

JURISDICTION

The burden is always on the one who seeks the exercise of the power of the court in her behalf to establish that the court does have jurisdiction. Neimes v. Maeda Constr. Co., 1 FSM R. 47, 47 (Truk 1982).

The Secretary of the Interior has the power to terminate the Trust Territory High Court's exclusive jurisdiction over suits against the Trust Territory because that jurisdiction was originally conferred upon the High Court by authority emanating from the Department of Interior. Lonno v. Trust Territory (I), 1 FSM R. 53, 65-67 (Kos. 1982).

The Trust Territory High Court's former exclusive jurisdiction over lawsuits against the Trust Territory government has been delegated to the constitutional governments covered by Secretarial Order 3039. Within the Federated States of Micronesia, the allocation of this former exclusive High Court jurisdiction between the Supreme Court of the Federated States of Micronesia and the various state courts will be determined on the basis of jurisdictional provisions within the Constitution and laws of the Federated States of Micronesia and its respective states. Lonno v. Trust Territory (I), 1 FSM R. 53, 68 (Kos. 1982).

The FSM Supreme Court is empowered to exercise authority in probate matters where there is an independent basis for jurisdiction under the Constitution. In re Nahnsen, 1 FSM R. 97, 104 (Pon. 1982).

There is no statutory limitation on the FSM Supreme Court's jurisdiction; the Judiciary Act of 1979 plainly contemplates that that court will exercise all the jurisdiction available to it under the Constitution. 4 F.S.M.C. 201-208. In re Nahnsen, 1 FSM R. 97, 106 (Pon. 1982).

The allocation of judicial authority is made on the basis of jurisdiction, generally without regard to whether state or national powers are at issue. In re Nahnsen, 1 FSM R. 97, 108 (Pon. 1982).

The Constitution contemplates that decisions affecting the people of the Federated States of Micronesia will be decided by courts appointed by the constitutional governments of the Federated States of Micronesia. This in turn requires an expansive reading of the FSM Supreme Court's jurisdictional mandate while we await establishment of functioning state courts. In re Nahnsen, 1 FSM R. 97, 111 (Pon. 1982).

The FSM Supreme Court may look to decisions under the United States Constitution for guidance in determining the scope of jurisdiction since the jurisdictional language of the FSM Constitution is similar to that of the United States. Etpison v. Perman, 1 FSM R. 405, 414 (Pon. 1984).

The standard method of obtaining a determination from the FSM Supreme Court as to its jurisdiction over specific parties or issues is to file a civil or criminal action with the FSM Supreme Court trial division. Koike v. Ponape Rock Products Co., 1 FSM R. 496, 500 (Pon. 1984).

The jurisdictional language in the FSM Constitution is patterned upon the United States Constitution. In re Sproat, 2 FSM R. 1, 4 n.2 (Pon. 1985).

A case must be one appropriate for judicial determination, that is, a justiciable controversy, as distinguished from a difference or dispute of a hypothetical or abstract character, or one that is academic or moot. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. In re Sproat, 2 FSM R. 1, 5 (Pon. 1985).

Because the FSM Constitution states that the judicial power "is vested" in the Supreme Court, and the trial division "has" jurisdiction over certain cases – unlike the jurisdictional provisions of the United States Constitution, which are not self-executing – determinations as to the jurisdiction of the FSM courts are based on constitutional interpretation rather than statutory construction, and therefore it cannot be assumed that United States court holdings will yield the correct result under FSM jurisdictional provisions. FSM Dev. Bank v. Estate of Nanpei, 2 FSM R. 217, 219 n.1 (Pon. 1986).

As a general rule the FSM Supreme Court trial division is obliged to exercise its jurisdiction and may not abstain simply because unsettled issues of state law are presented. Edwards v. Pohnpei, 3 FSM R. 350, 360 (Pon. 1988).

State courts do not normally look to the national Constitution as a source of jurisdictional authority, but instead typically rely upon state constitutions and state law for their authorization to act, so in considering whether a state court may exercise jurisdiction in a case the proper question is not whether the national Constitution authorizes, but whether it bars state court jurisdiction. Bank of Guam v. Semes, 3 FSM R. 370, 377 (Pon. 1988).

Article XI, section 6(c) of the Constitution places authority to prescribe jurisdiction only in the national Congress, and not in state legislatures. Bank of Guam v. Semes, 3 FSM R. 370, 379 (Pon. 1988).

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

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

The Constitution's jurisdictional provisions are self-executing. U Corp. v. Salik, 3 FSM R. 389, 394 (Pon. 1988).

The determination of jurisdiction itself normally qualifies for protection under the common law principle of res judicata, requiring a second court to presume that the court which issued the judgment did properly exercise its own jurisdiction, but plain usurpation of power by a court which wrongfully extends its jurisdiction beyond the scope of its authority, is outside of the doctrine and does not qualify for res judicata protection. United Church of Christ v. Hamo, 4 FSM R. 95, 107-08 (App. 1989).

In light of the Trust Territory High Court's insistence on maintaining control over cases within the Federated States of Micronesia in disregard of Secretarial Order 3039 and to the exclusion of the new constitutional courts, its characterizations of Joint Rule No. 1 as "simply a memorandum" and of the words "active trial" in Secretarial Order 3039 as merely

"administrative guidance," its acceptance of appeals after it was precluded from doing so by Secretarial Order 3039, its decision of appeals after Secretarial Order 3039 was terminated and its continued remand of cases to the High Court trial division for further action even after November 3, 1986, there can be no doubt that for purposes of res judicata analysis, the High Court was a court lacking capacity to make an adequately informed determination of a question concerning its own jurisdiction United Church of Christ v. Hamo, 4 FSM R. 95, 118 (App. 1989).

Although final judgment in a case has been entered by the Trust Territory High Court, because any effort by a party to have the High Court consider its own jurisdiction would have been futile, it is procedurally fair to later afford the party an opportunity to question that jurisdiction. United Church of Christ v. Hamo, 4 FSM R. 95, 118-19 (App. 1989).

Where the Trust Territory High Court's exercise of jurisdiction was a manifest abuse of authority, allowing the judgment of the High Court to stand would undermine the decision-making guidelines and policies reflected in the judicial guidance clauses of the national and state constitutions and would thwart the efforts of the framers of the Constitution to reallocate court jurisdiction within the Federated States of Micronesia by giving local decision-makers control over disputes concerning ownership of land. United Church of Christ v. Hamo, 4 FSM R. 95, 119 (App. 1989).

The decision as to jurisdiction is one to be made by the court, and counsel may not by agreement, confer upon a court jurisdiction that it does not have by law. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 369 (App. 1990).

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

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

The question of the enforceability of ship mortgages is a matter that falls within the maritime jurisdiction of the FSM Supreme Court under article XI, section 6(a) of the Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 376 (App. 1990).

A state law provision attempting to place "original and exclusive jurisdiction" in the Yap State Court cannot divest a national court of responsibilities placed upon it by the national constitution, which is the "supreme law of the Federated States of Micronesia." Gimnang v. Yap, 5 FSM R. 13, 23 (App. 1991).

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

Under the Compact of Free Association and the Federal Programs and Services Agreement, civilian employees of the United States government have immunity from civil and

criminal process for wrongful acts and omissions done within the scope and in performance of official duty, unless expressly waived by the U.S. government. Samuel v. Pryor, 5 FSM R. 91, 95 (Pon. 1991).

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

Issuance of a search warrant is indisputedly within the FSM Supreme Court's jurisdiction. Jano v. King, 5 FSM R. 388, 392 (Pon. 1992).

A maritime contract cannot be converted into a non-maritime one by stipulation of the parties so as to divest the court of its admiralty jurisdiction. Maruwa Shokai (Guam), Inc. v. Pyung Hwa 31, 6 FSM R. 1, 4 (Pon. 1993).

The term "concurrent" in article XI, section 6(c) of the FSM Constitution has the same meaning as in section 6(b); i.e., that jurisdiction is concurrent as between the FSM Supreme Court and any other national courts that may be established by statute. It would be illogical and contrary to norms of constitutional interpretation to assume a different meaning for "concurrent" in section 6(c) than in section 6(b), since it is quite clear that the two sections are to be read together. Faw v. FSM, 6 FSM R. 33, 35 (Yap 1993).

Under the FSM Constitution the FSM Supreme Court may hear cases on appeal from the highest state court in which a decision may be had if that state's constitution permits it. The Chuuk State Constitution permits such appeals, which, in civil cases, Chuuk statute provides be made by certiorari. Gustaf v. Mori, 6 FSM R. 284, 285 (App. 1993).

The FSM Supreme Court will not interfere in a pending state court proceeding where no authority has been cited to allow it to do so, where the case has not been removed from state court, where it has not been shown that the national government is a party to the state court proceeding thereby putting the case within the FSM Supreme Court's exclusive jurisdiction, and where it has not been shown that the movants are parties to the state court proceeding and thus have standing to seek national court intervention. Pohnpei v. Kailis, 6 FSM R. 460, 463 (Pon. 1994).

A court may *sua sponte* raise the issue of jurisdiction at any time because it is the duty of the courts and counsel to insure that jurisdiction exists. Barker v. Paul, 6 FSM R. 473, 475 (Chk. S. Ct. App. 1994).

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

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

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

The Chuuk State Supreme Court is a unified court system with two constitutionally mandated divisions – the trial division and the appellate division. All justices are members of both divisions, but a justice does not serve in the appellate division until he has been designated by the Chief Justice to be the presiding justice on a specific case. The trial division is the state's court of general jurisdiction. Election Comm'r v. Petewon, 6 FSM R. 491, 497 (Chk. S. Ct. App. 1994).

All justices in the trial division have concurrent jurisdiction, but once a case has been assigned to a particular justice, that justice has exclusive jurisdiction over the parties and issues of the case until the case is terminated in the trial division. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

A properly filed notice of appeal transfers jurisdiction from the trial court to the appellate court. Election Comm'r v. Petewon, 6 FSM R. 491, 498 (Chk. S. Ct. App. 1994).

The nonexclusive constitutional grant to the states of regulatory power over marine resources located within twelve miles of island baselines cannot be read as creating exclusive state court jurisdiction over marine resources within the twelve mile limit. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 598-99 & n.7 (Pon. 1994).

The state and national courts have concurrent jurisdiction over cases involving state regulation of marine resources located within twelve miles of island baselines. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM R. 594, 602 (Pon. 1994).

Parties cannot confer or divest a court of jurisdiction by stipulation or by assumption. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 45 (App. 1995).

It is the duty of the court to insure jurisdiction exists. The fact that the defendant has not challenged the allegation of jurisdiction does not confer jurisdiction on the court if none exists. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

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 Supreme Court has the ultimate responsibility for interpretation of the Constitution. Chuuk v. Secretary of Finance, 7 FSM R. 563, 567 (Pon. 1996).

A trial court has jurisdiction to issue an order assessing costs, even though it was issued after the notice of appeal was filed. Damarlane v. United States, 8 FSM R. 14, 17 (App. 1997).

A policy of judicial economy dictates against allowing further piecemeal appeals when the appeal in question arises from the same civil action and involves the same or similar questions of law. Damarlane v. United States, 8 FSM R. 14, 17 (App. 1997).

The FSM Supreme Court's jurisdiction is derived from the FSM Constitution which grants

the appellate division the jurisdiction to review cases heard in state or local courts if they require interpretation of the FSM Constitution, and a state constitution cannot deprive the FSM Supreme Court of this jurisdiction. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 26-27 (App. 1997).

The FSM Supreme Court appellate division has jurisdiction over an appeal where a motion to recuse filed by the appellant in the state court appellate division raised an issue of due process under the FSM Constitution. Damarlane v. Pohnpei Legislature, 8 FSM R. 23, 27 (App. 1997).

When the state election law requiring election appeals to go directly to the state court appellate division has a provision applying the law to municipal elections if the municipal constitution or law so provides and there is no such municipal provision, then jurisdiction over the election appeal does not lie in the state court appellate division in the first instance. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

A case challenging the Governor's authority to take certain actions where the Governor has cited the state constitution as his authority and where the issues are serious and substantial is clearly a case arising under the state constitution over which the state court trial division has original and exclusive jurisdiction. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

When the state judiciary act gives the state court trial division authority to review all actions of an agency of the government, the trial division has jurisdiction over an appeal of the state election commissioner's denial of a petition to set aside a municipal election. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 245, 247 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division had jurisdiction to hear an election appeal from an election conducted, pursuant to the governor's emergency declaration, under a state law providing for such jurisdiction. Aizawa v. Chuuk State Election Comm'r, 8 FSM R. 275, 280 n.1 (Chk. S. Ct. Tr. 1998).

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

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

Venue does not refer to jurisdiction at all. Jurisdiction of the court means the inherent power to decide a case, whereas venue designates the particular county or city in which a court with jurisdiction may hear and determine the case. On the other hand, forum means a place of jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM R. 120, 125 (Pon. 1999).

A foreign government is an entity over whom the FSM Supreme Court may exercise

jurisdiction if it engages in certain acts. Kosrae v. M/V Voea Lomipeau, 9 FSM R. 366, 371 n.1 (Kos. 2000).

The Constitution does not authorize the FSM Supreme Court to declare the law anytime a justice feels moved to do so or authorize the court to respond to every request for a legal ruling directed to it by citizens. Instead, Article XI, section 6 of the Constitution grants jurisdiction, and the power to exercise judicial powers, only in five specific kinds of "disputes" and five types of "cases." FSM v. Louis, 9 FSM R. 474, 482 (App. 2000).

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

When the court's jurisdiction is placed at issue, it is the plaintiff's burden to show that the Supreme Court does have jurisdiction, and that a colorable claim exists. Udot Municipality v. FSM, 9 FSM R. 560, 562 (Chk. 2000).

The FSM Development Bank is an instrumentality of the national government and part of the national government for purposes of Article XI, Section 6(a) of the Constitution. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001).

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

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

When plaintiffs ask the Chuuk State Supreme Court trial division to interpret a statute in light of various Chuuk Constitution provisions because in their view the statute unconstitutionally delegates the power to conduct elections to the municipalities themselves, it is a constitutional question of significant magnitude, given the past history of the conduct of elections in general in Chuuk. Given the clear jurisdictional mandate in the Chuuk Constitution for the court to determine issues regarding the state constitution and laws, the court has jurisdiction over the case, and a motion to dismiss for lack of subject matter jurisdiction must therefore be denied. Rubin v. Fefan Election Comm'n, 11 FSM R. 573, 579-80 (Chk. S. Ct. Tr. 2003).

The statutory prohibition on issuing writs against public property is jurisdictional. Since the statute deprives a court of jurisdiction to issue any such writ, the parties may not by agreement confer jurisdiction upon a court when a statute affirmatively deprives the court of jurisdiction. Ben v. Chuuk, 11 FSM R. 649, 651 (Chk. S. Ct. Tr. 2003).

To read the language that a petitioner shall by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part, to mean that the 60 day time period is absolute, which is to say jurisdictional, would be to read the statute as limiting the trial division's jurisdiction to hear such appeals. Statutes which limit a

court's jurisdiction are to be construed narrowly. Andrew v. FSM Social Sec. Admin., 12 FSM R. 78, 81 (Kos. 2003).

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

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

When the land in question clearly lies in a Land Commission registration area; when the action seeks a declaration that a party is the owner of the land and it does not allege, nor prove, that the Land Commission referred the matter to the court for resolution, and when she does not assert any "special cause" why the court should assert jurisdiction over the land claim, the court is statutorily deprived of jurisdiction over any action with regard to interests in land. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

The courts have a duty to examine issues regarding their jurisdiction. Jurisdiction of the court may be raised at any time, even after judgment. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

Acts in excess of a court's jurisdiction are void. Hartman v. Chuuk, 12 FSM R. 388, 399 (Chk. S. Ct. Tr. 2004).

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

Any case over which the trial division has jurisdiction may be heard by any of the justices as assigned by the Chief Justice. Once a case has been assigned to a particular justice, that justice has jurisdictional priority over the parties and issues of the case to the exclusion of all other trial division justices. This exclusive jurisdiction continues until the case is terminated in the trial division. While the case is pending, the priority extends to any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

When the parties are identical in two civil actions and the plaintiffs sought the same relief in both civil actions – that the contents of certain ballot boxes not be counted and tabulated

because of election irregularities and when the only difference in the later civil action was that the plaintiffs were contesting only two of the five boxes they contested in the first civil action and that the irregularities alleged in the later case were discovered during and in the course of the litigation of the first civil action (that is, during the counting and tabulating ordered by the judge in the first civil action), such irregularities would be expected to be brought immediately before the judge on the case in which they were discovered. When they were not, but were instead filed as a separate case, once the trial judge on the first case became available, the case should have been left to him to act upon. Therefore the second trial judge's presiding over the second civil action was in excess of his jurisdiction since the first trial division justice had jurisdictional priority over the parties and the issues in that case to the exclusion of all other trial division justices. Nikichiw v. O'Sonis, 13 FSM R. 132, 138 (Chk. S. Ct. App. 2005).

A claim that civil matters should be dealt with in the defendant's country and that since both he and the plaintiff were Koreans, the court should dismiss this case is an assertion of forum non conveniens. Forum non conveniens is not a claim that the court lacks jurisdiction over the case, but is a doctrine that the court may, as a matter of its discretion, decline jurisdiction and dismiss a case when the parties' and the witnesses' convenience and the ends of justice would be better served if the action were brought and tried in another forum in which the action could be heard. Lee v. Lee, 13 FSM R. 252, 257 n.5 (Chk. 2005).

A trial justice may not, *sua sponte*, assert jurisdiction over a case which has been fully dismissed, particularly when that case was dismissed by another justice. When a case has been dismissed, there is no case or dispute remaining before the court. Ruben v. Petewon, 14 FSM R. 177, 183 (Chk. S. Ct. App. 2006).

Because the Kosrae State Court only has the authority to hear appeals from Land Court and it cannot act until the Land Court has adjudicated the matter and an appeal has been filed, a case concerning a claim of title to land filed in the Kosrae State Court will be dismissed without prejudice to allow the plaintiffs to file their claim in the Land Court, whose jurisdiction includes all matters concerning the title of land and any interests therein. Alonso v. Pridgen, 14 FSM R. 479, 480 (Kos. S. Ct. Tr. 2006).

Courts have no jurisdiction to hear cases with regard to interests in land in land registration areas unless there has been a showing of special cause, and a finding by the court, that action by a court is desirable or the Land Commission has asked the court to assume jurisdiction without the Land Commission having made a determination. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

When an order awarded attorneys' fees on the private attorney general theory and those fees are added to the judgment to be borne by the defendants, the issue of whether the fee award under the private attorney general theory will also stand as the fee award to plaintiffs' counsel in a final distribution is an issue that is not now before the court and will not be before the court until a proposal for a final distribution is before the court. Until then, anything the court might say would be in the nature of an advisory opinion, and the court does not have the authority to issue advisory opinions. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 133, 134-35 (Yap 2007).

The FSM Supreme Court trial division lacks jurisdiction over an election contest in a Chuuk state election since jurisdiction over election contests rests purely on statutory and constitutional provisions, and courts otherwise have no inherent power to determine election contests, and

since the determination of such contests is a judicial function only when and to the extent that the determination is authorized by statute. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

The FSM Supreme Court's jurisdiction is constitutionally limited to actual cases and disputes thereby precluding it from making pronouncements on hypothetical, abstract, or academic issues or when the matter is moot. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

When the constitutional issues the plaintiffs raise are either a part of an election contest over which the court has no jurisdiction or are hypothetical, abstract, or academic, the court lacks jurisdiction over the case. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

The decision as to the court's jurisdiction over an action is one to be made by the court, and the election commission is not empowered to assume or confer whether a court has jurisdiction. The election commission is limited to determining its own jurisdiction. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

Although the court will not judge the actions of the U.S. government, when the case's disposition does not require the court to judge those actions, the court can and will judge the actions of the parties to the case if there are satisfactory criteria to do so. FSM v. GMP Hawaii, Inc., 16 FSM R. 479, 485 (Pon. 2009).

Chuuk Election Code, section 138 clearly contemplates that the FSM Supreme Court appellate division may exercise jurisdiction over a Chuuk state election contest even after the candidates that have been declared the winners have been sworn in. Chuuk State Election Comm'n v. Chuuk State Supreme Court App. Div., 16 FSM R. 614, 615 (App. 2009).

The section 6(a) phrase "except where an interest in land is at issue," does not preclude the FSM Supreme Court from exercising jurisdiction in a case where the national government entity is a party and land is involved. It does preclude the court from exercising exclusive jurisdiction – the jurisdiction becomes concurrent and a competent state court could instead entertain the matter. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 93 (Yap 2011).

A Yap state statute cannot divest the FSM Supreme Court of jurisdiction conferred on it by the FSM Constitution, which is the supreme law of the land. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

The FSM Supreme Court can exercise jurisdiction in a case where an interest in land is at issue if there is another basis for jurisdiction. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

Although pleading requirements are interpreted liberally, it is the plaintiff's responsibility to see that his complaint states the grounds of jurisdiction. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk. 2012).

If the case involves officials of foreign governments, or disputes between states, or admiralty or maritime matters, no further analysis is needed. The FSM Supreme Court trial division has exclusive jurisdiction. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 614 (Pon. 2013).

If the FSM Supreme Court does not have exclusive jurisdiction, the analysis will not end there. It proceeds to the next set of questions about the FSM Supreme Court's concurrent jurisdiction. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

The FSM Supreme Court either has exclusive jurisdiction over a case or it has concurrent jurisdiction. It cannot have both simultaneously because a court's jurisdiction over a case cannot be both exclusive and non-exclusive (concurrent) at the same time. It is either exclusive or it is not. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

The movants have not shown that there are any jurisdictional steps that the plaintiff failed to take or any jurisdictional deadlines that it failed to meet when the statute and attendant regulations that the movants rely on apply only to Pohnpei state government procurement contracts – bidding for contracts where the vendor bidders are competing to sell goods or services – personal property and, in this case, the bidders were not seeking to sell anything to Pohnpei, but were seeking to acquire real estate rights – to lease government land and fish processing facilities (not personal property) from the state government. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 656-57 (Pon. 2013).

The Constitution does not mandate such a sweeping expansion of the FSM Supreme Court's jurisdiction over probate cases as would result if creditors were considered parties for jurisdictional purposes. The better view is that only the heirs, potential heirs, or devisees in a probate case be considered parties for jurisdictional purposes and that, in the usual case, the decedent's creditors would file their claims in a state court probate proceeding. This view comports with the proper respect due to the state courts as courts of general jurisdiction that should normally resolve probate and inheritance issues. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

For jurisdictional purposes, the parties in a probate case are those who have a claim that they are heirs. Creditors are not to be considered parties for jurisdictional purposes. This reasoning is suitable for the FSM. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

A creditor may open a probate case in state court without destroying the state court's jurisdiction because a creditor is not an heir. In re Estate of Edmond, 19 FSM R. 59, 62 (Kos. 2013).

State laws vesting state courts with exclusive jurisdiction cannot divest the FSM Supreme Court of its constitutional responsibilities. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

When no defendant has started a case under bankruptcy law, the defendants cannot have the case dismissed because bankruptcy law would provide the legal framework for the case. FSM Dev. Bank v. Setik, 19 FSM R. 233, 236 (Pon. 2013).

The probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes the national courts from disposing of property that is in a state probate court's custody. But it does not bar the national courts from adjudicating matters outside of those confines and otherwise within national court jurisdiction. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 430 (App. 2014).

Interference with the property of the estate, and the probate exception should be read narrowly so as not to bar national court jurisdiction over preliminary matters, or ancillary matters, such as in personam actions and equitable intervention for fraud, maladministration, or non-administration of the estate. In those matters, the national court may appoint an administrator or an administrator pendente lite on behalf of third party interests before, or while, the action is pending in state court. These actions are outside of the scope of the probate exception, but they should not be confused with direct challenges to the validity of the will itself, in interpreting the language of the will, or equitable charges of fraud, undue influence, or tortious interference with the testator's intent which are core matters within the probate exception. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 430 (App. 2014).

Ultimately, the bulk of probate matters are to remain with the states, but an express constitutional exception is carved out when the national government is a party to the suit. Furthermore, the Constitution's framers created a constitutional limitation on the national government's jurisdiction under the land clause exception of article XI, § 6(a). FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 433 (App. 2014).

Courts have no jurisdiction to hear cases about interests in land in land registration areas unless there has been a showing of special cause, and a court finding, that action by a court is desirable or that the Land Commission has asked the court to assume jurisdiction without the Land Commission having made a determination. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

Under 11 F.S.M.C. 104(7)(b)(i), the FSM Supreme Court has jurisdiction over any crime committed in the FSM Exclusive Economic Zone. FSM v. Kimura, 19 FSM R. 630, 633 (Pon. 2015).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

For purposes of jurisdiction, since the College of Micronesia was created by national statute, and given the nature of its structure and functions, it is an instrumentality or agency of the FSM national government. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

A state statute that vests exclusive jurisdiction over certain cases in a state court (such as the Pohnpei statute requiring all judicial actions for a mortgage foreclosure to be brought in the Pohnpei Supreme Court trial division), cannot deprive the FSM Supreme Court of jurisdiction or have any effect on its jurisdiction. Sam v. FSM Dev. Bank, 20 FSM R. 409, 416 (App. 2016).

Jurisdictional grants of power to the national courts in Article XI, § 6 appear to be self-executing, calling for no action by Congress. Since most U.S. Constitution jurisdictional provisions are not self-executing, determinations of U.S. courts' jurisdiction are typically based on statutory construction rather than constitutional interpretation, as in the FSM. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 n.5 (App. 2016).

A state law vesting exclusive jurisdiction in a state court cannot divest the FSM Supreme Court of jurisdiction over a matter it would otherwise have jurisdiction, as mandated by the FSM Constitution. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 613 (Pon. 2016).

Although standing is not expressly stated within the FSM Constitution, it is implied as an antecedent to the "case or dispute" requirement found in Article XI, § 6 and should be interpreted so as to implement the objectives of that requirement. Two factors are central to the determination of whether a party has standing: 1) the party must allege a sufficient stake in a controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling, and 2) the injury must be such that it can be traced to the challenged action and must be of the kind likely to be redressed by a favorable decision. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

When the asserted ownership of a parcel constitutes a sufficient stake in the outcome; and when a challenge to the Kosrae State Court's ruling is capable of being redressed by a favorable decision in the FSM Supreme Court appellate division, an appellant, who did not appeal the Land Court decision to the Kosrae State Court, possesses standing to bring the present appeal. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 57 (App. 2016).

A manifest abuse of authority, a judgment obtained unfairly or working a serious injustice, fraud or collusion by a court, fraud, and lack of jurisdiction have been considered grounds to ignore a judgment's validity. Validity fundamentally includes the court's competence to adjudicate the matter with regard to subject-matter jurisdiction, territorial jurisdiction, and notice. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

A court of competent jurisdiction is a court that has the power and authority to do a particular act; one recognized by law as possessing the right to adjudicate a controversy. Waguk v. Waguk, 21 FSM R. 60, 71 n.14 (App. 2016).

A court has no more right to decline the exercise of jurisdiction which is given, than it does to usurp that which is not given. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

The Pohnpei Supreme Court is not the only forum with jurisdiction to foreclose a mortgage on Pohnpei real estate because it is undisputed that the FSM Supreme Court may exercise such jurisdiction when the FSM Development Bank is the mortgagee since a state statute cannot divest the FSM Supreme Court of its jurisdiction. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 172 (Pon. 2017).

A person may be convicted and sentenced under the laws of the FSM if he or she commits, or attempts to commit a crime, in whole or in part within the FSM. FSM v. Siega, 21 FSM R. 291, 298 (Chk. 2017).

The statute of limitations does not affect a court's jurisdiction because generally a statute of limitation is not jurisdictional unless it is a limitations period for claims against the government. Alik v. Heirs of Alik, 21 FSM R. 606, 621 (App. 2018).

A Chuuk probate court cannot have jurisdiction over real property on Pohnpei even though the property's registered owner was a Chuukese decedent for whom probate cases were filed in a Chuuk state court. Setik v. Mendiola, 21 FSM R. 624, 626 (App. 2018).

Even if there had not been an heirship proceeding for the Pohnpei property in the Pohnpei Court of Land Tenure, the Chuuk State Supreme Court would still lack jurisdiction to probate the property since the land and real estate are outside of Chuuk. Setik v. Mendiola, 21 FSM R. 624,

626 (App. 2018).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 12 (Pon. 2018).

When the Pohnpei state probate case was the first filed lawsuit and that case can afford a complete resolution of the issues between the parties; when the later-filed FSM Supreme Court case could, at best, afford only a partial resolution and certainly lacks jurisdiction to enforce a state court interlocutory order; and when the Pohnpei Supreme Court is perfectly competent to enforce its own orders and judgments and to take any further needed steps in the probate case pending before it, it is appropriate that that forum resolve the issues. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 13 (Pon. 2018).

When diversity jurisdiction does not exist, the FSM Supreme Court's subject-matter jurisdiction must be based on some other ground. Apostol v. Maniquiz, 22 FSM R. 146, 149 (Chk. 2019).

The general rule is that the lawsuit filed first has priority over any other case involving the same parties and issues, even if filed later before a court that could also take jurisdiction. O'Sonis v. O'Sonis, 22 FSM R. 268, 270 (Chk. 2019).

While it is true that parties cannot confer or divest a court of jurisdiction by stipulation or by assumption, a helicopter buyer who had to register that helicopter somewhere (some country) and chose to register it in the U.S., will be estopped from denying the U.S.'s regulatory authority over its helicopter. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 459 (Pon. 2020).

– Arising Under

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

The Seaman's Protection Act, originally enacted for the entire Trust Territory by the Congress of Micronesia, relates to matters that now fall within the legislative powers of the national government under article IX, section 2 of the Constitution, and has therefore become a national law of the Federated States of Micronesia under article XV. That being so, a claim asserting rights under the Act falls within the FSM Supreme Court's jurisdiction under article XI, section 6(b) of the Constitution as a case arising under national law. 19 F.S.M.C. 401-437. Lonno v. Trust Territory (I), 1 FSM R. 53, 72 (Kos. 1982).

Title 11 of the Trust Territory Code, before the effective date of the National Criminal Code, is not a national law because its criminal jurisdiction was not expressly delegated to the national government, nor is the power it confers of indisputably national character; therefore, it is not within the FSM Supreme Court's jurisdiction. Truk v. Otokichy, 1 FSM R. 127, 130 (Truk 1982).

The 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 national law by virtue of the transition article. Truk v. Hartman, 1 FSM R. 174, 178 (Truk 1982).

Exclusive national government jurisdiction over major crimes is not mandated by the Constitution; such jurisdiction would be exclusive in any event only if criminal jurisdiction was a power of indisputably national character. Truk v. Hartman, 1 FSM R. 174, 181 (Truk 1982).

The National Government has exclusive jurisdiction over crimes arising under national law. 11 F.S.M.C. 901. Truk v. Hartman, 1 FSM R. 174, 181 (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. 11 F.S.M.C. 102. In re Otokichy, 1 FSM R. 183, 185 (App. 1982).

Section 102(2), the savings clause of the National Criminal Code, 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. 11 F.S.M.C. 102(2). In re Otokichy, 1 FSM R. 183, 190 (App. 1982).

Presumably, Congress inserted no specific jurisdictional provision in section 102 of the National Criminal Code because Congress recognized that the FSM Supreme Court would have jurisdiction over all cases arising under national law by virtue of article XI, section 6(b) of the Constitution. 11 F.S.M.C. 102. In re Otokichy, 1 FSM R. 183, 193 (App. 1982).

The Trust Territory Weapons Control Act is not inconsistent with any provision of the Constitution. It therefore continued in effect. When the National Criminal Code was enacted, and major crimes were defined, the Trust Territory Weapons Control Act became national law and trials for violations thereof were within the FSM Supreme Court's jurisdiction. 11 F.S.M.C. 1201-1231. FSM v. Nota, 1 FSM R. 299, 302-03 (Truk 1983).

When petitioners raise serious and substantial constitutional claims supported by authorities and reasoning of legal substance, the case falls within the FSM Supreme Court's jurisdiction under article XI, section 6(b) of the Constitution. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 391 (Pon. 1984).

Article XI, section 6(a) of the Constitution places jurisdiction in the Federated States of Micronesia Supreme Court over cases in which the national government is a party. Panuelo v. Pohnpei (I), 2 FSM R. 150, 153 (Pon. 1986).

National civil rights claims under 11 F.S.M.C. 701 furnish a jurisdictional basis for the case to be heard by the FSM Supreme Court. Panuelo v. Pohnpei (I), 2 FSM R. 150, 153 (Pon. 1986).

Activities and organizations created and controlled by the national government should remain subject to FSM Constitution article XI, section 6(a), but organizations merely authorized or licensed by the national government which operate for private purposes, with little governmental involvement or control, should not be treated as a part of the national government. FSM Dev. Bank v. Estate of Nanpei, 2 FSM R. 217, 219-20 (Pon. 1986).

Exact scope of admiralty jurisdiction is not defined in the FSM Constitution or legislative history, but United States Constitution has a similar provision, so it is reasonable to expect that words in both Constitutions have similar meaning and effect. Weilbacher v. Kosrae, 3 FSM R. 320, 323 (Kos. S. Ct. Tr. 1988).

The FSM Supreme Court trial division is required to decide all national law issues presented to it. Certification to state court is only proper for state or local law issues. Edwards v. Pohnpei, 3 FSM R. 350, 354 (Pon. 1988).

In the absence of any special limitation, issues that arise under any state or national law within the particular state may fall within the jurisdiction of the state and local courts of that state through state constitutional and statutory provisions which place the "judicial power of the state" within those courts. Gimnang v. Yap, 5 FSM R. 13, 17 (App. 1991).

Article XI, section 6(b) and 8 of the FSM Constitution places primary responsibility in the national courts for the kind of cases arising under the constitution or requiring interpretation of the Constitution, national law or treaties; and in disputes between a state and a citizen of another state, between state, citizen, of different states, and between a state or a citizen, a foreign state, citizen, or subject but they do not prohibit state court jurisdiction over issues of national law or cases which arise under national law. Gimnang v. Yap, 5 FSM R. 13, 18 (App. 1991).

Issues that arise under any state or national law within the particular state may fall within the jurisdiction of the state and local courts of that state through state constitutional and statutory provisions which place the "judicial power of the state" within those courts, subject to the possibility that state or local courts may sometimes be barred from exercising jurisdiction in some such cases by the action of Congress, of this court, or of the state legislature. Gimnang v. Yap, 5 FSM R. 13, 18 (App. 1991).

Article XI, section 8 of the FSM constitution does not bar state courts from exercising jurisdiction over cases which arise under national law within the meaning of Article XI, section 6(b). Gimnang v. Yap, 5 FSM R. 13, 18 (App. 1991).

Full abstention is not appropriate where claims are not essentially state law claims, and are made against another nation, thus falling within the national court's primary jurisdiction. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67E (Pon. 1991).

Abstention may be appropriate for causes of action that raise issues of state law only, but may not be where substantive issues of national law are raised. A national court may not abstain from deciding a national constitutional claim. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67E (Pon. 1991).

The intent of the Constitutional Convention is that major crimes, as defined by Congress and committed prior to voter ratification, fall within the jurisdiction of the national government and may be prosecuted pursuant to the national law after the effective date of the amendment. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

The national court should not abstain from deciding a criminal case where the crime took place before the effective date of the 1991 amendment removing federal jurisdiction over major crimes because of the firmly expressed intention by the Constitutional Convention delegates as

to the manner of transition from national jurisdiction to state jurisdiction. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

Where the crimes charged are no longer those expressly delegated to Congress to define, or are not indisputedly of a national character the FSM Supreme Court has no subject matter jurisdiction. FSM v. Jano, 6 FSM R. 9, 11 (Pon. 1993).

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

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

That a corporation chartered under the laws of the FSM is involved in a lawsuit does not necessarily mean that the interpretation of national laws will be required or that the state court is not otherwise equipped to hear the case. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

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

When a case has been removed from state court on the ground that it arose under national law but the plaintiff's complaint only relies upon common law principles of breach of fiduciary duty and as such does not arise under national law because no issue of national law appears on the face of the complaint and no substantial issue of national law is raised, the case will be remanded to the state court where it was initially filed. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

When an amended complaint's deliberate indifference or negligence allegations do not rise to the level of a constitutional due process claim, it does not state a claim upon which the FSM Supreme Court can grant relief and the trial court's dismissal of the amended complaint will therefore be affirmed. Primo v. Pohnpei Transp. Auth., 9 FSM R. 407, 412 (App. 2000).

Determination of whether a case arises under the Constitution, national law, or a treaty is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001).

National law defenses do not constitute a basis for arising under national law jurisdiction pursuant to section 6(b). FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001).

Determination of whether a case arises under the Constitution, national law, or a treaty is

based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

A case that asserts five causes of action under 32 F.S.M.C. 301 *et seq.*, is one that "arises under national law" within the meaning of Article XI, section 6(b). Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 203 (Pon. 2001).

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

A party to a dispute within the scope of article XI, section 6(b) has a constitutional right to invoke the jurisdiction of the FSM Supreme Court. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

Although national law provides for the reciprocal enforcement of child support orders, case law supports the conclusion that FSM Supreme Court should abstain from exercising its jurisdiction at least until the state court has had the opportunity to rule on the issues. Villazon v. Mafnas, 11 FSM R. 309, 310 (Pon. 2003).

When the plaintiff has alleged that his termination from the Head Start Program violated his rights secured under the FSM Constitution, the FSM Supreme Court has concurrent original jurisdiction over the matter. Reg v. Falan, 11 FSM R. 393, 399 (Yap 2003).

A motion to dismiss for lack of jurisdiction will be denied when the plaintiffs' complaint alleges claims that arise under national law and the national constitution because the FSM Supreme Court exercises jurisdiction over such cases, and, although state courts may also exercise jurisdiction over such cases, the plaintiffs have a constitutional right to bring such cases in the FSM Supreme Court if they so desire. Naoro v. Walter, 11 FSM R. 619, 621 (Chk. 2003).

A cross-claim cannot form a basis for the FSM Supreme Court's jurisdiction because determination of whether a case arises under the Constitution, national law, or a treaty is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. Mailo v. Chuuk, 12 FSM R. 597, 600 (Chk. 2004).

The national courts, including the trial division of the Supreme Court, have concurrent original jurisdiction in cases arising under national law. National courts are the trial division of the FSM Supreme Court and any other national courts that might be established by statute, and not state courts. Shrew v. Sigrah, 13 FSM R. 30, 32 (Kos. 2004).

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

Section 6(b) of Article XI of the FSM Constitution provides that the national courts, including the Supreme Court trial division, have concurrent original jurisdiction in cases arising under the

Constitution, national law or treaties, and in disputes between a state and a citizen of another state, between citizens of different states, and between a state or citizen thereof, and a foreign state, citizen, or subject. The national courts referred to in this section are the FSM Supreme Court trial division and any other national courts which may be established in the future. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 147 (App. 2005).

Determination of whether the FSM Supreme Court has subject matter jurisdiction over a case is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. McVey v. Etscheit, 13 FSM R. 473, 476 (Pon. 2005).

Determination of whether a case arises under the Constitution, national law, or a treaty is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. Etscheit v. McVey, 13 FSM R. 477, 479 (Pon. 2005).

To determine whether a case arises under national law, the issue of national law must be an essential element of one or more of the plaintiff's causes of action, it must be disclosed upon the face of the complaint, unaided by the answer, the petition for removal or any pleadings subsequently filed in the case, it may not be inferred from a defense asserted or one expected to be made, and the issue of national law raised must be a substantial one. Etscheit v. McVey, 13 FSM R. 477, 479 (Pon. 2005).

When the plaintiffs' fifth cause of action is expressly entitled "Violation of the FSM Anti-competitive Practices Law" and the text specifically states that it alleges violations of the "Federated States of Micronesia Anti-competitive Practices Act" and cites 32 F.S.M.C. §§ 302-306 twice and when no Pohnpei state law or the Trust Territory predecessor statute is cited, this is thus clearly a cause of action arising under national law. The FSM Supreme Court has jurisdiction over cases arising under national law. Since the issue raised is a substantial one, the case was therefore not improvidently removed from the Pohnpei Supreme Court. Etscheit v. McVey, 13 FSM R. 477, 479-80 (Pon. 2005).

A case that came before the court based on the court's exclusive jurisdiction over cases when the national government is a party and where the plaintiff's asserted claims primarily arose under national law, is not a diversity case where state law provides the rules of decision. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

When the case was first filed in the FSM Supreme Court as an action for civil rights and due process and certain fact-finding functions were referred to the Pohnpei Board of Trustees because it was best able, at least initially, to make those determinations, the remand or reference to the Board did not divest the court of jurisdiction because in making that remand or reference, the court was not transferring this case to the Board of Trustees and the Board does not have the authority to grant much of the relief sought in the case – damages for civil rights and due process violations and for trespass and injunctive relief. Jurisdiction over the case remained with the court the whole time. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 156-57 (Pon. 2006).

When the remand or reference to the Board of Trustees was analogous to this court's power to appoint a special master to make factual findings, which the court may or may not adopt as its own findings and was also similar to those cases that were initiated in the FSM Supreme Court in Chuuk and then "remanded" to the Chuuk Land Commission for certain

factual determinations and those cases then either "appealed" back to, or referred back to, the FSM Supreme Court trial division when those determinations were either completed or some other issue came up that required court determination, and when the Board, in effect, acted as a special master – a court-designated fact finder. When the FSM Supreme Court had subject-matter jurisdiction over the complaint's allegations when it was filed, the court still retained that jurisdiction and the remand or reference is thus not a ground upon which to grant dismissal. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 157 (Pon. 2006).

Since an allegation of police brutality implicates both the national and state constitutions and a plaintiff asserting a right arising under national law has a right to be heard in the FSM Supreme Court even if state courts may also assert jurisdiction, the fact that the Pohnpei Supreme Court may be equally equipped to decide the case will not divest the plaintiff of his day in the FSM Supreme Court. Annes v. Primo, 14 FSM R. 196, 201 (Pon. 2006).

When, accepting the plaintiffs' allegations as true, which the court must on a Rule 12(b)(6) motion to dismiss, the plaintiffs state a claim that their civil rights were violated by an illegal act under the color of law, their case will not be dismissed. A determination of whether a case arises under the national constitution or national law is based on the plaintiff's statement of his case in his complaint, and, although a state court may exercise jurisdiction over such cases, a plaintiff has the constitutional right to bring such claims in the national court. Esa v. Elimo, 14 FSM R. 216, 219 (Chk. 2006).

A claim of denial of the right to suffrage in a state election because no revote was ordered is not a claim arising under the national constitution or law. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 397 (Chk. 2009).

When the parties are of diverse citizenship and when some of the plaintiff's claims arise under a treaty to which the FSM is a party, the FSM Supreme Court would, on either ground, have subject-matter jurisdiction over the case if an actual case or dispute exists. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 157 (Chk. 2010).

When a plaintiff clearly bases his cause of action on 11 F.S.M.C. 701, the national civil rights statute, it is obvious that he is invoking the FSM Supreme Court's jurisdiction over the case as one arising under FSM national law. Welle v. Chuuk Public Utility Corp., 17 FSM R. 609, 611 (Chk. 2011).

National law is not at issue in a case when the plaintiffs, in the complaint or in their initial motion for injunction, do not cite a particular national law at issue and their only mention of any sort of national law is in their October 19, 2011 "Notice of Terminology" and their October 31, 2011 "Supplement to Pending Motion for Injunction," where they cite only twenty-year-old "findings" of the FSM Secretary of Health and Human Services, and the FSM Earthmoving Regulations, neither of which apply to the defendants named in the complaint. Damarlane v. U Mun. Gov't, 18 FSM R. 96,98-99 (Pon. 2011).

When the plaintiff alleges that the state took his property without just compensation, but he only cites to the Chuuk Constitution provision barring Chuuk from taking property without just compensation and does not allege that Chuuk's alleged acts violated any FSM Constitutional provision, his complaint does not appear to allege claims arising under national law and thus does not show FSM Supreme Court jurisdiction. Iwo v. Chuuk, 18 FSM R. 182, 184 (Chk.

2012).

A writ of habeas corpus may be used in situations involving an individual incarcerated without probable cause. In re Anzures, 18 FSM R. 316, 320 (Kos. 2012).

The FSM Supreme Court has the power to issue all writs and must consider a petition for a writ of habeas corpus alleging imprisonment of the petitioner in violation of his rights under the FSM Constitution. In re Anzures, 18 FSM R. 316, 321 (Kos. 2012).

In the absence of any statutory restrictions, the FSM Supreme Court will, under the proper circumstances, consider applications for a writ of habeas corpus on the grounds that a person is in custody in violation of the FSM Constitution. The overriding purpose of such a writ is to protect an individual's right to be free from wrongful intrusions and restraints upon their liberty. In re Anzures, 18 FSM R. 316, 322 (Kos. 2012).

It is within the FSM Supreme Court's province to determine whether a Chuuk statute, as applied, runs afoul of the FSM Constitution. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 505 (Chk. 2013).

If the case arises under the FSM Constitution, national law, or treaties, then the FSM Supreme Court trial division has concurrent jurisdiction over the subject-matter. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

For some cases arising under national law, Congress has placed exclusive jurisdiction in the FSM Supreme Court trial division. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 n.1 (Pon. 2013).

The determination of whether a case is one "arising under" the FSM Constitution, national law, or treaties is derived from the plaintiff's cause of action, not inferred from any possible defenses. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

Since the Constitution explicitly grants the FSM Supreme Court trial division concurrent and original jurisdiction over any cases arising under treaties and since a breach of the inviolability of the embassy premises is a direct violation of an international treaty and international law, the FSM Supreme Court trial division has original jurisdiction over a prosecution for a misdemeanor trespass and theft committed in a foreign embassy. FSM v. Ezra, 19 FSM R. 486, 491-92 (Pon. 2014).

As a defense raised in the answer to the original complaint, a defendant's due process claims would not make it a case over which the FSM Supreme Court would have jurisdiction because it would not be considered a case arising under the FSM Constitution or national law. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 2014).

The determination of whether a case is one "arising under" the FSM Constitution, national law, or treaties is derived from the plaintiff's cause of action, not inferred from any possible defenses that are or that might be raised. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 2014).

Since a cross-claim cannot form a basis for the FSM Supreme Court's jurisdiction because determination of whether a case arises under the Constitution, national law, or a treaty is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that

might be raised, a third-party claim should not create subject-matter jurisdiction in the FSM Supreme Court either. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 2014).

When the case is not a case arising under the FSM Constitution or national laws, the only grounds asserted for jurisdiction, the FSM Supreme Court does not have subject-matter jurisdiction over it, and when the FSM Supreme Court does not have any subject-matter jurisdiction over a case, the case will be dismissed without prejudice to any later adjudication in a state court. Isamu Nakasone Store v. David, 20 FSM R. 53, 58 (Pon. 2015).

The FSM Constitution's Article VII, section 2 provides no basis for a party to seek relief in the FSM Supreme Court and no basis on which the party is likely to prevail when the party does not argue that the Chuuk has an undemocratic constitution but instead contends that the Chuuk executive branch is expending Chuuk state funds (albeit originally appropriated by Congress) without an appropriation of those funds by the Chuuk Legislature and that this is a violation of Chuuk's democratic constitution. Mailo v. Lawrence, 20 FSM R. 201, 204 (Chk. 2015).

Article XI, Section 6(b) grants the national courts concurrent original jurisdiction in cases arising under national law and these forums include the FSM Supreme Court trial division and any other national courts which might be established by statute, but not state courts. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

"Arising under" jurisdiction was limited to those matters, in which four factors exist: 1) a national law issue is an essential element of the cause of action; 2) the issue of national law is disclosed upon the complaint's face; 3) the issue of law is not inferred from a defense which is asserted and 4) the issue of law is a substantial one. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 (App. 2016).

The framers' intent was that "arising under" jurisdiction extend to cases involving the enforcement of a right protected or created by the national constitution, national law, or treaty and cases involving the construction or interpretation of the national constitution, national law, or treaty. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 (App. 2016).

In light of the self-executing grants of jurisdiction embodied within the FSM Constitution, the United States decisions, which address the underlying congressional intent, provide little guidance, in terms of analysis of the Article XI, Section 6(b) "arising under" language, against the backdrop of a constitutional provision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 517 (App. 2016).

Arising under jurisdiction enables the FSM Supreme Court to explicate the meaning of our Constitution's jurisdictional grants and thereby ensure an appropriate level of uniformity in the applicability thereof. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 518 (App. 2016).

Concurrent jurisdiction properly exists given the diverse citizenship of the parties or when consonant with the "arising under" constitutional provision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 518 (App. 2016).

When the complaint alleges violation of the plaintiff's civil rights under the FSM Constitution, the FSM Supreme Court has before it, at a bare minimum, a case that arises under the FSM Constitution and the court thus has jurisdiction under Section 6(b), with the state law matters that may be considered under the court's pendent jurisdiction. Rodriguez v. Ninth Pohnpei Legislature, 21 FSM R. 276, 278 (Pon. 2017).

The FSM Supreme Court has held it may exercise jurisdiction over appeals from state administrative agencies when those appeals have included due process violation and civil rights claims arising under the FSM Constitution. Phillip v. Pohnpei, 21 FSM R. 439, 442 (Pon. 2018).

When the defendant is not a governmental entity, is not alleged to have acted under color of law, and is not a private person (not acting under color of law) who injured, oppressed, threatened, or intimidated the plaintiff exercising or enjoying or having exercised or enjoyed any civil right, the plaintiff's claim is not a civil rights claim. Apostol v. Maniquiz, 22 FSM R. 146, 149 (Chk. 2019).

The determination of whether a case is one "arising under" the FSM Constitution, national law, or a treaty is derived from the plaintiff's cause of action and not inferred from any possible defense that is or that might be pled. Apostol v. Maniquiz, 22 FSM R. 146, 149 (Chk. 2019).

Whether an allegedly defamatory pleading in a case filed in a national court is privileged or actionable should be decided as a matter of national law and is thus a matter arising under national law. Helgenberger v. Helgenberger, 22 FSM R. 244, 249 (Pon. 2019).

A case that alleges that a state law is, or contains, a bill of attainder in violation of the FSM Constitution is a claim that arises under the Constitution and over which the FSM Supreme Court may exercise jurisdiction. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

As the constitutional prohibition of bills of attainder bars all such legislative acts, if a state law is a bill of attainder, the FSM Supreme Court has the jurisdiction to strike it (or the part of it that is a bill of attainder) down as unconstitutional and to enjoin its enforcement. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 263 (Chk. 2019).

The FSM Supreme Court has jurisdiction over a case as one arising under the Constitution, national law, or treaties, when the plaintiff asserts that the defendants violated three different FSM Constitution provisions and also violated an FSM Code provision. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 328 (Pon. 2019).

Congress's power to regulate bankruptcy and insolvency is an exclusive national power, and bankruptcy cases are, by law, assigned to the FSM Supreme Court trial division. Panuelo v. Sigrah, 22 FSM R. 341, 351 (Pon. 2019).

Any claim that a bankruptcy receiver was overcompensated is solely a matter of national (bankruptcy) law, and a claim that a bankruptcy receiver paid the creditors of a debtor, who had sought bankruptcy protection, more than was their due is also a matter arising only under national bankruptcy law. Panuelo v. Sigrah, 22 FSM R. 341, 351 (Pon. 2019).

– Diversity

The Trust Territory is not a foreign state such as to give the FSM Supreme Court diversity jurisdiction over a suit against the Trust Territory. Neimes v. Maeda Constr. Co., 1 FSM R. 47, 51 (Truk 1982).

Under the present state of affairs, the Trust Territory government cannot be considered a

foreign state, citizen or subject thereof within the meaning of article XI, section 6(b) of the Constitution. Lonno v. Trust Territory (I), 1 FSM R. 53, 74 (Kos. 1982).

The Federated States of Micronesia Supreme Court is specifically given jurisdiction over disputes between citizens of a state and foreign citizens. FSM Const. art. XI, § 6(b). The jurisdiction is based upon the citizenship of the parties, not on the subject matter of the dispute. In re Nahnsen, 1 FSM R. 97, 101 (Pon. 1982).

The Constitution places diversity jurisdiction in the Supreme Court, despite the fact that the issues involve matters within state or local, rather than national, legislative powers. In re Nahnsen, 1 FSM R. 97, 102 (Pon. 1982).

A primary purpose of diversity jurisdiction is to minimize any belief of the parties that a more local tribunal might favor local parties in disputes with "outsiders." In re Nahnsen, 1 FSM R. 97, 102 (Pon. 1982).

A requirement for complete diversity among all parties has no constitutional support as a prerequisite to FSM Supreme Court jurisdiction. In re Nahnsen, 1 FSM R. 97, 105-06 (Pon. 1982).

When jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative powers of states (e.g., probate, inheritance and land issues) may be involved. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 392-93 (Pon. 1984).

Diversity of citizenship is determined as of commencement of the action. Where diversity existed between the parties at the date and time the suit commenced, diversity will not be defeated by later developments. Etpison v. Perman, 1 FSM R. 405, 414 (Pon. 1984).

Where there is diversity of citizenship between the parties, litigation involving domestic relations issues, including custody and child support, falls within the jurisdiction of the FSM Supreme Court. Mongkeya v. Brackett, 2 FSM R. 291, 292 (Kos. 1986).

For purposes of diversity jurisdiction under article XI, section 6(b) of the Constitution, a corporation is considered a foreign citizen when any of its shareholders are not citizens of the Federated States of Micronesia. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM R. 256, 260 (Pon. 1987).

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. Pohnpej, 3 FSM R. 350, 360 n.22 (Pon. 1988).

Lack of mention of state and local courts in FSM Constitution article XI, section 6(b) reveals that national courts are to play the primary role in handling the kinds of cases, identified in that section, but nothing in article XI, section 6(b) may be read as absolutely preventing state courts from exercising jurisdiction over those kinds of cases. Bank of Guam v. Semes, 3 FSM R. 370, 379 (Pon. 1988).

Parties to a dispute in which there is diversity have a constitutional right to invoke the jurisdiction of a national court, but if all parties agree, and if state law permits, a state court may hear and decide the kinds of cases described in article XI, section 6(b) of the Constitution. Bank of Guam v. Semes, 3 FSM R. 370, 379 (Pon. 1988).

Only national courts are given jurisdiction by article XI, section 6(b) of the Constitution and the concurrent jurisdiction referred to there is between the trial division of the FSM Supreme Court, and any other national courts which may be established in the future. Bank of Guam v. Semes, 3 FSM R. 370, 377 (Pon. 1988).

The Trust Territory of the Pacific Islands, which still exists and has governmental powers in the Republic of Palau, is now "foreign" to the Federated States of Micronesia and a corporation organized under the laws of the Trust Territory may itself be regarded as foreign for purposes of diversity of citizenship jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 392 (Pon. 1988).

The Constitution requires only that one plaintiff has citizenship different from one defendant for there to be diversity jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 392 (Pon. 1988).

The national Constitution does not prohibit state courts from hearing cases described in article XI, section 6(b) if all parties accept state court jurisdiction, but parties to a dispute within scope of article XI, section 6(b) have a constitutional rights to invoke jurisdiction of FSM Supreme Court trial division. U Corp. v. Salik, 3 FSM R. 389, 392 (Pon. 1988).

Intent of framers of the Constitution was that national courts would handle most types of cases described in article XI, section 6(b) of the Constitution and national courts therefore should not lightly find a waiver of right to invoke its jurisdiction. U Corp. v. Salik, 3 FSM R. 389, 394 (Pon. 1988).

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

The Truk State Court will not assert jurisdiction in a diversity case because the "The national courts, including the trial division of the Supreme Court, have concurrent original jurisdiction . . . in disputes between a state and a citizen of another state, between citizens of different states, and between a state or a citizen thereof, and a foreign state, or subject." FSM Const. art. XI, § 6(b). Flossman v. Truk, 3 FSM R. 438, 440 (Truk S. Ct. Tr. 1988).

State courts are not prohibited by article XI, section 6(b) of the FSM Constitution from hearing and determining cases where the defendants are from FSM states other than the prosecuting state. Jurisdiction over criminal matters between the national and state governments is determined by the severity of the crime; not diversity of citizenship. Pohnpei v. Hawk, 3 FSM R. 543, 554 (Pon. S. Ct. App. 1988).

"Concurrent jurisdiction" as used in article XI, section 6(b) of the FSM Constitution means concurrent jurisdiction between national courts, including the trial divisions of the FSM Supreme Court and of the four state courts. Pohnpei v. Hawk, 3 FSM R. 543, 554-55 (Pon. S. Ct. App. 1988).

When all of the parties are citizens of foreign states there is no diversity of citizenship subject matter jurisdiction under article XI, section 6(b). International Trading Co. v. Hitec Corp., 4 FSM R. 1, 2 (Truk 1989).

A joint venture, without the powers to sue or be sued in the name of the association and without limited liability of the individual members of the association, is not a citizen of Truk State for diversity purposes even though its principal place of business is in Truk State. International Trading Corp. v. Hitec Corp., 4 FSM R. 1, 2 (Truk 1989).

A cautious, reasoned use of the doctrine of abstention is not a violation of the FSM Supreme Court's duty to exercise diversity jurisdiction, or of the litigants' constitutional rights, under article XI, section 6(b) of the FSM Constitution. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 39 (Pon. 1989).

While the FSM Constitution provides initial access to the FSM Supreme Court for any party in article XI, section 6(b) litigation, the court may, having familiarized itself with the issues, invoke the doctrine of abstention and permit the case to proceed in a state court, since the power to grant abstention is inherent in the jurisdiction of the FSM Supreme Court, and nothing in the FSM Constitution precludes the court from abstaining in cases which fall within its jurisdiction under article XI, section 6(b). Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 42-43 (Pon. 1989).

No jurisdiction is conferred on state courts by article XI, section 6(b) of the FSM Constitution, but neither does the diversity jurisdiction of section 6(b) preclude state courts from acting under state law, unless or until a party to the litigation invokes national court jurisdiction. Hawk v. Pohnpei, 4 FSM R. 85, 89 (App. 1989).

It is consistent with the broad plan of the framers of the FSM Constitution that the Constitution would not require that diversity jurisdiction be available in criminal proceedings. Hawk v. Pohnpei, 4 FSM R. 85, 94 (App. 1989).

Although the purpose of diversity jurisdiction is to provide parties who are not citizens of the state where a matter arises with a national forum for which the federation of states is responsible, the need to safeguard the legitimate rights of a noncitizen in a state forum must be balanced against the understandable concern of the society of that state to control standards of behavior in accordance with its own set of values. Hawk v. Pohnpei, 4 FSM R. 85, 94 (App. 1989).

The diversity jurisdiction provisions of article XI, section 6(b) of the FSM Constitution do not apply to criminal proceedings. Hawk v. Pohnpei, 4 FSM R. 85, 94 (App. 1989).

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

Issues concerning land usually fall into state court jurisdiction, but if there are diverse parties having bona fide interests in the case or dispute, the Constitution places jurisdiction in the national courts even if interests in land are at issue. Etscheit v. Adams, 5 FSM R. 243, 246 (Pon. 1991).

When an estate is a party it is the citizenship of the estate representative that is to be considered for diversity purposes. Etscheit v. Adams, 5 FSM R. 243, 246 (Pon. 1991).

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

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

National courts can exercise jurisdiction over divorce cases where there is diversity of citizenship although domestic relations are primarily the subject of state law. Youngstrom v. Youngstrom, 5 FSM R. 335, 336 (Pon. 1992).

In a diversity of citizenship case the FSM Supreme Court will normally apply state law. Youngstrom v. Youngstrom, 5 FSM R. 335, 337 (Pon. 1992).

For purposes of diversity jurisdiction a corporation is considered a foreign citizen when any of its shareholders are not FSM citizens. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 44 (App. 1995).

For purposes of diversity jurisdiction a joint venture is considered a foreign citizen when the parties to it are not FSM citizens. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 44 (App. 1995).

For purposes of diversity jurisdiction it is the citizenship of the estate administrator that is to be considered for determining citizenship of a decedent's estate. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 44 (App. 1995).

Where the constitutional language itself, following FSM precedents on constitutional interpretation, only requires minimal diversity for the national courts to have jurisdiction, and the constitutional journals do not reveal any intent to depart from the plain meaning of the constitutional language, there are no sound reasons why twelve years of FSM jurisprudence requiring only minimal diversity should be overturned. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 48 (App. 1995).

The FSM Supreme Court has diversity jurisdiction only in disputes between a state and a citizen of another state, between citizens of different states, and between a state or a citizen thereof, and a foreign state, citizen, or subject. Diversity jurisdiction thus does not exist when all the parties are foreign citizens, even though they may be citizens of different foreign nations. In such cases, the court's subject matter jurisdiction must be based on some other ground. Trance v. Penta Ocean Constr. Co., 7 FSM R. 147, 148 (Chk. 1995).

For the purposes of diversity jurisdiction the citizenship of a corporation is considered foreign if any of its shareholders are not FSM citizens or if it was organized under the laws of a

foreign government. The citizenship of a corporation formed in the FSM and wholly owned by FSM citizens is in the state of its principal place of business. Ladore v. U Corp., 7 FSM R. 296, 298 (Pon. 1995).

In a diversity case, a litigant may avail himself of the FSM Supreme Court's jurisdiction even though state law may determine the outcome of the litigation. Island Dev. Co. v. Yap, 9 FSM R. 18, 22 (Yap 1999).

There is no statutory or decisional authority in the FSM which would permit a joint venture to be considered a citizen of the state where its principal place of business is located. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

A corporation that has any foreign ownership at all is a noncitizen of the FSM for diversity purposes. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 (Yap 1999).

Any business entity in which any ownership interest is held by a person who is not a citizen of the FSM is a non-citizen. Island Dev. Co. v. Yap, 9 FSM R. 220, 223 & n.1 (Yap 1999).

A general partnership is a foreign citizen for diversity purposes when any ownership interest is held by a foreign citizen. Island Dev. Co. v. Yap, 9 FSM R. 220, 223-24 (Yap 1999).

In order to invoke the FSM Supreme Court's diversity jurisdiction under article XI, section 6(b) of the FSM Constitution, only one plaintiff need have citizenship different from one defendant. Island Dev. Co. v. Yap, 9 FSM R. 288, 290 (Yap 1999).

Since the FSM Supreme Court can decide a land issue under its diversity jurisdiction, the mere addition of the national government as another party to a diversity case should not divest the FSM Supreme Court of jurisdiction. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

In determining the question of jurisdiction based on the parties' citizenship, the FSM Supreme Court must look only to the parties of record. Enlet v. Bruton, 10 FSM R. 36, 40 (Chk. 2001).

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

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

A state court joinder of a diverse party does not deprive the state court of jurisdiction, it merely makes its jurisdiction concurrent with the FSM Supreme Court. Enlet v. Bruton, 10 FSM R. 36, 41 (Chk. 2001).

The FSM Supreme Court does not have diversity jurisdiction under Article XI, section 6(b) over disputes between two foreign citizens, even if they are citizens of different countries. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM R. 200, 203 (Pon. 2001).

The FSM Constitution grants the FSM Supreme Court jurisdiction over disputes between a

citizen of an FSM state and a citizen of a foreign state. Pernet v. Woodruff, 10 FSM R. 239, 242 (App. 2001).

No jurisdiction is conferred on state courts by article XI, section 6(b) but neither does section 6(b) diversity jurisdiction preclude state courts from acting under state law, unless or until a party to the litigation invokes national court jurisdiction. Pernet v. Woodruff, 10 FSM R. 239, 242 (App. 2001).

Both a state court and a national court may have jurisdiction over a case where, absent diversity considerations, the case is otherwise properly before the state court. Pernet v. Woodruff, 10 FSM R. 239, 242 (App. 2001).

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

The benefit the Constitution secures to diverse parties is the right to litigate in national court. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

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

A motion to dismiss a state court case because of diversity neither divests the state court of jurisdiction nor invokes the FSM Supreme Court's diversity jurisdiction. Pernet v. Woodruff, 10 FSM R. 239, 243 (App. 2001).

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

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

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

Section 6(b) does not grant the FSM Supreme Court exclusive jurisdiction over diversity cases. Section 6(b) does not bar a state court from exercising jurisdiction over a case in which the parties are of diverse citizenship, if the state court otherwise has jurisdiction. First Hawaiian Bank v. Berdon, 10 FSM R. 538, 539 (Chk. S. Ct. Tr. 2002).

If diverse parties wished to have a case in the Chuuk State Supreme Court heard in the FSM Supreme Court, they should have removed the case to the FSM Supreme Court using the procedure outlined in FSM General Court Order 1992-2. When they have not, a motion to dismiss filed in the Chuuk State Supreme Court will not invoke that court's jurisdiction. First

Hawaiian Bank v. Berdon, 10 FSM R. 538, 539 (Chk. S. Ct. Tr. 2002).

There is no requirement of complete diversity of parties for the FSM Supreme Court to have jurisdiction over a matter. The FSM Constitution requires only that one plaintiff has citizenship different from one defendant for there to be diversity jurisdiction. Ambros & Co. v. Board of Trustees, 11 FSM R. 17, 23 (Pon. 2002).

For purposes of diversity jurisdiction under article XI, section 6(b) of the Constitution, a corporation is considered a foreign citizen when any of its shareholders are not citizens of the FSM. Ambros & Co. v. Board of Trustees, 11 FSM R. 17, 24 (Pon. 2002).

When jurisdiction exists by virtue of the parties' diversity, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the states' legislative powers (e.g., probate, inheritance and land issues) may be involved. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

In property cases, if there are diverse parties having bona fide interests in the case or dispute, the FSM Constitution places jurisdiction in the FSM Supreme Court, and this is so even if interests in land are at issue in the litigation. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

A party to a dispute within the scope of article XI, section 6(b) has a constitutional right to invoke the jurisdiction of the FSM Supreme Court. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 100 (Pon. 2002).

The FSM Supreme Court has concurrent jurisdiction along with the state courts to hear cases where diversity of citizenship of the parties exists. Gilmete v. Adams, 11 FSM R. 105, 108 (Pon. 2002).

It is well settled that the FSM Supreme Court may hear cases based on diversity even when land is at issue. Gilmete v. Adams, 11 FSM R. 105, 108 (Pon. 2002).

The FSM Supreme Court cannot imply or create diversity of citizenship in a case. If it does not have subject matter jurisdiction in a case, it does not have the authority or jurisdiction to issue an order joining another party. Gilmete v. Adams, 11 FSM R. 105, 110 (Pon. 2002).

Diversity jurisdiction does not exist when all the parties are foreign citizens, even though they may be citizens of different foreign nations. In such cases, the FSM Supreme Court's subject matter jurisdiction must be based on some other ground. Kelly v. Lee, 11 FSM R. 116, 117 (Chk. 2002).

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

A corporation partly owned by non-FSM citizens, is a foreign citizen for diversity jurisdiction purposes because a corporation is deemed a foreign citizen when any of its shareholders are not FSM citizens. Marcus v. Truk Trading Corp., 11 FSM R. 152, 155 (Chk. 2002).

If diversity of citizenship among the parties were not present and there were no other basis of jurisdiction, the FSM Supreme Court would be without subject matter jurisdiction, and any judgment it might render would be void and without any res judicata effect because all proceedings that had taken place would have been for naught, and the plaintiffs would have to start all over again in state court if they still wished to pursue the matter. Marcus v. Truk Trading Corp., 11 FSM R. 152, 155 n.1 (Chk. 2002).

It is well established that the FSM Supreme Court has jurisdiction as a result of the parties' diversity of citizenship. Villazon v. Mafnas, 11 FSM R. 309, 310 (Pon. 2003).

It is well established that diversity is determined as of the commencement of the action. Once diversity jurisdiction attaches, or vests, it is not defeated by later developments, such as a party's later change of domicile or the dismissal of a party due to partial settlement. Island Homes Constr. Corp. v. Pohnpei Transp. Auth., 12 FSM R. 128, 129 (Pon. 2003).

When a consolidated case is before the FSM Supreme Court trial division under its diversity jurisdiction – because of the parties' diverse citizenship – state law will usually provide the rules of decision. This is especially true in real property cases. Enlet v. Bruton, 12 FSM R. 187, 189 (Chk. 2003).

In a diversity case, the FSM Supreme Court trial division has no greater and no lesser power than the state court would have if it were hearing the case. It may exercise whatever powers the state court could have if the case been before that court. Enlet v. Bruton, 12 FSM R. 187, 189 (Chk. 2003).

It has been a principle of long standing that, for purposes of diversity jurisdiction under the Constitution's article XI, section 6(b), a corporation or a joint venture is considered a foreign citizen when any of its shareholders are not FSM citizens. Its place of incorporation is irrelevant. Geoffrey Hughes (Export) Pty, Ltd. v. America Ducksan Co., 12 FSM R. 413, 414 (Chk. 2004).

When all parties to an action are foreign citizens, even if they are citizens of different foreign countries, the FSM Supreme Court does not have diversity jurisdiction. Geoffrey Hughes (Export) Pty, Ltd. v. America Ducksan Co., 12 FSM R. 413, 415 (Chk. 2004).

Section 6(b) of Article XI of the FSM Constitution provides that the national courts, including the Supreme Court trial division, have concurrent original jurisdiction in cases arising under the Constitution, national law or treaties, and in disputes between a state and a citizen of another state, between citizens of different states, and between a state or citizen thereof, and a foreign state, citizen, or subject. The national courts referred to in this section are the FSM Supreme Court trial division and any other national courts which may be established in the future. Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 147 (App. 2005).

Section 6(a) contains a single jurisdictional exception limited in scope to a case involving

the national government as a party. In contrast, Section 6(b) contains no exception of any kind. This admits of no conclusion other than the obvious one: the Framers intended that the limited exception stated in Section 6(a) apply to cases involving an interest in land in which the national government is a party, and with equal force intended that no such exception apply to any of the kinds of cases specified in Section 6(b). Gilmete v. Carlos Etscheit Soap Co., 13 FSM R. 145, 148 (App. 2005).

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

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

If in the complaint, a plaintiff asserts a contractual cause of action over which the FSM Supreme Court may exercise diversity jurisdiction, whether the defendants might ultimately prevail on one or more of their defenses does not deprive the FSM Supreme Court of subject matter jurisdiction. McVey v. Etscheit, 13 FSM R. 473, 476 (Pon. 2005).

Minimal diversity of citizenship, not complete diversity, is the rule in the Federated States of Micronesia. Lee v. Han, 13 FSM R. 571, 576 (Chk. 2005).

Diversity jurisdiction gives concurrent original jurisdiction to the state and national courts. FSM GCO 1992-2 provides for removal of diversity cases from the state to national courts and is directed solely to the issue of the transfer of cases between the state and national courts. It provides a procedure for removal, not authority for dismissal from state court. Muller v. Enlet, 16 FSM R. 92, 94 (Chk. S. Ct. Tr. 2008).

A motion to dismiss filed in the Chuuk State Supreme Court asserting non-consent to the court's jurisdiction will not, by its invocation of the FSM court's jurisdiction, deprive the Chuuk State Supreme court of its jurisdiction. Rather, in diversity cases, state courts otherwise having jurisdiction pursuant to state law are not divested of jurisdiction unless or until a removal petition is timely filed, prompt written notice of such filing is served upon all parties, and a copy of the petition is filed with the state court clerk. Thus, when an action is originally filed in state court, the state court retains its jurisdiction, despite the diversity of parties, so long as the same action is not filed in or removed to the FSM court. An allegation of diversity jurisdiction is not a proper basis for a defendant's motion to dismiss. Muller v. Enlet, 16 FSM R. 92, 94 (Chk. S. Ct. Tr. 2008).

When the parties are of diverse citizenship and when some of the plaintiff's claims arise under a treaty to which the FSM is a party, the FSM Supreme Court would, on either ground, have subject-matter jurisdiction over the case if an actual case or dispute exists. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 157 (Chk. 2010).

Since national court jurisdiction is proper when the parties are diverse, a Kosrae statute that requires a foreclosure action to be filed in Kosrae State Court cannot divest the FSM Supreme Court of its constitutionally mandated jurisdiction under the FSM Constitution. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

Minimal diversity, not complete diversity, is the rule in the Federated States of Micronesia. Damarlane v. U Mun. Gov't, 18 FSM R. 96, 98 (Pon. 2011).

When a fair reading of the complaint does not show a cause of action against the one diverse defendant, that person is thus merely a nominal party present only so that the plaintiff can plead the court's diversity jurisdiction. When the plaintiff has, for the sole purpose of attempting to create diversity of citizenship, named a person as a defendant against whom he asserts no cause of action or claim for relief, the court will dismiss the nominal diverse defendant from the case as improperly joined and then dismiss the complaint for lack of subject-matter jurisdiction because there was no actual diversity of citizenship when the case was filed. Hauk v. Mijares, 18 FSM R. 185, 187 (Chk. 2012).

The court does not believe that it can exercise jurisdiction over every credit dispute between a customer and a local business merely because that business has a foreign accountant (or manager) who a plaintiff can name as a nominal, but diverse, defendant. Hauk v. Mijares, 18 FSM R. 185, 187 (Chk. 2012).

A Chuukese plaintiff in a suit against a Chuukese business or other Chuukese entity cannot create jurisdiction in the FSM Supreme Court merely by adding the defendant's non-citizen employees as co-defendants when the plaintiff's claims are only against the employer. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 (Chk. 2012).

Even though a court must exercise its discretion liberally to grant leave to amend a complaint, the court should deny a motion to amend when it would be futile to amend the complaint to add diverse parties from whom no relief can be obtained since they are not statutorily liable to plaintiff. Chuuk Health Care Plan v. Chuuk Public Utility Corp., 18 FSM R. 409, 411 (Chk. 2012).

If the case involves parties of diverse (different) citizenship, then the FSM Supreme Court trial division has concurrent jurisdiction, unless all the parties are foreign citizens. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

Only minimal, not complete, diversity of citizenship is required for subject-matter jurisdiction in the FSM Supreme Court. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

If a party is a corporation, the corporation's citizenship is the citizenship of its shareholders and, for purposes of diversity jurisdiction, a corporation is considered a foreign citizen when any of its shareholders are not FSM citizens. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

Even if the FSM Development Bank were not an FSM national government agency, the FSM Supreme Court would still have subject-matter jurisdiction over the case as one between a plaintiff corporation with Chuuk and Kosrae citizenship and Pohnpei citizen defendants. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

Complete diversity of citizenship is not a requirement for the FSM Supreme Court to have subject-matter jurisdiction in a diversity case; only minimal diversity is required. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 18 FSM R. 653, 656 (Pon. 2013).

The FSM Supreme Court is empowered to exercise authority in probate matters when there is an independent basis for jurisdiction under the Constitution, and the court has found such an independent basis when there was a diversity of citizenship among the heirs. In re Estate of Edmond, 19 FSM R. 59, 61 (Kos. 2013).

Parties to a dispute within the scope of article XI, section 6(b) diversity jurisdiction have a constitutional right to invoke the FSM Supreme Court's jurisdiction and it is the solemn obligation of the court and all others within the Federated States of Micronesia to uphold the constitutional right to invoke national court jurisdiction under article XI, section 6(b). Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

The FSM Supreme Court's solemn obligation to consider the interests and protect the rights of those who wish to invoke its constitutional jurisdiction counsels against the unfettered use of abstention. The benefit the Constitution secures to diverse parties is the right to litigate in national court. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

A diverse party's constitutional right to litigate in the FSM Supreme Court should not lightly be disregarded, and the FSM Supreme Court's discretionary power to abstain must be exercised carefully and sparingly. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

Diversity cases where the causes of action are state law are not subject to abstention and dismissal at a judge's whim. That would make the constitutional right for diverse parties to litigate in the FSM Supreme Court an empty one. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

When jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative powers of states (e.g., probate, inheritance and land issues) may be involved. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 431 (App. 2014).

A long line of precedents supports diversity jurisdiction as a proper independent basis for national jurisdiction of probate matters. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 431 (App. 2014).

The Constitution only requires minimal diversity. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 431 n.2 (App. 2014).

When the legal issue of whether the foreign citizen CPUC Chief Executive Officer could be a defendant in a lawsuit by the Chuuk Health Care Plan to collect unpaid health insurance premiums, thereby creating diversity jurisdiction, was previously litigated and a final decision rendered concluding that it could not be done; when the time to appeal that decision has expired; and when the same parties are present, res judicata bars the action in the FSM Supreme Court and the case will be dismissed without prejudice to any action in the Chuuk State Supreme Court. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 285 (Chk. 2016).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders and only minimal diversity need exist. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 516 (App. 2016).

Concurrent jurisdiction properly exists given the diverse citizenship of the parties or when consonant with the "arising under" constitutional provision. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 518 (App. 2016).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders and only minimal diversity need exist. Setik v. Perman, 21 FSM R. 31, 36 (Pon. 2016).

Only minimal diversity of citizenship is needed to invoke the FSM Supreme Court's diversity jurisdiction. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

A corporation's citizenship, for diversity purposes, is the citizenship of its shareholders. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

If a non-profit corporation has no shareholders, its citizenship for diversity purposes should be the citizenship of its members, or, if it has no members, of its incorporators. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

If a party is an unincorporated association, then its citizenship is the citizenship of the association's individual members. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

Diversity jurisdiction does not exist when all parties are foreign citizens, even if they are citizens of different countries. Apostol v. Maniquiz, 22 FSM R. 146, 148 (Chk. 2019).

When diversity jurisdiction does not exist, the FSM Supreme Court's subject-matter jurisdiction must be based on some other ground. Apostol v. Maniquiz, 22 FSM R. 146, 149 (Chk. 2019).

When there is diversity of citizenship between the parties, litigation involving domestic relations issues, including custody and child support, falls within the FSM Supreme Court's jurisdiction, even though state law will furnish the rules of decision. O'Sonis v. O'Sonis, 22 FSM R. 268, 269 (Chk. 2019).

The FSM Supreme Court has diversity jurisdiction over a case where an FSM citizen sues a foreign citizen regardless of how long the foreign citizen has resided in the FSM or whether she is married to an FSM citizen. Panuelo v. Sigrah, 22 FSM R. 341, 351 (Pon. 2019).

– Exclusive FSM Supreme Court

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

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

1982).

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

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

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

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

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

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

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

The question of the enforceability of ship mortgages is a matter that falls within the maritime jurisdiction of the FSM Supreme Court under article XI, section 6(a) of the Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 376 (App. 1990).

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

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

A state law cannot divest the FSM Supreme Court of exclusive jurisdiction in cases arising

under article XI, section 6(a) of the FSM Constitution. Faw v. FSM, 6 FSM R. 33, 36-37 (Yap 1993).

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

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

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

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

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

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

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

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

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

A motion to dismiss for lack of diversity jurisdiction will be denied when the plaintiff's complaint does not plead diversity jurisdiction (found in section 6(b) of article XI of the Constitution), but clearly pleads that the court's jurisdiction under section 6(a), and when a fair

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

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

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

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

When the FSM Government is a party defendant, the court has subject matter jurisdiction under Article XI, § 6(a) of the Constitution, which provides that the FSM Supreme Court trial division has original and exclusive jurisdiction in cases in which the national government is a party. Emmanuel v. Kansou, 13 FSM R. 527, 529 (Chk. 2005).

A case that came before the court based on the court's exclusive jurisdiction over cases when the national government is a party and where the plaintiff's asserted claims primarily arose under national law, is not a diversity case where state law provides the rules of decision. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

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

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

The article XI, section 6(a) maritime jurisdiction extends to all cases which are maritime in nature. Since a maritime cause of action is one arising on the sea, ocean, great lakes, or navigable rivers, or from some act or contract concerning the commerce and navigation thereof, and when, although the plaintiffs attempt to characterize the issue as one of state law, they are

essentially complaining about loss of business as a result of the penalties imposed by the port authority on the vessels resulting from the port authority's maritime-related activities, it is a maritime case and will not be remanded to state court. Ehsa v. Pohnpei Port Auth., 14 FSM R. 505, 508 (Pon. 2006).

The College is an instrumentality of the national government in the same way that the FSM Development Bank is even though its employees are not considered government employees. The College was created by Congress and is subject to suit only in the manner provided for and to the extent that suits may be brought against the National Government. So, since the national government is not subject to suit under the Pohnpei Wage and Hour Law, neither is the College. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 596 (App. 2008).

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

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

The section 6(a) phrase "except where an interest in land is at issue," does not preclude the FSM Supreme Court from exercising jurisdiction in a case where the national government entity is a party and land is involved. It does preclude the court from exercising exclusive jurisdiction – the jurisdiction becomes concurrent and a competent state court could instead entertain the matter. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 93 (Yap 2011).

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

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

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

If the FSM national government is a party to the case and an interest in land is not at issue, the FSM Supreme Court trial division has exclusive jurisdiction. If an interest in land is at issue, the FSM Supreme Court may still have jurisdiction but it will not be exclusive. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

For some cases arising under national law, Congress has placed exclusive jurisdiction in the FSM Supreme Court trial division. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 n.1 (Pon. 2013).

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

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

That the national government is not legally responsible for the FSM Development Bank's debts, does not prevent the bank from being a national government instrumentality since other national government instrumentalities have similar status. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 617 (Pon. 2013).

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

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

private purposes. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

Since the FSM Supreme Court trial division has original and exclusive jurisdiction in cases in which the national government is a party except when an interest in land is at issue and since the Federated States of Micronesia Development Bank is an instrumentality of the national government and part of the national government for the purposes of the Constitution's Article XI, § 6(a), the FSM Supreme Court's trial division therefore has original and exclusive jurisdiction in any case in which the bank is a party so long as no interest in land is at issue. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 432 (App. 2014).

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

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

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

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

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

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

A mortgage foreclosure generally does not constitute an interest in land being at issue because in a mortgage foreclosure the interests in land are not in dispute – the parties all agree who owns the land and who holds the mortgage. The mortgagee just seeks to foreclose the mortgage which a mortgagor has pledged as security for a debt and which the mortgagor earlier

agreed, when he signed the mortgage, could be sold if the debt remained unpaid. Thus, the Exception Clause does not preclude jurisdiction. Sam v. FSM Dev. Bank, 20 FSM R. 409, 416 (App. 2016).

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

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

The exclusive nature of the national court jurisdiction is such that the FSM Supreme Court does not have the power to abstain from admiralty and maritime cases. Gilmete v. Peckalibe, 20 FSM R. 444, 448 (Pon. 2016).

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

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

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

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

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

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

When the FSM was not a successor-in-interest to the lands in question because, as a matter of law, the Trust Territory government never transferred to the FSM national government any of the Trust Territory's interest in that land; when the only basis, asserted or apparent, for the FSM Supreme Court's jurisdiction is that the FSM national government is a party; and when the FSM was never properly a party because it had no interest in the land, the plaintiff has not

stated a claim over which the FSM Supreme Court can exercise jurisdiction or for which it can grant relief and the FSM's motion to dismiss will therefore be granted and the FSM is dismissed and since the court never had jurisdiction over the case, it is dismissed without prejudice to any proceeding in a court of competent jurisdiction. Chuuk v. Weno Municipality, 20 FSM R. 582, 585 (Chk. 2016).

That the FSM Development Bank seeks to sell land of undisputed ownership does not divest the court of jurisdiction when it otherwise has jurisdiction. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 612 (Pon. 2016).

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

In an FSM Supreme Court criminal case, a "forum shopping" claim must be rejected because only the FSM Supreme Court has jurisdiction over a national crime – its jurisdiction over the prosecution of national crimes is exclusive. There is no alternative forum in which to prosecute a national crime. FSM v. Siega, 21 FSM R. 291, 299 (Chk. 2017).

A defendant's alleged breach of a maritime contract falls within the FSM Supreme Court's original and exclusive jurisdiction over admiralty and maritime cases. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 200 (Pon. 2019).

The FSM Development Bank is an instrumentality of the national government and is part of the national government for the purposes of FSM Constitution article XI, § 6(a), which gives the FSM Supreme Court trial division exclusive jurisdiction over cases in which the national government is a party. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 328, 328-29 (Pon. 2019).

It is well settled law that the FSM Supreme Court has jurisdiction over a case, regardless of the nature of the case's causes of action, when the FSM Development Bank is a party. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 328 (Pon. 2019).

The FSM Supreme Court must deny a motion to dismiss for lack of subject-matter jurisdiction when the FSM Development Bank is a party because the court has jurisdiction when the FSM Development Bank is a party. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371 (Pon. 2019).

The Constitution generally confers original and exclusive jurisdiction over cases to which the national government is a party on the FSM Supreme Court trial division. The FSM Supreme Court also has pendent jurisdiction over state law claims whenever the Constitution or national law confers subject matter jurisdiction on the court and those state law claims arise from the same nucleus of operative fact as the claims under national jurisdiction and are such that they would be expected to be tried in the same judicial proceeding. Panuelo v. FSM, 22 FSM R. 498, 513 (Pon. 2020).

– In Rem

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

In order to exercise *in rem* jurisdiction the thing over which jurisdiction is to be exercised (or

its substitute, e.g., a bond) must be physically present in the jurisdiction and under the control of the court. In re Kuang Hsing No. 127, 7 FSM R. 81, 82 (Chk. 1995).

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

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

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

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

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

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

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

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

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

The charterer under a demise is responsible for the proper performance of all agreements made with third parties in connection with the ship's operation. The charterer, as owner *pro hac vice* is also potentially liable for collision, personal injuries to the master, crew, and third parties,

pollution damages, and for loss or damage to the chartered vessel. The vessel owner normally has no personal liability, but the vessel may be liable *in rem*. The charterer, however, has an obligation to indemnify the vessel owner if the damage was incurred through the charterer's negligence or fault. Yap v. M/V Cecilia I, 13 FSM R. 403, 409 (Yap 2005).

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

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

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

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

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

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

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

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

When the court has not acquired *in rem* jurisdiction over the two vessels and since service

on an agent cannot create jurisdiction over a vessel, the complaint against the two vessels will be dismissed without prejudice. People of Gilman ex rel. Tamagken v. M/V Easternline I, 17 FSM R. 81, 85 (Yap 2010).

The only way a vessel can be a defendant in a civil action is if the proceeding against it is in rem, and in order for a court to exercise in rem jurisdiction, the vessel over which jurisdiction is to be exercised (or its substitute, e.g., a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 284, 288 (Yap 2012).

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

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

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

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

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

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

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

The court can exercise jurisdiction only over vessels that are present in the FSM and that have been brought into the court's jurisdiction by arrest or over vessels for which an adequate

substitute has been provided. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 88, 94 (Yap 2013).

Another court's assumption of jurisdiction should be made with restraint, cognizant of the limitation that if a court has already assumed jurisdiction over the matter, a second court will not interfere and assume in rem jurisdiction over the same res. In those cases, abstention may be the appropriate course of action. A probate matter filed only in national court, however, causes no such conflict. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

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

The only way a vessel can be a defendant in a civil action is if the proceeding against it is *in rem*. In order for a court to exercise *in rem* jurisdiction, the vessel over which jurisdiction is to be exercised (or its substitute, e.g., a posted bond) must be physically present in the jurisdiction and seized by court process and under the court's control, whereby it is held to abide such order as the court may make concerning it. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 132 (Pon. 2017).

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

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

When a court exercises jurisdiction over land, it can only exercise that jurisdiction in the nature of an in rem proceeding. In rem proceedings encompass any action in which essential purpose of suit is to determine title to or affect interests in specific property located within the territory over which court has jurisdiction. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

In rem jurisdiction includes registration of land titles, mortgages, and probate proceedings involving land. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

To be able to exercise in rem jurisdiction, the property over which the court is to exercise jurisdiction must be physically present within the court's territorial jurisdiction and under its control. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

A court's jurisdiction over land is in the nature of an in rem proceeding. "In rem" proceedings encompass any action in which essential purpose of suit is to determine title to or affect interests in specific property located within the territory over which court has jurisdiction. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

In rem jurisdiction includes registration of land titles, mortgages, and probate proceedings involving land. To exercise in rem jurisdiction, the property over which the court is to exercise jurisdiction must be physically present within the court's territorial jurisdiction and under its control. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

Land on Pohnpei is not physically present in the Chuuk State Supreme Court's territorial jurisdiction. Thus, neither it, nor any court in Chuuk, can exercise jurisdiction over any Pohnpei land. Only a court in Pohnpei can do that. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

The FSM Supreme Court has jurisdiction in rem over all vessels irrespective of their flag and all maritime claims wherever arising with respect to claims for goods, materials or services supplied to a vessel. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 200 (Pon. 2019).

– Pendent

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

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

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

Even though the requirements for pendent jurisdiction are met in a case, a national court has discretion to decline to exercise jurisdiction over state claims. This determination should turn on considerations of judicial economy, convenience and fairness to litigants and should be instructed by a desire of the federal or national court to avoid needless decisions of state law. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 397 (Pon. 1984).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A court can employ ancillary jurisdiction as 1) to allow a single court to dispose of factually interdependent claims; and 2) to enable a court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees. When courts refer to the "inherent power" of a court to consider a claim, they refer to the latter of these two uses of ancillary jurisdiction. In re Suka, 18 FSM R. 554, 557 (Chk. S. Ct. Tr. 2013).

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

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

The Constitution generally confers original and exclusive jurisdiction over cases to which the national government is a party on the FSM Supreme Court trial division. The FSM Supreme Court also has pendent jurisdiction over state law claims whenever the Constitution or national law confers subject matter jurisdiction on the court and those state law claims arise from the same nucleus of operative fact as the claims under national jurisdiction and are such that they would be expected to be tried in the same judicial proceeding. Panuelo v. FSM, 22 FSM R. 498, 513 (Pon. 2020).

When, before the defendants have even answered, the FSM Supreme Court dismisses, for the failure to state claims on which the court can grant relief, all of the claims that confer subject matter jurisdiction on the FSM Supreme Court, and all the causes of action that remain are the pendent state law claims, the court should dismiss the rest of the complaint without prejudice

and allow the state law claims to proceed in state court. Panuelo v. FSM, 22 FSM R. 498, 513 (Pon. 2020).

The FSM Supreme Court should consider and weigh in each pendent jurisdiction case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction over a case brought in that court involving pendent law state-law claims. When the balance of these factors indicates that a case properly belongs in state court, as when the national-law claims have dropped out of the lawsuit at its early stages and only state-law claims remain, the national court should decline to exercise jurisdiction by dismissing the case without prejudice. The doctrine of pendent jurisdiction thus is a doctrine of flexibility. When the national law claims must all be dismissed, it may be an abuse of discretion to take pendent jurisdiction of a claim that depends on novel questions of state law. Panuelo v. FSM, 22 FSM R. 498, 513-14 (Pon. 2020).

– Personal

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

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

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

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

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

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

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

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

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

When a complaint and summons (the service of process) is not properly served on a defendant, the court does not have personal jurisdiction over that defendant. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

A court which lacks personal jurisdiction over a defendant cannot enter a valid judgment against that defendant. Lee v. Lee, 13 FSM R. 252, 256 (Chk. 2005).

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

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

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

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

A court is not competent to rule on the validity of a certificate of title to land when the court does not have (by its own statement) subject matter jurisdiction over the case and does not have personal jurisdiction over indispensable parties (the titleholders) or give them notice or an opportunity to be heard. Its orders were void and an order invalidating a person's certificate of title may even be void on its face when it held that that person was an indispensable party who

was not present in the case and then proceeded to invalidate his certificate of title without him having been made a party to the case. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

The failure to join an indispensable party may subject a judgment to collateral attack. A judgment (or final order) entered against a person without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time, and a court that lacks personal jurisdiction over a person cannot enter a valid judgment against that person. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

In civil cases, a court has personal jurisdiction only over persons who have been duly summoned, that is, made a party by valid service of process. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

When neither the Wito Clan nor the Rubens were ever duly summoned in Civil Action No. 64-98 before the August 20, 1998 judgment was issued so that court never had personal jurisdiction over them, the judgment, as to any interest either of them might have, is void. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

Personal jurisdiction is the court's power to bring a person into its adjudicative process. A court always has personal jurisdiction over a plaintiff because, by filing a case, the plaintiff has consented to the court's jurisdiction over her person. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

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

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

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

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

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

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

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

When some defendants were never served with the complaint and summons, the court never had personal jurisdiction over them and the plaintiffs' case against them was considered abandoned and dismissed. William v. Kosrae State Hosp., 18 FSM R. 575, 579 n.1 (Kos. 2013).

No ruling can be made or judgment entered against persons over whom the court does not have personal jurisdiction. William v. Kosrae State Hosp., 18 FSM R. 575, 579 n.1 (Kos. 2013).

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

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

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

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

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

498, 509 (App. 2016).

A defendant, who has properly asserted lack of personal jurisdiction over it, may move for the issue's determination as a preliminary matter. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233 (App. 2017).

No substantial basis for difference of opinion exists about a defendant's right to move before trial for dismissal based on lack of personal jurisdiction. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233 (App. 2017).

The issue is well settled that affidavits and other evidence may be submitted in support of or opposition to a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233 (App. 2017).

The standard that a motion to dismiss should be denied unless it appears to a certainty that no relief could be granted is routinely applied to motions to dismiss under Civil Rule 12(b)(6) for failure to state a claim upon which relief can be granted, but this rule of interpretation has no bearing on a motion to dismiss under Civil Rule 12(b)(2), where the burden is on the plaintiff to prove a prima facie showing of personal jurisdiction. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 233-34 (App. 2017).

One of the most fundamental questions of law is whether a court has jurisdiction to preside over a given case or has personal jurisdiction over a particular party. The need for minimum contacts is a matter of personal jurisdiction, and whether a court has personal jurisdiction over a particular defendant is reviewed *de novo* when appealed. Thus, a question of personal jurisdiction is a "question of law." People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 234 (App. 2017).

There must be personal jurisdiction over a party before a court may enter an order against it, whether in a civil or criminal case. FSM v. Siega, 21 FSM R. 291, 297 (Chk. 2017).

Personal jurisdiction refers to the court's authority to adjudicate the claim as to the person. That a court has "jurisdiction of a party" means either that a party has appeared generally and submitted to the jurisdiction, has otherwise waived service of process, or that process has properly issued and been served on such party. FSM v. Siega, 21 FSM R. 291, 297 (Chk. 2017).

Physical presence in the country usually supplies the only necessary prerequisite for personal jurisdiction in a national criminal prosecution. FSM v. Siega, 21 FSM R. 291, 297 (Chk. 2017).

In extradition cases, the receiving court, under the rules of speciality and double criminality, lacks personal jurisdiction over the defendant for crimes other than the crimes for which the defendant was extradited. FSM v. Siega, 21 FSM R. 291, 297 n.4 (Chk. 2017).

When criminal defendants do not claim that they were not served process or that the process was not properly served on them or that they are not, or were not, physically present in the FSM, the court has personal jurisdiction over them. FSM v. Siega, 21 FSM R. 291, 297 (Chk. 2017).

For the trial court to have had personal jurisdiction over all the defendants, each defendant had to have been served the complaint and summons. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

A court that lacks personal jurisdiction over a defendant cannot enter a valid judgment against that defendant. Setik v. FSM Dev. Bank, 21 FSM R. 505, 516 (App. 2018).

Rule 12(b)(2) dismissal for lack of jurisdiction over the person raises a question as to whether the controversy or the defendant has sufficient contacts, ties, or relationships with the forum to give the court the right to exercise judicial power over the defendant. Fishy Choppers, Inc. v. M/V Marita 88, 22 FSM R. 187, 195 (Pon. 2019).

– Personal – Long-Arm

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A venue provision that permits a civil action against a defendant who does not live in the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Trust Territory's long-arm statute for the Trust Territory courts' jurisdiction is 6 F.S.M.C.

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

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

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

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

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

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

"Specific" jurisdiction requires a showing of three distinct elements: 1) the nonresident defendant must purposefully direct his activities or consummate some transaction with the forum or residents thereof; or perform some act by which he purposefully avails himself of the conducting activities in the forum, thereby invoking the benefits and protections of its laws; 2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and 3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 55 (Yap 2013).

When two of the defendants purposefully directed their activities to refloat a vessel stranded in FSM territorial waters and they purposefully availed themselves of the privilege of attempting salvage operations in FSM territorial waters for which the stranded vessel's owners hired them and when another defendant directed its vessel to FSM territorial waters to assist the stranded vessel and the plaintiffs' claims arise from that attempted assistance, the plaintiffs' claims against those defendants arise solely out of their activities in FSM territorial waters and the FSM Supreme Court's exercise of personal jurisdiction over those defendants is reasonable because,

if for no other reason, it would be unreasonable for any other forum to exercise jurisdiction over the plaintiffs' claims. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 49, 55 (Yap 2013).

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

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

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

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

The FSM Supreme Court may exercise personal jurisdiction over non-residents for any cause of action that arises from the transaction of any business within the FSM, the commission of a tortious act within the FSM; and contracting to insure any person, property, or risk located within the FSM at the time of contracting. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 210 (Yap 2015).

Insuring vessels that later navigate through FSM waters is not, by itself, sufficient to give the court personal jurisdiction over the insurer. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 210 (Yap 2015).

Since the FSM long-arm statute only requires for personal jurisdiction that the defendant be a party to a contracting to insure a risk located in the FSM, it may cover an agency providing underwriting and claims services for the actual insurers at Lloyd's of London. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 210-11 n.2 (Yap 2015).

Since the FSM long-arm statute specifically provides for personal jurisdiction over non-residents contracting to insure any person, property, or risk located within the FSM at the time of contracting, it does not allow the court to exercise personal jurisdiction over an insurer that insured a vessel that was not located in the FSM, but was in Singapore at the time of contracting for marine insurance. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

The court may not have personal jurisdiction over an insurer when the insurer did not sell insurance in the FSM and did not provide insurance-like services to its insureds when they were present in the FSM. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

Without a direct action statute, an injured third-party cannot sue an insurer directly because an insurer has no contractual obligation to persons other than its insured, at least until a court determines the liability of its insured and the insurer cannot be joined as a party to a lawsuit to determine that liability. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

Even without a direct action statute, an insurer with world-wide coverage could expect to be called upon to help defend its insured in FSM courts. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 211 (Yap 2015).

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

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

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

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

over insurance coverage. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 20 FSM R. 205, 212 (Yap 2015).

For the FSM Supreme Court to properly exercise jurisdiction under the FSM long-arm statute, a defendant must have certain minimum contacts with an FSM forum such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 234 (App. 2017).

Whether a defendant's conduct amounts to the requisite minimum contacts necessary for the court to exercise personal jurisdiction over it, requires the court to undertake a particularized inquiry about the extent to which the defendant purposefully availed itself of the benefits of FSM laws. This "particularized inquiry" is a necessarily fact-intensive investigation into the alleged facts that constitute the conduct by which the defendant established minimum contacts. Since it would be impossible for the appellate court to determine the trial court's jurisdiction over a defendant without reference to the trial court record, personal jurisdiction cannot be seen as a "pure" question of law, and because the issue is not a pure question of law, it cannot be properly certified for interlocutory appeal. People of Eauripik ex rel. Sarongelfeg v. Osprey Underwriting Agency, Ltd., 21 FSM R. 214, 234-35 (App. 2017).

– Removal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Any action brought in a state court of which the trial division of the FSM Supreme Court has

jurisdiction may be removed by any party to the trial division of the FSM Supreme Court. This includes cases involving parties of diverse citizenship. Damarlane v. Harden, 8 FSM R. 225, 226 (Pon. 1998).

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

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

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

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

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

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

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

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

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

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

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

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

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

When a case has been removed from state court on the ground that it arose under national law but the plaintiff's complaint only relies upon common law principles of breach of fiduciary duty and as such does not arise under national law because no issue of national law appears on the face of the complaint and no substantial issue of national law is raised, the case will be remanded to the state court where it was initially filed. David v. San Nicolas, 8 FSM R. 597, 598 (Pon. 1998).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

When a party desires to remove a case from a state court to the FSM Supreme Court trial division, the requirements of General Court Order 1992-2 must be met. A petitioner cannot remove certain causes of action – that is, certain discrete legal issues and claims pertaining to petitioner – that are imbedded in a state court case. Bifurcation of a case is not anticipated nor

authorized by GCO 1992-2, which pertains to the transfer of civil actions in their entirety. In re Estate of Helgenberger, 11 FSM R. 599, 600 (Pon. 2003).

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

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

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

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

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

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

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

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

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

A case stands removed to the FSM Supreme Court trial division when the party seeking removal files in the FSM trial division a verified petition for removal along with all the papers

served on or by the removing party. The removing party must file the petition within 60 days of being served with any paper from which it is first ascertainable that the case is removable. San Nicholas v. Neth, 16 FSM R. 70, 71 (Pon. 2008).

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

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

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

Diversity jurisdiction gives concurrent original jurisdiction to the state and national courts. FSM GCO 1992-2 provides for removal of diversity cases from the state to national courts and is directed solely to the issue of the transfer of cases between the state and national courts. It provides a procedure for removal, not authority for dismissal from state court. Muller v. Enlet, 16 FSM R. 92, 94 (Chk. S. Ct. Tr. 2008).

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

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

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

A party may remove a case from state court to the FSM Supreme Court if the case is one

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

A case arises under the FSM Constitution or national law when the FSM Constitutional issue or the national law issue is an essential element of one or more of the plaintiff's causes of action, and it must be disclosed upon the face of the complaint, unaided by the answer, the petition for removal, or any pleadings subsequently filed in the case, and it may not be inferred from a defense asserted or one expected to be made, and the national law issue must be a substantial one. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 2014).

As a defense raised in the answer to the original complaint, a defendant's due process claims would not make it a case over which the FSM Supreme Court would have jurisdiction because it would not be considered a case arising under the FSM Constitution or national law. Saimon v. Nena, 19 FSM R. 608, 611 (Kos. 2014).

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

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

Under FSM General Court Order 1992-2, § II(D), the filing of a petition for removal to the FSM Supreme Court itself effects removal so long as all the specified requirements are met. Thus, a party accomplishes the removal automatically without any FSM Supreme Court action. Setik v. Perman, 22 FSM R. 105, 115 (App. 2018).

An opposition to a removal petition must be considered a motion to remand because any opposition to a removal petition, regardless of how it is styled, is actually a motion to remand the case to the state court on the ground that it was improvidently removed. Setik v. Perman, 22 FSM R. 105, 115 (App. 2018).

A case is improvidently removed when it has been removed to the FSM Supreme Court and either the FSM Supreme Court did not have subject-matter jurisdiction over the case at the time it was removed, or the party removing the case has waived its right to proceed in the FSM Supreme Court. Setik v. Perman, 22 FSM R. 105, 115 (App. 2018).

A party's actions in the state court, such as conducting active litigation or waiting more than sixty days, may constitute a waiver of the right to remove that case to the FSM Supreme Court. Setik v. Perman, 22 FSM R. 105, 116 (App. 2018).

When a party's only action in the state court was to file a motion seeking more time to answer or otherwise defend, that filing does not constitute the party's waiver, through active state court litigation, of the right to effect the case's removal. Setik v. Perman, 22 FSM R. 105, 116 (App. 2018).

Although the court must first look to FSM sources of law, when it has not previously construed the effect of an FSM General Court Order 1992-2 provision that is identical or similar to a U.S. counterpart, the court may consult U.S. sources for guidance in interpreting that provision. Setik v. Perman, 22 FSM R. 105, 116 n.10 (App. 2018).

The word "may" in FSM General Court Order 1992-2, § I, grants the discretion to remove to any party in a state court action, not to the FSM Supreme Court. Setik v. Perman, 22 FSM R. 105, 116 (App. 2018).

In a removed case, the case arrives in the FSM Supreme Court in the same posture it was when it left the state court – the court treats everything that occurred in the state court before removal as if it had occurred in the FSM Supreme Court. Setik v. Perman, 22 FSM R. 105, 116 (App. 2018).

In a removed case, the FSM Supreme Court properly treats the complaint that the plaintiffs filed in the state court as if it had been filed in the FSM Supreme Court. Setik v. Perman, 22 FSM R. 105, 117 (App. 2018).

Once the state court granted an intervention as a party-defendant, that party had the same capacity as any party to quickly remove the case to the FSM Supreme Court, if the FSM court had jurisdiction, and to move to dismiss the case for the failure to state a claim, if it thought that was a viable defense. Setik v. Perman, 22 FSM R. 105, 119 (App. 2018).

An oral assertion that the state court retained jurisdiction and that the FSM Supreme Court had not acquired it was a motion to remand the matter to state court, because any opposition to a case's removal is, regardless of how it is styled, actually a motion to remand the case on the ground it was improvidently removed. Panuelo v. Sigrah, 22 FSM R. 341, 350 (Pon. 2019).

A case is "improvidently removed" when either the FSM Supreme Court did not have subject-matter jurisdiction over it when it was removed, or the party that removed the case had already waived its right to proceed in the FSM Supreme Court. An improvidently-removed case will be remanded to the court it was removed from. Panuelo v. Sigrah, 22 FSM R. 341, 350 (Pon. 2019).

The Chief Justice by rule may govern the transfer of cases between state and national courts, and FSM General Court Order 1992-2 is the rule the Chief Justice promulgated to govern the transfer of cases between state and national courts when cases are removed from a state court. It is thus the applicable rule and must be followed. Panuelo v. Sigrah, 22 FSM R. 341, 351 (Pon. 2019).

– Subject-Matter

Where the Trust Territory High Court improperly retained a case for four years after the

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

Where a court has dismissed a criminal case for lack of jurisdiction over the crimes for which the defendant was charged, the dismissal does not act as a discharge so as to preclude extradition on the charge. "Discharge" requires both personal and subject matter jurisdiction. In re Extradition of Jano, 6 FSM R. 93, 107-08 (App. 1993).

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

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

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

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

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

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

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

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

The Pohnpei Supreme Court is a court of general jurisdiction, which has subject matter

jurisdiction over a landlord/tenant dispute. Pernet v. Woodruff, 10 FSM R. 239, 242 (App. 2001).

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

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

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

The Chuuk State Supreme Court is a court of general jurisdiction and has concurrent original jurisdiction to try all civil cases. As such, it may exercise, subject to the principle of forum non conveniens, jurisdiction over contract cases generally, regardless of where the contract was formed, unless exclusive jurisdiction for that particular contract resides in some other court. First Hawaiian Bank v. Engichy, 10 FSM R. 536, 537 (Chk. S. Ct. Tr. 2002).

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

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

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

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

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

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

Whether a court has subject matter jurisdiction is an issue which may be raised at any time,

even after judgment. Ben v. Chuuk, 11 FSM R. 649, 651 (Chk. S. Ct. Tr. 2003).

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

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

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

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

A motion to dismiss for lack of standing is a claim that the court lacks subject matter jurisdiction and is properly filed in lieu of an answer under Rule 12(b)(1), or as a motion to dismiss under Rule 12(h)(3), which can be raised at any time, even after judgment. It is the plaintiff's burden to show that the court has jurisdiction, and that a colorable claim exists. Chuuk State Bd. of Educ. v. Sony, 16 FSM R. 213, 217 (Chk. S. Ct. Tr. 2008).

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

The court lacks subject-matter jurisdiction over a case when, if applied, the general principle that courts should first consider any non-constitutional grounds that might resolve the issue because unnecessary constitutional adjudication ought to be avoided, would unmask the case as an election contest and the matter would accordingly be dismissed. Ueda v. Chuuk State Election Comm'n, 16 FSM R. 395, 398 (Chk. 2009).

A court will refrain from addressing whether it has jurisdiction over an election contest when the matter is merely hypothetical and not a justiciable controversy, but if the issue comes properly before the court and if it appears that the court lacks jurisdiction over the complaint's subject matter, the court would dismiss the action. Doone v. Chuuk State Election Comm'n, 16 FSM R. 407, 411 (Chk. S. Ct. App. 2009).

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

If all the answers to the subject-matter analytical construct questions are no, then subject-matter jurisdiction must be in some (most likely the state) court other than the FSM Supreme

Court. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 615 (Pon. 2013).

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

Subject-matter jurisdiction can be raised at any time. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 366 (App. 2014).

An open probate proceeding at the state level is not a bar to national court subject matter jurisdiction as long as the national court does not interfere with the estate's res. Under the longstanding "creditor exception," the national courts have subject matter jurisdiction to appoint an administrator or an administrator pendente lite and to initiate proceedings on behalf of interested third parties. This appointment has no impact on the res of the decedent's estate, does not interfere with administrative decisions regarding the decedent's estate, nor does it affect the distribution of those assets within the state's control. It is a preliminary matter outside of the scope of the probate exception. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 430-31 (App. 2014).

Preference toward state courts adjudicating the bulk of probate matters should be read narrowly, to permit creditors and other third parties to protect financial interests by initiating probate proceedings and resolving many auxiliary matters. The national courts are not barred from exercising subject matter jurisdiction over probate matters, and when an independent basis for jurisdiction is established, the national courts may proceed with the probate matter in its entirety. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

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

A suit for any damage allegedly caused by a neighbor's pigs would have to be made against the pigs' owner or custodian, and, unless there was diversity of citizenship between the plaintiff and the pigs' owner (an unlikely occurrence), the FSM Supreme Court would not have any jurisdiction over such a claim. Palasko v. Pohnpei, 20 FSM R. 90, 95 (Pon. 2015).

Whether a default judgment granted relief not prayed for in the complaint's demand for judgment; whether the guaranties that were signed were not attached to the promissory notes; whether the judgment was joint and several; and whether one of the guaranties was not signed by the person it should have been signed by but was fraudulently signed by another person, are not determinants of subject-matter jurisdiction. While they may be raised as defenses, none of these grounds is jurisdictional. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 (Pon. 2016).

Subject-matter jurisdiction is jurisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 290 (Pon. 2016).

Whether a judgment is joint and several or not has no affect on whether the court has subject-matter jurisdiction. FSM Dev. Bank v. Ehsa, 20 FSM R. 286, 292 (Pon. 2016).

Whenever it appears by suggestion of the parties or otherwise, including being raised as an

affirmative defense in the answer, that the court lacks jurisdiction of the subject matter the court must dismiss the action. Eperiam v. FSM, 20 FSM R. 351, 354 & n.1 (Pon. 2016).

Subject-matter jurisdiction entails a court's power to entertain and adjudicate a given type of case. The fundamental requirement for subject matter jurisdiction is a power derived from the FSM Constitution that specifies the class of cases the FSM Supreme Court is granted authority to hear. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 506-07 (App. 2016).

A judgment rendered without the requisite subject-matter jurisdiction is void *ab initio*. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 507 (App. 2016).

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

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

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

Since the requirement of subject matter jurisdiction is never capable of being waived, judgments rendered without such allocation of authority are void *ab initio* and can be attacked at any time. Ehsa v. FSM Dev. Bank, 20 FSM R. 498, 509 (App. 2016).

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

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

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

In any matter before the court, the issue of standing should be addressed first as it is a threshold issue going to the court's subject matter jurisdiction. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 639 (Pon. 2016).

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

A standing issue is addressed first, as it is a threshold issue going to a court's subject

matter jurisdiction. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 56 (App. 2016).

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

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

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

Subject-matter jurisdiction is addressed first because, if the court lacks it, any ruling it makes on other issues would be an advisory opinion (*obiter dicta*), and the court is not empowered to make advisory opinions. Pohnpei Arts & Crafts, Inc. v. Narruhn, 21 FSM R. 366, 368 (Pon. 2017).

Since the court must dismiss the action whenever it appears by the parties' suggestion or otherwise that the court lacks jurisdiction of the subject matter, the court will dismiss a civil rights action by a municipality against the state without prejudice to any future action in the state court. Kitti Mun. Gov't v. Pohnpei Utilities Corp., 21 FSM R. 408, 409 (Pon. 2017).

A statute of limitation generally is not jurisdictional unless it is a limitations period for claims against the government. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

Raising a statute of limitation as a bar to a remedy does not deprive a court of jurisdiction to hear the cause in the first instance; the court could not adjudicate the question of proper application of the statute if it did not have subject matter jurisdiction. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

Raising a statute of limitation as a bar to a remedy does not deprive a court of jurisdiction to hear the cause in the first instance; the court could not adjudicate the question of proper application of the statute if it did not have subject matter jurisdiction. Alik v. Heirs of Alik, 21 FSM R. 606, 621 (App. 2018).

Courts that have subject matter jurisdiction over a case but not venue, have the inherent power to transfer the case to a court with both. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

The FSM Supreme Court has jurisdiction over a case, regardless of the nature of the case's causes of action, when the FSM Development Bank is a party. Setik v. Perman, 22 FSM R. 105, 115 (App. 2018).

A state court has no jurisdiction over real estate in the jurisdiction of a different sovereign state. Setik v. Perman, 22 FSM R. 105, 119 (App. 2018).

When the court lacks subject-matter jurisdiction over a case, the court may still adjudicate the counterclaim if the court has an adequate independent basis for subject-matter jurisdiction over the counterclaim. Helgenberger v. Helgenberger, 22 FSM R. 244, 248 (Pon. 2019).

Since subject-matter jurisdiction is a threshold matter, the court will address this point before considering the motion's merits. Panuelo v. Sigrah, 22 FSM R. 341, 350 (Pon. 2019).

A statute that acts as a bar to an action does not deprive the court of subject-matter jurisdiction to hear the case in the first instance because the court cannot rule on the statute's proper application – the statute's effect on the case – if it does not have subject-matter jurisdiction to consider the case. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371 (Pon. 2019).

A statutory bar does not mean that the court would lack subject-matter jurisdiction over the case, but instead it would be an affirmative defense that would bar the plaintiff's claim and require that a judgment be entered for the defendant. FSM Dev. Bank v. Carl, 22 FSM R. 365, 371 (Pon. 2019).

Although parties may stipulate to factual matters, they may not stipulate to interpretations of law. Thus, even though parties may stipulate to a judgment, they cannot stipulate to a court's subject-matter jurisdiction to enter that judgment. Suzuki v. Chuuk, 22 FSM R. 491, 493 (Chk. 2020).

Parties cannot confer subject matter jurisdiction upon the FSM Supreme Court by stipulation, and therefore their agreement to do so is irrelevant. Suzuki v. Chuuk, 22 FSM R. 491, 493 (Chk. 2020).

Because parties may not agree between themselves and stipulate to subject matter jurisdiction, the court has an obligation to independently determine whether it has subject matter jurisdiction. Suzuki v. Chuuk, 22 FSM R. 491, 493-94 (Chk. 2020).

A court, whether trial or appellate, is obliged to notice want of jurisdiction, on its own motion. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

When the only basis the plaintiff asserts for subject-matter jurisdiction is that his state court judgments are property and the state's failure to pay is a taking of his property without due process, the plaintiff's suit does not involve subject matter over which the FSM Supreme Court has jurisdiction because the plaintiff's state court judgments are not property, and the state's failure to pay his judgments against it does not violate his due process or civil rights. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

When the parties' stipulation to enter a judgment would result in a void judgment, the court must reject the stipulation for judgment and dismiss the case for the lack of subject-matter jurisdiction because whenever it appears that the court lacks jurisdiction of the subject matter, the court must dismiss the action. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

– Territorial

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

Unlike *in personam* defendants, who may under certain circumstances be validly served process in foreign countries, valid service of process on an *in rem* defendant can only be made within the court's territorial jurisdiction. People of Eauripik ex rel. Sarongfeg v. F/V Teraka No.

168, 18 FSM R. 461, 465 (Yap 2012).

A manifest abuse of authority, a judgment obtained unfairly or working a serious injustice, fraud or collusion by a court, fraud, and lack of jurisdiction have been considered grounds to ignore a judgment's validity. Validity fundamentally includes the court's competence to adjudicate the matter with regard to subject-matter jurisdiction, territorial jurisdiction, and notice. Waguk v. Waguk, 21 FSM R. 60, 71 (App. 2016).

When a court exercises jurisdiction over land, it can only exercise that jurisdiction in the nature of an in rem proceeding. In rem proceedings encompass any action in which essential purpose of suit is to determine title to or affect interests in specific property located within the territory over which court has jurisdiction. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

To be able to exercise in rem jurisdiction, the property over which the court is to exercise jurisdiction must be physically present within the court's territorial jurisdiction and under its control. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

No court located in Chuuk can exercise jurisdiction over land in Pohnpei. Only a court in Pohnpei can do that. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

A court's jurisdiction over land is in the nature of an in rem proceeding. "In rem" proceedings encompass any action in which essential purpose of suit is to determine title to or affect interests in specific property located within the territory over which court has jurisdiction. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

In rem jurisdiction includes registration of land titles, mortgages, and probate proceedings involving land. To exercise in rem jurisdiction, the property over which the court is to exercise jurisdiction must be physically present within the court's territorial jurisdiction and under its control. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

Land on Pohnpei is not physically present in the Chuuk State Supreme Court's territorial jurisdiction. Thus, neither it, nor any court in Chuuk, can exercise jurisdiction over any Pohnpei land. Only a court in Pohnpei can do that. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

Land on Pohnpei cannot be tied up in a Chuuk probate proceeding. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

It is a well established principle of law that a court's jurisdiction does not extend beyond the boundaries of the state of its creation. This is because the authority of every tribunal is necessarily restricted by the territorial limits of the state in which it is established, and any attempt to exercise authority beyond those limits would be deemed in every other forum an illegitimate assumption of power. Setik v. Mendiola, 21 FSM R. 624, 626 (App. 2018).

A state court has no jurisdiction over real estate in the jurisdiction of a different sovereign state. Setik v. Perman, 22 FSM R. 105, 119 (App. 2018).