Pohnpei is the appropriate venue for a case against a foreign defendant when all of the claims asserted by plaintiff allegedly arose in Pohnpei. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 200, 204 (Pon. 2001).

CIVIL RIGHTS

Actions of a police officer in stripping a prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of the prisoner's constitutional rights to be free from cruel and unusual punishment and his due process rights. Tolenoa v. Alokoa, 2 FSM Intrm. 247, 250 (Kos. 1986).

A municipality which employs untrained persons as police officers, then fails to train them and authorizes their use of excessive force and summary punishment, will be held responsible for their unlawful acts, including abuse of a prisoner arrested without being advised of the charges or given an opportunity for bail, whose handcuffs were repeatedly tightened during his 14 hour detention in such a way that he was injured and unable to work for one month. Moses v. Municipality of Polle, 2 FSM Intrm. 270, 271 (Truk 1986).

A municipality which employs untrained persons as police officers, fails to train them and authorizes their use of excessive force and summary punishment, will be held responsible for their actions in stripping a prisoner, handcuffing his leg to a table and his arms behind his back, then kicking and abusing him. Alaphen v. Municipality of Moen, 2 FSM Intrm. 279, 280 (Truk 1986).

Discrimination as it is experienced in the United States is not the same as is experienced in Pohnpei. Therefore, the decisions of this court will consider decisions of the United States and other common law jurisdictions, but the court will only apply them as may be appropriate in the individual circumstances. Paulus v. Pohnpei, 3 FSM Intrm. 208, 215 (Pon. S. Ct. Tr. 1987).

The Due Process Clause of the Pohnpei State Constitution, art. IV, § 4, guarantees the right of due process articulated in the governing law. Micronesian Legal Servs. Corp. v. Ludwig, 3 FSM Intrm. 241, 244 (Pon. S. Ct. Tr. 1987).

Where a person has not been tried, convicted and sentenced, no question of cruel and unusual punishment arises. Paul v. Celestine, 4 FSM Intrm. 205, 208 (App. 1990).

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. Meitou v. Uwera, 5 FSM Intrm. 139, 144 (Chk. S. Ct. Tr. 1991).

The use of force by police officers is not privileged or justified when the arrestee was so drunk and unstable to resist or defend himself and when the police officer used force because he was enraged at being insulted by the arrestee. Meitou v. Uwera, 5 FSM Intrm. 139, 144 (Chk. S. Ct. Tr. 1991).

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

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art. IV, § 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on article IV, section 8 which protects him from cruel and unusual punishment. Plais v. Panuelo, 5 FSM Intrm. 179, 190 (Pon. 1991).

In a case where a convicted prisoner, who is also a pre-trial detainee, asserts civil rights claims arising out of ill-treatment after arrest, denial of access to family is a due process claim, and physical abuse involves due process as well as cruel and unusual punishment claims. Plais v. Panuelo, 5 FSM Intrm. 179, 190 (Pon. 1991).

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

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

The doctrine of respondeat superior is not to be used to determine whether a governmental entity is liable under 11 F.S.M.C. 701(3) for civil rights violations inflicted by government employees. The government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the of action chosen from various alternatives. Plais v. Panuelo, 5 FSM Intrm. 179, 205-06 (Pon. 1991).

Where a prisoner is physically abused by an official with final policy-making authority, these acts are governmental and a statement of state policy concerning the prisoner. Plais v. Panuelo, 5 FSM Intrm. 179, 207 (Pon. 1991).

Refusing to permit the public defender or the prisoner's mother to see him are violations of civil rights guaranteed under 12 F.S.M.C. 218(1) and (2) and constitute official actions for which a state must be held responsible under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM Intrm. 179, 207 (Pon. 1991).

Confining a prisoner in dangerously unsanitary conditions, which represent a broader government-wide policy of deliberate indifference to the dignity and well-being of prisoners, is a failure to provide civilized treatment or punishment, in violation of prisoners' protection against cruel and unusual punishment, and renders the state liable under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM Intrm. 179, 208 (Pon. 1991).

When a state government is acting on behalf of the national government by virtue of the joint administration of law enforcement act, the state's officers and employees are agents of the national government and are acting "under color of authority" within the meaning of 6 F.S.M.C. 702(5). Plais v. Panuelo, 5 FSM Intrm. 179, 209-10 (Pon. 1991).

The national government is liable for violations of 6 F.S.M.C. 702(2) when it has abdicated its responsibility toward national prisoners. Plais v. Panuelo, 5 FSM Intrm. 179, 210-11 (Pon. 1991).

The national government is a person within the meaning of 6 F.S.M.C. 702(2) and will be held liable under that section when civil rights violations are in substantial part due to a governmental policy of deliberate indifference to the constitutional rights of national prisoners and failure to attempt to assure civilized treatment to prisoners. Plais v. Panuelo, 5 FSM Intrm. 179, 211 (Pon. 1991).

The government does not pay twice when it violates someone's civil rights and then is forced to pay attorney's fees. It pays only once – as a violator of civil rights. Its role as a provider of public services is distinct from its role as a defendant in a civil case. Thus an award of costs and reasonable attorney's fees should be made to a publicly funded legal services organization whose client prevailed in a civil rights action. Plais v. Panuelo, 5 FSM Intrm. 319, 321 (Pon. 1992).

The FSM Supreme Court is immune from an award of damages, pursuant to 11 F.S.M.C. 701(3), arising from the performance by the Chief Justice of his constitutionally granted rule-making powers. Berman v. FSM Supreme Court (II), 5 FSM Intrm. 371, 374 (Pon. 1992).

Where a plaintiff has alleged his due process rights were violated but it is proven otherwise, the plaintiff cannot recover under the civil rights statute. Nena v. Kosrae, 5 FSM Intrm. 417, 425 (Kos. S. Ct. Tr. 1990).

A corporation is a person who may recover damages for violation of its civil rights when it is deprived of its property interests, such as contract rights, without due process of law. Ponape Constr. Co. v. Pohnpei, 6 FSM Intrm. 114, 127-28 (Pon. 1993).

The FSM civil rights statute has no retroactive effect. There is no liability under the FSM civil rights statute for events that took place prior to the effective date of the statute. Alep v. United States, 6 FSM Intrm. 214, 219 (Chk. 1993).

Government entities are included in the definition of the word "person" as used in the statute governing civil liability of persons for the violation of another's civil rights. Davis v. Kutta, 7 FSM Intrm. 536, 548 (Chk. 1996).

An official state practice of allowing untrained and unqualified police officers to use deadly force may be shown from the chief of police's testimony that convicted felons were hired although regulations prohibited it and that requalification on firearms had been waived for at least three years although regulations required requalification when it is within his power to allow variation from written regulation, and from the lack of any internal discipline as the result of improper use of deadly force. If, as a result of this policy a person suffers serious bodily injury, it is a violation of her right to due process of law. Davis v. Kutta, 7 FSM Intrm. 536, 548 (Chk. 1996).

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

Liability for failure to inform a person of the charge for which he is being arrested will not be imposed when he knew was dealing with police who could arrest him, that he was likely to be arrested and why. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 193 (Pon. 1997).

Persons liable for civil rights violations include government entities. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 195 (Pon. 1997).

Statute law confers a private cause of action for damages against any person who deprives another of his civil rights. The word "person" embraces governmental organizations, including state governments. Louis v. Kutta, 8 FSM Intrm. 208, 211 (Chk. 1997).

State autonomy should be as wide-ranging as possible, but it is subject to the limits of the FSM Constitution. A state may not exceed the scope of its power by reliance on a state constitutional provision where to do so prevents enforcement of national civil rights legislation. Louis v. Kutta, 8 FSM Intrm. 208, 212-13 (Chk. 1997).

The supremacy clause of the FSM Constitution does not admit a result where a state constitutional provision prevents the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the Constitution is founded. Louis v. Kutta, 8 FSM Intrm. 208, 213 (Chk. 1997).

A state may not use its own constitution to defeat enforcement of a judgment entered on a civil rights claim brought pursuant to the mandate of the national constitution and statutes. Thus, a state constitutional provision will not prevent a civil rights plaintiff from using national execution procedures to obtain satisfaction of his judgment. Louis v. Kutta, 8 FSM Intrm. 208, 213 (Chk. 1997).

A successful plaintiff under the civil rights statute, 11 F.S.M.C. 701(3), is entitled to an award for costs and reasonable attorney's fees. Davis v. Kutta, 8 FSM Intrm. 218, 220 (Chk. 1997).

An hourly fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action. Davis v. Kutta, 8 FSM Intrm. 218, 222 (Chk. 1997).

When a party has entered into a contingent fee agreement reasonable under FSM MRPC Rule 1.5 and the contingent recovery is more than a fee calculated by an hourly rate times the hours expended, a court, in awarding civil rights attorney's fees, may award a reasonable fee pursuant to the agreement's terms. Davis

v. Kutta, 8 FSM Intrm. 218, 223 (Chk. 1997).

The purpose of the FSM civil rights fee provision is to permit an FSM civil rights litigant to employ reasonably competent counsel to pursue civil rights litigation without cost to him or herself. Davis v. Kutta, 8 FSM Intrm. 218, 223 (Chk. 1997).

Because the point of departure for determining a reasonable fee in civil rights litigation is to look at the amount of time spent, counsel should maintain careful records of time actually spent, notwithstanding the existence of a contingency fee agreement. Davis v. Kutta, 8 FSM Intrm. 218, 224 (Chk. 1997).

Civil rights attorney fee awards and awards of costs may be entered against multiple defendants in the same proportions as those in the original judgment. Davis v. Kutta, 8 FSM Intrm. 218, 224 (Chk. 1997).

A civil rights claim against a municipal government will be dismissed when it fails to allege that the officials were acting pursuant to governmental policy or custom when the allegedly unconstitutional actions occurred or when it fails to allege that the violations were caused by the officials who were responsible for final policy making, and when those officials made a deliberate choice to follow a course of action chosen from various alternatives. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 296 (Pon. 1998).

Wilful and malicious deprivation of a person's due process rights to notice and an opportunity to be heard, are a violation of that person's civil rights. Bank of Guam v. O'Sonis, 8 FSM Intrm. 301, 304 (Chk. 1998).

The FSM civil rights law is intended to provide an effective remedy to FSM citizens when their constitutional rights are violated. A fundamental role of government, be it state or national, is to safeguard those rights. Louis v. Kutta, 8 FSM Intrm. 312, 317 (Chk. 1998).

When a state government, acting by its agents, steps out of its role of protector of a citizen's constitutional rights, and violates the very rights it is meant to guard, a money judgment is the only practical means by which the state can compensate its citizens for the damage it inflicts. Louis v. Kutta, 8 FSM Intrm. 312, 317 (Chk. 1998).

Chapter 7 of Title 11 of the FSM Code creates a statutory cause of action for individuals whose constitutional rights have been violated, and imposes civil liability, including costs and attorney fees, on a person who deprives another of any right or privilege protected under that Section. The national government is a "person" to whom such civil liability may attach under this statute. Issac v. Weilbacher, 8 FSM Intrm. 326, 335 (Pon. 1998).

Under 11 F.S.M.C. 701 *et seq.* a private cause of action is provided to any person whose constitutional rights are violated. In order for the remedy provided by 11 F.S.M.C. 703 to be effective, it must be enforceable. Where the defendant in a civil rights action is a state, this means that the remedy should not be dependent upon subsequent state legislative action, such as appropriation of funds, which would thwart the Congressional mandate that 11 F.S.M.C. 701 is meant to implement. Accordingly, the FSM Supreme Court is not precluded from issuing an order in aid of judgment against a state in the absence of a state legislative appropriation. Davis v. Kutta, 8 FSM Intrm. 338, 341 (Chk. 1998).

Interest on a judgment is payable under 6 F.S.M.C. 1401 at nine percent a year. 11 F.S.M.C. 701(3), which provides for an award of attorney's fees in a civil rights action, should be construed to permit interest on an unpaid fee award. Davis v. Kutta, 8 FSM Intrm. 338, 341 n.2 (Chk. 1998).

When none of the defendants is a governmental entity, or someone alleged to have acted under color of law, or a private person, not acting under color of law, but who injures, oppresses, threatens, or intimidates another in exercising or enjoying or having exercised or enjoyed one's civil rights, it is not a civil rights case. Pau v. Kansou, 8 FSM Intrm. 524, 526 (Chk. 1998).

In any civil rights action the court may award costs and reasonable attorney's fees to the prevailing party. Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 113 (Chk. 1999).

Because of the similarity between the U.S. civil rights statute and 11 F.S.M.C. 701, FSM courts should consider the decisions of the United States in arriving at a decision, without being bound by them. Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 113 (Chk. 1999).

Judicial immunity does not apply against the imposition of prospective injunctive relief. The right to attorney's fees applies when prospective relief is granted against a judge pursuant to the civil rights statute. Bank of Guam v. O'Sonis, 9 FSM Intrm. 106, 113 (Chk. 1999).

It is a crime, under 11 F.S.M.C. 701(1), to willfully, whether or not acting under color of law, deprive another of, or injure, oppress, threaten, or to intimidate another in his free exercise or enjoyment of any right, privilege, or immunity secured to him by the FSM's Constitution or laws. A person who deprives another of any right or privilege protected under 11 F.S.M.C. 701 is civilly liable to the party injured. The element of willfulness is not required for the civil liability. Primo v. Pohnpei Transp. Auth., 9 FSM Intrm. 407, 411 (App. 2000).

Civil rights are guaranteed to all FSM citizens under the Declaration of Rights, which is Article IV of the FSM Constitution. Congress conferred a cause of action for violation of civil rights by enacting 11 F.S.M.C. 701 *et seq*., pursuant to subsection (3). Davis v. Kutta, 9 FSM Intrm. 565, 568 (Chk. 2000).

A deprivation of rights under the FSM Civil Rights statute requires a finding of willfulness. Damarlane v. Pohnpei Supreme Court Appellate Division, 9 FSM Intrm. 601, 603 (Pon. 2000).

A detainee may be deprived of his civil rights in violation of 11 F.S.M.C. 701(3) by the arbitrary and purposeless denial of medical care. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 13 (Chk. 2001).

Deliberate indifference to a detainee's medical needs is policy when there is no training which would prepare a shift supervisor or other officers to evaluate an illness's or injury's severity and the decision to refer to the hospital resides in the shift supervisor's unlimited discretion. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 13 (Chk. 2001).

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

Although Chuuk state law does not appear to recognize survival causes of action, the right to damages for civil rights violations under national law survives a victim's death. If it did not, the purpose of the civil rights cause of action would be thwarted. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 13 (Chk. 2001).

When the failure to refer a detainee for medical treatment is arbitrary and purposeless, it constitutes punishment of someone who has not been convicted of any crime. This punishment is a denial of the right to due process. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 13 (Chk. 2001).

A Public Safety Director, as the policy maker for the department, may, by failing to investigate the issue of accountability for a detainee's death, ratify the shift supervisor's and the jailer's actions. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 14 (Chk. 2001).

A jailer is not liable for the arbitrary and purposeless failure to refer a detainee for medical treatment when he referred the matter to the shift supervisor who had the authority to authorize the referral because he could not have done anything more. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 14 (Chk. 2001).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees

and costs of suit as compensatory damages. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 14 (Chk. 2001).

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

The state violates a detainee's civil rights to appropriate care while detained through its use of untrained and inexperienced trainees as jailers, failure to supervise those trainees, and failure to refer an injured detainee for medical care. Atesom v. Kukkun, 10 FSM Intrm. 19, 22 (Chk. 2001).

A detainee's civil right to appropriate care while detained is violated by a jailer's false report of the extent of the detainee's injury which prevented a possible medical referral. Atesom v. Kukkun, 10 FSM Intrm. 19, 22 (Chk. 2001).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages, and liability for attorney's fees will be assessed among the defendants in proportion to their responsibility for the judgment. Atesom v. Kukkun, 10 FSM Intrm. 19, 23 (Chk. 2001).

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

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

A court has the power to issue an order to a state official to perform a purely ministerial act – the issuance of a check – in order to cause the state to conform its conduct to the requirements of both the FSM Constitution and the national statute at issue, 11 F.S.M.C. 701. Davis v. Kutta, 10 FSM Intrm. 98, 99 (Chk. 2001).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. Estate of Mori v. Chuuk, 10 FSM Intrm. 123, 124 (Chk. 2001).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 and § 1988 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Estate of Mori v. Chuuk, 10 FSM Intrm. 123, 124 (Chk. 2001).

So long as a party has prevailed in a civil rights suit as a whole, that party is entitled to fees for all time reasonably spent on the matter, including the time spent on pendent state law claims that would not otherwise be statutorily entitled to a fee award, when the pendent claims arise out of a common nucleus of operative fact. Estate of Mori v. Chuuk, 10 FSM Intrm. 123, 124 (Chk. 2001).

Persons liable for civil rights violations include government entities. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 236 (Kos. S. Ct. Tr. 2001).

A civil rights claim against a municipal government will be dismissed when it fails to allege that the officials were acting pursuant to governmental policy or custom when the allegedly unconstitutional actions occurred or when it fails to allege that the violations were caused by the officials who were responsible for final policy making, and when those officials made a deliberate choice to follow a course of action chosen from various alternatives. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 238 (Kos. S. Ct. Tr. 2001).

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

Plaintiffs may recover all of their attorney's fees although the bulk of the damages was awarded on the state law claim and even though the entitlement to those fees arises from the civil rights statute because for attorney fee purposes in such an instance, it is sufficient that the non-fee claims (i.e., the state law claims) and the fee claims (i.e., the civil rights claims) arise out of a common nucleus of operative fact. Estate of Mori v. Chuuk, 11 FSM Intrm. 535, 537-38 (Chk. 2003).

When both the civil rights claim and the wrongful death claim arose from a common nucleus of operative fact, for purposes of enforcing the judgment, and to be consistent with the principle that plaintiffs are entitled to all of their attorney's fees under 11 F.S.M.C. 701 even though they prevailed on a state law claim as well as a civil rights claim, the court will treat the judgment as though it is in its entirety based on a civil rights claim. Estate of Mori v. Chuuk, 11 FSM Intrm. 535, 538 (Chk. 2003).

When the only reasonably effective means by which to obtain payment of a civil rights judgment against the state is through an order of garnishment directed to the national government, the anti-garnishment statute is unconstitutional to the extent that it precludes a garnishment order to pay a judgment that is based in material part on civil rights claims under 11 F.S.M.C. 701. Estate of Mori v. Chuuk, 11 FSM Intrm. 535, 541 (Chk. 2003).

A civil rights judgment must not depend on legislative action for satisfaction. Estate of Mori v. Chuuk, 11 FSM Intrm. 535, 541 (Chk. 2003).

A court finding that 6 F.S.M.C. 707 is unconstitutional to the extent that it prevents satisfaction of a judgment based on a violation of constitutional rights is limited to the facts before the court and applies only to a judgment against the state that is based on civil rights claims under the national civil rights statute, which confers a cause of action for violation of rights guaranteed by the FSM Constitution. Estate of Mori v. Chuuk, 11 FSM Intrm. 535, 541 (Chk. 2003).

In the usual case payment of a money judgment against the state must abide a legislative appropriation, but a judgment for the violation of rights guaranteed by the FSM Constitution is a species apart. If there is no meaningful remedy for such a violation, which means a judgment subject to satisfaction in a reasonably expeditious manner, then that right afforded constitutional protection is an illusion, and, if that right is reduced to an illusion, then our Constitution itself is reduced to a solemn mockery. Estate of Mori v. Chuuk, 11 FSM Intrm. 535, 541 (Chk. 2003).

A garnishment order against the national government will issue to pay a civil rights judgment against Chuuk when the sum is less by at least an order of magnitude than the sums that Chuuk receives on a drawdown basis from the FSM when Chuuk accordingly has the ability to pay the judgment and when, based on the case's history, a garnishment order is the only means by which payment can reasonably be made. Estate of Mori v. Chuuk, 11 FSM Intrm. 535, 542 (Chk. 2003).

Even if the Chuuk Financial Control Commission were at some future time to assume its responsibility to develop legislation for appropriation to address court judgments when it has thus far declined to do so, payment of the judgment would still have to await legislative appropriation, a state of affairs that the principle of supremacy of the FSM Constitution does not countenance where a judgment based on a civil rights violation is concerned. Davis v. Kutta, 11 FSM Intrm. 545, 549 (Chk. 2003).

The remedy for violation of a constitutional right, to be meaningful, must be one that can be realized upon in a reasonably expeditious manner. When more than six and a half years have elapsed since the judgment was entered, 6 F.S.M.C. 707, which prohibits the garnishment of funds owed by the FSM to a state, is unconstitutional as it applies to the case's judgment for a violation of civil rights guaranteed by the FSM

Constitution. In practical terms, that statute takes from the plaintiff the only means of securing a reasonably expeditious satisfaction of the judgment. Davis v. Kutta, 11 FSM Intrm. 545, 549 (Chk. 2003).

Although a state constitutional and a statutory provisions barring payment without a legislative appropriation are neither facially objectionable, what is not constitutionally permissible is to use the requirement defensively to avoid payment of a judgment based on a civil rights claim brought under the national civil rights statute. Principles of supremacy under Article II of the FSM Constitution preclude this result. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 11 n.5 (Chk. 2003).

A state trial court order that does not address the question of national court judgments based on the violation of civil rights guaranteed under the FSM Constitution cannot provide guidance with respect to enforcement of the FSM Supreme Court civil rights judgments. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 12 (Chk. 2003).

In any case brought under 11 F.S.M.C. 701 *et seq.*, a plaintiff must prove each element of his case by the preponderance of the evidence. In the case of a stipulated judgment under a settlement agreement, an equally basic jurisprudential principle dictates that a stipulated judgment will be entered only if it is well grounded both in law and in fact. Estate of Mori v. Chuuk, 12 FSM Intrm. 24, 26 (Chk. 2003).

When the plaintiff received notice of the hearing and had an opportunity to present its arguments to the agency, when, although the agency would have done well to explain its reasons for rejecting plaintiff's arguments, it was not legally required to do so, and when the record shows that a hearing was held, a rehearing was held, the parties were allowed to have their attorneys present, the parties were given the opportunity to file written briefs and did so, and the agency thereafter issued a 13-page written decision, the plaintiff's claim that its due process rights were violated will be dismissed for failure to state a claim, as will a civil rights claim inextricably tied to the due process claim. Asumen Venture, Inc. v. Board of Trustees, 12 FSM Intrm. 84, 91-92 (Pon. 2003).

Violating a person's civil right to be free from excessive force while detained by the municipal police, is a violation of 11 F.S.M.C. 701(3). Herman v. Municipality of Patta, 12 FSM Intrm. 130, 135 (Chk. 2003).

Civil rights causes of action survive the victim's death because if it did not then the national civil rights statute's purpose would be thwarted. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 135 (Chk. 2003).

A government entity may be held liable under 11 F.S.M.C. 701(3) when violations are caused by officials who are responsible for final policy making with respect to the action chosen from various alternatives. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 136 (Chk. 2003).

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

A detainee has a civil right to be free of excessive force while detained in the custody. The use of excessive force results from the arrest by a person having the authority to do so but accomplished by the use of unreasonable force. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 136 (Chk. 2003).

A state law cannot extinguish rights granted by an FSM statute, 11 F.S.M.C. 701 (civil rights cause of action), pursuant to rights guaranteed in the FSM Constitution, which is the supreme law of the land. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 136 (Chk. 2003).

Civil rights damages may include damages for the victim's pain and suffering before his death. Calculating damages for pain and suffering is difficult because no fixed rules exist to aid in that determination, which lies in the court's sole discretion. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 137 (Chk. 2003).

The prevailing party in civil rights actions under 11 F.S.M.C. 701 is entitled to reasonable attorney fees and costs of suit as compensatory damages. The usual method is to award fees based on the hourly rate. Thus the initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 137 (Chk. 2003).

While a continency fee is not an arbitrary ceiling with respect to attorney's fees recoverable under an 11 F.S.M.C. 701(3) civil rights action, neither is it a floor. A contingency fee may be used as a basis for an attorney fee award when there are no contemporaneous records of the time the attorney had spent on the case, but since the point of departure for determining a reasonable fee under 11 F.S.M.C. 701(3) is to look at the amount of time spent, counsel in civil rights litigation should maintain careful records of time actually spent, notwithstanding the existence of any contingency fee agreement. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 137 (Chk. 2003).

When plaintiffs are awarded reasonable fees and costs as compensatory damages under 11 F.S.M.C. 701(3), the liability for this will be assessed upon the defendants in proportion to their total liability on the rest of the judgment. Herman v. Municipality of Patta, 12 FSM Intrm. 130, 137-38 (Chk. 2003).

A person commits an offense if he willfully, whether or not acting under color of law, deprives another of, or injures, oppresses, threatens, or intimidates another in the free exercise or enjoyment of, or because of his having so exercised any right, privilege, or immunity secured to him by the FSM Constitution or laws. Section 701(3) provides for civil liability, including attorney's fees, against any person engaging in the proscribed conduct. "Person" includes state governments. Wortel v. Bickett, 12 FSM Intrm. 223, 225 (Kos. 2003).

The unilateral cancellation of a foreign investment permit in derogation of the procedures provided for under Kos. S.C. § 15.308(10) is arbitrary and grossly incorrect, and as such constitutes a violation of the national civil rights statute. Wortel v. Bickett, 12 FSM Intrm. 223, 226 (Kos. 2003).

When a canceled foreign investment permit was ultimately reinstated, it renders moot the cancellation itself and leaves no administrative remedy for the permit holder to pursue. What then remains as a live court issue is the arbitrary and grossly incorrect manner in which the permit was originally canceled. This conduct constitutes a violation of 11 F.S.M.C. 701 *et seq*., and entitles the plaintiff to a summary judgment. Wortel v. Bickett, 12 FSM Intrm. 223, 226 (Kos. 2003).

The Kosrae Office of the Attorney General enforces state penal laws, delegating enforcement to a department in its discretion. Thus the Kosrae attorney general is an individual with responsibility for determining final policy with regard to the matters committed to that office, and as such is liable on a personal basis if he violates a person's constitutional rights through making a deliberate choice to follow a course of action from among various alternatives. Wortel v. Bickett, 12 FSM Intrm. 223, 226-27 (Kos. 2003).

The court has granted writs of garnishment against funds held by the national government for the benefit of the State of Chuuk only in one instance, and that is where a judgment was entered against the state for violations of 11 F.S.M.C. 701 *et seq*., the national civil rights statute. Barrett v. Chuuk, 12 FSM Intrm. 558, 560 (Chk. 2004).

The FSM Congress has specifically acted to confer a cause of action for violation of civil rights, 11 F.S.M.C. 701 *et seq*., and it is for judgments based on such claims that the court has issued writs of garnishment against the state. Barrett v. Chuuk, 12 FSM Intrm. 558, 561 (Chk. 2004).

A false imprisonment claim is separate and distinct from a civil rights claim. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM Intrm. 154, 156 (Pon. 2005).

A plaintiff's tort claim will not be dismissed as duplicative of his civil rights claim without the benefit of trial because it would be premature to dismiss either claim since the plaintiff has yet to prove the necessary

elements of one or both of his two distinct claims and because at this juncture the contention that the tort and civil rights claims are duplicative is without merit. Warren v. Pohnpei State Dep't of Public Safety, 13 FSM Intrm. 154, 156 (Pon. 2005).

As required by the FSM Constitution, in rendering a decision, a court must consult and apply sources of the Federated States of Micronesia, but where appropriate, the FSM Supreme Court can and should consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. Because there is very little FSM law governing the enforcement of national civil rights judgments against the states, the court will look to case law of the United States for guidance, as civil rights protections in the United States and FSM are similar. Chuuk v. Davis, 13 FSM Intrm. 178, 185-86 (App. 2005).

When issuing a writ of garnishment becomes necessary to satisfy a civil rights judgment, the judiciary is clearly empowered to do so. The fact that the garnished is a state within this federation (and the garnishee is the national government) does not change the analysis because the FSM Constitution guarantees this nation's citizens certain protections, and Congress has passed laws allowing its citizens to sue for damages where those rights have been violated. It is not for one state to roll back those rights and privileges afforded by the national government, and the court would be derelict in our duty to allow it to do so. The trial court's action case was thus appropriate and within the bounds of its authority. Chuuk v. Davis, 13 FSM Intrm. 178, 186 (App. 2005).

COMMERCE

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

Whether Pohnpei's power to regulate trochus means that any action which has an arguably regulatory effect on trochus cannot constitute an anticompetitive practice is an issue for trial, and a motion to dismiss in this respect must be denied. AHPW, Inc. v. FSM, 9 FSM Intrm. 301, 304 (Pon. 2000).

Title 32, sections 301 *et seq.* date from the Trust Territory period but continue in effect pursuant to the FSM Constitution's Transition Clause. AHPW, Inc. v. FSM, 9 FSM Intrm. 301, 305 (Pon. 2000).

The State of Pohnpei is deemed a person within the meaning of section 306 of the Anticompetitive Practices statute and may be a defendant as well as a plaintiff in suits brought under the statute. AHPW, Inc. v. FSM, 9 FSM Intrm. 301, 305 (Pon. 2000).

A party to a commercial transaction, not one primarily for personal, family, or household purposes, may not bring a cause of action under Title 34 of the FSM Code since Title 34 only provides for consumer protection. FSM Dev. Bank v. Mudong, 10 FSM Intrm. 67, 77 (Pon. 2001).

32 F.S.M.C. 306(2) creates a civil cause of action under national law for violations of the prohibitions against anti-competitive practices. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 200, 203 (Pon. 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 Intrm. 200, 203 (Pon. 2001).

The venue provision of 32 F.S.M.C. 306(2) must be read in conjunction with the service provisions of the FSM "long-arm statute," 4 F.S.M.C. 204, and with the FSM Code's venue provisions. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 200, 204 (Pon. 2001).

A foreign corporation served pursuant to 4 F.S.M.C. 204 may be sued within the FSM for violations of 32 F.S.M.C. 302 or 303, regardless of where the service occurs, so long as that foreign corporation has done

specific acts within the FSM to bring it within the jurisdiction of the FSM Supreme Court. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 200, 204-05 (Pon. 2001).

Any person who is injured by another's violation of 32 F.S.M.C. 302 or 303 may sue therefor where the defendant resides or where service may be obtained, and may recover three times the damages sustained by him together with a reasonable attorney's fee and the costs of suit. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 409, 413 (Pon. 2001).

There is no common law tort of unfair competition in the FSM because that field of law has been preempted by the Consumer Protection Act of 1970. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 409, 414 (Pon. 2001).

Because the national government has the exclusive power to regulate foreign and interstate commerce, the Consumer Protection Act is the law of the FSM insofar as any advertising, sale, offer or distribution involves commerce between the states of the FSM or with any foreign entity. The Consumer Protection Act also is the law of the states of the FSM, insofar as it involves commerce which is intrastate and has not been repealed by the state legislatures. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 409, 415 (Pon. 2001).

The Consumer Protection Act of 1970 exclusively provides the means by which unfair competition between businesses should be dealt with under both national and applicable state law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 409, 415 (Pon. 2001).

The Consumer Protection Act vests consumers with a civil cause of action against anyone engaged in activity which is deceptive or misleading, and authorizes the Attorney General to seek injunctive relief against such activity, to prosecute criminal violations of the Act, and to seek civil and criminal penalties against those who violate the Act. The Act does not provide a means for recourse by businesses against other competing businesses. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 409, 415-16 Pon. 2001).

The Consumer Protection Act abolishes any common law action for unfair competition. Businesses do not have standing to sue competitors for violations of 34 F.S.M.C. 103, including passing off goods or services as those of another. Because Congress has legislated comprehensively in this field, it should be Congress that decides whether to provide businesses with a private cause of action against competitors for engaging in unfair competition. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 409, 416 (Pon. 2001).

Attempts to threaten or induce merchants not to sell competing products violate 32 F.S.M.C. 303. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 409, 417 (Pon. 2001).

When it is not clear whether the plaintiff can demonstrate the type of illegal "combination" contemplated by 32 F.S.M.C. 302, and there is no relevant case law found in the FSM which interprets the anti-competitive practices law and when the court does not have before it any evidence of the parties' relative market shares, it is difficult to evaluate the likelihood of success of plaintiff's claims under 32 F.S.M.C. 301 *et seq*. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 409, 417 (Pon. 2001).

The Attorney General has the authority to prosecute violations of the Consumer Protection Act, but private business entities do not. The Act recognizes that unfair or deceptive trade practices are criminal, and also confers standing on consumers who are injured by the practices to recover their actual damages or $100, whichever is greater. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 409, 418 (Pon. 2001).

In commercial credit transactions, no person may directly or indirectly receive or charge interest which exceeds an annual percentage rate of twenty-four percent. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM Intrm. 475, 477 (Pon. 2001).

The term "counterfeit" has a specific legal meaning: to forge; to copy or imitate, without authority or right, and with a view to deceive or defraud, by passing the copy or thing forged for that which is original or genuine.

Yang v. Western Sales Trading Co., 11 FSM Intrm. 607, 616 (Pon. 2003).

Goods received through unauthorized distribution networks often are referred to as "gray market" goods, or parallel products. Gray market goods are genuine products possessing a brand name protected by trademark or copyright, which are typically manufactured abroad and then purchased and imported by third parties, bypassing authorized distribution channels. Yang v. Western Sales Trading Co., 11 FSM Intrm. 607, 617 (Pon. 2003).

Summary judgment will be granted when, viewing the facts in the light most favorable to the plaintiff, the defendant national government's $40,000 appropriation did not, as a matter of law, violate any of the plaintiff's constitutional rights since the allotment was not a subsidy or other payment to pepper farmers that arguably reduced or otherwise affected its competitive advantage in a way that violated its constitutional rights and when the court does not construe this allotment as some form of financing of Pohnpei's allegedly unlawful activities. Any connection between the FSM allotment and the destruction of AHPW's pepper business is too remote since there is no showing that the allotment caused, or even contributed to the cause of, the destruction of its pepper operation. AHPW, Inc. v. FSM, 12 FSM Intrm. 114, 118 (Pon. 2003).

Since it is not competition, but anticompetitive practices that is proscribed and since nothing in the record suggests that at the time of its 1995 allotment to Pohnpei, the FSM had any knowledge that Pohnpei intended to engage in unfair competitive practices, the FSM's allotment did not constitute, as a matter of law, an anticompetitive practice. AHPW, Inc. v. FSM, 12 FSM Intrm. 114, 119 (Pon. 2003).

Pohnpei is a "person" for purposes of the anticompetition statutes. AHPW, Inc. v. FSM, 12 FSM Intrm. 114, 123 (Pon. 2003).

Competition is not what 32 F.S.M.C. 301 *et seq.* proscribes, but rather anticompetitive practices. AHPW, Inc. v. FSM, 12 FSM Intrm. 114, 123 (Pon. 2003).

Title 32, chapter 3 of the FSM Code prohibits anticompetitive conduct, not competition. AHPW, Inc. v. FSM, 12 FSM Intrm. 164, 168 (Pon. 2003).

The regulation of businesses is an exercise of the police power, recognized as necessary to protect the public health, morals and welfare. Regulation of intoxicating liquors pursuant to the police power is recognized in virtually every jurisdiction. Ceasar v. Uman Municipality, 12 FSM Intrm. 354, 357 (Chk. S. Ct. Tr. 2004).

Since the police power is an incident of state sovereignty, municipal exercise of the police power may only occur when delegated by the state, and since municipalities ordinarily have no original police power, they have only such authority with respect to intoxicating liquors as is conferred upon them by the state, either in express terms or by implication. Thus, if a municipality is to have the legal right to regulate the possession and sale of alcoholic beverages, that right must have been delegated to it by the state legislature. Ceasar v. Uman Municipality, 12 FSM Intrm. 354, 357-58 (Chk. S. Ct. Tr. 2004).

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

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

"Competition" means the effort of two or more parties, acting independently, to secure the business of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

When the lack of details provided in an attorney's fee affidavit is problematic, but Congress felt that the policy concerns underlying 32 F.S.M.C. 301 *et seq.* were strong, because a successful plaintiff may recover both reasonable attorney's fees and treble damages and the plaintiff has successfully vindicated an interest protected by this statute and when the case presented complex, novel issues and the relief sought was ultimately achieved, in lieu of denying a fee request altogether, the court may reduce the amount of the fee claimed. AHPW, Inc. v. FSM, 13 FSM Intrm. 36, 41 (Pon. 2004).

COMMON LAW

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

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

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

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

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

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

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

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

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

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

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

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

In considering the law concerning secured transactions, the FSM Supreme Court must look for guidance

of the pre-UCC common law and may only declare the existence of such security interests as have been found by other courts to exist in the absence of statutes. Bank of Guam v. Island Hardware, Inc., 2 FSM Intrm. 281, 288 (Pon. 1986).

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

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

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

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

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

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

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

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

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

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

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

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

When FSM courts have not yet addressed an issue, the court may look to the Restatement and to decisions from jurisdictions in the common law tradition outside the FSM, all the while keeping in mind the suitability for the FSM of any given common law principle. Senda v. Semes, 8 FSM Intrm. 484, 495 (Pon. 1998).

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

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

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

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

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

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

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

COMPACT OF FREE ASSOCIATION

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

A United States federal employee does not waive immunity from civil liability under the Compact of Free Association and the Federal Programs and Services Agreement when the civilian employee initiated litigation

in the FSM Supreme Court in a separate lawsuit with different claims against different parties and where the affirmative misconduct is within the scope and in the performance of the official duty. Samuel v. Pryor, 5 FSM Intrm. 91, 97 (Pon. 1991).

It is the duty of the FSM Supreme Court to review any national law, including a treaty such as the Compact of Free Association, in response to a claim that the law or treaty violates constitutional rights, and if any Compact provision is contrary to the Constitution, which is the supreme law of the land, then that provision must be set aside as without effect. Samuel v. Pryor, 5 FSM Intrm. 91, 98 (Pon. 1991).

The Compact of Free Association's immunization provisions, which limit a plaintiff's right to sue a physician for malpractice, do not affect a fundamental right, and therefore, the provisions need not be subjected to a strict scrutiny, but instead should be tested under the less stringent rational relationship test. Samuel v. Pryor, 5 FSM Intrm. 91, 104 (Pon. 1991).

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

By the terms of the Compact and its subsidiary extradition agreement the term "Signatory Government" includes not only the national, but also the state governments of the two nations. Therefore state as well as national law may be used to determine if the offense for which extradition is sought satisfies the dual criminality test–is criminal under the laws of both signatory governments. In re Extradition of Jano, 6 FSM Intrm. 93, 102-03 (App. 1993).

Although the Compact waives the sovereign immunity of the U.S. government, it does not create new causes of action or fashion a remedy where one was previously not available. The Compact does not authorize monetary damages to individuals for breach of the Trusteeship Agreement. Alep v. United States, 6 FSM Intrm. 214, 218-19 (Chk. 1993).

Although the Compact of Free Association waives U.S. sovereign immunity it does not create new causes of action or remedies beyond what was available to private litigants before the Compact. Nahnken of Nett v. United States (III), 6 FSM Intrm. 508, 526 (Pon. 1994).

The waiver of sovereign immunity clause in the Compact did not create any new causes of action, but merely waived sovereign immunity with respect to valid existing claims. Alep v. United States, 7 FSM Intrm. 494, 497 (App. 1996).

The only new cause of action created by the Compact is where the U.S. government accepts responsibility for losses or damages arising out of nuclear testing in the Marshall Islands between 1946 and 1958. Alep v. United States, 7 FSM Intrm. 494, 498-99 (App. 1996).

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

CONSTITUTIONAL LAW

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

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

While courts will not refuse to pass on the constitutionality of statutes in a proceeding in which such a

determination is involved, needless consideration of attacks on their validity and unnecessary decisions striking down statutes will be avoided. Legislative acts are presumed to be constitutional; where fairly possible a construction of a statute will be made that avoids constitutional questions. Truk v. Hartman, 1 FSM Intrm. 174, 180-81 (Truk 1982).

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

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

A court should not decide a constitutional issue when there remains a possibility that an administrative decision will obviate the need for a court decision. Suldan v. FSM (I), 1 FSM Intrm. 201, 205 (Pon. 1982).

The Constitution does not contemplate that FSM citizens must first petition any person or body outside the Federated States of Micronesia as a condition to consideration of their constitutional claims by courts established under this Constitution. In re Iriarte (II), 1 FSM Intrm. 255, 267 (Pon. 1983).

Unnecessary constitutional adjudication is to be avoided. Suldan v. FSM (II), 1 FSM 339, 357 (Pon. 1983).

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

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

Article III, sections l and 2, of the FSM Constitution are self-executing and do not contemplate, or imply the need for, court action to confirm citizenship where no challenge exists. In re Sproat, 2 FSM Intrm. 1, 7 (Pon. 1985).

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

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

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

As a matter of constitutional law, the authority to exercise executive, legislative and judicial powers came to the Federated States of Micronesia under the FSM Constitution, by operation of law, not through delegation of Trust Territory functions. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 103 (App. 1989).

The appellate court will not decide a constitutional issue if not raised below and because unnecessary constitutional adjudication is to be avoided. Jonah v. FSM, 5 FSM Intrm. 308, 313 (App. 1992).

The Chapman rule, which holds that a constitutional error can be found harmless only when it is harmless beyond a reasonable doubt, is suitable for the FSM. Jonah v. FSM, 5 FSM Intrm. 308, 314 (App. 1992).

A statute is repealed by implication by a constitutional provision when the legislature, under the new

constitutional provision, no longer has the present right to enact statutes substantially similar to the statute in question. FSM v. Jano, 6 FSM Intrm. 9, 11 (Pon. 1993).

In the absence of any authority or compelling policy arguments the court cannot conclude that a law, the enforcement of which entails a harsh result, is unconstitutional, and can only note that the creation of potentially harsh results is well within the province of the nation's constitutionally empowered legislators. Mid-Pacific Constr. Co. v. Semes, 7 FSM Intrm. 102, 104 (Pon. 1995).

A court should avoid unnecessary constitutional adjudication. Louis v. Kutta, 8 FSM Intrm. 228, 229 (Chk. 1998).

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

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

The constitutional government works not to override custom, but works in cooperation with the traditional system in an atmosphere of mutual respect. Senda v. Semes, 8 FSM Intrm. 484, 497 (Pon. 1998).

Micronesian custom, and the constitutional legal system established by the people of the FSM, flow from differing (not necessarily inconsistent) premises and purposes. These two systems, then, can be seen as supplementary and complementary, not contradictory. Each has a valuable role to perform, independent of the other. Senda v. Semes, 8 FSM Intrm. 484, 499 (Pon. 1998).

The right guaranteed in the Chuuk Constitution to move and migrate within the State and the right in the FSM Constitution to travel and migrate within the Federated States, do not protect travel or migration outside these boundaries. Chipen v. Losap Election Comm'r, 9 FSM Intrm. 46, 48 (Chk. S. Ct. Tr. 1999).

A municipal ordinance restricting absentee voting in municipal elections to persons in the state of Chuuk is not unconstitutional. Chipen v. Losap Election Comm'r, 9 FSM Intrm. 46, 48 (Chk. S. Ct. Tr. 1999).

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

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

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

When a government has the power to collect money, it has the power to disburse that money at its discretion unless the Constitution or applicable laws should provide otherwise. Chuuk v. Secretary of Finance,

9 FSM Intrm. 424, 431 (App. 2000).

The Constitution's broadly stated express grants of power to the national government contain within them innumerable incidental or implied powers, as well as certain inherent powers. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 431 n.2 (App. 2000).

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

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

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

The Constitution provides three instances of mandatory unconditional revenue sharing with the states, which the framers evidently thought enough. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 435 (App. 2000).

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

The FSM Constitution does not apply to a lawsuit in a CNMI court over a transaction that occurred in Saipan. Northern Marianas Housing Corp. v. Finik, 12 FSM Intrm. 441, 444 (Chk. 2004).

– Amendment

The National Constitutional Convention is given broad authority to revise the very foundation of government, and every institution and office of government may come within its reach. Constitutional Convention 1990 v. President, 4 FSM Intrm. 320, 326 (App. 1990).

The nature of a constitutional convention as authorized by the FSM Constitution, with direct control of the people over the identity of convention delegates, and ultimate acceptance of the products of the convention's efforts, and the fact that the framers view a constitutional convention as a standard and preferred amendment mechanism, preclude congressional control over the convention's decision-making. Constitutional Convention 1990 v. President, 4 FSM Intrm. 320, 327 (App. 1990).

Congress has no power to specify voting requirements for the Constitutional Convention and therefore any attempt to exercise this power so as to uphold tradition is also outside the powers of Congress under article V, section 2 of the Constitution, which is not an independent source of congressional power but which merely confirms the power of Congress, in exercising national legislative powers, to make special provisions for Micronesian tradition. Constitutional Convention 1990 v. President, 4 FSM Intrm. 320, 328 (App. 1990).

The 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 Intrm. 273, 276 (Chk. 1992).

An amendment to the Constitution may be proposed by a constitutional convention, popular initiative, or Congress in a manner provided by law. A proposed amendment becomes part of the Constitution when approved by ¾ of the votes cast on that amendment in each of ¾ of the states. These are the only methods by which the Constitution may be amended. Gilmete v. Carlos Etscheit Soap Co., 13 FSM Intrm. 145, 149 (App. 2005).

– Bill of Attainder

A bill of attainder is any legislative act that applies to either named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial by substitution of a legislative for a judicial determination of guilt. Robert v. Mori, 6 FSM Intrm. 394, 401 (App. 1994).

A statute making all persons convicted of a felony in the Trust Territory courts ineligible for election to the FSM Congress does not constitute criminal punishment and does not substitute a legislative for a judicial determination of guilt and thus is not an unconstitutional bill of attainder. Robert v. Mori, 6 FSM Intrm. 394, 401 (App. 1994).

The statutory ineligibility of persons convicted of Trust Territory felonies is a valid exercise of Congress's constitutional power to prescribe additional qualifications for election to Congress, and is not unconstitutional as a deprivation of a liberty interest without due process of law, or as an ex post facto law, or as a bill of attainder. Robert v. Mori, 6 FSM Intrm. 394, 401 (App. 1994).

– Case or Dispute

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 Intrm. 1, 5 (Pon. 1985).

One reason the judicial power is limited to cases or disputes is to prevent the Judiciary from intruding into areas committed to other branches of government. In re Sproat, 2 FSM Intrm. 1, 7 (Pon. 1985).

The principal objectives of the case and dispute requirement are to enhance the ability of the courts to make fair and intelligent decisions, and to keep the judicial power within its proper role. Innocenti v. Wainit, 2 FSM Intrm. 173, 178-79 (App. 1986).

A concrete case or dispute clearly exists where a state legislature contends that an act of the legislature requires payment of a tax on imports and others insist that the act is null and void, and, depending on the outcome of the controversy, money may or may not be collected, and penalties may or may not be imposed. Innocenti v. Wainit, 2 FSM Intrm. 173, 179 (App. 1986).

Where there is no indication that the sentencing order in question is an attempt to modify or affect the powers of the Director of Public Safety, absent indications that the order prevents the director from doing anything he wishes, the order creates no case or dispute as to the scope of the director's powers, and the court is thus without jurisdiction to speak on the issue. Loch v. FSM, 2 FSM Intrm. 224, 237 (App. 1986).

Where there is in the Constitution a textually demonstrable commitment of the issue to a coordinate branch of government, such as Congress being the sole judge of the elections of its members, it is a nonjusticiable political question not to be decided by the court because of the separation of powers provided for in the Constitution. Aten v. National Election Comm'r (III), 6 FSM Intrm. 143, 145 (App. 1993).

While the court has statutory authority to hear appeals regarding the conduct of elections, its power to grant relief is limited to ordering a recount or a revote. Only Congress can decide who is to be seated and

once it has seated a member unconditionally the matter is nonjusticiable. Aten v. National Election Comm'r (III), 6 FSM Intrm. 143, 145 & n.1 (App. 1993).

A suit against the national government by the states alleging that the states are constitutionally entitled to 50% of all revenues from the EEZ is justiciable because the Supreme Court must reconcile any conflict between sections of the Constitution. Chuuk v. Secretary of Finance, 7 FSM Intrm. 563, 569 (Pon. 1996).

Placement of proposed constitutional amendments on the ballot does not transform a claim into a non-justiciable political question. It does not constitute a commitment of the issue to any of the branches of government. Chuuk v. Secretary of Finance, 9 FSM Intrm. 73, 74-75 (Pon. 1999).

Our Constitution's "case or dispute" clause, FSM Const. art. XI, § 6, mirrors the U.S. Constitution's "case or controversy" clause. FSM v. Louis, 9 FSM Intrm. 474, 481 (App. 2000).

Article XI, section 6 of the Constitution restricts the FSM Supreme Court's jurisdiction to cases and disputes and the court is thereby precluded from making policy pronouncements on the basis of hypothetical or academic issues. FSM v. Louis, 9 FSM Intrm. 474, 481 (App. 2000).

While our Constitution's wording is otherwise similar to that in article III, section 2, clause 1 of the U.S. Constitution, the FSM national courts have jurisdiction over "cases" and "disputes" while the U.S. federal courts have jurisdiction over "cases" and "controversies," but no significance can be attached to the difference between controversies and disputes. The FSM Constitution's case or dispute clause is thus similar to the U.S. Constitution's case or controversy clause. FSM v. Louis, 9 FSM Intrm. 474, 482 (App. 2000).

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. FSM v. Louis, 9 FSM Intrm. 474, 482 (App. 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 Intrm. 474, 482 (App. 2000).

A case is not non-justiciable, one not proper for judicial review, when the plaintiff only seeks a fair chance to apply, through a constitutional procedure, for funds for which it is eligible. Udot Municipality v. FSM, 9 FSM Intrm. 560, 563 (Chk. 2000).

The FSM Constitution's case or dispute clause is similar to the U.S. Constitution's case or controversy clause, and it has been determined that no significance could be attached to the difference between the terms "controversies" and "disputes." Enlet v. Bruton, 10 FSM Intrm. 36, 40 (Chk. 2001).

One of the rationales for limiting a court's power to deciding the cases before it is to prevent the court from intruding into areas committed to the executive or legislative branches. Davis v. Kutta, 10 FSM Intrm. 98, 99 (Chk. 2001).

Legislative houses are the final judges of their memberships and under the Chuuk Constitution each house is the sole judge of the election and qualification of its members. This does not make an election case about a member-elect non-justiciable until such time as the house has taken its final action. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 153 (Chk. S. Ct. App. 2001).

It is settled law in the FSM that the FSM Supreme Court has the ability to issue declaratory judgments so long as there is a case or dispute within the meaning of article XI, sections 6(a) or 6(b). Udot Municipality v. FSM, 10 FSM Intrm. 354, 358 (Chk. 2001).

A court may decide only the case before it, and may not render an advisory opinion. A request for clarification that asks the court to opine on facts not before it, will be denied. Estate of Mori v. Chuuk, 12 FSM Intrm. 24, 26 (Chk. 2003).

When the parties have stipulated to a judgment and one claim remains, in order for the court to exercise its jurisdiction to dispose of this one remaining claim, a case or dispute under Article XI, Section 6 of the FSM Constitution must exist. The case or dispute must exist at the time the court acts. FSM Social Sec. Admin. v. Jonas, 13 FSM Intrm. 171, 173 (Kos. 2005).

– Case or Dispute – Mootness

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 Intrm. 1, 5 (Pon. 1985).

A claim becomes moot when the parties lack a legally cognizable interest in the outcome. If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Berman v. FSM Supreme Court (II), 7 FSM Intrm. 11, 16 (App. 1995).

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. FSM v. Louis, 9 FSM Intrm. 474, 482 (App. 2000).

The FSM Supreme Court's lack of jurisdiction over, or inability to decide, a moot case is firmly rooted in the FSM Constitution's requirement that there be a case or a dispute. A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. FSM v. Louis, 9 FSM Intrm. 474, 482 (App. 2000).

If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. FSM v. Louis, 9 FSM Intrm. 474, 482 (App. 2000).

When even if the court reversed the garnishment order, any relief it could grant the FSM on the sovereign immunity issue would be ineffectual since 6 F.S.M.C. 707 makes the FSM no longer subject to garnishment of funds it owes to a state, and when, although the general rule is that the payment of a judgment does not make an appeal moot, the FSM has stated that it will not seek repayment of the funds that it paid the plaintiff, the FSM would have no interest in the case's outcome and the issues it raised on appeal are moot. FSM v. Louis, 9 FSM Intrm. 474, 482-83 (App. 2000).

An exception to the mootness doctrine exists when there is a situation in which an otherwise moot case may have a continuing effect on future events, including future litigation. FSM v. Louis, 9 FSM Intrm. 474, 483 (App. 2000).

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

When it appears that the problem will arise again, and would otherwise be incapable of review, the court has jurisdiction because the most notable exception to the mootness doctrine is a situation in which an otherwise moot case may have a continuing effect on future events, including future litigation. Udot

Municipality v. FSM, 9 FSM Intrm. 560, 562 (Chk. 2000).

Because the FSM Supreme Court generally (with some exceptions) lacks jurisdiction over a moot cause of action, it must be dismissed. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM Intrm. 116, 119 (Pon. 2001).

Earmarking $50,000 of a prior appropriation to be spent in the plaintiff municipality does not take away the municipality's standing by making its claim moot when the appropriation still has an undifferentiated category called "other needs," and when the municipality's past inability to apply for funds already spent, and the likelihood that the situation would arise again, but be incapable of review, all favor a finding of continuing standing. Udot Municipality v. FSM, 10 FSM Intrm. 354, 358 (Chk. 2001).

An argument that a party once had standing but no longer does is an argument that the case is now moot. One exception to the mootness doctrine is that the court retains jurisdiction when the problem will arise again, and would otherwise be incapable of review. Udot Municipality v. FSM, 10 FSM Intrm. 354, 358 (Chk. 2001).

No justiciable controversy is presented if events subsequent to an appeal's filing make the issues presented in a case moot. A claim becomes moot when the parties lack a legally cognizable interest in the outcome, and if an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Enactment of a statute after judgment is entered and before the appeal is heard can make an appeal moot. Wainit v. Weno, 10 FSM Intrm. 601, 610 (Chk. S. Ct. App. 2002).

An appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Wainit v. Weno, 10 FSM Intrm. 601, 610 (Chk. S. Ct. App. 2002).

When an appeal is dismissed as moot, the established rule is for the appellate court to reverse or vacate the judgment below and dismiss the case. Wainit v. Weno, 10 FSM Intrm. 601, 611 (Chk. S. Ct. App. 2002).

The FSM Constitution's "case or dispute" clause restricts the FSM Supreme Court's jurisdiction to cases and disputes, and the court is thereby precluded from making policy pronouncements on the basis of hypothetical or academic issues. FSM Dev. Bank v. Yinug, 11 FSM Intrm. 405, 409-10 (App. 2003).

The Supreme Court's lack of jurisdiction over, or inability to decide, a moot case is firmly rooted in the Constitution's requirement that there be a case or a dispute. A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. FSM Dev. Bank v. Yinug, 11 FSM Intrm. 405, 410 (App. 2003).

When the issues presented in a petition for a writ of mandamus concerning the discovery of non-party borrower records have become moot because, by virtue of a trial court order, no further discovery will take place, the issuance of a writ of mandamus to the trial court to disallow or restrict the discovery would be ineffectual since there will be no further discovery. The petition will therefore be dismissed. FSM Dev. Bank v. Yinug, 11 FSM Intrm. 405, 410 (App. 2003).

There may be exceptions to the mootness doctrine, *e.g.*, for situations in which an otherwise moot case may have a continuing effect on future events, including future litigation. FSM Dev. Bank v. Yinug, 11 FSM Intrm. 405, 410 n.5 (App. 2003).

When the sole issue before the appellate court was whether the Director's rejection of an election petition as untimely was in compliance with the applicable statute and when the only relief the court could have granted would have been to vacate the Director's denial, remand the matter to the Director, and order the Director to consider the petition on the merits and when the Director himself has resolved this one issue in petitioner's favor and considered and ruled on the petition's merits, there is no further relief that the court could grant that the Director has not already granted. The appeal is moot. Fritz v. National Election Dir., 11 FSM

Intrm. 442, 444 (App. 2003).

If an appellate court finds that any relief it could grant would be ineffectual, it must treat the case as moot. Fritz v. National Election Dir., 11 FSM Intrm. 442, 444 (App. 2003).

Article XI, section 6 of the Constitution restricts the FSM Supreme Court's jurisdiction to actual cases and disputes. The court is thereby precluded from making pronouncements on the basis of hypothetical, abstract, or academic issues or when the matter is moot. Fritz v. National Election Dir., 11 FSM Intrm. 442, 444 (App. 2003).

An appellate court does not sit to render decisions on abstract legal propositions or to render advisory opinions. Fritz v. National Election Dir., 11 FSM Intrm. 442, 444 (App. 2003).

When any relief that a court would grant would be ineffective, then the court must deem the dispute moot. The mootness doctrine precludes a court from addressing a dispute's merits when the court can no longer grant any relief which would have any practical effect. McIlrath v. Amaraich, 11 FSM Intrm. 502, 506 (App. 2003).

When the submission of a letter constitutes compliance with the court order to file a brief, the petitioners' central claim that it cannot be compelled to submit a brief is rendered moot, and in the usual case, this would preclude the consideration of any of the petition's issues because the FSM Supreme Court lacks jurisdiction over, and cannot decide, moot cases since the Constitution requires that there be a case or a dispute. But an exception to the mootness doctrine exists when an otherwise moot case may have a continuing effect on future events, including future litigation, and when it appears that the problem will arise again, and would otherwise be incapable of review, a court may still have jurisdiction under this exception. McIlrath v. Amaraich, 11 FSM Intrm. 502, 506 (App. 2003).

A case or dispute becomes moot when the parties lack a legally cognizable interest in the outcome. McIlrath v. Amaraich, 11 FSM Intrm. 502, 506 (App. 2003).

A claim is moot when the parties lack a legally cognizable interest in the outcome. A case must be one appropriate for judicial determination, as distinguished from an hypothetical or abstract dispute. The controversy must be definite and concrete, touching the legal relations of parties having adverse interests. Rubin v. Fefan Election Comm'n, 11 FSM Intrm. 573, 580 (Chk. S. Ct. Tr. 2003).

Even when the real parties in interest have already taken office, both the plaintiffs and the real parties in interest have a legally cognizable interest in the outcome, because if the election is declared unconstitutionally void, the plaintiffs may have another chance at victory and if the election is declared valid, then the real parties in interest may savor their victory and because it is not an abstract dispute, but a very real problem which threatens the very foundation of democracy, the right of the people to vote in free and fair and democratic elections. Rubin v. Fefan Election Comm'n, 11 FSM Intrm. 573, 580 (Chk. S. Ct. Tr. 2003).

An exception to the mootness doctrine clearly applies when it appears to the court that the problem may rise again, and when a determination of the issues may have a continuing effect on future events, including future litigation. Rubin v. Fefan Election Comm'n, 11 FSM Intrm. 573, 580 (Chk. S. Ct. Tr. 2003).

When an appeal was from an order revoking pretrial release and the issue on appeal was the right to pretrial release, the appellant's subsequent conviction and release makes the appeal moot. Reddy v. Kosrae, 11 FSM Intrm. 595, 596 (App. 2003).

No justiciable controversy is presented if events subsequent to the filing of an appeal make the issues presented moot, and an appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Reddy v. Kosrae, 11 FSM Intrm. 595, 596-97 (App. 2003).

The court is without jurisdiction to consider and will dismiss a moot appeal. Reddy v. Kosrae, 11 FSM Intrm. 595, 597 (App. 2003).

When the appellants have not in fact been required to perform any non-statutory accounting and another appellant has already submitted an accounting, the appellants' challenge of a trial court order that others complete a proper accounting is moot. FSM v. Udot Municipality, 12 FSM Intrm. 29, 42 (App. 2003).

A dispute becomes moot when the parties lack a legally cognizable interest in the outcome and if any relief it could grant would be ineffectual. FSM v. Udot Municipality, 12 FSM Intrm. 29, 42 (App. 2003).

When even if the issue of mootness had been raised, the case still fell within the exception to the mootness doctrine that it may have a continuing effect on future events, including future litigation and may be capable of repetition, yet evading review, the court will address the issue. FSM v. Udot Municipality, 12 FSM Intrm. 29, 49 (App. 2003).

An interlocutory appeal may be considered moot when the trial court has issued a final judgment in the case below and the appellant has since filed a notice of appeal on the same issues. FSM Dev. Bank v. Adams, 12 FSM Intrm. 456, 460 (App. 2004).

Under an exception to the mootness doctrine, when the court's rulings will have a continuing effect on future events and future litigation and will offer guidance to future litigants, which should have the positive effect of eliminating or lessening unwarranted attempts at interlocutory appeals, thus conserving judicial resources, the court will review the matter. FSM Dev. Bank v. Adams, 12 FSM Intrm. 456, 460 (App. 2004).

– Case or Dispute – Ripeness

When a party has been specifically warned by the attorney general that he is required to obtain a foreign investment permit under national statute which imposes criminal sanctions for failure to comply, the question of whether a permit is required is sufficiently ripe to support a suit seeking declaratory judgment. Michelsen v. FSM, 3 FSM Intrm. 416, 418 (Pon. 1988).

When the government is attempting to enforce against the plaintiffs tax statutes which the plaintiffs believe, by the statutes' own terms, do not properly apply to them, and the plaintiffs have been warned that they are potentially subject to criminal and civil penalties if they do not comply, it is a case or dispute sufficiently ripe for the plaintiffs to seek a declaratory judgment. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM Intrm. 111, 115 (Chk. 1997).

When the plaintiff argues it is exempt from the tax under state and national law as an entity wholly owned and operated by the national government functioning solely for public benefit and the state asserts that the plaintiff's corporate status exposes it to state taxation (regardless of the national government's stock ownership and indirect control) and claims that the FSM Constitution does not authorize the national government to prevent the imposition of a "use tax" on imported goods used or consumed in the state, and when the state requests a declaration that its use tax scheme does not violate the FSM Constitution and makes its motion aware that the court's resolution of the plaintiff's motion does not require it to address whether the use tax law conflicts with the FSM Constitution even though the plaintiff's complaint includes a cause of action raising that very argument, all of the issues addressed in the motions are properly raised by the pleadings and involve justiciable controversies of special public concern worthy of resolution at this time. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM Intrm. 292, 293-94 (Pon. 1999).

An objection based on lack of ripeness in a case concerning appropriated funds that have not yet been distributed cannot prevail when the manner of the funds' distribution appears (at this stage of the proceedings) to violate the Constitution. Udot Municipality v. FSM, 9 FSM Intrm. 560, 562-63 (Chk. 2000).

– Case or Dispute – Standing

Standing to sue was an unsettled area of United States law when the FSM Constitution was ratified and the issue of standing to sue within the FSM is one that calls for independent analysis rather than rigid adherence to the decisions of United States courts construing that Constitution. Aisek v. Foreign Inv. Bd., 2 FSM Intrm. 95, 98-99 (Pon. 1985).

In deciding who may litigate in the FSM Supreme Court, the goal is to develop principles consistent with the language of the Constitution and calculated to meet the needs of the people and institutions within the Federated States of Micronesia. Aisek v. Foreign Inv. Bd., 2 FSM Intrm. 95, 100 (Pon. 1985).

Where dive shop operators allege actual or threatened economic injury as a result of increased competition flowing from business activities of a pleasure cruise ship providing diving opportunities in the same geographical area where the plaintiffs operate, and where they have placed before the court information sufficient to establish the reasonableness of their fear of economic injury, their law suit challenging the legality of the issuance of a foreign investment permit to a cruise ship may not be dismissed for lack of standing. Aisek v. Foreign Inv. Bd., 2 FSM Intrm. 95, 100 (Pon. 1985).

Where plaintiffs seek to challenge issuance to a third party of a permit which plaintiffs reasonably allege will cause them harm, and where they allege that the actions of a national senator were crucial to issuance of the permit, those plaintiffs have standing to be heard on the question of whether the senator's membership on the board is violative of the "incompatibility clause," article IX, section 13 of the FSM Constitution. Aisek v. Foreign Inv. Bd., 2 FSM Intrm. 95, 101 (Pon. 1985).

There is in the FSM no separate requirement that there be a nexus, that is, a logical connection between persons threatened by injury from the actions of an administrative agency and the statutory provisions under which the agency is operating. Aisek v. Foreign Inv. Bd., 2 FSM Intrm. 95, 102 (Pon. 1985).

The issue of standing to sue, because it was a particularly unsettled area in United States law when the FSM Constitution was drafted and ratified, is an area especially calling for independent analysis rather than adherence to decisions construing similar provisions in the United States Constitution. Innocenti v. Wainit, 2 FSM Intrm. 173, 178-79 (App. 1986).

The standing requirement is not expressly stated in the Constitution but implied as an antecedent to the constitutional case or dispute requirement, and should be interpreted so as to implement the objectives of that requirement. Innocenti v. Wainit, 2 FSM Intrm. 173, 179 (App. 1986).

Business people have standing to challenge the constitutionality of an excise tax based on imports where the addition of the tax increases the cost that business people must pay for goods intended for resale to consumers. Innocenti v. Wainit, 2 FSM Intrm. 173, 180 (App. 1986).

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

When a public officer is requested to perform a duty mandated by law which he feels would violate the constitution, he has standing to apply to the court for a declaratory judgment declaring the statute unconstitutional. Siba v. Sigrah, 4 FSM Intrm. 329, 334 (Kos. S. Ct. Tr. 1990).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional requirement that a case or dispute exist. In re Parcel No. 046-A-01, 6 FSM Intrm. 149, 153 (Pon. 1993).

A leasehold interest in land is a sufficient possessory interest to give a party standing to maintain an action for trespass. In re Parcel No. 046-A-01, 6 FSM Intrm. 149, 154 (Pon. 1993).

Private individuals lack standing to assert claims on behalf of the public. When the state government has certified ownership of land, and the traditional leaders' suit to have that land declared public land failed, private individuals cannot raise the same claim. In re Parcel No. 046-A-01, 6 FSM Intrm. 149, 157 (Pon. 1993).

Noncitizen plaintiffs have standing to sue for trespass if they have a leasehold interest in the land. Ponape Enterprises Co. v. Soumwei, 6 FSM Intrm. 341, 343 (Pon. 1994).

The FSM will not apply a Trust Territory rule based on Trust Territory Code provisions that only the government had standing to challenge title to land to deny standing to private persons challenging title to land under entirely separate FSM Constitutional provisions on citizenship, especially since the authority for the Trust Territory rule was derived from now-deleted language in an American legal encyclopedia. Etscheit v. Adams, 6 FSM Intrm. 365, 383-84 (Pon. 1994).

A party who denies ownership of the seized items has no standing to ask for return of the property. Chuuk v. Mijares, 7 FSM Intrm. 149, 150 (Chk. S. Ct. Tr. 1995).

A surviving co-obligor has standing to sue for failure to obtain credit life insurance for a deceased co-obligor. FSM Dev. Bank v. Bruton, 7 FSM Intrm. 246, 249 (Chk. 1995).

The states have standing to sue the national government where the states claim they are entitled to 50% of all revenues from the EEZ because it is an otherwise justiciable controversy in which they have a sufficient stake or interest. Chuuk v. Secretary of Finance, 7 FSM Intrm. 563, 570 (Pon. 1996).

While it may be that in the usual case a judgment debtor would not have standing to contest or appeal the distribution of funds collected pursuant to the judgment, but where the result of the case will have a substantial financial impact on the judgment debtor, he is an aggrieved party with standing to appeal because standing exists where a party has a direct pecuniary interest in the outcome of the litigation. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 669 (App. 1996).

While it is generally true that parties may not assert the rights of third parties or non-parties, where the plaintiff ship charterers would be subject to the obligations and liabilities of an employer, such as withholding taxes, and that failure to perform those obligations would expose the plaintiffs to civil and criminal penalties if the crew is subject to FSM wage and salary taxes, the plaintiffs are attempting to assert only their own rights and have standing. Dorval Tankship Pty, Ltd. v. Department of Finance, 8 FSM Intrm. 111, 115 (Chk. 1997).

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

When, at the formal hearings, a person testified that her father had willed the parcel at issue to her brother and she did not submit any testimony in support of her own personal claim even though she was given an opportunity at the end of her testimony to give a statement about any "last word will" made by her father, neither she, nor her daughter, now claiming under her, had a right to notice of the parcel's Determination of Ownership because she was not an interested party, and her daughter cannot now claim to be an interested party. Jonas v. Paulino, 9 FSM Intrm. 513, 516 (Kos. S. Ct. Tr. 2000).

A municipality that is one of eight eligible to receive development funds has standing to raise whether it has been fairly allowed to apply for some of them. Udot Municipality v. FSM, 9 FSM Intrm. 560, 562 (Chk. 2000).

Because the court must have a case or dispute before it in order to exercise jurisdiction, if a plaintiff lacks standing to bring a suit there is then no case or dispute to adjudicate. Moses v. M.V. Sea Chase, 10

FSM Intrm. 45, 51 (Chk. 2001).

A contention that a plaintiff is not singled out and thus suffers no irreparable harm peculiar to itself because it is one of eight in the same boat, does not indicate a lack of standing on the plaintiff's part, but rather that any of the eight would also have had standing to sue if it so chose. Udot Municipality v. FSM, 10 FSM Intrm. 354, 358 (Chk. 2001).

Earmarking $50,000 of a prior appropriation to be spent in the plaintiff municipality does not take away the municipality's standing by making its claim moot when the appropriation still has an undifferentiated category called "other needs," and when the municipality's past inability to apply for funds already spent, and the likelihood that the situation would arise again, but be incapable of review, all favor a finding of continuing standing. Udot Municipality v. FSM, 10 FSM Intrm. 354, 358 (Chk. 2001).

An argument that a party once had standing but no longer does is an argument that the case is now moot. One exception to the mootness doctrine is that the court retains jurisdiction when the problem will arise again, and would otherwise be incapable of review. Udot Municipality v. FSM, 10 FSM Intrm. 354, 358 (Chk. 2001).

A person may act as a clan representative and be a party-plaintiff in his representative capacity when he was an acknowledged lineage representative prior to and during the negotiations over the lineage land and was named as a lineage representative on the land's certificate of title. Marcus v. Truk Trading Corp., 11 FSM Intrm. 152, 158-59 (Chk. 2002).

An *afokur* has no right to sue for himself over lineage land and will be dismissed from such a lawsuit as a party in his individual capacity, because even if the lineage should prevail in the suit, the court could not award the *afokur* anything since whatever he might personally receive would be contingent on the lineage granting him permission to share in its recovery. Marcus v. Truk Trading Corp., 11 FSM Intrm. 152, 159 (Chk. 2002).

By not granting a defendant's motion to dismiss on the grounds that plaintiffs lacked standing, the court does not somehow imply that it, at that stage of the proceedings, has made any findings of ownership or right to possession of the property in question. Ambros & Co. v. Board of Trustees, 11 FSM Intrm. 333, 336 (Pon. 2003).

Since a finding of contempt is final and appealable, the legality of the specific sanction of imprisonment should be reviewed at the same time in the interest of judicial economy. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 380 (App. 2003).

The standing issue is addressed first as it is a threshold issue going to a court's subject matter jurisdiction. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 496 (Kos. 2003).

The standing requirement is not expressly stated in the FSM Constitution, but is implied as an antecedent to the Article XI, Section 6 "case or dispute" requirement and should be interpreted so as to implement that requirement's objectives. The issue of standing to sue is an area which calls for the FSM Supreme Court's independent analysis rather than adherence to decisions construing similar provisions in the U.S. Constitution. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 496 (Kos. 2003).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional requirement that a case or dispute exist. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 496 (Kos. 2003).

This court is mandated by Article XI, Section 11 of the Constitution to first consult and apply sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of the nation's people and institutions. The

controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 496-97 (Kos. 2003).

Two factors are central to the determination of whether a party has standing. First, the party must allege a sufficient stake in the outcome of the controversy and it must have suffered some threatened or actual injury resulting from the allegedly illegal action. Second, 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. While not constitutionally based, three additional factors or prudential principles need to be considered before the standing question can be resolved. First, generalized grievances shared by substantially the whole population do not normally warrant standing. Second, even when an injury sufficient to satisfy the constitutional requirement is alleged, the petitioner generally must assert its own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of third parties. Third, the petitioner's complaint must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 497 (Kos. 2003).

The first standing factor to be addressed is whether the plaintiff has alleged a sufficient stake in the controversy's outcome and whether it has suffered some threatened or actual injury resulting from the defendant's allegedly illegal action. The injury must be an invasion of a legally protected interest which is concrete and particularized, and actual or imminent. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 497 (Kos. 2003).

The second standing factor is that there must be a causal connection between the injury and the conduct complained of. The injury must be fairly traceable to the defendant's challenged action and not the result of the independent action of some third party not before the court. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 497 (Kos. 2003).

The Kosrae Legislature's alleged injury of not having its policy decisions abided by or infringed upon, cannot be fairly traced to the Development Bank's challenged actions under the Investment Development Act because while the bank has the responsibility to evaluate and comment upon a project's commercial feasibility and public infrastructure need, the FDA, not the bank has the loan's final approval. Therefore, the alleged injury cannot be traced to the bank's allegedly faulty or incomplete reports that may or may not have led to the loan's approval when the loan's approval was the result of independent action of the FDA which is not a party before the court. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 497-98 (Kos. 2003).

Another standing factor to be addressed is redressability. Will the relief requested make any legal difference that will redress the Petitioner's injury? Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 498 (Kos. 2003).

When the statutory language states only that a state government shall submit a project and when no evidence was offered that the Kosrae Legislature had any formal role in the submittal process, either by way of formal approval or the ability to disapprove a project, the court can find no legally delineated role for the Kosrae Legislature in the submittal process and therefore no injury to it from the governor's submittal. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 499 (Kos. 2003).

Passage of a legislative resolution that submits a request to the Governor which the Governor may or may not carry out at his discretion creates no legally enforceable rights by which the Kosrae Legislature may compel the Governor's compliance, especially when the Governor is not a party to the action. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 499 (Kos. 2003).

A law enacted by the Kosrae Legislature is the highest form of setting forth the legislature's policy decisions and such laws can create legal rights that may be enforceable in the courts. But when the subject bill is not yet law, having been vetoed by the Governor, and the bill requires action by the Governor who is not a party to the action, there is no injury to the plaintiff created from noncompliance with the bill's provisions. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 499 (Kos. 2003).

The three additional factors to be examined for determining standing are: 1) generalized grievances shared by substantially the whole population do not normally warrant standing; 2) the petitioner generally must assert its own legal rights and interests, and cannot rest its claim to relief on third parties' legal rights or interests; and 3) the petitioner's complaint must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 500 (Kos. 2003).

When the plaintiff's grievances with regard to possible harmful ramifications of the proposed disposition of the Kosrae IDF state earmarked subaccount funds, is the type of generalized grievance shared by substantially the whole population, such generalized grievances do not warrant standing. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 500 (Kos. 2003).

When the plaintiff's grievances with regard to the bank's inadequate and incomplete reporting to the FDA go to the FDA's legal rights or interests and not to the Kosrae Legislature's, and when it is purely speculative as to what effect more accurate and complete reports might have had on the FDA's decision making especially since the FDA had "pre-approved" the loan before the report was made, it is likely that the result would not be different. The report is therefore not reviewable and the injury not redressable. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 500 (Kos. 2003).

When a complaint does not fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question and neither the statute or constitutional provisions involved provide support for standing, the complaint does not fall within the zone of interest to be protected by the Investment Development Act's provisions which do not provide the plaintiff a cause of action where there was no intent by the FSM Congress to create one. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 500-01 (Kos. 2003).

When the Attorney General could not protect the state's interest since he was personally involved in the matter but when independent legal advice was offered by another attorney in the Attorney General's office who could have been used to protect the state's interest or alternatively, outside counsel could be retained for the same purpose, this does not give the Legislature as a co-equal branch of the state government,.standing to sue to protect the state's interest. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 501 (Kos. 2003).

Since the Kosrae Legislature is not the intended beneficiary of the Investment Development Act's statutory provisions requiring the bank to make reports to the FDA, its alleged injury is not directly traceable to the bank's reports. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 501 (Kos. 2003).

When the plaintiff does not have standing to pursue an action for a preliminary injunction, the court lacks subject matter jurisdiction over the action and the case will be dismissed. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 501 (Kos. 2003).

Issues of standing are discussed first, for a party's standing is a potentially dispositive threshold issue going to the court's subject matter jurisdiction. FSM v. Udot Municipality, 12 FSM Intrm. 29, 39 (App. 2003).

Whether a party has standing is a question of law reviewed *de novo* on appeal. FSM v. Udot Municipality, 12 FSM Intrm. 29, 40 (App. 2003).

The standing requirement is not expressly stated in the Constitution, but is implied as an antecedent to the "case or dispute" requirement found in Article XI, section 6 of the Constitution, and should be interpreted so as to implement that requirement's objectives. FSM v. Udot Municipality, 12 FSM Intrm. 29, 40 (App. 2003).

When deciding a question of standing, the FSM Supreme Court utilizes a case-specific analysis and as mandated by Article XI, section 11 of the Constitution, it first consults and applies sources from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's

language and designed to meet the needs of our nation's people and institutions. FSM v. Udot Municipality, 12 FSM Intrm. 29, 40 (App. 2003).

A party has standing to sue when that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain judicial resolution of that controversy. The implied requirement that a party have standing should be interpreted so as to implement the objectives of the constitutional case or dispute requirement. FSM v. Udot Municipality, 12 FSM Intrm. 29, 40 (App. 2003).

Two factors are central to the determination of whether a party has standing. First, the party must allege a sufficient stake in the controversy's outcome and it must have suffered some threatened or actual injury resulting from the allegedly illegal action or erroneous court ruling. Second, 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. FSM v. Udot Municipality, 12 FSM Intrm. 29, 40 (App. 2003).

While not constitutionally based, three additional rules need to be applied before the question of standing can be resolved. First, generalized grievances shared by substantially the whole population do not normally warrant standing. Second, even when an injury sufficient to satisfy the constitutional requirement is alleged, the party generally must assert its own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of third parties. Third, the interests which the party is seeking to protect must fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. FSM v. Udot Municipality, 12 FSM Intrm. 29, 40 (App. 2003).

When some appellants' interests are sufficiently distinct from those of other appellants and when they have suffered some injury which would be redressible by appeal's resolution in their favor, they have standing to raise issues in the appeal that the other appellants did not raise. FSM v. Udot Municipality, 12 FSM Intrm. 29, 41 (App. 2003).

When some appellants have interests, responsibilities, and functions that are distinguishable from the other appellants because Congress has delegated them authority to create legally enforceable contracts and because they have a significant role in implementing public projects, and when they have been injured in the performance of their duties by the trial court's order and their alleged injury can be traced to the challenged action and is not a generalized grievance shared by substantially the whole population, those appellants have competing contentions and are adversaries with sufficient interest in the outcome to have standing to challenge the trial court rulings on appeal. FSM v. Udot Municipality, 12 FSM Intrm. 29, 42-44 (App. 2003).

A party has standing to challenge both the legality of the process and compliance with the Financial Management Act and related regulations to the extent that such compliance impacts upon the relief that it requests when it has more than a general interest in the legality of this process as it contends that, under a fair and transparent application process, it would receive at least the opportunity to apply for and receive some of the funds for its own projects. Thus, the trial court in finding standing properly recognized and focused on the party's threatened economic injury when the process by which the Faichuk appropriations were being administered was alleged to be unlawful. FSM v. Udot Municipality, 12 FSM Intrm. 29, 45 (App. 2003).

Although the Financial Management Act does not create a private right of action for parties in general to contest violations of its provisions, a party has standing when it requests the opportunity to seek funding from the challenged public laws without participating in an unlawful process and the FSM's failure to comply with the Act and its related regulations impacts upon the relief that it requests and when, in order for it to seek funding, determination of what portion of funds remained unobligated and might still be available was necessary and an accounting was a necessary and appropriate tool to achieve this. FSM v. Udot Municipality, 12 FSM Intrm. 29, 45 (App. 2003).

A municipality may have standing when it has demonstrated a threatened economic injury and a sufficient stake in the controversy's outcome and this threatened economic injury is a direct result of, and can be traced to, the illegality of the subject provision in the appropriation and the manner in which it was being implemented, when the injury would be redressed by a favorable decision, when the injury is not a generalized

injury shared by substantially the whole population, but it is asserting its own legal rights and interests, and is not resting its claim to relief on the legal rights or interests of third parties, and when its complaint falls within the zone of interest to be protected by the statutory and constitutional provisions in question. FSM v. Udot Municipality, 12 FSM Intrm. 29, 46 (App. 2003).

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

When the deceased's brother failed to provide the court with evidence of his representation of the deceased's heirs in the matter, his appearance is accepted as a pro se representation of himself and his claimed interests, but when the brother is not an heir, he does not have standing to file a motion for reconsideration on his own behalf because he is not a party to the matter, and on this basis his motion will be denied. Edwin v. Heirs of Mongkeya, 12 FSM Intrm. 220, 222 (Kos. S. Ct. Tr. 2003).

A party has standing to sue where that party has a sufficient stake or interest in an otherwise justiciable controversy to obtain a judicial resolution of that controversy. Edgar v. Truk Trading Corp., 13 FSM Intrm. 112, 115 (Chk. 2005).

The plaintiffs have a sufficient stake or interest to maintain a case when they allege that they were not paid a portion of the funds they were specifically entitled to under the terms of the agreement to sell land to the defendant, but that someone else wrongfully received those funds and when they claim as damages only those funds that they are entitled to, but were not paid. The court is thus in a position to resolve the matter by awarding appropriate damages. Edgar v. Truk Trading Corp., 13 FSM Intrm. 112, 115 (Chk. 2005).

– Certification of Issues

When a case in a state or local court involves a substantial question requiring the interpretation of the Constitution, national law, or a treaty, on application of a party or on its own motion the court shall certify the question to the Appellate Division of the Supreme Court. The Appellate Division of the Supreme Court may decide the case or remand it for further proceedings. Koike v. Ponape Rock Products Co., 1 FSM Intrm. 496, 501 (Pon. 1984).

Pursuant to article XI, section 8 of the FSM Constitution, a state court receiving a proper motion is required to certify any substantial constitutional question to the Appellate Division of the Supreme Court for proper disposition. Koike v. Ponape Rock Products Co., 1 FSM Intrm. 496, 501 (Pon. 1984).

Article XI, section 8 of the Constitution, providing for state court certification of issues of national law, gives the FSM Supreme Court appellate division another tool to oversee the development of national law jurisprudence, but also provides the option of remand so that the state court may address issues of national law. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM Intrm. 33, 35 (App. 1989).

Under normal circumstances, the decision as to whether to decide or remand a question certified under article XI, section 8 of the Constitution will be made only by the constitutionally appointed justices of the FSM Supreme Court, without convening a third judge and without oral argument. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM Intrm. 33, 35 (App. 1989).

Unless definite articulable reasons to the contrary appear, questions certified under article XI, section 8 of the Constitution normally will be remanded to the state court. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM Intrm. 33, 35 (App. 1989).

Where the issues certified to the FSM Supreme Court by a state court under article XI, section 8 of the FSM Constitution are narrowly framed and not capable of varying solutions, and it appears that a greater service may be provided by simply answering the questions posed by the state court, the FSM Supreme Court

will not remand the certified questions to the state court. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM Intrm. 33, 35 (App. 1989).

Certified questions are decided by those constitutionally appointed justices who are not disqualified. Etscheit v. Adams, 6 FSM Intrm. 608, 609 (App. 1994).

The Constitution provides that the FSM Supreme Court Appellate Division may decide questions certified from state and local courts, not from the FSM Supreme Court Trial Division. Etscheit v. Adams, 6 FSM Intrm. 608, 610 (App. 1994).

Certification is normally granted by the court that will be applying the guidance sought to its decision, not yet made, not by the court that is requested to hear the certified question. Etscheit v. Adams, 6 FSM Intrm. 608, 610 (App. 1994).

When the FSM Supreme Court appellate division receives a certified question from a state or local court it has the discretion to decide the question or to remand it for decision. Jackson v. Kosrae, 7 FSM Intrm. 504, 505 (App. 1996).

Certified questions will normally be remanded to state court unless well-articulated reasons are presented for their resolution by the FSM Supreme Court appellate division. When the state court might resolve the case without reaching the certified constitutional question remand is proper. Jackson v. Kosrae, 7 FSM Intrm. 504, 506 (App. 1996).

Certified questions narrowly framed and not capable of varying resolutions may be accepted by the FSM Supreme Court appellate division when a greater service would be provided by answering the questions posed. Pernet v. Woodruff, 10 FSM Intrm. 239, 241 (App. 2001).

– Chuuk

Lease agreement executed by the Chuuk State is void insofar as it purports to "incur public indebtedness" without legislative authority by way of an appropriation or statute. Billimon v. Chuuk, 5 FSM Intrm. 130, 135-36 (Chk. S. Ct. Tr. 1991).

The framers did not intend that the constitutional provision barring persons convicted of a felony from serving in the legislature, even if pardoned, to have retroactive effect so as to bar a person who was both convicted and pardoned before the enactment of the Chuuk State Constitution from appearing on the official ballot for state legislator. Robert v. Mori, 6 FSM Intrm. 178, 179-80 (Chk. S. Ct. Tr. 1993).

The Chuuk State Constitution recognizes all traditional rights and ownership over all reefs, tidelands, and other submerged lands subject to legislative regulation of their reasonable use. Nimeisa v. Department of Public Works, 6 FSM Intrm. 205, 209 (Chk. S. Ct. Tr. 1993).

It was the intent of the framers of the Chuuk State Constitution to return the rights and ownership of all reefs, tidelands (all areas below the ordinary high watermark), and other submerged lands to the individual people of Chuuk State. Nimeisa v. Department of Public Works, 6 FSM Intrm. 205, 210 (Chk. S. Ct. Tr. 1993).

Statutes and case law inherited from the Trust Territory are invalid to the extent that they are inconsistent with the state constitution which is the supreme law of Chuuk. Nimeisa v. Department of Public Works, 6 FSM Intrm. 205, 210 (Chk. S. Ct. Tr. 1993).

The constitutional grant of ownership of the tidelands back to the rightful individual owners, shall be given prospective application only. Nimeisa v. Department of Public Works, 6 FSM Intrm. 205, 212 (Chk. S. Ct. Tr. 1993).

The reversion of reefs, tidelands and other submerged lands to private owners granted by article IV,

section 4 of the Chuuk Constitution does not apply to any tidelands that were previously filled or reclaimed. Nena v. Walter, 6 FSM Intrm. 233, 236 (Chk. S. Ct. Tr. 1993).

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 Intrm. 284, 285 (App. 1993).

A court begins its analysis with the presumption that all legislative enactments are constitutional. The burden is on the plaintiff to clearly demonstrate to the court that the ordinance is unconstitutional. Wainit v. Weno, 7 FSM Intrm. 121, 122 (Chk. S. Ct. Tr. 1995).

The Chuuk Constitution protects persons from an unreasonable invasion of privacy. The right to privacy depends upon whether a person has a reasonable expectation that the thing, paper or place should remain free from governmental intrusion. A person's right to privacy is strongest when the government is acting in its law enforcement capacity. In re Legislative Subpoena, 7 FSM Intrm. 261, 266 (Chk. S. Ct. Tr. 1995).

Under the Chuuk Constitution, statutory authorization is required as a predicate to expenditure of state funds, and the Chuuk state court does not have the power to issue an execution order against state property. Louis v. Kutta, 8 FSM Intrm. 208, 210 (Chk. 1997).

The Chuuk Constitution provides that existing Chuukese custom and tradition shall be respected. Chuuk v. Sound, 8 FSM Intrm. 577, 578 (Chk. S. Ct. Tr. 1998).

Because the Chuuk Constitution provides that Chuukese is the state language, but both Chuukese and English are official languages, a criminal appellant in the Chuuk State Supreme Court has no constitutional right to a transcript in both Chuukese and English. Reselap v. Chuuk, 8 FSM Intrm. 584, 586 (Chk. S. Ct. App. 1998).

No resident entitled to vote may be denied the privilege to vote or be interfered with in voting. Chipen v. Losap Election Comm'r, 9 FSM Intrm. 46, 47 (Chk. S. Ct. Tr. 1999).

The right guaranteed in the Chuuk Constitution to move and migrate within the State and the right in the FSM Constitution to travel and migrate within the Federated States, do not protect travel or migration outside these boundaries. Chipen v. Losap Election Comm'r, 9 FSM Intrm. 46, 48 (Chk. S. Ct. Tr. 1999).

A municipal ordinance restricting absentee voting in municipal elections to persons in the state of Chuuk is not unconstitutional. Chipen v. Losap Election Comm'r, 9 FSM Intrm. 46, 48 (Chk. S. Ct. Tr. 1999).

The secret ballot provision of Chuuk Constitution article XII, section 2 relates only to general elections and has no application to proceedings in the House of Representatives. Christlib v. House of Representatives, 9 FSM Intrm. 503, 507 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution provides that no person, otherwise qualified to vote, may be denied the privilege to vote. The unreasonableness of candidate qualifying fees is an effective denial of the privilege to vote. Nameta v. Cheipot, 9 FSM Intrm. 510, 512 (Chk. S. Ct. Tr. 2000).

While the Chuuk Constitution may not make voting abroad a constitutionally-protected right, it does not prohibit voting out-of-state. Such voting is a privilege that the Legislature may create and regulate by statute and it has done so. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 153 (Chk. S. Ct. App. 2001).

The prevailing rule is that when the Constitution provides no direct authority to establish qualifications for office in excess of those imposed by the Constitution, such qualifications were unconstitutional by their very terms and under equal protection, due process, and freedom of speech and assembly. Lokopwe v. Walter,

10 FSM Intrm. 303, 306 (Chk. S. Ct. Tr. 2001).

Tideland ownership derives from the Chuuk Constitution's recognition (as of its effective date, October 1, 1989) of traditional rights in the tidelands. Phillip v. Moses, 10 FSM Intrm. 540, 544 (Chk. S. Ct. App. 2002).

The Governor may declare a state of emergency and issue appropriate decrees if required to preserve public peace, health or safety at a time of extreme emergency caused by civil disturbance, natural disaster, or immediate threat of war or insurrection. A declaration of emergency may impair civil rights to the extent actually required for the preservation of peace, health or safety. In re Paul, 11 FSM Intrm. 273, 277 (Chk. S. Ct. Tr. 2002).

Article XI, § 12(b) of the Chuuk Constitution clearly provides that citizens' civil rights may be impaired by a declaration of emergency, but that impairment rights may only occur to the extent actually required for the preservation of peace, health or safety, so that when the Governor's declaration of emergency made no reference to the suspension of civil rights, or of the need to do so to preserve peace, health or safety, it was solely addressed to the creation and implementation of emergency response and recovery efforts to Tropical Storm Chata'an. In re Paul, 11 FSM Intrm. 273, 279 (Chk. S. Ct. Tr. 2002).

In circumstances short of war, rebellion, insurrection or invasion where suspension of the Chuuk citizens' civil rights is warranted require the Governor's clear and unambiguous statement in the declaration of emergency itself, and even if such a clear and unambiguous statement were made, the citizens continued right to petition for a writ of habeas corpus, except in cases of war, rebellion, insurrection or invasion, would provide a remedy to any improper suspension of civil rights by the declaration of emergency. In re Paul, 11 FSM Intrm. 273, 279 (Chk. S. Ct. Tr. 2002).

Where the Chuuk Constitution specifically authorizes the appointment of qualified attorneys in Chuuk as temporary appellate justices on a per case basis and the Constitution's framers therefore must have contemplated that counsel in one appeal may well be a temporary justice on a different appeal, the presence of qualified attorneys on an appellate panel is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM Intrm. 454, 457 (Chk. S. Ct. App. 2003).

In keeping with the Chuuk Constitution Judicial Guidance Clause's requirement that court decisions must be in conformity with "the social and geographical configuration of the State of Chuuk," parol evidence may be used to impeach a written election return that was based upon an oral communication by radio because Chuuk's geographical configuration is such that the transmission of election returns from the outer islands is oral (by radio). In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 477 (Chk. S. Ct. App. 2003).

There will be an independent Election Commission, vested with powers, duties and responsibilities, as prescribed by statute, for the administration of elections in Chuuk. Rubin v. Fefan Election Comm'n, 11 FSM Intrm. 573, 576 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution's supremacy clause provides that the Chuuk Constitution is the supreme law of the state, and that an act of government in conflict with it is invalid to the extent of the conflict. Rubin v. Fefan Election Comm'n, 11 FSM Intrm. 573, 577 (Chk. S. Ct. Tr. 2003).

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

In determining the extent of the powers of the judiciary under a state constitution, the rule is that the state constitution confers on the judicial department all the authority necessary to exercise powers as a co-ordinate department of the government. Kupenes v. Ungeni, 12 FSM Intrm. 252, 262 (Chk. S. Ct. Tr. 2003).

With regard to grants of legislative and judicial power by state constitutions, and especially regarding the principle barring implied limitations on such powers, the whole of such legislative and judicial power reposing in the sovereignty is granted to those bodies, except as it may be restricted in the same instrument.

Thus the state courts have and should maintain vigorously all the inherent and implied powers necessary to function properly and effectively as a separate department in the scheme of government. Kupenes v. Ungeni, 12 FSM Intrm. 252, 262-63 (Chk. S. Ct. Tr. 2003).

– Chuuk – Due Process

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. Meitou v. Uwera, 5 FSM Intrm. 139, 144 (Chk. S. Ct. Tr. 1991).

Since retrospective application of a constitutional provision barring persons convicted of felonies, even if pardoned, from holding legislative office is not an invalid ex post facto law, retrospective application of the provision is also not invalid as a bill of attainder or a denial of due process. Robert v. Chuuk State House of Representatives, 6 FSM Intrm. 260, 271-72 (Chk. S. Ct. Tr. 1993).

The FSM Constitution's due process provision protects persons from the governments, and those acting under them, established or recognized by the Constitution, and does not create causes of action against private parties. The Chuuk Constitution due process provision functions in the same manner. Rosokow v. Bob, 11 FSM Intrm. 210, 215 (Chk. S. Ct. App. 2002).

Among the fundamental rights of Chuuk citizens set forth in Article III of the Chuuk Constitution is the right of due process of law. In re Paul, 11 FSM Intrm. 273, 277 (Chk. S. Ct. Tr. 2002).

It is fundamental that no person may be deprived of liberty without due process of law. Due process of law, in the case of citizens accused of a crime, includes the right to be promptly brought before a Chuuk State Supreme Court justice, or other judicial officer, and to be informed of the charges being brought against him. In re Paul, 11 FSM Intrm. 273, 278 (Chk. S. Ct. Tr. 2002).

One of the fundamental due process rights afforded to criminal defendants is the right to be brought without unnecessary delay before a judicial officer, and that the period of confinement prior to initial appearance cannot exceed, except in extraordinary cases, twenty-four hours. In re Paul, 11 FSM Intrm. 273, 278 (Chk. S. Ct. Tr. 2002).

The right of a person arrested for the commission of a crime to due process of law, including the right to be promptly brought before a Chuuk State Supreme Court justice or other judicial officer for initial appearance within 24 hours of his arrest, is a fundamental right afforded to all Chuuk citizens. Only under the most extraordinary circumstances, and then only with a specific, clear, and unambiguous statement, may a Governor's declaration of emergency suspend this due process right or other civil rights of Chuuk citizens. In re Paul, 11 FSM Intrm. 273, 280 (Chk. S. Ct. Tr. 2002).

Termination resulting from the decision of any government employee (other than a "principal officer" or "advisor") to run for public office violates that employee's free speech and association rights as guaranteed by the Chuuk Constitution, as well as depriving the employee of a property interest (his right to continued employment) without due process of law. Tomy v. Walter, 12 FSM Intrm. 266, 271-72 (Chk. S. Ct. Tr. 2003).

– Chuuk – Equal Protection

The protection afforded by the Chuuk Constitution due process and equal protection provisions can only be asserted when the denials of such rights is based on account of race, sex, religion, language, dialect, ancestry, national origin, or social status. Christlib v. House of Representatives, 9 FSM Intrm. 503, 507 (Chk. S. Ct. Tr. 2000).

– Chuuk – Impairment of Contracts

The prohibition against the impairment of contracts is not absolute. The contract must be valid and

enforceable when made. A contract which is illegal when made is unenforceable because no obligation arises from an illegal contract, thus there is no obligation that may be impaired. Truk Shipping Co. v. Chuuk, 7 FSM Intrm. 337, 341 (Chk. S. Ct. Tr. 1995).

No obligation may arise from an agreement that lacks consideration, since consideration is required for a valid contract to exist. Therefore, the termination of a contract that lacks consideration does not violate the prohibition against impairment of the obligations of contracts. Truk Shipping Co. v. Chuuk, 7 FSM Intrm. 337, 341 (Chk. S. Ct. Tr. 1995).

When the State of Chuuk is a party to a contract there is a distinction between a breach of a contract by the state and impairment of the obligation of the contract. The distinction depends on the availability of a remedy in damages. If the state's action does not preclude a damage remedy the contract has been breached and the non-breaching party can be made whole. The state has the same power as an individual to break or terminate contracts. As long as the private individual or company that is the other party has a remedy at law no impairment of the obligation of contracts occurs. Truk Shipping Co. v. Chuuk, 7 FSM Intrm. 337, 341 (Chk. S. Ct. Tr. 1995).

Reading the constitutional provision barring impairment of contracts in harmony with the provision allowing general reduction of salaries, the exclusion of contract employees does not preclude the Chuuk Legislature from enacting a general reduction of salaries. Chuuk State Supreme Court v. Umwech (II), 7 FSM Intrm. 630, 632 (Chk. S. Ct. Tr. 1996).

– Chuuk – Interpretation

When a constitutional provision is ambiguous and no constitutional convention journal was ever compiled then the constitutional convention reports may be consulted to discern the framers' intent. Nimeisa v. Department of Public Works, 6 FSM Intrm. 205, 209 (Chk. S. Ct. Tr. 1993).

In deciding whether the new rule should be applied retroactively from the date of the court's judgment, or prospectively when rendering judgments on new constitutional rules, courts are to be guided by the following three factors: 1) the purpose to be served by the particular new rule; 2) the extent of reliance which had been placed upon the old rule; and 3) the effect on the administration of justice of a retroactive application of the new rule. Nimeisa v. Department of Public Works, 6 FSM Intrm. 205, 210-11 (Chk. S. Ct. Tr. 1993).

Where there has been good-faith reliance on an old rule, and retroactive application of the new rule would defeat such reliance, and where retroactive application would only unjustifiedly burden the administration of justice with meritless claims doubting the good faith reliance on the old rule, the new constitutional rule will apply to the parties of the case and be given prospective effect. Nimeisa v. Department of Public Works, 6 FSM Intrm. 205, 211-12 (Chk. S. Ct. Tr. 1993).

When the language of the Chuuk Constitution does not define the term "tidelands" contrary to the common usage of the word or its accepted legal definition, and the legislative history does not indicate that the framers intended another meaning the court will employ the meaning of the term consistent with its legal usage at the time of the Constitution's enactment. Nena v. Walter, 6 FSM Intrm. 233, 236 (Chk. S. Ct. Tr. 1993).

Where constitutional language is borrowed from another constitution the borrowed language will be interpreted in the light of the interpretation of the original language, but insertion of new or different language must be interpreted to intend that some sort of new or different meaning be given to that altered portion of the constitutional text. Robert v. Chuuk State House of Representatives, 6 FSM Intrm. 260, 265 (Chk. S. Ct. Tr. 1993).

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

In interpreting a provision of the Chuuk Constitution that is identical to the same provision in the United States Constitution it is appropriate, in the absence of any local precedent, to look to the law of the jurisdiction from which the provision was drawn. Truk Shipping Co. v. Chuuk, 7 FSM Intrm. 337, 341 (Chk. S. Ct. Tr. 1995).

It is true that when a provision of the Chuuk Constitution is ambiguous, and because no constitutional convention journal was ever compiled, the constitutional convention reports may be consulted to discern the framers' intent. But the constitutional provision must first be ambiguous, unclear, or inconclusive before a court can proceed to the legislative history to determine the provision's meaning. Stinnett v. Weno, 8 FSM Intrm. 142, 146 (Chk. 1997).

Statements prepared afterward for use in a lawsuit are not satisfactory legislative history and cannot be used to show the framers' intent. Stinnett v. Weno, 8 FSM Intrm. 142, 146 (Chk. 1997).

Language in a committee report in support of language that did not become part of the constitution cannot be relied upon to discover the real intent of the framers. At best it can only be used to show what was not their intent. Stinnett v. Weno, 8 FSM Intrm. 142, 147 (Chk. 1997).

When the meaning of a constitutional provision is forthright, a court will apply its analysis to the constitutional provision's language as it appears on its face. Weno v. Stinnett, 9 FSM Intrm. 200, 207 (App. 1999).

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

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

When a section of the Chuuk Constitution is clear on its face, consideration of this provision's legislative history is inappropriate. Weno v. Stinnett, 9 FSM Intrm. 200, 208 (App. 1999).

A committee report that refers to language that is not in the Constitution and that accompanied a committee proposal that was killed by the Constitutional Convention cannot be relied upon to discover the real intent of the framers. At best it can only be used to show what was not their intent. Weno v. Stinnett, 9 FSM Intrm. 200, 208 (App. 1999).

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

When constitutional language is clear, no outside reference is needed to explain any ambiguity. Christlib v. House of Representatives, 9 FSM Intrm. 503, 507 (Chk. S. Ct. Tr. 2000).

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

While courts will not refuse to pass on the constitutionality of statutes in any proceeding in which such a determination is necessarily involved, the courts' invariable practice is not to consider the constitutionality of state legislation unless it is imperatively required, or unavoidable. Pacific Coast Enterprises v. Chuuk, 9

FSM Intrm. 543, 545 (Chk. S. Ct. Tr. 2000).

The principle of avoiding constitutional questions was conceived out of considerations of sound judicial administration and is in accord with the principle of separation of powers of government. Pacific Coast Enterprises v. Chuuk, 9 FSM Intrm. 543, 545 (Chk. S. Ct. Tr. 2000).

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

Because the constitutional provision states that only one Chuuk State Supreme Court justice may hear or decide an appeal, and because "may" is permissive, not mandatory language, the Constitution contemplates that there may be an occasion when no Chuuk State Supreme Court justice would hear an appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 151 (Chk. S. Ct. App. 2001).

Analysis of the constitution must start with the words of the constitutional provision. If these words are clear and permit only one possible result, the court should go no further. In re Paul, 11 FSM Intrm. 273, 277 (Chk. S. Ct. Tr. 2002).

Any part of a constitution should be interpreted and considered against the background of other provisions of the same constitution. An effort should be made to reconcile all provisions so that none is deprived of meaning. In re Paul, 11 FSM Intrm. 273, 278 (Chk. S. Ct. Tr. 2002).

If the wording of the constitutional provisions is unambiguous, the words should control, and when more than one constitutional provision has an effect on the question being decided, the varying provisions must be interpreted in a manner which gives effect to each provision, so that no provision of the constitution is rendered meaningless. In re Paul, 11 FSM Intrm. 273, 278 (Chk. S. Ct. Tr. 2002).

In interpreting constitutional provisions, courts must seek to ensure that the purposes sought to be accomplished by the constitution are not defeated by the interpretation of any particular provision. No court is authorized to so construe any clause of a constitution as to defeat its obvious ends when another construction will enforce and protect it. A constitution must be interpreted so as to carry out the general purposes of the government, and not defeat them. Kupenes v. Ungeni, 12 FSM Intrm. 252, 262 (Chk. S. Ct. Tr. 2003).

A constitution is to be liberally construed, not only according to its letter, but also according to its true spirit, to carry into effect the principles of government which it embodies and the general purpose of its enactment. Kupenes v. Ungeni, 12 FSM Intrm. 252, 262 (Chk. S. Ct. Tr. 2003).

The principle of practicality provides that when two interpretations of constitutional language are available and one is productive of invalidity and chaos, while the other saves validity and avoids chaos, the latter interpretation will be adopted. Kupenes v. Ungeni, 12 FSM Intrm. 252, 262 (Chk. S. Ct. Tr. 2003).

When a particular interpretation of a constitutional provision has been in effect for a long period without objection, any practice adopted through such an interpretation may create acceptance of the practice by acquiescence. A long-continued understanding and application of a provision amounts to a practical construction of it. Such a construction, acquiesced in for many years, is frequently resorted to by the courts because it is entitled to great weight and will not be disregarded unless it clearly appears that it is erroneous. The general rule is that the exercise of powers and general acquiescence therein for a long period of years, especially if commencing with the government's organization, may be treated as fixing the construction of the Constitution and as amounting to a contemporary and practical exposition of it. Kupenes v. Ungeni, 12 FSM Intrm. 252, 262 (Chk. S. Ct. Tr. 2003).

Since the constitution must be interpreted in such a way as to carry out is purposes and since the purpose of the unified judiciary must be to ensure that fair and impartial justice be provided to every citizen

of Chuuk, in a case where all sitting justices are disqualified, unavailable, or have recused themselves, fair and impartial justice will be unavailable unless the Chief Justice has some method available to ensure a fair and impartial hearing. Kupenes v. Ungeni, 12 FSM Intrm. 252, 263 (Chk. S. Ct. Tr. 2003).

Since the constitution must be liberally, not restrictively, construed, any attempt to place limitations on the Chief Justice's power, where no words of limitation appear, would require a restrictive interpretation of the constitution, and would violate the rules of interpretation as applied to judiciaries. Kupenes v. Ungeni, 12 FSM Intrm. 252, 263 (Chk. S. Ct. Tr. 2003).

Interpreting the Chief Justice's rule-making authority and his authority to "appoint and prescribe duties of other officers and employees, as prohibiting the appointment of a special trial justice unless the appointee meets the Article VII, § 9 qualifications of associate justices, would invite invalidity and chaos. Instead, the principle of acquiescence controls. Kupenes v. Ungeni, 12 FSM Intrm. 252, 263-64 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution provides no guidance, positively or negatively, regarding whether special trial justices are permissible, and if so, what their minimum qualifications must be. Absent any words of limitation in the constitution, the Chief Justice has and should maintain vigorously all the inherent and implied powers necessary to permit the judiciary to function properly and effectively as a separate department in the scheme of government. These inherent and implied powers include the power to adopt general court orders for the appointment of special trial justices and to establish minimum qualifications for those special justices which equal the qualifications for temporary appellate justices under the constitution. Kupenes v. Ungeni, 12 FSM Intrm. 252, 265 (Chk. S. Ct. Tr. 2003).

A constitutional provision that requires things to be done without prescribing the result that should follow if those things are not done, is directory in character, not mandatory. Buruta v. Walter, 12 FSM Intrm. 289, 293 (Chk. 2004).

– Chuuk – Municipalities

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

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

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

The Chuuk Constitution provision that permits continued operation of existing municipalities pending the adoption of their own constitutions does not permit the continuation of functions outside "the limits prescribed by" the Chuuk Constitution. Stinnett v. Weno, 7 FSM Intrm. 560, 562 (Chk. 1996).

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

Chuuk municipalities do not have the power to levy taxes until such time as that power has been delegated to them by statute. No such delegation has occurred. Stinnett v. Weno, 8 FSM Intrm. 142, 147 (Chk. 1997).

The Chuuk Constitution provides for the creation of the state taxing power and its delegation, as the state government may elect, to the municipal governments. Article XIII, section 1 of the Chuuk Constitution provides that the two levels of government are state and municipal. As between these two levels of

government the one holding the right to delegate is superior. Weno v. Stinnett, 9 FSM Intrm. 200, 207 (App. 1999).

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

While under the Chuuk Constitution the "powers and functions of a municipality with respect to its local affairs and government are superior to statutory law," the key phrase in this constitutional provision is "local affairs." Gambling is of statewide concern and an area properly within the state legislative function and does not fall under the cloak of "local affairs." Pacific Coast Enterprises v. Chuuk, 9 FSM Intrm. 543, 546 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution provision granting municipalities "superior" powers is of such unique character that no similar constitutional provision has been found which gives municipalities such extensive control over legislative affairs. Pacific Coast Enterprises v. Chuuk, 9 FSM Intrm. 543, 546 (Chk. S. Ct. Tr. 2000).

Because the Chuuk Constitution gives municipalities full power over local affairs and government the Governor cannot, by Executive Order, require municipalities to relinquish any control over municipal employees. Udot Municipality v. Chuuk, 9 FSM Intrm. 586, 588 (Chk. S. Ct. Tr. 2000).

Each municipality in Chuuk must adopt its own constitution, which must be democratic and may be traditional. Rubin v. Fefan Election Comm'n, 11 FSM Intrm. 573, 576 (Chk. S. Ct. Tr. 2003).

Chuuk municipalities must adopt their own constitutions within limits prescribed by the Chuuk Constitution and by general law, but a municipality's powers and functions with respect to its local affairs and government are superior to statutory law. Neither term "general law" or "statutory law" is defined. Rubin v. Fefan Election Comm'n, 11 FSM Intrm. 573, 581 n.6 (Chk. S. Ct. Tr. 2003).

The Chuuk Constitution provides for each existing municipality to adopt a municipal constitution within three years of the Chuuk Constitution's effective date and for the state legislature to enact enabling legislation to carry that out. Buruta v. Walter, 12 FSM Intrm. 289, 292 (Chk. 2004).

The Chuuk Constitution provides that a municipality existing on the effective date of the Chuuk Constitution will continue to exercise its powers and functions under existing law, pending adoption of its constitution. Buruta v. Walter, 12 FSM Intrm. 289, 292 (Chk. 2004).

There is no provision in Chuuk law to classify a municipality under the Chuuk Constitution as a "quasi-municipality." Buruta v. Walter, 12 FSM Intrm. 289, 293 (Chk. 2004).

Both the constitutional and statutory provisions providing for Chuuk municipalities to adopt their own constitutions within three years of the state constitution's effective date are directory, not mandatory because neither prescribes what result should follow if a municipality fails to adopt a constitution within the allotted time and since the Chuuk Constitution provides that a municipality will continue to exercise its powers and functions under existing law, pending its adoption of a constitution. Buruta v. Walter, 12 FSM Intrm. 289, 294 (Chk. 2004).

Neither the constitutional nor the statutory provision directs the Governor to implement the provisions that each municipality adopt its own constitution. The direction is aimed at the others – the municipalities and the Legislature. Buruta v. Walter, 12 FSM Intrm. 289, 294 (Chk. 2004).

The Chuuk Constitution provides that final decisions of municipal courts may be appealed to the Chuuk State Supreme Court appellate division, and, in addition, the Chuuk Legislature, by statute, has conferred jurisdiction upon the trial division to hear appeals from municipal court criminal decisions. Ceasar v. Uman

Municipality, 12 FSM Intrm. 354, 356 (Chk. S. Ct. Tr. 2004).

While the Chuuk Constitution expressly authorizes appeals of municipal court decisions to the Chuuk State Supreme Court appellate division, and does not specifically confer authority in the Legislature to permit appeals to the trial division but is silent on the issue and does not prohibit it, and since the Legislature is empowered to enact any and all laws not inconsistent with the state and national constitutions, the trial division thus has jurisdiction, by statute, over an appeal from a municipal court. Ceasar v. Uman Municipality, 12 FSM Intrm. 354, 356-57 (Chk. S. Ct. Tr. 2004).

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

– Chuuk – Taking of Property

To consider a lease valid when the lessee state government cannot be compelled to honor it would be unconstitutional taking of lessor's property. Billimon v. Chuuk, 5 FSM Intrm. 130, 136 (Chk. S. Ct. Tr. 1991).

– Declaration of Rights

In developing the Constitution's Declaration of Rights, the Committee on Civil Rights, and subsequently the Constitutional Convention, drew almost exclusively upon constitutional principles under United States law. FSM v. Tipen, 1 FSM Intrm. 79, 83 (Pon. 1982).

In interpreting the Declaration of Rights, courts should emphasize and carefully consider United States Supreme Court interpretations of the United States Constitution. FSM v. Tipen, 1 FSM Intrm. 79, 85 (Pon. 1982).

The provisions in the Constitution's Declaration of Rights are to a substantial degree patterned upon comparable provisions in the United States Constitution; the FSM Supreme Court should consider carefully decisions of the United States courts interpreting the United States counterparts. Tosie v. Tosie, 1 FSM Intrm. 149, 154 (Kos. 1982).

As the provisions set forth in the Constitution's Declaration of Rights are based on counterparts in the United States Constitution, it is appropriate to review decisions of United States courts, especially those in effect when the Constitution was approved and ratified, to determine the content of the words employed therein. In re Iriarte (I), 1 FSM Intrm. 239, 249 (Pon. 1983).

Statutory provisions which carried over from the Trust Territory Code and were reproduced and referred to as a "Bill of Rights" in 1 F.S.M.C. 101-114, may retain some residual vitality in the unlikely event that they furnish protection beyond those available under the Constitution's Declaration of Rights. FSM v. George, 1 FSM Intrm. 449, 454-55 (Kos. 1984).

The provisions in the Declaration of Rights in the FSM Constitution concerning due process and the right to be informed are traceable to the Bill of Rights of the United States Constitution. Engichy v. FSM, 1 FSM Intrm. 532, 541 (App. 1984).

Because the Declaration of Rights is patterned after provisions of the United States Constitution, and United States cases were relied on to guide the constitutional convention, United States authority may be consulted to understand the meaning. Afituk v. FSM, 2 FSM Intrm. 260, 263 (Truk 1986).

While the constitutional provision barring invasion of privacy only protects persons from governmental intrusion into their affairs, not from intrusions by private persons, it does indicate a policy preference in favor of protection of privacy. Nethon v. Mobil Oil Micronesia, Inc., 6 FSM Intrm. 451, 455 (Chk. 1994).

The Declaration of Rights expresses ideals held sacred by all who cherish freedom and is the essential core of the FSM Constitution. Louis v. Kutta, 8 FSM Intrm. 208, 212 (Chk. 1997).

The Declaration of Rights protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution. Pau v. Kansou, 8 FSM Intrm. 524, 526 (Chk. 1998).

Because the Declaration of Rights is to a substantial degree patterned after provisions of the U.S. Constitution, and U.S. cases were relied on to guide the constitutional convention, U.S. authority may be consulted to understand its meaning. FSM v. Joseph, 9 FSM Intrm. 66, 72 (Chk. 1999).

The FSM Constitution's Declaration of Rights is based on the United States Constitution's Bill of Rights, and a court may look to United States precedent in this regard. FSM v. Moses, 9 FSM Intrm. 139, 146 (Pon. 1999).

The Declaration of Rights (article IV of the FSM Constitution) protects persons from acts of the governments, and those acting under them, established or recognized by the Constitution, and does not create causes of action against private parties. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM Intrm. 155, 157 (App. 1999).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. Primo v. Pohnpei Transp. Auth., 9 FSM Intrm. 407, 412 n.2 (App. 2000).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. FSM v. Inek, 10 FSM Intrm. 263, 265 (Chk. 2001).

When an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning, and where the FSM Constitution's framers borrowed phrases from the U.S. Constitution, it may be presumed that those phrases were intended to have the same meaning given them by the U.S. Supreme Court. FSM v. Wainit, 12 FSM Intrm. 405, 409 (Chk. 2004).

– Due Process

Due process may well require that, in a National Public Service System employment dispute, the ultimate decision-maker reviews the record of the ad hoc committee hearing, at least insofar as either party to the personnel dispute may rely upon some portion of the record. Suldan v. FSM (I), 1 FSM Intrm. 201, 206 (Pon. 1982).

The words "due process of law" shall be viewed in the light of history and the accepted meaning of those words prior to and at the time the Constitution was written. Alaphonso v. FSM, 1 FSM Intrm. 209, 216-17 (App. 1982).

The Due Process Clause of the Constitution requires proof beyond a reasonable doubt as a condition for criminal conviction in the Federated States of Micronesia. Alaphonso v. FSM, 1 FSM Intrm. 209, 217-23 (App. 1982).

As a matter of constitutional due process, a trial court presented with an alibi defense should consider evidence concerning the alibi along with all other evidence and shall not find the defendant guilty if after considering all of that evidence, the judge feels there is a reasonable doubt as to the defendant's guilt. Alaphonso v. FSM, 1 FSM Intrm. 209, 223-25 (App. 1982).

Article XI, section 6(b) of the Constitution of the Federated States of Micronesia requires that the FSM Supreme Court consider a petition for writ of habeas corpus alleging imprisonment of a petitioner in violation of his rights of due process. In re Iriarte (I), 1 FSM Intrm. 239, 243-44 (Pon. 1983).

Preservation of a fair decision-making process, and even the maintenance of a democratic system of government, requires that courts and individual judges be protected against unnecessary external pressures. In re Iriarte (I), 1 FSM Intrm. 239, 247 (Pon. 1983).

Strict judicial observance of due process is necessary to insure respect for the law. In re Iriarte (I), 1 FSM Intrm. 239, 248 (Pon. 1983).

In a habeas corpus proceeding, the court must apply due process standards to the actions of the courts which have issued orders of commitment. In re Iriarte (I), 1 FSM Intrm. 239, 249 (Pon. 1983).

The Constitution of the Federated States of Micronesia does not contemplate that citizens of the FSM should be required to travel to Saipan or to petition anyone outside of the FSM to realize rights guaranteed to them under the Constitution. In re Iriarte (I), 1 FSM Intrm. 239, 253 (Pon. 1983).

The defendant of a criminal contempt charge is entitled to those procedural rights normally accorded other criminal defendants. In re Iriarte (II), 1 FSM Intrm, 255, 260 (Pon. 1983).

The Constitution does not contemplate that FSM citizens must first petition any person or body outside the Federated States of Micronesia as a condition to consideration of their constitutional claims by courts established under this constitution. In re Iriarte (II), 1 FSM Intrm. 255, 265 (Pon. 1983).

The FSM Supreme Court is entitled and required to assure that the Trust Territory High Court, exercising governmental powers within the Federated States of Micronesia, does not violate the constitutional rights of its citizens. In re Iriarte (II), 1 FSM Intrm. 255, 268 (Pon. 1983).

A nahniken, just as any ordinary citizen, is entitled to bail and due process. In re Iriarte (II), 1 FSM Intrm. 255, 272 (Pon. 1983).

Government employment that is "property" within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified

reasons. Suldan v. FSM (II), 1 FSM Intrm. 339, 351-52 (Pon. 1983).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair, arbitrary manner. Where such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. Suldan v. FSM (II), 1 FSM Intrm. 339, 354-55 (Pon. 1983).

If, pursuant to section 156 of the National Public Service System Act, the highest management official declines to accept a finding of fact of the ad hoc committee, the official will be required by statutory as well as constitutional requirements to review those portions of the record bearing on the factual issues and to submit a reasoned statement demonstrating why the ad hoc committee's factual conclusion should be rejected. Suldan v. FSM (II), 1 FSM Intrm. 339, 360-61 (Pon. 1983).

Due process demands impartiality on the part of adjudicators. Suldan v. FSM (II), 1 FSM Intrm. 339, 362 (Pon. 1983).

There is a presumption that a judicial or quasi-judicial official is unbiased. The burden is placed on the party asserting the unconstitutional bias. The presumption of neutrality can be rebutted by a showing of conflict of interest or some other specific reason for disqualification. Where disqualification occurs, it is usually because the adjudicator has a pecuniary interest in the outcome or has been the target of personal abuse or criticism from the party before him. Suldan v. FSM (II), 1 FSM Intrm. 339, 362-63 (Pon. 1983).

The highest management officials cannot be said to be biased as a class and they cannot be disqualified, by virtue of their positions, from final decision-making as to a national government employee's termination under section 156 of the National Public Service System Act, without individual consideration. Suldan v. FSM (II), 1 FSM Intrm. 339, 363 (Pon. 1983).

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

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

The government in any criminal case is required, as a matter of due process, to prove all elements of the offense beyond a reasonable doubt. Ludwig v. FSM, 2 FSM Intrm. 27, 35 (App. 1985).

The Due Process Clause, FSM Const. art. IV, § 3, is based upon the Due Process Clause of the United States Constitution and courts can look to interpretations under the United States Constitution for guidance. Ludwig v. FSM, 2 FSM Intrm. 27, 35 (App. 1985).

A trial court may not simply presume that a person who possesses a firearm is not keeping it as a curio, ornament or for historical significance. This would be an irrational or arbitrary, hence unconstitutional, presumption or inference because one cannot determine from mere possession of a firearm alone the purpose or nature of that possession. Ludwig v. FSM, 2 FSM Intrm. 27, 37 (App. 1985).

Where a seizure is for forfeiture rather than evidentiary purposes, the constitutional prohibitions against taking property without due process come into play. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985).

The Constitution's Due Process Clause is drawn from the United States Constitution and FSM courts may look to decisions under that Constitution for guidance in determining the meaning of this Due Process Clause. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985).

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

Due process does not require that a second judge decide motions for recusal where the trial judge accepts as true all of the factual allegations in the affidavit of the party seeking recusal, and must rule only on matters of law in making the decision to recuse or not recuse himself. Skilling v. FSM, 2 FSM Intrm. 209, 213 (App. 1986).

The procedure for recusal provided in the FSM Code, whereby a party may file a motion for recusal with an affidavit, and the judge must rule on the motion, stating his reasons for granting or denying the motion, before any further proceeding is taken, allows the moving party due process. Skilling v. FSM, 2 FSM Intrm. 209, 214 (App. 1986).

Actions of a police officer in stripping a prisoner to punish and humiliate him, then beating him and damaging his pickup truck, constituted violation of the prisoner's constitutional rights to be free from cruel and unusual punishment and his due process rights. Tolenoa v. Alokoa, 2 FSM Intrm. 247, 250 (Kos. 1986).

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

There is no deprivation of due process in a case in which the government at the trial elicited testimony revealing that it had custody of certain physical evidence but did not attempt to introduce it, and in which the defendant made no request that it be produced. Loney v. FSM, 3 FSM Intrm. 151, 155 (App. 1987).

An expectation of being paid for work already performed is a property interest qualifying for protection under the Due Process Clause of the FSM Constitution. Falcam v. FSM, 3 FSM Intrm. 194, 200 (Pon. 1987).

An expectation of continued government employment, subject only to removal by a supervisor, is a property interest qualifying for protection under the Due Process Clause of the FSM Constitution. Falcam v. FSM, 3 FSM Intrm. 194, 200 (Pon. 1987).

The Due Process Clause of article VI, section 3 of the Constitution of the Federated States of Micronesia requires proof beyond a reasonable doubt as a condition for criminal convictions in the Federated States of Micronesia. Runmar v. FSM, 3 FSM Intrm. 308, 311 (App. 1988).

Where purchasers at a judicial sale are not served by summons and complaint pursuant to FSM Civil Rule 3 but receive notice of a motion seeking confirmation of the sale and made by a creditor of the party whose property was sold, and where the purchasers do not object to the motion, confirmation of the sale is effective and binding on the purchasers and is not violative of their rights of due process. Sets v. Island Hardware, 3 FSM Intrm. 365, 368 (Pon. 1988).

The National Public Service System Act and the FSM Public Service System Regulations establish an expectation of continued employment for nonprobationary national government employees by limiting the permissible grounds and specifying procedures necessary for their dismissal; this is sufficient protection of the right to continued national government employment to establish a property interest for nonprobationary employees which may not be taken without fair proceedings, or "due process." Semes v. FSM, 4 FSM Intrm. 66, 73 (App. 1989).

Once it is determined that a statute establishes a property right subject to protection under the Due Process Clause of the FSM Constitution, constitutional principles determine what process is due as a minimum. Semes v. FSM, 4 FSM Intrm. 66, 74 (App. 1989).

In the absence of statutory language to the contrary, the National Public Service System Act's mandate may be interpreted as assuming compliance with the constitutional requirements, because if it purported to preclude constitutionally required procedures, it must be set aside as unconstitutional. Semes v. FSM, 4 FSM Intrm. 66, 74 (App. 1989).

In assessing the government's shorter term, preliminary deprivations of private property to determine what, if any procedures are constitutionally necessary in advance of the deprivation, the FSM Supreme Court will balance the degree of hardship to the person affected against the government interests at stake. Semes v. FSM, 4 FSM Intrm. 66, 75 (App. 1989).

The Due Process Clause of the FSM Constitution's Declaration of Rights is based on the Due Process Clause of the United States Constitution. Paul v. Celestine, 4 FSM Intrm. 205, 208 (App. 1990).

In determining whether the constitutional line of due process has been crossed, a court must look to such factors as the need for application of force, the relationship between the need and the amount of force that was used, the extent of the injury inflicted, and whether the force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm. Paul v. Celestine, 4 FSM Intrm. 205, 208-09 (App. 1990).

To be property protected under the Federated States of Micronesia and Kosrae State Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulation, formal contract or actions of a supervisory person with authority to establish terms of employment. Edwin v. Kosrae, 4 FSM Intrm. 292, 302 (Kos. S. Ct. Tr. 1990).

Although neither the Environmental Protection Act nor the earthmoving regulations contain any absolute requirement that a public hearing be held before an earthmoving permit may be issued, the issuance by national government officials of a permit authorizing earthmoving by a state agency without holding a hearing and based simply upon the application filed by the state agency and the minutes prepared by the state officials, is arbitrary and capricious where the dredging activities have been long continued in the absence of a national earthmoving permit and where the parties directly affected by those activities have for several months been vigorously opposing continuation of the earthmoving activities at the dredging site. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 1, 8 (Pon. 1991).

If a judge has participated as an advocate in related litigation touching upon the same parties, and in the course of that previous activity has taken a position concerning the issue now before him as a judge, the appearance of justice, as guaranteed by Due Process Clause, requires recusal. Etscheit v. Santos, 5 FSM Intrm. 35, 43 (App. 1991).

There are certain circumstances or relationships which, as a *per se* matter of due process, require almost automatic disqualification, and, if a judge has a direct, personal, substantial, pecuniary interest in the outcome of the case, recusal is constitutionally mandated. Etscheit v. Santos, 5 FSM Intrm. 35, 43 (App. 1991).

To prevent the "probability of unfairness," a former trial counselor or attorney must refrain from presiding as a trial judge over litigation involving his former client, and many of the same issues, and the same interests and the same land, with which the trial judge has been intimately involved as a trial counselor or attorney. Etscheit v. Santos, 5 FSM Intrm. 35, 45 (App. 1991).

Because there is a rational basis, linked to legitimate government purposes of increasing the availability of health care services, for providing immunity from patient suits to U.S. Public Health Service physicians, the Federal Programs and Services Agreement's immunity provisions are not in violation of a plaintiff's due

process rights. Samuel v. Pryor, 5 FSM Intrm. 91, 106 (Pon. 1991).

A person's constitutional right to due process of law, and his right to be free from cruel and unusual punishment is violated when an officer instead of protecting the person from attack, threw him to the ground, and beat the person in the jail. Meitou v. Uwera, 5 FSM Intrm. 139, 144 (Chk. S. Ct. Tr. 1991).

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

Constitutional provisions applicable to a prisoner may vary depending on his status. A pre-trial detainee has a stronger right to liberty, which right is protected by the Due Process Clause, FSM Const. art. IV, § 3. A convicted prisoner's claims upon liberty have been diminished through due process so that person must rely primarily on article IV, section 8 which protects him from cruel and unusual punishment. Plais v. Panuelo, 5 FSM Intrm. 179, 190 (Pon. 1991).

When a panel hearing in a summary dismissal was closed to the public and the injured party and counsel were present to attend and participate in the hearing and the panel accepted and considered all testimony and evidence offered by the parties, due process was not violated. Palsis v. Kosrae State Court, 5 FSM Intrm. 214, 217 (Kos. S. Ct. Tr. 1991).

Variance between charge of striking police car windshield with fists and evidence adduced at trial of damaging headlights with a beer can is not so misleading and prejudicial that defendant was denied a fair trial or suffered from a lack of notice as to the evidence to be offered at trial on a charge of damaging the property of another. Otto v. Kosrae, 5 FSM Intrm. 218, 222 (App. 1991).

The actions of a private corporation partly owned by a government should not be considered "state action" for the purposes of due process analysis. Alik v. Kosrae Hotel Corp., 5 FSM Intrm. 294, 298 (Kos. 1992).

Under FSM law there is no property right to particular levels of tort compensation triggering due process protections. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM Intrm. 358, 362-63 (Kos. 1992).

Among the rational bases supporting the constitutionality of a state statute capping wrongful death recovery are a desire to create foreseeable limits on government liability; to promote insurance; to encourage settlement of claims; and to ease the burden on courts and families of valuing losses incurred through the death of a family member. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM Intrm. 358, 363 (Kos. 1992).

Aliens are persons protected by the due process and equal protection clause of the Constitution. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 366 (Pon. 1992).

Employment opportunity is a liberty interest protected by due process. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 366 (Pon. 1992).

When a landowner voluntarily signs a statement of intent for an easement for a road even though the state failed in is duty of care to inform him that he could refuse to sign, the state has not violated the landowner's due process rights. Nena v. Kosrae, 5 FSM Intrm. 417, 424 (Kos. S. Ct. Tr. 1990).

When counsel is allowed such a short preparation time that counsel's effectiveness is impaired then the accused is deprived of due process and effective assistance of counsel. In re Extradition of Jano, 6 FSM Intrm. 93, 101 (App. 1993).

Something more than a state merely misinterpreting its own law, such as that the state's interpretation was arbitrary, grossly incorrect, or motivated by improper purposes, is needed to raise a legitimate due

process issue. Simon v. Pohnpei, 6 FSM Intrm. 314, 316 (Pon. 1994).

The statutory ineligibility of persons convicted of Trust Territory felonies is a valid exercise of Congress's constitutional power to prescribe additional qualifications for election to Congress, and is not unconstitutional as a deprivation of a liberty interest without due process of law, or as an ex post facto law, or as a bill of attainder. Robert v. Mori, 6 FSM Intrm. 394, 401 (App. 1994).

The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Semwen v. Seaward Holdings, Micronesia, 7 FSM Intrm. 111, 113 (Chk. 1995).

A plaintiff's firing by a private employer does not state a cause of action for unconstitutional deprivation of due process because no governmental entity or official is a defendant; the defendant is not alleged to be performing an essential governmental function; and a government action is not at issue. Semwen v. Seaward Holdings, Micronesia, 7 FSM Intrm. 111, 113 (Chk. 1995).

Physical abuse committed by police officers may violate a prisoner's right to due process of law. Persons who are not suspects have no less protection from physical abuse and injury at the hands of the police. The right to due process of law is violated when a police officer batters a person instead of protecting her from harm because persons who are not in police custody have a due process interest in personal security that may be violated by the acts of police officers. Davis v. Kutta, 7 FSM Intrm. 536, 547-48 (Chk. 1996).

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

The failure of the state to adequately train police officers, and the excessive use of force used by officers is a violation of a victim's right to due process of law. Davis v. Kutta, 7 FSM Intrm. 536, 548 (Chk. 1996).

An official state practice of allowing untrained and unqualified police officers to use deadly force may be shown from the chief of police's testimony that convicted felons were hired although regulations prohibited it and that requalification on firearms had been waived for at least three years although regulations required requalification when it is within his power to allow variation from written regulation, and from the lack of any internal discipline as the result of improper use of deadly force. If, as a result of this policy a person suffers serious bodily injury, it is a violation of her right to due process of law. Davis v. Kutta, 7 FSM Intrm. 536, 548 (Chk. 1996).

The FSM Constitution due process provision is derived from the United States Constitution and thus United States cases may be consulted for guidance in interpretation, emphasizing cases in effect at the times of the framing (1975) and the ratification (1978) of the FSM Constitution. FSM v. Skico, Ltd. (II), 7 FSM Intrm. 555, 556-57 (Chk. 1996).

Because a government employee's pay is a form of property a government cannot deprive the employee of without due process of law, a state's failure to pay to the allottees money withheld from employees' paychecks for allotments constitutes a government deprivation of the employees' property without due process. Oster v. Cholymay, 7 FSM Intrm. 598, 599 (Chk. S. Ct. Tr. 1996).

A due process challenge to a criminal contempt charge on the ground of the court's or its personnel's actions may be resolved by the judge's recusal and reassignment of the case to a judge whose impartiality has not been questioned. FSM v. Cheida, 7 FSM Intrm. 633, 638-39 (Chk. 1996).

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 Intrm. 23, 27 (App. 1997).

A justice whose extrajudicial statements exhibit a bias towards a party's counsel must disqualify himself

under Pohnpei statute, and failure to do so is a denial of due process. Damarlane v. Pohnpei Legislature, 8 FSM Intrm. 23, 27-28 (App. 1997).

A trial judge abuses his discretion when, without due process of law, he *sua sponte* imposes a Rule 11 sanction on an attorney. In re Sanction of Michelsen, 8 FSM Intrm. 108, 111 (App. 1997).

State law specifically prohibits persons with an interest from being members of a land registration team, but no such statute specifically requires the disqualification of land commissioners with an interest from reviewing the registration team's determination. This brings constitutional due process concerns into play. Wito Clan v. United Church of Christ, 8 FSM Intrm. 116, 118 (Chk. 1997).

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

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

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

In order to assert due process, one must point to a property or liberty interest of one's own that is subject to due process. Louis v. Kutta, 8 FSM Intrm. 228, 230 (Chk. 1998).

The Kosrae State Charter's due process clause, in effect in 1982, did not extend any greater protection than the FSM Constitution's. Taulung v. Kosrae, 8 FSM Intrm. 270, 275 (App. 1998).

The essential features of procedural due process, or fairness, require notice and an opportunity to be heard. Taulung v. Kosrae, 8 FSM Intrm. 270, 275 (App. 1998).

The procedural due process requirements of notice and an opportunity to be heard are met when Kosrae provides a limited-term employee being suspended for two weeks the notice mandated by 61 TTC 10(15)(a) and an opportunity to be heard by the official suspending him. Taulung v. Kosrae, 8 FSM Intrm. 270, 275 (App. 1998).

The constitutional guarantees of due process and equal protection extend to aliens. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 295 n.8 (Pon. 1998).

It is a due process violation for a former trial counselor or attorney to preside as a trial judge over litigation involving the same issues and interests he had been intimately involved with as a trial counselor or attorney, particularly where he had represented one of the litigants. Bank of Guam v. O'Sonis, 8 FSM Intrm. 301, 305 (Chk. 1998).

A party has a due process right to a hearing before an unbiased judge and a judge without an interest in the case's outcome. Bank of Guam v. O'Sonis, 8 FSM Intrm. 301, 305 (Chk. 1998).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of "life, liberty or property" in an unfair, arbitrary manner. Where such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government

follow procedures calculated to assure a fair and rational decision making process. Issac v. Weilbacher, 8 FSM Intrm. 326, 333 (Pon. 1998).

Title 52 F.S.M.C. 151-57 and PSS Regulation 18.4 establish an expectation of continuous employment for nonprobationary national government employees by limiting the permissible grounds, and specifying necessary procedures, for their dismissal. This is sufficient to establish a "property interest" for the nonprobationary employee which cannot be taken without fair proceedings, or "due process." Issac v. Weilbacher, 8 FSM Intrm. 326, 333 (Pon. 1998).

A permanent employee cannot be demoted to his former position based on a regulation which, by its terms, only applies to a temporary promotion. A permanent employee's constitutional right to due process is violated by the national government when it has thus demoted him. Issac v. Weilbacher, 8 FSM Intrm. 326, 335 (Pon. 1998).

In the vast majority of criminal contempt cases, the defendant is given substantially those procedural rights normally accorded to defendants in other criminal cases. In re Contempt of Skilling, 8 FSM Intrm. 419, 424 (App. 1998).

Although the statutory time periods are directory and not mandatory, a significant delay in proceedings can deprive the Executive Service Appeals Board procedure of its meaningfulness, in violation of the due process rights protected by the Constitution. Langu v. Kosrae, 8 FSM Intrm. 427, 435 (Kos. S. Ct. Tr. 1998).

It is a violation of a litigant's constitutional right to due process for a trial court to rely on evidence, not a part of the record, without prior notice to the parties and an opportunity for the parties to comment on it. Thomson v. George, 8 FSM Intrm. 517, 523 (App. 1998).

It is error for a trial court to rely on exhibits never identified, described, or marked at trial. Thomson v. George, 8 FSM Intrm. 517, 523 (App. 1998).

A special master commits reversible error when its decision has relied on unidentified sketches not a part of the record and about which there was not extensive testimony and cross examination. Thomson v. George, 8 FSM Intrm. 517, 523 (App. 1998).

An illegally-hired public employee has a constitutionally protected interest in employment because the Secretary of Finance must give notice and an opportunity to be heard after taking the action to withhold his pay, and the government must terminate his employment after it determines his hiring had violated public policy, giving him notice and an opportunity to be heard. Failure to take such steps violated the employee's due process rights. FSM v. Falcam, 9 FSM Intrm. 1, 5 (App. 1999).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a due process violation. Island Dev. Co. v. Yap, 9 FSM Intrm. 18, 20 (Yap 1999).

Voters' due process and equal protection rights are not violated by regulation or restriction of voting by absentee ballots. Chipen v. Losap Election Comm'r, 9 FSM Intrm. 46, 48 (Chk. S. Ct. Tr. 1999).

From June 1997 when Kos. S.L. No. 6-131 became law to February 1998 when new PSS regulations were adopted, there was no administrative appeals process for grievances, which void raises substantial due process concerns under the FSM and Kosrae Constitutions. Abraham v. Kosrae, 9 FSM Intrm. 57, 60 (Kos. S. Ct. Tr. 1999).

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

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

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

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

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

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

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

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

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

Any reliance on the contents of a further investigation that have never been a part of the record is improper. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 172 (App. 1999).

A hearing cannot qualify as the full evidentiary hearing contemplated by Disciplinary Rule 5(b) when neither side had an opportunity to present evidence. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 174 (App. 1999).

A hearing cannot qualify as the full evidentiary hearing contemplated by Disciplinary Rule 5(b) when the decision finding the allegations of misconduct proven had been made and announced before the hearing was held. Such a hearing must take place before the decision is made. Otherwise it is a denial of due process. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 174 (App. 1999).

Since the Due Process Clause in the Declaration of Rights of the FSM Constitution is based on the Due

Process Clause of the U.S. Constitution's Fourteenth Amendment, the FSM Supreme Court may properly consider U.S. cases in construing due process under the FSM Constitution. Weno v. Stinnett, 9 FSM Intrm. 200, 213 (App. 1999).

Cases involving either prisoners or someone confronted with or being arrested by a police officer – someone in custody or being taken into custody – or cases involving intentional acts, are inapplicable to claims that other state actions that are either negligence, gross negligence or reckless disregard constitute a civil rights or due process violation. Primo v. Pohnpei Transp. Auth., 9 FSM Intrm. 407, 411-12 (App. 2000).

Historically, the guarantee of due process has been applied to deliberate decisions of government officials to deprive a person of life, liberty, or property. Mere negligence did not raise a constitutional violation. The Due Process Clause does not purport to supplant traditional tort law and does not transform every tort by a state actor into a constitutional violation. Primo v. Pohnpei Transp. Auth., 9 FSM Intrm. 407, 412 (App. 2000).

Neither the state defendants' alleged deliberate indifference to the dredging site's neighbors' safety nor their failure to warn those neighbors of any known risks can properly be characterized as a constitutional violation that would take the case out of the realm of ordinary tort law. Primo v. Pohnpei Transp. Auth., 9 FSM Intrm. 407, 412 (App. 2000).

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 Intrm. 407, 412 (App. 2000).

Because conduct alone without regard to the doer's intent is often sufficient to convict someone of a crime, because there is wide latitude to declare an offense and to exclude elements of knowledge and diligence from its definition, and because the defendant knew, by his own admission, that he was not permitted to take a weapon on board the plane, the strict criminal liability imposed by 11 F.S.M.C. 1223(6) for boarding or attempting to board a commercial aircraft while carrying a firearm or dangerous device does not violate due process. Sander v. FSM, 9 FSM Intrm. 442, 449-50 (App. 2000).

When the failure to refer a detainee for medical treatment is arbitrary and purposeless, it constitutes punishment of someone who has not been convicted of any crime. This punishment is a denial of the right to due process. Estate of Mori v. Chuuk, 10 FSM Intrm. 6, 13 (Chk. 2001).

A court must exercise its inherent powers with caution, restraint, and discretion and must comply with the mandates of due process. In re Sanction of Woodruff, 10 FSM Intrm. 79, 85 (App. 2001).

No one should ever be penalized or sanctioned by a court for successfully insisting upon those constitutional rights which are his due. In re Sanction of Woodruff, 10 FSM Intrm. 79, 87 (App. 2001).

A judgment may not be rendered in favor of or against a person who was not made party to the action. A party to an action is a person whose name is designated on the record as a plaintiff or defendant. A person may not be made a party to a proceeding simply by including his name in the judgment. Hartman v. Bank of Guam, 10 FSM Intrm. 89, 97 (App. 2001).

When someone is accorded none of these due process guarantees with respect to a "judgment" against it, the judgment and ensuing order in aid of judgment and writ of execution are void as a matter of law, and these procedural infirmities inherent in the judgment are subject to attack at any time, and thus are outside the adjudicative framework established by the rules of procedure. Hartman v. Bank of Guam, 10 FSM Intrm. 89, 97 (App. 2001).

In land cases, statutory notice requirements must be followed. Personal service of the notice of hearing and the Determination of Ownership upon all parties shown by the preliminary inquiry to have an interest in

the parcel is required. Failure to serve actual notice on a claimant is a denial of due process and violation of law, which will cause a Determination of Ownership to be set aside as void, and the case remanded to the Land Commission to hold the formal hearings and to issue the determination of ownership for that parcel. Kun v. Kilafwakun, 10 FSM Intrm. 214, 216 (Kos. S. Ct. Tr. 2001).

To be property protected under the FSM and Kosrae Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons. A person who has been hired under an employment contract, for a specific length of time, with no provisions for renewal of the contract and no entitlement for renewal of the contract, does not have a property interest in his continued employment and is not entitled to a hearing before termination. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 237 (Kos. S. Ct. Tr. 2001).

A person who has been employed for twelve years under a series of one year contracts could prove that by that length of employment, there was unwritten claim to continued employment under tenure. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 237 (Kos. S. Ct. Tr. 2001).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a due process violation. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 237 (Kos. S. Ct. Tr. 2001).

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

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

Due process generally requires some form of fair hearing and rational decision making process when an important interest is at stake. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 635 (Pon. 2002).

In evaluating an alleged due process violation, courts usually are looking at the procedure that was followed by the government when, for example, the government is denying a benefit or taking some property from a party. Three important elements in establishing a procedural due process claim are: 1) whether the government is involved; 2) whether there is a life, liberty or property interest at stake; and, if so, 3) whether adequate due process procedures are employed by the government before a party is deprived of such an interest. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 635 (Pon. 2002).

The constitutional guarantee of due process only protects parties from governments, and those acting under them. To establish a due process claim, a plaintiff must show that a government entity or official, or one acting at the direction of the government, is involved. When the defendants were merely acting as individuals and not as representatives of Congress, or at the direction of Congress, the plaintiff cannot demonstrate the requisite government involvement, and when there is no government action, there can be no due process violation. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 635 (Pon. 2002).

The wording of the due process provisions in both the FSM and Kosrae Constitutions are identical. Livaie v. Micronesia Petroleum Co., 10 FSM Intrm. 659, 665 (Kos. S. Ct. Tr. 2002).

Government employment that is "property" within the meaning of the due process clause cannot be taken without due process. To be property protected under the FSM and Kosrae Constitutions, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Livaie v. Micronesia Petroleum Co., 10 FSM Intrm. 659, 665-66 (Kos. S. Ct. Tr. 2002).

The due process requirements applicable to employment that is a property interest are: to be property protected under the FSM and Kosrae Constitutions, the employment rights must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulations,

formal contract or actions of a supervisory person with authority to establish terms of employment. Livaie v. Micronesia Petroleum Co., 10 FSM Intrm. 659, 666 (Kos. S. Ct. Tr. 2002).

There is no assurance of continued employment given by statute when the statute provides that the Corporation may retain and terminate the services of employees, agents, attorneys, auditors, and independent contractors upon such terms and conditions as it deems appropriate, or given by regulation when no regulations exist. Livaie v. Micronesia Petroleum Co., 10 FSM Intrm. 659, 666 (Kos. S. Ct. Tr. 2002).

The due process clause prevents governmental authorities from depriving individuals of property interests without first giving an opportunity to be heard. The clause protects against governmental rather than private deprivations of property. The party alleging a due process violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action. Livaie v. Micronesia Petroleum Co., 10 FSM Intrm. 659, 666 (Kos. S. Ct. Tr. 2002).

The actions of a private corporation which is partly owned by a government are not "state action" for purposes of due process analysis. Livaie v. Micronesia Petroleum Co., 10 FSM Intrm. 659, 666 (Kos. S. Ct. Tr. 2002).

When the statutory provisions intend and ensure that an entity is run as a corporation with its own management and employees, and not as a Kosrae state government agency and when, although the state government remains its sole shareholder, the state government does not assume its debts, does not own its assets, and has no control over its day to day operations, it is not a "state actor," and its termination of an employee is therefore not a "state action." Livaie v. Micronesia Petroleum Co., 10 FSM Intrm. 659, 666-67 (Kos. S. Ct. Tr. 2002).

A party alleging a due process violation has the burden of showing that the defendant is a state actor and that the conduct in question was a state action. Livaie v. Micronesia Petroleum Co., 10 FSM Intrm. 659, 667 (Kos. S. Ct. Tr. 2002).

The defendant employer will be granted summary judgment on a plaintiff's due process claim when the plaintiff has not satisfied his burden showing that the employer is a state actor and that its termination of his employment was a state action because the due process clause may only be invoked through state action. Livaie v. Micronesia Petroleum Co., 10 FSM Intrm. 659, 667 (Kos. S. Ct. Tr. 2002).

A trespass action is one for violation of possession, not for challenge to title. It is therefore not a proper proceeding for the defendant to challenge title and allege due process violations in the proceedings that determined the plaintiff's title to the parcel. The defendant may challenge the title through separate proceedings as appropriate. Shrew v. Killin, 10 FSM Intrm. 672, 674-75 (Kos. S. Ct. Tr. 2002).

The personal nature of constitutional rights, and prudential limitations on adjudicating constitutional questions, preclude a criminal defendant from challenging a law on the basis that it may be unconstitutionally applied to others in situations not before the court. FSM v. Anson, 11 FSM Intrm. 69, 75 (Pon. 2002).

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

The twenty year statute of limitation does not apply to claims against the Land Commission for violation of due process, violation of statute and for failure to apply an earlier judgment as they are not claims for the recovery of land. These claims are subject to a limitations period of six years and are barred by the statute of limitations and will be dismissed when the Land Commission actions all occurred more than six years ago. Sigrah v. Kosrae State Land Comm'n, 11 FSM Intrm. 169, 175 (Kos. S. Ct. Tr. 2002).

A claim of taking of property without due process of law is effective only against governmental entities or officials. The constitutional guarantee of due process only protects persons from the governments, and

those acting under them, established or recognized by the Constitution. Rosokow v. Bob, 11 FSM Intrm. 210, 215 (Chk. S. Ct. App. 2002).

The FSM Constitution's due process provision protects persons from the governments, and those acting under them, established or recognized by the Constitution, and does not create causes of action against private parties. The Chuuk Constitution due process provision functions in the same manner. Rosokow v. Bob, 11 FSM Intrm. 210, 215 (Chk. S. Ct. App. 2002).

Once the governmental defendants were dismissed there was no one against which to bring due process claims and civil rights taking claims so those claims were thus properly dismissed. Rosokow v. Bob, 11 FSM Intrm. 210, 215 (Chk. S. Ct. App. 2002).

A plaintiff's claims for damages resulting from violation of his due process rights depend upon whether the defendant's actions were "state action." Hauk v. Board of Dirs., 11 FSM Intrm. 236, 240 (Chk. S. Ct. Tr. 2002).

If the court is unable to declare that the defendant authority is a quasi-governmental authority subject to the provisions of the due process clause of the Chuuk and FSM Constitutions, then the plaintiff's due process claims must fail. The plaintiff has the burden of proving that the defendant is a state actor. Hauk v. Board of Dirs., 11 FSM Intrm. 236, 240 (Chk. S. Ct. Tr. 2002).

An Authority that has its own Board of Directors, is solely empowered to select its own officers, may sue and be sued in its own name and is responsible for its own debts, and owns its own assets is an autonomous agency that cannot be declared to be subject to the due process provisions of the FSM and state constitutions, and must be declared a private entity and not a "state actor" for due process purposes. Hauk v. Board of Dirs., 11 FSM Intrm. 236, 240-41 (Chk. S. Ct. Tr. 2002).

Except in extraordinary circumstances, due process requires that parties receive notice of motions because all parties must be served with all papers unless the party is in default, and the default is for a failure to ever appear at any stage of the proceeding. FSM Social Sec. Admin. v. David, 11 FSM Intrm. 262j, 262L (Pon. 2002).

When testimony presented at the first formal hearing was not heard by the full panel of adjudicators due to a Land Commissioner's late disqualification and the addition of temporary adjudicators, only one person of the adjudication panel heard that testimony. This resulted in a due process violation because the testimony was not heard by the full adjudication panel when the acting replacement commissioners did not hear the testimony, yet they participated in the findings of fact, opinion and decision. The Land Commission exceeded it constitutional and statutory authority by the adjudication panel's failure to hear all the evidence presented at the hearings. Heirs of Henry v. Palik, 11 FSM Intrm. 419, 422 (Kos. S. Ct. Tr. 2003).

When counsel, who now claims he was surprised and unprepared by the scheduling of oral argument, did not ask for a couple of days' (or even a few hours') continuance when the case was called, although such a continuance would have been possible and when counsel argued ably, it is not a ground to grant a rehearing. Rosokow v. Bob, 11 FSM Intrm. 454, 456 (Chk. S. Ct. App. 2003).

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

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

The public entity responsible for public lands is required to make its decisions openly and after giving

appropriate opportunity for participation by the public and interested parties. Asumen Venture, Inc. v. Board of Trustees, 12 FSM Intrm. 84, 91 (Pon. 2003).

The fundamental concept of due process is that government may not take from a citizen his life, liberty, or property in an unfair or arbitrary fashion, but must follow procedures that ensure a fair and rational decision-making process. AHPW, Inc. v. FSM, 12 FSM Intrm. 114, 118 (Pon. 2003).

To satisfy constitutional due process concerns, absent class members must be afforded adequate representation before entry of a judgment which binds them. Resolution of two questions determines legal adequacy: 1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and 2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class? The second part of this question may also be stated in the affirmative as that it must appear that the class representatives will vigorously prosecute the interests of the class through qualified counsel. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM Intrm. 192, 199 (Yap 2003).

No court could grant as relief a sweeping request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Heirs of Shrew, 12 FSM Intrm. 274, 277 (App. 2003).

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

An appellate court will first consider an appellant's due process contentions, when, if the appellant were to prevail on these, the decision below would be vacated (without the appellate court considering its merits), and the matter remanded for new proceedings. Anton v. Cornelius, 12 FSM Intrm. 280, 284 (App. 2003).

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

When the appellant does not name the persons who he claims were the appellee's or the appellee's wife's "close relatives" or state how they are related, or what positions they held, or how they were involved in the Land Commission decision, the appellate court, without knowing the answers to these questions, cannot find plain error and conclude that, as a matter of law, the appellant's due process rights were violated and thereby vacate the determination and remand it for a new determination before other adjudicators. When the appellant did not raise this claim in the Land Commission or later in the Kosrae State Court, having failed to raise it earlier, the appellant cannot raise it now. Anton v. Cornelius, 12 FSM Intrm. 280, 284-85 (App. 2003).

No court could grant as relief a far-reaching request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Cornelius, 12 FSM Intrm. 280, 288-89 (App. 2003).

A Governor's proclamation that continues municipal officials in office indefinitely, violates the people's rights to substantive due process, in that they have no say in their municipal government since all of its officials are now appointed by and now hold office due to the Governor; and to equal protection of the laws, in that the municipal citizens are treated differently based on their ancestry (they and their ancestors are from

Romalum) from citizens of other Chuuk municipalities in not being allowed an elected municipal government. Buruta v. Walter, 12 FSM Intrm. 289, 295 (Chk. 2004).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of "life, liberty or property" in an unfair, arbitrary manner. Before such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision making process. Panuelo v. Amayo, 12 FSM Intrm. 365, 374 (App. 2004).

The omission of an adopted daughter's name from a verified probate petition, signed under oath by the petitioner, resulted in the failure to provide the adopted daughter her constitutional due process rights to be notified of the probate proceeding, have an opportunity to be heard and may have also affected her rights as an heir of the decedent. In re Skilling, 12 FSM Intrm. 447, 449 (Kos. S. Ct. Tr. 2004).

When a plaintiff has a judgment based on a common law contract, and there is no FSM statute that affects ordinary contracts in a way that shows a substantial national interest in such matters, the law of contracts is generally one in which state law controls. A governmental entity's breach of a contract, without more, does not constitute a due process violation. Barrett v. Chuuk, 12 FSM Intrm. 558, 561 (Chk. 2004).

Repeated, intentional instances of failure of a state to pay a judgment does not constitute a separate, constitutional claim for deprivation of property without due process where the original underlying claim is not constitutional in character, but is based on common law contract and when there is no constitutional claim that supports the judgment itself, nor a national statute applicable that implicates a "clear and substantial" national interest. Barrett v. Chuuk, 12 FSM Intrm. 558, 561-62 (Chk. 2004).

– Due Process – Notice and Hearing

In criminal contempt proceedings, reasonable notice of a charge and an opportunity to be heard are basic in our system of jurisprudence; these rights include a right to examine witnesses against one, to offer testimony, and to be represented by counsel. In re Iriarte (I), 1 FSM Intrm. 239, 250 (Pon. 1983).

A summary punishment always, and rightly, is regarded with disfavor. Where conviction and punishment is delayed it is much more difficult to argue that action without notice or hearing of any kind is necessary to preserve order and enable the court to proceed with its business. In re Iriarte (I), 1 FSM Intrm. 239, 251 (Pon. 1983).

Once a contemner has left the courtroom, there presumably is no immediate necessity to act without a normal hearing to preserve the integrity of the court proceedings. In re Iriarte (I), 1 FSM Intrm. 239, 251 (Pon. 1983).

Where the accused disrupts courtroom proceedings and the judge must act immediately to restore order, a trial judge may immediately convict a defendant (the accused) through a "summary contempt" procedure, that is, without prior notice or hearing. In re Iriarte (II), 1 FSM Intrm. 255, 260 (Pon. 1983).

The Constitution secures to the criminal defendant, as a minimum, the right to receive reasonable notice of the charges against the defendant, right to examine any witnesses against the defendant, and the right to offer testimony and be represented by counsel. In re Iriarte (II), 1 FSM Intrm. 255, 260 (Pon. 1983).

No judge should mete out criminal punishment except upon notice and due hearing, unless overriding necessity precludes such indispensable safeguards for assuring fairness. In re Iriarte (II), 1 FSM Intrm. 255, 262 (Pon. 1983).

Failure to proceed with a contempt hearing offered by the court without prior notice cannot be deemed a loss or waiver of the hearing right itself when no clear and unmistakable warning is issued that a failure to proceed immediately with the hearing will constitute a loss or waiver of that right. In re Iriarte (II), 1 FSM Intrm.

255, 264-65 (Pon. 1983).

Where the plaintiff has been given reasonable notice of his trial and where he and his attorney failed to appear to adduce evidence and prosecute his claim, his inactivity amounts to abandonment of his claim and is subject to dismissal under FSM Civil Rule 41(b). Etpison v. Perman, 1 FSM Intrm. 405, 414 (Pon. 1984).

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

A fundamental requisite of due process of law is the opportunity to be heard. Etpison v. Perman, 1 FSM Intrm. 405, 423 (Pon. 1984).

Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must be notified. Etpison v. Perman, 1 FSM Intrm. 405, 423 (Pon. 1984).

Radio announcement is a common and generally effective method of notice. Yet radio notice alone of a proposed hearing to determine rights to future use of public lands is not constitutionally sufficient to a person who: 1) asserts a direct and serious claim based on his activities on, and actual possession of, the land; 2) had given written notice to the decision-maker of his wish to assert the claim; 3) lives relatively near the decision-maker's office; and 4) had a work location where telephone or written messages to him could have been received during the day. Etpison v. Perman, 1 FSM Intrm. 405, 427 (Pon. 1984).

It is normally required that a hearing be held prior to seizure of a property. In extraordinary situations a seizure may take place prior to hearing, but the owner must be afforded a prompt post-seizure hearing at which the person seizing the property must at least make a showing of probable cause. Unreasonable delay in providing a post-seizure hearing may require that an otherwise valid seizure be set aside. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985).

The Due Process Clause prevents governmental authorities from depriving an individual of property interests, without first according an opportunity to be heard as to whether the proposed deprivation is permissible. Falcam v. FSM, 3 FSM Intrm. 194, 200 (Pon. 1987).

Only in extraordinary circumstances, where immediate action is essential to protect crucially important public interests, may private property be seized without a hearing. Falcam v. FSM, 3 FSM Intrm. 194, 200 (Pon. 1987).

Any withholding of private property, such as a government employee's paycheck, without a hearing can be justified only so long as it takes the authorized payor to obtain a judicial determination as to the legality of the payment being withheld. Falcam v. FSM, 3 FSM Intrm. 194, 200 (Pon. 1987).

A party is not deprived of due process of law in a case in which a judgment is entered against it on a cause of action raised by the trial court, where the party had notice and an opportunity to be heard, even though the cause of action does not appear in the pleadings and no amendment of the pleadings was made. United Church of Christ v. Hamo, 3 FSM Intrm. 445, 453 (Truk 1988).

Only in extraordinary circumstances where immediate action is essential to protect crucially important public interests, may private property be seized without a prior hearing of some kind. Semes v. FSM, 4 FSM Intrm. 66, 74 (App. 1989).

Constitutional due process requires that a nonprobationary employee of the national government be given some opportunity to respond to the charges against him before his dismissal may be implemented; including oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. Semes v. FSM, 4 FSM Intrm. 66, 76 (App. 1989).

Implementation of the constitutional requirement that a government employee be given an opportunity to respond before dismissal is consistent with the statutory scheme of the National Public Service System Act, therefore the Act need not be set aside as contrary to due process. Semes v. FSM, 4 FSM Intrm. 66, 77 (App. 1989).

A prisoner's rights to procedural due process have been violated when he received neither notice of the charges against him nor an opportunity to respond to those charges before or during confinement. Plais v. Panuelo, 5 FSM Intrm. 179, 212 (Pon. 1991).

A person for whom extradition is sought must be brought before a justice that evidence of his criminality may be heard and considered so that he may be certified as extraditable. Such a person is entitled to notice of the hearing and an opportunity to be heard and to effective assistance of counsel. In re Extradition of Jano, 6 FSM Intrm. 93, 99 (App. 1993).

Where a party attended the meeting at which the common boundary was set and thus had actual notice, and filed no adverse claim to the boundary location that would trigger the statutory right to notice, but claimed he was not aware of the adverse boundary until eight years later, and waited another four years before filing suit, the claimant's repeated failure to timely assert his rights does not demonstrate a due process violation. Setik v. Sana, 6 FSM Intrm. 549, 553 (Chk. S. Ct. App. 1994).

One who receives actual notice cannot assert a constitutional claim that the method of notice was not calculated to reach him. Setik v. Sana, 6 FSM Intrm. 549, 553 (Chk. S. Ct. App. 1994).

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

Where a vessel has been arrested pursuant to a warrant, a post-seizure hearing is required by the constitutional guarantee of due process. FSM v. M.T. HL Achiever (II), 7 FSM Intrm. 256, 257 (Chk. 1995).

An owner of seized property cannot challenge the statute it was seized under as unconstitutional because the statute fails to provide for notice and a hearing, if procedural due process, notice and a right to a hearing, are provided. FSM v. M.T. HL Achiever (II), 7 FSM Intrm. 256, 258 (Chk. 1995).

The Due Process Clause does not require an immediate post-seizure probable cause hearing in advance of a civil forfeiture trial. It only requires that the government begin the forfeiture action within a reasonable time of the seizure. FSM v. Skico, Ltd. (II), 7 FSM Intrm. 555, 557 (Chk. 1996).

A civil forfeiture statute is not unconstitutional in failing to set out a requirement for a post-seizure hearing and a notice of that right; nor is the government constitutionally required to inform the defendant of such notice and a right to a hearing. FSM v. Skico, Ltd. (II), 7 FSM Intrm. 555, 557 (Chk. 1996).

It is constitutional error for the trial court to rely on a special master's report, not a part of the record, without prior notice to the parties and an opportunity for the parties to comment on it. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 669 (App. 1996).

Notice and an opportunity to be heard are the essence of due process of law. In re Sanction of Michelsen, 8 FSM Intrm. 108, 110 (App. 1997).

The manner in which Rule 11 sanctions are imposed must comport with due process requirements. At a minimum, notice and an opportunity to be heard are required. In re Sanction of Michelsen, 8 FSM Intrm. 108, 110 (App. 1997).

A court's failure to provide adequate notice and the opportunity to be heard when imposing sanctions *sua sponte* in itself provides the ground for reversal of an order imposing sanctions. In re Sanction of Michelsen, 8 FSM Intrm. 108, 110 (App. 1997).

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

Persons entitled to notice of a proceeding generally are those who are to be affected by a judgment or order therein and the requirement of notice applies only to those whose substantial interests are affected by the proceeding in question. Louis v. Kutta, 8 FSM Intrm. 228, 230 (Chk. 1998).

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

When an appellant has failed to comply with the appellate rules' timing requirements for filing its opening brief, a single article XI, section 3 justice may, on his own motion, dismiss the appeal after the appellant has been afforded its constitutional due process right to notice and an opportunity to be heard. Ting Hong Oceanic Enterprises v. FSM, 8 FSM Intrm. 264, 265 (App. 1998).

A non-party is deprived of due process of law when a case is started against it without notice or it having been made a party, when an order in aid of judgment has been issued against the non-party without a judgment and a hearing held following notice, and when a writ of execution has been issued against a non-party and without notice or hearing to determine the amount to be executed upon. Bank of Guam v. O'Sonis, 8 FSM Intrm. 301, 304 (Chk. 1998).

Due process requires that the parties be given the opportunity to comment upon evidence. A fundamental requisite of due process of law is the opportunity to be heard. Notice and an opportunity to be heard are the essence of due process of law. Langu v. Kosrae, 8 FSM Intrm. 455, 458 (Kos. S. Ct. Tr. 1998).

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

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties, and is required to post notice on the land, at the municipal office and principal meeting place at least thirty days in advance of the hearing. Failure to provide notice to an interested party is violation of due process. Sigrah v. Kosrae State Land Comm'n, 9 FSM Intrm. 89, 93 (Kos. S. Ct. Tr. 1999).

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

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

In land cases, notice requirements shall be followed. Failure to serve actual notice on a claimant is a denial of due process and violation of law. Due to the violations of the statutory notice requirement, Determinations of Ownership and Certificates of Title will be set aside as void. Sigrah v. Kosrae State Land

Comm'n, 9 FSM Intrm. 89, 95 (Kos. S. Ct. Tr. 1999).

When a person appeared as a witness at the formal hearing for a parcel and testified in support of another's claim to that parcel and did not make her own claim to the land, she was not entitled to notice of the Determination of Ownership for the parcel because she was not an "interested party." Jonas v. Paulino, 9 FSM Intrm. 513, 516 (Kos. S. Ct. Tr. 2000).

When parties had no claims to the land at the time the title was determined they were not entitled to notice. Without a claim to the land in question there is no right to notice of a land commission proceeding or finding. Jonas v. Paulino, 9 FSM Intrm. 513, 516 (Kos. S. Ct. Tr. 2000).

When a party had no claim to the land at the time ownership was determined, that party was not entitled to statutory notice of the determination of ownership for a parcel and she does not have standing to appeal the Land Commission's decision and the court does not have jurisdiction over her appeal claims. Jonas v. Paulino, 9 FSM Intrm. 519, 521 (Kos. S. Ct. Tr. 2000).

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

When a person, entitled to be served notice of the hearing, was not served notice of the hearing and was also not served a copy of the Determination of Ownership, there was no substantial compliance with the notice requirements specified by law, and the Determination of Ownership will be set aside as void and remanded to the Land Commission to hold formal hearings. Nena v. Heirs of Melander, 9 FSM Intrm. 523, 525 (Kos. S. Ct. Tr. 2000).

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

Personal service of the Determination of Ownership is required upon all parties shown by the preliminary inquiry to have an interest in the parcel. Nena v. Heirs of Nena, 9 FSM Intrm. 528, 530 (Kos. S. Ct. Tr. 2000).

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

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

Notice that the court has been requested to issue an order affecting a litigant's rights and an opportunity for that party to be heard are constitutionally mandated by the due process clause. O'Sullivan v. Panuelo, 9 FSM Intrm. 589, 595 (Pon. 2000).

An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on him, whether that sanction is imposed on him under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Woodruff, 10 FSM Intrm. 79, 84 (App. 2001).

A court hears before it condemns, and that while a court that has announced a decision without notice

and an opportunity to be heard can always be asked to recall its decision and listen to argument this opportunity, as every lawyer knows, is a poor substitute for the right to be heard before the decision is announced. In re Sanction of Woodruff, 10 FSM Intrm. 79, 89 (App. 2001).

The basic tenets of due process of law are notice and an opportunity to be heard. As applied to judgments, this means that a judgment may not be rendered in violation of these constitutional limitations and guaranties. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated to apprise interested parties of the pendency of the action, which is itself a corollary to another requisite of due process, the right to be heard. Hartman v. Bank of Guam, 10 FSM Intrm. 89, 96-97 (App. 2001).

A judgment entered against a party without notice or an opportunity to be heard is void and is subject to direct or collateral attack at any time. Hartman v. Bank of Guam, 10 FSM Intrm. 89, 97 (App. 2001).

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

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

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

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

Notice and an opportunity to be heard is the essence of due process. Kama v. Chuuk, 10 FSM Intrm. 593, 598 (Chk. S. Ct. App. 2002).

When the trial court *sua sponte* set aside a judgment without notice and an opportunity to be heard, it set aside the judgment without due process of law. Kama v. Chuuk, 10 FSM Intrm. 593, 598 (Chk. S. Ct. App. 2002).

A trial court abuses its discretion when it sua sponte sets aside a judgment because the court, and not a party or his legal representative made the motion; when the judgment holder was denied due process because he was not given notice and an opportunity to be heard before the decision against him was announced; and when the decision was based upon an erroneous conclusion of law that a trial court Rule 68(b) hearing was an absolute necessity before this judgment could be entered. Kama v. Chuuk, 10 FSM Intrm. 593, 599 (Chk. S. Ct. App. 2002).

When a court makes a motion sua sponte, it generally gives the parties notice and an opportunity to respond before it decides; just as when a party makes a motion the other party is generally given an opportunity to respond before the court rules. Notice and an opportunity to be heard is the essence of due process. Wainit v. Weno, 10 FSM Intrm. 601, 606 (Chk. S. Ct. App. 2002).

When an appellant had no notice of the court's sua sponte motion to dismiss the appeal before the dismissal order was entered, the dismissal was a violation of the appellant's right to due process because of

the lack of notice and an opportunity to be heard. Wainit v. Weno, 10 FSM Intrm. 601, 606 (Chk. S. Ct. App. 2002).

A court hears before it condemns, and that while a court that has announced a decision without notice and an opportunity to be heard can always be asked to recall its decision and listen to argument this opportunity is a poor substitute for the right to be heard before the decision is announced. Wainit v. Weno, 10 FSM Intrm. 601, 606 (Chk. S. Ct. App. 2002).

Due process generally requires that the government provide an individual with notice and an opportunity to be heard before taking away that person's liberty. A person has a liberty interest in not being criminally prosecuted without notice of what conduct is prohibited. A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law, as it fails to give people notice of what conduct is prohibited. FSM v. Anson, 11 FSM Intrm. 69, 75 (Pon. 2002).

A judgment entered against a party without notice or an opportunity to be heard is void and subject to direct or collateral attack. Pastor v. Ngusun, 11 FSM Intrm. 281, 285 (Chk. S. Ct. Tr. 2002).

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

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

When a person, entitled to be served notice of the hearing, was not served actual notice of the hearing by personal service, there was no substantial compliance with the notice requirements specified by law and when there was no substantial compliance with the notice requirements specified by law, the Certificate of Title and the Determination of Ownership will be vacated and set aside as void, and the matter remanded to Kosrae Land Court for further proceedings. Albert v. Jim, 11 FSM Intrm. 487, 490 (Kos. S. Ct. Tr. 2003).

When the two issues a party seeks reconsideration of were raised in the other parties' filings and at the scheduled conference (which it declined to attend), the party thus had the opportunity to (and did) respond to other parties' claims, then the party was given the process that was due it. In re Engichy, 12 FSM Intrm. 58, 66 (Chk. 2003).

When the plaintiff received notice of the hearing and had an opportunity to present its arguments to the agency, when, although the agency would have done well to explain its reasons for rejecting plaintiff's arguments, it was not legally required to do so, and when the record shows that a hearing was held, a rehearing was held, the parties were allowed to have their attorneys present, the parties were given the opportunity to file written briefs and did so, and the agency thereafter issued a 13-page written decision, the plaintiff's claim that its due process rights were violated will be dismissed for failure to state a claim, as will a civil rights claim inextricably tied to the due process claim. Asumen Venture, Inc. v. Board of Trustees, 12 FSM Intrm. 84, 91-92 (Pon. 2003).

A court cannot order a stay in cases in another court with parties not before it and who have had no notice and opportunity to be heard; nor should it prevent other, unknown persons from seeking future court relief. Even for cases where the parties are the same, there is no authority for such extraordinary relief. Enlet v. Bruton, 12 FSM Intrm. 187, 191 (Chk. 2003).

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

The trial court has an obligation to insure that a defendant was served with the notice of trial issued by the trial court, and on that basis an appellate court will reverse the trial court judgment and remand the case for a new trial. Panuelo v. Amayo, 12 FSM Intrm. 365, 372 (App. 2004).

When the fundamental tenets of due process are violated by the trial court's failure to provide notice of the trial to a *pro se* litigant, the trial court's later denial of his motion for relief from judgment under Rule 60 is an abuse of discretion. Panuelo v. Amayo, 12 FSM Intrm. 365, 374 (App. 2004).

Notice and an opportunity to be heard are the essence of due process of law. Panuelo v. Amayo, 12 FSM Intrm. 365, 374 (App. 2004).

Specific requirements of due process may vary depending on the nature of decisions to be made and the circumstances. At the core however is the right to be heard. Panuelo v. Amayo, 12 FSM Intrm. 365, 374 (App. 2004).

Even when a litigant was provided with a subpoena by opposing counsel, which accurately stated the trial date, it is essential that the trial court insure that its own notice procedures satisfy the requirements of due process, especially where *pro se* litigants are involved. When unrepresented parties are deluged with legal documents drafted by attorneys on the opposing side, it is conceivable that confusion will result. Panuelo v. Amayo, 12 FSM Intrm. 365, 374 (App. 2004).

When the trial court easily could have concluded a trial on the full merits of the case by extending or delaying the proceedings for a few extra hours, but chose instead to base its determination of liability upon evidence that a litigant did not have an opportunity to oppose because of lack of court-issued notice of trial, and when the law favors the disposition of cases on their merits, the trial court's error in failing to insure that it provided the litigant with notice of the trial date and time brings into question the fairness, integrity, and public reputation of judicial proceedings. Panuelo v. Amayo, 12 FSM Intrm. 365, 375 (App. 2004).

The procedural due process guarantee of notice protects not only the parties involved but upholds the court's integrity as well. Panuelo v. Amayo, 12 FSM Intrm. 365, 375 (App. 2004).

A trial court commits plain error, and violates the litigant's right to due process, when it fails to serve notice of a trial date and time on a *pro se* litigant. It therefore abuses its discretion when it denied the litigant's motion for a new trial. Panuelo v. Amayo, 12 FSM Intrm. 365, 375 (App. 2004).

A sua sponte summary judgment motion is proper so long as the court provides adequate notice to the parties and adequate opportunity to respond to the court's motion. FSM Social Sec. Admin. v. Jonas, 13 FSM Intrm. 171, 173 (Kos. 2005).

– Due Process – Vagueness

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

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

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

The required degree of precision under the right to be informed of the nature of the accusation may be affected by considerations such as limits upon the capacity for human expression and difficulties inherent in

attempts to employ alternative methods of stating the concept. Laion v. FSM, 1 FSM Intrm. 503, 508 (App. 1984).

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

Courts are far more inclined to set aside as unconstitutionally vague statutes or ordinances reaching into marginal areas of human conduct such as prohibitions against loitering or vagrancy aimed at conduct often thought of as offensive or undesirable, but not directly dangerous to others. Laion v. FSM, 1 FSM Intrm. 503, 509 (App. 1984).

Prohibitions against assaults with dangerous weapons fall within the more traditional realm of criminal law and therefore are entitled to greater deference by courts in determining whether they are unconstitutionally vague. Laion v. FSM, 1 FSM Intrm. 503, 509 (App. 1984).

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

There is no suggestion in the Constitutional Convention Journal that the framers of the FSM Constitution wanted to depart from or expand upon United States constitutional principles concerning particularity and definitions in criminal statutes. Reliance in the Report of the Committee on Civil Liberties upon United States court decisions in explaining the words confirms that the intent was to adopt the American approach concerning the statutory specificity needed so as not to be unconstitutionally vague. Laion v. FSM, 1 FSM Intrm. 503, 513 (App. 1984).

In considering whether the term "dangerous weapon" is so vague as to render 11 F.S.M.C. 919 unconstitutional, it is relevant that a court in the United States has held that term sufficiently definite to meet United States constitutional standards. Laion v. FSM, 1 FSM Intrm. 503, 513 (App. 1984).

"Dangerous device" as defined under the Weapons Control Act is not unconstitutionally vague. The language, properly interpreted, affords sufficient notice so that conscientious citizens may avoid inadvertent violations, and constructs sufficiently definite standards to prevent arbitrary law enforcement. Joker v. FSM, 2 FSM Intrm. 38, 45 (App. 1985).

When an information alleges violation of a statute, that statute must be drawn so as to give a person of ordinary intelligence fair notice that the contemplated conduct was forbidden. Laws must provide explicit standards for those who apply them. FSM v. Moses, 9 FSM Intrm. 139, 145 (Pon. 1999).

When a vague statute abuts upon sensitive areas of basic freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked. FSM v. Moses, 9 FSM Intrm. 139, 146 (Pon. 1999).

Congress did not exceed its constitutional authority when it defined a national crime as one committed "against a national public servant in the course of, in connection with, or as a result of that person's employment or service;" nor was this definition so vague that it does not give reasonable notice of what conduct is prohibited, or encourages arbitrary and discriminatory enforcement. FSM v. Anson, 11 FSM Intrm. 69, 73 (Pon. 2002).

Due process generally requires that the government provide an individual with notice and an opportunity to be heard before taking away that person's liberty. A person has a liberty interest in not being criminally prosecuted without notice of what conduct is prohibited. A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ

as to its application violates the first essential of due process of law, as it fails to give people notice of what conduct is prohibited. FSM v. Anson, 11 FSM Intrm. 69, 75 (Pon. 2002).

The right to be informed of the nature of the accusation requires that a statute be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Some generality may be inescapable in proscribing conduct, but the standard of precision required under the right to be informed of the nature of the accusation is greater in criminal statutes than in civil statutes. FSM v. Anson, 11 FSM Intrm. 69, 75 (Pon. 2002).

Certain types of criminal prohibitions are subject to greater scrutiny on grounds of vagueness. Courts are far more inclined to set aside as unconstitutionally vague statutes or ordinances reaching into marginal areas of human conduct such as prohibitions against loitering or vagrancy aimed at conduct often thought of as offensive or undesirable, but not directly dangerous to others, but prohibitions against assaults with dangerous weapons, for example, fall within the more traditional realm of criminal law and are therefore entitled to greater deference by courts in determining whether they are unconstitutionally vague. FSM v. Anson, 11 FSM Intrm. 69, 75 (Pon. 2002).

There are two aspects to consider in determining whether a criminal statute is unconstitutionally vague. First, the statute must ensure fair notice to the citizenry, and second it must provide standards for enforcement by the police, judges and juries. FSM v. Anson, 11 FSM Intrm. 69, 75 (Pon. 2002).

Because it is assumed that people are free to steer between lawful and unlawful conduct, it is necessary that laws give the people of ordinary intelligence a reasonable opportunity to know what is prohibited, so that they may act accordingly. Vague laws may trap the innocent by not providing fair warning. FSM v. Anson, 11 FSM Intrm. 69, 75-76 (Pon. 2002).

If arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. FSM v. Anson, 11 FSM Intrm. 69, 76 (Pon. 2002).

A statute that provides clear notice and fair warning that an assault on a national public servant while she is working in her national government office is conduct prohibited by national law. FSM v. Anson, 11 FSM Intrm. 69, 76 (Pon. 2002).

Laws cannot define the boundaries of impermissible conduct with mathematical certainty. Whenever the law draws a line there will be cases very near to each other on the opposite side. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so. FSM v. Anson, 11 FSM Intrm. 69, 76 (Pon. 2002).

When the purpose, intent and meaning of the Act can be ascertained by reading the disjunctive provisions of the statute together, and it is clear that Congress intended that conduct like that charged in this case be prohibited under national law the law is not unconstitutionally vague. FSM v. Anson, 11 FSM Intrm. 69, 76 (Pon. 2002).

The definition of the offense of "defamation" does not provide detailed warning of what type of speech is regulated whereas in other criminal offenses where speech is regulated, the specified words constituting the offense are listed. Kosrae v. Waguk, 11 FSM Intrm. 388, 391 (Kos. S. Ct. Tr. 2003).

The offense of defamation does not provide adequate notice of what speech is regulated. A statute, properly interpreted, must give sufficient notice so that conscientious citizens may avoid inadvertent violations. The statute must also provide sufficiently definite standards to prevent arbitrary law enforcement. Kosrae v. Waguk, 11 FSM Intrm. 388, 391 (Kos. S. Ct. Tr. 2003).

When an information alleges violation of a statute, that statute must be drawn so as to give a person of

ordinary intelligence fair notice that the contemplated conduct is forbidden. Laws must provide explicit standards for those who apply them. Kosrae v. Waguk, 11 FSM Intrm. 388, 391-92 (Kos. S. Ct. Tr. 2003).

The Kosrae criminal offense of "defamation" does not contain specific language defining the conduct or speech which forms the offense. There are no specific words or conduct listed in the offense which forms the basis for the defamatory conduct. Kosrae v. Waguk, 11 FSM Intrm. 388, 392 (Kos. S. Ct. Tr. 2003).

Since the Kosrae criminal defamation statute does not protect tradition, it may not impair a defendant's fundamental right of freedom of expression. The defamation statute impairs the fundamental right of freedom of expression because it fails to provide a specific standard of criminal conduct, thereby persons would not have adequate notice of what type of speech was regulated under it. Kosrae v. Waguk, 11 FSM Intrm. 388, 392 (Kos. S. Ct. Tr. 2003).

– Equal Protection

Under the equal protection clause of the Declaration of Rights in the FSM Constitution, indigency alone should not disadvantage an accused in our system of criminal justice. Gilmete v. FSM, 4 FSM Intrm. 165, 169 (App. 1989).

A patient's equal protection rights were not violated when there was no showing that the patient was treated differently from any other patient on the basis of her sex, ancestry, national origin, or social status. Samuel v. Pryor, 5 FSM Intrm. 91, 106 (Pon. 1991).

Families of wrongful death victims do not constitute a suspect class for purposes of equal protection analysis. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM Intrm. 358, 362 (Kos. 1992).

Among the rational bases supporting the constitutionality of a state statute capping wrongful death recovery are a desire to create foreseeable limits on government liability; to promote insurance; to encourage settlement of claims; and to ease the burden on courts and families of valuing losses incurred through the death of a family member. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM Intrm. 358, 363 (Kos. 1992).

Aliens are persons protected by the due process and equal protection clauses of the Constitution. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 366 (Pon. 1992).

Congress and the President respectively have the power to regulate immigration and conduct foreign affairs while the Chief Justice may make rules governing the admission of attorneys. Therefore a rule of admission that treats aliens unequally, promulgated by the Chief Justice, implicates powers expressly delegated to other branches. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 366 (Pon. 1992).

Without a rational valid basis for the rule limiting the number of times an alien may take the bar exam it will be held unconstitutional even if it would be constitutional if the regulation were made by Congress or the President. Berman v. FSM Supreme Court (I), 5 FSM Intrm. 364, 367 (Pon. 1992).

The constitutional guarantees of equal protection apply if the discrimination is based on the individual's membership in one of the classes enumerated in article IV, section 4, or if the discrimination affects a "fundamental right." The law is then subject to a strict scrutiny review, under which it will be upheld only if the government can demonstrate that the classification upon which that law is based bears a close rational relationship to some compelling governmental interest. But if the law does not concern an enumerated class or a fundamental right, the question becomes whether the classification is rationally related to a legitimate governmental purpose. FSM Social Sec. Admin. v. Weilbacher, 7 FSM Intrm. 137, 146 (Pon. 1995).

The equal protection analysis and standards that apply to a discriminatory law also apply to a neutral and non-discriminatory law when it is being applied in a discriminatory fashion. FSM Social Sec. Admin. v. Weilbacher, 7 FSM Intrm. 137, 146 (Pon. 1995).

Because the equal protection clause is designed to guarantee that similarly situated individuals are not treated differently due to some sort of invidious discrimination a victim of a stray police bullet who cannot show any evidence of discrimination has no equal protection claim. Davis v. Kutta, 7 FSM Intrm. 536, 547 (Chk. 1996).

The constitutional guarantees of due process and equal protection extend to aliens. Pohnpei v. M/V Miyo Maru No. 11, 8 FSM Intrm. 281, 295 n.8 (Pon. 1998).

Article IV, section 4 is designed to guarantee that similarly situated individuals are not treated differently due to some sort of invidious discrimination, but where there is no admissible competent evidence of any such intentional discrimination, a court will grant summary judgment against an equal protection claim. Issac v. Weilbacher, 8 FSM Intrm. 326, 336 (Pon. 1998).

Voters' due process and equal protection rights are not violated by regulation or restriction of voting by absentee ballots. Chipen v. Losap Election Comm'r, 9 FSM Intrm. 46, 48 (Chk. S. Ct. Tr. 1999).

The FSM Constitution provides that equal protection under the laws may not be denied or impaired on account of sex, race, ancestry, national origin, language or social status. This provision is designed to guarantee that similarly situated individuals are not treated differently due to some sort of invidious discrimination. Youp v. Pingelap, 9 FSM Intrm. 215, 217 (Pon. 1999).

When the plaintiff has not alleged that he was battered based upon his sex, race, ancestry, national origin, language or social status, but has merely alleged that the police, in battering him violated his equal protection rights, The plaintiff's equal protection claim will be dismissed. Youp v. Pingelap, 9 FSM Intrm. 215, 217 (Pon. 1999).

Unlawfully added education qualifications for mayor and assistant mayor improperly deprive candidates and those similarly situated of the equal protection of the law as guaranteed by the FSM Constitution. Chipen v. Election Comm'r of Losap, 10 FSM Intrm. 15, 18 (Chk. 2001).

The equal protection provisions of the FSM Constitution are in large part derived from those in the U.S. Constitution. FSM v. Wainit, 11 FSM Intrm. 1, 7 (Chk. 2002).

The elements of an equal protection claim of discriminatory or selective enforcement are: other similarly situated persons who generally have not been prosecuted; the defendant was intentionally or purposefully singled out for prosecution; and the prosecution was based on an arbitrary or invidious classification. FSM v. Wainit, 11 FSM Intrm. 1, 7 (Chk. 2002).

If a criminal defendant is to make out a selective prosecution equal protection claim, he must identify any persons similarly situated to him that the government could have prosecuted, but has failed to, and he must show that his prosecution is based on an invidious classification such as sex, race, ancestry, national origin, language, or social status. FSM v. Wainit, 11 FSM Intrm. 1, 8 (Chk. 2002).

To overcome the presumption that a decision to prosecute a particular person is motivated solely by proper considerations, a criminal defendant has a heavy burden to establish *prima facie* the elements of an impermissible selective prosecution so as to shift the burden to the government to demonstrate that the prosecution was not premised on an invidious objective. FSM v. Wainit, 11 FSM Intrm. 1, 8 (Chk. 2002).

A criminal defendant who presents clear evidence that shows that his prosecution violates his right to equal protection (is impermissible discrimination) would be entitled to a dismissal. FSM v. Wainit, 11 FSM Intrm. 1, 8-9 (Chk. 2002).

When in an equal protection claim, the record contains a document in which the defendant agency expressly referred to the claimants' race, the defendants have not met their burden under the applicable standard of review for dismissal for failure to state a claim because the question is not whether the plaintiff

has proven its claim, but whether under any set of facts it could do so. Asumen Venture, Inc. v. Board of Trustees, 12 FSM Intrm. 84, 91 (Pon. 2003).

Article IV, section 4 of the FSM Constitution guarantees that similarly situated individuals are not treated differently due to invidious discrimination. AHPW, Inc. v. FSM, 12 FSM Intrm. 114, 118 (Pon. 2003).

A Governor's proclamation that continues municipal officials in office indefinitely, violates the people's rights to substantive due process, in that they have no say in their municipal government since all of its officials are now appointed by and now hold office due to the Governor; and to equal protection of the laws, in that the municipal citizens are treated differently based on their ancestry (they and their ancestors are from Romalum) from citizens of other Chuuk municipalities in not being allowed an elected municipal government. Buruta v. Walter, 12 FSM Intrm. 289, 295 (Chk. 2004).

– Excessive Fines

It is premature to challenge a statute as unconstitutional for imposing excessive fines until a fine has been imposed. FSM v. Cheng Chia-W (I), 7 FSM Intrm. 124, 126 (Pon. 1995).

– Ex Post Facto Laws

While every ex post facto law must necessarily be retrospective not every retrospective law is an ex post facto law. An ex post facto law is one which imposes punishment for past conduct, lawful at the time it was engaged in. Robert v. Chuuk State House of Representatives, 6 FSM Intrm. 260, 266-67 (Chk. S. Ct. Tr. 1993).

Legislation is not an ex post facto law where the source of the legislative concern can be thought to be the activity or status from which the individual is barred, even though it may bear harshly upon one affected, but the contrary is the case where the statute in question is evidently aimed at the person or class of persons disqualified. Robert v. Chuuk State House of Representatives, 6 FSM Intrm. 260, 268-69 (Chk. S. Ct. Tr. 1993).

A provision barring those convicted of a felony, even if pardoned, from membership in the legislature is concerned with the qualifications of legislative membership, and is not just for the purpose of punishing felons and those pardoned of a felony which would violate the constitutional ban on ex post facto laws. Robert v. Chuuk State House of Representatives, 6 FSM Intrm. 260, 269-71 (Chk. S. Ct. Tr. 1993).

Regulations imposing civil disqualifications for past criminal conduct are not punishment barred by the constitutional ban against ex post facto laws. Robert v. Chuuk State House of Representatives, 6 FSM Intrm. 260, 270-71 (Chk. S. Ct. Tr. 1993).

Since retrospective application of a constitutional provision barring persons convicted of felonies, even if pardoned, from holding legislative office is not an invalid ex post facto law, retrospective application of the provision is also not invalid as a bill of attainder or a denial of due process. Robert v. Chuuk State House of Representatives, 6 FSM Intrm. 260, 271-72 (Chk. S. Ct. Tr. 1993).

The concept of ex post facto laws is limited to legislation which does any of the following: 1) makes criminal and punishable an act innocent when done; 2) aggravates a crime, or makes it greater than it was when committed; 3) increases the punishment for a crime and applies the increase to crimes committed before the enactment of the laws; or 4) alters the legal rules of evidence so that testimony insufficient to convict for the offense when committed would be sufficient as to that particular offense and accused person. The ban on ex post facto law applies to criminal acts only. This means retroactive noncriminal laws may be valid. Robert v. Mori, 6 FSM Intrm. 394, 400 (App. 1994).

The mark of an ex post facto law is the imposition of punishment for past acts. The question is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual

comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession. Robert v. Mori, 6 FSM Intrm. 394, 401 (App. 1994).

Since the legislative aim of a statute making ineligible for election to Congress those persons convicted of a felony in a Trust Territory court was not to punish persons for their past conduct it is a regulation of a present situation concerned solely with the proper qualifications for members of Congress. As such it is a reasonable means for achieving a legitimate governmental purpose. It is therefore not unconstitutional as an ex post facto law. Robert v. Mori, 6 FSM Intrm. 394, 401 (App. 1994).

The statutory ineligibility of persons convicted of Trust Territory felonies is a valid exercise of Congress's constitutional power to prescribe additional qualifications for election to Congress, and is not unconstitutional as a deprivation of a liberty interest without due process of law, or as an ex post facto law, or as a bill of attainder. Robert v. Mori, 6 FSM Intrm. 394, 401 (App. 1994).

– Freedom of Expression

The right of citizens to express their views, including views critical of public officials, is fundamental to the development of a healthy political system. Therefore, courts are generally reluctant to find that expression of opinions asserted outside of the court itself, however intemperate or misguided, constitute contempt of court. In re Iriarte (I), 1 FSM Intrm. 239, 247-48 (Pon. 1983).

If the preponderance of evidence shows that a government employee would have been terminated even in the absence of the protected free speech conduct the employee's termination should be upheld. Damarlane v. Pohnpei Legislature, 8 FSM Intrm. 23, 28 (App. 1997).

It is not a violation of a person's free speech rights to be arrested when he was attempting to interfere with the arrest of his cousin, when he was drunk at the time, and when he was disturbing the peace. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 193 (Pon. 1997).

A political candidate's freedom of expression is guaranteed, as it is to all citizens, under section 1 of the FSM Constitution's Declaration of Rights. FSM v. Moses, 9 FSM Intrm. 139, 146 (Pon. 1999).

The freedom to communicate is the rule and restraint is the exception. Censorship, a form of prior restraint, is the most suspect punishment in a free society; ideas do not even get to the marketplace to compete for recognition and acceptance. Censorship thus runs counter to the freedom of speech and press. FSM v. Moses, 9 FSM Intrm. 139, 146 n.2 (Pon. 1999).

When a vague statute abuts upon sensitive areas of basic freedoms, it operates to inhibit the exercise of those freedoms. Uncertain meanings inevitably lead citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked. FSM v. Moses, 9 FSM Intrm. 139, 146 (Pon. 1999).

To conclude that 9 F.S.M.C. 107(1) criminalizes either a candidate's conduct in submitting his campaign tape directly to a broadcast facility without previously submitting it to the national election commissioner, or to conclude that the owner and operator of the radio station faces a criminal penalty because it aired the tape would be to attribute an uncertain meaning to the statute, which might well cause candidates to steer far wider of the unlawful zone than they otherwise would, or should, in the important work of presenting their views to a public which needs to exercise its franchise in an intelligent manner. The court declines to credit such an uncertain meaning to the statute. FSM v. Moses, 9 FSM Intrm. 139, 146 (Pon. 1999).

Until such time as the plaintiff demonstrates the allegedly defamatory nature of the publications at issue, either by way of trial or proper motion accompanied by admissible supporting evidence, a permanent injunction cannot lawfully issue against the publication of speech that the defendants contend is true and which involves matters of public concern. O'Sullivan v. Panuelo, 10 FSM Intrm. 257, 262 (Pon. 2001).

A public employer may not discharge either a tenured or a non-tenured employee for the reasonable exercise of constitutional rights such as freedom of speech. Lokopwe v. Walter, 10 FSM Intrm. 303, 306 (Chk. S. Ct. Tr. 2001).

While no law may deny or impair freedom of expression, traditions are also protected under the FSM Constitution. Kosrae v. Waguk, 11 FSM Intrm. 388, 390 (Kos. S. Ct. Tr. 2003).

The Kosrae Constitution provides for the fundamental right of freedom of expression, and also permits denial or impairment of that fundamental right by a statute which protects tradition. Kosrae v. Waguk, 11 FSM Intrm. 388, 390 (Kos. S. Ct. Tr. 2003).

No law may deny or impair freedom of expression, except by a statute which protects tradition. If a statute is one which protects tradition, it may deny or impair the fundamental right of freedom of expression provided by the FSM and Kosrae Constitutions. If it is not a statute which protects tradition, then the statute may not impair the fundamental right of freedom of expression. Kosrae v. Waguk, 11 FSM Intrm. 388, 390-91 (Kos. S. Ct. Tr. 2003).

The offense of defamation was not enacted to protect tradition, and if the offense of defamation does not protect tradition, then the fundamental right of freedom of expression as guaranteed by the Kosrae Constitution may not be impaired or denied. Kosrae v. Waguk, 11 FSM Intrm. 388, 392 (Kos. S. Ct. Tr. 2003).

Since the Kosrae criminal defamation statute does not protect tradition, it may not impair a defendant's fundamental right of freedom of expression. The defamation statute impairs the fundamental right of freedom of expression because it fails to provide a specific standard of criminal conduct, thereby persons would not have adequate notice of what type of speech was regulated under it. Kosrae v. Waguk, 11 FSM Intrm. 388, 392 (Kos. S. Ct. Tr. 2003).

Flyers and newspaper advertisements may be interpreted as "press" for purposes of constitutional freedom of expression. Yang v. Western Sales Trading Co., 11 FSM Intrm. 607, 614 (Pon. 2003).

Commercial speech is expression related solely to the economic interests of the speaker and its audience, or speech which does no more than propose a commercial transaction. Yang v. Western Sales Trading Co., 11 FSM Intrm. 607, 614 (Pon. 2003).

No guidance is found in the Journal of the Constitutional Convention as to the specific protection the FSM Constitution's framers sought to give commercial speech, but it did recognize that some forms of speech deserve less protection than others. Yang v. Western Sales Trading Co., 11 FSM Intrm. 607, 614-15 (Pon. 2003).

Commercial expression serves two different functions – it serves the economic interests of the speaker, and also assists consumers and furthers the societal interest in dissemination of information. It may be constitutionally protected from unwarranted governmental restriction; however, there are common sense distinctions between commercial speech, which proposes a commercial transaction, and other varieties of speech. Yang v. Western Sales Trading Co., 11 FSM Intrm. 607, 615 (Pon. 2003).

Commercial speech deserves less constitutional protection than other varieties of speech. Commercial speech's societal benefits are directly related to the informational function; thus, there can be no constitutional objection to the suppression of commercial messages that do not accurately inform the public about a lawful activity. The government should be permitted to restrict commercial forms of communication more likely to deceive the public than to inform it. Yang v. Western Sales Trading Co., 11 FSM Intrm. 607, 615 (Pon. 2003).

A court approaches arguments as to the unconstitutionality of any prior restraint on the right to free speech as follows: first, the distinction is drawn between those portions of the publications that legitimately provide consumers with information and those portions which are solely related to proposing a commercial transaction. The court accords the first category constitutional protection as it approximates pure speech.

As for the commercial speech contained within the publications, it would not be afforded constitutional protection unless the court found that the speech concerned a lawful activity and was not misleading. Yang v. Western Sales Trading Co., 11 FSM Intrm. 607, 615 (Pon. 2003).

A court may issue a preliminary injunction when certain portions of commercial speech are misleading to consumers and merchants. Yang v. Western Sales Trading Co., 11 FSM Intrm. 607, 615 (Pon. 2003).

The public interest weighs in favor of issuing a preliminary injunction when the injunction is limited in scope to protect the public from defendants' statements which are more likely to mislead than to inform the public. Yang v. Western Sales Trading Co., 11 FSM Intrm. 607, 618 (Pon. 2003).

– Fundamental Rights

Waiver of a fundamental right may not be presumed in ambiguous circumstances. FSM v. Edward, 3 FSM Intrm. 224, 235 (Pon. 1987).

In adopting the Declaration of Rights as part of the Constitution of the Federated States of Micronesia and therefore the supreme law of the land, the people of Micronesia subscribed to various principles which place upon the judiciary the obligation, among others, to assure that arrests are based upon probable cause, that determinations of guilt are arrived at fairly, and that punishments for wrongdoing are proportionate to the crime and meet prescribed standards. Tammed v. FSM, 4 FSM Intrm. 266, 281-82 (App. 1990).

When a trial court is asked to give special mitigative effect to customary punishment during its sentencing proceedings, the court must first consider whether these customary activities have become so imbued with official state action so that the actions of the assailants are seen as actions of the state itself; if so the punishments must be tested by the same standards that would be applied if state officials carried out these punishments directly. Tammed v. FSM, 4 FSM Intrm. 266, 283 (App. 1990).

The Compact of Free Association's immunization provisions, which limit a plaintiff's right to sue a physician for malpractice, do not affect a fundamental right, and therefore, the provisions need not be subjected to a strict scrutiny, but instead should be tested under the less stringent rational relationship test. Samuel v. Pryor, 5 FSM Intrm. 91, 104 (Pon. 1991).

A defendant that has failed to raise and preserve the issue has waived his right to object to the admission of evidence, but when a plain error that affects the constitutional rights of the defendant has occurred the court may notice the error. Moses v. FSM, 5 FSM Intrm. 156, 161 (App. 1991).

There is no fundamental interest in unbounded wrongful death recovery requiring strict scrutiny of a state law imposing a recovery cap. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM Intrm. 358, 362 (Kos. 1992).

Since the FSM people's traditions may be protected by statute and if challenged as violative of the fundamental rights in Article IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action, Kosrae may pass a law which protects the Kosraean people's traditions. Kosrae v. Waguk, 11 FSM Intrm. 388, 390 (Kos. S. Ct. Tr. 2003).

– Imprisonment for Debt

The constitutional provision prohibiting imprisonment for debt does not restrict the manner in which 6 F.S.M.C. 1412 is applied, although that statute includes imprisonment as one possible sanction for violating an order in aid of judgment. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 381 (App. 2003).

The constitutional prohibition prohibiting imprisonment for debt is a restriction on the courts against the enforcement of judgments of a certain character, but does not restrict a court's power to enforce its lawful orders by imprisonment for contempt. Even when the violation of the order is for failure to make payments for the recovery of a judgment enforceable by an order in aid of judgment, if the order is one which the court

could lawfully make, the imprisonment is not for failure to pay the debt, but failure to obey a lawful court order. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 382 (App. 2003).

The prohibition on imprisonment for debt is to bar imprisonment for honest failure to pay contractual debts. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 382 (App. 2003).

A debtor who knows that he is under a court order to pay an amount certain, has the ability to pay the amount, and still refuses to pay it, acts against good morals and fair dealing. Such a situation amounts to being "tainted by fraud" and is within the exceptions to the prohibition on imprisonment for debt. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 382-83 (App. 2003).

– Indefinite Land Use Agreements

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

The FSM Constitution terminated all existing indefinite term land use agreements five years after the effective date of the Constitution. After that date, without a new lease agreement the occupier becomes a trespasser on the land. Billimon v. Chuuk, 5 FSM Intrm. 130, 132 (Chk. S. Ct. Tr. 1991).

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

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

The Constitutional prohibition against indefinite land use agreements does not apply to an agreement where none of the parties are a non-citizen, a corporation not wholly owned by citizens, or a government. Dobich v. Kapriel, 6 FSM Intrm. 199, 202 (Chk. S. Ct. Tr. 1993).

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

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

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

Where no indefinite land use agreement existed when the Constitution took effect there was no agreement that had to have been renegotiated by 1984. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 485, 491 (App. 1996).

All indefinite land use agreements are void after July 12, 1984, as being in violation of the FSM Constitution. Hartman v. Chuuk, 9 FSM Intrm. 28, 33 (Chk. S. Ct. App. 1999).

– Interpretation

The FSM Supreme Court must remain sensitive to the unique circumstances of the Federated States of Micronesia and may not slavishly follow interpretations of similar language by United States, Trust Territory, or other tribunals in different contexts. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 69 n.11 (Kos. 1982).

Because the Constitution of the Federated States of Micronesia has drawn upon numerous concepts established in the Constitution of the United States, interpretations of the United States Constitution, as of 1978 when the Constitution was ratified by plebiscite, are pertinent to determining the meaning of particular provisions in the FSM Constitution. To the extent that the FSM clearly patterned upon the United States Constitution, the reasonable expectation of the framers would be that the words of the FSM Constitution would have substantially the effect those same words had been given in the United States Constitution as of the times that the convention was acting, or when the ratifying vote occurred. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 69-70 (Kos. 1982).

Decisions of the courts of the Trust Territory may be a useful source of guidance in determining the meaning of particular provisions within the Constitution. The framers were working against the background of legal concepts recognized and applied by the Trust Territory High Court and may have been guided by those interpretations in selecting or rejecting certain provisions. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 71 (Kos. 1982).

The FSM Supreme Court may look to the law of other nations, especially other nations of the Pacific community, to determine whether approaches employed there may prove useful in determining the meaning of particular provisions within the Constitution. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 71 (Kos. 1982).

Analysis of the Constitution must start with the words of the constitutional provision. If these words are clear and permit only one possible result, the court should go no further. FSM v. Tipen, 1 FSM Intrm. 79, 82 (Pon. 1982).

Where the words of a constitutional provision are not conclusive as to its meaning, the next step in determining the intent of the framers is to review the Journal of the Micronesian Constitutional Convention to locate any discussion in the convention about the provision. FSM v. Tipen, 1 FSM Intrm. 79, 82 (Pon. 1982).

If doubt as to the meaning of a constitutional provision still remains after careful consideration of the language and constitutional history, the court should proceed to other sources for assistance. These include interpretations of similar language in the United States Constitution, decisions of the Trust Territory High Court, generally held notions of basic justice within the international community, and consideration of the law of other nations, especially others within the Pacific community. FSM v. Tipen, 1 FSM Intrm. 79, 83 (Pon. 1982).

In interpreting the Declaration of Rights, courts should emphasize and carefully consider United States Supreme Court interpretations of the United States Constitution. FSM v. Tipen, 1 FSM Intrm. 79, 85 (Pon. 1982).

The provisions in the Constitution's Declaration of Rights are to a substantial degree patterned upon comparable provisions in the United States Constitution; the FSM Supreme Court should consider carefully decisions of the United States courts interpreting the United States counterparts. Tosie v. Tosie, 1 FSM Intrm. 149, 154 (Kos. 1982).

As the provisions set forth in the Constitution's Declaration of Rights are based on counterparts in the United States Constitution, it is appropriate to review decisions of United States courts, especially those in effect when the Constitution was approved and ratified, to determine the content of the words employed therein. In re Iriarte (I), 1 FSM Intrm. 239, 249 (Pon. 1983).

The framers of the Constitution of the Federated States of Micronesia drew upon the Constitution of the

United States and it may be presumed that phrases so borrowed were intended to have the same meaning given to them by the Supreme Court of the United States. Jonas v. FSM, 1 FSM Intrm. 322, 327 n.1 (App. 1983).

An analysis of constitutional grants of power must start with the constitutional language itself. Suldan v. FSM (II), 1 FSM Intrm. 339, 342 (Pon. 1983).

The similarities of the FSM and the United States Constitutions mandate that the FSM Supreme Court, in attempting to determine its role under the FSM Constitution, will give serious consideration to United States constitutional analysis at the time of the Micronesian Constitutional Convention. Suldan v. FSM (II), 1 FSM Intrm. 339, 345 (Pon. 1983).

If the words of the Constitution are ambiguous or doubtful, it is a court's duty to seek out the intention of the framers. Suldan v. FSM (II), 1 FSM Intrm. 339, 348 (Pon. 1983).

By using the United States Constitution as a blueprint, the framers created a presumption that they were adopting such a fundamental American constitutional principle as judicial review, found to be inherent in the language and very idea of the United States Constitution. Suldan v. FSM (II), 1 FSM Intrm. 339, 348 (Pon. 1983).

A legitimate method for determining the meaning of a constitution is to trace the language to its source. Where the language in the FSM Constitution and the United States Constitution is similar, it is appropriate to look to interpretations by United States courts, especially those in existence at the time of the Micronesian Constitutional Convention, as a guide to the intended meaning of the words employed in the Constitution of the FSM. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 394 (Pon. 1984).

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 Federated States of Micronesia Constitution is similar to that of the United States. Etpison v. Perman, 1 FSM Intrm. 405, 414 (Pon. 1984).

United States constitutional law at the time of the Micronesian Constitutional Convention furnishes guidance as to the intended scope of the FSM Constitution's double jeopardy clause. Laion v. FSM, 1 FSM Intrm. 503, 523 (App. 1984).

Where the framers of the FSM Constitution have borrowed phrases from the Constitution of the United States for guidance, it may be presumed that those phrases were intended to have the same meaning given to them by the Supreme Court of the United States. Tammow v. FSM, 2 FSM Intrm. 53, 56-57 (App. 1985).

Interpretative efforts for a clause in the FSM Constitution which has no counterpart in the United States Constitution must begin with recognition that such a clause presumably reflects a conscious effort by the framers to select a road other than that paved by the United States Constitution. The original focus must be on the language of the clause. If the language is inconclusive the tentative conclusion may be tested against the journals of the Micronesian Constitutional Convention and the historical background against which the clause was adopted. Tammow v. FSM, 2 FSM Intrm. 53, 57 (App. 1985).

Interpretations of the FSM Constitution which strip constitutional clauses of substance and effect run against the norms of constitutional interpretation and are greatly disfavored. Tammow v. FSM, 2 FSM Intrm. 53, 57 (App. 1985).

Departure from the form of the United States Constitution reveals an intention by the framers of the FSM Constitution to depart from the substance as well, so far as major crimes are concerned. Tammow v. FSM, 2 FSM Intrm. 53, 58 (App. 1985).

General principles gleaned from an entire constitution and constitutional history may not be employed to defeat the clear meaning of an individual constitutional clause. Tammow v. FSM, 2 FSM Intrm. 53, 59 (App.

1985).

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

Though the words used in article XI, section 6 of the FSM Constitution, including the case or dispute requirements, are based on the similar case and controversy provisions set out in article III of the United States Constitution, courts within the FSM are not to consider themselves bound by the details and minute points of decisions of United States courts attempting to ferret out the precise meaning of article III. Aisek v. Foreign Inv. Bd., 2 FSM Intrm. 95, 98 (Pon. 1985).

Many provisions of this Constitution are derived from the United States Constitution and the framers intended that interpretation of the words adopted would be influenced by United States decisions in existence when this Constitution was adopted in October 1975 and ratified on July 12, 1978. Yet the framers also surely intended that courts here would not place undue importance on decisions of United States courts but would employ the words and concepts used in the United States Constitution to develop a jurisprudence appropriate and applicable to the circumstances of the Federated States of Micronesia. Aisek v. Foreign Inv. Bd., 2 FSM Intrm. 95, 98 (Pon. 1985).

Constitutional interpretation must start and end with the words of the provision when the words themselves plainly and unmistakably provide the answer to the issue posed. The court may not look to constitutional history nor to United States interpretations of similar constitutional language in this circumstance. Ponape Federation of Coop. Ass'ns v. FSM, 2 FSM Intrm. 124, 126-27 (Pon. 1985).

Courts may look to the Journals of the Micronesian Constitutional Convention for assistance in determining the meaning of constitutional language that does not provide an unmistakable answer. The Journals provide no conclusion as to whether promises of leniency by the police should be regarded as having compelled a defendant to give statements and other evidence but shows that the article IV, section 7 protection against self-incrimination was based upon the fifth amendment to the United States Constitution. Therefore courts within the Federated States of Micronesia may look to United States decisions to assist in determining the meaning of article IV, section 7. FSM v. Jonathan, 2 FSM Intrm. 189, 193-94 (Kos. 1986).

Differences in the language employed in parallel provisions of the FSM and United States Constitutions presumably reflect a conscious effort by the framers of the FSM Constitution to select a road other than that paved by the United States Constitution. FSM Dev. Bank v. Estate of Nanpei, 2 FSM Intrm. 217, 219 n.1 (Pon. 1986).

Because the Declaration of Rights is patterned after provisions of the United States Constitution, and United States cases were relied on to guide the constitutional convention, United States authority may be consulted to understand the meaning. Afituk v. FSM, 2 FSM Intrm. 260, 263 (Truk 1986).

In determining whether constitutional language is amenable to only one possible interpretation, courts should consider the words in the light of history and the accepted meaning of those words prior to and at the time the Constitution was written. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM Intrm. 256, 258 (Pon. 1987).

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 Intrm. 320, 323 (Kos. S. Ct. Tr. 1988).

In interpreting the Constitution, each provision should be interpreted against the background of all other provisions in the Constitution, and an effort should be made to reconcile all provisions so that none is deprived of meaning. Bank of Guam v. Semes, 3 FSM Intrm. 370, 378 (Pon. 1988).

Courts should interpret the national Constitution in such a manner that each provision is given effect. Carlos v. FSM, 4 FSM Intrm. 17, 29 (App. 1989).

Because the jurisdiction provisions of the FSM Constitution are substantially similar to those of the United States but the words themselves provide no definite interpretation and no party has pointed either to constitutional history or to other matters, such as custom or tradition, calling for a particular interpretation or for departure from the accepted meaning in the United States, it is appropriate to look to United States precedents for possible guidance in determining what the framers intended in adopting the provisions that now appear in the Constitution. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM Intrm. 37, 41 (Pon. 1989).

Where the language of the FSM Constitution has been borrowed from the United States Constitution, the court may look to leading United States cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves; in particular, United States constitutional law at the time of adoption of the FSM Constitution can have special relevance in determining the meaning of similar constitutional language here. Paul v. Celestine, 4 FSM Intrm. 205, 208 (App. 1990).

Analysis of Constitutional issues must begin with the words of the Constitution. Constitutional Convention 1990 v. President, 4 FSM Intrm. 320, 325 (App. 1990).

Consideration of the general plan of the Constitution and the institutions created thereunder may be helpful in determining the proper interpretation of specific language within the FSM Constitution. Constitutional Convention 1990 v. President, 4 FSM Intrm. 320, 326 (App. 1990).

When the meaning of the words in the FSM Constitution are not self-evident and it is apparent the words have been drawn from or are patterned upon language in the Constitution of the United States or of some other jurisdiction, the Supreme Court of the FSM may look to decisions of courts in that other jurisdiction for assistance in discerning the appropriate meaning of the words in the FSM Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM Intrm. 367, 371 (App. 1990).

The decisions of United States courts are not binding upon the FSM Supreme Court as to the meaning of the FSM Constitution even when the words of the FSM Constitution plainly are based upon comparable language in the United States Constitution, and the FSM Supreme Court will not accept a United States interpretation which 1) was shaped by historical factors not relevant to the FSM; 2) was widely and persuasively criticized by commentators in the United States; and 3) was not specifically recognized or even alluded to by the framers of the FSM Constitution. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM Intrm. 367, 371 (App. 1990).

In interpreting the provision against cruel and unusual punishment in the FSM Constitution, the court should consider the values and realities of Micronesia, but against a background of the law concerning cruel and unusual punishment and international standards concerning human rights. Plais v. Panuelo, 5 FSM Intrm. 179, 196-97 (Pon. 1991).

Constitutional analysis always starts with the words of the Constitution. Where the wording is inconclusive and where the wording is unique to the FSM Constitution, then the court should look to the journals of the Constitutional Convention and the historical background at the time the clause was adopted for guidance. But when there is a conflict with the language of the Constitution, then the actual wording of the Constitution prevails. Nena v. Kosrae, 5 FSM Intrm. 417, 422 (Kos. S. Ct. Tr. 1990).

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 Intrm. 33, 35 (Yap 1993).

Where the constitutional language is inconclusive or does not provide an unmistakable answer courts may look to the journal of the Constitutional Convention for assistance in determining the meaning of constitutional words. Robert v. Mori, 6 FSM Intrm. 394, 397 (App. 1994).

Some weight may be given as well to the early Congresses' understanding of constitutional provisions given the continuity of elected representation in the early Congresses. Robert v. Mori, 6 FSM Intrm. 394, 399 (App. 1994).

A litigant, in order to make arguments based on the legislative history of the constitutional provision, must first show the ambiguity in the constitutional provision. Only if the constitutional language is unclear or ambiguous can a court proceed to consult the constitutional convention journals and the historical background. Nena v. Kosrae (III), 6 FSM Intrm. 564, 568 (App. 1994).

Where distinctions exist between the Constitution of the Federated States of Micronesia and the United States Constitution or other foreign authorities, court must not hesitate to depart from foreign precedent and develop its own body of law. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM Intrm. 594, 600 (Pon. 1994).

If a matter may properly be resolved on statutory grounds without reaching potential constitutional issues, then the court should do so. FSM v. George, 6 FSM Intrm. 626, 628 (Kos. 1994).

Analysis of constitutional issues must begin with the words of the Constitution, and where the framers of the FSM Constitution drew upon the Constitution of the United States it may be presumed that phrases so borrowed were intended to have the same meaning given to them by the Supreme Court of the United States. Luzama v. Ponape Enterprises Co., 7 FSM Intrm. 40, 45 (App. 1995).

A committee report that refers to language that is not in the Constitution and that accompanied a committee proposal that was killed by the Constitutional Convention cannot be relied upon to discover the real intent of the framers. At best it can only be used to show what was not their intent. Luzama v. Ponape Enterprises Co., 7 FSM Intrm. 40, 47 (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 Intrm. 40, 48 (App. 1995).

The primary source available to courts when engaging in constitutional interpretation are the words of the constitution itself, and, if those are capable of more than one meaning, then the legislative history. Assuming that these two sources, taken together, are dispositive of the issue in question, a court may not look to any other source. Tafunsak v. Kosrae, 7 FSM Intrm. 344, 347 (App. 1995).

Courts are to interpret constitutions so as to give effect to each provision, because interpretations which strip constitutional clauses of substance and effect run against the norms of constitutional interpretation and are greatly disfavored. Tafunsak v. Kosrae, 7 FSM Intrm. 344, 347 & n.4 (App. 1995).

FSM courts may look for guidance to decisions of United States courts construing words of the United States Constitution which are similar to those in the Constitution of the Federated States of Micronesia, but FSM courts need not follow them in areas where United States constitutional law has been particularly unsettled or where the decision relies on specific and unique historical factors that do not exist here. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM Intrm. 456, 459-60 (App. 1996).

When the language of the Constitution is not conclusive as to the issue presented, it is proper to refer to the constitutional convention journal for the history of the provision. If the journal does not address the point, a court may next consult cases from the United States if the phrase in the U.S. Constitution suggests that the FSM borrowed the term, and the court can infer that the framers intended that the meaning here be

given the same meaning as it was given in U.S. courts. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM Intrm. 456, 463-64 (App. 1996).

The FSM Constitution due process provision is derived from the United States Constitution and thus United States cases may be consulted for guidance in interpretation, emphasizing cases in effect at the times of the framing (1975) and the ratification (1978) of the FSM Constitution. FSM v. Skico, Ltd. (II), 7 FSM Intrm. 555, 556-57 (Chk. 1996).

A state court is competent to rule on FSM Constitution, but should avoid unnecessary adjudication of the FSM Constitution. Damarlane v. Pohnpei Legislature, 8 FSM Intrm. 23, 28 (App. 1997).

When analyzing provisions of the FSM Constitution, a court must look first to the actual words of the Constitution. Where the words are clear and permit only one possible result, the court should go no further. Only where the words of the Constitution are not clear is it necessary to consult other sources. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 362-63 (Pon. 1998).

A court should consider all provisions of the Constitution, because different sections may relate to the same subject matter, giving the specific provision questioned added meaning. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 363, 368, 386 (Pon. 1998).

If a court finds that the words of the Constitution are not clear or do not permit only one possible result, the court should next consult the Journal of the Constitutional Convention to ascertain the intent of the framers in drafting that language. If these two sources are dispositive, the court may not look to any other source. If the Constitution's language considered together with the legislative history is not dispositive, the court should look to interpretation of comparable language in other constitutions and to custom and tradition for guidance. Given the continuity of elected representation in the early FSM Congresses, some weight may be given as well to early Congresses' understanding of constitutional provisions. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 363 (Pon. 1998).

The framers intended that the constitutional language delegating governmental functions to the FSM national government be strictly and narrowly construed and not used to excessively and unduly expand the power of the central government, but they did not intend that the general grant of power be ignored, with the effect of denying to the central government the power necessary to deal with problems which are national in scope. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 369 (Pon. 1998).

The Constitution must be interpreted so as to give effect to each provision, because interpretations which strip constitutional clauses of substance and effect run against the norms of constitutional interpretation, and are greatly disfavored. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 371 (Pon. 1998).

Because of the continuity of representation in the early Congresses of the FSM, courts can give some weight to the early Congresses' understanding of Constitutional provisions. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 374 (Pon. 1998).

The FSM Constitution contains a provision by which the net revenues from offshore mineral resources are to be divided equally between the states and the national government, FSM Const. art. IX, § 6. There would be no need to specify the division of income from such resources if such revenues were taxes to be automatically divided under article IX, section 5. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 386 (Pon. 1998).

Counsel's conversations with persons involved in drafting the Constitution are hearsay, especially when there is no competent evidence in the record, or in the Constitutional Convention Journal, to support counsel's assertion. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 386 n.27 (Pon. 1998).

Because the Declaration of Rights is to a substantial degree patterned after provisions of the U.S. Constitution, and U.S. cases were relied on to guide the constitutional convention, U.S. authority may be

consulted to understand its meaning. FSM v. Joseph, 9 FSM Intrm. 66, 72 (Chk. 1999).

When the court has analyzed the present meaning of the Constitution by recognized judicial standards of constitutional interpretation as long as the present language remains the court's conclusions carry full force and effect. Chuuk v. Secretary of Finance, 9 FSM Intrm. 73, 75 (Pon. 1999).

The FSM Constitution's Declaration of Rights is based on the United States Constitution's Bill of Rights, and a court may look to United States precedent in this regard. FSM v. Moses, 9 FSM Intrm. 139, 146 (Pon. 1999).

Since the Due Process Clause in the Declaration of Rights of the FSM Constitution is based on the Due Process Clause of the U.S. Constitution's Fourteenth Amendment, the FSM Supreme Court may properly consider U.S. cases in construing due process under the FSM Constitution. Weno v. Stinnett, 9 FSM Intrm. 200, 213 (App. 1999).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. Primo v. Pohnpei Transp. Auth., 9 FSM Intrm. 407, 412 n.2 (App. 2000).

What is important is not how the states imagine it might have been in Trust Territory times, but what presently exists under the provisions of the Constitution, which the people of all four states ratified. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 431 (App. 2000).

Trust Territory statutes that mostly never took effect cannot be relied upon to interpret provisions of the FSM Constitution. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 432-33 (App. 2000).

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

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

A court can neither read into the Constitution nor rewrite the Constitution to contain a provision that is not there. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 436 (App. 2000).

In interpreting the Constitution, a court looks first to the language and words of the Constitution. When that language is plain and unambiguous, a court need not look any further. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 436 (App. 2000).

While our Constitution's wording is otherwise similar to that in article III, section 2, clause 1 of the U.S. Constitution, the FSM national courts have jurisdiction over "cases" and "disputes" while the U.S. federal courts have jurisdiction over "cases" and "controversies," but no significance can be attached to the difference between controversies and disputes. The FSM Constitution's case or dispute clause is thus similar to the U.S. Constitution's case or controversy clause. FSM v. Louis, 9 FSM Intrm. 474, 482 (App. 2000).

In the usual case, a court will not decide a question on a constitutional ground if it may be resolved on a statutory or other basis. Department of Treasury v. FSM Telecomm. Corp., 9 FSM Intrm. 575, 579 (App. 2000).

When the tax exemption issue is implicitly a constitutional one because the statute, to the extent viewed as seeking to impose a state tax upon the national government, goes to the constitutional relationship between the state and national governments and when as between the exemption issue and the interstate commerce

restriction issue, which is explicitly constitutional in character, the determination of one makes the other moot, and when if only the tax exemption issue were addressed it could resolve the dispute between the parties but would leave in place an injunction precluding all collection of the tax as unconstitutional, the court must decide the constitutional tax and commerce question in order to accord the appellant a meaningful remedy. Department of Treasury v. FSM Telecomm. Corp., 9 FSM Intrm. 575, 579 (App. 2000).

When analyzing provisions of the FSM Constitution, a court must look first to the actual words of the Constitution. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 62 (Pon. 2001).

When a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, United States authority may be consulted to understand its meaning. FSM v. Inek, 10 FSM Intrm. 263, 265 (Chk. 2001).

Because the FSM Declaration of Rights was modeled after the U.S. Bill of Rights, the court may look to U.S. sources for guidance in interpreting similar Declaration of Rights provisions, such as the right to confrontation. FSM v. Wainit, 10 FSM Intrm. 618, 621 n.1 (Chk. 2002).

In resolving a constitutional question, first the court must look at plain meaning of words of the Constitution. If a particular provision is not clear, the court should attempt to ascertain the drafters' intent by looking at Constitutional Convention and the reasons expressed for including a particular provision in the Constitution. Finally, if there are constitutional provisions similar to provisions in other countries' constitutions, the court may look to other countries' case law for guidance, but is not bound. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 630 (Pon. 2002).

Where the framers of the FSM Constitution borrowed phrases from the United States Constitution for guidance, it may be presumed that those phrases were intended to have the same meaning given to them by the United States Supreme Court. Where the FSM Constitution's language has been borrowed from the United States Constitution, the court may look to leading United States cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves. Kosrae v. Sigrah, 11 FSM Intrm. 26, 30 (Kos. S. Ct. Tr. 2002).

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

In interpreting a constitutional provision, a court must initially analyze the constitution's actual words. If those words are clear and permit only one possible result, then the court should go no further. But if a constitutional provision is not clear and does not permit only one possible result, a court should next consult the constitutional convention journal to ascertain the framers' intent in drafting the language. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 380-81 (App. 2003).

Since the words "involuntary servitude" are subject to various definitions, the constitutional provision is not clear and does not permit only one possible result. A court may consult the constitutional convention journal to ascertain the framers' intent in drafting this language. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 385 (App. 2003).

When the language in the FSM Constitution and the United States Constitution is similar, it is appropriate to look to interpretations by United States courts, especially those in existence at the time of the Micronesian Constitutional Convention, as a guide to the intended meaning of the words employed in the Constitution. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 385 (App. 2003).

The search and seizure provision of the FSM Constitution's Declaration of Rights is similar to and drawn from a provision in the U.S. Constitution's Bill of Rights, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. FSM v. Wainit, 11 FSM Intrm. 424, 434 (Chk. 2003).

The similarities of the FSM and the U.S. Constitutions mandate that the FSM Supreme Court will give particular consideration to U.S. constitutional analysis at the time of the Micronesian Constitutional Convention and the Constitution's adoption. FSM v. Wainit, 11 FSM Intrm. 424, 434 (Chk. 2003).

Two old (1937 and 1924) cases that do not reflect U.S. constitutional analysis and practice at the time the FSM Constitution was drafted and adopted in the last half of the 1970's cannot be a basis for an FSM constitutional analysis of provisions adopted from and similar to a provision in the U.S. Constitution's Bill of Rights when those cases differ significantly from the constitutional analysis current in the 1970's. FSM v. Wainit, 11 FSM Intrm. 424, 436 (Chk. 2003).

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

Unnecessary constitutional adjudication is to be avoided. Parkinson v. Island Dev. Co., 11 FSM Intrm. 451, 453 (Yap 2003).

When analyzing provisions of the FSM Constitution, a court must look first to the Constitution's actual words. When the words are clear and permit only one possible result, the court should go no further. After reviewing the Constitution's words, if the court finds that the words are not clear or do not permit only one possible result, the court should next consult is the Journal of the Constitutional Convention to ascertain the framers' intent in drafting that language. Yang v. Western Sales Trading Co., 11 FSM Intrm. 607, 613 (Pon. 2003).

When there are no decisions by FSM courts which discuss which standard applies to conducting an investigatory stop of a vehicle, the court may look to the law of the United States for guidance. Kosrae v. Tosie, 12 FSM Intrm. 296, 299 (Kos. S. Ct. Tr. 2004).

In the absence of Micronesian precedent, the FSM Supreme Court can and should consider the reasoning from the courts of other common law jurisdictions. When the FSM Constitution's language has been borrowed from the U.S. Constitution, the court may look to leading U.S. cases for guidance in interpreting that language, especially where the meaning is not self-evident from the words themselves; in particular, U.S. constitutional law at the time of adoption of the FSM Constitution can have special relevance in determining the meaning of similar constitutional language here. But in evaluating the reasoning of other courts, the court emphasizes that it must always independently consider the suitability of that reasoning for the FSM. Sigrah v. Kosrae, 12 FSM Intrm. 320, 325 (App. 2004).

In construing a provision of the Declaration of Rights, our courts should carefully evaluate the way that the United States Supreme Court has interpreted the United States Constitution because a phrase appearing in our Constitution that was borrowed from the United States Constitution may be presumed to have a similar interpretive meaning. Sigrah v. Kosrae, 12 FSM Intrm. 320, 327-28 (App. 2004).

It is appropriate to look to U.S. constitutional law and its courts' interpretations, especially those interpretations existing at the time of the Micronesian Constitutional Convention, as a guide to the intended meaning and scope of the FSM Constitution's words (such as the speedy trial right) since the provisions in the FSM Constitution's Declaration of Rights are traceable to the U.S. Constitution's Bill of Rights. FSM v. Wainit, 12 FSM Intrm. 405, 409 (Chk. 2004).

When an FSM Declaration of Rights provision is patterned after a U.S. Bill of Rights provision, U.S. authority may be consulted to understand its meaning, and where the FSM Constitution's framers borrowed phrases from the U.S. Constitution, it may be presumed that those phrases were intended to have the same meaning given them by the U.S. Supreme Court. FSM v. Wainit, 12 FSM Intrm. 405, 409 (Chk. 2004).

The court cannot amend the Constitution by reading into it language that does not appear in it. To do so would be to amend the Constitution by judicial fiat, a course of action not only plainly inimical to Article XIV,

Section 1 of the Constitution, but one upon which the court is constitutionally forbidden from embarking. Gilmete v. Carlos Etscheit Soap Co., 13 FSM Intrm. 145, 149-50 (App. 2005).

When our nation's highest court, the FSM Supreme Court appellate division, interprets a constitutional provision in a case before it, that interpretation is to be given full effect in all cases still open on direct review, and as to all events, regardless of when they occurred. Once it announces a new rule of law, the integrity of judicial review requires application of the new rule to all similar cases pending on review. Kosrae v. Sikain, 13 FSM Intrm. 174, 177 (Kos. S. Ct. Tr. 2005).

When the funds garnished came from tax revenues already credited to the State of Chuuk and held by the FSM pending disbursement, and these are funds credited to the states in accordance with Title 54, Section 805, and are automatically paid into the state government treasury by statute and are simply held by the FSM national government, the state's argument that this money was not withdrawn from the national treasury "by law," is therefore incorrect. Chuuk v. Davis, 13 FSM Intrm. 178, 184-85 (App. 2005).

– Interstate and Foreign Commerce

Although foreign and interstate commerce and shipping involve profound national interests, where Congress has not seen fit to assert those interests and there is no national regulation or law to enforce, the fact that a case affects interstate and foreign commerce and shipping is not sufficient to deny abstention if other strong grounds for abstention exist. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM Intrm. 37, 47 (Pon. 1989).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 218 (Pon. 1990).

Power to regulate the incorporation and operation of corporations falls within the constitutional power of the national government to regulate foreign and interstate commerce. Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 376, 380 (Pon. 1990).

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

The national government has the express authority to regulate international commerce. International commerce is also a power of such an indisputably national character as to be beyond them power of a state to control because the customs and immigration borders of the country are controlled by agencies of the national government. FSM v. Fal, 8 FSM Intrm. 151, 154 (Yap 1997).

Congress may legislate regulation of firearms and ammunition under the foreign and interstate commerce clause of article IX, section 2(g). FSM v. Fal, 8 FSM Intrm. 151, 154 (Yap 1997).

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

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

Telecomm. Corp. v. Department of Treasury, 9 FSM Intrm. 380, 386 (Pon. 2000).

Article IX, section 2(g) of the Constitution expressly delegates to Congress the power to regulate foreign and interstate commerce. A delegation of power to the national government under section 2 of Article IX is exclusive. Department of Treasury v. FSM Telecomm. Corp., 9 FSM Intrm. 575, 581-82 (App. 2000).

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

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

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

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

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

Because the national government has the exclusive power to regulate foreign and interstate commerce, the Consumer Protection Act is the law of the FSM insofar as any advertising, sale, offer or distribution involves commerce between the states of the FSM or with any foreign entity. The Consumer Protection Act also is the law of the states of the FSM, insofar as it involves commerce which is intrastate and has not been repealed by the state legislatures. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 409, 415 (Pon. 2001).

– Involuntary Servitude

Slavery and involuntary servitude are prohibited except to punish crime. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 384 (App. 2003).

While the Constitution's prohibition of slavery and involuntary servitude may have had its source in the Trust Territory Bill of Rights and the U.S. Constitution, it has particular meaning within the FSM's historical context of forced labor by former foreign administering authorities. Some still-living citizens of this nation have experienced firsthand the evils of slavery and involuntary servitude, and the constitutional provision was meant to ban those types of atrocities forever. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 384 (App. 2003).

Since the words "involuntary servitude" are subject to various definitions, the constitutional provision is not clear and does not permit only one possible result. A court may consult the constitutional convention journal to ascertain the framers' intent in drafting this language. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 385 (App. 2003).

The determination of what constitutes 'involuntary servitude' or what is regarded as "badges of slavery" is to be made in the context of well established Micronesian customs. Rodriguez v. Bank of the FSM, 11 FSM

Intrm. 367, 385 (App. 2003).

Absent a violation of a criminal statute, the court cannot compel a person to labor for the liquidation of a debt to another with the threat of punishment for failure to perform. Involuntary servitude thus has been held to encompass peonage, where a person is bound to the service of a particular employer until an obligation to that person is satisfied. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 385 (App. 2003).

When a person claiming involuntary servitude is simply expected to seek and accept employment, if available, and is free to choose the type of employment and employer, and is also free to resign that employment if conditions are unsatisfactory or to accept other employment, none of the aspects of "involuntary servitude" are present. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 385 (App. 2003).

While the trial court does not violate the Constitution's involuntary servitude provision when it orders a judgment-debtor to seek immediate employment, when the judgment-debtor has presented evidence that he is unable to work, the trial court must make specific findings with regard to his fitness for work before it orders him to seek immediate employment. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 386 (App. 2003).

– Judicial Guidance Clause

The FSM Supreme Court must remain sensitive to the unique circumstances of the Federated States of Micronesia and may not slavishly follow interpretations of similar language by United States, Trust Territory, or other tribunals in different contexts. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 69 n.11 (Kos. 1982).

The Constitution of the FSM is the supreme law and the decisions of the FSM Supreme Court must be consistent with it. Truk v. Hartman, 1 FSM Intrm. 174, 176-77 (Truk 1982).

The FSM Supreme Court can and should consider decisions and reasoning of courts in the United States and other jurisdictions, including the Trust Territory courts, in arriving at its own decisions. It is not, however, bound by those decisions and must not fall into the error of adopting the reasoning of those decisions without independently considering suitability of that reasoning for the Federated States of Micronesia. Alaphonso v. FSM, 1 FSM Intrm. 209, 212-13 (App. 1982).

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

Under the FSM Constitution's Judicial Guidance Provision, FSM Const. art. XI, § 11, FSM Supreme Court decisions are to be consistent with the "social and geographical configuration of Micronesia." Ray v. Electrical Contracting Corp., 2 FSM Intrm. 21, 26 (App. 1985).

The Constitution's judicial guidance clause cautions against simply adopting previous interpretations of other jurisdictions without careful analysis of its application to the circumstances of the Federated States of Micronesia. Luda v. Maeda Road Constr. Co., 2 FSM Intrm. 107, 112 (Pon. 1985).

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

A message of the judicial guidance clause is that a court, when interpreting a contract, may not simply

assume that reasonably intelligent Micronesians will perceive the same meaning as would reasonably intelligent Americans. Courts may not blind themselves to the pertinent aspects of Micronesian society, such as less facility in the English language, less exposure to business concepts, and paucity of legal resources, which might cause a reasonably intelligent Micronesian to perceive a meaning differently than would a person from some other nation. Semens v. Continental Air Lines, Inc. (I), 2 FSM Intrm. 131, 149 (Pon. 1985).

The judicial guidance clause, FSM Const. art. XI, § 11, is intended to insure, among other things, that this court will not simply accept decisions of the Trust Territory High Court without independent analysis. FSM v. Oliver, 3 FSM Intrm. 469, 478 (Pon. 1988).

The judicial guidance clause prohibits a sentencing court from giving special effect to customary beatings administered to the defendant, unless the court finds that such recognition would be consistent with the protections guaranteed to individuals by the Declaration of Rights. Tammed v. FSM, 4 FSM Intrm. 266, 284 (App. 1990).

The judicial guidance clause implies a requirement that courts consult the values of the people in finding principles of law for this new nation, and the fact that all state legislatures in the Federated States of Micronesia, and the Congress, have enacted Judiciary Acts adopting the Code of Judicial Conduct as the standard for judicial officials and authorizing departures from those standards only to impose tighter standards, suggests that courts should rely heavily on those standards in locating minimal due process protections against biased decision-making in judicial proceedings within the Federated States of Micronesia. Etscheit v. Santos, 5 FSM Intrm. 35, 38-39 (App. 1991).

The judicial guidance clause, article XI, section 11 of the Constitution, requires that in searching for legal principles to serve the Federated States of Micronesia, courts must first look to sources of law and circumstances here within the Federated States of Micronesia rather than begin with a review of cases decided by other courts. Etscheit v. Santos, 5 FSM Intrm. 35, 38 (App. 1991).

State and national legislation may be useful as a means of ascertaining Micronesian values in rendering decisions pursuant to the judicial guidance clause, particularly when more than one legislative body in the FSM has independently adopted similar law. Tosie v. Healy-Tibbets Builders, Inc., 5 FSM Intrm. 358, 361 (Kos. 1992).

Article XI, section 11 of the FSM Constitution mandates that the court look first to Micronesian sources of law – which includes the FSM Code and rules of the court – in reaching decisions. Alfons v. FSM, 5 FSM Intrm. 402, 404-05 (App. 1992).

Extradition is founded upon treaties between sovereign nations involving mutual agreements and commitments. There is no counterpart in Micronesia custom and tradition that is applicable. In re Extradition of Jano, 6 FSM Intrm. 23, 25 (App. 1993).

Determining the relevancy of custom in carrying out the mandate of article XI, section 11 of the FSM Constitution must proceed on a case-by-case basis. Wito Clan v. United Church of Christ, 6 FSM Intrm. 129, 132 (App. 1993).

Where entitlement to customary relief has been proven and the means to execute such a remedy are within the trial court's authority and discretion, the trial court should as a matter of equity and constitutional duty grant the relief. Wito Clan v. United Church of Christ, 6 FSM Intrm. 129, 133 (App. 1993).

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

A court must consult and apply sources of law in the FSM prior to rendering a decision, and would resort to local customary law before considering the common law of other nations. Ladore v. U Corp., 7 FSM Intrm.

296, 299 (Pon. 1995).

The Judicial Guidance Clause requires that courts utilize the following analytic method. First, if a constitutional provision bears upon an issue, that provision will prevail over any other source of law. Second, any applicable Micronesian custom or tradition must be considered, and the court's decision must be consistent therewith. If there is no directly applicable constitutional provision, or custom or tradition, or if these sources are insufficient to resolve all issues in the case, then the court may look to the law of other nations. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 377 (Pon. 1998).

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

The FSM Constitution requires court decisions be consistent with Micronesian customs and traditions, and provides that the FSM Congress may enact statutes to protect the traditions of the people of the FSM. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 66 (Pon. 2001).

The Constitution admonishes that court decisions are to be consistent with the "social and geographical configuration of Micronesia," and a cause of action for loss of parental consortium is consistent with this admonition in that it acknowledges the important role played by the family in the many distinct cultures of Micronesia. Amayo v. MJ Co., 10 FSM Intrm. 244, 253 (Pon. 2001).

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

The FSM Supreme Court can and should consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. It is not, however, bound by those decisions and must not fall into the error of adopting reasoning of those decisions without independently considering suitability of that reasoning for the FSM. Panuelo v. Amayo, 10 FSM Intrm. 558, 563 (App. 2002).

The judicial guidance clause requires that, in searching for legal principles to serve the FSM, courts must first look to sources of law and circumstances here within the FSM rather than begin with a review of cases decided by other courts. Panuelo v. Amayo, 10 FSM Intrm. 558, 563 (App. 2002).

When the economic disparity between the indigent losing plaintiff and the successful defendants could not be more stark and when the plaintiff pursued his case in good faith and it was not frivolous, the defendants' motion to tax costs must be denied and no costs allowed. This result is consistent with the social configuration of Micronesia, as mandated by the Constitution's Judicial Guidance Clause. Lebehn v. Mobil Oil Micronesia, Inc., 11 FSM Intrm. 319, 323 (Pon. 2003).

Under FSM constitutional jurisprudence, a person has no right, with some possible narrow exception, to resist a court-issued search warrant even if that search warrant turns out to be invalid. A person's remedies for being subjected to a search with an invalid search warrant are the suppression of any evidence seized, and, in the proper case, a civil suit for damages. The self-help of resistance is not a remedy and because of the Micronesian customary preference for the peaceful resolution of disputes, this conclusion is consistent not only with the FSM Constitution, but also with the social configuration of Micronesia as is required by the Constitution's Judicial Guidance Clause. FSM v. Wainit, 11 FSM Intrm. 424, 436-37 (Chk. 2003).

This court is mandated by Article XI, Section 11 of the Constitution to first consult and apply sources

from within the FSM. The overall goal is to develop principles of standing which are consistent with the Constitution's language and designed to meet the needs of the nation's people and institutions. The controversy must be definite and concrete, touching the legal relations of parties having adverse legal interests. Eighth Kosrae Legislature v. FSM Dev. Bank, 11 FSM Intrm. 491, 496-97 (Kos. 2003).

The FSM Constitution requires that court decisions be consistent with the Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. Yang v. Western Sales Trading Co., 11 FSM Intrm. 607, 613 (Pon. 2003).

Because the court is required to make decisions consistent with the FSM's social and geographical configuration and because the FSM is a large country in terms of geographical distances, but has a small land base, a small population, and limited resources with a small government legal office and few other lawyers available, the court thus should not order the government to go outside its Department of Justice for a prosecutor unless it is absolutely necessary. FSM v. Wainit, 12 FSM Intrm. 172, 180 (Chk. 2003).

The FSM Supreme Court is ever mindful of the constitutional admonition that court decisions shall be consistent with the FSM Constitution, Micronesian custom and traditions, and Micronesia's social and geographical configuration and that in rendering a decision, a court shall consult and apply sources of the Federated States of Micronesia, and that the Kosrae Constitution also provides that court decisions shall be consistent with that constitution, state traditions and customs, and the state's social and geographical configuration. Sigrah v. Kosrae, 12 FSM Intrm. 320, 325 (App. 2004).

When the project control document did not say otherwise, the community halls contemplated by the Uman Social Project project control document are the customary and traditional community hall (an *wuut* or *uut*) found in Uman (and throughout the Southern Namoneas and Chuuk Lagoon) because this is the meaning of the term community hall (*wuut* or *uut*) as understood by the defendants, who are all from the Southern Namoneas and because is this is not only the only logical conclusion to draw under the circumstances, this result is mandated by the Judicial Guidance Clause, which requires all judicial decisions to be consistent with custom and tradition. FSM v. Este, 12 FSM Intrm. 476, 481 (Chk. 2004).

Since court decisions are constitutionally required to be consistent with the geographical configuration of Micronesia, which includes the relative isolation of various outer island communities, a fifteen-day delay caused by the inability of a mayor from an outer island with no air service to Chuuk Lagoon to travel to the Lagoon to sign legal papers will be considered excusable neglect. Fan Kay Man v. Fananu Mun. Gov't, 12 FSM Intrm. 492, 495-96 (Chk. 2004).

As required by the FSM Constitution, in rendering a decision, a court must consult and apply sources of the Federated States of Micronesia, but where appropriate, the FSM Supreme Court can and should consider decisions and reasoning of United States courts and other jurisdictions in arriving at its own decisions. Because there is very little FSM law governing the enforcement of national civil rights judgments against the states, the court will look to case law of the United States for guidance, as civil rights protections in the United States and FSM are similar. Chuuk v. Davis, 13 FSM Intrm. 178, 185-86 (App. 2005).

– Kosrae

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

In fiscal matters, the court must hear constitutional objections in order to save the state an expenditure of funds that may be unconstitutional. Siba v. Sigrah, 4 FSM Intrm. 329, 335 (Kos. S. Ct. Tr. 1990).

The Kosrae Constitution empowers the state government to collect both tax and non-tax revenue, but that only the tax revenue must be shared with the municipality in which the funds are collected. Tafunsak v. Kosrae, 7 FSM Intrm. 344, 347 (App. 1995).

Under the Kosrae Constitution tax revenue must be shared with the municipalities, and what constitutes non-tax, public money revenue need not be shared. A fee paid for use of airport facilities is non-tax public money. This follows a pattern widely recognized elsewhere of a distinction between taxes and user fees. Tafunsak v. Kosrae, 7 FSM Intrm. 344, 348-49 (App. 1995).

Compensation of Kosrae State Court justices is prescribed by law. Compensation may not be increased or decreased during their terms of office, except by general law applying to all state government employees. Cornelius v. Kosrae, 8 FSM Intrm. 345, 348 (Kos. S. Ct. Tr. 1998).

The Governor and Lieutenant Governor receive annual salaries as prescribed by law. The salaries may not be increased or decreased for their terms of office except by general law applying to all state government employees. Cornelius v. Kosrae, 8 FSM Intrm. 345, 350 (Kos. S. Ct. Tr. 1998).

Senators receive compensation as prescribed by law. No law increasing compensation may take effect until the end of the term of office for which the Senators voting thereon were elected. Cornelius v. Kosrae, 8 FSM Intrm. 345, 350 (Kos. S. Ct. Tr. 1998).

The phrase, "as prescribed by law," describes how the salaries of the senators; governor and lieutenant governor; and state court justices will be set in the first instance. Any subsequent increase or decrease as to the executive or judiciary will be by statute applicable to all state government employees; with respect to senators, any subsequent increase will occur by statute which becomes effective during a future term of office. Cornelius v. Kosrae, 8 FSM Intrm. 345, 350 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" as it appears in article VI, section 5, means those employees whose salaries are "prescribed by law." Only those employees whose salaries are set in the first place by statute are the employees to whom subsequent statutory reductions should apply. Cornelius v. Kosrae, 8 FSM Intrm. 345, 352 (Kos. S. Ct. Tr. 1998).

Although the Kosrae Constitution contains no impairment of contracts clause, it is not silent in this area. The Kosrae Transition Clause provides that contracts continue unaffected. Cornelius v. Kosrae, 8 FSM Intrm. 345, 352 (Kos. S. Ct. Tr. 1998).

The phrase "all State Government employees" means employees whose compensation is determined by statute, and does not include those employees who have individual contracts with Kosrae. Therefore a state law reducing state public service system employees' pay can constitutionally be applied to a Kosrae State Court justice's pay. Cornelius v. Kosrae, 8 FSM Intrm. 345, 352 (Kos. S. Ct. Tr. 1998).

The Kosrae Constitution provides that the state government protect the state's traditions as the public interest may require. Anton v. Heirs of Shrew, 10 FSM Intrm. 162, 165 (Kos. S. Ct. Tr. 2001).

Since the normal sense or definition of the word "term" does not include term limits, the phrase "for the same term," in Article V, section 6 applies only to the Lieutenant Governor's four year term of office. It does not include any limitation on the number of consecutive terms of office that a person may serve as Lieutenant Governor. The term limits imposed on the Governor thus do not apply to the Lieutenant Governor. Jackson v. Kosrae State Election Comm'n, 11 FSM Intrm. 162, 164 (Kos. S. Ct. Tr. 2002).

The Kosrae Constitution requires court decisions to be consistent with state traditions and customs, and the state's social and geographical configuration. Tolenoa v. Kosrae, 11 FSM Intrm. 179, 183 (Kos. S. Ct. Tr. 2002).

The requirements that a person's driver's license be in the immediate possession of the operator, and that the operator display his license to a police officer upon demand do not violate the Kosrae Constitution. Kosrae v. Sigrah, 11 FSM Intrm. 249, 257 (Kos. S. Ct. Tr. 2002).

The Kosrae Constitution provides for the fundamental right of freedom of expression, and also permits

denial or impairment of that fundamental right by a statute which protects tradition. Kosrae v. Waguk, 11 FSM Intrm. 388, 390 (Kos. S. Ct. Tr. 2003).

– Kosrae – Case

A difference of opinion between parties is not in and of itself a sufficient basis on which the Kosrae State Court may assume jurisdiction over a dispute. Kosrae v. Seventh Kosrae State Legislature, 10 FSM Intrm. 668, 670 (Kos. S. Ct. Tr. 2002).

The Kosrae State Court has original jurisdiction in all cases, except cases within the exclusive and original jurisdiction of inferior courts. "Case" means a justiciable controversy, which is another way of saying that it must be suitable for determination by a court. Kosrae v. Seventh Kosrae State Legislature, 10 FSM Intrm. 668, 670 (Kos. S. Ct. Tr. 2002).

A court will not pass on questions that are abstract, moot, academic, or hypothetical. The constitutionality of yet-to-be-enacted legislation presents a hypothetical question that is not justiciable. Kosrae v. Seventh Kosrae State Legislature, 10 FSM Intrm. 668, 670 (Kos. S. Ct. Tr. 2002).

Because duly enacted laws are presumed constitutional in the first instance, confirmation through a suit for declaratory relief of what is already presumed is not a fruitful exercise when there is no certainty that such a declaration would alter the parties' legal interests. Kosrae v. Seventh Kosrae State Legislature, 10 FSM Intrm. 668, 671 (Kos. S. Ct. Tr. 2002).

– Kosrae – Case – Standing

Standing exists where a putative plaintiff has a sufficient stake or interest in a justiciable controversy so that he may obtain judicial resolution of that dispute. Kosrae v. Seventh Kosrae State Legislature, 10 FSM Intrm. 668, 671 (Kos. S. Ct. Tr. 2002).

A public official who is called upon to perform a legally required duty which he concludes is violative of the constitution has standing to ask a court to declare the statute unconstitutional. Kosrae v. Seventh Kosrae State Legislature, 10 FSM Intrm. 668, 671 (Kos. S. Ct. Tr. 2002).

When the Legislature could very well exercise its legislative prerogative to decline to enact the proposed legislation irrespective of any declaration by the court of the constitutionality of the proposed legislation, Kosrae does not have a stake or interest that is amenable to judicial resolution. Kosrae v. Seventh Kosrae State Legislature, 10 FSM Intrm. 668, 671 (Kos. S. Ct. Tr. 2002).

To have standing, a plaintiff must show that he personally has suffered some actual or threatened injury as result of the defendant's putatively illegal conduct. Kosrae v. Seventh Kosrae State Legislature, 10 FSM Intrm. 668, 671 (Kos. S. Ct. Tr. 2002).

To the extent that an alleged salary loss constitutes a stake or interest that is subject to judicial resolution, it belongs to the specified officials, and not to Kosrae. Kosrae v. Seventh Kosrae State Legislature, 10 FSM Intrm. 668, 672 (Kos. S. Ct. Tr. 2002).

– Kosrae – Due Process

Written notice in a letter giving a limited-term employee three days notice of the reasons for his two week suspension from work is sufficient compliance with the requirement of 61 TTC 10(15)(a), which provides that a suspended employee must receive notice of the reasons for suspension, and is also sufficient compliance with the notice requirements of due process under the Kosrae Constitution. Taulung v. Kosrae, 3 FSM Intrm. 277, 279 (Kos. S. Ct. Tr. 1988).

To be property protected under the Kosrae State Constitution, the employment right must be supported

by more than merely the employee's own personal hope. There must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Taulung v. Kosrae, 3 FSM Intrm. 277, 280 (Kos. S. Ct. Tr. 1988).

The Kosrae Executive Appeals Board is authorized to subpoena witnesses, and may do so on its own motion, over the protest of a party. For the Board to question such a witness in absence of a party to the hearing, when the party had notice but elected to walk out of the proceeding to seek a writ of prohibition, is not violative of due process. Palik v. Executive Serv. Appeals Bd., 4 FSM Intrm. 287, 290 (Kos. S. Ct. Tr. 1990).

To be property protected under the Federated States of Micronesia and Kosrae State Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulation, formal contract or actions of a supervisory person with authority to establish terms of employment. Edwin v. Kosrae, 4 FSM Intrm. 292, 302 (Kos. S. Ct. Tr. 1990).

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

When a panel hearing in a summary dismissal was closed to the public and the injured party and counsel were present to attend and participate in the hearing and the panel accepted and considered all testimony and evidence offered by the parties, due process was not violated. Palsis v. Kosrae State Court, 5 FSM Intrm. 214, 217 (Kos. S. Ct. Tr. 1991).

The wording of the Due Process Clause of the Kosrae State Constitution is identical to the wording of the Due Process Clause of the FSM Constitution. Therefore the court will treat the clauses as identical in meaning and in scope. Alik v. Kosrae Hotel Corp., 5 FSM Intrm. 294, 297 (Kos. 1992).

The wording of the due process clause of the Kosrae Constitution is the same as that of the FSM Constitution, and are equivalent in terms of scope and meaning, and, in turn, because the FSM Declaration of Rights, which contains the due process clause, is patterned after provisions of the United States Constitution, and United States cases were relied on to guide the Constitutional Convention, United States authority may be consulted to understand the meaning of these rights. Cornelius v. Kosrae, 8 FSM Intrm. 345, 349 (Kos. S. Ct. Tr. 1998).

A summary order of contempt for non-appearance violates an accused's right to due process under the Kosrae Constitution. Accordingly, on appeal the conviction will be vacated and remanded. In re Contempt of Skilling, 8 FSM Intrm. 419, 426 (App. 1998).

State employees are entitled to recover the base salary that they would have received during the periods of time that they were placed on leave without pay because the state's imposition of a "lay off" and leave without pay violated the employees' right to continued employment under the Kosrae Constitution and the Kosrae State Code. Langu v. Kosrae, 8 FSM Intrm. 427, 436 (Kos. S. Ct. Tr. 1998).

A person may not be deprived of property without due process of law. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 237 (Kos. S. Ct. Tr. 2001).

To be property protected under the FSM and Kosrae Constitutions, the employment right must be based on governmental assurance of continual employment or dismissal for only specified reasons. A person who has been hired under an employment contract, for a specific length of time, with no provisions for renewal of the contract and no entitlement for renewal of the contract, does not have a property interest in his continued employment and is not entitled to a hearing before termination. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 237 (Kos. S. Ct. Tr. 2001).

The essential features of procedural due process, or fairness, require notice and opportunity to be heard. Ittu v. Heirs of Mongkeya, 10 FSM Intrm. 446, 447 (Kos. S. Ct. Tr. 2001).

Due process requires that the parties be given the opportunity to comment upon evidence. Ittu v. Heirs of Mongkeya, 10 FSM Intrm. 446, 448 (Kos. S. Ct. Tr. 2001).

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

When the Senior Land Commissioner failed to disqualify himself after the parcel was recorded for adjudication, took part in the hearing and consideration of the parcel by appointing the two pro-tempore members of the registration team, and failed to disqualify himself from the matter until after the two Associate Land Commissioners had concurred on the findings and decision, awarding ownership of the parcel to his family, his actions violated Kosrae State Code, Section 11.602 and the due process protection provided by the Kosrae Constitution. Langu v. Heirs of Jonas, 10 FSM Intrm. 547, 549 (Kos. S. Ct. Tr. 2002).

The wording of the due process provisions in both the FSM and Kosrae Constitutions are identical. Livaie v. Micronesia Petroleum Co., 10 FSM Intrm. 659, 665 (Kos. S. Ct. Tr. 2002).

The due process requirements applicable to employment that is a property interest are: to be property protected under the FSM and Kosrae Constitutions, the employment rights must be based on governmental assurance of continual employment or dismissal for only specified reasons as stated in statute, regulations, formal contract or actions of a supervisory person with authority to establish terms of employment. Livaie v. Micronesia Petroleum Co., 10 FSM Intrm. 659, 666 (Kos. S. Ct. Tr. 2002).

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

– Kosrae – Interpretation

Article II, section 1(d) of the Kosrae State Constitution is similar to article IV, section 5 of the FSM Constitution and to the fourth amendment to the U.S. Constitution, and therefore, interpretations of these provisions may be useful for interpreting the provision in the Kosrae State Constitution. Kosrae v. Alanso, 3 FSM Intrm. 39, 42 (Kos. S. Ct. Tr. 1985).

Because the Kosrae State Constitution does not provide an exact standard for determining whether a search is "reasonable," this court will first turn to the framers' intent. In the absence of an official journal of the First Constitutional Convention, this court will then look to FSM and U.S. judicial decisions interpreting the search and seizure provision in their respective constitutions. Kosrae v. Alanso, 3 FSM Intrm. 39, 42 (Kos. S. Ct. Tr. 1985).

If language of a provision of the Kosrae State Constitution is susceptible to more than one meaning, the court should look to the legislative history, including the constitutional convention committee notes and journals, all other provisions of the Constitution, and cases from jurisdictions with similar constitutional provisions, to clarify the definitions of the ambiguous term. Seymour v. Kosrae, 3 FSM Intrm. 537, 540 (Kos. S. Ct. Tr. 1988).

The movant is burdened with a high standard of proof in establishing the unconstitutionality of either state laws or the Constitution. Siba v. Sigrah, 4 FSM Intrm. 329, 335 (Kos. S. Ct. Tr. 1990).

A practice which has been engaged in by a branch of government for a significant period of time is entitled to great weight in establishing the constitutionality of that practice. Siba v. Sigrah, 4 FSM Intrm. 329, 342 (Kos. S. Ct. Tr. 1990).

The wording of the Due Process Clause of the Kosrae State Constitution is identical to the wording of the Due Process Clause of the FSM Constitution. Therefore the court will treat the clauses as identical in meaning and in scope. Alik v. Kosrae Hotel Corp., 5 FSM Intrm. 294, 297 (Kos. 1992).

In analyzing constitutional provisions a court must initially look to the actual words of the constitution. The court should also consider all provisions of the constitution because other sections may touch on the same subject area, thus giving the questionable provision added meaning. If those words are clear and permit only one possible result, the court should go no further. Tafunsak v. Kosrae, 7 FSM Intrm. 344, 347 (App. 1995).

If the language of a Kosrae constitutional provision or section is susceptible to more than one meaning, the court should look to the legislative history, including the Constitutional Committee Notes and the Journals, if available, to clarify the definition of the ambiguous term. Tafunsak v. Kosrae, 7 FSM Intrm. 344, 347 (App. 1995).

The party that raises the issue has the burden of proof as to the unconstitutionality of a statute. This burden is high and heavy, and that party must negative every reasonable, conceivable basis which would support the constitutionality of the statute, because statutes are presumed to be constitutional. Tafunsak v. Kosrae, 7 FSM Intrm. 344, 348 (App. 1995).

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

If a matter may properly be resolved on a statutory basis without reaching potential constitutional issues, then the court should do so. Unnecessary constitutional adjudication is to be avoided. Kosrae v. Langu, 9 FSM Intrm. 243, 251 (App. 1999).

The framework for analysis of constitutional provisions has been clearly established by the FSM Supreme Court. The court must first look to the actual words of the Constitution. When the constitutional language is inconclusive or does not provide an unmistakable answer, the court may look to the journal of the Constitutional Convention for assistance in determining the meaning of the constitutional words. Kosrae v. Sigrah, 11 FSM Intrm. 26, 29 (Kos. S. Ct. Tr. 2002).

The testimony of one Constitutional Convention delegate as to the meaning of a constitutional provision would reflect his personal opinions and beliefs on the interpretation of the subject constitutional provision, and not the opinions of the entire twenty-two member Convention, and will therefore not be admitted. Kosrae v. Sigrah, 11 FSM Intrm. 26, 30 (Kos. S. Ct. Tr. 2002).

In analyzing constitutional provisions, a court must first look to the constitution's actual words. If those words are clear and permit only one result, the court should go no further, but if the language of a Kosrae constitutional provision or section is susceptible to more than one meaning, the court should look to the legislative history, including the Constitutional Committee notes and the journals, if available, to clarify the definition of the ambiguous term. Jackson v. Kosrae State Election Comm'n, 11 FSM Intrm. 162, 164 (Kos. S. Ct. Tr. 2002).

Words in constitutions are ordinarily given their natural, normal, usual, common, popular, general and ordinary sense. Jackson v. Kosrae State Election Comm'n, 11 FSM Intrm. 162, 164 (Kos. S. Ct. Tr. 2002).

When the constitutional language is clear and permits only one result, the court goes no further and does not consider its legislative history. Jackson v. Kosrae State Election Comm'n, 11 FSM Intrm. 162, 164 (Kos. S. Ct. Tr. 2002).

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

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

A practice which has been engaged in by a government for a significant period of time is entitled to great weight in establishing the constitutionality of that practice. Thus, when the licensing of vehicle operators and that the license be in the immediate possession of the driver has been required for at nearly forty years, this significant period of time and therefore the licensing and possession requirement is entitled to great weight in establishing the constitutionality of that practice. Kosrae v. Sigrah, 11 FSM Intrm. 249, 256 (Kos. S. Ct. Tr. 2002).

Since article II, section 1(d) of the Kosrae Constitution is similar to article IV, section 5 of the FSM Constitution Declaration of Rights and the fourth amendment to the U.S. Constitution, interpretations of these two provisions may be useful for interpreting the Kosrae Constitution provision, and when a provision of the FSM Declaration of Rights is patterned after a provision of the U.S. Constitution, U.S. authority may be consulted to understand its meaning. Sigrah v. Kosrae, 12 FSM Intrm. 320, 327 (App. 2004).

A practice which has been engaged in by a branch of government for a significant period of time is entitled to great weight in establishing the constitutionality of that practice. Heirs of Palik v. Heirs of Henry, 12 FSM Intrm. 415, 421 (Kos. S. Ct. Tr. 2004).

– Kosrae – Legislative Privilege

Historically the legislative privilege from arrest has not applied in criminal cases. Sigrah v. Kosrae, 12 FSM Intrm. 320, 326 (App. 2004).

The Kosrae Constitution's drafters by no means intended the legislative privilege from arrest to be absolute. In addition to the stated exception for felony and breach of the peace that was incorporated into the privilege as adopted, the drafters felt that charges may still be filed against members at a time different from when a legislator is going to or coming from a legislative session. Sigrah v. Kosrae, 12 FSM Intrm. 320, 326 (App. 2004).

The court declines to adopt a general rule that any Kosrae police officer who stops a motorist has a specific duty to inquire of the motorist whether he is a Kosrae legislator going to or returning from conducting official business. Sigrah v. Kosrae, 12 FSM Intrm. 320, 326 (App. 2004).

The scope the Kosrae Constitution's legislative privilege is coterminous with the historical understanding of the phrase, "treason, felony, and breach of the peace," and that the privilege conferred by the Kosrae Constitution does not apply to criminal cases. Since the Kosrae Constitution's privilege of freedom from arrest does not apply to criminal cases, it is thus inapplicable to a category 4 misdemeanor, which is a criminal offense. Sigrah v. Kosrae, 12 FSM Intrm. 320, 327 (App. 2004).

– Kosrae – Taking of Property

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

– Pohnpei

The tenor of the Pohnpei Constitution is that the government is to be responsible to the people. That Constitution does not provide for sovereign immunity. Panuelo v. Pohnpei (I), 2 FSM Intrm. 150, 157-59 (Pon. 1986).

A constitutional provision is self-executing when no legislation is required to bring it into effect. Panuelo v. Pohnpei, 3 FSM Intrm. 76, 82 (Pon. S. Ct. App. 1987).

The provisions of article 7, section 4 of the Pohnpei Constitution are not self-executing because they provide general principles or policy directives without providing the means to effectuate them. Panuelo v. Pohnpei, 3 FSM Intrm. 76, 82 (Pon. S. Ct. App. 1987).

The government has the power to undertake projects in the areas set forth in article 7 of the Pohnpei Constitution, but the provisions of article 7 are merely directory rather than mandatory. Panuelo v. Pohnpei, 3 FSM Intrm. 76, 81-82 (Pon. S. Ct. App. 1987).

Article 4 of the Pohnpei Constitution confers fundamental rights and is mandatory and enforceable by the courts; in contrast, article 7 does not vest individuals with legal rights that they can assert in the courts. The framers of the Constitution structured these two articles in different ways because they intended them to achieve different goals. Panuelo v. Pohnpei, 3 FSM Intrm. 76, 81-82 (Pon. S. Ct. App. 1987).

The court may, in the interest of justice, make the application of its decision prospective where the court is overruling a previous decision or declaring a statute unconstitutional and the present ruling does not prejudice those who might have relied on such ruling or on such statute. Paulus v. Pohnpei, 3 FSM Intrm. 208, 222 (Pon. S. Ct. Tr. 1987).

– Pohnpei – Due Process

The Pohnpei State Government has discretion in hiring or firing employees, but that discretion does not carry with it the right to its arbitrary exercise. Paulus v. Pohnpei, 3 FSM Intrm. 208, 217 (Pon. S. Ct. Tr. 1987).

Substantive due process relates to the constitutional guarantee that no person shall be deprived of his life, liberty or property for arbitrary reasons. Such a deprivation is supportable constitutionally only if the conduct from which the deprivation flow is prescribed by reasonable legislation. The legislation shall be enacted within the scope of legislative authority and be reasonably applied for a purpose consonant with the purpose for which it was enacted. Paulus v. Pohnpei, 3 FSM Intrm. 208, 221 (Pon. S. Ct. Tr. 1987).

Procedural due process relates to the requisite characteristics of proceedings tending toward a deprivation of life, liberty, or property and thus makes it necessary that a person whom it is sought to deprive of such a right must be given notice of this fact. An individual must be given an opportunity to defend himself before tribunal or office having jurisdiction of the cause, and the problem of the propriety of this deprivation, under the circumstances presented, must be resolved in a manner consistent with essential fairness, in accordance with the Pohnpeian concept of justice. Paulus v. Pohnpei, 3 FSM Intrm. 208, 221 (Pon. S. Ct. Tr. 1987).

A statute providing that any person who has been convicted of a felony and who is currently under sentence shall be terminated from public employment, constitutes an unconstitutional deprivation of procedural due process by allowing for an affected individual's termination without a hearing, and thus must be struck down. Paulus v. Pohnpei, 3 FSM Intrm. 208, 221-22 (Pon. S. Ct. Tr. 1987).

The Due Process Clause of the Pohnpei State Constitution, art. IV, § 4, guarantees the right of due process articulated in the governing law. Micronesian Legal Servs. Corp. v. Ludwig, 3 FSM Intrm. 241, 244 (Pon. S. Ct. Tr. 1987).

A statute does not violate the Pohnpei constitutional safeguards of due process if the provisions of the statute are reasonably clear and give fair notice of what acts or omission are prescribed. Hadley v. Kolonia Town, 3 FSM Intrm. 267, 269 (Pon. S. Ct. App. 1987).

Whether statutory language is so unreasonably vague as to violate the Due Process Clause of the Pohnpei State Constitution is a question of degree, and when the law in question is a municipal ordinance greater leeway should be given to the municipality in recognition of the members' lack of prior training or experience in law or statutory drafting. Hadley v. Kolonia Town, 3 FSM Intrm. 267, 269-70 (Pon. S. Ct. App. 1987).

The right to due process under the Pohnpei Constitution, like the FSM Constitution, only protects people from actions by the government. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 636 (Pon. 2002).

– Pohnpei – Equal Protection

A classification of ex-felons currently under sentence is not suspect within the suspect classifications of section 3, article 4 of the Constitution of Pohnpei. Paulus v. Pohnpei, 3 FSM Intrm. 208, 216 (Pon. S. Ct. Tr. 1987).

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

Section 14(1) of the State Public Service System Act of 1981 (2L-57-81) is impermissibly arbitrary and irrationally unfair in its blanket prohibition of employment of any person who has been convicted of a felony and is currently under sentence; such statutory prohibition fails to tailor its impact to those convicted felons who otherwise lack the habits of industry. Consequently, the section of the statute is violative of the Equal

Rights Clause of the Pohnpei State Constitution by failing to demonstrate that the exclusion of all felons under sentence is necessary to achieve the articulated state goal. Paulus v. Pohnpei, 3 FSM Intrm. 208, 220 (Pon. S. Ct. Tr. 1987).

– Pohnpei – Fundamental Rights

Article 4 of the Pohnpei Constitution confers fundamental rights and is mandatory and enforceable by the courts; in contrast, article 7 does not vest individuals with legal rights that they can assert in the courts. The framers of the Constitution structured these two articles in different ways because they intended them to achieve different goals. Panuelo v. Pohnpei, 3 FSM Intrm. 76, 81-82 (Pon. S. Ct. App. 1987).

The right to governmental employment in Pohnpei is not a fundamental right, constitutionally protected, requiring invoking a strict scrutiny test. Paulus v. Pohnpei, 3 FSM Intrm. 208, 217 (Pon. S. Ct. Tr. 1987).

– Pohnpei – Interpretation

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

In interpreting the Constitution, Pohnpeian and English versions must be construed together in harmony to determine the intent of the Constitutional Convention on any subject. Pohnpei v. Hawk, 3 FSM Intrm. 17, 22-23 (Pon. S. Ct. Tr. 1986).

Whether article 7 of the Pohnpei Constitution is self-executing, creating substantive rights that individuals can seek to enforce in court of law, will depend upon the intent of the framers, as disclosed within the four corners of the Constitution when the words are given their ordinary meaning, as well as upon the nature of the acts and the goals they are to accomplish. Panuelo v. Pohnpei, 3 FSM Intrm. 76, 80-81 (Pon. S. Ct. App. 1987).

The words of the Pohnpei Constitution are words in common use and are to be understood according to their ordinary meaning. Panuelo v. Pohnpei, 3 FSM Intrm. 76, 81 (Pon. S. Ct. App. 1987).

A constitutional provision is self-executing when no legislation is required to bring it into effect. Panuelo v. Pohnpei, 3 FSM Intrm. 76, 82 (Pon. S. Ct. App. 1987).

The provisions of article 7, section 4 of the Pohnpei Constitution are not self-executing because they provide general principles or policy directives without providing the means to effectuate them. Panuelo v. Pohnpei, 3 FSM Intrm. 76, 82 (Pon. S. Ct. App. 1987).

In considering an issue of constitutional interpretation of an accused's right to a speedy trial in the light of Pohnpei's experience, manner and usage, and the concept of justice of the peoples of Pohnpei, it is helpful to review the application and development of the constitutional right to a speedy trial in other parts of the world. Pohnpei v. Weilbacher, 5 FSM Intrm. 431, 435 (Pon. S. Ct. Tr. 1992).

Differences in procedure, history, customs and practice do not require similar construction and application of the rights to a speedy trial in Pohnpei as the clause is construed and applied in other jurisdictions. Pohnpei v. Weilbacher, 5 FSM Intrm. 431, 449-50 (Pon. S. Ct. Tr. 1992).

– Pohnpei – Legislative Privilege

A member of the Pohnpei Legislature is responsible only to the Legislature for statements in the Legislature or a committee thereof. AHPW, Inc. v. FSM, 10 FSM Intrm. 420, 424 (Pon. 2001).

A Pohnpei legislator may decline to answer any questions that fall within the legitimate legislative activity

of the Pohnpei legislature. AHPW, Inc. v. FSM, 10 FSM Intrm. 420, 425 (Pon. 2001).

Questions that are casually or incidentally related to legislative affairs but not a part of the legislative process itself, do not fall within the legislative privilege. Such questions, when otherwise appropriate under Rule 26(b)(1), should be answered. AHPW, Inc. v. FSM, 10 FSM Intrm. 420, 426 (Pon. 2001).

– Pohnpei – Taking of Property

Under Pohnpei state law, owners of the land adjacent to the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land. Damarlane v. United States, 7 FSM Intrm. 56, 59-60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law persons simply possessing a permit in the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land unless there has been some affirmative action such as prior written approval from the appropriate authority and effecting some development in the area in question. Damarlane v. United States, 7 FSM Intrm. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a reef is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are not entitled to a payment of just compensation for the depreciation of the value of the reef and fishing grounds. Damarlane v. United States, 7 FSM Intrm. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a fish maii [trap] is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are entitled to a payment of just compensation for the damage to a fish maii which they had constructed in the lagoon, if the fish maii was constructed pursuant to the dictate of customary law as a joint enterprise of the villagers, supervised by the village chief, managed, maintained and owned in common by the villagers; or, if an individual constructed the fish maii, prior written permission from the District Administrator, now the Pohnpei Public Land Board of Trustees, was obtained. Damarlane v. United States, 7 FSM Intrm. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei law, damage to reefs or soil under the high water mark resulting from dredging activities, the object of which is for public purposes, does not justify compensation to abutting land owners. If the Pohnpei Public Land Board of Trustees had granted certain rights in writing to an individual or group of individuals, and acting on that grant the grantees erected or constructed certain improvements, including fish maii (fish trap) in shallow waters, and if destroyed or value reduced as a result of state dredging activities, the owners thereof may be entitled to just compensation in accordance with the Pohnpei Constitution. Damarlane v. United States, 7 FSM Intrm. 56, 69 (Pon. S. Ct. App. 1995).

– Professional Services Clause

The Constitution vests the national government with power to act concerning health care and may place some affirmative health care obligations on it. Manahane v. FSM, 1 FSM Intrm. 161, 172 (Pon. 1982).

Primary responsibility, perhaps even sole responsibility, for affirmative implementation of the Professional Services Clause, FSM Const. art. XIII, § 1, must lie with Congress. Carlos v. FSM, 4 FSM Intrm. 17, 29 (App. 1989).

The Professional Services Clause of the Constitution demands that when any part of the national government contemplates action that may be anticipated to affect the availability of education, health care or legal services, the national officials involved must consider the right of the people to such services and make a reasonable effort to take "every step reasonable and necessary" to avoid unnecessarily reducing the

availability of the services. Carlos v. FSM, 4 FSM Intrm. 17, 30 (App. 1989).

Since Congress did not give any consideration to, or make any mention of, the services enumerated in article XIII, section 1 of the FSM Constitution in enacting the Foreign Investment Act, 32 F.S.M.C. 201-232, the avoidance of potential conflict with the Constitution calls for the conclusion that Congress did not intend the Foreign Investment Act to apply to noncitizen attorneys or to any other persons who provide services of the kind described in article XIII, section 1 of the Constitution. Carlos v. FSM, 4 FSM Intrm. 17, 30 (App. 1989).

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

When considering a foreign investment permit application the Secretary of Resources and Development must consider "the extent to which the activity will contribute to the constitutional policy of making education, health care, and legal services available to the people of the Federated States of Micronesia." 32 F.S.M.C. 210(8). Michelsen v. FSM, 5 FSM Intrm. 249, 254 (App. 1991).

Since the denial of the application resulted in a decrease in the availability of legal services in Yap and since the Secretary did not properly weigh the extent to which the application would contribute to the constitutional policy of making legal services available to the of the Federated States of Micronesia, the denial of the foreign investment permit to practice law in Yap was unwarranted by the facts in the record and therefore unlawful. Michelsen v. FSM, 5 FSM Intrm. 249, 256 (App. 1991).

Article XIII, section 1 is a general provision that recognizes the right of the people to education, health care, and legal services. It does not act as an exclusive duty to ensure the availability of attorney services in the FSM, and it does not prohibit a state from administering its own bar. Berman v. Santos, 7 FSM Intrm. 231, 237 (Pon. 1995).

– Supremacy Clause

The FSM Constitution is the supreme law and the decisions of the FSM Supreme Court must be consistent with it. Truk v. Hartman, 1 FSM Intrm. 174, 176-77 (Truk 1982).

While the FSM Constitution is the supreme law of the land and the FSM Supreme Court may under no circumstances acquiesce in unconstitutional governmental action, states should be given a full opportunity to exercise their legitimate powers in a manner consistent with the commands of the Constitution without unnecessary intervention by national courts. Etpison v. Perman, 1 FSM Intrm. 405, 428 (Pon. 1984).

Failure to apply a constitutional holding retroactively does not violate the supremacy clause of the Constitution, FSM Const. art. II, § 1. To the contrary, courts may choose between prospective and retroactive application in order to avert injustice or hardship. Innocenti v. Wainit, 2 FSM Intrm. 173, 184-85 (App. 1986).

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 Intrm. 13, 23 (App. 1991).

It is the duty of the FSM Supreme Court to review any national law, including a treaty such as the Compact of Free Association, in response to a claim that the law or treaty violates constitutional rights, and if any provision of the Compact is contrary to the constitution, which is the supreme law of the land, then that provision must be set aside as without effect. Samuel v. Pryor, 5 FSM Intrm. 91, 98 (Pon. 1991).

The supremacy clause of the FSM Constitution does not admit a result where a state constitutional

provision prevents the enforcement of a national statute which gives a private cause of action for rights guaranteed by the FSM Constitution, especially when it is the solemn obligation of state governments to uphold the principles of the FSM Constitution and to advance the principles of unity upon which the Constitution is founded. Louis v. Kutta, 8 FSM Intrm. 208, 213 (Chk. 1997).

The FSM Constitution is the supreme law of the FSM, and any actions taken by the government which are in conflict with the FSM Constitution are invalid to the extent of conflict. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 630-31 (Pon. 2002).

Although a state constitutional and a statutory provisions barring payment without a legislative appropriation are neither facially objectionable, what is not constitutionally permissible is to use the requirement defensively to avoid payment of a judgment based on a civil rights claim brought under the national civil rights statute. Principles of supremacy under Article II of the FSM Constitution preclude this result. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 11 n.5 (Chk. 2003).

– Taking of Property

Government employment that is "property" within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. Suldan v. FSM (II), 1 FSM Intrm. 339, 351-52 (Pon. 1983).

The fundamental concept of procedural due process is that the government may not be permitted to strip citizens of life, liberty or property in an unfair, arbitrary manner. Where such important individual interests are exposed to possible governmental taking or deprivation, the Constitution requires that the government follow procedures calculated to assure a fair and rational decision-making process. Suldan v. FSM (II), 1 FSM Intrm. 339, 354-55 (Pon. 1983).

A temporary seizure is itself a significant taking of property, depriving the owner of possession, an important attribute of property. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 75 (Pon. 1985).

Where a seizure is for forfeiture rather than evidentiary purposes, the constitutional prohibitions against taking property without due process come into play. Ishizawa v. Pohnpei, 2 FSM Intrm. 67, 76 (Pon. 1985).

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

The mere act of the United States' funding the FSM and Pohnpei does not subject it to liability for a taking because its involvement was insufficiently direct and substantial to warrant such liability and because one government is not liable for a taking by officials of another government for merely advocating measures that other government should take. Damarlane v. United States, 7 FSM Intrm. 167, 169-70 (Pon. 1995).

An unconstitutional taking occurs whenever a public entity substantially deprives a private party of the beneficial use of his property for a public purpose. Therefore where neither the Trust Territory nor a U.S. government agency could be considered a public entity in the FSM after the effective date of the Compact they are legally incapable of committing a taking after that date. Damarlane v. United States, 7 FSM Intrm. 167, 170 (Pon. 1995).

The government does not engage in a taking where the interests lost are not private property. Damarlane v. United States, 8 FSM Intrm. 45, 52 (App. 1997).

A claim of taking of property without due process of law is effective only against governmental entities or officials. The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Rosokow v. Bob, 11 FSM Intrm. 210,

215 (Chk. S. Ct. App. 2002).

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

– Title to Land

Citizenship may affect, among other legal interests, rights to own land, to engage in business or be employed, and even to reside within the Federated States of Micronesia. In re Sproat, 2 FSM Intrm. 1, 6 (Pon. 1985).

The Constitution specifically bars noncitizens from acquiring title to land or waters in Micronesia and includes within the prohibition any corporation not wholly owned by citizens. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM Intrm. 256, 259 (Pon. 1987).

Where a person is constitutionally prohibited from inheriting land that person's valid assignment of expectancy to a person who may acquire land will operate only to assign the non-land holdings in the expectancy. Etscheit v. Adams, 6 FSM Intrm. 365, 382-83 (Pon. 1994).

The FSM Constitution mandates that a noncitizen may not acquire title to land or waters in Micronesia, but the Constitution does not prohibit a noncitizen from acquiring or holding some non-title interest in the land. Marcus v. Truk Trading Corp., 10 FSM Intrm. 387, 390 (Chk. 2001).

The Constitution does not divest noncitizens of their title to land if they had acquired title to land before the Constitution's effective date. Marcus v. Truk Trading Corp., 10 FSM Intrm. 387, 390 (Chk. 2001).

The Constitution does not prohibit a citizen landowner from becoming a citizen of another country and it does not strip a citizen landowner who does become a foreign citizen of title to land to which he acquired title when he was a citizen. Marcus v. Truk Trading Corp., 10 FSM Intrm. 387, 390 (Chk. 2001).

A foreign citizen, is barred from acquiring legal title to land anywhere in the FSM. In re Engichy, 12 FSM Intrm. 58, 68 (Chk. 2003).

– Yap – Interpretation

A constitutional provision that a thing shall be done in such a way "as provided by law" is not self-executing and requires legislation to implement it. Gimnang v. Yap, 7 FSM Intrm. 606, 609 (Yap S. Ct. Tr. 1996).

CONTEMPT

A counsel's decision to take steps which may cause him to be late for a scheduled court hearing, coupled with his failure to advise the court and opposing counsel of the possibility that he might be late to the hearing, may, when followed by failure to appear at the scheduled time, constitute an intentional obstruction of the administration of justice within the meaning of section 119(a) of the Judiciary Act, and may be contempt of court. 4 F.S.M.C. 119(a). In re Robert, 1 FSM Intrm. 18, 20 (Pon. 1981).

The right of citizens to express their views, including views critical of public officials, is fundamental to the development of a healthy political system. Therefore, courts are generally reluctant to find that expression of opinions asserted outside of the court itself, however intemperate or misguided, constitute contempt of court. In re Iriarte (I), 1 FSM Intrm. 239, 247-48 (Pon. 1983).

The need to assure fairness in judicial proceedings is especially pronounced where, as in a criminal contempt proceeding, the court itself is the accuser. In re Iriarte (I), 1 FSM Intrm. 239, 248 (Pon. 1983).

In criminal contempt proceedings, reasonable notice of a charge and an opportunity to be heard are basic in our system of jurisprudence; these rights include a right to examine witnesses against one, to offer testimony, and to be represented by counsel. In re Iriarte (I), 1 FSM Intrm. 239 250 (Pon. 1983).

To insure that order is maintained in court proceedings, courts have a limited power to make a finding of contempt summarily, where the contemptuous conduct takes place during courtroom proceedings and is personally observed by the judge, and where the judge acts immediately. In re Iriarte (I), 1 FSM Intrm. 239, 250 (Pon. 1983).

A hearing on a charge of contempt is less critical to fairness where the events occur before the judge's own eyes and a reporter's transcript is available. In re Iriarte (I), 1 FSM Intrm. 239, 250 (Pon. 1984).

A summary punishment always, and rightly, is regarded with disfavor. Where conviction and punishment is delayed it is much more difficult to argue that action without notice or hearing of any kind is necessary to preserve order and enable the court to proceed with its business. In re Iriarte (I), 1 FSM Intrm. 239, 251 (Pon. 1983).

Once a contemner has left the courtroom, there presumably is no immediate necessity to act without a normal hearing to preserve the integrity of the court proceedings. In re Iriarte (I), 1 FSM Intrm. 239, 251 (Pon. 1983).

Criminal contempt is normally considered a criminal case because the charge exposes the defendant to the possibility of imprisonment. In re Iriarte (II), 1 FSM Intrm. 255, 260 (Pon. 1983).

The defendant of a criminal contempt charge is entitled to those procedural rights normally accorded other criminal defendants. In re Iriarte (II), 1 FSM Intrm. 255, 260 (Pon. 1983).

Where the accused disrupts courtroom proceedings and the judge must act immediately to restore order, a trial judge may immediately convict a defendant (the accused) through a "summary contempt" procedure, that is, without prior notice or hearing. In re Iriarte (II), 1 FSM Intrm. 255, 260 (Pon. 1983).

The defendant of a criminal contempt charge is entitled to those procedural rights normally accorded other criminal defendants. In re Iriarte (II), 1 FSM Intrm, 255, 260 (Pon. 1983).

The summary contempt power may be invoked even after some delay if it was necessary for a transcript to be prepared to substantiate the contempt charge, or where the contemner is an attorney and immediate contempt proceedings may result in a mistrial. In re Iriarte (II), 1 FSM Intrm. 255, 261 (Pon. 1983).

When the necessity to restore order by immediate court action ends, the court's summary contempt power has expired. In re Iriarte (II), 1 FSM Intrm. 255, 261 (Pon. 1983).

Failure to proceed with a contempt hearing offered by the court without prior notice cannot be deemed a loss or waiver of the hearing right itself when no clear and unmistakable warning is issued that a failure to proceed immediately with the hearing will constitute a loss or waiver of that right. In re Iriarte (II), 1 FSM Intrm. 255, 264-65 (Pon. 1983).

Voluntary acts or omissions by a person, done with knowledge of facts sufficient to warn the person that such acts or omission could create a substantial risk of court delay, may constitute intentional obstruction of the administration of justice. In re Tarpley, 2 FSM Intrm. 221, 224 (Pon. 1986).

When counsel receives notice of a hearing, yet intentionally departs without making adequate efforts to reschedule the hearing or to assure that someone will appear on the client's behalf, he knowingly creates

a substantial risk of obstruction of justice. In re Tarpley, 2 FSM Intrm. 221, 224-25 (Pon. 1986).

"Intentional Obstruction," as specified in 4 F.S.M.C. 119, requires that the consequences of the act are the purpose for which it was done, or that the consequences were substantially certain to follow the act. In re Tarpley (II), 3 FSM Intrm. 145, 149 (App. 1987).

One who acts negligently but whose actions do not create a substantial risk of obstruction, may not be deemed to have acted with the necessary intention to be found in contempt. In re Tarpley (II), 3 FSM Intrm. 145, 150 (App. 1987).

The Judiciary Act of 1979 permits the court to both fine and imprison a person found to be in contempt of court, but does not permit the fine to exceed $1,000 or the term of imprisonment to go beyond six months. Soares v. FSM, 4 FSM Intrm. 78, 84 (App. 1989).

Where the record reflects that assets were removed from an insolvent's warehouse by its president following the issuance of a writ of execution banning removal of the insolvent's property and no evidence was presented which showed that the assets removed were not the insolvent's property, a reasonable trier of fact could infer that the assets belonged to the insolvent and could base the president's conviction for contempt of court upon such a finding. Semes v. FSM, 5 FSM Intrm. 49, 51 (App. 1991).

In a contempt trial, the trial court may consider information in addition to evidence adduced in the contempt hearing itself when the other information came to the knowledge of the trial court in previous judicial hearings related to the matter which gave rise to the contempt charge, and when the judge identified the "outside" information and gave the defendant an opportunity to object but the defendant failed to do so. Semes v. FSM, 5 FSM Intrm. 49, 52 (App. 1991).

While the Judiciary Act says relatively little about the appropriate distinctions between civil and criminal contempt proceedings, the statute does reveal a general expectation of Congress that the legal system here shall adhere generally to the same kinds of distinctions between civil and criminal contempt proceedings that have been established in other common law systems. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 62, 65 (Pon. 1991).

Although judiciaries are vested with power to require or authorize initiation of criminal contempt proceedings, and may appoint private counsel to prosecute those proceedings, judiciaries typically attempt to appoint for that purpose government attorneys who are already responsible for public prosecutions. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 62, 66 (Pon. 1991).

A contempt motion brought, not to obtain leverage to force compliance with a existing court order, but instead to attempt to punish the party for a previous violation is criminal in nature. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 62, 66 (Pon. 1991).

Counsel for a party in a civil action may not be appointed to prosecute the opposing party for criminal contempt for violating an order in that action because the primary focus of the private attorney is likely to be, not on the public interest, but instead upon obtaining for his or her client the benefits of the court's order. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 62, 67 (Pon. 1991).

Where the record lacked any identifiable order directing a particular counsel to appear before the court, insofar as the court's expectation was that "somebody" from the Office of the Public Defender appear, no affirmative duty to appear existed; nor did any intentional obstruction of the administration of justice occur to support the lower court's finding of contempt against counsel. In re Powell, 5 FSM Intrm. 114, 117 (App. 1991).

Criminal contempt under the FSM Code results from intentional disregard of a court order; the fact that the defendant was not specifically informed that he would be subject to punishment for disobedience does not negate a finding of requisite intent. Alfons v. FSM, 5 FSM Intrm. 402, 406 (App. 1992).

A garnishee who deliberately disobeys a court order may be held in contempt of court. Mid-Pac Constr. Co. v. Senda, 6 FSM Intrm. 135, 136 (Pon. 1993).

Whether the lower court erred by not holding the appellee in contempt of court involves a trial court's exercise of discretion and is reviewed using an abuse of discretion standard. Onopwi v. Aizawa, 6 FSM Intrm. 537, 539 (Chk. S. Ct. App. 1994).

An appellate court cannot hold a party in contempt for violating a trial court's orders because his actions were not a violation of the appellate court's orders or done in the appellate court's presence. Onopwi v. Aizawa, 6 FSM Intrm. 537, 539 (Chk. S. Ct. App. 1994).

Contempt is not a matter between opposing litigants; it is a matter between the offending person and the court, and the degree of punishment for contempt, if any, is within the sound discretion of the court. Onopwi v. Aizawa, 6 FSM Intrm. 537, 540 (Chk. S. Ct. App. 1994).

The intentional disobedience required for a conviction for contempt necessarily includes an element of voluntariness. In re Contempt of Cheida, 7 FSM Intrm. 183, 185 (App. 1995).

The tardiness of a person who appears before the court as a witness, not as an attorney, who was presented with an unexpected legitimate and confirmed conflict between the demands of two branches of government, and who made efforts to notify the court he would be late, cannot be considered intentional disobedience of the court's summons. In re Contempt of Cheida, 7 FSM Intrm. 183, 186 (App. 1995).

Before a trial court can hold a defendant in civil contempt of a court order it must find that the alleged contemnor knew of the court order and it must find that the alleged contemnor had the ability to comply with that order. Hadley v. Bank of Hawaii, 7 FSM Intrm. 449, 452 (App. 1996).

The inability of an alleged contemnor, without fault on his part to obey a court order generally absolves him from being held in contempt for violating that order, but such a defense is effective only where, after using due diligence, the person still is not able to comply with the order. The defense of inability to comply is not available where the contemnor has voluntarily created the incapacity. Hadley v. Bank of Hawaii, 7 FSM Intrm. 449, 452 (App. 1996).

FSM law allows imprisonment of a debtor for "not more than six months" if he is "adjudged in contempt as a civil matter" for failure "without good cause to comply with any order in aid of judgment." 6 F.S.M.C. 1412. The inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence constitutes "good cause" within the meaning of the statute. Hadley v. Bank of Hawaii, 7 FSM Intrm. 449, 452 (App. 1996).

Generally, a person who seeks to satisfy the court that his failure to obey an order or decree was due entirely to his inability to render obedience, without fault on his part, must prove such inability. The FSM Supreme Court places the burden on the movant to show that the debtor has the ability to comply. Once this burden has been met and the debtor has been held in contempt, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite his exercise of due diligence. Hadley v. Bank of Hawaii, 7 FSM Intrm. 449, 452-53 (App. 1996).

In order to hold a debtor in contempt for failure to comply with an order in aid of judgment it is not enough that the debtor's noncompliance was found to be willful. There must also be a recital, or a finding somewhere in the record, that the debtor was able to comply. Hadley v. Bank of Hawaii, 7 FSM Intrm. 449, 453 (App. 1996).

A prosecution for criminal contempt does not pose a double jeopardy problem when previous contempt proceedings were in the nature of civil contempt, nor does it violate the statutory prohibition against successive prosecutions for contempt. FSM v. Cheida, 7 FSM Intrm. 633, 637 (Chk. 1996).

The doctrine of collateral estoppel or issue preclusion holds that when an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim. It therefore does not apply to a criminal contempt proceeding for acts after earlier civil contempt proceedings and because the burden of proof is different in a criminal proceeding and because it is not a subsequent action between the same parties. FSM v. Cheida, 7 FSM Intrm. 633, 637-38 (Chk. 1996).

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

When a defendant who testified in a civil contempt proceeding was not in custody, the civil contempt proceedings were not conducted to gather evidence for use in a subsequent criminal action and because a court is not required to warn a defendant of his right to counsel before giving testimony in a civil contempt proceeding, the defendant's testimony and voluntarily submitted pleadings in a civil contempt proceeding are admissible in a later criminal contempt proceeding. FSM v. Cheida, 7 FSM Intrm. 633, 640 & n.2 (Chk. 1996).

Punishment of imprisonment for contempt is automatically stayed on appeal, unless the court finds that a stay of imprisonment will cause an immediate obstruction of justice. "Obstruction of justice" means to impede those who seek justice in court or to impede those who have duties or powers to administer justice. In re Contempt of Umwech, 8 FSM Intrm. 20, 22 (Chk. S. Ct. App. 1997).

When all parties are seeking to vindicate their positions in a court of law an immediate obstruction of justice is not present that would prevent the automatic stay of punishment of imprisonment for contempt. In re Contempt of Umwech, 8 FSM Intrm. 20, 22 (Chk. S. Ct. App. 1997).

The standard of review for a criminal contempt conviction, like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt by the evidence which it had a right to believe and accept as true. Johnny v. FSM, 8 FSM Intrm. 203, 206 (App. 1997).

Any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command is contempt of court, which the court has the power to punish. Johnny v. FSM, 8 FSM Intrm. 203, 206 (App. 1997).

Conduct proscribed by a court order may be punished as contempt even though authorized by an executive order because such activity is illegal, and under a government of laws, illegal conduct pays a price. Johnny v. FSM, 8 FSM Intrm. 203, 208 (App. 1997).

In the Kosrae State Code, contempt of court is defined as intentionally obstructing court proceedings or court operations directly related to the administration of justice or intentionally disobeying or resisting the court's writ, process, order, rule, decree or command. In re Contempt of Skilling, 8 FSM Intrm. 419, 424 (App. 1998).

Section 6.1104 of the Kosrae Code expressly gives criminal contempt defendants certain due process safeguards. In re Contempt of Skilling, 8 FSM Intrm. 419, 424 (App. 1998).

In the vast majority of criminal contempt cases, the defendant is given substantially those procedural rights normally accorded to defendants in other criminal cases. In re Contempt of Skilling, 8 FSM Intrm. 419, 424 (App. 1998).

In order to maintain order in the courtroom, courts have a limited power to make a finding of contempt "summarily" where the contemptuous conduct takes place during courtroom proceedings and is personally observed by the judge. This exception is typically used when the accused disrupts courtroom proceedings and the judge must act immediately to restore order. Fewer procedural safeguards are required in such

contexts because the events have occurred before the judge's own eyes and because a reporter's transcript is often available, a hearing is less critical to ensuring that the defendant is treated fairly. In re Contempt of Skilling, 8 FSM Intrm. 419, 424 (App. 1998).

The Kosrae Code and Rules of Criminal Procedure provide that a court may summarily punish a contempt committed in its presence if the justice directly saw or heard the conduct constituting the contempt and so certifies. In re Contempt of Skilling, 8 FSM Intrm. 419, 424 (App. 1998).

In situations in which attorneys or witnesses have been held in criminal contempt of court for failure to appear at court hearings, the FSM Supreme Court trial court has given notice that it was considering holding the defendant in criminal contempt, has taken testimony from the defendant, and has considered whether the defendant's conduct in missing the hearing was intentional. In re Contempt of Skilling, 8 FSM Intrm. 419, 424-25 (App. 1998).

Under Kosrae state law, summary contempt is only appropriate when the contempt is committed in the court's presence, and when the presiding justice directly saw or heard the conduct constituting the contempt. In re Contempt of Skilling, 8 FSM Intrm. 419, 425 (App. 1998).

Under Kosrae law, summary contempt is not appropriate for someone's failure to appear on time. Since the alleged contempt is an indirect contempt – a contempt not in the presence of the judge – the court should schedule a show cause hearing to enable the accused to present his own defense. In re Contempt of Skilling, 8 FSM Intrm. 419, 425 (App. 1998).

Summary contempt proceedings are viewed with disfavor. In re Contempt of Skilling, 8 FSM Intrm. 419, 425 (App. 1998).

Contempt of court is not a matter between opposing litigants, it is a matter between the offending person and the court. In re Contempt of Skilling, 8 FSM Intrm. 419, 426 (App. 1998).

Criminal contempt requires a specific intent to consciously disregard an order of the court, and willfulness does not exist where a defendant pursues in good faith a plausible though mistaken alternative. Mere negligent failure to comply with an order of the court is not enough. In re Contempt of Skilling, 8 FSM Intrm. 419, 426 (App. 1998).

There must be an identifiable, specific order in the record creating an affirmative duty to appear in order for an alleged contemnor to be guilty of contempt for non-appearance. In re Contempt of Skilling, 8 FSM Intrm. 419, 426 (App. 1998).

A summary order of contempt for non-appearance violates an accused's right to due process under the Kosrae Constitution. Accordingly, on appeal the conviction will be vacated and remanded. In re Contempt of Skilling, 8 FSM Intrm. 411, 418 (App. 1998).

A criminal contempt proceeding is maintained to vindicate the authority of the court or to punish otherwise for conduct offensive to the public in violation of a court order. Cheida v. FSM, 9 FSM Intrm. 183, 187 (App. 1999).

As a criminal contempt remedy is designed for individual deterrence, to punish for intentional disobedience of the court's orders, a defendant's status as a first time offender is not a mitigating factor in his sentencing. Cheida v. FSM, 9 FSM Intrm. 183, 188 (App. 1999).

In the usual criminal contempt proceeding, the defendant is charged with criminal contempt by a government attorney. Cheida v. FSM, 9 FSM Intrm. 183, 189 & n.3 (App. 1999).

Criminal contempt proceedings arising out of civil litigation are between the public and the defendant, and are not a part of the original cause. Cheida v. FSM, 9 FSM Intrm. 183, 189 (App. 1999).

Criminal contempt proceedings are instituted to protect the public interest of maintaining respect for the judicial system, and are not merely a stronger form of civil contempt sanctions against a defendant. Cheida v. FSM, 9 FSM Intrm. 183, 189 (App. 1999).

An officer of the court should be held to a higher standard for his contumacious behavior due to his intimate knowledge of the legal system. Cheida v. FSM, 9 FSM Intrm. 183, 190 (App. 1999).

The test for compliance with court orders is that one have knowledge of the order and if such knowledge exists, it is irrelevant that the person has not been served. Nameta v. Cheipot, 9 FSM Intrm. 510, 511 (Chk. S. Ct. Tr. 2000).

An attorney is entitled to appropriate notice and an opportunity to be heard before any sanction is imposed on him, whether that sanction is imposed on him under the civil procedure rules, the criminal contempt statute, or some other court power. In re Sanction of Woodruff, 10 FSM Intrm. 79, 84 (App. 2001).

In addition to its statutory contempt power, the FSM Supreme Court does retain inherent powers to sanction attorneys. In re Sanction of Woodruff, 10 FSM Intrm. 79, 85 (App. 2001).

In order for a person to be held in contempt, a court must find that he knew of the order and had the ability to comply with the order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM Intrm. 100, 102 (Kos. 2001).

A debtor who knew of an order, since he stipulated to it, and who had some ability to pay, as evidenced by the payments that he did make, cannot be found in contempt for failing to meet the payments under the stipulated order when there was insufficient evidence presented to establish any income sufficient to confer on the debtor the ability to pay under the order because having some ability to pay is different from having the ability to make the payments specified in the order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM Intrm. 100, 102 (Kos. 2001).

The distinction between civil and criminal contempt is that the former is prospective, while the latter is retrospective, which is to say that a civil contempt proceeding's purpose is to bring about compliance with a court order, while the criminal contempt's purpose is to punish for past wrongful conduct. Davis v. Kutta, 10 FSM Intrm. 125, 127 (Chk. 2001).

The court may not punish a contemnor for civil contempt where the contemnor lacks the ability, through no fault of his own, to comply with the order, or, in other words, where the contemnor lacks the ability to purge the contempt. Davis v. Kutta, 10 FSM Intrm. 125, 127 (Chk. 2001).

When a person no longer has the ability to purge the contempt by complying with the court's orders, he is not subject to punishment for civil contempt. Davis v. Kutta, 10 FSM Intrm. 125, 127 (Chk. 2001).

A request that someone be punished for his failure to pay a judgment during the period when he did have the ability to comply with the court's orders, is, since the contention relies on past conduct, a request that the court find him in criminal contempt. Davis v. Kutta, 10 FSM Intrm. 125, 127 (Chk. 2001).

Criminal contempt is not a specified remedy in 6 F.S.M.C. 1412, but is an available remedy under the general FSM contempt statute, 4 F.S.M.C. 119, under which the court may punish any intentional disobedience to a lawful court order. Davis v. Kutta, 10 FSM Intrm. 125, 127 (Chk. 2001).

An essential element of a criminal contempt is the subjective intent to defy the court's authority. Davis v. Kutta, 10 FSM Intrm. 125, 127 (Chk. 2001).

A finance director's actions in attempting to achieve payment of a judgment indicates that he lacks the subjective intent necessary for criminal contempt and a court therefore cannot hold him in contempt. Davis v. Kutta, 10 FSM Intrm. 125, 127 (Chk. 2001).

A criminal contemnor's intent must be ascertained from all the acts, words, and circumstances surrounding the occurrence. Davis v. Kutta, 10 FSM Intrm. 125, 127 (Chk. 2001).

Any adjudication of contempt is subject to appeal to the FSM Supreme Court appellate division. Adams v. Island Homes Constr., Inc., 10 FSM Intrm. 466, 470 (Pon. 2001).

The appropriate means by which someone may challenge a discovery order is to subject themselves to a contempt proceeding. Adams v. Island Homes Constr., Inc., 10 FSM Intrm. 466, 470 (Pon. 2001).

Any intentional disobedience or resistance to the court's lawful order is contempt of court. Adams v. Island Homes Constr., Inc., 10 FSM Intrm. 466, 475 (Pon. 2001).

When various recent financial exigencies have affected the judgment-debtor's ability to make the payments as pledged, and the judgment-debtor felt that a payment of no more than $50,000 could be made by the end of February, and that the remainder of the judgment could be paid by the end of the fiscal year, the court is satisfied that the judgment-debtor has not intentionally disobeyed the court's order. Davis v. Kutta, 10 FSM Intrm. 505, 506 (Chk. 2002).

The court may impose no further sanctions when a party is in contempt for its failure to abide by a court order because it knew of the order, had the ability to comply with the order, and decided not to comply, but Rule 37 sanctions have already been imposed. Adams v. Island Homes Constr., Inc., 11 FSM Intrm. 218, 229 (Pon. 2002).

Before a trial court can hold a defendant in civil contempt of court for violating an order in aid of judgment on a debt, it must find that the alleged contemnor both knew of the court order and had the ability to comply with that order. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 373 (App. 2003).

Traditionally the burden has been on the movant to show that the debtor has the ability to comply with the court order. This has been deemed reasonable because in the FSM debtors usually appear *pro se* and creditors do not. Once this burden has been met, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite his exercise of due diligence. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 373-74 (App. 2003).

The statutory remedy for violations of an order in aid of judgment is that if any debtor fails without good cause to comply with any order in aid of judgment, he may be adjudged in contempt as a civil matter. The inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence constitutes "good cause." Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 374 (App. 2003).

A finding that a judgment debtor is in civil contempt will be set aside on appeal only if it is clearly erroneous. In determining whether a factual finding is clearly erroneous, an appellate court must view the evidence in the light most favorable to the appellee. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 374 (App. 2003).

Since a finding of contempt is final and appealable, the legality of the specific sanction of imprisonment should be reviewed at the same time in the interest of judicial economy. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 380 (App. 2003).

Civil contempt is not punishment for the failure to pay a debt. It is a prospective remedial measure designed to encourage, or even coerce, compliance with a lawful court order when the contemnor has been found to have the ability to comply with that order. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 382 (App. 2003).

Criminal contempt (available under 4 F.S.M.C. 119) is retrospective and is punishment for past wrongful conduct. It is not designed to secure compliance with a court order, but instead punishes the intentional

violation of a lawful court order. Except for summary cases when the contempt is before a judge and is needed to maintain courtroom decorum, criminal contempt cases are normally prosecuted by the government, and not by an opposing party. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 382 n.23 (App. 2003).

A person sent to jail after being adjudged in civil contempt can get out of jail anytime he or she chooses merely by complying with the court order and thereby purging himself or herself of the contempt because 6 F.S.M.C. 1412 provides that upon an adjudication of civil contempt, the contemnor shall be committed to jail until he complies with the order. The purpose of a civil contempt adjudication is to secure compliance with a lawful court order when the contemnor has the ability to do so. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 382 (App. 2003).

A finding of civil contempt necessitates a finding that the defendant failed without good cause to comply with the court order. Good cause is the inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence. Rodriguez v. Bank of the FSM, 11 FSM Intrm. 367, 382 (App. 2003).

Contempt of court is any intentional obstruction of the administration of justice by any person or any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command. Atesom v. Kukkun, 11 FSM Intrm. 400, 402 (Chk. 2003).

While the court cannot find, beyond a reasonable doubt, that an attorney intended either to obstruct the administration of justice or to disobey the court's order since he thought the order did not apply to him because he believed he was no longer counsel and he thought (at that time) that he had informed the court of that, it can conclude that the attorney's conduct falls below that expected of someone admitted to the FSM bar. Atesom v. Kukkun, 11 FSM Intrm. 400, 402 (Chk. 2003).

When someone has no say over payment of judgments against the state beyond approving or disapproving vouchers that are submitted to the commission for payment he cannot be in contempt for failure to pay. Estate of Mori v. Chuuk, 11 FSM Intrm. 535, 539 (Chk. 2003).

When a defendant who was found in contempt of court for failure to comply with an order in aid of judgment later dies, the court will vacate its order sentencing him to jail. Bank of the FSM v. Rodriguez, 11 FSM Intrm. 542, 544 (Pon. 2003).

A motion to vacate a contempt order will be denied when nothing stated changes the previous finding. Davis v. Kutta, 11 FSM Intrm. 545, 548 (Pon. 2003).

A person's failure to obey a witness summons is considered contempt of court, and may subject the offending witness to arrest and imprisonment. Kosrae v. Nena, 12 FSM Intrm. 20, 23 (Kos. S. Ct. Tr. 2003).

When the defendants knew of two scheduled conference dates and were able to inform and/or seek leave of court to obtain a rescheduled conference date, but failed to take any action to do so prior to those conferences and when the defendants have intentionally and inexcusably delayed the litigation's progress, and since contempt of court is any intentional obstruction of the administration of justice by any person, or any intentional disobedience or resistance to the court's lawful writ, process, order, rule, decree, or command, the defendants are in civil contempt. FSM Dev. Bank v. Ladore, 12 FSM Intrm. 169, 170-71 (Pon. 2003).

When the court has found the defendants in civil contempt, it may order them imprisoned until such time as they comply with the orders issued to date and/or pay an amount necessary to compensate the court and plaintiff for the wasted time and expense involved in having held and set over pretrial conferences that the defendants never timely rescheduled nor attended; but if, in the court's opinion, imprisonment is a less suitable punishment than a ruling that by its nature will move this litigation to its conclusion, and when the defendant's only asserted defense to having defaulted on the underlying promissory note was his unemployment and inability to pay and he is now employed, the court may order the defendants to settle the case and file a stipulated judgment or the court will strike defendants' answer and enter a default judgment against the

defendants, grant a motion for order in aid of judgment, the plaintiff files one, hold a hearing thereon, make findings as to the defendants' ability to pay, and if warranted, order the defendants' wages garnished for such amount as the court deems appropriate in light of those findings. FSM Dev. Bank v. Ladore, 12 FSM Intrm. 169, 171-72 (Pon. 2003).

Failure to comply with an order in aid of judgment and an injunction can be grounds for a contempt proceeding. Edwin v. Heirs of Mongkeya, 12 FSM Intrm. 220, 222 (Kos. S. Ct. Tr. 2003).

Neither the petitioner nor his counsel will be held in contempt of court when their failure to include the decedent's adopted daughter as an heir was not intentional since the petitioner did not inform counsel of the decedent's adopted child and counsel failed to ask the petitioner, who was a lay person not expected to know the law's requirements and expected to rely on his counsel, to verify all of the decedent's heirs. In re Skilling, 12 FSM Intrm. 447, 449 (Kos. S. Ct. Tr. 2004).

Failure to pay a judgment in accordance with a court order may in the appropriate case constitute conduct that is sanctionable by an order of contempt under 4 F.S.M.C. 119. For such an order to issue, it must be shown that the putative contemnor had knowledge of the order and the ability to obey, and that he did not do so. Barrett v. Chuuk, 12 FSM Intrm. 558, 561 (Chk. 2004).

CONTRACTS

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

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

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

A message of the judicial guidance clause is that a court, when interpreting a contract, may not simply assume that reasonably intelligent Micronesians will perceive the same meaning as would reasonably intelligent Americans. Courts may not blind themselves to the pertinent aspects of Micronesian society, such as less facility in the English language, less exposure to business concepts, and paucity of legal resources, which might cause a reasonably intelligent Micronesian to perceive a meaning differently than would a person from some other nation. Semens v. Continental Air Lines, Inc. (I), 2 FSM Intrm. 131, 149 (Pon. 1985).

A telephone conversation between parties, in which the defendant related his desire to hire plaintiff's rental vehicle, coupled with plaintiff driving the vehicle from his place of business to defendant's place of employment, and defendant, after signing the rental agreement and returning the plaintiff to his business office, driving the vehicle away, satisfied the elements of a binding agreement. Phillip v. Aldis, 3 FSM Intrm. 33, 36 (Pon. S. Ct. Tr. 1987).

Common law decisions of the United States are an appropriate source of guidance for the FSM Supreme Court for contract issues unresolved by statutes, decisions of constitutional courts or custom and tradition within the Federated States of Micronesia. FSM v. Ocean Pearl, 3 FSM Intrm. 87, 90-91 (Pon. 1987).

In determining whether the terms of a contract should be enforced, the court will consider the parties' justified expectations, any forfeiture that would result if enforcement were denied, and any special public interest in the enforcement of the particular term. Falcam v. FSM, 3 FSM Intrm. 194, 197-98 (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. Pohnpei, 3 FSM Intrm. 350, 360 n.22 (Pon. 1988).

Since general contract law falls within powers of the state, state law will be used to resolve contract disputes. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM Intrm. 3, 9 (Pon. 1989).

A statement that one party to a contract has a rental obligation to a nonparty does not constitute a promise to the other party to the contract that the specific rental will be paid to that nonparty. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM Intrm. 3, 11-12 (Pon. 1989).

It is especially important for the court to scrutinize carefully and strictly construe contractual provisions which relate to the payment of attorney's fees. Bank of the FSM v. Bartolome, 4 FSM Intrm. 182, 185 (Pon. 1990).

Where an agreement between two parties is so vague and uncertain that the court cannot determine who is the breaching party, or cannot fashion a remedy to enforce the agreement, there is no contract. Jim v. Alik, 4 FSM Intrm. 198, 200 (Kos. S. Ct. Tr. 1989).

Where no contract existed for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Jim v. Alik, 4 FSM Intrm. 198, 200 (Kos. S. Ct. Tr. 1989).

Restitution is a remedy which returns the benefits already received by a party to the party who gave them where the court can find no contract. Jim v. Alik, 4 FSM Intrm. 198, 201 (Kos. S. Ct. Tr. 1989).

Generally, in cases requiring the interpretation or construction of contracts, the national courts would be called on to apply state law. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 218 (Pon. 1990).

Where attorney's fees claimed pursuant to a contractual provision are excessive or otherwise unreasonable, it is within the equitable and discretionary power of the court to reduce or even deny the award, despite the contractual provision. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 220 (Pon. 1990).

Where time of delivery was not of the essence of the contract and the contract was flexible in the agreed arrangements for delivery, a delivery of a bad container should not be seen as a failure of a condition to further obligations under the contract. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM Intrm. 123, 127 (Pon. 1991).

A breach of contract which is material justifies a halt in performance under the contract by the injured party. Whether a breach is material is a question of fact depending on several factors, particularly where the breach deprives the injured party of the benefits of the contract. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM Intrm. 123, 128 (Pon. 1991).

Prior representation of another party to contractual negotiations is not in and off itself sufficient to create a conflict of interest which would invalidate the negotiated contract unless it can be shown such representation was directly adverse to the other client or materially limited the interests of the present client. Billimon v. Chuuk, 5 FSM Intrm. 130, 135 (Chk. S. Ct. Tr. 1991).

Lease agreement executed by the Chuuk state government is void insofar as it purports to "incur public indebtedness" without legislative authority by way of an appropriation or statute. Billimon v. Chuuk, 5 FSM

Intrm. 130, 135-36 (Chk. S. Ct. Tr. 1991).

Where the plaintiffs were performing their contractual obligations, neither the defendant's wishes to accommodate a municipality's environmental concerns nor the defendant's reliance upon a subsequently passed state law making the subject matter of the contract illegal but which exempts existing contracts, will prevent the defendant from being held liable for termination of the contract. Ponape Constr. Co. v. Pohnpei, 6 FSM Intrm. 114, 124-25 (Pon. 1993).

Where a part of a contract provided that the state give a landowner leftover construction materials a trial court is fully warranted to believe that, by giving the landowner the opportunity to take whatever leftover materials he wanted, the state gave him the materials. Kinere v. Kosrae, 6 FSM Intrm. 307, 309 (App. 1993).

Problems regarding the timing of performance, or the existence of vague terms will not necessarily interfere with the enforceability of a contract. Iriarte v. Micronesian Developers, Inc., 6 FSM Intrm. 332, 335 (Pon. 1994).

In order for an agreement to be binding an agreement must be definite and certain as to its terms and requirements, and it must identify the subject matter and spell out the essential commitments and agreements with respect thereto. Etscheit v. Adams, 6 FSM Intrm. 365, 388 (Pon. 1994).

Where a stipulated preliminary injunction is void because of the judge's disqualification and because of the stipulated dismissal of the court case in which it was issued, factual questions must be resolved before deciding whether it is enforceable as an independent contract. Etscheit v. Adams, 6 FSM Intrm. 365, 391-92 (Pon. 1994).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Etscheit v. Adams, 6 FSM Intrm. 365, 392 (Pon. 1994).

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

A state as a party to a contract has the same rights as any party to a contract and may exercise all the rights that the parties have agreed upon in the contract itself. Truk Shipping Co. v. Chuuk, 7 FSM Intrm. 337, 342 (Chk. S. Ct. Tr. 1995).

Since freedom of will is essential to the validity of a contract, an agreement obtained by duress, coercion, or intimidation is invalid. Nahnken of Nett v. United States, 7 FSM Intrm. 581, 588 (App. 1996).

Where the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. The standard of review for findings of fact is whether the trial court's findings are clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM Intrm. 613, 620 (App. 1996).

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

Principles of contract are inapplicable to employment cases when the proper issue is whether plaintiff

his shown a legal entitlement to permanent employment under the Truk State Public Service System Act. Hauk v. Terravecchia, 8 FSM Intrm. 394, 396 (Chk. 1998).

An officer's authority to contract for a corporation may be actual or apparent, and may result from the officer's conduct and the acquiescence thereto by the directors. The corporation may be estopped to deny the officer's authority by having accepted the benefit of the contract. Generally, an officer's authority to act for his corporation with reference to contracts is a question of fact to be determined by the trier of fact. Asher v. Kosrae, 8 FSM Intrm. 443, 452 (Kos. S. Ct. Tr. 1998).

When the parties did not reach a full understanding of what would be provided in exchange for the right to build an access road across the plaintiffs' land, but the defendant did agree to compensate the plaintiffs in some way, and when the defendant represented to the plaintiffs that the access road, once constructed, would be usable by the plaintiffs' vehicle, the defendant is liable to make the road passable by car or truck. Nelper v. Akinaga, Pangelinan & Saita Co., 8 FSM Intrm. 528, 539-40 (Pon. 1998).

An open account is not self-proving. An account must be supported by an evidentiary foundation to demonstrate the accuracy of the account. FSM Telecomm. Corp. v. Worswick, 9 FSM Intrm. 6, 15 (Yap 1999).

Problems regarding the timing of performance will not necessarily interfere with the enforceability of a contract. O'Byrne v. George, 9 FSM Intrm. 62, 64 (Kos. S. Ct. Tr. 1999).

A breach of contract which is material justifies a halt in performance under the contract by the injured party. Whether a breach is material is a question of fact depending on several factors, particularly when the breach deprives the injured party of the benefits of the contract. O'Byrne v. George, 9 FSM Intrm. 62, 65 (Kos. S. Ct. Tr. 1999).

When the defendant's estimate of the construction materials' cost was a material term in the parties' agreement and the plaintiff paid the defendant the total amount due for materials, the plaintiff's refusal to provide more funds for materials does not constitute a breach of the contract because the plaintiff did not have any obligation to pay defendant any additional sums for construction materials. Therefore the defendant breached his promise to provide all necessary construction materials for the sum the plaintiff paid him. O'Byrne v. George, 9 FSM Intrm. 62, 65 (Kos. S. Ct. Tr. 1999).

A defendant who has completed substantial performance in constructing the plaintiff's house is entitled to payment for the second of three installments for labor and the plaintiff's failure to pay is a breach of her promise to pay the defendant the agreed amount for labor costs. O'Byrne v. George, 9 FSM Intrm. 62, 65 (Kos. S. Ct. Tr. 1999).

An open account is an account based upon running or concurrent dealing between the parties which has not been closed, settled, or stated, and which is kept unclosed with the expectation of further transactions. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM Intrm. 75, 78 (Kos. 1999).

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

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

When a plaintiff's interest and attorney's fee claim rests on a paragraph on the bottom left portion of each invoice and none of the invoices bears the defendant's signature, an issue of fact exists as to whether this pre-judgment interest and fee clause ever formed a material part of the open account agreement between

the parties. Summary judgment is therefore denied on the issue. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM Intrm. 75, 79 (Kos. 1999).

The court will find that the parties' verbal agreement was not modified later by any of the parties' later actions when the plaintiff has failed to sustain his burden of proof with respect to those later actions. Tulensru v. Utwe, 9 FSM Intrm. 95, 98 (Kos. S. Ct. Tr. 1999).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Tulensru v. Utwe, 9 FSM Intrm. 95, 98 (Kos. S. Ct. Tr. 1999).

When both parties have fulfilled their obligations under the contract, there is no breach of the contract by either party. Tulensru v. Utwe, 9 FSM Intrm. 95, 98 (Kos. S. Ct. Tr. 1999).

Lessors are entitled to the unpaid rent from time lessees stopped paying rent until the time lessors terminated the lease, pursuant to the lease's terms, for lessees' failure to pay rent. Ueda v. Stephen, 9 FSM Intrm. 195, 196 (Chk. S. Ct. Tr. 1999).

In determining whether the terms of a contract should be enforced, the court will consider the parties' justified expectations, any forfeiture that would result if enforcement were denied, and any special public interest in the enforcement of the particular term. Malem v. Kosrae, 9 FSM Intrm. 233, 236 (Kos. S. Ct. Tr. 1999).

When both plaintiff and defendant were aware of the project's changed specifications; when defendant was present at the project site on the first day of construction and on several days throughout the project term; when defendant had ample notice and knowledge that the project specifications had been changed; and when defendant did not, at any time, notify, stop or interfere with plaintiff's work and completion of the project, it would be unfair to enforce the contract term that required a writing signed by both parties to amend the agreement's terms and conditions. The parol evidence rule does not bar evidence of subsequent modification of a contract. Malem v. Kosrae, 9 FSM Intrm. 233, 236 (Kos. S. Ct. Tr. 1999).

When one party fails to perform their promise, there is a breach of contract. Malem v. Kosrae, 9 FSM Intrm. 233, 236 (Kos. S. Ct. Tr. 1999).

The court will not enforce a written settlement agreement as a verbal contract against a defendant who has not signed it when because of conflicting affidavits the court finds that the settlement terms were not sufficiently definite to constitute an enforceable contract and when there are questions as to whether the settlement was freely and fairly negotiated by the parties thereto. Bank of Hawaii v. Helgenberger, 9 FSM Intrm. 260, 262 (Pon. 1999).

As a general rule a creditor may rely on its running account, produced in the normal course of it business, to establish a prima facie case, but in the face of contrary credible evidence, it is insufficient to sustain the creditor's burden of proof and each item, or each item not given credit for, must be proven. But the rule does not apply when to support its running account, the plaintiff introduced copies of the accounts sent to the defendant, its internal records of the account, the record of the calls that the defendant said made sense made during the first seven-month period, the testimony of its Yap accountant and of the chief of its division of collections, and when the defendant's own testimony contradicted the record she had prepared in advance of trial showing the calls she admitted making. Worswick v. FSM Telecomm. Corp., 9 FSM Intrm. 460, 464 (App. 2000).

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

When under the parties' contract, the defendant was to pay plaintiff within one year from the time that

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

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

As a general proposition, an express contract and an implied contract for the same thing cannot exist at the same time. Where an express contract is in force, the law does not recognize an implied one. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM Intrm. 551, 558 (Pon. 2000).

As a matter of law, the presence of an express written contract, which clearly sets forth the obligations of the parties, precludes a party from bringing a claim under quantum meruit. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM Intrm. 551, 558 (Pon. 2000).

When estoppel serves as the basis for a plaintiff to file a breach of contract claim and that contract claim has been time barred, the plaintiff's estoppel claim is also barred. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM Intrm. 551, 559 (Pon. 2000).

An agreement and promissory note that does not set out the exact amount of payments needed to make a debt current, would not make performance of that agreement impossible when the party assuming the payments could easily have calculated the amount of the payments he would have to make to bring the loan current. FSM Dev. Bank v. Mudong, 10 FSM Intrm. 67, 76 (Pon. 2001).

When the undisputed facts show that a party clearly entered into a legally binding agreement whereby he agreed and promised to make payments to the bank in exchange for purchasing a taxi service and when he breached it by failing to make the required payments, the court will grant summary judgment to the taxi service seller. The fact that the taxi service was losing money does not excuse the buyer from his responsibility. Nor does the fact that it might have been a bad investment. FSM Dev. Bank v. Mudong, 10 FSM Intrm. 67, 78 (Pon. 2001).

At trial, the plaintiff has the burden of proving each element of his breach of contract claim by a preponderance of the evidence. If he fails to do so, it is appropriate for the trial court to enter judgment against him. Tulensru v. Wakuk, 10 FSM Intrm. 128, 132 (App. 2001).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 194 (Kos. S. Ct. Tr. 2001).

Where no contract exists, the court may use its inherent equity power to fashion a remedy under equitable doctrines. The doctrine of promissory estoppel allows enforcement of promises that induce reliance. The doctrine of promissory estoppel, also referred to as detrimental reliance, is summarized as: A promise which the promisor should reasonably expect to induce action on the part of the promisee, and which does induce such action, is binding if justice requires enforcement of the promise. The remedy for breach may be limited as justice requires. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 195 (Kos. S. Ct. Tr. 2001).

Under the doctrine of promissory estoppel, a person's reliance upon a promise may create rights and duties. The finding of detrimental reliance does not depend upon finding any agreement or consideration. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 195 (Kos. S. Ct. Tr. 2001).

Where no contract existed, a court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 195 (Kos. S. Ct. Tr. 2001).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract. It requires a party to either return what has been received or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another.

Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 195 (Kos. S. Ct. Tr. 2001).

As a general proposition, a governmental entity's breach of a contract, without more, does not constitute a due process violation. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 237 (Kos. S. Ct. Tr. 2001).

A breach of contract and warranty claim that all defendants had warranted that the construction project would be a reasonably safe workplace will be dismissed when the contract does not contain such a warranty, and no other evidence supports the allegation that such an express warranty was made. Amayo v. MJ Co., 10 FSM Intrm. 244, 249 (Pon. 2001).

An agreement to waive a contractual provision is itself a contract, and the same offer and acceptance are required. E.M Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM Intrm. 400, 407 (Pon. 2001).

When the defendant never accepted the plaintiff's offer to waive arbitration, no binding agreement to waive arbitration was ever entered into by the parties. E.M Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 10 FSM Intrm. 400, 407 (Pon. 2001).

A parol agreement inconsistent with a written agreement made contemporaneously therewith is void and unenforceable, unless it was omitted from the written contract by fraud, accident, or mistake. FSM Dev. Bank v. Arthur, 10 FSM Intrm. 479, 480 (Pon. 2001).

When the plaintiff paid the defendant $475 as consideration for the purchase of a washing machine and the defendant promised to sell a new, working washing machine to the plaintiff, who was not able to inspect the washing machine's working condition at the store because the washer was packaged in its original cardboard container, and when the plaintiff discovered that the washing machine did not work properly only after it was installed, the defendant breached the contract by failing to provide to the plaintiff a new, working washing machine because a new washing machine is expected to work properly to wash clothes. Edwin v. True Value Store, 10 FSM Intrm. 481, 484-85 (Kos. S. Ct. Tr. 2001).

Neither the FSM nor Kosrae have yet adopted a Uniform Commercial Code (UCC) to govern sales of goods, although the UCC has been adopted in virtually every U.S. jurisdiction as state law. Edwin v. True Value Store, 10 FSM Intrm. 481, 485 (Kos. S. Ct. Tr. 2001).

When the attorney-client contract is at an end without liability for breach on either side, the attorney remains entitled to compensation according to the contract terms for the services performed to date. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM Intrm. 493, 497 (Chk. 2002).

Contract provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM Intrm. 523, 526 (Kos. S. Ct. Tr. 2002).

When there was no legal requirement for the lessor to offer insurance to the lessee in a car rental agreement, the lessor's failure to offer insurance to the lessee in a rental agreement does not serve as a defense to the damages assessed against the lessee for an accident. Jackson v. George, 10 FSM Intrm. 523, 527 (Kos. S. Ct. Tr. 2002).

An attorney's fee must be reasonable, and the court must make such a finding. Therefore, contract provisions for the payment of attorney's fees will be enforced only to the extent that the fees demanded are reasonable. In debt collection cases, the amount awarded for attorney's fees should not exceed 15 percent of the outstanding principal and interest. Jackson v. George, 10 FSM Intrm. 531, 532-33 (Kos. 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 Intrm. 536, 537 (Chk. S. Ct. Tr. 2002).

That a contract was formed in another jurisdiction does not deprive a court of jurisdiction over a dispute over or enforcement of that contract. It may, however, involve a choice of law problem – contract questions may need to be resolved by resort to the substantive law of the jurisdiction in which the contract was formed, but not necessarily by resort to that jurisdiction's courts. First Hawaiian Bank v. Engichy, 10 FSM Intrm. 536, 537-38 (Chk. S. Ct. Tr. 2002).

Neither Rule 68, nor any principle of contract law, requires an acceptance to be on a different piece of paper from the offer of judgment in order for it to be valid. Kama v. Chuuk, 10 FSM Intrm. 593, 599 (Chk. S. Ct. App. 2002).

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

When a construction contract did not require the plaintiff contractor to perform or pay for any landfilling equipment or landfill materials or to be responsible for payment to any sub-contractor for landfilling equipment or landfill materials and when there was no written Contract Change Order, executed by the parties, as required by General Condition # 1 of the construction contract regarding payment for landfilling equipment or landfill materials, the plaintiff contractor, pursuant of the construction contract's terms, is not responsible for payment of the landfilling equipment costs or the landfill material costs. Youngstrom v. Mongkeya, 11 FSM Intrm. 550, 553 (Kos. S. Ct. Tr. 2003).

An experienced, certified trial counselor admitted to practice law in Kosrae is held to a higher standard regarding knowledge of contract requirements. He should have known that a valid, enforceable contract requires the material term of the cost. Youngstrom v. Mongkeya, 11 FSM Intrm. 550, 554 (Kos. S. Ct. Tr. 2003).

Where no contract existed for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Youngstrom v. Mongkeya, 11 FSM Intrm. 550, 554 (Kos. S. Ct. Tr. 2003).

In order to be binding, an agreement must be definite and certain as to its terms and requirements; it must identify the subject matter and spell out the essential commitment and agreements with respect thereto. Phillip v. Marianas Ins. Co., 11 FSM Intrm. 559, 562 (Pon. 2003).

When the parties have failed to make an enforceable contract due to the lack of definite terms, the court may use its equity power to grant a remedy under the doctrine of restitution. Restitution is a remedy which returns the benefits already received to the party who gave those benefits. Livaie v. Weilbacher, 11 FSM Intrm. 644, 648 (Kos. S. Ct. Tr. 2003).

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

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

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

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

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

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Goyo Corp. v. Christian, 12 FSM Intrm. 140, 146 (Pon. 2003).

A promissory note and a security agreement are enforceable contractual agreements between the parties. Goyo Corp. v. Christian, 12 FSM Intrm. 140, 146 (Pon. 2003).

An MOU that contains promises between two parties for the performance of mutual obligations is a legally binding, enforceable contract. Esau v. Malem Mun. Gov't, 12 FSM Intrm. 433, 435 (Kos. S. Ct. Tr. 2004).

When the parties entered into an oral agreement, which was later reduced to writing, whereby the plaintiff leased his property to the defendant for a monthly rent and for repairs to be completed by defendant, it is an enforceable contract. Lonno v. Talley, 12 FSM Intrm. 484, 486 (Kos. S. Ct. Tr. 2004).

When a contract was later modified verbally by the parties to require a monthly rental payment of $150 for the first year of the agreement, in addition to the agreed upon repairs to be completed by the defendant, this verbal modification of the lease agreement is enforceable. Lonno v. Talley, 12 FSM Intrm. 484, 486 (Kos. S. Ct. Tr. 2004).

When a plaintiff has a judgment based on a common law contract, and there is no FSM statute that affects ordinary contracts in a way that shows a substantial national interest in such matters, the law of contracts is generally one in which state law controls. A governmental entity's breach of a contract, without more, does not constitute a due process violation. Barrett v. Chuuk, 12 FSM Intrm. 558, 561 (Chk. 2004).

Repeated, intentional instances of failure of a state to pay a judgment does not constitute a separate, constitutional claim for deprivation of property without due process where the original underlying claim is not constitutional in character, but is based on common law contract and when there is no constitutional claim that supports the judgment itself, nor a national statute applicable that implicates a "clear and substantial" national interest. Barrett v. Chuuk, 12 FSM Intrm. 558, 561-62 (Chk. 2004).

In a broad sense a guarantor or surety is one who promises to answer for the debt or default of another. FSM Dev. Bank v. Arthur, 13 FSM Intrm. 1, 10 (Pon. 2004).

The main distinction between a contract of surety and one of guaranty has been expressed by stating

that a surety is primarily and jointly liable with the principal debtor, while a guarantor's liability is collateral and secondary and is fixed only by the inability of the principal debtor to discharge the primary obligation. FSM Dev. Bank v. Arthur, 13 FSM Intrm. 1, 11 (Pon. 2004).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable, there must be an offer, acceptance, consideration and definite terms. George v. Alik, 13 FSM Intrm. 12, 14 (Kos. S. Ct. Tr. 2004).

Issues regarding the timing of performance will not necessarily interfere with the enforceability of a contract. George v. Alik, 13 FSM Intrm. 12, 14 (Kos. S. Ct. Tr. 2004).

When an agreement does not specify when the payment was to be made by the defendant to the plaintiff, it suggests that the parties did not regard any specific point in time as essential. Accordingly, the court will adopt a "reasonable time" as the time for performance of the contract. George v. Alik, 13 FSM Intrm. 12, 14-15 (Kos. S. Ct. Tr. 2004).

When one party fails to perform his promise, there is a breach of contract. A breach of contract which is material justifies a halt in performance under the contract by the injured party. George v. Alik, 13 FSM Intrm. 12, 15 (Kos. S. Ct. Tr. 2004).

When the plaintiff had accepted the defendant's condition that the jeep could not be returned to its original condition and continued to request that defendant work on the jeep, the plaintiff had accepted the defendant's condition regarding workmanship on the jeep and the defendant's inability to return the jeep to its original condition and the plaintiff is thus not entitled to recover his claim for additional work completed later by another. Palik v. PKC Auto Repair Shop, 13 FSM Intrm. 93, 96 (Kos. S. Ct. Tr. 2004).

When the plaintiffs allege two separate claims for the same damages in this suit and one sounds in contract and alleges a breach of a purchase agreement since part of the plaintiffs' agreed share of the purchase price was not paid to them and the other claim sounds in tort and alleges that the defendant was negligent in wrongfully releasing the remaining balance to someone else without taking such precautionary measures that a reasonably prudent person would be expected to take as a holder of funds that plaintiffs were entitled to, the court will analyze the contract claim first and finding a breach of the purchase agreement, need not address the plaintiffs' negligence tort claims. Edgar v. Truk Trading Corp., 13 FSM Intrm. 112, 117 (Chk. 2005).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. Livaie v. Weilbacher, 13 FSM Intrm. 139, 143 (App. 2005).

When the existence of a contract is at issue, the trier of fact determines whether the contract did in fact exist. Livaie v. Weilbacher, 13 FSM Intrm. 139, 143 (App. 2005).

When no contract exists for lack of definite terms, the court may use its inherent equity power to fashion a remedy under the doctrine of restitution. Restitution is the proper remedy when no enforceable contract exists. It requires the benefitted party to return what was received or to pay the other party for it. Livaie v. Weilbacher, 13 FSM Intrm. 139, 143 (App. 2005).

– Accord and Satisfaction

For there to be an accord and satisfaction, there must be an offer in full satisfaction of a debt accompanied by acts and declarations that amount to a condition that if the offer is accepted, it is in full satisfaction of the obligation. The condition must be such that the party to whom the offer is made is bound to understand that if it accepts the offer in full satisfaction, it does so subject to the condition imposed. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (I), 7 FSM Intrm. 387, 389 (Pon. 1996).

– Assignment and Delegation

Liabilities arising from a contract are not assignable without the consent of the creditor, and the mere assumption of the debt by a third party is not sufficient to establish a novation of the original contract unless there is a clear assent by the creditor to the substitution of a new obligor. Black Micro Corp. v. Santos, 7 FSM Intrm. 311, 314-15 (Pon. 1995).

When a person is liable for a business's debts because he is the sole proprietor of a business, the sale of the business to another who has agreed to assume the business's liabilities will not relieve him of liability if the creditor has not agreed to the assignment. Black Micro Corp. v. Santos, 7 FSM Intrm. 311, 315 (Pon. 1995).

A party to a contract cannot relieve himself of the obligations which a contract imposed upon him merely by assigning the contract to a third person. Unless the obligee agrees otherwise, neither delegation of performance nor a contract to assume the duty made with the obligor by the person delegated discharges any duty or liability of the delegating obligor. FSM Dev. Bank v. Mudong, 10 FSM Intrm. 67, 74 (Pon. 2001).

Liabilities arising from a contract are not assignable without the consent of the creditor, and a third party's mere assumption of the debt is not sufficient to establish a novation of the original contract unless there is a clear assent by the creditor to the substitution of a new obligor. FSM Dev. Bank v. Mudong, 10 FSM Intrm. 67, 74 (Pon. 2001).

When a person is liable for a business' debts because he is the sole proprietor of a business, the sale of the business to another who has agreed to assume the business' liabilities will not relieve him of liability if the creditor has not agreed to the assignment. FSM Dev. Bank v. Mudong, 10 FSM Intrm. 67, 74 (Pon. 2001).

When a bank agreed to allow another to take on the obligations under a promissory note, but did not agree to allow the borrowers to be free from liability on that note once they had assigned their rights, and when the language of the assignment agreement and promissory note indicates that the parties (assignors and assignee) intended that the assignors would remain liable on the promissory note, the assignors remain liable, and if the assignors are in default on the note, the bank is entitled to summary judgment against the assignors based on their breach of the duty to pay as required. FSM Dev. Bank v. Mudong, 10 FSM Intrm. 67, 74 (Pon. 2001).

While the fact that as part of an assignment another agreed to assume all of a debtor's liabilities under a stipulated judgment may provide the debtor with recourse against the other, it does not affect the debtor's obligation to the creditor under the judgment and payment order. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM Intrm. 100, 103 (Kos. 2001).

– Conditions

A "conditional sale" is one in which the vendee receives possession of and the right to use the goods sold, but transfer of the title depends upon the performance of a condition or the occurrence of a contingency, which is usually full payment of the purchase price. Phillip v. Aldis, 3 FSM Intrm. 33, 37 (Pon. S. Ct. Tr. 1987).

The FSM Supreme Court will not recognize conditions to a contract where they are not created by its express terms or by clear or necessary implication, and where no reasonable construction of the agreement when considered in light of circumstances surrounding its execution points to any intention of the parties to create conditions. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM Intrm. 3, 10-11 (Pon. 1989).

In a contract for installment shipments of goods where the parties' agreement was not in writing and there was no oral agreement or other manifestation of intent that the buyer's obligation to accept shipments was to be conditioned upon each prior shipment having arrived in timely fashion and in good condition, a nonoccurrence of the event or act is a breach of promise which gives rise to a claim for damages, rather than

a failure of a condition to performance, which frees the other party from any further duty to perform the promised acts. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM Intrm. 123, 127 (Pon. 1991).

Where time of delivery was not of the essence of the contract and the contract was flexible in the agreed arrangements for delivery, a delivery of a bad container should not be seen as a failure of a condition to further obligations under the contract. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM Intrm. 123, 127 (Pon. 1991).

Requisite clarity to establish a reference in a contract as a condition precedent may be created through plain and unambiguous language or necessary implication manifested by the contract itself. Kihara v. Nanpei, 5 FSM Intrm. 342, 344 (Pon. 1992).

Conditions to contractual obligations are not favored in the law because they tend to have the effect of creating forfeitures. Kihara v. Nanpei, 5 FSM Intrm. 342, 344 (Pon. 1992).

Where the parties to a proposed contract have agreed that the contract is not to be effective or binding until certain conditions are performed or occur, no binding contract will arise until the conditions specified have occurred or been performed. Etscheit v. Adams, 6 FSM Intrm. 365, 388 (Pon. 1994).

Although conditions to contractual obligations are not favored in the law because they tend to have the effect of creating forfeitures, parties may create a condition to a contract through plain and unambiguous language, through necessary implication manifested by the contract itself, or in some other way that makes their intent to create a condition clear. In the absence of some such showing, courts find promises, not conditions to further performances. Adams v. Etscheit, 6 FSM Intrm. 580, 582-83 (App. 1994).

Conditions precedent to a contract are not favored and the courts will not construe stipulations to be such unless required to do so by plain, unambiguous language or by necessary implication. Adams v. Etscheit, 6 FSM Intrm. 580, 583 (App. 1994).

Because conditions precedent are disfavored at law and require plain and unambiguous language to establish, when differing inferences create an issue of fact, summary judgment that a condition precedent exists is inappropriate. Adams v. Etscheit, 6 FSM Intrm. 580, 584 (App. 1994).

A contention that a contract provision is ambiguous defeats a contention that it creates a condition precedent. Conditions precedent to contractual obligations are not favored in the law and courts will not construe terms to be such unless required to do so by plain and unambiguous language or by necessary implication. Nanpei v. Kihara, 7 FSM Intrm. 319, 324 (App. 1995).

When faced with an allegation that an ambiguous contract provision creates a condition, courts prefer either an interpretation that imposes on a party a duty to see that an event occurs, rather than one that makes the other party's duty conditional on the occurrence of the event, or an interpretation that will reduce an obligee's risk of forfeiture if the event does not occur. Nanpei v. Kihara, 7 FSM Intrm. 319, 324 (App. 1995).

Contractual terms that provide that payment is due "when" or "not until" a stated event occurs are generally not considered to be conditions, but merely a means of measuring time, and if the stated event does not occur then the payment is nevertheless due after a reasonable time. Nanpei v. Kihara, 7 FSM Intrm. 319, 324 (App. 1995).

The existence of quitclaim deeds is evidence that the parties had fulfilled their respective agreed conditions precedent to the transfer of land. Nahnken of Nett v. United States, 7 FSM Intrm. 581, 588-89 (App. 1996).

The time for completion of a house is not a material term of the parties' agreement when nothing in the parties' oral agreement indicated that the "time was of the essence" for completion of the house within two months and when the plaintiff pointed out no particular day of completion as being crucial. Therefore, late

completion of the house should not be seen as a failure of a condition to further obligations under the contract. O'Byrne v. George, 9 FSM Intrm. 62, 64 (Kos. S. Ct. Tr. 1999).

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

– Consideration

No obligation may arise from an agreement that lacks consideration, since consideration is required for a valid contract to exist. Therefore, the termination of a contract that lacks consideration does not violate the prohibition against impairment of the obligations of contracts. Truk Shipping Co. v. Chuuk, 7 FSM Intrm. 337, 341 (Chk. S. Ct. Tr. 1995).

The contract law pre-existing duty rule is that a promise to perform an act which is already required supplies no consideration for the return promise or performance. On that basis, a contract may fail for lack of consideration. But a contract provision cannot be examined in isolation to determine the sufficiency of consideration as a whole. Therefore the rule does not apply where there is sufficient other consideration flowing between the parties to support an agreement and all of its provisions. FSM v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 166, 175 (Pon. 1997).

When there was nothing of value exchanged for a promise to allow a parcel of land to be used to build a house, there was no consideration for the promise. Since consideration for a promise is required for a promise to be enforceable as a contract, when there was no consideration given in exchange for the promise, the parties did not have an enforceable contract. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 194 (Kos. S. Ct. Tr. 2001).

Under the doctrine of promissory estoppel, a person's reliance upon a promise may create rights and duties. The finding of detrimental reliance does not depend upon finding any agreement or consideration. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 195 (Kos. S. Ct. Tr. 2001).

A pre-existing debt establishes sufficient consideration to support the formation of a contract. Goyo Corp. v. Christian, 12 FSM Intrm. 140, 146 (Pon. 2003).

Like other contracts, contracts of guaranty must be supported by consideration, and a guaranty will not be enforced unless the promise is supported by consideration. However, if the promise of the guarantor is shown to have been given as part of a transaction or arrangement which created the guaranteed debt or obligation, the promise is supported by the same consideration which supports the principal transaction. FSM Dev. Bank v. Arthur, 13 FSM Intrm. 1, 11 (Pon. 2004).

When a guaranty was given as a part of the same transaction by which the debt to the bank was created, no independent consideration was necessary. The guaranty was supported by the same consideration that supported the transaction between the debtor and the bank. FSM Dev. Bank v. Arthur, 13 FSM Intrm. 1, 11 (Pon. 2004).

– Damages

When a car rental agreement provides that the lessee shall pay to the lessor all costs and expenses incurred as a result of loss or damage to the rented vehicle regardless of fault, then the lessor has a duty to accept the damaged vehicle and simply charge the repair costs to the lessee. Phillip v. Aldis, 3 FSM Intrm. 33, 36 (Pon. S. Ct. Tr. 1987).

The measure of damages is the difference between the agreed price buyer was to have paid and the

general market price at which seller could sell to another buyer. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM Intrm. 123, 128 (Pon. 1991).

The equitable remedy of specific performance is one where the court orders a breaching party to do that which he has agreed to do, thereby rendering the non-breaching party the exact benefit which he expected. The remedy is available when money damages are inadequate compensation for the plaintiff – when damages cannot be computed or when a substitute cannot be purchased. Ponape Constr. Co. v. Pohnpei, 6 FSM Intrm. 114, 126 (Pon. 1993).

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

The trial court has wide discretion in determining the amount of damages in a contract case. In a breach of contract case the non-breaching party is entitled to damages that will put the party in the position he or she would have been in if not for the breach. The plaintiff may be compensated for the injuries flowing from the breach either by awarding compensation for lost profits, or by awarding compensation for the expenditures made in reliance on the contract. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM Intrm. 502, 505 (Pon. 1994).

The plaintiff has the burden of proving the damages, but once a prima facie showing of damages has been made it is the defendant's burden to prove that the injuries did not result from his omission. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM Intrm. 502, 505 (Pon. 1994).

The right to recover expenditures made in reliance on the contract has limitations. If the plaintiff would have suffered the same losses even if the defendant had performed under the contract, then the plaintiff cannot recover them, since recovery would put the plaintiff in a better position than he would have been in had the defendant performed. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM Intrm. 502, 505 (Pon. 1994).

In order to be recoverable, contract damages must be a proximate consequence of the defendant's breach. A proximate consequence is one that flows from the act complained of, unbroken by any independent cause. Thus, where the loss would have occurred even if the defendant had not breached the contract reliance damages are not recoverable. Kihara Real Estate, Inc. v. Estate of Nanpei (III), 6 FSM Intrm. 502, 506 (Pon. 1994).

The measure of damages for the breach of an agreement to procure insurance is the amount of loss that would have been subject to indemnification by the insurer had the insurance been properly obtained. FSM Dev. Bank v. Bruton, 7 FSM Intrm. 246, 250 (Chk. 1995).

If a plaintiff cannot be compensated for the value it expected from a breached contract, it might then be compensated for its reliance expenditures and placed in as good a position as it would have been if it had not entered into the contract. Pohnpei v. Ponape Constr. Co., 7 FSM Intrm. 613, 623 (App. 1996).

The definiteness of the contract terms and the ease or difficulty of enforcement or supervision must be considered before awarding specific performance damages. Pohnpei v. Ponape Constr. Co., 7 FSM Intrm. 613, 623 (App. 1996).

Generally, interest is usually included as an element of damages as a matter of right when a debtor knows precisely what he is to pay and when he is to pay it. The complaining party has been deprived of funds to which he was entitled by virtue of the contract, the defaulting party knew the exact amount and terms of the debt, and the goal of compensation requires that the complainant be compensated for the loss of use of those funds. This compensation is made in the form of interest. In the absence of statute, an award of prejudgment interest is in the discretion of the court. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM Intrm. 388, 392-93 (Kos. 1998).

Pre-judgment interest at the statutory, judgment rate of 9% is appropriate when the defendant wrote the insufficient funds checks to plaintiff because the defendant knew precisely the amount to which he was obligating himself, and the effective date of that commitment. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM Intrm. 388, 393 (Kos. 1998).

The trial court has wide discretion in determining the amount of damages in a contract case. O'Byrne v. George, 9 FSM Intrm. 62, 65 (Kos. S. Ct. Tr. 1999).

When the plaintiff has paid the defendant in full the entire sum due for construction materials and when because of the defendant's breach the plaintiff has hired a second contractor to finish her house and was required to buy certain materials necessary to complete her house, the plaintiff has suffered damages in the amount of the materials purchased by the second contractor. O'Byrne v. George, 9 FSM Intrm. 62, 65 (Kos. S. Ct. Tr. 1999).

A defendant who has completed substantial performance in constructing the plaintiff's house is entitled to payment for the second of three installments for labor and the plaintiff's failure to pay is a breach of her promise to pay the defendant the agreed amount for labor costs. O'Byrne v. George, 9 FSM Intrm. 62, 65 (Kos. S. Ct. Tr. 1999).

When the defendant has breached its contract with the plaintiff, the plaintiff, who has completed the contract, is entitled to recover the difference between the contract amount and the amount the defendant has already paid. Malem v. Kosrae, 9 FSM Intrm. 233, 236 (Kos. S. Ct. Tr. 1999).

Prejudgment interest is also recoverable in cases where the plaintiff is entitled to recover a liquidated sum of money. Malem v. Kosrae, 9 FSM Intrm. 233, 236 (Kos. S. Ct. Tr. 1999).

When the amount awarded for prejudgment interest is more than the amount designated as usurious, it is excessive and must be reduced. Malem v. Kosrae, 9 FSM Intrm. 233, 237 (Kos. S. Ct. Tr. 1999).

When there is no statutory rate for prejudgment interest and when there is no contract provision or limitation for the award of prejudgment interest, the court may use its discretion to determine the prejudgment interest rate and may accept as reasonable the statutory 9% post-judgment interest rate. Malem v. Kosrae, 9 FSM Intrm. 233, 237 (Kos. S. Ct. Tr. 1999).

Once a claimant's entitlement to damages is established, the amount of damages is an issue of fact for the finder of fact. Kosrae v. Langu, 9 FSM Intrm. 243, 250 (App. 1999).

The trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution. The plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 196 (Kos. S. Ct. Tr. 2001).

Claimed expenditures for food and beverages will not be awarded when the purchase and consumption of these items was not dependent upon the defendant's promise, and labor costs will not be allowed as damages when there was no evidence presented at trial that the plaintiff paid any person a specific sum for labor. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 196 (Kos. S. Ct. Tr. 2001).

Generally, pre-judgment interest is only included as an element of damages as a matter of right when a debtor knows precisely what he is to pay and when he is to pay it. This occurs when a party has been deprived of funds to which he was entitled by virtue of the contract, and the defaulting party knew the exact amount and terms of the debt. In those types of cases, the goal of compensation requires that the complaining party be compensated for the loss of use of those funds. This compensation is made in the form of interest. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 196 (Kos. S. Ct. Tr. 2001).

Punitive damages are not a contract remedy, since only compensatory damages are allowed for breach.

Amayo v. MJ Co., 10 FSM Intrm. 244, 249 (Pon. 2001).

The court has wide discretion in the determination of the damages in a contract case. Edwin v. True Value Store, 10 FSM Intrm. 481, 485 (Kos. S. Ct. Tr. 2001).

When the court finds the remedies provided by the UCC, Article 2, for sales of goods to be persuasive, and appropriate to provide substantial justice in a case, the court may adopt and apply its remedy principles to that case. Edwin v. True Value Store, 10 FSM Intrm. 481, 485 (Kos. S. Ct. Tr. 2001).

A buyer has the right to revoke his acceptance of a unit where the unit is non-conforming and the unit's value is substantially impaired. The revocation must occur within a reasonable time. Revocation of acceptance by the buyer requires the buyer to return the non-conforming goods to the seller, and substantial justice requires that the goods be returned in the same substantial condition as when accepted by the buyer. Edwin v. True Value Store, 10 FSM Intrm. 481, 485 (Kos. S. Ct. Tr. 2001).

The buyer's measure of damages for breach in regard to accepted goods is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted. Edwin v. True Value Store, 10 FSM Intrm. 481, 485 (Kos. S. Ct. Tr. 2001).

When a car rental agreement provides that the lessee shall pay to the lessor all costs and expenses incurred as a result of loss or damage to the rental vehicle, then the lessor has a duty to accept the damaged vehicle and simply charge the repair costs to the lessee. Jackson v. George, 10 FSM Intrm. 523, 525 (Kos. S. Ct. Tr. 2002).

When the police accident report and testimony at the trial shows that the left front fender was not damaged in the accident, repair costs for the left front fender cannot be charged to the defendant. Jackson v. George, 10 FSM Intrm. 523, 525 (Kos. S. Ct. Tr. 2002).

Generally, lost profits may be recovered in breach of contract cases, provided that certain evidentiary requirements are satisfied. Jackson v. George, 10 FSM Intrm. 523, 526 (Kos. S. Ct. Tr. 2002).

The terms "lost profits" and "revenues" are not interchangeable as they have entirely different meanings. "Revenues" are the gross receipts of the business. The term "profits" means the gross proceeds of a business transaction less the costs of the transaction. In other words, profits equal the revenues minus the costs. Jackson v. George, 10 FSM Intrm. 523, 526 (Kos. S. Ct. Tr. 2002).

Lost profits may be presumed to a natural result of a breach of contract, but a plaintiff's claim for lost profits must be clearly established. First, the plaintiff must show that there would have been a profit. The plaintiff must also prove costs of the business because it is impossible to prove profits without first proving costs. Jackson v. George, 10 FSM Intrm. 523, 526 (Kos. S. Ct. Tr. 2002).

If the plaintiff fails to produce satisfactory evidence of costs, then the plaintiff's claim to lost profits must fail, because the trier of fact has no basis to compute profits. Jackson v. George, 10 FSM Intrm. 523, 526 (Kos. S. Ct. Tr. 2002).

When the parties have agreed in the court's presence to specific performance on the issue of damages, trial is not necessary on that issue. James v. Lelu Town, 10 FSM Intrm. 648, 650 (Kos. S. Ct. Tr. 2002).

Generally, punitive damages are not a contract remedy, because only compensatory damages are usually allowed for breach of contract. Kelly v. Lee, 11 FSM Intrm. 116, 117 (Chk. 2002).

When the plaintiff breached a construction contract by not paying the defendant for the change order amount of $1,369 and when the defendant breached the contract by not paying a third party $1,000 for the design plan as agreed, the plaintiff is liable to the defendant for $1,369 for the change order and the defendant is liable to plaintiff for $1,000 for the design fee. In the final calculation, the plaintiff is liable to the defendant

for $369 and the plaintiff is also liable to pay the third party directly for the $1,000 design fee. Mongkeya v. RV Constr., 11 FSM Intrm. 234, 235-36 (Kos. S. Ct. Tr. 2002).

When a terminated employee was contractually entitled to sixty days notice of termination and he would have received $3,575 in gross salary during that period and when this sum must be reduced by the $2,000 the employee diverted, the employee is entitled to $1,575 damages from his employer arising from its breach of his employment contract. Hauk v. Board of Dirs., 11 FSM Intrm. 236, 242 (Chk. S. Ct. Tr. 2002).

Generally, damages for breach by either party to a contract may be liquidated in the agreement, but only in an amount that is reasonable in light of the anticipated or actual loss caused by the breach and of the difficulties of proof of loss. A term fixing unreasonably large liquidated damages may be unenforceable on grounds of public policy as a penalty. Island Homes Constr. Corp. v. Falcam, 11 FSM Intrm. 414, 416 (Pon. 2003).

When in discovery responses the amount of the plaintiffs' damages was stated as slightly more than the amount actually proven at trial, the invoices offered and received into evidence at trial establish by a preponderance of the evidence the amount of plaintiffs' damages. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 234, 241-42 (Pon. 2003).

An assignment agreement that sets forth the full amount of the open accounts due, does not preclude further liability for any goods and services purchased after the date of the assignment agreement. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 234, 242 (Pon. 2003).

The court's pretrial order did not prevent the bank from adequately defending on the question of damages when all witnesses specified in the bank's pretrial statement whose testimony summaries indicated that they had testimony to offer relevant to the question of damages were permitted to testify. Further, when the bank did not object before trial to the court's limitation of its damages witnesses, it waived any objection in this regard. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 234, 242 (Pon. 2003).

Since the only prejudgment interest recognized so far in breach of contract cases is where the contract itself specifically provides for such a remedy, the part of a foreign judgment containing such prejudgment interest may thus be unenforceable in the FSM as against public policy. Northern Marianas Housing Corp. v. Finik, 12 FSM Intrm. 441, 447 (Chk. 2004).

Since a plaintiff is entitled to recover the difference between the contract amount and the amount that the defendant has already paid, the plaintiff is entitled to recover the $100 per month difference between the contract monthly rental amount of $250 and the monthly $150 payment made and the plaintiff is also entitled to recover the amount necessary to complete the repairs to the ceiling and the floor that the defendant had agreed to do. Lonno v. Talley, 12 FSM Intrm. 484, 486 (Kos. S. Ct. Tr. 2004).

The trial court has wide discretion in determining the amount of damages in a contract case. In a breach of contract case, the non-breaching party is entitled to damages that will put the party in the position he would have been in if not for the breach. George v. Alik, 13 FSM Intrm. 12, 15 (Kos. S. Ct. Tr. 2004).

When the defendant's obligation under the contract was to pay the plaintiff the amount of $2,400 in return for the damaged vehicle and the damages were mitigated by the plaintiff's sale of the vehicle for $800, the damages are reduced by $800 to $1,600, and judgment will be entered in the plaintiff's favor and against the defendant in the amount of $1,600. George v. Alik, 13 FSM Intrm. 12, 15 (Kos. S. Ct. Tr. 2004).

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

When there has been a breach of a purchase agreement entitling the plaintiffs to damages, the plaintiffs

are entitled to what they expected to receive if the purchase agreement had not been breached. Edgar v. Truk Trading Corp., 13 FSM Intrm. 112, 118 (Chk. 2005).

– Damages – Mitigation of

A court will not compensate an injured party for a loss that he could have avoided by making efforts appropriate, in the eyes of the court, to the circumstances. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM Intrm. 123, 129 (Pon. 1991).

In a breach of contract case, the injured party is expected to take appropriate actions to mitigate, or lessen, his damages. George v. Alik, 13 FSM Intrm. 12, 15 (Kos. S. Ct. Tr. 2004).

When the defendant failed to buy, as agreed, for the plaintiff's damaged car, the plaintiff was expected to, and did, mitigate his damages by selling the car to someone else. The car's sale price was its fair market value at the time of the sale and the value of the plaintiff's mitigation. George v. Alik, 13 FSM Intrm. 12, 15 (Kos. S. Ct. Tr. 2004).

– Executory

When the sale of a barge was conditional upon inspection and was canceled after the inspection occurred, the agreement, prior to cancellation, remained an executory contract. Kosrae v. Worswick, 10 FSM Intrm. 288, 291 (Kos. 2001).

When it is contemplated that something be done to complete the sale, such as weighing, selecting, delivery, or some other act, the contract is "executory," and title does not pass until the specific goods are ascertained and appropriated in the mode agreed on. Kosrae v. Worswick, 10 FSM Intrm. 288, 291 (Kos. 2001).

– Formation

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. Ponape Constr. Co. v. Pohnpei, 6 FSM Intrm. 114, 123 (Pon. 1993).

A valid and enforceable contract was formed when the state offered to permit plaintiffs to dredge if they would repair the causeway, the plaintiffs accepted the offer by starting repairs, and the material dredged formed the consideration and the terms were sufficiently definite as to the time length of contract because it was limited by the expiration of the U.S. Army Corps of Engineers dredging permit. Pohnpei v. Ponape Constr. Co., 7 FSM Intrm. 613, 620-21 (App. 1996).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). When one party fails to perform their promise, there is a breach of contract. O'Byrne v. George, 9 FSM Intrm. 62, 64 (Kos. S. Ct. Tr. 1999).

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise (that which the performance is exchanged for). Tulensru v. Utwe, 9 FSM Intrm. 95, 98 (Kos. S. Ct. Tr. 1999).

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance,

definite terms, and consideration for the promise. Malem v. Kosrae, 9 FSM Intrm. 233, 236 (Kos. S. Ct. Tr. 1999).

An enforceable contract requires an offer, an acceptance, definite terms, and consideration. Bank of Hawaii v. Helgenberger, 9 FSM Intrm. 260, 262 (Pon. 1999).

A contract is a promise between two parties for the future performance of mutual obligations, which the law will enforce in some way. For the promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise. For an agreement to be binding it must be definite and certain as to its terms and requirements, and it must identify the subject matter and spell out the essential commitments and agreements with respect thereto. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 194 (Kos. S. Ct. Tr. 2001).

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

A contract is a promise between two parties for the future performance of mutual obligations which the law will enforce in some way. For a promise to be enforceable, there must be an offer and an acceptance, definite terms, and consideration for the promise. Youngstrom v. Mongkeya, 11 FSM Intrm. 550, 554 (Kos. S. Ct. Tr. 2003).

When in the parties' verbal promises, a critical definite terms was missing: the cost for the landfilling equipment and landfill materials were unknown, the parties did not form an enforceable contract with respect to the obligation to pay for the landfilling equipment and the landfill materials. Youngstrom v. Mongkeya, 11 FSM Intrm. 550, 554 (Kos. S. Ct. Tr. 2003).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable, there must be an offer, acceptance, consideration and definite terms. Livaie v. Weilbacher, 11 FSM Intrm. 644, 647 (Kos. S. Ct. Tr. 2003).

When the parties did not agree upon the amount, location, scope, timing or deadline to complete the land filling and were aware of the missing elements as they agreed to meet again to work out the details, but the parties did not meet again to finalize the details, one of the four elements necessary for an enforceable contract, definite terms, remained missing from the parties' understanding. Livaie v. Weilbacher, 11 FSM Intrm. 644, 647-48 (Kos. S. Ct. Tr. 2003).

A contract is a promise between two parties for the future performance of mutual obligations. For the promise to be enforceable there must be an offer, acceptance, consideration, and definite terms. Livaie v. Weilbacher, 13 FSM Intrm. 139, 143 (App. 2005).

When a review of the record confirms that the parties did not discuss and there was no agreement about the amount, location, scope, timing or deadline to complete the fill and that the agreement was never reduced to writing (although no Kosrae law would require that it be reduced to writing), the record supports the trial court's finding that the parties failed to agree on definite terms and that therefore no contract was formed. Livaie v. Weilbacher, 13 FSM Intrm. 139, 143 & n.1 (App. 2005).

– Forum Selection Clause

A motion to dismiss because the forum selection clause in the agreement selects a different court to hear the dispute is properly seen as a motion to dismiss for improper forum. National Fisheries Corp. v. New Quick Co., 9 FSM Intrm. 120, 125 (Pon. 1999).

Parties may by contract designate a forum in which any litigation is to take place. Forum selection

clauses are presumed valid, and enforcement will be ordered absent a strong showing that it should be set aside, and unless it clearly would be unreasonable and unjust, or that the clause is invalid for such reasons as fraud or overreaching. National Fisheries Corp. v. New Quick Co., 9 FSM Intrm. 120, 125 (Pon. 1999).

A forum selection clause may be subject to judicial scrutiny for fundamental fairness. In determining fundamental fairness, courts should consider such factors as: 1) whether the forum was selected by one party as a bad faith tactic to discourage pursuit of legitimate claims by the other; 2) whether consent to the forum selection clause was obtained by fraud or overreaching; or 3) whether the contesting party had no notice of the forum provision. National Fisheries Corp. v. New Quick Co., 9 FSM Intrm. 120, 126 (Pon. 1999).

A forum selection clause is not unfair and rendered unenforceable because the court selected is a neutral forum with no relation to the parties or their dispute. National Fisheries Corp. v. New Quick Co., 9 FSM Intrm. 120, 126 & n.1 (Pon. 1999).

A forum selection clause unaffected by fraud, undue influence, or overweening bargaining power should be given full effect. National Fisheries Corp. v. New Quick Co., 9 FSM Intrm. 120, 126 (Pon. 1999).

When parties engaged in an international business transaction unambiguously select a forum in a third country, they are to be credited with knowledge of the jurisdictional requirements of the chosen court. National Fisheries Corp. v. New Quick Co., 9 FSM Intrm. 120, 126 (Pon. 1999).

Once a forum selection clause is determined to be binding, its scope and effect should be determined under a contract law analysis. National Fisheries Corp. v. New Quick Co., 9 FSM Intrm. 120, 127 (Pon. 1999).

When the forum selection clause language uses "exclusive jurisdiction" in conjunction with the mandatory language, "hereby irrevocably consent," it establishes an intent to have any dispute resolved only by the other forum and it leaves no room for dispute over the clause's meaning in this respect. National Fisheries Corp. v. New Quick Co., 9 FSM Intrm. 120, 127 (Pon. 1999).

When contracts between the parties provide that any legal proceedings instituted by either party must be filed and heard in the FSM Supreme Court with no other court having jurisdiction and that should the FSM Supreme Court not accept jurisdiction must the parties' dispute be resolved by arbitration, the FSM Supreme Court, not having declined jurisdiction, will not dismiss or stay the case pending arbitration because arbitration is mandated in a dispute arising from the agreements only when the FSM Supreme Court has declined jurisdiction. Mobil Oil Micronesia, Inc. v. Helgenberger, 9 FSM Intrm. 295, 296 (Pon. 1999).

Parties can designate by contract a forum in which any litigation is to take place, and such forum selection clauses are presumed valid and will be enforced unless there is a strong showing that it would be unreasonable or unjust or fraud or overreaching is involved. The clause must unambiguously name another forum. FSM Dev. Bank v. Gouland, 9 FSM Intrm. 605, 607-08 (Chk. 2000).

When a forum selection clause names a court that no longer exists, but another court is in all respects its successor, it is expected that the case is meant to proceed in that court absent some valid reason it should not. FSM Dev. Bank v. Gouland, 9 FSM Intrm. 605, 608 (Chk. 2000).

Parties can designate by contract a forum in which any litigation is to take place, and such forum selection clauses are presumed valid and will be enforced unless there is a strong showing that it would be unreasonable or unjust, or fraud or overreaching is involved. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 1, 5 (Chk. 2001).

A forum selection clause must unambiguously name a forum. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 1, 5 (Chk. 2001).

When a court by the name Truk State Court no longer exists, and had not existed for several years at the time the mortgage with a forum selection clause naming the Truk State Court was executed and the

Chuuk State Supreme Court was, and is, in all respects the Truk State Court's successor, a court must conclude that when they executed the mortgage the parties understood the phrase "Truk State Court" to mean the Chuuk State Supreme Court. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 1, 5 (Chk. 2001).

When the mortgagors have not expressly waived their right to require the FSM Development Bank to abide by the forum selection it made when it drafted the mortgage they signed and absent some other valid reason, the foreclosure must proceed in the Chuuk State Supreme Court, even though the FSM Supreme Court will determine the amount, if any, of the mortgagors' indebtedness on the promissory note. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 1, 5-6 (Chk. 2001).

Forum selection clauses are presumed valid and will be enforced unless there is a strong showing that it would be unreasonable or unjust, or fraud or overreaching is involved. The clause must unambiguously name another forum. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 107, 109 (Chk. 2001).

Because a court by the name Truk State Court had not existed for several years at the time the mortgage was executed and because the Chuuk State Supreme Court was, and is, in all respects its successor, the parties, when they executed the mortgage, understood the phrase "Truk State Court" to mean the Chuuk State Supreme Court. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 107, 109 (Chk. 2001).

There are two types of forum selection clauses – permissive and mandatory. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 107, 109 (Chk. 2001).

A mandatory forum selection clause requires that all litigation between the parties be conducted in the named forum and nowhere else. To be mandatory, a clause must contain language that clearly designates a forum as the exclusive one. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 107, 109 (Chk. 2001).

Forum selection clauses which give a court jurisdiction without clearly making that jurisdiction exclusive are permissive rather than mandatory. A permissive forum selection clause merely allows a chosen forum to exercise personal jurisdiction over the parties but does not bar litigation in another forum and will not alter the presumption in favor of the plaintiff's choice of forum. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 107, 110 (Chk. 2001).

A forum selection clause cannot be interpreted so as to make it meaningless. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 107, 110 (Chk. 2001).

Because only two courts can exercise jurisdiction over land in Chuuk, the only meaningful reason for the inclusion of a forum selection clause in a mortgage would be to make one court's jurisdiction exclusive. Such a forum selection clause can therefore only be interpreted as mandatory; otherwise it would be meaningless. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 107, 110 (Chk. 2001).

When a forum selection clause in a mortgage was not the result of an arm's length transaction, but the bank dictated all the mortgage's terms, which it prepared in a pre-printed form with blanks in which to insert the borrowers' names and addresses, the amount borrowed and at what interest rate, the number and amount of monthly installment payments and their starting date, and the property mortgaged, it would be inequitable to allow the bank to now interpret the forum selection clause so as to make it meaningless. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 107, 110-11 (Chk. 2001).

Ambiguity in a forum selection clause may be construed against its drafter. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 107, 111 (Chk. 2001).

A forum selection clause is an agreement that disputes relating to the parties' contract will be heard by a designated court and unambiguously names a forum. A threshold question is whether contractual language at issue is a forum selection clause. Phillip v. Marianas Ins. Co., 11 FSM Intrm. 559, 561 (Pon. 2003).

The FSM Supreme Court does not look kindly upon contractual provisions that can only be understood

by individuals who possess an advanced degree in insurance law. Clear, understandable, precise language is a condition to a finding that an insured must bear the cost of litigating in a remote forum. Phillip v. Marianas Ins. Co., 11 FSM Intrm. 559, 562 n.3 (Pon. 2003).

A properly drafted forum selection clause's purpose is to eliminate uncertainty as to where disputes between the parties will be litigated. Such clauses can further eliminate uncertainty by specifying the law that will be applied. When a clause accomplishes neither purpose, and when it would be fundamentally unfair to conclude that the contract provision's ambiguous language constitutes an agreement that claims may be litigated only in a certain place, it does not constitute a forum selection clause. Phillip v. Marianas Ins. Co., 11 FSM Intrm. 559, 562 (Pon. 2003).

To the extent that a purported forum selection clause could be interpreted to require suit in a foreign country, it must be struck down as void as against public policy unless it is a freely negotiated, arms-length agreement between parties with relatively equal bargaining power. An insurance contract that seeks to oust the FSM Supreme Court's jurisdiction will not be upheld when the insured is an FSM citizen and resident, the insurance policy is obtained in the FSM from an FSM-based agent, the premiums are paid in the FSM to cover vehicles operating in the FSM, and the incident giving rise to a claim occurred in the FSM. The clause is against public policy because it impedes the administration of justice relating to insurance claims, and would undermine the public's confidence in business dealings if upheld. To require such lawsuits to be filed in a foreign country would not only be onerous, but would essentially render insurance companies immune from suit. Phillip v. Marianas Ins. Co., 11 FSM Intrm. 559, 562-63 (Pon. 2003).

A forum selection clause will be stricken from a contract when it is unenforceably vague and ambiguous, and void as against public policy. The court will not make this decision lightly, as judicial restraint requires the exercise of extreme caution in striking down a portion of any contract that is entered into freely. Phillip v. Marianas Ins. Co., 11 FSM Intrm. 559, 563 (Pon. 2003).

– Illegality

The court may not simply assume that an illegal contract is unenforceable, but must make its own determination as to whether public policy factors militating against enforcement so outweigh the interests in favor that enforcement must be refused. Falcam v. FSM Postal Serv., 3 FSM Intrm. 112, 121 (Pon. 1987).

A contract ostensibly entered into by government officials on behalf of the government but in violation of applicable law is illegal. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM Intrm. 174, 178 (Pon. 1987).

As a general rule, an illegal contract is unenforceable. Even when performance occurs and a benefit is conferred, no recovery in either expectation damages or quantum meruit may be had. Ponape Constr. Co. v. Pohnpei, 6 FSM Intrm. 114, 125 (Pon. 1993).

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Etscheit v. Adams, 6 FSM Intrm. 365, 392 (Pon. 1994).

A party to an illegal agreement will not be permitted to avail himself of its illegality until he restores to the other party all that has been received from such a party on the illegal agreement, and so long as he continues to enjoy the benefits of the agreement, he will not be allowed to set up its nullity. Nanpei v. Kihara, 7 FSM Intrm. 319, 325 (App. 1995).

Contract provisions that exceed allowable interest rates, and are reached in violation of conflict of interest laws or the procedures prescribed by law, all concern possible violations of the law and may render the contract void as against public policy. Any contract that violates the law when made is not enforceable

in the courts with respect to the illegality. Truk Shipping Co. v. Chuuk, 7 FSM Intrm. 337, 340 (Chk. S. Ct. Tr. 1995).

The prohibition against the impairment of contracts is not absolute. The contract must be valid and enforceable when made. A contract which is illegal when made is unenforceable because no obligation arises from an illegal contract, thus there is no obligation that may be impaired. Truk Shipping Co. v. Chuuk, 7 FSM Intrm. 337, 341 (Chk. S. Ct. Tr. 1995).

A claim of illegality cannot be raised by a party to nullify a contract until it restores to the other party all that it has received under the contract. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (I), 7 FSM Intrm. 387, 389 (Pon. 1996).

Even though there is offer and acceptance and consideration exists, there is no contract when the agent signing the proposal was without authority to bind the principal, and the signing violated statutes, which rendered it illegal. Hauk v. Terravecchia, 8 FSM Intrm. 394, 396 (Chk. 1998).

Whether a trial court correctly used the balancing of factors in weighing enforceability of part of an illegal employment contract, or whether the hiring, being in violation of public policy is unenforceable, is a matter of law, which is reviewed de novo. FSM v. Falcam, 9 FSM Intrm. 1, 4 (App. 1999).

The general rule that illegal agreements are void is not without exceptions and restitution ought to be awarded in some situations. FSM v. Falcam, 9 FSM Intrm. 1, 4 (App. 1999).

Because Congress has not explicitly made employment contracts which violate 11 F.S.M.C. 1305 unenforceable, the FSM Supreme Court may properly decide whether a contravention of public policy is grave enough to warrant unenforceabillty. FSM v. Falcam, 9 FSM Intrm. 1, 4 (App. 1999).

The standard of review of whether the balancing factors for weighing enforceability of part of an illegal employment contract were weighed properly is whether the trial court abused its discretion. FSM v. Falcam, 9 FSM Intrm. 1, 4 (App. 1999).

When there is no national precedent on the issue of the enforcement of an employment contract term which was violative of public policy, and there is no custom or tradition governing the matter, the FSM Supreme Court may look to the common law of the United States. FSM v. Falcam, 9 FSM Intrm. 1, 5 (App. 1999).

Although there was a public interest in denying enforcement because the hiring violated public policy, this is outweighed by the special public interest of the government's failure to provide any hearing or opportunity to be heard concerning its failure to pay the employee or take any steps to terminate the contract, thus constituting a violation of due process rights; the employee's justified expectations of being paid; and the substantial forfeiture would result if enforcement were to be denied. Therefore the trial court did not abuse its discretion in its weighing of the factors on the issue of enforceability. FSM v. Falcam, 9 FSM Intrm. 1, 5 (App. 1999).

A contract entered into by government officials on behalf of the government, but in violation of applicable law, is illegal. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 233 (Kos. S. Ct. Tr. 2001).

A contract which is illegal when it is made is not enforceable because there is no obligation that arises from the illegal contract. There is thus no obligation that has been impaired. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 233 (Kos. S. Ct. Tr. 2001).

As a general rule, an illegal contract is unenforceable. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 233 (Kos. S. Ct. Tr. 2001).

When there was no promise or expectation of the plaintiff's continued employment by the municipal

government after the contract's expiration; when the plaintiff makes no salary claim for unpaid work because, despite the fact that the second contract failed to receive the town council's support as required by the municipal charter and was therefore illegal, the plaintiff was paid for all work performed under the second written contract; public policy weighs in favor of enforcing the provisions of the municipal charter and weighs against enforcement of a contract made in violation of those charter provisions. Plaintiff's breach of contract claim thus fails. Talley v. Lelu Town Council, 10 FSM Intrm. 226, 234 (Kos. S. Ct. Tr. 2001).

A defendant would be estopped from raising an illegality of contract as a defense to a negligence claim when as the other party to the allegedly illegal contract he had the benefit of it. Amayo v. MJ Co., 10 FSM Intrm. 244, 250 (Pon. 2001).

A contract entered into by government officials on behalf of the government but in violation of applicable law is illegal, and as a general rule an illegal contract is unenforceable, even when a benefit has been conferred on the party against whom enforcement is sought. Billimont v. Chuuk, 11 FSM Intrm. 77, 80, 81 (Chk. S. Ct. Tr. 2002).

In order for a lease to be a valid obligation of state funds, it is necessary that the funds be not only already appropriated and available, but appropriated to the specific purpose of funding the lease payments. It is not enough that there are some funds in some account which could be used to pay the lease, having not been used as originally appropriated. Billimont v. Chuuk, 11 FSM Intrm. 77, 80 (Chk. S. Ct. Tr. 2002).

The Restrictive Measures Act, clearly and unambiguously, prohibits execution of housing leases for the benefit of state personnel following its effective date with the only possible exception for the benefit of expatriate professional employees. A lease for a Chuuk citizen does not fit the exception. Billimont v. Chuuk, 11 FSM Intrm. 77, 81 (Chk. S. Ct. Tr. 2002).

When the contract at issue is in violation of two separate Chuuk state statutes, it is illegal, void, and unenforceable, and the plaintiff's breach of contract claim cannot be upheld. Judgment for the defendant on that claim is mandated. Billimont v. Chuuk, 11 FSM Intrm. 77, 81 (Chk. S. Ct. Tr. 2002).

A contract that is entered into *ultra vires* is void and illegal. As a general rule, an illegal contract is unenforceable. Even when performance occurs and a benefit has been conferred, no recovery in either expectation damages or quantum meruit may be had. Nagata v. Pohnpei, 11 FSM Intrm. 265, 271 (Pon. 2002).

A party to an illegal agreement will not be permitted to avail himself of its illegality until he restores to the other party all that has been received from such a party on the illegal agreement, and so long as he continues to enjoy the benefits of the agreement, he will not be allowed to set up its nullity. Goyo Corp. v. Christian, 12 FSM Intrm. 140, 148 (Pon. 2003).

When the argument that the defendants should not be bound in their personal capacities but that only a corporation should be bound by the agreement, contradicts the promissory note's plain meaning, as it is worded, and when the individuals, in their depositions, acknowledged that they read and signed the agreement, they should not be permitted to claim that they did not understand the clear terms. And when at the same time the individuals clearly intended to encumber their personal property and assets, not merely those of the corporation, based upon the promissory note's plain, unambiguous language, the plaintiff is entitled to summary judgment as to the affirmative defense of lack of capacity. Goyo Corp. v. Christian, 12 FSM Intrm. 140, 148 (Pon. 2003).

Courts do not generally inquire into the sufficiency of consideration offered pursuant to a promissory note– parties to an agreement are free to attach value to whatever is exchanged. Goyo Corp. v. Christian, 12 FSM Intrm. 140, 148 (Pon. 2003).

When the plaintiff had a legal right to initiate a lawsuit against a corporate defendant for its unpaid debts at the time that the promissory note was executed in 1994, but instead of initiating a lawsuit, it agreed to

certain terms of payment, and required individuals to personally guarantee that payment would be made, each of the parties gained something in the execution of the promissory note and security agreement. There was thus consideration exchanged by the parties when they entered into these agreements. Goyo Corp. v. Christian, 12 FSM Intrm. 140, 149 (Pon. 2003).

– Implied Contracts

When passengers purchase passage in an ocean-going vessel for transportation, there is an implied maritime contract for passage even in the absence of written document. Weilbacher v. Kosrae, 3 FSM Intrm. 320, 323 (Kos. S. Ct. Tr. 1988).

Where prior course of dealing and surrounding circumstances make it apparent that the parties' intention was that pay for unused vacation time would be an implied term of the contract, the former employee is entitled to the pay for unused vacation time minus the applicable taxes. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM Intrm. 354, 356 (Pon. 1992).

The doctrine of unjust enrichment has been expanded to cover cases where there is an implied contract, but a benefit officiously thrust upon one is not considered an unjust enrichment and restitution is denied in such cases. Etscheit v. Adams, 6 FSM Intrm. 365, 392 (Pon. 1994).

When a defendant, after canceling her long distance phone telephone service, continues to make long distance calls because the plaintiff is slow in terminating the service, the defendant, having made those calls, is precluded from arguing that she should not pay for them. FSM Telecomm. Corp. v. Worswick, 9 FSM Intrm. 6, 17 (Yap 1999).

As a general proposition, an express contract and an implied contract for the same thing cannot exist at the same time. Where an express contract is in force, the law does not recognize an implied one. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM Intrm. 551, 558 (Pon. 2000).

The settled rule that the statute of limitations begins to run upon the accrual of a cause of action applies in actions on implied and quasi contracts. When compensation for services is to be made on a certain date, the statute of limitations on an implied or quasi contract begins to run at that time. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM Intrm. 551, 559 (Pon. 2000).

Quantum meruit is an equitable doctrine, based on the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby; under those circumstances, the law implies a promise to pay a reasonable amount for the labor and materials furnished, even absent a specific contract therefor. The doctrine of unjust enrichment has been recognized in the FSM. Adams v. Island Homes Constr., Inc., 11 FSM Intrm. 218, 232 (Pon. 2002).

A motion to amend a complaint to add an unjust enrichment claim will be denied when it is based upon a defendant's failure to abide by the alleged agreements' terms because these are express agreements, and unjust enrichment is a theory applicable to implied contracts. Adams v. Island Homes Constr., Inc., 11 FSM Intrm. 218, 232 (Pon. 2002).

The doctrine of unjust enrichment only applies where there is no enforceable contract; the doctrine of restitution may not be applied where there is a contract; and the doctrines of implied contract and quantum meruit do not apply where there is an enforceable written contract. Esau v. Malem Mun. Gov't, 12 FSM Intrm. 433, 436 (Kos. S. Ct. Tr. 2004).

– Indemnification

Where it is shown that the party seeking indemnification drafted the contract language, had greater bargaining power than the other party, had greater control over the work activities, or had considerably larger stake and expectation of profits from the endeavor, the courts become increasingly insistent upon ever more

precise language in the indemnity clause as a condition to a finding that a non-negligent indemnitor is required by the clause to bear the burden of the indemnitee's negligence. Semens v. Continental Air Lines, Inc. (I), 2 FSM Intrm. 131, 146 (Pon. 1985).

Where there was no clear statement in a contractual indemnification clause that the indemnitee was to be protected against its own negligence, a reasonably intelligent FSM citizen aware of the general circumstances of the parties would not have perceived the English words used would require that the non-negligent party who had no control over, and relatively little economic stake in the work, must indemnify the major contractor against negligence of that major contractor. Semens v. Continental Air Lines, Inc. (I), 2 FSM Intrm. 131, 149 (Pon. 1985).

In indemnification provisions, in particular, the court requires pristine clarity in the language of the clause. Bank of the FSM v. Bartolome, 4 FSM Intrm. 182, 185 (Pon. 1990).

Because agreements in promissory notes for the payment of attorney's fees are essentially indemnity clauses, they will be given effect only to the extent that expenses and losses are actually incurred, as demonstrated by detailed supporting documentation showing the date, the work done, and the amount of time spent on each service for which a claim for compensation is made. Bank of Hawaii v. Jack, 4 FSM Intrm. 216, 219 (Pon. 1990).

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

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

When an agreement's indemnification provisions regarding the transfer of liability for causes of action and other claims are clear, the transferee is liable to indemnify the transferor for damages awarded for the transferor's negligence. Asher v. Kosrae, 8 FSM Intrm. 443, 453 (Kos. S. Ct. Tr. 1998).

In the case of indemnity the defendant is liable for the whole damage springing from contract, while in contribution the defendant is chargeable only with a ratable proportion founded not on contract but upon equitable factors measured by equality of burden. Senda v. Semes, 8 FSM Intrm. 484, 505 (Pon. 1998).

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

Indemnification arises out of an express or implied contract by which a party held liable shifts the entire loss to another in order to prevent an unjust or unsatisfactory result. Adams v. Island Homes Constr., Inc., 11 FSM Intrm. 445, 449 (Pon. 2003).

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

– Installment Contracts

In a contract for installment shipments of goods where the parties' agreement was not in writing and there was no oral agreement or other manifestation of intent that the buyer's obligation to accept shipments was to be conditioned upon each prior shipment having arrived in timely fashion and in good condition, a nonoccurrence of the event or act is a breach of promise which gives rise to a claim for damages, rather than a failure of a condition to performance, which frees the other party from any further duty to perform the promised acts. Panuelo v. Pepsi Cola Bottling Co. of Guam, 5 FSM Intrm. 123, 127 (Pon. 1991).

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

– Interpretation

Where a purported state employment contract erroneously and consistently recites that it is between the employee and the Trust Territory of the Pacific Islands and contains other statements demonstrating that the contract words were not taken seriously and did not comport with reality, the document is unpersuasive evidence of the relationships among the employee, the state, and the national government. Manahane v. FSM, 1 FSM Intrm. 161, 165-67 (Pon. 1982).

Where there is ambiguity within a contractual clause and there are various reasonable and practical alternative constructions available, it is necessary to employ rules of interpretation. Semens v. Continental Air Lines, Inc. (I), 2 FSM Intrm. 131, 147 (Pon. 1985).

The purpose of the common law rules of interpretation is to assist in reaching an objective interpretation, determining the meaning which reasonably intelligent people, knowing the circumstances, would place upon the words. Semens v. Continental Air Lines, Inc. (I), 2 FSM Intrm. 131, 148 (Pon. 1985).

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

Where there are various reasonable and practical alternative constructions of a contractual provision available, rules of interpretation dictate that any ambiguities in a contract should be construed more strictly against the party who wrote it. Bank of the FSM v. Bartolome, 4 FSM Intrm. 182, 185 (Pon. 1990).

Contracts are not interpreted on the basis of subjective uncommunicated views, or secret hopes of one of the parties, but on an objective basis, according to the reasonable expectations or understanding of parties based upon circumstances known to the parties and their words and actions, at the time the agreement was entered into. Kihara v. Nanpei, 5 FSM Intrm. 342, 345 (Pon. 1992).

Where prior course of dealing and surrounding circumstances make it apparent that the parties' intention was that pay for unused vacation time would be an implied term the former employee is entitled to the pay for unused vacation time minus the applicable taxes. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM Intrm. 354, 356 (Pon. 1992).

The controlling factor in the interpretation of contracts is the intention of the parties at the time of the entering into of the contract. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM Intrm. 354, 356 (Pon. 1992).

When the language of a contract is ambiguous or uncertain a court may look beyond the words of the contract to the surrounding circumstances and the parties' intent without changing the writing. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM Intrm. 354, 356 (Pon. 1992).

Where the express language of the contract does not unambiguously require the employer to pay a terminated employee the equivalent of the cost of shipping household goods back to point of hire when no goods are actually shipped and where there are no surrounding circumstances or prior course of dealing

indicating that this was the parties' intent the court will find that it was not the parties' intent and thus not a term of the contract that terminated employees be paid shipping costs for household goods not shipped. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM Intrm. 354, 357 (Pon. 1992).

Contracts frequently do not specify the time of performance and courts routinely decide what a reasonable time for performance is in those cases where no time has been specified. Iriarte v. Micronesian Developers, Inc., 6 FSM Intrm. 332, 335 (Pon. 1994).

The presumption that a written contract that is complete on its face embodies the final and entire agreement between the parties may be rebutted by evidence presented at trial. Etscheit v. Adams, 6 FSM Intrm. 365, 384 (Pon. 1994).

An instrument that is not a promissory note because it fails to contain words of negotiability may still be enforceable as a contract between the parties. Nanpei v. Kihara, 7 FSM Intrm. 319, 323 (App. 1995).

Interpretations of terms in contracts are matters of law to be determined by the court. Nanpei v. Kihara, 7 FSM Intrm. 319, 323 (App. 1995).

When the language of a contract is ambiguous or uncertain a court may look beyond the words of the contract to the surrounding circumstances to determine the parties' intent without changing the writing, and the court should attempt to determine meaning of words used rather than what signatory later says he intended. Nanpei v. Kihara, 7 FSM Intrm. 319, 324 (App. 1995).

When faced with an allegation that an ambiguous contract provision creates a condition, courts prefer either an interpretation that imposes on a party a duty to see that an event occurs, rather than one that makes the other party's duty conditional on the occurrence of the event, or an interpretation that will reduce an obligee's risk of forfeiture if the event does not occur. Nanpei v. Kihara, 7 FSM Intrm. 319, 324 (App. 1995).

Unless it is clear from the agreement or the surrounding circumstances that the obligee has assumed the risk of forfeiture, courts prefer an interpretation that reduces that risk. Nanpei v. Kihara, 7 FSM Intrm. 319, 324 (App. 1995).

Interpretations of contract terms are matters of law to be determined by the court, and are reviewed on appeal *de novo*. Pohnpei v. Ponape Constr. Co., 7 FSM Intrm. 613, 621 (App. 1996).

Contracts are not interpreted on the basis of subjective uncommunicated views, or secret hopes of one of the parties, but on an objective basis. FSM v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 79, 86 (Pon. 1997).

The determining factor as to the rights of a third-party beneficiary is the intention of the parties who actually made the contract. The question whether a contract was intended for the benefit of a third person is generally regarded as one of construction of the contract. The parties' intention in this respect is determined by the terms of the contract as a whole, construed in the light of the circumstances under which it was made and with the apparent purpose that the parties are trying to accomplish. Mailo v. Penta Ocean Inc., 8 FSM Intrm. 139, 141 (Chk. 1997).

The time for completion of a house is not a material term of the parties' agreement when nothing in the parties' oral agreement indicated that the "time was of the essence" for completion of the house within two months and when the plaintiff pointed out no particular day of completion as being crucial. Therefore, late completion of the house should not be seen as a failure of a condition to further obligations under the contract. O'Byrne v. George, 9 FSM Intrm. 62, 64 (Kos. S. Ct. Tr. 1999).

The controlling factor in the interpretation of contracts is the intention of the parties at the time of the entering into the contract. Tulensru v. Utwe, 9 FSM Intrm. 95, 98 (Kos. S. Ct. Tr. 1999).

Contracts are not interpreted on the basis of subjective uncommunicated views, or secret hopes of one of the parties, but on an objective basis. Contracts are interpreted according to the reasonable expectations or understanding of parties based upon circumstances known to the parties and their words and actions, at the time the agreement was entered into. Tulensru v. Utwe, 9 FSM Intrm. 95, 98 (Kos. S. Ct. Tr. 1999).

When the parties made their verbal agreement promising that the plaintiff would provide fill materials from his quarry for various of the defendant's municipal projects and that the defendant would provide the plaintiff with two loads of fill material for each day of hauling, they formed a contract because these promises contained an offer, acceptance and consideration and the terms of the agreement were definite and enforceable. The parties' essential commitments and agreement were identified and definite. Therefore the agreement is binding. Tulensru v. Utwe, 9 FSM Intrm. 95, 98 (Kos. S. Ct. Tr. 1999).

Once a forum selection clause is determined to be binding, its scope and effect should be determined under a contract law analysis. National Fisheries Corp. v. New Quick Co., 9 FSM Intrm. 120, 127 (Pon. 1999).

When the forum selection clause language uses "exclusive jurisdiction" in conjunction with the mandatory language, "hereby irrevocably consent," it establishes an intent to have any dispute resolved only by the other forum and it leaves no room for dispute over the clause's meaning in this respect. National Fisheries Corp. v. New Quick Co., 9 FSM Intrm. 120, 127 (Pon. 1999).

Contractual interpretation is a question of law to be reviewed de novo on appeal. Wolphagen v. Ramp, 9 FSM Intrm. 191, 194 (App. 1999).

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

It is a well established principle of contract construction that clauses which are knowingly incorporated into a contract should not be treated as meaningless. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 107, 110 (Chk. 2001).

Ambiguity in a contract provision is generally construed against the drafter. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 107, 111 (Chk. 2001).

In interpreting a contract, words are to be given there plain and ordinary meaning. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM Intrm. 112, 115 (Kos. 2001).

A contract provision that states that a fishing association will "take necessary steps to facilitate prompt and adequate settlement of any claim for loss or damage" against its member vessels cannot be read to mean that the association assumed liability for those claims because to "facilitate" a settlement of a claim or loss, without more, does not mean to assume liability for the claim or loss. Dai Wang Sheng v. Japan Far Seas Purse Seine Fishing Ass'n, 10 FSM Intrm. 112, 115 (Kos. 2001).

When contractual provisions differ significantly from similar ones in another contract they therefore must be interpreted differently, and a party's liability must be based on the language in the agreement it signed, not on the language in the agreement that another signed. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM Intrm. 169, 173 (Chk. 2001).

Interpretations of contract terms are matters of law to be determined by the court. FSM v. National Offshore Tuna Fisheries Ass'n, 10 FSM Intrm. 169, 173 (Chk. 2001).

When a fishing agreement requires that the signatory organizations must only take "necessary steps

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

Construction of a contract for an attorney's compensation is governed by the same rules that apply to contracts generally and interpretation of contract terms are matters of law to be determined by the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 10 FSM Intrm. 493, 496 (Chk. 2002).

Contracts are not interpreted on the basis of one of the parties' subjective uncommunicated views or secret hopes. Instead, courts interpret and enforce agreements on an objective basis, according to the parties' reasonable expectations based upon the circumstances known to the parties and their words and actions, at the time the agreement was entered into. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM Intrm. 502, 504-05 (Pon. 2002).

The fact that a party's understanding of an agreement is at variance with its express terms does not raise an issue of fact precluding summary judgment. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM Intrm. 502, 505 (Pon. 2002).

Ambiguities in a contract must be construed against the drafter. Hauk v. Board of Dirs., 11 FSM Intrm. 236, 241 (Chk. S. Ct. Tr. 2002).

In interpreting a contract, the words thereof are to be given their plain and ordinary meaning. Hauk v. Board of Dirs., 11 FSM Intrm. 236, 241 (Chk. S. Ct. Tr. 2002).

When a contract provision for written notice of termination was inserted in the contract to assure that the employee had actual notice of the adverse action and when there is no dispute that the employee received actual notice of his termination, the employer's failure to provide written notice is not actionable breach of contract. Hauk v. Board of Dirs., 11 FSM Intrm. 236, 242 (Chk. S. Ct. Tr. 2002).

When an employment contract has no provision for immediate termination under any circumstances, even where it is undisputed that the employer's property was misappropriated by an employee under contract, the court, construing the contract against the drafter, must conclude that the employer was required to provide the employee with sixty days written notice of his termination, which must run from the date of actual notice of impending termination. Hauk v. Board of Dirs., 11 FSM Intrm. 236, 242 (Chk. S. Ct. Tr. 2002).

When interpreting a contract, the FSM judiciary may not simply assume that reasonably intelligent Micronesians will perceive the same meaning as would reasonably intelligent Americans. The court may not blind itself to the pertinent aspects of Micronesian society, such as less facility in the English language, less exposure to business concepts, and paucity of legal resources, which might cause a reasonably intelligent Micronesian to perceive a meaning differently than would a person from some other nation. Phillip v. Marianas Ins. Co., 11 FSM Intrm. 559, 563 n.4 (Pon. 2003).

Contracts are not interpreted on the basis of subjective, uncommunicated views or secret hopes of one of the parties. Instead, courts interpret and enforce agreements on an objective basis, according to the parties' reasonable expectations or understanding based upon the circumstances known to the parties and their words and actions, at the time the agreement was entered into. Goyo Corp. v. Christian, 12 FSM Intrm. 140, 146 (Pon. 2003).

Only when there is ambiguity within a contract and there are various reasonable and practical alternative constructions available is it necessary to employ rules of interpretation. Otherwise, a party may not seek to

introduce evidence that shows that the clear and unambiguous terms of a written agreement are other than as shown on the face of the agreement. Such a prohibition preserves the security and credibility of those who contract with the good faith belief that what they sign is what they agree to. Goyo Corp. v. Christian, 12 FSM Intrm. 140, 146 (Pon. 2003).

The word "shall" renders the indicated procedures mandatory. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 234, 239 (Pon. 2003).

Contracts frequently do not specify the time of performance and courts routinely decide what is a "reasonable time" for performance in those cases. Therefore, if the timing of a party's performance under a contract is in dispute, it is the court's duty to determine what is a "reasonable time" for performance. Esau v. Malem Mun. Gov't, 12 FSM Intrm. 433, 435 (Kos. S. Ct. Tr. 2004).

– Mistake and Misunderstanding

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

The doctrine of unjust enrichment generally applies where there is an unenforceable contract due to impossibility, illegality, mistake, fraud, or another reason and requires a party to either return what has been received under the contract or pay the other party for it. The unjust enrichment doctrine is based on the idea one person should not be permitted unjustly to enrich himself at the expense of another. Etscheit v. Adams, 6 FSM Intrm. 365, 392 (Pon. 1994).

The parol evidence rule generally prohibits the introduction of any extrinsic evidence, whether oral or written, to vary, alter or add to the terms of an integrated written instrument, but parol evidence is generally held admissible to alter the terms of a written contract when it is shown that by reason of mutual mistake the parties' true intention is not expressed. FSM Dev. Bank v. Arthur, 10 FSM Intrm. 479, 480 (Pon. 2001).

In the case of mutual mistake the adversely affected party may rescind or avoid the contract. FSM Dev. Bank v. Arthur, 13 FSM Intrm. 1, 9 (Pon. 2004).

A mutual mistake occurs when both parties are under substantially the same erroneous belief as to the facts. In a mutual mistake case, the party adversely affected must show that: 1) the mistake goes to a basic assumption on which the contract was made; 2) the mistake has a material effect on the agreed exchange of performances; and 3) the mistake is not one of which he bears the risk. FSM Dev. Bank v. Arthur, 13 FSM Intrm. 1, 9 (Pon. 2004).

When the mistake did not go to a basic assumption upon which the contract (loan) was made; when the mistake had no effect on the agreed exchange of performances – the loan terms offered by the bank and accepted and agreed to by the borrower were not a result of the "mistake"; and when both parties were not under substantially the same erroneous belief as to the facts that were the basis of the agreement, there was no mutual erroneous belief about the facts which were the basis for the loan and its terms and it is not a case of mutual mistake. FSM Dev. Bank v. Arthur, 13 FSM Intrm. 1, 9 (Pon. 2004).

Contracts are not reformed for mistake, writings are. The distinction is crucial. Courts have been tenacious in refusing to remake a bargain entered into because of mistake. They will, however, rewrite a writing which does not express the bargain. FSM Dev. Bank v. Arthur, 13 FSM Intrm. 1, 9 (Pon. 2004).

The classic case for reformation is a scrivener's or typist's error. Reformation is available in the case of the omission of a term agreed on, the inclusion of a term not agreed on, or the incorrect reduction of a term to writing. At the simplest level it is the mechanism for the correction of typographical and other similar inadvertent errors in reducing an agreement to writing. FSM Dev. Bank v. Arthur, 13 FSM Intrm. 1, 9 (Pon. 2004).

The variance between the original agreement and the writing may take any one of an infinity of conceivable forms. Often, the mistake is as to the legal effect of the writing; the parties' agreement called for a particular legal result. The writing, if enforced, produces a different result. Reformation is available. FSM Dev. Bank v. Arthur, 13 FSM Intrm. 1, 9 (Pon. 2004).

Where, because of mistake, a writing fails to accurately state the parties' agreement, reformation is the exclusive remedy. If the writing is inaccurate because of fraud, the alternative remedies of reformation and rescission are available. But when no allegation of fraud has been made, rescission is not an available remedy. FSM Dev. Bank v. Arthur, 13 FSM Intrm. 1, 9 (Pon. 2004).

– Necessity of Writing

Under a statute of frauds writings are not required to make a contract, but to provide evidence that a contract has been made. A writing meets the statute of frauds if it contains the names of the parties, terms and conditions of the contract, a reasonable description of the subject of the contract and is signed by the party to be charged. It need not state the particulars of the contract so long as its substance or essential terms are stated, and it need not be a single document, but may be pieced together from separate writings. Pohnpei v. Ponape Constr. Co., 7 FSM Intrm. 613, 620 (App. 1996).

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