Even if there was no authority to bind a party to a compromise, he may nevertheless be bound on the basis of ratification or estoppel if he retains benefits derived from the compromise. Stephen v. Chuuk, 11 FSM Intrm. 36, 43-44 (Chk. S. Ct. Tr. 2002).

The usual effect of the invalidation of a settlement is to restore the parties to where they were before the defective settlement or compromise was made, or at least to prevent the defective settlement from being enforced. Stephen v. Chuuk, 11 FSM Intrm. 36, 44 (Chk. S. Ct. Tr. 2002).

Trial judges are expected to suggest the desirability of possible settlement. That is a normal part of their job. Bualuay v. Rano, 11 FSM Intrm. 139, 148 (App. 2002).

The filing of the appeal over land was not a breach of the defendant's condition and was not a breach of a customary settlement when the appeal was filed before the customary settlement and condition were made; and when the appeal was not decided in the defendant's favor, the defendant's condition regarding his promised grant of a portion of land was satisfied and the customary settlement and the defendant's promise were therefore enforceable. Robert v. Semuda, 11 FSM Intrm. 165, 168 (Kos. S. Ct. Tr. 2002).

When the parties settled rather than go to trial on damages a contract was formed between the parties – the defendant offered specific performance to fill land and in exchange, the plaintiff accepted the offer and agreed to not go to trial on the issue of damages. There was thus an offer and acceptance, consideration, and mutual assent by both parties. James v. Lelu Town, 11 FSM Intrm. 337, 339 (Kos. S. Ct. Tr. 2003).

When a settlement contract for landfill of Muraka was formed between the parties that was not dependent on the case's active status, the contract is still enforceable because the case's status (pending or dismissed) was not part of the agreement. Therefore, the defendant is still liable to the plaintiff because the case's dismissal did not affect the parties' contract or the court's order when the court's order was based upon the parties' agreement and not upon any trial on damages. James v. Lelu Town, 11 FSM Intrm. 337, 339-40 (Kos. S. Ct. Tr. 2003).

While the prosecution has broad discretion in determining whether to initiate litigation, once that litigation is instituted in court, the court also has responsibility for assuring that actions thereafter taken are in the public interest; therefore criminal litigation can be dismissed only by obtaining leave of the court. In a fishing case where criminal and civil cases are filed together, and the dismissal of the criminal proceeding(s) is obviously "integral" to the settlement agreement for which court approval is sought, the same policy considerations apply to the settlement of the civil proceeding(s) as apply to the criminal dismissal. FSM v. Ching Feng 767, 12 FSM Intrm. 498, 502, 504 (Pon. 2004).

When there is no authorization for compound interest in the settlement agreement and when it is apparent that the parties, in settling their prior lawsuit, intended to apply the legal or judgment rate of interest to any unpaid settlement balances, the plaintiff's damages must therefore be calculated on a simple interest basis. Lee v. Lee, 13 FSM Intrm. 68, 71 (Chk. 2004).

SOCIAL SECURITY

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

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

For Social Security purposes, wages means payment, salary, or compensation for employment, whether

received in cash or a medium other than cash, such as meals. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM Intrm. 280, 284 (Yap 1995).

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

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

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

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

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

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

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

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

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

When Congress has specifically given Social Security, not the courts, the discretion to levy a penalty and limited that discretion to $1,000 a quarter and Social Security has exercised its discretion by levying a penalty less than that allowed by the statute, the court is generally bound to enforce it. The courts cannot usurp the power Congress granted to another governmental body. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM Intrm. 129, 133 (App. 1997).

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

Social security taxes, although imposed on actual earned income, are levied pursuant to a constitutional authority other than that to impose taxes on income. Thus, although social security taxes are an "income" tax, they are not "national taxes" that the national government must pay half of to the state where collected. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 434-35 (App. 2000).

Although income-related, neither the fishing fees levied under Article IX, section 2(m) nor the social

security taxes levied under Article IX, section 3(d) are income taxes within the meaning of Article IX, section 2(e) or national taxes within the meaning of section 5. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 435 (App. 2000).

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

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

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

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

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

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

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

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

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

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

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

Since "enter" means to place anything before a court, or upon or among the records, in a formal and

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

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

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

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

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

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

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

SOVEREIGN IMMUNITY

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

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

No clause in the FSM Constitution is equivalent to the eleventh amendment of the United States

Constitution, which generally bars citizens from using United States federal courts to seek monetary damages against states. Edwards v. Pohnpei, 3 FSM Intrm. 350, 361 (Pon. 1988).

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

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

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

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

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

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

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

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

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

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

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

International organizations, their property, and their assets wherever located, and by whomsoever held, are accorded the same immunity from suit and every form of judicial process by the Federated States of

Micronesia government that it accords to foreign governments, but the nature of the immunity the FSM affords foreign governments is still an open question. Kosrae v. M/V Voea Lomipeau, 9 FSM Intrm. 366, 373 n.5 (Kos. 2000).

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

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

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

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

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

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

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

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

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

– Chuuk

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

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

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

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

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

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

– Kosrae

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

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

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

– Pohnpei

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

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

STATUTES

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

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

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be

punished but the right to be informed of the nature of the accusation does not require absolute precision of perfection of criminal statutory language. Laion v. FSM, 1 FSM Intrm. 503, 507 (App. 1984).

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

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

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

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

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

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

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

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

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

Where the legislature has a rational basis for a statutorily non-suspect classification, the court will not inquire into the wisdom of that statute. Paulus v. Pohnpei, 3 FSM Intrm. 208, 218 (Pon. S. Ct. Tr. 1987).

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

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

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

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

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

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

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

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

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

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

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

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

When a state has not enacted laws in an area within its jurisdiction such as child support, national law is applicable to the state court proceeding, because the Trust Territory Code reciprocal support enforcement provisions, now codified at 6 F.S.M.C. 1711, are imputed to be state law under the FSM Constitution's Transition Clause. Under that clause, Trust Territory statutes that were applicable to the states became part of the states' laws regardless of whether they were published thereby. They stand as the laws of the states until amended, superseded or repealed. Anson v. Rutmag, 11 FSM Intrm. 570, 572 (Pon. 2003).

– Construction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Courts may not speculate as to the powers and duties of the office of the Attorney General, but must look to the wording of the relevant law, and further, may not speculate as to the probable intent of the legislature apart from the words. Truk v. Robi, 3 FSM Intrm. 556, 562 (Truk S. Ct. App. 1988).

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

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

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

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

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

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

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

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

Statutes should be interpreted so that they are internally consistent. Provisions should be considered

against the background of the entire act so as to arrive at a reasonable interpretation consistent with other specific provisions and the general design of the act. Bank of the FSM v. FSM, 6 FSM Intrm. 5, 8 (Pon. 1993).

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

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

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

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

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

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

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

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

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

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

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

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

A general section in a statute cannot expand the class of principals to whom the more specific sections

are directed. FSM v. Webster George & Co., 7 FSM Intrm. 437, 440 (Kos. 1996).

Because the provision permitting an automatic increase back to their former salaries by the Governor, Lieutenant Governor, and the members of the legislature, is severable, it thus may be ruled unconstitutional without affecting the validity of the rest of the statute. Chuuk State Supreme Court v. Umwech (II), 7 FSM Intrm. 630, 632 (Chk. S. Ct. Tr. 1996).

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

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

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

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

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

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

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

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

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

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

It is the purpose of the Financial Management Act to ensure that public funds are only used or promised in a manner provided by law and a judgment of the Chuuk State Supreme Court trial division is a manner provided by law. Ham v. Chuuk, 8 FSM Intrm. 300i, 300k (Chk. S. Ct. App. 1998).

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

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

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

The statutory and regulatory authorities in effect during the time the employees' grievances took place will be applied to the decision. Langu v. Kosrae, 8 FSM Intrm. 427, 432 (Kos. S. Ct. Tr. 1998).

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

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

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

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

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

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

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

The generally recognized rule is that interest should not bear interest, but compound interest may be awarded if authorized by statute. When the statute reads "nine percent a year" it is not an express authorization to compound interest annually, but is instead, without more, merely a statement of the rate of

simple interest. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM Intrm. 569, 570 (Chk. 2000).

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

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

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

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

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

When statutes are pre-constitution, the statutes and constitutional provisions must be read together because the statutes are only effective to the extent they are not in conflict with the constitution. Pohnpei v. KSVI No. 3, 10 FSM 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).

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

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

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

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

When the statute requires that a statement of contest must be filed within five days "after declaration of the result of the election by the body canvassing the returns" and also provides that upon "tabulation of each

of the precinct votes, the Commission shall tabulate or cause to be tabulated the cumulative results, including the total of election results for each nominee, and make these results known to the public," the declaration is when the results are made known to the public. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 153 (Chk. S. Ct. App. 2001).

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

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

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

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

Generally, a provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. Jonas v. Kosrae, 10 FSM Intrm. 453, 459 (Kos. S. Ct. Tr. 2001).

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

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).

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

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

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

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

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

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

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

The court's role is to construe the relevant statute as the legislature intended. Legislative intent is determined, first and foremost, by the statute's wording. The statute's text is considered the best evidence of legislative intent or will. The court must give effect to the plain meaning of a statutory provision whenever possible. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 379 (App. 2003).

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

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

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

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

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

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

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

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

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

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

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

Since "enter" means to place anything before a court, or upon or among the records, in a formal and

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

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

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

By deliberately using a different term in 11 F.S.M.C. 105(3)(b) from the one defined in 11 F.S.M.C. 104(11), the drafters can only have intended that the meaning be different, and, by not defining it, that the term's meaning should be the common, ordinary English language meaning of the term because words and phrases as used in the code must be read with their context and be construed according to the common and approved usage of the English language. FSM v. Wainit, 12 FSM 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).

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

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

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

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

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

A national statute whose term "public officer" refers to state and municipal public officials as well as national officials does not raise a constitutional issue involving the allocation of powers between the two sovereigns – state and national – and the three levels of government – national, state, and local because it applies to persons based upon their status as public officers – persons holding posts and exercising governmental functions. It does not matter whether that status is defined and bestowed upon a person by the national government or by another level of government in the FSM. It only matters that the person holds that status. FSM v. Wainit, 12 FSM Intrm. 105, 111 (Chk. 2003).

It is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it. AHPW, Inc. v. FSM, 12 FSM Intrm. 114, 122 (Pon. 2003).

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

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

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

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

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

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

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

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

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

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

The legislature's intention as to whether a statutory provision is mandatory is determined from the language used. Generally, a provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. Buruta

v. Walter, 12 FSM Intrm. 289, 293 (Chk. 2004).

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

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

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

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

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

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

– Repeal

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

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

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

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

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

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

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

Because the repeal of a statutory prohibition against usury releases any penalties imposed and permits enforcement of the debtor's obligation in accordance with the parties' agreement, it follows that as to a usury defense, the parties' agreement is governed by the law existing when the agreement is enforced. Bank of the FSM v. Mori, 11 FSM Intrm. 13, 15 (Chk. 2002).

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

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

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

STATUTES OF LIMITATION

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

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

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

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

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

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

In the absence of any law or regulation in the Federated States of Micronesia which provides a specific limitation on actions to collect unpaid stock subscriptions, the applicable period is six years. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 157, 159 (Pon. 1989).

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

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

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

Stock subscriptions which are silent as to the date and terms of payment do not become due until a call has been issued by the corporation or, if the corporation becomes insolvent without ever issuing such a call, then the cause of action to collect unpaid subscriptions accrues when the creditors, by authority of the court, first demand payment. Creditors of Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 157, 161 (Pon. 1989).

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

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

Where the prosecution of an underlying offense is not time-barred, prosecution of conspiracy to commit that offense is not time-barred even if part of the conspiracy extends back in time to a point that would be time-barred. In re Extradition of Jano, 6 FSM Intrm. 93, 107 (App. 1993).

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

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

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

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

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

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

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

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

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

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

Under section 24(1) of the Pohnpei Government Liability Act of 1991, the statute of limitations on a cause of action brought pursuant to the Act is not suspended during the period of administrative review required by the statute. Abraham v. Lusangulira, 6 FSM Intrm. 423, 425 (Pon. 1994).

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

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

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

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

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

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

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

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

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

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

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

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

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

The date of accrual for a contribution cause of action is the day the judgment was entered. Obviously a prerequisite to any successful contribution action based on a judgment is the judgment itself. The limitations period for a contribution action is six years. Senda v. Semes, 8 FSM Intrm. 484, 500-01 (Pon. 1998).

In the Chuuk State Supreme Court, a hearing for judgment after a default is entered that is held to allow the plaintiff to present to the court further evidence to establish the plaintiff's right to a claim or relief, includes the court's determination of whether the action was brought within the limitation period provided by law. Sipia v. Chuuk, 8 FSM Intrm. 557, 558, 560 (Chk. S. Ct. Tr. 1998).

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

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

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

When the plaintiff claims the state trespassed on her property by installing poles, a road and pipes sometime before the end of 1987 but did not file suit until 1994, recovery will be barred by the six year statute of limitations. Sipia v. Chuuk, 8 FSM Intrm. 557, 559-60 (Chk. S. Ct. Tr. 1998).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Because leave to amend a pleading shall be freely given when justice so requires, a plaintiff may be granted leave to amend its complaint to present its argument that the statute of limitations may have been tolled based upon its request that the parties submit their dispute to arbitration when the defendant has not presented any arguments that would show any injustice if the plaintiff amended its complaint. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM Intrm. 551, 559 (Pon. 2000).

In general, a cause of action accrues when the right to bring suit on a claim is complete. The true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have first maintained the action to a successful conclusion. Skilling v. Kosrae, 9 FSM Intrm. 608, 611 (Kos. S. Ct. Tr. 2000).

While the plaintiff was a state employee, he was subject to the administrative procedures specified for grievances, but when his administrative action was still pending when he retired in 1997, because his grievance had never been ruled on, he was no longer an employee required to comply with the administrative procedures. His right to bring suit on his claim did not become complete and his cause of action therefore did not accrue his early retirement resulted in termination from state government employment. Skilling v. Kosrae, 9 FSM Intrm. 608, 613 (Kos. S. Ct. Tr. 2000).

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

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

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

Intrm. 400, 405 (Pon. 2001).

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

When there is a two year statute of limitations for actions for injury to or for the death of one caused by the wrongful act or neglect of another, when the plaintiff, who was an adult at the time she was injured, filed her complaint over seven years after the injury, and when the testimony yields no information why the statute of limitations had not run two years after the date of the accident, a motion to dismiss based on the statute of limitations will be granted. Adolip v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 587, 589 (Pon. 2002).

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

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

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

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

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

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

When, despite several tries by counsel, a state employee's 1987 written grievance was never acted upon due to the state's inaction throughout the administrative process although the applicable statutes entitled him to a written response, the employee's cause of action accrued and the statute of limitations began to run only when he left state employment in 1997. The state's own inaction cannot be used to run against the six-year statute of limitations. Kosrae v. Skilling, 11 FSM Intrm. 311, 316-17 (App. 2003).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

When the Pohnpei Foreign Investment Board's letter states that the plaintiff is ordered to cease and desist from engaging in business and must surrender her Foreign Investment Permit, the clear implication of the Board's letter is that its revocation decision is effective immediately with no indication that those "orders" would take effect only at the expiration of a 20-day period. Thus, having failed to inform plaintiff of the 20-day

waiting period, and having improperly indicated that its revocation decision was immediately effective, the Board cannot rely on the 20-day statutory period to appeal as a basis for dismissing this appeal. To the extent that it functions as a statute of limitation, it begins to run when a permit holder is notified of a Board decision and informed that the decision will become effective in 20 days if not appealed. Cuipan v. Pohnpei Foreign Inv. Bd., 12 FSM Intrm. 184, 186 (Pon. 2003).

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

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

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

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

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

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

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

Claims against the Land Commission for violation of statute and violation of due process are subject to a limitations period of six years. When claims against the Land Commission based upon Land Commission actions which took place in 1984 and before occurred more than six years ago, they are barred by the statute

of limitations and should be dismissed. Skilling v. Kosrae State Land Comm'n, 13 FSM Intrm. 16, 19 (Kos. S. Ct. Tr. 2004).

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

The statute of limitations is an affirmative defense which must be raised in either the answer or in a motion to dismiss. Kinere v. Kosrae Land Comm'n, 13 FSM Intrm. 78, 80 (Kos. S. Ct. Tr. 2004).

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

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

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

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

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

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

– Criminal Offenses

The statute of limitations begins to run from the commission of an offense, or when the crime is complete. Once prosecution has been commenced the statute of limitations period is no longer available to the prosecution who must then face the task of bringing the defendants to a prompt trial. Pohnpei v. Weilbacher, 5 FSM Intrm. 431, 454-55 (Pon. S. Ct. Tr. 1992).

The day upon which a crime is committed is to be excluded in the computation of the statute of limitations. In re Extradition of Jano, 6 FSM Intrm. 93, 106 (App. 1993).

A prosecution for criminal contempt will not be dismissed on statute of limitations grounds when the information is based in part on acts within the three month statute of limitations for contempt. FSM v. Cheida, 7 FSM Intrm. 633, 638 (Chk. 1996).

The government will be permitted to file an amended information to dismiss those counts for which the statute of limitations has expired. FSM v. Edwin, 8 FSM Intrm. 543, 545 (Pon. 1998).

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).

The statute of limitations is an affirmative defense which the defendant must raise either by motion under Criminal Procedure Rule 12(b) or later at trial by a plea of not guilty. FSM v. Wainit, 12 FSM Intrm. 105, 108 (Chk. 2003).

Under 11 F.S.M.C. 105(3)(b) even if the three-year time limitation to prosecute a felony or the two-year time limit to prosecute a misdemeanor has expired, a prosecution may nevertheless be commenced for any offense based on misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, but in no case will this provision extend the period of limitations otherwise applicable by more than three years. FSM v. Wainit, 12 FSM Intrm. 105, 109 (Chk. 2003).

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

The right not to be put into jeopardy once when barred by the statute of limitations is not a constitutional right, but rather one created by statute. FSM v. Wainit, 12 FSM Intrm. 201, 204 (Chk. 2003).

Prosecution for a petty misdemeanor must be commenced within six months after it is committed. FSM v. Ching Feng 767, 12 FSM Intrm. 498, 501 (Pon. 2004).

Dismissal of a case is warranted when the statute of limitation applicable to both of the counts in the criminal information had elapsed before the case was filed. FSM v. Ching Feng 767, 12 FSM Intrm. 498, 504-05 (Pon. 2004).

TAXATION

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

A Pohnpei state government official is an employee for purposes of the Federated States of Micronesia Income Tax Law. Rauzi v. FSM, 2 FSM Intrm. 8, 12 (Pon. 1985).

There is a common law of taxation which addresses the status of public officials as employees. Rauzi v. FSM, 2 FSM Intrm. 8, 17 (Pon. 1985).

The FSM Income Tax Law's distinction between employees and businesses obviously reflects

congressional expectation that businesses and employees are generally distinguishable on the basis of whether generation of their income would require substantial expenditures by them. Rauzi v. FSM, 2 FSM Intrm. 8, 19 (Pon. 1985).

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

A taxpayer who held the high public office of Chief of Finance, whose contract gave him a wide degree of discretion in carrying out governmental powers; and who was not an outside consultant who could merely suggest or advise but was an integral part of the governmental operation is a governmental official, therefore an employee for purposes of the FSM Income Tax Law. Heston v. FSM, 2 FSM 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).

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

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

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

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

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

The power granted to Congress by FSM Constitution article IX, section 2(e) "to impose taxes on income" includes the power to tax gross revenue. Afituk v. FSM, 2 FSM Intrm. 260, 264 (Truk 1986).

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

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

On a claim for declaratory relief from an unconstitutional excise tax, the FSM Supreme Court trial division will not abstain, where the issue could later be certified to the FSM Supreme Court appellate division and result in delay, where the trial court has already retained the case longer than contemplated, where the issue is narrowly posed and not capable of varying resolutions, and where it appears that a greater service

may be provided by deciding the issue. Gimnang v. Yap, 4 FSM Intrm. 212, 214 (Yap 1990).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Social Security Administration is entitled to summary judgment for unpaid taxes when it supported its motion with an affidavit detailing the a taxpayer's audit and other evidence indicating the taxpayer's liability, and the taxpayer has provided no evidence to indicate otherwise. FSM Social Sec. Admin. v. Weilbacher, 7 FSM Intrm. 442, 445-46 (Pon. 1996).

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

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

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

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

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

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

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

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

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

A fee for use of property which is controlled by the government is not necessarily a tax, because the government is entitled to receive the benefits of its property just like any private landowner. As a sovereign, the government levies taxes, but as property owner it may charge fees for the use of its property. These fees are paid by choice and in exchange for a particular benefit, the use of government property, just as rents are freely paid for the use of private property. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 385 (Pon. 1998).

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

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

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

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

The penalties applicable to criminal mischief pertain to deterring the commission of the crime not for the primary purpose of raising revenue as with the tax code which has comprehensive civil and criminal penalties designed specifically for that purpose. FSM v. Edwin, 8 FSM Intrm. 543, 549 (Pon. 1998).

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

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

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

By making the taxing powers allocated between the national and state governments of Micronesia exclusive and distinct and allocating the exclusive power to tax income and imports, the Constitution's framers sought to avoid vertical multiple taxation and ensure a consistent fiscal policy for Micronesia. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM Intrm. 380, 387-89 (Pon. 2000).

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

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

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

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).

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

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

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

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

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

– Constitutionality

State excise tax which levies tax at the port of entry on items imported into a state and which must be paid prior to release of those items from the port of entry, is an import tax within the meaning of FSM Constitution article IX, section 2(d). Wainit v. Truk (II), 2 FSM Intrm. 86, 87 (Truk 1985).

The tax on gross revenues falls squarely within the constitutional authorization given to Congress by article IX, section 2(e) to tax income. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM 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).

The national power to impose taxes based on imports is exclusive, and not shared by the states. Innocenti v. Wainit, 2 FSM Intrm. 173, 182 (App. 1986).

Taxes imposed on goods because of their entry into a port of entry of the State of Truk, levied at the port of entry in amounts based upon the quality or value of imported goods, and which must be paid to the Division of Revenue prior to release of the items from the port of entry, are taxes based on imports. Such a tax

represents an effort to exercise powers expressly delegated to the national government, is beyond the powers of the state, and is null and void. Innocenti v. Wainit, 2 FSM Intrm. 173, 183-84 (App. 1986).

Although retroactive application of a decision holding a state tax unconstitutional would impose hardship upon a state, where funds collected under the tax have already been committed, such a result is not inequitable where the state legislature pushed on with the tax act despite the strong resistance of business people to the tax in the form of a petition and establishment of an escrow account to hold contested payments, and a veto message by the governor of the state, and there is no evidence that the legislature seriously considered the constitutionality of the legislation. Innocenti v. Wainit, 2 FSM Intrm. 173, 186 (App. 1986).

Taxation of gross revenue of business at different amounts and rates depending upon the amount of each business's annual gross revenue is rationally related to the legitimate legislative purposes of requiring businesses who receive less to pay lower tax and of administrative simplicity and therefore does not violate the due process or equal protection provisions of the FSM Constitution. Afituk v. FSM, 2 FSM Intrm. 260, 263 (Truk 1986).

The power granted to Congress by FSM Constitution article IX, section 2(e) "to impose taxes on income" includes the power to tax gross revenue. Afituk v. FSM, 2 FSM Intrm. 260, 264 (Truk 1986).

There is no evidence in the journal of the Constitutional Convention that the phrase "to impose taxes on income" in FSM Constitution, article IX, section 2(e) was derived from the sixteenth amendment of the United States Constitution which permits the United States Congress to "lay and collect taxes on income" so in determining the meaning of the Federated States of Micronesia constitutional provision, no particular weight should be given to the United States cases. Afituk v. FSM, 2 FSM Intrm. 260, 264 (Truk 1986).

A state excise tax imposed on imports is unconstitutional, regardless of the manner of tax payment. Gimnang v. Yap, 4 FSM Intrm. 212, 215 (Yap 1990).

When the record is barren of any relationship between the license fee imposed and the business regulation or licensing objectives and the fee is exacted for the sole purpose of granting a business permission to do business and possesses no attributes of a licensing statute, a municipality's power and authority to impose tax on the income of a business are foreclosed. Bruton v. Moen, 5 FSM Intrm. 9, 12 (Chk. 1991).

The power of the national government under article IX, section 2(e) of the Constitution, "to impose taxes on income," is an exclusive national power that may not be exercised by the states. Youngstrom v. Kosrae, 5 FSM Intrm. 73, 74 (Kos. 1991).

The Kosrae transaction tax of KC 9.301 is a selective tax rather than an income tax and is not an encroachment upon the national government's exclusive power to tax income. Youngstrom v. Kosrae, 5 FSM Intrm. 73, 76 (Kos. 1991).

A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. Actouka v. Kolonia Town, 5 FSM Intrm. 121, 122 (Pon. 1991).

The national government has the exclusive power to tax income and imports. The power to levy other taxes, unless specifically barred by the Constitution, is an exclusive state power. Sigrah v. Kosrae, 6 FSM Intrm. 168, 169-70 (App. 1993).

A transaction tax oriented toward individual transactions and not total income, and only triggered by the transactions it covers, even though paid by the vendor, is analogous to a selective sales tax and is not an unconstitutional encroachment on the national government's exclusive power to tax income. Sigrah v. Kosrae, 6 FSM Intrm. 168, 170 (App. 1993).

A Chuuk state tax on a lessor or landowner who rents or leases land, building or housing unit, for residential, or office space, or other use is not an unconstitutional encroachment on the national government's exclusive power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 6 FSM Intrm. 310, 311 (Chk. 1994).

The Constitution prohibits state and local governments from imposing taxes which restrict interstate commerce. Stinnett v. Weno, 6 FSM Intrm. 312, 313 (Chk. 1994).

Since, given the social and geographic configuration of the State of Chuuk and the structure of the transportation services available, a travel agency would necessarily be essentially interstate commerce, a tax aimed solely at a travel agency restricts or is restrictive of interstate commerce and therefore may not be levied by a state or local government. Stinnett v. Weno, 6 FSM Intrm. 312, 313-14 (Chk. 1994).

Only the national government may constitutionally tax income. The states' taxing power does not include the power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM Intrm. 117, 119 (App. 1995).

If a state wishes to obtain funding from a consumption tax, it can avoid a constitutional confrontation by making the taxable incident the sale or rental transaction, and by expressing the requirement that the tax be paid by the consumer. Therefore a state tax on the gross rental receipts of a landlord is an unconstitutional tax on income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM Intrm. 117, 120 (App. 1995).

The general grant of the taxing power to the state, which allows taxing power to be delegated to the municipalities, is not an exclusive grant preventing municipalities from levying taxes. Wainit v. Weno, 7 FSM Intrm. 121, 123 (Chk. S. Ct. Tr. 1995).

A municipality in Chuuk has the power to tax so long as the state has not preempted the area. Wainit v. Weno, 7 FSM Intrm. 121, 123 (Chk. S. Ct. Tr. 1995).

The power to tax is vested in the state which may delegate certain taxing powers to a municipality. Without such delegation a municipality has no power to tax. Stinnett v. Weno, 7 FSM Intrm. 560, 561 (Chk. 1996).

A municipal ordinance levying taxes did not continue in effect after the effective date of the Chuuk Constitution because it is inconsistent with that Constitution. Stinnett v. Weno, 7 FSM Intrm. 560, 562 (Chk. 1996).

A litigant may seek a declaratory judgment without first exhausting its administrative remedies where the jurisdiction of the taxing authorities is challenged on the ground that the statute is unconstitutional or that the statute by its own terms does not apply in a given case. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM Intrm. 111, 115 (Chk. 1997).

The language, "and may delegate certain taxing powers to the municipal governments by statute," contemplates that municipal governments are invested with the power to tax only insofar as they receive that power from the state government. Without express delegation to a municipality of the authority to tax, the municipality lacked this power. Weno v. Stinnett, 9 FSM Intrm. 200, 207 (App. 1999).

The Chuuk Constitution provides for the creation of the state taxing power and its delegation, as the state government may elect, to the municipal governments. Article XIII, section 1 of the Chuuk Constitution provides that the two levels of government are state and municipal. As between these two levels of government the one holding the right to delegate is superior. Weno v. Stinnett, 9 FSM Intrm. 200, 207 (App. 1999).

Because the express provision for delegation of the taxing authority is inconsistent with the notion that municipalities already had this power, in the absence of specific legislative action authorizing a municipality to impose taxes, the municipality does not have the authority to impose business license fees. Weno v. Stinnett, 9 FSM Intrm. 200, 207 (App. 1999).

When the Chuuk Constitution says the state "may delegate certain taxing powers to the municipal governments by statute," it is plain that "certain" in this context means nothing more, and nothing less, than that the state government may delegate such of its taxing powers as it sees fit – the point is that the option is the state government's. Weno v. Stinnett, 9 FSM Intrm. 200, 207 (App. 1999).

The only conclusion to be fairly drawn from the deletion of a sentence giving the municipal governments the exclusive power to levy head taxes and business license fees from the proposal as adopted is that the Chuuk Constitution's framers did not intend that the municipal governments should have the power to levy head taxes and business license fees. Weno v. Stinnett, 9 FSM Intrm. 200, 208 (App. 1999).

Because a man who denies the legality of a tax should have a clear and certain remedy, justice may require that he should be at liberty to pay promptly and bring suit on his side. Weno v. Stinnett, 9 FSM Intrm. 200, 212 (App. 1999).

The filing of a suit to contest the legality of a tax, which the trial court found to be the plaintiffs' only remedy, obviates the need for demonstrating duress and notice of protest, as required by the common law, for payments made after suit is instigated. The filing of suit is protest of the most emphatic sort, and allowing a claim for recovery for payments made thereafter without regard to duress recognizes the "implied duress" under which contested taxes are paid. Weno v. Stinnett, 9 FSM Intrm. 200, 212 (App. 1999).

Duress and protest need not be shown to state a claim for recovery of tax payments extracted under an unconstitutional enactment when the plaintiffs seek refund of payments made after instigation of suit in a court having jurisdiction over the parties, and when such a lawsuit is the plaintiff's only remedy. Weno v. Stinnett, 9 FSM Intrm. 200, 212 (App. 1999).

The taxing authority, if it opts not to provide predeprivation process, must by way of postdeprivation process provide a clear and certain remedy for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one. A clear and certain remedy is one designed to render the opportunity to challenge a tax meaningful by preventing any permanent unlawful deprivation of property. Weno v. Stinnett, 9 FSM Intrm. 200, 213 (App. 1999).

When deciding the question of retroactivity of a decision declaring a tax unconstitutional, a court considers three factors: 1) whether a decision enunciates a new and unanticipated principle; 2) whether retroactive application to this case would promote implementation of the rule at issue, taking into consideration the rule's history; and 3) the equities of the case as they are associated with retroactive application. Weno v. Stinnett, 9 FSM Intrm. 200, 214 (App. 1999).

Because the Chuuk Constitution is clear that only the state government has the power to tax, it cannot be said that such a resolution could not be predicted. Weno v. Stinnett, 9 FSM Intrm. 200, 214 (App. 1999).

To permit taxes to be retained that were extracted under an unconstitutional statute would have the effect of prolonging the viability of an ordinance that runs afoul of the Chuuk Constitution, at the expense of establishing the correct rule. The better course is to permit recovery of the taxes. Weno v. Stinnett, 9 FSM Intrm. 200, 214 (App. 1999).

When litigation over the constitutionality of a municipality's taxes was pending for five years, the municipality was put on notice early on that the taxes collected under the ordinances were subject to a claim for refund, and nothing prevented the municipality from planning for this eventuality. Having failed to do so, it cannot now claim hardship. Weno v. Stinnett, 9 FSM Intrm. 200, 214 (App. 1999).

A state use tax is a tax on imports which impermissibly interferes with interstate commerce such that the use tax is in violation of the FSM Constitution, FSM Const. art. IX, §§ 2(d), 2(g); FSM Const. art. VIII, § 3. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM Intrm. 292, 294 (Pon. 1999).

For tax purposes, Telecom is deemed to be part of the national government and is exempt from any and

all state tax liability because it functions are so closely intertwined with the national government that it is appropriate to view it as a national government agency for the purpose of taxation and because, although the FSM Constitution does not specifically delegate the power to establish a telecommunications network to the national government, the circumstances presently existing in the FSM support a conclusion that such a power is of an indisputably national character beyond the control of any state. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM Intrm. 380, 384 (Pon. 2000).

Because the FSM Constitution expressly delegates to Congress the power to regulate interstate commerce and because the existence, availability and quality of telecommunication services in the FSM clearly impacts on interstate commerce, the FSM government is constitutionally authorized to establish the FSM Telecommunications Corporation and may similarly exempt it from taxes or assessments. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM Intrm. 380, 384 (Pon. 2000).

A state "use tax" that instead of collecting the tax at the port in order to release the goods, requires the taxpayer to fill out a form prior to release of the goods after which collection of the assessment is deferred for sixty days, is, despite its name, a tax on imports and an unauthorized action to usurp the national government's exclusive power to impose taxes, duties, and tariffs based on imports. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM Intrm. 380, 386 (Pon. 2000).

A state "use tax" calculated on the value of items brought into the state plus the cost of shipping, handling, insurance, labor or service cost, transportation charges or any expenses whatsoever, has nothing to do with benefits provided by the state associated with the use of the item and cannot be justified as having a substantial nexus with the state. It only serves as an unauthorized burden on interstate commerce. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM Intrm. 380, 386 (Pon. 2000).

Imposing taxes, duties, and tariffs based on imports is a power expressly delegated to Congress. Department of Treasury v. FSM Telecomm. Corp., 9 FSM Intrm. 575, 579 (App. 2000).

When "commencement of use or consumption" equals importation as it applies to the nonexempt merchandise subject to a use tax, any semantic distinction resulting from making the tax payable upon "commencement of use or consumption" does not render it any less a tax on imports because the name given a tax by a taxing authority is not controlling and because extending the time for payment to 60 days after importation does not change the nature of the tax. The Pohnpei use tax violates the constitutional reservation to Congress of the power to tax imports. Department of Treasury v. FSM Telecomm. Corp., 9 FSM Intrm. 575, 581 (App. 2000).

As to interstate commerce, Article VIII, section 3 contains the negative counterpart to Article IX, section 2(g)'s positive grant of power by prohibiting state and local governments from imposing taxes which restrict interstate commerce. Department of Treasury v. FSM Telecomm. Corp., 9 FSM Intrm. 575, 582 (App. 2000).

Since the event triggering the Pohnpei use tax is the unqualified "use or consumption" in Pohnpei of nonexempt goods, the statute applies to goods brought into Pohnpei from Yap, Chuuk, and Kosrae, as well as from locations outside the FSM. It is thus clear that the statute directly regulates or restricts interstate commerce in the same way it does imports. Department of Treasury v. FSM Telecomm. Corp., 9 FSM Intrm. 575, 582 (App. 2000).

As to goods making their way from any of the other three states into Pohnpei, the direct nexus between the simultaneous arrival of the goods and imposition of the Pohnpei use tax points to direct regulation of interstate commerce. Department of Treasury v. FSM Telecomm. Corp., 9 FSM Intrm. 575, 582 (App. 2000).

Even assuming that the Pohnpei use tax apportionment clause could be interpreted to remedy concerns about discrimination against interstate commerce, the fact remains that the use tax is indissolubly linked to the event of importation, and no semantic calisthenics liberate the tax from this inherent defect. Department of Treasury v. FSM Telecomm. Corp., 9 FSM Intrm. 575, 583 (App. 2000).

A state tax that is unconstitutional as an import tax, if applied to interstate commerce, is also restrictive of interstate commerce. The Constitution does not permit a state to erect tax barriers to the free movement of goods among the states. Department of Treasury v. FSM Telecomm. Corp., 9 FSM Intrm. 575, 583 (App. 2000).

A state use tax that is a tax on imports in violation of Article IX, section 2(d); and that regulates and restricts interstate commerce in violation of Article IX, Section 2(g), and Article VIII, section 3, respectively of the FSM Constitution contravenes the Constitution. Department of Treasury v. FSM Telecomm. Corp., 9 FSM Intrm. 575, 583 (App. 2000).

A state alcoholic beverage possession tax for which liability is triggered by the act of importation although actual payment may be delayed five days, is an import tax, and as such unconstitutional. MGM Import-Export Co. v. Chuuk, 10 FSM Intrm. 42, 44 (Chk. 2001).

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

– License and Permit Fees

A municipality may legislate and impose licensing fees to regulate activities within its jurisdiction subject to a requirement that the licensing fee at least tends to promote the public health, morals, safety or welfare. Bruton v. Moen, 5 FSM Intrm. 9, 12 (Chk. 1991).

When the record is barren of any relationship between the license fee imposed and the business regulation or licensing objectives and the fee is exacted for the sole purpose of granting a business permission to do business and possesses no attributes of a licensing statute, a municipality's power and authority to impose tax on the income of a business are foreclosed. Bruton v. Moen, 5 FSM Intrm. 9, 12 (Chk. 1991).

A municipal license fee ordinance which separately defines banking and insurance businesses and specifically imposes a different rate upon those businesses than would be imposed upon other kinds of businesses on its face appears to be an effort to regulate banking and insurance and is unconstitutional and void. Actouka v. Kolonia Town, 5 FSM Intrm. 121, 122 (Pon. 1991).

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

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

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

Another distinction between a tax and a fee is whether the levy is exacted voluntarily in exchange for a

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

One characteristic of a fee is that it must be no greater than the government's costs, but in considering costs it is appropriate to consider the government's "real cost," which is not limited to the government's actual expenditures. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 384 (Pon. 1998).

A fee for use of property which is controlled by the government is not necessarily a tax, because the government is entitled to receive the benefits of its property just like any private landowner. As a sovereign, the government levies taxes, but as property owner it may charge fees for the use of its property. These fees are paid by choice and in exchange for a particular benefit, the use of government property, just as rents are freely paid for the use of private property. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 385 (Pon. 1998).

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

The FSM Constitution contains a provision by which the net revenues from offshore mineral resources are to be divided equally between the states and the national government, FSM Const. art. IX, § 6. There would be no need to specify the division of income from such resources if such revenues were taxes to be automatically divided under article IX, section 5. Chuuk v. Secretary of Finance, 8 FSM 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).

Chuuk municipalities are barred from imposing taxes except as specifically permitted by state statute. Municipalities have been delegated, by statute, the authority to require persons to obtain and pay for a business license before engaging or continuing in a business within the municipality in which the business is located. Ceasar v. Uman Municipality, 12 FSM Intrm. 354, 358 (Chk. S. Ct. Tr. 2004).

When the state statute authorizing municipal tax powers reserved the state's right to enact legislation to assess, levy and collect taxes on any subject for which a tax has been assessed and levied by municipal

ordinance and provided that in the event that the state enacted legislation on that same subject, the enactment would repeal the ordinance on the same subject, and when the state has in fact enacted legislation imposing fees on businesses engaged in alcoholic beverage sales, any municipal ordinance imposing business license fees on businesses engaged in alcoholic beverage sales is repealed and a municipality does not have the authority to impose business license fees or taxes on alcoholic beverage sellers. Ceasar v. Uman Municipality, 12 FSM Intrm. 354, 358-59 (Chk. S. Ct. Tr. 2004).

– Recovery of Taxes

The question whether taxes paid by plaintiffs under a taxing statute subsequently found to be unconstitutional may be refunded to them turns upon whether the tax was voluntarily paid. Innocenti v. Wainit, 2 FSM Intrm. 173, 187 (App. 1986).

Where taxpayers informed the government that they protested the tax as unconstitutional, and had to pay the tax in order to receive the taxed property, the payments are coerced, not voluntary, and taxpayers are entitled to the refund of all amounts paid. Innocenti v. Wainit, 2 FSM Intrm. 173, 187 (App. 1986).

The FSM Supreme Court will abstain from a claim for recovery of taxes where the defendant state requests abstention, the claim is for monetary relief, and the state has endeavored to develop a body of law in the areas of excise taxes and sovereign immunity. Gimnang v. Yap, 4 FSM Intrm. 212, 214 (Yap 1990).

Under traditional constitutional analysis, taxpayers' efforts to recover tax moneys unlawfully extracted from them by a state may be relegated to state procedures and decision-makers so long as there is a reasonable procedure under state law whereby the taxpayer may obtain meaningful relief. Gimnang v. Yap, 5 FSM Intrm. 13, 23-24 (App. 1991).

Prior to November 25, 1986, a plaintiff had a common law right to recover taxes paid pursuant to an unconstitutional Yap statute if he could show payment was made under duress and under protest. Gimnang v. Yap, 7 FSM Intrm. 606, 607, 610-11 (Yap S. Ct. Tr. 1996).

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

The general rule is that to entitle a taxpayer to a refund of a tax paid pursuant to an unconstitutional law, the tax must have been paid under duress and protest. Chuuk Chamber of Commerce v. Weno, 8 FSM Intrm. 122, 125 (Chk. 1997).

Refund of taxes paid pursuant to an unconstitutional ordinance is an action for restitution, not damages. The principles governing recovery of payment which preclude recovery of voluntary payments are applicable to the recovery of tax payments. The "voluntary payment rule" has barred recovery in restitution. The general rule is that money paid voluntarily under a claim of right to the payment, and with knowledge of the facts by the person making the payment, cannot be recovered back on the ground that the claim was illegal. Chuuk Chamber of Commerce v. Weno, 8 FSM 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).

Normally, notice and an opportunity to be heard is given prior to governmental deprivation of property, but governments need not follow this in the case of taxes. Governments must, however, provide a post-deprivation opportunity to challenge the tax and a clear and certain remedy. Chuuk Chamber of Commerce v. Weno, 8 FSM Intrm. 122, 126 (Chk. 1997).

It is unavailing in tax cases, except in special circumstances, to seek a preliminary injunction against

enforcement or to have the taxes escrowed pending the outcome. This is in order not to disrupt the financial stability of the governmental unit. Chuuk Chamber of Commerce v. Weno, 8 FSM Intrm. 122, 127 (Chk. 1997).

Refund of taxes unlawfully paid after commencement of suit is favored by the Innocenti guidelines concerning retrospective application of court decisions where the court decision was clearly foreshadowed by the Chuuk Constitutional provision, where there was no merit to be found in preventing the taxpayers from recovering unlawful taxes paid after the institution of litigation, and where the equitable considerations favor the taxpayers. Chuuk Chamber of Commerce v. Weno, 8 FSM Intrm. 122, 127-28 (Chk. 1997).

For a plaintiff to recover payments made under an unconstitutional tax statute, he must demonstrate that he made those payments under both duress and notice of protest. Weno v. Stinnett, 9 FSM Intrm. 200, 211 (App. 1999).

Because a man who denies the legality of a tax should have a clear and certain remedy, justice may require that he should be at liberty to pay promptly and bring suit on his side. Weno v. Stinnett, 9 FSM Intrm. 200, 212 (App. 1999).

The filing of a suit to contest the legality of a tax, which the trial court found to be the plaintiffs' only remedy, obviates the need for demonstrating duress and notice of protest, as required by the common law, for payments made after suit is instigated. The filing of suit is protest of the most emphatic sort, and allowing a claim for recovery for payments made thereafter without regard to duress recognizes the "implied duress" under which contested taxes are paid. Weno v. Stinnett, 9 FSM Intrm. 200, 212 (App. 1999).

Duress and protest need not be shown to state a claim for recovery of tax payments extracted under an unconstitutional enactment when the plaintiffs seek refund of payments made after instigation of suit in a court having jurisdiction over the parties, and when such a lawsuit is the plaintiff's only remedy. Weno v. Stinnett, 9 FSM Intrm. 200, 212 (App. 1999).

The taxing authority, if it opts not to provide predeprivation process, must by way of postdeprivation process provide a clear and certain remedy for any erroneous or unlawful tax collection to ensure that the opportunity to contest the tax is a meaningful one. A clear and certain remedy is one designed to render the opportunity to challenge a tax meaningful by preventing any permanent unlawful deprivation of property. Weno v. Stinnett, 9 FSM Intrm. 200, 213 (App. 1999).

Because the Chuuk Constitution is clear that only the state government has the power to tax, it cannot be said that such a resolution could not be predicted. Weno v. Stinnett, 9 FSM Intrm. 200, 214 (App. 1999).

To permit taxes to be retained that were extracted under an unconstitutional statute would have the effect of prolonging the viability of an ordinance that runs afoul of the Chuuk Constitution, at the expense of establishing the correct rule. The better course is to permit recovery of the taxes. Weno v. Stinnett, 9 FSM Intrm. 200, 214 (App. 1999).

When litigation over the constitutionality of a municipality's taxes was pending for five years, the municipality was put on notice early on that the taxes collected under the ordinances were subject to a claim for refund, and nothing prevented the municipality from planning for this eventuality. Having failed to do so, it cannot now claim hardship. Weno v. Stinnett, 9 FSM Intrm. 200, 214 (App. 1999).

TORTS

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

Roughly stated, the general principle is that one person may be liable in tort to another only if the first intentionally or negligently violates a duty owed to the other, and the other is injured as a result. Semens v. Continental Air Lines, Inc. (I), 2 FSM Intrm. 131, 142 (Pon. 1985).

According to the Pohnpeian view of civil wrongs, if one damages another's property, he must repair or replace it; if one injures another person, he must apologize and provide assistance to the injured person and his family; if one kills another person, he must provide the assistance that the victim would have provided and may have to offer another person to take the place of victim in his family. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 70-71 (Pon. S. Ct. Tr. 1986).

Primary lawmaking powers for the field of torts lie with the states, not with the national government, but the national government may have an implied power to regulate tort law as part of the exercise of other general powers. Edwards v. Pohnpei, 3 FSM Intrm. 350, 359 (Pon. 1988).

Although the FSM Supreme Court has often decided matters of tort law without stating explicitly that state rather than national law controls, there has been acknowledgment that state law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. Edwards v. Pohnpei, 3 FSM Intrm. 350, 360 n.22 (Pon. 1989).

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

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

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

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

Since state law generally controls the resolution of tort issues the duty of the FSM Supreme Court in a diversity case involving tort law is to try to apply the law the same way the highest state court would. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 455 (Chk. 1994).

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

A tort is a wrong for which the harm that resulted, or is about to result, is capable of being compensated in an action at law. The purpose is to afford compensation for injuries sustained by one person as the result of the unreasonable or socially harmful conduct of another. Primo v. Refalopei, 7 FSM Intrm. 423, 430 n.13 (Pon. 1996).

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

The defenses of estoppel, unclean hands and laches are all equitable defenses which do not apply in

actions sounding in personal injury. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 193 (Pon. 1997).

Should Pohnpeian custom and tradition not be determinative, the FSM Supreme Court will look to its earlier holding and decisions of United States courts for guidance as to relevant common law tort principles, and will evaluate the persuasiveness of the reasoning in these decisions against the background of pertinent aspects of Micronesian society and culture in Pohnpei. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 248, 253 (Pon. 1998).

The general principle is that one person may be liable in tort to another only if the first intentionally or negligently violates a duty owed to the other, and the other is injured as a result. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 293, 294 (Pon. 1998).

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

State law controls in the resolution of contract and tort issues. When the Supreme Court, in the exercise of its jurisdiction, decides a matter of state law, its goal should be to apply the law the same way the highest state court would. When no existing case law is found the FSM Supreme Court must decide issues of tort law by applying the law as it believes the state court would. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 294-95 (Pon. 1998).

A tort is a wrong for which the harm that resulted is capable of being compensated in an action at law. The purpose is to afford compensation for injuries sustained by one person as the result of the unreasonable or socially harmful conduct of another. Generally, one person may be liable in tort to another only if the first intentionally or negligently violates a duty owed to the other, and the other is injured as a result. Asher v. Kosrae, 8 FSM Intrm. 443, 449 (Kos. S. Ct. Tr. 1998).

The states' role in tort law is predominant. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM Intrm. 155, 158 (App. 1999).

A Kosrae state regulation that covers all persons wanting to fill in and construct on or over land below the ordinary high water mark does not provide any private right of action and cannot be the basis of a claim against the state for violation of law or regulation even if it did not have a specific plan for the seawall that was part of a road-widening project for which it had an overall plan. Jonah v. Kosrae, 9 FSM Intrm. 335, 342-43 (Kos. S. Ct. Tr. 2000).

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

The statute, 30 F.S.M.C. 104, does not impose a duty upon the FSM Development Bank to provide technical assistance to debtors to whom it has already made a loan, nor to assignees of those debtors. Nor does it give rise to a private cause of action. FSM Dev. Bank v. Mudong, 10 FSM Intrm. 67, 76-77 (Pon. 2001).

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

State law generally determines tort issues, and the FSM Supreme Court in diversity cases must attempt

to apply the law in the manner that the highest state court would. Amayo v. MJ Co., 10 FSM Intrm. 244, 253-54 (Pon. 2001).

A given for tort causes of action is that the alleged actor have some interest in or control over the instrumentality that brought about the tortious conduct. Kosrae v. Worswick, 10 FSM Intrm. 288, 291 (Kos. 2001).

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

The legislative privilege doctrine has both substantive and evidentiary aspects. In substance, the doctrine renders legislators immune from civil and criminal liability based on either speech or debate in the course of proceedings in the legislature. From an evidentiary standpoint, a legislator may claim the privilege in declining to answer any questions outside the legislature itself where those questions concern how a legislator voted, acted, or decided on matters within the sphere of legitimate legislative activity. AHPW, Inc. v. FSM, 10 FSM Intrm. 420, 425 (Pon. 2001).

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

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

The Pohnpei state criminal statutes were intended to provide for criminal penalties for those who commit certain acts which are prohibited by the Act. The Pohnpei Crimes Act is not intended to create a basis for private parties to sue other parties, but to enable the Pohnpei state government to be able to punish those persons who violate provisions of the Act. Statutes which do not by their terms provide citizens with a cause of action for money damages cannot be the basis for private damages claims. Ambros & Co. v. Board of Trustees, 11 FSM Intrm. 17, 25 (Pon. 2002).

The general purpose of tort law is to afford a victim compensation for the injuries or damages sustained as the result of another's unreasonable or socially harmful conduct. In other words, a purpose of tort law is to make the victim whole. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 469 (Pon. 2004).

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

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

as to whether be will be sued at all will be confined to the statutory period. His uncertainty about the extent of his liability may be greater, but that is often true in litigation. AHPW, Inc. v. FSM, 12 FSM Intrm. 544, 553 (Pon. 2004).

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

A plaintiff's state law claims will not be dismissed because he is seeking a large amount of damages. The amount of damages sought does not determine whether a claim is to be dismissed. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM Intrm. 154, 156 (Pon. 2005).

– Abuse of Process

Whether interference with the efforts of a non-FSM citizen engaged in business within the Federated States of Micronesia is an abuse of process is not an issue which may be resolved by reference to traditional or customary principles. Mailo v. Twum-Barimah, 2 FSM Intrm. 265, 268 (Pon. 1986).

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

Abuse of process occurs where one uses legal process against another's person or property to accomplish an ulterior purpose for which the process was not designed. Mailo v. Twum-Barimah, 2 FSM Intrm. 265, 268 (Pon. 1986).

The process contemplated for the tort of abuse of process is issuance by an official body of some legal document or order which affects the victim's person or property. Mailo v. Twum-Barimah, 2 FSM Intrm. 265, 268 (Pon. 1986).

One of the elements of abuse of process is that the process be used for an improper, ulterior purpose. An ulterior purpose is one in which coercion is used to obtain a collateral advantage not properly involved in the proceeding. The tort typically involves some form of extortion. Some definite act not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required. Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 111 (Chk. 1999).

When an order and writ are manifestly improper, but their purpose was not collateral to the process used, one of the elements of the tort of abuse of process is not satisfied. Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 111 (Chk. 1999).

– Anticompetitive Practices

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

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

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

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

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

When Pohnpei's refusal to hold a trochus harvest allegedly stemmed from environmental concerns, but all of the reports addressing this issue recommended that a trochus harvest be held and the concern was not that there would be too little trochus, but that there would be too much, nothing stood in the way of reasonable limitations on the harvest that could have harmonized both Pohnpei's legitimate environmental concerns and the national law requirement that it not limit the production of any commodity. Failure to do so violated 32 F.S.M.C. 302(2). AHPW, Inc. v. FSM, 12 FSM Intrm. 544, 552 (Pon. 2004).

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

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

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

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

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

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

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

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

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

Any person who proves a violation of 32 F.S.M.C. 302 or 32 F.S.M.C. 303 may recover reasonable attorney's fees. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 39 (Pon. 2004).

– Assault

Battery is the harmful or offensive contact with a person, resulting from an act intended to cause that contact, while an assault refers to the apprehension of that offensive contact. Once the court is satisfied from the evidence that an actual injury has occurred then it need not consider the separate tort of assault. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 191 (Pon. 1997).

Battery is a harmful, offensive contact with a person resulting from an act intended to cause the contact, while an assault has to do with the apprehension of the offensive contact; when the court determines that a battery has occurred, it need not consider the separate tort of assault. Elymore v. Walter, 9 FSM Intrm. 450, 458 (Pon. 2000).

– Battery

A battery or an assault is not determined by the presence or absence of injury; battery is a harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff to suffer such contact, while assault refers to the apprehension of imminent contact. Paul v. Celestine, 4 FSM Intrm. 205, 207 (App. 1990).

When the evidence clearly establishes that plaintiff suffered injuries as a result of intentional direct contact by the defendant the court need only consider the tort of battery, not the separate tort of assault. Meitou v. Uwera, 5 FSM Intrm. 139, 142 (Chk. S. Ct. Tr. 1991).

Despite the finding of battery, defendant will not be found liable for damages if plaintiff consented to battery, of if defendant was in some way privileged to inflict harmful or offensive contact. Meitou v. Uwera,

5 FSM Intrm. 139, 143 (Chk. S. Ct. Tr. 1991).

A person is liable to another for battery if he acts intending to cause harmful contact with a third person or an imminent apprehension of such contact, and a harmful contact indirectly results. Davis v. Kutta, 7 FSM Intrm. 536, 544 (Chk. 1996).

An actor is privileged to use reasonable force, not intended or likely to cause death or serious bodily harm, to defend himself against the unprivileged harmful or offensive contact or other bodily harm which he reasonably believes another is about to inflict intentionally upon him, but the means used must be proportionate to the danger threatened. Davis v. Kutta, 7 FSM Intrm. 536, 544-45 (Chk. 1996).

Even though police may be privileged to use force to prevent the commission of a crime, the battery of an innocent bystander is not privileged. Davis v. Kutta, 7 FSM Intrm. 536, 545 (Chk. 1996).

Civil liability for a battery is not limited to the direct perpetrator of the act charged, but extends to any person who by any means encourages or incites the battery, or aids and abets it. Davis v. Kutta, 7 FSM Intrm. 536, 545 (Chk. 1996).

Where a number of people fired weapons and others encouraged them to fire or surrendered their weapon so another could fire it, all are jointly and severally liable for battery on an innocent bystander as the person who fired the bullet that struck her. Davis v. Kutta, 7 FSM Intrm. 536, 545 (Chk. 1996).

The commission of the intentional tort of battery by police officers in the scope of their employment is a denial of due process of law. Davis v. Kutta, 7 FSM Intrm. 536, 548 (Chk. 1996).

Battery is the harmful or offensive contact with a person, resulting from an act intended to cause that contact, while an assault refers to the apprehension of that offensive contact. Once the court is satisfied from the evidence that an actual injury has occurred then it need not consider the separate tort of assault. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 191 (Pon. 1997).

Civil liability for a battery is not limited to the direct perpetrator of the act charged. It extends to any person who by any means encourages or incites the battery, or aids and abets it. Each officer who encouraged any other officer to become involved in the fight with plaintiff, either by direct command, by statements or by providing the means for another officer to become involved, is as liable for the battery on plaintiff as the person who actually delivered the kick to his leg. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 192 (Pon. 1997).

The tort of battery is an intentional tort; therefore none of the defenses to negligence such as assumption of risk, comparative negligence, contributory negligence and last clear chance apply to intentional actions on the part of the defendants. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 193 (Pon. 1997).

Privilege is a legal defense to the tort of battery and may be based upon the consent of the person who is the one affected by the touching, or the fact that the touching is a necessity to protect some private or public interest which is of such importance as to justify the threatened harm or, that the touching is one which the actor must cause in the exercise of some action for which freedom of action is essential. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 193 (Pon. 1997).

The commission of the intentional tort of battery by the police officers in the scope of their employment is a denial of due process of law. Physical abuse committed by police officers may violate a prisoner's right to due process of law. The right to due process of law is violated when a police officer batters a person. The public at large has the right to be free of invasions of their person and personal security by any government agent and suspects have the right to be free from the use of excessive force during their arrest. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 195 (Pon. 1997).

A municipality is liable for battery by its police officers when it has ratified their actions by failing to charge

them and the lack of any internal discipline whatsoever. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 195 (Pon. 1997).

It is not a manifest error of law or fact requiring a new trial that the court held police officers liable for battery without determining exactly which officer's action caused plaintiff's injury when the court found that each of the defendants had participated in plaintiff's arrest, the court discussed the issues of justifiable force and privilege throughout its decision, and found that defendants had acted with intent to bring about a harmful or offensive contact with plaintiff, which was not justified under the circumstances. Conrad v. Kolonia Town, 8 FSM Intrm. 215, 217-18 (Pon. 1997).

Although under Pohnpeian custom it is inappropriate for a parent, or an individual who stands in the place of a parent, to see his daughter come home late at night with a boyfriend, it is not a corollary that that person is justified under custom in inflicting a battery on the boyfriend, or damaging car he is driving. Elymore v. Walter, 9 FSM Intrm. 450, 456 (Pon. 2000).

When there was no evidence to suggest that a parent's customary privilege to discipline ran beyond the daughter to encompass her boyfriend as well, when there was no evidence to suggest that when the boyfriend dropped the daughter off he was threatening or in any other way posing a danger of physical harm to her such that the parent was entitled to inflict a battery upon the boyfriend in order to defend the daughter as he may have been obligated to do under custom, and when there was no evidence that under custom a parent could attack the car driven by the daughter's boyfriend with the baseball bat as a way of demonstrating his displeasure with the boyfriend for his role in keeping her out late, and in dropping her off under circumstances where he would see them together, Pohnpeian custom does not constitute a defense to either the battery or property damage claims. Elymore v. Walter, 9 FSM Intrm. 450, 456 (Pon. 2000).

Battery is a harmful, offensive contact with a person resulting from an act intended to cause the contact, while an assault has to do with the apprehension of the offensive contact; when the court determines that a battery has occurred, it need not consider the separate tort of assault. Elymore v. Walter, 9 FSM Intrm. 450, 458 (Pon. 2000).

It is enough to constitute a battery that the defendant sets a force in motion which ultimately produces the result, such as striking a glass door so that the plaintiff is hit with the fragments. Elymore v. Walter, 9 FSM Intrm. 450, 458 (Pon. 2000).

Punitive damages are awarded as a punishment to the defendant for his wrongful act and as a warning and example to deter him and others from committing similar acts in the future. As a general rule, punitive damages are allowed for an assault and battery committed wantonly, maliciously, or under circumstances of aggravation. Since battery usually is a matter of the worst kind of intentions, it frequently justifies punitive damages. Elymore v. Walter, 9 FSM Intrm. 450, 459 (Pon. 2000).

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

The state, as employer of a police trainee, is responsible for the battery committed by the trainee while acting within the scope of that employment. Atesom v. Kukkun, 10 FSM Intrm. 19, 22 (Chk. 2001).

– Breach of Fiduciary Duty

Where the defendant has breached her fiduciary duty, and converted to her own personal use funds of others, has made no claim of right to any of the funds or offered any defense, and blame thus lies wholly with the defendant, the plaintiff will be allowed to recover its attorney's fees in order to make the victim whole. This is a narrowly drawn exception to the general rule parties will bear their own attorney's fees. Bank of Guam v. Nukuto, 6 FSM Intrm. 615, 617-18 (Chk. 1994).

A financial institution, such as a credit union, that holds money from depositors does have an on-going

fiduciary duty to its depositors. Wakuk v. Kosrae Island Credit Union, 7 FSM Intrm. 195, 197 (Kos. S. Ct. Tr. 1995).

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

FSM case law has not acknowledged the existence of the tort of breach of fiduciary duty in the context of insurance or any other context except banking. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 308 (Pon. 2004).

In a narrowly drawn exception to the general rule that the parties will bear their own attorney's fees, attorney's fees have been awarded as part of costs when a defendant has breached her fiduciary duty to the plaintiff. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 472 (Pon. 2004).

– Breach of Implied Covenant of Good Faith

Breach of an implied covenant of good faith and fair dealing is a common law cause of action, which is a tort claim that arises out of a contractual relationship between the parties. The implied covenant of good faith and fair dealing rests on the premise that whenever a party's cooperation is necessary for the performance of a contractual promise, there is a condition implied that the cooperation will be given. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 307 (Pon. 2004).

Contracts impose on the parties thereto a duty to do everything necessary to carry them out, and there is an implied undertaking in every contract on each party's part that he will not intentionally and purposely do anything to prevent the other party from carrying out his part of the agreement, or do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract, and the FSM Supreme Court will entertain such claims in the context of insurance contracts, where the insurer possesses greater sophistication, can be expected to assist local insureds in understanding the relevant legal terminology, and has a specialized role in processing claims. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 307 (Pon. 2004).

The court cannot say that an insurance claims process which consumed between 3 and 4 months from the filing of the claim to the issuance of a denial is so lengthy, so egregious, as to constitute bad faith as a matter of law. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 308 (Pon. 2004).

Courts have permitted attorney's fee awards under the vexatious conduct exception when the plaintiff has proven the defendant's breach of the implied covenant or implied duty of good faith and fair dealing (also called the bad faith tort). If a plaintiff were to prevail on a bad faith tort claim against an insurer, the insurer would be liable to him for reasonable attorney's fees that are proximately caused by the bad faith conduct. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 471 (Pon. 2004).

– Causation

The excavation of large holes on the land of private citizens, in areas where children play, and near a public road, is inherently dangerous and calls for special precautions. One who causes such work to be undertaken may not escape liability simply by employing an independent contractor to do the work. Ray v. Electrical Contracting Corp., 2 FSM Intrm. 21, 25 (App. 1985).

Medical malpractice by hospital staff does not relieve a tortfeasor of his responsibility for damages, because any injuries that might have been caused by the staff flowed naturally from his own acts. Primo v. Refalopei, 7 FSM Intrm. 423, 429 (Pon. 1996).

The proximate cause of an injury is the primary or moving cause which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. Primo v. Refalopei, 7 FSM Intrm. 423, 429 (Pon. 1996).

Medical actions of a hospital staff do not constitute an efficient intervening cause that would break the causal link between a tortfeasor's attack and the plaintiff's injuries. Primo v. Refalopei, 7 FSM Intrm. 423, 429 (Pon. 1996).

The employment of a police officer with ten-year old charges and or convictions for violent behavior is insufficient to hold a municipality liable for negligent hiring because the charges and or convictions were too remote and attenuated to be the proximate cause of the plaintiff's injury. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 194 (Pon. 1997).

Proximate cause is the primary or moving cause, or that which, in a natural and continuous sequence; unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 194 (Pon. 1997).

Failure to use due care under the circumstances in maintaining a telephone pole guy wire is the proximate cause of an eye injury resulting from a collision with the defective wire because the injury was one that might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. Asher v. Kosrae, 8 FSM Intrm. 443, 450-51 (Kos. S. Ct. Tr. 1998).

The plaintiff has not shown a causative link between the alleged contamination and her injury sufficient to withstand the defendants' summary judgment motion when, as between contaminated and uncontaminated kerosene, a reasonable trier of fact could not exclude the latter so as to conclude that it was the former that caused her injury. William v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 584, 586 (Pon. 2002).

Speculation, guess and surmise may not be substituted for competent evidence, and where there are several possible causes of one accident, one or more of which a defendant is not responsible for, a plaintiff cannot recover without proving that the injury was sustained wholly or in part by a cause for which the defendant was responsible. William v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 584, 587 (Pon. 2002).

When a reasonable trier of fact could not exclude the plaintiff's playing with matches and uncontaminated – as opposed to contaminated – kerosene as the cause of her injuries, it follows that the record taken as a whole could not lead a rational trier of fact to find for her and that the defendants' summary judgment motion must be granted. William v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 584, 587 (Pon. 2002).

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

– Comparative Negligence

Comparative negligence, which has displaced contributory negligence in most jurisdictions in the United States, should be given careful consideration by courts even though the *Restatement (Second) of Torts* refers only to contributory negligence and is silent about comparative negligence. There is reason to doubt that the FSM Supreme Court is bound by 1 F.S.M.C. 203 pointing to the *Restatements* as a guide for determining and

applying the common law. Ray v. Electrical Contracting Corp., 2 FSM Intrm. 21, 23 n.1 (App. 1985).

Apportionment of fault among several defendants in a personal injury case must be based on the Pohnpeian concept of "kaidehn peid sipal ieu dihp," which requires each wrongdoer to bear the consequences of his or her own fault. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 75 (Pon. S. Ct. Tr. 1986).

In keeping with the spirit of Pohnpeian custom, when defendants are at fault, they should share in the payment of damages based upon their share of liability. Koike v. Ponape Rock Products, Inc. (II), 3 FSM Intrm. 182, 185 (Pon. S. Ct. Tr. 1987).

In apportioning damages among negligent parties, the Pohnpei Supreme Court will consider the following factors: the Pohnpei Constitution, custom and tradition, the degree of negligence of each party, other jurisdictions' efforts to abolish joint liability, the need to minimize the role of insurance companies given Pohnpei's stage of development, the example of the U.S. insurance crisis, other jurisdictions' efforts to modify the rules governing joint and several liability, and American judges' assessments of joint and several liability. Koike v. Ponape Rock Products, Inc. (II), 3 FSM Intrm. 182, 185 (Pon. S. Ct. Tr. 1987).

The "pure system" of comparative negligence is available as a defense to defendants in Chuuk State. The defendant is entitled to a proportional reduction in any damage award upon proof that the plaintiff's negligence was in part the cause of his injuries. Epiti v. Chuuk, 5 FSM Intrm. 162, 167-68 (Chk. S. Ct. Tr. 1991).

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

As a loss of consortium claim is derivative from a spouse's claim for damages an award for loss of consortium is properly reduced by the percentage of fault attributable to the spouse. Epiti v. Chuuk, 5 FSM Intrm. 162, 170 (Chk. S. Ct. Tr. 1991).

The doctrine of comparative negligence is more consistent with life in Pohnpei in that the doctrine recognizes that injuries and damages are often caused through a combination of errors and misjudgments by more than one person. Nothing in Pohnpei custom absolves a party who caused injury to another from the customary obligations of apology and reconciliation because the injured party's negligence contributed to the injury. Alfons v. Edwin, 5 FSM Intrm. 238, 242 (Pon. 1991).

Comparative negligence, unlike contributory negligence permits assessment of relative degrees of responsibility and allows awards on that basis. Alfons v. Edwin, 5 FSM Intrm. 238, 242 (Pon. 1991).

Doctrine of comparative negligence is more consistent with custom and tradition on Pohnpei unless, and until the highest Pohnpei state court rules otherwise. Alfons v. Edwin, 5 FSM Intrm. 238, 242-43 (Pon. 1991).

In order for a third party's negligent conduct to afford any relief to defendants by way of a contributory (comparative) negligence theory, it must be demonstrated that the negligent act or omission somehow caused or contributed to the injury sustained and that there was not an independent or superseding cause. Ludwig v. Mailo, 5 FSM Intrm. 256, 261 (Chk. S. Ct. Tr. 1992).

Under the "pure" form of comparative negligence, which is a defense available in Chuuk, a defendant is entitled to a proportional reduction in any damage award upon proof that the plaintiff's negligence was in part the cause of his injuries, but the plaintiff may still recover for all of the harm attributable to the defendant's wrongdoing even if plaintiff's negligence was greater than the defendant's. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 63, 66 (Chk. 1997).

Comparative negligence, not assumption of risk, is the rule in Pohnpei. Amayo v. MJ Co., 10 FSM Intrm.

244, 250 (Pon. 2001).

Comparative fault is a preferable doctrine to that of contributory negligence, and should be considered the law in Pohnpei until and unless the Pohnpei Supreme Court rules otherwise. Primo v. Semes, 11 FSM Intrm. 324, 330 (Pon. 2003).

Under comparative fault principles, a defendant will only be held liable for the percentage of fault he is found responsible for, if any. Primo v. Semes, 11 FSM Intrm. 324, 330 (Pon. 2003).

– Conspiracy

In a case in which the defendant proposes a standard of requiring clear and convincing evidence in civil conspiracy cases rather than a preponderance based upon conditions, customs and traditions in Micronesia, it is incumbent upon him to establish such conditions by evidence, because the court will not take judicial notice of such conditions, customs or traditions. Opet v. Mobil Oil Micronesia, Inc., 3 FSM Intrm. 159, 164 (App. 1987).

In a case of civil conspiracy, the burden of proof is a preponderance of the evidence, not a clear and convincing standard, in order to establish the conspiracy. Opet v. Mobil Oil Micronesia, Inc., 3 FSM Intrm. 159, 164 (App. 1987).

– Contribution

The right of contribution among tortfeasors, where two or more persons become jointly or severally liable in tort for the same injury to a person, is subject to certain limitations which are set out in the statute that creates the cause of action for contribution among joint tortfeasors. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM Intrm. 306, 309 (Pon. 1998).

When a defendant's and plaintiff's prejudgment settlement, by its terms, did not extinguish or discharge a third-party defendant's potential liability to the plaintiff, the defendant's contribution action against the third-party defendant is barred, even though, since the statute of limitations had run, the settlement had the effect of extinguishing the plaintiff's potential claims against the third-party defendant. Under 6 F.S.M.C. 1202(4), for the defendant to be allowed to maintain a contribution action the settlement itself must either have discharged the common liability or extinguished the third-party defendant's liability. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM Intrm. 306, 311 & n.4 (Pon. 1998).

Although the FSM Supreme Court has recognized claims for indemnity based on contractual provisions between two parties, and required precise clarity in the indemnification clause language, it is not prepared to create a common law indemnity claim. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM Intrm. 306, 311 (Pon. 1998).

By statute, when two or more persons become jointly or severally liable in tort there is a right of contribution among them. Senda v. Semes, 8 FSM Intrm. 484, 495 (Pon. 1998).

The date of accrual for a contribution cause of action is the day the judgment was entered. Obviously a prerequisite to any successful contribution action based on a judgment is the judgment itself. The limitations period for a contribution action is six years. Senda v. Semes, 8 FSM Intrm. 484, 500-01 (Pon. 1998).

A person who has discharged more than his proportionate share of a duty owed by himself and another and who is entitled to contribution from the other is entitled to reimbursement limited to the proportionate amount of his net outlay properly expended. When incurred interest expense is part of his net outlay properly expended, the other should contribute toward the interest expense. Senda v. Semes, 8 FSM Intrm. 484, 508 (Pon. 1998).

By statute, a tort-feasor who enters into a settlement agreement is not entitled to recover contribution

from another tort-feasor whose liability for the injury or wrongful death is not extinguished by the settlement. Tom v. Pohnpei Utilities Corp., 9 FSM Intrm. 82, 88 (App. 1999).

By statute, a tort-feasor, against whom there is no judgment, and who has agreed while the action was pending against him to discharge the common liability, may sue for contribution within one year of the agreement if he has paid the liability. Tom v. Pohnpei Utilities Corp., 9 FSM Intrm. 82, 88 (App. 1999).

6 F.S.M.C. 1202(4) bars a contribution claim when a settlement agreement does not extinguish another tort-feasor's liability because that liability had already been extinguished by the relevant statute of limitations. Tom v. Pohnpei Utilities Corp., 9 FSM Intrm. 82, 89 (App. 1999).

A defendant is barred from seeking contribution from a joint-tortfeasor when its settlement agreement with the plaintiffs recites that the release does not affect either the plaintiffs' or the defendant's claims against the joint tort-feasor. Tom v. Pohnpei Utilities Corp., 9 FSM Intrm. 82, 89 (App. 1999).

When a defendant is granted summary judgment on the complaint against him, that defendant's cross-claim for contribution and indemnification from another defendant in the event that he is found liable on the complaint will be dismissed since he has no basis to seek indemnification or contribution because the summary judgment order dismissed the complaint against him. Kosrae v. Worswick, 10 FSM Intrm. 288, 292 (Kos. 2001).

No right of contribution exists when a party has not paid more than his pro rata share of the common liability because there has not yet been any finding of liability against any party. Primo v. Semes, 11 FSM Intrm. 324, 330 (Pon. 2003).

An action for contribution may be enforced by a separate action, or by motion when a judgment has been entered against two or more tort-feasors for the same injury or wrongful death, but when no judgment has yet been entered, claims for contribution are premature, and may not be brought by way of a counterclaim. Primo v. Semes, 11 FSM Intrm. 324, 330 (Pon. 2003).

– Contributory Negligence and Assumption of the Risk

Comparative negligence, which has displaced contributory negligence in most jurisdictions in the United States, should be given careful consideration by courts even though the *Restatement (Second) of Torts* refers only to contributory negligence and is silent about comparative negligence. There is reason to doubt that the FSM Supreme Court is bound by 1 F.S.M.C. 203 pointing to the *Restatements* as a guide for determining and applying the common law. Ray v. Electrical Contracting Corp., 2 FSM Intrm. 21, 22 n.1 (App. 1985).

An employee who is performing a difficult task in one way and is given contrary instructions by his employer and who must be mindful of his employer's instructions or face a possible reprimand is not guilty of contributory negligence. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 66 (Pon. S. Ct. Tr. 1986).

Conduct on an employee's part, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection, constitutes contributory negligence. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 67 (Pon. S. Ct. Tr. 1986).

The common Pohnpeian custom of assisting a person in need should not be dispensed with in order to allow the defense of contributory negligence or assumption of risk to be raised. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 67 (Pon. S. Ct. Tr. 1986).

Assumption of risk typically involves one of the following situations: 1) plaintiff has given his consent in advance to relieve defendant of an obligation of conduct toward him, and to take his chances of injury from a known risk arising from what defendant is to do or leave undone; 2) plaintiff voluntarily enters into a relation with defendant, with knowledge that defendant will not protect him against the risk; 3) plaintiff is aware of a risk already created by defendant's negligence, but proceeds to encounter it by voluntarily taking part even

after the danger is known to him. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 67-68 (Pon. S. Ct. Tr. 1986).

Contributory negligence of the owner of property is not a defense available to the wrongdoer in an action for conversion brought by the owner of the property. Opet v. Mobil Oil Micronesia, Inc., 3 FSM Intrm. 159, 166 (App. 1987).

The doctrine of contributory negligence should not be adopted in Truk State in the absence of a statute because it is not in conformity with traditional Trukese concepts of responsibility; in Trukese custom, the wrongdoer cannot excuse his obligations to the injured person or the injured family by arguing that the injury was in part caused by the negligence of the injured party, or that someone else was also responsible. Suka v. Truk, 4 FSM Intrm. 123, 127 (Truk S. Ct. Tr. 1989).

The absolute defenses of Assumption of the Risk and Contributory Negligence are contrary to the traditional Chuukese concepts of responsibility and shall not be available in Chuuk State. Epiti v. Chuuk, 5 FSM Intrm. 162, 167 (Chk. S. Ct. Tr. 1991).

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

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

Comparative negligence, not assumption of risk, is the rule in Pohnpei. Amayo v. MJ Co., 10 FSM Intrm. 244, 250 (Pon. 2001).

Comparative fault is a preferable doctrine to that of contributory negligence, and should be considered the law in Pohnpei until and unless the Pohnpei Supreme Court rules otherwise. Primo v. Semes, 11 FSM Intrm. 324, 330 (Pon. 2003).

– Conversion

Contributory negligence of the owner of property is not a defense available to the wrongdoer in an action for conversion brought by the owner of the property. Opet v. Mobil Oil Micronesia, Inc., 3 FSM Intrm. 159, 166 (App. 1987).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Bank of Guam v. Nukuto, 6 FSM Intrm. 615, 616 (Chk. 1994).

Where the defendant has breached her fiduciary duty, and converted to her own personal use funds of others, has made no claim of right to any of the funds or offered any defense, and blame thus lies wholly with the defendant, the plaintiff will be allowed to recover its attorney's fees in order to make the victim whole. This is a narrowly drawn exception to the general rule parties will bear their own attorney's fees. Bank of Guam v. Nukuto, 6 FSM Intrm. 615, 617-18 (Chk. 1994).

The elements of an action for conversion are the plaintiffs' ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Bank of Hawaii v. Air Nauru, 7 FSM Intrm. 651, 653 (Chk. 1996).

The measure of damages in conversion is the property's market value at the time of conversion plus the legal rate of interest. Bank of Hawaii v. Air Nauru, 7 FSM Intrm. 651, 653 (Chk. 1996).

When there has been no wrongful taking or disposal of the goods, and the defendant has merely come rightfully into possession and then refused to surrender them, demand and refusal are necessary to the existence of the tort of conversion. Continued silence and inaction can amount to a refusal. Bank of Hawaii v. Air Nauru, 7 FSM Intrm. 651, 653 (Chk. 1996).

Punitive damages may be recoverable for conversion where the defendant's act was accompanied by fraud, ill will, malice, recklessness, wantonness, oppressiveness, willful disregard of the plaintiff's rights, or other circumstances tending to aggravate the injury, but defendant's mere failure to respond to an inquiry, or to answer a complaint is not a circumstance entitling a plaintiff to punitive damages. Bank of Hawaii v. Air Nauru, 7 FSM Intrm. 651, 653 (Chk. 1996).

The elements of an action for conversion are the party's ownership and right to possession of the property, the other party's wrongful or unauthorized act of dominion over the property inconsistent with or hostile to the owner's right, and resulting damages. Jonas v. Paulino, 9 FSM Intrm. 519, 521 (Kos. S. Ct. Tr. 2000).

A party's claim for conversion must fail and be dismissed when the has no ownership and rights to possession of the property because title has been confirmed in another. Jonas v. Paulino, 9 FSM Intrm. 519, 521 (Kos. S. Ct. Tr. 2000).

An action for conversion requires proof of the following elements: 1) plaintiff's ownership and right to possession of the property, 2) defendant's wrongful or unauthorized action of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and 3) damages. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 235 (Kos. S. Ct. Tr. 2001).

When, although there is no dispute that the plaintiff's property was removed from its designated location without his consent and has not been recovered to date, the plaintiff did not prove by a preponderance of the evidence that either defendant converted the property by a wrongful act, the plaintiff cannot recover on his conversion claim. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 236 (Kos. S. Ct. Tr. 2001).

The doctrine of separation of powers is not violated every time a person, who happens to be a senator, allegedly misuses property that is traceable to an appropriation made under national law. If a senator takes a car, boat, desk, computer, or pen that rightfully is in the possession of another person or entity, he should bear the same responsibility and consequences as any other person: he could be charged criminally, or sued in a civil action by the rightful owner for conversion of that property. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 632 (Pon. 2002).

A claim that some private party has taken or deprived someone of their property is, if it was personal property that was allegedly taken, a claim for conversion or for trespass to chattels, and, if it was real property that was allegedly taken by some private party, it is a claim for trespass (including actions for ejectment) or possibly for nuisance (interference with use and enjoyment of land). They are not due process or takings claims. Rosokow v. Bob, 11 FSM Intrm. 210, 215 (Chk. S. Ct. App. 2002).

Prejudgment interest has been allowed on conversion claims. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 471 (Pon. 2004).

The elements of an action for conversion are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 128-29 (Chk. 2005).

When, viewing the facts in the light most favorable to the plaintiff and accepting his well-pled allegations (which remain to be proven) as true, a corporation (while under receivership) took dominion over the plaintiff's property; quarried it for rock; crushed the rock into aggregate; sold it; paid various expenses, including workers' wages, the operator's fees, and the receiver's fee; and then paid the royalties, to which the

corporation was entitled, to the bank to reduce its indebtedness to the bank, the bank never took dominion over the property the plaintiff alleges is his and the bank is therefore entitled to summary judgment in its favor as a matter of law on the plaintiff's conversion and the "unauthorized sale of property" (the quarried aggregate) claims. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 129 (Chk. 2005).

– Damages

The Pohnpei Supreme Court will adhere to the common law rule followed by the former Trust Territory High Court that the wrongdoer in an automobile accident is not obliged to repair the damaged vehicle nor to pay its original cost; his only obligation is to pay the plaintiff-owner the amount of his loss. Phillip v. Aldis, 3 FSM Intrm. 33, 37 (Pon. S. Ct. Tr. 1987).

To determine damages in a personal injury case, the Pohnpei Supreme Court will consider the victim's loss of income, as well as his inability to provide support through fishing and farming as a result of his disability. To determine the total loss of income, the court will assume that income would be earned until the age of sixty, which is the mandatory retirement age for government employees, though not for private employees. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 73 (Pon. S. Ct. Tr. 1986).

The Pohnpei Supreme Court recognizes pain and suffering as a principle element of damages in personal injury cases, but because there is no fixed formula to determine the monetary amount, the court has to use its discretion. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 73 (Pon. S. Ct. Tr. 1986).

To determine a monetary value for loss of consortium, the Pohnpei Supreme Court will consider the social structure of the society and the extended family system, whereby other members of the family can be expected to provide some, albeit occasional, assistance. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 74 (Pon. S. Ct. Tr. 1986).

The Pohnpei Supreme Court declines to adopt the "collateral source" rule, according to which alternative sources of income available to a victim are not allowed to be deducted from the amount the negligent party owes, because it does not want to discourage customary forms of family restitution. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 74 (Pon. S. Ct. Tr. 1986).

In apportioning damages among negligent parties, the Pohnpei Supreme Court will consider the following factors: the Pohnpei Constitution, custom and tradition, the degree of negligence of each party, other jurisdictions' efforts to abolish joint liability, the need to minimize the role of insurance companies given Pohnpei's stage of development, the example of the U.S. insurance crisis, other jurisdictions' efforts to modify the rules governing joint and several liability, and American judges' assessments of joint and several liability. Koike v. Ponape Rock Products, Inc. (II), 3 FSM Intrm. 182, 185 (Pon. S. Ct. Tr. 1987).

In a wrongful death claim in Truk State, where the total pecuniary estimated loss was $15,288 and where an infant child lost his mother, there should be a finding for the plaintiff in the maximum amount allowed by law, $50,000. Asan v. Truk, 4 FSM Intrm. 51, 56-57 (Truk S. Ct. Tr. 1989).

In a wrongful death claim, parents of the deceased child are entitled to claim pecuniary damages and damages for their own pain and suffering from the loss of their child. Suka v. Truk, 4 FSM Intrm. 123, 130 (Truk S. Ct. Tr. 1989).

The mental anguish or grief aspect of a damage award reflects the loss of a broad range of mutual benefits each family member normally receives from others' continued existence, including love, affection, care, attention, companionship, comfort and protection. Suka v. Truk, 4 FSM Intrm. 123, 130 (Truk S. Ct. Tr. 1989).

Although in the usual case in Truk the damages for loss of income will be lower than, for instance, Guam or Hawaii because of the wage scale there, and medical expense damages will normally be greatly reduced because in the usual case the government absorbs the medical bills, there is no justification for reducing a

mental pain and suffering award because of the citizenship of the parents or the geographic location of the accident causing the injury. Suka v. Truk, 4 FSM Intrm. 123, 131 (Truk S. Ct. Tr. 1989).

The term "pecuniary injury" as used in wrongful death statutes traditionally has been interpreted as including the probable support, services and other contributions that reasonably could have been expected by the beneficiaries had the decedent lived out her full life expectancy, all reduced to present worth. Leeruw v. FSM, 4 FSM Intrm. 350, 365 (Yap 1990).

Where the court cannot compel the state to honor an illegal and/or unconstitutional lease it can order the state to restore the illegally held land, with any and all public improvements removed, to its rightful owner who may also be entitled to damages. Billimon v. Chuuk, 5 FSM Intrm. 130, 137 (Chk. S. Ct. Tr. 1991).

Despite lack of evidence of medical expenses, either that medical treatment was necessary, or that medical treatment was obtained as a result of injuries the court is entitled to presume that some expenditures were made and finds that plaintiff should recover damages for those expenses, even in the absence of proof of purchase. Meitou v. Uwera, 5 FSM Intrm. 139, 145 (Chk. S. Ct. Tr. 1991).

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

As a loss of consortium claim is derivative from a spouse's claim for damages an award for loss of consortium is properly reduced by the percentage of fault attributable to the spouse. Epiti v. Chuuk, 5 FSM Intrm. 162, 170 (Chk. S. Ct. Tr. 1991).

To recover for pain and suffering a plaintiff need only show "suffering," not both "pain" and "suffering" as the term includes not only the physical pain but also fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal. Ludwig v. Mailo, 5 FSM Intrm. 256, 262 (Chk. S. Ct. Tr. 1992).

A statutory cap on the amount and scope of recovery in a wrongful death action, lawfully enacted by the Kosrae legislature, does not interfere with traditional Kosraean or Micronesian compensation of a victim's family by the tortfeasor. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM Intrm. 358, 361 (Kos. 1992).

Where a plaintiff makes damage claims in tort as well damage claims based on contract, contract clauses limiting the contract damages do not apply. McGillivray v. Bank of the FSM (I), 6 FSM Intrm. 404, 409 (Pon. 1994).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. Bank of Guam v. Nukuto, 6 FSM Intrm. 615, 616 (Chk. 1994).

Where the defendant has breached her fiduciary duty, and converted to her own personal use funds of others, has made no claim of right to any of the funds or offered any defense, and blame thus lies wholly with the defendant, the plaintiff will be allowed to recover its attorney's fees in order to make the victim whole. This is a narrowly drawn exception to the general rule parties will bear their own attorney's fees. Bank of Guam v. Nukuto, 6 FSM Intrm. 615, 617-18 (Chk. 1994).

Actual, not speculative, damages must be proven in order to award damages for wrongful restraint. Estimates of lost gross receipts are insufficient because a claimant is only entitled to lost profits. Sellem v. Maras, 7 FSM Intrm. 1, 6 & n.10 (Chk. S. Ct. Tr. 1995).

Normally, the measure of damages in case of the purchase of personal property induced by misrepresentation is the difference between the fair market value of the property if the true condition were known and what the plaintiff paid for the property. Eram v. Masaichy, 7 FSM Intrm. 223, 226 (Chk. S. Ct. Tr. 1995).

Failure of a creditor to notify the debtor of its failure to obtain insurance is negligence. As a consequence the creditor is liable to the debtor for the entire amount of the debtors' loss, otherwise the debtor is only entitled to return of full amount of insurance premiums paid. FSM Dev. Bank v. Bruton, 7 FSM Intrm. 246, 251 (Chk. 1995).

Where a defendant has trespassed on a plaintiff's land by constructing improvements thereon the measure of damages due the plaintiff is an amount equal to the fair market rental value of the land in the place located over the period of use, and also an amount for any damage to trees or food plants during the defendant's use of the property and for any conditions caused by the defendant's trespass and use such as the construction of a garbage dump. Ikanur v. Director of Educ., 7 FSM Intrm. 275, 277 (Chk. S. Ct. Tr. 1995).

In a trespass case, a defendant who made improvements to the plaintiff's property is entitled to offset the value of the improvements against damages caused to the plaintiff's property during the trespass, but all improvements made by the defendant on land without the plaintiff's permission become the plaintiff's property and the defendant has no right to any further use of the improvements without the plaintiff's permission. Ikanur v. Director of Educ., 7 FSM Intrm. 275, 277 (Chk. S. Ct. Tr. 1995).

Where a defendant's negligence proximately caused plaintiffs' home to be unsanitary and uninhabitable the measure of damages is the replacement value of the personal property lost and the fair market value of a replacement rental house for the time that the plaintiff's house was uninhabitable. Sandy v. Chuuk, 7 FSM Intrm. 316, 318 (Chk. S. Ct. Tr. 1995).

An entry of default does not relieve a plaintiff of the burden of proving the damages that flowed from the liability thus established. Primo v. Refalopei, 7 FSM Intrm. 423, 428 (Pon. 1996).

A tortfeasor is responsible for all damages flowing from his actions, including injuries related to medical care and treatment. Primo v. Refalopei, 7 FSM Intrm. 423, 430 (Pon. 1996).

Damages for lost future earnings are not awardable where they are duplicative and speculative, but damages may be awarded for financial and emotional loss, and for loss, at present value, of customary services that a child would have preformed if not for her wrongful death. Primo v. Refalopei, 7 FSM Intrm. 423, 433-34 (Pon. 1996).

Awarding damages for pain and suffering is one of the most difficult tasks of a court because the determination lies solely in the discretion of the trier of fact and no fixed rules exist to aid in the determination. Primo v. Refalopei, 7 FSM Intrm. 423, 434 (Pon. 1996).

Compensatory damages for personal injury may include medical expanses incurred, lost wages, impairment of future ability to earn, and other specific costs that accrued as a result of the injury. Davis v. Kutta, 7 FSM Intrm. 536, 548 (Chk. 1996).

Compensatory damages for personal injury also include pain and suffering, past as well as the reasonable value of future pain and suffering. An award for pain and suffering is not reduced merely because the injury took place in Chuuk. The court must use its discretion in awarding it. Davis v. Kutta, 7 FSM Intrm. 536, 549 (Chk. 1996).

A person injured by the intentional tort of another is entitled to an award for pain and suffering, including mental anguish. Davis v. Kutta, 7 FSM Intrm. 536, 549 (Chk. 1996).

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

The measure of damages in conversion is the property's market value at the time of conversion plus the legal rate of interest. Bank of Hawaii v. Air Nauru, 7 FSM Intrm. 651, 653 (Chk. 1996).

Calculating damages for pain and suffering is a difficult task because no fixed rules exist to aid in that determination which lies in the sole discretion of the trier of fact, and in making the calculation, it is proper to consider not only past pain but future pain. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 63, 66 (Chk. 1997).

A specific claim for lost wages that accrued as a result of an injury at the hands of the defendants may be recovered as part of compensatory damages. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 195 (Pon. 1997).

Compensatory damages may be awarded a party who is deprived of civil rights. This award of damages includes reasonable attorney fees and costs of suit. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 196 (Pon. 1997).

Damages for waste are normally the difference in value of the property before and after the act of waste. Wolphagen v. Ramp, 8 FSM Intrm. 241, 244 (Pon. 1998).

The damages for waste committed are usually measured by the injury actually sustained and if the value of the premises has been improved by the acts complained of, the complainants will only recover nominal damages, if any, at law. Wolphagen v. Ramp, 8 FSM Intrm. 241, 244 (Pon. 1998).

Damages for waste can also be determined by the cost of repairing or replacing what was wasted when the damage is small in comparison to property's total value and the amount is readily ascertainable. Wolphagen v. Ramp, 8 FSM Intrm. 241, 245 (Pon. 1998).

A lessor may not recover damages for waste when the removal of termite-infested lumber from uninhabitable houses while trying to turn the houses into a bar improved the value of the property, and because if the property had been abandoned without trying to turn the houses into a bar, the lessor would still have become the owner of two uninhabitable houses. Wolphagen v. Ramp, 8 FSM Intrm. 241, 245 (Pon. 1998).

Where is little guidance in the prior decided opinions of the FSM Supreme Court for damage awards in privacy cases, the court will look to the reasoning of courts in other jurisdictions for guidance in assessing damages. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 414 (Pon. 1998).

A party that has established a cause of action for invasion of privacy is entitled to recover damages for the harm to his or her interest in privacy resulting from the invasion; mental distress proved to have been suffered if it is of a kind that normally results from such an invasion; and special damage of which the invasion is a legal cause. Special damages are demonstrable, direct economic losses resulting from the invasion of privacy. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 414 & n.1 (Pon. 1998).

The gist of the cause of action for invasion of privacy is for direct wrongs of a personal character which result in injury to the plaintiff's feelings, mental and emotional suffering are proper elements of damages. Substantial damages may be recovered, even if the only damages suffered resulted from mental anguish. These damages may include compensation for the wounded feelings, embarrassment, humiliation, and mental pain which a person of ordinary sensibilities would suffer under the circumstances. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 414 (Pon. 1998).

The amount of damages to be awarded in invasion of privacy cases rests with the sound discretion of the trier of fact. The fact that damages may be difficult to ascertain, or that they cannot be measured by a pecuniary standard, is not a basis for denying all recovery even though there is no direct evidence of the amount of damage sustained. However, to recover substantial compensatory damages, the plaintiff must prove these damages. If there has been no material injury to the plaintiff, or if there is no evidence that damage has been sustained, or no evidence to serve as a basis for the calculation of damage, plaintiff will be awarded nominal damages only. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 414 (Pon. 1998).

The measure of compensatory damages in a case involving commercial appropriation of one's name or likeness is the value of the benefit derived by the person appropriating the other's name, or the pecuniary loss suffered by the plaintiff whose name has been appropriated. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 414 (Pon. 1998).

In privacy cases in which a plaintiff also seeks damages for unjust enrichment, only one recovery is available because an invasion of another's right of privacy by a publication confers no right to share in the proceeds of such publication's sale of upon the ground that the author has thereby been unjustly enriched. It is inconsistent for the plaintiff to seek recovery for an invasion of the right of privacy, and in the same suit, to claim the right to participate in the profits of the publication. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 414 (Pon. 1998).

When there is little instruction in previously decided FSM cases for assessing damages in an invasion of privacy case, privacy cases in other jurisdictions may provide some useful guidance. FSM cases awarding damages for mental pain and suffering outside the privacy context are also instructive. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 418 (Pon. 1998).

When there is no direct evidence of the amount of damages sustained, nor the amount of money that can compensate for an injury, the court, as trier of fact, must assess an appropriate level of compensatory damages for that injury. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 418 (Pon. 1998).

Compensatory damages for unjust enrichment will be not awarded when this claim conflicts with plaintiff's claim for compensatory damages for invasion of privacy because it is inconsistent for a plaintiff who wishes to recover for invasion of privacy to also claim the right to participate in the profits of publication and because when a privacy cause of action is brought together with another cause of action based on the same objectionable behavior under another theory, generally only one recovery may be awarded. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 418-19 (Pon. 1998).

A person injured through the negligent or intentional tort of another is entitled to an award of damages for pain and suffering. Calculating the amount is difficult because there are no fixed rules to help in that determination. The determination lies in the sole discretion of the trier of fact. Asher v. Kosrae, 8 FSM Intrm. 443, 453-54 (Kos. S. Ct. Tr. 1998).

Compensatory damages for personal injury include pain and suffering, past as well as the reasonable value of future pain and suffering. The court must use its discretion in awarding it. Pain and suffering includes mental anguish. Asher v. Kosrae, 8 FSM Intrm. 443, 454 (Kos. S. Ct. Tr. 1998).

Damages for lost future earnings are not awardable when they are duplicative and speculative. Asher v. Kosrae, 8 FSM Intrm. 443, 454 (Kos. S. Ct. Tr. 1998).

In determining pain and suffering, it is proper to consider not only past pain but future pain, and to consider the loss of enjoyment of life as an element of pain and suffering. Asher v. Kosrae, 8 FSM Intrm. 443, 454 (Kos. S. Ct. Tr. 1998).

Plaintiffs' children are not entitled to recover damages when they are not named as plaintiffs to the action. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 542 (Pon. 1998).

Awarding damages for pain and suffering does not present a facile endeavor, since this is a matter committed to the discretion of the court, and there are no established rules for making such an award. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM Intrm. 23, 26 (Yap 1999).

The measure of damages for impairment of earning capacity is the difference between the amount which the plaintiff was capable of earning before the injury and the amount which he or she is capable of earning thereafter. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM Intrm. 23, 26 (Yap 1999).

Where the effect of an injury continues over time, earnings impairment will have two components: the loss sustained from the time of injury until time of trial, designated "loss of time" or lost wages, and the prospective loss that plaintiff will experience after trial due to the injury's on-going impact. The plaintiff has the burden of proof with respect to impairment, which must be demonstrated with a reasonable degree of certainty; however, proof of impairment of earning capacity does not require the specificity necessary to establish lost prospective wages. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM Intrm. 23, 26 (Yap 1999).

A plaintiff must introduce evidence of his or her earning capacity prior to the injury. Even if there is no evidence of the extent of future loss, evidence of prior earnings warrants recovery for the impairment of future earning capacity which the injury would generally cause. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM Intrm. 23, 27 (Yap 1999).

A plaintiff's education or lack of education may be considered in determining the amount of damages sustained by diminished earning capacity where the plaintiff has been engaged in manual labor and is incapacitated from doing that type of work. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM Intrm. 23, 27 (Yap 1999).

Damages for reduction of future earning capacity are not for the wages themselves, but for the loss of the ability to earn money. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM Intrm. 23, 27 (Yap 1999).

Limitation of employment opportunities resulting from lack of education is a specific factor which a court may consider in awarding damages for reduced earning capacity. Mathebei v. Ting Hong Oceanic Enterprises, 9 FSM Intrm. 23, 27 (Yap 1999).

Damages for a sawmill employee's lost wages will be awarded only for the time period that the sawmill remained in business. When there is no evidence regarding other type of work that the plaintiff did prior to his sawmill employment, the court will decline to award damages for other potential lost wages as being speculative. Sigrah v. Timothy, 9 FSM Intrm. 48, 54 (Kos. S. Ct. Tr. 1999).

Calculating the damages for pain and suffering is a difficult task because there are no fixed rules to aid in that determination, which lies in the sole discretion of the trier of fact. In determining pain and suffering, it is proper to consider not only past pain but future pain. It is also appropriate to consider loss of enjoyment of life as an element of pain and suffering. Sigrah v. Timothy, 9 FSM Intrm. 48, 54 (Kos. S. Ct. Tr. 1999).

A plaintiff who is proud to participate in a ceremony can suffer embarrassment and emotional upset over the commercialization of a photograph of his participation in the ceremony. Because the two findings are not inconsistent and there is evidence in the record to support this conclusion, the damages awarded the plaintiff for invasion of privacy will be affirmed as not clearly erroneous. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM Intrm. 155, 159 (App. 1999).

When a plaintiff has not been awarded damages, the question is not whether he made his case for damages with the requisite specificity, but whether he has shown entitlement to damages in the first instance. Wolphagen v. Ramp, 9 FSM Intrm. 191, 193 (App. 1999).

Nominal damages, or none at all, are awarded for ameliorating waste. Wolphagen v. Ramp, 9 FSM Intrm. 191, 194 (App. 1999).

In an action for damage to personal property, the plaintiff may recover the cost of the repairs to the damaged property. Elymore v. Walter, 9 FSM Intrm. 450, 456 (Pon. 2000).

When a plaintiff makes a claim for damages, he has a duty to mitigate those damages, which means that a plaintiff who has taken reasonable steps to minimize the amount of his damages may recover the amount of those expenses. Elymore v. Walter, 9 FSM Intrm. 450, 457 (Pon. 2000).

As a separate item of damages, and in addition to the cost of repairs, a plaintiff is entitled to be compensated for the loss of the use of the property. Customary rental charges are an adequate measure of damage for loss of use, and are awardable even when the plaintiff has not rented a substitute. The period for which the rental is allowed is the reasonable time that it would take to repair the damaged property. Elymore v. Walter, 9 FSM Intrm. 450, 457 (Pon. 2000).

If loss-of-use damages is measured by either rental or replacement value and if repairs take a considerable period of time, damages should be measured not on the basis of rental value or replacement cost for the entire period, and not by the aggregate of the charges by the day or week. Elymore v. Walter, 9 FSM Intrm. 450, 457 (Pon. 2000).

The damages for loss of use of property may not exceed the value of the property. Elymore v. Walter, 9 FSM Intrm. 450, 457 (Pon. 2000).

An award for a car's loss of use for a sum substantially more than the car's original price – not to mention its value at the time of the incident – would, in addition to the money necessary to effect the repairs, result in a windfall to the plaintiffs and is not appropriate. Elymore v. Walter, 9 FSM Intrm. 450, 457 (Pon. 2000).

When ten days is a reasonable time in which to obtain auto parts and two weeks is a reasonable time in which to make repairs once the parts have arrived, and when seven days is a reasonable time in which to arrange financing for the repairs, loss of use damages will be awarded for those days. Elymore v. Walter, 9 FSM Intrm. 450, 457-58 & n.2 (Pon. 2000).

"Pain and suffering" includes fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal. A plaintiff is entitled to such damages as will fully compensate him for the injuries directly flowing from the alleged tort, including physical pain and suffering as well as the mental suffering caused by the tortious act. Elymore v. Walter, 9 FSM Intrm. 450, 458 (Pon. 2000).

Calculating the appropriate monetary award for pain and suffering is difficult, because such an award is not subject to precise calculation, and the matter is committed to the court's entire discretion. The court in making an award for pain and suffering is guided by other cases in the FSM which have addressed this issue. Elymore v. Walter, 9 FSM Intrm. 450, 459 (Pon. 2000).

Since wrongful death actions are brought for the exclusive benefit of the deceased's "surviving spouse, the children and other next of kin," 6 TTC 202, when the deceased had no spouse or children, the damages are the next of kin's pecuniary injury. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 15 (Chk. 2001).

A deceased's parent (or her estate) is entitled to damages that include her mental pain and suffering for the loss of her child that resulted from her child's wrongful death, without regard to provable pecuniary damages. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 15 (Chk. 2001).

When the state took prompt steps in accordance with medical advice to refer the plaintiff for off-island care and treatment, but the plaintiff abandoned the care mid-treatment to return to Chuuk, no damages for lost earnings or pain and suffering after he abandoned the health care will be awarded because there is no evidence as to what the plaintiff's degree of disability would have been had the expected prosthesis been fitted, nor the length of recovery and therapy following the fitting, nor the residual disfigurement, nor the loss, if any, of his future earnings would have been once a prothesis is fitted. Atesom v. Kukkun, 10 FSM Intrm. 19, 23 (Chk. 2001).

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

Compensatory damages are just that – compensation to make the victim whole again. Compensation for an injury is not doubled just because the plaintiff has two different causes of action on which to base that recovery. Only the injury itself is compensated. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 50 (Chk. 2001).

Regardless of the disposition of a punitive damages claim, plaintiffs are fully compensated by a damages award. Elymore v. Walter, 10 FSM Intrm. 166, 168 (Pon. 2001).

A person injured through the negligence of another is entitled to an award of damages for pain and suffering. Awarding damages for pain and suffering is one of a court's most difficult tasks because the determination lies solely in the discretion of the trier of fact and no fixed rules exist to aid in the determination. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 238 (Kos. S. Ct. Tr. 2001).

When there is no direct evidence of the amount of damages sustained, nor the amount of money that can compensate for an injury, the court, as trier of fact, must assess the proper level of compensatory damages for that injury. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 238 (Kos. S. Ct. Tr. 2001).

A person who is injured through the negligence of another is entitled to an award of damages for pain and suffering. To recover for pain and suffering a plaintiff need only show "suffering," not both "pain" and "suffering" as the term includes not only the physical pain but also fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, apprehension, terror or ordeal. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 238 (Kos. S. Ct. Tr. 2001).

Damages for harm to personal property is the difference between the value of the property before the tort and its value afterwards. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 238 (Kos. S. Ct. Tr. 2001).

In determining damages, the court may take judicial notice regarding the replacement costs for college transcripts and a college diploma, when they are easily ascertainable and available on the University of Guam Internet site and from the University of Guam Office of Admissions and Records. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 239 (Kos. S. Ct. Tr. 2001).

No additional damages will be awarded for the "sentimental value" of the lost items when the plaintiff's pain and suffering has already been compensated, because these damages already encompass the "sentimental value" of the lost items. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 239 (Kos. S. Ct. Tr. 2001).

Past and future lost wages, medical expenses, and pain and suffering are all compensable. Amayo v. MJ Co., 10 FSM Intrm. 244, 251 (Pon. 2001).

A plaintiff totally disabled at age 42 can be compensated for the wages he would have earned until age 60. Amayo v. MJ Co., 10 FSM Intrm. 244, 251 (Pon. 2001).

When the injuries sustained are plainly evident, the court is entitled to presume that expenditures for medical expenses were made. Amayo v. MJ Co., 10 FSM Intrm. 244, 252 (Pon. 2001).

Travel and lodging are compensable as medical expenses when the expenditure results from defendant's fault; the charge is reasonable; and the expense serves a medical purposes. Amayo v. MJ Co., 10 FSM Intrm. 244, 252 (Pon. 2001).

Pain and suffering serves as a convenient label under which a plaintiff may recover not only for physical pain but also for fright, nervousness, grief, anxiety, worry, mortification, shock, humiliation, indignity, embarrassment, terror, or ordeal. It covers disfigurement and deformity, impairment of ability to work or labor, anxiety or worry proximately attributable to an injury and mental distress caused by impairment of the enjoyment of life and it includes anxiety and embarrassment from disfigurement or limitations on activities. Amayo v. MJ Co., 10 FSM Intrm. 244, 252 (Pon. 2001).

Determining damages for pain and suffering is difficult because there are no precise rules for determining the amount, which lies within the sole discretion of the trier of fact. Amayo v. MJ Co., 10 FSM Intrm. 244, 252 (Pon. 2001).

Various approaches exist for monetary valuation of damages to reefs: commodity value, which is posited on a sale of the components of the damaged area; tourism value, which is based on what visitors spend to visit the site; and replacement value involves, which is the cost of replacing the damaged corals by reseeding. People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3, 10 FSM Intrm. 337, 339 (Yap 2001).

It is well established that medical expenses are properly a component of negligence damages and may be recovered from the tortfeasor. Amayo v. MJ Co., 10 FSM Intrm. 371, 376 (Pon. 2001).

Pre-judgment interest is rarely awarded as an element of damages. Because tort claims are generally "unliquidated" in that the defendant does not know the precise amount he will be obligated to pay, most courts will not award interest on unliquidated monetary claims, which amount cannot be computed without a trial. Jonas v. Kosrae, 10 FSM 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).

Absent any evidence of the cost of repair of a bushcutter, damages for its repair cannot be awarded. Hauk v. Board of Dirs., 11 FSM Intrm. 236, 242 (Chk. S. Ct. Tr. 2002).

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

Wrongful death actions are brought for the exclusive benefit of the deceased's surviving spouse, children and other next of kin. The pecuniary injury consists of funeral expenses (including a novena) and the earnings that the deceased would have used to support his family, had he lived. The future earnings calculation may be based on the victim's continued employment and earnings at the same rate until he reached the FSM retirement age of 60. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 138 (Chk. 2003).

No damages will be awarded for the cost of a loan to finish building a cement house started before the victim's death when the court has just awarded damages for lost earnings because any loan would have been repaid out of those earnings had the victim lived. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 138 (Chk. 2003).

Since a claim for negligent infliction of emotional distress cannot be sustained without evidence of actual physical illness resulting from the mental and emotional distress, a plaintiff who failed to provide evidence of actual physical illness resulting from the defendants' actions cannot obtain any monetary recovery on this claim. Tomy v. Walter, 12 FSM Intrm. 266, 272 (Chk. S. Ct. Tr. 2003).

Prejudgment interest has been allowed on conversion claims. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 471 (Pon. 2004).

Prejudgment interest might rightfully be sought on what would appear to be a liquidated claim in the sense that it is capable of ascertainment by mathematical computation. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 471 (Pon. 2004).

The court is generally without authority to award attorney's fees in the absence of a specific statute or contractual provision allowing recovery of such fees. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 471 (Pon. 2004).

When no statute or contractual provision has been put forth to support an attorney's fees award to a prevailing party, the basis for an award must be found in some exception to the general rule that the parties must pay their own attorney's fees. Such an exception is where attorney's fees are awarded as an element of costs when it is shown that such fees were traceable to the opposing party's unreasonable or vexatious actions, or when a party acts vexatiously, or in bad faith, presses frivolous claims, or employs oppressive litigation practices. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 471 (Pon. 2004).

Courts have permitted attorney's fee awards under the vexatious conduct exception when the plaintiff has proven the defendant's breach of the implied covenant or implied duty of good faith and fair dealing (also called the bad faith tort). If a plaintiff were to prevail on a bad faith tort claim against an insurer, the insurer would be liable to him for reasonable attorney's fees that are proximately caused by the bad faith conduct. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 471 (Pon. 2004).

In a narrowly drawn exception to the general rule that the parties will bear their own attorney's fees, attorney's fees have been awarded as part of costs when a defendant has breached her fiduciary duty to the plaintiff. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 472 (Pon. 2004).

In order to prove lost rental damages, a business should be prepared to show that all other similar available vehicles were rented and that the had to turn away customers who would otherwise had rented the damaged pickup, and the number of days it would have been rented. A long-term, ongoing business might show this by comparing the average of the total rental days of all pickups combined for each month before the pickup was damaged with the average total rental days for each month after the accident. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 472 (Pon. 2004).

Under the traditional "new business rule," which applies to any business without a history of profits, it has been recognized that evidence of expected profits from a new business is too speculative, uncertain, and remote to be considered and does not meet the legal standard of reasonable certainty. But lost profits can be recovered by a new business when it is possible to show, by competent evidence and with reasonable certainty, that profits would have been made in the particular situation, and the amount of those profits. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 472 (Pon. 2004).

The proper measure of damages resulting from a business tort is lost profits as opposed to lost gross receipts. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 472 (Pon. 2004).

Any recovery for lost rental income may be limited in time until that point at which the plaintiff could have obtained a replacement for his rental business since if a plaintiff could have avoided the loss by purchasing a substitute item, profits are not the measure of the plaintiff's recovery even though profits were in fact lost. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 472 (Pon. 2004).

Consequential damages, of which economic loss such as lost profits may be an example, are available for negligent misrepresentation (deceit) claims if reasonably foreseeable. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 472 (Pon. 2004).

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

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

In anticompetitive practices cases where causation is established, the burden of proving damages is much less severe. This rule of leniency with regard to proof of damages is necessary because any other rule

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

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

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

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

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

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

A court may award a plaintiff reasonable attorney's fees in litigating a statutory cause of action that provides for award of attorney's fees to the prevailing party even though the plaintiff obtains only nominal damages. The fact that only nominal damages are awarded however may be considered in determining the amount of the attorney's fees. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 39-40 (Pon. 2004).

When a statute provides for attorney's fees to the prevailing party, a plaintiff need not receive all of the relief that he seeks in order to be eligible for attorney's fees so long as he prevails on a significant issue. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 40 (Pon. 2004).

When improvements were made by a plaintiff for his own benefit to what the trial court ruled was his own property, the defendants are not liable for the improvements. Narruhn v. Aisek, 13 FSM Intrm. 97, 99 (Chk. S. Ct. App. 2004).

The rule is well settled that to authorize damages for pain and suffering, such must be the result of physical injury. Narruhn v. Aisek, 13 FSM Intrm. 97, 99 (Chk. S. Ct. App. 2004).

For an emotional distress award there must be a foreseeable physical manifestation of the distress. Narruhn v. Aisek, 13 FSM Intrm. 97, 99 (Chk. S. Ct. App. 2004).

When there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of emotional distress by the plaintiff, an award of damages for pain and suffering must be set aside. Narruhn v. Aisek, 13 FSM Intrm. 97, 99 (Chk. S. Ct. App. 2004).

Failure to mitigate damages will usually not bar a claim but rather reduce any damages awarded, although in some cases it may reduce the damages to zero. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 127 (Chk. 2005).

– Damages – Punitive

An employer generally may not be held liable for punitive damages for the tortious acts of its employees. However, an employer may be held liable for punitive damages if 1) the employer authorized the act, 2) the employer knew the employee was unfit for the position at the time of the hiring, or 3) the employer ratified the tortious act of the employee. Meitou v. Uwera, 5 FSM Intrm. 139, 146 (Chk. S. Ct. Tr. 1991).

There is no authority to award punitive damages against a foreign national government even when it is otherwise liable for damages. Damarlane v. United States, 6 FSM Intrm. 357, 361 (Pon. 1994).

Punitive damages are not recoverable for ordinary negligence. Elwise v. Bonneville Constr. Co., 6 FSM Intrm. 570, 572 (Pon. 1994).

Punitive damages merely constitute an element of recovery in an underlying cause of action. Therefore no punitive damages may be recovered without an underpinning independent cause of action. Urban v. Salvador, 7 FSM Intrm. 29, 33 (Pon. 1995).

Punitive damages are a derivative, not an independent cause of action, and must rest upon some other, underlying cause of action because it is merely an element of damages in that cause of action. Thus, if all other causes of action are dismissed then punitive damages must necessarily also be dismissed. Semwen v. Seaward Holdings, Micronesia, 7 FSM Intrm. 111, 113 (Chk. 1995).

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

Punitive damages may be awarded when a tort was committed with actual malice, or deliberate violence, or the acts complained of were wanton, reckless, malicious and oppressive and are given to enhance compensatory damages. Punitive damages depend on the existence of compensatory damages and cannot be awarded in the absence of compensatory damages. Primo v. Refalopei, 7 FSM Intrm. 423, 435-36 & n.29 (Pon. 1996).

Punitive damages will not be awarded where the plaintiff has not claimed and proved that a defendant acted with actual malice or deliberate violence. Davis v. Kutta, 7 FSM Intrm. 536, 546 (Chk. 1996).

Punitive damages may be recoverable for conversion where the defendant's act was accompanied by fraud, ill will, malice, recklessness, wantonness, oppressiveness, willful disregard of the plaintiff's rights, or other circumstances tending to aggravate the injury, but defendant's mere failure to respond to an inquiry, or to answer a complaint is not a circumstance entitling a plaintiff to punitive damages. Bank of Hawaii v. Air Nauru, 7 FSM Intrm. 651, 653 (Chk. 1996).

Punitive damages are not recoverable for ordinary negligence. Fabian v. Ting Hong Oceanic

Enterprises, 8 FSM Intrm. 63, 67 (Chk. 1997).

Punitive damages are typically given as an enhancement of compensatory damages because of the wanton, reckless, malicious or oppressive character of defendant's conduct, but will not be given when compensatory damages will deter similar future actions and the excessive force used on a person resisting arrest was not of such a character. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 196 (Pon. 1997).

Punitive damages may also be awarded where it is shown that the defendant acted with malice or with a gross disregard for plaintiff's right to privacy, in order to punish the defendant for its conduct and to deter the defendant and others from engaging in like conduct in the future. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 414 (Pon. 1998).

When the evidence presented shows that the defendant relied on what he believed was appropriate consent and had acted in accordance with what he thought was appropriate custom and had not acted with malice, with an intent to violate plaintiff's rights, punitive damages will not be awarded. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 417 (Pon. 1998).

Punitive damages will be rejected when the defendant conducted its blasting and quarrying activities with an intentional, reckless or wanton disregard of the of the plaintiffs' rights and safety. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 541 (Pon. 1998).

When a plaintiff is entitled to punitive damages against a defendant because he acted with malice, but that defendant has no net worth and there was a substantial damage, fee and cost award only a nominal punitive damage award is proper. Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 113 (Chk. 1999).

Judicial immunity protects from liability for punitive damages. Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 113 (Chk. 1999).

A defendant's financial condition is relevant to a punitive damages claim and a proper subject of discovery, if, under the applicable law, the defendant's financial condition has a bearing on the amount of punitive damages to be awarded. Elymore v. Walter, 9 FSM Intrm. 251, 253 (Pon. 1999).

If a defendant is found liable for punitive damages, a court cannot make an award having a meaningfully deterrent effect unless the court knows the extent of the defendant's wealth. The greater or lesser the degree of defendant's wealth, the greater or lesser would be the amount of the punitive award, since a small award relative to overall wealth would not meaningfully deter, whereas a large award relative to overall wealth would be unduly onerous. Elymore v. Walter, 9 FSM Intrm. 251, 253 (Pon. 1999).

Punitive damages are recoverable for tortious acts which involve actual malice or deliberate violence, or where the conduct involved is shown to be wanton, reckless, malicious and oppressive. Elymore v. Walter, 9 FSM Intrm. 251, 254 (Pon. 1999).

A trial judge abuses his discretion when he denies a motion to compel production of financial information in a case where punitive damages are claimed, if the plaintiff submits factual support for the claim and the defendant fails to demonstrate good cause for a protective order preventing discovery; but the defendant is usually entitled to a protective order that the information only be revealed to the discovering party's counsel or representative, that demands be limited only to information needed to determine the defendant's present net worth, and that the information be sealed or otherwise restricted to use in the current proceeding only. Elymore v. Walter, 9 FSM Intrm. 251, 254 (Pon. 1999).

A defendant facing a claim for punitive damages may be required to answer discovery concerning current net worth, but cannot be compelled to reveal his financial status for the previous five years. The court may order plaintiffs' counsel not to divulge this information to anyone until such time as the court determines punitive damages liability, at which time the court will order what is to be done with the discovered information. Elymore v. Walter, 9 FSM Intrm. 251, 254 (Pon. 1999).

Punitive damages are awarded as a punishment to the defendant for his wrongful act and as a warning and example to deter him and others from committing similar acts in the future. As a general rule, punitive damages are allowed for an assault and battery committed wantonly, maliciously, or under circumstances of aggravation. Since battery usually is a matter of the worst kind of intentions, it frequently justifies punitive damages. Elymore v. Walter, 9 FSM Intrm. 450, 459 (Pon. 2000).

Punitive damages may be awarded for tortious acts that are committed with deliberate violence, as when a defendant waits at night with a baseball bat and then repeatedly swings the bat at a car's windshield and sunroof although he never saw the driver or knew who it was and the driver never saw the defendant or got out of the car. In such circumstances, an award of punitive damages is appropriate and the defendant, having been offended by that which he had made overt efforts to see, can scarcely be heard to complain of the offense or that the offense otherwise mitigates his conduct's consequences. Elymore v. Walter, 9 FSM Intrm. 450, 459 (Pon. 2000).

When an award of punitive damages is appropriate, materials relating to the defendant's financial status must be submitted to the court before it will enter a punitive damages award. Elymore v. Walter, 9 FSM Intrm. 450, 460 (Pon. 2000).

Punitive damages are not permitted against the State of Chuuk, but punitive damages may be awarded against a police officer trainee assigned as a jailer and which are justified by the wanton, malicious, deliberate and violent nature of his battery of a detainee. Atesom v. Kukkun, 10 FSM Intrm. 19, 24 (Chk. 2001).

When six months have elapsed since the plaintiffs first asked for time to find new counsel and a court order explicitly stated what the consequences would be if new counsel did not file a notice of appearance by March 30, 2001, the plaintiffs' remaining punitive damages claim, absent a showing of good cause and excusable neglect, will be dismissed, and, given the purpose of punitive damages, a final judgment entered. Elymore v. Walter, 10 FSM Intrm. 166, 168-69 (Pon. 2001).

The purpose of punitive damages is to punish the tortfeasor, not compensate the victim. Elymore v. Walter, 10 FSM Intrm. 166, 168 (Pon. 2001).

Punitive damages are a windfall to the plaintiff and not a matter of right. Elymore v. Walter, 10 FSM Intrm. 166, 168 (Pon. 2001).

Regardless of the disposition of a punitive damages claim, plaintiffs are fully compensated by a damages award. Elymore v. Walter, 10 FSM Intrm. 166, 168 (Pon. 2001).

Punitive damages may be awarded when a tort was committed with actual malice, or deliberate violence, or the acts complained of were wanton, reckless, malicious and oppressive and are given to enhance compensatory damages. Punitive damages depend on the existence of compensatory damages and cannot be awarded in the absence of compensatory damages. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 239 (Kos. S. Ct. Tr. 2001).

Punitive damages are not recoverable for ordinary negligence. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 239 (Kos. S. Ct. Tr. 2001).

Ordinary negligence is not a basis for punitive damages. In order for negligence to constitute wantonness meriting imposition of punitive damages, the plaintiff must show that the one acting or failing to act realized the imminence of the danger and failed to take steps to prevent it because he was indifferent to whether the injury occurred. Amayo v. MJ Co., 10 FSM Intrm. 244, 250 (Pon. 2001).

As a matter of public policy, governments are generally not liable for punitive damages. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 138 (Chk. 2003).

Under the Chuuk State Sovereign Immunity Act of 2000, punitive (or exemplary) damages not greater

than the compensatory damages and of not more than $20,000 may be awarded against the state or a municipality only if the injury was as a result of a government employee or agent who, acting under color of authority, violated the individual rights secured by the Chuuk Constitution. But the Sovereign Immunity Act of 2000 is not retrospective – it does not apply to claims that arose before its enactment – and prior law bars any punitive damage awards against a municipal government. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 138 (Chk. 2003).

While punitive damages are not permitted against a municipality, they can be awarded and are justified against individuals for their wanton, malicious, and deliberately violent treatment of a victim in detention. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 139 (Chk. 2003).

Since the purpose of punitive damages is to punish the tortfeasor, not to compensate the victim, a defendant's financial condition is relevant to a punitive damages claim because the defendant's financial condition has a bearing on the amount of punitive damages to be awarded. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 139 (Chk. 2003).

When a defendant with no net worth and no income is liable for punitive damages in addition to a substantial damage award, only a nominal punitive damage award of $1 is proper. When the net worth and income of defendants is not known, but it is known that they are employed and thus have an income, it is appropriate to award more than just nominal punitive damages. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 139 (Chk. 2003).

Punitive damages may not be recovered from Chuuk State as a matter of law. Tomy v. Walter, 12 FSM Intrm. 266, 272 (Chk. S. Ct. Tr. 2003).

While exceptions exist, the general rule is that punitive damages may not be awarded absent an award of monetary damages. Tomy v. Walter, 12 FSM Intrm. 266, 272 (Chk. S. Ct. Tr. 2003).

In order to obtain an award of punitive damages, a plaintiff must establish that the defendant acted with actual malice or deliberate violence. Tomy v. Walter, 12 FSM Intrm. 266, 272 (Chk. S. Ct. Tr. 2003).

No punitive damages can be awarded when the plaintiff has not sustained his burden of demonstrating that the defendant's actions were intentional, wilful, and malicious, rather than merely negligent. Punitive damages may not be awarded for ordinary negligence. Tomy v. Walter, 12 FSM Intrm. 266, 272 (Chk. S. Ct. Tr. 2003).

Continued disobedience of court judgments and orders or of any court decision, may be grounds for a finding in the future, that the disobedience of the court's orders and decisions is wilful, deliberate, and intended to cause harm to the victim. Punitive damages may be recoverable in the future against any government officer or employee who is found to have wilfully violated the court orders and judgments. Tomy v. Walter, 12 FSM Intrm. 266, 273 (Chk. S. Ct. Tr. 2003).

It is well established that punitive damages are not recoverable for ordinary negligence. Such damages also will not be awarded unless it has been claimed and proved that the defendant acted with actual malice or deliberate violence. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 309 (Pon. 2004).

Since tort law generally is an area governed by state law, exemplary or punitive damages are not awardable against the State of Pohnpei under Pohnpei state law and a claim for exemplary damages against it will be dismissed. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM Intrm. 154, 155 (Pon. 2005).

– Defamation

Tort claims for tortious interference with contractual relationships, defamation, and interference with prospective business opportunities are causes of action that arise under state law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 200, 203 (Pon. 2001).

Until such time as the plaintiff demonstrates the allegedly defamatory nature of the publications at issue, either by way of trial or proper motion accompanied by admissible supporting evidence, a permanent injunction cannot lawfully issue against the publication of speech that the defendants contend is true and which involves matters of public concern. O'Sullivan v. Panuelo, 10 FSM Intrm. 257, 262 (Pon. 2001).

The complainant's right to bring a civil suit against the defendant for the tort of defamation is not impaired by the court's dismissal of the criminal defamation charges against her. Kosrae v. Waguk, 11 FSM Intrm. 388, 392 (Kos. S. Ct. Tr. 2003).

– Duty of Care

In a jurisdiction like Pohnpei, where individual and economic development is beginning to take place and people are not quite sophisticated about the uses or proper handling of certain machinery or equipment introduced into the community to support such development, the procurer, user, owner, or seller of such equipment or machinery must take precautionary measures to educate people, either through written or oral explanation, about the proper handling, operation or storing of such equipment or machinery, and to inform them about the harm that might result if such equipment or machinery is not properly handled, operated or stored. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 68 (Pon. S. Ct. Tr. 1986).

So long as a state retains its role as the primary provider of health care services in that state, it is legally obligated to make a reasonable effort to provide a health care system reasonably calculated to meet the needs of the people of the state, but the state may make decisions to limit the scope of medicines to be maintained, so long as the decisions are based upon sound medical judgment arrived at through consideration of the health needs and financial realities of the state. Amor v. Pohnpei, 3 FSM Intrm. 519, 530-31 (Pon. 1988).

Once a state health services decision has been made that a particular medicine should be obtained for patients, the state health services staff and other responsible state officials are under a duty to take reasonable steps to obtain the medicine. Amor v. Pohnpei, 3 FSM Intrm. 519, 531 (Pon. 1988).

The standard of care for doctors at the Truk State hospital is that they are to exercise professional judgment in the attempt to diagnose the illness of the patient, and then, consistent with available facilities and supplies, act on that diagnosis. Asan v. Truk, 4 FSM Intrm. 51, 56 (Truk S. Ct. Tr. 1989).

When a person elects to operate a vehicle on the public streets he owes a duty to pedestrians and others using the road and adjacent areas to operate the vehicle in a safe and prudent manner. When the breach of this duty by driving in a fast and careless manner is the proximate cause of an injury the driver will be held liable. Ludwig v. Mailo, 5 FSM Intrm. 256, 259 (Chk. S. Ct. Tr. 1992).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. Nena v. Kosrae, 5 FSM Intrm. 417, 420 (Kos. S. Ct. Tr. 1990).

Everyone has a duty of care to act in such a way that other people are not harmed. Duties of care differ according to the circumstances and the exact parameters of each person's responsibilities towards others will be defined through time by judicial decisions and statutes. Nena v. Kosrae, 5 FSM Intrm. 417, 421 (Kos. S. Ct. Tr. 1990).

The state, when building a road, has a duty of care to take precautions to avoid foreseeable harm, and it has a duty of care not to take undue advantage of a landowner's generosity and lack of understanding of his rights. Nena v. Kosrae, 5 FSM Intrm. 417, 421 (Kos. S. Ct. Tr. 1990).

Generally, a breach of duty is proven by the testimony of witnesses who describe what a reasonable person, acting in compliance with the duty of care, would have done or not done in the same situation. In rare circumstances when the facts are indisputable and when they raise such a strong inference that all reasonable

people agree on the duty of care, the court can decide, as a matter of law, the person has breached his duty of care. Nena v. Kosrae, 5 FSM Intrm. 417, 421 (Kos. S. Ct. Tr. 1990).

When the state fails to tell a landowner that he has the option to refuse to grant the state an easement for a road, it has breached its duty of care. Nena v. Kosrae, 5 FSM Intrm. 417, 421-22 (Kos. S. Ct. Tr. 1990).

In order to be liable for a breach of the duty of care the breach must cause damage. Nena v. Kosrae, 5 FSM Intrm. 417, 422 (Kos. S. Ct. Tr. 1990).

A defendant must exercise due care not to cause others emotional distress that leads in turn to a foreseeable physical result. Eram v. Masaichy, 7 FSM Intrm. 223, 226-27 (Chk. S. Ct. Tr. 1995).

Where there was no physical manifestation of the emotional distress that was foreseeable there can be no claim for negligent infliction of emotional distress. Eram v. Masaichy, 7 FSM Intrm. 223, 227 (Chk. S. Ct. Tr. 1995).

To license police officers to carry firearms without adequate training breaches the duty of care of the state and the chief of police because the duty of care is heightened when the instrumentality given the police is a deadly one. Davis v. Kutta, 7 FSM Intrm. 536, 547 (Chk. 1996).

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

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

Acts that do not provide for a private citizen's cause of action for monetary damages cannot be used to create a duty for the breach of which damages may be awarded. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 292 (Pon. 1998).

The common law "incomplete privilege" of one to enter onto the land of another in times of private necessity is essentially codified by 19 F.S.M.C. 805(3), which states that "no person, including the owner or occupier of land may hinder or impede a rescuer." But it cannot have been the intent of 19 F.S.M.C. 805(3) to prevent law enforcement officials from carrying out their official duties in the face of an emergency rescue situation. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 292 (Pon. 1998).

The general principle is that one person may be liable in tort to another only if the first intentionally or negligently violates a duty owed to the other, and the other is injured as a result. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 293, 294 (Pon. 1998).

Everyone has a duty of care to act in such a way that other people are not harmed. Duties of care differ according to the circumstances. The exact parameters of each person's responsibilities towards others will be defined through time by judicial decisions and statutes. Asher v. Kosrae, 8 FSM Intrm. 443, 449 (Kos. S. Ct. Tr. 1998).

There is a duty to take precautions in installing a telephone pole and wires to avoid foreseeable harm, for example, a child or another person walking into the dangling wire and causing injury. Asher v. Kosrae, 8 FSM Intrm. 443, 449 (Kos. S. Ct. Tr. 1998).

Generally, a breach of duty is proven by the testimony of a witness who describes what a reasonable person, acting in compliance with the duty of care, would have done or not done in the same situation. Asher v. Kosrae, 8 FSM Intrm. 443, 449 (Kos. S. Ct. Tr. 1998).

In determining liability for negligent injuries generally, electricity providers are required to use reasonable care in the construction and maintenance of their lines and apparatus, and will be responsible for any conduct falling short of this standard. Asher v. Kosrae, 8 FSM Intrm. 443, 449 (Kos. S. Ct. Tr. 1998).

Electricity providers transmitting or using electricity are required to guard against events which can be reasonably foreseen or anticipated. The extent of the duty or standard of care is measured in the terms of foreseeability of injury from the situation created. It is not necessary that a power provider anticipate the precise injury to someone who had a right to be in the vicinity. Asher v. Kosrae, 8 FSM Intrm. 443, 449-50 (Kos. S. Ct. Tr. 1998).

One in the business of generating and distributing electricity who engages to install electric equipment must exercise the care of a reasonably prudent person skilled in the practice and art of installing such equipment according to the state of the art or method generally used by persons engaged in a like business at the time the work is done. An electricity provider is also charged with the duty of maintaining their electrical equipment and appliances. Asher v. Kosrae, 8 FSM Intrm. 443, 450 (Kos. S. Ct. Tr. 1998).

It is the imperative duty of electricity providers to make reasonable and proper inspection of their wires and other equipment and to use due diligence to discover and repair defects. A failure to perform such duty constitutes negligence. Asher v. Kosrae, 8 FSM Intrm. 443, 450 (Kos. S. Ct. Tr. 1998).

An electricity provider must make reasonable and proper inspections of its appliances with such frequency as appears reasonably necessary, and use due diligence to discover and remedy defects so that injury will not result. The presence of a conspicuous defect or dangerous condition of the electrical appliance which has existed for a considerable length of time will create a presumption of constructive notice of the defect. Asher v. Kosrae, 8 FSM Intrm. 443, 450 (Kos. S. Ct. Tr. 1998).

The provisions of the Kosrae State Code do not impose a duty upon the state to grant medical referrals to every person. Asher v. Kosrae, 8 FSM Intrm. 443, 451 (Kos. S. Ct. Tr. 1998).

Although neither state law nor regulation imposes any duty upon the state to make a medical referral to every person, a volunteer who gratuitously offers to provide service or assistance to another, and causes that other to rely upon the offer rather then to seek alternative ways of responding to the need, owes a duty to perform the donated services with reasonable care. Asher v. Kosrae, 8 FSM Intrm. 443, 451 (Kos. S. Ct. Tr. 1998).

When the state volunteers to provide medical service or assistance and causes the someone to rely upon that offer, what constitutes reasonable action or assistance must be determined in light of the surrounding circumstances. Asher v. Kosrae, 8 FSM Intrm. 443, 451 (Kos. S. Ct. Tr. 1998).

In order to impose a duty upon the state to return a patient to Pohnpei for treatment, the state must know about the need for further medical care. If the state was not informed, it cannot be charged with the knowledge or the duty to return a patient for further medical treatment. Asher v. Kosrae, 8 FSM Intrm. 443, 451 (Kos. S. Ct. Tr. 1998).

One who carries on a dangerous activity must use care commensurate with the risk or danger of injury involved or suffer liability for resulting injuries. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 535 (Pon. 1998).

It is a breach of a duty of care to fail to warn persons known to be on nearby land when blasting will occur. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 540 (Pon. 1998).

The common law definition of negligence includes the failure to use such care as a reasonably prudent person would use in a similar situation. Sigrah v. Timothy, 9 FSM Intrm. 48, 53 (Kos. S. Ct. Tr. 1999).

An employer owes a duty of care toward its employee to see that the employee is properly educated

about the operation of clearly dangerous machinery. An employer who recognizes the potential danger of a work situation, but who fails to take steps to reduce the danger or warn his employees of the danger is negligent. Sigrah v. Timothy, 9 FSM Intrm. 48, 53 (Kos. S. Ct. Tr. 1999).

30 F.S.M.C. 104 does not require the FSM Development Bank to provide technical assistance to persons the bank loans money to, but simply permits it to provide such assistance. The bank has no duty to provide technical assistance. FSM Dev. Bank v. Mudong, 10 FSM Intrm. 67, 76 (Pon. 2001).

The statute, 30 F.S.M.C. 104, does not impose a duty upon the FSM Development Bank to provide technical assistance to debtors to whom it has already made a loan, nor to assignees of those debtors. Nor does it give rise to a private cause of action. FSM Dev. Bank v. Mudong, 10 FSM Intrm. 67, 76-77 (Pon. 2001).

In order to be liable for a breach of duty of care, the breach must cause damage. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 236 (Kos. S. Ct. Tr. 2001).

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

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

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

When a general contractor had a duty to provide a safe work environment for the construction work to be done at the second story heights and his duty in this regard ran not only to the employees of subcontractors, but to those that he employed directly as well, which included the plaintiff, and when his failure to provide any kind of safety equipment, precautions, instructions or supervision resulted in the plaintiff's fall and consequent injury, he is therefore liable for the damages suffered as a result of that injury. Amayo v. MJ Co., 10 FSM Intrm. 244, 250-51 (Pon. 2001).

30 F.S.M.C. 104(b) does not create a duty for the FSM Development Bank to provide technical assistance, but rather authorizes the FSM Development Bank to provide such assistance as a part of its functions. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 342, 345 (Chk. 2001).

Sellers of inflammable liquids owe a high duty toward consumers to exercise care in the sales of inflammable liquids to consumers. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 348, 353 (Pon. 2001).

When, according to the complaint's allegations, the defendants' medical malpractice led to the deceased's death, and when, attached to the defendants' summary judgment motion is an affidavit of a medical doctor who is board certified in the field of family practice and the affidavit recites that the doctor has reviewed the medical records and that his opinion is that her diagnosed illness, tuberculosis of the spine, was so serious that in order to avoid paralysis, it would have been acceptable practice to administer the medications in question even if the deceased's treating doctors had been aware of her hepatitis history, the doctor's affidavit is relevant evidence based on an adequate foundation, that tends to show that the defendants did not violate the applicable standard of care. This evidence is of sufficient weight that left unopposed, no genuine issue of material fact exists under FSM Civil Rule 56, and the defendants are entitled to judgment as a matter of law. Since the plaintiffs have offered nothing to meet the evidence offered by the defendants, no genuine issues of material fact therefore exist, and the defendants are entitled to summary judgment in their favor. Joe v. Kosrae, 13 FSM Intrm. 45, 47 (Kos. 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).

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).

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).

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).

– False Imprisonment

A redressible civil wrong is committed when a person is unlawfully detained against his will. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 295 (Pon. 1998).

The elements of false imprisonment are 1) detention or restraint of one against his or her will, and 2) the unlawfulness of such detention or restraint. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 295 (Pon. 1998).

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

– Fraud

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

The elements of fraud are 1) misrepresentations, 2) made to induce action by the plaintiffs, 3) with reliance by the plaintiffs upon the misrepresentations, 4) to their detriment. Pohnpei v. Kailis, 6 FSM Intrm. 460, 462 (Pon. 1994).

Rule 9(b) requires that in allegations of fraud that the circumstances constituting the fraud shall be stated with particularity. The extent of the particularity is guided by Civil Rule 8(a) which requires a short and plain statement of the claim. Pohnpei v. Kailis, 6 FSM Intrm. 460, 462 (Pon. 1994).

In order to make a prima facie case of intentional misrepresentation a plaintiff must produce some evidence of: 1) a misrepresentation by the defendant, 2) scienter or the defendant's knowledge that the statements were untrue, 3) intent to cause the plaintiff to rely on the misrepresentations, 4) causation or actual reliance by the plaintiff, 5) justifiable reliance by the plaintiff and 6) damages. The misrepresentation must be a false and material representation of a past or present fact. Eram v. Masaichy, 7 FSM Intrm. 223, 225 (Chk. S. Ct. Tr. 1995).

A plaintiff is justified in relying on a defendant's representations of a vehicle's "good shape and operation" where the defendant is a mechanic with superior knowledge of vehicles and this particular vehicle's condition. Eram v. Masaichy, 7 FSM Intrm. 223, 225 (Chk. S. Ct. Tr. 1995).

When pleading fraud the pleader must state the time, place, and content of the false misrepresentation, the fact misrepresented and what was obtained as a consequence of the fraud. Pacific Agri-Products, Inc. v. Kolonia Consumer Coop. Ass'n, 7 FSM Intrm. 291, 293 (Pon. 1995).

The extent of the particularity required when pleading fraud is guided by FSM Civil Rule 8(a), which requires a "short and plain statement of the claim." Chen Ho Fu v. Salvador, 7 FSM Intrm. 306, 309 (Pon. 1995).

The elements of fraud are 1) a misrepresentation, 2) made to induce action by plaintiff, 3) reliance by plaintiff on the misrepresentation, 4) to plaintiff's detriment. Chen Ho Fu v. Salvador, 7 FSM Intrm. 306, 309 (Pon. 1995).

Because the elements of fraud are 1) misrepresentations, 2) made to induce action by the plaintiff, 3) with reliance by the plaintiff upon the misrepresentations, 4) to their detriment, a plaintiff must put on evidence that the misrepresentations were done to induce action by him, and that he relied on them to his detriment. Mid-Pacific Constr. Co. v. Semes, 7 FSM Intrm. 522, 526 (Pon. 1996).

In Chuuk, the elements of fraud or intentional misrepresentation are: 1) a misrepresentation by the

defendant, 2) scienter or the defendant's knowledge that the statements were untrue, 3) intent to cause the plaintiff to rely on the misrepresentations, 4) causation or actual reliance by the plaintiff, 5) justifiable reliance by the plaintiff and 6) damages. Kaminanga v. FSM College of Micronesia, 8 FSM Intrm. 438, 442 (Chk. 1998).

Actions or conduct, as well as words, can constitute the necessary misrepresentation for fraud. In some cases, the misrepresentations may be made by a failure to disclose information. Kaminanga v. FSM College of Micronesia, 8 FSM Intrm. 438, 443 (Chk. 1998).

In all averments of fraud the circumstances constituting fraud must be stated with particularity. Medabalmi v. Island Imports Co., 10 FSM Intrm. 32, 35 (Chk. 2001).

Any proposed amended complaint seeking to add a civil fraud charge against a defendant must state the circumstances constituting fraud with particularity. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM Intrm. 327, 333 (Pon. 2001).

When the plaintiff's complaint seems to plead fraud, and a defendant moves to dismiss for failure to state a claim but the argument is that this claim should be dismissed because it was not plead with particularity, the court may treat that as a request for a more definite statement, grant the request, and require the plaintiff to amend its complaint to state with greater clarity which facts it believes constitute fraud. Asumen Venture, Inc. v. Board of Trustees, 12 FSM Intrm. 84, 92 (Pon. 2003).

– Governmental Liability

Given the Memorandum of Understanding of December 31, 1979 between the President and the Trust Territory High Commissioner, its accompanying Functions Agreement No. 3, and the State-National Leader's Conference resolution on health and education (Sept. 28, 1979), and given the absence of assumption of functions agreements entered into by the states, whether the national government is immune from liability arising out of operation of the hospitals within the FSM is a question of fact. Manahane v. FSM, 1 FSM Intrm. 161, 168-73 (Pon. 1982).

The emphasis in governmental tort liability cases has been on the special status of government, its functions and its officials rather than on the degree of control tests commonly employed in nongovernmental cases. Even those commentators who specifically note that the *respondeat superior* doctrine applies to the government analyze governmental liability issues in terms of public policy considerations rather than through a degree of control analysis which distinguishes between closely supervised and high-ranking officials. Rauzi v. FSM, 2 FSM Intrm. 8, 16 (Pon. 1985).

The State of Pohnpei and its agencies may be held liable in tort subject to legislative restrictions that may be imposed and to certain other recognized common law exceptions. Panuelo v. Pohnpei (I), 2 FSM Intrm. 150, 163 (Pon. 1986).

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

Any liability of the state for suffering or death caused by defective health care provided by the state must be based upon theories of negligence, not strict liability. Amor v. Pohnpei, 3 FSM Intrm. 519, 534 (Pon. 1988).

Whether the relationship between U.S. National Health Service Corps doctors and the State of Pohnpei is such that the doctrine of *respondeat superior* may be applicable in an action for medical malpractice so that the state may be made to respond in damages for any negligence of the doctor has not been determined. Amor v. Pohnpei, 3 FSM Intrm. 519, 536 (Pon. 1988).

A claim that the FSM liaison office did not fulfill its medical referral obligations as required by law falls within the embrace of 6 F.S.M.C. 702(2), which authorizes damage claims against the government for alleged

improper administration of statutory laws or regulations. Leeruw v. FSM, 4 FSM Intrm. 350, 363 (Yap 1990).

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

When force is employed by a police officer in an apparent use of official authority, the governmental employer should be held responsible for what is done. Plais v. Panuelo, 5 FSM Intrm. 179, 201 (Pon. 1991).

A state's ratification and acceptance of its employee's torts through its subsequent conduct is an independent ground for holding the state jointly and severally liable for those torts. Plais v. Panuelo, 5 FSM Intrm. 179, 202-03 (Pon. 1991).

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

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

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

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

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

Since by statute the Trust Territory government would be liable to private litigants only under circumstances where a private person would be liable to the claimant for similar acts and because declaring title to the property could only be accomplished by an administering governmental authority there is no tort for loss of property for declaring title because private persons have no authority to declare title. Nahnken of Nett v. United States (III), 6 FSM Intrm. 508, 527 (Pon. 1994).

Any action of the Land Commission in excess of its statutory authority would be actionable only against the Commission itself, not the United States since it was not an agency of the U.S. government. Nahnken of Nett v. United States (III), 6 FSM Intrm. 508, 528 (Pon. 1994).

The state, not the chief of police, is vicariously liable under the doctrine of respondeat superior for the torts of its police officers committed in the course and scope of their employment when force is employed in the use of even apparent official authority. Davis v. Kutta, 7 FSM Intrm. 536, 545-46 (Chk. 1996).

The state is liable for injuries proximately caused by the employment of untrained or poorly trained police officers, and for the failure to adequately train them, and the chief of police is liable for any injury resulting from breach of duties connected with his office. Davis v. Kutta, 7 FSM Intrm. 536, 546 (Chk. 1996).

Summary judgment will be granted on the issue of the state's liability for the its employee's act when there is no genuine issue of material fact that at the time of the accident the employee was negligent, that he was acting at the direction of his employer and within the scope of his employment, and that his conduct was not wanton or malicious. Glocke v. Pohnpei, 8 FSM Intrm. 60, 61-62 (Pon. 1997).

Although a town government is not automatically liable for all the torts of its agents and employees, it is liable for those torts committed in the course and scope of employment under the doctrine of respondeat superior. When force is employed by police officers in use of even apparent official authority, the government employer should be held responsible for whatever results. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 192 (Pon. 1997).

The Pohnpei Governmental Liability Act, Pon. S.L. No. 2L-192-91, provides for no immunity for torts committed by governmental employees acting within the scope of their employment. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 194 (Pon. 1997).

Although a municipality would be liable for the injuries proximately caused by employment of poorly trained police officers, and for failure to adequately train them, there is no liability where the plaintiff has failed to prove by any competent evidence that the level of police training provided by the municipality was deficient, or that that level of training violated the proper standard of care in the community, or even what level of training would be appropriate giving due consideration to the social and geographical configuration of the Federated States of Micronesia. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 194 (Pon. 1997).

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

A municipality is liable for battery by its police officers when it has ratified their actions by failing to charge them and the lack of any internal discipline whatsoever. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 195 (Pon. 1997).

A complaint's allegations that officials' knowing interference prevented two ships from refloating their ship after it had grounded on a reef, that the ship's crew were arrested by the officials without cause, and that this actively and unreasonably prevented rescue the vessel's by other boats, and that that interference was the direct cause of the boat's damage, set forth a claim in negligence and are sufficient to survive a motion to dismiss. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 294 (Pon. 1998).

The state, as employer of a police trainee, is responsible for the battery committed by the trainee while acting within the scope of that employment. Atesom v. Kukkun, 10 FSM Intrm. 19, 22 (Chk. 2001).

When force is employed by a police officer in an apparent use of official authority, the governmental employer should be held responsible for what is done. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 136 (Chk. 2003).

As a matter of public policy, governments are generally not liable for punitive damages. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 138 (Chk. 2003).

Under the Chuuk State Sovereign Immunity Act of 2000, punitive (or exemplary) damages not greater than the compensatory damages and of not more than $20,000 may be awarded against the state or a municipality only if the injury was as a result of a government employee or agent who, acting under color of authority, violated the individual rights secured by the Chuuk Constitution. But the Sovereign Immunity Act of 2000 is not retrospective – it does not apply to claims that arose before its enactment – and prior law bars any punitive damage awards against a municipal government. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 138 (Chk. 2003).

While punitive damages are not permitted against a municipality, they can be awarded and are justified against individuals for their wanton, malicious, and deliberately violent treatment of a victim in detention.

Herman v. Municipality of Patta, 12 FSM Intrm. 130, 139 (Chk. 2003).

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

While § 219 of the Foreign Investment Laws admits of a cause of action for prospective, injunctive relief against the FSM, it does not permit an action for damages. Chapter 3 provides a remedy for damages, but notwithstanding the fact that the remedy is against Pohnpei, and not the FSM, it is nevertheless a remedy. If the plaintiff prevails, the conduct alleged will not go unsanctioned. AHPW, Inc. v. FSM, 12 FSM Intrm. 164, 167 (Pon. 2003).

Since tort law generally is an area governed by state law, exemplary or punitive damages are not awardable against the State of Pohnpei under Pohnpei state law and a claim for exemplary damages against it will be dismissed. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM Intrm. 154, 155 (Pon. 2005).

– Immunity

Some government workers have been held partially or completely immune from tort liability on grounds that they are public officers. This immunity, intended to serve the purpose of encouraging fearless and independent public service, has been bestowed upon prosecutors as well as other public officials. Rauzi v. FSM, 2 FSM Intrm. 8, 16 (Pon. 1985).

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

A judge is generally granted absolute civil immunity from civil liability for acts done in the exercise of a judicial function. Jano v. King, 5 FSM Intrm. 388, 391 (Pon. 1992).

A judge loses the cloak of judicial immunity in only two instances. A judge is not immune for actions not taken in the judge's judicial capacity, and a judge is not immune for actions, though judicial in nature, taken in the absence of all jurisdiction. Jano v. King, 5 FSM Intrm. 388, 391 (Pon. 1992).

An act performed by a judge does not have to be an adjudicatory act in order for it to be a judicial act. Judges and justices of the courts of the Federated States of Micronesia are protected by the cloak of judicial

absolute immunity for judicial functions performed unless they are in complete absence of jurisdiction. Jano v. King, 5 FSM Intrm. 388, 392-93 (Pon. 1992).

Prosecutors enjoy absolute immunity from prosecution for their actions which are connected to their role in judicial proceedings, which include participation in hearings related to obtaining search warrants. Prosecutors do not, however, enjoy absolute immunity from prosecution for their role as an administrative or investigative officers, which includes participation in and giving advice regarding the execution of a search warrant. Jano v. King, 5 FSM Intrm. 388, 396 (Pon. 1992).

Judges and justices of the FSM are protected by the cloak of absolute immunity for judicial functions performed, unless the functions were performed in the complete absence of jurisdiction. Issuance of a search warrant is within the jurisdiction of FSM courts. Therefore it is a judicial act to which immunity attaches. Liwi v. Finn, 5 FSM Intrm. 398, 400-01 (Pon. 1992).

Prosecutors are absolutely immune from prosecution for their actions which are connected to their role in judicial proceedings, but do not enjoy absolute immunity from prosecution for their role as an administrative or investigative officer. Therefore prosecutors are absolutely immune for involvement in judicial proceedings to obtain a search warrant, but not for participation in and giving police advice regarding the execution of a search warrant. Liwi v. Finn, 5 FSM Intrm. 398, 401 (Pon. 1992).

A chief justice's actions in reviewing an attorney's application for admission is a judicial function that is entitled to absolute immunity from suit for damages. Berman v. Santos, 7 FSM Intrm. 231, 240 (Pon. 1995).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. A judge loses the cloak of judicial immunity in only two events: First, a judge is not immune from non-judicial actions, i.e. actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 112 (Chk. 1999).

Absolute immunity affords complete protection from a damage award to a public official as long as the challenged act falls within the scope of the activity for which the immunity is conferred. Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 112 (Chk. 1999).

The factors determining whether an act by a judge is a judicial one relate to the nature of act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity. The second question in deciding whether immunity exists is whether the judge acted in complete absence of all jurisdiction. Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 112 (Chk. 1999).

Judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly. A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors. Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 112 (Chk. 1999).

Judicial immunity protects from liability for punitive damages. Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 113 (Chk. 1999).

A judge is generally granted absolute immunity from civil liability for acts done in the exercise of a judicial function. Few doctrines were more solidly established at common law than the immunity of judges for damages for acts committed within their judicial jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM Intrm. 116, 121 (Pon. 2001).

Judges lose their judicial immunity only for non-judicial actions (actions not taken in the judge's judicial capacity), or for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Damarlane

v. Pohnpei Supreme Court Appellate Division, 10 FSM Intrm. 116, 121 (Pon. 2001).

Two factors, both relating to the nature of act itself, determine whether an act by a judge is a judicial one: whether it is a function normally performed by a judge, and whether the parties dealt with the judge in his judicial capacity. The second question in deciding whether immunity exists is whether the judge acted in complete absence of all jurisdiction. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM Intrm. 116, 121 (Pon. 2001).

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

– Infliction of Emotional Distress

A defendant must exercise due care not to cause others emotional distress that leads in turn to a foreseeable physical result. Eram v. Masaichy, 7 FSM Intrm. 223, 226-27 (Chk. S. Ct. Tr. 1995).

Where there was no physical manifestation of the emotional distress that was foreseeable there can be no claim for negligent infliction of emotional distress. Eram v. Masaichy, 7 FSM Intrm. 223, 227 (Chk. S. Ct. Tr. 1995).

For a negligent infliction of emotional distress claim to be compensable, a physical manifestation is required. Pau v. Kansou, 8 FSM Intrm. 524, 526 (Chk. 1998).

One of the elements of an intentional infliction of emotional distress claim is that the plaintiff must have suffered some physical manifestation of the alleged infliction of emotional distress. When the plaintiff neither alleged, nor proved at trial, any physical ailments or manifestations resulting from his termination from employment his claim must fail for lack of proof. Hauk v. Board of Dirs., 11 FSM Intrm. 236, 241 (Chk. S. Ct. Tr. 2002).

Since a claim for negligent infliction of emotional distress cannot be sustained without evidence of actual physical illness resulting from the mental and emotional distress, a plaintiff who failed to provide evidence of actual physical illness resulting from the defendants' actions cannot obtain any monetary recovery on this claim. Tomy v. Walter, 12 FSM Intrm. 266, 272 (Chk. S. Ct. Tr. 2003).

For an emotional distress award there must be a foreseeable physical manifestation of the distress. Narruhn v. Aisek, 13 FSM Intrm. 97, 99 (Chk. S. Ct. App. 2004).

When there is no evidence in the record of physical injury to the plaintiff or of any physical manifestation of emotional distress by the plaintiff, an award of damages for pain and suffering must be set aside. Narruhn v. Aisek, 13 FSM Intrm. 97, 99 (Chk. S. Ct. App. 2004).

– Interference with a Contractual Relationship

Relief may be granted under the law of Pohnpei for a claim of tortious interference with a contractual relationship, when an individual's economic advantages obtained through dealings with others are knowingly jeopardized out of petty or malicious motives or by the improper or unjustified conduct of a third party. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM Intrm. 3, 14 (Pon. 1989).

Where a defendant's allegedly offensive actions were taken in the course of a good faith effort to protect a legally cognizable interest, such actions do not constitute tortious interference with a contractual relationship under the law of Pohnpei. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM Intrm. 3, 15

(Pon. 1989).

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

Tort claims for tortious interference with contractual relationships, defamation, and interference with prospective business opportunities are causes of action that arise under state law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 200, 203 (Pon. 2001).

Relief may be granted under Pohnpei law for a claim of tortious interference with a contractual relationship when an individual's economic advantages obtained through dealings with others are knowingly jeopardized out of petty or malicious motives, or by a third party's improper or unjustified conduct. In order to succeed on the merits of a tortious interference claim, a plaintiff will also have to demonstrate that her business was lawful, and that defendants' conduct was improper or unjustified. Yang v. Western Sales Trading Co., 11 FSM Intrm. 607, 617 (Pon. 2003).

When the plaintiff alleges facts regarding a defendant having familial ties that gave him either inside information or favorable treatment in the proceeding below that dissolved the plaintiff's public land assignment, under the relevant standard of review, the tortious interference with contract claim cannot be dismissed at this point. Asumen Venture, Inc. v. Board of Trustees, 12 FSM Intrm. 84, 92 (Pon. 2003).

– Interference with Customary Property Rights

A cause of action that alleges that the plaintiffs' customary and traditional rights to use an island might be better described as intentional interference with a customary and traditional property right than trespass. That the plaintiffs referred to it as a trespass should not, in itself, be an obstacle to them prevailing on this point if the evidence warrants, because except for judgments rendered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. Rosokow v. Bob, 11 FSM Intrm. 210, 217 (Chk. S. Ct. App. 2002).

– Interference with Prospective Business Opportunity

Tort claims for tortious interference with contractual relationships, defamation, and interference with prospective business opportunities are causes of action that arise under state law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 200, 203 (Pon. 2001).

– Invasion of Privacy

Wide ranging and unwarranted movement of police officers on private land may constitute an unreasonable invasion of privacy, or establish that the investigation had evolved into a search. FSM v. Mark, 1 FSM Intrm. 284, 290 (Pon. 1983).

While the constitutional provision barring invasion of privacy only protects persons from governmental intrusion into their affairs, not from intrusions by private persons, it does indicate a policy preference in favor of protection of privacy. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 455 (Chk. 1994).

Privacy law comprises four distinct kinds of invasion (although other forms may arise) of four different interests of the plaintiff, which are tied together by a common name, but otherwise have little in common except that each represents an interference with the right to be let alone. A plaintiff's privacy may be invaded in two or more of the four tortious ways and in those cases he may maintain his action for invasion of privacy on all of the grounds available. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 455-56 (Chk. 1994).

The elements of the privacy tort of unreasonable publicity given to the other's private life are: 1) there

must be a public disclosure; 2) the facts disclosed must be private facts, rather than public ones; and 3) the matter made public must be one that would be offensive and objectionable to a reasonable person of ordinary sensibilities. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 456 (Chk. 1994).

Whoever publicizes a matter about another that places the other in a false light before the public is liable for tortious invasion of privacy if the false light in which the other was placed would be highly offensive to a reasonable person, and the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 456 (Chk. 1994).

One is liable for intentional intrusion, physical or otherwise, upon the solitude or seclusion or private affairs or concerns of another if the intrusion would be highly offensive to the reasonable person. The unauthorized photographing of a person who is not in a public place will incur liability for the unreasonable intrusion upon the seclusion of another. Failure of the plaintiff to plead she was not in a public place when the photograph was taken means an essential element of the tort has not been pled. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 457 (Chk. 1994).

There may be liability for the tort of appropriation of another's name or likeness when one appropriates the name or likeness of another for his own use or benefit. The right is in the nature of a property right. Incidental use of a name or likeness does not incur liability. Plaintiff's name or likeness must have intrinsic commercial or value associated with it. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 457-58 (Chk. 1994).

There may be liability for unauthorized use of name or likeness when the plaintiff is identifiable from the appropriated name or likeness, the name or likeness is used for trade or advertising purposes, and the use is unauthorized. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 458-59 (Chk. 1994).

Consent is not effective beyond the scope for which it is given. Therefore consent to have one's photograph taken is not consent for its exhibition or publication. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 459 (Chk. 1994).

A court can find as a matter of law whether defendant's use of plaintiff's likeness was predominately commercial because the characterization of the nature of an alleged tortious publication or a defense to such a claim is often decided as a matter of law. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 459 (Chk. 1994).

In the invasion of privacy context courts interpret "advertising purposes" broadly to include the use of a person's name or picture for all types of promotional endeavors. Thus where a corporation widely distributed its calendar free to the public for use and display wherever it does business the court may conclude as a matter of law that the calendar was used for advertising or trade purposes. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 459 (Chk. 1994).

Incidental unauthorized use of a name or likeness is not actionable if the use was in the context of a public event or newsworthy item of public interest. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 459 (Chk. 1994).

Because the primary lawmaking powers for the field of torts lie with the states, not the national government, the FSM Supreme Court's duty in an invasion of privacy case on Pohnpei is to try to apply the law the same way the highest state court in Pohnpei would. This involves an initial determination of whether it is contrary to, or consistent with, Pohnpei state law to recognize a right of privacy and an action for that right's violation. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 248, 251-52 (Pon. 1998).

Although Pohnpei has not adopted the Restatement (Second) of Torts as state law, Pohnpei state constitutional guarantees of freedom from certain intrusions indicate that a policy preference of the protection of privacy exists in Pohnpei, and there is no constitutional or traditional impediment to the recognition of a right

to privacy in Pohnpei. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 248, 252-53 (Pon. 1998).

Although the FSM Supreme Court declines to adopt this formal three-pronged test for evaluating commercial appropriation invasion of privacy claims in Pohnpei, it notes that the following elements are present and create liability: 1) the plaintiff must be identifiable from the appropriated image or likeness; 2) the image or likeness must be used for trade or advertising purposes; and 3) the use must be unauthorized. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 248, 259 (Pon. 1998).

Postcards produced for sale are produced for predominately commercial purposes, and when a person's image fills the entire frame of the postcard, his presence is not merely incidental to the illustration of the sakau ritual. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 248, 259-60 (Pon. 1998).

Although a plaintiff may have implicitly consented to having his picture taken, that does not constitute consent to the use of that photograph in the form of a postcard for sale to the general public, because consent is not effective beyond the scope for which it is given. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 248, 260 (Pon. 1998).

A nanmwarki does not have authority to authorize the commercial use of another person's image without that person's consent even though the photograph was taken at a traditional feast hosted by the nanmwarki. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 248, 261 (Pon. 1998).

There is no recovery for false light invasion of privacy where the matter publicized is not untrue or highly offensive. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 248, 262 (Pon. 1998).

A person's appearance on a postcard showing a sakau ceremony cannot be interpreted as support for the postcard maker's commercial services, or be interpreted as trivializing or demeaning to the Pohnpeian culture, when the photograph was taken at a public event and accurately depicts what occurred at that event. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 248, 262 (Pon. 1998).

There is no impediment to recognition of a right to privacy in Pohnpei and therefore no impediment to recognition of a cause of action for violation of that right. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 413 (Pon. 1998).

Where is little guidance in the prior decided opinions of the FSM Supreme Court for damage awards in privacy cases, the court will look to the reasoning of courts in other jurisdictions for guidance in assessing damages. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 414 (Pon. 1998).

A party that has established a cause of action for invasion of privacy is entitled to recover damages for the harm to his or her interest in privacy resulting from the invasion; mental distress proved to have been suffered if it is of a kind that normally results from such an invasion; and special damage of which the invasion is a legal cause. Special damages are demonstrable, direct economic losses resulting from the invasion of privacy. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 414 & n.1 (Pon. 1998).

The gist of the cause of action for invasion of privacy is for direct wrongs of a personal character which result in injury to the plaintiff's feelings, mental and emotional suffering are proper elements of damages. Substantial damages may be recovered, even if the only damages suffered resulted from mental anguish. These damages may include compensation for the wounded feelings, embarrassment, humiliation, and mental pain which a person of ordinary sensibilities would suffer under the circumstances. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 414 (Pon. 1998).

Punitive damages may also be awarded where it is shown that the defendant acted with malice or with a gross disregard for plaintiff's right to privacy, in order to punish the defendant for its conduct and to deter the defendant and others from engaging in like conduct in the future. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 414 (Pon. 1998).

The amount of damages to be awarded in invasion of privacy cases rests with the sound discretion of the trier of fact. The fact that damages may be difficult to ascertain, or that they cannot be measured by a pecuniary standard, is not a basis for denying all recovery even though there is no direct evidence of the amount of damage sustained. However, to recover substantial compensatory damages, the plaintiff must prove these damages. If there has been no material injury to the plaintiff, or if there is no evidence that damage has been sustained, or no evidence to serve as a basis for the calculation of damage, plaintiff will be awarded nominal damages only. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 414 (Pon. 1998).

The measure of compensatory damages in a case involving commercial appropriation of one's name or likeness is the value of the benefit derived by the person appropriating the other's name, or the pecuniary loss suffered by the plaintiff whose name has been appropriated. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 414 (Pon. 1998).

In privacy cases in which a plaintiff also seeks damages for unjust enrichment, only one recovery is available because an invasion of another's right of privacy by a publication confers no right to share in the proceeds of such publication's sale of upon the ground that the author has thereby been unjustly enriched. It is inconsistent for the plaintiff to seek recovery for an invasion of the right of privacy, and in the same suit, to claim the right to participate in the profits of the publication. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 414 (Pon. 1998).

When there is little instruction in previously decided FSM cases for assessing damages in an invasion of privacy case, privacy cases in other jurisdictions may provide some useful guidance. FSM cases awarding damages for mental pain and suffering outside the privacy context are also instructive. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 418 (Pon. 1998).

When there is no direct evidence of the amount of damages sustained, nor the amount of money that can compensate for an injury, the court, as trier of fact, must assess an appropriate level of compensatory damages for that injury. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 418 (Pon. 1998).

Compensatory damages for unjust enrichment will be not awarded when this claim conflicts with plaintiff's claim for compensatory damages for invasion of privacy because it is inconsistent for a plaintiff who wishes to recover for invasion of privacy to also claim the right to participate in the profits of publication and because when a privacy cause of action is brought together with another cause of action based on the same objectionable behavior under another theory, generally only one recovery may be awarded. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM Intrm. 411, 418-19 (Pon. 1998).

A photograph that is used to make a postcard offered for sale is being used primarily for trade purposes. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM Intrm. 155, 159 (App. 1999).

A plaintiff who is proud to participate in a ceremony can suffer embarrassment and emotional upset over the commercialization of a photograph of his participation in the ceremony. Because the two findings are not inconsistent and there is evidence in the record to support this conclusion, the damages awarded the plaintiff for invasion of privacy will be affirmed as not clearly erroneous. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM Intrm. 155, 159 (App. 1999).

– Loss of Consortium

To determine a monetary value for loss of consortium, the Pohnpei Supreme Court will consider the social structure of the society and the extended family system, whereby other members of the family can be expected to provide some, albeit occasional, assistance. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 74 (Pon. S. Ct. Tr. 1986).

As a loss of consortium claim is derivative from a spouse's claim for damages an award for loss of consortium is properly reduced by the percentage of fault attributable to the spouse. Epiti v. Chuuk, 5 FSM

Intrm. 162, 170 (Chk. S. Ct. Tr. 1991).

The right to recover damages for loss of consortium is recognized in Pohnpei. Amayo v. MJ Co., 10 FSM Intrm. 244, 253 (Pon. 2001).

Loss of consortium contemplates something more than loss of general overall happiness, and includes components of love and affection, society and companionship, sexual relations, right of performance of material services, right of support, aid and assistance, and felicity. Amayo v. MJ Co., 10 FSM Intrm. 244, 253 (Pon. 2001).

Some qualifications that have placed on the right to recover for the loss of parental consortium, or the loss of the society and companionship of an injured parent, have been that the children must be minors, and that the injury to the parent must be serious, permanent, and disabling so as to render the parent unable to provide the love, care, companionship, and guidance to the child, and so overwhelming and severe that the parent-child relationship is destroyed or nearly destroyed. Amayo v. MJ Co., 10 FSM Intrm. 244, 253 (Pon. 2001).

The Constitution admonishes that court decisions are to be consistent with the "social and geographical configuration of Micronesia," and a cause of action for loss of parental consortium is consistent with this admonition in that it acknowledges the important role played by the family in the many distinct cultures of Micronesia. Amayo v. MJ Co., 10 FSM Intrm. 244, 253 (Pon. 2001).

Minor children have a right of recovery for the loss of their father's love, care, affection, companionship, and guidance (loss of parental consortium) which they have suffered as a result of the grievous injury to their father. Amayo v. MJ Co., 10 FSM Intrm. 244, 254 (Pon. 2001).

– Malicious Prosecution

The five elements of the tort of malicious prosecution or wrongful or unjustified initiation of a civil suit are satisfied when: 1) the defendant initiated the civil litigation, 2) the litigation was resolved in the plaintiff's favor, 3) the defendant did not have probable cause to initiate the civil litigation, 4) the defendant exhibited malice or ill will, and 5) the litigation caused significant interference with the plaintiff's property. Island Cable TV-Chuuk v. Aizawa, 8 FSM Intrm. 104, 106-07 (Chk. 1997).

– Negligence

Where it is undisputed that the original employer had no right to control the workplace or the employee's actions at the time that plaintiff-employee was injured, exercised no actual control over the manner of work, knew nothing which would have increased the plaintiff's knowledge of the risk he was facing, and did nothing to cause the injury, the court may conclude as a matter of law that the defendant is not liable for plaintiff's injuries. Semens v. Continental Air Lines, Inc. (I), 2 FSM Intrm. 131, 144 (Pon. 1985).

The common law definition of negligence, which includes the failure to use such care as a reasonably prudent person would use in a similar situation, is consistent with the Pohnpeian concept of civil wrong. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 66 (Pon. S. Ct. Tr. 1986).

The Pohnpei Supreme Court will apply an English principle to the situation of a joint enterprise such that when parties to a joint enterprise, or their agents, perform work on another man's property and cause damage to the other man or his property through failure to exercise due care, then they are liable. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 67 (Pon. S. Ct. Tr. 1986).

An employer who recognizes the potential danger of a work situation, but who fails to take steps to reduce the danger or warn his employees of the danger, is guilty of nonfeasance and negligence. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 69 (Pon. S. Ct. Tr. 1986).

A corporation and its shareholders are liable for the wrongful act of their employees under the doctrine of respondeat superior. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 70 (Pon. S. Ct. Tr. 1986).

In apportioning damages among negligent parties, the Pohnpei Supreme Court will consider the following factors: the Pohnpei Constitution, custom and tradition, the degree of negligence of each party, other jurisdictions' efforts to abolish joint liability, the need to minimize the role of insurance companies given Pohnpei's stage of development, the example of the U.S. insurance crisis, other jurisdictions' efforts to modify the rules governing joint and several liability, and American judges' assessments of joint and several liability. Koike v. Ponape Rock Products, Inc. (II), 3 FSM Intrm. 182, 185 (Pon. S. Ct. Tr. 1987).

Any liability of the state for suffering or death caused by defective health care provided by the state must be based upon theories of negligence, not strict liability. Amor v. Pohnpei, 3 FSM Intrm. 519, 534 (Pon. 1988).

Any causative factors not within the exclusive control of the alleged negligent party render res ipsa loquitur doctrine inapplicable to an action for medical malpractice. Amor v. Pohnpei, 3 FSM Intrm. 519, 534-35 (Pon. 1988).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Amor v. Pohnpei, 3 FSM Intrm. 519, 531 (Pon. 1988).

The standard of care for doctors at the Truk State hospital is that they are to exercise professional judgment in the attempt to diagnose the illness of the patient, and then, consistent with available facilities and supplies, act on that diagnosis. Asan v. Truk, 4 FSM Intrm. 51, 56 (Truk S. Ct. Tr. 1989).

In a case where a patient died following the normal delivery of her child, where the evidence fails to show any demonstrable effort at diagnosis and no treatment as a result of diagnosis, the standard of care expected of a doctor at the Truk State Hospital was not met and the evidence proves negligence. Asan v. Truk, 4 FSM Intrm. 51, 56 (Truk S. Ct. Tr. 1989).

Where the driver of a vehicle dropped off a child and then failed to see that the way was clear before starting the vehicle in motion, the driver was negligent and is liable for the death of the child. Suka v. Truk, 4 FSM Intrm. 123, 129-30 (Truk S. Ct. Tr. 1989).

One person may be liable to another if the first negligently violates a duty owed to the other and thereby causes the other to suffer injury or loss. Leeruw v. FSM, 4 FSM Intrm. 350, 357 (Yap 1990).

A volunteer who gratuitously offers to provide service or assistance to another, and causes that other to rely upon the offer rather than to seek alternative ways of responding to the need, owes a duty to perform the donated services with reasonable care. Leeruw v. FSM, 4 FSM Intrm. 350, 357 (Yap 1990).

The FSM liaison officers generally owe a duty, established by statutory authorizations and administrative directives, to exercise reasonable care and diligence in providing timely transportation services to medically-referred citizens, and when the FSM liaison office personnel are aware of facts which reveal that a medically-referred citizen is in serious condition and that the timing of her travel for further medical attention is crucial, those officials have a duty to inquire how long the stabilization procedure will take, when it will be appropriate for the citizen to travel and what, if any flights are available for the injured person. Leeruw v. FSM, 4 FSM Intrm. 350, 358 (Yap 1990).

What constitutes reasonable action or assistance must be determined in light of the surrounding circumstances. Leeruw v. FSM, 4 FSM Intrm. 350, 358 (Yap 1990).

One who has acted negligently may be held liable only for the damages proximately caused by that negligence. Leeruw v. FSM, 4 FSM Intrm. 350, 361 (Yap 1990).

A claim that the FSM liaison office did not fulfill its medical referral obligations as required by law falls

within the embrace of 6 F.S.M.C. 702(2), which authorizes damage claims against the government for alleged improper administration of statutory laws or regulations. Leeruw v. FSM, 4 FSM Intrm. 350, 363 (Yap 1990).

Where the national government, through the Guam liaison office, undertook to assist in transporting persons being medically referred to other locations and then failed to provide competent and reasonable assistance, the failure to fulfill the duty owed was a failure of the government liaison office and not of just one or two staff members of that office. Leeruw v. FSM, 4 FSM Intrm. 350, 364 (Yap 1990).

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

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. It is the failure to do what a person of ordinary prudence would have done under similar circumstances. Epiti v. Chuuk, 5 FSM Intrm. 162, 166 (Chk. S. Ct. Tr. 1991).

Where any reasonable employer would have ordered all electrical power cut off while any work was being performed in close proximity to high voltage lines, the failure to do so is clearly negligent. Epiti v. Chuuk, 5 FSM Intrm. 162, 166 (Chk. S. Ct. Tr. 1991).

When a person elects to operate a vehicle on the public streets he owes a duty to pedestrians and others using the road and adjacent areas to operate the vehicle in a safe and prudent manner. When the breach of this duty by driving in a fast and careless manner is the proximate cause of an injury the driver will by held liable. Ludwig v. Mailo, 5 FSM Intrm. 256, 259 (Chk. S. Ct. Tr. 1992).

In order for a third party's negligent conduct to afford any relief to defendants by way of a contributory (comparative) negligence theory, it must be demonstrated that the negligent act or omission somehow caused or contributed to the injury sustained and that there was not an independent or superseding cause. Ludwig v. Mailo, 5 FSM Intrm. 256, 261 (Chk. S. Ct. Tr. 1992).

Until proven contrary to Kosraean custom the Kosrae State Court will entertain actions for negligence as tort liability for negligence is consistent with Micronesian culture. Nena v. Kosrae, 5 FSM Intrm. 417, 420 (Kos. S. Ct. Tr. 1990).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. Nena v. Kosrae, 5 FSM Intrm. 417, 420 (Kos. S. Ct. Tr. 1990).

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

Punitive damages are not recoverable for ordinary negligence. Elwise v. Bonneville Constr. Co., 6 FSM Intrm. 570, 572 (Pon. 1994).

A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent performance of that duty or of duty to notify debtor if insurance not obtained. FSM Dev. Bank v. Bruton, 7 FSM Intrm. 246, 251 (Chk. 1995).

Failure of a creditor to notify the debtor of its failure to obtain insurance is negligence. As a consequence the creditor is liable to the debtor for the entire amount of the debtors' loss, otherwise the debtor is only entitled to return of full amount of insurance premiums paid. FSM Dev. Bank v. Bruton, 7 FSM Intrm. 246, 251 (Chk. 1995).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Davis v. Kutta, 7 FSM Intrm. 536, 546 (Chk. 1996).

The state is liable for injuries proximately caused by the employment of untrained or poorly trained police officers, and for the failure to adequately train them, and the chief of police is liable for any injury resulting from breach of duties connected with his office. Davis v. Kutta, 7 FSM Intrm. 536, 546 (Chk. 1996).

Violation of a statute creates a rebuttable presumption of negligence. Put another way, the unexcused violation of law which defines reasonable conduct is negligence in itself. Glocke v. Pohnpei, 8 FSM Intrm. 60, 61 (Pon. 1997).

Because tort law is primarily state law a negligence action will be governed by the substantive state law and the FSM Supreme Court's duty is to try to apply the law the same way the highest state court would. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 63, 64-65 (Chk. 1997).

Under Chuuk state law the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed, which may be summarized as: a duty of care, a breach of that duty, which breach proximately causes damages. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 63, 65 (Chk. 1997).

The employment of a police officer with ten-year old charges and or convictions for violent behavior is insufficient to hold a municipality liable for negligent hiring because the charges and or convictions were too remote and attenuated to be the proximate cause of the plaintiff's injury. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 194 (Pon. 1997).

The definition of "negligence," as the term is used in the common law countries, is applicable or similar to the Pohnpeian understanding of negligence. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 293 (Pon. 1998).

Negligence is the omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 293 (Pon. 1998).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 293 (Pon. 1998).

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

One who knows or has reason to know that a third person is giving or is ready to give to another aid necessary to prevent physical harm to him, and negligently prevents or disables the third person from giving such aid, is subject to liability for physical harm caused to the other by the absence of the aid for which he has prevented the third person from giving. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 294 (Pon. 1998).

A complaint's allegations that officials' knowing interference prevented two ships from refloating their ship after it had grounded on a reef, that the ship's crew were arrested by the officials without cause, and that this actively and unreasonably prevented rescue the vessel's by other boats, and that that interference was the direct cause of the boat's damage, set forth a claim in negligence and are sufficient to survive a motion to dismiss. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 294 (Pon. 1998).

Under Chuuk state law the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed. Kaminanga v. FSM College of Micronesia, 8 FSM Intrm. 438, 442 (Chk. 1998).

A negligence claim may be stated when a party has breached its duty to negotiate in good faith. Kaminanga v. FSM College of Micronesia, 8 FSM Intrm. 438, 442 (Chk. 1998).

In determining liability for negligent injuries generally, electricity providers are required to use reasonable care in the construction and maintenance of their lines and apparatus, and will be responsible for any conduct falling short of this standard. Asher v. Kosrae, 8 FSM Intrm. 443, 449 (Kos. S. Ct. Tr. 1998).

It is the imperative duty of electricity providers to make reasonable and proper inspection of their wires and other equipment and to use due diligence to discover and repair defects. A failure to perform such duty constitutes negligence. Asher v. Kosrae, 8 FSM Intrm. 443, 450 (Kos. S. Ct. Tr. 1998).

The placing of a guy wire within areas that are traveled may constitute negligence where the wire is not guarded, covered, rendered easy to see, and a person is injured by a collision with it. An electricity provider can be held liable for injures sustained from a collision if it is shown that the company's negligence in the erection or the maintenance of such wire was the proximate cause of the injury. The test is whether the injury under all of the circumstances, might reasonably been foreseen by a person of ordinary intelligence and prudence. Asher v. Kosrae, 8 FSM Intrm. 443, 450 (Kos. S. Ct. Tr. 1998).

It is reasonably foreseeable to a person of ordinary intelligence and prudence that a dangling, frayed wire could cause injury to passersby in the vicinity of the pole and wire. Asher v. Kosrae, 8 FSM Intrm. 443, 450 (Kos. S. Ct. Tr. 1998).

A state will be liable for damages resulting from personal injury as a result of a collision with a guy wire when the state erected and maintained the guy wire to support a pole carrying its electric transmission wires, when for a considerable length of time prior to the accident it failed to make reasonable and proper inspections of the guy wire as necessary and failed to use due diligence to discover and remedy the defective guy wire so that that injury would not result, and when the type injury which occurred was reasonably foreseeable. Asher v. Kosrae, 8 FSM Intrm. 443, 450 (Kos. S. Ct. Tr. 1998).

Negligence is a separate tort from nuisance. Although negligence is one kind of conduct upon which liability for nuisance may be based, negligence is not a necessary ingredient for a nuisance. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 534 (Pon. 1998).

Under Pohnpei law, negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. It is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 535 (Pon. 1998).

The elements of actionable negligence are: 1) a duty of care, 2) a breach of that duty, and 3) damages proximately caused by that breach. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 535 (Pon. 1998).

One who carries on a dangerous activity must use care commensurate with the risk or danger of injury involved or suffer liability for resulting injuries. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 535 (Pon. 1998).

The focus of a negligence analysis is on the actor's conduct, while the focus of an intentional nuisance analysis is on the resulting interference. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 541 (Pon. 1998).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. A plaintiff must show that the defendants owed the plaintiff a duty of care, and that the defendants breached this duty. The plaintiff must also show that his injuries were caused by the breach and that a value can be assigned to his injuries. Sigrah v. Timothy, 9 FSM Intrm. 48, 53 (Kos. S. Ct. Tr. 1999).

The common law definition of negligence includes the failure to use such care as a reasonably prudent person would use in a similar situation. Sigrah v. Timothy, 9 FSM Intrm. 48, 53 (Kos. S. Ct. Tr. 1999).

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

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances. Duties of care differ according to the circumstances. The exact parameters of each person's responsibilities towards others will be defined through time by judicial decisions and statutes. Jonah v. Kosrae, 9 FSM Intrm. 335, 341 (Kos. S. Ct. Tr. 2000).

The elements required to prevail on a negligence claim are: a duty of care, a breach of that duty, and damages proximately caused by that breach. Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. Jonah v. Kosrae, 9 FSM Intrm. 335, 341 (Kos. S. Ct. Tr. 2000).

Because the state had a duty of care to construct the seawall in a manner which a reasonably careful person would have done in similar circumstances and a reasonably careful person would have constructed the seawall in accordance with accepted methods of seawall construction in Kosrae at that time during the late 1980s, and because at that time black rock was routinely used for seawall construction as the best method to dissipate wave energy from the ocean, the state did not breach its duty to, and is not liable to the plaintiff for negligence by using black rocks for erosion control measures and construction of the seawall. Jonah v. Kosrae, 9 FSM Intrm. 335, 341 (Kos. S. Ct. Tr. 2000).

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

Under Chuuk state law the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed, which may be summarized as: a duty of care, a breach of that duty, which breach proximately causes damages. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 14 (Chk. 2001).

Jailers, and their superiors, owe detainees a duty of care, which may include the duty to regularly observe a detainee's condition, and may breach that duty by failing to provide the required checks on his condition, had a duty of watchfulness when they are aware or should be aware of the effect on the detainee of the scolding he received and when these failures are the proximate cause of the plaintiff's death, these defendants are liable under 6 TTC 201(1) for the plaintiff's death by neglect. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 14 (Chk. 2001).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. A plaintiff must show that the defendants owed the plaintiff a duty of care, and that the defendants breached this duty. The plaintiff must also show that his injuries were caused by the breach and that a value can be assigned to his injuries. The common law definition of negligence includes the failure to use such care as a reasonably prudent person would use in a similar situation. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 236 (Kos. S. Ct. Tr. 2001).

Negligence may include a condition created by the negligent conduct of a government entity, or its employees, a condition which created a reasonably foreseeable risk of the kind of injury which afflicted the

plaintiff, and that the injury proximately caused by the condition. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 236 (Kos. S. Ct. Tr. 2001).

When the act of losing the key, or providing the key to allow one or more unauthorized persons access to the municipal building and the office area breached the duty of care to protect the plaintiff's property and created a reasonably foreseeable risk that the property in the building would be moved, damaged or removed from the premises, and when the plaintiff's property was removed from its designated location, the loss of the key, or the providing it to unauthorized persons proximately caused the plaintiff's loss of his personal property, and the defendants are liable for tort of negligence. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 236 (Kos. S. Ct. Tr. 2001).

Punitive damages are not recoverable for ordinary negligence. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 239 (Kos. S. Ct. Tr. 2001).

Ordinary negligence is not a basis for punitive damages. In order for negligence to constitute wantonness meriting imposition of punitive damages, the plaintiff must show that the one acting or failing to act realized the imminence of the danger and failed to take steps to prevent it because he was indifferent to whether the injury occurred. Amayo v. MJ Co., 10 FSM Intrm. 244, 250 (Pon. 2001).

The failure to exercise the degree of care that a reasonably prudent and careful person would use under the same circumstances constitutes negligence. Amayo v. MJ Co., 10 FSM Intrm. 244, 250 (Pon. 2001).

When a general contractor had a duty to provide a safe work environment for the construction work to be done at the second story heights and his duty in this regard ran not only to the employees of subcontractors, but to those that he employed directly as well, which included the plaintiff, and when his failure to provide any kind of safety equipment, precautions, instructions or supervision resulted in the plaintiff's fall and consequent injury, he is therefore liable for the damages suffered as a result of that injury. Amayo v. MJ Co., 10 FSM Intrm. 244, 250-51 (Pon. 2001).

When one company assigned its employee to work for another company, and the assigning company was effectively stripped of control over the way the work was done, and when the assigning company had no knowledge of facts unknown to the employee that would have affected the risk faced by him, and did nothing else to cause the employee's injury, there is no negligence liability on the part of the assigning company. Amayo v. MJ Co., 10 FSM Intrm. 244, 251 (Pon. 2001).

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

Negligence consists of four essential elements: 1) a legal duty owed to the plaintiff by the defendant, 2) a breach of that duty, 3) injury to the plaintiff, and 4) a showing that the breach was the proximate cause of the injury. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 348, 352-53 (Pon. 2001).

It is well established that medical expenses are properly a component of negligence damages and may be recovered from the tortfeasor. Amayo v. MJ Co., 10 FSM Intrm. 371, 376 (Pon. 2001).

In determining whether conduct is negligent, the customs of the community, or of others under like circumstances, are factors to be taken into account, but are not controlling where a reasonable man would not follow them. Amayo v. MJ Co., 10 FSM Intrm. 371, 384 (Pon. 2001).

It is not a defense to negligence to say that others engaged in the same conduct would have operated in the same way, without taking safety precautions, and were, or are on an ongoing basis, negligent. Amayo v. MJ Co., 10 FSM Intrm. 371, 384 (Pon. 2001).

The construction of a multistory building using imported technology is not imbued with Pohnpeian custom and tradition so as to lend itself to an analysis in those terms. Amayo v. MJ Co., 10 FSM Intrm. 371, 384 (Pon. 2001).

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances, or the failure to do what a person of ordinary prudence would have done under similar circumstances. Billimont v. Chuuk, 11 FSM Intrm. 77, 81 (Chk. S. Ct. Tr. 2002).

In order to prove negligence, a plaintiff must prove the existence of a duty, breach of the duty, and damages proximately caused by the breach. Billimont v. Chuuk, 11 FSM Intrm. 77, 81 (Chk. S. Ct. Tr. 2002).

The plaintiff, in order to establish the defendant's negligence in failing to pay the sums due under the lease, has the burden of proving by a preponderance of the evidence the existence of a duty on the defendant's part to pay. But, given the lease's illegal nature, this essential fact cannot be proven as a matter of law. Billimont v. Chuuk, 11 FSM Intrm. 77, 81 (Chk. S. Ct. Tr. 2002).

As a matter of law no reasonably prudent person would commit an act the consequence of which might result in that person's imprisonment. Billimont v. Chuuk, 11 FSM Intrm. 77, 81 (Chk. S. Ct. Tr. 2002).

When a reasonably prudent person in the Director of Treasury's position would not willingly and intentionally violate Chuuk state laws, and when to pay sums purportedly due under the contract at issue would violate Chuuk state laws, subjecting the party authorizing payment to criminal penalties, the plaintiff cannot as a matter of law prove a material and indispensable element of her claim of negligence for failure to pay her because the sums are due her on an illegal contract. Billimont v. Chuuk, 11 FSM Intrm. 77, 81 (Chk. S. Ct. Tr. 2002).

Each of the familiar elements of a cause of action for negligence – duty, breach of duty, proximate cause, and damages – should be alleged, and a negligence counterclaim that does not is deficient and a motion to dismiss it will be granted. Adams v. Island Homes Constr., Inc., 11 FSM Intrm. 445, 449 (Pon. 2003).

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

No punitive damages can be awarded when the plaintiff has not sustained his burden of demonstrating that the defendant's actions were intentional, wilful, and malicious, rather than merely negligent. Punitive damages may not be awarded for ordinary negligence. Tomy v. Walter, 12 FSM Intrm. 266, 272 (Chk. S. Ct. Tr. 2003).

Once a plaintiff has presented a *prima facie* case of entitlement to judgment on a cause of action, the burden shifts to the defendants to raise a question of material fact. Thus when the defendants have raised no such question, and where there is a duty of care, a breach of that duty, damage caused by the breach, and the value of the damage can be determined, liability as to the defendants' negligence has been established. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 308 (Pon. 2004).

It is well established that punitive damages are not recoverable for ordinary negligence. Such damages also will not be awarded unless it has been claimed and proved that the defendant acted with actual malice or deliberate violence. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 309 (Pon. 2004).

When, according to the complaint's allegations, the defendants' medical malpractice led to the deceased's death, and when, attached to the defendants' summary judgment motion is an affidavit of a medical doctor who is board certified in the field of family practice and the affidavit recites that the doctor has reviewed the medical records and that his opinion is that her diagnosed illness, tuberculosis of the spine, was so serious that in order to avoid paralysis, it would have been acceptable practice to administer the medications in question even if the deceased's treating doctors had been aware of her hepatitis history, the

doctor's affidavit is relevant evidence based on an adequate foundation, that tends to show that the defendants did not violate the applicable standard of care. This evidence is of sufficient weight that left unopposed, no genuine issue of material fact exists under FSM Civil Rule 56, and the defendants are entitled to judgment as a matter of law. Since the plaintiffs have offered nothing to meet the evidence offered by the defendants, no genuine issues of material fact therefore exist, and the defendants are entitled to summary judgment in their favor. Joe v. Kosrae, 13 FSM Intrm. 45, 47 (Kos. 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).

When the plaintiffs allege two separate claims for the same damages in this suit and one sounds in contract and alleges a breach of a purchase agreement since part of the plaintiffs' agreed share of the purchase price was not paid to them and the other claim sounds in tort and alleges that the defendant was negligent in wrongfully releasing the remaining balance to someone else without taking such precautionary measures that a reasonably prudent person would be expected to take as a holder of funds that plaintiffs were entitled to, the court will analyze the contract claim first and finding a breach of the purchase agreement, need not address the plaintiffs' negligence tort claims. Edgar v. Truk Trading Corp., 13 FSM Intrm. 112, 117 (Chk. 2005).

Under Chuuk law, the elements of actionable negligence are the breach of a duty on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 127 (Chk. 2005).

For a plaintiff to recover for negligence, the defendant must owe a duty of care to the plaintiff and have breached that duty. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 127 (Chk. 2005).

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

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

– Negligent Misrepresentation

Negligent misrepresentation is established where the defendant made a false representation of fact which was either known by the defendant to be false or the defendant had an insufficient basis of information to make the factual representation; the representation is made with the intent to induce the plaintiff to act or refrain from acting, in reliance upon the misrepresentation; plaintiff has justifiably relied thereupon; and damage to plaintiff has resulted from such reliance. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 308 (Pon. 2004).

Summary judgment on a negligent misrepresentation claim will be granted when the uncontroverted and

dispositive fact is that the defendants misled the plaintiff to believe that his rental fleet would be covered by the insurance policy if the vehicles were damaged while driven by renters, but the defendants failed to bind the type of coverage that was both requested and promised and when the defendants have not attempted to meet their burden of showing that there is a genuine issue of fact as to this claim. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 308-09 (Pon. 2004).

A measure of damages for the tort of negligent misrepresentation (also called deceit) employs the benefit of the bargain rule when damages can be proved with reasonable certainty. Under this principle, the insurer would be entitled to its premium, which would be set off against what it owed its insured. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 469 (Pon. 2004).

Consequential damages, of which economic loss such as lost profits may be an example, are available for negligent misrepresentation (deceit) claims if reasonably foreseeable. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 472 (Pon. 2004).

– Nuisance

Nuisance is generally regarded as a substantial interference with the use and enjoyment of another's land caused by intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or the performance of an abnormally dangerous activity. A substantial interference is actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm, that affects the health, comfort, or property of those who live nearby. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 534 (Pon. 1998).

An intentional invasion of another's interest in the use and enjoyment of land is unreasonable if a) the gravity of the harm outweighs the utility of the actor's conduct, or b) the harm caused by the conduct is serious and the financial burden of compensating for it and similar harm to others would not force the defendant out of business. In determining the gravity of harm, a court will consider the extent and character of the harm, the social value and suitability to the community of the use and enjoyment involved, and the burden on the person harmed of avoiding the harm. In determining the utility of the conduct, a court will consider the social value and suitability to the community of the conduct, and the impracticability of preventing or avoiding the invasion. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 534 (Pon. 1998).

Nuisances are classified as either permanent, continuing, recurring or temporary in nature. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 534 (Pon. 1998).

A permanent nuisance is one which may be expected to continue indefinitely, and is generally caused by a single act that permanently affects the property's value. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 534 (Pon. 1998).

A temporary, recurring or continuing nuisance is one which is intermittent or periodic and can be abated, such as an ongoing or repeated disturbance caused by noise, vibration or a foul odor. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 534 (Pon. 1998).

Nuisances that affect the public at large are classified as public nuisances, while those that affect an individual or a small number of individuals are classified as private nuisances. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 534 (Pon. 1998).

Negligence is a separate tort from nuisance. Although negligence is one kind of conduct upon which liability for nuisance may be based, negligence is not a necessary ingredient for a nuisance. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 534 (Pon. 1998).

There is no liability for nuisance when the structural damage to the plaintiffs' house was caused by the plaintiffs' improper construction, poor maintenance and general deterioration and not by vibrations from the defendant's nearby blasting. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 539 (Pon. 1998).

Defendant created a permanent nuisance with its creation of a cliffline at the boundary of plaintiffs' property that has made plaintiffs' land susceptible to erosion over time, diminishing the value of plaintiffs' land. Defendant shall compensate plaintiffs for the diminished property value, and further undertake reasonable efforts to stabilize the cliffline to prevent future erosion. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 540 (Pon. 1998).

The first step in evaluating nuisance liability is to determine whether there has been substantial interference with plaintiffs' use and enjoyment of their land. The second step is to determine whether the harm caused by the defendant was intentional or unintentional. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 540 (Pon. 1998).

When harm is intentionally caused, liability attaches if the harm is unreasonable. Under the definition of nuisance, interference is unreasonable if the gravity of the harm outweighs the utility of the conduct, or the harm is serious and the financial burden of compensating for it and similar harm to others would not force the defendant out of business. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 540-41 (Pon. 1998).

If harm is unintentionally caused, nuisance liability will attach when it is the result of negligent or reckless conduct, or the result of an abnormally dangerous activity. If defendant's conduct was unintentional, the next step would be to evaluate whether the conduct was reasonable (i.e. negligence analysis), or the result of an abnormally dangerous activity. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 540-41 n.2 (Pon. 1998).

The focus of a negligence analysis is on the actor's conduct, while the focus of an intentional nuisance analysis is on the resulting interference. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 541 (Pon. 1998).

The logic behind an intentional nuisance analysis is that, regardless of whether a defendant acted with reasonable care, it is unfair (i.e. unreasonable) to allow the defendant to intentionally cause serious harm to a plaintiff without compensating the plaintiff. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 541 (Pon. 1998).

A defendant will not be required to abate its nuisance when it operates under permits granted by appropriate state agencies, its quarrying operation uses proper blasting methods, its quarry operation is necessary, and its quarrying activities have substantial public utility for the people in Pohnpei. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 541 (Pon. 1998).

Nuisance is generally regarded as a substantial interference with the use and enjoyment of another's land caused by intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or by the performance of an abnormally dangerous activity. Jonah v. Kosrae, 9 FSM Intrm. 335, 341-42 (Kos. S. Ct. Tr. 2000).

The first step of the two-step analysis for nuisance requires that there be a substantial interference with the use and enjoyment of another's land. A substantial interference is actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm, that affects the health, comfort, or property of those who live nearby. Jonah v. Kosrae, 9 FSM Intrm. 335, 342 (Kos. S. Ct. Tr. 2000).

The second step of the analysis for nuisance describes the actions of the potential liable party. The interference with the use and enjoyment of another's land must be caused by intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or the performance of an abnormally dangerous activity. Jonah v. Kosrae, 9 FSM Intrm. 335, 342 (Kos. S. Ct. Tr. 2000).

A party is not liable for nuisance when there is no evidence that the party intentionally caused the erosion damage, or that its actions were reckless, unreasonable, or abnormally dangerous and when it has already been shown that the party was not negligent. Jonah v. Kosrae, 9 FSM Intrm. 335, 342 (Kos. S. Ct. Tr. 2000).

A claim that some private party has taken or deprived someone of their property is, if it was personal property that was allegedly taken, a claim for conversion or for trespass to chattels, and, if it was real property that was allegedly taken by some private party, it is a claim for trespass (including actions for ejectment) or possibly for nuisance (interference with use and enjoyment of land). They are not due process or takings claims. Rosokow v. Bob, 11 FSM Intrm. 210, 215 (Chk. S. Ct. App. 2002).

Nuisance is generally regarded as a substantial interference with the use and enjoyment of another's land caused by intentional and unreasonable conduct, or caused unintentionally by negligent or reckless conduct, or the performance of an abnormally dangerous conduct. A substantial interference is actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm, that affects the health, comfort, or property of those who live nearby. Ambros & Co. v. Board of Trustees, 11 FSM Intrm. 262a, 262h (Pon. 2002).

An intentional invasion of another's interest in property in the use and enjoyment of land is unreasonable if a) the gravity of the harm outweighs the utility of the actor's conduct, or b) the conduct is serious and the financial burden of compensating for it and similar harm to others would not force the defendant out of business. In determining the gravity of the harm, a court will consider the extent and character of the harm, the social value and suitability to the community of the use and enjoyment involved, and the burden on the person harmed of avoiding the harm. In determining the utility of the conduct, a court will consider the social value and suitability to the community of the conduct, and the impracticability of preventing or avoiding the invasion. Ambros & Co. v. Board of Trustees, 11 FSM Intrm. 262a, 262h (Pon. 2002).

If the actor's conduct is negligent, then to establish a nuisance it must be shown that the actor's negligent or reckless conduct caused a substantial interference with the use and enjoyment of another's land. Ambros & Co. v. Board of Trustees, 11 FSM Intrm. 262a, 262h n.1 (Pon. 2002).

To prevail on a claim for nuisance, a party must show that another substantially interfered with the use and enjoyment of his land by intentional or unreasonable conduct. A substantial interference is actual, material, physical discomfort, material annoyance, inconvenience, discomfort, or hurt, or significant harm, that affects the health, comfort or property of those who live nearby. Ambros & Co. v. Board of Trustees, 12 FSM Intrm. 206, 214 (Pon. 2003).

A nuisance is an activity which arises from unreasonable or unlawful use by a person of his own property, and that disturbs another in possession of his property, or an offensive, unpleasant, or obnoxious thing or practice, especially a continuing or repeated invasion or disturbance of another's right. While it is undisputed that suicides and suicide attempts are events which disturb others, particularly family members and friends, and possibly a large number of persons in the community on a small island such as Kosrae, these events cannot be classified as public nuisances. Kosrae v. Nena, 13 FSM Intrm. 63, 66-67 (Kos. S. Ct. Tr. 2004).

– Product Liability

A plaintiff who establishes the existence of risk factors which may have caused the injury, must show that these risk factors did in fact cause the injury. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 348, 353 (Pon. 2001).

It is enough that the plaintiff introduce evidence from which reasonable men may conclude that it is more probable that the event was caused by the defendant than that it was not. Stated another way, it does not require that the proof eliminate every possible cause other than the one on which plaintiff relies, but only such other causes, if any, which fairly arise from the evidence. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 348, 353 (Pon. 2001).

When no product defect is found, causes of action based on strict product liability and on breach of warranty fail and *res ipsa loquitur* is not applicable. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 348, 353 (Pon. 2001).

On a design defect products liability claim, evidence of other accidents is admissible to show a dangerous condition so long as the proponent makes a foundational showing that the prior accidents occurred under substantially the same circumstances. Further, evidence proffered to illustrate the existence of a dangerous condition necessitates a high degree of similarity because it weighs directly on the ultimate issue to be decided by the [finder of fact. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 574, 583 (Pon. 2002).

When the alleged defect in the kerosene resulted from the contamination of the product, and not its design, logic dictates that the plaintiff must show a high degree of similarity between the accident in this case and the accidents in the other cases before the other accidents will be admitted on the question of the dangerous condition of the allegedly contaminated product. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 574, 583 (Pon. 2002).

When the instant case is similar to the other accidents to the extent that the alleged defect is the same, i.e., contaminated kerosene, but the manner in which the other accidents occurred is quite different, the other accidents are not sufficiently similar to be admissible on the question of dangerousness. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 574, 583 (Pon. 2002).

– Respondeat Superior

Under the common law there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the possible liability of the principal for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. The earlier common law rules making distinctions for this purpose have for the most part been supplanted by social legislation such as workers' compensation, minimum wage, fair labor standards, social security and income tax laws. Rauzi v. FSM, 2 FSM Intrm. 8, 15 (Pon. 1985).

The emphasis in governmental tort liability cases has been on the special status of government, its functions and its officials rather than on the degree of control tests commonly employed in nongovernmental cases. Even those commentators who specifically note that the *respondeat superior* doctrine applies to the government analyze governmental liability issues in terms of public policy considerations rather than through a degree of control analysis which distinguishes between closely supervised and high-ranking officials. Rauzi v. FSM, 2 FSM Intrm. 8, 16 (Pon. 1985).

A corporation and its shareholders are liable for the wrongful act of their employees under the doctrine of *respondeat superior*. Koike v. Ponape Rock Products, Inc., 3 FSM Intrm. 57, 70 (Pon. S. Ct. Tr. 1986).

Whether the relationship between U.S. National Health Service Corps doctors and the State of Pohnpei is such that the doctrine of *respondeat superior* may be applicable in an action for medical malpractice so that the state may be made to respond in damages for any negligence of the doctor has not been determined. Amor v. Pohnpei, 3 FSM Intrm. 519, 536 (Pon. 1988).

An employer may be liable for the negligent acts of employees, but not for acts committed outside the scope of employment. Suka v. Truk, 4 FSM Intrm. 123, 126 (Truk S. Ct. Tr. 1989).

An employer generally may not be held liable for punitive damages for the tortious acts of its employees. However, an employer may be held liable for punitive damages if 1) the employer authorized the act, 2) the employer knew the employee was unfit for the position at the time of the hiring, or 3) the employer ratified the tortious act of the employee. Meitou v. Uwera, 5 FSM Intrm. 139, 146 (Chk. S. Ct. Tr. 1991).

When force is employed by a police officer in an apparent use of official authority, the governmental employer should be held responsible for what is done. Plais v. Panuelo, 5 FSM Intrm. 179, 201 (Pon. 1991).

A state's ratification and acceptance of its employee's torts through its subsequent conduct is an independent ground for holding the state jointly and severally liable for those torts. Plais v. Panuelo, 5 FSM

Intrm. 179, 202-03 (Pon. 1991).

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

The individuals owning an unincorporated business are liable under the *respondeat superior* principle for the tortious injuries caused by their employee who was acting on behalf of the business and within the scope of his employee. Ludwig v. Mailo, 5 FSM Intrm. 256, 259 (Chk. S. Ct. Tr. 1992).

Since the plaintiffs could have discovered the defendant's true ownership interest in the liable employer, it would place an undue burden on a minority interest owner in an unincorporated business to impose liability on him in excess of his ownership interest. Ludwig v. Mailo, 5 FSM Intrm. 256, 260 (Chk. S. Ct. Tr. 1992).

The state, not the chief of police, is vicariously liable under the doctrine of respondeat superior for the torts of its police officers committed in the course and scope of their employment when force is employed in the use of even apparent official authority. Davis v. Kutta, 7 FSM Intrm. 536, 545-46 (Chk. 1996).

Although a town government is not automatically liable for all the torts of its agents and employees, it is liable for those torts committed in the course and scope of employment under the doctrine of respondeat superior. When force is employed by police officers in use of even apparent official authority, the government employer should be held responsible for whatever results. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 192 (Pon. 1997).

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

– Strict Liability

Strict liability arises where the activity performed is not merely dangerous, but abnormally dangerous. One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 535 (Pon. 1998).

Strict liability is limited to the kind of harm, the possibility of which makes the activity abnormally dangerous. In determining whether an activity is abnormally dangerous, the following factors are to be considered: a) the existence of a high degree of some harm to the person, land or chattels of others; b) the likelihood that the harm that results from it will be great; c) the inability to eliminate the risk by the exercise of reasonable care; d) the extent to which the activity is not a matter of common usage; e) the inappropriateness of the activity to the place where it is carried on; and f) the extent to which its value to the community is outweighed by its dangerous attributes. Whether the activity is an abnormally dangerous one is to be determined by the court. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 535 (Pon. 1998).

A strict liability claim will be rejected when the defendant's blasting was not performed in an abnormally dangerous manner. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 541 (Pon. 1998).

– Trespass

Entering private land is at least technically a trespass, absent express or implied consent to the visit.

FSM v. Mark, 1 FSM Intrm. 284, 290 (Pon. 1983).

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

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

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

To prevail in an action for trespass, a plaintiff must prove a wrongful interference with his possessory interest in the property. Damages naturally resulting from the trespass alleged may be proved without being specially pleaded. In re Parcel No. 046-A-01, 6 FSM Intrm. 149, 155 (Pon. 1993).

When plaintiff leaseholders present a written lease agreement and the certificates of title issued to the lessor and the defendants admit to occupying the land in question, the leaseholders have made a prima facie case for trespass. In re Parcel No. 046-A-01, 6 FSM Intrm. 149, 155-56 (Pon. 1993).

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

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

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

It is unnecessary to have a fee simple title to land in order to bring an action for trespass. All that is needed is a possessory interest. A trespass action is one for violation of possession, not for challenge to title. Ponape Enterprises Co. v. Soumwei, 6 FSM Intrm. 341, 343 (Pon. 1994).

In a trespass case the judgment is for physical possession of the land and the standard is based on who has better right of possession not who has the better title. Ponape Enterprises Co. v. Soumwei, 6 FSM Intrm. 341, 345 (Pon. 1994).

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

A trespass cause of action accrues when there is an intrusion upon the land of another which invades

the possessor's interest in the exclusive possession of his land. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 171, 177 (Pon. 1995).

Substantial, open and notorious occupation of land is constructive notice of occupant's claim and puts all persons on inquiry as to the nature of occupant's claim, and whoever willfully avoids learning of such trespass will be charged with constructive notice. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 171, 177-78 (Pon. 1995).

To maintain a trespass action, a plaintiff must prove that at the time of the alleged trespass he had either actual possession or the right to immediate possession. Sana v. Chuuk, 7 FSM Intrm. 252, 254 (Chk. S. Ct. Tr. 1995).

Where a defendant has trespassed on a plaintiff's land by constructing improvements thereon the measure of damages due the plaintiff is an amount equal to the fair market rental value of the land in the place located over the period of use, and also an amount for any damage to trees or food plants during the defendant's use of the property and for any conditions caused by the defendant's trespass and use such as the construction of a garbage dump. Ikanur v. Director of Educ., 7 FSM Intrm. 275, 277 (Chk. S. Ct. Tr. 1995).

In a trespass case, a defendant who made improvements to the plaintiff's property is entitled to offset the value of the improvements against damages caused to the plaintiff's property during the trespass, but all improvements made by the defendant on land without the plaintiff's permission become the plaintiff's property and the defendant has no right to any further use of the improvements without the plaintiff's permission. Ikanur v. Director of Educ., 7 FSM Intrm. 275, 277 (Chk. S. Ct. Tr. 1995).

The common law "incomplete privilege" of one to enter onto the land of another in times of private necessity is essentially codified by 19 F.S.M.C. 805(3), which states that "no person, including the owner or occupier of land may hinder or impede a rescuer." But it cannot have been the intent of 19 F.S.M.C. 805(3) to prevent law enforcement officials from carrying out their official duties in the face of an emergency rescue situation. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 292 (Pon. 1998).

The court's role in a civil trespass case is to determine which party has the greater possessory right to disputed property. In a criminal trespass case, in contrast, the court must determine whether the prosecution has established each element of the crime of trespass beyond a reasonable doubt. Nelson v. Kosrae, 8 FSM Intrm. 397, 403 (App. 1998).

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

An action for trespass has been broadly defined in the FSM as a wrongful interference with another's possessory interest in property. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 533 (Pon. 1998).

One is subject to liability to another for trespass, irrespective of whether he causes harm to any legally protected interest of the other, if he 1) intentionally and without consent enters land in the possession of the other, or causes a thing or person to do so, or 2) intentionally and without consent remains on the land of the other, or 3) intentionally fails to remove from the land a thing which he is under a duty to remove. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 533-34 (Pon. 1998).

When the intrusion is the result of reckless or negligent conduct, or the result of an abnormally dangerous activity, trespass liability attaches only where harm is caused to the land, to the possessor, or to a thing or a third person in whose security the possessor has a legally protected interest. Nelper v. Akinaga,

Pangelinan & Saita Co., 8 FSM Intrm. 528, 534 (Pon. 1998).

There is no liability for trespass when the construction and use of a turnaround area did not exceed that contemplated by the parties in a valid lease agreement. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 539 (Pon. 1998).

When the parties did not reach a full understanding of what would be provided in exchange for the right to build an access road across the plaintiffs' land, but the defendant did agree to compensate the plaintiffs in some way, and when the defendant represented to the plaintiffs that the access road, once constructed, would be usable by the plaintiffs' vehicle, the defendant is liable to make the road passable by car or truck. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 539-40 (Pon. 1998).

Defendant committed a trespass when it caused two to three inches of soil to deposit on plaintiffs' land in an area approximately 12 by 14 feet. Defendant is liable to plaintiffs for the cost to return this area of plaintiffs' land to its original condition. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 540 (Pon. 1998).

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

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

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

When the plaintiff claims the state trespassed on her property by installing poles, a road and pipes sometime before the end of 1987 but did not file suit until 1994, recovery will be barred by the six year statute of limitations. Sipia v. Chuuk, 8 FSM Intrm. 557, 559-60 (Chk. S. Ct. Tr. 1998).

In the case of a continuing trespass the statute of limitation does not begin to run from the date of the original entry, but recovery may be had for a period of time not exceeding the statutory period immediately preceding the institution of the action. David v. Bossy, 9 FSM Intrm. 224, 226 (Chk. S. Ct. Tr. 1999).

Where the act of a wrongdoer involves a course of action which is a direct invasion of the rights of another, such conduct is regarded as a trespass of a continuing character. David v. Bossy, 9 FSM Intrm. 224, 226 (Chk. S. Ct. Tr. 1999).

A possessory interest in a land parcel gives standing to maintain an action for trespass and other torts. It is unnecessary to have a fee simple title to the land in order to bring an action for trespass. All that is needed is a possessory interest. Jonah v. Kosrae, 9 FSM Intrm. 332, 334 (Kos. S. Ct. Tr. 2000).

When a plaintiff has been granted the right to utilize the land through land use agreements he holds a sufficient possessory interest to give him standing to maintain an action for trespass. It is unnecessary to have a fee simple title to land in order to bring an action for trespass. Jonah v. Kosrae, 9 FSM Intrm. 335, 343 (Kos. S. Ct. Tr. 2000).

An action for trespass has been broadly defined in the FSM as a wrongful interference with another's possessory interest in property. A trespass cause of action accrues when there is an intrusion upon another's land which invades the possessor's interest in the exclusive possession of his land. To prevail in an action for trespass, a plaintiff must prove a wrongful interference with his possessory interest in the property. Jonah v. Kosrae, 9 FSM Intrm. 335, 343 (Kos. S. Ct. Tr. 2000).

When the state did not intentionally cause the black rocks to appear on the plaintiff's land, it did not

intentionally cause a trespass to plaintiff's land, and when the state was not negligent or reckless in constructing the seawall and constructing the seawall was not an abnormally dangerous activity, no trespass liability attaches to, and the state is not liable to, the plaintiff for trespass. Jonah v. Kosrae, 9 FSM Intrm. 335, 343 (Kos. S. Ct. Tr. 2000).

Although under a common law ejectment theory one is privileged to exercise reasonable force to prevent an intrusion onto his property, provided that he has first requested the intruder to leave the premises, or where circumstances are such that such a request is unnecessary, such a theory would have no application to a case when he said nothing before he started hitting another's car, and the evidence was inconclusive as to whether the driveway was private property from which he would have been entitled to eject intruders. Elymore v. Walter, 9 FSM Intrm. 450, 456 n.1 (Pon. 2000).

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

To prevail in an action for trespass, a plaintiff must prove a wrongful interference with his possessory interest in the property. The plaintiff must prove his possession of the property, the time and location of the trespass, and the act of trespass. A cause of action for trespass accrues when there is an intrusion upon the land of another which invades the possessor's interest in the exclusive possession of his land. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 175, 183 (Pon. 2001).

A possessor without a claim of right in real property may maintain trespass against anyone who unlawfully disturbs his possession except against the lawful owner or someone claiming under him. The defendant in such a trespass action may not set up in defense the title of a third person with whom there is no privity or connection. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 175, 185 (Pon. 2001).

A defense to a trespass action that someone other than the plaintiff owned the land would only be material if the defendant alleged that that someone authorized him to use the land. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 175, 185 (Pon. 2001).

When a defendant produces only incompetent evidence, regarding other people and other tracts of land, wholly unrelated to the land on which he is allegedly trespassing, and when the speculative and conflicting statements contained in his pleadings are insufficient to create a material fact as to his right to possess any part of the land, there are no material issues of fact and the plaintiff is entitled to summary judgment on its trespass claim. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 175, 186 (Pon. 2001).

A trespass action is one for violation of possession, not for challenge to title. A trespass case is brought to re-establish possession, not to determine ownership or quiet title. A trespass case is a judgment for physical possession of the land and should be based on the standard of who has the superior right of possession, not who has the better title. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 175, 187 (Pon. 2001).

A trespass defendant's bald assertions of third party ownership does nothing to diminish a plaintiff's superior right to possession of the land as to him and is immaterial to the issue of which party to the trespass action has the superior right of possession. A plaintiff's summary judgment motion will therefore be granted as to this affirmative defense. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 175, 187-88 (Pon. 2001).

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

When a plaintiff has acted expeditiously to notify a defendant of his trespass as soon as the defendant began construction on the land, there has been no unreasonable delay prejudicing the defendant which could give rise to a laches defense. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 175, 188 (Pon. 2001).

A defendant's summary judgment motion based on assertions of the validity of a third party's potential claim is insufficient as a matter of law to establish a triable issue of fact as to the plaintiff's superior right of possession. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 175, 188 (Pon. 2001).

The absence of a certificate of title does not affect a trespass case when the plaintiff holds the land under a color of title which is superior to the defendant's claimed right of possession. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 175, 188 (Pon. 2001).

When a plaintiff has proven actual possession of part of the land, it operates as possession of the whole of the land covered by the quitclaim deeds. To require all landowners to construct buildings and fences on the entirety of their property in order to protect it from trespassers and interlopers is simply not practical. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 175, 188 (Pon. 2001).

A noncitizen plaintiff who does not have title to the land may sue for trespass if he has a possessory interest. Marcus v. Truk Trading Corp., 10 FSM Intrm. 387, 390 (Chk. 2001).

An action for trespass is for a wrongful interference with another's possessory interest in property. The court's role in a civil trespass is to determine which party has the greater possessory right to disputed property. A trespass action is one for violation of possession, not for challenge to title. Shrew v. Killin, 10 FSM Intrm. 672, 674 (Kos. S. Ct. Tr. 2002).

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

A trespass action is one for violation of possession, not for challenge to title. It is therefore not a proper proceeding for the defendant to challenge title and allege due process violations in the proceedings that determined the plaintiff's title to the parcel. The defendant may challenge the title through separate proceedings as appropriate. Shrew v. Killin, 10 FSM Intrm. 672, 674-75 (Kos. S. Ct. Tr. 2002).

One is subject to liability to another for trespass, irrespective of whether he causes harm to any legally protected interest of the other if he 1) intentionally and without consent enters land in the other's possession, or causes a thing or person to do so, or 2) intentionally and without consent remains on the other's land, or 3) intentionally fails to remove from the land a thing which he is under a duty to remove. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM Intrm. 94, 99-100 (Pon. 2002).

The plaintiffs have made a prima facie case for a trespass cause of action when they have established that they own the land pursuant to certificates of title and that the defendants are on the property without their consent, but in order to determine whether the plaintiffs should be granted summary judgment, the court needs to consider the defendants' arguments in opposition to the plaintiffs' motion, and if the defendants' arguments fail to establish a genuine issue of material fact exists, then it is appropriate for the court to enter summary judgment. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM Intrm. 94, 100 (Pon. 2002).

When, even if a lease were deemed null and void or that the plaintiffs lacked the authority to enter into the agreement, the defendants have still failed to show that the plaintiffs do not own the property or to offer any evidence supporting their claim that they have a right to possession of the property. It would not prevent the plaintiffs from prevailing in their trespass action. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM Intrm. 94, 102 (Pon. 2002).

In a claim for damages to land, such as trespass, all the co-owners of the affected land are

indispensable parties to the action and must be joined if they are not already parties; otherwise the defendant faces a substantial risk that it may be subject to multiple or inconsistent judgments if any of the other persons who claim to be co-owners decide to sue. Ifenuk v. FSM Telecomm. Corp., 11 FSM Intrm. 201, 203-04 (Chk. 2002).

A claim that some private party has taken or deprived someone of their property is, if it was personal property that was allegedly taken, a claim for conversion or for trespass to chattels, and, if it was real property that was allegedly taken by some private party, it is a claim for trespass (including actions for ejectment) or possibly for nuisance (interference with use and enjoyment of land). They are not due process or takings claims. Rosokow v. Bob, 11 FSM Intrm. 210, 215 (Chk. S. Ct. App. 2002).

A cause of action that alleges that the plaintiffs' customary and traditional rights to use an island might be better described as intentional interference with a customary and traditional property right than trespass. That the plaintiffs referred to it as a trespass should not, in itself, be an obstacle to them prevailing on this point if the evidence warrants, because except for judgments rendered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. Rosokow v. Bob, 11 FSM Intrm. 210, 217 (Chk. S. Ct. App. 2002).

When it is clear that regardless of the probability of appellant's success on appeal, he cannot demonstrate any right to possession of the property at the current time greater than that of the appellee, and when regardless of any stay of execution and of the offering of any supersedeas bond adequate to obtain the court's approval, the appellee is currently entitled to possession of her property pending the appeal's outcome and the appellant is not and must vacate the premises at the earliest possible moment. Konman v. Esa, 11 FSM Intrm. 291, 297 (Chk. S. Ct. Tr. 2002).

As between a bare occupier of land and one holding under a deed, the deed holder has the greater right to possession. Rosario v. College of Micronesia-FSM, 11 FSM Intrm. 355, 359 (App. 2003).

Who had, or has, title to the property was never at issue in a trespass action in which no counterclaim was brought to quiet title to the disputed land. Our law is clear that in an action for trespass, the judgment is for right of possession; in such a case, the issue is who has the superior right to possession, not who has title. Rosario v. College of Micronesia-FSM, 11 FSM Intrm. 355, 359 (App. 2003).

The trial court did not err when it found that one party's right to possess the land was superior to another's because it had color of title, through a quitclaim deed, to the property. Rosario v. College of Micronesia-FSM, 11 FSM Intrm. 355, 359 (App. 2003).

When the record is devoid of evidence that a non-party opposes or has ever challenged ownership of the disputed land, it does not bear on the question of who, as between the parties, has the greater right to possession of the disputed land. Nor are whether, relative to the disputed property, a public hearing was held or a certificate of title issued, or alleged defects in the quitclaim deed by which the plaintiff took its interest germane because these are title questions that do not relate to the issue in a trespass action, which is one of right of possession. These types of claims are insufficient as a matter of law to establish triable issues of fact as to the superior right of possession between the parties. Rosario v. College of Micronesia-FSM, 11 FSM Intrm. 355, 359-60 (App. 2003).

When the action was not one to set boundaries or to determine the ownership of any particular property, the case was not an "action with regard to interests in land" within the meaning of 67 TTC 105 because the defendant never asserted an ownership interest on his own behalf in the land, but rather asserted the alleged rights of third parties who were not before the court. Thus the trial court, when it determined who had the greater possessory right to the disputed property, did not err when it did not refer the matter to the Pohnpei Court of Land Tenure. Rosario v. College of Micronesia-FSM, 11 FSM Intrm. 355, 360 (App. 2003).

It is not practical to require all landowners to construct buildings or build fences on the entirety of their property in order to protect it from trespassers. Rosario v. College of Micronesia-FSM, 11 FSM Intrm. 355,

360 (App. 2003).

When the College presented competent evidence that the land to which a deed refers is located miles from the disputed property and when Rosario produced only incompetent evidence regarding other people and other tracts of land that was wholly unrelated to land at issue, the trial court correctly concluded that Rosario's evidence relating to his claim of a possessory interest was insufficient to create a genuine issue of material fact as to his right to possess any part of the land. Thus, as between the parties, the College has the greater right of possession. Rosario v. College of Micronesia-FSM, 11 FSM Intrm. 355, 360-61 (App. 2003).

A trespass case will be dismissed for failure to join the land's co-owners as indispensable parties plaintiff because any judgment in a rendered in the co-owners' absence will be prejudicial to the defendant since any of the other co-owners could sue for the same trespass, thus subjecting the defendant to multiple judgments for the same acts; because even a judgment in the defendant's favor would not prevent another co-owner from suing for the same acts; because there are no protective provisions that could be included in a judgment that would lessen the prejudice; and because the plaintiff has an adequate remedy since the dismissal is without prejudice – he may refile the case with the co-owners included. Ifenuk v. FSM Telecomm. Corp., 11 FSM Intrm. 403, 405 (Chk. 2003).

A court can determine no more than who among the parties before it has a better claim to title (or in the case of trespass – possession). A court usually cannot determine who has title good against the world. Land registration (determination of title presumptively good against the world) is the province of the Land Commission and its procedures. Enlet v. Bruton, 12 FSM Intrm. 187, 191 (Chk. 2003).

To prevail in an action for trespass, a party must prove a wrongful interference with his possessory interest in the property. Ambros & Co. v. Board of Trustees, 12 FSM Intrm. 206, 212 (Pon. 2003).

When a party has a valid possessory interest in the property and has shown that another has interfered with his possessory interest, he has proved that the other has trespassed on property to which he has a superior right of possession and he is thus entitled to summary judgment against the other on his claims for trespass. Ambros & Co. v. Board of Trustees, 12 FSM Intrm. 206, 213 (Pon. 2003).

Trespass actions determine who has a better right to possession of the land. Kiniol v. Kansou, 12 FSM Intrm. 335, 336 (Chk. 2004).

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

When the bank's real property mortgage has never been enforced because receivership was the chosen remedy; when no agent of the bank is alleged to have entered or to have quarried the property the plaintiff contends is his; when the receivership was not the bank's agent over which it had control, direction, or authority; when the execution of a mortgage, even an invalid mortgage, is not an "authorization" by the mortgagee for anyone to either enter the mortgaged land or to trespass on another's land, viewing the facts in the light most favorable to the plaintiff, the bank, by asking for and obtaining amended receivership terms to facilitate aggregate production to meet another's needs and to set up a payment plan for the judgment-creditors' benefit, did not commit or authorize a trespass. The bank is therefore entitled to summary judgment in its favor on the trespass cause of action. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 129-30 (Chk.

2005).

– Trespass to Chattels

The tort of trespass to chattels, or personal property, is the intentional use of or interference with a chattel which is in the possession of another without justification. Trespass includes the unlawful taking away of personal property of another. Whoever commits or causes another to commit an act of trespass is liable for the trespass and its damages. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 234 (Kos. S. Ct. Tr. 2001).

When, although there was substantial evidence to support finding that the plaintiff's personal property had been interfered with or taken away by another person, the plaintiff did not carry his burden of proof to show that either defendant did or caused another person to interfere with or take or move his property away from its designated location, the plaintiff cannot recover on his claim for trespass to chattels. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 235 (Kos. S. Ct. Tr. 2001).

A claim that some private party has taken or deprived someone of their property is, if it was personal property that was allegedly taken, a claim for conversion or for trespass to chattels, and, if it was real property that was allegedly taken by some private party, it is a claim for trespass (including actions for ejectment) or possibly for nuisance (interference with use and enjoyment of land). They are not due process or takings claims. Rosokow v. Bob, 11 FSM Intrm. 210, 215 (Chk. S. Ct. App. 2002).

– Unfair Competition

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

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

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

The Consumer Protection Act abolishes any common law action for unfair competition. Businesses do not have standing to sue competitors for violations of 34 F.S.M.C. 103, including passing off goods or services as those of another. Because Congress has legislated comprehensively in this field, it should be Congress that decides whether to provide businesses with a private cause of action against competitors for engaging in unfair competition. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 409, 416 (Pon. 2001).

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

– Use of Excessive Force

The tort of use of excessive force results from the arrest by a person having the authority to do so but accomplished by the use of unreasonable force. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 191 (Pon. 1997).

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

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

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

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

– Waste

Damages for waste are normally the difference in value of the property before and after the act of waste. Wolphagen v. Ramp, 8 FSM Intrm. 241, 244 (Pon. 1998).

The damages for waste committed are usually measured by the injury actually sustained and if the value of the premises has been improved by the acts complained of, the complainants will only recover nominal damages, if any, at law. Wolphagen v. Ramp, 8 FSM Intrm. 241, 244 (Pon. 1998).

Damages for waste can also be determined by the cost of repairing or replacing what was wasted when the damage is small in comparison to property's total value and the amount is readily ascertainable. Wolphagen v. Ramp, 8 FSM Intrm. 241, 245 (Pon. 1998).

A lessor may not recover damages for waste when the removal of termite-infested lumber from uninhabitable houses while trying to turn the houses into a bar improved the value of the property, and because if the property had been abandoned without trying to turn the houses into a bar, the lessor would still have become the owner of two uninhabitable houses. Wolphagen v. Ramp, 8 FSM Intrm. 241, 245 (Pon. 1998).

It does not automatically follow that because the lessor could prevent a change in the use of the premises, he should also be compensated as a result of the changes made to the structures when the trial court found that the structures were uninhabitable before the alterations were begun, and when the trial court noted evidence that the changes made had actually improved the structures. Wolphagen v. Ramp, 9 FSM Intrm. 191, 194 (App. 1999).

When the trial court found that houses were uninhabitable before the lessee made alterations, the question is the cost to return the houses to their (uninhabitable) state before the work was done. The trial court holding that the lessor is not entitled to houses in livable condition, made so at the lessee's expense, when he would have been left with uninhabitable houses had the lessee taken no steps to alter the premises will thus be affirmed. Wolphagen v. Ramp, 9 FSM Intrm. 191, 194 (App. 1999).

Nominal damages, or none at all, are awarded for ameliorating waste. Wolphagen v. Ramp, 9 FSM Intrm. 191, 194 (App. 1999).

– Wrongful Death

The common law today reflects no policy against wrongful death actions. The Federated States of Micronesia Supreme Court is not required to adopt the restrictive method of interpretation employed by the first courts who approached wrongful death statutes more than a century ago. Luda v. Maeda Road Constr. Co., 2 FSM Intrm. 107, 113 (Pon. 1985).

Wrongful death statutes, including the $100,000 ceiling on wrongful death claims, are part of the law of the states and are not national law. Edwards v. Pohnpei, 3 FSM Intrm. 350, 360 (Pon. 1988).

In a case where a patient died following the normal delivery of her child, where the evidence fails to show any demonstrable effort at diagnosis and no treatment as a result of diagnosis, the standard of care expected of a doctor at the Truk State Hospital was not met and the evidence proves negligence. Asan v. Truk, 4 FSM Intrm. 51, 56 (Truk S. Ct. Tr. 1989).

In a wrongful death claim in Truk State, where the total pecuniary estimated loss was $15,288 and where an infant child lost his mother, there should be a finding for the plaintiff in the maximum amount allowed by law, $50,000. Asan v. Truk, 4 FSM Intrm. 51, 56-57 (Truk S. Ct. Tr. 1989).

In a wrongful death claim, parents of the deceased child are entitled to claim pecuniary damages and damages for their own pain and suffering from the loss of their child. Suka v. Truk, 4 FSM Intrm. 123, 130 (Truk S. Ct. Tr. 1989).

Although the death, and all key events giving rise to the wrongful death claim, occurred in Guam, damages should be determined under FSM law when the claim is brought under 6 F.S.M.C. 503, the FSM wrongful death statute. Leeruw v. FSM, 4 FSM Intrm. 350, 365 (Yap 1990).

The term "pecuniary injury" as used in wrongful death statutes traditionally has been interpreted as including the probable support, services and other contributions that reasonably could have been expected by the beneficiaries had the decedent lived out her full life expectancy, all reduced to present worth. Leeruw v. FSM, 4 FSM Intrm. 350, 365 (Yap 1990).

Since under Yapese custom a daughter in her adult years may be expected to provide certain services for her mother, the loss of such customary services should be considered in calculating the mother's pecuniary injury resulting from her daughter's death. Leeruw v. FSM, 4 FSM Intrm. 350, 365 (Yap 1990).

That a plaintiff parent of a decedent child can be awarded damages to include mental pain and suffering for the loss of such child is an exception to the general rule that wrongful death actions exclude compensation for pain and suffering, medical expenses, emotional distress or sorrow, or loss of companionship or consortium. Leeruw v. FSM, 4 FSM Intrm. 350, 366 (Yap 1990).

Given that a 19-year old daughter is considered a child under Yapese custom, that the decedent was a 19-year old daughter who up to the time of her death continued to live with her parents in Yap and to perform those household chores expected under custom of young female persons within families in Yap, and that the parents were accompanying their daughter en route to obtain medical services when she died, the daughter was a child within the meaning of 6 F.S.M.C. 503. Leeruw v. FSM, 4 FSM Intrm. 350, 366 (Yap 1990).

A statutory cap on the amount and scope of recovery in a wrongful death action, lawfully enacted by the Kosrae legislature, does not interfere with traditional Kosraean or Micronesian compensation of a victim's family by the tortfeasor. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM Intrm. 358, 361 (Kos. 1992).

Families of wrongful death victims do not constitute a suspect class for purposes of equal protection analysis. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM Intrm. 358, 362 (Kos. 1992).

There is no fundamental interest in unbounded wrongful death recovery requiring strict scrutiny of a state law imposing a recovery cap. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM Intrm. 358, 362 (Kos. 1992).

Among the rational bases supporting the constitutionality of a state statute capping wrongful death recovery are a desire to create foreseeable limits on government liability; to promote insurance; to encourage settlement of claims; and to ease the burden on courts and families of valuing losses incurred through the death of a family member. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM Intrm. 358, 363 (Kos. 1992).

Because there is no survival statute in the FSM that would allow a deceased victim to sue a tortfeasor, the deceased cannot be awarded damages for wrongful death. The statute does allow a deceased's personal representative to sue for wrongful death on behalf of the deceased's relatives. Primo v. Refalopei, 7 FSM Intrm. 423, 430-32 (Pon. 1996).

Damages for lost future earnings are not awardable where they are duplicative and speculative, but damages may be awarded for financial and emotional loss, and for loss, at present value, of customary services that a child would have preformed if not for her wrongful death. Primo v. Refalopei, 7 FSM Intrm.

423, 433-34 (Pon. 1996).

In Chuuk, wrongful death is a state law cause of action created by a Trust Territory statute, 6 TTC 201-203, that is state law pursuant to the FSM and Chuuk Constitutions' transition clauses. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 13 (Chk. 2001).

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

Jailers, and their superiors, owe detainees a duty of care, which may include the duty to regularly observe a detainee's condition, and may breach that duty by failing to provide the required checks on his condition, had a duty of watchfulness when they are aware or should be aware of the effect on the detainee of the scolding he received and when these failures are the proximate cause of the plaintiff's death, these defendants are liable under 6 TTC 201(1) for the plaintiff's death by neglect. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 14 (Chk. 2001).

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

Since wrongful death actions are brought for the exclusive benefit of the deceased's "surviving spouse, the children and other next of kin," 6 TTC 202, when the deceased had no spouse or children, the damages are the next of kin's pecuniary injury. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 15 (Chk. 2001).

A deceased's parent (or her estate) is entitled to damages that include her mental pain and suffering for the loss of her child that resulted from her child's wrongful death, without regard to provable pecuniary damages. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 15 (Chk. 2001).

Wrongful death is a state law cause of action created by a Trust Territory statute, 6 TTC 201-203, that is state law pursuant to the FSM and Chuuk Constitutions' transition clauses. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 136 (Chk. 2003).

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

Wrongful death actions are brought for the exclusive benefit of the deceased's surviving spouse, children and other next of kin. The pecuniary injury consists of funeral expenses (including a novena) and the earnings that the deceased would have used to support his family, had he lived. The future earnings calculation may be based on the victim's continued employment and earnings at the same rate until he reached the FSM retirement age of 60. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 138 (Chk. 2003).

– Wrongful Discharge

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

TRANSITION OF AUTHORITY

Amendment or repeal of a Trust Territory statute by Congress need not be explicit to be effective. If a

Trust Territory statutory provision is inconsistent or in conflict with a statutory provision enacted by Congress, that provision is repealed by implication. FSM v. Albert, 1 FSM Intrm. 14, 16 (Pon. 1981).

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

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

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

Secretarial Order 3039, section 2 cleared the way for the assumption of jurisdiction by FSM courts by delegating the judicial functions of the government of the Trust Territory of the Pacific islands to the Federated States of Micronesia. Thus, the previous exclusive jurisdiction of the High Court under 6 TTC 251 was effectively delegated to the Federated States of Micronesia, insofar as the Constitution of the Federated States of Micronesia authorizes such jurisdiction. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 57-58 (Kos. 1982).

The language of Secretarial Order 3039, section 5(a) contemplates continued Trust Territory High Court activity pursuant to the "present procedural and jurisdictional provisions of Trust Territory law" only until new functioning courts are established by the constitutional governments, and recognizes that the jurisdictional provisions of Trust Territory law will necessarily be revised when those courts have been established. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 59 (Kos. 1982).

A Secretarial Order, issued by one responsible official with full authority to state his intentions and instructions precisely, typically should not require reference to other documents for explanation. It is not a product of compromises and discussions among numerous legislators, where contemporaneous discussion may be especially helpful in determining the intention of the legislature in using certain words. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 61 (Kos. 1982).

Delegation of former Trust Territory High Court judicial functions under 6 TTC 251 to the courts of the Federated States of Micronesia did not violate Executive Order No. 11021. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 63 (Kos. 1982).

Interpretation of Secretarial Order 3039 as acquiescing in FSM Supreme Court jurisdiction over suits against the Trust Territory does not conflict with any residual United States obligation to oversee activities of the FSM courts pending termination of the Trusteeship Agreement nor does this interpretation imperil any interest the United States government may have in protecting the Trust Territory government against unfair or overreaching actions by the courts of the new constitutional governments. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 64 (Kos. 1982).

Trust Territory High Court Appellate Division jurisdiction by writ of certiorari over appeals from the courts of last resort of the respective jurisdictions of the Federated States of Micronesia, the Marshall Islands, and Palau eliminates any possible risk which might otherwise be posed to the United States or its interests or responsibilities here by the full exercise of constitutional jurisdiction by the courts of the constitutional governments. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 64-65 (Kos. 1982).

The Secretary of the Interior has the power to terminate the Trust Territory High Court's exclusive jurisdiction over suits against the Trust Territory because that jurisdiction was originally conferred upon the

High Court by authority emanating from the Department of Interior. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 65-67 (Kos. 1982).

The former exclusive jurisdiction of the Trust Territory High Court lawsuits against the Trust Territory government has been delegated to the constitutional governments covered by Secretarial Order 3039. Within the Federated States of Micronesia, the allocation of this former exclusive High Court jurisdiction between the Supreme Court of the Federated States of Micronesia and the various state courts will be determined on the basis of jurisdictional provisions within the Constitution and laws of the Federated States of Micronesia and its respective states. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 68 (Kos. 1982).

Until the state courts are established, the Trust Territory High Court retains that portion of its exclusive jurisdiction formerly held under 6 TTC 251 which does not fall within the constitutional jurisdiction of the FSM Supreme Court. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 68 (Kos. 1982).

The Seaman's Protection Act, originally enacted for the entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under article IX, section 2 of the Constitution, and has therefore become a national law of the Federated States of Micronesia under article XV. That being so, a claim asserting rights under the Act falls within the 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).

Retention of the power to play a major role in executive functions, to suspend legislation enacted by the Congress, and to entertain appeals from the court of last resort, the very essence of government, suggests that the Trust Territory government remains, not a foreign state, but an integral part of the national government here. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 72 (Kos. 1982).

Under the present state of affairs, the Trust Territory government cannot be considered a foreign state, citizen or subject thereof within the meaning of article XI, section 6(b) of the Constitution. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 74 (Kos. 1982).

It would be contrary to the desire of the framers of the Constitution that local officials retain control over local matters if the FSM Supreme Court were to relinquish jurisdiction over issues involving local and state powers to the Trust Territory High Court, which is the least local tribunal now existing in the Trust Territory. In re Nahnsen, 1 FSM Intrm. 97, 110 (Pon. 1982).

The Constitution contemplates that decisions affecting the people of the Federated States of Micronesia will be decided by courts appointed by the constitutional governments of the Federated States of Micronesia. This in turn requires an expansive reading of the FSM Supreme Court's jurisdictional mandate while we await establishment of functioning state courts. In re Nahnsen, 1 FSM Intrm. 97, 111 (Pon. 1982).

Title 11 of TT Code is not inconsistent with nor violative of the FSM Constitution; therefore 11 TTC continued in effect after the effective date of the Constitution and until the effective date of the National Criminal Code. Truk v. Otokichy, 1 FSM Intrm. 127, 130 (Truk 1982).

Title 11 of the Trust Territory Code, prior to the effective date of the National Criminal Code, is not a national law because its criminal jurisdiction was not expressly delegated to the national government, nor is it a power of indisputably national character; therefore, it is not within the jurisdiction of the FSM Supreme Court. Truk v. Otokichy, 1 FSM Intrm. 127, 130 (Truk 1982).

The delegation of judicial functions to the Federated States of Micronesia, pursuant to Secretarial Order 3039, section 2 does not by itself give the FSM Supreme Court jurisdiction over Title 11 Trust Territory Code crimes occurring before the effective date of the National Criminal Code. Truk v. Otokichy, 1 FSM Intrm. 127, 131 (Truk 1982).

The national and state governments' assumption of powers from the Trust Territory government is

accomplished through the transfer and transition approach rather than by operation of law. Manahane v. FSM, 1 FSM Intrm. 161, 167 n.3 (Pon. 1982).

The FSM Supreme Court has jurisdiction to try Title 11 Trust Territory Code cases if they arise under a national law. Title 11 of the Trust Territory Code is not a national law. It was not adopted by Congress as a national law and it did not become a national law by virtue of the transition article. Truk v. Hartman, 1 FSM Intrm. 174, 178 (Truk 1982).

Sections of Title 11 of the Trust Territory Code covering matters within the jurisdiction of Congress owe their continuing vitality to Section 102 of the National Criminal Code. Thus, the criminal prosecutions thereunder are a national matter and fall within the FSM Supreme Court's constitutional jurisdiction. In re Otokichy, 1 FSM Intrm. 183, 185 (App. 1982).

Upon inception of constitutional self-government by the people of the Federated States of Micronesia, criminal law provisions in Title 11 of the Trust Territory Code became the law of governments within the Federated States of Micronesia by virtue of the Constitution's transition provisions. In re Otokichy, 1 FSM Intrm. 183, 187 (App. 1982).

The savings clause, 11 F.S.M.C. 102(2), unlike the other sections of the National Criminal Code, was intended to apply to offenses committed before the Code's effective date. It specifically authorizes prosecutions of Title 11 Trust Territory Code offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. In re Otokichy, 1 FSM Intrm. 183, 189-90 (App. 1982).

Change of forum for Title 11 Trust Territory Code cases from the Trust Territory High Court to the FSM Supreme Court is a procedural matter with no effect on the substantive rights of defendants. In re Otokichy, 1 FSM Intrm. 183, 193 (App. 1982).

Any power the Trust Territory High Court, the District Courts and the Community Courts may have to exercise judicial powers within the Federated States of Micronesia is to be exercised not as that of autonomous foreign states but as integral parts of the domestic governments. Those courts continue to exercise trial court functions in Ponape only on an interim basis, until the State of Ponape establishes its own courts, either under its present state charter or under any constitution which Ponape may adopt. In re Iriarte (I), 1 FSM Intrm. 239, 244 (Pon. 1983).

The interim nature and limited purpose of the Trust Territory High Court, the District Courts and the Community Courts does not suggest that these entities are immune to the restraints imposed upon officials authorized to act by constitutions or statutes approved by citizens of the Federated States of Micronesia or their representatives. To the contrary, respect for constitutional self-government and provisions of the Trusteeship Agreement to which they trace their power to act here, mandate that these interim entities act with great restraint, only as necessary to supplement the constitutional courts and until creation of constitutional courts here. In re Iriarte (I), 1 FSM Intrm. 239, 244-45 (Pon. 1983).

The exercise of governmental powers by the Trust Territory High Court, the District Courts and the Community Courts must be carried out in a manner consistent with constitutional self-government and are subject to the safeguards erected by the Constitution for citizens of the Federated States of Micronesia. In re Iriarte (I), 1 FSM Intrm. 239, 245 (Pon. 1983).

The Constitution of the Federated States of Micronesia does not contemplate that citizens of the FSM should be required to travel to Saipan or to petition anyone outside of the FSM to realize rights guaranteed to them under the Constitution. In re Iriarte (I), 1 FSM Intrm. 239, 253 (Pon. 1983).

The FSM Supreme Court should not intrude unnecessarily in the efforts of the Trust Territory High Court to vindicate itself and other judges through court proceedings within the Trust Territory system. In re Iriarte (I), 1 FSM Intrm. 239, 254 (Pon. 1983).

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

The Trust Territory High Court is an anomalous entity operating on an interim basis adjacent to a constitutional framework and consisting of judges appointed by officials of the United States Department of the Interior. These and other considerations point toward the propriety and necessity of vigilance by the FSM Supreme Court to uphold the constitutional rights of FSM citizens. In re Iriarte (II), 1 FSM Intrm. 255, 267 (Pon. 1983).

Transfer of a case not in active trial in the Trust Territory High Court is mandatory unless the legal rights of a party are impaired by the transfer. U.S. Dep't Int. Sec'l Order 3039, § 5(a) (1979). Actouka v. Etpison, 1 FSM Intrm. 275, 277 (Pon. 1983).

National court jurisdiction over the Trust Territory Weapons Control Act is consistent with 12 F.S.M.C. 102 which states in part that criminal prosecutions shall be conducted in the name of the Federated States of Micronesia for violations of the statutes of the Trust Territory which continued in effect by virtue of the transition article of the Constitution and which are within the jurisdiction of the national government of the Federated States of Micronesia. 11 F.S.M.C. 1201-1231. FSM v. Nota, 1 FSM Intrm. 299, 303 (Truk 1983).

8 F.S.M.C. 206 authorizes the transfer of authority from the Trust Territory and its officials to the government of the Federated States of Micronesia and its officials. Thus the reference in the Trust Territory Weapons Control Act to the High Commissioner and the Attorney General of the Trust Territory does not prevent its effectiveness as national law of the Federated States of Micronesia. 11 F.S.M.C. 1201-1231. FSM v. Nota, 1 FSM Intrm. 299, 303 (Truk 1983).

The Trust Territory High Court has the legitimate authority to issue writs of certiorari for cases from the FSM Supreme Court; the Supreme Court cannot disregard an opinion resulting from such review. U.S. Dep't Int. Sec'l Order 3039, § 5(b). Jonas v. FSM, 1 FSM Intrm. 322, 326-29 (App. 1983).

A writ of certiorari is improvidently granted by the Trust Territory High Court unless a decision of the FSM Supreme Court affects the ability of the Secretary of the Interior to fulfill his responsibilities under Executive Order 11021. Jonas v. FSM, 1 FSM Intrm. 322, 329 n.1 (App. 1983).

Title 5 of the FSM Code, including section 514, is in essence the judiciary act of the Trust Territory High Court. The statute was enacted when the Trust Territory High Court had general original jurisdiction over criminal cases within the area that is now the Federated States of Micronesia. The act was not deleted in the codification process but remains part of the body of national law in the Federated States of Micronesia because at the time of codification, the Trust Territory High Court still had extensive original jurisdiction in the Federated States of Micronesia. In re Raitoun, 1 FSM Intrm. 561, 564 (App. 1984).

In light of the Constitution's Transition Clause, action by the FSM Congress is not necessary in order to establish that violations of the Weapons Control Act are prohibited within the Federated States of Micronesia. The only question is whether those are state or national law prohibitions or both. If the definition of major crimes in the National Criminal Code bears upon the Weapons Control Act at all, it is only for that purpose of allocating between state and national law. Joker v. FSM, 2 FSM Intrm. 38, 43 (App. 1985).

The Transition Clause of the FSM Constitution effectively adopts statutes of the Trust Territory, including the Weapons Control Act, and serves as the original enactment of a body of law, criminal as well as civil, for the new constitutional government. Further action by the FSM Congress is not necessary to establish that violations of the Weapons Control Act are prohibited within the FSM. Joker v. FSM, 2 FSM Intrm. 38, 43 (App. 1985).

Public Law No. 2-48, promulgating the codification of the FSM statutes and speaking only of "All enacted law of the Interim Congress of Micronesia . . . and all enacted law of the Congress law of the Federated States

of Micronesia" as "readopted and reenacted as positive law of the Federated States of Micronesia," may not be interpreted as an attempt to repeal or purge the Trust Territory law from the law of the Federated States of Micronesia. Joker v. FSM, 2 FSM Intrm. 38, 43 (App. 1985).

There is nothing absurd about a weapons control scheme that recognizes that both the national and the state governments have an interest in controlling the possession, use and sale of weapons. While Congress and the states may eventually wish to allocate their respective roles with more precision, the current Weapons Control Act appears to provide a workable system during these early years of transition and constitutional self-government. Joker v. FSM, 2 FSM Intrm. 38, 44 (App. 1985).

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

Procedural statute 6 F.S.M.C. 1018, providing that the court may tax any additional costs incurred in litigation against the losing party other than fees of counsel, applies only to Trust Territory courts and not to courts of the Federated States of Micronesia, and therefore does not preclude the FSM Supreme Court from awarding attorney's fees as costs. Semens v. Continental Air Lines, Inc. (II), 2 FSM Intrm. 200, 205 (Pon. 1986).

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

According to Secretarial Order No. 3039, § 5(a), all cases against the Trust Territory of the Pacific Islands and the High Commissioner that were filed in the FSM at the time the Truk State Court was certified will continue to remain within the exclusive jurisdiction of the High Court. Those cases filed after certification are not within the jurisdiction of the High Court. Suda v. Trust Territory, 3 FSM Intrm. 12, 14 (Truk S. Ct. Tr. 1985).

Under the Constitution of the Federated States of Micronesia, the national government, not the state governments, assumes any "right, obligation, liability, or contract of the government of the Trust Territory." Salik v. U Corp. (I), 3 FSM Intrm. 404, 407 (Pon. 1988).

The underlying principle of the Transition Clause of the Constitution, FSM Const. art. XV, § 1, is that a new constitution ought to bring with it no greater changes than are necessary to effectuate its terms. FSM v. Oliver, 3 FSM Intrm. 469, 476 (Pon. 1988).

That a carryover statute covers topics that now fall into areas of both state and national responsibilities is not a sufficient ground for reducing the reach of the statute or allowing it to fall short of its originally intended scope. FSM v. Oliver, 3 FSM Intrm. 469, 477 (Pon. 1988).

If neither state nor national powers alone are sufficient to carry out the original purposes of a carryover statute, or if state and national powers are invoked, then the statute is enforceable as both state and national law. FSM v. Oliver, 3 FSM Intrm. 469, 477 (Pon. 1988).

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

The Kosrae constitutional state government may be held liable for actions taken by police officers under the previous chartered state government, approximately one month before ratification and four months before

implementation of the Kosrae Constitution, in falsely arresting and abusing a citizen in Kosrae. Seymour v. Kosrae, 3 FSM Intrm. 539, 543 (Kos. S. Ct. Tr. 1988).

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

The Constitution of the FSM has been the supreme law of the Federated States of Micronesia since May 10, 1979 and from that time on, nonconstitutional officials could be authorized to exercise powers assigned to the national government by the Constitution only through authorization by constitutional officials or pursuant to some other power rooted in the Constitution. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 104 (App. 1989).

In specifically authorizing the President to act pursuant to Secretarial Order 3039 in accepting executive functions from the Trust Territory, the FSM Congress implicitly adopted those provisions of Secretarial Order 3039 concerning transfer of executive functions as law of the Federated States of Micronesia. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 104 (App. 1989).

The FSM Constitution provides no authority for any courts to act within the Federated States of Micronesia, other than the FSM Supreme Court, inferior courts to be established by statute, and state or local courts. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 105 (App. 1989).

The transitional actions of the FSM Congress, intended to adopt as law of the Federated States of Micronesia those portions of Secretarial Order 3039 relating to judicial functions within the FSM and permitting the Trust Territory courts to continue functioning within the FSM pending establishment of constitutional courts, were a necessary and proper exercise of Congress' power under the Constitution to provide for a smooth and orderly transition. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 105 (App. 1989).

The FSM Supreme Court normally will refuse to review the correctness of an earlier Trust Territory High Court judgment, which has become final through affirmance on appeal or through lack of a timely appeal, and claims that the earlier judgment is ill-reasoned, unfair or even beyond the jurisdiction of the High Court typically will not be sufficient to escape the doctrine of res judicata. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 107 (App. 1989).

In light of the Trust Territory High Court's insistence on maintaining control over cases within the Federated States of Micronesia in disregard of Secretarial Order 3039 and to the exclusion of the new constitutional courts, its characterizations of Joint Rule No. 1 as "simply a memorandum" and of the words "active trial" in Secretarial Order 3039 as merely "administrative guidance," its acceptance of appeals after it was precluded from doing so by Secretarial Order 3039, its decision of appeals after Secretarial Order 3039 was terminated and its continued remand of cases to the High Court trial division for further action even after November 3, 1986, there can be no doubt that for purposes of res judicata analysis, the High Court was a court lacking capacity to make an adequately informed determination of a question concerning its own jurisdiction. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 118 (App. 1989).

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

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

Where the Trust Territory High Court's exercise of jurisdiction was a manifest abuse of authority, allowing the judgment of the High Court to stand would undermine the decision-making guidelines and policies reflected in the judicial guidance clauses of the national and state constitutions and would thwart the efforts of the framers of the Constitution to reallocate court jurisdiction within the Federated States of Micronesia by giving local decision-makers control over disputes concerning ownership of land. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 119 (App. 1989).

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

Actions of the Trust Territory High Court taken after the establishment of functioning constitutional courts in the Federated States of Micronesia, and without a good faith determination after a full and fair hearing as to whether the "active trial" exception permitted retention of the cases, were null and void, even though the parties failed to object, because the High Court was without jurisdiction to act and its conduct constituted usurpation of power. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 122 (App. 1989).

The Corporations, Partnership and Agency regulations were adopted pursuant to, and affect the reach of, the Trust Territory statute regulating corporations and, since those statutory provisions are part of FSM national law by virtue of the Transition Clause of the FSM Constitution, the regulations too must retain their effect until they are amended or repealed pursuant to FSM law. Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 376, 381 (Pon. 1990).

The Corporation, Partnership and Association Regulations incorporated by 37 TTC 52 (1980) remain in effect as FSM national law by virtue of the Transition Clause, FSM Const. art. XV, § 1, until they are amended or repealed by Congress. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM Intrm. 180, 187 (Pon. 1993).

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

The United States could not assume responsibility for, or be held liable for, the absence of separate adjudicatory body for public land disputes when the exclusive authority to establish such a body had been transferred to the Ponape district legislature. Nahnken of Nett v. United States (III), 6 FSM Intrm. 508, 528 (Pon. 1994).

Title 3 of the Trust Territory Code represents interim legislation prior to the time when the former Trust Territory Districts were chartered, and had no continuing existence after the adoption of the Truk Charter in 1977. Wainit v. Weno, 7 FSM Intrm. 121, 123 (Chk. S. Ct. Tr. 1995).

Whether carryover provisions from the Trust Territory Code are state or national laws must be determined on a statute-by-statute, or a section-by-section, basis. Burke v. Torwal, 7 FSM Intrm. 531, 534 (Pon. 1996).

The reciprocal child support enforcement provisions of chapter 17 of Title 6 of the FSM Code remain in effect as part of state law. Burke v. Torwal, 7 FSM Intrm. 531, 534 (Pon. 1996).

A proceeding for enforcement of a CNMI child support order in the FSM is properly filed in state court by the state attorney general, not in national court by the FSM Attorney General. Burke v. Torwal, 7 FSM Intrm. 531, 535-36 (Pon. 1996).

Because whatever vestigial authority the Trust Territory or the United States may have had after May 10, 1979, disappeared on November 3, 1986, when the Federated States of Micronesia became independent, governmental conduct after that date is not attributable to the United States or to the Trust Territory. Nahnken of Nett v. United States, 7 FSM Intrm. 581, 591 (App. 1996).

Although the Kosrae Constitution contains no impairment of contracts clause, it is not silent in this area. The Kosrae Transition Clause provides that contracts continue unaffected. Cornelius v. Kosrae, 8 FSM Intrm. 345, 352 (Kos. S. Ct. Tr. 1998).

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

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

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

Trust Territory statutes that mostly never took effect cannot be relied upon to interpret provisions of the FSM Constitution. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 432-33 (App. 2000).

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

Chuuk, as the succeeding sovereign, is entitled to rely on the taking of the land in question by the Trust Territory, the previous sovereign, and is not required to correct any wrong in the original 1968 Trust Territory taking because it is now too late. Sefich v. Chuuk, 9 FSM Intrm. 517, 518 (Chk. S. Ct. Tr. 2000).

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

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

The witness fees in 6 F.S.M.C. 1011 apply only to the Trust Territory High Court. FSM v. Kuranaga, 9 FSM Intrm. 584, 586 (Chk. 2000).

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

Title 67, Section 2 of the Trust Territory Code continues in effect under the transition clause of the FSM Constitution, is consistent with other provisions in the FSM and Pohnpei Constitutions, and clearly confirms that all marine areas below the ordinary high water mark belong to the government. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 66 (Pon. 2001).

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

A Trust Territory statute (except to the extent it is amended, repealed, or is inconsistent with the Constitution), which related to matters that now fall within the national government's legislative powers became national law upon the Constitution's ratification, and the other Trust Territory laws presumably became law of each of the states at the same time; and if neither state nor national powers alone are sufficient to carry out the statute's original purpose, or if state and national powers are invoked, then the statute is enforceable as both state and national law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 409,

414-15 (Pon. 2001).

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

Title 67 of the Trust Territory Code remains Chuuk state law pursuant to the Chuuk Constitution's Transition Clause and because it has never been amended or repealed. Stephen v. Chuuk, 11 FSM Intrm. 36, 41 n.1 (Chk. S. Ct. Tr. 2002).

A Kosrae district Trust Territory High Court judgment in a trespass action will not be set aside as invalid because it was in a designated land registration area when the registration area designation was not filed in the Kosrae district High Court and the prevailing defendants did not ask that title be issued to them, but only that the complaint be dismissed. Sigrah v. Kosrae State Land Comm'n, 11 FSM Intrm. 169, 172-73 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court has always accepted and enforced Trust Territory High Court decisions as valid and binding, consistent with the Kosrae constitutional provisions on transition of government. Sigrah v. Kosrae State Land Comm'n, 11 FSM Intrm. 169, 173 (Kos. S. Ct. Tr. 2002).

Under the FSM Constitution's Transition Clause, Trust Territory statutes applicable to the states became part of the states' laws regardless of whether they were published in the FSM Code; they are the laws of the states until amended, superseded or repealed. Villazon v. Mafnas, 11 FSM Intrm. 309, 311 (Pon. 2003).

When a state has not enacted laws in an area within its jurisdiction such as child support, national law is applicable to the state court proceeding, because the Trust Territory Code reciprocal support enforcement provisions, now codified at 6 F.S.M.C. 1711, are imputed to be state law under the FSM Constitution's Transition Clause. Under that clause, Trust Territory statutes that were applicable to the states became part of the states' laws regardless of whether they were published thereby. They stand as the laws of the states until amended, superseded or repealed. Anson v. Rutmag, 11 FSM Intrm. 570, 572 (Pon. 2003).

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

TRANSLATION

Where plaintiff's complaint is written in English and the defendant requests a written translation into a local Micronesian language, and where it appears that this is the only language the defendant can speak or read, the trial judge may order that the court provide a written translation and that the expense of providing the translation shall be taxed as a cost to the party not prevailing in the action. Rawepi v. Billimon, 2 FSM Intrm. 240, 241 (Truk 1986).

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

TREATIES

Conduct of foreign affairs and the implementation of international agreements are properly left to the

non-judicial branches of government. The judicial branch has the power to interpret treaties. In re Extradition of Jano, 6 FSM Intrm. 93, 103 (App. 1993).

Extradition treaties are to be construed liberally to effect their purpose of surrender of fugitives to be tried for their alleged offenses. In re Extradition of Jano, 6 FSM Intrm. 93, 103 (App. 1993).

The ordinary or usual meaning shall be given to words, phrases, and terms in a treaty. Terms are to be considered in their context and a contrary meaning may be indicated by the context. Preparatory documents and subsequent conduct of the parties can be used to determine the parties' intentions. Alep v. United States, 6 FSM Intrm. 214, 218 (Chk. 1993).

Although the FSM Supreme Court has the power to interpret treaties, it should not do so if the issue may be decided on other grounds. Louis v. Kutta, 8 FSM Intrm. 228, 229-30 (Chk. 1998).

TRUSTEESHIP AGREEMENT

Under article 6 of the Trusteeship Agreement, the United States is obligated to foster the development of suitable political institutions with the goal of self-government by the inhabitants, and to promote economic, social and educational advancement. Neimes v. Maeda Constr. Co., 1 FSM Intrm. 47, 51 (Truk 1981).

Interpretation of Secretarial Order 3039 as acquiescing in FSM Supreme Court jurisdiction over suits against the Trust Territory does not conflict with any residual United States obligation to oversee activities of the FSM courts pending termination of the Trusteeship Agreement nor does this interpretation imperil any interest the United States government may have in protecting the Trust Territory government against unfair or overreaching actions by the courts of the new constitutional governments. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 64 (Kos. 1982).

Trusteeship principles call for similarity between the self-government accorded the peoples of the Northern Mariana Islands by the United States, and that granted other parts of the Trust Territory. If the administering authority were to permit those peoples selecting a closer and more dependent relationship with the administering authority a higher degree of autonomy than those seeking other relationships, the dual standard could suggest an effort to discourage self-government and independence of the people within the Trust Territory. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 67 (Kos. 1982).

The interim nature and limited purpose of the Trust Territory Court, the District Courts and the Community Courts does not suggest that these entities are immune to the restraints imposed upon officials authorized to act by constitutions or statutes approved by citizens of the Federated States of Micronesia or their representatives. To the contrary, respect for constitutional self-government and provisions of the Trusteeship Agreement to which they trace their power to act here, mandate that these interim entities act with great restraint, only as necessary to supplement the constitutional courts and until creation of constitutional courts here. In re Iriarte (I), 1 FSM Intrm. 239, 244-45 (Pon. 1983).

The Trust Territory High Court must promote constitutional self-government to satisfy the provisions of the Trusteeship Agreement to which is subject. In re Iriarte (II), 1 FSM Intrm. 255, 268 (Pon. 1983).

The Trusteeship Agreement cannot be given retroactive effect to cover events that took place before it came into force. Alep v. United States, 6 FSM Intrm. 214, 216 (Chk. 1993).

Monetary damages are not legal remedies available to an individual for breach of the Trusteeship Agreement, either through the treaty or as codified. Alep v. United States, 6 FSM Intrm. 214, 217-18 (Chk. 1993).

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

Intrm. 508, 524-25 (Pon. 1994).

The Trusteeship Agreement does not provide individuals with a private cause of action for damages for alleged breach of any of its provisions. Nahnken of Nett v. United States (III), 6 FSM Intrm. 508, 526 (Pon. 1994).

Although the Trusteeship Agreement was a source of individual legal rights, it, standing alone, did not create private rights of action for money damages for bureaucratic abuses attributed to U.S. or Trust Territory officials. Alep v. United States, 7 FSM Intrm. 494, 496 (App. 1996).

WEAPONS

There is no automatic prohibition against use of a dangerous weapon to protect oneself and family against an intruder, even against an intruder without a weapon, so long as the weapon is not used in deadly fashion and the actual force employed is not more than would be reasonably necessary for purposes of protection. FSM v. Ruben, 1 FSM Intrm. 34, 38 (Truk 1981).

The Trust Territory Weapons Control Act is not inconsistent with any provision of the Constitution. It therefore continued in effect. When the National Criminal Code was enacted, and major crimes were defined, the Trust Territory Weapons Control Act became national law and trials for violations thereof were within the jurisdiction of the FSM Supreme Court. 11 F.S.M.C. 1201-1231. FSM v. Nota 1 FSM Intrm. 299, 302-03 (Truk 1983).

National court jurisdiction over the Trust Territory Weapons Control Act is consistent with 12 F.S.M.C. 102 which states in part that criminal prosecutions shall be conducted in the name of the Federated States of Micronesia for violations of the statutes of the Trust Territory which continued in effect by virtue of the transition article of the Constitution and which are within the jurisdiction of the National Government of the Federated States of Micronesia. 11 F.S.M.C. 1201-1231. FSM v. Nota, 1 FSM Intrm. 299, 303 (Truk 1983).

8 F.S.M.C. 206 authorizes the transfer of authority from the Trust Territory and its officials to the government of the Federated States of Micronesia and its officials. Thus the reference in the Trust Territory Weapons Control Act to the High Commissioner and the Attorney General of the Trust Territory does not prevent its effectiveness as national law of the Federated States of Micronesia. 11 F.S.M.C. 1201-1231. FSM v. Nota, 1 FSM Intrm. 299, 303 (Truk 1983).

The Weapons Control Act is clear as to its intent in its definition of "dangerous device," that is, to proscribe weapons of violence; its terms become clear in the light of that intent. 11 F.S.M.C. 1204(3). FSM v. Nota, 1 FSM Intrm. 299, 304 (Truk 1983).

The national government has an interest in controlling the proliferation and use of firearms throughout Micronesia; the classifications singled out for a 10-year prohibition on possession appear reasonable. 11 F.S.M.C. 1205. FSM v. Nena, 1 FSM Intrm. 331, 335 (Kos. 1983).

The government has a serious interest, and Congress deserves the support of the FSM Supreme Court, in carrying out policy established to control firearm use. Open violations, without punitive results, weaken the congressional policy and thwart efforts to assure that firearms will be available only to responsible people. Courts must assure that the policy is carried out against those convicted. FSM v. Nena, 1 FSM Intrm. 331, 336 (Kos. 1983).

Whether a particular item is dangerous often depends upon the use to which it is being put. Laion v. FSM, 1 FSM Intrm. 503, 511 (App. 1984).

A "dangerous weapon" under 11 F.S.M.C. 919(1) is an object which, as used, may be anticipated to produce death or great bodily harm. Laion v. FSM, 1 FSM Intrm. 503, 512 (App. 1984).

In considering whether the term "dangerous weapon" is so vague as to render 11 F.S.M.C. 919 unconstitutional, it is relevant that a court in the United States has held that term sufficiently definite to meet United States constitutional standards. Laion v. FSM, 1 FSM Intrm. 503, 513 (App. 1984).

A gun with a defective trigger is a firearm under 11 F.S.M.C. 1204(4). The statute's purpose may not be evaded by such simple expedients as dismantling the weapon, maintaining weapons and ammunition in separate places, removing one easily replaceable part, or other similar ploys. Under the statute, current operability is not an essential element of the crime of possession of a firearm. Ludwig v. FSM, 2 FSM Intrm. 27, 34 (App. 1985).

Some exceptions under 11 F.S.M.C. 1203, whereunder possession of a firearm is permissible, relate to considerations separate from the essential elements of the crime and require the defendant to place them in issue. A defendant claiming exemption as a law enforcement officer or United States military person engaged in official duty, §§ 1203(1), (4), or as a designated crocodile hunter, § 1203(5), is not disputing any element of the government's basic case. Instead, these exemption claims bring into play new facts, uniquely within the knowledge of the defendant, which the government could overlook by focusing on whether the conduct prohibited by the Weapons Control Act has occurred. The defendant is in a far better position to place these exemptions in issue and it is fair to require that he do so. Ludwig v. FSM, 2 FSM Intrm. 27, 36 (App. 1985).

The 11 F.S.M.C. 1203(1), (4) and (5) exemptions, whereunder possession of a firearm is permissible, are defenses within the meaning of 11 F.S.M.C. 107, although they are not affirmative defenses for they are not so designated. The ultimate burden of persuasion remains with the government, but the defendant has the burden of going forward with sufficient evidence to raise these exemptions as issues. Ludwig v. FSM, 2 FSM Intrm. 27, 36 (App. 1985).

The 11 F.S.M.C. 1203(2) exemption for curios, ornaments and historical pieces whereunder possession of a firearm is permissible requires findings that the firearm be in "unserviceable condition" and "incapable of being fired or discharged." Ludwig v. FSM, 2 FSM Intrm. 27, 37 (App. 1985).

While proof of current operability is not essential to a finding of guilt for illegal possession of a firearm, the design and the capacity of the instrument to fire are at the very heart of the Weapons Control Act's definition of a firearm. To prove its case, the government must show that the device "is designed or may be converted to expel . . . projectiles." Ludwig v. FSM, 2 FSM Intrm. 27, 37 (App. 1985).

Although not always essential, current operability of a firearm should be shown by the government, where possible, as standard procedure. Ludwig v. FSM, 2 FSM Intrm. 27, 37 (App. 1985).

Inapplicability of the 11 F.S.M.C. 1203(2) exemption whereunder possession of a firearm is permissible because it is in unserviceable condition, is incapable of being fired or discharged and is being kept as a curio, ornament or historical piece is an essential element of the government's case in prosecution for unlawful possession of a firearm under 11 F.S.M.C. 1202. Ludwig v. FSM, 2 FSM Intrm. 27, 37 (App. 1985).

A trial court may not simply presume that a person who possesses a firearm is not keeping it as a curio, ornament or for historical significance. This would be an irrational or arbitrary, hence unconstitutional, presumption or inference because one cannot determine from mere possession of a firearm alone the purpose or nature of that possession. Ludwig v. FSM, 2 FSM Intrm. 27, 37 (App. 1985).

The 11 F.S.M.C. 1203(2) exemption whereunder possession of a firearm is permissible applies only if the firearm is: 1) unserviceable; 2) incapable of being fired or discharged; and 3) being kept as a curio, ornament or for its historical significance. Ludwig v. FSM, 2 FSM Intrm. 27, 37-38 (App. 1985).

The Weapons Control Act violations punishable by imprisonment of three or more years are national crimes. Joker v. FSM, 2 FSM Intrm. 38, 41 (App. 1985).

The Transition Clause of the FSM Constitution effectively adopts statutes of the Trust Territory, including the Weapons Control Act, and serves as the original enactment of a body of law, criminal as well as civil, for the new constitutional government. Further action by the FSM Congress is not necessary to establish that violations of the Weapons Control Act are prohibited within the FSM. Joker v. FSM, 2 FSM Intrm. 38, 43 (App. 1985).

There is nothing absurd about a weapons control scheme that recognized that both the national and the state governments have an interest in controlling the possession, use and sale of weapons. While Congress and the states may eventually wish to allocate their respective roles with more precision, the current Weapons Control Act appears to provide a workable system during these early years of transition and constitutional self-government. Joker v. FSM, 2 FSM Intrm. 38, 44 (App. 1985).

"Dangerous device" as defined under the Weapons Control Act is not unconstitutionally vague. The language, properly interpreted, affords sufficient notice so that conscientious citizens may avoid inadvertent violations, and constructs sufficiently definite standards to prevent arbitrary law enforcement. Joker v. FSM, 2 FSM Intrm. 38, 45 (App. 1985).

Three categories of devices are identified in the definition of "dangerous device" under the Weapons Control Act and the standards of proof for each differ slightly. Joker v. FSM, 2 FSM Intrm. 38, 45 (App. 1985).

The second category of "dangerous device" under the Weapons Control Act requires demonstration by the government that the item in question was designed or redesigned as a weapon and that the person whose possession is at issue is aware that the instrument was created or modified for that purpose. The intent and knowledge normally might be inferred from the nature of the instrument itself. It does not appear necessary that the possessor be shown to have actually intended to use the instrument as a weapon or for a wrongful purpose. Joker v. FSM, 2 FSM Intrm. 38, 45 (App. 1985).

For the last category of "dangerous device" under the Weapons Control Act, the forbidden instrument in question must not only be capable of causing bodily injury but it must also be possessed without any "lawful purpose." A violation occurs only when the possession is coupled with a wrongful purpose, that is, a purpose to use the instrument to cause bodily injury, or a complete absence of any lawful purpose, shown through statements or overt conduct of the possessor manifesting wrongful purpose. Joker v. FSM, 2 FSM Intrm. 38, 45 (App. 1985).

Dangerous device is defined in three categories, 1) explosive, etc., 2) an instrument designed or redesigned as a weapon, and 3) an instrument which can be used to inflict bodily harm and which under the circumstances of its possession serves no lawful purpose. Este v. FSM, 4 FSM Intrm. 132, 136 (App. 1989).

In requiring an identification card in order to possess a dangerous device there was not an intent to require such a card for that category of dangerous devices which can be used to inflict bodily harm and which under the circumstances of its possession serves no lawful purpose. 11 F.S.M.C. 1204(3). Este v. FSM, 4 FSM Intrm. 132, 136-37 (App. 1989).

Congress may legislate regulation of firearms and ammunition under the foreign and interstate commerce clause of article IX, section 2(g). FSM v. Fal, 8 FSM Intrm. 151, 154 (Yap 1997).

Because Congress has the present authority to enact firearms and ammunition statutes, such previously enacted statutes have continuing vitality. FSM v. Fal, 8 FSM Intrm. 151, 154 (Yap 1997).

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

Because the defendant was affirmatively prevented from taking possession of the cooler which contained the bullets he never had present control or possession of the bullets and therefore was acquitted

of the charge of possession of ammunition. FSM v. Fal, 8 FSM Intrm. 151, 155 (Yap 1997).

Because a Rule 41(e) motion for return of seized property is predicated on the seizure's illegality and the showing of a right to possession, return of unregistered firearms is improper because possession of unregistered firearms is unlawful there is thus no right to possession. FSM v. Santa, 8 FSM Intrm. 266, 268 (Chk. 1998).

A dangerous weapon is any object that, as used or attempted to be used, can endanger life or inflict great bodily harm. Shoes worn on the feet are dangerous weapons when used to kick a victim. Stationary objects can also be dangerous or deadly weapons. Palik v. Kosrae, 8 FSM Intrm. 509, 513 (App. 1998).

The absence of an intent element in 11 F.S.M.C. 1223(6) (which prohibits any person from boarding or attempting to board a commercial airliner while carrying a firearm either on his person or in his luggage) evinces a legislative intent to dispense with the mens rea element and make the proscribed conduct a strict liability crime. The court can properly infer from Congress's silence in subsection (6) and lack of silence in subsections (1) and (2) that Congress intended that subsection (6) constitute a strict liability offense, whereas subsections (1) and (2) do not. Sander v. FSM, 9 FSM Intrm. 442, 447 (App. 2000).

Although 11 F.S.M.C. 1223(6) does not dispense with the mental element that the defendant must know or be aware that he had the shotgun in his possession, the statute does dispense with the specific intent to board the aircraft knowing that it was illegal to do so with a shotgun. Sander v. FSM, 9 FSM Intrm. 442, 447 (App. 2000).

Because violation of 11 F.S.M.C. 1223(6) is not a case of an attempt to commit a crime but a case where "attempt to board" is an element of the offense, 11 F.S.M.C. 201 (the attempt statute) does not apply to the crime of attempting to board a commercial aircraft with a firearm. Sander v. FSM, 9 FSM Intrm. 442, 448 (App. 2000).

When sufficient evidence was before the trial court such that it could reasonably have been persuaded beyond a reasonable doubt that the defendant did not attempt to turn in the shotgun to an appropriate official because the trial court could reasonably have concluded that the defendant's actions at the security screening area were consistent with the way any passenger might have dealt with any piece of carry on luggage, and that it did not constitute turning in the shotgun to an "appropriate official" under 11 F.S.M.C. 1223(6), its findings were not clearly erroneous and will not be disturbed. Sander v. FSM, 9 FSM Intrm. 442, 449 (App. 2000).

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