

COMMON LAW

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

By its terms, 1 F.S.M.C. 203 pointing to the *Restatements* as a guide for determining and applying the common law applies only to "courts of the Trust Territory." Since only courts established by the Trust Territory administration existed when the section was issued, it plainly was intended only for those courts at that time. In absence of any persuasive considerations to the contrary, it is logical to conclude that 1 F.S.M.C. 203 applies only to courts of the Trust Territory, not to courts of the Federated States of Micronesia or the various states. Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

1 F.S.M.C. 203, with its sweeping mandate that the *Restatements* and other common law rules as applied in the United States be the "rules of decision," would lure the courts in a direction other than that illuminated by the Constitution's Judicial Guidance Provisions, FSM Const. art. XI, ' 11, which identifies as the guiding star, not the *Restatement* or decisions of United States courts concerning common law, but the fundamental principle that decisions must be "consistent" with the "Constitution, Micronesian custom and tradition, and the social and geographical configuration of Micronesia." Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

The FSM Supreme Court can and should consider the *Restatement* and reasoning of courts in the United States and other jurisdictions in arriving at its own decisions although it is not bound by those decisions and must not fall into the error of adopting the reasoning of those decisions without independently considering suitability of that reasoning for the Federated States of Micronesia. Rauzi v. FSM, 2 FSM R. 8, 14-15 (Pon. 1985).

No common law rule has been applied universally in all contexts to determine the status of government officials. Rauzi v. FSM, 2 FSM R. 8, 15 (Pon. 1985).

The common law for the Federated States of Micronesia referred to at 54 F.S.M.C. 112(3) is not based upon the law of England at the time of the American Revolution but upon the law of the United States, the Trust Territory and other nations in the common law tradition up to the initiation of constitutional government in 1979. Rauzi v. FSM, 2 FSM R. 8, 17 (Pon. 1985).

Common law principles may be drawn from statutes as well as court decisions. While the common law is articulated through court decisions, it has its source in legislative action as well as court decisions. Rauzi v. FSM, 2 FSM R. 8, 17 (Pon. 1985).

Comparative negligence, which has displaced contributory negligence in most jurisdiction in the United States, should be given careful consideration by courts even though the *Restatement (Second) of Torts* refers only to contributory negligence and is silent about comparative negligence. There is reason to doubt that the FSM Supreme Court is bound by 1 F.S.M.C. 203 pointing to the *Restatements* as a guide for determining and applying the common law. Ray v. Electrical Contracting Corp., 2 FSM R. 21, 23 n.1 (App. 1985).

The Micronesian Constitutional Convention anticipated that judges in the new constitutional court system would find it necessary to draw on experience and decisions of courts in other nations to develop a common law of the Federated States of Micronesia. The framers recognized the desirability of such a search and amended the earlier draft of the provision to be sure to leave it open to the constitutional courts to do so. Nonetheless, judges now are not to consider the relationship between the common law of the United States and the legal system here in the same way that relationship was viewed prior to self-government. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 139 (Pon. 1985).

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

A generally recognized principle of the common law is that questions neither brought to the attention of the court nor ruled upon are not to be considered as having been decided so as to constitute precedents. Semens v. Continental Air Lines, Inc. (II), 2 FSM R. 200, 204 (Pon. 1986).

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

In considering the law concerning secured transactions, the FSM Supreme Court must look for guidance of the pre-UCC common law and may only declare the existence of such security interests as have been found by other courts to exist in the absence of statutes. Bank of Guam v. Island Hardware, Inc., 2 FSM R. 281, 288 (Pon. 1986).

When confronted with an issue of first instance, the Pohnpei Supreme Court may look beyond prior state experience for guidance, including looking towards the common law and United States precedents. People of Kapingamarangi v. Pohnpei Legislature, 3 FSM R. 5, 10 (Pon. S. Ct. Tr. 1985).

The Pohnpei Supreme Court may look to Pohnpeian customs and concepts of justice when there are no statutes governing the subject matter, but it may also draw from common law concepts when they are appropriate. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 64 (Pon. S. Ct. Tr. 1986).

A "general security agreement," without more does not establish a lien under common law or pursuant to any statute in the Federated States of Micronesia. In re Island Hardware, 3 FSM R. 332, 342 (Pon. 1988).

United States statutes regarding ships' mortgages will not be adopted as the common law of the Federated States of Micronesia, because their purposes are not applicable to the FSM and because their changing nature and complexity are not conducive to forming the basis of the common law of this nation. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 57, 59-60 (Truk 1989).

Where there are no directly controlling statutes, cases or other authorities within the Federated States of Micronesia, it may be helpful to look to the law of other jurisdictions, especially the United States, in formulating general principles for use in resolving legal issues bearing upon the rights of public employees and officers, in part because the structures of public employment within the Federated States of Micronesia are based upon the comparable governmental models existing in the United States. Sohl v. FSM, 4 FSM R. 186, 191 (Pon. 1990).

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

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

Under the common law the death of a criminal appellant pending appeal abates the proceedings ab initio – not only the appeal but all proceedings from the inception of the prosecution, thus requiring the appellate court to dismiss the appeal, and remand the case to the trial court to vacate the judgment and dismiss the information. Palik v. Kosrae, 6 FSM R. 362, 364 (App. 1994).

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

Common law decisions of the United States are an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of the constitutional courts here, or custom and tradition within the Federated States of Micronesia, but review of decisions of courts of the United States or other jurisdictions, must proceed against the background of pertinent aspects of Micronesian society and culture. Black Micro Corp. v. Santos, 7 FSM R. 311, 314 (Pon. 1995).

The common law of the United States and other nations in the common law tradition, up to the initiation of constitutional self-government in the FSM in 1979, is an essential part of the common law of Yap, but a court ought not fall into the error of adopting the reasoning of other common law jurisdictions' decisions without independently considering their suitability for Yap. Gimnang v. Yap, 7 FSM R. 606, 609 (Yap S. Ct. Tr. 1996).

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

When FSM courts have not yet addressed an issue, the court may look to the Restatement and to decisions from jurisdictions in the common law tradition outside the FSM, all the while keeping in mind the suitability for the FSM of any given common law principle. Senda v.

Semes, 8 FSM R. 484, 495 (Pon. 1998).

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

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

When the court looks to common law sources in considering the nature of the legislative privilege enjoyed by members of the Pohnpei Legislature, it is mindful of Article XI, section 11 of the FSM Constitution, which requires that FSM Supreme Court decisions be consistent with the Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 (Pon. 2001).

Although the court has previously recognized claims for indemnity based on contractual provisions between two parties, in the absence of a contractual provision it will not create a common law indemnity claim, therefore, in the absence of any contractual provisions between the parties, there is no basis for a claim of indemnity by a defendant against a plaintiff, the court will dismiss the defendant's counterclaim for indemnity. Primo v. Semes, 11 FSM R. 324, 329 (Pon. 2003).

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

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

The court will recognize claims for indemnity based on contractual provisions between two parties, but, in the absence of a contractual provision, it will not create a common law indemnity claim. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 347 (Pon. 2004).

The court may employ a common law principle from other jurisdictions with a common law tradition when it is not contrary to the FSM Constitution, statutes, or custom and tradition and if it is suitable for adoption here. Lee v. Han, 13 FSM R. 571, 576 n.2 (Chk. 2005).

Although the FSM Code permits the restatements to be used when applying rules of common law in the absence of written law, the court can give the Restatement no such weight when interpreting written law – a congressionally-enacted statute. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 24 (App. 2006).

U.S. courts' common law decisions are an appropriate source of guidance for the FSM Supreme Court for contract and tort issues unresolved by statutes, decisions of constitutional

courts here, or custom and tradition within the FSM. The FSM Constitution's judicial guidance clause requires that the court's review of U.S. courts' decisions proceed against the background of pertinent aspects of Micronesian society and culture, but where the business activities which gave rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when none have been brought to its attention by the parties and none are apparent. Reg v. Falan, 14 FSM R. 426, 430 n.1 (Yap 2006).

Stare decisis is the doctrine of precedent, under which it is necessary for a court to follow earlier judicial decisions when the same points of law arise again in litigation. Stare decisis requires that the same rule of law previously announced be applied to any succeeding cases with similar facts. Nakamura v. Chuuk, 15 FSM R. 146, 149-50 (Chk. S. Ct. App. 2007).

When there is no guidance from FSM case law or statutes, it is appropriate to look to the common law of the United States because United States common law decisions are an appropriate source of guidance for contract and tort issues unresolved by statutes, decisions of constitutional courts here, or custom and tradition in the FSM. Jano v. Fujita, 15 FSM R. 405, 408 (Pon. 2007).

Where there is no specific precedent in FSM case law, the court may consider cases from other jurisdictions in the common law tradition. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 652 (Pon. 2008).

When no FSM case has discussed the specific elements of the causes of action for interference with contractual relations or interference with prospective business advantage, the court may consider authorities from other jurisdictions in the common law tradition. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

When prior FSM cases have not addressed a precise point, the court, in such instances, may look to authorities from other jurisdictions in the common law tradition. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438 n.3 (Pon. 2009).

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. Thus, even assuming the court had found any defendant liable, when no contractual provision for indemnification between the plaintiff and any of the defendants was presented to the court, the plaintiff's claim for indemnity fails. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 458 (Pon. 2009).

In instances where there is no FSM precedent, such as whether to require an attorney to appear for a corporation (although it has been a rather long-standing practice in the FSM Supreme Court), the court may consider cases from other jurisdictions in the common law tradition. FSM Telecomm. Corp. v. Helgenberger, 17 FSM R. 407, 410 n.2 (Pon. 2011).

Although the FSM Supreme Court may not be bound by 1 F.S.M.C. 203, which points to the Restatements as the rules of decision for courts in determining and applying the common law, that FSM Code provision does permit the Restatements to be used when applying common law rules in the absence of written law, while keeping in mind the suitability for the FSM of any given common law principle. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580 n.14 (Pon. 2011).

Courts are statutorily authorized to consider the common law as expressed in the ALL Restatements of Law. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 355 n.3 (App. 2012).

Since, although courts are not bound to adopt common-law doctrines, they may, by statute, use the Restatements of the Law as the rules of decision to determine and apply the common law in the absence of written law while keeping in mind the suitability of any given common law principle for the FSM, if a court were to recognize an equitable indemnity cause of action, its elements would be those set forth in the Restatement. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 365 (App. 2012).

Statute law authorizes the court to consider the common law as expressed in the ALL Restatements of Law. Ruben v. Chuuk, 18 FSM R. 425, 430 n.1 (Chk. 2012).

Common law decisions from U.S. sources are an appropriate source of guidance for the FSM Supreme Court for contract and tort issues unresolved by statutes or decisions of constitutional courts within the FSM. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

Customary law takes precedence over the common law. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 272 n.3 (Pon. 2015).

When presented with an issue of first impression and the absence of FSM case law on point, the court will examine relevant U.S. decisions for guidance and may look to authorities from other jurisdictions in the common law tradition. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

Before the 1979 initiation of constitutional government in the FSM, it may be said that the common law of the FSM was based on the law of the United States, the Trust Territory, and other nations in the common law tradition. Fuji Enterprises v. Jacob, 21 FSM R. 355, 364-65 (App. 2017).

In the absence of Micronesian precedent, the FSM Supreme Court can and should consider the reasoning from the courts of other common law jurisdictions. Fuji Enterprises v. Jacob, 21 FSM R. 355, 365 n.10 (App. 2017).

Although FSM courts are not bound to adopt common-law doctrines, they are statutorily authorized to use the ALI Restatements of the Law to consider, determine, and apply the common law in the absence of written law while keeping in mind the suitability of that common law principle for the FSM. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 201 n.11 (Pon. 2019).

Although FSM courts are not bound to adopt common-law doctrines, the courts can, by statute, use the Restatements of the Law as the rules of decision to determine and apply the common law in the absence of written law while keeping in mind any given common law principle's suitability for the FSM. Helgenberger v. Helgenberger, 22 FSM R. 244, 249 (Pon. 2019).

The rules of the common law, as expressed in the restatements of the law approved by the American Law Institute are the rules of decision in applicable cases. Helgenberger v. Helgenberger, 22 FSM R. 244, 249 (Pon. 2019).

A private litigant is absolutely privileged to publish defamatory matter concerning another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course and as a part of, a judicial proceeding in which he participates, if the matter has some relation to the proceeding. This privilege is based upon the public interest in according to all men the utmost freedom of access to the courts of justice for the settlement of their private disputes. Like the privilege of an attorney, it is absolute. Helgenberger v. Helgenberger, 22 FSM R. 244, 249-50 (Pon. 2019).

At common law, parties to judicial proceedings are granted an absolute privilege to use defamatory language because of the overriding public interest that persons should speak freely and fearlessly in litigation, uninfluenced by the possibility of being brought to account in an action for defamation. This common law principle is eminently suitable for the FSM because it is difficult to see how any court system could function otherwise. It is sound public policy. Helgenberger v. Helgenberger, 22 FSM R. 244, 250 (Pon. 2019).

While FSM courts are not bound to adopt common-law principles, they are authorized by statute to use the Restatements of the Law to determine and apply the common law in the absence of written law while keeping in mind the principle's suitability for the FSM. Courts are statutorily authorized, under both FSM national and Pohnpei state law, to consider the common law as expressed in the ALI Restatements of Law. FSM Dev. Bank v. Carl, 22 FSM R. 365, 372 n.1 (Pon. 2019).

FSM courts may look for guidance from U.S. common law decisions if there are no statutes or decisions of constitutional courts within the FSM. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 393 n.4 (Kos. 2019).

Pohnpei state law provides that the rules of the common law, as expressed in the restatements of the law, shall be the rules of decision in the courts of the state of Pohnpei in applicable cases, in the absence of written law applicable to the state of Pohnpei or applicable local customary law. Panuelo v. FSM, 22 FSM R. 498, 506 (Pon. 2020).