffline at the boundary of plaintiffs' property that has made plaintiffs' land susceptible to erosion over time, diminishing the value of plaintiffs' land. Defendant shall compensate plaintiffs for the diminished property value, and further undertake reasonable efforts to stabilize the cliffline to prevent future erosion. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 540 (Pon. 1998).

The first step in evaluating nuisance liability is to determine whether there has been substantial interference with plaintiffs' use and enjoyment of their land. The second step is to determine whether the harm caused by the defendant was intentional or unintentional. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 540 (Pon. 1998).

When harm is intentionally caused, liability attaches if the harm is unreasonable. Under the definition of nuisance, interference is unreasonable if the gravity of the harm outweighs the utility of the conduct, or the harm is serious and the financial burden of compensating for it and similar harm to others would not force the defendant out of business. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 540-41 (Pon. 1998).

If harm is unintentionally caused, nuisance liability will attach when it is the result of negligent or reckless conduct, or the result of an abnormally dangerous activity. If defendant's conduct was unintentional, the next step would be to evaluate whether the conduct was reasonable (i.e. negligence analysis), or the result of an abnormally dangerous activity. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 540-41 n.2 (Pon. 1998).

The focus of a negligence analysis is on the actor's conduct, while the focus of an intentional nuisance analysis is on the resulting interference. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 541 (Pon. 1998).

The logic behind an intentional nuisance analysis is that, regardless of whether a defendant acted with reasonable care, it is unfair (i.e. unreasonable) to allow the defendant to intentionally cause serious harm to a plaintiff without compensating the plaintiff. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 541 (Pon. 1998).

A defendant will not be required to abate its nuisance when it operates under permits granted by appropriate state agencies, its quarrying operation uses proper blasting methods, its quarry operation is necessary, and its quarrying activities have substantial public utility for the people in Pohnpei. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 541 (Pon. 1998).

Nuisance is generally regarded as a substantial interference with the use and enjoyment of another's land caused by intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or by the performance of an abnormally dangerous activity. Jonah v. Kosrae, 9 FSM R. 335, 341-42 (Kos. S. Ct. Tr. 2000).

The first step of the two-step analysis for nuisance requires that there be a substantial interference with the use and enjoyment of another's land. A substantial interference is actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm, that affects the health, comfort, or property of those who live nearby. Jonah v. Kosrae, 9 FSM R. 335, 342 (Kos. S. Ct. Tr. 2000).

The second step of the analysis for nuisance describes the actions of the potential liable party. The interference with the use and enjoyment of another's land must be caused by intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or the performance of an abnormally dangerous activity. Jonah v. Kosrae, 9 FSM R. 335, 342 (Kos. S. Ct. Tr. 2000).

A party is not liable for nuisance when there is no evidence that the party intentionally caused the erosion damage, or that its actions were reckless, unreasonable, or abnormally dangerous and when it has already been shown that the party was not negligent. Jonah v. Kosrae, 9 FSM R. 335, 342 (Kos. S. Ct. Tr. 2000).

A claim that some private party has taken or deprived someone of their property is, if it was personal property that was allegedly taken, a claim for conversion or for trespass to chattels, and, if it was real property that was allegedly taken by some private party, it is a claim for trespass (including actions for ejectment) or possibly for nuisance (interference with use and enjoyment of land). They are not due process or takings claims. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

Nuisance is generally regarded as a substantial interference with the use and enjoyment of another's land caused by intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or the performance of an abnormally dangerous conduct. A substantial interference is actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm, that affects the health, comfort, or property of those who live nearby. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262h (Pon. 2002).

An intentional invasion of another's interest in property in the use and enjoyment of land is unreasonable if a) the gravity of the harm outweighs the utility of the actor's conduct, or b) the conduct is serious and the financial burden of compensating for it and similar harm to others would not force the defendant out of business. In determining the gravity of the harm, a court will consider the extent and character of the harm, the social value and suitability to the community of the use and enjoyment involved, and the burden on the person harmed of avoiding the harm. In determining the utility of the conduct, a court will consider the social value and suitability to the community of the conduct, and the impracticability of preventing or avoiding the invasion. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262h (Pon. 2002).

If the actor's conduct is negligent, then to establish a nuisance it must be shown that the actor's negligent or reckless conduct caused a substantial interference with the use and enjoyment of another's land. Ambros & Co. v. Board of Trustees, 11 FSM R. 262a, 262h n.1 (Pon. 2002).

To prevail on a claim for nuisance, a party must show that another substantially interfered with the use and enjoyment of his land by intentional or unreasonable conduct. A substantial interference is actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm, that affects the health, comfort or property of those who live nearby. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 214 (Pon. 2003).

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).

Causes of action for public and private nuisance are recognized in admiralty law, borrowing from traditional common law principles. Admiralty courts look to general sources of the common law for guidance, such as the Restatement (Second) of Torts. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

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

A nuisance is a substantial interference with the use and enjoyment of another's land resulting from intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or the performance of an abnormally dangerous activity. A substantial interference is actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm, that affects the health, comfort, or property of those who live nearby. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

A private nuisance is a non-possessory invasion of another's interest in the use and enjoyment of land. A public nuisance involves an unreasonable interference with a right common to the general public. A nuisance can be both a public and a private nuisance. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 416 (Yap 2006).

To obtain damages in a nuisance action, a person pursuing a private cause of action must have suffered significant harm. To maintain a damage action for public nuisance, a person must have suffered damage different in kind from that suffered by the general public. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (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).

Nuisance is a cause of action involving a substantial interference with one's use and enjoyment of one's land caused by another's intentional and unreasonable conduct, or another's unintentional negligent

or reckless conduct, or another's performance of abnormally dangerous conduct. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

When the original complaint alleged that the defendants' negligence damaged the plaintiffs' property and interfered with their use and enjoyment of their dwelling, the defendants will not be prejudiced by an amended complaint including a nuisance theory of recovery. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

Nuisance is a cause of action involving a substantial interference with one's use and enjoyment of one's land caused by another's intentional and unreasonable conduct, or another's unintentional negligent or reckless conduct, or another's performance of abnormally dangerous conduct. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 123 (Chk. 2010).

The plaintiffs' nuisance claims fail when there was no evidence supporting a claim that the defendant's contractor's conduct was intentional and unreasonable; when road and drainage maintenance and clearing is not an inherently abnormally dangerous conduct; and when the plaintiffs have failed to prove that the defendant was negligent. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 123-24 (Chk. 2010).

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 owners were liable under a nuisance cause of action when its vessels substantially interfered with the plaintiffs' use and enjoyment of the affected reef both when the vessels were present and afterward because of the resulting damage. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

When the nuisance damages are the same (or lesser portion of) those awarded for maritime negligence, no further damages will be awarded for the nuisance cause of action. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

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

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

Nuisances are classified as either permanent, continuing, recurring or temporary in nature – a permanent nuisance is one which may be expected to continue indefinitely, and is generally caused by a single act that permanently affects the property's value while a temporary, recurring or continuing nuisance is one which is intermittent or periodic and can be abated, such as an ongoing or repeated disturbance caused by noise, vibration, or a foul odor. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

Nuisances that affect the public at large are classified as public nuisances, while those that affect an individual or a small number of individuals are classified as private nuisances. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

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

The first step in evaluating nuisance liability is to determine whether there has been substantial interference with plaintiffs' use and enjoyment of their land. The second step is to determine whether the harm caused by the defendant was intentional or unintentional. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

When harm is intentionally caused, liability attaches if the harm is unreasonable. Under the definition of nuisance, interference is unreasonable if the gravity of the harm outweighs the utility of the conduct, or the harm is serious and the financial burden of compensating for it and similar harm to others would not force the defendant out of business. Damarlane v. Damarlane, 19 FSM R. 97, 109-10 (App. 2013).

If harm is unintentionally caused, nuisance liability will attach when it is the result of negligent or reckless conduct, or the result of an abnormally dangerous activity. Damarlane v. Damarlane, 19 FSM R. 97, 110 (App. 2013).

Once liability has attached (that is, if the nuisance claims are proven), the remedies that the plaintiffs can seek are money damages for past interference and, when it is a recurring or continuing nuisance, an abatement of the nuisance – an injunction ordering those causing the nuisance to cease certain activities. Damarlane v. Damarlane, 19 FSM R. 97, 110 (App. 2013).

An evidentiary hearing must be conducted before the abatement of a nuisance or injunction can issue (or be denied). This evidentiary hearing may be consolidated with the trial on the merits if the trial is advanced, but one must be held on the application for an injunction. Damarlane v. Damarlane, 19 FSM R. 97, 110 (App. 2013).

When the plaintiffs failed to raise the issue of nuisance, or damages arising from nuisance, at trial, that count of the complaint is waived. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

A nuisance is generally regarded as a substantial interference with the use and enjoyment of another's land caused by intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or the performance of an abnormally dangerous activity. A substantial interference is actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm that affects the health, comfort, or property of those who live nearby. Damarlane v. Damarlane, 19 FSM R. 519, 530 (Pon. 2014).

The first step in evaluating nuisance liability is to determine whether there has been substantial interference with plaintiffs' use and enjoyment of their land and the second step is to determine if the harm caused by Defendants was intentional or unintentional. Damarlane v. Damarlane, 19 FSM R. 519, 530 (Pon. 2014).

The defendants are not liable for nuisance caused by noisy members of the public when the defendants do not have the lawful right to exercise control over the revelers' behavior on the causeway, or to ask them to leave. Damarlane v. Damarlane, 19 FSM R. 519, 530-31 (Pon. 2014).

If harm is unintentionally caused, nuisance liability will attach when it is the result of negligent or reckless conduct, or the result of an abnormally dangerous activity. Damarlane v. Damarlane, 19 FSM R. 519, 531 (Pon. 2014).

The focus of a negligence analysis is on the defendants' conduct, while the focus of an intentional nuisance analysis would be on the resulting interference. Damarlane v. Damarlane, 19 FSM R. 519, 531 (Pon. 2014).

Since the plaintiffs could not prove that the defendants' actions in maintaining huts and a small store on the causeway proximately caused the noise pollution affecting the plaintiffs and since the cost to the defendants of removing the huts would substantially outweigh the harm caused to the plaintiffs by the huts, nuisance liability has not attached against the defendants. Damarlane v. Damarlane, 19 FSM R. 519, 532 (Pon. 2014).

Nuisances that affect the public at large are classified as public nuisances, while those that affect an individual or small number of individuals are classified as private nuisances. Damarlane v. Damarlane, 19 FSM R. 519, 532 (Pon. 2014).

As a general rule, a public nuisance gives no right of action to an individual either for equitable relief, or for damages. A private plaintiff may bring an action for public nuisance only where he can show that he has sustained significant damage or injury which is different in type from the harm suffered by the community at large. Damarlane v. Damarlane, 19 FSM R. 519, 532 (Pon. 2014).

When the disposal of human waste into the lagoon causes degradation to water quality that harms the community at large, the plaintiffs did not show that they were uniquely affected by this environmental degradation. Therefore the public nuisance cause of action against the defendants for constructing faulty toilet facilities lies with the governmental authorities, and not with the private plaintiffs. Damarlane v. Damarlane, 19 FSM R. 519, 532 (Pon. 2014).

– Product Liability

A plaintiff who establishes the existence of risk factors which may have caused the injury, must show that these risk factors did in fact cause the injury. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

It is enough that the plaintiff introduce evidence from which reasonable men may conclude that it is more probable that the event was caused by the defendant than that it was not. Stated another way, it does not require that the proof eliminate every possible cause other than the one on which plaintiff relies, but only such other causes, if any, which fairly arise from the evidence. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

When no product defect is found, causes of action based on strict product liability and on breach of warranty fail and *res ipsa loquitur* is not applicable. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

On a design defect products liability claim, evidence of other accidents is admissible to show a dangerous condition so long as the proponent makes a foundational showing that the prior accidents occurred under substantially the same circumstances. Further, evidence proffered to illustrate the existence of a dangerous condition necessitates a high degree of similarity because it weighs directly on the ultimate issue to be decided by the [finder of fact. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

When the alleged defect in the kerosene resulted from the contamination of the product, and not its design, logic dictates that the plaintiff must show a high degree of similarity between the accident in this case and the accidents in the other cases before the other accidents will be admitted on the question of the dangerous condition of the allegedly contaminated product. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

When the instant case is similar to the other accidents to the extent that the alleged defect is the same, i.e., contaminated kerosene, but the manner in which the other accidents occurred is quite different, the other accidents are not sufficiently similar to be admissible on the question of dangerousness. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

– Respondeat Superior

Under the common law there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the possible liability of the principal for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. The earlier common law rules making distinctions for this purpose have for the most part been supplanted by social legislation such as workers' compensation, minimum wage, fair labor standards, social security and income tax laws. Rauzi v. FSM, 2 FSM R. 8, 15 (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).

A corporation and its shareholders are liable for the wrongful act of their employees under the doctrine of *respondeat superior*. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 70 (Pon. S. Ct. Tr. 1986).

Whether the relationship between U.S. National Health Service Corps doctors and the State of Pohnpei is such that the doctrine of *respondeat superior* may be applicable in an action for medical malpractice so that the state may be made to respond in damages for any negligence of the doctor has not been determined. Amor v. Pohnpei, 3 FSM R. 519, 536 (Pon. 1988).

An employer may be liable for the negligent acts of employees, but not for acts committed outside the scope of employment. Suka v. Truk, 4 FSM R. 123, 126 (Truk S. Ct. Tr. 1989).

An employer generally may not be held liable for punitive damages for the tortious acts of its employees. However, an employer may be held liable for punitive damages if 1) the employer authorized the act, 2) the employer knew the employee was unfit for the position at the time of the hiring, or 3) the employer ratified the tortious act of the employee. Meitou v. Uwera, 5 FSM R. 139, 146 (Chk. S. Ct. Tr. 1991).

When force is employed by a police officer in an apparent use of official authority, the governmental employer should be held responsible for what is done. Plais v. Panuelo, 5 FSM R. 179, 201 (Pon. 1991).

A state's ratification and acceptance of its employee's torts through its subsequent conduct is an independent ground for holding the state jointly and severally liable for those torts. Plais v. Panuelo, 5 FSM R. 179, 202-03 (Pon. 1991).

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

The individuals owning an unincorporated business are liable under the *respondeat superior* principle for the tortious injuries caused by their employee who was acting on behalf of the business and within the scope of his employent. Ludwig v. Mailo, 5 FSM R. 256, 259 (Chk. S. Ct. Tr. 1992).

Since the plaintiffs could have discovered the defendant's true ownership interest in the liable employer, it would place an undue burden on a minority interest owner in an unincorporated business to impose liability on him in excess of his ownership interest. Ludwig v. Mailo, 5 FSM R. 256, 260 (Chk. S. Ct. Tr. 1992).

The state, not the chief of police, is vicariously liable under the doctrine of respondeat superior for the torts of its police officers committed in the course and scope of their employment when force is employed in the use of even apparent official authority. Davis v. Kutta, 7 FSM R. 536, 545-46 (Chk. 1996).

Although a town government is not automatically liable for all the torts of its agents and employees, it is liable for those torts committed in the course and scope of employment under the doctrine of respondeat superior. When force is employed by police officers in use of even apparent official authority, the government employer should be held responsible for whatever results. Conrad v. Kolonia Town, 8 FSM R. 183, 192 (Pon. 1997).

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).

The doctrine of *respondeat superior* may be applied to impose liability upon a state for the negligent torts of its employees. The theory may also be applied to intentional torts when committed by a police officer or other official in an apparent use of official authority. In other words, a state may only be held liable for torts committed in the scope of employment. Annes v. Primo, 14 FSM R. 196, 204 (Pon. 2006).

Generally, the question of whether a police officer acted within the scope of employment is a question of fact, rather than a legal question, although, if the facts are undisputed and can support only one conclusion, the inquiry becomes legal. Thus to survive a defendant's motion to dismiss, it is enough that the plaintiff has alleged assault and battery by a government employee cloaked with the authority of the state. Annes v. Primo, 14 FSM R. 196, 204 & n.3 (Pon. 2006).

When confronted with a situation where a principal may be held vicariously liable for its agent's acts, a plaintiff, at the plaintiff's option, may sue either the principal, the agent, or both. Thus, an agent is not an indispensable or necessary party to a vicarious liability claim against the principal. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

Since an agent is not an indispensable party to a vicarious liability claim against the principal, the principal would not be prejudiced if leave were granted to amend the complaint against it to include a vicarious liability claim against it for an agent's acts even if the plaintiffs do not also sue the agent. Nakamura v. Mori, 16 FSM R. 262, 268 (Chk. 2009).

An employee is herself jointly and severally liable with her employers for the checks she converted by cashing them while she was their employee because, under the doctrine of respondeat superior, an agent's act within the scope of his or her agency is the act of the principal, and the result is that both the principal and the agent are jointly and severally liable to the person injured by the wrongful act. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 (Pon. 2009).

Both principal and agent are jointly and severally liable for the torts that the agent commits in the course and scope of the work performed for the principal. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 446 (Pon. 2009).

Vicarious liability is not a cause of action but a means by which a defendant is held liable for the act of another, such as a principal being held liable for the torts or contracts of its agent. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 48 (Chk. 2010).

An agent who employs a subagent is the latter's principal and is responsible both to third persons and to his principal for the subagent's derelictions. Thus the agent is subject to liability to the principal for harm to the principal's property or business caused by the subagent's negligence or other wrong to the principal's

interests. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 (App. 2012).

Since supervisory liability requires proof of the underlying liability of the officers being supervised, when the officers on the scene cannot be held liable because they did not breach any duty owed to the decedent and because they were not the proximate cause of his death, the Director of Public Safety (and Chuuk as respondeat superior) cannot be held liable either. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

Vicarious liability is not a cause of action but a means by which a defendant is held liable for the act of another, such as a principal being held liable for the torts or contracts of its agent. Respondeat superior is just the same doctrine holding an employer or a principal liable for the employee's or agent's wrongful acts. Neither term describes a cause of action. George v. Palsis, 19 FSM R. 558, 570 (Kos. 2014).

When two of the corporation's officials remain as defendants, the plaintiff's claim of respondeat superior or vicarious liability will not be dismissed since the corporation is still potentially vicariously liable for any liability they might have. George v. Palsis, 19 FSM R. 558, 571 (Kos. 2014).

– Strict Liability

Any liability of the state for suffering or death caused by defective health care provided by the state must be based upon theories of negligence, not strict liability. Amor v. Pohnpei, 3 FSM R. 519, 534 (Pon. 1988).

Strict liability arises where the activity performed is not merely dangerous, but abnormally dangerous. One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 535 (Pon. 1998).

Strict liability is limited to the kind of harm, the possibility of which makes the activity abnormally dangerous. In determining whether an activity is abnormally dangerous, the following factors are to be considered: a) the existence of a high degree of some harm to the person, land or chattels of others; b) the likelihood that the harm that results from it will be great; c) the inability to eliminate the risk by the exercise of reasonable care; d) the extent to which the activity is not a matter of common usage; e) the inappropriateness of the activity to the place where it is carried on; and f) the extent to which its value to the community is outweighed by its dangerous attributes. Whether the activity is an abnormally dangerous one is to be determined by the court. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 535 (Pon. 1998).

A strict liability claim will be rejected when the defendant's blasting was not performed in an abnormally dangerous manner. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 541 (Pon. 1998).

Strict liability arises where the activity performed is not merely dangerous, but abnormally dangerous, so that one who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

When there is nothing inherently abnormally dangerous about road drainage systems, a proposed amendment to add a strict liability claim for damages from a road drainage system would be denied as futile since it would not be able to withstand a summary judgment motion. Nakamura v. Mori, 16 FSM R. 262, 269 (Chk. 2009).

– Trespass

Entering private land is at least technically a trespass, absent express or implied consent to the visit. FSM v. Mark, 1 FSM R. 284, 290 (Pon. 1983).

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).

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).

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

To prevail in an action for trespass, a plaintiff must prove a wrongful interference with his possessory interest in the property. Damages naturally resulting from the trespass alleged may be proved without being specially pleaded. In re Parcel No. 046-A-01, 6 FSM R. 149, 155 (Pon. 1993).

When plaintiff leaseholders present a written lease agreement and the certificates of title issued to the lessor and the defendants admit to occupying the land in question, the leaseholders have made a prima facie case for trespass. In re Parcel No. 046-A-01, 6 FSM R. 149, 155-56 (Pon. 1993).

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).

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

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

It is unnecessary to have a fee simple title to land in order to bring an action for trespass. All that is needed is a possessory interest. A trespass action is one for violation of possession, not for challenge to title. Ponape Enterprises Co. v. Soumwei, 6 FSM R. 341, 343 (Pon. 1994).

In a trespass case the judgment is for physical possession of the land and the standard is based on who has better right of possession not who has the better title. Ponape Enterprises Co. v. Soumwei, 6 FSM R. 341, 345 (Pon. 1994).

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).

A trespass cause of action accrues when there is an intrusion upon the land of another which invades

the possessor's interest in the exclusive possession of his land. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 177 (Pon. 1995).

Substantial, open and notorious occupation of land is constructive notice of occupant's claim and puts all persons on inquiry as to the nature of occupant's claim, and whoever willfully avoids learning of such trespass will be charged with constructive notice. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 177-78 (Pon. 1995).

To maintain a trespass action, a plaintiff must prove that at the time of the alleged trespass he had either actual possession or the right to immediate possession. Sana v. Chuuk, 7 FSM R. 252, 254 (Chk. S. Ct. Tr. 1995).

Where a defendant has trespassed on a plaintiff's land by constructing improvements thereon the measure of damages due the plaintiff is an amount equal to the fair market rental value of the land in the place located over the period of use, and also an amount for any damage to trees or food plants during the defendant's use of the property and for any conditions caused by the defendant's trespass and use such as the construction of a garbage dump. Ikanur v. Director of Educ., 7 FSM R. 275, 277 (Chk. S. Ct. Tr. 1995).

In a trespass case, a defendant who made improvements to the plaintiff's property is entitled to offset the value of the improvements against damages caused to the plaintiff's property during the trespass, but all improvements made by the defendant on land without the plaintiff's permission become the plaintiff's property and the defendant has no right to any further use of the improvements without the plaintiff's permission. Ikanur v. Director of Educ., 7 FSM R. 275, 277 (Chk. S. Ct. Tr. 1995).

The common law "incomplete privilege" of one to enter onto the land of another in times of private necessity is essentially codified by 19 F.S.M.C. 805(3), which states that "no person, including the owner or occupier of land may hinder or impede a rescuer." But it cannot have been the intent of 19 F.S.M.C. 805(3) to prevent law enforcement officials from carrying out their official duties in the face of an emergency rescue situation. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM R. 281, 292 (Pon. 1998).

The court's role in a civil trespass case is to determine which party has the greater possessory right to disputed property. In a criminal trespass case, in contrast, the court must determine whether the prosecution has established each element of the crime of trespass beyond a reasonable doubt. Nelson v. Kosrae, 8 FSM R. 397, 403 (App. 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).

An action for trespass has been broadly defined in the FSM as a wrongful interference with another's possessory interest in property. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 533 (Pon. 1998).

One is subject to liability to another for trespass, irrespective of whether he causes harm to any legally protected interest of the other, if he 1) intentionally and without consent enters land in the possession of the other, or causes a thing or person to do so, or 2) intentionally and without consent remains on the land of the other, or 3) intentionally fails to remove from the land a thing which he is under a duty to remove. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 533-34 (Pon. 1998).

When the intrusion is the result of reckless or negligent conduct, or the result of an abnormally dangerous activity, trespass liability attaches only where harm is caused to the land, to the possessor, or to a thing or a third person in whose security the possessor has a legally protected interest. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 534 (Pon. 1998).

There is no liability for trespass when the construction and use of a turnaround area did not exceed that contemplated by the parties in a valid lease agreement. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 539 (Pon. 1998).

When the parties did not reach a full understanding of what would be provided in exchange for the right to build an access road across the plaintiffs' land, but the defendant did agree to compensate the plaintiffs in some way, and when the defendant represented to the plaintiffs that the access road, once constructed, would be usable by the plaintiffs' vehicle, the defendant is liable to make the road passable by car or truck. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 539-40 (Pon. 1998).

Defendant committed a trespass when it caused two to three inches of soil to deposit on plaintiffs' land in an area approximately 12 by 14 feet. Defendant is liable to plaintiffs for the cost to return this area of plaintiffs' land to its original condition. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM R. 528, 540 (Pon. 1998).

Actions for trespass shall be commenced within six years after the cause of action accrues. Sipia v. Chuuk, 8 FSM R. 557, 558 (Chk. S. Ct. Tr. 1998).

For trespass the period of limitation begins to run when the project causing the damage is completed, if substantial damage has already occurred, or when the first substantial injury is sustained. Sipia v. Chuuk, 8 FSM R. 557, 559 (Chk. S. Ct. Tr. 1998).

The cause of action arises, and the general statute of limitations begins to run on tort actions for injury to property at the time the injury is sustained. Sipia v. Chuuk, 8 FSM R. 557, 559 (Chk. S. Ct. Tr. 1998).

When the plaintiff claims the state trespassed on her property by installing poles, a road and pipes sometime before the end of 1987 but did not file suit until 1994, recovery will be barred by the six year statute of limitations. Sipia v. Chuuk, 8 FSM R. 557, 559-60 (Chk. S. Ct. Tr. 1998).

In the case of a continuing trespass the statute of limitation does not begin to run from the date of the original entry, but recovery may be had for a period of time not exceeding the statutory period immediately preceding the institution of the action. David v. Bossy, 9 FSM R. 224, 226 (Chk. S. Ct. Tr. 1999).

Where the act of a wrongdoer involves a course of action which is a direct invasion of the rights of another, such conduct is regarded as a trespass of a continuing character. David v. Bossy, 9 FSM R. 224, 226 (Chk. S. Ct. Tr. 1999).

A possessory interest in a land parcel gives standing to maintain an action for trespass and other torts. It is unnecessary to have a fee simple title to the land in order to bring an action for trespass. All that is needed is a possessory interest. Jonah v. Kosrae, 9 FSM R. 332, 334 (Kos. S. Ct. Tr. 2000).

When a plaintiff has been granted the right to utilize the land through land use agreements he holds a sufficient possessory interest to give him standing to maintain an action for trespass. It is unnecessary to have a fee simple title to land in order to bring an action for trespass. Jonah v. Kosrae, 9 FSM R. 335, 343 (Kos. S. Ct. Tr. 2000).

An action for trespass has been broadly defined in the FSM as a wrongful interference with another's possessory interest in property. A trespass cause of action accrues when there is an intrusion upon another's land which invades the possessor's interest in the exclusive possession of his land. To prevail in an action for trespass, a plaintiff must prove a wrongful interference with his possessory interest in the property. Jonah v. Kosrae, 9 FSM R. 335, 343 (Kos. S. Ct. Tr. 2000).

When the state did not intentionally cause the black rocks to appear on the plaintiff's land, it did not intentionally cause a trespass to plaintiff's land, and when the state was not negligent or reckless in

constructing the seawall and constructing the seawall was not an abnormally dangerous activity, no trespass liability attaches to, and the state is not liable to, the plaintiff for trespass. Jonah v. Kosrae, 9 FSM R. 335, 343 (Kos. S. Ct. Tr. 2000).

Although under a common law ejectment theory one is privileged to exercise reasonable force to prevent an intrusion onto his property, provided that he has first requested the intruder to leave the premises, or where circumstances are such that such a request is unnecessary, such a theory would have no application to a case when he said nothing before he started hitting another's car, and the evidence was inconclusive as to whether the driveway was private property from which he would have been entitled to eject intruders. Elymore v. Walter, 9 FSM R. 450, 456 n.1 (Pon. 2000).

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).

To prevail in an action for trespass, a plaintiff must prove a wrongful interference with his possessory interest in the property. The plaintiff must prove his possession of the property, the time and location of the trespass, and the act of trespass. A cause of action for trespass accrues when there is an intrusion upon the land of another which invades the possessor's interest in the exclusive possession of his land. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 183 (Pon. 2001).

A possessor without a claim of right in real property may maintain trespass against anyone who unlawfully disturbs his possession except against the lawful owner or someone claiming under him. The defendant in such a trespass action may not set up in defense the title of a third person with whom there is no privity or connection. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 185 (Pon. 2001).

A defense to a trespass action that someone other than the plaintiff owned the land would only be material if the defendant alleged that that someone authorized him to use the land. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 185 (Pon. 2001).

When a defendant produces only incompetent evidence, regarding other people and other tracts of land, wholly unrelated to the land on which he is allegedly trespassing, and when the speculative and conflicting statements contained in his pleadings are insufficient to create a material fact as to his right to possess any part of the land, there are no material issues of fact and the plaintiff is entitled to summary judgment on its trespass claim. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 186 (Pon. 2001).

A trespass action is one for violation of possession, not for challenge to title. A trespass case is brought to re-establish possession, not to determine ownership or quiet title. A trespass case is a judgment for physical possession of the land and should be based on the standard of who has the superior right of possession, not who has the better title. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 187 (Pon. 2001).

A trespass defendant's bald assertions of third party ownership does nothing to diminish a plaintiff's superior right to possession of the land as to him and is immaterial to the issue of which party to the trespass action has the superior right of possession. A plaintiff's summary judgment motion will therefore be granted as to this affirmative defense. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 187-88 (Pon. 2001).

Because a trespass claim has either a twenty-year or a six-year statute of limitations, the statute of limitations on a trespass starting November, 1999 will not run for many years. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

When a plaintiff has acted expeditiously to notify a defendant of his trespass as soon as the defendant began construction on the land, there has been no unreasonable delay prejudicing the defendant which could give rise to a laches defense. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

A defendant's summary judgment motion based on assertions of the validity of a third party's potential claim is insufficient as a matter of law to establish a triable issue of fact as to the plaintiff's superior right of possession. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

The absence of a certificate of title does not affect a trespass case when the plaintiff holds the land under a color of title which is superior to the defendant's claimed right of possession. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

When a plaintiff has proven actual possession of part of the land, it operates as possession of the whole of the land covered by the quitclaim deeds. To require all landowners to construct buildings and fences on the entirety of their property in order to protect it from trespassers and interlopers is simply not practical. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 188 (Pon. 2001).

A noncitizen plaintiff who does not have title to the land may sue for trespass if he has a possessory interest. Marcus v. Truk Trading Corp., 10 FSM R. 387, 390 (Chk. 2001).

An action for trespass is for a wrongful interference with another's possessory interest in property. The court's role in a civil trespass is to determine which party has the greater possessory right to disputed property. A trespass action is one for violation of possession, not for challenge to title. Shrew v. Killin, 10 FSM R. 672, 674 (Kos. S. Ct. Tr. 2002).

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).

A trespass action is one for violation of possession, not for challenge to title. It is therefore not a proper proceeding for the defendant to challenge title and allege due process violations in the proceedings that determined the plaintiff's title to the parcel. The defendant may challenge the title through separate proceedings as appropriate. Shrew v. Killin, 10 FSM R. 672, 674-75 (Kos. S. Ct. Tr. 2002).

One is subject to liability to another for trespass, irrespective of whether he causes harm to any legally protected interest of the other if he 1) intentionally and without consent enters land in the other's possession, or causes a thing or person to do so, or 2) intentionally and without consent remains on the other's land, or 3) intentionally fails to remove from the land a thing which he is under a duty to remove. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 99-100 (Pon. 2002).

The plaintiffs have made a prima facie case for a trespass cause of action when they have established that they own the land pursuant to certificates of title and that the defendants are on the property without their consent, but in order to determine whether the plaintiffs should be granted summary judgment, the court needs to consider the defendants' arguments in opposition to the plaintiffs' motion, and if the defendants' arguments fail to establish a genuine issue of material fact exists, then it is appropriate for the court to enter summary judgment. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

When, even if a lease were deemed null and void or that the plaintiffs lacked the authority to enter into the agreement, the defendants have still failed to show that the plaintiffs do not own the property or to offer any evidence supporting their claim that they have a right to possession of the property. It would not prevent the plaintiffs from prevailing in their trespass action. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 102 (Pon. 2002).

In a claim for damages to land, such as trespass, all the co-owners of the affected land are indispensable parties to the action and must be joined if they are not already parties; otherwise the defendant faces a substantial risk that it may be subject to multiple or inconsistent judgments if any of the other persons who claim to be co-owners decide to sue. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 201, 203-04 (Chk. 2002).

A claim that some private party has taken or deprived someone of their property is, if it was personal property that was allegedly taken, a claim for conversion or for trespass to chattels, and, if it was real property that was allegedly taken by some private party, it is a claim for trespass (including actions for ejectment) or possibly for nuisance (interference with use and enjoyment of land). They are not due process or takings claims. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

A cause of action that alleges that the plaintiffs' customary and traditional rights to use an island might be better described as intentional interference with a customary and traditional property right than trespass. That the plaintiffs referred to it as a trespass should not, in itself, be an obstacle to them prevailing on this point if the evidence warrants, because except for judgments rendered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

When it is clear that regardless of the probability of appellant's success on appeal, he cannot demonstrate any right to possession of the property at the current time greater than that of the appellee, and when regardless of any stay of execution and of the offering of any supersedeas bond adequate to obtain the court's approval, the appellee is currently entitled to possession of her property pending the appeal's outcome and the appellant is not and must vacate the premises at the earliest possible moment. Konman v. Esa, 11 FSM R. 291, 297 (Chk. S. Ct. Tr. 2002).

As between a bare occupier of land and one holding under a deed, the deed holder has the greater right to possession. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 359 (App. 2003).

Who had, or has, title to the property was never at issue in a trespass action in which no counterclaim was brought to quiet title to the disputed land. Our law is clear that in an action for trespass, the judgment is for right of possession; in such a case, the issue is who has the superior right to possession, not who has title. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 359 (App. 2003).

The trial court did not err when it found that one party's right to possess the land was superior to another's because it had color of title, through a quitclaim deed, to the property. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 359 (App. 2003).

When the record is devoid of evidence that a non-party opposes or has ever challenged ownership of the disputed land, it does not bear on the question of who, as between the parties, has the greater right to possession of the disputed land. Nor are whether, relative to the disputed property, a public hearing was held or a certificate of title issued, or alleged defects in the quitclaim deed by which the plaintiff took its interest germane because these are title questions that do not relate to the issue in a trespass action, which is one of right of possession. These types of claims are insufficient as a matter of law to establish triable issues of fact as to the superior right of possession between the parties. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 359-60 (App. 2003).

When the action was not one to set boundaries or to determine the ownership of any particular property, the case was not an "action with regard to interests in land" within the meaning of 67 TTC 105 because the defendant never asserted an ownership interest on his own behalf in the land, but rather asserted the alleged rights of third parties who were not before the court. Thus the trial court, when it determined who had the greater possessory right to the disputed property, did not err when it did not refer the matter to the Pohnpei Court of Land Tenure. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 360 (App. 2003).

It is not practical to require all landowners to construct buildings or build fences on the entirety of their property in order to protect it from trespassers. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 360 (App. 2003).

When the College presented competent evidence that the land to which a deed refers is located miles from the disputed property and when Rosario produced only incompetent evidence regarding other people and other tracts of land that was wholly unrelated to land at issue, the trial court correctly concluded that Rosario's evidence relating to his claim of a possessory interest was insufficient to create a genuine issue of material fact as to his right to possess any part of the land. Thus, as between the parties, the College has the greater right of possession. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 360-61 (App. 2003).

A trespass case will be dismissed for failure to join the land's co-owners as indispensable parties plaintiff because any judgment in a rendered in the co-owners' absence will be prejudicial to the defendant since any of the other co-owners could sue for the same trespass, thus subjecting the defendant to multiple judgments for the same acts; because even a judgment in the defendant's favor would not prevent another co-owner from suing for the same acts; because there are no protective provisions that could be included in a judgment that would lessen the prejudice; and because the plaintiff has an adequate remedy since the dismissal is without prejudice – he may refile the case with the co-owners included. Ifenuk v. FSM Telecomm. Corp., 11 FSM R. 403, 405 (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).

To prevail in an action for trespass, a party must prove a wrongful interference with his possessory interest in the property. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 212 (Pon. 2003).

When a party has a valid possessory interest in the property and has shown that another has interfered with his possessory interest, he has proved that the other has trespassed on property to which he has a superior right of possession and he is thus entitled to summary judgment against the other on his claims for trespass. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 213 (Pon. 2003).

Trespass actions determine who has a better right to possession of the land. Kiniol v. Kansou, 12 FSM R. 335, 336 (Chk. 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 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).

When the bank's real property mortgage has never been enforced because receivership was the chosen remedy; when no agent of the bank is alleged to have entered or to have quarried the property the plaintiff contends is his; when the receivership was not the bank's agent over which it had control, direction, or authority; when the execution of a mortgage, even an invalid mortgage, is not an "authorization" by the mortgagee for anyone to either enter the mortgaged land or to trespass on another's land, viewing the facts in the light most favorable to the plaintiff, the bank, by asking for and obtaining amended receivership terms

to facilitate aggregate production to meet another's needs and to set up a payment plan for the judgment-creditors' benefit, did not commit or authorize a trespass. The bank is therefore entitled to summary judgment in its favor on the trespass cause of action. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129-30 (Chk. 2005).

Trespass actions determine who has a better right to possession of the land. Kiniol v. Kansou, 13 FSM R. 456, 458 (Chk. 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).

To maintain a trespass action, a plaintiff must prove that at the time of the alleged trespass he had either actual possession or the right to immediate possession. Mailo v. Chuuk, 13 FSM R. 462, 466 (Chk. 2005).

The court's role in a civil trespass case is to determine which party has the greater possessory right to the property, and an action for trespass has been broadly defined in the FSM as a wrongful interference with another's possessory interest in property. Mailo v. Chuuk, 13 FSM R. 462, 466 (Chk. 2005).

When a defendant has shown a superior right to present possession of a parcel and the plaintiff has not shown any right to immediate possession of any of the parcels he owns or any right to actual possession until 2019, the plaintiff cannot maintain a trespass action against the defendant and the defendant has the superior possessory right and is entitled to summary judgment as a matter of law against the plaintiff on the plaintiff's trespass cause of action. Mailo v. Chuuk, 13 FSM R. 462, 470 (Chk. 2005).

A trespass action is one for violation of possession. George v. Abraham, 14 FSM R. 102, 109 (Kos. S. Ct. Tr. 2006).

A trespass action will be stayed when the court cannot determine which person or persons have right to possession of the land until Land Court proceedings have determined the heirs of the deceased certificate of tile holder. George v. Abraham, 14 FSM R. 102, 109 (Kos. S. Ct. Tr. 2006).

Trespass is wrongful interference with a possessory interest in property. Defendants are liable for trespass if the plaintiff proves he owns or has a possessory interest in the land and the defendants intentionally and without consent enter or remain on the land. Siba v. Noah, 15 FSM R. 189, 196 (Kos. S. Ct. Tr. 2007).

A trespass action is one for violation of possession, not for challenge to title. Siba v. Noah, 15 FSM R. 189, 196 (Kos. S. Ct. Tr. 2007).

Since a trespass action is one for violation of possession, not for challenge to title, when a claim of trespass is raised and title to land is an issue and there is no pending case before a land commission or there is a previous determination of ownership, then the question of ownership may be remanded to the land commission. Once that ownership is determined, then a court can proceed on the trespass claim, if necessary, because a trespass claim involves more than an interest in land. Siba v. Noah, 15 FSM R. 189, 196-97 (Kos. S. Ct. Tr. 2007).

A trespass action is one for violation of possession, not for challenge to title. The court's role in a claim for trespass is to determine which party has the greater possessory right. Thus, when the plaintiff did not offer evidence to support his claim even though it was his burden to prove that he had the greater

possessory right and that the defendant intruded upon that interest and the record shows that the defendant had title and therefore a greater possessory right, the plaintiff's trespass claim must fail. And, when the defendant did not offer evidence of trespass by the plaintiff, so his allegation of trespass raised in his pre-trial brief will also fail. Andon v. Shrew, 15 FSM R. 315, 322 (Kos. S. Ct. Tr. 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).

If a defendant's acts caused trespass on a plaintiff's land and chattels but no actual damages are proven, the plaintiff would be entitled to no more than nominal damages ($1). Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 50 (Chk. 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).

If a defendant trespasses on a plaintiff's land but no actual damages can be proven, the plaintiff is entitled to nominal damages ($1). Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

An action for trespass has been broadly defined in the FSM as a wrongful interference with another's possessory interest in property, and a trespass cause of action accrues when there is an intrusion upon another's land which invades the possessor's interest in the exclusive possession of his land. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 124 (Chk. 2010).

To prevail in a trespass action, a plaintiff must prove a wrongful interference with his possessory interest in the property. When the intrusion is the result of reckless or negligent conduct, trespass liability attaches only where harm is caused to the land, to the possessor, or to a thing or a third person in whose security the possessor has a legally protected interest. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 124 (Chk. 2010).

A court does not need the presence of all owners of all property abutting the land's purported boundaries, and any other landowners in the vicinity whose property or property lines would have to appear on a certified survey map to decide the limited issue raised by a plaintiff's cause of action for trespass, that is, to decide whether the defendant is trespassing or occupying land to which the plaintiff church has a better right to possess or occupy. The court does not need to (and without the other necessary parties cannot) determine where all of the other boundaries lie because the only issue properly before the court, and the only issue the court may rule upon without violating the due process rights of non-parties, is whether it is more likely than not that the land the plaintiff leased was owned by the lessor and because the determination of boundaries of any other parts of the land which the plaintiff does not claim a leasehold or of the boundaries of any other parcels of land in the area is not before the court. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233-34 (Chk. 2010).

When there is a prior Chuuk State Supreme Court case that deals with the ownership issue and in which the alleged trespasser may soon be joined, and when the state court, unlike Chuuk Land Commission, has the power to issue monetary awards, the later-filed FSM Supreme Court trespass case will be dismissed without prejudice. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 307 (Chk. 2010).

A plaintiff must prove a wrongful interference with his possessory interest in the property to include possession of the property, the time and location of the trespass, and the act of trespass in order to prevail, but it is not for the court to assist him in proving any or all of these elements by ordering a Land Commission re-survey absent a showing of special circumstances. For the plaintiff to make the request in the first place suggests that uncertainty about his land boundaries implicates the allegation of trespass; otherwise it is

unclear what the purpose of such a survey would be and while a court order might expedite the certification or surveying of boundaries, that alone is not sufficient to warrant accommodating the request. Truk Trading Co. v. John, 17 FSM R. 382, 384 (Chk. S. Ct. Tr. 2010).

In a successful trespass claim where no evidence exists of actual damages, the trial court will award nominal damages. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 427, 437 (App. 2011).

When a tort claim – trespass – that the state occupied and continues to occupy the plaintiff's property to the exclusion of all others rises to the level of a constitutional claim and a civil rights violation, it is a taking of the plaintiff's property without just compensation. Stephen v. Chuuk, 18 FSM R. 22, 25 (Chk. 2011).

When the plaintiffs have an exclusive leasehold interest in a town lot for the duration of the lease, such a possessory interest is sufficient to support an action for trespass. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

When the defendants are liable for trespass, but the plaintiff failed to present any evidence of damages at trial, the plaintiff is entitled to nominal damages only, which will be set at one dollar. Harden v. Inek, 19 FSM R. 244, 252 (Pon. 2014).

For either a trespass cause of action or a cause of action against a municipal government for due process violations, the plaintiffs did not have to prove title or ownership, just a greater right to possession. Andrew v. Heirs of Seymour, 19 FSM R. 331, 338 (App. 2014).

To prevail in an action for trespass, a plaintiff must prove a wrongful interference with a valid possessory interest in land. A plaintiff can demonstrate wrongful interference by showing that a defendant, 1) intentionally and without consent enters land in the plaintiff's possession, or causes a thing or person to do so, or 2) intentionally and without consent remains on the plaintiff's land, or 3) intentionally fails to remove from the land a thing which he is under a duty to remove. Damarlane v. Damarlane, 19 FSM R. 519, 528 (Pon. 2014).

For the purpose of establishing trespass, a plaintiff can demonstrate a valid possessory interest in land by proving that at the time of the alleged trespass he had either actual possession, or the right to immediate possession of the land. Damarlane v. Damarlane, 19 FSM R. 519, 528 (Pon. 2014).

Judgment in a trespass case is for physical possession of the land, and the court's role is to determine which party has the greater possessory right to disputed property. Damarlane v. Damarlane, 19 FSM R. 519, 528 (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).

Since the alleged defect in the deed, in terms of the concomitant condition to the fee simple that conveyed the subject land to the FSM, is a question that does not relate to the issue in this trespass action, which is one of right of possession because In an action for trespass, the judgment is for the right of possession; in such a case, the issue is who has the superior right to possession, not who has title. FSM v. Falan, 20 FSM R. 59, 62 (Pon. 2015).

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).

The usual remedy for trespass to land (and when applicable nuisance and negligence claims are based on similar facts) is either a judgment for an amount equal to the diminution in the land's value or a judgment for an amount that would be needed to restore the land to its previous condition, whichever is the lesser amount. To award both would constitute an impermissible double recovery. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 78-79 (Pon. 2015).

One is subject to liability to another for trespass, irrespective of whether he causes harm to any legally protected interest of the other if he 1) intentionally and without consent enters land in the other's possession, or causes a thing or person to do so, or 2) intentionally and without consent remains on the other's land, or 3) intentionally fails to remove from the land a thing which he is under a duty to remove. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

The defendants are entitled to summary judgment on a plaintiff's trespass claim when unrebutted affidavit evidence defendants shows that the plaintiff told the police to get the pigs from his land and return them and shows that a resident of the property was there and gave him permission to enter the land and retrieve the pigs. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

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).

– Trespass to Chattels

The tort of trespass to chattels, or personal property, is the intentional use of or interference with a chattel which is in the possession of another without justification. Trespass includes the unlawful taking away of personal property of another. Whoever commits or causes another to commit an act of trespass is liable for the trespass and its damages. Talley v. Lelu Town Council, 10 FSM R. 226, 234 (Kos. S. Ct. Tr. 2001).

When, although there was substantial evidence to support finding that the plaintiff's personal property had been interfered with or taken away by another person, the plaintiff did not carry his burden of proof to show that either defendant did or caused another person to interfere with or take or move his property away from its designated location, the plaintiff cannot recover on his claim for trespass to chattels. Talley v. Lelu Town Council, 10 FSM R. 226, 235 (Kos. S. Ct. Tr. 2001).

A claim that some private party has taken or deprived someone of their property is, if it was personal property that was allegedly taken, a claim for conversion or for trespass to chattels, and, if it was real property that was allegedly taken by some private party, it is a claim for trespass (including actions for ejectment) or possibly for nuisance (interference with use and enjoyment of land). They are not due process or takings claims. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

The tort of trespass to chattels, or personal property, is the intentional use of or interference with a chattel which is in the possession of another without justification, so that when there was no evidence that the defendant intentionally interfered with the plaintiffs' personal property (inside their homes), the plaintiffs fail to prove their trespass to chattels claim. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 124 (Chk. 2010).

– Unfair Competition

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

The Consumer Protection Act of 1970 exclusively provides the means by which unfair competition between businesses should be dealt with under both national and applicable state law. Foods Pacific, Ltd.

v. H.J. Heinz Co. Australia, 10 FSM R. 409, 415 (Pon. 2001).

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

The Consumer Protection Act abolishes any common law action for unfair competition. Businesses do not have standing to sue competitors for violations of 34 F.S.M.C. 103, including passing off goods or services as those of another. Because Congress has legislated comprehensively in this field, it should be Congress that decides whether to provide businesses with a private cause of action against competitors for engaging in unfair competition. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 416 (Pon. 2001).

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

– Use of Excessive Force

In making an otherwise lawful arrest, a police officer may use whatever force is reasonably necessary to effect the arrest, and no more; he must avoid using unnecessary violence. Meitou v. Uwera, 5 FSM R. 139, 143 (Chk. S. Ct. Tr. 1991).

The tort of use of excessive force results from the arrest by a person having the authority to do so but accomplished by the use of unreasonable force. Conrad v. Kolonia Town, 8 FSM R. 183, 191 (Pon. 1997).

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

Violating a person's civil right to be free from excessive force while detained by the municipal police, is a violation of 11 F.S.M.C. 701(3). Herman v. Municipality of Patta, 12 FSM R. 130, 135 (Chk. 2003).

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

Excessive force is defined as the use of unreasonable force by a person having the authority to arrest. A person who has been arrested has the right to be free of excessive force and use of excessive force may constitute battery. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

Although an arrestee sustained some bruising to her wrists, the bruising was not the result of any arresting officer's conduct since when the arrestee was handcuffed, the cuffs were loose enough that they could slide up and down her wrists and there was enough space between the metal of the cuff and her skin to fit a regular-sized ballpoint pen, but during the travel from the arrest site to the police station, she struggled with the handcuffs, resulting in their tightening further around her wrists. Since the tightening of the handcuffs was not the result of an officer's conduct, but of the arrestee's own movements, the police did not use any unreasonable force in arresting and handcuffing her. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

Whether the Pohnpei police injured an arrestee through the use of excessive force and thus battered her is a question of fact. Thus, when the trial court found as fact that the arrestee had caused her own injuries by struggling with the handcuffs during the travel from the arrest site to the police station, which resulted in the handcuffs tightening further around her wrists and that the handcuffs' tightening was not the

result of an officer's conduct, but rather was the result of her own movements, the police did not cause her injury and no use-of-excessive-force battery could have occurred. Berman v. Pohnpei, 17 FSM R. 360, 372 (App. 2011).

Since a police officer may employ no more force than he reasonably believes to be necessary to effect the arrest, the tort of use of excessive force (which may constitute a battery) results from the arrest by a person having the authority to do so but accomplished by the use of unreasonable force. An arrestee has a civil right to be free of excessive force when being detained. Palasko v. Pohnpei, 20 FSM R. 90, 97 (Pon. 2015).

– Waste

Damages for waste are normally the difference in value of the property before and after the act of waste. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

The damages for waste committed are usually measured by the injury actually sustained and if the value of the premises has been improved by the acts complained of, the complainants will only recover nominal damages, if any, at law. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

Damages for waste can also be determined by the cost of repairing or replacing what was wasted when the damage is small in comparison to property's total value and the amount is readily ascertainable. Wolphagen v. Ramp, 8 FSM R. 241, 245 (Pon. 1998).

A lessor may not recover damages for waste when the removal of termite-infested lumber from uninhabitable houses while trying to turn the houses into a bar improved the value of the property, and because if the property had been abandoned without trying to turn the houses into a bar, the lessor would still have become the owner of two uninhabitable houses. Wolphagen v. Ramp, 8 FSM R. 241, 245 (Pon. 1998).

It does not automatically follow that because the lessor could prevent a change in the use of the premises, he should also be compensated as a result of the changes made to the structures when the trial court found that the structures were uninhabitable before the alterations were begun, and when the trial court noted evidence that the changes made had actually improved the structures. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

When the trial court found that houses were uninhabitable before the lessee made alterations, the question is the cost to return the houses to their (uninhabitable) state before the work was done. The trial court holding that the lessor is not entitled to houses in livable condition, made so at the lessee's expense, when he would have been left with uninhabitable houses had the lessee taken no steps to alter the premises will thus be affirmed. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

Nominal damages, or none at all, are awarded for ameliorating waste. Wolphagen v. Ramp, 9 FSM R. 191, 194 (App. 1999).

– Wrongful Arrest

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).

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).

– Wrongful Death

The common law today reflects no policy against wrongful death actions. The Federated States of Micronesia Supreme Court is not required to adopt the restrictive method of interpretation employed by the first courts who approached wrongful death statutes more than a century ago. Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 113 (Pon. 1985).

Wrongful death statutes, including the $100,000 ceiling on wrongful death claims, are part of the law of the states and are not national law. Edwards v. Pohnpei, 3 FSM R. 350, 360 (Pon. 1988).

In a case where a patient died following the normal delivery of her child, where the evidence fails to show any demonstrable effort at diagnosis and no treatment as a result of diagnosis, the standard of care expected of a doctor at the Truk State Hospital was not met and the evidence proves negligence. Asan v. Truk, 4 FSM R. 51, 56 (Truk S. Ct. Tr. 1989).

In a wrongful death claim in Truk State, where the total pecuniary estimated loss was $15,288 and where an infant child lost his mother, there should be a finding for the plaintiff in the maximum amount allowed by law, $50,000. Asan v. Truk, 4 FSM R. 51, 56-57 (Truk S. Ct. Tr. 1989).

In a wrongful death claim, parents of the deceased child are entitled to claim pecuniary damages and damages for their own pain and suffering from the loss of their child. Suka v. Truk, 4 FSM R. 123, 130 (Truk S. Ct. Tr. 1989).

Although the death, and all key events giving rise to the wrongful death claim, occurred in Guam, damages should be determined under FSM law when the claim is brought under 6 F.S.M.C. 503, the FSM wrongful death statute. Leeruw v. FSM, 4 FSM R. 350, 365 (Yap 1990).

The term "pecuniary injury" as used in wrongful death statutes traditionally has been interpreted as including the probable support, services and other contributions that reasonably could have been expected by the beneficiaries had the decedent lived out her full life expectancy, all reduced to present worth. Leeruw v. FSM, 4 FSM R. 350, 365 (Yap 1990).

Since under Yapese custom a daughter in her adult years may be expected to provide certain services for her mother, the loss of such customary services should be considered in calculating the mother's pecuniary injury resulting from her daughter's death. Leeruw v. FSM, 4 FSM R. 350, 365 (Yap 1990).

That a plaintiff parent of a decedent child can be awarded damages to include mental pain and suffering for the loss of such child is an exception to the general rule that wrongful death actions exclude compensation for pain and suffering, medical expenses, emotional distress or sorrow, or loss of companionship or consortium. Leeruw v. FSM, 4 FSM R. 350, 366 (Yap 1990).

Given that a 19-year old daughter is considered a child under Yapese custom, that the decedent was a 19-year old daughter who up to the time of her death continued to live with her parents in Yap and to perform those household chores expected under custom of young female persons within families in Yap, and that the parents were accompanying their daughter en route to obtain medical services when she died, the daughter was a child within the meaning of 6 F.S.M.C. 503. Leeruw v. FSM, 4 FSM R. 350, 366 (Yap 1990).

A statutory cap on the amount and scope of recovery in a wrongful death action, lawfully enacted by the Kosrae legislature, does not interfere with traditional Kosraean or Micronesian compensation of a victim's family by the tortfeasor. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 361 (Kos. 1992).

Families of wrongful death victims do not constitute a suspect class for purposes of equal protection

analysis. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 362 (Kos. 1992).

There is no fundamental interest in unbounded wrongful death recovery requiring strict scrutiny of a state law imposing a recovery cap. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 362 (Kos. 1992).

Among the rational bases supporting the constitutionality of a state statute capping wrongful death recovery are a desire to create foreseeable limits on government liability; to promote insurance; to encourage settlement of claims; and to ease the burden on courts and families of valuing losses incurred through the death of a family member. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM R. 358, 363 (Kos. 1992).

Because there is no survival statute in the FSM that would allow a deceased victim to sue a tortfeasor, the deceased cannot be awarded damages for wrongful death. The statute does allow a deceased's personal representative to sue for wrongful death on behalf of the deceased's relatives. Primo v. Refalopei, 7 FSM R. 423, 430-32 (Pon. 1996).

Damages for lost future earnings are not awardable where they are duplicative and speculative, but damages may be awarded for financial and emotional loss, and for loss, at present value, of customary services that a child would have preformed if not for her wrongful death. Primo v. Refalopei, 7 FSM R. 423, 433-34 (Pon. 1996).

In Chuuk, wrongful death is a state law cause of action created by a Trust Territory statute, 6 TTC 201-203, that is state law pursuant to the FSM and Chuuk Constitutions' transition clauses. Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (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).

Jailers, and their superiors, owe detainees a duty of care, which may include the duty to regularly observe a detainee's condition, and may breach that duty by failing to provide the required checks on his condition, had a duty of watchfulness when they are aware or should be aware of the effect on the detainee of the scolding he received and when these failures are the proximate cause of the plaintiff's death, these defendants are liable under 6 TTC 201(1) for the plaintiff's death by neglect. Estate of Mori v. Chuuk, 10 FSM R. 6, 14 (Chk. 2001).

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

Since wrongful death actions are brought for the exclusive benefit of the deceased's "surviving spouse, the children and other next of kin," 6 TTC 202, when the deceased had no spouse or children, the damages are the next of kin's pecuniary injury. Estate of Mori v. Chuuk, 10 FSM R. 6, 15 (Chk. 2001).

A deceased's parent (or her estate) is entitled to damages that include her mental pain and suffering for the loss of her child that resulted from her child's wrongful death, without regard to provable pecuniary damages. Estate of Mori v. Chuuk, 10 FSM R. 6, 15 (Chk. 2001).

Wrongful death is a state law cause of action created by a Trust Territory statute, 6 TTC 201-203, that is state law pursuant to the FSM and Chuuk Constitutions' transition clauses. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (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).

Wrongful death actions are brought for the exclusive benefit of the deceased's surviving spouse, children and other next of kin. The pecuniary injury consists of funeral expenses (including a novena) and the earnings that the deceased would have used to support his family, had he lived. The future earnings calculation may be based on the victim's continued employment and earnings at the same rate until he reached the FSM retirement age of 60. Herman v. Municipality of Patta, 12 FSM R. 130, 138 (Chk. 2003).

A battery or wrongful death, by itself, does not constitute a civil rights violation. 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).

Wrongful death actions are brought for the exclusive benefit of the deceased's surviving spouse, the children and other next of kin. When the decedent had no spouse or children, the damages are the next of kin's pecuniary injury. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

A decedent's mother as the deceased's parent is entitled to damages that include her mental pain and suffering for the loss of her child, without regard to provable pecuniary damages. Lippwe v. Weno Municipality, 14 FSM R. 347, 353 (Chk. 2006).

Every wrongful death action is for the exclusive benefit of the surviving spouse, the children, and other next of kin, if any, of the decedent as the court may direct. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 210 (Chk. 2010).

The Trust Territory wrongful death statute is valid as Chuuk state law through the Chuuk Constitution's transition clause. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 210 & n.1 (Chk. 2010).

The Chuuk wrongful death statute phrases the class of persons entitled to recovery in the conjunctive ("and"), not the disjunctive ("or"). Generally the use of the conjunctive "and" instead of the disjunctive "or" would mean that all three named beneficiaries – surviving spouse, children, and next of kin – are within the class of persons for whose benefit a wrongful death action may be brought and construing "and" according to its common and approved English usage would mean that all three groups, spouse, children, and next of kin, compose a single class of beneficiaries in a wrongful death action. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

There is no evidence that the Trust Territory Congress of Micronesia's legislative intent in the wrongful death statute was that "other next of kin" meant only those who would inherit under intestate succession acts, especially since, at the time the Trust Territory wrongful death statute was enacted, there were no intestate succession acts. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

The Pohnpei Intestate Succession Act cannot be used to restrict the operation of the Trust Territory wrongful death statute now applied as Chuuk state law. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

Under Chuukese custom, children are expected to and do in fact contribute to support of their parents. If they are not married and are employed they give larger amounts than when they have a family of their own, but the support in some amount will continue, in a normal relationship, as long as the parents live. Whether there is an obligation under the custom to support parents or other members of the family, largely depending on their need, does not affect the next of kin's entitlement to damages for pecuniary loss.

Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

If a decedent had been married, this would not eliminate parental support under custom, nor would it relieve the wrongdoer under the wrongful death statute. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

In determining the class of persons entitled to recovery the better cases favor an extended operation of the wrongful death statutes for the purpose of maximizing their remedial objectives. A remedial objective of the Chuuk wrongful death statute is to compensate those persons who had the right to rely on the decedent for pecuniary support had the decedent lived. Under Chuukese custom, these include, in addition to the decedent's spouse and children, the decedent's parents. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

Since there is no indication that parental support has ceased to be the custom in Chuuk and since parents are undoubtedly "other next of kin" under the Chuuk wrongful death statute, parents of adult children, consistent with custom, are included within the single class of persons entitled to recover in a wrongful death action even when there are other members (surviving spouse and children) of the class present. But even when a plaintiff is within the class of persons who may benefit from a wrongful death action, that plaintiff still must prove pecuniary damages in order for a money judgment to be awarded, and, of course, the plaintiff must also prove the other elements of a wrongful death cause of action. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

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

When it was the decedent's own actions that were the proximate cause of his death, the causation element of wrongful death cannot be proven. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

When a plaintiff cannot prove that the defendants had a duty toward the decedent that the defendants breached, the plaintiff cannot prove an essential element of his case and the defendants must be granted summary judgment. Ruben v. Chuuk, 18 FSM R. 425, 431 (Chk. 2012).

TRANSITION OF AUTHORITY

Amendment or repeal of a Trust Territory statute by Congress need not be explicit to be effective. If a Trust Territory statutory provision is inconsistent or in conflict with a statutory provision enacted by Congress, that provision is repealed by implication. FSM v. Albert, 1 FSM R. 14, 16 (Pon. 1981).

Under article XV, section 1 of the Constitution a Trust Territory Code provision is repealed by a subsequent statutory provision enacted by the Congress only if the statutory provisions in question are inconsistent or in conflict. Even if certain provisions are repealed, other provisions of that same statute may remain intact if the statute, without the deleted provision, is self-sustaining and capable of separate enforcement. FSM v. Boaz (II), 1 FSM R. 28, 29 (Pon. 1981).

The fact that Congress repealed many provisions of Title 11 of the Trust Territory Code by implication does not lead to the conclusion that all provisions of Title 11 are repealed. FSM v. Boaz (II), 1 FSM R. 28, 29 (Pon. 1981).

Since the national government does not have major crimes jurisdiction over Title 11 Trust Territory Code assaults calling for imprisonment of no more than six months, the repealer clause of the National Criminal Code would not appear to repeal those sections. FSM v. Boaz (II), 1 FSM R. 28, 30 (Pon. 1981).

Secretarial Order 3039, section 2 cleared the way for the assumption of jurisdiction by FSM courts by delegating the judicial functions of the government of the Trust Territory of the Pacific islands to the Federated States of Micronesia. Thus, the High Court's previous exclusive jurisdiction under 6 TTC 251 was effectively delegated to the Federated States of Micronesia, insofar as the Constitution of the Federated States of Micronesia authorizes such jurisdiction. Lonno v. Trust Territory (I), 1 FSM R. 53, 57-58 (Kos. 1982).

The language of Secretarial Order 3039, section 5(a) contemplates continued Trust Territory High Court activity pursuant to the "present procedural and jurisdictional provisions of Trust Territory law" only until new functioning courts are established by the constitutional governments, and recognizes that the jurisdictional provisions of Trust Territory law will necessarily be revised when those courts have been established. Lonno v. Trust Territory (I), 1 FSM R. 53, 59 (Kos. 1982).

A Secretarial Order, issued by one responsible official with full authority to state his intentions and instructions precisely, typically should not require reference to other documents for explanation. It is not a product of compromises and discussions among numerous legislators, where contemporaneous discussion may be especially helpful in determining the intention of the legislature in using certain words. Lonno v. Trust Territory (I), 1 FSM R. 53, 61 (Kos. 1982).

Delegation of former Trust Territory High Court judicial functions under 6 TTC 251 to the courts of the Federated States of Micronesia did not violate Executive Order No. 11021. Lonno v. Trust Territory (I), 1 FSM R. 53, 63 (Kos. 1982).

Interpretation of Secretarial Order 3039 as acquiescing in FSM Supreme Court jurisdiction over suits against the Trust Territory does not conflict with any residual United States obligation to oversee activities of the FSM courts pending termination of the Trusteeship Agreement nor does this interpretation imperil any interest the United States government may have in protecting the Trust Territory government against unfair or overreaching actions by the courts of the new constitutional governments. Lonno v. Trust Territory (I), 1 FSM R. 53, 64 (Kos. 1982).

Trust Territory High Court appellate division jurisdiction by writ of certiorari over appeals from the courts of last resort of the respective jurisdictions of the Federated States of Micronesia, the Marshall Islands, and Palau eliminates any possible risk which might otherwise be posed to the United States or its interests or responsibilities here by the full exercise of constitutional jurisdiction by the courts of the constitutional governments. Lonno v. Trust Territory (I), 1 FSM R. 53, 64-65 (Kos. 1982).

The Secretary of the Interior has the power to terminate the Trust Territory High Court's exclusive jurisdiction over suits against the Trust Territory because that jurisdiction was originally conferred upon the High Court by authority emanating from the Department of Interior. Lonno v. Trust Territory (I), 1 FSM R. 53, 65-67 (Kos. 1982).

The Trust Territory High Court's former exclusive jurisdiction over lawsuits against the Trust Territory government has been delegated to the constitutional governments covered by Secretarial Order 3039. Within the Federated States of Micronesia, the allocation of this former exclusive High Court jurisdiction between the Supreme Court of the Federated States of Micronesia and the various state courts will be determined on the basis of jurisdictional provisions within the Constitution and laws of the Federated States of Micronesia and its respective states. Lonno v. Trust Territory (I), 1 FSM R. 53, 68 (Kos. 1982).

Until the state courts are established, the Trust Territory High Court retains that portion of its exclusive jurisdiction formerly held under 6 TTC 251 which does not fall within the constitutional jurisdiction of the FSM Supreme Court. Lonno v. Trust Territory (I), 1 FSM R. 53, 68 (Kos. 1982).

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).

Retention of the power to play a major role in executive functions, to suspend legislation enacted by the Congress, and to entertain appeals from the court of last resort, the very essence of government, suggests that the Trust Territory government remains, not a foreign state, but an integral part of the national government here. Lonno v. Trust Territory (I), 1 FSM R. 53, 72 (Kos. 1982).

Under the present state of affairs, the Trust Territory government cannot be considered a foreign state, citizen or subject thereof within the meaning of article XI, section 6(b) of the Constitution. Lonno v. Trust Territory (I), 1 FSM R. 53, 74 (Kos. 1982).

It would be contrary to the desire of the framers of the Constitution that local officials retain control over local matters if the FSM Supreme Court were to relinquish jurisdiction over issues involving local and state powers to the Trust Territory High Court, which is the least local tribunal now existing in the Trust Territory. In re Nahnsen, 1 FSM R. 97, 110 (Pon. 1982).

The Constitution contemplates that decisions affecting the people of the Federated States of Micronesia will be decided by courts appointed by the constitutional governments of the Federated States of Micronesia. This in turn requires an expansive reading of the FSM Supreme Court's jurisdictional mandate while we await establishment of functioning state courts. In re Nahnsen, 1 FSM R. 97, 111 (Pon. 1982).

Title 11 of TT Code is not inconsistent with nor violative of the FSM Constitution; therefore 11 TTC continued in effect after the effective date of the Constitution and until the National Criminal Code's effective date. Truk v. Otokichy, 1 FSM R. 127, 130 (Truk 1982).

Title 11 of the Trust Territory Code, before the effective date of the National Criminal Code, is not a national law because its criminal jurisdiction was not expressly delegated to the national government, nor is it a power of indisputably national character; therefore, it is not within the FSM Supreme Court's jurisdiction. Truk v. Otokichy, 1 FSM R. 127, 130 (Truk 1982).

The delegation of judicial functions to the Federated States of Micronesia, pursuant to Secretarial Order 3039, section 2 does not by itself give the FSM Supreme Court jurisdiction over Title 11 Trust Territory Code crimes occurring before the National Criminal Code's effective date. Truk v. Otokichy, 1 FSM R. 127, 131 (Truk 1982).

The national and state governments' assumption of powers from the Trust Territory government is accomplished through the transfer and transition approach rather than by operation of law. Manahane v. FSM, 1 FSM R. 161, 167 n.3 (Pon. 1982).

The FSM Supreme Court has jurisdiction to try Title 11 Trust Territory Code cases if they arise under a national law. Title 11 of the Trust Territory Code is not a national law. It was not adopted by Congress as a national law and it did not become a national law by virtue of the transition article. Truk v. Hartman, 1 FSM R. 174, 178 (Truk 1982).

Sections of Title 11 of the Trust Territory Code covering matters within the jurisdiction of Congress owe their continuing vitality to Section 102 of the National Criminal Code. Thus, the criminal prosecutions thereunder are a national matter and fall within the FSM Supreme Court's constitutional jurisdiction. In re Otokichy, 1 FSM R. 183, 185 (App. 1982).

Upon inception of constitutional self-government by the people of the Federated States of Micronesia, criminal law provisions in Title 11 of the Trust Territory Code became the law of governments within the

Federated States of Micronesia by virtue of the Constitution's transition provisions. In re Otokichy, 1 FSM R. 183, 187 (App. 1982).

The savings clause, 11 F.S.M.C. 102(2), unlike the other sections of the National Criminal Code, was intended to apply to offenses committed before the Code's effective date. It specifically authorizes prosecutions of Title 11 Trust Territory Code offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. In re Otokichy, 1 FSM R. 183, 189-90 (App. 1982).

Change of forum for Title 11 Trust Territory Code cases from the Trust Territory High Court to the FSM Supreme Court is a procedural matter with no effect on the defendants' substantive rights. In re Otokichy, 1 FSM R. 183, 193 (App. 1982).

Any power the Trust Territory High Court, the District Courts and the Community Courts may have to exercise judicial powers within the Federated States of Micronesia is to be exercised not as that of autonomous foreign states but as integral parts of the domestic governments. Those courts continue to exercise trial court functions in Ponape only on an interim basis, until the State of Ponape establishes its own courts, either under its present state charter or under any constitution which Ponape may adopt. In re Iriarte (I), 1 FSM R. 239, 244 (Pon. 1983).

The interim nature and limited purpose of the Trust Territory High Court, the District Courts and the Community Courts does not suggest that these entities are immune to the restraints imposed upon officials authorized to act by constitutions or statutes approved by citizens of the Federated States of Micronesia or their representatives. To the contrary, respect for constitutional self-government and the Trusteeship Agreement provisions to which they trace their power to act here, mandate that these interim entities act with great restraint, only as necessary to supplement the constitutional courts and until creation of constitutional courts here. In re Iriarte (I), 1 FSM R. 239, 244-45 (Pon. 1983).

The exercise of governmental powers by the Trust Territory High Court, the District Courts and the Community Courts must be carried out in a manner consistent with constitutional self-government and are subject to the safeguards erected by the Constitution for citizens of the Federated States of Micronesia. In re Iriarte (I), 1 FSM R. 239, 245 (Pon. 1983).

The Federated States of Micronesia Constitution does not contemplate that FSM citizens should be required to travel to Saipan or to petition anyone outside of the FSM to realize rights guaranteed to them under the Constitution. In re Iriarte (I), 1 FSM R. 239, 253 (Pon. 1983).

The FSM Supreme Court should not intrude unnecessarily in the efforts of the Trust Territory High Court to vindicate itself and other judges through court proceedings within the Trust Territory system. In re Iriarte (I), 1 FSM R. 239, 254 (Pon. 1983).

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

The Trust Territory High Court is an anomalous entity operating on an interim basis adjacent to a constitutional framework and consisting of judges appointed by officials of the United States Department of the Interior. These and other considerations point toward the propriety and necessity of vigilance by the FSM Supreme Court to uphold the constitutional rights of FSM citizens. In re Iriarte (II), 1 FSM R. 255, 267 (Pon. 1983).

Transfer of a case not in active trial in the Trust Territory High Court is mandatory unless the legal rights of a party are impaired by the transfer. U.S. Dep't Int. Sec'l Order 3039, § 5(a) (1979). Actouka v. Etpison, 1 FSM R. 275, 277 (Pon. 1983).

National court jurisdiction over the Trust Territory Weapons Control Act is consistent with 12 F.S.M.C.

102 which states in part that criminal prosecutions shall be conducted in the name of the Federated States of Micronesia for violations of the statutes of the Trust Territory which continued in effect by virtue of the transition article of the Constitution and which are within the FSM national government's jurisdiction. 11 F.S.M.C. 1201-1231. FSM v. Nota, 1 FSM R. 299, 303 (Truk 1983).

8 F.S.M.C. 206 authorizes the transfer of authority from the Trust Territory and its officials to the Federated States of Micronesia government and its officials. Thus the reference in the Trust Territory Weapons Control Act to the High Commissioner and the Attorney General of the Trust Territory does not prevent its effectiveness as national law of the Federated States of Micronesia. 11 F.S.M.C. 1201-1231. FSM v. Nota, 1 FSM R. 299, 303 (Truk 1983).

The Trust Territory High Court has the legitimate authority to issue writs of certiorari for cases from the FSM Supreme Court; the Supreme Court cannot disregard an opinion resulting from such review. U.S. Dep't Int. Sec'l Order 3039, § 5(b). Jonas v. Trial Division, 1 FSM R. 322, 326-29 (App. 1983).

A writ of certiorari is improvidently granted by the Trust Territory High Court unless the FSM Supreme Court decision affects the Secretary of the Interior's ability to fulfill his responsibilities under Executive Order 11021. Jonas v. Trial Division, 1 FSM R. 322, 329 n.1 (App. 1983).

Title 5 of the FSM Code, including section 514, is in essence the Trust Territory High Court judiciary act. The statute was enacted when the Trust Territory High Court had general original jurisdiction over criminal cases within the area that is now the Federated States of Micronesia. The act was not deleted in the codification process but remains part of the body of FSM national law because at the time of codification, the Trust Territory High Court still had extensive original jurisdiction in the Federated States of Micronesia. In re Raitoun, 1 FSM R. 561, 564 (App. 1984).

In light of the Constitution's Transition Clause, action by the FSM Congress is not necessary in order to establish that violations of the Weapons Control Act are prohibited within the Federated States of Micronesia. The only question is whether those are state or national law prohibitions or both. If the definition of major crimes in the National Criminal Code bears upon the Weapons Control Act at all, it is only for that purpose of allocating between state and national law. Joker v. FSM, 2 FSM R. 38, 43 (App. 1985).

The Transition Clause of the FSM Constitution effectively adopts statutes of the Trust Territory, including the Weapons Control Act, and serves as the original enactment of a body of law, criminal as well as civil, for the new constitutional government. Further action by the FSM Congress is not necessary to establish that violations of the Weapons Control Act are prohibited within the FSM. Joker v. FSM, 2 FSM R. 38, 43 (App. 1985).

Public Law No. 2-48, promulgating the codification of the FSM statutes and speaking only of "All enacted law of the Interim Congress of Micronesia . . . and all enacted law of the Congress law of the Federated States of Micronesia" as "readopted and reenacted as positive law of the Federated States of Micronesia," may not be interpreted as an attempt to repeal or purge the Trust Territory law from the law of the Federated States of Micronesia. Joker v. FSM, 2 FSM R. 38, 43 (App. 1985).

There is nothing absurd about a weapons control scheme that recognizes that both the national and the state governments have an interest in controlling the possession, use and sale of weapons. While Congress and the states may eventually wish to allocate their respective roles with more precision, the current Weapons Control Act appears to provide a workable system during these early years of transition and constitutional self-government. Joker v. FSM, 2 FSM R. 38, 44 (App. 1985).

In declining to "reenact" in Public Law No. 2-48 provisions originating with High Commissioners or Congress of Micronesia, Congress seems to have been motivated by transitional considerations rather than a desire to withhold official status from those laws. FSM v. George, 2 FSM R. 88, 92 (Kos. 1985).

Procedural statute 6 F.S.M.C. 1018, providing that the court may tax any additional costs incurred in

litigation against the losing party other than fees of counsel, applies only to Trust Territory courts and not to courts of the Federated States of Micronesia, and therefore does not preclude the FSM Supreme Court from awarding attorney's fees as costs. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 205 (Pon. 1986).

The gross revenue tax as enacted by the Congress of Micronesia continued in effect in the Federated States of Micronesia by virtue of the transition article of the FSM Constitution but, because it was subsequently amended by the FSM Congress and was included in the codification of FSM statutes, may now be considered a law enacted by Congress. Afituk v. FSM, 2 FSM R. 260, 264 (Truk 1986).

According to Secretarial Order No. 3039, § 5(a), all cases against the Trust Territory of the Pacific Islands and the High Commissioner that were filed in the FSM at the time the Truk State Court was certified will continue to remain within the exclusive jurisdiction of the High Court. Those cases filed after certification are not within the jurisdiction of the High Court. Suda v. Trust Territory, 3 FSM R. 12, 14 (Truk S. Ct. Tr. 1985).

Under the Constitution of the Federated States of Micronesia, the national government, not the state governments, assumes any "right, obligation, liability, or contract of the government of the Trust Territory." Salik v. U Corp. (I), 3 FSM R. 404, 407 (Pon. 1988).

The underlying principle of the Transition Clause of the Constitution, FSM Const. art. XV, § 1, is that a new constitution ought to bring with it no greater changes than are necessary to effectuate its terms. FSM v. Oliver, 3 FSM R. 469, 476 (Pon. 1988).

That a carryover statute covers topics that now fall into areas of both state and national responsibilities is not a sufficient ground for reducing the reach of the statute or allowing it to fall short of its originally intended scope. FSM v. Oliver, 3 FSM R. 469, 477 (Pon. 1988).

If neither state nor national powers alone are sufficient to carry out the original purposes of a carryover statute, or if state and national powers are invoked, then the statute is enforceable as both state and national law. FSM v. Oliver, 3 FSM R. 469, 477 (Pon. 1988).

Determinations as to whether claims of citizens against the previous Kosrae state chartered government may now be upheld against the constitutional state government are to be made by the judiciary on the basis of: 1) when the cause of action arose; 2) the identity of the officer or person whose action created the liability; and 3) the place where the original action creating the liability occurred. Seymour v. Kosrae, 3 FSM R. 539, 542-43 (Kos. S. Ct. Tr. 1988).

The Kosrae constitutional state government may be held liable for actions taken by police officers under the previous chartered state government, approximately one month before ratification and four months before implementation of the Kosrae Constitution, in falsely arresting and abusing a citizen in Kosrae. Seymour v. Kosrae, 3 FSM R. 539, 543 (Kos. S. Ct. Tr. 1988).

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

The Constitution of the FSM has been the supreme law of the Federated States of Micronesia since May 10, 1979 and from that time on, nonconstitutional officials could be authorized to exercise powers assigned to the national government by the Constitution only through authorization by constitutional officials or pursuant to some other power rooted in the Constitution. United Church of Christ v. Hamo, 4 FSM R. 95, 104 (App. 1989).

In specifically authorizing the President to act pursuant to Secretarial Order 3039 in accepting executive functions from the Trust Territory, the FSM Congress implicitly adopted those provisions of Secretarial Order 3039 concerning transfer of executive functions as law of the Federated States of

Micronesia. United Church of Christ v. Hamo, 4 FSM R. 95, 104 (App. 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 transitional actions of the FSM Congress, intended to adopt as law of the Federated States of Micronesia those portions of Secretarial Order 3039 relating to judicial functions within the FSM and permitting the Trust Territory courts to continue functioning within the FSM pending establishment of constitutional courts, were a necessary and proper exercise of Congress' power under the Constitution to provide for a smooth and orderly transition. United Church of Christ v. Hamo, 4 FSM R. 95, 105 (App. 1989).

The FSM Supreme Court normally will refuse to review the correctness of an earlier Trust Territory High Court judgment, which has become final through affirmance on appeal or through lack of a timely appeal, and claims that the earlier judgment is ill-reasoned, unfair or even beyond the jurisdiction of the High Court typically will not be sufficient to escape the doctrine of res judicata. United Church of Christ v. Hamo, 4 FSM R. 95, 107 (App. 1989).

In light of the Trust Territory High Court's insistence on maintaining control over cases within the Federated States of Micronesia in disregard of Secretarial Order 3039 and to the exclusion of the new constitutional courts, its characterizations of Joint Rule No. 1 as "simply a memorandum" and of the words "active trial" in Secretarial Order 3039 as merely "administrative guidance," its acceptance of appeals after it was precluded from doing so by Secretarial Order 3039, its decision of appeals after Secretarial Order 3039 was terminated and its continued remand of cases to the High Court trial division for further action even after November 3, 1986, there can be no doubt that for purposes of res judicata analysis, the High Court was a court lacking capacity to make an adequately informed determination of a question concerning its own jurisdiction. United Church of Christ v. Hamo, 4 FSM R. 95, 118 (App. 1989).

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

Where the Trust Territory High Court 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 the Trust Territory High Court's exercise of jurisdiction was a manifest abuse of authority, allowing the judgment of the High Court to stand would undermine the decision-making guidelines and policies reflected in the judicial guidance clauses of the national and state constitutions and would thwart the efforts of the framers of the Constitution to reallocate court jurisdiction within the Federated States of Micronesia by giving local decision-makers control over disputes concerning ownership of land. United Church of Christ v. Hamo, 4 FSM R. 95, 119 (App. 1989).

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

Actions of the Trust Territory High Court taken after the establishment of functioning constitutional courts in the Federated States of Micronesia, and without a good faith determination after a full and fair hearing as to whether the "active trial" exception permitted retention of the cases, were null and void, even

though the parties failed to object, because the High Court was without jurisdiction to act and its conduct constituted usurpation of power. United Church of Christ v. Hamo, 4 FSM R. 95, 122 (App. 1989).

The Corporations, Partnership and Agency regulations were adopted pursuant to, and affect the reach of, the Trust Territory statute regulating corporations and, since those statutory provisions are part of FSM national law by virtue of the Transition Clause of the FSM Constitution, the regulations too must retain their effect until they are amended or repealed pursuant to FSM law. Mid-Pac Constr. Co. v. Senda, 4 FSM R. 376, 381 (Pon. 1990).

The Corporation, Partnership and Association Regulations incorporated by 37 TTC 52 (1980) remain in effect as FSM national law by virtue of the Transition Clause, FSM Const. art. XV, § 1, until they are amended or repealed by Congress. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM R. 180, 187 (Pon. 1993).

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

The United States could not assume responsibility for, or be held liable for, the absence of separate adjudicatory body for public land disputes when the exclusive authority to establish such a body had been transferred to the Ponape district legislature. Nahnken of Nett v. United States (III), 6 FSM R. 508, 528 (Pon. 1994).

Title 3 of the Trust Territory Code represents interim legislation prior to the time when the former Trust Territory Districts were chartered, and had no continuing existence after the adoption of the Truk Charter in 1977. Wainit v. Weno, 7 FSM R. 121, 123 (Chk. S. Ct. Tr. 1995).

Whether carryover provisions from the Trust Territory Code are state or national laws must be determined on a statute-by-statute, or a section-by-section, basis. Burke v. Torwal, 7 FSM R. 531, 534 (Pon. 1996).

The reciprocal child support enforcement provisions of chapter 17 of Title 6 of the FSM Code remain in effect as part of state law. Burke v. Torwal, 7 FSM R. 531, 534 (Pon. 1996).

A proceeding for enforcement of a CNMI child support order in the FSM is properly filed in state court by the state attorney general, not in national court by the FSM Attorney General. Burke v. Torwal, 7 FSM R. 531, 535-36 (Pon. 1996).

Because whatever vestigial authority the Trust Territory or the United States may have had after May 10, 1979, disappeared on November 3, 1986, when the Federated States of Micronesia became independent, governmental conduct after that date is not attributable to the United States or to the Trust Territory. Nahnken of Nett v. United States, 7 FSM R. 581, 591 (App. 1996).

Although the Kosrae Constitution contains no impairment of contracts clause, it is not silent in this area. The Kosrae Transition Clause provides that contracts continue unaffected. Cornelius v. Kosrae, 8 FSM R. 345, 352 (Kos. S. Ct. Tr. 1998).

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).

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

Via the analogy implicated by the Transition Clause, under a statute carried over from the Trust Territory which speaks in terms of the Trust Territory and any of its political subdivisions as being persons, Pohnpei is also a person to the same extent that a Trust Territory political subdivision was a person under

the statute's prior incarnation. AHPW, Inc. v. FSM, 9 FSM R. 301, 305 (Pon. 2000).

Trust Territory statutes that mostly never took effect cannot be relied upon to interpret provisions of the FSM Constitution. Chuuk v. Secretary of Finance, 9 FSM R. 424, 432-33 (App. 2000).

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).

Chuuk, as the succeeding sovereign, is entitled to rely on the taking of the land in question by the Trust Territory, the previous sovereign, and is not required to correct any wrong in the original 1968 Trust Territory taking because it is now too late. Sefich v. Chuuk, 9 FSM R. 517, 518 (Chk. S. Ct. Tr. 2000).

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).

Title 6, chapter 10, subchapter 1 of the FSM Code is replete with references to officials who either do not exist now or who no longer carry out the functions with which they are identified in the statute, and when confronted with such language in a section thereof, the FSM Supreme Court has generally ruled that the section applies only to the Trust Territory High Court. FSM v. Kuranaga, 9 FSM R. 584, 586 (Chk. 2000).

The witness fees in 6 F.S.M.C. 1011 apply only to the Trust Territory High Court. FSM v. Kuranaga, 9 FSM R. 584, 586 (Chk. 2000).

Trust Territory statutes continue in effect except to the extent they are inconsistent with the Constitution, or are amended or repealed. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 62 (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).

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).

A Trust Territory statute (except to the extent it is amended, repealed, or is inconsistent with the Constitution), which related to matters that now fall within the national government's legislative powers became national law upon the Constitution's ratification, and the other Trust Territory laws presumably became law of each of the states at the same time; and if neither state nor national powers alone are sufficient to carry out the statute's original purpose, or if state and national powers are invoked, then the statute is enforceable as both state and national law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 409, 414-15 (Pon. 2001).

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

Title 67 of the Trust Territory Code remains Chuuk state law pursuant to the Chuuk Constitution's Transition Clause and because it has never been amended or repealed. Stephen v. Chuuk, 11 FSM R. 36, 41 n.1 (Chk. S. Ct. Tr. 2002).

A Kosrae district Trust Territory High Court judgment in a trespass action will not be set aside as invalid because it was in a designated land registration area when the registration area designation was not filed in the Kosrae district High Court and the prevailing defendants did not ask that title be issued to them, but only that the complaint be dismissed. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 172-73 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court has always accepted and enforced Trust Territory High Court decisions as valid and binding, consistent with the Kosrae constitutional provisions on transition of government. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 173 (Kos. S. Ct. Tr. 2002).

Under the FSM Constitution's Transition Clause, Trust Territory statutes applicable to the states became part of the states' laws regardless of whether they were published in the FSM Code; they are the laws of the states until amended, superseded or repealed. Villazon v. Mafnas, 11 FSM R. 309, 311 (Pon. 2003).

When a state has not enacted laws in an area within its jurisdiction such as child support, national law is applicable to the state court proceeding, because the Trust Territory Code reciprocal support enforcement provisions, now codified at 6 F.S.M.C. 1711, are imputed to be state law under the FSM Constitution's Transition Clause. Under that clause, Trust Territory statutes that were applicable to the states became part of the states' laws regardless of whether they were published thereby. They stand as the laws of the states until amended, superseded or repealed. Anson v. Rutmag, 11 FSM R. 570, 572 (Pon. 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).

The states of Yap and Kosrae repealed the Trust Territory Code when they enacted their state codes. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 509 (App. 2005).

Generally, when the word "district" appears in an FSM Code provision carried over from the Trust Territory Code by virtue of the Constitution's Transition Clause, "state" will be read in its place. FSM v. Kansou, 14 FSM R. 136, 138 n.1 (Chk. 2006).

Under the Chuuk Constitution's Transition Clause, Trust Territory Code Title 8 is still applicable law in Chuuk. Chuuk v. Andrew, 15 FSM R. 39, 42 n.2 (Chk. S. Ct. App. 2007).

Trust Territory judicial decisions are not stare decisis, that is, they are not binding precedent on FSM courts. Nakamura v. Moen Municipality, 15 FSM R. 213, 218 (Chk. S. Ct. App. 2007).

Since 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; since nothing in the Trust Territory survival of actions statute is inconsistent with the Chuuk Constitution; and since the statute has not been amended or repealed, 6 TTC 151(1) remains the law in Chuuk. Dereas v. Eas, 15 FSM R. 446, 448 (Chk. S. Ct. Tr. 2007).

Chapter six of Title Six is the Trust Territory of the Pacific Islands sovereign immunity statute. If it ever had any application to the FSM, it would have been supplanted or repealed by implication when the FSM Congress enacted a sovereign immunity statute, FSM Pub. L. No. 1-141, specifically applicable to the FSM national government. It remained part of the FSM Code because, at the time the FSM laws were codified, the Trust Territory government retained vestigial functions and authority in the FSM. By its terms, chapter six relates only to the Trust Territory government's liability and not to the liability of any of the FSM constitutional governments. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 604 (Pon. 2009).

Trust Territory High Court decisions are not stare decisis in the Federated States of Micronesia, but

their rationale may be adopted when persuasive. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

Trust Territory Code Title 17 is retained as Chuuk state law through the Chuuk Constitution's Transition Clause. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 535, 540 n.1 (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).

The term "Trust Territory" in statutes carried over from the Trust Territory Code should generally be read as meaning "Federated States of Micronesia" when the power involved is a national power. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619 n.1 (Chk. 2011).

A statute in force in Chuuk on the Chuuk Constitution's effective date continues in effect to the extent it is consistent with the Chuuk Constitution or until it is amended or repealed. Thus 1TTC 103 is still effective statutory law in Chuuk. Ruben v. Chuuk, 18 FSM R. 425, 430 n.1 (Chk. 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 argument that citizens' rights must be upheld over a Trust Territory High Court judgment because the Trust Territory High Court was not a constitutional court must be rejected when there were no constitutional courts in 1960 when the judgment was issued and the Trust Territory courts were the only functioning court system then. The impropriety of the Trust Territory High Court deciding cases when both the Trust Territory High Court and constitutional FSM courts were simultaneously in existence and functioning thus offers no support. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 303-04 (App. 2014).

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).

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).

TRANSLATION

Where plaintiff's complaint is written in English and the defendant requests a written translation into a local Micronesian language, and where it appears that this is the only language the defendant can speak or read, the trial judge may order that the court provide a written translation and that the expense of providing the translation shall be taxed as a cost to the party not prevailing in the action. Rawepi v. Billimon, 2 FSM R. 240, 241 (Truk 1986).

Because the Chuuk Constitution provides that Chuukese is the state language, but both Chuukese and English are official languages, a criminal appellant in the Chuuk State Supreme Court has no constitutional

right to a transcript in both Chuukese and English. Reselap v. Chuuk, 8 FSM R. 584, 586 (Chk. S. Ct. App. 1998).

Since the appellate record must be sufficient to permit the court to insure that the issues on appeal were properly raised before the trial court, the appellants are responsible for presenting a record sufficient to permit the court to decide the issues raised on appeal, and the record must be one which provides the court with a fair and accurate account of what transpired in the trial court. They therefore have the burden of providing an appendix that is reviewable by the court – a certified translation of the Chuukese transcript. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

When an appellant argues that some of the trial court's legal and factual findings are incorrect, specifically its factual findings about the ownership of a particular piece of land, the issue is certainly relevant to the appeal, but without a translation of the deposition transcript, the appellate court cannot conclude that the deposition transcript is relevant. Thus, if the deposition transcript's assertions are part of the reported case, there is no need to include it in the appendix but if the assertions are not part of the reported case, the appellants have the burden of providing a certified translation of the deposition transcript. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

When the trial transcript and a deposition transcript relied upon by the appellants are in Chuukese and have not been translated, the court may order the appellants: 1) to provide a certified translation of the trial transcript and either a certified translation of the deposition transcript or a statement that the appellants will not rely on the deposition transcript; or 2) to stipulate to a continuation of oral argument and move for enlargement of time to file a certified translation; or 3) to proceed with oral argument as scheduled without the benefit of the appendix. Setik v. Ruben, 17 FSM R. 301, 303 (App. 2010).

Usually, when the record is not in a form that fairly and accurately provides the appellate court with an account of what happened in the lower court because it has not been translated into English, the appellate court will stop the analysis of the issue there and proceed to the next since the appellants have not met their responsibility to present the court with a record sufficient to permit it to decide the issues raised on appeal and which provides the court with a fair and accurate account of what transpired in the trial court proceedings. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 504 n.2 (App. 2011).

Appellate litigants should translate court decisions and other necessary parts of the record into English in order to facilitate and ensure a proper appellate review. Otherwise, the appellate court may be unable, except in an uncommon case, to ensure a proper review of the record and the litigants' arguments. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 n.2 (App. 2011).

The scope and manner of examination and cross-examination during the Rule 15 depositions is the same as would be allowed in the trial itself. This includes the prosecution making available to the defendant or his counsel for examination and use during the deposition any statement of the witness being deposed which is in the government's possession and to which the defendant would be entitled at the trial. The deposition procedure will also include frequent pauses in the testimony so as to allow for translation for the defendant's benefit. The prosecution will be responsible for engaging and compensating a court-approved translator so that the defendant can follow the testimony and confer with his defense counsel. FSM v. Tipingeni, 19 FSM R. 439, 450 (Chk. 2014).

Translation expenses are generally allowed as costs. Pohnpei v. M/V Ping Da 7, 20 FSM R. 75, 79 (Pon. 2015).

TREATIES

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).

Extradition treaties are to be construed liberally to effect their purpose of surrender of fugitives to be tried for their alleged offenses. In re Extradition of Jano, 6 FSM R. 93, 103 (App. 1993).

The ordinary or usual meaning shall be given to words, phrases, and terms in a treaty. Terms are to be considered in their context and a contrary meaning may be indicated by the context. Preparatory documents and subsequent conduct of the parties can be used to determine the parties' intentions. Alep v. United States, 6 FSM R. 214, 218 (Chk. 1993).

Although the FSM Supreme Court has the power to interpret treaties, it should not do so if the issue may be decided on other grounds. Louis v. Kutta, 8 FSM R. 228, 229-30 (Chk. 1998).

The imposition of community service on a juvenile offender would not violate the provisions or spirit of the United Nations Convention on the Rights of the Child since community service, could be considered as guidance, supervision, counseling, education and vocational training, which are all preferred alternatives to institutional care (detention), which is also explicitly permitted under the Convention. Kosrae v. Ned, 13 FSM R. 351, 354 (Kos. S. Ct. Tr. 2005).

Extradition treaties are to be liberally construed to effect their purpose of surrender of the persons sought to be tried for their alleged crimes. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 372 (Yap 2005).

An "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).

A treaty is a compact made between two or more independent nations with a view to the public welfare. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 189-90 (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).

Article 15 of the 1944 Convention on International Aviation, which bars fees, dues, or other charges being imposed by any contracting State in respect solely of the right of transit over or entry into or exit from its territory of any aircraft of a contracting State or persons thereon, does not bar a tax only on outgoing passengers, freight, or cargo from Chuuk. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 533-34 (Chk. 2011).

In order to ratify a treaty, two-thirds of the members of Congress must vote in favor of ratification. Ratification may not be done by the resolution process where only eight votes are necessary. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 547 & n.1 (App. 2011).

A treaty is an international agreement concluded between states in written form and governed by

international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. FSM v. Ezra, 19 FSM R. 486, 490 n.2 (Pon. 2014).

Pacta sunt servanda ("agreements must be kept"), is the rule of law that applies to all agreements made within the framework of the international legal system, and is the basis of the law of treaties, and once in force treaties are binding on the parties to them and must be performed in good faith. FSM v. Ezra, 19 FSM R. 486, 492 & n.5 (Pon. 2014).

A treaty signed by the President, and ratified by Congress, is our law. FSM v. Ezra, 19 FSM R. 486, 497 (Pon. 2014).

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).

TRUSTEESHIP AGREEMENT

Under article 6 of the Trusteeship Agreement, the United States is obligated to foster the development of suitable political institutions with the goal of self-government by the inhabitants, and to promote economic, social and educational advancement. Neimes v. Maeda Constr. Co., 1 FSM R. 47, 51 (Truk 1981).

Interpretation of Secretarial Order 3039 as acquiescing in FSM Supreme Court jurisdiction over suits against the Trust Territory does not conflict with any residual United States obligation to oversee activities of the FSM courts pending termination of the Trusteeship Agreement nor does this interpretation imperil any interest the United States government may have in protecting the Trust Territory government against unfair or overreaching actions by the courts of the new constitutional governments. Lonno v. Trust Territory (I), 1 FSM R. 53, 64 (Kos. 1982).

Trusteeship principles call for similarity between the self-government accorded the peoples of the Northern Mariana Islands by the United States, and that granted other parts of the Trust Territory. If the administering authority were to permit those peoples selecting a closer and more dependent relationship with the administering authority a higher degree of autonomy than those seeking other relationships, the dual standard could suggest an effort to discourage self-government and independence of the people within the Trust Territory. Lonno v. Trust Territory (I), 1 FSM R. 53, 67 (Kos. 1982).

The interim nature and limited purpose of the Trust Territory Court, the District Courts and the Community Courts does not suggest that these entities are immune to the restraints imposed upon officials authorized to act by constitutions or statutes approved by citizens of the Federated States of Micronesia or their representatives. To the contrary, respect for constitutional self-government and the Trusteeship Agreement provisions to which they trace their power to act here, mandate that these interim entities act with great restraint, only as necessary to supplement the constitutional courts and until creation of constitutional courts here. In re Iriarte (I), 1 FSM R. 239, 244-45 (Pon. 1983).

The Trust Territory High Court must promote constitutional self-government to satisfy the provisions of the Trusteeship Agreement to which is subject. In re Iriarte (II), 1 FSM R. 255, 268 (Pon. 1983).

The Trusteeship Agreement cannot be given retroactive effect to cover events that took place before it came into force. Alep v. United States, 6 FSM R. 214, 216 (Chk. 1993).

Monetary damages are not legal remedies available to an individual for breach of the Trusteeship Agreement, either through the treaty or as codified. Alep v. United States, 6 FSM R. 214, 217-18 (Chk. 1993).

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).

The Trusteeship Agreement does not provide individuals with a private cause of action for damages for alleged breach of any of its provisions. Nahnken of Nett v. United States (III), 6 FSM R. 508, 526 (Pon. 1994).

Although the Trusteeship Agreement was a source of individual legal rights, it, standing alone, did not create private rights of action for money damages for bureaucratic abuses attributed to U.S. or Trust Territory officials. Alep v. United States, 7 FSM R. 494, 496 (App. 1996).

WEAPONS

There is no automatic prohibition against use of a dangerous weapon to protect oneself and family against an intruder, even against an intruder without a weapon, so long as the weapon is not used in deadly fashion and the actual force employed is not more than would be reasonably necessary for purposes of protection. FSM v. Ruben, 1 FSM R. 34, 38 (Truk 1981).

The Trust Territory Weapons Control Act is not inconsistent with any provision of the Constitution. It therefore continued in effect. When the National Criminal Code was enacted, and major crimes were defined, the Trust Territory Weapons Control Act became national law and trials for violations thereof were within the FSM Supreme Court's jurisdiction. 11 F.S.M.C. 1201-1231. FSM v. Nota 1 FSM R. 299, 302-03 (Truk 1983).

National court jurisdiction over the Trust Territory Weapons Control Act is consistent with 12 F.S.M.C. 102 which states in part that criminal prosecutions shall be conducted in the name of the Federated States of Micronesia for violations of the statutes of the Trust Territory which continued in effect by virtue of the transition article of the Constitution and which are within the FSM national government's jurisdiction. 11 F.S.M.C. 1201-1231. FSM v. Nota, 1 FSM R. 299, 303 (Truk 1983).

8 F.S.M.C. 206 authorizes the transfer of authority from the Trust Territory and its officials to the Federated States of Micronesia government and its officials. Thus the reference in the Trust Territory Weapons Control Act to the High Commissioner and the Attorney General of the Trust Territory does not prevent its effectiveness as national law of the Federated States of Micronesia. 11 F.S.M.C. 1201-1231. FSM v. Nota, 1 FSM R. 299, 303 (Truk 1983).

The Weapons Control Act is clear as to its intent in its definition of "dangerous device," that is, to proscribe weapons of violence; its terms become clear in the light of that intent. 11 F.S.M.C. 1204(3). FSM v. Nota, 1 FSM R. 299, 304 (Truk 1983).

The national government has an interest in controlling the proliferation and use of firearms throughout Micronesia; the classifications singled out for a 10-year prohibition on possession appear reasonable. 11 F.S.M.C. 1205. FSM v. Nena, 1 FSM R. 331, 335 (Kos. 1983).

The government has a serious interest, and Congress deserves the support of the FSM Supreme Court, in carrying out policy established to control firearm use. Open violations, without punitive results, weaken the congressional policy and thwart efforts to assure that firearms will be available only to responsible people. Courts must assure that the policy is carried out against those convicted. FSM v.

Nena, 1 FSM R. 331, 335-36 (Kos. 1983).

Whether a particular item is dangerous often depends upon the use to which it is being put. Laion v. FSM, 1 FSM R. 503, 511 (App. 1984).

A "dangerous weapon" under 11 F.S.M.C. 919(1) is an object which, as used, may be anticipated to produce death or great bodily harm. Laion v. FSM, 1 FSM R. 503, 512 (App. 1984).

In considering whether the term "dangerous weapon" is so vague as to render 11 F.S.M.C. 919 unconstitutional, it is relevant that a court in the United States has held that term sufficiently definite to meet United States constitutional standards. Laion v. FSM, 1 FSM R. 503, 513 (App. 1984).

A gun with a defective trigger is a firearm under 11 F.S.M.C. 1204(4). The statute's purpose may not be evaded by such simple expedients as dismantling the weapon, maintaining weapons and ammunition in separate places, removing one easily replaceable part, or other similar ploys. Under the statute, current operability is not an essential element of the crime of possession of a firearm. Ludwig v. FSM, 2 FSM R. 27, 34 (App. 1985).

Some exceptions under 11 F.S.M.C. 1203, whereunder possession of a firearm is permissible, relate to considerations separate from the essential elements of the crime and require the defendant to place them in issue. A defendant claiming exemption as a law enforcement officer or United States military person engaged in official duty, §§ 1203(1), (4), or as a designated crocodile hunter, § 1203(5), is not disputing any element of the government's basic case. Instead, these exemption claims bring into play new facts, uniquely within the knowledge of the defendant, which the government could overlook by focusing on whether the conduct prohibited by the Weapons Control Act has occurred. The defendant is in a far better position to place these exemptions in issue and it is fair to require that he do so. Ludwig v. FSM, 2 FSM R. 27, 36 (App. 1985).

The 11 F.S.M.C. 1203(1), (4) and (5) exemptions, whereunder possession of a firearm is permissible, are defenses within the meaning of 11 F.S.M.C. 107, although they are not affirmative defenses for they are not so designated. The ultimate burden of persuasion remains with the government, but the defendant has the burden of going forward with sufficient evidence to raise these exemptions as issues. Ludwig v. FSM, 2 FSM R. 27, 36 (App. 1985).

The 11 F.S.M.C. 1203(2) exemption for curios, ornaments and historical pieces whereunder possession of a firearm is permissible requires findings that the firearm be in "unserviceable condition" and "incapable of being fired or discharged." Ludwig v. FSM, 2 FSM R. 27, 37 (App. 1985).

While proof of current operability is not essential to a finding of guilt for illegal possession of a firearm, the design and the capacity of the instrument to fire are at the very heart of the Weapons Control Act's definition of a firearm. To prove its case, the government must show that the device "is designed or may be converted to expel . . . projectiles." Ludwig v. FSM, 2 FSM R. 27, 37 (App. 1985).

Although not always essential, current operability of a firearm should be shown by the government, where possible, as standard procedure. Ludwig v. FSM, 2 FSM R. 27, 37 (App. 1985).

Inapplicability of the 11 F.S.M.C. 1203(2) exemption whereunder possession of a firearm is permissible because it is in unserviceable condition, is incapable of being fired or discharged and is being kept as a curio, ornament or historical piece is an essential element of the government's case in prosecution for unlawful possession of a firearm under 11 F.S.M.C. 1202. Ludwig v. FSM, 2 FSM R. 27, 37 (App. 1985).

A trial court may not simply presume that a person who possesses a firearm is not keeping it as a curio, ornament or for historical significance. This would be an irrational or arbitrary, hence unconstitutional, presumption or inference because one cannot determine from mere possession of a firearm alone the purpose or nature of that possession. Ludwig v. FSM, 2 FSM R. 27, 37 (App. 1985).

The 11 F.S.M.C. 1203(2) exemption whereunder possession of a firearm is permissible applies only if the firearm is: 1) unserviceable; 2) incapable of being fired or discharged; and 3) being kept as a curio, ornament or for its historical significance. Ludwig v. FSM, 2 FSM R. 27, 37-38 (App. 1985).

The Weapons Control Act violations punishable by imprisonment of three or more years are national crimes. Joker v. FSM, 2 FSM R. 38, 41 (App. 1985).

The Transition Clause of the FSM Constitution effectively adopts statutes of the Trust Territory, including the Weapons Control Act, and serves as the original enactment of a body of law, criminal as well as civil, for the new constitutional government. Further action by the FSM Congress is not necessary to establish that violations of the Weapons Control Act are prohibited within the FSM. Joker v. FSM, 2 FSM R. 38, 43 (App. 1985).

There is nothing absurd about a weapons control scheme that recognized that both the national and the state governments have an interest in controlling the possession, use and sale of weapons. While Congress and the states may eventually wish to allocate their respective roles with more precision, the current Weapons Control Act appears to provide a workable system during these early years of transition and constitutional self-government. Joker v. FSM, 2 FSM R. 38, 44 (App. 1985).

"Dangerous device" as defined under the Weapons Control Act is not unconstitutionally vague. The language, properly interpreted, affords sufficient notice so that conscientious citizens may avoid inadvertent violations, and constructs sufficiently definite standards to prevent arbitrary law enforcement. Joker v. FSM, 2 FSM R. 38, 45 (App. 1985).

Three categories of devices are identified in the definition of "dangerous device" under the Weapons Control Act and the standards of proof for each differ slightly. Joker v. FSM, 2 FSM R. 38, 45 (App. 1985).

The second category of "dangerous device" under the Weapons Control Act requires demonstration by the government that the item in question was designed or redesigned as a weapon and that the person whose possession is at issue is aware that the instrument was created or modified for that purpose. The intent and knowledge normally might be inferred from the nature of the instrument itself. It does not appear necessary that the possessor be shown to have actually intended to use the instrument as a weapon or for a wrongful purpose. Joker v. FSM, 2 FSM R. 38, 45 (App. 1985).

For the last category of "dangerous device" under the Weapons Control Act, the forbidden instrument in question must not only be capable of causing bodily injury but it must also be possessed without any "lawful purpose." A violation occurs only when the possession is coupled with a wrongful purpose, that is, a purpose to use the instrument to cause bodily injury, or a complete absence of any lawful purpose, shown through statements or overt conduct of the possessor manifesting wrongful purpose. Joker v. FSM, 2 FSM R. 38, 45 (App. 1985).

Dangerous device is defined in three categories, 1) explosive, etc., 2) an instrument designed or redesigned as a weapon, and 3) an instrument which can be used to inflict bodily harm and which under the circumstances of its possession serves no lawful purpose. Este v. FSM, 4 FSM R. 132, 136 (App. 1989).

In requiring an identification card in order to possess a dangerous device there was not an intent to require such a card for that category of dangerous devices which can be used to inflict bodily harm and which under the circumstances of its possession serves no lawful purpose. 11 F.S.M.C. 1204(3). Este v. FSM, 4 FSM R. 132, 136-37 (App. 1989).

Congress may legislate regulation of firearms and ammunition under the foreign and interstate commerce clause of article IX, section 2(g). FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

Because Congress has the present authority to enact firearms and ammunition statutes, such previously enacted statutes have continuing vitality. FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

Because of the verbs in the statute, only "carry" is defined in the Weapons Control Act, "possess" is given its usual meaning of taking into one's possession, and possession means to have in one's control. FSM v. Fal, 8 FSM R. 151, 155 (Yap 1997).

Because the defendant was affirmatively prevented from taking possession of the cooler which contained the bullets he never had present control or possession of the bullets and therefore was acquitted of the charge of possession of ammunition. FSM v. Fal, 8 FSM R. 151, 155 (Yap 1997).

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 dangerous weapon is any object that, as used or attempted to be used, can endanger life or inflict great bodily harm. Shoes worn on the feet are dangerous weapons when used to kick a victim. Stationary objects can also be dangerous or deadly weapons. Palik v. Kosrae, 8 FSM R. 509, 513 (App. 1998).

The absence of an intent element in 11 F.S.M.C. 1223(6) (which prohibits any person from boarding or attempting to board a commercial airliner while carrying a firearm either on his person or in his luggage) evinces a legislative intent to dispense with the mens rea element and make the proscribed conduct a strict liability crime. The court can properly infer from Congress's silence in subsection (6) and lack of silence in subsections (1) and (2) that Congress intended that subsection (6) constitute a strict liability offense, whereas subsections (1) and (2) do not. Sander v. FSM, 9 FSM R. 442, 447 (App. 2000).

Although 11 F.S.M.C. 1223(6) does not dispense with the mental element that the defendant must know or be aware that he had the shotgun in his possession, the statute does dispense with the specific intent to board the aircraft knowing that it was illegal to do so with a shotgun. Sander v. FSM, 9 FSM R. 442, 447 (App. 2000).

Because violation of 11 F.S.M.C. 1223(6) is not a case of an attempt to commit a crime but a case where "attempt to board" is an element of the offense, 11 F.S.M.C. 201 (the attempt statute) does not apply to the crime of attempting to board a commercial aircraft with a firearm. Sander v. FSM, 9 FSM R. 442, 448 (App. 2000).

When sufficient evidence was before the trial court such that it could reasonably have been persuaded beyond a reasonable doubt that the defendant did not attempt to turn in the shotgun to an appropriate official because the trial court could reasonably have concluded that the defendant's actions at the security screening area were consistent with the way any passenger might have dealt with any piece of carry on luggage, and that it did not constitute turning in the shotgun to an "appropriate official" under 11 F.S.M.C. 1223(6), its findings were not clearly erroneous and will not be disturbed. Sander v. FSM, 9 FSM R. 442, 449 (App. 2000).

The 1991 constitutional amendment that removed national government jurisdiction over major crimes did not remove national government jurisdiction over firearms and ammunition possession under the Weapons Control Act since there was an independent jurisdictional basis for it under the Constitution's foreign and interstate commerce and national defense clauses and Congress has always had the power to define national crimes. Jano v. FSM, 12 FSM R. 569, 574 (App. 2004).

In an examination to determine whether it is a national crime, the focus is: Does the regulation of the possession of firearms and ammunition involve a national activity or function, or is it one of an indisputably national character? Jano v. FSM, 12 FSM R. 569, 575 (App. 2004).

The national government can regulate firearms and ammunition possession since there is an international commerce aspect to the regulation of possession of firearms and ammunition that is related to

its manufacture outside of the FSM and to its movement through the nation's customs and immigration borders and on the additional jurisdictional basis rooted in the national defense clause. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

There is a national government interest in regulating the possession of firearms and ammunition in order to provide for the national security, which furthers the nation's interest in its defense, and this, in combination with the international commerce aspects, provides a jurisdictional basis for the national government's regulation of the possession of firearms and ammunition. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

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

The regulation of possession of firearms and ammunition involves a national activity or function because of the international commerce aspects of its manufacture and movement, together with the national government interest in protecting the national security under the national defense clause. In combination, these provide the national government with a jurisdictional basis to regulate the possession of firearms and ammunition. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

Even if Congress took no position on its jurisdiction based on Article IX, Section 2(a), the court is well within its power to determine jurisdiction based on this constitutional provision when it is not a situation where the action of the government is being challenged for attempting to implement a non-self-executing provision of the Constitution, but is one where the court determined what authority Congress had to enact statutes regulating the possession of firearms and ammunition. In doing so, the court did not usurp the powers of Congress. Jano v. FSM, 12 FSM R. 633, 635 (App. 2004).

Since there is no language in the aid or abet statute, 11 F.S.M.C. 301(1)(d), or in the firearms possession or use statutes, 11 F.S.M.C. 1023(5) and (7), that limits the application of one statute to the other, a defendant may be charged with aiding or abetting firearms possession or use. FSM v. Sam, 14 FSM R. 328, 333 (Chk. 2006).

Subsection 1023(7) does not restrict liability to use of a firearm to commit crimes defined by Title 11 (the national criminal code) of the FSM Code or to the FSM Code in general. It prohibits use in connection with or in aid of the commission of "any crime against the laws of the Federated States of Micronesia," a term which must refer to any or all criminal laws in the Federated States of Micronesia, national, state, or local because if it were otherwise, it would not be possible for the statute to have its obviously intended purpose and effect – to discourage the use of, and to punish the use of, firearms during the commission of other crimes. FSM v. Sam, 14 FSM R. 328, 333-34 (Chk. 2006).

Since, under 11 F.S.M.C. 1023(7), the government must prove beyond a reasonable doubt that the firearm was used to commit a crime, when the amended information does not allege what crime or crimes, the firearm was used to commit, or even that it was used to commit any crime, it therefore fails to allege an essential element of 11 F.S.M.C. 1023(7), and that count of the amended information will be dismissed for failure to state an offense. FSM v. Sam, 14 FSM R. 328, 334 (Chk. 2006).

A Philippine slingshot consists of a forked piece of wood to which is attached an elastic that is used to propel a piece of sharpened metal that has been crafted into a dart-like object, often feathered at one end for aerial stability. It is this metal dart-like object that transforms a regular (not particularly dangerous) slingshot, which uses stones, into a dangerous Philippine slingshot. FSM v. Masis, 15 FSM R. 172, 174 (Chk. 2007).

A Philippine slingshot is a dangerous device within the statutory definition. FSM v. Masis, 15 FSM R. 172, 175 (Chk. 2007).

The national government has the power to ban the possession and use of Philippine slingshots in those places under its jurisdiction and in those circumstances that make the offense "inherently national in character" such as when the offense is committed in the FSM Exclusive Economic Zone or in FSM airspace, or on FSM-flagged vessels, or is committed against an FSM public servant in connection with that servant's service. FSM v. Masis, 15 FSM R. 172, 175-76 (Chk. 2007).

The regulation of possession of firearms and ammunition involved a national activity or function because of the international commerce aspects of their manufacture and movement together with the national government interest in protecting the national security under the national defense clause, and that these, in combination, provided the national government's jurisdictional basis to regulate the possession of firearms and ammunition. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

When the imported materials in a Philippine slingshot are not manufactured abroad with the intent that they be assembled into a Philippine slingshot but are manufactured abroad as other articles or as parts of other articles and are legitimately imported for other purposes but are then recycled into Philippine slingshot parts, a Philippine slingshot is manufactured locally, out of locally available materials. It does not pass through foreign or interstate commerce. That some of those materials were once imported as something else to be used for some other purpose is not enough to implicate the national government's activity or function to regulate foreign commerce. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

The possession or use of a Philippine slingshot does not implicate the national government's functions and activities in the sphere of national defense or security and the connection, if there is one, is too tenuous to give the national government authority to regulate Philippine slingshots. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

The national government certainly has the power to criminalize possession or use of explosive, incendiary or poison gas bomb, grenade, mine or similar devices on the same basis that it has the power to regulate the possession and use of firearms and ammunition because these items definitely implicate both national defense and security and foreign commerce interests on which the Jano court concluded that the national government had the authority to regulate firearms and ammunition. But Philippine slingshots do not. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

Weapons control has long been recognized as a subject on which both the national and state governments may legislate. It is thus within the power of the State of Chuuk to regulate the possession and use of Philippine slingshots. If it has not done so, that does not mean that it cannot. FSM v. Masis, 15 FSM R. 172, 177 (Chk. 2007).

It has long been recognized that both the national and state governments may enact legislation regulating the possession of firearms. There is nothing particularly absurd about a weapons control scheme that recognizes that both the national and the state governments have an interest in controlling the possession, use and sale of weapons. FSM v. Louis, 15 FSM R. 206, 211 (Pon. 2007).

Congress has an independent jurisdictional basis for the Weapons Control Act under FSM Constitution Article IX, Section 2(g) on foreign and interstate commerce and Article IX, Section 2(a) on national defense. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

The 1991 constitutional amendment did not proscribe Congress's authority to enact legislation pursuant to its independent authority under the national defense and foreign and interstate commerce clauses. Thus, the 1991 amendment did nothing to curtail Congress's authority to regulate the possession of firearms. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

Congress does not lack the authority to regulate possession of firearms because it was the framers' clear intent that commerce within a particular state should be regulated locally since there is an international commerce aspect to the regulation of possession of firearms and ammunition that is related to its manufacture outside of the FSM and to its movement through the nation's customs and immigration

borders. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

In concluding that Congress has the authority to regulate the possession of firearms as part of its power to provide for the national defense, the court does not focus on the defendant's intended use of the firearm at issue, but instead focuses on the potential uses of firearms in general. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

Congress's authority to regulate firearms is not dependent on the defendant's subjective intent because the national government interest in regulating the possession of firearms and ammunition in order to provide for the national security in combination with the international commerce aspects provides a jurisdictional basis for the national government's regulation of the possession of firearms and ammunition. Congress's jurisdiction over the possession of firearms is not tied to the intent of a particular defendant. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

The national government's power to regulate firearms is derived from both its ability to protect the national security under its power to provide for the national defense and its power to regulate international commerce aspects because of the international commerce aspect of firearms manufacture and movement. In combination, these provide the national government with a jurisdictional basis to regulate the possession of firearms and ammunition. FSM v. Tosy, 15 FSM R. 238, 239 (Chk. 2007).

The national government's jurisdiction over firearms is not limited to only certain circumstances or certain quantities. What the national government can regulate in aggregate, it is able to regulate piece by piece; otherwise it would not be able to regulate it at all, and that, is clearly not the case. FSM v. Tosy, 15 FSM R. 238, 239 (Chk. 2007).

A contention that the FSM Supreme Court lacks subject matter jurisdiction over a case's firearms charges because there was no nexus between those charges and the national government's powers to regulate interstate and foreign commerce and to provide for the national defense or because national defense and foreign or interstate commerce was not involved or not implicated in the case is without merit. FSM v. Sam, 15 FSM R. 457, 459-60 (Chk. 2007).

When the accused produced no evidence to substantiate his claim that the weapon he allegedly possessed was in unserviceable condition (such as producing the weapon itself, or even a witness's report on the weapon's condition) and that it was kept as a curio, an ornament, or for historical purposes, but instead, argued that despite his repeated discovery requests, the government had failed to provide access to the firearm that he allegedly possessed so that it could, in turn, be inspected, this argument is more appropriately suited for a motion to compel discovery, rather than a motion to dismiss. The accused is free to raise at trial the defense that the weapon he allegedly possessed falls within the exemption. FSM v. Tosy, 15 FSM R. 463, 466 (Chk. 2008).

A criminal information will not be dismissed on the ground that it fails to allege that the weapon in question was a handgun of .22 caliber or greater because the information alleges that the defendant possessed a .22 handgun and because a handgun's caliber is irrelevant since 11 F.S.M.C. 1023(5) prohibits the possession of any handgun, regardless of caliber. FSM v. Sato, 16 FSM R. 26, 28 (Chk. 2008).

All offenses involving a handgun are felonies under Title 11, chapter 10. FSM v. Aliven, 16 FSM R. 520, 527 n.1 (Chk. 2009).

A "mini bag," which is an easily-transportable article similar in that nature to a purse, handbag, brief case, attache case, or backpack, is not an "enclosed customary depository" within the meaning of the statutory exception to the statutory presumption that a firearm, dangerous device, or ammunition found in a vehicle or vessel, is prima facie evidence that such firearm, dangerous device, or ammunition is in the possession of all persons in the vehicle or vessel. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

11 F.S.M.C. 1023(7), which prohibits firearms use in connection with or in aid of the commission of "any crime against the laws of the Federated States of Micronesia," does not restrict liability for firearms use to only those crimes defined in the FSM Code because the term "any crime against the laws of the Federated States of Micronesia," when read in context must refer to any or all criminal laws in the Federated States of Micronesia, national, state, or local, since, if it were otherwise, it would not be possible for the statute to have its obviously intended purpose and effect – to discourage the use of, and to punish the use of, firearms during the commission of other crimes. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

The use of a firearm to commit a Chuuk state law crime, such as robbery, is a national offense even though the robbery itself is not a national offense. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

Since the possession of any handgun is banned, an information charging the illegal possession of a handgun is not deficient when the information does not allege the handgun's exact barrel length, color, caliber, or whether the handgun was a pistol or a revolver. The allegation that an accused possessed a handgun is an allegation that the firearm had a barrel length under twenty-six inches because that is the statutory definition of a handgun. FSM v. Meitou, 18 FSM R. 121, 127 (Chk. 2011).

The carefully written statutory language precludes evasion of the statute's purpose by such simple expedients as dismantling the weapon, maintaining weapons and ammunition in separate places, removing one easily replaceable part, or other similar ploys. Under the statute, current operability is not an essential element of the crime of possession of a firearm. FSM v. Meitou, 18 FSM R. 121, 128 (Chk. 2011).

The inapplicability of the 11 F.S.M.C. 1003(2) exemption is an essential element of the government's case in a prosecution for unlawful possession of a firearm, and since it is an essential element 11 F.S.M.C. 1003(2)'s inapplicability must be pled. FSM v. Meitou, 18 FSM R. 121, 128-29 (Chk. 2011).

Under 11 F.S.M.C. 1003(2), in order to be exempt from criminal liability for possession of a firearm, the court must be persuaded beyond a reasonable doubt that the firearm is: 1) unserviceable; 2) incapable of being fired or discharged; and 3) being kept as a curio, ornament or for its historical value. All three of these requirements must be satisfied for this exemption to apply. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

Current operability of a firearm absolutely negates application of the Section 1003(2) exemption. For the exemption to apply, a firearm's current inoperability is not enough; it must also be proven that the firearm was not being kept as either a curio, or an ornament, or for its historical value or significance. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

An information charging firearms possession is sufficient if it or the supporting affidavit contains an allegation that negates any one of the three 11 F.S.M.C. 1003(2) requirements and the prosecution's proof at trial is sufficient if it negates beyond a reasonable doubt any one of the three requirements. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

A supporting affidavit's averment that the accused had been drinking and was openly displaying the handgun at the public market is viewed as just barely enough to give the accused notice of the essential element of the charges against him that the 11 F.S.M.C. 1003(2) exemption does not apply because in the appellate court's view, an intoxicated defendant displaying a firearm in public is inconsistent with the 1003(2) exemption because it is inconsistent with a claim that the accused was keeping the handgun as a curio, ornament, or a piece with historical value. FSM v. Meitou, 18 FSM R. 121, 129 (Chk. 2011).

Under 11 F.S.M.C. 1003(2), in order to be exempt from criminal liability for possession of a firearm, the court must be persuaded beyond a reasonable doubt that the firearm is: 1) unserviceable; 2) incapable of being fired or discharged; and 3) being kept as a curio, ornament, or for its historical value. All three of these requirements must be satisfied for this exemption to apply, and if any one of them is not met, this exception does not apply. FSM v. Sonis, 18 FSM R. 620, 622 (Chk. 2013).

When there is evidence before the court from which the court can infer that the handgun was serviceable – testimony of two officers that they had tried to and did get the firearm to work and from that evidence the court could infer that the handgun was capable of being fired or discharged; and when, from the circumstances under which the firearm was found and where it was found, abandoned by the accused in a mop bucket at Chuuk International Airport (right where he told the police he left it), the court could infer that he was not keeping the handgun as a curio, or as an ornament, or for its historical value but that his possession of the handgun must have been for some other reason. FSM v. Sonis, 18 FSM R. 620, 622 (Chk. 2013).

The firearm statute's purpose cannot be evaded by such simple expedients as dismantling the weapon, maintaining weapons and ammunition in separate places, removing one easily replaceable part, or other similar ploys. Under the statute, current operability is not an essential element of the crime of possession of a firearm. FSM v. Sonis, 18 FSM R. 620, 622 (Chk. 2013).

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