The adoption of Committee Proposal No. 01-5 by the Third Constitutional Convention does not act as a check upon the exercise of the FSM Supreme Court's diversity jurisdiction in land cases because the proposed amendment was not ratified by the people. Gilmete v. Carlos Etscheit Soap Co., 13 FSM Intrm. 145, 150 (App. 2005).

Parties to a dispute within the scope of article XI, section 6(b) have a constitutional right to invoke the jurisdiction of the FSM Supreme Court and it is the solemn obligation of the court and all others within the Federated States of Micronesia to uphold that constitutional right to invoke national court jurisdiction under Article XI, Section 6(b). To accept the contention that the FSM Supreme Court trial division has no jurisdiction in diversity cases involving land would defeat the exercise of that right. The court upholds the right of litigants who fall within the scope of Article XI, Section 6(b) to invoke the FSM Supreme Court's jurisdiction in cases involving land issues. Gilmete v. Carlos Etscheit Soap Co., 13 FSM Intrm. 145, 150 (App. 2005).

– Exclusive FSM Supreme Court

The National Criminal Code places in the FSM Supreme Court exclusive jurisdiction over allegations of violations of the Code. No exception to that jurisdiction is provided for juveniles, so charges of crimes leveled against juveniles are governed by the National Criminal Code. FSM v. Albert, 1 FSM Intrm. 14, 15 (Pon. 1981).

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

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

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

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

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

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

The maritime jurisdiction conferred on the FSM Supreme Court by the Constitution is not to be decided with reference to the details of United States cases and statutes concerning admiralty jurisdiction but instead with reference to the general maritime law of seafaring nations of the world, and to the law of nations. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM Intrm. 367, 374 (App. 1990).

The FSM Supreme Court has jurisdiction over all cases which are maritime in nature including all maritime contracts, torts and injuries. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM Intrm. 367, 374 (App. 1990).

The question of the enforceability of ship mortgages is a matter that falls within the maritime jurisdiction

of the FSM Supreme Court under article XI, section 6(a) of the Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM Intrm. 367, 376 (App. 1990).

Where a claim is against the national government and an interest in land is not placed at issue the claim is within the exclusive jurisdiction of the FSM Supreme Court and it cannot abstain on the claim. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 67A, 67E (Pon. 1991).

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

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

The FSM Supreme Court has exclusive jurisdiction in actions by the national government to enforce the terms of fishing agreements and permits to which it is a party. FSM v. Hai Hsiang No. 63, 7 FSM Intrm. 114, 116 (Chk. 1995).

The FSM Supreme Court has original and exclusive jurisdiction over admiralty and maritime cases. This grant of exclusive jurisdiction is not made dependent upon constitutional grants of powers to other branches of the national government. When the Supreme Court's jurisdiction is exclusive it cannot abstain from deciding a case in favor of another court in the FSM because no other court in the country has jurisdiction. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM Intrm. 456, 459 (App. 1996).

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

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

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

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

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

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

The only time the FSM Supreme Court does not have original and exclusive jurisdiction over the types of cases enumerated in Section 6(a) is in those specific cases where the national government is a party and an interest in land is at issue. Gilmete v. Adams, 11 FSM Intrm. 105, 108 (Pon. 2002).

A motion to dismiss for lack of diversity jurisdiction will be denied when the plaintiff's complaint does not

plead diversity jurisdiction (found in section 6(b) of article XI of the Constitution), but clearly pleads that the court's jurisdiction under section 6(a), and when a fair reading of the plaintiff's claim is that it is based on the defendant's alleged breach of a maritime contract – the plaintiff's employment contract as a ship's captain. This, coupled with the complaint's allegation that the court has jurisdiction based on section 6(a), which provides for FSM Supreme Court exclusive jurisdiction over certain cases including admiralty and maritime cases, indicates that the plaintiff did not base his jurisdictional plea on the parties' citizenship, but upon the case's alleged maritime nature. Kelly v. Lee, 11 FSM Intrm. 116, 117 (Chk. 2002).

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

Section 6(a) carves out a specific exception for cases involving land – the trial division has original and exclusive jurisdiction in cases in which the national government is a party except where an interest in land is at issue. Or to cast this as a negative, the trial division does not have original and exclusive jurisdiction in a case in which the national government is a party and an interest in land is at issue. Gilmete v. Carlos Etscheit Soap Co., 13 FSM Intrm. 145, 148 (App. 2005).

– In Rem

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

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

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

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

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

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

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

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

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

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

– Pendent

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

Under article XI, section 6(b) of the FSM Constitution, it is proper to employ the rule of pendent jurisdiction over cases involving interpretations of the Constitution or national law, so that the court may resolve state or local issues involved in the same case. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 396 (Pon. 1984).

Where a substantial constitutional issue is involved in a case, the national court may exercise pendent jurisdiction over state or local claims which derives from the same nucleus of operative fact and are such that the plaintiff would ordinarily be expected to try them all in one judicial proceeding. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 396 (Pon. 1984).

Even though the requirements for pendent jurisdiction are met in a case, a national court has discretion to decline to exercise jurisdiction over state claims. This determination should turn on considerations of judicial economy, convenience and fairness to litigants and should be instructed by a desire of the federal or national court to avoid needless decisions of state law. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 397 (Pon. 1984).

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

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

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

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

The FSM Supreme Court has jurisdiction over state law claims of tortious interference with contractual

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

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

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

– Personal

Under the Compact of Free Association and the Federal Programs and Services Agreement, civilian employees of the United States government have immunity from civil and criminal process for wrongful acts and omissions done within the scope and in performance of official duty, unless expressly waived by the U.S. government. Samuel v. Pryor, 5 FSM Intrm. 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 Intrm. 91, 97 (Pon. 1991).

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

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

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 Intrm. 148, 149-50 (Pon. 1997).

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

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

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

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

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

Except as provided for in 4 F.S.M.C. 204, the Supreme Court may exercise personal jurisdiction in civil cases only over persons residing or found in the Federated States of Micronesia or who have been duly summoned and voluntarily appear. National Fisheries Corp. v. New Quick Co., 9 FSM Intrm. 120, 129 (Pon. 1999).

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

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

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

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

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

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

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

Except as provided in 4 F.S.M.C. 204, the FSM Supreme Court may exercise personal jurisdiction in civil cases only over persons residing or found in the Federated States of Micronesia or who have been duly summoned and voluntarily appear. Kosrae v. M/V Voea Lomipeau, 9 FSM Intrm. 366, 370 (Kos. 2000).

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

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

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

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

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

Transacting business in the FSM, engaging in tortious activity within the FSM, and causing injury within the FSM related to sales of products within the FSM, are arguably sufficient to bring a foreign defendant under the personal jurisdiction of the FSM Supreme Court. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 200, 205 n.4 (Pon. 2001).

To exercise jurisdiction, the court must also have personal jurisdiction over the parties. The Chuuk State Supreme Court has personal jurisdiction over all who reside or are found in the State of Chuuk and any who voluntarily appear before the court. First Hawaiian Bank v. Engichy, 10 FSM Intrm. 536, 538 (Chk. S. Ct. Tr. 2002).

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

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

– Removal

A party named as a defendant in state court litigation which falls within the scope of article XI, section 6(b) of the Constitution may invoke national court jurisdiction through a petition for removal and is not required to file a complaint. U Corp. v. Salik, 3 FSM Intrm. 389, 394 (Pon. 1988).

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

Jurisdiction based upon diversity of citizenship between the parties is concurrent in the Supreme Court and the national courts, and therefore a party to state court litigation where diversity exists has a constitutional right to invoke the jurisdiction of the national court. In re Estate of Hartman, 4 FSM Intrm. 386, 387 (Chk. 1989).

If national court jurisdiction exists the national court should promptly grant the petition to remove. Thereafter the national court can entertain a motion to abstain or to certify specific issues to the state court. Proceedings in the national court do not have to stop while a certified issue is presented to a state court. Etscheit v. Adams, 5 FSM Intrm. 243, 246 (Pon. 1991).

Where, for six and a half years after the national court had come into existence the noncitizen petitioners made no attempt to invoke the national court's jurisdiction, the noncitizen petitioners affirmatively indicated their willingness to have the case resolved in court proceedings, first in the Trust Territory High Court and later in Pohnpei state court, and thus have waived their right to diversity jurisdiction in the national courts. Etscheit v. Adams, 5 FSM Intrm. 243, 247-48 (Pon. 1991).

The fact that a "tactical stipulation," made in 1988 to eliminate all noncitizens as parities to the litigation and thus place the litigation within the sole jurisdiction of the state court, may have been violated in 1991, does not retroactively change the effect of the stipulation for purposes of jurisdiction. Etscheit v. Adams, 5 FSM Intrm. 243, 248 (Pon. 1991).

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

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

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

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

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

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

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

When a case has been removed from state court after improperly pleading as a party a diverse citizen, it will be remanded as improvidently removed. Wilson v. Pohnpei Family Headstart Program, Inc., 7 FSM Intrm. 411, 413-14 (Pon. 1996).

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

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

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

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

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

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

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

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

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

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

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

There is no obstacle to the removal of a defaulted case so long as it is done within the time limit set by the General Court Order 1992-2. Porwek v. American Int'l Co. Micronesia, 8 FSM Intrm. 463, 466 (Chk. 1998).

Although removal after a default judgment is proper if done within time, it cannot be taken to supersede

the default judgment which must be regarded as valid until set aside. Porwek v. American Int'l Co. Micronesia, 8 FSM Intrm. 463, 466-67 (Chk. 1998).

A plaintiff's complaint, stating two causes of action for breach of fiduciary duty (both existing under common law), does not arise under the national laws of the FSM so as to confer original jurisdiction on the FSM Supreme Court or show on its face an issue of national law thereby creating removal jurisdiction. David v. San Nicolas, 8 FSM Intrm. 597, 598 (Pon. 1998).

To determine whether a controversy arises under national law, the issue of national law must be an essential element of one or more of the plaintiff's causes of action, it must be disclosed upon the face of the complaint, unaided by the answer, the petition for removal or any pleadings subsequently filed in the case, it may not be inferred from a defense asserted or one expected to be made, and the issue of national law raised must be a substantial one. David v. San Nicolas, 8 FSM Intrm. 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 Intrm. 597, 598 (Pon. 1998).

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

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

FSM GCO 1992-2, § II(B), similar to 28 U.S.C. § 1446(b), states that the removal petition must be filed within sixty days after the receipt by any party, through service or otherwise, of a copy of an initial or amended pleading, motion, order or other paper from which it may first be ascertained that the case is removable. Enlet v. Bruton, 10 FSM Intrm. 36, 40 (Chk. 2001).

When diverse citizenship was not present on the record in a case when it was removed, it cannot be created by the FSM Supreme Court's order when the court lacks the jurisdiction to issue any but procedural orders. Enlet v. Bruton, 10 FSM Intrm. 36, 40 (Chk. 2001).

When the FSM Supreme Court does not have subject-matter jurisdiction in a case, it does not have the authority or jurisdiction to issue an order joining a diverse party, and any such order it did issue would be void for want of jurisdiction. Enlet v. Bruton, 10 FSM Intrm. 36, 40 (Chk. 2001).

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

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

Delay in effecting a case's removal by not filing a copy of the removal petition with the state court clerk until some days after the sixty days had run might prove fatal to the removal. Enlet v. Bruton, 10 FSM Intrm. 36, 41 (Chk. 2001).

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

2001).

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

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

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

A party may file a request in the FSM Supreme Court for its just costs incurred by the improvident removal of a case. Enlet v. Bruton, 10 FSM Intrm. 36, 41 (Chk. 2001).

In a diversity case, a plaintiff, as the party initiating suit, can file her action in either state or national court, and if she files in state court, the defendant has two alternatives, either to litigate on the merits in state court or to remove the matter to national court. Pernet v. Woodruff, 10 FSM Intrm. 239, 242-43 (App. 2001).

The fact of the parties' diversity, without more, does not preclude a suit in state court because to invoke national court jurisdiction so as to divest a state court of jurisdiction means to remove the action to national court. Pernet v. Woodruff, 10 FSM Intrm. 239, 243 (App. 2001).

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

To invoke national court jurisdiction in a diversity case in state court, a removal petition must be filed within 60 days of a party's receipt of papers from which his right to remove the case may first be ascertained. Pernet v. Woodruff, 10 FSM Intrm. 239, 243 (App. 2001).

Failure to file a removal petition within the time requirements of FSM General Court Order 1992-2 constitutes a waiver of the right to invoke national court jurisdiction in cases involving parties of diverse citizenship. Pernet v. Woodruff, 10 FSM Intrm. 239, 243 (App. 2001).

In diversity cases, state courts otherwise having jurisdiction pursuant to state law are not divested of jurisdiction unless or until a removal petition is timely filed, prompt written notice of such filing is served upon all parties, and a copy of the petition is filed with the state court clerk. Pernet v. Woodruff, 10 FSM Intrm. 239, 243 (App. 2001).

The FSM Supreme Court Admission Rules apply to all cases properly before the national courts, regardless of where the case originated. There is no exception to these rules, express or implied, for legal representatives whose cases are removed to the national court from a state court. Nett Dist. Gov't v. Micronesian Longline Fishing Corp., 10 FSM Intrm. 520, 521-22 (Pon. 2002).

If diverse parties wished to have a case in the Chuuk State Supreme Court heard in the FSM Supreme Court, they should have removed the case to the FSM Supreme Court using the procedure outlined in FSM General Court Order 1992-2. When they have not, a motion to dismiss filed in the Chuuk State Supreme Court will not invoke that court's jurisdiction. First Hawaiian Bank v. Berdon, 10 FSM Intrm. 538, 539 (Chk. S. Ct. Tr. 2002).

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

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

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

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

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

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

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

MANDAMUS AND PROHIBITION

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

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

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

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

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

The finality requirement and its underlying rationale mandate appellate court restraint and preclude issuance of writs of mandamus and prohibition on an interlocutory basis except in those rare and exceptional circumstances when the precise requirements for issuance of the writ are met and the appellate court in its

discretion determines that immediate relief is called for. In re Main, 4 FSM Intrm. 255, 258 (App. 1990).

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

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

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

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

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

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

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

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

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

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

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

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

The single issue presented by a writ of prohibition is whether or not an inferior court or tribunal is without jurisdiction or is about to act in excess of its jurisdiction. Election Commissioner v. Petewon, 6 FSM Intrm.

491, 496 (Chk. S. Ct. App. 1994).

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

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

The principal and fundamental purpose of the writ of prohibition is to prevent an encroachment, excess, usurpation or assumption of jurisdiction on the part of an inferior court or tribunal. The issuance of the writ is discretionary and used with great caution for the furtherance of justice and to secure order and regularity in judicial proceedings. Election Commissioner v. Petewon, 6 FSM Intrm. 491, 497 (Chk. S. Ct. App. 1994).

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

Where a properly filed notice of appeal has transferred jurisdiction to the appellate court and the trial court is about to conduct either a hearing on a preliminary injunction or a trial on the merits of the case which is the same as those on appeal, it is proper for an appellate court to issue a writ of prohibition to prevent further action by the lower court. Election Commissioner v. Petewon, 6 FSM Intrm. 491, 498 (Chk. S. Ct. App. 1994).

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

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

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

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

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

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

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

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

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

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

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

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

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

The Chuuk Judiciary Act gives the Chuuk State Supreme Court Appellate Division the authority to issue writs, including writs of mandamus or prohibition directed to a justice. In re Failure of Justice to Resign, 7 FSM Intrm. 105, 108 (Chk. S. Ct. App. 1995).

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

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

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

Pursuant to the Chuuk Judiciary Act judges in Chuuk have a clear ministerial, non-discretionary duty to resign from judicial office upon becoming a candidate for a non-judicial office. A writ of mandamus is the specific remedy to compel the performance of such a legally required ministerial act. In re Failure of Justice

to Resign, 7 FSM Intrm. 105, 110 (Chk. S. Ct. App. 1995).

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

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

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

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

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

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

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

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

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

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

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

273 (App. 1999).

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

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

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

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

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

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

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

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

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

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

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

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

2001).

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

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

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

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

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

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

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

Five elements must be present before the court can exercise its discretion to issue a writ of mandamus: 1) the respondent must be a judicial or other public officer; 2) the act to be compelled must be non-discretionary or ministerial; 3) the respondent must have a clear legal duty to perform the act; 4) the respondent must have failed or refused to perform the act; and 5) there must be no other adequate legal remedy available. Benjamin v. Attorney General Office Kosrae, 10 FSM Intrm. 566, 568 (Kos. S. Ct. Tr. 2002).

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

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

Because no statute or regulation requires the Attorney General or Director of Administration to explain

his decision to deny the request for hazardous pay differential, it is not a non-discretionary or ministerial act. Benjamin v. Attorney General Office Kosrae, 10 FSM Intrm. 566, 569 (Kos. S. Ct. Tr. 2002).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

When a trial judge's presiding over a case is in excess of his jurisdiction since another trial division justice had jurisdictional priority over the parties and the issues in that case to the exclusion of all other trial division justices, when the petitioner objected to that judge's exercise of jurisdiction from the start, and when the petitioner will be injured if the writ does not issue since he will be subject to conflicting and contradictory orders from two different trial division justices, there is no plain, speedy, or adequate remedy otherwise available and the writ of prohibition will accordingly issue. Nikichiw v. O'Sonis, 13 FSM Intrm. 132, 138-39 (Chk. S. Ct. App. 2005).

MARINE RESOURCES

While the FSM and Pohnpei foreign fishing statutes pose no specific requirements as grounds for the search of a fishing vessel, the power to seize is carefully conditioned upon illegal use of the vessel. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 75 (Pon. 1985).

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

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

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

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

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

23 F.S.M.C. 105(3) is national law, at least as it applies beyond the twelve mile limit. FSM v. Oliver, 3 FSM Intrm. 469, 479 (Pon. 1988).

Nothing in the language of the statute, 23 F.S.M.C. 105, or in the legislative history, indicates that Congress made an affirmative determination to enact national legislation applicable within twelve miles of prescribed baselines. Therefore, 23 F.S.M.C. 105 gives the national government regulatory power only outside the twelve mile zone. FSM v. Oliver, 3 FSM Intrm. 469, 480 (Pon. 1988).

Regulation of the Exclusive Economic Zone rests exclusively with the Micronesian Maritime Authority, 24 F.S.M.C. 301-02. FSM v. Kotobuki Maru No. 23 (I), 6 FSM Intrm. 65, 69 (Pon. 1993).

To the extent that the state is unable to police its waters and enforce its fishing regulations of its own, the national government has an obligation to provide assistance. However, to the extent that the national government must provide assistance, the power to regulate state waters is beyond the state's control and is in fact a concurrent national power. FSM v. Kotobuki Maru No. 23 (I), 6 FSM Intrm. 65, 73 (Pon. 1993).

Conditions on commercial fishing permits issued by the Micronesian Maritime Authority need not be "reasonable" as with recreational permits. FSM v. Kotobuki Maru No. 23 (I), 6 FSM Intrm. 65, 73 (Pon. 1993).

A condition on an MMA fishing permit which prohibits fishing within 12 miles of the FSM unless authorized by the state which has jurisdiction is an exercise of the national government's unexpressed concurrent national power. FSM v. Kotobuki Maru No. 23 (I), 6 FSM Intrm. 65, 73 (Pon. 1993).

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

The regulation of foreign commercial fishing in state waters – within a limit of twelve miles, is a matter

of state law. Pohnpei v. M/V Zhong Yuan Yu #606, 6 FSM Intrm. 464, 465 (Pon. 1994).

A fishing vessel involved in criminal violations of FSM fishing laws is subject to forfeiture to the government in a civil proceeding against the vessel itself. FSM v. Zhong Yuan Yu No. 621, 6 FSM Intrm. 584, 587 (Pon. 1994).

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

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

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

A party entitled to apply for a fishing permit must file an application on prescribed forms; otherwise the Micronesian Maritime Authority cannot issue a fishing permit. An applicant may be given an opportunity to cure any defects in a filed permit application. Katau Corp. v. Micronesian Maritime Auth., 6 FSM Intrm. 621, 625 (Pon. 1994).

A fishing permit issued by the national government prohibiting fishing in state waters unless authorized by the state which has jurisdiction does not constitute regulation of state waters by the national government because it merely tries to prevent a vessel that fishes illegally in state waters from continuing to fish in national waters. FSM v. Hai Hsiang No. 63, 7 FSM Intrm. 114, 116 (Chk. 1995).

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

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

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

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

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

A defendant cannot be held criminally liable for failure to properly stow all fishing gear aboard a vessel

in such a manner that it would not be readily available for use in fishing when the vessel was in an area in which it was authorized to fish. FSM v. Cheng Chia-W (II), 7 FSM Intrm. 205, 215 (Pon. 1995).

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

By statute, only the cargo actually used illegally, or the fish actually caught illegally, are subject to forfeiture, although the burden of proof (presumptions) rest on different parties depending on whether fish or cargo is involved. It is a rebuttable presumption that all fish found a board a vessel seized for Title 24 violations were illegally taken, but there is no such presumption that the cargo found aboard was "cargo used" in the alleged violation. FSM v. Skico, Ltd. (I), 7 FSM Intrm. 550, 552 (Chk. 1996).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In fashioning an appropriate sentence for fishing violations, a court considers the nature, circumstances, extent, and gravity of the prohibited acts committed, the defendant's degree of culpability and history of prior offenses, whether other civil penalties or criminal fines have already been imposed for the specific conduct before the court, and such other matters as justice might require, keeping in mind the statutory purpose behind the provisions violated. FSM v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 166, 181-82 (Pon. 1997).

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

Article IX, section 2(m) of the FSM Constitution expressly grants to the FSM Congress the power to regulate the ownership, exploration, and exploitation of natural resources beyond 12 miles from island baselines. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 368 (Pon. 1998).

The express grant of power to the national government to regulate the ownership, exploration, and exploitation of natural resources, implicitly includes the power of the national government to collect revenues that are generated as a result. Thus, the national government has the authority to enact legislation related to offshore marine resources, including legislation related to collection and distribution of revenues derived therefrom. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 371 (Pon. 1998).

To empower the national government to regulate ownership and exploitation of fishery resources within the EEZ, without the power to collect and distribute revenues derived from these regulatory functions, would violate the intention of the Constitution's framers and unduly limit the national government in the exercise of its exclusive power over natural resources in the area beyond 12 miles from the island baselines. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 371 (Pon. 1998).

Since the national government has the express authority to regulate the ownership, exploration, and exploitation of fishery resources in the EEZ, the power to promulgate legislation which generates revenue from the regulation of these resources and provides for collection and distribution of such revenue, is incidental to or implied in the express grant. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 371 (Pon. 1998).

The Constitution's framers intended to vest complete control of the EEZ in the national government, and the expressed intent of legislation passed by the Interim Congress which terminated the practice of distributing fishing fees from the EEZ to the districts, or states, was to bring certain provisions of the Fishery Zone legislation into conformity with the provisions of the FSM Constitution and the powers granted to the national government under the Constitution. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 371-74 (Pon. 1998).

That the states currently are dissatisfied with the national government's power over the fishing fees does not change the constitutional division of powers that each of the states agreed to when it ratified the FSM Constitution and entered the Federated States of Micronesia. The states clearly delegated all power over offshore fishing resources beyond 12 miles from their baselines to the national government in the Constitution. Thus, the FSM has the power to collect and distribute the fishing fees under article IX, section 2(m). Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 374 (Pon. 1998).

The national government's authority to collect and distribute the fishing fees derived from the FSM EEZ is indisputably of a national character and beyond the ability of a single state to control because of the numerous national powers which the national government is required to exercise in order to effectively regulate and control the FSM EEZ and because the individual states are incapable of regulating and controlling the EEZ. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 374-75 (Pon. 1998).

Management and control of the FSM's fishing resources in its EEZ requires the national government to exercise its exclusive treaty powers under article IX, section 2(b) of the FSM Constitution. The FSM national government has specific international rights, and has undertaken specific international obligations, with respect to its EEZ under certain treaties. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 375 (Pon. 1998).

Negotiating fishery agreements with foreign governments and foreign companies necessarily involves foreign affairs, another exclusive national power. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 375 (Pon. 1998).

The process of determining the appropriate level of the fishing fees, the best method to collect the fishing fees, and ultimately how to distribute the fishing fees, is indisputably of a national character. Thus the national government, not the states, has the power to collect and distribute the fishing fees. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 375 (Pon. 1998).

That Congress has legislated sharing revenues from fines and forfeitures with the states and that each of the states has a delegate on the Board of the MMA is not an admission or indication that the states are the owners of the underlying resources. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 376 (Pon. 1998).

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

Traditional claims of exclusive ownership of marine resources have been recognized only in areas immediately adjacent to an island or submerged reef. Claims involving custom and tradition were recognized by the Constitution's drafters, but were restricted to areas within lagoons and near reef areas. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 377 (Pon. 1998).

The Law of the Sea Convention first recognized that the Federated States of Micronesia as a nation has the exclusive right to exploit resources in its 200-mile EEZ. The FSM Constitution was drafted to vest authority over the EEZ in the national government with this in mind. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 378 & n.19 (Pon. 1998).

Issues related to the EEZ cannot be determined by relying on custom and tradition, as the commercial

value of the EEZ to the Federated States of Micronesia was first realized when the nation acceded to the Law of the Sea Convention. While the rights of individual Micronesians, families and clans to living marine resources under particular circumstances might be amenable to determination by custom and tradition, the states' legal entitlement to share in fishing fees derived from commercial fishing ventures, extending to 200 miles from island baselines, is not. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 378 (Pon. 1998).

Any claim to resources in the EEZ based upon custom and tradition must rest with clans, families and individuals rather than with the states. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 379 (Pon. 1998).

The MMA can establish fees and other forms of compensation in foreign fishing agreements, which can include compensation in the field of refinancing, equipment and technology relating to the fishing industry, but no particular measure is set for the fishing fee in the FSM Code. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 380 (Pon. 1998).

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

The level of fishing fees is set at a measure of the value of the asset to the payor, a percentage of the value of the estimated weighted catch. The measure of the value of the service to the payor can be an appropriate measure for a fee. That the value received by the government exceeds the cost of administration is not dispositive when a valuable resource is being removed from the government's control by fishing fees payors. The government is entitled to compensation for its asset like any private property owner. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 385-86 (Pon. 1998).

The FSM national government has the exclusive right to harvest living marine resources in its EEZ, just as it has the exclusive right to harvest offshore mineral resources. As the holder of this exclusive right, the national government is allowed to dispose of this resource and receive revenue in return. Under the Convention on the Law of the Sea, each nation is entitled to exploit its marine resources to the extent it is able to achieve a maximum sustainable yield. When the FSM does not fully exploit its own resources, it is entitled to compensation at the appropriate market rate from foreign fishing vessels which it allows to fish in its waters. Chuuk v. Secretary of Finance, 8 FSM Intrm. 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 Intrm. 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 Intrm. 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 Intrm. 99, 102 (Pon. 1999).

How Congress appropriates fishing fees is irrelevant to whether they are a tax. Chuuk v. Secretary of Finance, 9 FSM Intrm. 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 Intrm. 99, 102 (Pon. 1999).

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

A criminal prosecution for fishing in state waters will not be dismissed when even if the Foreign Fishing Agreement were to be construed as regulating commercial fishing in Kosrae's waters, the cooperative law enforcement public policy weighs in favor of Kosrae's ability to expressly ratify any such regulation by a specific request to institute a prosecution where the ratification facilitated the enforcement of a national law criminalizing conduct proscribed in the Foreign Fishing Agreement. FSM v. Zhong Yuan Fishery Co., 9 FSM Intrm. 421, 423 (Kos. 2000).

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

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

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

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

Under the United Nations Convention on the Law of the Sea, an international treaty to which the FSM has acceded and which is now in effect, coastal nations do not have sovereign ownership of the resources in their exclusive economic zones. Coastal nations only have sovereign rights for the purpose of exploring and exploiting, conserving and managing natural resources, whether living or non-living. These rights are subject to numerous duties, including the duty to allow other nations access to the living resources of its exclusive economic zone if the coastal nation does not have the domestic capacity to harvest the entire allowable catch in its exclusive economic zone. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 432 (App. 2000).

Under the Law of the Sea Convention, a coastal nation does not "own" the fish in its exclusive economic zone. But a coastal nation does "own," if "own" is the right word, the sovereign right to exploit those fish and control who is given the access to its exclusive economic zone and the opportunity to reduce those fish to proprietary ownership. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 432 (App. 2000).

Under the fishery statute enacted by the FSM Interim Congress, the only portion of the fishing fees subject to mutual determination with the states was that attributable to the foreign catch within twelve nautical miles of the baselines, an area whose natural resources the Constitution places under state control. The rest of the fishing fees – those for the area now known as the exclusive economic zone – went directly to the national government. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 433 (App. 2000).

The four states are not entitled to the net proceeds of revenues from exploitation of the living resources in the FSM exclusive economic zone on the basis of ownership. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 434 (App. 2000).

Although fishing fees, as currently assessed, may be related to a percentage of the expected landed catch's value – projected income – there is no legal or constitutional requirement that they be calculated that way. They could be assessed on a flat amount per day or per voyage basis, or some other method not related to income. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 434 (App. 2000).

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

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

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

The Constitution grants the national government the exclusive right to regulate the exploitation of the natural resources within the EEZ, which necessarily includes the generation of revenue from the EEZ and the use of that revenue. The Constitution requires that of the EEZ-generated revenues, half of the net revenues derived from ocean floor mineral resources be given to the state governments. There is no Constitutional requirement that any revenue from the EEZ's living resources be shared with the state governments although the framers could have easily included one. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 435-36 (App. 2000).

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

Fishing fees are not an income tax because they are not a tax. The national government has the exclusive sovereign right to control access to and exploitation of the natural resources in the FSM's exclusive economic zone and when it imposes fishing fees, the national government is selling access to the exclusive economic zone's living resources to its fishing licensees and it is selling the licensees the opportunity to reduce some of those resources to the licensees' proprietary ownership. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 436 (App. 2000).

A fishing association is not liable under a general theory of agency when the complaint does not make a general agency allegation, and instead asserts liability based on an agreement's language, and nothing in the agreement renders the other defendants the agents of the fishing association such that the association

is liable under the respondeat superior doctrine for the damages flowing from a vessel's alleged negligent operation. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM Intrm. 112, 115 (Kos. 2001).

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

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

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

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

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

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

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

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

NAMES

In *in personam* actions, there is no authority to proceed against unknown persons in the absence of a statute or rule, and the FSM has no rule or statute permitting the use of fictitious names to designate defendants. Accordingly, John Doe defendants will be dismissed. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 409, 412 n.1 (Pon. 2001).

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

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

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

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

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

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

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

564, 567 (Chk. S. Ct. Tr. 2003).

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

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

NOTARIES

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

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

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

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

PROPERTY

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

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

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

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

State officials generally should have greater knowledge of use, local custom and expectations concerning land and personal property. They should be better equipped than the national government to

control and regulate these matters. The framers of the Constitution specifically considered this issue and felt that powers of this sort should be state powers. In re Nahnsen, 1 FSM Intrm. 97, 107, 109 (Pon. 1982).

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

Where jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative powers of states (e.g., probate, inheritance and land issues) may be involved. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 392 (Pon. 1984).

Where an individual claiming an interest in land has no prior knowledge of an impending transaction of other parties concerning that land, his failure to forewarn those parties of his claim cannot be interpreted as a knowing waiver of his rights. Etpison v. Perman, 1 FSM Intrm. 405, 418 (Pon. 1984).

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

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

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

FSM Supreme Court's trial division does not lose jurisdiction over a case merely because land issues are involved, but if such issues are presented, certification procedures may be employed to avoid encroachment upon state decision-making prerogatives. Bank of Guam v. Semes, 3 FSM Intrm. 370, 381 (Pon. 1988).

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

A party claiming ownership in land for which there is a determination of ownership showing another as owner, with the appeal period expired, has, at a minimum, the burden of showing facts to establish that the determination of ownership is incorrect. Benjamin v. Kosrae, 3 FSM Intrm. 508, 510 (Kos. S. Ct. Tr. 1988).

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

The FSM Supreme Court may and should abstain in a case where land use rights are at issue, where the state is attempting to develop a coherent policy concerning the disposition of public lands, where there is a similar litigation already pending in state court, where the state requests abstention as defendant in an action which may expose it to monetary damages, where Congress has not asserted any national interests which may be affected by the outcome of the litigation, and where abstention will not result in delay or injustice to the parties. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM Intrm. 37, 39 (Pon. 1989).

The FSM Constitution terminated all existing indefinite term land use agreements five years after the

effective date of the Constitution. After that date, without a new lease agreement the occupier becomes a trespasser on the land. Billimon v. Chuuk, 5 FSM Intrm. 130, 132 (Chk. S. Ct. Tr. 1991).

Although the court is powerless to compel Chuuk State to honor its lease agreement it has full power to restore unlawfully held property to its rightful owner as a remedy for forcible entry and unlawful detainer. Billimon v. Chuuk, 5 FSM Intrm. 130, 136-37 (Chk. S. Ct. Tr. 1991).

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

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

A strong presumption exists under FSM law for deferring land matters to local land authorities. Kapas v. Church of Latter Day Saints, 6 FSM Intrm. 56, 60 (App. 1993).

Determination of property boundaries is the responsibility of the state land commissions, and the national court should not intercede where the local agency has not completed its work. Kapas v. Church of Latter Day Saints, 6 FSM Intrm. 56, 60 (App. 1993).

Because land ownership determinations in the FSM are conducted using different procedures and resources than in the United States, it is not appropriate to adopt the same legal prerequisites to title employed by U.S. jurisdictions. Wito Clan v. United Church of Christ, 6 FSM Intrm. 129, 133 (App. 1993).

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

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

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

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

Where a party purchases land subject to prior liens and a lease is a prior lien noted on the title the purchase was made subject to the lease. Chipuelong v. Chuuk, 6 FSM Intrm. 188, 198 (Chk. S. Ct. Tr. 1993).

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

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

The Constitutional prohibition against indefinite land use agreements does not apply to an agreement

where none of the parties are a non-citizen, a corporation not wholly owned by citizens, or a government. Dobich v. Kapriel, 6 FSM Intrm. 199, 202 (Chk. S. Ct. Tr. 1993).

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

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

Individuals have full title to the improvements (as distinguished from the soil) made upon land owned by a land-owning group or "corporation." In re Estate of Hartman, 6 FSM Intrm. 326, 330 (Chk. 1994).

The property owned in full title by one who dies is inherited by the children of the deceased. Personal property suited for use by women is inherited by daughters and sisters. In re Estate of Hartman, 6 FSM Intrm. 326, 330 (Chk. 1994).

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

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

An action for damages for negligent surveying is not an action for the recovery of an interest in land, for which the twenty year statute of limitation would apply, therefore it may be barred by the lesser statue of limitations. Damarlane v. United States, 6 FSM Intrm. 357, 361 (Pon. 1994).

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

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

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

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

Where the rule of primogeniture was not in effect when the land was individually acquired in 1903, was never fully in effect at any time, was largely ignored by the Japanese when the land was passed by will

contrary to primogeniture, and has been repudiated by the state government, and where the person who would have inherited if primogeniture had applied never made that claim, and where primogeniture appears contrary to custom, the court must conclude that primogeniture never applied to the land in question. Etscheit v. Adams, 6 FSM Intrm. 365, 381-82 (Pon. 1994).

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

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

A party who has not disturbed the natural contours of the land is not liable for loss of lateral support for removing fill pushed over the common boundary by the other party when the other party created the need for lateral support by altering the natural contours of the land at their common boundary. Setik v. Sana, 6 FSM Intrm. 549, 553 & n.3 (Chk. S. Ct. App. 1994).

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

Where a judge's pretrial order states that the only issue for trial is the ownership of land within certain boundaries as described on a certain map later litigants cannot claim that the determination of title does not include land that they admit is within those boundaries. Luzama v. Ponape Enterprises Co., 7 FSM Intrm. 40, 49-50 (App. 1995).

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

Under Kosraen custom one does not openly declare that a *kewosr* has taken place, but simply acts, with a witness present, in a certain fashion. A *kewosr* is a secret way of giving land that only the man and woman involved know about. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM Intrm. 31, 36 (Kos. S. Ct. Tr. 1997).

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

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

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

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

A person, who acquires leased land from the lessees and the houses the lessees built on it, has no rights superior to the rights given the lessees in the lease. Wolphagen v. Ramp, 8 FSM Intrm. 241, 244 (Pon. 1998).

When a lease provides that lessees may build "such buildings as they see fit" on the land and that such buildings will become the lessor's property when the lease ended, the lessor has a vested future interest in the buildings if they are built. The interest is executory, resulting from a springing use, the event of which is when and if the lessees built structures. The lessor has a vested future interest in the buildings, once built, which ripens into possession at the lease's termination. Wolphagen v. Ramp, 8 FSM Intrm. 241, 244 (Pon. 1998).

A lessor's vested future interest in houses may be protected from an alteration which would change the structures' character. A wrongful eviction counterclaim based on the lessor's refusal to allow the houses to be turned into a bar will therefore be dismissed. Wolphagen v. Ramp, 8 FSM Intrm. 241, 244 (Pon. 1998).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

When a lease provides that the lessees have the right to build such structures as they see fit with the buildings to become the lessor's property upon the lease termination and the lessees built two houses, they built such structures as they saw fit, and in doing so defined the nature of those structures. Once built, those structures became the lessor's property, although not until the lease's termination. At that time, the lessor was entitled to find himself the owner of dwellings, not a bar. He was within his rights to prevent the houses from being renovated for use in that manner. Wolphagen v. Ramp, 9 FSM Intrm. 191, 195 (App. 1999).

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

The German Land Code of 1912 applies only to land on Pohnpei, not to submerged areas. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 64 (Pon. 2001).

In order for a court to have jurisdiction over an action involving real property, particularly an action involving title, the real property must be within that court's territorial jurisdiction. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 107, 110 (Chk. 2001).

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

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

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

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

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

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

A person may make improvements to land he possesses even if he does not own the land. The issue of making improvements is a matter between the owner of the land and possessor of the land. James v. Lelu Town, 10 FSM Intrm. 648, 649 (Kos. S. Ct. Tr. 2002).

In Kosrae, due to the customs regarding land inheritance and the delays in adjudicating title to land, many parcels are possessed and used by persons who do not have title to land. Land use agreements may be made in writing, but when the agreements involve family members, the agreements are usually verbal. James v. Lelu Town, 10 FSM Intrm. 648, 649 (Kos. S. Ct. Tr. 2002).

The consent of all adult members of the lineage is needed to sell lineage land. Marcus v. Truk Trading Corp., 11 FSM Intrm. 152, 159 (Chk. 2002).

It would seem that for a long-term land lease (especially one that could last two or three or more generations) the level of lineage members' consent needed should be equivalent to that needed for a sale. Marcus v. Truk Trading Corp., 11 FSM Intrm. 152, 160 (Chk. 2002).

When a lineage as a whole has accepted all of the benefits of a lease – all of the payments that the lessee was required to make – up to the present and even beyond, it cannot now reject the burden of the lessee exercising its options to renew. Marcus v. Truk Trading Corp., 11 FSM Intrm. 152, 161 (Chk. 2002).

Community censure is the sanction imposed on one who controls and manages the land of a group who does not fairly and according to custom concern himself with the rights of other members or another member of the group. That is not a sanction that a court can order or relief that a court could grant. Marcus v. Truk Trading Corp., 11 FSM Intrm. 152, 161 (Chk. 2002).

Customary and traditional use rights to an island are a form of property right. Rosokow v. Bob, 11 FSM Intrm. 210, 217 (Chk. S. Ct. App. 2002).

"Color of title" is susceptible to ready definition: Any instrument having a grantor and a grantee, and containing a description of the lands intended to be conveyed, and apt words for their conveyance, gives a color of title to the lands described. When the College had color of title to the property because it held a quitclaim deed to the property, that recognition served as a means of assessing and comparing the quality of the respective possessory interests claimed by it and another. Rosario v. College of Micronesia-FSM, 11 FSM Intrm. 355, 359 (App. 2003).

A trial court can hold that, as between the parties to the case, who had the better claim to ownership, but that is all the trial court could have decided regarding ownership. Its ruling could not apply to any claims to ownership by non-parties or to other claims not raised in the pleadings or at trial. Rosokow v. Bob, 11 FSM Intrm. 454, 457 (Chk. S. Ct. App. 2003).

When the parties' position at trial, and on this appeal (until now), was that it was a dispute over ownership, the trial court's decision was limited to who among the parties had a better claim to ownership and did not include a claim that no one owned Fayu. Thus the claim that Fayu was owned by no one was not before the trial court. The appellate court's affirmance of the trial court thus does not preclude a non-party from later successfully maintaining a claim that no one owns Fayu. Rosokow v. Bob, 11 FSM Intrm. 454, 457 (Chk. S. Ct. App. 2003).

The transfer of a void title to another does not make the title any more valid when the other also had notice that the title was being challenged on appeal. In re Lot No. 014-A-21, 11 FSM Intrm. 582, 591 (Chk. S. Ct. Tr. 2003).

Acheche is traditionally a gift of land at the time of the birth of the first son so there could not have been any acheche of the land later because the transfer would have had to have taken place when the son was born. In re Lot No. 014-A-21, 11 FSM Intrm. 582, 593 (Chk. S. Ct. Tr. 2003).

A party can have no legal interest in a lot when she never alleged that she purchased the lot from the true landowning group. In re Lot No. 014-A-21, 11 FSM Intrm. 582, 595 (Chk. S. Ct. Tr. 2003).

The law presumes that an owner of land knows his own property and truly represents it. Tulenkun v. Abraham, 12 FSM Intrm. 13, 17 (Kos. S. Ct. Tr. 2003).

When the Chuuk Legislature has made no effort to repeal, supersede or amend the Trust Territory Code regarding land tenure in Chuuk, pursuant to Article XV, § 9 of the Chuuk Constitution, the Trust Territory Code provisions still apply to land disputes. Chuuk v. Ernist Family, 12 FSM Intrm. 154, 158 n.3 (Chk. S. Ct. Tr. 2003).

When determinations of ownership for adjoining land show that title to those lands is held not only by the named parties but by their brothers and sisters as well, these persons should be named in a boundary dispute and trespass case's pleadings and at least once in the caption, because as co-owners, they may be indispensable parties. In re FSM Telcomm. Corp. Cellular Tower, 12 FSM Intrm. 243, 248 (Chk. 2003).

A party who seeks to quiet title to a piece of land must join all known persons who are claiming title in order to settle the property's ownership without additional litigation. Anton v. Heirs of Shrew, 12 FSM Intrm. 274, 279 (App. 2003).

All co-tenants are indispensable parties to the litigation when someone else claims complete ownership of the land. Otherwise, the co-tenants would either be deprived of their property interest without due process of law or they would be forced to share their property with a hostile co-owner who believes he should be the sole owner. Anton v. Heirs of Shrew, 12 FSM Intrm. 274, 279 (App. 2003).

An appeal will be dismissed for the lack of indispensable parties because an appellant's failure to join all the co-owners as parties is fatal to his appeal. Anton v. Heirs of Shrew, 12 FSM Intrm. 274, 279 (App. 2003).

All co-tenants would not be indispensable parties if a litigant were claiming only one co-tenant's share and not the other shares. Then only that co-tenant need be joined. Anton v. Heirs of Shrew, 12 FSM Intrm. 274, 279 (App. 2003).

Whether or not someone had a valid claim of land ownership arising out of his alleged purchase in 1959, he lost any claim he may have had to it by failing to raise the claim or perfect his interest prior to the issuance of a Certificate of Title for it in 1981. Hartman v. Chuuk, 12 FSM Intrm. 388, 400 (Chk. S. Ct. Tr. 2004).

A claim to land clearly could not be renewed when the statute of limitations on an action to recover land or an interest therein is twenty years and more than twenty years have passed since the Certificate of Title in another's favor was issued and since the court decision affirming ownership. Any subsequent attempt to litigate the land's ownership is barred by the statute of limitations. Hartman v. Chuuk, 12 FSM Intrm. 388, 400 (Chk. S. Ct. Tr. 2004).

The law of Chuuk provides that lineage land is owned by the matrilineal members of the lineage. Lineage land may only be transferred with the consent of the lineage, and since the land is owned by the matrilineal members of the lineage, their consent is necessary. Hartman v. Chuuk, 12 FSM Intrm. 388, 401 (Chk. S. Ct. Tr. 2004).

Interests in land include fee simple ownership, easements, rights of way and leases. Sigrah v. Kosrae, 12 FSM Intrm. 531, 535 (Kos. S. Ct. Tr. 2004).

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

Implicit in the concept of ownership of property is the right to exclude others; that is a true owner of land exercises full dominion and control over it and possesses the right to expel intruders. Benjamin v. Youngstrom, 13 FSM Intrm. 72, 76 (Kos. S. Ct. Tr. 2004).

Individuals may have full title to the improvements (as distinguished from the soil) they make upon land not owned by them. Bank of the FSM v. Aisek, 13 FSM Intrm. 162, 166 (Chk. 2005).

– Adverse Possession

Adverse possession must continue unabated for 20 years in order for the doctrine of adverse possession to be applicable in a land case. Similarly, the common law doctrine of prescriptive right is inapplicable if the 20-year statutory period is not completed. Etpison v. Perman, 1 FSM Intrm. 405, 416 (Pon. 1984).

There was not the kind of consistent assertion of ownership, as distinguished from right of use, that would allow the doctrine of adverse possession to apply in this case. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM Intrm. 465, 468 (Kos. S. Ct. Tr. 1988).

For the state to acquire an easement by prescription, the state's use must by open, notorious, hostile, and continuous for the statutory period under a claim of right. Palik v. Kosrae, 5 FSM Intrm. 147, 154 (Kos. S. Ct. Tr. 1991).

In order for an action over an interest in land to be barred by the statute of limitations, the cause of action must arise more than twenty years before the action is brought. If the claim could have been made over twenty years before it was actually made, then the action can no longer be maintained, no matter how meritorious. Chipuelong v. Chuuk, 6 FSM Intrm. 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 Intrm. 188, 195 (Chk. S. Ct. Tr. 1993).

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously and under a claim of right, and the owner does not challenge such action until after the statute of limitations has run. Etscheit v. Adams, 6 FSM Intrm. 365, 389 (Pon. 1994).

Because the Trust Territory statute of limitations did not go into effect until May 28, 1951 the 20-year period of unchallenged possession necessary to make out a claim for title to land under adverse possession cannot be met if possession was challenged before May 28, 1971. Etscheit v. Adams, 6 FSM Intrm. 365, 389 (Pon. 1994).

It is a general principle that members of a family may not acquire adverse possession against each other in the absence of a clear, positive, and continued disclaimer and disavowal of title, and an assertion of adverse right brought home to the true owner a sufficient length of time to bar him under the statute of limitations from asserting his rights. Etscheit v. Adams, 6 FSM Intrm. 365, 390 (Pon. 1994).

For adverse possession to be shown, the statute of limitations under which a challenge to possession can be made must have expired. Etscheit v. Adams, 6 FSM Intrm. 365, 390 (Pon. 1994).

Adverse possession is a method, which is not favored, of acquiring title to property, which has been defined as the open and notorious possession and occupation of real property under an evident claim or color of right. This possession must be exclusive and in opposition to the true owner of the land. Usually adverse possession is controlled by statute, including the length of time needed to qualify, which is often the same as

the statute of limitation. Cheni v. Ngusun, 6 FSM Intrm. 544, 547 (Chk. S. Ct. App. 1994).

One may not claim adverse possession against the government. Cheni v. Ngusun, 6 FSM Intrm. 544, 548 (Chk. S. Ct. App. 1994).

Where government title to the tidelands reverted to the traditional owners in 1989, and because the right to bring an action for trespass or ejection must be available to the owner before the time period for adverse possession has run, whether the doctrine of adverse possession exists in Chuukese land law need not be decided because the twenty-year statute of limitations did not start to run until 1989. Cheni v. Ngusun, 6 FSM Intrm. 544, 548 (Chk. S. Ct. App. 1994).

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

Adverse possession refers to the acquisition of the full benefit of a piece of property, whereas *profit à prendre* refers to the acquisition of a right of entry and the right to remove and take from the land the designated products or profits. Etscheit v. Nahnken of Nett, 7 FSM Intrm. 390, 393 n.3 (Pon. 1996).

In addition to actual possession for the twenty-year statutory period, adverse possession requires the possessor's occupancy to have been open and notorious, exclusive, continuous and under a claim of right. Thus, a party claiming property rights based on adverse possession must demonstrate that he came onto the land with the intent of taking complete and exclusive control of the property. Etscheit v. Nahnken of Nett, 7 FSM Intrm. 390, 395 (Pon. 1996).

Parties that claim they entered the land with permission to do exactly what they were doing, and did not take any affirmative steps to assert outright ownership, cannot be said to have been in "adverse" possession of the land in dispute. Etscheit v. Nahnken of Nett, 7 FSM Intrm. 390, 396 (Pon. 1996).

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously and under claim of right, and the owner does not challenge such action until after the statute of limitations has run. Iriarte v. Etscheit, 8 FSM Intrm. 231, 239 (App. 1998).

The applicable statute of limitations period for adverse possession is twenty years. Iriarte v. Etscheit, 8 FSM Intrm. 231, 239 (App. 1998).

The adverse possession element of "under claim of right" means that the claimant intends to hold the land as his own to the exclusion of all others. It has the same meaning as "hostile." Iriarte v. Etscheit, 8 FSM Intrm. 231, 239 (App. 1998).

When the requisite element of hostility is absent from a party's assertion of adverse possession it is irrelevant whether the party had occupied the land for twenty years before the certificate of title was issued because their occupation was not hostile. Iriarte v. Etscheit, 8 FSM Intrm. 231, 239 (App. 1998).

The FSM Supreme Court does not acknowledge that ownership in land can be gained by adverse possession because when a party cannot satisfy elements to make out claim of adverse possession it is unnecessary to decide whether to recognize that doctrine. Even in those jurisdictions in which adverse possession is recognized, it is not favored as a method of acquiring title. Iriarte v. Etscheit, 8 FSM Intrm. 231, 239 (App. 1998).

An argument that a certificate of title is invalid because of an adverse possession claim must fail when the twenty years necessary for adverse possession has not passed. Iriarte v. Etscheit, 8 FSM Intrm. 231, 239 (App. 1998).

When parties' claim to possession of land changes from permission of someone without authority to give

permission to hostility an adverse possession claim will fail if the period of hostility has not yet run twenty years. Iriarte v. Etscheit, 8 FSM Intrm. 231, 240 (App. 1998).

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

Acquisition by prescription of the right to *profit à prendre* requires the same claim of right or hostility as required to gain ownership by adverse possession. Iriarte v. Etscheit, 8 FSM Intrm. 231, 240 (App. 1998).

When a party's possession of land was not hostile so as to give rise to an adverse possession or to a *profit à prendre* claim, failure to give the party notice is not a violation of the party's due process rights. Iriarte v. Etscheit, 8 FSM Intrm. 231, 240 (App. 1998).

A party's claim to land after a municipality has continued its open, notorious, exclusive and hostile occupation of the land for a period of 27 years before he files suit is barred by the twenty-year statute of limitations, and the municipality is the true and lawful owner of title to the land in dispute on the theory of adverse possession. Hartman v. Chuuk, 9 FSM Intrm. 28, 31 (Chk. S. Ct. App. 1999).

Adverse possession is an acknowledged doctrine under the common law which is fully applicable in Chuuk state court. Hartman v. Chuuk, 9 FSM Intrm. 28, 31 (Chk. S. Ct. App. 1999).

The presumptive rights in land arising from long possession and use, together with delay on the part of the lawful owner in asserting his title, have often been found to be sufficient grounds for taking title from a legal owner and granting it to the user. Hartman v. Chuuk, 9 FSM Intrm. 28, 32 (Chk. S. Ct. App. 1999).

The doctrine of adverse possession provides that long-continued peaceful possession under claim of right is a strong indication of ownership. Hartman v. Chuuk, 9 FSM Intrm. 28, 32 (Chk. S. Ct. App. 1999).

If a person of full age and sound mind stands by, or he and his predecessors in interest together have stood by, for twenty years or more and let someone else openly and actively use land under claim of ownership for that period or more, the person who so stood by will ordinarily be held to have lost whatever rights he may previously have had in the land and the courts will not, and should not, assist him in regaining such rights. Hartman v. Chuuk, 9 FSM Intrm. 28, 32 (Chk. S. Ct. App. 1999).

To avoid trouble, a person who believes he owns certain land and raises no objection to someone else using it, should at least obtain some clear and definite acknowledgment of his ownership by the user's word or acts at intervals of less than twenty years. If he cannot obtain such an acknowledgment, he should bring the matter to the court for determination before the use has continued for more than twenty years either from the time it began or from the time of the last such acknowledgment. Hartman v. Chuuk, 9 FSM Intrm. 28, 32 (Chk. S. Ct. App. 1999).

When in 1968 the Trust Territory entered the land in question and, pursuant to 6 TTC 302, acquired title by adverse possession 20 years later in 1988, Chuuk is the successor to the title. Sefich v. Chuuk, 9 FSM Intrm. 517, 519 (Chk. S. Ct. Tr. 2000).

When the defendants have failed to show the elements of adverse possession have been met and have thus failed to show that they own or have a right to possess the property they presently occupy, the defendants' claim of long use and occupation of the land does not create a genuine issue as to a material fact since the defendants failed to establish that they acquired ownership or a right to possession. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM Intrm. 94, 103 (Pon. 2002).

An adverse possession claim will never prevail over a validly-issued certificate of title. In re Engichy, 12 FSM Intrm. 58, 69 (Chk. 2003).

Since someone claiming land by adverse possession must prove that his possession was open, notorious, hostile, continuous, and exclusive for the required statutory (twenty-year) time limit, failure to prove any one of these elements causes the whole claim to fail. A court's conclusion concerning another's continuous use of the land can only mean that the claimant, at a minimum, failed to show that his claimed possession was "exclusive" for any twenty-year period. His failure to prove that element is enough so that the lower court did not need to further discuss adverse possession because his adverse possession claim had failed at that point. Anton v. Cornelius, 12 FSM Intrm. 280, 288 (App. 2003).

– Deeds

Where two clauses within an agreement are inconsistent, the court should attempt to interpret the agreement so that each provision has meaning, but the paramount rule is that the deed must be construed so as to give effect to the intention of the parties as collected from the whole instrument. Melander v. Kosrae, 3 FSM Intrm. 324, 327 (Kos. S. Ct. Tr. 1988).

A court interpreting a deed should attempt to determine the meaning of the words used rather than what the signatory later says he intended. Melander v. Kosrae, 3 FSM Intrm. 324, 328 (Kos. S. Ct. Tr. 1988).

Where fraud or mistake are involved, the court can reform or cancel a deed, but relief will be denied in either situation if the misunderstanding of the aggrieved party was caused by his unexplained failure to read the necessary documents. Melander v. Kosrae, 3 FSM Intrm. 324, 329 (Kos. S. Ct. Tr. 1988).

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

Where there is an issue of fact regarding the authenticity of a deed, summary judgment will not be granted to the parties claiming under the deed, and both sides will be allowed to present evidence on the issue. Etscheit v. Adams, 6 FSM Intrm. 365, 389 (Pon. 1994).

When a deed may be legally insufficient to transfer a property because of an inaccurate recitation of its size it may still be relied on as an expression of the intent of the parties at the time. Nakamura v. Moen Municipality, 7 FSM Intrm. 375, 379 (Chk. S. Ct. Tr. 1996).

On Pohnpei, German land deeds were issued only for land taken from the Nahnmwarkis and distributed to ethnic Pohnpeians. The lack of a German land deed for land acquired in another way and thus not subject to German deeds is not an infirmity of title. Nahnken of Nett v. United States, 7 FSM Intrm. 581, 588 (App. 1996).

– Easements

Read in the light of its legislative history, article XIII, section 5 of the Constitution of the Federated States of Micronesia was intended to cover leases, not easements, and therefore an easement that is indefinite in term does not violate this constitutional section. Melander v. Kosrae, 3 FSM Intrm. 324, 330 (Kos. S. Ct. Tr. 1988).

For the state to acquire an easement by prescription, the state's use must by open, notorious, hostile, and continuous for the statutory period under a claim of right. Palik v. Kosrae, 5 FSM Intrm. 147, 154 (Kos. S. Ct. Tr. 1991).

Utility poles do not constitute trespass on land when the owner consented to their placement, accepted compensation for crop damage, and signed an agreement which effectively granted an easement for placement of utility poles. Palik v. Kosrae, 5 FSM Intrm. 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 Intrm. 147, 156 (Kos. S. Ct. Tr. 1991).

Easements are not indefinite land use agreements prohibited by the Constitution because "indefinite land use agreement" is a term of art referring to Trust Territory leases for an indefinite term. Nena v. Kosrae, 5 FSM Intrm. 417, 423 (Kos. S. Ct. Tr. 1990).

An easement for a road is not an indefinite land use agreement prohibited by the Constitution because it is perpetual. It is not indefinite in that it is effective into perpetuity. Nena v. Kosrae (I), 6 FSM Intrm. 251, 254 (App. 1993).

An easement may be created for a permanent duration, or, as it is sometimes stated, in fee, which will ordinarily continue in operation and be enforceable forever. The grant of a permanent easement is for as definite a term as the grant of a fee simple estate. Both are permanent and not for a definite term. Nena v. Kosrae (II), 6 FSM Intrm. 437, 439 (App. 1994).

A grant of a permanent or perpetual easement is definite in the same sense that a grant of a fee simple estate is definite – it is a permanent transfer of an interest in land. Nena v. Kosrae (III), 6 FSM Intrm. 564, 568 (App. 1994).

Although no Trust Territory statute expressly authorizes easements, they are recognized by clear implication in the Trust Territory Code. Island Cable TV v. Gilmete, 9 FSM Intrm. 264, 266 (Pon. 1999).

Under Kosrae State Code § 11.615(3), land held under a certificate of title may be subject to a right of way whether or not the right of way is stated in the certificate of title. Sigrah v. Kosrae, 12 FSM Intrm. 513, 518 (Kos. S. Ct. Tr. 2004).

A pre-existing right of way, such as an access road, passes with and remains necessarily attached to a parcel until it is cut off in a lawful manner Sigrah v. Kosrae, 12 FSM Intrm. 513, 518-19 (Kos. S. Ct. Tr. 2004).

A holder or user of an existing right of way does not have the right to widen or modify the right of way without the landowner's consent. Sigrah v. Kosrae, 12 FSM Intrm. 513, 519 (Kos. S. Ct. Tr. 2004).

An easement by prescription is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively and continuously for the statutory period under a claim of right. The statutory period for easement by prescription, which is an action for the recovery for an interest in land, is twenty years. Sigrah v. Kosrae, 12 FSM Intrm. 513, 519 (Kos. S. Ct. Tr. 2004).

– Eminent Domain

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

The acquisition of interests in private land by the state for a public purpose without the consent of the interested parties is permitted under the Kosrae Constitution, Article XI, § 5, which requires specific procedures to be followed, which are set forth in Kosrae State Code § 11.103. The state must first negotiate with each interested party, provide a written statement of the public purpose for which the interest is sought and negotiate in good faith. If the negotiations are not successful, the state may begin a court action to acquire the interest in land. Sigrah v. Kosrae, 12 FSM Intrm. 513, 519 (Kos. S. Ct. Tr. 2004).

Since the state's statutory authority to acquire interests in land through court action has never been utilized to forcibly purchase an interest in private land for a public purpose, the court cannot conclude that the

state is likely to prevail on the merits of its claim due to a complete absence of court decisions applying or interpreting this authority. Sigrah v. Kosrae, 12 FSM Intrm. 513, 519 (Kos. S. Ct. Tr. 2004).

– Gifts

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

There must be a clear, unmistakable, and unequivocal intention on the part of a donor to make a gift of his property in order to constitute a valid, effective gift inter vivos. Elaija v. Edmond, 9 FSM Intrm. 175, 180 (Kos. S. Ct. Tr. 1999).

Gifts inter vivos must be fully and completely executed – that is, there must be a donative intent to transfer title to the property, a delivery by the donor, and an acceptance by the donee. The intention to make a gift must be executed by a complete and unconditional delivery. Elaija v. Edmond, 9 FSM Intrm. 175, 180 (Kos. S. Ct. Tr. 1999).

– Land Commission

Under Kosrae state statute KC 11.614, which says appeals will be heard "on the record" unless "good cause" exists for a trial of the matter, the court does not have statutory guidance as to the standard to be used in reviewing the Land Commission's decision and therefore, in reviewing the commission's procedure and decision, normally should merely consider whether the commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM Intrm. 395, 398 (Kos. S. Ct. Tr. 1988).

When the land commission concludes that a traditional gift of land, a "kewosr," has been made, but is unable to determine who made the gift, and when, and does not explain any details about the customary gift sufficient to explain how it has determined that a kewosr was made, the opinion does not reflect proper resolution of the legal issues or reasonable assessment of the evidence and therefore must be set aside. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM Intrm. 395, 402 (Kos. S. Ct. Tr. 1988).

Kosrae State Land Commission properly relied on the decision of the Trust Territory High Court in Civil Action No. 47 (1953) as establishing that a person's name on the Japanese Survey of Kosrae was not conclusive evidence of ownership in 1932 of the land indicated. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM Intrm. 465, 468 (Kos. S. Ct. Tr. 1988).

Kosrae State Land Commission was not required as a matter of law to accept as true the Japanese Survey's designation of Fred Likiaksa as owner, in 1932, of certain lands called Limes, in Lelu, parcel No. 050-K-00. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM Intrm. 465, 468 (Kos. S. Ct. Tr. 1988).

Kosrae State Land Commission properly relied on the decision of the Trust Territory High Court in Civil Action No. 47 (1953) as establishing that no rights given to plaintiff's family could have extended beyond the death of Nena Kuang in 1970. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM Intrm. 465, 468 (Kos. S. Ct. Tr. 1988).

Land Commission procedures result in a determination of ownership wherein title to registered land is settled and declared by the government. The certificate of title issued by the government shows the state of the title and in whom it is vested. Chipuelong v. Chuuk, 6 FSM Intrm. 188, 196 (Chk. S. Ct. Tr. 1993).

Where a certificate of title issued by the Land Commission goes beyond the findings of its own determination of ownership as affirmed by the court's findings, the certificate of title is invalid to the extent that it goes beyond the determination. Chipuelong v. Chuuk, 6 FSM Intrm. 188, 197 (Chk. S. Ct. Tr. 1993).

Actions concerning the determination of land titles rest primarily with the Land Commission, which is statutorily charged with the registration and determination of land ownership. When the Land Commission has designated a registration area the courts cannot entertain any action with regard to interests in land within that registration area without a showing of special cause, although any determination of the Commission may be appealed to the Trial Division of the Chuuk State Supreme Court. Otherwise, it becomes final and conclusive. Barker v. Paul, 6 FSM Intrm. 473, 475-76 (Chk. S. Ct. App. 1994).

Absent a finding of "special cause" on the record the trial court had no jurisdiction to entertain an action asserting an interest in land located within a designated registration area. Barker v. Paul, 6 FSM Intrm. 473, 476 (Chk. S. Ct. App. 1994).

When the Land Commission has issued a Determination of Ownership which has become final upon the lapse of the time to appeal, the trial court has no authority or power to alter the final determination of ownership and boundaries. Barker v. Paul, 6 FSM Intrm. 473, 476 (Chk. S. Ct. App. 1994).

Once a section of land is considered for registration the Land Commission undertakes a five-step program: 1) survey and establish tentative boundaries, 2) notice and conduct preliminary inquiry, 3) notice and conduct formal hearing, 4) notice and issue determination of ownership, and 5) issue certificate of title. These duties are both administrative and adjudicative. Palik v. Henry, 7 FSM Intrm. 571, 574 (Kos. S. Ct. Tr. 1996).

Before a preliminary inquiry is conducted, the Land Commission must notify any person who claims a portion of the area in dispute so that they might attend the inquiry and be heard. Palik v. Henry, 7 FSM Intrm. 571, 575 (Kos. S. Ct. Tr. 1996).

It is critical that the Land Commission post notice on the land, at the municipal office, and at the principal village meeting place and serve notice on all interested parties at least thirty days in advance of a formal hearing and give similar notice of its determination of ownership. Notice is required because it gives a chance to be heard. Palik v. Henry, 7 FSM Intrm. 571, 576 (Kos. S. Ct. Tr. 1996).

Judgments of the Land Commission are void when it has failed to serve notice as required by law. Palik v. Henry, 7 FSM Intrm. 571, 576-77 (Kos. S. Ct. Tr. 1996).

The Land Commission is required by statute to give actual, not constructive notice for hearings to all interested parties and to post notice on the land, at the municipal office and principal meeting place at least thirty days in advance of the hearing. Palik v. Henry, 7 FSM Intrm. 571, 577 (Kos. S. Ct. Tr. 1996).

Without a claim to the land in question there is no right to notice of a land commission proceeding or finding. Nahnken of Nett v. United States, 7 FSM Intrm. 581, 589 (App. 1996).

An appeal from the land commission will be on the record unless the court finds good cause for a trial of the matter. At a trial de novo the parties may offer any competent evidence, including the record of proceedings before the land commission, but the question of whether the commission considered the evidence submitted to it is not normally a part of judicial scrutiny. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM Intrm. 31, 35 (Kos. S. Ct. Tr. 1997).

On appeal the court should not substitute its judgment for those well-founded findings of the land commission, but questions of law are reserved to the court. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM Intrm. 31, 35 (Kos. S. Ct. Tr. 1997).

Chuuk land commissioners have considerable adjudicatory powers under 67 TTC 109. Wito Clan v. United Church of Christ, 8 FSM Intrm. 116, 118 (Chk. 1997).

State law specifically prohibits persons with an interest from being members of a land registration team, but no such statute specifically requires the disqualification of land commissioners with an interest from

reviewing the registration team's determination. This brings constitutional due process concerns into play. Wito Clan v. United Church of Christ, 8 FSM Intrm. 116, 118 (Chk. 1997).

Adjudicatory decisions affecting property rights are subject to the procedural due process requirements of article IV, section 3 of the Constitution. Due process demands impartiality on the part of adjudicators, including quasi-judicial officials, such as land commissioners. Wito Clan v. United Church of Christ, 8 FSM Intrm. 116, 118 (Chk. 1997).

Grounds that require a person's recusal from the land registration team also require his disqualification as a land commissioner reviewing the land registration team's adjudication. Wito Clan v. United Church of Christ, 8 FSM Intrm. 116, 118 (Chk. 1997).

When the statute requires the signature of at least two land commissioners in order to constitute an action of the commission and only two commissioners signed the section 109 review, and at least one of those should have disqualified himself, the review is void. Wito Clan v. United Church of Christ, 8 FSM Intrm. 116, 118 (Chk. 1997).

Review of a land registration team's decision should, in the first instance, be done by the Land Commission, not a court. A land commission review that is void will therefore be remanded for a new review. Wito Clan v. United Church of Christ, 8 FSM Intrm. 116, 118 (Chk. 1997).

Once land has been declared part of a registration area, courts shall not entertain any action with regard to interests in land within that registration area without a showing of special cause why action by a court is desirable before it is likely the land commission can make a determination on the matter. Pau v. Kansou, 8 FSM Intrm. 524, 526-27 (Chk. 1998).

When title to land in a designated registration area becomes an issue in a case involving damage claims for trespass, and there is no pending case before the land commission concerning this land or a previous final determination of ownership, a court may remand the question of ownership to the land commission to be determined within a limited time. Once ownership is determined, the court may proceed because more than an interest in land is at stake, and the land commission can only adjudicate interests in land. Pau v. Kansou, 8 FSM Intrm. 524, 527 (Chk. 1998).

The standard required for the review of a Land Commission decision by the Chuuk State Supreme Court trial division is whether the decision of the Land Commission is supported by substantial evidence. Nakamura v. Moen Municipality, 8 FSM Intrm. 552, 554 (Chk. S. Ct. App. 1998).

When a court case containing a count for trespass and injunctive relief raises the issue of who holds title to the land in question, the case will be transferred to the Chuuk Land Commission for adjudication of the parties' claims to ownership pursuant to its administrative procedure. Choisa v. Osia, 8 FSM Intrm. 567, 568 (Chk. S. Ct. Tr. 1998).

Administrative agencies in the form of Registration Teams and the Land Commission are created and an administrative procedure are provided for the purpose of determining the ownership of land and the registration thereof. Choisa v. Osia, 8 FSM Intrm. 567, 568 (Chk. S. Ct. Tr. 1998).

When a person, who has applied for registration of land included within the boundaries of an area on which hearings are held and who, based upon his application, was, as required by 67 TTC 110, entitled to be served notice of the hearings, was not served notice of the hearings and was also not served a copy of the Determination of Ownership, there was no substantial compliance with the notice requirements specified by law. Sigrah v. Kosrae State Land Comm'n, 9 FSM Intrm. 89, 93 (Kos. S. Ct. Tr. 1999).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties, and is required to post notice on the land, at the municipal office and principal meeting place at least thirty days in advance of the hearing. Failure to provide notice to an interested party is violation

of due process. Sigrah v. Kosrae State Land Comm'n, 9 FSM Intrm. 89, 93 (Kos. S. Ct. Tr. 1999).

The policy reasons supporting actual notice of hearings to land claimants, as required by law, are very important. There is a substantial interest in assuring that land disputes are decided fairly because of the fundamental role that land plays in Kosrae and throughout Micronesia. Sigrah v. Kosrae State Land Comm'n, 9 FSM Intrm. 89, 94-95 (Kos. S. Ct. Tr. 1999).

In reviewing the Land Commission's decision, the Kosrae State Court should merely consider whether the Land Commission exceeded its constitutional or statutory authority, has conducted a fair proceeding, has properly resolved any legal issues and has reasonably assessed the evidence presented. Isaac v. Benjamin, 9 FSM Intrm. 258, 259 (Kos. S. Ct. Tr. 1999).

It is critical that before a preliminary inquiry is conducted, the Land Commission must serve notice at least thirty days in advance of a formal hearing on any person who claims a portion of the area in dispute so that they might attend the inquiry and be heard. Notice is required because it gives a chance to be heard. Isaac v. Benjamin, 9 FSM Intrm. 258, 259 (Kos. S. Ct. Tr. 1999).

The Land Commission is required by statute to give actual, not constructive notice for hearings to all interested parties at least thirty days in advance of the hearing. Judgments of the Land Commission are void when it has failed to serve notice as required by law. Isaac v. Benjamin, 9 FSM Intrm. 258, 259 (Kos. S. Ct. Tr. 1999).

When the record reflects that the Kosrae State Land Commission failed to serve notice, as required by law, on the appellants for the preliminary and formal hearings on adjoining parcels to which the appellants are interested parties its failure to serve notice as required by law makes its judgments void. The Kosrae State Court will vacate and remand to the Land Commission to, as necessary, give proper notice and conduct preliminary inquiries and formal hearings and take evidence from appellants and other interested parties regarding the boundaries and issue any new Determinations of Ownership. Isaac v. Benjamin, 9 FSM Intrm. 258, 259-60 (Kos. S. Ct. Tr. 1999).

Because a Kosrae Land Commission determination of ownership is subject to appeal to the Kosrae State Court within one hundred twenty days from the date of receipt of notice of the determination, when that time has passed and someone claims that he was never given notice of the original Kosrae Land Commission title determination proceedings as required under KC 11.609, his remedy lies with the Kosrae State Court. If he wishes to pursue that remedy on a lack of notice basis, he must file a complaint seeking to set aside the title determinations. His remedy is not to pursue his claims either within the confines of an earlier case concerning other land, or with the Land Commission. Palik v. Henry, 9 FSM Intrm. 309, 312 (Kos. S. Ct. Tr. 2000).

Under the Chuuk Constitution's transition clause, Trust Territory Code Title 67, which authorizes and empowers land commissions to determine the ownership of any land in its district, applies in Chuuk. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 490 (Chk. S. Ct. Tr. 1999).

A land commission may appoint one or more land registration teams and may designate the area or areas for which each team shall be responsible. Each land registration team is responsible for adjudicating claims to land within that area. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 490 (Chk. S. Ct. Tr. 1999).

Land registration teams may administer oaths to witnesses, take testimony under oath and subpoena witnesses. Once a decision is reached on any claim where a dispute has arisen, the land registration team shall include in the team's record the substance of all pertinent testimony it took. Land registration teams are to be guided by the civil procedure and evidence rules, and their determinations are subject to review by the land commission. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 490 (Chk. S. Ct. Tr. 1999).

Land registration teams may decline to adjudicate a disputed claim and instead refer it to the land commission along with any record, including the substance of all pertinent testimony, taken by the team. The

land commission may then adjudicate the claim or refer it to court. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 490 n.2 (Chk. S. Ct. Tr. 1999).

The land commission, upon receipt of a land registration team adjudication and the record upon which it is based, may accept the land registration team's determination or reject it, and if it rejects the team's determination, the land commission may either remand the matter to the land registration team or itself hold further hearings and make its own determination of ownership. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 490, 492 (Chk. S. Ct. Tr. 1999).

If the land commission rejects a land registration team determination and instead holds further hearings, it may administer oaths to witnesses, take testimony under oath and subpoena witnesses, and it is to be guided by the civil procedure and evidence rules. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 490 (Chk. S. Ct. Tr. 1999).

Any aggrieved party may appeal a land commission determination of ownership at any time within 120 days from the date of determination. If it is not appealed within 120 days, then the land commission shall issue a certificate of title which is conclusive evidence of ownership of the land as to all persons who received notice of the land commission's action. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 491 (Chk. S. Ct. Tr. 1999).

The Chuuk State Supreme Court trial division may review decisions of an administrative agency, including the land commission. The court reviews the whole record and gives due account to the rule of prejudicial error. The court may conduct a *de novo* review of an administrative determination when the agency action was adjudicative in nature and the fact finding procedures employed by the agency were inadequate. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 491 (Chk. S. Ct. Tr. 1999).

A court reviewing a land commission determination must have before it a full and complete record upon which the land commission's final decision on the parties' claims was based. An agency action is subject to *de novo* review when the agency action is adjudicative in nature and its fact finding procedures are inadequate. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 492 (Chk. S. Ct. Tr. 1999).

Just as the courts in the judiciary confirm their role in society by adjudicating claims in civil matters, so to must the land commission. When a court fails to provide an adequate record of its proceedings, the role of the judiciary fails. Because claims over land are of no lesser importance than claims in civil matters, the requirement of a full and complete record applies to the land commission. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 493 (Chk. S. Ct. Tr. 1999).

Not only is a full and complete record of the land commission's action needed for court review, but the Trust Territory Code requires that there be a full and complete record of any land commission determinations. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 493 (Chk. S. Ct. Tr. 1999).

Although the land commission may appoint a land registration team to conduct hearings and adjudicate the parties' competing claims, the land registration team's determination, including the record upon which it is based, is not the final determination of ownership. Rather, it is the subsequent action of the land commission that establishes a determination of ownership and which is, in turn, subject to judicial review. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 493 (Chk. S. Ct. Tr. 1999).

If the land commission approves the land registration team's report, either initially or after remand for further hearings, and issues a determination, it is the land registration team's record that will be subject to judicial review. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 493 (Chk. S. Ct. Tr. 1999).

When the land commission conducts its own hearings and reaches a determination of ownership, it must be based upon the record from the land registration team along with the record from the land commission's hearings. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 493 (Chk. S. Ct. Tr. 1999).

When the land commission has made a determination that results in a reversal of a land registration

team's earlier determination, the record must also include an adequate basis supporting the land commission rationale for rejecting the land registration team's earlier findings. The absence of such information in the record gives the appearance that the land commission has acted arbitrarily in reaching its determination and has employed inadequate fact finding procedures. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 494 (Chk. S. Ct. Tr. 1999).

Without a full and complete record of the land commission's determination, a reviewing court cannot conduct a fair and meaningful review of the land commission's actions. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 494 (Chk. S. Ct. Tr. 1999).

When the land commission's determination provides no explanation as to why it apparently rejected the land registration team's determination or how it reached its own determination, when the absence of a complete record makes it impossible for the court to review the land commission's determination, and when even if the court were to review the matter giving due regard for the rule of prejudicial error, the land commission's decision would be set aside for its failure to observe procedures required by the Trust Territory Code, the court, given the land commission's failure to prepare a complete record and the time elapsed, will conduct a *de novo* review of the land commission action. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 494-95 (Chk. S. Ct. Tr. 1999).

The Chuuk State Supreme Court will not set aside a Land Commission determination on the ground that members of the land registration team were not residents of Weno when that issue was not raised and argued before the Land Commission. O'Sonis v. Sana, 9 FSM Intrm. 501, 502 (Chk. S. Ct. Tr. 2000).

Jurisdiction of the Chuuk State Supreme Court trial division in appeals from the Land Commission is limited to a review of the Land Commission record and is not a trial de novo. O'Sonis v. Sana, 9 FSM Intrm. 501, 502-03 (Chk. S. Ct. Tr. 2000).

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

Because a court is without jurisdiction to entertain an action asserting an interest in land located within a designated registration area and because all such actions must first be filed with the Chuuk State Land Commission, a quiet title action filed in the Chuuk State Supreme Court will be transferred to the Land Commission for consideration of ownership. Simina v. Rayphand, 9 FSM Intrm. 508, 509 (Chk. S. Ct. Tr. 2000).

One method to claim an interest in a parcel is to file a written claim with the Land Commission before the hearing. A verbal claim is invalid. Jonas v. Paulino, 9 FSM Intrm. 513, 516 (Kos. S. Ct. Tr. 2000).

It is the claimant's duty to submit a written claim to the Land Commission. The Land Commission does not have any statutory obligation to write down a claimant's verbal claim. Jonas v. Paulino, 9 FSM Intrm. 519, 521 (Kos. S. Ct. Tr. 2000).

The court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Nena v. Heirs of Melander, 9 FSM Intrm. 523, 524-25 (Kos. S. Ct. Tr. 2000).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice to an interested party is violation of due process. Nena v. Heirs of Melander, 9 FSM Intrm. 523, 525 (Kos. S. Ct. Tr. 2000).

The registration team is required to serve actual notice of the hearing upon all parties shown by the

preliminary inquiry to have an interest in the parcel either by personal service or registered air mail. It is also required to serve actual notice of a determination of ownership upon all persons shown to have an interest in the parcel. Nena v. Heirs of Melander, 9 FSM Intrm. 523, 525 (Kos. S. Ct. Tr. 2000).

When the land commission voids one person's certificate of title and issues a new certificate of title covering the same land to another person without notice to the first person and affording the first person an opportunity to be heard, it is a denial of due process and the certificates of title will be vacated and the case remanded to the land commission to conduct the statutorily-required hearings. Enlet v. Chee Young Family Store, 9 FSM Intrm. 563, 564-65 (Chk. S. Ct. Tr. 2000).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Anton v. Heirs of Shrew, 10 FSM Intrm. 162, 164 (Kos. S. Ct. Tr. 2001).

On appeal the Kosrae State Court should not substitute its judgment for those well-founded findings of the Land Commission because it is primarily the task of the Land Commission, and not the reviewing court, to assess the witnesses' credibility and resolve factual disputes, since it is the Land Commission, and not the court, who is present during the testimony. Therefore, the Kosrae State Court should review the Land Commission record and determine whether the Land Commission reasonably assessed the evidence presented, with respect to factual issues. Anton v. Heirs of Shrew, 10 FSM Intrm. 162, 164 (Kos. S. Ct. Tr. 2001).

A Land Commission opinion must reflect a proper resolution of the legal issues. If it does not, the decision must be set aside. Anton v. Heirs of Shrew, 10 FSM Intrm. 162, 164 (Kos. S. Ct. Tr. 2001).

When the Land Commission reasonably assessed the evidence with respect to who owned the land, its findings are not clearly erroneous, and when those findings are that Ittu never took back ownership of the land, the Land Commission did not reach the issue of applying Kosrae tradition and thus properly resolved that legal issue and did not exceed its constitutional authority. That Land Commission decision will be affirmed. Anton v. Heirs of Shrew, 10 FSM Intrm. 162, 165 (Kos. S. Ct. Tr. 2001).

When a person who has asserted a claim to land was not given notice of the registration proceedings as required by law, the Determination of Ownership for that land is not conclusive as upon him. Kun v. Kilafwakun, 10 FSM Intrm. 214, 216 (Kos. S. Ct. Tr. 2001).

When a person had asserted a claim to a parcel and was identified as a claimant early in the Land Commission proceedings and also testified in support of his boundary dispute at several hearings, but was not served notice of the formal hearing and was also not served a copy of the Determination of Ownership for the parcel, the Determination of Ownership for the parcel is not conclusive upon him. Kun v. Kilafwakun, 10 FSM Intrm. 214, 216 (Kos. S. Ct. Tr. 2001).

In land cases, statutory notice requirements must be followed. Personal service of the notice of hearing and the Determination of Ownership upon all parties shown by the preliminary inquiry to have an interest in the parcel is required. Failure to serve actual notice on a claimant is a denial of due process and violation of law, which will cause a Determination of Ownership to be set aside as void, and the case remanded to the Land Commission to hold the formal hearings and to issue the determination of ownership for that parcel. Kun v. Kilafwakun, 10 FSM Intrm. 214, 216 (Kos. S. Ct. Tr. 2001).

Under the Chuuk Constitution, article VII, § 3(c), the Chuuk State Supreme Court has only appellate or review jurisdiction over the Land Commission, and thus a motion for review de novo of matters not raised before the Land Commission must be denied. Enengeitaw Clan v. Shirai, 10 FSM Intrm. 309, 311 (Chk. S. Ct. Tr. 2001).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider

whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Nena v. Heirs of Melander, 10 FSM Intrm. 362, 364 (Kos. S. Ct. Tr. 2001).

The Land Commission does not conduct a fair proceeding when it issues a determination of ownership without compliance with statutory notice requirements. Nena v. Heirs of Melander, 10 FSM Intrm. 362, 364 (Kos. S. Ct. Tr. 2001).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice to an interested party is violation of due process. Nena v. Heirs of Melander, 10 FSM Intrm. 362, 364 (Kos. S. Ct. Tr. 2001).

The registration team is required to service actual notice of the hearing, either by personal service or registered air mail, upon all parties shown by the preliminary inquiry to have an interest in the parcel, and is also required to serve actual notice of a determination of ownership upon all persons shown to have an interest in the parcel. Nena v. Heirs of Melander, 10 FSM Intrm. 362, 364 (Kos. S. Ct. Tr. 2001).

When the land registration team was informed at the preliminary inquiry that someone was an interested party due to his boundary dispute, but the land registration team failed to serve him actual notice of the formal hearing and the determination of ownership issued for the parcel, there was no substantial compliance with the notice requirements specified by law, and due to the violations of the statutory notice requirement, the determinations of ownership for both adjoining parcels must be set aside as void and remanded to the Land Commission. Nena v. Heirs of Melander, 10 FSM Intrm. 362, 364 (Kos. S. Ct. Tr. 2001).

Once land has been declared part of a registration area a court cannot entertain any action with regard to interests in land within that registration area without a showing of special cause why court action is desirable before it is likely a determination can be made on the matter by the land commission. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM Intrm. 367, 369 (Chk. 2001).

Boundary determination in designated registration areas is a statutory function of the Land Commission. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM Intrm. 367, 370 (Chk. 2001).

When the plaintiffs have not shown any special cause why action by a court is desirable before the land commission can determine the boundary between the plaintiffs' and the defendants' land and when there is a case pending before the Land Commission concerning the land, the issue of the land's boundaries will be remanded to the Land Commission. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM Intrm. 367, 370 (Chk. 2001).

Under the doctrine of primary jurisdiction it is for the Land Commission, not the court, to decide land boundaries, and the Land Commission must be given the chance to conclude its administrative process. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM Intrm. 367, 370 (Chk. 2001).

Adjudicatory decisions of governmental bodies affecting property rights are subject to the procedural due process requirements of the Constitution. Due process requirements are applicable to the proceedings of the Kosrae Land Commission. Ittu v. Heirs of Mongkeya, 10 FSM Intrm. 446, 447 (Kos. S. Ct. Tr. 2001).

When a party was not given an opportunity to comment or rebut the evidence presented by the adverse claimants at the formal Land Commission hearing, and was not given an opportunity to cross examine adverse witnesses or an opportunity to present his own testimony to rebut adverse claims, this procedural failure is a violation of the due process protection provided by the Kosrae Constitution; and the issued determination of ownership will be set aside, and held null and void and the matter remanded to the Land Commission. Ittu v. Heirs of Mongkeya, 10 FSM Intrm. 446, 448 (Kos. S. Ct. Tr. 2001).

When the Senior Land Commissioner failed to disqualify himself after the parcel was recorded for adjudication, took part in the hearing and consideration of the parcel by appointing the two pro-tempore

members of the registration team, and failed to disqualify himself from the matter until after the two Associate Land Commissioners had concurred on the findings and decision, awarding ownership of the parcel to his family, his actions violated Kosrae State Code, Section 11.602 and the due process protection provided by the Kosrae Constitution. Langu v. Heirs of Jonas, 10 FSM Intrm. 547, 549 (Kos. S. Ct. Tr. 2002).

Due process demands impartiality on the part of adjudicators, such as land commissioners. Langu v. Heirs of Jonas, 10 FSM Intrm. 547, 549 (Kos. S. Ct. Tr. 2002).

It is a land commissioner's duty to disqualify himself when necessary, as soon as the commissioner is aware of the grounds for his disqualification. Langu v. Heirs of Jonas, 10 FSM Intrm. 547, 549-50 (Kos. S. Ct. Tr. 2002).

When there has been a violation of law or a denial of due process, a determination of ownership must be vacated and the matter remanded for further proceedings. Land Commission judgments are void when the Land Commission has failed to follow the requirements of the law. Langu v. Heirs of Jonas, 10 FSM Intrm. 547, 550 (Kos. S. Ct. Tr. 2002).

When the Land Commission has not served an interested party statutory notice, the law is clear. Determinations of ownership and certificates of title have been held void and vacated when proper notice was not given pursuant to statute. Actual notice by personal service to an interested party is required. Sigrah v. Kosrae State Land Comm'n, 11 FSM Intrm. 169, 174 (Kos. S. Ct. Tr. 2002).

When an interested party was never served proper statutory notice of the formal hearings or Determinations of Ownership issued for the land in question, the 120-day appeal period never began to run and has never expired. Sigrah v. Kosrae State Land Comm'n, 11 FSM Intrm. 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 Intrm. 169, 175 (Kos. S. Ct. Tr. 2002).

The law is clear when the Land Commission knew of a civil action judgment and that a person was a claimant and interested party for the parcels, which were the subject of the judgment and later the subject of Land Commission proceedings, but that person was not served personal notice of the formal hearings or the Determinations of Ownership for the parcels. Pursuant to established precedent, Determinations of Ownership and Certificates of Title will be held void and vacated when proper notice was not given pursuant to statute. Actual notice to an interested party is required by personal service. Sigrah v. Kosrae State Land Comm'n, 11 FSM Intrm. 246, 248 (Kos. S. Ct. Tr. 2002).

The law does not require notice to potential adverse claimants in completing the preliminary inquiry. The preliminary inquiry's purpose was to record all claims for a parcel, so that the claimants would be on record and would then be notified of the formal hearing. Heirs of Henry v. Palik, 11 FSM Intrm. 419, 422 (Kos. S. Ct. Tr. 2003).

The Land Commission may withdraw a disputed claim from a registration team. If that withdrawal takes place, then the Land Commissioners must hold the hearing, hear the evidence and make an adjudication. Heirs of Henry v. Palik, 11 FSM Intrm. 419, 422 (Kos. S. Ct. Tr. 2003).

When testimony presented at the first formal hearing was not heard by the full panel of adjudicators due to a Land Commissioner's late disqualification and the addition of temporary adjudicators, only one person of the adjudication panel heard that testimony. This resulted in a due process violation because the testimony was not heard by the full adjudication panel when the acting replacement commissioners did not hear the testimony, yet they participated in the findings of fact, opinion and decision. The Land Commission exceeded it constitutional and statutory authority by the adjudication panel's failure to hear all the evidence presented

at the hearings. Heirs of Henry v. Palik, 11 FSM Intrm. 419, 422 (Kos. S. Ct. Tr. 2003).

When the Land Commission has not followed statutory requirements for the formal hearings and there was no substantial compliance with the requirements specified by law, the Kosrae State Court must set aside the Determination of Ownership as void and remanded to Kosrae Land Court for further proceedings. Heirs of Henry v. Palik, 11 FSM Intrm. 419, 423 (Kos. S. Ct. Tr. 2003).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice as required by law to an interested party is violation of due process. Albert v. Jim, 11 FSM Intrm. 487, 490 (Kos. S. Ct. Tr. 2003).

The registration team is required to serve actual notice of the hearing upon all parties shown to have an interest in the parcel either by personal service or registered air mail. Albert v. Jim, 11 FSM Intrm. 487, 490 (Kos. S. Ct. Tr. 2003).

If the Chuuk State Supreme Court determines that a de novo review of an appeal from Land Commission is appropriate, the plaintiff must prove his case by a preponderance of the evidence, and the court may make its own findings of fact based on the total record in this case, but if the court does not conduct a de novo review of the case, it merely determines whether the Land Commission's decision was arbitrary and capricious, and whether the facts as found by the Land Commission were clearly erroneous. In re Lot No. 014-A-21, 11 FSM Intrm. 582, 588-89 (Chk. S. Ct. Tr. 2003).

When no detailed findings of fact are included either in the Land Commission Registration Team's two decisions or in the full Land Commission's one decision; when the full Land Commission gave no reason for reversing the Registration Team's determinations and supports its decision with nothing but a mere conclusion; when the newly-discovered Land Commission hearing transcripts do not assist the court in determining how the Land Commission reached its decision; and when there is no indication in the Land Commission record that witness testimony was taken under oath, or that the admitted exhibits were properly authenticated and identified and the exhibits were not contained within the record, there was no basis for the court to review the Land Commission's actions, and a trial de novo was necessary. In re Lot No. 014-A-21, 11 FSM Intrm. 582, 589 (Chk. S. Ct. Tr. 2003).

De novo review is appropriate when reviewing an administrative hearing when the action is adjudicative in nature and the fact finding procedures employed by the agency are inadequate. In re Lot No. 014-A-21, 11 FSM Intrm. 582, 589 (Chk. S. Ct. Tr. 2003).

Since the Land Commission only has authority to issue a certificate of title after the time for appeal from a Land Commission determination of ownership has expired without any notice of appeal having been filed, when a notice of appeal was timely filed with the Chuuk State Supreme Court and the appellee had notice of the appeal, she is precluded from using the certificate of title against the appellant, and its issuance has no conclusive effect because once a notice of appeal had been filed, the Land Commission acted ultra vires, or outside of its authority, when it issued the certificate of title. The certificate is thus void. In re Lot No. 014-A-21, 11 FSM Intrm. 582, 590 (Chk. S. Ct. Tr. 2003).

Where the provisions of former Kosrae State Code, Title 11, Chapter 6, were applicable to the Land Commission proceedings now on appeal, the court will apply the provisions of former Kosrae State Code, Title 11, Chapter (repealed) to its review of the Land Commission's procedure and decision in the matter. Tulenkun v. Abraham, 12 FSM Intrm. 13, 15-16 (Kos. S. Ct. Tr. 2003).

The court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Tulenkun v. Abraham, 12 FSM Intrm. 13, 16 (Kos. S. Ct. Tr. 2003).

When the determined parcels' boundaries are clear by either permanent markers or by readily

recognizable natural features, the Land Commission is not required to give written notice to the claimants before planting monuments. The planting of monuments is an administrative task and is completed pursuant to the Land Commission's instructions. The Division of Survey's planting of monuments, by itself, does not establish boundaries for purposes of an appeal. Tulenkun v. Abraham, 12 FSM Intrm. 13, 16 (Kos. S. Ct. Tr. 2003).

When the Land Commission did not exceed its constitutional or statutory authority, and did conduct a fair proceeding for determination of title, there was no violation of state law and no violation of constitutional and statutory due process based upon the Land Commission's failure to notify the appellant in writing of the planting of monuments. Tulenkun v. Abraham, 12 FSM Intrm. 13, 16 (Kos. S. Ct. Tr. 2003).

The Kosrae State Court, on appeal, will not substitute its judgment for the Land Commission's well-founded evidentiary findings. An appellate court will not reweigh the evidence presented at the hearing. When the court, in reviewing the Land Commission's record and decision in a matter, concludes that the Commission has reasonably assessed the evidence presented regarding the parcel's size, the Land Commission's factual finding of the parcel's size is adequately supported by substantial evidence in the record, and its findings of fact are not clearly erroneous and will not be disturbed on appeal. Tulenkun v. Abraham, 12 FSM Intrm. 13, 17 (Kos. S. Ct. Tr. 2003).

If the land registration team deems that consideration of a disputed claim will seriously interfere with accomplishment of the purpose of land registration, it may refer the claim to the Land Commission without the team's making any decision thereon and if a Land Commission deems that a team is spending an undesirable amount of time on a particular disputed claim, it may withdraw that claim from the team's consideration. In either of these situations, the Land Commission may then proceed itself to hear the parties and witnesses and make a determination on the claim or it may refer the claim to Chuuk State Supreme Court trial division for adjudication without any determination by the Commission. Chuuk v. Ernist Family, 12 FSM Intrm. 154, 158 (Chk. S. Ct. Tr. 2003).

While ordinarily the court does not have jurisdiction over claims arising in land registration areas subject to the Land Commission's jurisdiction, an exception is that whenever the Land Commission, in its discretion, makes either of the determinations set forth in 67 TTC 108(1) or (2), it may refer the claim to the Chuuk State Supreme Court trial division for adjudication without itself making any determination. The statute thus expressly confers jurisdiction on the court upon a matter's referral from the Land Commission whenever cause appears pursuant to 67 TTC 108(1) or (2). The "special cause" is established by the statute, and the trial division clearly has jurisdiction if the circumstances meet the statute's requirements. Chuuk v. Ernist Family, 12 FSM Intrm. 154, 159 (Chk. S. Ct. Tr. 2003).

In order for the Land Commission to exercise its discretion pursuant to statute and send a dispute to the trial division, either the land registration team must conclude that the dispute is interfering with the purpose of the law, and send the dispute to the Land Commission, or the Land Commission must determine that the land registration team is spending too much time on a particular dispute, and take control over the dispute from the land registration team. Chuuk v. Ernist Family, 12 FSM Intrm. 154, 159 (Chk. S. Ct. Tr. 2003).

The Land Commission's decision to refer a dispute to the court was not arbitrary and capricious when the land registration team failed to resolve the dispute over the twenty-eight years since the first claim to the land was presented and when the Land Commission's request for transfer recited the problems in resolving the dispute and the lack of sufficient Land Commissioners (due to disqualification) to render a decision. Chuuk v. Ernist Family, 12 FSM Intrm. 154, 160 (Chk. S. Ct. Tr. 2003).

In an appeal from a Land Commission determination of ownership, the reviewing court will apply the clearly erroneous standard of review. If the agency decision is a considered judgment, arrived at on the basis of a full record and careful reflection, the court is more likely to rely on the agency's knowledge and judgment and to restrict the scope of review. Chuuk v. Ernist Family, 12 FSM Intrm. 154, 160 (Chk. S. Ct. Tr. 2003).

The Land Commission has primary jurisdiction to determine and register land titles. Once an area has

been designated as a land registration area, courts cannot entertain any action regarding land titles in that area unless special cause has been shown. Enlet v. Bruton, 12 FSM Intrm. 187, 191 (Chk. 2003).

The statute authorizes only the Land Commission to declare a land registration area. No authority has been identified that would permit a court to designate a land registration area, or to order the Land Commission to designate one. The statute leaves that to the Land Commission's discretion based upon its determination of desirability and practicability, which is uniquely within its expertise and authority to make. Enlet v. Bruton, 12 FSM Intrm. 187, 191 (Chk. 2003).

While the Land Commission has the statutory authority to determine and register land titles, whether the Land Commission has the legal authority and the technical ability to determine, survey, and register tidelands is an unanswered question. Enlet v. Bruton, 12 FSM Intrm. 187, 191 (Chk. 2003).

The 120-day statutory time limit to appeal from the Kosrae Land Commission to the Kosrae State Court is jurisdictional because deadlines set by statute, especially deadlines to appeal including those from administrative agency decisions, are generally jurisdictional. Anton v. Heirs of Shrew, 12 FSM Intrm. 274, 278 (App. 2003).

An assertion that a Land Commission decision was tainted and a party denied due process because various members of the Land Commission and Land Registration Team were close relatives of the appellee or the appellee's wife is a serious allegation that, if true, would usually be enough to vacate the decision and remand the case to the Land Court for new proceedings with a new determination to be made by impartial adjudicators. Anton v. Cornelius, 12 FSM Intrm. 280, 284 (App. 2003).

Since the Kosrae State Court has not been shy in vacating and remanding Land Commission decisions for due process violations, including involvement of commissioners who should have disqualified themselves, Kosrae's social configuration should not prevent an appellant from timely raising the issue of disqualification of persons in the Land Commission proceedings. Anton v. Cornelius, 12 FSM Intrm. 280, 285 (App. 2003).

The Kosrae State Court must hear an appeal from the Land Commission on the record unless it finds good cause exists for a trial of the matter. The Land Commission's failure to follow the Kosrae Rules of Evidence does not constitute good cause for a trial *de novo* because those rules do not apply in the Land Commission. Anton v. Cornelius, 12 FSM Intrm. 280, 286 (App. 2003).

That the Land Commission did not properly consider certain evidence, is an issue the Kosrae State Court may properly consider under its standard of review without the need for a trial *de novo*, and, if the appellant should prevail, it can order a remand. Anton v. Cornelius, 12 FSM Intrm. 280, 287 (App. 2003).

The statute contemplates that judicial review of a Land Commission appeal would be the norm and that a trial *de novo* would be held only in the uncommon event that the Kosrae State Court had found good cause for one. When that court did not, and when there has been no showing that would warrant a conclusion of good cause, the Kosrae State Court has not abused its discretion by not holding a trial *de novo*. Anton v. Cornelius, 12 FSM Intrm. 280, 287 (App. 2003).

The Kosrae State Court, in reviewing Land Commission appeals, properly uses the following standard of review – it considers whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Under this standard, that court cannot substitute its judgment for the Land Commission's well-founded findings, but questions of law are reserved to it. Anton v. Cornelius, 12 FSM Intrm. 280, 287 (App. 2003).

It violates due process for the Land Commission to hold a hearing and adjudicate ownership of a parcel of land without giving notice to a party with a demonstrated interest in that land. George v. Nena, 12 FSM Intrm. 310, 316 (App. 2004).

When title to land in a designated registration area becomes an issue in a case involving damage claims for trespass, a court may remand the question of ownership to the land commission to be determined within a limited time. Once the land commission has determined ownership, the court may proceed because more than an interest in land is at stake, and the land commission can only adjudicate interests in land. Kiniol v. Kansou, 12 FSM Intrm. 335, 336 (Chk. 2004).

When the plaintiffs have not shown any special cause why court action is desirable before the land commission can determine the boundary between the plaintiffs' and the defendants' land, the issue of the land's boundaries will be remanded to the land commission. Kiniol v. Kansou, 12 FSM Intrm. 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 Intrm. 335, 337 (Chk. 2004).

A default judgment must be vacated when the Chuuk State Supreme Court never had jurisdiction over the action to determine ownership of real property in the first place because, despite being framed as a declaratory relief action, the case sought a determination of ownership of land lying within a land registration area and only the Land Commission has jurisdiction to determine ownership of land within a land registration area. Hartman v. Chuuk, 12 FSM Intrm. 388, 398-99 (Chk. S. Ct. Tr. 2004).

When someone offers no evidence of irregularity in the Land Commission proceedings and no evidence that her father (through whom she claims the land) was deprived in some way of participating in the proceedings, and when, to the contrary, documents establish that the Land Commission followed all statutory requirements regarding notice of the proceedings involving the land, any action taken thereafter must be conclusively presumed valid. Hartman v. Chuuk, 12 FSM Intrm. 388, 400 (Chk. S. Ct. Tr. 2004).

Questions regarding interests in land must be raised before the Land Commission. The Chuuk State Supreme Court has no jurisdiction to hear or decide such claims. The court can only refer the matter to the Land Commission, so that the Land Commission can resolve the dispute. Hartman v. Chuuk, 12 FSM Intrm. 388, 401-02 (Chk. S. Ct. Tr. 2004).

A Land Commission determination of ownership is subject to appeal to the Kosrae State Court within 120 days from the date of receipt of notice of the determination. If the determination was not received, then the appeal time limit of 120 days never began to run. Kinere v. Kosrae Land Comm'n, 13 FSM Intrm. 78, 80 (Kos. S. Ct. Tr. 2004).

– Mortgages

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

Failure to mention national courts in section 25 of the Pohnpei State Real Property Mortgage Act should not be read as an attempt to deprive litigants of access to the FSM Supreme Court's trial division. Bank of Guam v. Semes, 3 FSM Intrm. 370, 380 (Pon. 1988).

A lawsuit to enforce a mortgage is an attempt to enforce a type of lien against a delinquent debtor. Such a case bears a relationship to the power to regulate "bankruptcy and insolvency," which the Constitution, in article IX, section 2(g), places in the national Congress. Bank of Guam v. Semes, 3 FSM Intrm. 370, 381 (Pon. 1988).

When loan collateral is in the lender's possession and the borrower has made a reasonable request that the lender liquidate the collateral to preserve its value, the lender should do so; but there is no duty in law requiring the lender to take possession of the collateral and foreclose on property at the borrowers' request when that property is not in the lender's possession, unless there is a provision in the mortgage requiring it. FSM Dev. Bank v. Gouland, 9 FSM Intrm. 605, 607 (Chk. 2000).

A mortgage foreclosure generally does not involve a dispute over who owns the land, but rather the mortgagor's undisputed ownership being transferred, often involuntarily, to a buyer or to the mortgagee to satisfy the mortgagor's debt. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 1, 4 (Chk. 2001).

The Constitution does appear not to bar the FSM Supreme Court from exercising jurisdiction over FSM Development Bank mortgage foreclosures. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 1, 5 (Chk. 2001).

Only two courts have jurisdiction over the territory of Chuuk – the Chuuk State Supreme Court and the FSM Supreme Court. A mortgage foreclosure on land in Chuuk therefore could not be in any court other than those two. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 107, 110 (Chk. 2001).

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

A statute that requires the creditor to give written notice to the debtor of the creditor's intention to foreclose prior to foreclosing on the property, is inapplicable to setoffs because foreclosures and setoffs are very different things. Bank of the FSM v. Asugar, 10 FSM Intrm. 340, 342 (Chk. 2001).

A foreclosure is a legal proceeding to terminate a mortgagor's interest in property, instituted by the lender (the mortgagee) either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property. Bank of the FSM v. Asugar, 10 FSM Intrm. 340, 342 (Chk. 2001).

Generally, money deposited in a bank account is a debt that the bank owes to the depositor – the bank is obligated to repay the money to the depositor, either on demand or at a fixed time. Money deposited in a bank account is thus not property mortgaged to the bank. Bank of the FSM v. Asugar, 10 FSM Intrm. 340, 342 (Chk. 2001).

If a judgment-creditor were to attempt to execute against a piece of land for which there was a certificate of title and that certificate showed an outstanding mortgage on the land, or if there was no certificate of title for the land but a mortgage had been duly and properly recorded at the Land Commission so that anyone searching the records there should necessarily find it, then that would be a security interest that was not a secret lien and therefore valid against third parties. UNK Wholesale, Inc. v. Robinson, 11 FSM Intrm. 361, 365 (Chk. 2003).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. A mortgage can and must show on the certificate to be effective against third parties. UNK Wholesale, Inc. v. Robinson, 11 FSM Intrm. 361, 365 n.2 (Chk. 2003).

A buyer would usually expect to buy land without a mortgage or, if the land carries a mortgage, that a part of his purchase price will be used to pay off the mortgage so that he receives title free and clear of any mortgage. (Alternatively, a buyer might reduce his offer by the mortgage's outstanding balance and then pay off the mortgage himself.). In re Engichy, 11 FSM Intrm. 520, 530 (Chk. 2003).

If a creditor's judgment is secured by a mortgage, it would have priority over the other unsecured

judgment-creditors for the proceeds from the sale of the mortgaged property. In re Engichy, 11 FSM Intrm. 520, 530 (Chk. 2003).

If a judgment-creditor were to attempt to execute against a piece of land for which there was a certificate of title and that certificate showed an outstanding mortgage on the land, or if there was no certificate of title for the land but a mortgage had been duly and properly recorded at the Land Commission so that anyone searching the records there should necessarily find it, then that would be a security interest that was not a secret lien and therefore valid against third parties. In re Engichy, 11 FSM Intrm. 520, 530 (Chk. 2003).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. Therefore a mortgage can and must be shown on the certificate of title to be perfected and thus effective against third parties. If the property has not been issued a certificate of title, then the mortgage must be properly recorded in the chain of title so that someone searching the Land Commission files would expect to find it. In re Engichy, 11 FSM Intrm. 520, 530 (Chk. 2003).

A perfected security interest in land (the mortgage either shown on the certificate of title, or if no certificate, properly recorded) would have priority over any unsecured judgment-creditors, even those with writs of execution, should the mortgaged property be sold to satisfy the landowners' debts. In re Engichy, 11 FSM Intrm. 520, 530 (Chk. 2003).

The proper way to record a mortgage under the Torrens land registration system in use in Chuuk is for the mortgage and the landowner's [duplicate] certificate of title to be submitted to the Land Commission at the same time. The mortgage document is then recorded; the mortgage is endorsed on the certificate of title permanently on file at the Land Commission; and then a (new) duplicate certificate of title, showing the endorsement of the newly-recorded mortgage, is given (or returned) to the landowner. If this is done, then the security interest is perfected and the mortgage is valid and enforceable against all the world and has priority over all other claims to the proceeds from the sale of the mortgaged property. If all these steps are not done, then the security interest is not perfected and the mortgage does not carry priority over and is not effective against parties without notice of it – it is a disfavored secret lien. In re Engichy, 11 FSM Intrm. 520, 531 (Chk. 2003).

Failure to perfect a security interest does not affect the mortgage's validity and enforceability between the parties to it. In re Engichy, 11 FSM Intrm. 520, 531 (Chk. 2003).

A social security tax lien has priority over a mortgage because section 607 grants social security tax liens priority over all other liens regardless of whether the other liens arose earlier. In re Engichy, 12 FSM Intrm. 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 Intrm. 58, 65 (Chk. 2003).

A mortgagee's due process rights are not violated by a statute making another lien superior to its mortgage when the statute was enacted prior to the mortgage's execution. In re Engichy, 12 FSM Intrm. 58, 65 (Chk. 2003).

By state statute, a mortgage creates a lien on the land, but does not pass title to the mortgagee. In re Engichy, 12 FSM Intrm. 58, 68 (Chk. 2003).

Any land may be mortgaged by its owners, and such a mortgage may be recorded. But a mortgage on unregistered land can only be recorded, not registered because no certificate of title had been issued for it. In re Engichy, 12 FSM Intrm. 58, 68 (Chk. 2003).

The Chuuk Real Estate Mortgage Law confirms and adopts by reference rather than modifying or

repealing the Title 67 provisions applicable to the endorsement of mortgages on certificates of title. In re Engichy, 12 FSM Intrm. 58, 70 (Chk. 2003).

A mortgage endorsed on a certificate of title cannot be given retroactive effect. To do so would destroy the purpose of the land registration system – that the original certificate of title at the Land Commission is conclusive and if there are no endorsements anyone searching the state of the title need look nowhere else for mortgages and for the other encumbrances that, with certain exceptions, are required to be listed there. In re Engichy, 12 FSM Intrm. 58, 71 (Chk. 2003).

A mortgagee will have a secured interest in any future funds that from the sale of the mortgaged land when, although the mortgage was not endorsed on the certificate of title before the case was consolidated with other judgment-creditors', all of the necessary documents for the Land Commission to endorse the mortgage had been submitted to the Land Commission by then. In re Engichy, 12 FSM Intrm. 58, 71 (Chk. 2003).

While a mortgagee bank may have policies and rules it must follow that require it to inquire into the purported collateral or security and require ownership documents and certified maps of the property's location when land is used as collateral or security for its loans, it has not been shown that violation of these policies and rules creates a duty to a stranger to the mortgage. They may create a duty to the bank's shareholder, and failure to follow them may result in the bank holding worthless security, but the bank has not been shown to have a general duty to all landowners not to accept a mortgage to land one of them might later claim. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 127-28 (Chk. 2005).

The result of "negligence" in failing to properly record a mortgage on unregistered land is that the mortgage is ineffective against third parties – someone other than the mortgagor who had no notice of the mortgage (and the result is the same for registered land when a mortgage is not properly endorsed on the certificate of title). Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 128 & n.4 (Chk. 2005).

A mortgagor can only mortgage an interest in land that he owns at the time the mortgage is granted. If the mortgagors held no interest in the land they mortgaged, the bank would never be able to foreclose the mortgage (essentially it holds no security) since it can only foreclose the interests that the mortgagors held and mortgaged. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 128 (Chk. 2005).

There is some authority that a mortgagor can mortgage land that he does not own but will own in the future and that the mortgage then becomes effective when he acquires the land. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 128 n.5 (Chk. 2005).

A mortgagee that fails to ascertain the mortgagor's true interest in the mortgaged property does so at its own risk. Its punishment, if it can be called that, is that it has no security for the debt it is owed. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 128 (Chk. 2005).

When a plaintiff's determination of ownership is for a lot with one number and the bank holds mortgages on lots with other numbers, the bank does not have a mortgage for the plaintiff's lot and there is no proximate cause between the bank acquiring the mortgage and any later alleged damage to the plaintiff's lot. Whether the mortgage was properly recorded is immaterial. If the plaintiff was damaged, the mortgage did not cause it. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 128 (Chk. 2005).

Since a bank owed no duty of care to a plaintiff when it took a mortgage to secure a loan to another, and that mortgage, even if it is unenforceable, was not the proximate cause of the plaintiff's alleged damages, the bank is entitled to summary judgment as a matter of law on the plaintiff's negligence and void mortgage causes of action. Additional reasons for this are that the bank has not attempted to foreclose its mortgage and that the mortgage does not cover the lot for which the plaintiff has a determination of ownership. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 128 (Chk. 2005).

Holding a mortgage to property in which the mortgagor had no interest cannot be taking dominion over

property. A mortgagee may take dominion over a mortgaged property only when it has foreclosed on the property and either taken title to it itself or had it sold to another. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 129 (Chk. 2005).

By taking a mortgage, a mortgagee does not claim title to (or dominion over) the property. A mortgage creates a lien on the land, but does not pass title to the mortgagee. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 129 n.6 (Chk. 2005).

A mortgagee, is not an insurer or guarantor of the mortgagor's actions. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 129 (Chk. 2005).

– Personal

Because farming of short term crops, such as sugar cane, on someone else's land is not uncommon in Kosrae, the fruits of such farming are considered the personal property of the person planting them. Kosrae v. Tolenoa, 4 FSM Intrm. 201, 204 (Kos. S. Ct. Tr. 1990).

Personal property is property other than land or interests in land. House of Travel v. Neth, 7 FSM Intrm. 228, 229 (Pon. 1995).

– Personal – Bailment

Bailment occurs when one person has lawfully acquired possession of another's personal property; the bailor retains ownership, but the bailee has lawful possession and exclusive control over the property for the duration of the term of the lease. Vehicle rental agreements are bailment leases. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 305 (Pon. 2004).

A bailment is created by the delivery of personal property by one person to another, in trust for a specific purpose, pursuant to an express or implied contract to fulfill the trust. Palik v. PKC Auto Repair Shop, 13 FSM Intrm. 93, 96 (Kos. S. Ct. Tr. 2004).

The delivery of property to another under an agreement to repair is a bailment. Palik v. PKC Auto Repair Shop, 13 FSM Intrm. 93, 96 (Kos. S. Ct. Tr. 2004).

The bailee, having custody of the bailor's property, has the obligation to exercise due care to protect the property from loss, damage or destruction. Palik v. PKC Auto Repair Shop, 13 FSM Intrm. 93, 96 (Kos. S. Ct. Tr. 2004).

A presumption arises that a bailee who has sole actual and exclusive possession of the goods has been negligent if he cannot explain the loss, disappearance or damage of the bailed property, its parts or contents. Palik v. PKC Auto Repair Shop, 13 FSM Intrm. 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 Intrm. 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 Intrm. 93, 96 (Kos. S. Ct. Tr. 2004).

– Public Lands

Basic notions of fair play, as well as the Constitution, require that Public Lands Authority decisions be made openly and after giving appropriate opportunity for participation by the public an interested parties. Etpison v. Perman, 1 FSM Intrm. 405, 420-21 (Pon. 1984).

Where there is reason to believe that provisions of a public land lease may have been violated by the

lessee, and where another person has notified the Public Lands Authority of his claim of a right to have the land leased to him, the Public Lands Authority may not consider itself bound by the lease's renewal provision but is required to consider whether it has a right to cancel the lease and, if so, whether the right should be exercised. These are decisions to be made after a rational decision-making process in compliance with procedural due process requirements of article IV, section 3 of the FSM Constitution. Etpison v. Perman, 1 FSM Intrm. 405, 421 (Pon. 1984).

Where a Public Land Authority has erred procedurally, but there is no suggestion of bad faith or substantive violations by the Authority, the FSM Supreme Court may appropriately employ the doctrine of primary jurisdiction to remand the public land issue to the Authority for its decision. Etpison v. Perman, 1 FSM Intrm. 405, 429 (Pon. 1984).

The Pohnpei Public Lands laws do not provide for the disposal or lease of public lands in Kolonia Town by the Pohnpei Public Lands Authority. Micronesian Legal Servs. Corp. v. Ludwig, 3 FSM Intrm. 241, 247 (Pon. S. Ct. Tr. 1987).

Abstention by national courts is desirable in a case affecting state efforts to establish a coherent policy concerning how private persons may obtain rights to use land currently held by the state government. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM Intrm. 37, 44 (Pon. 1989).

Plaintiff's due process rights were not violated where the government did not use condemnation procedures specified in 67 TTC 451, but followed land registration procedures to obtain title and treated the plaintiff fairly and in the same way it treated other landowners. Palik v. Kosrae, 5 FSM Intrm. 147, 152-54 (Kos. S. Ct. Tr. 1991).

Where the alleged trespassers did not claim to have an interest in the land at the time of the determination of ownership they cannot now raise as a defense a claim that the land in question is public land when that issue was decided in the determination of ownership process and certificates of title issued. In re Parcel No. 046-A-01, 6 FSM Intrm. 149, 156-57 (Pon. 1993).

A Certificate of Title issued by a state land commission precludes a claim by the state that the land is public land. Luzama v. Ponape Enterprises Co., 7 FSM Intrm. 40, 51 (App. 1995).

Since under 67 TTC 1 public lands were lands situated within the Trust Territory as the government of the Trust Territory had acquired or would acquire for public purposes, in Chuuk public lands are those lands located in Chuuk that the state has acquired or will acquire for public purposes. Sana v. Chuuk, 7 FSM Intrm. 252, 254 (Chk. S. Ct. Tr. 1995).

In Chuuk the leasing of private land by the government for public purposes is an exercise of the state's eminent domain power because the Chuuk Constitution requires that the state should negotiate a voluntary lease, sale or exchange, if possible, instead of an involuntary taking. Sana v. Chuuk, 7 FSM Intrm. 252, 254 (Chk. S. Ct. Tr. 1995).

In Chuuk land leased by the government for a public purpose is public land for the duration of the term of the lease. Sana v. Chuuk, 7 FSM Intrm. 252, 255 (Chk. S. Ct. Tr. 1995).

Early termination of a lease for which the State of Chuuk has fully paid is a disposal of public land which the governor cannot do without the advice and consent of the legislature. Sana v. Chuuk, 7 FSM Intrm. 252, 255 (Chk. S. Ct. Tr. 1995).

Prior to the effective date of the Chuuk Constitution the ownership of the filled marineland was with the Japanese government and that title was transferred to the Trust Territory pursuant to 67 TTC §§ 1 and 2 and later to Truk State. Atin v. Eram, 7 FSM Intrm. 269, 271 (Chk. S. Ct. Tr. 1995).

A forced sale of land under duress to the Japanese government does not make that land public land.

Nahnken of Nett v. United States, 7 FSM Intrm. 581, 588 (App. 1996).

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

A claim that no one owned an island is in the nature of a claim that the island is public land. Generally, but not always, it is the state government that would assert that some land is public land. Rosokow v. Bob, 11 FSM Intrm. 454, 457 & n.2 (Chk. S. Ct. App. 2003).

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

The Board of Trustees of the Pohnpei Public Lands Trust is the sole entity empowered and authorized to execute a lease agreement in regard to Pohnpei public lands, and when the Board has executed a residential lease agreement, the holder of the residential lease for the property is the present tenant and enjoys privity of contract and privity of estate in relation to that parcel. Ambros & Co. v. Board of Trustees, 12 FSM Intrm. 206, 212 (Pon. 2003).

Under Pohnpei law, an executory interest in the assignment of a public lands leasehold expires on the grantor's death. Ambros & Co. v. Board of Trustees, 12 FSM Intrm. 206, 212 (Pon. 2003).

When an assignment of public land was never approved by the Board and by the form lease agreement's terms, the tenant could not sublease, transfer or assign any interest in the premises without the Board's prior written consent, the assignment could not become a possessory interest until the Board gave its written approval. Upon the assignor's death, the leasehold interest became part of the assignor's estate, and the assignment was extinguished. Ambros & Co. v. Board of Trustees, 12 FSM Intrm. 206, 213 (Pon. 2003).

– Registered Land

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

Where parties had no claims to the land at the time the title was determined they were not entitled to notice. The lack of notice to them does not raise a genuine issue of material fact as to the validity of a Certificate of Title. Where a court proceeding determined title, the lack of a record of notice in the Land Commission files does not raise a genuine issue of material fact as to the validity of the Certificate of Title because the Land Commission did not conduct the hearing on title and so would not have any record of notice. Luzama v. Ponape Enterprises Co., 7 FSM Intrm. 40, 49 (App. 1995).

FSM courts must consider customary law where relevant to a decision, but it is not error for a court to consider custom and find that it is not relevant to its decision because a Certificate of Title had been issued for the land. Luzama v. Ponape Enterprises Co., 7 FSM Intrm. 40, 50 (App. 1995).

While, as a general rule, res judicata applies only to parties, and their privies, to an earlier proceeding, a Torrens system land registration Certificate of Title is, by statute, prima facie evidence of ownership stated therein as against the world, and conclusive upon all persons who had notice and those claiming under them. As a general rule a Certificate of Title can be set aside only on the grounds of fraudulent registration. Luzama v. Ponape Enterprises Co., 7 FSM Intrm. 40, 50-51 (App. 1995).

A Certificate of Title issued by a state land commission precludes a claim by the state that the land is public land. Luzama v. Ponape Enterprises Co., 7 FSM Intrm. 40, 51 (App. 1995).

A court need not decide whether a party who is being sued for trespass, and who does not claim ownership, may raise as an affirmative defense a challenge to the validity of a plaintiff's Certificate of Title issued under the Torrens land registration system when the issues raised by the defendant are insufficient to challenge the Certificate of Title. Luzama v. Ponape Enterprises Co., 7 FSM Intrm. 40, 51-52 (App. 1995).

Certificates of Title to real property are conclusive upon all persons who have had notice of the proceedings that resulted in the issuance of the certificates, and all those claiming under them, and are prima facie evidence of ownership as therein stated against the world. Etscheit v. Nahnken of Nett, 7 FSM Intrm. 390, 392 (Pon. 1996).

Because Certificates of Title are prima facie evidence of ownership as therein stated against the world, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Etscheit v. Nahnken of Nett, 7 FSM Intrm. 390, 394 (Pon. 1996).

Once a Designation of Land Registration Area is made, courts should not entertain actions with regard to interests in such land unless special cause is shown for so doing. Iriarte v. Etscheit, 8 FSM Intrm. 231, 238 (App. 1998).

The statutory provisions required for notice to those the land registration team might find from preliminary inquiry to have claims includes both actual service on known claimants and posting. Iriarte v. Etscheit, 8 FSM Intrm. 231, 238 (App. 1998).

When a court makes the determination of ownership the Land Commission is not relieved from giving notice of that determination prior to issuing the certificate of title. Iriarte v. Etscheit, 8 FSM Intrm. 231, 238 (App. 1998).

An argument that a certificate of title is invalid because of an adverse possession claim must fail when the twenty years necessary for adverse possession has not passed. Iriarte v. Etscheit, 8 FSM Intrm. 231, 239 (App. 1998).

Because Certificates of Title are prima facie evidence of ownership as therein stated against the world, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Sigrah v. Kosrae State Land Comm'n, 9 FSM Intrm. 89, 93 (Kos. S. Ct. Tr. 1999).

As a general rule, a Torrens system land registration Certificate of Title is, by statute, prima facie evidence of ownership stated therein as against the world, and conclusive upon all persons who had notice and those claiming under them; but when a person has asserted a claim to the land and was not given notice of the registration proceedings as required by law, the Determination of Ownership and the Certificate of Title for that land is not conclusive as upon him. Sigrah v. Kosrae State Land Comm'n, 9 FSM Intrm. 89, 93 (Kos. S. Ct. Tr. 1999).

In land cases, notice requirements shall be followed. Failure to serve actual notice on a claimant is a denial of due process and violation of law. Due to the violations of the statutory notice requirement, Determinations of Ownership and Certificates of Title will be set aside as void. Sigrah v. Kosrae State Land Comm'n, 9 FSM Intrm. 89, 95 (Kos. S. Ct. Tr. 1999).

Any aggrieved party may appeal a land commission determination of ownership at any time within 120 days from the date of determination. If it is not appealed within 120 days, then the land commission shall issue a certificate of title which is conclusive evidence of ownership of the land as to all persons who received notice of the land commission's action. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 491 (Chk. S. Ct. Tr. 1999).

A Certificate of Title is prima facie evidence of ownership and is conclusive upon a person who appeared

as a witness at the formal hearing and those claiming under her. Jonas v. Paulino, 9 FSM Intrm. 513, 516 (Kos. S. Ct. Tr. 2000).

As a general rule, a Torrens system land registration Certificate of Title is, by statute, prima facie evidence of ownership stated therein as against the world, and conclusive upon all persons who had notice and those claiming under them. However, when a person has asserted a claim to the land and was not given notice of the registration proceedings as required by law, the Determination of Ownership and the Certificate of Title for that land is not conclusive as upon him. Nena v. Heirs of Nena, 9 FSM Intrm. 528, 530 (Kos. S. Ct. Tr. 2000).

A Determination of Ownership is not conclusive upon a claimant who was identified early in the Land Commission proceedings and who also testified in support of his claim at the formal hearing but was not served a copy of the Determination of Ownership. Nena v. Heirs of Nena, 9 FSM Intrm. 528, 530 (Kos. S. Ct. Tr. 2000).

In land cases, statutory notice requirements must be followed. Failure to serve actual notice on a claimant is a denial of due process and violation of law. Due to the violations of the statutory notice requirement, Determinations of Ownership and Certificates of Title will be set aside as void. Nena v. Heirs of Nena, 9 FSM Intrm. 528, 530 (Kos. S. Ct. Tr. 2000).

When a party, who had shown an interest in the parcel, was not served the Determination of Ownership as required by law, the parcel's Determination of Ownership and the Certificate of Title will, due to the violations of the statutory notice requirement, be vacated and set aside as void and remanded to the Land Commission to again issue and serve the Determination of Ownership for the parcel in accordance with statutory requirements. Nena v. Heirs of Nena, 9 FSM Intrm. 528, 530 (Kos. S. Ct. Tr. 2000).

Someone who by her written request transferred the Certificate of Title to her daughter is no longer the fee owner of that parcel, and therefore has no rights to the parcel and no standing to bring an action concerning the parcel. Jack v. Paulino, 10 FSM Intrm. 335, 336 (Kos. S. Ct. Tr. 2001).

The issuance of a Determination of Ownership is not the final step in the land registration process. Issuance of a Certificate of Title is. Generally, certificates of title are to be issued shortly after the time to appeal a determination of ownership has expired or shortly after an appeal has been determined. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM Intrm. 367, 370 (Chk. 2001).

A Certificate of Title must, with exception of rights of way, taxes, and leases of less than one year, set forth the names of all persons or groups of persons holding interest in the land, and should include a description of the land's boundaries. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM Intrm. 367, 370 (Chk. 2001).

When a Determination of Ownership has been issued but no Certificate of Title has been issued, the Land Commission's ownership determination process has been started but has not been completed. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM Intrm. 367, 370 (Chk. 2001).

A plaintiff with a certificate of title for a parcel clearly has greater possessory interest to the disputed property so that a defendant is liable for trespass on the plaintiff's parcel when he has entered, cleared and planted crops inside the established boundaries of the plaintiff's parcel without the plaintiff's consent. Shrew v. Killin, 10 FSM Intrm. 672, 674 (Kos. S. Ct. Tr. 2002).

Certificates of title are by statute, prima facie evidence of ownership stated therein as against the world. Because of this, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Stephen v. Chuuk, 11 FSM Intrm. 36, 41 (Chk. S. Ct. Tr. 2002).

Because certificates of title to real property are prima facie evidence of ownership as stated therein against the world, a court is required to attach a presumption of correctness to them when considering

challenges to their validity or authenticity. A party challenging the certificates' validity thus bears the burden of proving that they are not valid or authentic. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM Intrm. 94, 101 (Pon. 2002).

When to dispute the plaintiffs' ownership of the property, the defendants have the burden of showing that the plaintiffs' certificates of title are not valid or authentic, or that the relevant certificate of title does not cover the land the defendants occupy, whether the land the defendants occupy was part of the land in a 1903 auction is not a genuine issue of material fact because the defendants' unsupported contention does not dispute the validity of the certificates showing the plaintiffs to be the property's owners. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM Intrm. 94, 101 (Pon. 2002).

That a later survey was performed and another certificate of title issued for the same land does not somehow dilute the certificate holders' ownership of the property, or make defendants' claim to it any more substantial. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM Intrm. 94, 102 (Pon. 2002).

Whether a certificate of title issued in 1983 was voidable is not a genuine issue as to a material fact which would prevent the granting of summary judgment because the plaintiffs presently hold a certificate of title for the property defendants presently occupy. The party challenging the certificate's validity bears the burden of proving that it is not valid or authentic, and when the defendants have failed to show that the relevant certificate of title is invalid, their argument does not create a genuine issue of material fact. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM Intrm. 94, 104 (Pon. 2002).

Courts are required to attach a presumption of correctness to a certificate of title. Marcus v. Truk Trading Corp., 11 FSM Intrm. 152, 158 (Chk. 2002).

It would seem that due process would require that in any lawsuit to remove someone's name from a certificate of title that that person would be an indispensable party to the action. Marcus v. Truk Trading Corp., 11 FSM Intrm. 152, 158 n.4 (Chk. 2002).

When the plaintiffs are entitled to continued use of a parcel on a permanent land use basis pursuant to a land use grant made in 1974 by the defendant's now decreased father, title to the parcel will be issued in the defendant's name as fee simple owner, but the Certificate of Title to that parcel must also reflect the plaintiffs' permanent land use right. Robert v. Semuda, 11 FSM Intrm. 165, 168 (Kos. S. Ct. Tr. 2002).

The law is clear when the Land Commission knew of a civil action judgment and that a person was a claimant and interested party for the parcels, which were the subject of the judgment and later the subject of Land Commission proceedings, but that person was not served personal notice of the formal hearings or the Determinations of Ownership for the parcels. Pursuant to established precedent, Determinations of Ownership and Certificates of Title will be held void and vacated when proper notice was not given pursuant to statute. Actual notice to an interested party is required by personal service. Sigrah v. Kosrae State Land Comm'n, 11 FSM Intrm. 246, 248 (Kos. S. Ct. Tr. 2002).

When the plaintiff was never served statutory notice of the formal hearings or Determinations of Ownership issued for the parcels, those Determinations of Ownership and Certificates of Title must be vacated and set aside as void and the matter remanded for further proceedings consistent with statute. Sigrah v. Kosrae State Land Comm'n, 11 FSM Intrm. 246, 248 (Kos. S. Ct. Tr. 2002).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. A mortgage can and must show on the certificate to be effective against third parties. UNK Wholesale, Inc. v. Robinson, 11 FSM Intrm. 361, 365 n.2 (Chk. 2003).

When a person, entitled to be served notice of the hearing, was not served actual notice of the hearing by personal service, there was no substantial compliance with the notice requirements specified by law and when there was no substantial compliance with the notice requirements specified by law, the Certificate of Title and the Determination of Ownership will be vacated and set aside as void, and the matter remanded to

Kosrae Land Court for further proceedings. Albert v. Jim, 11 FSM Intrm. 487, 490 (Kos. S. Ct. Tr. 2003).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. Therefore a mortgage can and must be shown on the certificate of title to be perfected and thus effective against third parties. If the property has not been issued a certificate of title, then the mortgage must be properly recorded in the chain of title so that someone searching the Land Commission files would expect to find it. In re Engichy, 11 FSM Intrm. 520, 530 (Chk. 2003).

The proper way to record a mortgage under the Torrens land registration system in use in Chuuk is for the mortgage and the landowner's [duplicate] certificate of title to be submitted to the Land Commission at the same time. The mortgage document is then recorded; the mortgage is endorsed on the certificate of title permanently on file at the Land Commission; and then a (new) duplicate certificate of title, showing the endorsement of the newly-recorded mortgage, is given (or returned) to the landowner. If this is done, then the security interest is perfected and the mortgage is valid and enforceable against all the world and has priority over all other claims to the proceeds from the sale of the mortgaged property. If all these steps are not done, then the security interest is not perfected and the mortgage does not carry priority over and is not effective against parties without notice of it – it is a disfavored secret lien. In re Engichy, 11 FSM Intrm. 520, 531 (Chk. 2003).

A party must comply strictly with the Torrens land registration system's procedures in order to claim its benefits. In re Engichy, 11 FSM Intrm. 520, 531 (Chk. 2003).

Since the Land Commission only has authority to issue a certificate of title after the time for appeal from a Land Commission determination of ownership has expired without any notice of appeal having been filed, when a notice of appeal was timely filed with the Chuuk State Supreme Court and the appellee had notice of the appeal, she is precluded from using the certificate of title against the appellant, and its issuance has no conclusive effect because once a notice of appeal had been filed, the Land Commission acted ultra vires, or outside of its authority, when it issued the certificate of title. The certificate is thus void. In re Lot No. 014-A-21, 11 FSM Intrm. 582, 590 (Chk. S. Ct. Tr. 2003).

It is fairly clear that a purchaser who has actual knowledge of some adverse claim to the land will take subject to it, even though the certificate of title fails to memorialize it. In re Engichy, 12 FSM Intrm. 58, 67 n.4 (Chk. 2003).

On registered land encumbrances such as a mortgage must be endorsed upon the certificate of title. In re Engichy, 12 FSM Intrm. 58, 68 (Chk. 2003).

American common law authorities are applicable in the Federated States of Micronesia, if they are applicable at all, only to "recorded" land – to land that has not been issued a certificate of title. Land with a certificate of title is not part of a land recordation system but is part of a Torrens land registration system. In re Engichy, 12 FSM Intrm. 58, 68 (Chk. 2003).

A Torrens land registration system is a legal concept completely foreign to American common law and the related recording statutes. Common law precedents and procedures do not apply to registered land. Land registration is wholly statutory. In re Engichy, 12 FSM Intrm. 58, 68-69 (Chk. 2003).

The purpose and benefit of the lengthy procedure and notice requirements needed to register land is that a certificate of title, once issued, is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and shall be prima facie evidence of ownership as therein stated against the world. This is unlike a "conventional" recording system, which makes no averments to the public about the state of title to any parcel of land. Instead it merely invites searchers to inspect the copies of the instruments which it contains and to draw their own conclusions as to title. In re Engichy, 12 FSM Intrm. 58, 69 (Chk. 2003).

The ownership as stated in the certificate of title is conclusive upon all persons who have had notice of

the proceedings and all those claiming under them and prima facie evidence against the world. In re Engichy, 12 FSM Intrm. 58, 69 (Chk. 2003).

No lengthy title searches, which may fail to turn up important claims, need be done on registered land because all transfers and encumbrances of any interest in the land covered by a certificate of title must be noted thereon or therewith except for rights of way over the land, taxes on the land due within the two years prior to the certificate's issuance, and leases or use rights of less than one year. One only needs to consult the Land Commission's original certificate of title, which will show at a glance the ownership of, and the encumbrances on, the property, and the title searcher need then only read and evaluate the documents referred to by the current endorsements. No historical search of the title is ever necessary or relevant. In re Engichy, 12 FSM Intrm. 58, 69 (Chk. 2003).

An adverse possession claim will never prevail over a validly-issued certificate of title. In re Engichy, 12 FSM Intrm. 58, 69 (Chk. 2003).

The benefits of land registration all flow from the adherence to the Torrens land registration statutes and people's ability to rely on the certificate of title. In re Engichy, 12 FSM Intrm. 58, 69 (Chk. 2003).

The Chuuk Real Estate Mortgage Law confirms and adopts by reference rather than modifying or repealing the Title 67 provisions applicable to the endorsement of mortgages on certificates of title. In re Engichy, 12 FSM Intrm. 58, 70 (Chk. 2003).

It is the owner's duty in requesting any transfer or upon notice that an involuntary transfer has been effected to submit his owner's duplicate certificate for proper endorsement or cancellation, if it is physically practicable for him to do so and if the owner is unable to physically submit the certificate because it has been lost or destroyed, there is a method whereby he may obtain a new duplicate certificate for submission. In re Engichy, 12 FSM Intrm. 58, 70 (Chk. 2003).

Although preferable, endorsements on certificates of title are not required to be typewritten. Hand printing would suffice. In re Engichy, 12 FSM Intrm. 58, 70 (Chk. 2003).

In some Torrens land registration system jurisdictions, considering that the purpose of land registration acts is to allow confident reliance upon the land registration agency's original certificate of title, the absence of even an obvious encumbrance (or an encumbrance of which there is actual knowledge) from the certificate is fatal because the certificate itself is conclusive. In re Engichy, 12 FSM Intrm. 58, 70-71 (Chk. 2003).

A mortgage endorsed on a certificate of title cannot be given retroactive effect. To do so would destroy the purpose of the land registration system – that the original certificate of title at the Land Commission is conclusive and if there are no endorsements anyone searching the state of the title need look nowhere else for mortgages and for the other encumbrances that, with certain exceptions, are required to be listed there. In re Engichy, 12 FSM Intrm. 58, 71 (Chk. 2003).

A mortgagee will have a secured interest in any future funds that from the sale of the mortgaged land when, although the mortgage was not endorsed on the certificate of title before the case was consolidated with other judgment-creditors', all of the necessary documents for the Land Commission to endorse the mortgage had been submitted to the Land Commission by then. In re Engichy, 12 FSM Intrm. 58, 71 (Chk. 2003).

The Land Commission has primary jurisdiction to determine and register land titles. Once an area has been designated as a land registration area, courts cannot entertain any action regarding land titles in that area unless special cause has been shown. Enlet v. Bruton, 12 FSM Intrm. 187, 191 (Chk. 2003).

The statute authorizes only the Land Commission to declare a land registration area. No authority has been identified that would permit a court to designate a land registration area, or to order the Land Commission to designate one. The statute leaves that to the Land Commission's discretion based upon its

determination of desirability and practicability, which is uniquely within its expertise and authority to make. Enlet v. Bruton, 12 FSM Intrm. 187, 191 (Chk. 2003).

A court can determine no more than who among the parties before it has a better claim to title (or in the case of trespass – possession). A court usually cannot determine who has title good against the world. Land registration (determination of title presumptively good against the world) is the province of the Land Commission and its procedures. Enlet v. Bruton, 12 FSM Intrm. 187, 191 (Chk. 2003).

No court could grant as relief a sweeping request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Heirs of Shrew, 12 FSM Intrm. 274, 277 (App. 2003).

Courts must attach a presumption of correctness to a certificate of title. Anton v. Heirs of Shrew, 12 FSM Intrm. 274, 277 (App. 2003).

Co-owners of land are generally considered indispensable parties to any litigation involving that land. This should be especially true when full title to the land is at stake, and even more important when the land will be registered and a certificate of title issued for it because a certificate of title, once issued, is conclusive upon a person who had notice of the proceedings and a person claiming under him and is prima facie evidence of ownership. This is because a cotenant cannot be divested of his interest by a proceeding against all the co-owners of the common property unless he is made a party to the proceeding and served with legal process. Anton v. Heirs of Shrew, 12 FSM Intrm. 274, 278-79 (App. 2003).

No court could grant as relief a far-reaching request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Cornelius, 12 FSM Intrm. 280, 288-89 (App. 2003).

Properly issued certificates of title are by statute *prima facie* evidence of the ownership stated therein as against the whole world, and a court is required to attach a presumption of correctness to them. Hartman v. Chuuk, 12 FSM Intrm. 388, 400 (Chk. S. Ct. Tr. 2004).

Under Kosrae State Code § 11.615(3), land held under a certificate of title may be subject to a right of way whether or not the right of way is stated in the certificate of title. Sigrah v. Kosrae, 12 FSM Intrm. 513, 518 (Kos. S. Ct. Tr. 2004).

Certificates of title are prima facie evidence of ownership as therein stated against the world. Therefore the court, pursuant to established precedent and in accordance with Kosrae's Torrens system land registration process, must attach a presumption of correctness to a certificate of title for a parcel, including its ownership and its boundaries. Sigrah v. Kosrae, 12 FSM Intrm. 531, 533-34 (Kos. S. Ct. Tr. 2004).

Certificates of title are prima facie evidence of ownership as therein stated against the world, and a court is required to attach a presumption of correctness to them when considering challenges to their validity. Since a certificate of title issued to the defendant carries a presumption of correctness, it must be presumed that the defendant is the true owner of the parcel. Benjamin v. Youngstrom, 13 FSM Intrm. 72, 75 (Kos. S. Ct. Tr. 2004).

Someone who has transferred the certificate of title to another person is no longer the fee owner of the parcel and therefore has no rights to the parcel. Benjamin v. Youngstrom, 13 FSM Intrm. 72, 75 (Kos. S. Ct. Tr. 2004).

– Tidelands

The people of Chuuk have always considered themselves to have rights and ownership of the tidelands, and thereby hold the property rights in them, throughout all of the several foreign administrations. These traditional and customary claims came down from time immemorial. Nimeisa v. Department of Public Works, 6 FSM Intrm. 205, 208 (Chk. S. Ct. Tr. 1993).

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

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

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

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

Tideland is land below the ordinary high water mark. Filled or reclaimed land, by its nature, is not land below the ordinary high water mark, and it cannot be considered tideland or submerged land. Nena v. Walter, 6 FSM Intrm. 233, 236 (Chk. S. Ct. Tr. 1993).

Where government title to the tidelands reverted to the traditional owners in 1989, and because the right to bring an action for trespass or ejection must be available to the owner before the time period for adverse possession has run, whether the doctrine of adverse possession exists in Chuukese land law need not be decided because the twenty-year statute of limitations did not start to run until 1989. Cheni v. Ngusun, 6 FSM Intrm. 544, 548 (Chk. S. Ct. App. 1994).

The Chuuk State Constitution, effective on October 1, 1989, recognizes traditional rights over all reefs, tidelands, and other submerged lands. Tidelands, including man-made islands, that were filled prior to this effective date are no longer classed as tidelands and have become dry land. Sellem v. Maras, 7 FSM Intrm. 1, 3-4 (Chk. S. Ct. Tr. 1995).

Tidelands traditionally are those lands from the dry land to the deep water at the edge of the reef, and must be shallow enough for Chuukese women to engage in traditional methods of fishing. Sellem v. Maras, 7 FSM Intrm. 1, 4 (Chk. S. Ct. Tr. 1995).

A deep water passage through a reef too deep for Chuukese women to engage in their traditional fishing methods is not a tideland. While under Chuukese tradition and custom channels may have been owned, the constitution does not recognize traditional rights over channels. The state thus retains ownership of the channels, as was the situation prior to the adoption of the Chuuk Constitution. Sellem v. Maras, 7 FSM Intrm. 1, 5 & n.9 (Chk. S. Ct. Tr. 1995).

Tidelands within the meaning of article IV, section 4 of the Chuuk Constitution are those marine lands from the shore to the face of the reef that are shallow enough for traditional fishing activity by women. The constitutional recognition of traditional rights in tidelands does not include deep water channels or tidelands that have become dry land prior to the effective date of the constitution, through filling or other activity that raised the level of the marine lands above the mean high tide mark. Sellem v. Maras, 7 FSM Intrm. 1, 7 (Chk. S. Ct. Tr. 1995).

Under Pohnpei state law, owners of the land adjacent to the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land. Damarlane v. United States, 7 FSM Intrm. 56, 59-60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law persons simply possessing a permit in the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land unless there has been some affirmative action such as prior written approval from the appropriate authority and effecting some development in the area in question. Damarlane v. United States, 7 FSM Intrm. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a reef is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are not entitled to a payment of just compensation for the depreciation of the value of the reef and fishing grounds. Damarlane v. United States, 7 FSM Intrm. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a fish maii [trap] is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are entitled to a payment of just compensation for the damage to a fish maii which they had constructed in the lagoon, if the fish maii was constructed pursuant to the dictate of customary law as a joint enterprise of the villagers, supervised by the village chief, managed, maintained and owned in common by the villagers; or, if an individual constructed the fish maii, prior written permission from the District Administrator, now the Pohnpei Public Land Board of Trustees, was obtained. Damarlane v. United States, 7 FSM Intrm. 56, 60 (Pon. S. Ct. App. 1995).

The rights of citizens of Pohnpei in areas below the high watermark are prescribed by 67 TTC 2. Damarlane v. United States, 7 FSM Intrm. 56, 63-64 (Pon. S. Ct. App. 1995).

Under Pohnpei law, damage to reefs or soil under the high water mark resulting from dredging activities, the object of which is for public purposes, does not justify compensation to abutting land owners. If the Pohnpei Public Land Board of Trustees had granted certain rights in writing to an individual or group of individuals, and acting on that grant the grantees erected or constructed certain improvements, including fish maii (fish trap) in shallow waters, and if destroyed or value reduced as a result of state dredging activities, the owners thereof may be entitled to just compensation in accordance with the Pohnpei Constitution. Damarlane v. United States, 7 FSM Intrm. 56, 69 (Pon. S. Ct. App. 1995).

Prior to the effective date of the Chuuk Constitution the ownership of the filled marineland was with the Japanese government and that title was transferred to the Trust Territory pursuant to 67 TTC §§ 1 and 2 and later to Truk State. Atin v. Eram, 7 FSM Intrm. 269, 271 (Chk. S. Ct. Tr. 1995).

Any filling of marineland prior to the effective date of the Chuuk Constitution is dry land and has become part of the land adjacent to the fill activity. Atin v. Eram, 7 FSM Intrm. 269, 271 (Chk. S. Ct. Tr. 1995).

An owner of dry land that erodes has no legal basis to claim ownership of tideland. Mailo v. Atonesia, 7 FSM Intrm. 294, 295 (Chk. S. Ct. Tr. 1995).

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

Traditional claims of exclusive ownership of marine resources have been recognized only in areas immediately adjacent to an island or submerged reef. Claims involving custom and tradition were recognized by the Constitution's drafters, but were restricted to areas within lagoons and near reef areas. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 377 (Pon. 1998).

The waters, land, and other natural resources within the marine space of Kosrae are public property, the use of which the state government shall regulate by law in the public interest, subject to the right of the owner of land abutting the marine space to fill in and construct on or over the marine space. Jonah v. Kosrae, 9 FSM Intrm. 335, 340 (Kos. S. Ct. Tr. 2000).

All marine areas below the ordinary high water mark belong to the Kosrae state government. Jonah v. Kosrae, 9 FSM Intrm. 335, 340 (Kos. S. Ct. Tr. 2000).

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

A Kosrae state regulation that covers all persons wanting to fill in and construct on or over land below the ordinary high water mark does not provide any private right of action and cannot be the basis of a claim against the state for violation of law or regulation even if it did not have a specific plan for the seawall that was part of a road-widening project for which it had an overall plan. Jonah v. Kosrae, 9 FSM Intrm. 335, 342-43 (Kos. S. Ct. Tr. 2000).

The customary and traditional rights of municipalities, clans, families and individuals to engage in subsistence fishing, and to harvest fish and other living marine resources from reef areas are recognized, but a municipality is not directly entitled to compensation when resources in a particular reef area of Pohnpei are damaged. Thus, absent any damage to municipal property besides the reef itself or the living marine resources, the municipality is entitled only to that amount which Pohnpei appropriates to the municipality to compensate it for damage to its traditional subsistence fishing rights. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 60-61 (Pon. 2001).

The state owns the submerged reef areas, but this ownership carries with it certain responsibilities with respect to the people in whose trust these areas are held. It must preserve and respect the traditionally recognized fishing rights of the people of Pohnpei. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 61 (Pon. 2001).

Submerged reef areas are government lands which passed from the Trust Territory to Pohnpei, and the rights of the municipalities to use these areas are subject to the state's ownership rights. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 61 (Pon. 2001).

Under the Trust Territory Code the state has the power to control all marine areas below the ordinary high water mark, subject to a few notable exceptions. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 62 (Pon. 2001).

The power of the states to regulate ownership, exploration and exploitation of natural resources in the marine area within 12 miles from the island baselines is not absolute as it is limited by the national powers to regulate navigation and shipping, and to regulate foreign and interstate commerce. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 63 & n.8 (Pon. 2001).

Pohnpei has legal ownership of the submerged reef area as long as none of the relevant exceptions to 67 TTC 2 are applicable. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 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 Intrm. 53, 64 (Pon. 2001).

The German Land Code of 1912 applies only to land on Pohnpei, not to submerged areas. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 64 (Pon. 2001).

The Japanese owned all areas below the high water mark during their administration, then ownership of this land passed to the Trust Territory, and subsequently to the State of Pohnpei. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 65 (Pon. 2001).

Control over areas within 12 miles from island baselines was reserved to the states, subject to the national government's control over foreign and interstate commerce, and navigation and shipping. Thus, under the transition clause, the "government" ownership referenced in 67 TTC 2 should be interpreted as "state" ownership within 12 miles from island baselines. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 65 n.13 (Pon. 2001).

Because the state has assumed the duty of regulating exploration, exploitation and conservation of natural resources within the 12 mile zone from island baselines, and it is presumably the state which bears the costs associated with enforcing state laws related to such natural resources within state waters, it is logical that the state should recover the damages flowing from injury to these resources. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 65 (Pon. 2001).

Title 67, Section 2 of the Trust Territory Code continues in effect under the transition clause of the FSM Constitution, is consistent with other provisions in the FSM and Pohnpei Constitutions, and clearly confirms that all marine areas below the ordinary high water mark belong to the government. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 66 (Pon. 2001).

Pohnpei does not have a proprietary ownership interest in the tideland, as it is public land which is intended to benefit the public. Thus, Pohnpei may not sell submerged reef areas, or destroy or waste these resources with impunity because such actions would violate the public trust, and any damages recovered by Pohnpei should be returned in kind to the people in accordance with Pohnpei's obligation to protect and preserve the natural resources for the people's use. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 66 (Pon. 2001).

The ownership of submerged land and marine resources has a public character, being held by all of the people for purposes in which all of the people are interested. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 66 (Pon. 2001).

The people of Pohnpei's traditional and customary rights to freely navigate the reef, engage in subsistence fishing in that area, and control the use of and materials in that marine environment is recognized in 67 TTC 2(e), in the FSM Constitution, and the Pohnpei Constitution. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 66 (Pon. 2001).

A municipality is precluded from recovering damages for injury to the submerged lands and living marine resources damaged by a fishing vessel grounding, but will be provided an opportunity at trial to prove any damage to other municipal resources. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 67 (Pon. 2001).

When tidelands were never properly divided during the father's lifetime, the logical conclusion is that those tidelands remain lineage or family property according to Chuukese tradition and custom and cannot be transferred without the consent of all male adults of the lineage, subject only to the traditional rights of afokur as consented to. Lukas v. Stanley, 10 FSM Intrm. 365, 366 (Chk. S. Ct. Tr. 2001).

When deciding the ownership of tideland, the trial court did not err in not taking judicial notice of and following the judgment in a different case that dealt only with the boundaries and ownership of adjacent filled land. Phillip v. Moses, 10 FSM Intrm. 540, 544 (Chk. S. Ct. App. 2002).

An owner of dry land is not necessarily the owner of the adjacent tideland. Phillip v. Moses, 10 FSM Intrm. 540, 544 (Chk. S. Ct. App. 2002).

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

Since traditional rights in tideland were not recognized in the law until October 1, 1989, no prior assertion of ownership over filled land could affect the traditional tideland rights. Phillip v. Moses, 10 FSM Intrm. 540, 545 (Chk. S. Ct. App. 2002).

Any assertion of ownership over the filled land in a different case could not affect the continuing traditional rights in the adjacent tidelands. Phillip v. Moses, 10 FSM Intrm. 540, 545 (Chk. S. Ct. App. 2002).

Prior to the effective date of the Chuuk Constitution, all tidelands were owned by the government. When the Chuuk Constitution became effective, traditional tideland rights were restored over only those areas that were still tidelands on that date (Oct. 1, 1989). Stephen v. Chuuk, 11 FSM Intrm. 36, 41 (Chk. S. Ct. Tr. 2002).

The tideland that is subject to traditional claims of ownership does not include deep water. Stephen v. Chuuk, 11 FSM Intrm. 36, 42 n.2 (Chk. S. Ct. Tr. 2002).

While the Land Commission has the statutory authority to determine and register land titles, whether the Land Commission has the legal authority and the technical ability to determine, survey, and register tidelands is an unanswered question. Enlet v. Bruton, 12 FSM Intrm. 187, 191 (Chk. 2003).

PUBLIC CONTRACTS

When the state's letter says that the bid was incomplete and that the contract was awarded to another bidder, it is a fair inference that the bid was rejected. International Bridge Corp. v. Yap, 9 FSM Intrm. 362, 364 (Yap 2000).

Rejection of a contractor's bid on the basis it was incomplete is a final administrative determination which confers on the bidder the right to judicial review. International Bridge Corp. v. Yap, 9 FSM Intrm. 362, 365 (Yap 2000).

A suit for injunctive relief is the appropriate vehicle by which to challenge a contract award under public bidding statutes because as a general rule, a declaratory judgment and an injunction are the only adequate means of protecting the public interest, the integrity of the competitive bidding process, and the individual bidder's rights. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 394 (Yap 2000).

A court must fully take into account the discretion that is typically accorded an official in the procurement agencies by statutes and regulations. Such discretion extends not only to the evaluation of bids submitted in response to a solicitation but also to the agency's determination with respect to the application of technical, and often esoteric, regulations to the complicated circumstances of individual procurement. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 396 (Yap 2000).

Under 9 Y.S.C. 528, all Yap state government contracts must be in writing and be executed by the agency which is authorized to let contracts in its own name and must be made with the lowest responsible bidder. The lowest responsible bidder is the lowest bidder whose offer adequately responds in quality, fitness, and capacity to the particular requirements of the proposed work called for by the contract. The lowest responsible bidder may be the bidder who submits the lowest price, but not necessarily. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 397 (Yap 2000).

All state contracts shall be in writing and made with the lowest responsible bidder. If the lowest bid is rejected, the contracting officer may, at his discretion, award the contract to the lowest remaining responsible bidder or advertise anew for bids. In each instance the officer, at his discretion, after determining the lowest responsible bidder, may negotiate with that bidder, and that bidder only, to reduce the scope of work and to award the contract at a price which reflects the reduction in the scope of work. International Bridge Corp. v.

Yap, 9 FSM Intrm. 390, 397 (Yap 2000).

While the better procedure under 9 Y.S.C. 528 would have been for Public Works to formally select the second lowest bidder as the lowest responsible bidder before beginning negotiations with it to reduce the scope of work, and consequent price, the essential point is that the state had legally sufficient reasons for rejecting the lowest bidder's bid when it did so. As a result, no substantial right of the lowest bidder was violated by the state's failure to strictly conform to the statutory procedure. The court therefore will not reverse, modify, or remand the case for further proceedings pursuant to 10 Y.S.C. 165 on the basis of the state's negotiations with the second lowest bidder. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 398 (Yap 2000).

The state must provide contract bidders with substantial, material, and detailed information necessary for a bidder to make a knowing and fully informed bid. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 399 (Yap 2000).

Materials provided by the state, however denominated, must provide sufficient specificity to permit real competition between the bidders on contracts, and fair comparison among the several bids. The state-provided specifications may be sufficient to provide real competition and a fair comparison although the bid form requires the bidder to provide additional specifications. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 400 (Yap 2000).

When the state's bid documents provided specifications for metal buildings in extreme detail it could properly require a contract bidder to provide the brand name and additional specifications for the metal buildings as part of its bid, and could reject the bid on this basis when those items were not provided. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 401-02 (Yap 2000).

The lowest responsible bidder is the lowest bidder whose offer adequately responds in quality, fitness, and capacity to the particular requirements of the proposed work called for by the contract. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 403 (Yap 2000).

The lowest responsible bidder for a contract for public work is one who is responsible and the lowest in price on the advertised basis. The term "responsible" as thus used is not limited in its meaning to financial resources and ability. Authorizations of this kind invest public authorities with discretionary power to pass upon the bidder's experience and his facilities for carrying out the contract, his previous conduct under other contracts, and the quality of his previous work, and when that discretion is properly exercised, the courts will not interfere. A bidder's experience in his field of expertise is a valid factor which may be considered in evaluating competing bids in order to determine the lowest responsible bidder. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 403 (Yap 2000).

In addition to the names of any joint or subcontractors and the work they will do, all bids for state contracts must include any other materially relevant information the contracting officer may require, and any bid which does not comply with the advertisement's requirements or the statutory provisions shall be rejected. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 403 (Yap 2000).

It is not for the court to second-guess the state's determination that a bidder's related experience was insufficient to qualify it as the lowest responsible bidder because a court has no warrant to set aside agency actions as arbitrary or capricious when those words mean no more than that the judge would have handled the matter differently had he been an agency member. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 404 (Yap 2000).

The state may reject a contract bid when the bidder has not supplied the names and curriculum vitae of its key personnel which was materially relevant information required by the bidding documents. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 404 (Yap 2000).

When the subcontractors' professional experience was not required under the terms of the bid

documents themselves, nor was its submission a customary practice, a bidder's failure to submit them was not properly a basis for the rejection of its bid. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 405 (Yap 2000).

When the statute provides that any bid which does not comply with the bid advertisement's requirements or the statutory provisions shall be rejected, and when the bidder's qualification statement makes it clear that failure to provide any of the information requested may result in the contracting officer's rejection of the bid, the lack of materially relevant information required by the bid documents was a sufficient basis upon which to reject the bid. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 405 (Yap 2000).

Although the statute requires the state to determine before a bid is submitted whether a potential bidder's financial ability to perform the work and its experience in performing similar work, the state may also require that a bidder provide, as part of its bid package, additional information regarding the qualifications of those specific individuals within its organization who would be working on the project. International Bridge Corp. v. Yap, 9 FSM Intrm. 390, 406 (Yap 2000).

A contract for public work or public property or supplies must be executed on the public body's behalf by some officer or officers possessed of the power to contract on behalf of the governmental body which they represent. The fundamental rule is that a public officer, who has only such authority as is conferred upon him by law, may make for the government he represents only such contracts as he is authorized by law to make. Nagata v. Pohnpei, 11 FSM Intrm. 265, 271 (Pon. 2002).

The terms and conditions of a contract with a successful bidder for public contracts where competitive bidding is required are to be gathered from the terms and specifications of the advertisement or solicitation for bids. Nagata v. Pohnpei, 11 FSM Intrm. 265, 271 (Pon. 2002).

When the plaintiffs have shown that the state has acted *ultra vires* with regard to soliciting bids, designating successful bidders, and entering into contracts for trochus, and has acted arbitrarily in determining what constitutes evidence of available funds and in attaching other conditions to the contract awards which were not included in the solicitation to bid documents, they have demonstrated that they will be irreparably injured if the trochus harvest is permitted to proceed, as the bid solicitation and contract award processes were contrary to Pohnpei state law. The plaintiffs are thus entitled to a declaratory judgment that the defendants' trochus harvest activities are illegal and to a permanent injunction, prohibiting the defendants from proceeding with any trochus harvest until the state has implemented procedures to conduct a fair and transparent bidding process for trochus, through the department authorized by law to conduct it. Nagata v. Pohnpei, 11 FSM Intrm. 265, 272 (Pon. 2002).

A fair and transparent bidding process requires that regulations for soliciting bids, designating successful bidders, and awarding contracts for trochus be properly noticed, published, and distributed by the authorized department and that the department's solicitations to bid set forth in clear terms each and every term and condition of the contract to be formed with a successful bidder for a trochus harvest, which terms may not be varied by the state after a bid is awarded. Nagata v. Pohnpei, 11 FSM Intrm. 265, 272 (Pon. 2002).

The statutory provision entitled "State Acquisition of Land" applies to the state's acquisition of interests in private land, which includes purchases of land in fee simple, and also other interests such as leases, easements for access roads and rights of way. Sigrah v. Kosrae, 12 FSM Intrm. 513, 521-22 (Kos. S. Ct. Tr. 2004).

When the timing and manner in which a parcel was selected for a state quarry site, and when the negotiations were conducted and a lease agreement executed without public notice, without bidding procedures and without testing the suitability of the rock therein for aggregate production, it raises issues of public trust, transparency of government operations and propriety of the these actions under state law. Sigrah v. Kosrae, 12 FSM Intrm. 513, 522 (Kos. S. Ct. Tr. 2004).

The Kosrae Financial Management Regulations, Section 4.2(b) requires free, open and competitive

bidding for purchases more than $25,000. Sigrah v. Kosrae, 12 FSM Intrm. 531, 534 (Kos. S. Ct. Tr. 2004).

The Financial Management Regulations, Section 4.17 provides the requirements for an exemption from open bidding when the Governor, in the event of an emergency affecting public health, safety, or convenience so declares in writing, describing the nature of the emergency and danger, an exemption to open bidding will be made to the extent necessary to avoid the stated danger. Sigrah v. Kosrae, 12 FSM Intrm. 531, 534 (Kos. S. Ct. Tr. 2004).

The State of Kosrae acquires an interest in private land at the direction of the Governor through negotiation or through a procedure for acquisition of an interest in private land through court proceedings. Sigrah v. Kosrae, 12 FSM Intrm. 531, 535 (Kos. S. Ct. Tr. 2004).

If the state's lease interest in parcels of which the Governor as a co-owner was acquired at the Lt. Governor's direction, or at the direction of any person other than the Governor, then it appears that lease interest was acquired in violation of Kosrae State Code, Section 11.103(1), but if the lease interest in the parcels was acquired at the Governor's direction, in compliance with Section 11.103, then it appears that the lease interest was acquired in violation of the Kosrae State Ethics Act. Sigrah v. Kosrae, 12 FSM Intrm. 531, 535 (Kos. S. Ct. Tr. 2004).

PUBLIC OFFICERS AND EMPLOYEES

Where a purported state employment contract erroneously and consistently recites that it is between the employee and the Trust Territory of the Pacific Islands and contains other statements demonstrating that the contract words were not to be taken seriously and did not comport with reality, the document is unpersuasive evidence of the relationships among the employee, the state, and the national government. Manahane v. FSM, 1 FSM Intrm. 161, 165-67 (Pon. 1982).

It is not appropriate for the FSM Supreme Court to consider a claim that a government employee's termination was unconstitutional where the administrative steps essential for review by the court of employment terminations have not yet been completed. 52 F.S.M.C. 157. Suldan v. FSM (I), 1 FSM Intrm. 201, 202 (Pon. 1982).

The National Public Service system Act plainly manifests a congressional intention that, where there is a dispute over a dismissal, the FSM Supreme Court should withhold action until the administrative steps have been completed. 52 F.S.M.C. 157. Suldan v. FSM (I), 1 FSM Intrm. 201, 206 (Pon. 1982).

Due process may well require that, in a National Public Service system employment dispute, the ultimate decision-maker review the record of the ad hoc committee hearing, at least insofar as either party to the personnel dispute may rely upon some portion of the record. 52 F.S.M.C. 156. Suldan v. FSM (I), 1 FSM Intrm. 201, 206 (Pon. 1982).

Government employment that is "property" within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Suldan v. FSM (II), 1 FSM Intrm. 339, 351-52 (Pon. 1983).

The National Public Service System Act fixes two conditions for termination of a national government employee. Responsible officials must be persuaded that: 1) there is "cause," that is, the employee has acted wrongfully, justifying disciplinary action; and 2) the proposed action will serve "the good of the public service." 52 F.S.M.C. 151-157. Suldan v. FSM (II), 1 FSM Intrm. 339, 353 (Pon. 1983).

The National Public Service System Act's provisions create a mutual expectation of continued employment for national government employees and protect that employment right by limiting the permissible grounds, and specifying necessary procedures, for termination. This, in turn, is sufficient protection of the employment right to establish a property interest. Suldan v. FSM (II), 1 FSM Intrm. 339, 353-54 (Pon. 1983).

The government's right to discipline an employee for unexcused absence is not erased by the fact that annual leave and sick leave were awarded for the days of absence. Suldan v. FSM (II), 1 FSM Intrm. 339, 357 (Pon. 1983).

The highest management official must base his final decision on a national government employee's termination, under section 156 of the National Public Service System Act, upon the information presented at the ad hoc committee hearing and no other information. Suldan v. FSM (II), 1 FSM Intrm. 339, 359-60 (Pon. 1983).

If, pursuant to section 156 of the National Public Service system Act, the highest management official declines to accept a finding of the ad hoc committee, the official will be required by statutory as well as constitutional requirements to review those portions of the record bearing on the factual issues and to submit a reasoned statement demonstrating why the ad hoc committee's factual conclusion should be rejected. Suldan v. FSM (II), 1 FSM Intrm. 339, 360-61 (Pon. 1983).

The National Public Service System Act, by implication, requires final decisions by unbiased persons. Suldan v. FSM (II), 1 FSM Intrm. 339, 362 (Pon. 1983).

The highest management officials cannot be said to be biased as a class and they cannot be disqualified, by virtue of their positions, from final decision-making as to a national government employee's termination under section 156 of the National Public Service System Act, without individual consideration. Suldan v. FSM (II), 1 FSM Intrm. 339, 363 (Pon. 1983).

The high public office of state prosecutor may be the most powerful office in our system of justice. The prosecutor invokes and implements the sovereign powers of the state in the justice system and is given a wide degree of discretion in so doing. Rauzi v. FSM, 2 FSM Intrm. 8, 13 (Pon. 1985).

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

Some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. Rauzi v. FSM, 2 FSM Intrm. 8, 16 (Pon. 1985).

The emphasis in governmental tort liability cases has been on the special status of government, its functions and its officials rather than on the degree of control tests commonly employed in nongovernmental cases. Even those commentators who specifically note that the *respondeat superior* doctrine applies to the government analyze governmental liability issues in terms of public policy considerations rather than through a degree of control analysis which distinguishes between closely supervised and high-ranking officials. Rauzi v. FSM, 2 FSM Intrm. 8, 16 (Pon. 1985).

There is a common law of taxation which addresses the status of public officials as employees. Rauzi v. FSM, 2 FSM Intrm. 8, 17 (Pon. 1985).

A taxpayer who held the high public office of Chief of Finance, whose contract gave him a wide degree of discretion in carrying out governmental powers; and who was not an outside consultant who could merely suggest or advise but was an integral part of the governmental operation is a governmental official, therefore an employee for purposes of the FSM Income Tax Law. Heston v. FSM, 2 FSM Intrm. 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 Intrm. 61, 65 (Pon. 1985).

Defendants were not acting as police officers or under the direction of police officers so as to make their conduct lawful where the record reveals generally that the defendants' actions were not those of police officers

acting in good faith to enforce the law, but were taken on their own behalf to punish and intimidate their victims. Teruo v. FSM, 2 FSM Intrm. 167, 171 (App. 1986).

When an individual begins working for a federal government agency, he is justified in believing that he will be allowed to hold that position until terminated by a supervisor and in believing that he will be compensated for his work. Falcam v. FSM, 3 FSM Intrm. 194, 198 (Pon. 1987).

An expectation of being paid for work already performed is a property interest qualifying for protection under the Due Process Clause of the FSM Constitution. Falcam v. FSM, 3 FSM Intrm. 194, 200 (Pon. 1987).

Any withholding of private property, such as a government employee's paycheck, without a hearing can be justified only so long as it take the authorized payor to obtain a judicial determination as to the legality of the payment being withheld. Falcam v. FSM, 3 FSM Intrm. 194, 200 (Pon. 1987).

In reviewing the termination of national government employees under the National Public Service System Act, the FSM Supreme Court will review factual findings insofar as necessary to determine whether there is evidence to establish that there were grounds for discipline. Semes v. FSM, 4 FSM Intrm. 66, 71 (App. 1989).

Under the National Public Service System Act, where the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of factual findings is limited to determining whether substantial evidence in the record supports the conclusion of the administrative official that a violation of the kind justifying termination has occurred. Semes v. FSM, 4 FSM Intrm. 66, 72 (App. 1989).

The National Public Service System Act places broad authority in the highest management official, authorizing dismissal based upon disciplinary reasons when the official determines that the good of the public service will be served thereby. Semes v. FSM, 4 FSM Intrm. 66, 73 (App. 1989).

The National Public Service System Act and the FSM Public Service System Regulations establish an expectation of continued employment for nonprobationary national government employees by limiting the permissible grounds and specifying necessary procedures for their dismissal; this is sufficient protection of the right to continued national government employment to establish a property interest for nonprobationary employees which may not be taken without fair proceedings, or "due process." Semes v. FSM, 4 FSM Intrm. 66, 73 (App. 1989).

The National Public Service System Act and the FSM Public Service System Regulations establish an expectation of continued employment for nonprobationary national government employees by limiting the permissible grounds and specifying procedures necessary for their dismissal; this is sufficient protection of the right to continued national government employment to establish a property interest for nonprobationary employees which may not be taken without fair proceedings, or "due process." Semes v. FSM, 4 FSM Intrm. 66, 73 (App. 1989).

In the absence of statutory language to the contrary, the National Public Service System Act's mandate may be interpreted as assuming compliance with the constitutional requirements, because if it purported to preclude constitutionally required procedures, it must be set aside as unconstitutional. Semes v. FSM, 4 FSM Intrm. 66, 74 (App. 1989).

Constitutional due process requires that a nonprobationary employee of the national government be given some opportunity to respond to the charges against him before his dismissal may be implemented; including oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Semes v. FSM, 4 FSM Intrm. 66, 76 (App. 1989).

Implementation of the constitutional requirement that a government employee be given an opportunity to respond before dismissal is consistent with the statutory scheme of the National Public Service System Act, therefore the Act need not be set aside as contrary to due process. Semes v. FSM, 4 FSM Intrm. 66, 77 (App.

1989).

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

A basic premise of public employment law is that the rights of a holder of public office are determined primarily by reference to constitutional, statutory and regulatory provisions, not by the principles of contract which govern private employment relationships. Sohl v. FSM, 4 FSM Intrm. 186, 191 (Pon. 1990).

Subject to constitutional limitations, the public has the power, through its laws, to fix the rights, duties and emoluments of public service, and the public officer neither bargains for, nor has contractual entitlements to them. Sohl v. FSM, 4 FSM Intrm. 186, 191 (Pon. 1990).

The amount of compensation a public employee receives is not based on quasi-contract doctrines such as quantum meruit or unjust enrichment, but instead is set by law, even if the actual value of the services rendered by a public officer is greater than the compensation set by law. Sohl v. FSM, 4 FSM Intrm. 186, 192 (Pon. 1990).

Public employees are only entitled to receive the benefits prescribed by law for positions to which they have been duly appointed, even if an officer or employee has performed duties or services above and beyond those of the appointed office. Sohl v. FSM, 4 FSM Intrm. 186, 192 (Pon. 1990).

A public officer claiming certain compensation or other benefits must show a clear legal basis for his right to these emoluments; hopes and expectations, even reasonable ones, are not enough to create that legal entitlement, nor are any moral obligations which may be incurred, without clear warrant of law. Sohl v. FSM, 4 FSM Intrm. 186, 193 (Pon. 1990).

The compensation of public officials in the FSM is not determined by a contract for specific services, express or implied, but by the judgment of the people, through their elected representatives and executive officials who properly exercise delegated power pursuant to statutory or other authorization; specifically, the FSM Constitution and statutes establish how a person may attain public office, and the National Public Service System Act and regulations thereunder set the compensation to be paid to holders of the respective offices. Sohl v. FSM, 4 FSM Intrm. 186, 194 (Pon. 1990).

Where a public official claims additional compensation, it is inappropriate to ask whether he received compensation equal to the value of his services to the public, but instead the court must inquire whether he received the amount that was due to him by law or whether he can demonstrate a clear legal entitlement to the office which would have provided the compensation he now seeks. Sohl v. FSM, 4 FSM Intrm. 186, 194 (Pon. 1990).

The power of the President to appoint executive branch officers is not absolute, but is subject to check by the advice and consent of Congress. Sohl v. FSM, 4 FSM Intrm. 186, 197 (Pon. 1990).

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 Intrm. 388, 396 (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 Intrm. 398, 401 (Pon. 1992).

If someone constitutionally ineligible for appointment, is appointed a judge then his status is that of a de facto judge. A de facto judge is one who exercises the duties of the judicial office under the color of an appointment thereto. Where there is an office to be filled, and one, acting under color of authority, fills the office and discharges its duties, his actions are those of an officer de facto, and binding on the public. Hartman v. FSM, 6 FSM Intrm. 293, 298-99 (App. 1993).

The Title 51 provision barring nonresident workers from gainful employment for other than the employer who has contracted for him does not apply to national government employees because the national government is not an employer for the purposes of Title 51 of the FSM Code and does not contract with the Chief of the Division of Labor for employment of nonresident workers. FSM v. Moroni, 6 FSM Intrm. 575, 578 (App. 1994).

Title 51 does not preclude nonresident national government employees from engaging in off-hours, secondary, private sector employment, but simply means that in order to engage in secondary employment nonresident national government employees must comply with its statutory provisions covering the private sector employment of nonresidents. FSM v. Moroni, 6 FSM Intrm. 575, 579 (App. 1994).

A temporarily-promoted employee is compensated at the step in the new pay level which is next above his current pay, and the employee must be informed in advance and must agree in writing that at the end of the temporary promotion, he will be returned to the former salary (grade and step) that he would be receiving had he remained in his former position. No temporary promotion can exceed one year. Issac v. Weilbacher, 8 FSM Intrm. 326, 332 (Pon. 1998).

A permanent employee has a one year probationary period after a promotion or transfer. A probationary employee has all of the rights of a permanent employee except the right to appeal from removal from the new position. Once the probationary period expires, an employee becomes a permanent employee in the new position. No adverse action (including a demotion) may be taken against a permanent employee except as prescribed by regulations which entitle the employee to notice of the action taken and a hearing regarding the merits of the action before an ad hoc committee if the employee appeals. Issac v. Weilbacher, 8 FSM Intrm. 326, 332 (Pon. 1998).

Title 52 F.S.M.C. 151-57 and PSS Regulation 18.4 establish an expectation of continuous employment for nonprobationary national government employees by limiting the permissible grounds, and specifying necessary procedures, for their dismissal. This is sufficient to establish a "property interest" for the nonprobationary employee which cannot be taken without fair proceedings, or "due process." Issac v. Weilbacher, 8 FSM Intrm. 326, 333 (Pon. 1998).

When there is no applicable FSM precedent on the point, it is helpful to look to U.S. law in order to formulate general principles for use in resolving legal issues bearing upon the rights of public employees and officers because the public employment structures within the FSM are based upon comparable government models existing in the United States. Issac v. Weilbacher, 8 FSM Intrm. 326, 333 (Pon. 1998).

A provisionally or temporarily appointed individual is not ordinarily entitled to a permanent civil service position merely by reason of his or her retention beyond the probation period prescribed for regular appointees. At least two conditions must be present before a temporary appointment may become permanent, so as to entitle an affected employee to the procedures in the PSS Act and Regulations, regarding adverse action against permanent employees: 1) the employee must have been among the first three on the eligible list at the time of the appointment, so as to be qualified and capable of receiving the appointment, and 2) there must have been a vacancy. Issac v. Weilbacher, 8 FSM Intrm. 326, 334 (Pon. 1998).

A court finding that an employee, who held an acting position for four years and was certified as qualified

or eligible for the vacant position, had been permanently promoted, does not take away management discretion in hiring and establish for employees a legal right to promotion. Rather, it recognizes the reality of the employee's employment situation, and prevents the government from circumventing the procedural requirements of the PSS Act and Regulations. Issac v. Weilbacher, 8 FSM Intrm. 326, 334 (Pon. 1998).

The PSS Act's purpose is to provide employees with just opportunities for promotion, reasonable job security (including the right to appeal), and tenure in positions. 52 F.S.M.C. 113, 115. If the national government is allowed to "temporarily" promote employees for indefinite periods of time and subsequently return them to their previous positions, the government can effectively circumvent all of the Act's merit and tenure principles. Issac v. Weilbacher, 8 FSM Intrm. 326, 334-35 (Pon. 1998).

Under the PSS Act and Regulations, a permanent employee after a promotion or transfer is a probationary employee who becomes permanent and non-probationary at the end of a maximum one year probationary period. Thereafter, an action returning the employee to his previous pay level is a demotion, an adverse action. Issac v. Weilbacher, 8 FSM Intrm. 326, 335 (Pon. 1998).

The protections afforded a permanent employee include: 1) notification of the adverse action, containing a full and detailed statement of the reasons for the action; 2) notification of his right to appeal the adverse action; 3) the right to appeal the adverse action and have his appeal heard publicly by an ad hoc committee; and 4) the right to receive a written report from the ad hoc committee containing findings of fact and written recommendations concerning the adverse action. Issac v. Weilbacher, 8 FSM Intrm. 326, 335, 337 (Pon. 1998).

An employee receiving a temporary promotion must be informed in advance and must agree in writing that at the expiration of the temporary promotion, he will be returned to the former salary (grade and step) that he would be receiving had he remained in his former position. But such a written agreement has no effect if the promotion has become permanent. Issac v. Weilbacher, 8 FSM Intrm. 326, 335 (Pon. 1998).

A permanent employee cannot be demoted to his former position based on a regulation which, by its terms, only applies to a temporary promotion. A permanent employee's constitutional right to due process is violated by the national government when it has thus demoted him. Issac v. Weilbacher, 8 FSM Intrm. 326, 335 (Pon. 1998).

Every permanent and probationary employee is to receive an annual written rating of performance. Employees who receive "Satisfactory" or "Exceptional" ratings are eligible for step increases within their pay level. Employees who receive "Less than Satisfactory" ratings are not eligible. The absence of a performance evaluation gives rise to the presumption that the individual was performing at a "Less than Satisfactory" level. Pay and step increases are discretionary. Issac v. Weilbacher, 8 FSM Intrm. 326, 336-37 (Pon. 1998).

A person whose temporary promotion became permanent has the right to be discharged only for cause, and is entitled to all of the other protections afforded a permanent employee. Issac v. Weilbacher, 8 FSM Intrm. 326, 337 (Pon. 1998).

Because Congress has not explicitly made employment contracts which violate 11 F.S.M.C. 1305 unenforceable, the FSM Supreme Court may properly decide whether a contravention of public policy is grave enough to warrant unenforceabillty. FSM v. Falcam, 9 FSM Intrm. 1, 4 (App. 1999).

When there is no national precedent on the issue of the enforcement of an employment contract term which was violative of public policy, and there is no custom or tradition governing the matter, the FSM Supreme Court may look to the common law of the United States. FSM v. Falcam, 9 FSM Intrm. 1, 5 (App. 1999).

Although there was a public interest in denying enforcement because the hiring violated public policy, this is outweighed by the special public interest of the government's failure to provide any hearing or opportunity to be heard concerning its failure to pay the employee or take any steps to terminate the contract,

thus constituting a violation of due process rights; the employee's justified expectations of being paid; and the substantial forfeiture would result if enforcement were to be denied. Therefore the trial court did not abuse its discretion in its weighing of the factors on the issue of enforceability. FSM v. Falcam, 9 FSM Intrm. 1, 5 (App. 1999).

An illegally-hired public employee has a constitutionally protected interest in employment because the Secretary of Finance must give notice and an opportunity to be heard after taking the action to withhold his pay, and the government must terminate his employment after it determines his hiring had violated public policy, giving him notice and an opportunity to be heard. Failure to take such steps violated the employee's due process rights. FSM v. Falcam, 9 FSM Intrm. 1, 5 (App. 1999).

Trust Territory Code Title 61 governed the Public Employment System during 1978, and provided that the grievance procedures would hear and adjudicate grievances for all employees where the employees would be free from coercion, discrimination or reprisals and that they might have a representative of their own choosing. Skilling v. Kosrae, 10 FSM Intrm. 448, 451 (Kos. S. Ct. Tr. 2001).

In 1978, the Trust Territory Public Service Grievance System covered all Public Service employees and covered any matter of concern or dissatisfaction to an eligible employee, unless exempted. Skilling v. Kosrae, 10 FSM Intrm. 448, 451 (Kos. S. Ct. Tr. 2001).

An employee had to complete the informal grievance procedure before presenting the grievance to the Trust Territory Personnel Board. The employee was required to present a grievance concerning a particular act or occurrence within fifteen calendar days of the date of the act or occurrence. The informal grievance procedure permitted presentation of the grievance orally. The Regulations also provided a formal grievance procedure, which the employee may have utilized and which had to be done in writing, if his grievance was not settled to his satisfaction under the informal grievance procedure. The formal grievance procedure was not mandatory upon employees. Skilling v. Kosrae, 10 FSM Intrm. 448, 451-52 (Kos. S. Ct. Tr. 2001).

The Trust Territory Public Service System Regulations did not require an employee grievance be heard by the Personnel Board in the formal grievance procedure prior to filing suit in court on that grievance. There was no limitation on judicial review of grievances imposed by the Public Service System Regulations, as long as the informal grievance procedure was completed. Skilling v. Kosrae, 10 FSM Intrm. 448, 452 (Kos. S. Ct. Tr. 2001).

After a Trust Territory employee's cause of action accrued in 1980 when he completed the informal grievance procedure with his supervisor, he had two options: follow the formal grievance procedure for review by the Personnel Board; or file suit in court for judicial review of his grievance. Since his right to sue was complete then, a suit, filed in 2000, will be barred by the six-year statute of limitations and dismissed. Skilling v. Kosrae, 10 FSM Intrm. 448, 452-53 (Kos. S. Ct. Tr. 2001).

The over-obligation of funds statute, 55 F.S.M.C. 220(3), was not intended to create a basis for private parties to sue government officials, but for the government to be able to punish employees and officials who are found to be misusing public funds. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 634 (Pon. 2002).

Under the FSM criminal code a "public servant" is any officer or employee of, or any person acting on behalf of, the FSM, including legislators and judges, and any person acting as an advisor, consultant, or otherwise, in performing a governmental function; but the term does not include witnesses. FSM v. Wainit, 12 FSM Intrm. 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 Intrm. 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 Intrm. 105, 111 (Chk. 2003).

The plain, unambiguous, and ordinary meaning of "public officer," an ordinary term for which no construction is required, is that the term includes any person holding a post to which he has been legally elected or appointed and exercising governmental functions. FSM v. Wainit, 12 FSM Intrm. 105, 111 (Chk. 2003).

A timely appeal by a public employee of his termination by submitting a letter brief to the Assistant Secretary for Personnel Administration entitles him to a hearing on his appeal within fifteen calendar days after the Personnel Officer receives the appeal, unless the appellant requests a delay. A postponement longer than that by the government not consented to by the appellant is not in compliance with the law. Maradol v. Department of Foreign Affairs, 13 FSM Intrm. 51, 52-53 (Pon. 2004).

The ad hoc committee is required to prepare a full written statement of its findings of fact and its recommendations for action within seven calendar days after the close of its hearing. Maradol v. Department of Foreign Affairs, 13 FSM Intrm. 51, 54 (Pon. 2004).

When there are non-frivolous disputes about the grounds for termination, the decision of the ad hoc committee should identify and address those grounds with specificity, and when they have not, the court will remand the case to the ad hoc committee to prepare a full written statement of its findings of fact to be forwarded to the President for his final review. If, after the President completes his final review, any party believes such action is necessary and appropriate, the party may file a motion to reinstitute the judicial proceedings. Maradol v. Department of Foreign Affairs, 13 FSM Intrm. 51, 54-55 (Pon. 2004).

– Chuuk

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 Intrm. 556, 562 (Truk S. Ct. App. 1988).

The Truk Attorney General represents the government in legal actions and is given the statutory authority pursuant to TSL 5-32 to conduct and control the proceedings on behalf of the government and, in absence of explicit legislative or constitutional expression to the contrary, possesses complete dominion over litigation including power to settle the case in which he properly appears in the interest of the state. Truk v. Robi, 3 FSM Intrm. 556, 561-63 (Truk S. Ct. App. 1988).

The discretion vested in the office of the Attorney General to settle a civil action brought against Truk State is provided for by law, which does not require consent of the Governor before the Attorney General may settle a civil suit against Truk State. Truk v. Robi, 3 FSM Intrm. 556, 561-63 (Truk S. Ct. App. 1988).

Under Rule 1.11 of the Truk State Code of Professional Responsibility, a lawyer may not represent a private client in connection with a matter in which the lawyer participated "personally and substantially" as a public officer or employee, unless the appropriate government agency consents after consultation. Nakayama v. Truk, 3 FSM Intrm. 565, 570 (Truk S. Ct. Tr. 1987).

For purposes of Rule 1.11, an attorney who, as a government attorney, signs his name to a lease agreement, approving the lease "as to form," is personally and substantially involved. Nakayama v. Truk, 3 FSM Intrm. 565, 571 (Truk S. Ct. Tr. 1987).

An attorney holding public office should avoid all conduct which might lead the layman to conclude that the attorney is utilizing his former public position to further his subsequent professional success in private practice. Nakayama v. Truk, 3 FSM Intrm. 565, 572 (Truk S. Ct. Tr. 1987).

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 Intrm. 139, 143 (Chk. S. Ct. Tr. 1991).

The Governor, as all public officials, occupies a fiduciary relationship to the state he serves, may not use his official power to further his own interest, and shall cooperate with any legislative investigating committee. In re Legislative Subpoena, 7 FSM Intrm. 261, 266 (Chk. S. Ct. Tr. 1995).

It is unreasonable for a public official, required by law to cooperate with legislative investigating committees, to have an expectation of privacy in matters that are linked to his performance in office, and it is unreasonable for a public official, such as the Governor, who is a trustee of the state's finances and who owes a fiduciary duty to the state to expect that his personal finances will be kept private if there is some reason to believe he has violated his trust. In re Legislative Subpoena, 7 FSM Intrm. 261, 267 (Chk. S. Ct. Tr. 1995).

All citizens generally have the duty to, and state officials are obligated by statute to, cooperate with legislative investigations. These obligations of citizenship and public office are linked with the assumption that the legislature will respect individuals' constitutional rights, including the right of privacy. In re Legislative Subpoena, 7 FSM Intrm. 328, 333-34 (Chk. S. Ct. App. 1995).

All Chuuk public officers are statutorily required to cooperate with legislative investigations, but an officer being tried in the Senate on a case of impeachment after the House of Representatives has voted a bill of impeachment is no longer required to cooperate. In re Legislative Subpoena, 7 FSM Intrm. 328, 336 (Chk. S. Ct. App. 1995).

It is settled doctrine that the power vested in the office of the Attorney General empowers settlement of litigation in which the Attorney General has supervision and control. Ham v. Chuuk, 8 FSM Intrm. 300i, 300k (Chk. S. Ct. App. 1998).

A commitment in a personnel action form for permanent employment without the existence of an appropriation to fund such a position violates the Truk Financial Management Act. Hauk v. Terravecchia, 8 FSM Intrm. 394, 396 (Chk. 1998).

Granting of permanent employment without advertisement, examination (if required) and the preparation of a eligible list by the Personnel Officer violates the Truk State Public Service System Act. Hauk v. Terravecchia, 8 FSM Intrm. 394, 396 (Chk. 1998).

Principles of contract are inapplicable to employment cases when the proper issue is whether plaintiff his shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Hauk v. Terravecchia, 8 FSM Intrm. 394, 396 (Chk. 1998).

The regulations provide in part that overtime must be requested by the immediate supervisor and approved by his superior or the department head. Osi v. Chuuk, 8 FSM Intrm. 565, 566 (Chk. S. Ct. Tr. 1998).

Government employees who worked overtime during inaugural ceremonies are not entitled to recovery when there is no convincing evidence that they were directed to work overtime by the proper authority such as would entitle them to overtime pay. Osi v. Chuuk, 8 FSM Intrm. 565, 566 (Chk. S. Ct. Tr. 1998).

Overtime voluntarily performed is not compensable. Osi v. Chuuk, 8 FSM Intrm. 565, 566 (Chk. S. Ct. Tr. 1998).

The Governor of Chuuk has no constitutional or statutory power or authority to appoint an acting Executive Director of the Board of Education or head of the Education Department other than as provided for in section 4, article X, Chuuk Constitution and that any other appointment to that position is void. Welle v. Walter, 8 FSM Intrm. 572, 573-74 (Chk. S. Ct. Tr. 1998).

Only the lawful Director or Head of Education is entitled to all the rights, powers, privileges and emoluments thereof, including the benefits of office. Welle v. Walter, 8 FSM Intrm. 572, 574 (Chk. S. Ct. Tr. 1998).

The Chuuk Attorney General has no duty to act a successful plaintiff's behalf in collecting the plaintiff's judgment against the state. Judah v. Chuuk, 9 FSM Intrm. 41, 41-42 (Chk. S. Ct. Tr. 1999).

A public employee who explained that he would be absent because he contested the demotion, was not absent without explanation as required by the Public Service regulations and statute for abandonment of his job. Marar v. Chuuk, 9 FSM Intrm. 313, 315 (Chk. 2000).

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

While the principal officers and advisors serve during the current term of the appointing Governor unless sooner removed by the Governor, the dismissal of non-policy making employees from public employment solely on the ground of political affiliation is not permissible. Lokopwe v. Walter, 10 FSM Intrm. 303, 306 (Chk. S. Ct. Tr. 2001).

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

A public employer may not discharge either a tenured or a non-tenured employee for the reasonable exercise of constitutional rights such as freedom of speech. Lokopwe v. Walter, 10 FSM Intrm. 303, 306 (Chk. S. Ct. Tr. 2001).

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

A person entering upon a public office is generally required to qualify by performing all the steps customarily or legally required to hold the office. This includes the taking of an oath of office and attendance upon the duties of the office. Songeni v. Fanapanges Municipality, 10 FSM Intrm. 308, 309 (Chk. S. Ct. Tr. 2001).

When the plaintiffs have never qualified for the public office for which they seek compensation, their case will be dismissed. Songeni v. Fanapanges Municipality, 10 FSM Intrm. 308, 309 (Chk. S. Ct. Tr. 2001).

When the state has not paid plaintiff employees as mandated by its state law and has alleged as affirmative defenses that a supervening cause prevented performance and that funds intended to pay lapsed, frustrating performance, these are defenses of payment, not liability, and the plaintiffs are entitled to judgment as a matter of law, the liability or obligation resting on the public law of the defendant state itself with the affirmative defenses being inadequate as a matter of law as to liability. Saret v. Chuuk, 10 FSM Intrm. 320, 322-23 (Chk. 2001).

Since the Oneisomw municipal constitution provides for succession in the event of a mayor's death or disability, that document, not Article VI, § 1, nor Article XIII, § 1 of the Chuuk Constitution, governs succession to the position of Mayor of Oneisomw upon the mayor's passing. In re Oneisomw Election, 11 FSM Intrm. 89, 92 (Chk. S. Ct. Tr. 2002).

Neither Article VI, § 1, nor Article XIII, § 1 of the Chuuk Constitution provides authority to the Governor to appoint any person to any municipal office. Absent any state law authorizing the Governor to so act, he is without power to affect municipal political offices in any manner. In re Oneisomw Election, 11 FSM Intrm. 89, 92 (Chk. S. Ct. Tr. 2002).

Under Article XIII, § 5 of the Chuuk Constitution, if rules of succession to the office of municipal mayor in the event of the mayor's death or disability are to be found anywhere, they are to be found in the municipality's constitution and laws. In re Oneisomw Election, 11 FSM Intrm. 89, 92 (Chk. S. Ct. Tr. 2002).

The Governor cannot interfere with the political rights of a municipality's people by appointing a mayor when the municipal constitution has provided for the orderly succession of an elected official to that office. Such an appointment is void. In re Oneisomw Election, 11 FSM Intrm. 89, 93 (Chk. S. Ct. Tr. 2002).

While under normal circumstances exhaustion of administrative remedies is a pre-requisite to bringing an action in court challenging the constitutionality of personnel actions, an exception to this general rule exists. When exhaustion of administrative remedies is rendered futile, due to the bad faith, improper actions or predetermination of the administrative body itself, exhaustion of the administrative process is not required, and redress may be immediately sought in the courts. Tomy v. Walter, 12 FSM Intrm. 266, 270 (Chk. S. Ct. Tr. 2003).

When it is clear that any attempt by plaintiff to obtain relief through the Public Service Act would have been futile, the court has jurisdiction to hear the plaintiff's claims. Tomy v. Walter, 12 FSM Intrm. 266, 270 (Chk. S. Ct. Tr. 2003).

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

Termination resulting from the decision of any government employee (other than a "principal officer" or "advisor") to run for public office violates that employee's free speech and association rights as guaranteed by the Chuuk Constitution, as well as depriving the employee of a property interest (his right to continued employment) without due process of law. Tomy v. Walter, 12 FSM Intrm. 266, 271-72 (Chk. S. Ct. Tr. 2003).

A plaintiff, who failed to prove monetary damages, is still entitled to a permanent injunction, against the Governor, the Director of Personnel, the Director of Budget, and any designee acting on their behalf or in their stead, permanently enjoining them from interfering in any way or manner with plaintiff's lawful exercise of all of the duties, obligations and responsibilities of his office. Tomy v. Walter, 12 FSM Intrm. 266, 273 (Chk. S. Ct. Tr. 2003).

Statutes clearly prohibit Chuuk state employees from engaging in any outside employment not compatible with the discharge of the employee's duties to the state. Hartman v. Chuuk, 12 FSM Intrm. 388, 396 (Chk. S. Ct. Tr. 2004).

– Kosrae

Written notice in a letter giving a limited-term employee three days' notice of the reasons for his two week suspension from work is sufficient compliance with the requirement of 61 TTC 10(15)(a), which provides that a suspended employee must receive notice of the reasons for suspension, and is also sufficient compliance with the notice requirements of due process under the Kosrae Constitution. Taulung v. Kosrae, 3 FSM Intrm. 277, 279 (Kos. S. Ct. Tr. 1988).

To be property protected under the Constitution, the employment right must be supported by more than

merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Taulung v. Kosrae, 3 FSM Intrm. 277, 280 (Kos. S. Ct. Tr. 1988).

A public officer's right to a given salary is based primarily upon constitutional, statutory, and regulatory provisions. Edwin v. Kosrae, 4 FSM Intrm. 292, 298 (Kos. S. Ct. Tr. 1990).

The Kosrae Code contemplates the problem of persons performing services in excess of their prescribed duties, and KC 5.427 provided a means for compensating such extra labor. Edwin v. Kosrae, 4 FSM Intrm. 292, 299 (Kos. S. Ct. Tr. 1990).

When a Kosrae state employee makes a claim for additional compensation or benefits, on grounds that he has been temporarily assigned to a position by detail, "acting" assignment, or temporary promotion and is performing services in excess of prescribed duties, the burden is on the employee to show that a clear legal basis exists for the employee's right to those emoluments. Edwin v. Kosrae, 4 FSM Intrm. 292, 299 (Kos. S. Ct. Tr. 1990).

There is no provision in the laws of Kosrae that provides that Kosrae State is entitled to reimbursement of salary paid over and above a state employee's pay level. Edwin v. Kosrae, 4 FSM Intrm. 292, 300 (Kos. S. Ct. Tr. 1990).

Representations by officials with authority to set and change salaries can alter the general rule that salaries are set by law and not contract. Edwin v. Kosrae, 4 FSM Intrm. 292, 300 (Kos. S. Ct. Tr. 1990).

In order for a Kosrae state employee's salary to be set by contract and not law, it must be shown that direct representations were made to the employee regarding the fixing of a salary not otherwise determined by law and made by an official with legal discretion to do so. Edwin v. Kosrae, 4 FSM Intrm. 292, 300 (Kos. S. Ct. Tr. 1990).

In Kosrae, a permanent employee has the right to hold his position during good behavior, subject to suspension, demotion, reduction-in-force, or dismissal, except when an employment contract provides otherwise. Edwin v. Kosrae, 4 FSM Intrm. 292, 302 (Kos. S. Ct. Tr. 1990).

The right of Kosrae State to demote an employee is limited to disciplinary reasons based on good cause. Edwin v. Kosrae, 4 FSM Intrm. 292, 303 (Kos. S. Ct. Tr. 1990).

Kosrae State has the right and the power to adjust its employment scheme according to the availability of funds and work. Edwin v. Kosrae, 4 FSM Intrm. 292, 303 (Kos. S. Ct. Tr. 1990).

When shortage of work or funds requires the dismissal of a Kosrae state employee the Executive should consider an employee's individual merit, qualifications through education, training, and experience and the employee's seniority. Edwin v. Kosrae, 4 FSM Intrm. 292, 303 (Kos. S. Ct. Tr. 1990).

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

Title III of the Kosrae State Court manual of administration permits dismissal of a government employee if the employee is convicted of felony. In the case of non-felonies, section 11(5)(c) permits dismissal only if it is shown that the employee's "criminal conduct . . . is detrimental to the performance of the duties and responsibilities of his position." Palsis v. Kosrae State Court, 5 FSM Intrm. 214, 217 (Kos. S. Ct. Tr. 1991).

An employee may not be dismissed for conviction of a misdemeanor unless the nature of the conduct leading to the conviction is itself detrimental to the performance of the employee's duties. Palsis v. Kosrae State Court, 5 FSM Intrm. 214, 218 (Kos. S. Ct. Tr. 1991).

When a law enforcement officer during performance of his duties reveals an unacceptable lack of respect for legal authority such as obstructing another officer from performing similar duties, the nature of his conduct is itself detrimental to the performance of his duties and his dismissal is justified. Palsis v. Kosrae State Court, 5 FSM Intrm. 214, 218 (Kos. S. Ct. Tr. 1991).

An employee may be terminated without notice and an opportunity to be heard if she has abandoned her job. If not, the state must provide written notice stating the reasons for the dismissal and an opportunity to present mitigating circumstances, defenses, or other positions in opposition to the proposed disciplinary action. Klavasru v. Kosrae, 7 FSM Intrm. 86, 89-90 (Kos. 1995).

It is an impermissible extension of the reach of the statute for the executive service regulation to define abandonment of public office as absent without authorization for two weeks. Klavasru v. Kosrae, 7 FSM Intrm. 86, 91 (Kos. 1995).

A public employee, who supplied an explanation for her absence from work and who made clear, both before and after the absence that she did not intend to take permanent leave of her position, cannot be terminated for abandonment of office or disciplined without the statutory safeguard of notice and an opportunity to be heard. Klavasru v. Kosrae, 7 FSM Intrm. 86, 92 (Kos. 1995).

The public service system applies to all state employees except for listed exemptions, which include positions of a temporary nature. Taulung v. Kosrae, 8 FSM Intrm. 270, 273 (App. 1998).

A regular or permanent state employee is an employee who has been appointed to a position in the public service in accordance with the statute and who has successfully completed an initial probation period of not less than six months nor more than one year. Taulung v. Kosrae, 8 FSM Intrm. 270, 273 (App. 1998).

A state employee appointed to successive, discrete six-month temporary positions with terminations at the end of some of them, is not a permanent state employee or a member of the public service system. Taulung v. Kosrae, 8 FSM Intrm. 270, 273-74 (App. 1998).

A management official may not suspend any employee without pay for a period of three working days or more, unless the management official gives the employee a written notice setting forth the specific reasons upon which the suspension is based and files a copy of the statement with the director. Taulung v. Kosrae, 8 FSM Intrm. 270, 274 (App. 1998).

Government employment that is property with the meaning of the Due Process Clause cannot be taken without due process. Only if an employment arrangement has an entitlement based upon governmental assurances of continual employment or dismissal for only specified reasons does the FSM Constitution require procedural due process as a condition to its termination. Taulung v. Kosrae, 8 FSM Intrm. 270, 274 (App. 1998).

A limited-term employee does not have an assurance of continual employment in the sense of continuing indefinitely in time without interruption, but he is assured of employment until the end of his limited term, and of dismissal for only specified reasons, namely, when the good of the service will be served thereby. Taulung v. Kosrae, 8 FSM Intrm. 270, 275 (App. 1998).

The procedural due process requirements of notice and an opportunity to be heard are met when Kosrae provides a limited-term employee being suspended for two weeks the notice mandated by 61 TTC 10(15)(a) and an opportunity to be heard by the official suspending him. Taulung v. Kosrae, 8 FSM Intrm. 270, 275 (App. 1998).

A salient feature of Chapter 5 of Title 5 of the 1985 Code drew a distinction between the employees whose compensation was determined according to specific contract, which the sections anticipate and authorize, and those permanent state employees whose salary was determined according to the base salary schedule contained in § 5.502. Chapter 4 conferred a wide range of rights on permanent employees that

contract employees did not enjoy, such as the right given by § 402 to continued employment "during good behavior." Cornelius v. Kosrae, 8 FSM Intrm. 345, 350-51 (Kos. S. Ct. Tr. 1998).

There is a dichotomy between employees whose salaries are set by statute – "as prescribed by law" – and those whose salaries are subject to individual contract. Certain individuals or groups are subject to individual contracts, and excluded from the Public Service System. The Public Service System gives substantial rights to permanent employees that are denied contract employees. Cornelius v. Kosrae, 8 FSM Intrm. 345, 351 (Kos. S. Ct. Tr. 1998).

Kosrae law has historically recognized a permanent work force of employees given specified rights whose compensation is statutorily determined; and a second group of employees who do not have the specified rights given permanent employees, who serve for a contract term, and whose compensation is determined by those contracts. It is this former group whose salaries were subject to reduction by S.L. No. 6-132. Cornelius v. Kosrae, 8 FSM Intrm. 345, 352 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" as it appears in article VI, section 5, means those employees whose salaries are "prescribed by law." Only those employees whose salaries are set in the first place by statute are the employees to whom subsequent statutory reductions should apply. Cornelius v. Kosrae, 8 FSM Intrm. 345, 352 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" means employees whose compensation is determined by statute, and does not include those employees who have individual contracts with Kosrae. Therefore a state law reducing state public service system employees' pay can constitutionally be applied to a Kosrae State Court justice's pay. Cornelius v. Kosrae, 8 FSM Intrm. 345, 352 (Kos. S. Ct. Tr. 1998).

In reviewing appeals from the Executive Service Appeals Board, the Kosrae State Court is empowered to overturn or modify the ESAB's decision if it finds a violation of law or regulation, but the court is precluded from re-weighing the ESAB's factual determinations. If there is any factual basis for the ESAB's decision, it will be upheld, assuming no other violation or law or regulation. Langu v. Kosrae, 8 FSM Intrm. 427, 432 (Kos. S. Ct. Tr. 1998).

The statutory and regulatory authorities in effect during the time the employees' grievances took place will be applied to the decision. Langu v. Kosrae, 8 FSM Intrm. 427, 432 (Kos. S. Ct. Tr. 1998).

Upon successfully completing probation, an employee becomes a permanent employee. Positions in the Executive Service are either permanent or temporary. Permanent positions are authorized to last longer than one year. Temporary positions are authorized to last up to twelve months. Permanent employment may be part-time, so long as the work time exceeds sixty hours per month. Temporary or limited-term appointments may be either full-time or part-time. Langu v. Kosrae, 8 FSM Intrm. 427, 432 (Kos. S. Ct. Tr. 1998).

When employees were classified as permanent employees on their Personnel Action Forms, their scheduled work time during the school year was full-time, and their bi-weekly salaries were full-time base salaries, the employees were full-time permanent employees of the Kosrae Executive Service System. Langu v. Kosrae, 8 FSM Intrm. 427, 433 (Kos. S. Ct. Tr. 1998).

Permanent employees have the right to hold their position during good behavior, subject to suspension, demotion, reduction-in-force or dismissal, unless an employment contract provides otherwise. Langu v. Kosrae, 8 FSM Intrm. 427, 433 (Kos. S. Ct. Tr. 1998).

Suspension and demotion of a permanent employee are actions that may be taken only for disciplinary reasons based on good cause. Langu v. Kosrae, 8 FSM Intrm. 427, 433 (Kos. S. Ct. Tr. 1998).

A permanent employee may be dismissed for disciplinary reasons based upon good cause or the employee may be dismissed within a reduction-in-force. Langu v. Kosrae, 8 FSM Intrm. 427, 433 (Kos. S.

Ct. Tr. 1998).

Kosrae's right and power to adjust its employment scheme according to the availability of funds and work is not unlimited. When the shortage of funds require dismissal of an employee, certain procedures are to be followed to ensure that seniority and qualifications are given due consideration. The government must give employees written notice that he has been reached by a reduction-in-force and that his services shall be terminated. Langu v. Kosrae, 8 FSM Intrm. 427, 433 (Kos. S. Ct. Tr. 1998).

Termination of employment means a complete severance of the relationship of employer and employee. Reductions-in-force mean dismissal or termination of employees. Langu v. Kosrae, 8 FSM Intrm. 427, 433 (Kos. S. Ct. Tr. 1998).

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

A state employee's right to a given salary is based primarily upon constitutional, statutory and regulatory provisions. Langu v. Kosrae, 8 FSM Intrm. 427, 434 (Kos. S. Ct. Tr. 1998).

A permanent Kosrae government employee's right to hold his position during good behavior is not subject to a "lay off" because neither the term "lay off," nor the concept of a "lay off" is present anywhere in Title 5. Langu v. Kosrae, 8 FSM Intrm. 427, 434 (Kos. S. Ct. Tr. 1998).

Leave with pay (annual leave) must be requested by the employee in advance on a written form. Langu v. Kosrae, 8 FSM Intrm. 427, 434 (Kos. S. Ct. Tr. 1998).

Leave without pay may be granted to an employee if the reason is sufficient and is in the best interests of the Executive. The maximum is thirty calendar days. Leave without pay is not a disciplinary tool to be imposed upon an employee who has not requested it; instead it is a benefit to be granted to the employee in appropriate circumstances. Langu v. Kosrae, 8 FSM Intrm. 427, 434 (Kos. S. Ct. Tr. 1998).

There is no authority that permits the Kosrae government to impose annual leave or leave without pay upon its permanent employees. Langu v. Kosrae, 8 FSM Intrm. 427, 434 (Kos. S. Ct. Tr. 1998).

When state employees have been required to apply for annual leave, if it was available, and did receive their salary during the annual leave, the employees have not suffered any monetary damages with respect to their annual leave. Langu v. Kosrae, 8 FSM Intrm. 427, 434 (Kos. S. Ct. Tr. 1998).

The state's imposition upon its employees of leave without pay violated the Kosrae State Code, Title 5, and deprived them of their right to continued employment and salary. Langu v. Kosrae, 8 FSM Intrm. 427, 434 (Kos. S. Ct. Tr. 1998).

The Kosrae State Court cannot substitute its judgment for that of the Executive Service Appeals Board, but in reviewing the ESAB's findings it may examine all of the evidence in the record in determining whether the factual findings are clearly erroneous, and if it is left with the definite and firm conviction that a mistake has been committed with respect to the findings, it must reject the findings as clearly erroneous. Langu v. Kosrae, 8 FSM Intrm. 427, 435 (Kos. S. Ct. Tr. 1998).

Permanent state employees are subject to the laws and regulations implementing the Executive Service System, and a finding that some were exempted from all regulations and policies applicable to Kosrae government employees is clearly erroneous. Langu v. Kosrae, 8 FSM Intrm. 427, 435 (Kos. S. Ct. Tr. 1998).

Although the statutory time periods are directory and not mandatory, a significant delay in proceedings can deprive the Executive Service Appeals Board procedure of its meaningfulness, in violation of the due process rights protected by the Constitution. Langu v. Kosrae, 8 FSM Intrm. 427, 435 (Kos. S. Ct. Tr. 1998).

State employees are entitled to recover the base salary that they would have received during the periods of time that they were placed on leave without pay because the state's imposition of a "lay off" and leave without pay violated the employees' right to continued employment under the Kosrae Constitution and the Kosrae State Code. Langu v. Kosrae, 8 FSM Intrm. 427, 436 (Kos. S. Ct. Tr. 1998).

Employee grievances were subject to judicial review by the Kosrae State Court, following the completion of certain administrative procedures, specifically review by the Executive Service Appeals Board. The court may reverse or modify ESAB's decision only if finds a violation of law or regulation. Langu v. Kosrae, 8 FSM Intrm. 455, 457, 458 (Kos. S. Ct. Tr. 1998).

When the administrative steps essential for court review of employment terminations have not yet been completed, the court cannot review the termination. Abraham v. Kosrae, 9 FSM Intrm. 57, 60 (Kos. S. Ct. Tr. 1999).

Under Kosrae state law, a "grievance" is an employee action to present and resolve a difficulty or dispute arising in the performance of his duties and not from a disciplinary action. Abraham v. Kosrae, 9 FSM Intrm. 57, 61 (Kos. S. Ct. Tr. 1999).

There are no provisions in Title 18 that prohibit an the filing of a civil action by non-employee for a grievance based upon facts which occurred during his or her employment with the Kosrae state government. For employees, Title 18 provides that an administrative procedure must be followed first, as prescribed by their branch heads. Abraham v. Kosrae, 9 FSM Intrm. 57, 61 (Kos. S. Ct. Tr. 1999).

Disciplinary actions, suspensions, demotions and dismissals, taken in conformance with Title 18 are in no case subject to review in the courts until the administrative remedies have been exhausted. Grievances are not disciplinary actions. Title 18 does not provide any limitations on the court's review of grievances or grievance appeals. There is no limitation of judicial review with respect to grievances. Abraham v. Kosrae, 9 FSM Intrm. 57, 61 (Kos. S. Ct. Tr. 1999).

Under Title 18, there is no limitation on the court's jurisdiction to hear claims based upon a grievance filed by a former employee of the Executive Branch. Abraham v. Kosrae, 9 FSM Intrm. 57, 61 (Kos. S. Ct. Tr. 1999).

Under the Executive Services Regulations when they were in effect, a Kosrae state employee may present a grievance concerning a continuing practice or condition at any time. Kosrae v. Langu, 9 FSM Intrm. 243, 246 & n.1 (App. 1999).

Under the Executive Service Regulations, when they were in effect, an appeal from a grievance was identical to that for an appeal from a disciplinary action, and was made to the Executive Service Appeals Board. Kosrae v. Langu, 9 FSM Intrm. 243, 246 (App. 1999).

An appeal from the Executive Service Appeals Board's decision to the Kosrae State Court was available for state employee grievances. The Kosrae State Court trial division's jurisdiction to reverse or modify a finding of the ESAB was limited under Kosrae State Code section 5.421(2) to violations of law or regulation. In this regard, the state court acted as an appellate tribunal. Kosrae v. Langu, 9 FSM Intrm. 243, 246 & n.2 (App. 1999).

On an appeal from the Executive Service Appeals Board's decision it was not within the authority of the Kosrae State Court to make new factual determinations in light of the express stricture in section 5.421(2) that the state court could reverse or modify an ESAB finding only if it finds a violation of law or regulation. Kosrae v. Langu, 9 FSM Intrm. 243, 248 (App. 1999).

Although an inquiry whether state employees were not exempt, but were permanent employees under section 5.409, is fact driven – the court or other administrative body must determine material facts before it can apply the statute to those facts – the final determination whether an individual falls within a specific

category defined by statute is necessarily one of law, not fact. Kosrae v. Langu, 9 FSM Intrm. 243, 248 (App. 1999).

Issues of law, such as whether cooks were permanent state employees in the legal sense such that they were entitled to all the protections afforded to them under the statute and regulations, are reviewed de novo on appeal. Kosrae v. Langu, 9 FSM Intrm. 243, 248 (App. 1999).

Kosrae state employees must fall within one of three categories – exempt, i.e., exempt from the protections afforded to state employees by the Kosrae Executive Service as it was then structured; probationary; or permanent. Kosrae v. Langu, 9 FSM Intrm. 243, 248 (App. 1999).

A permanent state employee has the right to hold his position during good behavior, subject to suspension, demotion, reduction-in-force, or dismissal, except when an employment contract provides otherwise. Kosrae v. Langu, 9 FSM Intrm. 243, 249 (App. 1999).

A summer layoff of school cooks that required the cooks to take annual leave first, then leave without pay when school was not in session was not a reduction-in-force because a reduction-in-force means an employee's termination. Kosrae v. Langu, 9 FSM Intrm. 243, 250 (App. 1999).

Once the Kosrae State Court has correctly determined that placing cooks on unpaid leave was a violation of law or regulation, the appropriate factfinder for the determination of cooks' back pay, which constitutes their damages, is the Executive Service Appeals Board or its successor, not the state court. Kosrae v. Langu, 9 FSM Intrm. 243, 250 (App. 1999).

When an administrative procedure and ensuing appeal has afforded parties complete relief for their grievances pursuant to statutes and regulations and the parties' constitutional claims are not the basis for any separate or distinct relief, the constitutional issue need not be reached. Kosrae v. Langu, 9 FSM Intrm. 243, 250-51 (App. 1999).

Under Kosrae State Code, Title 18, there is no limitation on the Kosrae State Court's jurisdiction to hear claims based upon a grievance, filed by a former Executive Branch employee. There is no limitation on a plaintiff's right, as a former employee, to file suit on his grievance and his right to file suit on his grievance arose in 1997, when he took early retirement and terminated his state employment. Skilling v. Kosrae, 9 FSM Intrm. 608, 612-13 (Kos. S. Ct. Tr. 2000).

While the plaintiff was a state employee, he was subject to the administrative procedures specified for grievances, but when his administrative action was still pending when he retired in 1997, because his grievance had never been ruled on, he was no longer an employee required to comply with the administrative procedures. His right to bring suit on his claim did not become complete and his cause of action therefore did not accrue his early retirement resulted in termination from state government employment. Skilling v. Kosrae, 9 FSM Intrm. 608, 613 (Kos. S. Ct. Tr. 2000).

When two Directors of Education failed to act properly by not acting upon the plaintiff's grievance and not making a written finding on plaintiff's grievance, as required by regulation, the State cannot invoke the equitable doctrine of laches in its defense. Skilling v. Kosrae, 9 FSM Intrm. 608, 613 (Kos. S. Ct. Tr. 2000).

A public officer's right to a given salary is based primarily upon constitutional, statutory, and regulatory provisions. The amount of compensation a public employee receives is set by law. Palsis v. Mayor of Tafunsak, 10 FSM Intrm. 141, 144 (Kos. S. Ct. Tr. 2001).

Because the Tafunsak Municipal Constitution requires that salaries for elected Council members be established by ordinance and because a public officer's right to compensation depends entirely upon him being able to show clear authority of law entitling him to remuneration for performance of public duties, Tafunsak public officials' salaries must be appropriated by municipal ordinance. Palsis v. Mayor of Tafunsak, 10 FSM Intrm. 141, 144 (Kos. S. Ct. Tr. 2001).

Compensation for a public officer's official services depends entirely upon the law. A public officer may only collect and retain such compensation as is specifically provided by law. Palsis v. Mayor of Tafunsak, 10 FSM Intrm. 141, 144 (Kos. S. Ct. Tr. 2001).

When no Tafunsak municipal ordinance has been enacted to establish and pay salary for council members, other municipal officers and employees, there is no authority, as required by the municipal constitution, to pay salaries to Tafunsak municipal public officers and employees. A municipal council member is thus not entitled to receive unpaid salary, particularly when no evidence has been presented of a Tafunsak municipal ordinance enacted for appropriation of funds for payment of salaries for the 4th quarter of 1998 and when the municipal constitution requires that all payments from the municipal treasury be made according to appropriation by ordinance. Palsis v. Mayor of Tafunsak, 10 FSM Intrm. 141, 144 (Kos. S. Ct. Tr. 2001).

Any payments for salaries of elected officials and staff made from the Tafunsak municipal treasury without the authority of a municipal ordinance establishing such salary and appropriating funds for the payment of such salary have been made in violation of the municipal constitution. Palsis v. Mayor of Tafunsak, 10 FSM Intrm. 141, 144 (Kos. S. Ct. Tr. 2001).

While it appears that elected officials and staff of Tafunsak municipal government have been paid and continue to be paid salaries without authority of law, the Kosrae State Court cannot approve or order any salary to be paid to a Tafunsak Municipal Council member in violation of the municipal constitution. Palsis v. Mayor of Tafunsak, 10 FSM Intrm. 141, 144 (Kos. S. Ct. Tr. 2001).

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

Because the Oversight Board has not adopted any policies, rules or regulations, the Director of Administration, who is responsible for administration of the Public Service System consistent with Title 18, and any policies, rules and regulations adopted by the Oversight Board, must implement all the Speaker's decisions pertaining to the Legislative Branch's public service employees, as long as the decision is not inconsistent with Kosrae State Code, Title 18. Seventh Kosrae State Legislature v. Abraham, 10 FSM Intrm. 299, 302 (Kos. S. Ct. Tr. 2001).

When two legislative branch employees, effective October 1, 1998, had met the statutory requirements to qualify for performance increases, but the personnel action forms to implement the increases were never submitted to the Department of Administration for processing due to administrative oversight at the Legislature; when in June 2001, the Speaker ordered the Director of Administration to implement the performance increases effective October 1, 1998 and backdated personnel action forms were submitted on both employees' behalf; when the personnel action forms contemplate an effective date that may be different than the approval date; when backdating of personnel action forms was a common practice in all three branches of state government and are routinely processed and implemented by the Department of Administration; when the Department's refusal to process the backdated personnel actions deprives both employees of the performance increases they qualified for and are entitled to by law; and when backdating employees' personnel action forms is consistent with all three state government branches' accepted and continuing practice and is not inconsistent with Kosrae State Code, Title 18; the Director of Administration is required to implement the performance increase, retroactive to October 1, 1998, and subsequent pay level adjustments ordered by the Speaker. Seventh Kosrae State Legislature v. Abraham, 10 FSM Intrm. 299, 302-03 (Kos. S. Ct. Tr. 2001).

The Kosrae Executive Service System provides for the systemic classification of positions and for one pay level for each class of positions, and the state's action in assigning two different pay levels to the same

class of positions was a violation of Kosrae State Code §§ 5.401(6), 5.410(1) and 5.506(1). Jonas v. Kosrae, 10 FSM Intrm. 441, 444 (Kos. S. Ct. Tr. 2001).

When plaintiffs should have been classified at the time the state hired them in 1997 at the same pay level as the medical officers who the state hired as Staff Physicians I prior to the plaintiffs and when the plaintiffs' grievances were granted increasing their pay in 2000 only partially corrected the situation from May 1, 2000 forward, the plaintiffs are entitled to summary judgment for a retroactive adjustment to their entrance salary. Jonas v. Kosrae, 10 FSM Intrm. 441, 444-45 (Kos. S. Ct. Tr. 2001).

Pre-judgment interest is rarely awarded as an element of damages. Because tort claims are generally "unliquidated" in that the defendant does not know the precise amount he will be obligated to pay, most courts will not award interest on unliquidated monetary claims, which amount cannot be computed without a trial. Jonas v. Kosrae, 10 FSM Intrm. 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 Intrm. 441, 445 (Kos. S. Ct. Tr. 2001).

The Kosrae State Court's standard of review in its judicial review of State Public Service System final decisions is that the court will decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action, and the court is authorized to compel, or hold unlawful and set aside agency actions. Jonas v. Kosrae, 10 FSM Intrm. 453, 458 (Kos. S. Ct. Tr. 2001).

Former Kosrae State Code, Title 5 (repealed) and Regulation 11 (repealed) are applicable to positions within the Executive Service System from 1990 through 1992. Jonas v. Kosrae, 10 FSM Intrm. 453, 458 (Kos. S. Ct. Tr. 2001).

An employee was required to present a grievance related to a particular act or occurrence within 15 calendar days of the date of occurrence or the date when the employee should have become aware of it had he been exercising reasonable diligence. Jonas v. Kosrae, 10 FSM Intrm. 453, 459-60 (Kos. S. Ct. Tr. 2001).

The time limits prescribed in the Executive Service Laws and Regulations are directory and not mandatory because the law and the regulations do not prescribe what happens if the prescribed time limits are not met. Jonas v. Kosrae, 10 FSM Intrm. 453, 459 (Kos. S. Ct. Tr. 2001).

Because the regulation that an employee grievance be presented no later than 15 days after the subject action is directory and not mandatory, a plaintiff's late presentation of his grievance after the specified 15 day period does not bar his claim. Jonas v. Kosrae, 10 FSM Intrm. 453, 459 (Kos. S. Ct. Tr. 2001).

An Executive Service position is a defined set of work responsibilities in the Executive. Jonas v. Kosrae, 10 FSM Intrm. 453, 460 (Kos. S. Ct. Tr. 2001).

Each Executive Service position was required to be classified by the Director of the Department of Personnel and Employment Services and all executive branch employee positions fall within the Executive System and Kosrae State Code, Title 5, chapters 4 and 5, unless exempted under section 5.101(18). When the Director failed to classify the Head Teacher position before, during, or after the plaintiff was moved into that position, he did not perform his duties as required, and therefore violated state law. Jonas v. Kosrae, 10 FSM Intrm. 453, 460 (Kos. S. Ct. Tr. 2001).

If an employee performs duties in addition to those stated in the classification plan for his regular position and the compensation for the position which normally includes the additional duties is greater than his regular salary, he receives the greater salary during the period of performance. Jonas v. Kosrae, 10 FSM Intrm. 453, 460 (Kos. S. Ct. Tr. 2001).

There are several types of salary adjustment for additional duties: detail, acting assignment and temporary promotion. Jonas v. Kosrae, 10 FSM Intrm. 453, 460 (Kos. S. Ct. Tr. 2001).

A detail is an employee's temporary assignment to a different position for a specified period, with the intention that the employee will return to his regular position and duties at the end of the detail. A position is not filled by detail, as the employee continues to the incumbent of the position from which detailed. A teacher's temporary assignment to the different position of Head Teacher for a maximum period of one year, with the intention that he would return to his regular position of Classroom Teacher II at the end of the detail no later than one year later, is a detail. Jonas v. Kosrae, 10 FSM Intrm. 453, 461 (Kos. S. Ct. Tr. 2001).

An employee who is temporarily assigned to a position by detail will be compensated at the step in the new pay level which is equivalent to a two step increase above his regular salary. A one step increase is unlawful and is therefore set aside. Jonas v. Kosrae, 10 FSM Intrm. 453, 461 (Kos. S. Ct. Tr. 2001).

The term demotion means reduction to lower rank or grade, or to lower type of position, or to lower pay scale. For disciplinary reasons based upon good cause a management official may demote an employee. An employee's demotion is not effective for any purpose until a management official gives the employee written notice stating the reasons for the demotion and the employee's right of appeal. Demotion for a non-disciplinary reason is a statutory violation. Jonas v. Kosrae, 10 FSM Intrm. 453, 461-62 (Kos. S. Ct. Tr. 2001).

A regulation that permits demotions for non-disciplinary reasons is in conflict with Kosrae State Code § 5.418 and is therefore an impermissible extension of the statute. Jonas v. Kosrae, 10 FSM Intrm. 453, 462 (Kos. S. Ct. Tr. 2001).

The state's failure to give an employee the required written notice of his demotion and his right of appeal is a statutory violation, and makes the demotion ineffective for any purpose. Jonas v. Kosrae, 10 FSM Intrm. 453, 462 (Kos. S. Ct. Tr. 2001).

After successfully serving a maximum probation period of one year, an employee may be converted to a permanent employee. Jonas v. Kosrae, 10 FSM Intrm. 453, 462 (Kos. S. Ct. Tr. 2001).

A position which is established to meet continuing government need and which is authorized to last longer than one year, must be identified as a permanent position. Jonas v. Kosrae, 10 FSM Intrm. 453, 462 (Kos. S. Ct. Tr. 2001).

When an employee successfully served the full one year probationary period as Head Teacher, his position as Head Teacher with its higher pay level, became a permanent position when the probationary period expired. Jonas v. Kosrae, 10 FSM Intrm. 453, 462 (Kos. S. Ct. Tr. 2001).

When a state employee's demotion was unlawful and is set aside, his salary will be established as if the demotion never occurred. Jonas v. Kosrae, 10 FSM Intrm. 453, 462 (Kos. S. Ct. Tr. 2001).

The Kosrae State Court's standard of review in its judicial review of State Public Service System final decisions is that the court will decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action, and the court is authorized to compel, or hold unlawful and set aside agency actions. Tolenoa v. Kosrae, 10 FSM Intrm. 486, 489 (Kos. S. Ct. Tr. 2001).

Former Kosrae State Code, Title 5 (repealed) and Regulation 11 (repealed) are applicable to positions within the Executive Service System from 1990 through 1997. Tolenoa v. Kosrae, 10 FSM Intrm. 486, 489 (Kos. S. Ct. Tr. 2001).

An Executive Service position is a defined set of work responsibilities in the Executive. Tolenoa v. Kosrae, 10 FSM Intrm. 486, 490 (Kos. S. Ct. Tr. 2001).

Each Executive Service position was required to be classified by the Director of the Department of Personnel and Employment Services and all executive branch employee positions fall within the Executive System and Kosrae State Code, Title 5, chapters 4 and 5, unless exempted under section 5.101(18). When the Director failed to classify the Head Teacher position before, during, or after the plaintiff was moved into that position, he did not perform his duties as required, and therefore violated state law. Tolenoa v. Kosrae, 10 FSM Intrm. 486, 490 (Kos. S. Ct. Tr. 2001).

If an employee performs duties in addition to those stated in the classification plan for his regular position and the compensation for the position which normally includes the additional duties is greater than his regular salary, he receives the greater salary during the period of performance. Tolenoa v. Kosrae, 10 FSM Intrm. 486, 490 (Kos. S. Ct. Tr. 2001).

There are several types of salary adjustment for additional duties: detail, acting assignment and temporary promotion. Tolenoa v. Kosrae, 10 FSM Intrm. 486, 491 (Kos. S. Ct. Tr. 2001).

A detail is an employee's temporary assignment to a different position for a specified period, with the intention that the employee will return to his regular position and duties at the end of the detail. A position is not filled by detail, as the employee continues to the incumbent of the position from which detailed. A teacher's temporary assignment to the different position of Head Teacher for a maximum period of one year, with the intention that he would return to his regular position of Classroom Teacher II at the end of the detail no later than one year later, is a detail. Tolenoa v. Kosrae, 10 FSM Intrm. 486, 491 (Kos. S. Ct. Tr. 2001).

An employee who is temporarily assigned to a position by detail will be compensated at the step in the new pay level which is equivalent to a two step increase above his regular salary. A one step increase is unlawful and is therefore set aside. Tolenoa v. Kosrae, 10 FSM Intrm. 486, 491 (Kos. S. Ct. Tr. 2001).

When the plaintiff did not assume all of the administrative duties of the Vice Principal position and did not assume the duties of a vacant position, he was not assigned a "temporary promotion" to the position of Vice Principal. Tolenoa v. Kosrae, 10 FSM Intrm. 486, 491-92 (Kos. S. Ct. Tr. 2001).

When an employee was given added duties as a Head Teacher, the state will be required to classify the position of head teacher, including position description and pay level, and to pay compensation equivalent to a two-step increase. Tolenoa v. Kosrae, 10 FSM Intrm. 486, 492 (Kos. S. Ct. Tr. 2001).

The law does not require that a supervisor (Director or Governor) implement a hazardous pay differential decision made by a subordinate employee, such as the Administrator of Division of Personnel. Benjamin v. Attorney General Office Kosrae, 10 FSM Intrm. 566, 569 (Kos. S. Ct. Tr. 2002).

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

Any decision made by the Director's subordinate, the Administrator of Personnel, would only be deemed as advice to the Director, and not binding on the Director of Administration and Finance. Ultimately, it is the Director who is responsible for administering the Public Service System, consistent with Title 18 and applicable regulations. Benjamin v. Attorney General Office Kosrae, 10 FSM Intrm. 566, 569-70 (Kos. S. Ct. Tr. 2002).

When the statutory provisions intend and ensure that an entity is run as a corporation with its own management and employees, and not as a Kosrae state government agency and when, although the state government remains its sole shareholder, the state government does not assume its debts, does not own its assets, and has no control over its day to day operations, it is not a "state actor," and its termination of an employee is therefore not a "state action." Livaie v. Micronesia Petroleum Co., 10 FSM Intrm. 659, 666-67 (Kos. S. Ct. Tr. 2002).

Since a state employee classification plan that identifies class specifications for each class, including appropriate pay levels, must be approved by the Oversight Board, of which the Chief Justice is a member, it would be improper for the Chief Justice to order a classification of a position that would ultimately be reviewed and approved by him as an Oversight Board member. The court will therefore delete from its order the requirement that the state must create Head Teacher position classification. Tolenoa v. Kosrae, 11 FSM Intrm. 179, 185 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court's standard of judicial review of final decisions made under the State Public Service System is that the court will decide all relevant questions of law and fact, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The court is authorized to compel, or hold unlawful and set aside agency actions. Jackson v. Kosrae, 11 FSM Intrm. 197, 199 (Kos. S. Ct. Tr. 2002).

A position in the Executive Service is a defined set of work responsibilities in the Executive, and if an employee performs duties in addition to those stated in the classification plan for his regular position and the compensation for the position which normally includes the additional duties is greater than her regular salary, she receives the greater salary during the period of performance. Jackson v. Kosrae, 11 FSM Intrm. 197, 200 (Kos. S. Ct. Tr. 2002).

When the duties performed by the plaintiff in the Diabetic and Hypertension Program were regular duties of the Head Nurse position pursuant to the classification plan and were not in addition to those stated in the classification plan for the Head Nurse position, the plaintiff is not entitled to additional compensation or a higher salary during the time she performed those duties. Jackson v. Kosrae, 11 FSM Intrm. 197, 200 (Kos. S. Ct. Tr. 2002).

The state was not required to change the plaintiff's position to the CDC Coordinator when her duties did not substantially change after she was assigned to perform some of the CDC Coordinator duties and when it was not a "temporary promotion" to the position of CDC Coordinator because she did not assume all or nearly all of the CDC Coordinator duties, which were shared and completed by four employees including her. Jackson v. Kosrae, 11 FSM Intrm. 197, 200 (Kos. S. Ct. Tr. 2002).

A state employee's government service is governed by law, first by the Kosrae State Code, Title 5, the Executive Service Law, and later by Title 18, the State Public Service System Law. A public service employee does not have any contractual entitlements, and thus a state employee's contract claim against the state is without merit and will be dismissed. Jackson v. Kosrae, 11 FSM Intrm. 197, 201 (Kos. S. Ct. Tr. 2002).

When, despite several tries by counsel, a state employee's 1987 written grievance was never acted upon due to the state's inaction throughout the administrative process although the applicable statutes entitled him to a written response, the employee's cause of action accrued and the statute of limitations began to run only when he left state employment in 1997. The state's own inaction cannot be used to run against the six-year statute of limitations. Kosrae v. Skilling, 11 FSM Intrm. 311, 316-17 (App. 2003).

When a state employee did not engage in inexcusable delay or a lack of diligence in bringing suit, as the delay was caused by his engaging the administrative grievance process and waiting for the state's required response, and when the state, by its own inaction on the employee's claims, was not in compliance with the applicable regulation and statute, failed to act properly with regard to his grievance, the state, being the cause of the delay, cannot invoke the equitable doctrine of laches. Kosrae v. Skilling, 11 FSM Intrm. 311, 318 (App. 2003).

– Pohnpei

A Pohnpei state government official is an employee for purposes of the Federated States of Micronesia Income Tax Law. Rauzi v. FSM, 2 FSM Intrm. 8, 12 (Pon. 1985).

Working for the Pohnpei state government, whose policy of public service is based explicitly on the merit,

is merely a privilege which can be withheld subject to the due process of law. Paulus v. Pohnpei, 3 FSM Intrm. 208, 217 (Pon. S. Ct. Tr. 1987).

The right to governmental employment in Pohnpei is not a fundamental right, constitutionally protected, requiring invoking a strict scrutiny test. Paulus v. Pohnpei, 3 FSM Intrm. 208, 217 (Pon. S. Ct. Tr. 1987).

The Pohnpei State Government has discretion in hiring or firing employees, but that discretion does not carry with it the right to its arbitrary exercise. Paulus v. Pohnpei, 3 FSM Intrm. 208, 217 (Pon. S. Ct. Tr. 1987).

Section 14(1) of the State Public Service System Act of 1981 (2L-57-81), prohibiting any person who has been convicted of a felony and is currently under sentence from being considered for any public employment or from continuing to hold any previously attained public service position, operates to effect double punishment on persons classified as felons, by preventing such individuals' attempts at rehabilitation, and as such this statute does not support Pohnpei State Government's policy of rehabilitating persons who are convicted of crimes. Paulus v. Pohnpei, 3 FSM Intrm. 208, 219 (Pon. S. Ct. Tr. 1987).

Section 14(1) of the State Public Service System Act of 1981 (2L-57-81) is impermissibly arbitrary and irrationally unfair in its blanket prohibition of employment of any person who has been convicted of a felony and is currently under sentence; such statutory prohibition fails to tailor its impact to those convicted felons who otherwise lack the habits of industry. Consequently, this section of the statute is violative of the Equal Rights Clause of the Pohnpei Constitution by failing to demonstrate that the exclusion of all felons is necessary to achieve the articulated state goal. Paulus v. Pohnpei, 3 FSM Intrm. 208, 220 (Pon. S. Ct. Tr. 1987).

A statute providing that any person who has been convicted of a felony and who is currently under sentence shall be terminated from public employment, constitutes an unconstitutional deprivation of procedural due process by allowing for an affected individual's termination without a hearing, and thus must be struck down. Paulus v. Pohnpei, 3 FSM Intrm. 208, 221-22 (Pon. S. Ct. Tr. 1987).

– Yap

Section 23 of Yap State Law 1-35, affecting resignation and abandonment of employment positions, does not provide for administrative remedies or administrative appeal of any kind. Dabchur v. Yap, 3 FSM Intrm. 203, 205 (Yap S. Ct. App. 1987).

Abandonment of a public office is a voluntary form of resignation wherein the employee's intention to relinquish his position must be clear, either through declaration or overt acts. Dabchur v. Yap, 3 FSM Intrm. 203, 207 (Yap S. Ct. App. 1987).

Where the statute in question classifies "constructive" abandonment as an employee ceasing work "without explanation" for not less than six consecutive working days, any explanation from the employee, written or verbal, would suffice to indicate the employer that the employee does not intend to relinquish his position absolutely. Dabchur v. Yap, 3 FSM Intrm. 203, 207 (Yap S. Ct. App. 1987).

An employee who contests the factual allegation of voluntary abandonment is not entitled to any administrative remedies or administrative appeal, and has recourse only in the court. Dabchur v. Yap, 3 FSM Intrm. 203, 208 (Yap S. Ct. App. 1987).

REMEDIES

Although retroactive application of a decision holding a state tax unconstitutional would impose hardship on a state where funds collected under the tax have already been committed, such a result is not inequitable where the state legislature pushed on with the tax act despite the strong resistance of business people to the tax in the form of petition and establishment of an escrow account to hold contested payments, and a veto message by the governor of the state, and there is no indication that the legislature seriously considered the constitutionality of the legislation. Innocenti v. Wainit, 2 FSM Intrm. 173, 186 (App. 1986).

A promissory note executed by a governor, not authorized by law, and for which no appropriation of funds was made, and which failed to meet the requirements of the state financial management act is unenforceable against the state. Truk v. Maeda Constr. Co. (I), 3 FSM Intrm. 485, 487 (Truk 1988).

A promissory note executed by the governor which is unenforceable against the state is not ratified although the legislature appropriated funds for a state debt committee which included the amount of the note, since the committee is not required to pay the promisee of the note, and since the promisee is not the allottee of the appropriation. Truk v. Maeda Constr. Co. (I), 3 FSM Intrm. 485, 487 (Truk 1988).

Although the court is powerless to compel Chuuk State to honor its lease agreement it has full power to restore unlawfully held property to its rightful owner as a remedy for forcible entry and unlawful detainer. Billimon v. Chuuk, 5 FSM Intrm. 130, 136-37 (Chk. S. Ct. Tr. 1991).

Under Civil Rule 54(c) the court has full authority except in default judgments, to award the party granted judgment any relief to which it is entitled whether that party prayed for it or not. Billimon v. Chuuk, 5 FSM Intrm. 130, 137 (Chk. S. Ct. Tr. 1991).

Where the court cannot compel the state to honor an illegal and/or unconstitutional lease it can order the state to restore the illegally held land, with any and all public improvements removed, to its rightful owner who may also be entitled to damages. Billimon v. Chuuk, 5 FSM Intrm. 130, 137 (Chk. S. Ct. Tr. 1991).

The equitable remedy of specific performance is one where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff – when damages cannot be computed or when a substitute cannot be purchased. Ponape Constr. Co. v. Pohnpei, 6 FSM Intrm. 114, 126 (Pon. 1993).

Where entitlement to customary relief has been proven and the means to execute such a remedy are within the trial court's authority and discretion, the trial court should as a matter of equity and constitutional duty grant the relief. Wito Clan v. United Church of Christ, 6 FSM Intrm. 129, 133 (App. 1993).

Where a remedy exists, the FSM Supreme Court has general power under the Judiciary Act of 1979 to effect that remedy. Amayo v. MJ Co., 10 FSM Intrm. 433, 435 (Pon. 2001).

It is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it. AHPW, Inc. v. FSM, 12 FSM Intrm. 114, 122 (Pon. 2003).

– Election of Remedies

Under the doctrine of election of remedies, a plaintiff cannot pursue two or more remedies which are inconsistent with each other, i.e. the assertion of one remedy directly contradicts or repudiates the other. The test is whether the assertion of one remedy involves the negation or repudiation of the other at a time when full knowledge of the facts would indicate a choice between the forms of redress. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM Intrm. 180, 183 (Pon. 1993).

Election of remedies as a bar to a plaintiff's action does not apply in a case where plaintiff had no knowledge or reason to know of fraud affecting his choice of action or where his original choice was based unknowingly on false information. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM Intrm. 180, 184 (Pon. 1993).

– Quantum Meruit

In an action by a party who performed work for the benefit of the state and who seeks quantum meruit relief because no valid obligation of state funds existed, that relief by summary judgment cannot be granted when the party's own authorities show that the party must overcome the presumption of knowledge of the

requirements of government contracting to demonstrate good faith, and no evidence on this issue was included in the motion for summary judgment, even though the work done and the charges made were reasonable, and even though there was no evidence of bad faith, collusion or fraud. Truk v. Maeda Constr. Co. (II), 3 FSM Intrm. 487, 489 (Truk 1988).

A party completing projects is not entitled to quantum meruit recovery against the state when the contracts were done at the instance of the governor who had no authority to obligate the funds of the state, when the contracts did not purport to obligate the funds of the state, in which the governor promised to use his best efforts to find funds to pay for work performed, when the party accepted the risk that the governor might not be able to find funds, and when the governor promised payment when and if funds were available, even though the work performed was satisfactory, the charges were reasonable, and the work benefitted the state. Truk v. Maeda Constr. Co. (III), 3 FSM Intrm. 489, 493-94 (Truk 1988).

The amount of compensation a public employee receives is not based on quasi-contract doctrines such as quantum meruit or unjust enrichment, but instead is set by law, even if the actual value of the services rendered by a public officer is greater than the compensation set by law. Sohl v. FSM, 4 FSM Intrm. 186, 192 (Pon. 1990).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Etscheit v. Adams, 6 FSM Intrm. 365, 392 (Pon. 1994).

A claim for unjust enrichment will not lie where a party's efforts to reclaim the family's land were necessary in order for him to preserve any claim he personally had to that land and there is no evidence that he expended additional efforts or expense for the rest of the family beyond what he had to do to protect his own interests. Etscheit v. Adams, 6 FSM Intrm. 365, 392 (Pon. 1994).

Quantum meruit is an equitable doctrine, based upon the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM Intrm. 551, 558 (Pon. 2000).

The essential elements of recovery under quantum meruit include: 1) valuable services rendered or materials furnished; 2) to a person sought to be charged; 3) which services or material were used and enjoyed by the person sought to be charged; and 4) under such circumstances as reasonably notified the person sought to be charged that the person performing the services expected payment. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM Intrm. 551, 558 (Pon. 2000).

As a matter of law, the presence of an express written contract, which clearly sets forth the obligations of the parties, precludes a party from bringing a claim under quantum meruit. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM Intrm. 551, 558 (Pon. 2000).

The settled rule that the statute of limitations begins to run upon the accrual of a cause of action applies in actions on implied and quasi contracts. When compensation for services is to be made on a certain date, the statute of limitations on an implied or quasi contract begins to run at that time. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM Intrm. 551, 559 (Pon. 2000).

Quantum meruit is an equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby; under those circumstances, the law implies a promise to pay a reasonable amount for the labor and materials furnished, even absent a specific contract therefor. The doctrine of unjust enrichment has been recognized in the FSM. Adams v. Island Homes Constr., Inc., 11 FSM Intrm. 218, 232 (Pon. 2002).

A motion to amend a complaint to add an unjust enrichment claim will be denied when it is based upon

a defendant's failure to abide by the alleged agreements' terms because these are express agreements, and unjust enrichment is a theory applicable to implied contracts. Adams v. Island Homes Constr., Inc., 11 FSM Intrm. 218, 232 (Pon. 2002).

The doctrine of unjust enrichment only applies where there is no enforceable contract; the doctrine of restitution may not be applied where there is a contract; and the doctrines of implied contract and quantum meruit do not apply where there is an enforceable written contract. Esau v. Malem Mun. Gov't, 12 FSM Intrm. 433, 436 (Kos. S. Ct. Tr. 2004).

– Restitution

Where no contract existed for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Jim v. Alik, 4 FSM Intrm. 198, 200 (Kos. S. Ct. Tr. 1989).

Restitution is a remedy which returns the benefits already received by a party to the party who gave them where the court can find no contract. Jim v. Alik, 4 FSM Intrm. 198, 201 (Kos. S. Ct. Tr. 1989).

The doctrine of unjust enrichment has been expanded to cover cases where there is an implied contract, but a benefit officiously thrust upon one is not considered an unjust enrichment and restitution is denied in such cases. Etscheit v. Adams, 6 FSM Intrm. 365, 392 (Pon. 1994).

The purpose of the remedy of restitution is not to compensate the non-breaching party for reliance expenditures, but rather to prevent unjust enrichment of the breaching parties by forcing them to give up what they have received under the contract. Therefore defendants who breached an enforceable option agreement must return the $12,500 consideration, not because it is a loss attributable to the breach, but because the defendants would be unjustly enriched if they were allowed to keep the consideration after failing to live up to their end of the option agreement. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM Intrm. 502, 507 (Pon. 1994).

As a general rule, where money is paid under a mistake of fact, and payment would not have been made had the facts been known to the payor, such money may be recovered even though the person to whom the money was paid under a mistake of fact was not guilty of deceit or unfairness, and acted in good faith, nor does the payor's negligence preclude recovery. The fact that money paid by mistake has been spent by the payee is generally insufficient to bar restitution to the payor. Bank of Hawaii v. Air Nauru, 7 FSM Intrm. 651, 653 (Chk. 1996).

Restitution is a quasi-contract action based on a tort that is an alternative remedy to a tort action for damages. Bank of Hawaii v. Air Nauru, 7 FSM Intrm. 651, 653 (Chk. 1996).

Refund of taxes paid pursuant to an unconstitutional ordinance is an action for restitution, not damages. The principles governing recovery of payment which preclude recovery of voluntary payments are applicable to the recovery of tax payments. The "voluntary payment rule" has barred recovery in restitution. The general rule is that money paid voluntarily under a claim of right to the payment, and with knowledge of the facts by the person making the payment, cannot be recovered back on the ground that the claim was illegal. Chuuk Chamber of Commerce v. Weno, 8 FSM Intrm. 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 Intrm. 122, 125-26 (Chk. 1997).

A person who has discharged more than his proportionate share of a duty owed by himself and another, as to which neither had a prior duty of performance, and who is entitled to contribution from the other is entitled to reimbursement, limited to the proportionate amount of his net outlay properly expended. Senda v. Semes, 8 FSM Intrm. 484, 495 (Pon. 1998).

Contribution is an equitable doctrine based on principles of fundamental justice. When any burden ought, from the relationship of the parties to be equally borne and each party is in aequali jure, contribution is due if one has been compelled to pay more than his share. The right to contribution is not dependent on contract, joint action, or original relationship between the parties; it is based on principles of fundamental justice and equity. Senda v. Semes, 8 FSM Intrm. 484, 495 (Pon. 1998).

The right to sue for contribution does not depend upon a prior determination that the defendants are liable. Whether they are liable is the matter to be decided in the suit. To recover a plaintiff must prove both that there was common burden of debt and that he has, as between himself and the defendant, paid more than his fair share of the common obligations. Senda v. Semes, 8 FSM Intrm. 484, 496 (Pon. 1998).

In a civil case where defendants seeks to advance Pohnpeian customary practice as a defense to a claim of equitable contribution, the burden is on the defendants to establish by a preponderance of the evidence the relevant custom and tradition. Senda v. Semes, 8 FSM Intrm. 484, 497 (Pon. 1998).

Allowing a contribution claim between parties who are relatives, and who are equally liable under a duly promulgated regulation for a corporation's debts, is consistent with the customary principle that relatives should assist one another. Senda v. Semes, 8 FSM Intrm. 484, 499 (Pon. 1998).

A contention that custom and tradition as a procedural device may prevent an equitable claim for contribution based on violation of a regulation governing the formation of corporations is an insufficient defense as a matter of law. Senda v. Semes, 8 FSM Intrm. 484, 499 (Pon. 1998).

The date of accrual for a contribution cause of action is the day the judgment was entered. Obviously a prerequisite to any successful contribution action based on a judgment is the judgment itself. The limitations period for a contribution action is six years. Senda v. Semes, 8 FSM Intrm. 484, 500-01 (Pon. 1998).

In the case of indemnity the defendant is liable for the whole damage springing from contract, while in contribution the defendant is chargeable only with a ratable proportion founded not on contract but upon equitable factors measured by equality of burden. Senda v. Semes, 8 FSM Intrm. 484, 505 (Pon. 1998).

A party jointly and severally liable for a corporation's debts is not liable for contribution for a subsidiary's debt paid by a guarantor when the corporation was not a coguarantor of the subsidiary's loan. Senda v. Semes, 8 FSM Intrm. 484, 506 (Pon. 1998).

Equity does not dictate that a setoff for the amount of a defendant's stock subscription be allowed against a contribution claim when the person claiming the setoff received by far the greatest benefit from the failed corporation while it was operating. Senda v. Semes, 8 FSM Intrm. 484, 507 (Pon. 1998).

When C.P.A. Reg. 2.7 imposes the same degree of liability on all incorporators, and the parties' plan from the beginning was to share profits equally, balancing the equities favors a three-way, equal split of the debt burden on a contribution claim. Senda v. Semes, 8 FSM Intrm. 484, 507-08 (Pon. 1998).

A person who has discharged more than his proportionate share of a duty owed by himself and another and who is entitled to contribution from the other is entitled to reimbursement limited to the proportionate amount of his net outlay properly expended. When incurred interest expense is part of his net outlay properly expended, the other should contribute toward the interest expense. Senda v. Semes, 8 FSM Intrm. 484, 508 (Pon. 1998).

Where no contract existed, a court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 195 (Kos. S. Ct. Tr. 2001).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract. It requires a party to either return what has been received or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another.

Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 195 (Kos. S. Ct. Tr. 2001).

Restitution is a remedy which returns the benefits already received by a party to the party who gave them where the court can find no contract. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 195 (Kos. S. Ct. Tr. 2001).

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

The trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution. The plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 196 (Kos. S. Ct. Tr. 2001).

Claimed expenditures for food and beverages will not be awarded when the purchase and consumption of these items was not dependent upon the defendant's promise, and labor costs will not be allowed as damages when there was no evidence presented at trial that the plaintiff paid any person a specific sum for labor. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 196 (Kos. S. Ct. Tr. 2001).

Pre-judgment interest is not appropriate and a claim for it will be denied when there was no agreement involving a promise to pay money, when the plaintiff was not deprived of funds that he was entitled to because there was no contract made between the parties to pay money, and when the plaintiff was awarded damages based upon the equitable doctrine of promissory estoppel for the plaintiff's expenditures made in reliance on a promise. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 197 (Kos. S. Ct. Tr. 2001).

Where no contract existed for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Youngstrom v. Mongkeya, 11 FSM Intrm. 550, 554 (Kos. S. Ct. Tr. 2003).

The court has wide discretion in the award of damages in restitution cases to achieve fairness. Once a claimant's entitlement to damages is established, the amount of damages is an issue for the finder of fact. Youngstrom v. Mongkeya, 11 FSM Intrm. 550, 555 (Kos. S. Ct. Tr. 2003).

When the plaintiff has already paid the full amount of costs for which both the plaintiff and defendant are equally responsible, the defendant is liable to the plaintiff for half of those costs. Youngstrom v. Mongkeya, 11 FSM Intrm. 550, 555 (Kos. S. Ct. Tr. 2003).

When the parties have failed to make an enforceable contract due to the lack of definite terms, the court may use its equity power to grant a remedy under the doctrine of restitution. Restitution is a remedy which returns the benefits already received to the party who gave those benefits. Livaie v. Weilbacher, 11 FSM Intrm. 644, 648 (Kos. S. Ct. Tr. 2003).

Restitution is a doctrine by which the court returns the benefits received by one party. Livaie v. Weilbacher, 11 FSM Intrm. 644, 648 (Kos. S. Ct. Tr. 2003).

When the plaintiff is entitled to restitution for the value of landfill hauled from his property, he will be paid at the market value per cubic yard. Livaie v. Weilbacher, 11 FSM Intrm. 644, 648 (Kos. S. Ct. Tr. 2003).

The unjust enrichment doctrine is based on the idea that one person should not be permitted unjustly to enrich himself at another's expense. The generally accepted elements of an unjust enrichment cause of action are: 1) the plaintiff conferred a benefit on the defendant, who has knowledge of the benefit, 2) the defendant accepted and retained the conferred benefit, and 3) under the circumstances it would be inequitable for the defendant to retain the benefit without paying for it. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM Intrm. 337, 345 (Pon. 2004).

Unjust enrichment is an equitable remedy, and generally requires that the party who accepted and retained a benefit pay that benefit back to the party who conferred it. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM Intrm. 337, 346 (Pon. 2004).

While the doctrine of unjust enrichment has not been explicitly discussed or adopted, Pohnpei state law and Micronesian custom and tradition dictate that a party who has benefitted unjustly from another should, under certain circumstances, be made to repay that benefit. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM Intrm. 337, 346 (Pon. 2004).

There is no impediment to a plaintiff recovering for unjust enrichment, when the plaintiff has proven that one or more defendant knowingly accepted a benefit from the plaintiff and was unjustly enriched at plaintiff's expense. The plaintiff was undoubtedly wronged when it paid $54,000 for 27 outboard motors, and only received 13 of the motors, and since the defendants received this money and converted it to other purposes, it would be unjust to permit them to retain that benefit. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM Intrm. 337, 346 (Pon. 2004).

Even though there is evidence of a contract between the plaintiff and a defendant, the equitable remedy of unjust enrichment will be applied to permit the plaintiff to recover from another defendant, when it is apparent that the first defendant was created only to circumvent second's obligations under its distributorship agreement and the second defendant ultimately was the party that received the bulk of the money. It would be unjust indeed to permit it to retain a benefit it received, merely because it received the benefit through a shell company that was created merely so that the plaintiff's check could be cashed and the money paid over to it. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM Intrm. 337, 346 (Pon. 2004).

When individuals were unjustly enriched by the plaintiff in the amount of $3,500, and the plaintiff elected to sue on an equitable claim of unjust enrichment, rather than for breach of contract, and when, by their own testimony, the individuals personally made money on the transaction, and the plaintiff received only one-half of the motors it purchased, it would be inappropriate to not hold the defendants responsible, as individuals and as the company's principals, for their dealings with the plaintiff which damaged the plaintiff. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM Intrm. 337, 346-47 (Pon. 2004).

When a defendant admitted that it had been "paid in full" for the 27 outboard motors the plaintiff purchased, but it only delivered 13 of the motors, the defendant has been unjustly enriched in the amount the plaintiff paid for 14 of the 27 motors, minus the amount that was converted by others. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM Intrm. 337, 347 (Pon. 2004).

The doctrine of unjust enrichment only applies where there is no enforceable contract; the doctrine of restitution may not be applied where there is a contract; and the doctrines of implied contract and quantum meruit do not apply where there is an enforceable written contract. Esau v. Malem Mun. Gov't, 12 FSM Intrm. 433, 436 (Kos. S. Ct. Tr. 2004).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 130 (Chk. 2005).

The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at another's expense and this doctrine has been expanded to cover cases where there is an implied contract. The generally accepted elements of an unjust enrichment cause of action are: 1) the plaintiff conferred a benefit on the defendant, who has knowledge of the benefit, 2) the defendant accepted and retained the conferred benefit, and 3) under the circumstances it would be inequitable for the defendant to retain the benefit without paying for it. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 130 (Chk. 2005).

The classic situation to which the unjust enrichment doctrine is applied is where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and the doctrine

requires a party to either return what has been received under the contract or pay the other party for it. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 130 (Chk. 2005).

There was no classic unjust enrichment situation when there was no contract, unenforceable or otherwise, between the plaintiff and the bank and no implied contract between the two and when the plaintiff did not confer a benefit on the bank that the bank had knowledge of, accepted and retained, because not only was there no contract between the plaintiff and the bank, but also because the plaintiff had no contact with the bank at all and was not in privity with the bank. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 130 (Chk. 2005).

When a borrower did not pay the money to the bank under the mistaken belief that it owed the bank money because it actually did owe the bank money and when it did not mistakenly pay to the bank money that it owed to another, the money was not paid to the bank by mistake as that term is used in unjust enrichment cases – often referred to as an action for money had and received. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 130 (Chk. 2005).

There is a certain limited instance where a plaintiff may recover under an unjust enrichment theory from a third party with which he has had no contact, either directly or through its agents. The requisite "privity" does exist between a plaintiff and such a defendant when that defendant has received money from another fraudulently obtained by the latter only when the recipient was aware of the fraud. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 130-31 (Chk. 2005).

Money received in the regular course of business from one who fraudulently or feloniously obtained it from another may not be recovered by the true owner from the recipient, even though the latter received it in payment of an antecedent debt and parted with no new consideration for the same, if he had no knowledge of the fraud or of the felony. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 131 (Chk. 2005).

A defendant bank, having received money from a debtor to it in the regular course of business to pay an antecedent debt which the debtor unquestionably owed to it and having no reason to believe or knowledge that the money might have been fraudulently obtained, is not liable to pay restitution to the plaintiff under the unjust enrichment doctrine. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 131 (Chk. 2005).

When no contract exists for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Restitution is the proper remedy when no enforceable contract exists. It requires the benefitted party to return what was received or to pay the other party for it. Livaie v. Weilbacher, 13 FSM Intrm. 139, 143 (App. 2005).

SEARCH AND SEIZURE

The Ponape state consent statute does not authorize the search of a nonconsenting bar or restaurant customer. Pon. Code. ch. 3, §§ 3-13. FSM v. Tipen, 1 FSM Intrm. 79, 81 (Pon. 1982).

Under Ponape state law, a bar or restaurant patron's denial of an authorized person's request to search the person of the patron merely subjects the patron to exclusion from the establishment. Pon. Code ch. 3, §§ 3-13. FSM v. Tipen, 1 FSM Intrm. 79, 81 (Pon. 1982).

The article IV, section 5 right to be secure against searches is not absolute. The Constitution only protects against unreasonable searches. FSM v. Tipen, 1 FSM Intrm. 79, 82 (Pon. 1982).

Police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure. FSM v. Tipen, 1 FSM Intrm. 79, 85 (Pon. 1982).

No right is held more sacred, or is more carefully guarded by the common law than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. FSM v. Tipen, 1 FSM Intrm. 79, 86 (Pon. 1982).

The constitutional protection of the individual against unreasonable searches and limitation of powers of the police apply wherever an individual may harbor a reasonable expectation of privacy. FSM v. Tipen, 1 FSM Intrm. 79, 86 (Pon. 1982).

Constitutional protection against unreasonable searches extends to the contents of closed containers within one's possession and to those items one carries on one's person. FSM v. Tipen, 1 FSM Intrm. 79, 86 (Pon. 1982).

A citizen is entitled to protection of the privacy which he seeks to maintain even in a public place. FSM v. Tipen, 1 FSM Intrm. 79, 86 (Pon. 1982).

The burden is on the government to justify a search without a warrant. FSM v. Tipen, 1 FSM Intrm. 79, 87 (Pon. 1982).

The legality of the search must be tested on the basis of the information known to the police officer immediately before the search began. FSM v. Tipen, 1 FSM Intrm. 79, 88 (Pon. 1982).

The FSM Supreme Court is vested, by statute, with authority to suppress or exclude, evidence obtained by unlawful search and seizure. 12 F.S.M.C. 312. FSM v. Tipen, 1 FSM Intrm. 79, 92 (Pon. 1982).

Where investigating officers have reason to believe that somebody on private premises may have information pertaining to their investigation, they may enter those private premises, without a warrant or prior judicial authorization, to make reasonably nonintrusive efforts to determine if anybody is willing to discuss the substance of their investigations. FSM v. Mark, 1 FSM Intrm. 284, 288 (Pon. 1983).

It is generally agreed that for actions to constitute a search, there must be: 1) an examination of premises or a person; 2) in a manner encroaching upon one's reasonable expectation of privacy; 3) with an intention, or at least a hope, to discover contraband or evidence of guilt to be used in prosecution of a criminal action. FSM v. Mark, 1 FSM Intrm. 284, 298 (Pon. 1983).

Mere observation does not constitute a search. The term "search" implies exploratory investigation or quest. FSM v. Mark, 1 FSM Instr. 284, 289 (Pon. 1983).

Police officers who in the performance of their duty enter upon private property without an intention to look for evidence but merely to ask preliminary questions of the occupants cannot be said to be conducting a search within the meaning of the Constitution. FSM v. Mark, 1 FSM Intrm. 284, 289 (Pon. 1983).

Wide ranging and unwarranted movement of police officers on private land may constitute an unreasonable invasion of privacy, or establish that the investigation had evolved into a search. FSM v. Mark, 1 FSM Intrm. 284, 290 (Pon. 1983).

A warrant is not necessary to authorize seizure when marijuana is in plain view of a police officer who has a right to be in the position to have that view. FSM v. Mark, 1 FSM Intrm. 284, 294 (Pon. 1983).

The starting point and primary focus of legal analysis for a claim of unreasonable search and seizure should normally be the Constitution's Declaration of Rights, not the statutory "Bill of Rights." FSM v. George, 1 FSM Intrm. 449, 455 (Kos. 1984).

The principal difference between FSM Constitution article IV, section 5 and 1 F.S.M.C. 103 is that the Constitution, in addition to prohibiting unreasonable searches and seizures also contains a prohibition against invasions of privacy. FSM v. George, 1 FSM Intrm. 449, 455 n.1 (Kos. 1984).

The government bears the burden of proving the existence of voluntary consent. Acquiescence in the desire of law enforcement personnel to search will not be presumed but must be affirmatively demonstrated. FSM v. George, 1 FSM Intrm. 449, 456 (Kos. 1984).

A demand, even if courteously expressed, is different from a request, and a citizen's compliance with a police officer's demand, backed by apparent force of law, is perhaps subtly, but nonetheless significantly, different from voluntary consent to a request. FSM v. George, 1 FSM Intrm. 449, 458 (Kos. 1984).

On matters relating to a warrantless search, it is for the court to decide whether voluntary consent, as opposed to passive submission to legal authority, occurred. The government must put before the court facts, not mere conclusions of police officers, which will permit the judge to decide whether consent was given. FSM v. George, 1 FSM Intrm. 449, 458 (Kos. 1984).

The unconsented and warrantless entry into defendant's house, without any subsequent action on the officer's part to impress upon the defendant that they could be influenced by his wishes as to whether a search might be conducted, erases any possibility of finding any aspect of the search in the house or the resultant seizure of evidence, to be either consented to or untainted. FSM v. George, 1 FSM Intrm. 449, 459 (Kos. 1984).

While the existence of probable cause to believe that a crime has been committed and that a particular person has committed it is not in itself sufficient to justify a warrantless search, the establishment of probable cause is nevertheless critical to any unconsented search. FSM v. George, 1 FSM Intrm. 449, 460-61 (Kos. 1984).

Without probable cause, no search warrant may be obtained and no unconsented search may be conducted. FSM v. George, 1 FSM Intrm. 449, 461 (Kos. 1984).

Constitutional prohibitions against unreasonable searches, seizures or invasions of privacy must be applied with full vigor when a dwelling place is the object of the search. FSM v. George, 1 FSM Intrm. 449, 461 (Kos. 1984).

Police officers desiring to conduct a search should normally obtain a search warrant. This requirement serves to motivate officers to assess their case and to obtain perspective from the very start. FSM v. George, 1 FSM Intrm. 449, 461-62 (Kos. 1984).

Officers entering a house by consent for purposes of a search must keep in mind the eventual likelihood that they will need to establish that consent was voluntary. FSM v. George, 1 FSM Intrm. 449, 463 (Kos. 1984).

Only under rare circumstances would the FSM Supreme Court likely find that a homeowner who neither says nor does anything to indicate affirmative consent has consented to a warrantless search of his house. FSM v. George, 1 FSM Intrm. 449, 463 (Pon. 1984).

The standard announced in the second sentence of FSM Constitution article IV, section 5 for issuance of a warrant must be employed in determining the reasonableness of a search or seizure. Imposition of a standard of probable cause for issuance of a warrant in article IV, section 5 implies that no search or seizure may be considered reasonable unless justified by probable cause. Ludwig v. FSM, 2 FSM Intrm. 27, 32 (App. 1985).

Article IV, section 5 of the FSM Constitution, based upon the fourth amendment of the United States Constitution, permits reasonable, statutorily authorized inspections of a fishing vessel in FSM ports, under various theories upheld under the United States Constitution, when the vessel is reasonably suspected of having engaged in fishing activities. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 74 (Pon. 1985).

It is extraordinarily difficult for law enforcement authorities to police the vast waters of the Federated States of Micronesia. Yet, effective law enforcement to prevent fishing violations is crucial to the economic interests of this new nation. Accordingly, the historical doctrines applied under the United States Constitution which expand the right to search based upon border search, administrative inspection and exigent circumstances theories, appear suitable for application to fishing vessels within the Federated States of

Micronesia. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 74 (Pon. 1985).

Searches and seizures both constitute a substantial intrusion upon the privacy of an individual whose person or property is affected, but a seizure often imposes more onerous burdens. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 75 (Pon. 1985).

A temporary seizure is itself a significant taking of property, depriving the owner of possession, an important attribute of property. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 75 (Pon. 1985).

While the power to seize a vessel is crucial to the interests of the Federated States of Micronesia and its states, there are also compelling factors demanding that seizures take place only where fully justified and that procedures be established and scrupulously followed to assure that the power to seize is not abused. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 75 (Pon. 1985).

It is normally required that a hearing be held prior to seizure of a property. In extraordinary situations a seizure may take place prior to hearing, but the owner must be afforded a prompt post-seizure hearing at which the person seizing the property must at least make a showing of probable cause. Unreasonable delay in providing a post-seizure hearing may require that an otherwise valid seizure be set aside. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985).

Where a seizure is for forfeiture rather than evidentiary purposes, the constitutional prohibitions against taking property without due process come into play. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985).

The general requirement under article IV, section 5 of the Constitution is that before a search or seizure may occur there must exist "probable cause," that is, a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed and that the item to be seized has been used in the crime. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985).

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

Where defendants accompanied police officers, then defendants entered their homes and obtained the stolen goods and turned them over to the police, the question of whether there has been an unreasonable seizure in violation of article IV, section 5 of the Constitution turns on whether the defendants' actions were voluntary. FSM v. Jonathan, 2 FSM Intrm. 189, 198-99 (Kos. 1986).

The prohibition in article II, section 1(d) of the Constitution of Kosrae against any unreasonable search and seizure is to assure the individual of his fundamental right to the possession of and control over his own person and property. Kosrae v. Alanso, 3 FSM Intrm. 39, 42 (Kos. S. Ct. Tr. 1985).

Because the Kosrae State Constitution does not provide an exact standard for determining whether a search is "reasonable," this court will first turn to the framers' intent. In the absence of an official journal of the First Constitutional Convention, this court will then look to FSM and U.S. judicial decisions interpreting the search and seizure provision in their respective constitutions. Kosrae v. Alanso, 3 FSM Intrm. 39, 42 (Kos. S. Ct. Tr. 1985).

To determine whether a search is reasonable, the Kosrae State Court will be guided by the principle that, with the exception of a few carefully defined types of cases, any search of private property without proper consent is unreasonable, unless previously authorized by a valid search warrant. Kosrae v. Alanso, 3 FSM Intrm. 39, 43 (Kos. S. Ct. Tr. 1985).

The Kosrae State Court, consistent with U.S. and FSM precedent, recognizes consent as a valid exception to the need for a search warrant. However, consent is understood to be an informed and voluntary

relinquishment of a known right and the burden will be on the government to show that there was consent. Kosrae v. Alanso, 3 FSM Intrm. 39, 43 (Kos. S. Ct. Tr. 1985).

This court will apply the exclusionary rule on a case-by-case basis. The exclusionary rule has been devised as a necessary device to protect the right to be free from unreasonable search and seizure. Kosrae v. Alanso, 3 FSM Intrm. 39, 44 (Kos. S. Ct. Tr. 1985).

Under the exclusionary rule, any evidence obtained through an illegal search and seizure, whether physical or verbal, is a fruit of the illegal search and seizure, is tainted by illegality, and must be excluded. Kosrae v. Alanso, 3 FSM Intrm. 39, 44 (Kos. S. Ct. Tr. 1985).

Few rights are more important than the freedom from unreasonable governmental intrusion into a citizen's privacy and courts must protect this right from well-intentioned, but unauthorized, governmental action. Kosrae v. Alanso, 3 FSM Intrm. 39, 44 (Kos. S. Ct. Tr. 1985).

To protect the right to be free from unreasonable search and seizure, this court requires clear proof, not merely that consent was given, but also that a right was knowingly and voluntarily waived. It is fundamental that a citizen be aware of the right he is giving up in order for consent to be found. Kosrae v. Alanso, 3 FSM Intrm. 39, 44 (Kos. S. Ct. Tr. 1985).

Consent, given in the face of a police request to search without the consenting person having been informed of his right to refuse consent, and without any written evidence that consent was voluntarily and knowingly given, renders such consent inadequate to permit a warrantless search absent probable cause. Kosrae v. Alanso, 3 FSM Intrm. 39, 44 (Kos. S. Ct. Tr. 1985).

The Constitution does not protect a person against a "reasonable" search and/or seizure and a search is reasonable where a search warrant has been obtained prior to the search. Kosrae v. Paulino, 3 FSM Intrm. 273, 275 (Kos. S. Ct. Tr. 1988).

An officer who, while standing on a road, sees a marijuana plant in plain view on top of a nearby house has not thereby engaged in an unlawful search. Kosrae v. Paulino, 3 FSM Intrm. 273, 276 (Kos. S. Ct. Tr. 1988).

Even on public premises a person may retain an expectation of privacy, but where a person residing on public land makes no effort to preserve the privacy of marijuana plants and seedings, entry of police on the premises and seizure of contraband that is plainly visible from outside the residence is not an unconstitutional search and seizure. FSM v. Rodriquez, 3 FSM Intrm. 368, 370 (Pon. 1988).

An individual's home, even on located on public land, qualifies for constitutional protection against warrantless searches. FSM v. Rodriquez, 3 FSM Intrm. 385, 386 (Pon. 1988).

The protection in article IV, section 5 of the Constitution of the Federated States of Micronesia against unreasonable search and seizure is based upon the comparable provision in the fourth amendment of the United States Constitution. FSM v. Rodriquez, 3 FSM Intrm. 385, 386 (Pon. 1988).

Although an individual acting without state authorization has constructed a sleeping hut and has planted crops on state-owned public land, state police officers may nevertheless enter the land without a search warrant to make reasonable inspections of it and may observe and seize illegally possessed plants in open view and plainly visible from outside the sleeping hut. FSM v. Rodriquez, 3 FSM Intrm. 385, 386 (Pon. 1988).

When investigators, acting without a search warrant on advance information, conduct searches in privately owned areas beyond the immediate area of a dwelling house, and seize contraband, they do not thereby violate the prohibitions in article IV, section 5 of the Constitution of the Federated States of Micronesia against unreasonable search and seizure. FSM v. Rosario, 3 FSM Intrm. 387, 388-89 (Pon. 1988).

Issuance of a search warrant is indisputedly within the FSM Supreme Court's jurisdiction. Jano v. King, 5 FSM Intrm. 388, 392 (Pon. 1992).

The standard for engaging in a search of private property is less exacting than the standard required for seizing such property. FSM v. Zhong Yuan Yu No. 621, 6 FSM Intrm. 584, 588 n.4 (Pon. 1994).

For purposes of article IV, section 5 protection, a search is any governmental intrusion into an area where a person has a reasonable expectation of privacy. Thus, the constitutional protections do not attach unless the search or seizure can be attributed to governmental conduct *and* the defendant had a reasonable expectation of privacy in the items searched. FSM Social Sec. Admin. v. Weilbacher, 7 FSM Intrm. 137, 142 (Pon. 1995).

Administrative searches designed to aid in the collection of taxes rightly owing to the government must be conducted according to the same requirements laid down for other searches and seizures. FSM Social Sec. Admin. v. Weilbacher, 7 FSM Intrm. 137, 142 (Pon. 1995).

In an administrative agency inspection, as in any other governmental search and seizure, a warrant is unnecessary where the government obtains the voluntary consent of the party to be searched. FSM Social Sec. Admin. v. Weilbacher, 7 FSM Intrm. 137, 143 (Pon. 1995).

An administrative agency may either request certain records be provided or formally subpoena the desired information, rather than obtain a court-ordered search warrant. In either situation, the subject of the inspection may decide whether to refuse or cooperate with the government's request. Only when a person refuses to permit the requested search does the Constitution prohibit the administrative agency from coercing that person to turn over records without first obtaining a valid search warrant. FSM Social Sec. Admin. v. Weilbacher, 7 FSM Intrm. 137, 143 (Pon. 1995).

Where a person refuses to cooperate with the inspection requests of the administrative agency, the government will be required to demonstrate to a neutral and detached magistrate that the requested material is reasonable to the enforcement of the administrative agency's statutory responsibilities and that the inspection is being conducted pursuant to a general and neutral enforcement plan in order to obtain the required search warrant. FSM Social Sec. Admin. v. Weilbacher, 7 FSM Intrm. 137, 143 (Pon. 1995).

Where a vessel has been arrested pursuant to a warrant, a post-seizure hearing is required by the constitutional guarantee of due process. FSM v. M.T. HL Achiever (II), 7 FSM Intrm. 256, 257 (Chk. 1995).

An owner of seized property cannot challenge the statute it was seized under as unconstitutional because the statute fails to provide for notice and a hearing, if procedural due process, notice and a right to a hearing, are provided. FSM v. M.T. HL Achiever (II), 7 FSM Intrm. 256, 258 (Chk. 1995).

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

It is unreasonable for a public official, required by law to cooperate with legislative investigating committees, to have an expectation of privacy in matters that are linked to his performance in office, and it is unreasonable for a public official, such as the Governor, who is a trustee of the state's finances and who owes a fiduciary duty to the state to expect that his personal finances will be kept private if there is some reason to believe he has violated his trust. In re Legislative Subpoena, 7 FSM Intrm. 261, 267 (Chk. S. Ct. Tr. 1995).

Persons are secure in their persons, houses, and possessions against an unreasonable invasion of privacy. An invasion of privacy occurs when the government intrudes into any place where the individual harbors a reasonable expectation of privacy. A claim to privacy must be viewed in the specific context in

which it arises. In re Legislative Subpoena, 7 FSM Intrm. 328, 334 (Chk. S. Ct. App. 1995).

An person's expectation that his bank records will remain private is not reasonable because bank records are not the person's private papers, but are the bank's business records. This does not mean that such records are open to unrestrained production and inspection. For such records to be produced or inspected, the purpose of the intrusion must not be unreasonable. In re Legislative Subpoena, 7 FSM Intrm. 328, 335 (Chk. S. Ct. App. 1995).

Apprehension of a person suspected of committing a crime by use of deadly force is a seizure, but the shooting of a bystander, who is not a suspect, by the police is not. Davis v. Kutta, 7 FSM Intrm. 536, 547 (Chk. 1996).

A person can only complain of an unlawful search or seizure if it is his own rights which have been violated, such as when the person had ownership or a possessory right to the place searched, or was the owner of the items seized. A person also has standing to challenge a search and seizure of items as illegal when possession is an element of the crime charged, or when the person is legitimately on the premises searched and fruits of the search are to be used against him. FSM v. Skico, Ltd. (I), 7 FSM Intrm. 550, 553 (Chk. 1996).

A vessel arrested pursuant to a warrant has, upon request, a right to a post-seizure hearing to contest the warrant and any deficiency in the arrest proceeding. FSM v. Skico, Ltd. (II), 7 FSM Intrm. 555, 556 (Chk. 1996).

The Due Process Clause does not require an immediate post-seizure probable cause hearing in advance of a civil forfeiture trial. It only requires that the government begin the forfeiture action within a reasonable time of the seizure. FSM v. Skico, Ltd. (II), 7 FSM Intrm. 555, 557 (Chk. 1996).

A civil forfeiture statute is not unconstitutional in failing to set out a requirement for a post-seizure hearing and a notice of that right nor is the government constitutionally required to inform the defendant of such notice and a right to a hearing. FSM v. Skico, Ltd. (II), 7 FSM Intrm. 555, 557 (Chk. 1996).

A court may suppress evidence obtained by an unlawful search and seizure. FSM v. Santa, 8 FSM Intrm. 266, 268 (Chk. 1998).

When a search or seizure is conducted without a warrant the burden is on the government to justify the search or seizure, but when the search or seizure is conducted pursuant to a judicially-issued warrant the burden rests with the defendant to prove the illegality of the search or seizure. FSM v. Santa, 8 FSM Intrm. 266, 268 (Chk. 1998).

When a warrantless search or seizure is conducted the burden is on the government to justify the search or seizure, but when the search or seizure is conducted pursuant to a judicially-issued warrant the burden rests with the defendant to prove the illegality of the search or seizure. FSM v. Joseph, 9 FSM Intrm. 66, 69 (Chk. 1999).

When no search or arrest warrant had been issued or sought and the defendant moves to suppress the evidence seized, although it is the defendant's suppression motion, it is the government's burden to prove that the searches were reasonable and therefore lawful under section 5 of article IV of the FSM Constitution. FSM v. Joseph, 9 FSM Intrm. 66, 69 (Chk. 1999).

The border search doctrine is suitable for application to fishing vessels in the FSM. The principle should be the same for aircraft. FSM v. Joseph, 9 FSM Intrm. 66, 70 n.2 (Chk. 1999).

All aircraft entering FSM ports of entry are subject to immigration inspection, customs inspections, agricultural inspections and quarantines, and other administrative inspections authorized by law. In Chuuk, the Chuuk International Airport is the only port of entry for aircraft. FSM v. Joseph, 9 FSM Intrm. 66, 70 (Chk.

1999).

An agriculture quarantine inspector's duty is to enforce the provisions of plant and animal quarantine controls, quarantines, and regulations, the purpose of which is to protect the agricultural and general well-being of the people of the FSM from injurious insects, pests, and diseases. Goods entering or transported within the FSM can be inspected. Those goods known to be, or suspected of being, infected or infested with disease or pests may be refused entry into or movement within the FSM, and anything attempted to be brought into or transported within the FSM in contravention of the agricultural inspection scheme shall be seized and may be destroyed. FSM v. Joseph, 9 FSM Intrm. 66, 70 (Chk. 1999).

Customs officers have the right to examine all goods subject to customs control, and it is unlawful to import into the FSM any goods whose use, possession or import is prohibited or contrary to restrictions imposed by the FSM or the state into which the goods are imported. FSM v. Joseph, 9 FSM Intrm. 66, 70 (Chk. 1999).

Border searches and searches at the functional equivalent of a border are an exception to the warrant requirement of section 5 of the FSM Declaration of Rights. FSM v. Joseph, 9 FSM Intrm. 66, 70 (Chk. 1999).

Passing through security screening and boarding a foreign-registered airplane in Pohnpei that has arrived from a foreign country without it and its cargo having cleared customs in the FSM and whose passengers have not cleared immigration in the FSM, unless they deplaned, is passing out of and across a functional border of the FSM. The same passenger landing in Chuuk and entering the customs inspection area is crossing a functional equivalent of a border back into the FSM. FSM v. Joseph, 9 FSM Intrm. 66, 70-71 (Chk. 1999).

Because entering the Chuuk International Airport customs inspection area after deplaning from a through flight is crossing the functional equivalent of a border a warrantless search there is reasonable under section 5 of the FSM Declaration of Rights. This analysis is consistent with the geographical configuration of Micronesia, with the statutory schemes of agricultural inspection, and customs inspection. FSM v. Joseph, 9 FSM Intrm. 66, 71 (Chk. 1999).

An airport inspection of arriving passengers and their luggage does not violate an FSM citizen's right to travel within the FSM and the right to privacy. FSM v. Joseph, 9 FSM Intrm. 66, 71 (Chk. 1999).

A search and seizure at the police station of an arrestee's possessions is not the unlawful fruit of the poisonous tree when the arrest was lawful. FSM v. Joseph, 9 FSM Intrm. 66, 72 (Chk. 1999).

The protection in article IV, section 5 of the FSM Constitution against unreasonable search and seizure is based upon the comparable provision in the U.S. Constitution's fourth amendment. FSM v. Inek, 10 FSM Intrm. 263, 265 (Chk. 2001).

When no search or arrest warrant had been issued or sought and the defendant moves to suppress the evidence seized, although it is the defendant's suppression motion, it is the government's burden to prove that the searches were reasonable and therefore lawful under section 5 of article IV of the FSM Constitution. FSM v. Inek, 10 FSM Intrm. 263, 265 (Chk. 2001).

Generally, whatever evidence is obtained pursuant to an unlawful arrest may be suppressed. One exception to the general rule is when the government obtains the evidence based on an independent source. If knowledge of such facts is gained from an independent source they may be proved like any others. FSM v. Inek, 10 FSM Intrm. 263, 265 (Chk. 2001).

Exclusion of evidence obtained as a result of a violation of one's constitutional rights has no applicability to evidence obtained by the prosecution from sources factually unrelated to violations of a defendant's rights. FSM v. Inek, 10 FSM Intrm. 263, 266 (Chk. 2001).

Society's interest in deterring unlawful police conduct and the public interest in having factfinders receive all probative evidence of a crime are properly balanced by putting the police in the same, not a worse, position than they would have been if no police error or misconduct had occurred. When the challenged evidence has an independent source, exclusion of such evidence would put the police in a worse position than they would have been in absent any error or violation. FSM v. Inek, 10 FSM Intrm. 263, 266 (Chk. 2001).

When the police received information that the defendant was carrying a handgun from a known informant with whom they knew the defendant had lived for three years while he was in Nema, and when their conduct of the ensuing search was based on that and not on the prior unlawful arrest, that independent tip makes the search reasonable because the information given the police while the defendant was detained was a source independent from the unlawful arrest. FSM v. Inek, 10 FSM Intrm. 263, 266 (Chk. 2001).

Once the police have a reasonable suspicion that a person may be armed and dangerous they may do a patdown search of or frisk that person for weapons in order to protect themselves and others from possible danger. FSM v. Inek, 10 FSM Intrm. 263, 266 (Chk. 2001).

When the police received the information from a known independent source that a person was carrying a handgun, the police not only had a reasonable suspicion that he was armed and carrying a handgun, they also had probable cause to believe that he was, and it was constitutionally permissible for the police to conduct a patdown search of or to frisk him for weapons. Such a warrantless search is reasonable. FSM v. Inek, 10 FSM Intrm. 263, 266 (Chk. 2001).

In order for a warrant or a criminal summons to issue, the affidavits, or affidavits and exhibits, attached to a criminal information should make a prima facie showing of probable cause, not proof beyond a reasonable doubt. FSM v. Wainit, 10 FSM Intrm. 618, 621 (Chk. 2002).

One reason for limiting the government's right to discovery is the many other means the government has for obtaining needed information, such as the search warrant. FSM v. Wainit, 11 FSM Intrm. 1, 10 (Chk. 2002).

Frequently, a search warrant is used at the start of an investigation before charges are brought. But no statute, rule, legal principle, or constitutional provision bars its use at a later stage in the proceeding. FSM v. Wainit, 11 FSM Intrm. 1, 10 (Chk. 2002).

Rule 16(b) only concerns the limited amount of information that the government may, in very limited circumstances, seek by discovery. It is not concerned with what the government may seek to obtain through the use of a search warrant – search warrants are not "discovery." FSM v. Wainit, 11 FSM Intrm. 1, 10 (Chk. 2002).

Persons executing search warrants are required to promptly file a return with an inventory of the property seized. FSM v. Wainit, 11 FSM Intrm. 1, 10 (Chk. 2002).

In light of the prompt filing requirement for search warrant inventories, it would be unreasonable to expect the government's inventory to list every document when there are numerous documents. FSM v. Wainit, 11 FSM Intrm. 1, 10-11 (Chk. 2002).

Generally, the failure to promptly file a return with an inventory is a ministerial violation which does not void an otherwise valid search in the absence of a showing of prejudice. FSM v. Wainit, 11 FSM Intrm. 1, 11 (Chk. 2002).

The ostensible purpose of the inventory requirement is to enable the court to determine, on the face of the warrant, return and inventory, whether the seizure was properly limited to the property identified in the warrant. FSM v. Wainit, 11 FSM Intrm. 1, 11 (Chk. 2002).

An inventory which lists four file folders and how each folder is labeled, but which does not individually

list each document in the 600 pages of documents in the folders, does not show the prejudice that would void an otherwise valid search. If the inventory were found to be inadequate, the most likely remedy would be an order for the government to file a more detailed inventory, not suppression. FSM v. Wainit, 11 FSM Intrm. 1, 11 (Chk. 2002).

The inadvertent omission of a document from the search warrant inventory would, in itself, not be grounds to suppress that document. FSM v. Wainit, 11 FSM Intrm. 1, 11 (Chk. 2002).

Rule 41 only requires that a return be made promptly and be accompanied by a written inventory, not that the seized property itself be brought before the court. FSM v. Wainit, 11 FSM Intrm. 1, 12 (Chk. 2002).

A defendant is entitled to a protective order barring the admission of any of the seized items that were outside the search warrant's scope. But when there is no indication that the government intends to offer any of them in evidence, the court will not inspect each item seized and rule its relevance and whether it was outside the warrant's scope. FSM v. Wainit, 11 FSM Intrm. 1, 12 (Chk. 2002).

Stopping motorists on a public road is reasonable, even if there is no particularized suspicion of crime, but police roadblocks must be designed to advance a specific purpose, such as eradication of drunken driving, and the court must determine whether the roadblock was reasonable, through consideration of several factors: the importance of the state's interest served by the roadblock; the effectiveness of the roadblock in advancing the public interest, and the degree to which the roadblock interferes with the motorist. Kosrae v. Sigrah, 11 FSM Intrm. 249, 254 (Kos. S. Ct. Tr. 2002).

When a roadblock's purpose was to check motorists for valid driver's licenses and vehicle registrations, the roadblock was designed to advance a specific state and public interest of assuring that drivers are properly licensed to drive, and to assure that the vehicle being driven meets minimum safety standards by being registered, and it addressed problems which were associated with the persons stopped. When a roadblock was designed to advance a specific public interest and was effective in advancing that public interest because motorists were detained for a temporary and brief period of time, interfering with them only to a minimal degree, the roadblock was reasonable under the Kosrae Constitution and a warrant was not required to conduct it nor was a warrant required for the police to stop a person at the roadblock. Kosrae v. Sigrah, 11 FSM Intrm. 249, 254 (Kos. S. Ct. Tr. 2002).

When a motorist, detained at routine traffic stop for a temporary and brief period, was not arrested and was not in custody at the time he was questioned regarding his driver's license, the police questioning at the roadblock was routine questioning, conducted by government agents as part of their roadblock procedure and did not require Miranda warnings. Therefore, based upon the totality of the circumstances, that motorist was not compelled into giving incriminating evidence against himself, his right against self-incrimination was not violated by the roadblock, and the evidence thus obtained will not be suppressed. Kosrae v. Sigrah, 11 FSM Intrm. 249, 255 (Kos. S. Ct. Tr. 2002).

The requirements that a person's driver's license be in the immediate possession of the operator, and that the operator display his license to a police officer upon demand do not violate the Kosrae Constitution. Kosrae v. Sigrah, 11 FSM Intrm. 249, 257 (Kos. S. Ct. Tr. 2002).

The requirements that a person's driver's license be in the immediate possession of the operator, and that the operator display his license to a police officer upon demand do not violate the Kosrae Constitution. Kosrae v. Sigrah, 11 FSM Intrm. 249, 257 (Kos. S. Ct. Tr. 2002).

As long as probable cause still exists, it is generally accepted that a warrant need only be executed within a reasonable time after its issuance, notwithstanding the presence of "forthwith" language in the warrant. FSM v. Wainit, 11 FSM Intrm. 424, 432 (Chk. 2003).

To "execute" a search warrant does not mean a fully completed search but to "execute" is in that instance synonymous with to serve a search warrant. FSM v. Wainit, 11 FSM Intrm. 424, 433 (Chk. 2003).

Even if a search warrant was valid for execution only until 4 p.m., on September 5, 2002, the government having executed, that is served, the search warrant and begun its search before 4 p.m. on September 5th, could have continued its search after 4 p.m. on the 5th until done, even if it ran over onto the 6th. The court does not see much difference between that and securing the site with police present inside to resume physically searching the next morning. FSM v. Wainit, 11 FSM Intrm. 424, 433 (Chk. 2003).

The historical reason for restricting searches to daytime hours was that invasion of private premises in the small hours of the night and abrupt intrusion upon sleeping residents in the dark was more likely to create terror that precipitated violence. That reason does not apply to a search started in daytime that continues after dark. FSM v. Wainit, 11 FSM Intrm. 424, 433 (Chk. 2003).

Normally, a search warrant's validity is brought into question by a motion to suppress the evidence seized as a result of the questioned warrant. FSM v. Wainit, 11 FSM Intrm. 424, 434 (Chk. 2003).

The search and seizure provision of the FSM Constitution's Declaration of Rights is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. FSM v. Wainit, 11 FSM Intrm. 424, 434 (Chk. 2003).

Whoever suffers the imposition of an unlawful police search has the assurance that any evidence so acquired is rendered inadmissible in a subsequent criminal trial by the exclusionary rule and that damage remedies are available for violations of constitutional rights stemming from either an unlawful search or arrest. Both these remedies are present in the FSM. FSM v. Wainit, 11 FSM Intrm. 424, 435 (Chk. 2003).

The reasoning behind the principle barring physical resistance to an invalid search warrant is that while society has an interest in securing for its members the right to be free from unreasonable searches and seizures, society also has an interest in the orderly settlement of disputes between citizens and their government and it has an especially strong interest in minimizing the use of violent self-help in the resolution of those disputes particularly when a proper accommodation of those interests requires that a person claiming to be aggrieved by a search conducted pursuant to an allegedly invalid warrant test that claim in a court of law and not forcibly resist the warrant's execution at the place of search. This reasoning resonates even more strongly in Micronesia, where society has customarily prized peaceful and orderly resolution of disputes much higher than in the United States. FSM v. Wainit, 11 FSM Intrm. 424, 436 (Chk. 2003).

At the time the FSM Constitution was framed and adopted, the prevailing U.S. constitutional analysis of its constitutional search and seizure provision, which the FSM constitutional provision was modeled after, was that persons had no right to resist a search warrant even if that warrant was invalid. FSM v. Wainit, 11 FSM Intrm. 424, 436 (Chk. 2003).

Two old (1937 and 1924) cases that do not reflect U.S. constitutional analysis and practice at the time the FSM Constitution was drafted and adopted in the last half of the 1970's cannot be a basis for an FSM constitutional analysis of provisions adopted from and similar to a provision in the U.S. Constitution's Bill of Rights when those cases differ significantly from the constitutional analysis current in the 1970's. FSM v. Wainit, 11 FSM Intrm. 424, 436 (Chk. 2003).

Process "void on its face" usually means process that the court did not have jurisdiction to issue or that was in excess of its jurisdiction. Since the FSM Supreme Court has the jurisdiction to issue search warrants anywhere in the FSM, and the island of Udot is within the FSM's territorial jurisdiction, and on September 4, 2002, the court had jurisdiction to issue a search warrant that would be valid on September 6, 2002, a search warrant used on Udot on September 6, 2002 was not void on its face. FSM v. Wainit, 11 FSM Intrm. 424, 436 (Chk. 2003).

A defective search warrant is not a defense to a prosecution for resisting the defective warrant. FSM v. Wainit, 11 FSM Intrm. 424, 436 (Chk. 2003).

Under FSM constitutional jurisprudence, a person has no right, with some possible narrow exception, to resist a court-issued search warrant even if that search warrant turns out to be invalid. A person's remedies for being subjected to a search with an invalid search warrant are the suppression of any evidence seized, and, in the proper case, a civil suit for damages. The self-help of resistance is not a remedy and because of the Micronesian customary preference for the peaceful resolution of disputes, this conclusion is consistent not only with the FSM Constitution, but also with the social configuration of Micronesia as is required by the Constitution's Judicial Guidance Clause. FSM v. Wainit, 11 FSM Intrm. 424, 436-37 (Chk. 2003).

The issue of a search warrant's validity is not a central, or even major issue in a case of resisting a search. It is not an available defense. FSM v. Wainit, 11 FSM Intrm. 424, 437 (Chk. 2003).

Few rights are more important than the freedom from unreasonable governmental intrusion into a citizen's privacy. The FSM Supreme Court, mindful of these principles, must protect these rights from well-intentioned, but unauthorized, government action. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM Intrm. 248, 250 (Pon. 2003).

Article IV, section 5 of the FSM Constitution states that "[t]he right of the people to be secure in their persons, houses, papers, and other possessions against unreasonable search, seizure or invasion of privacy may not be violated." For article IV, section 5 purposes, a search is any governmental intrusion into an area where a person has a reasonable expectation of privacy. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM Intrm. 248, 250 (Pon. 2003).

A subscriber to an internet service in the FSM may have a reasonable expectation of privacy in the content of e-mails that are stored on the server at the FSM Telecom's offices. Even though e-mails are computer generated, digital images, they are "papers and possessions" that a person reasonably expects will be kept private, and they should not be subject to unchecked governmental intrusion or seizure. Thus, before the court can issue a warrant, it must find that there is evidence sufficiently strong to warrant a cautious person to believe that a crime has been committed. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM Intrm. 248, 251 (Pon. 2003).

Under Kosrae statute, following commission of an offense a police officer who has reasonable grounds to believe that a particular person has committed the offense may arrest the person. This establishes the standard for the arrest of a person, but it does not establish the standard for the police to conduct an investigatory stop of a vehicle. Kosrae v. Tosie, 12 FSM Intrm. 296, 299 (Kos. S. Ct. Tr. 2004).

Reasonable suspicion is required for police officers to make an investigatory stop of a vehicle. "Reasonable suspicion" is a particularized and objective basis for suspecting that a person is engaged in a criminal activity. Kosrae v. Tosie, 12 FSM Intrm. 296, 299 (Kos. S. Ct. Tr. 2004).

Generally, an anonymous tip is not sufficient justification for a stop by the police. Police need sufficient reasonable articulated suspicion. Kosrae v. Tosie, 12 FSM Intrm. 296, 299 (Kos. S. Ct. Tr. 2004).

When an officer has made a warrantless arrest by relying upon a tip from an informant, the reviewing court will evaluate the tip based upon the totality of the circumstances, including the informant's truthfulness and reliability, and the basis of his or her knowledge. Deficiency in one prong may be compensated for by a strong showing of the other. Kosrae v. Tosie, 12 FSM Intrm. 296, 299 (Kos. S. Ct. Tr. 2004).

Once the police have reasonable suspicion that the Defendant has committed a criminal offense, they may conduct an investigatory stop, which is a temporary stop to confirm or dispel the suspicion which initially induced the investigatory stop. Investigatory stops are based upon less than probable cause and are temporary in nature. The information gained at the investigatory stop is then used to confirm or dispel the initial suspicion, and then either arrest or release the defendant. Kosrae v. Tosie, 12 FSM Intrm. 296, 300 (Kos. S. Ct. Tr. 2004).

A roadblock stop where all oncoming traffic was stopped is not an arrest. Just as indubitably, such a

stop is a "seizure" within the meaning of the proscription against unreasonable search and seizures. Sigrah v. Kosrae, 12 FSM Intrm. 320, 328 (App. 2004).

The standard by which the actions of law enforcement personnel is to be measured in conducting a traffic stop is one of reasonableness. To ensure against the arbitrary invasion of an individual motorist's security and privacy interests, the stop may not involve the discretionary exercise of authority by the officers who are actually on the scene and making the stops. The stops may not be made on an ad hoc basis, but must be implemented by public safety administrative personnel as part of a legitimate, rational program intended to make the state's roads safer, and not as a means of circumventing either the probable cause or reasonable, articulable suspicion, standards that would otherwise apply to the stop of an individual motorist. The manner of stopping must be in a rational, predetermined way. Either all motorists must be stopped, or the stops must occur in a specified incremental manner, such as every second, every fifth, etc., motorist. To insure the arbitrary, discretionary conduct is not merely shifted from the officer in the field to the public safety administrator responsible for the planning and implementation of the stops, the public must be given advance notice by means of radio announcement that the stops will be held. With these safeguards in place, the state's interest in promoting roadway safety more than outweighs the intrusion upon the privacy of and momentary inconvenience to the stopped motorists. Sigrah v. Kosrae, 12 FSM Intrm. 320, 329 (App. 2004).

A checkpoint stop constitutes a mechanism for enforcing applicable laws. The roadblock itself, together with its prior announcement, is a means of causing people to take action to comply with applicable laws. When the stop is conducted in such a way that the rights conferred upon citizens under both Article II, § 1(d) of the Kosrae Constitution and Article IV, § 5 of the FSM Constitution are afforded adequate protection, the roadblock stop is not an unreasonable seizure. Sigrah v. Kosrae, 12 FSM Intrm. 320, 330 (App. 2004).

It is sufficiently plain that automobiles by their intrinsic nature implicate safety concerns. Thus it does not take a statistical analysis to make the point that they are powerful mechanical devices that must be operated in a responsible manner, and that the operation of an automobile that is not roadworthy creates a hazard for other motorists and pedestrians, and a statistical analysis, however useful it might prove, is not a critical predicate to a finding that Kosrae's program of roadway safety roadblocks is constitutional. Sigrah v. Kosrae, 12 FSM Intrm. 320, 330 (App. 2004).

A roadblock traffic stop may not involve the discretionary exercise of authority by the officers who are actually on the scene and making the stops. The stops may not be made on an ad hoc basis, but must be implemented by public safety administrative personnel as part of a legitimate rational program. To insure the arbitrary, discretionary conduct is not merely shifted from the officer in the field to the public safety administrator responsible for the planning and implementation of the stops, the public must be given advance notice by means of radio announcement that the stops will be held. Kosrae v. Robert, 13 FSM Intrm. 109, 111 (Kos. S. Ct. Tr. 2005).

The purpose of a roadblock, with proper advance notice, is a means to cause people to take action to comply with applicable laws. Kosrae v. Robert, 13 FSM Intrm. 109, 111 (Kos. S. Ct. Tr. 2005).

The state's radio announcements made from October 11 through 19, 2004, which stated that roadblocks would be implemented "throughout the year" without specifying the dates of the roadblocks, constituted a failure to announce the date or dates of the scheduled roadblocks necessarily and did not provide adequate advance notice to the public thus resulting in discretionary conduct by giving the public safety administrator and the police officers unfettered discretion to determine the dates of the roadblocks. This arbitrary and discretionary exercise of authority is not permissible. The advance notice and the roadblock held on October 22, 2004 did not provide the necessary constitutional protections and therefore all evidence obtained by the state against the defendant as a result of the roadblock is suppressed and not admissible at trial. Kosrae v. Robert, 13 FSM Intrm. 109, 112 (Kos. S. Ct. Tr. 2005).

A roadblock stop may not involve the discretionary exercise of authority by the officers who are actually on the scene and making the stops. To insure the arbitrary, discretionary conduct is not merely shifted from the officer in the field to the public safety administrator responsible for the planning and implementation of the

stops, the public must be given advance notice by means of radio announcement that the stops will be held. Kosrae v. Sikain, 13 FSM Intrm. 174, 174 (Kos. S. Ct. Tr. 2005).

The purpose of a roadblock, with proper advance notice is a means to cause people to take action to comply with applicable laws. Kosrae v. Sikain, 13 FSM Intrm. 174, 176 (Kos. S. Ct. Tr. 2005).

There are two purposes for requiring advance notice of a roadblock to the public: first, to eliminate arbitrary and discretionary conduct by the officers, and second, to cause people to take action to comply with applicable law. Accordingly, the general public, including passengers, and not just drivers, must be given advance notice. Kosrae v. Sikain, 13 FSM Intrm. 174, 176-77 (Kos. S. Ct. Tr. 2005).

The "open fields" exception requires the evidence to be in plain view from a public place. But when the police viewed the open can of beer in the defendant's hand solely as the result of an illegal roadblock at which the car was stopped and would not have viewed the can of beer if the car had not been stopped at the roadblock, the can of beer was not in plain view from a public place and the "open fields" exception is not applicable. Kosrae v. Sikain, 13 FSM Intrm. 174, 177 (Kos. S. Ct. Tr. 2005).

– Incident to an Arrest

A constitutional search may be conducted without a warrant if the search is incidental to a lawful arrest. Ludwig v. FSM, 2 FSM Intrm. 27, 32 (App. 1985).

A police officer making an arrest has a limited right to conduct a search incident to that arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Although the right to search is of limited scope, it plainly authorizes a reasonable search of the person being arrested. Ludwig v. FSM, 2 FSM Intrm. 27, 34 (App. 1985).

An officer making an arrest has a limited right to conduct a warrantless search incident to that arrest. This right to search is for the limited purposes of preventing the arrested person from reaching concealed weapons to injure the officer or others, and from destroying evidence. Yinmed v. Yap, 8 FSM Intrm. 95, 100 (Yap S. Ct. App. 1997).

A search incident to valid arrest must be confined to the person and the area from within which he or she might have reached weapons or destructible evidence and be done on the spot or later at the place of detention. Yinmed v. Yap, 8 FSM Intrm. 95, 100 (Yap S. Ct. App. 1997).

When the police, after arresting the accused and while he was being escorted away, returned to seize items that had been lying next to him when arrested did make the seizure, they did no more than they were entitled to do incident to the usual custodial arrest, and the accused was no more imposed upon than he would have been had the seizure taken place simultaneously with his arrest. The seizure was thus valid under the search incident to lawful arrest exception to the warrant rule. Yinmed v. Yap, 8 FSM Intrm. 95, 100-01 (Yap S. Ct. App. 1997).

A search that was not done at the place of the arrest and at the time of the arrest or immediately thereafter is not a valid search incident to a lawful arrest. FSM v. Aki, 9 FSM Intrm. 345, 348 (Chk. 2000).

– Inventory Search

It is not unreasonable for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures. The justification for such searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search. FSM v. Joseph, 9 FSM Intrm. 66, 72 (Chk. 1999).

A standardized procedure for inventorying an arrestee's possessions at the stationhouse is an entirely reasonable administrative procedure that not only deters an arrestee's false claims of missing or damaged property but also inhibits theft or careless handling of the arrestee's property and protects people from any dangerous instrumentalities that may be found. FSM v. Joseph, 9 FSM Intrm. 66, 72 (Chk. 1999).

An inventory search is reasonable when police follow standardized procedures and are not acting in bad faith or for the sole purpose of investigation. FSM v. Joseph, 9 FSM Intrm. 66, 72 (Chk. 1999).

Standardized or established routine must govern inventory searches because an inventory search must not be a ruse for a general rummaging in order to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory. FSM v. Joseph, 9 FSM Intrm. 66, 72 (Chk. 1999).

Because the police also looked for contraband while doing an inventory that does not mean that the search was done in bad faith or for the sole purpose of investigation. FSM v. Joseph, 9 FSM Intrm. 66, 72 (Chk. 1999).

To be valid, an inventory search must be governed by a standardized or established routine and not be a general rummaging to discover incriminating evidence. The policy or practice governing inventory searches should be designed to produce an inventory. The purpose of a standardized inventory procedure is to deter an arrestee's false claims of missing or damaged property, to inhibit theft or careless handling of an arrestee's property, and to protect against any dangerous instrumentalities that may be found. FSM v. Aki, 9 FSM Intrm. 345, 348-49 (Chk. 2000).

When the police did not follow their own standard procedure for an inventory search of a vehicle and no inventory of the sedan's contents was made, and no listing of the sedan's description and owner made, it can only be described as a warrantless search for evidence, and as such was an illegal search. FSM v. Aki, 9 FSM Intrm. 345, 349 (Chk. 2000).

– Probable Cause

While the existence of probable cause to believe that a crime has been committed and that a particular person has committed it is not in itself sufficient to justify a warrantless search, the establishment of probable cause is nevertheless critical to any unconsented search. FSM v. George, 1 FSM Intrm. 449, 460-61 (Kos. 1984).

Without probable cause, no search warrant may be obtained and no unconsented search may be conducted. FSM v. George, 1 FSM Intrm. 449, 461 (Kos. 1984).

The standard announced in the second sentence of FSM Constitution article IV, section 5 for issuance of a warrant must be employed in determining the reasonableness of a search or seizure. Imposition of a standard of probable cause for issuance of a warrant in article IV, section 5 implies that no search or seizure may be considered reasonable unless justified by probable cause. Ludwig v. FSM, 2 FSM Intrm. 27, 32 (App. 1985).

It is normally required that a hearing be held prior to seizure of a property. In extraordinary situations a seizure may take place prior to hearing, but the owner must be afforded a prompt post-seizure hearing at which the person seizing the property must at least make a showing of probable cause. Unreasonable delay in providing a post-seizure hearing may require that an otherwise valid seizure be set aside. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985).

The general requirement under article IV, section 5 of the Constitution is that before a search or seizure may occur there must exist "probable cause," that is, a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed and that the item to be seized has been used in the crime. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985).

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

In probable cause determinations the court must regard the evidence from the vantage point of law enforcement officers acting on the scene but must make its own independent determination as to whether, considering all the facts at hand, a prudent and cautious law enforcement officer, guided by reasonable training and experience, would consider it more likely than not that a violation has occurred. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 77 (Pon. 1985).

Consent, given in the face of a police request to search without the consenting person having been informed of his right to refuse consent, and without any written evidence that consent was voluntarily and knowingly given, renders such consent inadequate to permit a warrantless search absent probable cause. Kosrae v. Alanso, 3 FSM Intrm. 39, 44 (Kos. S. Ct. Tr. 1985).

Probable cause is not proof of guilt, but shows that a reasonable ground for suspicion, sufficiently strong to warrant a cautious man to believe that the accused is guilty of the offense, exists. Kosrae v. Paulino, 3 FSM Intrm. 273, 276 (Kos. S. Ct. Tr. 1988).

Because the purpose of article IV, section 5 of the Constitution is to protect the privacy rights of individuals against unreasonable and unauthorized searches and seizures by government officials it has been interpreted to require that an individual suspected of a crime be released from detention unless the government can establish "probable cause" to hold that individual. FSM v. Zhong Yuan Yu No. 621, 6 FSM Intrm. 584, 588 (Pon. 1994).

The standard for determining probable cause is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. The probable cause determination must be made by the deliberate, impartial, judgment of a judicial officer. FSM v. Zhong Yuan Yu No. 621, 6 FSM Intrm. 584, 588-89 (Pon. 1994).

Often the determination of probable cause is made by a competent judicial officer upon the issuance of an arrest warrant, but where an arrest is not made pursuant to a warrant the arrested is entitled to a judicial determination as to whether there is probable cause to detain the accused. FSM v. Zhong Yuan Yu No. 621, 6 FSM Intrm. 584, 589 (Pon. 1994).

A probable cause hearing is an informal, non-adversarial proceeding in which the formal rules of evidence and the requirement of proof beyond a reasonable doubt do not apply. FSM v. Zhong Yuan Yu No. 621, 6 FSM Intrm. 584, 589 (Pon. 1994).

An individual whose property has been seized pursuant to a civil forfeiture proceeding is entitled to a post-seizure hearing in order to determine whether there is probable cause to seize and detain that property. The probable cause standard in a civil forfeiture case is whether there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation has occurred and that the property was used in that violation. FSM v. Zhong Yuan Yu No. 621, 6 FSM Intrm. 584, 589-90 (Pon. 1994).

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

In a post-seizure probable cause hearing in a civil forfeiture case the standard for finding that the FSM has probable cause to seize a fishing vessel is defined by reference to 24 F.S.M.C. 513(2). FSM v. Yue Yuan Yu No. 708, 7 FSM Intrm. 300, 302 n.1 (Kos. 1995).

A court may rely on hearsay evidence for the purpose of finding probable cause at a post-seizure hearing. FSM v. Yue Yuan Yu No. 708, 7 FSM Intrm. 300, 303 (Kos. 1995).

Although procedural and evidentiary rules are relaxed at a probable cause hearing a prosecutor may not rely solely on hearsay evidence when other, more competent testimony is available. FSM v. Yue Yuan Yu No. 708, 7 FSM Intrm. 300, 304 (Kos. 1995).

Representations of counsel in a probable cause hearing are not a substitute for competent, reliable evidence in the form of testimony or appropriately detailed affidavits. FSM v. Yue Yuan Yu No. 708, 7 FSM Intrm. 300, 305 (Kos. 1995).

The Due Process Clause does not require an immediate post-seizure probable cause hearing in advance of a civil forfeiture trial. It only requires that the government begin the forfeiture action within a reasonable time of the seizure. FSM v. Skico, Ltd. (II), 7 FSM Intrm. 555, 557 (Chk. 1996).

A search warrant may not issue except on probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized. FSM v. Santa, 8 FSM Intrm. 266, 268 (Chk. 1998).

To determine probable cause, the question is whether a substantial probability exists in the mind of a cautious person which leads him or her to conclude that the items to be seized that are the evidence of a crime are in a particular place at the time the warrant is issued – probable cause upon which a valid search warrant must be based must exist at the time at which the warrant is issued, not at some earlier time. FSM v. Santa, 8 FSM Intrm. 266, 269 (Chk. 1998).

Although crucial, the time lapse is not considered in isolation from other factors when determining probable cause. The passage of time is not necessarily a controlling factor in determining the existence of probable cause because a court should also evaluate the nature of the criminal activity and the kind of property for which authorization is sought. FSM v. Santa, 8 FSM Intrm. 266, 269 (Chk. 1998).

First-hand information from a reliable informant that firearms were left in a particular building and other firearms were packed and shipped to that address months earlier will establish probable cause of illegal possession of firearms because firearms are something that do not deteriorate or pass away just through the passage of time and are usually left in just one position where kept and rarely, if ever, used, and delivery and then continued possession after receipt as a continuing matter may be inferred. FSM v. Santa, 8 FSM Intrm. 266, 269 (Chk. 1998).

It is not unreasonable for police, as part of the routine procedure incident to incarcerating an arrested person, to search any container or article in his possession, in accordance with established inventory procedures. The justification for such searches does not rest on probable cause, and hence the absence of a warrant is immaterial to the reasonableness of the search. FSM v. Joseph, 9 FSM Intrm. 66, 72 (Chk. 1999).

The police had probable cause to stop a sedan and detain its driver when they found it headed northbound a short time after it almost collided with a police car while it was speeding southbound and passing another southbound vehicle because the sedan had tinted windows and the police had no reason to believe that the sedan had switched drivers in the short time since they had last seen it. FSM v. Aki, 9 FSM Intrm. 345, 348 (Chk. 2000).

When the police received the information from a known independent source that a person was carrying a handgun, the police not only had a reasonable suspicion that he was armed and carrying a handgun, they also had probable cause to believe that he was, and it was constitutionally permissible for the police to conduct a patdown search of or to frisk him for weapons. Such a warrantless search is reasonable. FSM v. Inek, 10 FSM Intrm. 263, 266 (Chk. 2001).

Probable cause is a higher standard than reasonable suspicion. FSM v. Inek, 10 FSM Intrm. 263, 266 (Chk. 2001).

Probable cause exists when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more likely than not that a violation of the law has occurred and that the accused committed that violation. FSM v. Wainit, 10 FSM Intrm. 618, 621 (Chk. 2002).

The finding of probable cause may be based upon hearsay evidence in whole or in part. FSM v. Wainit, 10 FSM Intrm. 618, 621 (Chk. 2002).

A probable cause determination must be made by the deliberate, impartial, judgment of a judicial officer. FSM v. Wainit, 10 FSM Intrm. 618, 622 (Chk. 2002).

The statute of limitations is no part of any definition of probable cause. Probable cause is present when there is evidence and information sufficiently persuasive to warrant a cautious person to believe it is more

likely than not that a violation of the law has occurred and that the accused committed that violation. That the violation of law occurred within the statute of limitations is not an element that must be shown for probable cause to exist. FSM v. Wainit, 12 FSM Intrm. 105, 108 (Chk. 2003).

Before a search or seizure may occur, there must exist "probable cause," that is, a reasonable ground for suspicion, sufficiently strong to warrant a cautious person to believe that a crime has been committed and that the item to be seized has been used in the crime. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM Intrm. 248, 251 (Pon. 2003).

Probable cause has not been provided that a crime has been committed and an application for a search warrant will be denied when the criminal law cited requires a showing that an individual threaten harm to a public official "with purpose to influence" a public official in a decision making capacity and the e-mails' language is ambiguous, and does not necessarily threaten harm to any public official and do not reference any decision, opinion, recommendation, vote, or other exercise of discretion by any FSM Immigration personnel and even if the court were to read the e-mails as serious threats to do harm, there is no connection between the threatened harm and any action by Immigration officials that could possibly be influenced. In re FSM Nat'l Police Case No. NP 10-04-03, 12 FSM Intrm. 248, 251 (Pon. 2003).

A police officer may, as a general rule, consider any evidence in determining whether reasonable suspicion or probable cause exists. The information may be provided by an informer. Police should consider the underlying circumstances from which the informer drew his conclusion. Some of the underlying circumstances must show that the informant was reliable. However, evidence to establish reasonable suspicion or probable cause may be entirely based upon hearsay. The general rule is that virtually any evidence may be considered. Kosrae v. Tosie, 12 FSM Intrm. 296, 299 (Kos. S. Ct. Tr. 2004).

Reasonable grounds or probable cause exist when factors and circumstance within the arresting officer's knowledge are sufficient to warrant a man of reasonable caution to believe an offense has been committed. For the offense of driving under the influence, these circumstances include odor of alcohol, results of the field sobriety tests, appearance and mannerism of intoxication, slurring of speech, and unsteady movement. Kosrae v. Tosie, 12 FSM Intrm. 296, 300 (Kos. S. Ct. Tr. 2004).

A criminal prosecution for driving under the influence will not be dismissed when the police officers had sufficient reasonable suspicion to conduct an investigatory stop of the defendant because the reasonable suspicion was supplied by an informant, whose identity, credibility, reputation and reliability were known. When at the investigatory stop, the police observed signs of the defendant's alcohol impairment, these signs provided grounds for the police to administer the field sobriety tests to the defendant, and when the defendant failed two field sobriety tests, it gave the police reasonable grounds and probable cause for defendant's commission of driving under the influence and probable cause to arrest the defendant. Kosrae v. Tosie, 12 FSM Intrm. 296, 300 (Kos. S. Ct. Tr. 2004).

– Return of Seized Property

For a court to order property seized pursuant to a search warrant to be returned, the defendants' burden is to show both that there has been an illegal seizure by the state and that they have a claim of lawful possession to the property. Chuuk v. Mijares, 7 FSM Intrm. 149, 150 (Chk. S. Ct. Tr. 1995).

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

For a party to have a valid claim of lawful possession of alcohol seized by the state that party must have paid the possession tax on the seized items. Chuuk v. Mijares, 7 FSM Intrm. 149, 150 (Chk. S. Ct. Tr. 1995).

Where a defendant's motion is one for the return of seized property and he has failed to meet his burden to show a right to lawful possession, a court need not reach the issue of the illegal seizure and suppression of the evidence. Chuuk v. Mijares, 7 FSM Intrm. 149, 151 (Chk. S. Ct. Tr. 1995).

Because a Rule 41(e) motion for return of seized property is predicated on the seizure's illegality and the showing of a right to possession, return of unregistered firearms is improper because possession of unregistered firearms is unlawful there is thus no right to possession. FSM v. Santa, 8 FSM Intrm. 266, 268 (Chk. 1998).

A criminal defendant has the right to move for the return of his property pursuant to Rule 41(e). This offers prompt and adequate relief for his grievance. FSM v. Joseph, 8 FSM Intrm. 469, 470 (Chk. 1998).

The government may retain property seized from a criminal defendant that is not contraband or subject to forfeiture when it intends to offer the items in evidence at trial, and has a plausible reason for so intending. FSM v. Joseph, 8 FSM Intrm. 469, 470 (Chk. 1998).

The court shall receive evidence on any issue of fact necessary to decide a motion for return of property. FSM v. Aki, 9 FSM Intrm. 345, 349 (Chk. 2000).

A Rule 41(e) motion to return seized property the government claims it never had will be treated as a civil proceeding and may be entertained post-judgment or prejudgment. FSM v. Aki, 9 FSM Intrm. 345, 349-50 (Chk. 2000).

To prevail in his motion the defendant must show that the seizure of the property was illegal, and that he is entitled to lawful possession. The burden of persuasion as to the possession is by a preponderance of the evidence. FSM v. Aki, 9 FSM Intrm. 345, 350 (Chk. 2000).

When the defendant has established by a preponderance of the evidence that the $900 existed, that it was in his briefcase, that it was taken from his briefcase sometime after the police obtained the briefcase and before it was returned, and that he is entitled to lawful possession of the $900.00, a motion to return will be granted and since that money is not in the possession of the government, the defendant shall have judgment against the state for $900.00. FSM v. Aki, 9 FSM Intrm. 345, 350 (Chk. 2000).

SEPARATION OF POWERS

When Congress has passed a statute, executive branch and judiciary branch members may not decide among themselves to reassign the decision-making responsibilities set forth in the statute. Suldan v. FSM (I), 1 FSM Intrm. 201, 205 (Pon. 1982).

While the Judiciary must resolve disputes legitimately placed before it, it may not usurp legislative functions by making declarations of policy or law beyond those necessary to resolve disputes nor undertake administrative functions of the kind normally consigned to the Executive Branch where this is not necessary to carry out the judicial function. In re Sproat, 2 FSM Intrm. 1, 4 (Pon. 1985).

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

Although the internal management of a jail or prison is, subject to compliance with constitutional requirements, a function of the executive branch, the legislature controls the overall sentencing scheme through statute. Soares v. FSM, 4 FSM Intrm. 78, 82 (App. 1989).

In the absence of legislative action saying otherwise, it is the sentencing order, not the jailer or any member of the executive branch, which determines whether the prisoner is to be confined, and for how long. Soares v. FSM, 4 FSM Intrm. 78, 82 (App. 1989).

A national senator has no power to release national prisoners confined for violation of laws enacted by the national Congress. Soares v. FSM, 4 FSM Intrm. 78, 83 (App. 1989).

The Joint Law Enforcement Agreement between the State of Truk and the national government in no

way affects the ability of a national court to require a jailer who has accepted custody of a prisoner to act in conformity with the sentencing order governing the confinement of the prisoner. Soares v. FSM, 4 FSM Intrm. 78, 84 (App. 1989).

To the extent that Secretarial Order 3039 can be read as permitting the Trust Territory High Court to continue, after the FSM Supreme Court had begun functioning, to control cases assigned by the FSM Constitution to the FSM Supreme Court, that exercise by Congress of the transitional power under the Constitution could run counter to other specific provisions of the Constitution, especially the judiciary article, and to fundamental principles of the separation of powers; any extension by the Trust Territory High Court of the powers assigned to it under Secretarial Order 3039 would violate those same constitutional provisions and principles. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 106 (App. 1989).

The power of the President to appoint executive branch officers is not absolute, but is subject to check by the advice and consent of Congress. Sohl v. FSM, 4 FSM Intrm. 186, 197 (Pon. 1990).

The determination of whether stockholders and directors should be protected at the expense of the general public and the employees of the corporation is, at the bottom, a policy choice of the kind that legislatures are better equipped than courts to make. Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 376, 385 (Pon. 1990).

Where the record fails to reflect that the functions of the judiciary have been prevented or substantially impaired by the financial management and fiscal powers exercised by the Secretary of Finance, the judiciary has not been deprived of its essential role and constitutional independence. Mackenzie v. Tuuth, 5 FSM Intrm. 78, 84 (Pon. 1991).

The Constitution mandates that the Chief Justice by rule may govern the admission to practice of attorneys, but a rule which differentiates between FSM citizens and noncitizens inherently relates to the regulation of immigration and foreign relations which are powers expressly delegated to the other two branches of government. Berman v. Pohnpei, 5 FSM Intrm. 303, 305 (Pon. 1992).

The Chief Justice has the constitutional authority to make rules for the appointment of special judges, and Congress has the constitutional authority to amend them. Congress has provided the Chief Justice with the statutory authority to appoint temporary justices. Where Congress has acted pursuant to its constitutional authority to provide statutory authority to the court, the court need not have exercised its concurrent rule-making authority. Jano v. King, 5 FSM Intrm. 326, 331 (App. 1992).

Congress and the President respectively have the power to regulate immigration and conduct foreign affairs while the Chief Justice may make rules governing the admission of attorneys. Therefore a rule of admission that treats aliens unequally promulgated by the Chief Justice implicates powers expressly delegated to other branches. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 366 (Pon. 1992).

Without a rational valid basis for the rule limiting the number of times an alien may take the bar exam it will be held unconstitutional even if it would be constitutional if the regulation were made by Congress or the President. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 367 (Pon. 1992).

Conduct of foreign affairs and the implementation of international agreements are properly left to the non-judicial branches of government. The judicial branch has the power to interpret treaties. In re Extradition of Jano, 6 FSM Intrm. 93, 103 (App. 1993).

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

In order for a Congressional statute to give the court valid authority in those areas which the Constitution

grants the Chief Justice rule-making powers the Chief Justice does not first have to promulgate a rule before Congress may legislate on the same subject. Hartman v. FSM, 6 FSM Intrm. 293, 297 (App. 1993).

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

Courts and administrative agencies alike may not encroach upon the lawmaking responsibility reserved to the legislature. Klavasru v. Kosrae, 7 FSM Intrm. 86, 91 (Kos. 1995).

Congress has not unconstitutionally delegated its authority to define crimes by delegating to an executive agency the power to enter into fishing agreements because congressional approval is needed for these agreements to take effect. FSM v. Cheng Chia-W (I), 7 FSM Intrm. 124, 127 (Pon. 1995).

When Congress has specifically given Social Security, not the courts, the discretion to levy a penalty and limited that discretion to $1,000 a quarter and Social Security has exercised its discretion by levying a penalty less than that allowed by the statute, the court is generally bound to enforce it. The courts cannot usurp the power Congress granted to another governmental body. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM Intrm. 129, 133 (App. 1997).

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

When a Senator tells a public agency what projects are approved and the agency then carries out his decisions, it is Congress, not the executive, that is executing and implementing the public law. Udot Municipality v. FSM, 9 FSM Intrm. 418, 420 (Chk. 2000).

Specific powers are given to each branch of the government. When Congress is executing and implementing a national law, a power expressly delegated to the executive branch, it abridges the executive's power to execute and implement national laws. Udot Municipality v. FSM, 9 FSM Intrm. 418, 420 (Chk. 2000).

While FSM Supreme Court may determine the constitutionality under the FSM Constitution of a specific legislative act, there is no authority where a court has either ordered a legislative body to perform a specified legislative function, or held such a body in contempt for not performing that function. Davis v. Kutta, 10 FSM Intrm. 98, 99 (Chk. 2001).

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

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

Specific powers are given to each branch of the government and a public law that abridges the executive's power to execute and implement national laws may be enjoined. Udot Municipality v. FSM, 10 FSM Intrm. 354, 357 (Chk. 2001).

Because Congress has the statutory authority to name allottees other than the President or his designee, the court will deny a request for an order prohibiting defendants from ever again being allottees of FSM money. Udot Municipality v. FSM, 10 FSM Intrm. 354, 359 (Chk. 2001).

The constitutional principle of separation of powers is still violated when the public law only requires that those seeking funds for improvement projects must consult with the relevant congressman before the funds are obligated instead of requiring consultation and approval by the congressman. Udot Municipality v. FSM, 10 FSM Intrm. 354, 359 (Chk. 2001).

Congress can give as much guidance as it wishes in the appropriation legislation about which projects will be funded, and much of this guidance will, no doubt, be the product of individual congressmen's consultation with their constituents. But this consultation takes place before the appropriation bill becomes law, not afterwards. After the appropriation bill has become law, it is the duty of those who execute the law and administer the funds to follow the guidance Congress has given them by consulting the language Congress put in the public law, and any applicable regulations, not by consulting individual congressmen. Udot Municipality v. FSM, 10 FSM Intrm. 354, 359-60 (Chk. 2001).

Fund categories that were formulated as the result of an unconstitutional "consultation" process with congressmen may effectively be disregarded whenever a new process is implemented to determine in a constitutionally proper manner where, how, and what to spend the improvement project money on. Udot Municipality v. FSM, 10 FSM Intrm. 354, 360 (Chk. 2001).

As a matter of law, some official government action is required before a violation of the doctrine of separation of powers can occur. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 630 (Pon. 2002).

The concept of separation of powers is inherent in the FSM Constitution's structure. Each branch of the FSM government has specific powers and duties enumerated in the Constitution's text. Thus, each branch should restrain itself to exercise only those powers which the people of the FSM have granted to it in the Constitution: any power exercised by a branch of the government that is beyond that which the Constitution granted to that branch violates the Constitution and is null and void. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 630 (Pon. 2002).

Any attempt by one branch to usurp the powers that the FSM Constitution explicitly grants to another branch violates the FSM Constitution and is invalid. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 631 (Pon. 2002).

The essence of the separation of powers concept is that each branch, acting within the sphere of its defined powers and subject to the distinct institutional responsibilities of the others, is essential to the liberty and security of the people. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 631 (Pon. 2002).

The separation of powers among the three branches is intended to be a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of another. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 631 (Pon. 2002).

Acts of individual senators can result in a public law being declared unconstitutional in its application. However, at a minimum, the acts of individual senators must be acts done in their official capacities as senators to establish any constitutional violation. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 631 (Pon. 2002).

The doctrine of separation of powers is not violated every time a person, who happens to be a senator, allegedly misuses property that is traceable to an appropriation made under national law. If a senator takes a car, boat, desk, computer, or pen that rightfully is in the possession of another person or entity, he should bear the same responsibility and consequences as any other person: he could be charged criminally, or sued in a civil action by the rightful owner for conversion of that property. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 632 (Pon. 2002).

The separation of powers doctrine provides that in the tripartite government structure – i.e., the legislative, executive, and judiciary branches – that prevails at the state and national levels in the FSM, each

branch may exercise only the particular powers with which it has been constitutionally endowed. Through history and practice, this has meant that the legislature enacts the laws, the executive executes or enforces the laws, and the judiciary, by resolving disputes that come before it in specific cases, interprets the laws. Sigrah v. Speaker, 11 FSM Intrm. 258, 260 (Kos. S. Ct. Tr. 2002).

The separation of powers doctrine fortifies the government's constitutional makeup by requiring that each government branch exercise its assigned powers independently of the other two branches. Sigrah v. Speaker, 11 FSM Intrm. 258, 260 (Kos. S. Ct. Tr. 2002).

While the naked right to legislate may not be delegated, the power to enforce legislation and to enlarge on standards defined in a statute can be delegated if the statute contains reasonable guidance and reasonable definition of the standards to be employed and the matter that is to be regulated. In order for the delegation of legislative authority to pass constitutional muster, there must be a delineation of policy, a designation of the agency to implement it, and a statement of the outer boundaries of the authority delegated. Sigrah v. Speaker, 11 FSM Intrm. 258, 261 (Kos. S. Ct. Tr. 2002).

Our Constitution commits to the executive branch the conduct of foreign affairs, just as it vests the judicial power in the Supreme Court and such other courts as may be established by statute. Although these powers are categorically assigned, they are not in their exercise subject to the same degree of precision. Foreign sovereign immunity is inescapably a part of foreign affairs, but it can be offered as a defense in a lawsuit. Inter-branch comity is the means by which these parallel, if not competing, concerns are recognized and integrated. McIlrath v. Amaraich, 11 FSM Intrm. 502, 506 (App. 2003).

Interbranch comity may manifest itself in the judicial branch's deference to the executive branch on the issue of foreign sovereign immunity. Some mechanism must be available to implement this procedure. The appellate division is disinclined to view the trial court's language that "ordered" the Department of Foreign Affairs to file the amicus curiae brief as transforming comity into a coercion that divested the Department of its discretion. McIlrath v. Amaraich, 11 FSM Intrm. 502, 506-07 (App. 2003).

When all that the order required was that the Department of Foreign Affairs file an amicus curiae brief, it did not require the Department to decide the issue one way or another, or for any opinion at all. But what it did do was elicit a minimal degree of interaction between the two branches involved so that the executive branch's position, or even lack of one, would become known to the judicial branch. McIlrath v. Amaraich, 11 FSM Intrm. 502, 507 (App. 2003).

Inter-branch comity is a two-way street. Just as the trial court's order recognized that the question of the foreign sovereign immunity putatively enjoyed by the defendants in the underlying case was appropriately decided by the executive branch's Department of Foreign Affairs, so the executive branch should participate in this process by giving its opinion on the matter, even if this means stating that it has no opinion. McIlrath v. Amaraich, 11 FSM Intrm. 502, 507 (App. 2003).

The doctrine of separation of powers among the three branches of the national government is built into the Constitution by its very structure and the explicit language in Articles IX, X, and XI. These articles provide each branch its own specific powers and this structure provides for the independence of each branch in a system of checks and balances wherein no one branch of government may encroach upon another's domain. FSM v. Udot Municipality, 12 FSM Intrm. 29, 48 (App. 2003).

On its most fundamental plane, the separation of powers doctrine protects the whole constitutional structure by requiring that each branch retain its essential powers and independence. FSM v. Udot Municipality, 12 FSM Intrm. 29, 48 (App. 2003).

The standard for determining whether there is an improper interference with or delegation of the independent power of a branch is whether the alteration prevents or substantially impairs performance by the branch of its essential role in the constitutional system. FSM v. Udot Municipality, 12 FSM Intrm. 29, 48 (App. 2003).

Once a public law is enacted, the responsibility for the execution and implementation of the law rests with those who have a duty to execute and administer the law, and Senators can have no further role in its execution. FSM v. Udot Municipality, 12 FSM Intrm. 29, 49 (App. 2003).

The execution and implementation of the laws is an executive rather than a legislative function. FSM v. Udot Municipality, 12 FSM Intrm. 29, 50 (App. 2003).

A public law that specifically provides that a Congressional delegation must be consulted on the most appropriate usage of the funds before an obligation could occur runs afoul of the Constitution because it empowers the Congressional delegation to engage in an executive function by formally involving itself in executing and implementing the appropriation. Congress cannot pass laws and vest in itself or its members the power to control how that law is executed. FSM v. Udot Municipality, 12 FSM Intrm. 29, 50 (App. 2003).

The constitutional demarcation of powers to the three branches of the national government was established with deliberate design and purpose. The intended effect was to create a system of checks and balances between the national government's branches such that no one branch could encroach upon the power of another branch and thereby dominate the others. FSM v. Udot Municipality, 12 FSM Intrm. 29, 51 (App. 2003).

The standard for determining whether there is an improper interference with the independent power of a branch of government is whether the action of one branch substantially impairs another branch's performance of its essential role in the constitutional system. FSM v. Udot Municipality, 12 FSM Intrm. 29, 51 (App. 2003).

Congress's enactment preventing obligation of funds unless and until the allottees engaged in "consultation" with the relevant Congressional delegation, substantially impaired the allottees' performance in executing and implementing the law, which is the executive's essential and exclusive role under our Constitution. By legislating "consultation" before obligation requirement into the law, the Congress encroached upon an executive function and assumed more power than it is allowed in our constitutional system of checks and balances, thus violating the separation of powers doctrine. FSM v. Udot Municipality, 12 FSM Intrm. 29, 51 (App. 2003).

– Chuuk

A Chuuk state statute authorizing Chuuk state senators to designate the particular projects to be financed from state funds for their own election districts was violative of the separation of powers between the executive and legislative branches of the state government, and of the right of municipalities to select their own development projects, all as provided in the Chuuk Constitution. Akapito v. Doone, 4 FSM Intrm. 285, 286 (Chk. S. Ct. Tr. 1990).

The ultimate interpretation of any provisions of the Chuuk State Constitution is within the sole authority of the Chuuk State Supreme Court, as the ultimate interpreter of the Constitution, and that includes the authority to interpret the meaning of whether a matter has been committed by the Constitution to another branch of government, or whether the action of that branch exceeds its authority. Robert v. Chuuk State House of Representatives, 6 FSM Intrm. 260, 264 (Chk. S. Ct. Tr. 1993).

The constitutional provision making the House the sole judge of the qualification of its members does not automatically preclude the Chuuk State Supreme Court from having jurisdiction to decide if a member-elect of the legislature has been excluded from membership on unconstitutional grounds; nor is the court's jurisdiction over alleged unconstitutional applications of the Legislature's powers necessarily precluded by the political question doctrine. The court ultimately has the power to determine if the Legislature has exercised its powers in an unconstitutional and invalid manner. Robert v. Chuuk State House of Representatives, 6 FSM Intrm. 260, 264-65 (Chk. S. Ct. Tr. 1993).

Policy determinations by other branches of the government are always to be given wide latitude when

under judicial review, and policy determinations within the constitution itself must therefore receive the widest possible latitude when under review. Robert v. Chuuk State House of Representatives, 6 FSM Intrm. 260, 269 (Chk. S. Ct. Tr. 1993).

Courts will not attempt to interfere with or control the exercise of discretionary powers, in the absence of any controlling provisions in the law conferring the power. The fact that the exercise of a power may be abused is not a sufficient reason for denying its existence. Thus, it is a firmly established rule that the judiciary will not interfere with executive officers in the performance of duties which are discretionary in their nature or involve the exercise of judgment. Chipen v. Reynold, 9 FSM Intrm. 148, 150 (Chk. S. Ct. Tr. 1999).

The principle of avoiding constitutional questions was conceived out of considerations of sound judicial administration and is in accord with the principle of separation of powers of government. Pacific Coast Enterprises v. Chuuk, 9 FSM Intrm. 543, 545 (Chk. S. Ct. Tr. 2000).

Neither the Director of Treasury nor the Governor may use or direct the use of monies appropriated to pay judgments against the state for any purpose other than to pay judgments. Narruhn v. Chuuk, 11 FSM Intrm. 48, 54 (Chk. S. Ct. Tr. 2002).

Money appropriated to pay judgments against the state may not be used to pay "settlements" or "claims" against the state which have not been reduced to judgment. Narruhn v. Chuuk, 11 FSM Intrm. 48, 54 (Chk. S. Ct. Tr. 2002).

The separation of powers doctrine precludes the Chuuk State Supreme Court from exercising jurisdiction over the claims that the plaintiff should be speaker of a municipal legislature and will dismiss the action. Anopad v. Eko, 11 FSM Intrm. 287, 290 (Chk. S. Ct. Tr. 2002).

– Chuuk – Executive Powers

Because the Office of the Chuuk Attorney General is not a constitutional officer but rather is a principal officer of the executive and advisor to the governor and serves at his pleasure the Chuuk Attorney General cannot prosecute the governor. That would be the constitutional responsibility of the Independent Counsel. In re Legislative Subpoena, 7 FSM Intrm. 259, 260 (Chk. S. Ct. Tr. 1995).

The governor does not have free rein to use the Attorney General's Office to litigate private matters outside the scope of his duties as governor, but until such time as he ceases to be able to act as governor pursuant to a bill of impeachment or other constitutional process he may utilize that office's services to litigate such matters as concern his acts as governor. In re Legislative Subpoena, 7 FSM Intrm. 259, 261 (Chk. S. Ct. Tr. 1995).

For the Chuuk Governor to veto a bill he must both disapprove it and return it to the house in the legislature in which it originated within ten days of it being presented to him. Otherwise it becomes law in like manner as if he had signed it. Chuuk State Supreme Court v. Umwech (I), 7 FSM Intrm. 600, 601 (Chk. S. Ct. Tr. 1996).

The Chuuk Governor's constitutional power to declare an emergency is discretionary. Whether an abuse exists is determined by an "arbitrary and capricious" standard. Aizawa v. Chuuk State Election Comm'r, 8 FSM Intrm. 275, 280 (Chk. S. Ct. Tr. 1998).

The validity of the action taken following the declaration of emergency is determined by whether it was taken in good faith and in the honest belief of its necessity. Aizawa v. Chuuk State Election Comm'r, 8 FSM Intrm. 275, 280 (Chk. S. Ct. Tr. 1998).

Executive orders must meet constitutional standards the same as acts of legislative bodies. Lokopwe v. Walter, 10 FSM Intrm. 303, 306 (Chk. S. Ct. Tr. 2001).

While the principal officers and advisors serve during the current term of the appointing Governor unless sooner removed by the Governor, the dismissal of non-policy making employees from public employment solely on the ground of political affiliation is not permissible. Lokopwe v. Walter, 10 FSM Intrm. 303, 306 (Chk. S. Ct. Tr. 2001).

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

The executive power is the power to execute, or carry the laws into effect, as distinguished from the power to make the laws and the power to judge them. All executive power is granted by the constitution, and the executive branch can exercise no power not derived from it. Lokopwe v. Walter, 10 FSM Intrm. 303, 307 (Chk. S. Ct. Tr. 2001).

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

Neither the Director of Treasury nor the Governor may use or direct the use of monies appropriated to pay judgments against the state for any purpose other than to pay judgments. Narruhn v. Chuuk, 11 FSM Intrm. 48, 54 (Chk. S. Ct. Tr. 2002).

Money appropriated to pay judgments against the state may not be used to pay "settlements" or "claims" against the state which have not been reduced to judgment. Narruhn v. Chuuk, 11 FSM Intrm. 48, 54 (Chk. S. Ct. Tr. 2002).

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

Neither the constitutional nor the statutory provision directs the Governor to implement the provisions that each municipality adopt its own constitution. The direction is aimed at the others – the municipalities and the Legislature. Buruta v. Walter, 12 FSM Intrm. 289, 294 (Chk. 2004).

No authority, constitutional or statutory, grants the Governor the power to appoint (or to remove) municipal officials. Executive orders must meet constitutional standards, the same as acts of legislative bodies. Buruta v. Walter, 12 FSM Intrm. 289, 294 (Chk. 2004).

The Chuuk Governor's constitutional power to declare an emergency is discretionary. Whether an abuse of discretion exists is determined by the arbitrary and capricious standard. The validity of an action taken following the declaration of emergency is determined by whether it was taken in good faith and in the honest belief of its necessity. Buruta v. Walter, 12 FSM Intrm. 289, 294 (Chk. 2004).

A Governor's proclamation that finds that it was the intentional failure of the incumbent mayor and council that caused the lack of a municipal constitution and funding for the 2003 municipal election, but which continues those officials in office indefinitely until a constitution is adopted and an election is held but with no incentive to do either of those things and with every incentive not to, can only be termed arbitrary and capricious. Since the proclamation is arbitrary and capricious and exercises powers for which the Governor has no apparent authority, it is void. Buruta v. Walter, 12 FSM Intrm. 289, 294 (Chk. 2004).

A Governor's proclamation that continues municipal officials in office indefinitely, violates the people's rights to substantive due process, in that they have no say in their municipal government since all of its officials are now appointed by and now hold office due to the Governor; and to equal protection of the laws, in that the municipal citizens are treated differently based on their ancestry (they and their ancestors are from Romalum) from citizens of other Chuuk municipalities in not being allowed an elected municipal government. Buruta v. Walter, 12 FSM Intrm. 289, 295 (Chk. 2004).

– Chuuk – Judicial Powers

The Chuuk State Supreme Court has constitutional jurisdiction to review the actions of any state administrative agency, and decide all relevant questions of law, interpret constitutional and statutory provisions and determine the meaning or applicability of the terms of an agency action. Robert v. Mori, 6 FSM Intrm. 178, 179 (Chk. S. Ct. Tr. 1993).

The ultimate interpretation of any provisions of the Chuuk State Constitution is within the sole authority of the Chuuk State Supreme Court, as the ultimate interpreter of the Constitution, and that includes the authority to interpret the meaning of whether a matter has been committed by the Constitution to another branch of government, or whether the action of that branch exceeds its authority. Robert v. Chuuk State House of Representatives, 6 FSM Intrm. 260, 264 (Chk. S. Ct. Tr. 1993).

The constitutional provision making the House the sole judge of the qualification of its members does not automatically preclude the Chuuk State Supreme Court from having jurisdiction to decide if a member-elect of the legislature has been excluded from membership on unconstitutional grounds; nor is the court's jurisdiction over alleged unconstitutional applications of the Legislature's powers necessarily precluded by the political question doctrine. The court ultimately has the power to determine if the Legislature has exercised its powers in an unconstitutional and invalid manner. Robert v. Chuuk State House of Representatives, 6 FSM Intrm. 260, 264-65 (Chk. S. Ct. Tr. 1993).

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

A court should not order a traditional apology, compensation, and settlement when none has been offered voluntarily because traditional settlements are customarily non-adversarial and arrived at without outside coercion and court decisions must be consistent with custom. Alafonso v. Sarep, 7 FSM Intrm. 288, 290-91 (Chk. S. Ct. Tr. 1995).

A party may seek declaratory relief from the Chuuk State Supreme Court even though it may have another available remedy, but there must be an actual controversy between the parties and the matter must be within the court's jurisdiction. The court has discretion to entertain such actions if appropriate. Truk Shipping Co. v. Chuuk, 7 FSM Intrm. 337, 339, 342 (Chk. S. Ct. Tr. 1995).

It is the duty of the court in the proper case to determine whether an act of the government, including acts of the Legislature, is in conformance with the supreme law of the state. Any such act that violates the Chuuk Constitution violates the supreme law of Chuuk and must be treated as null and void. Sauder v. Chuuk State Legislature, 7 FSM Intrm. 358, 361 (Chk. S. Ct. Tr. 1995).

At least three justices hear all appeals in the Chuuk State Supreme Court appellate division with the decision by a concurrence of a majority of the justices sitting on the appellate panel, but a single justice may make necessary orders concerning failure to take or prosecute the appeal in accordance with applicable law and procedure. Wainit v. Weno, 9 FSM Intrm. 160, 162 (App. 1999).

In the Chuuk Constitution there is a distinction between a "decision," which must be by a majority of the appellate justices assigned to hear the case, and "orders," which a single appellate justice may make. A

"decision" means the final determination of the appeal. Wainit v. Weno, 9 FSM Intrm. 160, 162 (App. 1999).

An action of a Chuuk State Supreme Court single appellate justice may be reviewed by the court. This provides a means whereby a single justice "order" may become the appellate panel's dispositive "decision." Wainit v. Weno, 9 FSM Intrm. 160, 162-63 (App. 1999).

The court lacks jurisdiction over the subject matter or the complaint does not state a claim or cause of action upon which relief can be granted when it asks the court to hold the removal of the Speaker and Vice-Speaker null and void. Christlib v. House of Representatives, 9 FSM Intrm. 503, 506-07 (Chk. S. Ct. Tr. 2000).

No branch of the Chuuk state government is supreme, but it is the duty of the court in each case to determine if the powers of any branch of the government have been exercised in conformity with the constitution, and if they have not, to treat their acts as null and void. Udot Municipality v. Chuuk, 9 FSM Intrm. 586, 588 (Chk. S. Ct. Tr. 2000).

Because the constitutional provision states that only one Chuuk State Supreme Court justice may hear or decide an appeal, and because "may" is permissive, not mandatory language, the Constitution contemplates that there may be an occasion when no Chuuk State Supreme Court justice would hear an appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 151 (Chk. S. Ct. App. 2001).

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

With regard to grants of legislative and judicial power by state constitutions, and especially regarding the principle barring implied limitations on such powers, the whole of such legislative and judicial power reposing in the sovereignty is granted to those bodies, except as it may be restricted in the same instrument. Thus the state courts have and should maintain vigorously all the inherent and implied powers necessary to function properly and effectively as a separate department in the scheme of government. Kupenes v. Ungeni, 12 FSM Intrm. 252, 262-63 (Chk. S. Ct. Tr. 2003).

Since the constitution must be interpreted in such a way as to carry out is purposes and since the purpose of the unified judiciary must be to ensure that fair and impartial justice be provided to every citizen of Chuuk, in a case where all sitting justices are disqualified, unavailable, or have recused themselves, fair and impartial justice will be unavailable unless the Chief Justice has some method available to ensure a fair and impartial hearing. Kupenes v. Ungeni, 12 FSM Intrm. 252, 263 (Chk. S. Ct. Tr. 2003).

Since the constitution must be liberally, not restrictively, construed, any attempt to place limitations on the Chief Justice's power, where no words of limitation appear, would require a restrictive interpretation of the constitution, and would violate the rules of interpretation as applied to judiciaries. Kupenes v. Ungeni, 12 FSM Intrm. 252, 263 (Chk. S. Ct. Tr. 2003).

Interpreting the Chief Justice's rule-making authority and his authority to "appoint and prescribe duties of other officers and employees, as prohibiting the appointment of a special trial justice unless the appointee meets the Article VII, § 9 qualifications of associate justices, would invite invalidity and chaos. Instead, the principle of acquiescence controls. Kupenes v. Ungeni, 12 FSM Intrm. 252, 263-64 (Chk. S. Ct. Tr. 2003).

– Chuuk – Legislative Powers

The Chuuk State Legislature is limited to judging only those qualifications of its elected members that are explicitly listed within the Chuuk State Constitution. Robert v. Chuuk State House of Representatives, 6 FSM Intrm. 260, 264 (Chk. S. Ct. Tr. 1993).

Each house of the Chuuk State Legislature may exercise its power as the sole judge of the qualifications

of its members so long as it is done in a manner that is rationally and reasonably related to the plain ordinary meaning of the text in order to comply with the state and federal requirements of due process, and not in any arbitrary or capricious manner, or in any other manner that would otherwise violate the state or national constitutions. This power may be exercised only in regard to the qualifications that explicitly appear in the constitution itself. Robert v. Chuuk State House of Representatives, 6 FSM Intrm. 260, 266 (Chk. S. Ct. Tr. 1993).

No house of the legislature is bound by the decisions or determinations of a previous house. One duly elected legislature's determination of a member-elect's constitutional qualifications or disqualification to sit is not binding as legal precedent on any subsequently and duly elected legislatures, and each newly elected legislature is free to determine the meaning of constitutional qualifications and apply it in a manner that is different from that of previous legislatures, so long as its application is in conformity with the state and national constitutions. Robert v. Chuuk State House of Representatives, 6 FSM Intrm. 260, 272 (Chk. S. Ct. Tr. 1993).

The power to investigate and issue subpoenas is expressly granted the legislature by the constitution. In re Legislative Subpoena, 7 FSM Intrm. 261, 265 (Chk. S. Ct. Tr. 1995).

In determining whether the Legislature has the power to subpoena personal financial records of a public official in a legislative investigation, a court must consider the right to privacy as it specifically applies to a public official. In re Legislative Subpoena, 7 FSM Intrm. 261, 265 (Chk. S. Ct. Tr. 1995).

The power to investigate has historically been found to be an inherent power of the legislative process and a power that is very broad. It comprehends probes into departments of the government to expose corruption, inefficiency or waste, and may not be unduly hampered. In re Legislative Subpoena, 7 FSM Intrm. 261, 265 (Chk. S. Ct. Tr. 1995).

The legislative power to investigate is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the legislature, and the right to privacy embodied in Article III, section 3 of the Chuuk Constitution is a restraint on the investigative power of the legislature. In re Legislative Subpoena, 7 FSM Intrm. 261, 265 (Chk. S. Ct. Tr. 1995).

The legislature's investigative powers are greatest when it is inquiring into and publicizing corruption, maladministration or inefficiency in the agencies or branches of government. In re Legislative Subpoena, 7 FSM Intrm. 261, 265 (Chk. S. Ct. Tr. 1995).

The Chuuk House of Representatives possesses the sole authority and power to pass a Bill of Impeachment seeking to remove those state officials responsible for misfeasance or malfeasance. In re Legislative Subpoena, 7 FSM Intrm. 261, 266 (Chk. S. Ct. Tr. 1995).

The Chuuk House of Representatives has no criminal prosecution function. It is limited to passing laws and under the proper circumstance bringing bills of impeachment, which are not criminal in nature. In re Legislative Subpoena, 7 FSM Intrm. 261, 266 (Chk. S. Ct. Tr. 1995).

The Chuuk State Legislature has the express constitutional power to conduct investigations and to issue subpoenas in aid of an investigation. Each house has all the authority and attributes inherent in legislative assemblies. In re Legislative Subpoena, 7 FSM Intrm. 328, 331 (Chk. S. Ct. App. 1995).

Constitutional protections are a restraint on legislative investigations. In re Legislative Subpoena, 7 FSM Intrm. 328, 331 (Chk. S. Ct. App. 1995).

Any committee formed by a house of the legislature is restricted to the missions delegated to it, i.e., to acquire certain data to be used in coping with a problem that falls within the house's legislative sphere. This jurisdictional concept requires that material sought by the committee be pertinent or relevant to this function in order to compel disclosure from an unwilling witness. In re Legislative Subpoena, 7 FSM Intrm. 328, 332 (Chk. S. Ct. App. 1995).

A court must presume that an action of a legislative body was taken with a legitimate object if it is capable of being so construed, and has no right to assume that the contrary was intended. In re Legislative Subpoena, 7 FSM Intrm. 328, 332-33 (Chk. S. Ct. App. 1995).

A committee of the legislative house constitutionally charged with the function of impeachment whose authorizing resolution empowered it to investigate the state's insolvency and the executive branch officers' misfeasance, malfeasance, or failure to carry out their duties and responsibilities, presented with evidence that the governor has illegal sources of income that may involve state funds is seeking relevant material related to its function when it seeks to subpoena the governor's bank records. In re Legislative Subpoena, 7 FSM Intrm. 328, 333 (Chk. S. Ct. App. 1995).

All citizens generally have the duty to, and state officials are obligated by statute to, cooperate with legislative investigations. These obligations of citizenship and public office are linked with the assumption that the legislature will respect individuals' constitutional rights, including the right of privacy. In re Legislative Subpoena, 7 FSM Intrm. 328, 333-34 (Chk. S. Ct. App. 1995).

Once the First Chuuk Legislature has set the salaries of it members by statute, no increase in their salaries is effective until after approval by the voters in a referendum. Sauder v. Chuuk State Legislature, 7 FSM Intrm. 358, 361 (Chk. S. Ct. Tr. 1995).

Expense allowances for a member of the Chuuk Legislature may not exceed 20% of his salary. Sauder v. Chuuk State Legislature, 7 FSM Intrm. 358, 362 (Chk. S. Ct. Tr. 1995).

Salary and expense allowances for members of the Chuuk Legislature cannot exceed ¾ of the equivalent the Governor is entitled to. Sauder v. Chuuk State Legislature, 7 FSM Intrm. 358, 362-63 (Chk. S. Ct. Tr. 1995).

Any form of legislative remuneration, compensation or reimbursement for Chuuk legislators is limited to 1/5 of a legislator's salary. An unrestricted "representation allowance" is an unconstitutional form of compensation. Sauder v. Chuuk State Legislature, 7 FSM Intrm. 358, 364 (Chk. S. Ct. Tr. 1995).

Even in the absence of a general reduction of the pay of all state employees which would allow the Chuuk Legislature to reduce the pay of judges, the legislature has authority to reduce the pay of other judiciary employees. When there is no general reduction of salaries, a law reducing the Chuuk State Supreme Court justices' salaries is invalid. Chuuk State Supreme Court v. Umwech (II), 7 FSM Intrm. 630, 632 (Chk. S. Ct. Tr. 1996).

Reading the constitutional provision barring impairment of contracts in harmony with the provision allowing general reduction of salaries, the exclusion of contract employees does not preclude the Chuuk Legislature from enacting a general reduction of salaries. Chuuk State Supreme Court v. Umwech (II), 7 FSM Intrm. 630, 632 (Chk. S. Ct. Tr. 1996).

Because the provision permitting an automatic increase back to their former salaries by the Governor, Lieutenant Governor, and the members of the legislature, is severable, it thus may be ruled unconstitutional without affecting the validity of the rest of the statute. Chuuk State Supreme Court v. Umwech (II), 7 FSM Intrm. 630, 632 (Chk. S. Ct. Tr. 1996).

A state legislative body has the power to choose its own speaker from its own members and to appoint its own officers. Christlib v. House of Representatives, 9 FSM Intrm. 503, 505 (Chk. S. Ct. Tr. 2000).

A state legislative body, having the power to choose its own speaker from its own members, also has the inherent power to remove such officer at its will or pleasure. Christlib v. House of Representatives, 9 FSM Intrm. 503, 506 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution requires that every 2 years when a new Legislature convenes, each house shall

organize by the election of one of its members as presiding officer, but it does not require that he remain in office throughout his term. Christlib v. House of Representatives, 9 FSM Intrm. 503, 507 (Chk. S. Ct. Tr. 2000).

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

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

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

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

Temporary Chuuk State Supreme Court justices, appointed for the limited purpose of hearing the appeal, may be a justice of the FSM Supreme Court, a judge of a court of another FSM state, or a qualified attorney in the State of Chuuk. FSM citizenship is not a constitutional requirement to be a temporary Chuuk State Supreme Court appellate justice and the Legislature cannot add it by statute. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 152 (Chk. S. Ct. App. 2001).

When the Constitution sets forth the requirements for office and does not authorize the Legislature to add further requirements, it is barred from doing so. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 152 (Chk. S. Ct. App. 2001).

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

The Legislature has, under its power to prescribe by statute for the regulation of the certification of elections and under its power to provide by law for review of administrative agency decisions, the power to place the jurisdiction to review Election Commission decisions in the Chuuk State Supreme Court appellate division rather than in the trial division. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 155 (Chk. S. Ct. App. 2001).

An order to show cause to the entire Chuuk Legislature requiring it to demonstrate why it should not be held in contempt for failing to pay the judgment will not be issued because it is not for the court to intrude in this manner into areas committed to the province of the state legislature. Estate of Mori v. Chuuk, 11 FSM Intrm. 535, 540 (Chk. 2003).

The Chuuk state government's legislative power is vested in the Legislature, and extends to all rightful subjects of legislation not inconsistent with the Chuuk or FSM Constitutions. Ceasar v. Uman Municipality, 12 FSM Intrm. 354, 357 n.1 (Chk. S. Ct. Tr. 2004).

– Executive Powers

Under our Constitution the Executive Branch is expressly delegated the power to faithfully execute and implement all national laws. Udot Municipality v. FSM, 9 FSM Intrm. 418, 420 (Chk. 2000).

Specific powers are given to each branch of the government. When Congress is executing and implementing a national law, a power expressly delegated to the executive branch, it abridges the executive's power to execute and implement national laws. Udot Municipality v. FSM, 9 FSM Intrm. 418, 420 (Chk. 2000).

The Constitution gives Congress the authority to appropriate public funds, but the Executive Branch is expressly delegated the power to faithfully execute and implement all national laws and a public law that appropriates public funds is a national law. Udot Municipality v. FSM, 10 FSM Intrm. 354, 357 (Chk. 2001).

The national government's executive power is vested in the President of the Federated States of Micronesia and expressly includes the power to faithfully execute and implement the provisions of the Constitution and all national laws. FSM v. Udot Municipality, 12 FSM Intrm. 29, 48 (App. 2003).

Congress has its constitutional role of carrying out its legislative power by enacting national laws. Once national laws are enacted, the Executive Branch then has its constitutional role of carrying out its executive power by seeing to the execution and implementation of these laws. FSM v. Udot Municipality, 12 FSM Intrm. 29, 51 (App. 2003).

Allottees, either specifically designated in an appropriations law or in the Financial Management Act, have their role in administering the law. Allottees' role in the execution, implementation, and administration of the law is executive in nature and must be considered as such. FSM v. Udot Municipality, 12 FSM Intrm. 29, 51 (App. 2003).

– Judicial Powers

The FSM Supreme Court has broad rule-making powers under the Constitution. FSM Const. art. XI, § 9. FSM v. Albert, 1 FSM Intrm. 14, 17 (Pon. 1981).

The Supreme Court of the Federated States of Micronesia is specifically given jurisdiction over disputes between citizens of a state and foreign citizens. FSM Const. art. XI, § 6(b). This jurisdiction is based upon the citizenship of the parties, not the subject matter of their dispute. In re Nahnsen, 1 FSM Intrm. 97, 101 (Pon. 1982).

The Constitution places diversity jurisdiction in the Supreme Court, despite the fact that the issues involve matters within state or local, rather than national, legislative powers. FSM Const. art. XI, § 6(b). In re Nahnsen, 1 FSM Intrm. 97, 102 (Pon. 1982).

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

There is no statutory limitation on the FSM Supreme Court's jurisdiction; the Judiciary Act of 1979 plainly contemplates that the FSM Supreme Court will exercise all the jurisdiction available to it under the Constitution. 4 F.S.M.C. 201-08. In re Nahnsen, 1 FSM Intrm. 97, 106 (Pon. 1982).

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

The FSM Supreme Court's constitutional jurisdiction to consider writs of habeas corpus is undiminished by the fact that the courts whose actions are under consideration, the Trust Territory High Court and a Community Court, were not contemplated by the Constitution of the Federated States of Micronesia. In re Iriarte (I), 1 FSM Intrm. 239, 244, 246 (Pon. 1983).

The FSM Supreme Court is entitled and required to assure that the Trust Territory High Court, exercising

governmental powers within the Federated States of Micronesia, does not violate the constitutional rights of its citizens. In re Iriarte (II), 1 FSM Intrm. 255, 268 (Pon. 1983).

The Constitution unmistakably places upon the judicial branch ultimate responsibility for interpretation of the Constitution. Suldan v. FSM (II), 1 FSM Intrm. 339, 343 (Pon. 1983).

By using the United States Constitution as a blueprint, the framers created a presumption that they were adopting such a fundamental American Constitutional principle as judicial review, found to be inherent in the language and very idea of the United States Constitution. Suldan v. FSM (II), 1 FSM Intrm. 339, 348 (Pon. 1983).

Where petitioners raise serious and substantial constitutional claims supported by authorities and reasoning of legal substance, the case falls within the jurisdiction of the FSM Supreme Court under article XI, section 6(b) of the Constitution. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 391 (Pon. 1984).

Under article XI, section 6(b) of the FSM Constitution, it is proper to employ the rule of pendent jurisdiction over cases involving interpretations of the Constitution or national law, so that the court may resolve state or local issues involved in the same case. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 396 (Pon. 1984).

The power to issue declaratory judgments is within the judicial power vested in the FSM Supreme Court by article XI, section 1 of the Constitution and confirmed by the Judiciary Act of 1979. The FSM Supreme Court may exercise jurisdiction over an action seeking a declaratory judgment so long as there is a "case" within the meaning of article XI, section 6(b). Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 400 (Pon. 1984).

An attorney's professional activities are individually subject to regulation by the judiciary, not by the administrators of the Foreign Investment Act. Michelsen v. FSM, 3 FSM Intrm. 416, 427 (Pon. 1988).

The Constitution places control over admission of attorneys to practice before the national courts, and regulation of the professional conduct of the attorneys, in the Chief Justice, as the chief administrator of the national judiciary. Carlos v. FSM, 4 FSM Intrm. 17, 27 (App. 1989).

While the FSM Constitution provides initial access to the FSM Supreme Court for any party in article XI, section 6(b) litigation, the court may, having familiarized itself with the issues, invoke the doctrine of abstention and permit the case to proceed in a state court, since the power to grant abstention is inherent in the jurisdiction of the FSM Supreme Court, and nothing in the FSM Constitution precludes the court from abstaining in cases which fall within its jurisdiction under article XI, section 6(b). Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM Intrm. 37, 42-43 (Pon. 1989).

The FSM Constitution provides no authority for any courts to act within the Federated States of Micronesia, other than the FSM Supreme Court, inferior courts to be established by statute, and state or local courts. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 105 (App. 1989).

The provisions of the FSM Constitution spelling out jurisdiction and vesting the entire judicial power of the national government in the FSM Supreme Court are self-executing, and the judicial power of the FSM Supreme Court is not dependent upon congressional action. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 105-06 (App. 1989).

The Supreme Court of the FSM has the constitutional power and obligation to review legislative enactments of Congress and to set aside national statutes to the extent they violate the Constitution. Constitutional Convention 1990 v. President, 4 FSM Intrm. 320, 324 (App. 1990).

Although judiciaries are vested with power to require or authorize initiation of criminal contempt proceedings, and may appoint private counsel to prosecute those proceedings, judiciaries typically attempt

to appoint for that purpose government attorneys who are already responsible for public prosecutions. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 62, 66 (Pon. 1991).

The legislative enactment of the Financial Management Act does not conflict with the constitutional provision stating the Chief Justice is the chief administrator of the national judiciary. Mackenzie v. Tuuth, 5 FSM Intrm. 78, 80 (Pon. 1991).

The constitutional provision making the Chief Justice the chief administrator of the national judiciary was not intended to establish a separate administration of funds allotted to the judiciary; it is not so specific as to overcome the presumption of the constitutionality of the Financial Management Act as it relates to the judiciary. Mackenzie v. Tuuth, 5 FSM Intrm. 78, 82-83 (Pon. 1991).

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

The Chief Justice has the constitutional authority to make rules for the appointment of special judges, and Congress has the constitutional authority to amend them. Congress has provided the Chief Justice with the statutory authority to appoint temporary justices. Where Congress has acted pursuant to its constitutional authority to provide statutory authority to the court, the court need not have exercised its concurrent rule-making authority. Jano v. King, 5 FSM Intrm. 326, 331 (App. 1992).

The Chief Justice may appoint an acting chief justice if he is unable to perform his duties. "Unable to perform his duties" refers to a physical or mental disability of some duration, not to the legal inability to act on one particular case. Jano v. King, 5 FSM Intrm. 326, 331 (App. 1992).

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

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

A judge cannot adopt a procedure not provided for by the rules because the Constitution grants the Chief Justice, and Congress, the power to establish rules of procedure. FSM v. M.T. HL Achiever (II), 7 FSM Intrm. 256, 258 (Chk. 1995).

No court, municipal, state, or otherwise, has the jurisdiction to question the internal workings of a legislative body. Anopad v. Eko, 11 FSM Intrm. 287, 290 (Chk. S. Ct. Tr. 2002).

The Supreme Court has the power to review Congress's legislative enactments and the implementation of those enactments, and it has the responsibility to set aside any national statute to the extent that it violates the Constitution. FSM v. Udot Municipality, 12 FSM Intrm. 29, 47 (App. 2003).

When a party before the court insists that a particular national law contains provisions contrary to the

Constitution, the court is required by the Constitution to consider that assertion. If it determines that the statutory provision is indeed repugnant to the Constitution, it may not enforce the statutory provision nor permit its enforcement by others. FSM v. Udot Municipality, 12 FSM Intrm. 29, 47 (App. 2003).

The national government's judicial power is vested in a Supreme Court and inferior courts established by statute. FSM v. Udot Municipality, 12 FSM Intrm. 29, 48 (App. 2003).

The Constitution permits the Chief Justice to promulgate rules, including criminal procedure rules, which Congress may amend by statute. Congress has the authority to amend or create procedural rules by statute, and when Congress has enacted a procedural rule, it is valid. The Chief Justice does not have the authority to amend Congressionally-enacted statutes. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. FSM v. Wainit, 12 FSM Intrm. 376, 383 (Chk. 2004).

– Kosrae

The doctrine of separation of powers does not prevent courts from modifying sentences even though the effect of modification may be the same as commuting the sentence. Kosrae v. Mongkeya, 3 FSM Intrm. 262, 263-64 (Kos. S. Ct. Tr. 1987).

The executive authority to grant clemency is a function of the separation of powers between the executive and the judiciary to check sometimes mechanical jurisprudence which might work harsh results in individual cases. Kosrae v. Mongkeya, 3 FSM Intrm. 262, 264 (Kos. S. Ct. Tr. 1987).

It is an inconsistency and a conflict with the legislative role in the Kosrae government when a member of the Legislature is made an allottee of funds for a purpose other than the operation of the legislature. Siba v. Sigrah, 4 FSM Intrm. 329, 339 (Kos. S. Ct. Tr. 1990).

The legislature has some discretion as to who it may make an allottee and complete discretion as to the purpose and policies behind the allotment, but the function of the allottee is definitely not legislative in character. Siba v. Sigrah, 4 FSM Intrm. 329, 340 (Kos. S. Ct. Tr. 1990).

The Legislature may make a delegation of power to specified officials, or administrative agencies within the executive branch. This necessarily includes the Governor, and such a delegation is appropriate because a proper, limited delegation of power confers on the delegatee the power to bring about a result that has already been legislated. Sigrah v. Speaker, 11 FSM Intrm. 258, 261 (Kos. S. Ct. Tr. 2002).

A delegation of power that passes constitutional muster confers specified powers on the executive to execute and enforce the law. This is the executive branch's acknowledged role, and the governor's inclusion on a board that promulgates Public Service System rules and regulations confers on him specific powers to facilitate what is already the Governor's province to do, i.e., to execute and enforce state laws. Thus the governor's inclusion as a member of the board does not, per se, give rise to a constitutional infirmity. Sigrah v. Speaker, 11 FSM Intrm. 258, 261 (Kos. S. Ct. Tr. 2002).

The Legislature may not by legislative act create a board to implement the Kosrae Public Service System and at the same time retain a degree of control over the board by appointing the Speaker as one of its members. Delegation of legislative authority may not proceed by half measures. To do so is to violate the separation of powers doctrine. Sigrah v. Speaker, 11 FSM Intrm. 258, 261-62 (Kos. S. Ct. Tr. 2002).

The inclusion of the Kosrae State Court Chief Justice and the Kosrae Legislature Speaker on the Kosrae Public Service System Oversight Board is an impermissible delegation of legislative authority, violating the separation of powers doctrine. The Governor's inclusion on the board does not per se contravene that same principle. Sigrah v. Speaker, 11 FSM Intrm. 258, 262 (Kos. S. Ct. Tr. 2002).

– Kosrae – Executive Powers

If required to preserve the public peace, health, or safety, at a time of extreme emergency caused by civil disturbance, natural disaster, or immediate threat of war or insurrection, the Governor may declare a state of emergency and issue appropriate decrees. Although a declaration of emergency may not impair the power of the judiciary, it may impair a civil right to the extent actually required for the preservation of peace, health, or safety. Unless it expires by its own terms, is revoked or extended, a declaration of emergency is effective for thirty days. Kosrae v. Nena, 13 FSM Intrm. 63, 66 (Kos. S. Ct. Tr. 2004).

– Kosrae – Judicial Powers

A fundamental precept of judicial independence is that the judiciary must not be dependent upon other branches of government in order to carry out judicial responsibilities. Article VI, section 8 of the Kosrae Constitution expressly confirms that the judicial branch is to control its own administration. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM Intrm. 92, 96 (Kos. S. Ct. Tr. 1987).

The Kosrae Constitution contemplates that justices of the FSM Supreme Court may decide cases which arise within Kosrae and fall under the original jurisdiction of the Kosrae State Court. In addition, the Kosrae Constitution vests in the Kosrae Chief Justice the power to include the resources and justices of the FSM Supreme Court as resources of the Kosrae State Court, insofar as that is consistent with the duties of the FSM Supreme Court under the FSM Constitution. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM Intrm. 92, 97 (Kos. S. Ct. Tr. 1987).

– Kosrae – Legislative Powers

The power of the legislature is to decide what the law shall be, to determine public policy and to frame the laws to reflect that public policy. Siba v. Sigrah, 4 FSM Intrm. 329, 336 (Kos. S. Ct. Tr. 1990).

It is an inconsistency and a conflict with the legislative role in the Kosrae government when a member of the Legislature is made an allottee of funds for a purpose other than the operation of the legislature. Siba v. Sigrah, 4 FSM Intrm. 329, 339 (Kos. S. Ct. Tr. 1990).

The legislature has some discretion as to who it may make an allottee and complete discretion as to the purpose and policies behind the allotment, but the function of the allottee is definitely not legislative in character. Siba v. Sigrah, 4 FSM Intrm. 329, 340 (Kos. S. Ct. Tr. 1990).

Kosrae state legislators are, in all cases except felony or breach of peace, privileged from arrest during their attendance at sessions or committee meetings of the Legislature, and in going to and returning from the same. Kosrae v. Sigrah, 11 FSM Intrm. 249, 253 (Kos. S. Ct. Tr. 2002).

A practice which has been engaged in by a government for a significant period of time is entitled to great weight in establishing the constitutionality of that practice. Thus, when the licensing of vehicle operators and that the license be in the immediate possession of the driver has been required for at nearly forty years, this significant period of time and therefore the licensing and possession requirement is entitled to great weight in establishing the constitutionality of that practice. Kosrae v. Sigrah, 11 FSM Intrm. 249, 256 (Kos. S. Ct. Tr. 2002).

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

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

Within thirty days after the declaration of emergency, the Legislature must convene at the call of the Speaker or the Governor to consider revocation, amendment or extension of the declaration. Kosrae v. Nena, 13 FSM Intrm. 63, 66 (Kos. S. Ct. Tr. 2004).

A declaration of a state of emergency requires a time of "extreme emergency" caused by civil disturbance, natural disaster or immediate threat of war or insurrection. The word "emergency" is a sudden unexpected happening or an unforeseen occurrence or condition. Kosrae v. Nena, 13 FSM Intrm. 63, 66 (Kos. S. Ct. Tr. 2004).

A civil disturbance or civil disorder is a public disturbance involving acts of violence by a group of three or more persons, which causes an immediate danger of or results in damage or injury to the property or person of any other individual. Suicides and suicide attempts, as they have occurred in Kosrae State during 2003 and 2004, do not rise to the level of a civil disturbance or civil disorder. Kosrae v. Nena, 13 FSM Intrm. 63, 66 (Kos. S. Ct. Tr. 2004).

A nuisance is an activity which arises from unreasonable or unlawful use by a person of his own property, and that disturbs another in possession of his property, or an offensive, unpleasant, or obnoxious thing or practice, especially a continuing or repeated invasion or disturbance of another's right. While it is undisputed that suicides and suicide attempts are events which disturb others, particularly family members and friends, and possibly a large number of persons in the community on a small island such as Kosrae, these events cannot be classified as public nuisances. Kosrae v. Nena, 13 FSM Intrm. 63, 66-67 (Kos. S. Ct. Tr. 2004).

The issuance of an Executive Decree, pursuant to Kosrae Constitution, Article V, section 13, is an extraordinary power which may be applied only in extreme emergency situations. The issuance of an Executive Decree may not be utilized as a tool to remedy a state of affairs which does not meet the definition of extreme emergency, and which may be addressed by legislation. Kosrae v. Nena, 13 FSM Intrm. 63, 67 (Kos. S. Ct. Tr. 2004).

The Governor's issuance of Declaration of Temporary State of Emergency and the Executive Decree, which prohibited the issuance of drinking permits, possession and consumption of alcoholic drinks by persons under the age of 35 and revoked drinking permits which had been issued to persons under the age of 35, exceeded the authority granted to him by the Kosrae Constitution, Article V, Section 13 because there was no civil disturbance, riot, typhoon, natural disaster or immediate threat of war or insurrection which constituted an "extreme emergency" and the Decree was therefore unconstitutional and void. Any criminal charges which have been based upon violation of the Executive Decree must be dismissed. Kosrae v. Nena, 13 FSM Intrm. 63, 67 (Kos. S. Ct. Tr. 2004).

– Legislative Powers

It is doubtful that Congress would have the power to require that all criminal prosecutions be in the name of the Federated States of Micronesia. FSM v. Boaz (II), 1 FSM Intrm. 28, 31 (Pon. 1981).

The Seaman's Protection Act, originally enacted for the entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under article IX, section 2 of the Constitution, and has therefore become a national law of the Federated States of Micronesia under article XV. That being so, a claim asserting rights under the Act falls within the jurisdiction of the FSM Supreme Court 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 Intrm. 53, 72 (Kos. 1982).

The tax on gross revenues falls squarely within the constitutional authorization given to Congress by article IX, section 2(e) to tax income. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM Intrm. 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 Intrm. 124, 127 (Pon. 1985).

Congress enacted Public Law No. 1-72 and confirmed the legislative power of state governments to supersede Trust Territory statutes within the scope of their exclusive powers. Pohnpei v. Mack, 3 FSM Intrm. 45, 54 (Pon. S. Ct. Tr. 1987).

While Congress may have the power to prohibit the taking of and killing of turtles within the twelve mile area as a matter of national law, it should lie with Congress, and not the court, to determine whether the power should be exercised. FSM v. Oliver, 3 FSM Intrm. 469, 480 (Pon. 1988).

Once Congress has set a policy direction, barring constitutional violation, it is the duty of this court to ascertain and follow that guidance. In re Cantero, 3 FSM Intrm. 481, 484 (Pon. 1988).

Primary responsibility, perhaps even sole responsibility, for affirmative implementation of the Professional Services Clause, FSM Const. art. XIII, § 1, must lie with Congress. Carlos v. FSM, 4 FSM Intrm. 17, 29 (App. 1989).

The fixing of voting requirements is a uniquely political task and falls within the purview of the political arms of the government, so long as no legal rights are violated by a particular method selected. Constitutional Convention 1990 v. President, 4 FSM Intrm. 320, 324 (App. 1990).

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

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

The legislative enactment of the Financial Management Act does not conflict with the constitutional provision stating the Chief Justice is the chief administrator of the national judiciary. Mackenzie v. Tuuth, 5 FSM Intrm. 78, 80 (Pon. 1991).

The legislative passage of the Financial Management Act rests upon the provisions of the Constitution, pursuant to which the Department of Finance and the General Fund were established to oversee the national administration and management of public money. Mackenzie v. Tuuth, 5 FSM Intrm. 78, 81 (Pon. 1991).

Historically the concept of a single, general fund administered by one person is found in laws enacted by the Congress of Micronesia. The enactment of the Financial Management Act reflects a continuity of purpose and statutory consistency. Mackenzie v. Tuuth, 5 FSM Intrm. 78, 82 (Pon. 1991).

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

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

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

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

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

Congress has not unconstitutionally delegated its authority to define crimes by delegating to an executive agency the power to enter into fishing agreements because congressional approval is needed for these agreements to take effect. FSM v. Cheng Chia-W (I), 7 FSM Intrm. 124, 127 (Pon. 1995).

Congress has the sole power to legislate the regulation of natural resources in the marine space of the Federated States of Micronesia beyond 12 miles from island baselines, and the states have the constitutional power to legislate the regulation of natural resources within that twelve miles of sea. Congress may also legislate concerning navigation and shipping within the twelve-mile limit except within lagoons, lakes, and rivers. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM Intrm. 456, 459 (App. 1996).

The Constitution gives Congress the authority to appropriate public funds. Udot Municipality v. FSM, 9 FSM Intrm. 418, 420 (Chk. 2000).

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

The Constitution gives Congress the authority to appropriate public funds, but the Executive Branch is expressly delegated the power to faithfully execute and implement all national laws and a public law that appropriates public funds is a national law. Udot Municipality v. FSM, 10 FSM Intrm. 354, 357 (Chk. 2001).

Congress can give as much guidance as it wishes in the appropriation legislation about which projects will be funded, and much of this guidance will, no doubt, be the product of individual congressmen's consultation with their constituents. But this consultation takes place before the appropriation bill becomes law, not afterwards. After the appropriation bill has become law, it is the duty of those who execute the law and administer the funds to follow the guidance Congress has given them by consulting the language Congress put in the public law, and any applicable regulations, not by consulting individual congressmen. Udot Municipality v. FSM, 10 FSM Intrm. 354, 359-60 (Chk. 2001).

A lawmaker engages in many activities which are not covered by the legislative privilege, such as a wide range of legitimate errands performed for constituents, making of appointments with government agencies, assistance in securing government contracts, preparing news letters to constituents, news releases, and outside speeches. Such activities, though entirely legitimate, are political in nature rather than legislative, and such political matters do not have speech or debate clause protection. But when a legislator is acting within the legitimate legislative sphere, the speech or debate clause is an absolute bar to interference. AHPW, Inc. v. FSM, 10 FSM Intrm. 420, 424-25 (Pon. 2001).

Legislative privilege should be read broadly to include anything generally done in a session of the legislature by one of its members in relation to the business before it. The ambit of the privilege extends beyond speech and debate per se to cover voting, circulation of information to other legislators, participation in the work of legislative committees, and a host of kindred activities. AHPW, Inc. v. FSM, 10 FSM Intrm. 420, 425 (Pon. 2001).

The legislative privilege doctrine has both substantive and evidentiary aspects. In substance, the doctrine renders legislators immune from civil and criminal liability based on either speech or debate in the course of proceedings in the legislature. From an evidentiary standpoint, a legislator may claim the privilege in declining to answer any questions outside the legislature itself where those questions concern how a legislator voted, acted, or decided on matters within the sphere of legitimate legislative activity. AHPW, Inc. v. FSM, 10 FSM Intrm. 420, 425 (Pon. 2001).

Once the Congress has enacted a law appropriating money for certain purposes, the Congress cannot retain, for itself or for individual senators, the power to determine how that appropriated money is spent, beyond what is spelled out in the law itself, and Congress also does not have the authority to dictate the voting requirements for a Constitutional Convention. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 631 (Pon. 2002).

The power to organize is inherent in each legislature or general assembly. This includes the power of selecting its own presiding officer. Observance of a legislative body's rules which regulate the passage of statutes is a matter entirely within legislative control and discretion, not subject to review by the courts. Anopad v. Eko, 11 FSM Intrm. 287, 290 (Chk. S. Ct. Tr. 2002).

Only the legislature has authority over its organization. Its acts in this regard are not subject to review by the courts. Anopad v. Eko, 11 FSM Intrm. 287, 290 (Chk. S. Ct. Tr. 2002).

The remedy for one who believes he was improperly removed as speaker of a municipal legislature is to attend the legislature's next regular session and seek to reorganize the legislature again, and reclaim his position as speaker. Anopad v. Eko, 11 FSM Intrm. 287, 290 (Chk. S. Ct. Tr. 2002).

Just as a legislature has the power to elect its leaders from among the members, it has an equal power to remove its leaders, and to select new leadership, at any time it so chooses. Anopad v. Eko, 11 FSM Intrm. 287, 290 (Chk. S. Ct. Tr. 2002).

It is Congress that determines the qualifications for candidates for membership in that legislative body. Trust Territory v. Edgar, 11 FSM Intrm. 303, 308 (Chk. S. Ct. Tr. 2002).

The Constitution assigns Congress the authority to enact bankruptcy laws and thus to determine when a judgment against an insolvent person should be discharged without either full payment or the parties' agreement. In re Engichy, 11 FSM Intrm. 520, 525-26 (Chk. 2003).

The national government's legislative power is vested in the Congress of the Federated States of Micronesia. FSM v. Udot Municipality, 12 FSM Intrm. 29, 48 (App. 2003).

Once a public law is enacted, the responsibility for the execution and implementation of the law rests with those who have a duty to execute and administer the law, and Senators can have no further role in its execution. FSM v. Udot Municipality, 12 FSM Intrm. 29, 49 (App. 2003).

A public law that specifically provides that a Congressional delegation must be consulted on the most appropriate usage of the funds before an obligation could occur runs afoul of the Constitution because it empowers the Congressional delegation to engage in an executive function by formally involving itself in executing and implementing the appropriation. Congress cannot pass laws and vest in itself or its members the power to control how that law is executed. FSM v. Udot Municipality, 12 FSM Intrm. 29, 50 (App. 2003).

The Constitution affords the Congress great latitude in making policy decisions through the process of enacting legislation. However, once Congress enacts legislation, its role ends: Congress can thereafter formally affect the execution of its enactment only by enacting appropriate new legislation. FSM v. Udot Municipality, 12 FSM Intrm. 29, 50 (App. 2003).

While Congress may inform itself on how legislation is being implemented through the normal means

of legislative oversight, public hearing, and investigation, it cannot directly insert a Congressional delegation into the process of executing and implementing the law. FSM v. Udot Municipality, 12 FSM Intrm. 29, 50 (App. 2003).

Making obligation of appropriated funds contingent upon consultation with members of Congress presented some of the same dangers that arose with permitting Congressional member(s) to control the approval of specific projects and the break down of the funding amounts under the line-item involved without going through the constitutional legislative process. The formal legislative process set forth in the Constitution's text requires formulating and introducing an appropriations bill, passing that bill in two separate readings, and then transmitting that bill to the President for approval or veto. To permit congressmen to effectively legislate without following constitutionally mandated procedures eliminates any transparency in the governmental process, and reduces the accountability of the congressmen to those whom they represent. FSM v. Udot Municipality, 12 FSM Intrm. 29, 50-51 (App. 2003).

Congress has its constitutional role of carrying out its legislative power by enacting national laws. Once national laws are enacted, the Executive Branch then has its constitutional role of carrying out its executive power by seeing to the execution and implementation of these laws. FSM v. Udot Municipality, 12 FSM Intrm. 29, 51 (App. 2003).

Congress's enactment preventing obligation of funds unless and until the allottees engaged in "consultation" with the relevant Congressional delegation, substantially impaired the allottees' performance in executing and implementing the law, which is the executive's essential and exclusive role under our Constitution. By legislating "consultation" before obligation requirement into the law, the Congress encroached upon an executive function and assumed more power than it is allowed in our constitutional system of checks and balances, thus violating the separation of powers doctrine. FSM v. Udot Municipality, 12 FSM Intrm. 29, 51 (App. 2003).

The Constitution permits the Chief Justice to promulgate rules, including criminal procedure rules, which Congress may amend by statute. Congress has the authority to amend or create procedural rules by statute, and when Congress has enacted a procedural rule, it is valid. The Chief Justice does not have the authority to amend Congressionally-enacted statutes. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. FSM v. Wainit, 12 FSM Intrm. 376, 383 (Chk. 2004).

– Pohnpei

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

A characteristic feature, and one of the cardinal and fundamental principles of the Pohnpei State Constitutional system, is that the governmental powers are divided among the three departments of this government, the legislative, executive, and judicial, and that each of these is separate from the others. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM Intrm. 5, 9 (Pon. S. Ct. Tr. 1985).

– Pohnpei – Judicial Powers

Under the system of constitutional government of the State of Pohnpei, among the most important functions entrusted to the judiciary are the duty to interpret the State's Constitution and the closely connected duty to determine whether or not laws and acts of the state legislature are contrary to the State Constitution. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM Intrm. 5, 10 (Pon. S. Ct. Tr. 1985).

When called on to review and control the acts of an officer or a coordinate branch of the government, the court should proceed with extreme caution, and the right to exercise the power must be manifestly clear. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM Intrm. 5, 10 (Pon. S. Ct. Tr. 1985).

It is within the special province and duty of the courts, and the courts alone, to say what the law is and to determine whether a statute or ordinance is constitutional. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM Intrm. 5, 8-9 (Pon. S. Ct. Tr. 1985).

The Pohnpei Constitution provides that single appellate justice orders are subject to review by a full appellate panel of justices hearing the appeal. This constitutional provision is self-executing. Damarlane v. Pohnpei, 9 FSM Intrm. 114, 118 (App. 1999).

A single justice order in the Pohnpei Supreme Court appellate division is not a final decision of the Pohnpei Supreme Court because it is subject to review by a full appellate panel of the Pohnpei Supreme Court. Damarlane v. Pohnpei, 9 FSM Intrm. 114, 118 (App. 1999).

A motion to reconsider a single justice appellate order in the Pohnpei Supreme Court is an application for review by a full appellate panel. Damarlane v. Pohnpei, 9 FSM Intrm. 114, 118 (App. 1999).

SETTLEMENT

Customary settlements do not require court dismissal of court proceeding if no exceptional circumstances are shown. FSM v. Mudong, 1 FSM Intrm. 135, 140 (Pon. 1982).

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

Conflicting affidavits show that the circumstances surrounding the execution of a document allegedly reflecting plaintiffs acceptance of a settlement and her release of defendant and others from liability for the death of her late husband are not sufficiently clear to permit summary judgment either as to the efficacy of that document or as to the application to the plaintiff's claims of the statute of limitations found at 6 F.S.M.C. 503(2). Sarapio v. Maeda Road Constr. Co., 3 FSM Intrm. 463, 464 (Pon. 1988).

Kosrae Evidence Rule 408, which renders evidence of settlement negotiations inadmissible in the trial, is based upon the court's commitment to encourage out of court settlements and includes offers made in the early stages of a dispute. Nena v. Kosrae, 3 FSM Intrm. 502, 505-06 (Kos. S. Ct. Tr. 1988).

Pursuant to Kosrae Evidence Rule 408, all statements, including factual assertions, made during the settlement process are protected and inadmissible in court to prove liability or invalidity of a claim. Nena v. Kosrae, 3 FSM Intrm. 502, 506 (Kos. S. Ct. Tr. 1988).

The discretion vested in the office of the Attorney General to settle a civil action brought against Truk State is provided for by law, which does not require consent of the Governor before the Attorney General may settle a civil suit against Truk State. Truk v. Robi, 3 FSM Intrm. 556, 561-63 (Truk S. Ct. App. 1988).

A valid compromise and settlement is as final, conclusive and binding upon the parties and upon those who knowingly accept its benefit as if its terms were embodied in a judgment and, regardless of what the actual merits of the antecedent claim may have been, they will not afterward be inquired into and examined. Truk v. Robi, 3 FSM Intrm. 556, 564 (Truk S. Ct. App. 1988).

Judgment entered pursuant to compromise and settlement is treated as a judgment on the merits barring any other action for the same cause. Truk v. Robi, 3 FSM Intrm. 556, 564 (Truk S. Ct. App. 1988).

Since the judicial system and customary settlement in Truk are fundamentally different and serve different goals, the primary concern of customary settlement being community harmony rather than compensation for loss, the use of one should not prevent the use of the other. Suka v. Truk, 4 FSM Intrm. 123, 128 (Truk S. Ct. Tr. 1989).

Offers or acceptances of customary settlement should neither be used in court to prove liability on the part of the wrongdoer, nor be deemed the same as a legal release on the part of the plaintiff. Suka v. Truk, 4 FSM Intrm. 123, 129 (Truk S. Ct. Tr. 1989).

To the extent that customary settlements are given any binding effect at all, they should be only binding as to those persons that are part of custom; state agencies and non-Trukese persons are not part of that system. Suka v. Truk, 4 FSM Intrm. 123, 129 (Truk S. Ct. Tr. 1989).

The parties, not their attorneys, have ultimate responsibility to determine the purposes to be served by legal representation. Thus, clients always have the right, if acting in good faith, to agree to settle their own case, with or without the consultation or approval of counsel, even when their attorneys have failed to settle. Iriarte v. Micronesian Developers, Inc., 6 FSM Intrm. 332, 334 & n.1 (Pon. 1994).

Counsel's own dissatisfaction with the settlement agreement reached by his clients without counsel's consultation or approval does not take precedence over the clients' rights to settle their claims themselves. Iriarte v. Micronesian Developers, Inc., 6 FSM Intrm. 332, 334-35 (Pon. 1994).

It is settled doctrine that the power vested in the office of the Attorney General empowers settlement of litigation in which the Attorney General has supervision and control. Ham v. Chuuk, 8 FSM Intrm. 300i, 300k (Chk. S. Ct. App. 1998).

The court will not enforce a written settlement agreement as a verbal contract against a defendant who has not signed it when because of conflicting affidavits the court finds that the settlement terms were not sufficiently definite to constitute an enforceable contract and when there are questions as to whether the settlement was freely and fairly negotiated by the parties thereto. Bank of Hawaii v. Helgenberger, 9 FSM Intrm. 260, 262 (Pon. 1999).

Default judgments and stipulated or agreed judgments against the State of Chuuk are to be subjected to close scrutiny by the court. Kama v. Chuuk, 9 FSM Intrm. 496, 499 (Chk. S. Ct. Tr. 1999).

Settlement negotiations are not adequate grounds for dismissal of a matter. Generally when parties do settle a matter, they jointly request the court for dismissal. Talley v. Talley, 10 FSM Intrm. 570, 573 (Kos. S. Ct. Tr. 2002).

When the defendants did not sign the settlement agreement between the other parties, they are not bound by it or by the court's confirmation of it because the defendants were not parties to the settlement agreement. A settlement agreement will not bind those not a party to it. Stephen v. Chuuk, 11 FSM Intrm. 36, 42 (Chk. S. Ct. Tr. 2002).

When an order confirming a settlement agreement did not adjudicate the rights and liabilities of all parties, but only of the tideland claimants against each other, it may be revised because in the absence of a properly entered partial final judgment, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not terminate the action as to any of the claims or parties, and is subject to revision at any time before the entry of judgment. Stephen v. Chuuk, 11 FSM Intrm. 36, 43 (Chk. S. Ct. Tr. 2002).

The grant or denial of a motion to set aside a settlement agreement lies within the sound discretion of the court and will not be disturbed on appeal except for a clear abuse of discretion. Stephen v. Chuuk, 11 FSM Intrm. 36, 43 (Chk. S. Ct. Tr. 2002).

As a contract, a valid settlement agreement requires offer and acceptance, consideration, and parties who have the capacity and authority to settle. Stephen v. Chuuk, 11 FSM Intrm. 36, 43 (Chk. S. Ct. Tr. 2002).

In order for a settlement to be fully binding, a person signing a settlement agreement must have the capacity and the authority to do so. Stephen v. Chuuk, 11 FSM Intrm. 36, 43 (Chk. S. Ct. Tr. 2002).

When affidavits show that the one person who purportedly signed the settlement on the affiants' behalf did not have the authority to do so and there is no admissible evidence to the contrary, only the unsupported assertion of counsel that the signer said she had the authority to sign for her older sisters, and when there is no basis to conclude that they ratified the settlement or that they should now be estopped from claiming that they are not bound by it, the movants have shown good cause that the settlement agreement must be held invalid. Stephen v. Chuuk, 11 FSM Intrm. 36, 43 (Chk. S. Ct. Tr. 2002).