The obligation to support the parties' children is, after all, one that the mother must share with the father, taking into account her ability to contribute. Ramp v. Ramp, 11 FSM Intrm. 630, 643 (Pon. 2003).

When under the separation agreement, the father is only obligated to support the parties' adult children while they are pursuing post secondary education and since a child has re-enrolled in college and the father has now resumed paying her expenses and another has left school, these two do not entitle the mother to any measure of relief. Ramp v. Ramp, 11 FSM Intrm. 630, 643 (Pon. 2003).

A requested child support order will be denied as redundant when it is already in the parties' court-approved separation agreement and past history shows that the father has complied with it. Ramp v. Ramp, 11 FSM Intrm. 630, 643-44 (Pon. 2003).

– Divorce

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

Since a divorce case involves the status or condition of a person and his relation to other persons the law to be applied is the law of the domicile. Youngstrom v. Youngstrom, 5 FSM Intrm. 335, 337 (Pon. 1992).

When a divorced couple is jointly responsible on a promissory note, no agreement they could make between them could possibly prevent the creditor from pursuing its claims against either or both of them, and since the issue of whether one of the defendants could have relieved himself or herself from responsibility to the creditor could not have been litigated in the divorce proceeding, the creditor cannot be precluded from litigating that issue. Bank of the FSM v. Hebel, 10 FSM Intrm. 279, 286 (Pon. 2001).

A divorcing couple is free to enter into whatever agreement they choose as to who between the two of them will be responsible to repay a bank loan. However, such an agreement can have no effect on bank's right to seek repayment of the loan from either or both of them. Bank of the FSM v. Hebel, 10 FSM Intrm. 279, 286 (Pon. 2001).

Title 6, section 1622, FSM Code provides that any decree as to custody or support of the parties' minor children is subject to revision by the court at any time, but does not provide for continuing jurisdiction over property issues. Ramp v. Ramp, 11 FSM Intrm. 630, 633 n.1 (Pon. 2003).

Because a divorce case involves the parties' status or condition and their relationship to others, the law to be applied is that of the domicile. Thus in a divorce between a Pohnpeian, who now resides in Hawaii, and an American citizen who resides in Pohnpei and the parties lived in Pohnpei during their marriage, the court will apply Pohnpei substantive law. Ramp v. Ramp, 11 FSM Intrm. 630, 641 (Pon. 2003).

– Probate

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

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

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

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

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

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

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

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

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).

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

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

A probate appeal may be remanded when a number of essential issues and facts have yet to be established and the ends of justice require that additional matters must be considered, including whether the appellants are proper parties to the proceedings and who are the beneficiaries or the exact persons entitled to share in the assets of the estate and what the proposed division of the assets is. In re Malon, 8 FSM Intrm. 591, 592 (Chk. S. Ct. App. 1998).

The terms of the will and the clear intent of the testator control who shall be in actual physical control of the land for the purpose and its preservation and for the purpose of granting its reasonable use by those persons having a lawful right to the use of the land. In re Ori, 8 FSM Intrm. 593, 594 (Chk. S. Ct. App. 1998).

Because the Chuuk Constitution requires the courts to make decisions consistent with Chuukese customs and traditions, Chuukese custom and tradition may prevail over the provisions of a holographic will in deciding who may enter upon land for the purpose of making reasonable use thereof. In re Ori, 8 FSM Intrm. 593, 595 (Chk. S. Ct. App. 1998).

A will written out by request by someone else does not constitute a holographic will within the meaning of 13 TTC 6, or one in the handwriting of the testator, but one prepared by another at the testator's direction within the meaning of 13 TTC 5. Elaija v. Edmond, 9 FSM Intrm. 175, 181 (Kos. S. Ct. Tr. 1999).

There were no clearly ascertainable statutory requirements for the execution of a valid will in Kosrae in 1962. Elaija v. Edmond, 9 FSM Intrm. 175, 181-82 n.3 (Kos. S. Ct. Tr. 1999).

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

It is in an estate's best interests that a trustee who resides in Kosrae be appointed to manage the lease

of a land parcel located in Kosrae, so that negotiations, collection and distribution of the lease payments can easily take place in Kosrae, where most of the heirs live; and so that the trustee be able to quickly respond to any issues or problems which may arise during the lease, including seeking court assistance. In re Estate of Melander, 12 FSM Intrm. 82, 83 (Kos. S. Ct. Tr. 2003).

Even if a will is valid and judicially recognized as such, this does not automatically make every bequest in that will valid. For a bequest to be valid, the testator must, at the time of his death, actually own the property being bequeathed. A person can only transfer such title to land as he validly owns. Anton v. Cornelius, 12 FSM Intrm. 280, 287 (App. 2003).

When the Kosrae State Court did not abuse its discretion in concluding that the Land Commission's findings that the testator had not actually acquired ownership of the land were not clearly erroneous, any further consideration of the will was pointless once it has been determined that the testator did not own the land mentioned in the will. Anton v. Cornelius, 12 FSM Intrm. 280, 288 (App. 2003).

In general, a probate court is not a court of equity, but it is recognized that a probate court may apply principles of equity in determining issues brought before it. In re Estate of Setik, 12 FSM Intrm. 423, 428 (Chk. S. Ct. Tr. 2004).

When the court has determined the portion of a decedent's estate that one heir is to inherit, the court may permit all the heirs to agree to divide the estate to satisfy that heir's judgment. In re Estate of Setik, 12 FSM Intrm. 423, 431 (Chk. S. Ct. Tr. 2004).

The filing requirements in probate proceedings, specifically require that all heirs be listed in the verified petition. The term "heirs" include the decedent's surviving adopted children. In re Skilling, 12 FSM Intrm. 447, 449 (Kos. S. Ct. Tr. 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).

Counsel is expected to know legal and procedural requirements for court filings and proceedings and is required to provide competent representation to a client, which includes the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. It is counsel's duty to complete all preparation necessary to represent a petitioner in a probate proceeding, including investigating and obtaining all necessary facts to prepare the verified petition. In re Skilling, 12 FSM Intrm. 447, 449 (Kos. S. Ct. Tr. 2004).

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

When the plaintiffs' predecessor in interest no longer held title to the parcel in April 2002, when he wrote his will, he could not transfer any interest in the parcel, by will or otherwise, to the plaintiffs or to anyone else and therefore the plaintiffs do not have likelihood of success on the merits. This factor weighs strongly in the defendants' favor. Benjamin v. Youngstrom, 13 FSM Intrm. 72, 75-76 (Kos. S. Ct. Tr. 2004).

ELECTIONS

After the executive branch has declared a candidate to have won an election, that winner has the right to hold office, subject only to the legislative branch's power to judge the qualifications of its members. Daniel v. Moses, 3 FSM Intrm. 1, 4 (Pon. S. Ct. Tr. 1985).

An election must be completed and the results announced before the election can be contested. Daniel

v. Moses, 3 FSM Intrm. 1, 4 (Pon. S. Ct. Tr. 1985).

For elections, the timing provisions of the National Election Code prevail over any conflicting timing set out in the APA. Olter v. National Election Comm'r, 3 FSM Intrm. 123, 129 (App. 1987).

The "two-of-three mechanism," in which three tabulators tally the votes for a particular candidate as they are read aloud, and either all three tabulators, or at least two of the three tabulators, must agree on the results for the results to be taken as correct, is not illegal, unreasonable, improper or prohibited. This mechanism will produce an accurate count for most ballot boxes. Olter v. National Election Comm'r, 3 FSM Intrm. 123, 135-37 (App. 1987).

To interpret 9 F.S.M.C. 904, the FSM Supreme Court should apply a two-prong test. The first prong is whether there is a "substantial question or fraud or error" and the second prong is whether there is "substantial possibility that the outcome would be affected by a recount." Olter v. National Election Comm'r, 3 FSM Intrm. 123, 136-37 (App. 1987).

Generally, the conduct of elections is left to the political branches of government, unless the court has powers specifically given to it by Congress contrary to that general rule. Kony v. Mori, 6 FSM Intrm. 28, 29 (Chk. 1993).

By statute an aggrieved candidate in an election contest can only appeal to the FSM Supreme Court after his petition to the National Election Commissioner has been denied. Kony v. Mori, 6 FSM Intrm. 28, 30 (Chk. 1993).

The National Election Commissioner has the power to establish voting precincts and designate polling places upon the recommendation of the members of the board of elections of the particular election district. Aten v. National Election Comm'r (II), 6 FSM Intrm. 74, 76-77 (App. 1993).

If the possibility of double voting is alleged the burden is on the appellant to show that it occurred. Aten v. National Election Comm'r (II), 6 FSM Intrm. 74, 78 (App. 1993).

When a state election is held on the same date as the national election and the closing time for the state poll is later than the 5:00 p.m. closing time for the national election, then the later state closing time prevails for the national election as well. The poll remains open to allow all who are waiting in line at closing time to vote. Aten v. National Election Comm'r (II), 6 FSM Intrm. 74, 79 (App. 1993).

When the National Election Commissioner's decision concerning election irregularities is appealed to the FSM Supreme Court, the Appellate Division must decide whether the National Election Commissioner's decision is proper, and if not, whether the irregularities complained of could have resulted in the election of a candidate who would not have won had the irregularities not occurred. Aten v. National Election Comm'r (II), 6 FSM Intrm. 74, 81 (App. 1993).

Where election irregularities cannot be corrected by a recount, the election, in whole or in part, can be set aside and done over only if it is more likely than not that the irregularities complained of could have, not necessarily would have, resulted in the election of a candidate who would not have won had the irregularities not occurred. Aten v. National Election Comm'r (II), 6 FSM Intrm. 74, 82 (App. 1993).

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

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).

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).

While the Constitution makes ineligible for election to Congress persons convicted of felonies in FSM courts, the Constitution gives to Congress the power to modify that ineligibility by statute. Robert v. Mori, 6 FSM Intrm. 394, 398 (App. 1994).

Congress has the Constitutional power to prescribe, by statute, additional qualifications for eligibility for election to Congress beyond those found in the Constitution. Such additional qualifications must be consistent with the rest of the Constitution. Knowledge of English may not be a qualification. Robert v. Mori, 6 FSM Intrm. 394, 399 (App. 1994).

Congress, not the FSM Supreme Court, has the constitutional power to make persons granted a pardon of a felony conviction eligible for election to Congress. The court cannot exercise a power reserved to Congress. Robert v. Mori, 6 FSM Intrm. 394, 401 (App. 1994).

Courts of equity are without jurisdiction to enforce purely political rights. Matters concerning the conduct of elections are usually left to the political branches and the courts generally have no jurisdiction until after the elections are held. Election Commissioner v. Petewon, 6 FSM Intrm. 491, 500 (Chk. S. Ct. App. 1994).

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

Generally speaking, elections are conducted and carried out and administered by the executive and legislative branches. Courts do not have a primary position in that traditional scheme. The election law states the time at which the court has the right of entertaining an appeal from the final action of the National Election Director. Wiliander v. Siales, 7 FSM Intrm. 77, 79 (Chk. 1995).

Where the election law provides for remedies that have not yet been used a candidate cannot show irreparable harm necessary for the issuance of a temporary restraining order. Wiliander v. Siales, 7 FSM Intrm. 77, 80 (Chk. 1995).

While there may be cases in which the court would enter a matter before the election process has been completed the court will not do so where none of the acts complained of are contrary to law. Wiliander v. Siales, 7 FSM Intrm. 77, 80 (Chk. 1995).

By statute, petitions to the National Election Director challenging the acceptablitiy of a vote or votes must be filed prior to certification of the results of the election or within one week of the election, whichever occurs first. Wiliander v. Mallarme, 7 FSM Intrm. 152, 156 (App. 1995).

By statute, absentee ballots are to be examined when received, on or before Election Day, to determine if the voter is qualified to vote absentee, and the ballot envelope deposited unopened in container, and publicly delivered to counting and tabulating committee on Election Day. Wiliander v. Mallarme, 7 FSM Intrm. 152, 156-57 (App. 1995).

Where, because election officials had not processed the absentee ballots until nine and ten days after the election thus making it impossible to file a petition concerning the acceptability of those ballots within the statutory time frame of prior to certification of the results of the election or within one week of the election, whichever occurs first, the petition will still be considered timely if it is filed before certification. Wiliander v. Mallarme, 7 FSM Intrm. 152, 157 (App. 1995).

The time frames established by statute for election petitions to the National Election Director are short. A candidate must be vigilant in asserting his rights to petition. Wiliander v. Mallarme, 7 FSM Intrm. 152, 157 (App. 1995).

Where no action, or words, or silence of the National Election Director prior to the appellant's initial petition misled the appellant into untimely filing his petition after certification it does not give rise to an estoppel. The Director's later failure to raise the issue of untimeliness until his denial of the petition was appealed to the Supreme Court does not give rise to an estoppel. Wiliander v. Mallarme, 7 FSM Intrm. 152, 157-58 (App. 1995).

Deadlines set by statute are generally jurisdictional. If the deadline has not been strictly complied with the adjudicator is without jurisdiction over the matter once the deadline has passed. This applies equally to the National Election Director as a member of an administrative agency (executive branch) hearing an appeal as it does to a court hearing an appeal from an administrative agency. Thus the Director cannot extend statutory time frames set by Congress. When the Director had not rendered his decision within the statutorily-prescribed time limit it must be considered a denial of the petition, and the petitioner could then have filed his appeal in the Supreme Court. Wiliander v. Mallarme, 7 FSM Intrm. 152, 158 (App. 1995).

A timely received absentee ballot may be rejected if the accompanying statement is insufficient, the signatures do not correspond, the procedure for marking and returning the absentee ballot has not been complied with, the voter is not a qualified elector, or the ballot envelope has been tampered with. Wiliander v. Mallarme, 7 FSM Intrm. 152, 156 n.6, 159 (App. 1995).

The formalities involved in the absentee election process are intended to safeguard the electoral process from voter fraud. Therefore a regulation rejecting absentee ballots if the signature on the request form is different from the signature on the statement accompanying an absentee ballot is a reasonable exercise of the National Election Director's power to implement rules and regulations for absentee ballots. Wiliander v. Mallarme, 7 FSM Intrm. 152, 160-61 (App. 1995).

Since the right to vote is personal – one person's vote cannot be cast by another – one person's request to vote absentee cannot be made by another. Wiliander v. Mallarme, 7 FSM Intrm. 152, 160 (App. 1995).

Congress intended that the National Election Code be applied uniformly throughout the nation. Wiliander v. Mallarme, 7 FSM Intrm. 152, 161 (App. 1995).

Congress intended that the election appeal process be timely and expeditious. This is especially important in a year in which the newly elected Congress selects the President and Vice President of the nation from among its members. Wiliander v. Mallarme, 7 FSM Intrm. 152, 161 (App. 1995).

The Chuuk State Election Law, Chk. Pub. L. No. 3-95-26, §§ 126, 130, requires that all election complaints be filed with the Chuuk Election Commissioner and that all appeals from the Election Commissioner's decision go directly to the Chuuk State Supreme Court appellate division. Aizawa v. Chuuk State Election Comm'r, 8 FSM Intrm. 245, 247 (Chk. S. Ct. Tr. 1998).

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

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

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

A decision of the Chuuk Election Commission may be appealed to the Chuuk State Supreme Court appellate division. David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300f, 300h (Chk. S. Ct. App. 1998).

A radio announcement of the results of an Uman municipal election by the Uman Election Commissioner is not a ruling by the Chuuk Election Commission which would authorize an appeal to the Chuuk State Supreme Court appellate division. David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300f (Chk. S. Ct. App. 1998).

The right to contest an election is not a common law right. Elections belong to the political branch of the government, and are beyond the control of the judicial power. David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300g (Chk. S. Ct. App. 1998).

The jurisdiction of courts exercising general equity powers does not include election contests, unless it is so provided expressly or impliedly by the constitution or by statute. David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300g (Chk. S. Ct. App. 1998).

It is a general rule that courts of equity have no inherent power to try contested elections, notwithstanding fraud on the part of the election officers. David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300g (Chk. S. Ct. App. 1998).

Constitutions and statutes of most jurisdictions provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300g (Chk. S. Ct. App. 1998).

Election contests are purely statutory, and the courts have no inherent power to determine election contests, the determination of such contests being a judicial function only when and to the extent that the determination is authorized by statute. David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300h (Chk. S. Ct. App. 1998).

If the Chuuk State Supreme Court appellate division has original jurisdiction to decide an election contest, there must be a specific constitutional or statutory provision giving the appellate division that authority. David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300h (Chk. S. Ct. App. 1998).

The Chuuk Constitution provides that there shall be an independent Election Commission vested with powers, duties, and responsibilities, as prescribed by statute, for the administration of elections in the State of Chuuk. David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300h (Chk. S. Ct. App. 1998).

The Chuuk Election Law of 1996 applies to all elections in Chuuk including municipal elections unless otherwise specifically provided. David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300i (Chk. S. Ct. App. 1998).

The Chuuk State Supreme Court appellate division has no original jurisdiction to entertain an appeal directly from a municipal election commissioner. David v. Uman Election Comm'r, 8 FSM Intrm. 300d, 300i (Chk. S. Ct. App. 1998).

All the provisions of the Chuuk State Election Law of 1996 apply to all elections in the State of Chuuk, including municipal and national elections whenever applicable unless otherwise specifically provided. Chipen v. Chuuk State Election Comm'n, 8 FSM Intrm. 300n, 300o (Chk. S. Ct. App. 1998).

When a contestant offers no evidence of voting irregularities before a municipal election board and the Chuuk State Election Commission and the Chuuk State Supreme Court appellate division, the appellate division has no basis to disturb the findings of fact reached by the Election Commission. Findings of fact relative to the residence, age and location of electors will generally be left undisturbed. Chipen v. Chuuk State Election Comm'n, 8 FSM Intrm. 300n, 300p (Chk. S. Ct. App. 1998).

All ballots forwarded to absentee voters and not physically received by the Commission at its main office prior to the closing of the polls on election day shall be rejected. Chipen v. Chuuk State Election Comm'n, 8 FSM Intrm. 300n, 300p (Chk. S. Ct. App. 1998).

The right to contest an election is not a common-law right. Elections belong to the political branch of the government, and are beyond the control of the judicial power. An election contest is purely a constitutional or statutory proceeding. Mathew v. Silander, 8 FSM Intrm. 560, 562 (Chk. S. Ct. Tr. 1998).

The jurisdiction of courts exercising general equity powers does not include election contests, unless it is so provided expressly or impliedly by the constitution or by statute. Mathew v. Silander, 8 FSM Intrm. 560, 562 (Chk. S. Ct. Tr. 1998).

It is a general rule that courts of equity have no inherent power to try contested elections, notwithstanding fraud on the part of the election officers. Mathew v. Silander, 8 FSM Intrm. 560, 562 (Chk. S. Ct. Tr. 1998).

The constitutions and statutes of most jurisdictions provide, as a part of the machinery of elections, a procedure by which election results may be contested. Such contests are regulated wholly by the constitutional or statutory provisions. They are not actions at law or suits in equity, and were unknown to the common law. The proceedings are special and summary in their nature. A strict observance to the steps necessary to give jurisdiction is required, and the jurisdictional facts must appear on the face of the proceedings. If these steps are not followed, courts are powerless to entertain such proceedings. Mathew v. Silander, 8 FSM Intrm. 560, 563 (Chk. S. Ct. Tr. 1998).

The determination of an election contest is a judicial function only so far as authorized by the statute. The court exercising the jurisdiction does not proceed according to the course of the common law, but must resort to the statute alone to ascertain its powers and mode of procedure. Mathew v. Silander, 8 FSM Intrm. 560, 563 (Chk. S. Ct. Tr. 1998).

The Chuuk Constitution provides that there shall be an independent election commission vested with powers, duties, and responsibilities, as prescribed by statute, for the administration of elections in Chuuk. Mathew v. Silander, 8 FSM Intrm. 560, 564 (Chk. S. Ct. Tr. 1998).

The Chuuk State Supreme Court trial division could have had jurisdiction over election commission appeals had the legislature seen fit to grant it such authority, but the Election Law of 1996, provides that Chuuk Election Commission decisions may be appealed to the appellate division. Therefore an election contest appeal in the trial division will be dismissed for lack of jurisdiction. Mathew v. Silander, 8 FSM Intrm. 560, 564 (Chk. S. Ct. Tr. 1998).

No stay in an election appeal will be granted when nothing in the record of the case indicates that appellant will suffer irreparable harm and, also, that he will likely prevail on the merits of the appeal and when granting a stay would have a substantial effect on the municipal employees and other public officials who have held office for almost a year and would not be in the public interest of having an efficient and effective municipal government. Pius v. Chuuk State Election Comm'n, 8 FSM Intrm. 570, 571 (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).

Voting is a privilege and not a right. Chipen v. Losap Election Comm'r, 9 FSM Intrm. 46, 47 (Chk. S. Ct. Tr. 1999).

Absentee voting is a privilege granted electors, and not an absolute right. The purpose of statutes permitting absentee voting is to enable a qualified voter to vote at a general election in the precinct of his domicil when he is temporarily absent therefrom. Chipen v. Losap Election Comm'r, 9 FSM Intrm. 46, 47 (Chk. S. Ct. Tr. 1999).

Unless voting is expressly allowed elsewhere, all ballots must be cast in the state of residence. Chipen v. Losap Election Comm'r, 9 FSM Intrm. 46, 48 (Chk. S. Ct. Tr. 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).

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).

When it appears that there is no provision in the Chuuk Constitution or statutes which guarantees the right to or even permits voting by absentee ballot, the appellants have not shown a likelihood of success on appeal and their request for a stay of a trial court judgment not to deliver Losap municipal absentee ballots to voters outside of Chuuk will be denied. Chipen v. Election Comm'r of Losap, 9 FSM Intrm. 80, 81 (Chk. S. Ct. App. 1999).

The National Election Commissioner's failure to send out any absentee ballots until eleven days before the election instead of the at least 30 days prior to an election provided for by 9 F.S.M.C. 704(1) is not in substantial compliance with the procedures required by the statute and was a direct violation of a mandatory statute enacted by Congress. Braiel v. National Election Dir., 9 FSM Intrm. 133, 136 (App. 1999).

When requests for absentee ballots were received between January 30th and February 11th and no ballots were sent out until February 19th, those ballots were not sent out as soon as is practicable after the request was received as required by statute. Braiel v. National Election Dir., 9 FSM Intrm. 133, 136 (App. 1999).

Errors in not timely providing absentee ballots can be largely remedied by extending the time in which ballots from such voters can be counted as timely received. Braiel v. National Election Dir., 9 FSM Intrm. 133, 136 (App. 1999).

Absentee ballots must be sent out at least thirty days before the election to all duly qualified voters who have requested them by then. Braiel v. National Election Dir., 9 FSM Intrm. 133, 136, 137 (App. 1999).

No absentee ballots received after the established close of polling places on Election Day should be counted and tabulated. Braiel v. National Election Dir., 9 FSM Intrm. 133, 137 (App. 1999).

There are rare occasions when an equitable remedy may be proper in an election case. Braiel v. National Election Dir., 9 FSM Intrm. 133, 137 (App. 1999).

The innocent voter who has done everything right should not lose the right to vote and be counted because the election officials have disregarded the mandates and directions of the election law. Braiel v. National Election Dir., 9 FSM Intrm. 133, 138 (App. 1999).

Separate mail or delivery by absentee voters is not required by the statute's language. Braiel v. National Election Dir., 9 FSM Intrm. 133, 138 (App. 1999).

Mere irregularities in a ballot's form will not invalidate an election if the voters' intent is obvious. Therefore ballots where the alignment of the candidate's name, picture, and box for an X vary slightly from the specimen ballot are not confusing and will not be invalidated. Braiel v. National Election Dir., 9 FSM Intrm. 133, 139 (App. 1999).

Candidates are to notify the national election commissioner twenty-four hours before their intended use of a government broadcast facility. FSM v. Moses, 9 FSM Intrm. 139, 144 (Pon. 1999).

When there is no statutory requirement that a candidate submit his taped speech before it is aired and when there is no mention of criminal liability on the of the government broadcast facility should it do so, there is no probable cause to believe a crime has been committed, and the information and criminal summons should be dismissed without prejudice. FSM v. Moses, 9 FSM Intrm. 139, 145 (Pon. 1999).

A court will not extrapolate a statute's allowable meaning to encompass submission of the taped speech directly to the radio station without first submitting it to the national election commissioner when the statute's only stated requirement is twenty-four hours' notice. FSM v. Moses, 9 FSM Intrm. 139, 145 (Pon. 1999).

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).

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).

The national election director and his deputies in the four states, the national election commissioners, may have a duty to take all reasonable steps to insure that candidates have equal access to government broadcast facilities. FSM v. Moses, 9 FSM Intrm. 139, 146 (Pon. 1999).

An election contest is purely a constitutional or statutory proceeding. At common law there was no right to contest in a court any public election, the theory being that elections belong to the political branch of the government, beyond the control of judicial power. Phillip v. Phillip, 9 FSM Intrm. 226, 228 (Chk. S. Ct. Tr. 1999).

All provisions of the Chuuk Election Law of 1996 apply to all elections in the State of Chuuk, including municipal and national elections whenever applicable unless otherwise specifically provided. Phillip v. Phillip, 9 FSM Intrm. 226, 228 (Chk. S. Ct. Tr. 1999).

When a voter contests any election he must file a written complaint with the Chuuk Election Commission. If the contestant is dissatisfied with the Commission's decision, appeal to the Chuuk State Supreme Court appellate division can be had, and if the contestant is dissatisfied with the Chuuk State Supreme Court appellate division's decision, appeal to the FSM Supreme Court can be had. The Chuuk State Supreme Court trial division is without jurisdiction to hear an election contest. Phillip v. Phillip, 9 FSM Intrm. 226, 228 (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).

While conditions may be imposed on candidates, the candidate must be afforded a reasonable opportunity to satisfy the conditions, and the extraction of fees which are arbitrary, or have no relation to the expense of the election will be denied. Nameta v. Cheipot, 9 FSM Intrm. 510, 512 (Chk. S. Ct. Tr. 2000).

The purpose of election filing fees is to defray the costs of the procedures leading to the election. There must be a reasonable relation to the amount of the fee and the costs incurred. Unreasonable fees not only deny the candidate his right to be a candidate, but also deny the right of every person to select him for office. When the fee requirements go beyond the bounds of reasonable regulation, it operates as a substantial

impairment of the right of the electorate to freely choose the candidate of their choice. Nameta v. Cheipot, 9 FSM Intrm. 510, 512 (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).

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

When a constitution establishes specific eligibility requirements for a particular constitutional office, the legislature is without power to require different qualifications and when there is no direct authority in the constitution for the legislature to establish qualifications for office in excess of those imposed by the constitution, such extra qualifications are unconstitutional. Olap v. Chuuk State Election Comm'n, 9 FSM Intrm. 531, 533 (Chk. S. Ct. Tr. 2000).

The Chuuk Constitution does not, either expressly or by implication, give the Legislature any authority whatsoever, to add qualifications for persons seeking a legislative office beyond those in the Constitution. Olap v. Chuuk State Election Comm'n, 9 FSM Intrm. 531, 533 (Chk. S. Ct. Tr. 2000).

It is beyond the power of the Legislature to enact a law to prohibit government employees from becoming candidates for legislative service. Olap v. Chuuk State Election Comm'n, 9 FSM Intrm. 531, 534 (Chk. S. Ct. Tr. 2000).

The issue of whether a person is entitled to have his name placed on the ballot is an election case, over which neither division of the Chuuk State Supreme Court has original jurisdiction, and which is placed solely in the hands of the Chuuk State Election Commission with the Chuuk State Supreme Court appellate division having jurisdiction only as provided in the Election Law of 1996. Hethon v. Os, 9 FSM Intrm. 534, 535 (Chk. S. Ct. Tr. 2000).

Even if the purported enactment of the education qualifications for mayor and assistant mayor were unquestionably enacted, the municipal council is without authority to add qualifications to those set out in the municipal constitution unless the constitution so authorizes the council. Chipen v. Election Comm'r of Losap, 10 FSM Intrm. 15, 17-18 (Chk. 2001).

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).

A municipality and its election commissioner will be restrained from enforcing added qualifications for municipal office when a short time remains to file as a candidate and the harm is irreparable to those potential candidates who are denied nominating petitions because they do not meet the unlawful added qualifications, when there is no harm to the municipality or the election commissioner if they are required to allow the candidacies, and when the public interest is served if eligible citizens are able to present themselves for election. Chipen v. Election Comm'r of Losap, 10 FSM Intrm. 15, 18 (Chk. 2001).

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).

When the statute requires that a statement of contest must be filed within five days "after declaration of the result of the election by the body canvassing the returns" and also provides that upon "tabulation of each of the precinct votes, the Commission shall tabulate or cause to be tabulated the cumulative results, including

the total of election results for each nominee, and make these results known to the public," the declaration is when the results are made known to the public. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 153 (Chk. S. Ct. App. 2001).

An aggrieved candidate does not have to wait until the final certification of the results to file his complaint. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 153 (Chk. S. Ct. App. 2001).

The Chuuk State Election Commission must meet within three days after certification to consider any complaints. A contestant is justified in considering the Commission's failure to meet within its deadline as a denial of his complaint, and is thus entitled to file a notice of appeal. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 153-54 (Chk. S. Ct. App. 2001).

The Legislature has, under its power to prescribe by statute for the regulation of the certification of elections and under its power to provide by law for review of administrative agency decisions, the power to place the jurisdiction to review Election Commission decisions in the Chuuk State Supreme Court appellate division rather than in the trial division. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 155 (Chk. S. Ct. App. 2001).

There is no provision in the election law allowing a voter to cast a ballot after the polling places have closed and everyone in line at the time has been allowed to vote. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 155 (Chk. S. Ct. App. 2001).

When sufficient evidence was not produced to establish a prima facie case for the reliability of state ballots found misplaced in national election ballot boxes, and those ballots were not kept securely, the election contestant has failed to establish an attribute of reliability that might have lead the court to allow those ballots to have been counted. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 156 (Chk. S. Ct. App. 2001).

When the faxed official result form from a polling place abroad is illegible and the results are later sent on an unofficial form, the proper relief for those results' unreliability is not their elimination, but that the ballot box be placed in the court clerk's custody, to be opened and the original official result form used in place of the faxed results to determine the proper result. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 156 (Chk. S. Ct. App. 2001).

The election statute does not contain a deadline to file an election contest appeal from the Chuuk State Election Commission. The only deadlines in the statute that relate to the court are that the court must "meet within 7 days of its receipt of a complaint to determine the contested election," and that the court must "decide on the contested election prior to the date upon which the declared winning candidates are to take office." Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 157 (Chk. S. Ct. App. 2001).

An appellee's cross appeal in an election case will be dismissed when there was no evidence that he had ever raised the issue before either the tabulating committee or the Election Commission. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 158 (Chk. S. Ct. App. 2001).

The absence of a filing deadline in the election statute means that there is no statutory jurisdictional time bar to an appeal, but that any election contest party who appeals within seven days of when the declared winning candidates are to take office runs the risk that the court will either not meet before its authority to decide the appeal expires or that court may be unable to conclude the proceedings and make its decision before its authority to decide the appeal expires. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 158 (Chk. S. Ct. App. 2001).

If, on appeal the Chuuk State Supreme Court confirms the election, judgment shall be rendered against the contestants, for costs, in favor of the defendant. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 220, 222 (Chk. S. Ct. App. 2001).

When, if an election contestant were declared a winning candidate, only one of two other candidates would no longer be a winning candidate, both may properly be considered defendants under the election statute when it is uncertain which of those two the contestant would have displaced if he had succeeded in being elected. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 220, 222 (Chk. S. Ct. App. 2001).

The executive policy requiring resignation before running for a seat in the Chuuk Legislature adds a qualification prohibited by the Chuuk Constitution and is void, and therefore, the plaintiffs' forced resignation pursuant to the Governor's Executive Order or policy is unconstitutional and beyond his power. Lokopwe v. Walter, 10 FSM Intrm. 303, 306 (Chk. S. Ct. Tr. 2001).

A governor has only a delegated power and a limited sphere of action, and the Chuuk Constitution does not give the Governor the power to add qualifications, that a person must not be a state employee, to be a candidate for a seat in the Chuuk Legislature. Lokopwe v. Walter, 10 FSM Intrm. 303, 307 (Chk. S. Ct. Tr. 2001).

When a municipal election ordinance has no provision for contesting or challenging the election results after an election has been held, or for resolving election disputes and when the state election law applies to all elections in the state including municipal elections whenever applicable unless otherwise specifically provided, the state election law must apply to this phase of the election, and the proper forum to contest the municipal election is the Chuuk Election Commission. Alafanso v. Suda, 10 FSM Intrm. 553, 557 (Chk. S. Ct. Tr. 2002).

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).

A Chuuk Election Commission decision may be appealed to the Chuuk State Supreme Court appellate division where a trial *de novo* may hear witness testimony and oral arguments from the parties. In re Nomun Weito Interim Election, 11 FSM Intrm. 461, 464 & n.2 (Chk. S. Ct. App. 2003).

An FSM citizen, who is over 18 years of age, a resident of Chuuk, and not insane, confined to a mental institution or imprisoned, may vote at any Chuuk election provided he is registered to vote. In re Nomun Weito Interim Election, 11 FSM Intrm. 461, 465 (Chk. S. Ct. App. 2003).

Specific procedures and time frames govern voter registration. No one can be registered except by affidavit of registration made before the registration clerk in the municipality where such person resides at least 30 days prior to any election, when the registration rolls close for that election, and the Commission, accepts no further affidavits except for those who turn 18 years of age within the 30 day period. In re Nomun Weito Interim Election, 11 FSM Intrm. 461, 465 (Chk. S. Ct. App. 2003).

The Chuuk State Election Commission has the statutory power to promulgate in writing the necessary rules and regulations including administrative procedures for elections. In re Nomun Weito Interim Election, 11 FSM Intrm. 461, 466 n.8 (Chk. S. Ct. App. 2003).

Any elector who has previously been registered but whose name does not appear on the master list of his or her election precinct may be re-registered provided, he or she signs an affidavit attesting to such previous registration and swears to before the Election Commission or a designated representative. A registered voter from the same precinct must witness the elector's sworn statement. In re Nomun Weito Interim Election, 11 FSM Intrm. 461, 466 (Chk. S. Ct. App. 2003).

The Election Commission must prepare and compile a registration list of all voters for use in a general

election, or any other election. The Election Commission's responsibility is to see that the general register lists accurately reflects the registered voters for the State of Chuuk. In re Nomun Weito Interim Election, 11 FSM Intrm. 461, 467 (Chk. S. Ct. App. 2003).

When it was already too late for the 39 persons on the additional list to be registered if they had not previously registered, then their votes were illegal; and when the specific procedures for re-registration were not followed for any of the 39 persons on the additional list that were being re-registered, their votes were illegal. Therefore, the process used to add the 39 persons on the additional list to the general register list on election day so as to allow them to vote was an election irregularity; all 39 persons on the additional list should not have been allowed to vote; and their votes were illegal. In re Nomun Weito Interim Election, 11 FSM Intrm. 461, 467 (Chk. S. Ct. App. 2003).

Because the statutory provision prohibits making, using or furnishing copies of official ballots by any person, the Election Director should not have authorized the copying of additional ballots and copied ballots should not have been used in the election. In re Nomun Weito Interim Election, 11 FSM Intrm. 461, 467 (Chk. S. Ct. App. 2003).

Opening a ballot box on the day before the election is not in accordance with the election law. In re Nomun Weito Interim Election, 11 FSM Intrm. 461, 468 (Chk. S. Ct. App. 2003).

When voters used a copied ballot but were not aware of it and did not intend to do so and when those voters were properly registered to vote, showed up at the polling place, and properly exercised their constitutional and statutory right to vote, any problem with the ballots that they used was not their fault, but the fault of election officials in carrying out the election. Thus their votes should not be voided. In re Nomun Weito Interim Election, 11 FSM Intrm. 461, 468-69 (Chk. S. Ct. App. 2003).

When even if the number of illegal votes were all subtracted from the real party in interest's legal votes, the real party in interest still has more votes than his opponent, the court cannot set aside the election results because the election results would not change. In re Nomun Weito Interim Election, 11 FSM Intrm. 461, 469-70 (Chk. S. Ct. App. 2003).

When an election contestant has not proven that an unauthorized pollwatcher's actions made the situation at the Pohnpei VAAPP such that the results from that ballot box are so unreliable that they must be discarded, those results will stand. In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 474 (Chk. S. Ct. App. 2003).

If true, even a failed attempt to intimidate voters, especially at a polling place, would subject that person to criminal liability. In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 474 (Chk. S. Ct. App. 2003).

A letter to the Commission, that asks that the vote be changed from 154 to 164 is not in the form of a verified complaint as required by statute. In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 475 (Chk. S. Ct. App. 2003).

The Election Director does not have the authority to open a ballot box and to change the certification on his own. In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 475 (Chk. S. Ct. App. 2003).

The unauthorized opening of a ballot box creates severe impediments to resolving an election contest in a manner reflecting the voters' intent. In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 475 (Chk. S. Ct. App. 2003).

An aggrieved candidate has a due process right, created by statute, to be heard on his verified complaint's contentions. In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 475 (Chk. S. Ct. App. 2003).

An aggrieved candidate should file a verified complaint, which should be heard and considered by the

Election Commission before it alters or certifies the figures certified by the Overall Chairman and the Director. In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 476 (Chk. S. Ct. App. 2003).

When an election contest comes before the Chuuk State Supreme Court appellate division with the best evidence of the results, the ballots, irreversibly tainted and unusable, the court is forced to consider less authoritative evidence. Since the election law mandates that a trial be held for election contests appealed to the appellate division, this requires the court to make a *de novo* determination of the facts as well as stating its interpretation of the law. The court therefore hears witness testimony in addition to considering documentary evidence and legal argument. In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 476 (Chk. S. Ct. App. 2003).

When the election law was not complied with in making a certification of votes, that certification is void. In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 476-77 (Chk. S. Ct. App. 2003).

The Chuuk election law requires a trial in the appellate division and not a normal appeal where generally only issues of law are decided and the facts as determined below are left undisturbed. In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 477 (Chk. S. Ct. App. 2003).

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

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).

When the election commission never properly certified anyone as the winning candidate, an appellate trial's result cannot confirm a candidate's election, but rather determines which of two contestants should have been declared elected. Therefore no judgment for costs will be awarded in anyone's favor. In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 477-78 (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 State Election Commission has the power to conduct all elections in the State of Chuuk, including national and municipal elections, if so provided by law or municipal constitutions. Rubin v. Fefan Election Comm'n, 11 FSM Intrm. 573, 577 (Chk. S. Ct. Tr. 2003).

Allegations of a total failure to provide an accounting of the number of ballots printed for the election; refusal to record or account for the total number of ballots cast in the election; failure to maintain an acknowledgment list to provide proof of which registered voters actually cast ballots; refusal by the Election Commissioner (the brother of an elected candidate) to permit opponents' representatives to accompany the Guam VAAPP ballot box to Fefan; the ballot box's seizure and opening while it was in his possession; evidence, including the fact that the key for the ballot box's lock did not fit the lock, raising an inference that the Election Commissioner had tampered with the ballot box while it was in his possession; deciding, a mere 10 days before the election, to do away with VAAPP sites in Hawaii and Pohnpei, thereby effectively depriving Fefan citizens residing in those places of their right to cast votes in the election; and the fact that the entire Fefan Election Commission had been hand selected by a candidate from his active supporters, thereby calling into question whether the Election Commission was truly independent, if proven to be true, are sufficient to call into question whether the election was in fact free and democratic, as required by the Chuuk Constitution. Rubin v. Fefan Election Comm'n, 11 FSM Intrm. 573, 578 (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).

Since, if the court determines that the Chuuk State Election Commission is constitutionally required to conduct all elections in Chuuk, including all municipal elections, the Chuuk State Election Commission will be required to bear substantial additional burdens and obligations, the Chuuk State Election Commission is thus a necessary party to the litigation as provided in Chuuk Civil Rule 19(a). Rubin v. Fefan Election Comm'n, 11 FSM Intrm. 573, 581 (Chk. S. Ct. Tr. 2003).

Neither the Legislature, nor the Governor, may add qualifications for public office beyond those qualifications provided in the Chuuk Constitution. It matters not whether the employee in question is an "exempt" employee, or one covered by the Public Service Act. All government employees, with the express exception of the Governor's principal officers and advisors (who serve at the Governor's pleasure), are protected in their political activities from the Governor's interference with their employment. Tomy v. Walter, 12 FSM Intrm. 266, 271 (Chk. S. Ct. Tr. 2003).

A new claim that constitutionally only the state election commission can conduct municipal elections in Chuuk will not be considered unless the municipal defendants are represented separately from the state when past practice in Chuuk has been that municipal officials have run municipal elections, when this new claim is only hypothetical as the state election commission, a non-party, has not asserted that it intends to and will conduct or that it has the sole authority to conduct municipal elections in the future, and when the defendant Governor and the municipal defendants are represented by the same counsel, a state employee, but may likely have differing views on the point. Even then, the court would desire a separate appearance by the state election commission before considering the issue. Buruta v. Walter, 12 FSM Intrm. 289, 295 (Chk. 2004).

When nothing in the record indicates under what tenure a person held the municipal election commissioner's office, the court cannot conclude as a matter of law that he held that position when he conducted an election on August 1, 2003 and that his purported removal from office was unlawful. Summary judgment that the August 1st election was valid will therefore denied. Buruta v. Walter, 12 FSM Intrm. 289, 295 (Chk. 2004).

– Recount

A decision whether to grant or deny a recount is not an everyday decision, but a large question affecting the public interest profoundly and involving fundamental policy considerations. Olter v. National Election Comm'r, 3 FSM Intrm. 123, 133 (App. 1987).

To interpret 9 F.S.M.C. 904, the FSM Supreme Court should apply a two-prong test. The first prong is whether there is a "substantial question or fraud or error" and the second prong is whether there is "substantial possibility that the outcome would be affected by a recount." Olter v. National Election Comm'r, 3 FSM Intrm. 123, 136-37 (App. 1987).

The statutory scheme of the National Election Code strongly suggests that Congress intended the word "substantial" in 9 F.S.M.C. 904 to be applied liberally, so that in the event of doubt, a recount would be available. Olter v. National Election Comm'r, 3 FSM Intrm. 123, 138 (App. 1987).

The statutory scheme of the National Election Code reflects far greater concern that appropriate recounts be provided than that inappropriate recounts be prevented. If a recount is denied when it should have been granted, a grave risk is presented to constitutional government. Olter v. National Election Comm'r, 3 FSM Intrm. 123, 138-39 (App. 1987).

When an appellant seeks to have an election set aside and done over due to irregularities not correctable by a recount the appeal is timely filed if it is filed within one week of the certification of the results of the election. This is the same filing time frame as for a recount. Aten v. National Election Comm'r (I), 6 FSM Intrm. 38, 39 (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).

The standard to determine whether a recount must be ordered is 1) whether a substantial question of fraud or error exists, and 2) whether there is a substantial possibility that the outcome of the election would be affected. Braiel v. National Election Dir., 9 FSM Intrm. 133, 136 (App. 1999).

A partial recount is a less drastic remedy than requiring part of the election to be done over. Braiel v. National Election Dir., 9 FSM Intrm. 133, 137 (App. 1999).

Under Chuuk election law, once the votes are tabulated and certified, the Election Commission does not have the power to grant a recount request unless ordered to do so by "a court of competent jurisdiction." It can only deny a recount request and a contestant's only recourse then is an appeal to a court of competent jurisdiction. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 154 (Chk. S. Ct. App. 2001).

When the election statute provides that a recount is to be taken if a recount is necessary for the proper determination of the election contest, the proper standard to use to determine whether "a recount is necessary for the proper determination of the contest" is that a recount will be ordered when the contestant has shown that it is more likely than not that there were substantial irregularities that could have affected the election's outcome. It is the election contestant's burden to make this showing. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 156 (Chk. S. Ct. App. 2001).

When one member of the tabulating committee, called the speaker, read out the votes on the ballot, another member verified what he read, and three other members recorded the votes on their tally sheets and stopped at various checking places to check their totals and when the methods used to resolve tally sheet discrepancies – if two tally sheets agreed and one did not, the result of the two that agreed was used; and if all three differed, the middle result was used – introduced a substantial chance of inaccurate results, these methods' inaccurate results could have affected the outcome because of the closeness of the official results (a one vote difference). Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 156-57 (Chk. S. Ct. App. 2001).

The court heartily approved of a recount method designed to achieve an accurate result by which, if there were any discrepancies in tally totals at any of the checking points, the tabulating committee would instead recount the ballots they had counted since the last checking point and not count any further ballots until all tally counts agreed. Cholymay v. Chuuk State Election Comm'n, 10 FSM Intrm. 145, 157 (Chk. S. Ct. App. 2001).

When the ballot box was obviously not in the condition it was when locked and it was not even in the condition that the Director asserted that it was in when he opened (and closed) it to retrieve the tally sheet, the possibility that the box could have been tampered with and that the ballots were not in their original condition was unmistakable. Since the court could have no confidence in the integrity of the ballots because they were so tainted that they were inadmissable as evidence of the votes cast, it would be pointless to order a recount. In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 476 (Chk. S. Ct. App. 2003).

If the Director had not opened the ballot box on his own, but instead waited as required by statute, for a court order to recount, the ballots' integrity would, in all likelihood, be unquestioned and a recount could have been ordered which should have satisfied the parties and the public as to the true vote totals. In re Mid-Mortlocks Interim Election, 11 FSM Intrm. 470, 476 (Chk. S. Ct. App. 2003).

– Revote

When an appellant seeks to have an election set aside and done over due to irregularities not correctable by a recount the appeal is timely filed if it is filed within one week of the certification of the results of the election. This is the same filing time frame as for a recount. Aten v. National Election Comm'r (I), 6 FSM Intrm. 38, 39 (App. 1993).

That the results of the election would have been changed but for the alleged irregularities is not the correct formulation of the ground for a revote. Aten v. National Election Comm'r (II), 6 FSM Intrm. 74, 79 (App. 1993).

Where election irregularities cannot be corrected by a recount, the election, in whole or in part, can be set aside and done over only if it is more likely than not that the irregularities complained of could have, not necessarily would have, resulted in the election of a candidate who would not have won had the irregularities not occurred. Aten v. National Election Comm'r (II), 6 FSM Intrm. 74, 82 (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).

The proper standard for determining whether a revote should be ordered is whether the result could have been different had the irregularities not occurred. The plaintiffs' obligation is twofold, to establish that irregularities occurred and to show that the result could have been different had no irregularities occurred. Aizawa v. Chuuk State Election Comm'r, 8 FSM Intrm. 275, 277-78 (Chk. S. Ct. Tr. 1998).

No revote can be ordered when there is no proof of the alleged election irregularities and thus no showing that the conduct of the election affected the result, and when the outcome is the result of the plaintiffs' refusal to participate in the election. Aizawa v. Chuuk State Election Comm'r, 8 FSM Intrm. 275, 278-79 (Chk. S. Ct. Tr. 1998).

EMPLOYER – EMPLOYEE

Where the employee seeking damages for injuries sustained while working does not, either in his complaint or elsewhere, point to any particular act or omission by the employer, who had been stripped of any supervision and control over the activities of the employee before the injury, that employer cannot be held responsible for any wrongful direction or lack of direction at the scene which might have led to the alleged injury. Semens v. Continental Air Lines, Inc. (I), 2 FSM Intrm. 131, 144 (Pon. 1985).

An employer who assigns employees to work under the supervision of another is not legally responsible to the assigned employees for injuries caused by failure of the other employer to provide labor-saving or safety equipment where the hazards known to the employer were equally obvious to the assigned employees. Semens v. Continental Air Lines, Inc. (I), 2 FSM Intrm. 131, 144 (Pon. 1985).

In absence of statute pertaining to rights of employees of insolvent companies to receive preference against other creditors of employer, an appropriate source of guidance is the common law as it existed in absence of statute. In re Mid-Pacific Constr. Co., 3 FSM Intrm. 292, 300 (Pon. 1988).

Claims for wages asserted by low level employees and laborers are entitled to preference over all other claims, except wage and salary tax lien rights of the national government, which are given priority over all other claims and liens by 54 F.S.M.C. 135(2). In re Mid-Pacific Constr. Co., 3 FSM Intrm. 292, 301 (Pon. 1988).

An employee's preference for wage claims is determined by reference to the equities among the parties rather than exclusively by specific dates upon which particular liens were established. In re Island Hardware,

3 FSM Intrm. 332, 341 (Pon. 1988).

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

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

Where an employer terminates an employee without proper notice the termination will be given effect at the end of the proper notice period and the employee is entitled to any compensation he would have received during that period. Alik v. Kosrae Hotel Corp., 5 FSM Intrm. 294, 296 (Kos. 1992).

Where there is sufficient evidence in the record for the trial judge to have found that an employee was terminated for the just cause of insubordination as permitted without notice in the parties' written employment contract, the trial court ruling that the plaintiff failed to prove he was terminated without just cause is sufficiently comprehensive and pertinent to the issue to form a basis for the decision. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 352-53 (App. 1994).

Termination for just cause as described in a written employment contract precludes the former employee from seeking redress for the termination as the breach of an implied contract embodied in the personnel manual. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 353 (App. 1994).

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).

An employee fired because he had filed suit against the defendant seeking compensation for injuries received while working on the job for the employer appears to state a cause of action in either tort or implied contract for wrongful discharge or termination. Semwen v. Seaward Holdings, Micronesia, 7 FSM Intrm. 111, 114 (Chk. 1995).

An employer owes a duty of care toward its employee to see that the employee is properly educated about the operation of clearly dangerous machinery. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 63, 65 (Chk. 1997).

Where the employer is aware that unsafe procedures are being used and safe procedures are possible, but the employer does not demand them, the employer breaches its duty of care toward its employees. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 63, 65 (Chk. 1997).

When an employee has been laid off for the summer, it is not a termination for disciplinary reasons or a reduction-in-force. A layoff is a termination of employment at the will of the employer, which may be temporary or permanent. Langu v. Kosrae, 8 FSM Intrm. 427, 434 (Kos. S. Ct. Tr. 1998).

When a general manager's actions in hiring, supervising and paying the employees of a sawmill were within the scope of authority granted to him by the principals, the sawmill's joint owners, the principals are bound by their agent's actions in hiring or authorizing the hiring of a sawmill employee. Sigrah v. Timothy, 9 FSM Intrm. 48, 52 (Kos. S. Ct. Tr. 1999).

The determination of an employee-employer relationship for tort liability purposes will not be based upon an employer's decision on whether to report the persons as "employees" for the purposes of reporting Social Security contributions and FSM Income Tax deductions. Sigrah v. Timothy, 9 FSM Intrm. 48, 52 (Kos. S. Ct.

Tr. 1999).

For the purposes of determining the employee status of an individual person for FSM Social Security contributions or for the FSM Income Tax law, the statutes look to the usual common law rules applicable in determining the employer-employee relationship. An employer includes any association or group employing any person. Employment means any service by an employee for the employer employing him, irrespective of where such employment is performed. Sigrah v. Timothy, 9 FSM Intrm. 48, 52 (Kos. S. Ct. Tr. 1999).

Under common law generally, "employment" includes any service performed for remuneration under any oral agreement of hire. To "employ" is to make use of the services of another, and to "be employed" means to perform a function under orders to do so. An "employee" is normally defined as a person in the service of another, through an agreement, which may be express, implied or verbal, and which gives the employer the right to control and direct the person in the way the work is to be performed. An employee performs services for an employer and is paid by the employer for those services. Sigrah v. Timothy, 9 FSM Intrm. 48, 52-53 (Kos. S. Ct. Tr. 1999).

If a person performed services at the defendants' sawmill and was paid compensation for his services by the defendants through their sawmill operations manager, who gave employees directions for the performance of labor, he was the defendants' employee under the common law rules for determining the employer-employee relationship for individuals. Sigrah v. Timothy, 9 FSM Intrm. 48, 53 (Kos. S. Ct. Tr. 1999).

Under the common law, there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the principal's possible liability for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. Sigrah v. Timothy, 9 FSM Intrm. 48, 53 (Kos. S. Ct. Tr. 1999).

An employer owes a duty of care toward its employee to see that the employee is properly educated about the operation of clearly dangerous machinery. An employer who recognizes the potential danger of a work situation, but who fails to take steps to reduce the danger or warn his employees of the danger is negligent. Sigrah v. Timothy, 9 FSM Intrm. 48, 53 (Kos. S. Ct. Tr. 1999).

A general contractor in control of a structure or premises owes to the employees of any other contractor rightfully thereon a duty to exercise ordinary care to keep the structure or premises in a safe condition for their use. Amayo v. MJ Co., 10 FSM Intrm. 244, 250 (Pon. 2001).

An employer has a duty to exercise ordinary or reasonable care commensurate with the nature of the business to protect the employee from the hazards incident to it, and the employer is bound to exercise this degree of diligence in providing his employee with a safe working place. Amayo v. MJ Co., 10 FSM Intrm. 244, 250 (Pon. 2001).

An owner/general contractor who actively supervises daily construction operations has a duty to keep the premises safe for all workers on the job and is ultimately liable for injuries occurring on the worksite when those injuries result from failure to perform that duty. Amayo v. MJ Co., 10 FSM Intrm. 244, 250 (Pon. 2001).

When one company assigned its employee to work for another company, and the assigning company was effectively stripped of control over the way the work was done, and when the assigning company had no knowledge of facts unknown to the employee that would have affected the risk faced by him, and did nothing else to cause the employee's injury, there is no negligence liability on the part of the assigning company. Amayo v. MJ Co., 10 FSM Intrm. 244, 251 (Pon. 2001).

When an employee is directed or permitted by his employer to perform services for another employer he may become the employee of such other in performing the services and since the question of liability is always raised because of some specific act done, the important question is whether or not, as to the act in question the employee was acting in the business of and under the direction of one or the other employer.

Amayo v. MJ Co., 10 FSM Intrm. 244, 251 (Pon. 2001).

Summary judgment will be granted against a terminated employee on his claim for breach of his verbal employment contract when he has failed to show that he had an assurance of continued employment through actions of a supervisor with authority to establish employment terms; when even assuming that former general manager did give the employee verbal assurances of continued employment, those verbal assurances ended with the general manager's termination; and when cause was not required for an employee's termination because the statute permitted employees to be terminated for other reasons, as the employer deemed appropriate. Livaie v. Micronesia Petroleum Co., 10 FSM Intrm. 659, 664 (Kos. S. Ct. Tr. 2002).

When failure to adopt a manual of administration was not a violation of statute because the statute does not set a time limit for the board to adopt one and when the employer is specifically exempted by statute from the Public Service System Act, summary judgment will be granted against a terminated employee on his claim that failure to adopt a manual made the employer liable for his termination. Livaie v. Micronesia Petroleum Co., 10 FSM Intrm. 659, 665 (Kos. S. Ct. Tr. 2002).

When the employer is empowered to create bylaws in which the rights and obligations of employees with regard to termination might be spelled out, but none have been introduced into evidence in this case, only the terms of the contract itself may control the question of whether the plaintiff's termination was in material breach of his employment agreement. Hauk v. Board of Dirs., 11 FSM Intrm. 236, 241 (Chk. S. Ct. Tr. 2002).

An employee's diversion of funds can be construed to violate employment contract provision that bars unethical conduct, but when the contract provides the employer with the right to terminate the employee if he does not discharge his duties and responsibilities to his "employer's satisfaction," the employer could discharge the employee upon sixty days written notice if the employer was dissatisfied in any manner with his job performance, even without the apparent ethical lapse which occurred. Hauk v. Board of Dirs., 11 FSM Intrm. 236, 241-42 (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).

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

ENVIRONMENTAL PROTECTION

Earthmoving regulations themselves represent a governmental determination as to the public interest, and the clear violation of such regulations may therefore be enjoined without a separate court assessment of the public interest and balancing of hardships between the parties. Damarlane v. Pohnpei Transp. Auth., 4 FSM Intrm. 347, 349 (Pon. 1990).

Where the national government, in previous appearances and filings, stated that no valid earthmoving permit was in effect the burden is on the national government at a motion for summary judgment to establish that there was a valid delegation of permit granting authority by the national government to the state officials. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 1, 7 (Pon. 1991).

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).

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

The FSM Environmental Protection Act does not provide for a citizen's claim for damages. Damarlane v. FSM, 8 FSM Intrm. 119, 121 (Pon. 1997).

Claims for damages for violation of the FSM Environmental Protection Act and for damage based on an alleged property interest in the reef and lagoon adjoining plaintiffs' land will be dismissed for failure to state a claim for which relief may be granted. Damarlane v. FSM, 8 FSM Intrm. 119, 121 (Pon. 1997).

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

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).

EQUITY

Where it becomes apparent that claims of creditors will outstrip the value of debtor's assets, the approach is to give all creditors an opportunity to submit claims, and distribute any available proceeds on an equitable basis. In re Mid-Pacific Constr. Co., 3 FSM Intrm. 292, 306 (Pon. 1988).

Under circumstances where there is no bankruptcy legislation or comprehensive system for establishing and recognizing liens in the FSM, the court acts essentially as a court of equity when deciding insolvency cases. In re Pacific Islands Distrib. Co., 3 FSM Intrm. 575, 581 (Pon. 1988).

Decisions regarding res judicata and the transitional activities of the Trust Territory High Court typically should be made on the basis of larger policy considerations rather than the equities lying with or against a particular party. United Church of Christ v. Hamo, 4 FSM Intrm. 95, 120 (App. 1989).

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).

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).

Encroachment of a road on adjacent parcels is a trespass when the state has not used the property

without interruption for the statutory period, nor for a period of time that would make the assertion of plaintiff's rights unfair. Palik v. Kosrae, 5 FSM Intrm. 147, 156 (Kos. S. Ct. Tr. 1991).

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).

Trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. Election Commissioner v. Petewon, 6 FSM Intrm. 491, 499 (Chk. S. Ct. App. 1994).

There are five essential elements to an independent action in equity to set aside a judgment. They are 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of these elements is missing the court cannot take equitable jurisdiction of the case. Election Commissioner v. Petewon, 6 FSM Intrm. 491, 499 (Chk. S. Ct. App. 1994).

Where there are one or more legal remedies still available to a litigant the trial court has no jurisdiction to grant relief from a judgment through an independent action in equity. Election Commissioner v. Petewon, 6 FSM Intrm. 491, 499 (Chk. S. Ct. App. 1994).

Courts of equity are without jurisdiction to enforce purely political rights. Matters concerning the conduct of elections are usually left to the political branches and the courts generally have no jurisdiction until after the elections are held. Election Commissioner v. Petewon, 6 FSM Intrm. 491, 500 (Chk. S. Ct. App. 1994).

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

Courts may consult foreign sources about equitable principles when there is no applicable Micronesian authority on point. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 485, 489 n.3 (App. 1996).

The clean hands doctrine has been expressed in the language that he who has done inequity shall not have equity. A maxim which is closely related to, and which has been described as a corollary of, the clean hands maxim is where the wrong of the one party equals that of the other, the defendant is in the stronger position. On the other hand, one whose wrong is less than that of the other may be granted relief in some circumstances. Senda v. Semes, 8 FSM Intrm. 484, 500 (Pon. 1998).

Equity does not dictate that a setoff for the amount of a defendant's stock subscription be allowed against a contribution claim when the person claiming the setoff received by far the greatest benefit from the failed corporation while it was operating. Senda v. Semes, 8 FSM Intrm. 484, 507 (Pon. 1998).

An award of attorney's fees, depending as it does upon a finding of reasonableness, is an exercise in equity. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM Intrm. 100, 103 (Kos. 2001).

Rescission is equitable in nature, just as waiver is. Adams v. Island Homes Constr., Inc., 10 FSM Intrm. 510, 513 (Pon. 2002).

One who would seek the benefit of equitable relief must himself demonstrate that he has done equity, or that he has clean hands. Obversely stated, he who has done inequity shall not have equity. Adams v. Island Homes Constr., Inc., 10 FSM Intrm. 510, 513 (Pon. 2002).

When a defendant has unprofessionally refused to comply with the plaintiffs' discovery requests without any justification for doing so, in the limited context of discovery proceedings, its hands are unclean and it is

in no position to make a case under rescission or other equitable principle. Adams v. Island Homes Constr., Inc., 10 FSM Intrm. 510, 513 (Pon. 2002).

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 court exercising equity jurisdiction has plenary power to fashion an order in such a manner as to recognize and maintain the equities of the parties involved. The relief granted in equity is dictated by the equitable requirements of the situation at hand and must be adapted to the facts and circumstances of each particular case. More simply stated, the underlying concept is the prevention of injustice, when a legal remedy may not be available to a party because of a technicality. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM Intrm. 337, 346 (Pon. 2004).

Reformation is an equitable doctrine that allows a court to conform a contract (even an insurance contract) to the true agreement between the parties rather than the agreement as written. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 470 (Pon. 2004).

The exercise of equity is justified for the court to order the return of a unique pocketknife to the plaintiff when that unique item is not available for purchase on Kosrae. Palik v. PKC Auto Repair Shop, 13 FSM Intrm. 93, 96 (Kos. S. Ct. Tr. 2004).

– Estoppel and Waiver

Under the doctrine of equitable estoppel, a person may sometimes be precluded by his act or conduct, or silence when he has a duty to speak, from asserting a right which he otherwise would have had. However, this equitable doctrine may apply only when justice demands intervention on behalf of a person misled by the conduct of the party estopped. Etpison v. Perman, 1 FSM Intrm. 405, 417 (Pon. 1984).

Where a party claiming to have been misled was aware of the facts which he insists the other party should have told him, or where the first party could reasonably have been expected to learn those facts, the doctrine of equitable estoppel does not apply. Etpison v. Perman, 1 FSM Intrm. 405, 417 (Pon. 1984).

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

Laches and estoppel are equitable doctrines which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM Intrm. 174, 178 (Pon. 1987).

The estoppel doctrine, which is applied when justice demands intervention on behalf of a person misled by the conduct of the person estopped, is not available as a defense to a board member of a corporation where the board member knowingly misled regulatory officials and creditors of the corporation. Mid-Pac Constr. Co. v. Senda, 4 FSM Intrm. 376, 385 (Pon. 1990).

Equitable estoppel should be applied to governments in the Federated States of Micronesia where this is necessary to prevent manifest injustice and where the interests of the public will not be significantly prejudiced. KCCA v. Tuuth, 5 FSM Intrm. 118, 120 (Pon. 1991).

A party may sometimes be precluded by his act or conduct from asserting a right which he otherwise would have had. When a party has failed to assert its rights over a long period of time, and another party has relied on this non-assertion, the first party may be estopped from asserting those rights now. NIH Corp. v.

FSM, 5 FSM Intrm. 411, 414 (Pon. 1992).

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

Where no action, or words, or silence of the National Election Director prior to the appellant's initial petition misled the appellant into untimely filing his petition after certification it does not give rise to an estoppel. The Director's later failure to raise the issue of untimeliness until his denial of the petition was appealed to the Supreme Court does not give rise to an estoppel. Wiliander v. Mallarme, 7 FSM Intrm. 152, 157-58 (App. 1995).

The affirmative defense of estoppel requires a long non-assertion of one's rights by the plaintiff and the defendant's reliance on that non-assertion to its detriment. There can be no estoppel where there is no loss, injury, damage, detriment, or prejudice to the party claiming it. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 63, 65-66 (Chk. 1997).

Defendants are not likely to prevail on counterclaims of promissory estoppel when it does not appear that they relied on the plaintiff's promise to their detriment. Carlos Etscheit Soap Co. v. Epina, 8 FSM Intrm. 155, 163 (Pon. 1997).

Estoppel is an equitable doctrine which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation. Carlos Etscheit Soap Co. v. Epina, 8 FSM Intrm. 155, 163 (Pon. 1997).

One of the necessary elements of equitable estoppel is that the party to be estopped must have had knowledge, actual or constructive, of the real facts. Carlos Etscheit Soap Co. v. Epina, 8 FSM Intrm. 155, 164 (Pon. 1997).

No estoppel can arise from an act or a representation if it was not intended to have the effect claimed and if, from its nature or from the time when, or the circumstances under which, it was done or made, it would be unreasonable to attribute such effect to it. Carlos Etscheit Soap Co. v. Epina, 8 FSM Intrm. 155, 164 (Pon. 1997).

The defenses of estoppel, unclean hands and laches are all equitable defenses which do not apply in actions sounding in personal injury. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 193 (Pon. 1997).

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).

Express or implied waiver, to be effective, must be the knowing, intentional and voluntary relinquishment of a known legal right. Enlet v. Bruton, 10 FSM Intrm. 36, 41 (Chk. 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).

When the plaintiff relied upon the defendant's promise to let him use the land to build his house, and the defendant should have reasonably expected the plaintiff to take action on this promise, such as obtaining financing through a loan, leasing equipment, and purchasing materials and labor to build his house, and when the plaintiff did in fact rely upon the promise and took action to secure financing through a loan, the doctrine of promissory estoppel is applicable and the promise is enforceable. Justice requires the enforcement of the promise and the plaintiff is entitled to recover the amount expended in reliance of his promise, based upon the doctrine of promissory estoppel. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 195 (Kos. S. Ct. Tr. 2001).

Evidence that, sometime before defendant's marriage, the plaintiff did have some limited intimate contact on one occasion with the woman who later became the defendant's wife, does not serve as a defense to the plaintiff's claim of unjust enrichment and to recover restitution for the defendant's stopping construction of the plaintiff's house. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 196 (Kos. S. Ct. Tr. 2001).

The trial court has wide discretion in determining the amount of damages in contract and quasi-contract cases involving equitable doctrines, such as promissory estoppel and restitution. The plaintiff may be compensated for the injuries by awarding compensation for the expenditures made in reliance on the promise. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 196 (Kos. S. Ct. Tr. 2001).

Pre-judgment interest is not appropriate and a claim for it will be denied when there was no agreement involving a promise to pay money, when the plaintiff was not deprived of funds that he was entitled to because there was no contract made between the parties to pay money, and when the plaintiff was awarded damages based upon the equitable doctrine of promissory estoppel for the plaintiff's expenditures made in reliance on a promise. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 197 (Kos. S. Ct. Tr. 2001).

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).

Estoppel in pais is defined as the doctrine by which a person may be precluded by his act or conduct, or silence when it is his duty to speak. Enengeitaw Clan v. Shirai, 10 FSM Intrm. 309, 311 (Chk. S. Ct. Tr. 2001).

Waiver is the relinquishment of a known right, either by action or words, which rests upon the equitable principle that one will not be permitted to act contrary to his former position when to do so results in detriment to another. Adams v. Island Homes Constr., Inc., 10 FSM Intrm. 510, 513 (Pon. 2002).

The doctrine of equitable estoppel operates to preclude a party from asserting a right he otherwise might have had, based upon his previous conduct. But a plaintiff is not equitably estopped from challenging the Office of Economic Affairs's authority to conduct a trochus harvest because any past acquiescence to the Office's authority does not alter the Office's powers and duties vested in it by Pohnpei state law when, as a matter of law, the Office's activities with regard to the trochus harvest were illegal. Nagata v. Pohnpei, 11 FSM Intrm. 265, 271 (Pon. 2002).

Estoppel is an equitable remedy that may be invoked only by parties who themselves have acted properly concerning the subject of the litigation. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 307 (Pon. 2004).

A plaintiff's effort to induce a driver to claim that he was not intoxicated at the time of the accident, makes it unlikely that the plaintiff will be successful in any attempt to rely upon equitable doctrines in the litigation, especially when it cannot be said that no genuine issue of material fact exists, and that on the basis of estoppel the plaintiff is entitled to judgment as a matter of law. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 307 (Pon. 2004).

– Laches

Laches and estoppel are equitable doctrines which may be invoked only by parties who themselves have acted properly concerning the subject matter of the litigation. Ponape Transfer & Storage v. Federated Shipping Co., 3 FSM Intrm. 174, 178 (Pon. 1987).

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

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

Where there is a long delay in moving for certification of an issue and it appears the motion's sole purpose is to cause further delay, the doctrine of laches may bar the granting of the motion. Youngstrom v. Youngstrom, 5 FSM Intrm. 335, 337-38 (Pon. 1992).

The elements of the equitable defense of laches include, at a minimum, inexcusable delay or lack of diligence by the plaintiff in bringing suit, and injury to the defendant from the plaintiff's inaction. For the delay to have been inexcusable, the plaintiff has to have known or had notice of the defendant's conduct giving rise to the cause of action and had an opportunity to bring suit. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM Intrm. 180, 185-86 (Pon. 1993).

The equitable defense of laches is not available to a defendant who has not shown inexcusable delay by the plaintiff in bringing suit and injury to the defendant as a result. Mid-Pacific Constr. Co. v. Semes (II), 6 FSM Intrm. 180, 186 (Pon. 1993).

The basic elements of the doctrine of laches are 1) inexcusable delay or lack of diligence by the plaintiff in bringing suit, and 2) injury or prejudice to the defendant from plaintiff's delay. Delay is inexcusable when the plaintiff knew or had notice of defendant's conduct giving rise to plaintiff's cause of action, and had prior opportunity to bring suit. Nahnken of Nett v. United States (III), 6 FSM Intrm. 508, 522 (Pon. 1994).

Where the plaintiff did know or should have known of defendants' claims for at least a decade, defendants should not have to be hauled into court to relitigate issues decided over ten years before because it is prejudicial to the defendants who had a reasonable right to assume that the TT High Court appellate decision had closed the matter in 1982. Nahnken of Nett v. United States (III), 6 FSM Intrm. 508, 523 (Pon. 1994).

Although the doctrine of laches cannot be asserted against government land, where suit is prosecuted in the name of a government by a private individual laches may apply as a bar. Nahnken of Nett v. United States (III), 6 FSM Intrm. 508, 523 (Pon. 1994).

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

The two elements to a laches defense are inexcusable delay or lack of diligence by a plaintiff in bringing suit, and injury or prejudice to the defendant from the plaintiff's delay. Inexcusable delay exists when plaintiff knew or had notice of the defendant's conduct which gave rise to plaintiff's cause of action, had an opportunity to bring suit, but failed to do so. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 171, 177 (Pon. 1995).

The determination whether a plaintiff's delay in bringing suit is sufficient to justify the application of laches is made on a case by case basis. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 171, 178 (Pon. 1995).

Where plaintiff inexcusably waited fifteen years after accrual of cause of action and prejudiced the state by allowing it to make substantial costly improvements the doctrine of laches will bar plaintiff's claims. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 171, 178 (Pon. 1995).

The doctrine of laches may not be used as a defense against the government in an action brought by the government, but may be used as a defense by the government against a suit brought by a private party. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 171, 179 (Pon. 1995).

A party whose conduct regarding the subject of the litigation is unconscionable, or its actions constitute deceit, fraud, or misrepresentation has unclean hands and thus may not invoke the equitable defense of laches. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 171, 180 (Pon. 1995).

The equitable defense of laches and the statute of limitations are neither synonymous nor mutually exclusive. Unlike statutes of limitation, which forever bar an action after a fixed period of time, laches depends upon considerations of fairness, justice, and equity, and is invoked when the applicable statute of limitations has not yet expired. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 171, 181 (Pon. 1995).

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

Laches is a mixed question of law and fact. Whether the elements of laches have been established in any particular case is one of fact depending on the circumstances, and calls for the exercise of a sound discretion by the trial court. But whether, in view of the established facts, relief is to be denied–that is, whether it would be inequitable or unjust to the defendant to enforce the complainant's right–is a question of law. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 485, 489 (App. 1996).

An abuse of discretion standard is used to review whether the elements of laches have been established, but the question of law – whether it would be inequitable or unjust to the defendant to enforce the complainant's right is reviewed *de novo*. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 485, 489 (App. 1996).

In order for a plaintiff to be charged with inexcusable delay or lack of diligence the plaintiff must have had knowledge of the facts that gave rise to his claim. Ordinarily, actual knowledge on the part of the complainant is necessary in order to charge him with laches. However, knowledge may in some circumstances be imputed to him by reason of opportunity to acquire knowledge, or where it appears he could have informed himself of the facts by the exercise of reasonable diligence, or where the circumstances were such as to put a man of ordinary prudence on inquiry. Ordinary prudence depends on the particular circumstances of the case. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 485, 490 (App. 1996).

A plaintiff inexcusably delays in bringing suit when he was aware of or should have been aware of, the state's control and use of the land that had not been given over to his control and for which he had received no payment for at least fifteen years during which he could have brought suit against the state or its predecessor in interest. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 485, 490 (App. 1996).

Delay alone does not constitute laches. Even lengthy delay does not eliminate the prejudice prong of the laches test, but the longer the delay the less need there is to show, or search for, specific prejudice, and the greater the shift to the plaintiff of the task of demonstrating lack of prejudice. The test of laches is prejudice to the other party. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 485, 490 (App. 1996).

There are two types of prejudice that may stem from delay in filing suit. The adverse party may be unable to mount a defense because of loss of records, destruction of evidence, missing witnesses, and the like, or the prejudice may be economic. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 485, 490 (App. 1996).

The doctrine of laches is applied only where it would be inequitable to allow a person making a belated claim to prevail. Each case is governed chiefly by its own circumstances. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 485, 491 (App. 1996).

Generally, a party who has failed to act properly – a party who has "unclean hands" – cannot invoke an equitable doctrine such as laches. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 485, 491 (App. 1996).

Where public lands are involved laches cannot be used as a defense against the government, but the government may use laches as a defense against another who seeks to claim public lands. Nahnken of Nett v. Pohnpei, 7 FSM Intrm. 485, 491 (App. 1996).

Laches is a plaintiff's inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 63, 65 (Chk. 1997).

The defenses of estoppel, unclean hands and laches are all equitable defenses which do not apply in actions sounding in personal injury. Conrad v. Kolonia Town, 8 FSM Intrm. 183, 193 (Pon. 1997).

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).

Generally, the laches defense is meant to prevent injustice as to a person against whom one seeks to assert rights where the one asserting the rights has slept on those rights. Thus, laches at a minimum comprehends an inexcusable delay in bringing suit, and prejudice to the defendant as a result. Senda v. Semes, 8 FSM Intrm. 484, 501 (Pon. 1998).

The doctrine of laches or stale demand is whereby the owner after the lapse of time is deprived of his interests because he has not exercised proper diligence in protecting his rights in court. Hartman v. Chuuk, 9 FSM Intrm. 28, 33 (Chk. S. Ct. App. 1999).

Laches involves two factors, 1) inexcusable delay or lack of diligence by the plaintiff in bringing suit, and 2) injury or prejudice to the defendant from plaintiff's delay. A predicate to reliance on the doctrine of laches is that he who would invoke it must have clean hands, and must have acted properly concerning the subject matter of the litigation. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM Intrm. 75, 78 (Kos. 1999).

A defendant who has had the benefit of the goods which he received without paying for them is precluded from relying on the doctrine of laches as a defense to a suit for payment. Mid-Pacific Liquor Distrib. Corp. v. Edmond, 9 FSM Intrm. 75, 78 (Kos. 1999).

Both res judicata and laches are affirmative defenses and must be asserted in responsive pleading. If affirmative defenses are not raised in the answer or other responsive pleading, the defenses are waived. Sigrah v. Kosrae State Land Comm'n, 9 FSM Intrm. 89, 94 (Kos. S. Ct. Tr. 1999).

The doctrine of laches applies to the actual filing of a claim rather than to any inaction that might arise following the initiation of a legal proceeding. In re Lot No. 014-A-21, 9 FSM Intrm. 484, 491 (Chk. S. Ct. Tr. 1999).

Since laches is an equitable defense, it is only available to a defendant when a plaintiff seeks some form of equitable relief. It is not a valid defense to an action brought solely at law. FSM Dev. Bank v. Gouland, 9 FSM Intrm. 605, 607 (Chk. 2000).

The doctrine of laches is applied only where it would be inequitable to allow a person making a belated claim to prevail. Each case is governed chiefly by its own circumstances. The equitable defense of laches

has two elements: the passage of a nonspecific amount of time during which the plaintiff engages in inexcusable delay or lack of diligence in bringing suit, and resulting prejudice to the defendant. Laches is always applied separate from and irrespective of the statute of limitations. Skilling v. Kosrae, 9 FSM Intrm. 608, 613 (Kos. S. Ct. Tr. 2000).

In determining whether to apply laches, the resulting prejudice to the defendant is explored first. There are two types of prejudice that may stem from delay in filing suit. The adverse party may be unable to mount a defense because of loss of records, destruction of evidence, missing witnesses, and the like, or the prejudice may be economic. Skilling v. Kosrae, 9 FSM Intrm. 608, 613 (Kos. S. Ct. Tr. 2000).

A predicate to reliance on the doctrine of laches is that he who would invoke it must have clean hands, and must have acted properly concerning the subject matter of the litigation. Generally, a party who has failed to act properly a party who has "unclean hands" cannot invoke an equitable doctrine such as laches. Skilling v. Kosrae, 9 FSM Intrm. 608, 613 (Kos. S. Ct. Tr. 2000).

When two Directors of Education failed to act properly by not acting upon the plaintiff's grievance and not making a written finding on plaintiff's grievance, as required by regulation, the State cannot invoke the equitable doctrine of laches in its defense. Skilling v. Kosrae, 9 FSM Intrm. 608, 613 (Kos. S. Ct. Tr. 2000).

When a plaintiff has acted expeditiously to notify a defendant of his trespass as soon as the defendant began construction on the land, there has been no unreasonable delay prejudicing the defendant which could give rise to a laches defense. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 175, 188 (Pon. 2001).

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

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

There is a two part standard of review for a laches defense since laches is a mixed question of law and fact. Whether the elements of laches have been established is a factual determination which depends upon the case's circumstances, and calls for an appellate court to apply an abuse of discretion standard of review. But whether, in view of the established facts, it would be equitable or unjust to the defendant to enforce the complainant's right is a question of law that is reviewed *de novo*. Kosrae v. Skilling, 11 FSM Intrm. 311, 318 (App. 2003).

There was no abuse of discretion by the trial court in finding that the state had not satisfied the laches requirement of showing prejudice due to the passage of time before the plaintiff brought his action when any resulting prejudice due to a witness's death was not significant as other pertinent records and witnesses still existed and because there was no resulting prejudice to the state in light of its joint stipulation of facts and documents. Kosrae v. Skilling, 11 FSM Intrm. 311, 318 (App. 2003).

The equitable doctrine of laches cannot be invoked when a party has failed to act properly or is said to have "unclean hands." Kosrae v. Skilling, 11 FSM Intrm. 311, 318 (App. 2003).

When a state employee did not engage in inexcusable delay or a lack of diligence in bringing suit, as the delay was caused by his engaging the administrative grievance process and waiting for the state's required response, and when the state, by its own inaction on the employee's claims, was not in compliance with the applicable regulation and statute, failed to act properly with regard to his grievance, the state, being the cause of the delay, cannot invoke the equitable doctrine of laches. Kosrae v. Skilling, 11 FSM Intrm. 311, 318 (App. 2003).

Laches and failure to mitigate damages are not grounds on which to grant summary judgment when a sufficient factual basis to support either ground has not yet been developed. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 127 (Chk. 2005).

ESCHEAT

Unclaimed balances of judgments paid into court may escheat to the government. Mid-Pacific Constr. Co. v. Senda, 7 FSM Intrm. 371, 375 (Pon. 1996).

At least two Micronesian legislatures have considered some form of escheat suited for application in the FSM. Congress has enacted a limited escheat statute concerning the proceeds from property found in an unclaimed shipwreck. The Pohnpei Legislature has enacted a more general escheat statute concerning the real and personal property of an intestate who die without heirs. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 672 (App. 1996).

Escheat of property, as is property law in general, is primarily a state power. Therefore, based on the inherent power of the court in the absence of an applicable statute, any funds paid into court left unclaimed after the twenty-year statute of limitations has run will escheat to the state. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 673 (App. 1996).

EVIDENCE

The intention of an actor must be inferred from what he says and what he does. FSM v. Boaz (I), 1 FSM Intrm. 22, 24-25 (Pon. 1981).

The FSM Supreme Court is vested, by statute, with authority to suppress or exclude, evidence obtained by unlawful search and seizure. 12 F.S.M.C. 312. FSM v. Tipen, 1 FSM Intrm. 79, 92 (Pon. 1982).

Where 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).

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).

Unsubstantiated speculations raised subsequent to trial are not sufficient to raise reasonable doubt as to a person's guilt in the light of eyewitness testimony. Alaphonso v. FSM, 1 FSM Intrm. 209, 225-27 (App. 1982).

The existence of plea negotiations says little to the court about defendant's actual guilt. FSM v. Skilling, 1 FSM Intrm. 464, 483 (Kos. 1984).

Where there is sufficient evidence of other force in the record to support a conviction for forces sexual penetration, there is no inconsistency in finding the use of force even without ruling that a knife compelled the victim to submit. Buekea v. FSM, 1 FSM Intrm. 487, 494 (App. 1984).

It is not unreasonable for a trial court to conclude that a police officer, claiming to effect an arrest, who hits a person four times with a mangrove coconut husker and kills him was trying to kill him. Loch v. FSM, 1 FSM Intrm. 566, 576 (App. 1984).

Death and the cause of death can be shown by circumstantial evidence. Loch v. FSM, 1 FSM Intrm.

566, 577 (App. 1984).

It is generally recognized by courts that nonmedical persons may be capable of recognizing when someone is intoxicated. Ludwig v. FSM, 2 FSM Intrm. 27, 33 n.3 (App. 1985).

If the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court has broad discretion to admit merely on the basis of testimony that the item is the one in question and is in substantially unchanged condition. Joker v. FSM, 2 FSM Intrm. 38, 46 (App. 1985).

FSM Evidence Rule 103 contemplates timely objection and statement of reasons in support of evidentiary objections. Failure to offer reasons in timely fashion, especially when coupled with pointed avoidance by counsel of inquiry into the matters at issue, places a party in a poor position for mounting an effective challenge to an evidentiary ruling. Joker v. FSM, 2 FSM Intrm. 38, 47 (App. 1985).

An affidavit unsupported by factual detail is not sufficient to cast doubt on the proposition that a project manager of a joint venture, who is in charge of all activities of a corporate member of the joint venture within a state, is a managing or general agent of that corporation. Luda v. Maeda Road Constr. Co., 2 FSM Intrm. 107, 110 (Pon. 1985).

That a land commission's determination is not sufficiently supported by either reasoning or evidence furnishes "good cause" to permit the reviewing court to conduct its own evidentiary proceeding. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM Intrm. 395, 398 (Kos. S. Ct. Tr. 1988).

Kosrae Evidence Rule 408, which renders evidence of settlement negotiations inadmissible in the trial, is based upon the court's commitment to encourage out of court settlements and includes offers made in the early stages of a dispute. Nena v. Kosrae, 3 FSM Intrm. 502, 505-06 (Kos. S. Ct. Tr. 1988).

In adopting the rules of evidence used by the United States federal courts, the Kosrae State Court also adopted the reasons for those rules and the case law which interprets them, insofar as those are appropriate for Kosrae. Nena v. Kosrae, 3 FSM Intrm. 502, 506 (Kos. S. Ct. Tr. 1988).

Pursuant to Kosrae Evidence Rule 408, all statements, including factual assertions, made during the settlement process are protected and inadmissible in court to prove liability or invalidity of a claim. Nena v. Kosrae, 3 FSM Intrm. 502, 506 (Kos. S. Ct. Tr. 1988).

Although Kosrae Evidence Rule 408 does not require the exclusion of factual evidence "otherwise discoverable" simply because it was presented during compromise negotiations, a statement made in a letter seeking to settle a dispute, which statement is clearly connected to and part of the settlement offer, is not otherwise discoverable. Nena v. Kosrae, 3 FSM Intrm. 502, 507 (Kos. S. Ct. Tr. 1988).

A request for admission as to the genuineness of a letter, excludable as evidence under Kosrae Evidence Rule 408 because it relates to settlement negotiations, is reasonably calculated to lead to evidence which could be admissible, and an objecting party may not obtain a protective order pursuant to Kosrae Civil Rule 26 to avoid responding to the request. Nena v. Kosrae, 3 FSM Intrm. 502, 507 (Kos. S. Ct. Tr. 1988).

An inference is not permitted if it cannot reasonably be drawn from the facts in evidence. Este v. FSM, 4 FSM Intrm. 132, 138 (App. 1989).

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).

Failure to raise objections which must be made prior to trial constitutes a waiver of objections, FSM Crim. R. 12(f). Moses v. FSM, 5 FSM Intrm. 156, 159 (App. 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).

The trier of fact determines what should be accepted as the truth and what should be rejected as untrue or false, and in doing so is free to select from conflicting evidence, and inferences that which it considers most reasonable. Epiti v. Chuuk, 5 FSM Intrm. 162, 166 (Chk. S. Ct. Tr. 1991).

Evidence that a customary adoption has taken place may be offered via affidavits from the natural parents of the child, consenting and attesting to the customary adoption. In re Marquez, 5 FSM Intrm. 381, 384 (Pon. 1992).

Generally, a breach of duty is proven by the testimony of witnesses who describe what a reasonable person, acting in compliance with the duty of care, would have done or not done in the same situation. In rare circumstances when the facts are indisputable and when they raise such a strong inference that all reasonable people agree on the duty of care, the court can decide, as a matter of law, the person has breached his duty of care. Nena v. Kosrae, 5 FSM Intrm. 417, 421 (Kos. S. Ct. Tr. 1990).

It is error for a trial court to rely on exhibits never identified, described or marked at trial. Waguk v. Kosrae Island Credit Union, 6 FSM Intrm. 14, 18 (App. 1993).

Where exhibits are identified and marked at trial but never introduced, and where there is extensive testimony and cross examination of witnesses concerning the contents of these exhibits except for interest and late charges, an award for interest and late charges must be deleted because it is not supported by testimony. Waguk v. Kosrae Island Credit Union, 6 FSM Intrm. 14, 18 (App. 1993).

A party seeking to offer evidence after trial must show good cause why it should be admitted. The court, in exercising its discretion, must weigh the evidence's probative value against the danger of injuring the opposite party through surprise because the opposing party cannot properly examine or counter the evidence, and without good cause shown the court should deny its admission as untimely. Ponape Constr. Co. v. Pohnpei, 6 FSM Intrm. 114, 121 (Pon. 1993).

Unless a malfunction is alleged or proven, the printout of a functioning Global Positioning System unit will be presumed correct as to a ship's position regardless of assertions to the contrary. FSM v. Kotobuki Maru No. 23 (II), 6 FSM Intrm. 159, 164-65 (Pon. 1993).

If a judge does not specifically rely on the objected to evidence, the appellate court must presume that he did not rely on that evidence and therefore that any error in admitting the evidence did not result in substantial hardship or prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 349 (App. 1994).

It is not an abuse of the trial court's discretion for a trial court to admit testimony that is inconsistent with that witness's answer to an interrogatory. Admissions made in interrogatories are not binding and the answering party may introduce other evidence on the subject of the admissions at trial. Contradictions between a party's answers to interrogatories and court testimony go to the weight and credibility of the testimony, not to its admissibility. Conflicting testimony may be admitted, and it is the responsibility of the finder of fact to weigh all the answers and resolve the conflict. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 350 (App. 1994).

Where there is no indication that the trial court relied on certain evidence, the presumption is there was no such reliance, and any error in its admission is not prejudicial. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 351 (App. 1994).

Inconsistencies between a party's responses to discovery and trial testimony properly go to the weight and credibility of the testimony and not to its admissibility. Nakamura v. Bank of Guam (II), 6 FSM Intrm. 345, 352 (App. 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).

Representations of counsel in a probable cause hearing are not a substitute for competent, reliable evidence in the form of testimony or appropriately detailed affidavits. FSM v. Yue Yuan Yu No. 708, 7 FSM Intrm. 300, 305 (Kos. 1995).

A court cannot infer that someone attended a hearing because they might have attended another hearing that might have taken place an hour beforehand at the same place. Palik v. Henry, 7 FSM Intrm. 571, 575 (Kos. S. Ct. Tr. 1996).

The issue of the court's jurisdiction to try a case is a preliminary matter that the accused, by testifying upon, does not subject himself to cross-examination as to other issues in the case. FSM v. Fal, 8 FSM Intrm. 151, 154 (Yap 1997).

Proof of guilt may be by either direct evidence, circumstantial evidence or both. Direct evidence is evidence, which if believed, proves the existence of facts in issue without inference or presumption. Circumstantial evidence is evidence of facts and circumstances from which the existence or nonexistence of facts in issue may be inferred. FSM v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 166, 171 (Pon. 1997).

An appellate court will not reweigh the evidence presented at trial. Credibility determinations are uniquely the province of the factfinder, not the appellate court. Johnny v. FSM, 8 FSM Intrm. 203, 207 (App. 1997).

It is not a manifest error of fact requiring a new trial that certain evidence that parties felt was compelling was not recited in the court's decision or given the weight they thought proper, when the parties were afforded a full hearing and the court considered all evidence on the record in reaching its decision. Conrad v. Kolonia Town, 8 FSM Intrm. 215, 217 (Pon. 1997).

A court may suppress evidence obtained by an unlawful search and seizure. FSM v. Santa, 8 FSM Intrm. 266, 268 (Chk. 1998).

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).

It is improper for counsel to argue facts only within the counsel's knowledge and not in the record. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 172 (App. 1999).

Counsel's statements concerning an answer constitute argument of counsel, not evidence. Only the answer itself is admissible evidence. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 172 (App. 1999).

Any reliance on a "proposed disposition" to prove the respondent attorney's misconduct is improper when the respondent attorney's statements show that any admissions of misconduct were only for the purpose of the reviewing justice's approval of the proposed disposition and if it was not accepted, the respondent attorney would have to call defense witnesses. Such equivocation is not an admission of professional misconduct. It is thus inadmissible under FSM Evidence Rules 410 and 408, which bar the admission of pleas, plea discussions, and related statements and compromises and offers to settle, respectively. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 172 (App. 1999).

When no party raised a best evidence objection about two checks during the trial, when the trial court did not preclude or limit the introduction of evidence about either check, when both checks were involved in much of the testimony offered by the plaintiff and both also formed the subject of direct examination testimony by defense witnesses, when the trial judge himself questioned defense witnesses at length concerning the two checks, and when defense witnesses acknowledged both checks' existence, their amounts and that they were made out to the plaintiff, the trial court cannot be said to have applied the "best evidence" rule, which is exclusionary in character, and requires the production of originals unless specified exceptions are met. Tulensru v. Wakuk, 10 FSM Intrm. 128, 133 (App. 2001).

The weight to be accorded admissible evidence is for the trier of fact to determine. Tulensru v. Wakuk, 10 FSM Intrm. 128, 134 (App. 2001).

Introduction of other burn cases to show that defective fuel in those cases tended to show the fuel was defective in the present case is relevant if the other cases are similar. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 348, 352 (Pon. 2001).

Generally, failure to object or to seek a continuance results in a waiver of the objection. Amayo v. MJ Co., 10 FSM Intrm. 371, 383 (Pon. 2001).

Rule 59 provides a means for relief in cases in which a party has been unfairly made the victim of surprise, but relief will be denied if the party failed to seek a continuance. Surprise, along with excusable neglect, is also addressed by Rule 60(b)(1). Thus, if a party is surprised at trial he is amply protected by Rules 59(a) and 60(b). Amayo v. MJ Co., 10 FSM Intrm. 371, 383 (Pon. 2001).

A party may not derive benefit post trial from tendering evidence that which he was under a discovery obligation to produce pre-trial, and did not. Amayo v. MJ Co., 10 FSM Intrm. 371, 385 (Pon. 2001).

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the action's determination more probable or less probable than it would be without the evidence, and all relevant evidence is admissible, except for the specific exceptions set out in the FSM Rules of Evidence. Adams v. Island Homes Constr., Inc., 10 FSM Intrm. 466, 473 (Pon. 2001).

When a sketch proffered to the appellate court, even if it had been admitted at trial, would not have been enough to demonstrate that a trial court's factual finding was clearly erroneous, the factual finding must stand. Phillip v. Moses, 10 FSM Intrm. 540, 544 (Chk. S. Ct. App. 2002).

When the plaintiff's complaint claimed he performed "over 714 hours of overtime work," the defendant was given notice of the plaintiff's overtime claims. The defendant thus cannot exclude evidence that the plaintiff worked 1184.5 overtime hours, and the plaintiff does not need to amend his complaint, because 1184.5 hours is more than 714 hours. Palsis v. Kosrae, 10 FSM Intrm. 551, 552 (Kos. S. Ct. Tr. 2002).

On a design defect products liability claim, evidence of other accidents is admissible to show a dangerous condition so long as the proponent makes a foundational showing that the prior accidents occurred under substantially the same circumstances. Further, evidence proffered to illustrate the existence of a dangerous condition necessitates a high degree of similarity because it weighs directly on the ultimate issue to be decided by the [finder of fact. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 574, 583 (Pon. 2002).

When the alleged defect in the kerosene resulted from the contamination of the product, and not its design, logic dictates that the plaintiff must show a high degree of similarity between the accident in this case and the accidents in the other cases before the other accidents will be admitted on the question of the dangerous condition of the allegedly contaminated product. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 574, 583 (Pon. 2002).

When the instant case is similar to the other accidents to the extent that the alleged defect is the same, i.e., contaminated kerosene, but the manner in which the other accidents occurred is quite different, the other

accidents are not sufficiently similar to be admissible on the question of dangerousness. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 574, 583 (Pon. 2002).

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

Generally, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith, but such evidence is admissible as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. FSM v. Wainit, 11 FSM Intrm. 1, 5 (Chk. 2002).

When prosecuting criminal acts alleged to have occurred during the national election, the government may introduce evidence of acts in relation to the Chuuk state election held on the same day so long as those acts are relevant and are evidence of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident in relation to the national election offenses charged in the information. FSM v. Wainit, 11 FSM Intrm. 1, 6 (Chk. 2002).

Production of an original document, although preferable, is not absolutely required. Other evidence of its contents could be admissible if all originals have been lost or destroyed (unless the proponent destroyed them in bad faith), or if no original can be obtained by any available judicial process or procedure, or if the original is under the control of the party against whom it is offered and he does not produce the original, or if it is not closely related to a controlling issue. FSM v. Wainit, 11 FSM Intrm. 1, 6 (Chk. 2002).

When the government, in prosecuting criminal acts alleged to have occurred during the national election, may introduce evidence of acts in relation to the Chuuk state election held on the same day so long as those acts are relevant and are evidence of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident in relation to the national election offenses, the defendant may have the State Election Director as a witness give evidence so long as it is restricted to relevant evidence of which he has first-hand knowledge and which is within the scope of evidence the prosecution has introduced concerning the state election during the government's case-in-chief. FSM v. Wainit, 11 FSM Intrm. 1, 7 (Chk. 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).

The court is required to receive satisfactory evidence that custom or tradition applies to a case, before utilizing it. Kosrae v. Sigrah, 11 FSM Intrm. 26, 30 (Kos. S. Ct. Tr. 2002).

A trial court's errors in admitting or excluding evidence are not grounds for reversal when the appellants have not explained what the evidence would have shown had it been admitted and how this evidence would or could have changed the court's decision because error in admitting or excluding evidence is not ground for vacating judgment unless refusal to do so is inconsistent with substantial justice. Rosokow v. Bob, 11 FSM Intrm. 210, 216 (Chk. S. Ct. App. 2002).

Authentic school and hospital documents, which reflect the correct birth date of a petitioner may be used to establish the petitioner's correct birth date. In re Phillip, 11 FSM Intrm. 301, 302 (Kos. S. Ct. Tr. 2002).

There is no "dead man's statute" barring the admission of a deceased person's statements as evidence in Kosrae state law or in the rules of evidence. Taulung v. Jack, 11 FSM Intrm. 345, 348 (Kos. S. Ct. Tr. 2003).

An appellate ruling that only determined that certain testimony was admissible did not instruct the trial

court as to what weight to give his testimony or what inferences it must draw from it on remand. Rosokow v. Bob, 11 FSM Intrm. 454, 458 (Chk. S. Ct. App. 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).

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).

In order to prove lost rental damages, a business should be prepared to show that all other similar available vehicles were rented and that the had to turn away customers who would otherwise had rented the damaged pickup, and the number of days it would have been rented. A long-term, ongoing business might show this by comparing the average of the total rental days of all pickups combined for each month before the pickup was damaged with the average total rental days for each month after the accident. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 472 (Pon. 2004).

Under the traditional "new business rule," which applies to any business without a history of profits, it has been recognized that evidence of expected profits from a new business is too speculative, uncertain, and remote to be considered and does not meet the legal standard of reasonable certainty. But lost profits can be recovered by a new business when it is possible to show, by competent evidence and with reasonable certainty, that profits would have been made in the particular situation, and the amount of those profits. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 472 (Pon. 2004).

When the boundary claimed by appellants was supported by testimony of a neutral observer and the appellees' was based only on their testimony, the Land Court decision, which accepted the appellees' boundary claim was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM Intrm. 21, 23 (Kos. S. Ct. Tr. 2004).

When there was no evidence presented to the Land Court regarding the parties' acceptance of the river as the boundary between their parcels, but the Land Court relied upon an alleged settlement between the parties which was never presented or accepted as evidence at the hearing, the Land Court decision which determined the river as the boundary was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM Intrm. 21, 23 (Kos. S. Ct. Tr. 2004).

When the parties' settlement to divide the islands in the swampy area such that each party is owner of two islands was accepted into evidence at the Land Court hearing, but was not reflected in the Land Court decision, that decision regarding the swampy area, was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM Intrm. 21, 23-24 (Kos. S. Ct. Tr. 2004).

Representations of counsel at a hearing are not a substitute for competent, reliable evidence in the form of testimony or detailed affidavits. Counsel's statements constitute only argument of counsel and are not evidence. Kosrae v. Nena, 13 FSM Intrm. 63, 67 (Kos. S. Ct. Tr. 2004).

Evidence first introduced in response to questioning by the trial judge during defendant's closing argument was not properly in evidence before the trial court as it was made during the closing arguments and such statements were not made under oath, not subject to cross-examination, and not subject to any rebuttal testimony by any witness. Argument does not constitute evidence. Livaie v. Weilbacher, 13 FSM Intrm. 139, 144 (App. 2005).

When the trial court's assessment of restitution damages was specifically calculated using a figure

based on a statement made during closing argument, it was not supported by evidence properly before the trial court. As such, the amount of restitution assessed by the trial court is clearly erroneous and must be vacated and the case remanded to the trial court to determine the amount of restitution based on the evidence properly before it or to hold a further evidentiary hearing on the issue. Livaie v. Weilbacher, 13 FSM Intrm. 139, 144-45 (App. 2005).

– Authentication

Rule 901(a) of our Rules of Evidence provides that the requirement of authentication "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Testimony of two witnesses supporting such a claim is fully adequate to justify the action of the trial court in accepting that matter as evidence. Joker v. FSM, 2 FSM Intrm. 38, 46 (App. 1985).

The FSM Rules of Evidence for identification, authentication and admissibility of evidence do not require that exhibits related to an essential element of the crime may be admitted into evidence only if identified beyond a reasonable doubt. Joker v. FSM, 2 FSM Intrm. 38, 47 (App. 1985).

A certified copy of a judgment from a foreign court is admissible evidence as a properly authenticated public record of that jurisdiction. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM Intrm. 326, 327 (Chk. S. Ct. Tr. 1995).

Business records are normally authenticated by a custodian of records. A duplicate of an original writing is not admissible if there is a genuine issue as to the authenticity of the original. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (III), 7 FSM Intrm. 453, 455 (Pon. 1996).

Maps attached to a filing without any sort of foundation or any type of authentication cannot be considered as evidence. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM Intrm. 31, 38 (Kos. S. Ct. Tr. 1997).

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).

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Elaija v. Edmond, 9 FSM Intrm. 175, 182 (Kos. S. Ct. Tr. 1999).

An ancient document or data compilation is authenticated if evidence that the document or data compilation, in any form, is in such condition as to create no suspicion concerning its authenticity, was in a place where it, if authentic, would likely be, and has been in existence 20 years or more at the time it is offered. Elaija v. Edmond, 9 FSM Intrm. 175, 182 (Kos. S. Ct. Tr. 1999).

For a plaintiff to succeed, she must come forward with a preponderance of creditable evidence to establish the authenticity of the document upon which her claim is based. Lukas v. Stanley, 10 FSM Intrm. 365, 366 (Chk. S. Ct. Tr. 2001).

A plaintiff has not met the necessary burden of proof when the affidavit offered by plaintiff to prove her claim is highly suspect in that the plaintiff's father, whom she claims gave the property to her, did not appear in person before the Clerk of Court when he signed the document and the plaintiff presented conflicting evidence in court at which place or where the document was signed. Lukas v. Stanley, 10 FSM Intrm. 365, 366 (Chk. S. Ct. Tr. 2001).

– Burden of Proof

In a case of civil conspiracy, the burden of proof is a preponderance of the evidence, not a clear and

convincing standard, in order to establish the conspiracy. Opet v. Mobil Oil Micronesia, Inc., 3 FSM Intrm. 159, 164 (App. 1987).

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

The concept of Burden of Proof has two aspects. First the plaintiff in a civil case must produce sufficient evidence to establish a prima facie case in order to avoid a nonsuit. Second, the sufficiency of evidence necessary to prove a disputed fact in a civil case is proof by a preponderance of the evidence – the facts asserted by the plaintiff are more probably true than false. Meitou v. Uwera, 5 FSM Intrm. 139, 141-42 (Chk. S. Ct. Tr. 1991).

The plaintiff, whose duty it is to introduce evidence to prove her case by a preponderance of the evidence, carries the burden of proof. This "burden of going forward with the evidence," or "burden of producing evidence," lies with the party who seeks to prove an affirmative fact. Nimeisa v. Department of Public Works, 6 FSM Intrm. 205, 212 (Chk. S. Ct. Tr. 1993).

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

The defendant has the burden of proving affirmative defenses. A defense raised for the first time in a defendant's written closing argument does not meet the burden of proof. Pohnpei v. Ponape Constr. Co., 7 FSM Intrm. 613, 619 (App. 1996).

The burden of producing evidence in a civil trial generally lies with the plaintiff, who must establish a prima facie case to avoid a nonsuit or other adverse ruling. Berman v. Santos, 7 FSM Intrm. 624, 627 (App. 1996).

The defendants have the burden of proof with respect to each affirmative defense, and must prove that defense by a preponderance of the evidence. Senda v. Semes, 8 FSM Intrm. 484, 496 (Pon. 1998).

In a civil case where defendants seeks to advance Pohnpeian customary practice as a defense to a claim of equitable contribution, the burden is on the defendants to establish by a preponderance of the evidence the relevant custom and tradition. Senda v. Semes, 8 FSM Intrm. 484, 497 (Pon. 1998).

Preponderance of the evidence is not evidence to a moral certainty or clear and convincing evidence. As a standard of proof, preponderance of the evidence has been held to mean that the facts asserted by the plaintiff are more probably true than false. The party having the burden of establishing his claim by a preponderance of the evidence must establish the facts by evidence at least sufficient to destroy the equilibrium and overbalance any weight of evidence produced by the other party. FSM Telecomm. Corp. v. Worswick, 9 FSM Intrm. 6, 12 (Yap 1999).

If the plaintiff's evidence is more convincing than that which defendant offers in opposition, then plaintiff has met its burden of showing that the facts for which it contends are more probably true than false. If, on the other hand, plaintiff's evidence is less convincing than that offered in opposition, then defendant's version of events is the more likely, and the plaintiff fails to meet its burden of proof. FSM Telecomm. Corp. v. Worswick, 9 FSM Intrm. 6, 12 (Yap 1999).

When the plaintiff has demonstrated that it billed the defendant for long distance services according to its usual and customary practice, and that its billing practices accurately reflect its customers' usage of the communications services which it offers to the public and when the defendant's 1998 testimony about her long

distance usage habits during September 1990 through July 1, 1992 does not persuade the court that she received inaccurate telephone bills from plaintiff at relevant times under the terms of the parties' valid and enforceable contract, the plaintiff has met its burden of proof. FSM Telecomm. Corp. v. Worswick, 9 FSM Intrm. 6, 15 (Yap 1999).

A plaintiff, who has testified that in 1991 the defendant gave him $500 and that this payment was a portion of a $3,000 check issued by the FSM Finance Office as payment to the plaintiff, but who does not present any other evidence of the $3,000 check or the $500 payment and does not show that documentary proof relating to the $500 payment or the $3,000 check was unavailable through discovery or by subpoena, has failed to sustain his burden of proof. When the plaintiff has testified that in 1996 the FSM Finance Office issued another check in his name, but presents no documentary proof of this check, the plaintiff has again failed to sustain his burden of proof. Tulensru v. Utwe, 9 FSM Intrm. 95, 97 (Kos. S. Ct. Tr. 1999).

A plaintiff must prove the allegations of the complaint by a preponderance of admissible evidence in order to prevail. Chipen v. Reynold, 9 FSM Intrm. 148, 149 (Chk. S. Ct. Tr. 1999).

In a civil case when a defendant seeks to advance Pohnpeian customary practice as a defense, the burden is on the defendant to establish by a preponderance of the evidence the relevant custom and tradition. Phoenix of Micronesia, Inc. v. Mauricio, 9 FSM Intrm. 155, 158-59 (App. 1999).

The disciplinary counsel's burden is to prove attorney misconduct by clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 171 (App. 1999).

The standard of proof for establishing allegations of attorney misconduct is clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 173 (App. 1999).

Clear and convincing evidence is a higher burden of proof than mere preponderance of the evidence, but not quite as high as beyond a reasonable doubt. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 173 (App. 1999).

The clear and convincing evidence standard is the most demanding standard applied in civil cases. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 173 (App. 1999).

To be clear and convincing evidence must be of extraordinary persuasiveness. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 173 (App. 1999).

Clear and convincing evidence means evidence establishing that the truth of the facts asserted is highly probable. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 173 (App. 1999).

The clear and convincing evidentiary standard is that weight of proof which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 173 (App. 1999).

A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not. Clear and convincing evidence, on the other hand, reflects a more exacting standard of proof. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 173 (App. 1999).

Although stated in terms of reasonable doubt, clear and convincing evidence is considered to be more than a preponderance while not quite approaching the degree of proof necessary to convict a person of a criminal offense. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 173 (App. 1999).

The spectrum of increasing degrees of proof, from preponderance of the evidence, to clear and convincing evidence, to beyond a reasonable doubt is widely recognized, and it has been suggested that the

standard of proof required would be clearer if the degrees of proof were defined, respectively, as probably true, highly probably true and almost certainly true. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 173-74 (App. 1999).

Evidence may be uncontroverted, and yet not be clear and convincing. Conversely, evidence may be clear and convincing despite the fact it has been contradicted. In re Attorney Disciplinary Proceeding, 9 FSM Intrm. 165, 174 (App. 1999).

The clear and convincing standard is that which enables the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case. In re Robert, 9 FSM Intrm. 278a, 278g (Pon. 1999).

The proper standard of proof for inherent power sanctions is clear and convincing evidence standard rather than the lower standard of preponderance of the evidence standard. This heightened standard of proof is particularly appropriate because most inherent power sanctions are fundamentally punitive and because an inherent power sanction requires a finding of bad faith, and a bad faith finding requires heightened certainty. In re Sanction of Woodruff, 10 FSM Intrm. 79, 88 (App. 2001).

For those inherent power sanctions that are fundamentally penal – and default judgments, as well as contempt orders, awards of attorneys' fees and the imposition of fines – the trial court must find clear and convincing evidence of the predicate misconduct. In re Sanction of Woodruff, 10 FSM Intrm. 79, 88 (App. 2001).

The clear and convincing evidence standard of an inherent powers sanction is also consistent with the standard of proof needed to discipline an attorney. It would be inequitable if a court could avoid the heightened standard of a disciplinary proceeding by instead resorting to its inherent powers to sanction an attorney. In re Sanction of Woodruff, 10 FSM Intrm. 79, 88 (App. 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 a trial court has found that all parties fulfilled their obligations under the contract, and the plaintiff did not offer competent evidence of breach sufficient to establish that the trial court's findings were improper, there was no clear error in the trial court's factual findings on the liability issue. Tulensru v. Wakuk, 10 FSM Intrm. 128, 133 (App. 2001).

When defendants did not submit any proof at trial in support of their affirmative defense, they did not carry their burden of proof. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 196 (Kos. S. Ct. Tr. 2001).

When there was no evidence presented at trial that two defendants had made any promise to the plaintiff and they were not a parties to any agreement or promise with the plaintiff, the plaintiff has not carried his burden of proof with respect to claims made against them and justice requires that the complaint against them be dismissed. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 197 (Kos. S. Ct. Tr. 2001).

A plaintiff who establishes the existence of risk factors which may have caused the injury, must show that these risk factors did in fact cause the injury. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 348, 353 (Pon. 2001).

It is enough that the plaintiff introduce evidence from which reasonable men may conclude that it is more probable that the event was caused by the defendant than that it was not. Stated another way, it does not require that the proof eliminate every possible cause other than the one on which plaintiff relies, but only such other causes, if any, which fairly arise from the evidence. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 348, 353 (Pon. 2001).

When no product defect is found, causes of action based on strict product liability and on breach of warranty fail and *res ipsa loquitur* is not applicable. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 348, 353 (Pon. 2001).

The clear and convincing evidence standard involves a higher burden of proof than a mere preponderance of the evidence, but not quite as high as beyond a reasonable doubt. "Clear evidence to the contrary" would be a similar standard. FSM v. Wainit, 11 FSM Intrm. 1, 8 n.1 (Chk. 2002).

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

When, at a trial de novo, the plaintiff's testimony was credible and supported by other credible testimonial and physical evidence and the defendant's claim was inconsistent and not supported by convincing evidence, the plaintiff's evidence is more convincing and he has met his burden of proving ownership. In re Lot No. 014-A-21, 11 FSM Intrm. 582, 591-94 (Chk. S. Ct. Tr. 2003).

All relevant documents are not necessarily those required to prove a party's case by the preponderance of the evidence. AHPW, Inc. v. FSM, 12 FSM Intrm. 164, 168 (Pon. 2003).

The plaintiffs' reply to a defendant's written closing argument will not be stricken because the plaintiffs have the burden of proof, and therefore may have the last word. Adams v. Island Homes Constr., Inc., 12 FSM Intrm. 234, 242 (Pon. 2003).

– Expert Opinion

Opinion testimony by experts has no such conclusive force that there is an error of law in not following it. The trier of fact may decide what weight, if any, is to be given such testimony, and even if the testimony is uncontroverted, may exercise independent judgment. Setik v. Sana, 6 FSM Intrm. 549, 553-54 (Chk. S. Ct. App. 1994).

Expert opinion testimony is admissible if the witness is qualified by knowledge, skill, experience, training, education, or otherwise; and that the expert's opinion will assist the trier of fact to understand the fact at issue. Pohnpei v. Ponape Constr. Co., 7 FSM Intrm. 613, 622 (App. 1996).

A trial court's qualification of a witness as an expert and the admission of his opinion testimony will not be reversed unless clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM Intrm. 613, 622 (App. 1996).

To be qualified as an expert witness, the witness must have skill and knowledge superior to the trier of fact, but expert opinion testimony is not restricted to the person best qualified to give an opinion. Pohnpei v. Ponape Constr. Co., 7 FSM Intrm. 613, 622 (App. 1996).

Under the work product doctrine, even if a plaintiff demonstrates substantial need for factual information contained in the report of a consulting expert whose services a defendant sought in anticipation of litigation, he would have to show exceptional circumstances under FSM Civil Rule 26(b)(4)(B) before being entitled to discover the consulting expert's opinions. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM Intrm. 471, 476 (Pon. 1998).

Rule 26 does not authorize any discovery concerning experts who the other party does not intend to call as a trial witness absent a showing of exceptional circumstances. It would be "unfair" to allow a party to extract his adversaries' consulting expert's knowledge or opinion without having to bear any of the financial cost of retaining that expert and to take unwarranted advantage of the opponent's trial preparation or

investigations. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM Intrm. 471, 482-83 (Pon. 1998).

Absent the requisite showing of exceptional circumstances, FSM Civil Rule 26 does not permit a party to obtain any information specific to an adversary's nontestifying experts through interrogatories. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM Intrm. 471, 483 (Pon. 1998).

If a person is to be used by the defendants as a testifying expert, the plaintiff would be entitled to all the discovery authorized by FSM Civil Rule 26(b)(4)(A), and all documents the expert considered in forming his opinions would be discoverable as well. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM Intrm. 471, 483 (Pon. 1998).

If specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill experience, training, or education, may testify thereto in the form of an opinion. Senda v. Semes, 8 FSM Intrm. 484, 497-98 (Pon. 1998).

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. FSM Telecomm. Corp. v. Worswick, 9 FSM Intrm. 6, 15 (Yap 1999).

When an expert's testimony, although not objected to, lacks the foundation contemplated by Evidence Rule 703, it is, at best, entitled to slight weight. FSM Telecomm. Corp. v. Worswick, 9 FSM Intrm. 6, 16 (Yap 1999).

The appellate court begins its review of trial court rulings by presuming that the trial court's factual findings are correct. The trial court's grant or refusal to adopt an expert's opinion is a question of fact and factual questions are reviewed by this court under the clearly erroneous standard. Sellem v. Maras, 9 FSM Intrm. 36, 38 (Chk. S. Ct. App. 1999).

To state an opinion is not to set forth specific facts. In the context of a summary judgment motion, an expert must back up his opinion with specific facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 574, 580 (Pon. 2002).

No expert opinion arises simultaneously with the events that ultimately gives rise to that opinion, but comes to harvest in the course of a lawsuit and in the usual case is a gloss on the occurrence or events on which the lawsuit is based. In that sense an opinion is not a "fact" within the meaning of Civil Rule 56(e), but since Evidence Rules 702-704 expressly allow for expert witnesses' opinion testimony, the question is whether any given opinion is backed up with specific facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 574, 580 (Pon. 2002).

The precise combustive characteristics of kerosene, gasoline, and mixtures of the two lie beyond the ordinary ken of the court. In these circumstances, an expert's opinion is indispensable to the finder of fact in determining whether questions of fact may be reasonably resolved only in favor of the moving party. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 574, 581 (Pon. 2002).

An expert may opine on a particular case's facts as they are made known to him at or before the hearing at which the expert testifies and the expert may offer an opinion that embraces an ultimate issue to be decided by the trier of fact. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 574, 581 (Pon. 2002).

When the expert opinion offered by the nonmovant does not go to the causation issue presented by the facts, and on which the movant's expert offered his opinion, it does not create a fact issue under Rule 56. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 574, 582 (Pon. 2002).

The litigation process is designed not only to discover information, but also to reduce it to the essentials

necessary to advance a party's case. When a lawsuit deals with scientific, technical, or other specialized knowledge, an expert's opinion is a useful tool in this paring process. Its value derives in no insubstantial part from the fact that it reflects a synthesis of relevant facts. When such an opinion goes to a necessary element of the case, and stands unopposed by a countervailing, factually supported expert opinion that fairly meets the moving party's opinion, it may be dispositive in the context of a summary judgment motion. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 574, 582 (Pon. 2002).

When the plaintiff's expert's testimony does not set forth specific facts showing that there is a genuine issue of fact as to the kerosene contamination issue and since the defect's existence goes to a necessary element of the plaintiff's case, the plaintiff has failed to make a showing sufficient to establish the existence of an element essential to his case, and on which he will bear the burden of proof at trial and summary judgment in the defendants' favor is therefore appropriate. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 574, 583 (Pon. 2002).

Facts that go to the question of a contamination source are rendered immaterial in light of the defendants' expert's competent, uncontroverted expert testimony that nothing about the combustion event that caused the injury led him to believe that the kerosene was contaminated. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 574, 583-84 (Pon. 2002).

When the defendants' expert has testified, and the plaintiff conceded, that gasoline and kerosene are completely miscible, when the plain inference from expert's miscibility testimony is that the fuel which first burned normally was identical in its chemical makeup to the fuel which the plaintiff later claimed exploded, and when the defendant offers nothing in her response to address the anomaly created by the expert's specific testimony on the miscibility point as it relates to her memory of what occurred, in the absence of such evidence, and given the expert's competency to opine on a verifiable physical phenomenon like miscibility, no issue of fact exists on this specific point. George v. Mobil Oil Micronesia, Inc., 10 FSM Intrm. 590, 592 (Pon. 2002).

An economist, who holds a master's degree in economics, is qualified as an expert by knowledge, skill, experience, training, or education under FSM Evidence Rule 702, since his expert testimony, if admissible, will assist the trier of fact to understand the evidence or to determine the economic damages in issue. AHPW, Inc. v. FSM, 12 FSM Intrm. 544, 556-57 (Pon. 2004).

– Hearsay

The excited utterance exception to the hearsay rule, FSM Evid. R. 803, does not permit admission of a statement made under stress of excitement caused by a startling event or condition, if the statement does not relate to the event or condition. Jonah v. FSM, 5 FSM Intrm. 308, 313 (App. 1992).

Hearsay is not admissible in a hearing or trial. Hearsay is an out-of-court statement offered as evidence to prove the truth of the matter asserted. A statement is an oral or written assertion. An affidavit is hearsay which is inadmissible unless allowed by an exception to the hearsay rule. In re Disqualification of Justice, 7 FSM Intrm. 278, 279 (Chk. S. Ct. Tr. 1995).

A court may rely on hearsay evidence for the purpose of finding probable cause at a post-seizure hearing. FSM v. Yue Yuan Yu No. 708, 7 FSM Intrm. 300, 303 (Kos. 1995).

Although procedural and evidentiary rules are relaxed at a probable cause hearing a prosecutor may not rely solely on hearsay evidence when other, more competent testimony is available. FSM v. Yue Yuan Yu No. 708, 7 FSM Intrm. 300, 304 (Kos. 1995).

A court may discount inherently unreliable evidence. The more levels of hearsay or the more hearsay statements contained within an affidavit, which is hearsay itself, the more unreliable the evidence is. FSM v. Yue Yuan Yu No. 708, 7 FSM Intrm. 300, 304 (Kos. 1995).

Statements made for purposes of medical diagnosis or treatment are not excluded from admissibility by the hearsay rule. Primo v. Refalopei, 7 FSM Intrm. 423, 436 n.28 (Pon. 1996).

In order for a deposition to be admissible a deponent must physically appear before someone who can identify and administer the oath even if the deposition is taken telephonically. FSM v. Skico, Ltd. (III), 7 FSM Intrm. 558, 559 (Chk. 1996).

Out of court admissions by a party-opponent are not hearsay statements. FSM v. Skico, Ltd. (IV), 7 FSM Intrm. 628, 630 (Chk. 1996).

Hearsay within hearsay is inadmissible. Hearsay otherwise admissible may be excluded where it consists primarily of reiteration of a statement made by some other unidentified person. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM Intrm. 659, 663 (Pon. 1996).

A statement, which if it had been made by the defendant would have been admissible as an admission of a party-opponent, is inadmissible hearsay when made by the defendant's then spouse as part of a traditional apology, and cannot be considered on a summary judgment motion. Glocke v. Pohnpei, 8 FSM Intrm. 60, 62 (Pon. 1997).

Official government documents submitted to Congress are evidence that falls within an exception to the hearsay rule. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 364 n.8 (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).

Statements in a document in existence twenty years or more the authenticity of which is established are excepted from the hearsay rule. Elaija v. Edmond, 9 FSM Intrm. 175, 182 (Kos. S. Ct. Tr. 1999).

The finding of probable cause may be based upon hearsay evidence in whole or in part. FSM v. Wainit, 10 FSM Intrm. 618, 621 (Chk. 2002).

The evidence rules define a letter from a criminal defendant as non-hearsay – an admission by a party-opponent, and if the defendant were not to testify on his own behalf, as is his right, it could also be admissible under the hearsay exception for statements against interest when the declarant is unavailable to testify. If produced and properly authenticated, the letter itself would be admissible evidence. FSM v. Wainit, 11 FSM Intrm. 1, 6 (Chk. 2002).

Merely because a person who holds a public office creates a document does not necessarily make that document a public record admissible under the hearsay exception for public documents. FSM v. Wainit, 11 FSM Intrm. 1, 6 (Chk. 2002).

As a general rule, hearsay evidence is inadmissible unless it falls within an exception to the hearsay rule. The reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located, is such an exception and is admissible as evidence. Rosokow v. Bob, 11 FSM Intrm. 210, 215 (Chk. S. Ct. App. 2002).

The subject himself cannot provide the factual basis for the date of his birth, as his knowledge of this information is based upon hearsay only. A person does not have personal knowledge of his date of birth. In re Phillip, 11 FSM Intrm. 243, 245 (Kos. S. Ct. Tr. 2002).

The Kosrae Rules of Evidence do not apply in the Land Commission or Land Court. In the case of hearsay testimony, the Land Commission or presiding justice shall determine the testimony's relevancy and the credibility of the witness. The purpose of allowing hearsay testimony and other evidence at land

proceedings, without application of the Kosrae Rules of Evidence, is to allow all relevant evidence on the claims presented before the Land Commission and Land Court, without limitations imposed by the Rules of Evidence. The determination of relevancy of evidence and credibility of witnesses is made by the adjudicators, the Land Commission or a justice of the Kosrae Land Court. Taulung v. Jack, 11 FSM Intrm. 345, 348 (Kos. S. Ct. Tr. 2003).

A log of payments in which entries were made at or about the same time as the transactions took place, and that they were records he kept in the normal course of business can be admitted into evidence. In re Lot No. 014-A-21, 11 FSM Intrm. 582, 592 (Chk. S. Ct. Tr. 2003).

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Hearsay is generally not admissible, and therefore cannot be relied upon to create a material issue of fact when opposing a summary judgment motion. Goyo Corp. v. Christian, 12 FSM Intrm. 140, 147 (Pon. 2003).

– Judicial Notice

A trial court is entitled to take judicial notice of an agreement authorizing state police officers to act on behalf of the FSM. Doone v. FSM, 2 FSM Intrm. 103, 106 (App. 1985).

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

The trial court may take judicial notice at any stage of the proceedings and may do so when he gives his findings. Este v. FSM, 4 FSM Intrm. 132, 135 (App. 1989).

When the trial court states that it is taking judicial notice of a fact the parties can raise the issue of the propriety thereof. Este v. FSM, 4 FSM Intrm. 132, 135 (App. 1989).

It is mandatory for a court to take judicial notice of the amount of judgments in favor of creditors when a request has been made and the court has been given all necessary information. Senda v. Mid-Pac Constr. Co., 5 FSM Intrm. 277, 280 (App. 1992).

Judicial notice may be taken on appeal. Welson v. FSM, 5 FSM Intrm. 281, 284 (App. 1992).

When requested to by a party, and once it has been supplied with all the necessary information, a court must take judicial notice of an adjudicative fact, only if it is either generally known within the territorial jurisdiction of the trial court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Counsel's oral argument to that effect is not enough. Stinnett v. Weno, 6 FSM Intrm. 312, 313 (Chk. 1994).

A court may take judicial notice at any stage of the proceedings including during a petition for rehearing on the appellate level. Nena v. Kosrae (III), 6 FSM Intrm. 564, 566 (App. 1994).

A court may take judicial notice of its own reported decisions. Berman v. FSM Supreme Court (I), 7 FSM Intrm. 8, 11 n.2 (App. 1995).

A court may consider as evidence against pleader, in the action in which they are filed, a party's earlier admissions in its responsive pleadings even though it was later withdrawn or superseded by amended pleadings. A court may take judicial notice of them as part of the record. FSM Dev. Bank v. Bruton, 7 FSM Intrm. 246, 249 (Chk. 1995).

When portions of court files in other cases are introduced into evidence a court may take judicial notice of all the papers and pleadings on file in those other cases. Kaminaga v. Chuuk, 7 FSM Intrm. 272, 273 (Chk. S. Ct. Tr. 1995).

When most documents provided in support of a party's submission are official records of the opponent state government, the Kosrae State Court may take judicial notice of the records. Langu v. Kosrae, 8 FSM Intrm. 455, 459 (Kos. S. Ct. Tr. 1998).

In a land case, the Kosrae State Court may take judicial notice of the documents in the file of a Trust Territory land case to clarify if the judgment in that case concerned the land in this case. Sigrah v. Kosrae State Land Comm'n, 9 FSM Intrm. 89, 93 (Kos. S. Ct. Tr. 1999).

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

When deciding the ownership of tideland, the trial court did not err in not taking judicial notice of and following the judgment in a different case that dealt only with the boundaries and ownership of adjacent filled land. Phillip v. Moses, 10 FSM Intrm. 540, 544 (Chk. S. Ct. App. 2002).

An 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).

Judicial notice may be taken of a statutory provision. Hauk v. Board of Dirs., 11 FSM Intrm. 236, 240 (Chk. S. Ct. Tr. 2002).

The court may take judicial notice that a person's status as a chief implies his residence within the area of which they are chief. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM Intrm. 192, 199 (Yap 2003).

In assessing damages, the court may take judicial notice of the prevailing cost in Kosrae of items similar to the ones lost. Palik v. PKC Auto Repair Shop, 13 FSM Intrm. 93, 96 (Kos. S. Ct. Tr. 2004).

When portions of court files in other cases are introduced into evidence, a court may take judicial notice of all the papers and pleadings on file in those other cases. Rudolph v. Louis Family, Inc., 13 FSM Intrm. 118, 125 n.2 (Chk. 2005).

– Privileges

Information concerning the source of funds for payment of attorney's fees of a particular party normally is not privileged information. Mailo v. Twum-Barimah, 3 FSM Intrm. 179, 181 (Pon. 1987).

The appropriate test to determine the scope of work product protection to be afforded a document which serves the dual purpose of assisting with future litigation the outcome of which may be affected by a business decision, is that documents should be deemed prepared in anticipation of litigation if in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation. Where a document is created because of the prospect of litigation, analyzing the likely outcome of that litigation, it does not lose protection under this formulation merely because it is created to assist with a business decision. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM Intrm. 471, 479 (Pon. 1998).

Work product protection extends to subsequent litigation as long as the materials sought were prepared by or for a party to the subsequent litigation. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM Intrm. 471, 481 (Pon. 1998).

It is appropriate to allow the deposition of a party's attorney either when 1) the deposition is the only practical means of obtaining the information, 2) the information sought will not invade the attorney-client privilege or the work product doctrine, and 3) the information sought is relevant and the need for it outweighs the disadvantages inherent in deposing a party's attorney; or when it is shown that no other means exist to obtain the information, and that the information sought is crucial to the preparation of the case. Pohnpei v. KSVI No. 3, 9 FSM Intrm. 273, 278 (Pon. 1999).

A privilege is a peculiar right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others. AHPW, Inc. v. FSM, 10 FSM Intrm. 420, 423 n.1 (Pon. 2001).

A witness's privilege is governed by common law principles as they may be interpreted by FSM courts in the light of reason and experience, including local custom and tradition. AHPW, Inc. v. FSM, 10 FSM Intrm. 420, 423 (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).

Legislative privilege has a long history, and was well established at common law even before the founding of the United States. AHPW, Inc. v. FSM, 10 FSM Intrm. 420, 423 (Pon. 2001).

Legislative immunity for state legislators exists under United States federal law independent of state constitutional speech or debate provisions. Legislative freedom has no less vitality in the FSM than in the United States. Our national Constitution and all four state constitutions contain speech or debate clauses. AHPW, Inc. v. FSM, 10 FSM Intrm. 420, 424 (Pon. 2001).

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 lawmaker engages in many activities which are not covered by the legislative privilege, such as a wide range of legitimate errands performed for constituents, making of appointments with government agencies, assistance in securing government contracts, preparing news letters to constituents, news releases, and outside speeches. Such activities, though entirely legitimate, are political in nature rather than legislative, and such political matters do not have speech or debate clause protection. But when a legislator is acting within the legitimate legislative sphere, the speech or debate clause is an absolute bar to interference. AHPW, Inc. v. FSM, 10 FSM Intrm. 420, 424-25 (Pon. 2001).

Legislative privilege should be read broadly to include anything generally done in a session of the legislature by one of its members in relation to the business before it. The ambit of the privilege extends beyond speech and debate per se to cover voting, circulation of information to other legislators, participation in the work of legislative committees, and a host of kindred activities. AHPW, Inc. v. FSM, 10 FSM Intrm. 420, 425 (Pon. 2001).

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

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).

There is no banker-client (i.e., customer) privilege, and no analytical reason to raise an understandably confidential commercial situation of principal-agent or customer-banker to a privilege. A privacy or confidentiality interest must be balanced against a litigant's interest in obtaining relevant and probative information even if the privacy interest implicated is that of non-parties. Adams v. Island Homes Constr., Inc., 11 FSM Intrm. 218, 227 (Pon. 2002).

There is no privilege provided by law to protect the victim daughter from testifying against the defendant father. Kosrae State Code § 6.302 provides a privilege to persons from testifying against their spouse, but when the family victim is not the defendant's spouse, no privilege exists. Kosrae v. Nena, 12 FSM Intrm. 20, 23 (Kos. S. Ct. Tr. 2003).

– Witnesses

At the core of the task of the trier of fact is the power and obligation to determine credibility of witnesses. The court may rely upon that testimony which he finds credible and disregard testimony which does not appear credible. To do this, the trial court must be a sensitive observer of tones, hesitations, inflections, mannerisms and general demeanor of actual witnesses. Engichy v. FSM, 1 FSM Intrm. 532, 556 (App. 1984).

Normally, it is primarily the task of the land commission, not the reviewing court, to assess the credibility of witnesses and to resolve factual disputes, since it is the commission, not the court that is present when witnesses testify and only the commission sees the manner their testimony but commission's major findings, and if no such explanation is made, the reviewing court may conduct its own evidentiary hearings or may remand the case to the commission for further proceedings. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM Intrm. 395, 401 (Kos. S. Ct. Tr. 1988).

A witness's credibility may not be attacked by evidence of a prior criminal conviction if the crime did not involve dishonesty or false statement, or was not for a felony whose punishment ended within the past ten years, or if the prejudicial effect outweighs the probative value. Ponape Constr. Co. v. Pohnpei, 6 FSM Intrm. 114, 122 (Pon. 1993).

A lawyer generally cannot appear as an advocate when he also appears as a witness, although there is an exception when the testimony relates to an uncontested issue. FSM Dev. Bank v. Ifraim, 10 FSM Intrm. 342, 344 (Chk. 2001).

A witness summons can be issued for any witness, including the victim, for his or her appearance and testimony at trial. This process is utilized frequently in trials of criminal cases where witnesses are reluctant to appear and testify. Kosrae v. Nena, 12 FSM Intrm. 20, 23 (Kos. S. Ct. Tr. 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).

Every person is competent to be witness except as otherwise provided by the Evidence Rules. A witness must have personal knowledge of the matter testified to and must, prior to testifying, declare, by oath or affirmation that she will testify truthfully. Kosrae v. Jackson, 12 FSM Intrm. 93, 97 (Kos. S. Ct. Tr. 2003).

The Rules do not specify any mental qualifications for testifying as a witness. The issue is better suited to the fact finder in its determination of the witness's weight and credibility. Kosrae v. Jackson, 12 FSM Intrm. 93, 97 (Kos. S. Ct. Tr. 2003).

The question of a witness's competency goes to the issue of credibility, which is for the trier of fact. Even a finding of criminal insanity and incompetence does not make a person incompetent to testify. As long

as the person had a sufficient memory, could understand the oath, and could communicate what the person saw, the person was competent to serve as a witness. Kosrae v. Jackson, 12 FSM Intrm. 93, 97 (Kos. S. Ct. Tr. 2003).

A witness's competency to testify requires a minimum ability to observe, record, recollect and recount an event, as well as an understanding to tell the truth. The fact finder hears the testimony and judges the witness's credibility. Therefore, mental capacity generally functions as an effect on the weight of the testimony to be given, instead of precluding admissibility of the testimony. Generally, any showing of memory about the event is sufficient to make the witness competent to testify. If the witness is capable of communicating in any manner, the witness is competent. Kosrae v. Jackson, 12 FSM Intrm. 93, 97 (Kos. S. Ct. Tr. 2003).

A witness will not be disqualified to testify as witness in a trial due to her mental handicap when she took an oath to testify truthfully; had the memory of what actions had taken place; and, based upon her testimony, showed her ability to observe, record, recollect and recount that event. Kosrae v. Jackson, 12 FSM Intrm. 93, 97 (Kos. S. Ct. Tr. 2003).

Kosrae Rule of Evidence 609 permits impeachment through evidence of conviction of a felony, where the date of the conviction is less than ten years and it also requires the court to determine that the probative value of admitted the prior conviction outweighs its prejudicial effect to the defendant. Kosrae v. Jackson, 12 FSM Intrm. 93, 98 (Kos. S. Ct. Tr. 2003).

Every person is competent to be a witness except as otherwise provided in the Rules. Rule 602 requires lay witnesses to have personal knowledge of the matters that they are testifying to. Rule 603 requires every witness to declare that he will testify truthfully. The Rules do not exclude potential witnesses based upon their status as prisoners. Kosrae v. Sigrah, 12 FSM Intrm. 562, 566 (Kos. S. Ct. Tr. 2004).

When a prisoner's testimony complied with the requirements of Rules 601, 602 and 603 and the defendant had the opportunity to cross examine him and attack his credibility by evidence of prior criminal convictions, there is no legal authority for the automatic exclusion of a prisoner's testimony. Ultimately, it is the task of trier of fact to determine the witnesses' credibility and to determine what should be accepted as the truth and what should be rejected as untrue or false. Kosrae v. Sigrah, 12 FSM Intrm. 562, 566 (Kos. S. Ct. Tr. 2004).

EXTRADITION

Extradition is neither a criminal nor a civil proceeding. In re Extradition of Jano, 6 FSM Intrm. 12, 13 (App. 1993).

The FSM Attorney General's Office is not disqualified in an international extradition case where the accused is the plaintiff in a civil suit against one of its members because the Attorney General's office has no discretion in the matter. It did not initiate nor can it influence the course of the prosecution abroad, and the discretion of whether to extradite a citizen does not repose in the Attorney General's Office. In re Extradition of Jano, 6 FSM Intrm. 12, 13-14 (App. 1993).

Certifications of extraditability are not final decisions of the trial court since the final decision-making authority rests with the Secretary of External Affairs. Therefore they are not appealable. In re Extradition of Jano, 6 FSM Intrm. 23, 25 App. 1993).

Judicial review of a certification of extraditability, although not appealable, is available to an accused in custody by seeking a writ of habeas corpus. In re Extradition of Jano, 6 FSM Intrm. 23, 25 (App. 1993).

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

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).

Certification of extraditability is an adversarial proceeding. An advocate in an adversarial proceeding is expected to be zealous. In re Extradition of Jano, 6 FSM Intrm. 26, 27 (App. 1993).

Extradition is not a criminal action although it involves a criminal accusation. The specific provisions of the international extradition statute apply rather than the general provisions of Title 12, chapter 2. In re Extradition of Jano, 6 FSM Intrm. 62, 63 (App. 1993).

Once a justice certifies an accused as extraditable, the justice must then commit the person to the proper jail until surrendered. The extradition statute does not give the court the authority to release a person on bail pending any judicial review of the certification. In re Extradition of Jano, 6 FSM Intrm. 62, 63 (App. 1993).

In an international extradition case, bail can be granted only if "special circumstances" are shown. Neither risk of flight nor the availability of a suitable custodian are primary considerations. Rather the primary consideration is the ability of the government to surrender the accused to the requesting government. In re Extradition of Jano, 6 FSM Intrm. 62, 64 (App. 1993).

Judicial review of an extradition hearing is by petition for a writ of habeas corpus. In re Extradition of Jano, 6 FSM Intrm. 93, 97 (App. 1993).

No Micronesian custom or tradition is applicable to extradition. In re Extradition of Jano, 6 FSM Intrm. 93, 97 (App. 1993).

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).

A person whose extradition is sought can always contest identification. In re Extradition of Jano, 6 FSM Intrm. 93, 100 (App. 1993).

A person whose extradition is sought may, at the extradition hearing, introduce evidence that explains the government's evidence of probable cause, but not evidence that contradicts it. In re Extradition of Jano, 6 FSM Intrm. 93, 101 (App. 1993).

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 of whether it is criminal under the laws of both signatory governments. In re Extradition of Jano, 6 FSM Intrm. 93, 102-03 (App. 1993).

Extradition treaties are to be construed liberally to effect their purpose of surrender of fugitives to be tried for their alleged offenses. In re Extradition of Jano, 6 FSM Intrm. 93, 103 (App. 1993).

The scope of a habeas corpus review of an extradition proceeding is 1) whether the judge had jurisdiction, 2) whether the court had jurisdiction over the extraditee, 3) whether there is an extradition agreement in force, 4) whether the crimes charged fall within the terms of the agreement, and 5) whether there was sufficient evidence to support a finding of extraditability. In re Extradition of Jano, 6 FSM Intrm. 93, 104 (App. 1993).

An extradition hearing justice is required to make written findings for two reasons: 1) to meet the "rule

of specialty" by which prosecution is limited to those offenses upon which extradition is granted, and 2) to reflect that the offenses for which extradition is granted is criminal in both the requesting and requested countries. In re Extradition of Jano, 6 FSM Intrm. 93, 105 (App. 1993).

To satisfy the dual criminality test in extradition matters either national or state law may be used. An exact matching of the offense or elements is not required, but the acts charged must be criminal in both jurisdictions. In re Extradition of Jano, 6 FSM Intrm. 93, 105 (App. 1993).

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

Where the extradition agreement specifically requires that the requesting government's statute of limitations be used to determine extraditability, a general provision cannot be read to apply the statute of limitations of the requested government. In re Extradition of Jano, 6 FSM Intrm. 93, 108 (App. 1993).

FEDERALISM

The Pohnpei State Constitution was established under the authority granted by article VII, section 2 of the Constitution of the Federated States of Micronesia which mandates that a state shall have a democratic constitution and also Pohnpei State Law No. 2L-131-82, section 9, which mandated the Pohnpei State Constitutional Convention "to draft a constitution for the State of Ponape . . . [that] shall make adequate provisions for the exercise of legislative, judicial and executive functions, and shall guarantee to all citizens of the State, a democratic form of government." People of Kapingamarangi v. Pohnpei Legislature, 3 FSM Intrm. 5, 8-9 (Pon. S. Ct. Tr. 1985).

Although national law requires the FSM Supreme Court to protect persons against violations of civil rights, strong considerations of federalism and local self-government suggest that local institutions should be given an opportunity to address local issues, even civil rights issues, especially when this can be done without placing the rights of the parties in serious jeopardy and when the local decision may obviate the need for a constitutional ruling by the national court. Hadley v. Kolonia Town, 3 FSM Intrm. 101, 103 (Pon. 1987).

As a general proposition, the court will not lightly assume that Congress intends to assert national powers which may overlap with, or encroach upon, powers allocated to the states under the general scheme of federalism embodied in the Constitution. FSM v. Oliver, 3 FSM Intrm. 469, 480 (Pon. 1988).

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

Statutory provisions in the Trust Territory Code concerning domestic relations are part of state law because domestic relations fall within the powers of the states and not the national government. Pernet v. Aflague, 4 FSM Intrm. 222, 224 (Pon. 1990).

Since the determination of support payments payable by a divorced husband is a matter governed by state law, the FSM Supreme Court in addressing such an issue is obligated to attempt to apply the pertinent state statutes in the same fashion as would the highest state court in the pertinent jurisdiction. Pernet v. Aflague, 4 FSM Intrm. 222, 224 (Pon. 1990).

The FSM Supreme Court will not interfere in a pending state court proceeding where no authority has been cited to allow it to do so, where the case has not been removed from state court, where it has not been shown that the national government is a party to the state court proceeding thereby putting the case within the FSM Supreme Court's exclusive jurisdiction, and where it has not been shown that the movants are parties

to the state court proceeding and thus have standing to seek national court intervention. Pohnpei v. Kailis, 6 FSM Intrm. 460, 463 (Pon. 1994).

Congress has the sole power to legislate the regulation of natural resources in the marine space of the Federated States of Micronesia beyond 12 miles from island baselines, and the states have the constitutional power to legislate the regulation of natural resources within that twelve miles of sea. Congress may also legislate concerning navigation and shipping within the twelve-mile limit except within lagoons, lakes, and rivers. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM Intrm. 456, 459 (App. 1996).

The Constitution 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).

When the judgment creditor has an execution remedy apart from a writ of execution directed to the state police, the court is reluctant to unnecessarily consider the constitutional issue raised when doing so could be viewed in any light as hampering voluntary cooperation between state and national law enforcement as a matter of comity, an important concern given the geographical configuration of our country and the limited law enforcement resources of both the state and national governments. Parkinson v. Island Dev. Co., 11 FSM Intrm. 451, 453 (Yap 2003).

– Abstention and Certification

As the Ponape District Court bears the closest resemblance to the state court system contemplated by the Constitution, it is appropriate to provide the District Court an opportunity to render an opinion on local issues. In re Nahnsen, 1 FSM Intrm. 97, 97 (Pon. 1982).

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

It would be contrary to the desire of the framers of the Constitution that local officials retain control over local matters if the FSM Supreme Court were to relinquish jurisdiction over issues involving local and state powers to the Trust Territory High Court, which is the least local tribunal now existing in the Trust Territory. In re Nahnsen, 1 FSM Intrm. 97, 110 (Pon. 1982).

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

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

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

A reasoned request by a state that the FSM Supreme Court abstain from deciding a particular issue should be granted unless the opposing party establishes that the benefits of abstention in terms of federalism and judicial harmony, and respect for state sovereignty, would be substantially outweighed by delay, harm or injustice. Panuelo v. Pohnpei (I), 2 FSM Intrm. 150, 156 (Pon. 1986).

Where neither land, inheritance nor any other crucial interest of the state is involved; where the state has developed no extensive administrative apparatus or practical knowledge relating to the state issue with which a state court would be more familiar; where the state issue is not, strictly speaking, constitutional; and where the state has tendered the issue to the FSM Supreme Court and no party has requested abstention, the FSM Supreme Court should decide the issue rather than abstaining in favor of the state court. Panuelo v. Pohnpei (I), 2 FSM Intrm. 150, 157-59 (Pon. 1986).

Where litigation in which a state of the Federated States of Micronesia is a defendant involves an issue concerning the meaning of a provision of the state Constitution, and the parties in that litigation request that the issue of the meaning of the provision be certified to the supreme court of the state, it is an appropriate exercise of the inherent powers of the FSM Supreme Court to devise a procedure for tendering the issue to the state supreme court, so long as the state court approves. Panuelo v. Pohnpei (III), 2 FSM Intrm. 244, 246 (Pon. 1986).

Abstention in favor of state court jurisdiction is inappropriate in a case which concerns leasehold of a dock facility, raises issues of national commercial import, and was filed almost two years ago during which time several opinions were rendered. Federated Shipping Co. v. Ponape Transfer & Storage (III), 3 FSM Intrm. 256, 260-61 (Pon. 1987).

The factors to be considered in the decision about whether the FSM Supreme Court should certify an issue to the state supreme court include: possible harm to the party seeking relief; the likelihood of significant delay; and the objections raised by the opposing party. Hadley v. Kolonia Town, 3 FSM Intrm. 101, 103 (Pon. 1987).

Certification of appropriate issues to the Pohnpei Supreme Court appellate division by the FSM Supreme Court is consistent with the interaction between state and national courts, as contemplated by the FSM Const. art. XI, §§ 7, 8, 10, and as interpreted in earlier case law. Hadley v. Kolonia Town, 3 FSM Intrm. 101, 103-04 (Pon. 1987).

The FSM Supreme Court has earlier explained that in the interests of judicial harmony and out of respect for state sovereignty, it is an appropriate exercise of the FSM Supreme Court's inherent powers to devise a procedure for tendering state constitutional issues to the state courts, so long as the state court approves. Hadley v. Kolonia Town, 3 FSM Intrm. 101, 104 (Pon. 1987).

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

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

The FSM Constitution, article XI, section 8, as well as general principles of federalism and considerations of judicial harmony, give the FSM Supreme Court power to certify state law issues to state courts. Edwards v. Pohnpei, 3 FSM Intrm. 350, 361 (Pon. 1988).

Considerations of federalism and state sovereignty create a presumption in litigation when a state is defendant in an action for money damages that a request by the state defendant for certification to state court of unresolved and significant issues of state law will be granted. Edwards v. Pohnpei, 3 FSM Intrm. 350, 362 (Pon. 1988).

While the FSM Supreme Court may certify legal issues in a case before it to the highest state court, questions which require application of law to facts may not be certified. Edwards v. Pohnpei, 3 FSM Intrm. 350, 363 (Pon. 1988).

Certification of issues to other courts typically causes delay and increases the cost of litigation and therefore should be employed only for unsettled legal issues. Edwards v. Pohnpei, 3 FSM Intrm. 350, 363 (Pon. 1988).

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

Because the interest of developing a dynamic and well reasoned body of Micronesian jurisprudence, is best served when all courts have the benefit of one another's opinions to consider and question; when the litigants are private parties the FSM Supreme Court normally should attempt to resolve all issues presented, even when matters of state law are involved. Federated Shipping Co. v. Ponape Transfer & Storage Co., 4 FSM Intrm. 3, 13 (Pon. 1989).

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).

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).

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

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

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

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

In a case brought before the FSM Supreme Court where similar litigating involving the same parties and issues is already pending before a state court, and a decision by the state court in the litigation would resolve all controversies among the parties, the risk of costly, duplicative litigation is one factor to be considered by the national court in determining whether to abstain. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM Intrm. 37, 44 (Pon. 1989).

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).

There are no statutory or constitutional obligations which require the FSM Supreme Court to abstain or certify questions merely because unsettled matters of state law are at issue. Pryor v. Moses, 4 FSM Intrm. 138, 141 (Pon. 1989).

The choice of whether to abstain from a decision or certify questions is one that lies wholly within the discretion of the FSM Supreme Court, and the judge must not undertake that decision lightly. Pryor v. Moses, 4 FSM Intrm. 138, 141 (Pon. 1989).

The list of areas in which the FSM Supreme Court will consider it appropriate to liberally defer to state courts must be open and flexible, responding to the particular state of legal and social development in Micronesia, and when issues important to Micronesians become the focus of concerted state efforts to establish a coherent body of law, the FSM Supreme Court will take those developments into account in evaluating requests for certification or abstention. Pryor v. Moses, 4 FSM Intrm. 138, 142 (Pon. 1989).

Where two private parties are involved, special considerations of state sovereignty are not as weighty in considering requests for abstention or certification, and the FSM Supreme Court normally should attempt to resolve all issues presented, even when matters of state law are involved. Pryor v. Moses, 4 FSM Intrm. 138, 143 (Pon. 1989).

Requiring the FSM Supreme Court to abstain from deciding virtually all state law matters of first impression would not be in the interests of the efficient administration of justice, and would not be consistent with the jurisdictional provisions of the FSM Constitution. Pryor v. Moses, 4 FSM Intrm. 138, 143 (Pon. 1989).

Because it is appropriate to seek to develop legal standards through careful consideration of every individual case and all its attendant facts, to certify questions of law in a factual vacuum as a regular and frequent practice ill serves the primary purpose of the courts to address the justice of each separate case. Pryor v. Moses, 4 FSM Intrm. 138, 144-45 (Pon. 1989).

In a case where there is no state party and no issues of land or other matters crucial to state interests for which the state is actively developing policy and law, the healthy and efficient administration of justice demands that the FSM Supreme Court fulfill its duty to exercise jurisdiction and refuse to abstain or certify issues. Pryor v. Moses, 4 FSM Intrm. 138, 145 (Pon. 1989).

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

On a claim for declaratory relief from an unconstitutional excise tax, the FSM Supreme Court trial division will not abstain, where the issue could later be certified to the FSM Supreme Court appellate division and result in delay, where the trial court has already retained the case longer than contemplated, where the issue is narrowly posed and not capable of varying resolutions, and where it appears that a greater service may be provided by deciding the issue. Gimnang v. Yap, 4 FSM Intrm. 212, 214 (Yap 1990).

It is not appropriate to abstain from deciding a claim for injunctive relief where it is undisputed that the court has jurisdiction and where the interests of time can be of pressing importance. Gimnang v. Yap, 4 FSM Intrm. 212, 214 (Yap 1990).

The national courts, in carrying out their judicial responsibilities, do have inherent power to certify issues, or to abstain partially or completely from exercising jurisdiction in a particular issue or to exercise jurisdiction

over part or all of a case. Gimnang v. Yap, 5 FSM Intrm. 13, 19 (App. 1991).

A national court ordinarily should refrain from deciding a case in which state action is challenged as violating the federal constitution, if unsettled questions of state law may be dispositive and obviate the need for the constitutional determination. Gimnang v. Yap, 5 FSM Intrm. 13, 21 (App. 1991).

A national court may not abstain from exercising its constitutional jurisdiction when it is directly faced with a constitutional issue and surely may never abstain completely from exercising jurisdiction in a case where there remains to be resolved a substantial issue under the national constitution. Gimnang v. Yap, 5 FSM Intrm. 13, 25 (App. 1991).

In a case arising under national law there is an especially strong presumption against full abstention, and there is a serious question whether the trial division of a national court may ever certify a question of national law to a state court for decision unless it can reasonably be expected that the particular claim can be resolved entirely through the application of state law. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 67A, 67C (Pon. 1991).

When there are identifiable, particularly strong state interests, such as questions concerning the ownership of land or where there are monetary claims against the state or its agencies, the national courts should exercise restraint, and look with sympathy upon a state request for abstention. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 67A, 67D (Pon. 1991).

Although it may be appropriate to defer to state courts the resolution of land related state law issues, abstention and certification of issues should not be allowed to thwart the more fundamental goal and obligation of the judicial system to render just decisions in a speedy fashion at a minimum of costs to litigants and society alike. Therefore a reasonable balance must be sought between responsiveness to state interests and the obligation of the national courts to carry out their own jurisdictional responsibilities. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 67A, 67D (Pon. 1991).

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

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

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

Where a case requires decisions as to the rights of owners of land in Pohnpei, it is appropriate that these issues be certified for presentation to the Pohnpei Supreme Court if it can be done without undue expense to the litigants, or extended delay. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 67A, 67F (Pon. 1991).

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

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).

It is appropriate for the state court to rule upon the non-constitutional grounds and upon the alleged violation of the Pohnpei Constitution. The plaintiff may raise at a later time the allegation that the ordinance violates the FSM Constitution if that is still necessary after disposition by the state court. Berman v. Pohnpei, 5 FSM Intrm. 303, 306-07 (Pon. 1992).

Where there is a long delay in moving for certification of an issue and it appears the motion's sole purpose is to cause further delay, the doctrine of laches may bar the granting of the motion. Youngstrom v. Youngstrom, 5 FSM Intrm. 335, 337-38 (Pon. 1992).

A bond of debt is simply a loan instrument. Therefore when determining its legal effect does not require a determination concerning interests in land there is insufficient basis for abstention. Kihara v. Nanpei, 5 FSM Intrm. 342, 345 (Pon. 1992).

Because the FSM Supreme Court is the only court of jurisdiction in cases arising under article XI, section 6(a) of the FSM Constitution, the court has no discretion to abstain in such cases. Faw v. FSM, 6 FSM Intrm. 33, 36 (Yap 1993).

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

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

The FSM Supreme Court has a constitutional duty to hear disputes wherein the parties are diverse, even if land issues are involved, although the court may abstain from exercising such jurisdiction on a case-by-case basis where other factors weighing in favor of abstention are present. Etscheit v. Mix, 6 FSM Intrm. 248, 250 (Pon. 1993).

Where a complaint arises from actions concerning the internal operations of municipal government, and the claims sound in tort, abstention in favor of state court adjudication is appropriate. Mendiola v. Berman (I), 6 FSM Intrm. 427, 429 (Pon. 1994).

That a defendant files a counterclaim alleging violation of constitutional rights does not in itself make abstention of the case as a whole inappropriate. Mendiola v. Berman (II), 6 FSM Intrm. 449, 450 (Pon. 1994).

Deference to state court jurisdiction is warranted in cases involving municipal government issues, given the greater familiarity with such issues at the state level and the greater importance to state interests. Mendiola v. Berman (II), 6 FSM Intrm. 449, 450-51 (Pon. 1994).

Even though the national court has jurisdiction abstention may be warranted in civil forfeiture fishing case for fishing in state waters where defendants are also part of a companion criminal case in state court. Pohnpei v. M/V Zhong Yuan Yu #606, 6 FSM Intrm. 464, 465-66 (Pon. 1994).

The circumstance that decisions of the Appellate Division of the Chuuk State Supreme Court may be appealed to the Appellate Division of the FSM Supreme Court and the method chosen by the sovereign State of Chuuk to select members of their appellate panels will not foreclose the FSM Supreme Court trial division from certifying a question to the Chuuk State Supreme Court Appellate Division where there are other elements in favor of certification. Stinnett v. Weno, 6 FSM Intrm. 478, 479-80 (Chk. 1994).

Certification of questions to a state court is appropriate where the decision of the state court on state law may be dispositive, eliminating the need to address the FSM Constitutional issues and where important questions as to the source of authority of one of its political subdivisions to impose a tax and the nature of the exercise of municipal taxing authority are involved. Stinnett v. Weno, 6 FSM Intrm. 478, 480 (Chk. 1994).

Considerations of federalism and local self-government lead to the utility of certification. Stinnett v. Weno, 6 FSM Intrm. 478, 480 (Chk. 1994).

Certification to a state court does not prevent the FSM Supreme Court from addressing the FSM constitutional issues if that becomes necessary. Stinnett v. Weno, 6 FSM Intrm. 478, 480 (Chk. 1994).

Where the validity of a municipal tax ordinance is questioned under the state constitution and right of the taxpayer to a refund it is appropriate for the FSM Supreme Court to certify the question to the appellate division of the state court. Chuuk Chamber of Commerce v. Weno, 6 FSM Intrm. 480, 481 (Chk. 1994).

When a national court abstains it simply says that it is not going to decide the issue and allows the parties to file in state or local court; it does not submit or transfer anything to another court. Gimnang v. Trial Division, 6 FSM Intrm. 482, 485 (App. 1994).

Unlike abstention, when a national court certifies a state law issue it poses specific questions to the appellate division of the state court. Gimnang v. Trial Division, 6 FSM Intrm. 482, 485 (App. 1994).

The choice of whether to abstain from a decision or to certify questions is one that lies wholly within the discretion of the trial court. Gimnang v. Trial Division, 6 FSM Intrm. 482, 485 (App. 1994).

Abstention is left to the sound discretion of the court, but the Supreme Court may not abstain for cases involving issues of interpreting the Constitution. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM Intrm. 594, 603 (Pon. 1994).

Because speedy and final resolution of questions regarding the constitutional roles of the state and national governments will avoid unnecessary conflict and possible jurisdictional tension between the state and national courts, it is proper to stay an order of abstention pending appeal in such cases. Pohnpei v. MV Hai Hsiang #36 (II), 6 FSM Intrm. 604, 605 (Pon. 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).

National courts are not required to certify to state courts state law issues of first impression. Whether to certify a question to state court is left to the sound discretion of the trial court on a case by case basis. Youngstrom v. Youngstrom, 7 FSM Intrm. 34, 36 (App. 1995).

A most important issue in determining whether to certify an issue to state court is whether it will result in undue delay and whether that delay will prejudice a party. Youngstrom v. Youngstrom, 7 FSM Intrm. 34, 36 (App. 1995).

The decision whether the FSM Supreme Court will exercise its inherent power to abstain from a case is left to the sound discretion of the trial division which must exercise it carefully and sparingly. Conrad v. Kolonia Town, 7 FSM Intrm. 97, 99 (Pon. 1995).

Counseling against the unfettered use of abstention is the FSM Supreme Court's solemn obligation to consider the interests and protect the rights of those who wish to invoke its constitutional jurisdiction. Conrad v. Kolonia Town, 7 FSM Intrm. 97, 99 (Pon. 1995).

When issues of national law are involved there is a particularly strong presumption against full abstention from the case. Conrad v. Kolonia Town, 7 FSM Intrm. 97, 100 (Pon. 1995).

There is a presumption favoring abstention in claims involving state law and money damages against the state that touch upon the particularly strong state interest of fiscal autonomy and federalism. Even in those cases the FSM Supreme Court will not abstain when abstention will result in substantial delay or

additional cost. Conrad v. Kolonia Town, 7 FSM Intrm. 97, 100 (Pon. 1995).

Where a case involves several substantive FSM constitutional claims the FSM Supreme Court will not and most likely cannot exercise its discretion to abstain. Conrad v. Kolonia Town, 7 FSM Intrm. 97, 101 (Pon. 1995).

Extension of the presumption of abstention in certain cases to municipalities is inappropriate. Conrad v. Kolonia Town, 7 FSM Intrm. 97, 101 (Pon. 1995).

Abstention by the FSM Supreme Court is only proper if it has concurrent jurisdiction, such as diversity jurisdiction, and the case involves state powers or interests. Ladore v. U Corp., 7 FSM Intrm. 296, 298 (Pon. 1995).

Abstention may be proper in a case involving a private easement where there are no issues distinctly separate from those involving state powers because state courts have the primary role in setting policy and deciding legal issues concerning ownership and interests in land. Ladore v. U Corp., 7 FSM Intrm. 296, 298 (Pon. 1995).

Only "clean" questions of law are appropriate for certification, not questions of fact or mixed questions of law and fact. Nanpei v. Kihara, 7 FSM Intrm. 319, 322 (App. 1995).

The decision to certify a question to a state court lies wholly within the sound discretion of the trial court. Thus the standard of review of the decision not to certify a question is whether the trial court abused its discretion. Nanpei v. Kihara, 7 FSM Intrm. 319, 322 (App. 1995).

The FSM Supreme Court is not obligated to certify every unsettled issue of state law, and it does have a constitutional obligation to exercise its own jurisdiction, but there may be a preference for referring a matter to state court when the state court's decision on an unsettled matter of state law would be dispositive and obviate the need for an adjudication of the national constitution. Nanpei v. Kihara, 7 FSM Intrm. 319, 322 (App. 1995).

The choice to abstain from a decision, like the decision to certify a question, lies wholly within the sound discretion of the trial court. Thus the standard of review of the decision not to abstain is whether the trial court abused its discretion. Nanpei v. Kihara, 7 FSM Intrm. 319, 322 (App. 1995).

Certain circumstances may give rise to an inclination in favor of abstention, such as a state request for abstention where there are identifiable, particularly strong state interests such as monetary claims against the state or questions concerning ownership of land, but national courts still have the obligation to carry out their own jurisdictional responsibilities. Nanpei v. Kihara, 7 FSM Intrm. 319, 322 (App. 1995).

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

The FSM Supreme Court may not abstain in cases involving interpretation of the FSM Constitution. Island Dev. Co. v. Yap, 9 FSM Intrm. 18, 20 (Yap 1999).

Neither the state's mere presence in a lawsuit by virtue of a monetary claim against it, nor its presence plus the presence of even an important issue of state law serves as a sufficient basis for abstention. Always hovering in the background of any abstention analysis is a litigant's constitutional right under the FSM Constitution to avail himself of the national court's diversity jurisdiction under article XI, section 6(b). Island Dev. Co. v. Yap, 9 FSM Intrm. 18, 21 (Yap 1999).

The likelihood of abstention, always discretionary, is increased when the state is a party; when the subject matter of the requested abstention is one involving local concerns that lie solidly within a state's sphere of interest, such as land or inheritance issues; when the state has developed an administrative approach to deal with the specified issues; and when the issue presented is a "clean" legal issue, as opposed to a factual one. Island Dev. Co. v. Yap, 9 FSM Intrm. 18, 21-22 (Yap 1999).

Yap's interest in establishing a body of contract jurisprudence is, without more, insufficient to cause the FSM Supreme Court to exercise its discretion and abstain in a case in which it has diversity jurisdiction under article XI, section 6(b) of the FSM Constitution. Island Dev. Co. v. Yap, 9 FSM Intrm. 18, 22 (Yap 1999).

Certification as practiced in the FSM is a judicially devised procedure that is entirely discretionary with the court. Weno v. Stinnett, 9 FSM Intrm. 200, 209 (App. 1999).

Just as the trial court could exercise its discretion to certify the questions on its own motion, it could properly exercise that discretion to grant plaintiffs' unopposed motion to withdraw the certification after nearly a year had elapsed without any indication from the Chuuk state court appellate division that it would hear the question. Weno v. Stinnett, 9 FSM Intrm. 200, 209 (App. 1999).

Events transpiring in other litigation before the Chuuk State Supreme Court trial division did not have the capacity, by their mere occurrence, to create reversible error in a different case before a different court. The FSM trial court was not obliged to be aware of and draw inferences from those events, which did not constitute controlling precedent, in order to discern the Chuuk State Supreme Court appellate division's mind with respect to the certification question. When Chuuk State Supreme Court appellate division did not speak to the certification issue, the FSM Supreme Court trial division properly exercised its discretion to withdraw the certification. Weno v. Stinnett, 9 FSM Intrm. 200, 209-10 (App. 1999).

The standard of review for a decision not to abstain is that of abuse of discretion. Weno v. Stinnett, 9 FSM Intrm. 200, 210 (App. 1999).

An abstention request that comes after trial, and after the case had been pending for approximately five years, is untimely. Weno v. Stinnett, 9 FSM Intrm. 200, 210 (App. 1999).

Abstention requires the initiation of a new lawsuit in a state court. Weno v. Stinnett, 9 FSM Intrm. 200, 210-11 (App. 1999).

A motion to certify issues to a state court may be denied when there is an absence of legal authority in the movant's memorandum and when the issues are imprecisely and inaccurately defined. Island Cable TV v. Gilmete, 9 FSM Intrm. 264, 266-67 (Pon. 1999).

A court is hesitant to initiate the somewhat cumbersome certification procedure until it is satisfied that putative issues raised exist, and that they have been precisely defined. Island Cable TV v. Gilmete, 9 FSM Intrm. 264, 266-67 (Pon. 1999).

A defense is that which is offered and alleged by the party proceeded against in an action or suit, as a reason in law or fact why plaintiff should not recover or establish what he seeks. A motion for abstention has little common ground with the concept of a defense because abstention by no means precludes a plaintiff from obtaining the requested relief but rather goes to the question of the appropriate forum in which to pursue that relief. Island Dev. Co. v. Yap, 9 FSM Intrm. 279, 283 (Yap 1999).

Abstention is not a defense to a lawsuit in the sense used in Rule 12(b). In abstention practice, the movant is asking the court to exercise its discretion to abstain from hearing the action for the express purpose that another court may hear the lawsuit. Island Dev. Co. v. Yap, 9 FSM Intrm. 279, 283 (Yap 1999).

There is no reason that answers could not be filed in due course during the pendency of an abstention motion, and there is also no reason that discovery could not have been ongoing during an abstention motion's

pendency, since discovery was just as inevitable as the answer. Island Dev. Co. v. Yap, 9 FSM Intrm. 279, 284 (Yap 1999).

An abstention motion before the FSM Supreme Court should proceed as a post-answer motion, and not a motion in lieu of answer under Rule 12(b) of the FSM Civil Procedure Rules. Island Dev. Co. v. Yap, 9 FSM Intrm. 279, 284 (Yap 1999).

As a general rule, the FSM Supreme Court trial division is obliged to exercise its jurisdiction and may not abstain simply because unsettled issues of state law are presented. Pohnpei Cmty. Action Agency v. Christian, 10 FSM Intrm. 623, 635 (Pon. 2002).

The FSM Supreme Court has deferred adjudication of certain land disputes in favor of state land commissions, but has also emphasized its responsibility under article XI, section 6(b) of the FSM Constitution to hear diversity disputes, even if land issues are involved. There is no judicial, constitutional, or legislative rule that in all cases where land is concerned, the FSM Supreme Court must abstain or otherwise refrain from exercising jurisdiction. The presence of certain factors on a case-by-case basis may influence the decision to abstain in land cases. Ambros & Co. v. Board of Trustees, 10 FSM Intrm. 639, 644 (Pon. 2001).

The factors in favor of abstention are outweighed by the factors in favor of the FSM Supreme Court retaining jurisdiction over a case when there is no parallel litigation in state court which will address all of the parties' respective claims; when there is no duplicative litigation from two lawsuits as to the same subject matter; when, if the court does abstain, various claims of the parties will not be addressed, such as the numerous tort claims and the motions for preliminary injunction; and especially when the motion for remand does not seek to transfer the case to a state court, but instead to the party who allegedly committed bad faith and substantive violations in the performance of its duties. Ambros & Co. v. Board of Trustees, 10 FSM Intrm. 639, 644 (Pon. 2001).

A strong presumption exists under FSM law for deferring land matters to local land authorities, along with federalism principles and concerns for judicial harmony. The FSM Supreme Court can certify such questions of state law to the state courts. But when, if the equitable or mechanic's lien claims had been presented in the original complaint, the court could then have certified the questions to the state court to determine whether such liens exist under state law and when the original complaint's factual allegations support such claims, there was no reason why that claim could not have been made then with discovery on-going while the state court considered the question. But when, considering the circumstances, it has become too late to bring this claim, a motion to amend the complaint to add a declaratory judgment claim that the plaintiffs have such a lien will be denied. Adams v. Island Homes Constr., Inc., 11 FSM Intrm. 218, 233 (Pon. 2002).

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

A motion to abstain will be denied when the plaintiffs have a constitutional right to pursue their claims in the FSM Supreme Court as the claims arise under the Constitution and national laws and they have chosen to do so, and when the nature of the state law rulings a court might have to make in the case is not apparent at this stage of the case. Naoro v. Walter, 11 FSM Intrm. 619, 621 (Chk. 2003).

When issues of national law are involved there is a particularly strong presumption against full abstention from the case. Naoro v. Walter, 11 FSM Intrm. 619, 621 (Chk. 2003).

While certain circumstances, such as a state request for abstention where there are identifiable, particularly strong state interests such as monetary claims against the state or questions concerning ownership of land, may give rise to an inclination in favor of abstention, national courts still have the obligation to carry out their own jurisdictional responsibilities, but the FSM Supreme Court may not abstain in cases involving interpretation of the FSM Constitution. Naoro v. Walter, 11 FSM Intrm. 619, 621 (Chk. 2003).

A motion to abstain may be denied when the case does not involve land and when, although it involves monetary claims against the state, it appears that interpretation of the Constitution may also be necessary. Naoro v. Walter, 11 FSM Intrm. 619, 621 (Chk. 2003).

When a state administrative agency asks that the FSM Supreme Court not exercise jurisdiction in a case because the case involves a question about land, and land issues are best (and traditionally) left to the state court, but when a deeper analysis reveals that the case is not fundamentally a land case, but rather one in which the court is being asked to review an agency's action and determine whether that action was lawful from an administrative or procedural point of view, not a substantive one, the question presented is not whether the plaintiff is entitled to the assignment of the lease in question, but rather whether the board possessed the authority to reconsider its decision and, if so, did it do so in a manner that recognized plaintiff's rights under the FSM Constitution. In such a case, the FSM Supreme Court does not lack subject matter jurisdiction, and the plaintiff's complaint will not be dismissed. Asumen Venture, Inc. v. Board of Trustees, 12 FSM Intrm. 84, 90 (Pon. 2003).

The rationale for abstention is that the state court is the better court to decide an issue which involves state powers and particularly strong, identifiable state interests. Gilmete v. Carlos Etscheit Soap Co., 13 FSM Intrm. 145, 148 (App. 2005).

– National/State Power

There appears nothing of an indisputably national character in the power to control all lesser crimes. FSM v. Boaz (II), 1 FSM Intrm. 28, 32 (Pon. 1981).

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

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

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

The power to regulate probate of wills or inheritance of property is not "beyond the power of a state to control" within the meaning of article VIII, section 1 of the Constitution and is consequently a state power. Nothing about the power to regulate probate or inheritance suggests that these are beyond the power of a state to control. In re Nahnsen, 1 FSM Intrm. 97, 107 (Pon. 1982).

State officials generally should have greater knowledge of use, local custom and expectations concerning land and personal property. They should be better equipped than the national government to control and regulate these matters. The framers of the Constitution specifically considered this issue and felt that powers of this sort should be state powers. In re Nahnsen, 1 FSM Intrm. 97, 107, 109 (Pon. 1982).

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

The prosecution of criminals is not a power having indisputably national character. Truk v. Hartman, 1 FSM Intrm. 174, 178 (Truk 1982).

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

Where jurisdiction exists by virtue of diversity of the parties, the FSM Supreme Court may resolve the dispute despite the fact that matters squarely within the legislative powers of states (e.g., probate, inheritance an land issue) may be involved. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 396 (Pon. 1984).

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).

There is nothing absurd about a weapons control scheme that recognizes that both the national and the state governments have an interest in controlling the possession, use and sale of weapons. While Congress and the states may eventually wish to allocate their respective roles with more precision, the current Weapons Control Act appears to provide a workable system during these early years of transition and constitutional self-government. Joker v. FSM, 2 FSM Intrm. 38, 44 (App. 1985).

The Weapons Control Act seems well attuned to the recognition of shared national-state interest in maintaining an orderly society and the goal of cooperation in law enforcement as reflected in the Major Crimes Clause, article IX, section 2(p) of the Constitution as well as the Joint Law Enforcement Act, 12 F.S.M.C. 1201. Joker v. FSM, 2 FSM Intrm. 38, 44 (App. 1985).

Major crimes obviously were not viewed by the framers as simply a local or state problem. The Major Crimes Clause undoubtedly reflects their judgment that the very integrity of this new nation could be threatened if major crimes could be committed with impunity in any part of the nation, with the national government forced helplessly to stand aside. Tammow v. FSM, 2 FSM Intrm. 53, 58 (App. 1985).

The framers of the Constitution stipulated that the line for determining whether a crime is major be drawn on the basis of severity or gravity of the crime rather than by reference to principles of federalism developed under the Constitution of the United States. Tammow v. FSM, 2 FSM Intrm. 53, 58 (App. 1985).

The scope of state police powers under the FSM Constitution must be determined by reference to the powers of the national government under the Major Crimes Clause. It follows that legitimate exercise of the national government power to define major crimes cannot be viewed as an unconstitutional encroachment upon the police powers of the states. Tammow v. FSM, 2 FSM Intrm. 53, 59 (App. 1985).

The members of the Micronesian Constitutional Convention obviously did not believe the Major Crimes Clause was improperly at odds with their general view that governmental power should be less centralized under the FSM Constitution than it had been in Trust Territory days. Tammow v. FSM, 2 FSM Intrm. 53, 59 (App. 1985).

The power to impose taxes, duties, and tariffs based on imports is a national, not a state, power and where Congress has exercised the power and shares the revenues with the states, a state may not also impose an additional import tax. Wainit v. Truk (II), 2 FSM Intrm. 86, 88 (Truk 1985).

The nature of the expressly delegated powers in article IX, section 2, of the Constitution – including the powers to impose taxes, to provide for the national defense, ratify treaties, regulate immigration and citizenship, regulate currency, foreign commerce and navigation, and to provide for a postal system – strongly suggests that they are intended to be the exclusive province of the national government, since they call for a uniform nationally coordinated approach. Innocenti v. Wainit, 2 FSM Intrm. 173, 181-82 (App. 1986).

The Pohnpei State Constitution was established under the authority granted by article VII, section 2 of the Constitution of the Federated States of Micronesia which mandates that a state shall have a democratic

constitution and also Pohnpei State Law No. 2L-131-82, section 9, which mandated the Pohnpei State Constitutional Convention "to draft a constitution for the State of Ponape . . . [that] shall make adequate provisions for the exercise of legislative, judicial and executive functions, and shall guarantee to all citizens of the State, a democratic form of government." People of Kapingamarangi v. Pohnpei Legislature, 3 FSM Intrm. 5, 8-9 (Pon. S. Ct. Tr. 1985).

Congress, under section 5 of article XV, had the power to provide for transition from government under the Trusteeship to government under the Constitution of the Federated States of Micronesia. Pohnpei v. Mack, 3 FSM Intrm. 45, 49 (Pon. S. Ct. Tr. 1987).

Trust Territory statutes applicable to the states became part of the state's laws, regardless of whether they were published in the FSM Code. Such holdover Trust Territory laws become laws of the states until superseded. Pohnpei v. Mack, 3 FSM Intrm. 45, 55 (Pon. S. Ct. Tr. 1987).

All Trust Territory statutes that were applicable to the State of Pohnpei prior to Pub. L. No. 2-48 and immediately before November 8, 1984, the effective date of the Pohnpei State Constitution, and which have not been amended, superseded, or repealed, are laws of the State of Pohnpei. Section 3 of S.L. 3L-33-84 made those Trust Territory statutes into laws of the State of Pohnpei, and that includes Title 15 of the Trust Territory Code. Pohnpei v. Mack, 3 FSM Intrm. 45, 55 (Pon. S. Ct. Tr. 1987).

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

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

If a power is not enumerated in the Constitution, the likelihood is that the framers intended it to be a state power, for the only unexpressed powers which may be exercised by the national government are powers of "such an indisputably national character as to be beyond the power of a state to control." FSM Const. art. VIII, § 1. Edwards v. Pohnpei, 3 FSM Intrm. 350, 357 (Pon. 1988).

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

Wrongful death statutes, including the $100,000 ceiling on wrongful death claims, are part of the law of the states and are not national law. Edwards v. Pohnpei, 3 FSM Intrm. 350, 359 (Pon. 1988).

A FSM Supreme Court decision applying state law in a case before it is final and res judicata; but if in a subsequent case a state court decides the same issue differently, the state decision in that subsequent case is controlling precedent and the national courts should apply the state court rule in future cases. Edwards v. Pohnpei, 3 FSM Intrm. 350, 360 n.22 (Pon. 1988).

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

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

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

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

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

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

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

Under the Constitution of the Federated States of Micronesia, the national government, not the state governments, assumes any "right, obligation, liability, or contract of the government of the Trust Territory." Salik v. U Corp. (I), 3 FSM Intrm. 404, 407 (Pon. 1988).

Powers not expressly delegated to the national government nor prohibited to the states are state powers. FSM Const. art. VIII, § 2. FSM v. Oliver, 3 FSM Intrm. 469, 473 (Pon. 1988).

The fact that control over marine areas within the twelve-mile zone is not mentioned in the Constitution is a strong indication that the framers intended the states to control ownership and use of marine resources within that area. FSM v. Oliver, 3 FSM Intrm. 469, 473 (Pon. 1988).

Regulatory power beyond twelve miles from island baselines lies with the national government. FSM v. Oliver, 3 FSM Intrm. 469, 479 (Pon. 1988).

Decision making concerning allocation of functions as state and national roles falls most squarely within the role of Congress, for Congress is the most political branch of the national government and is best suited to resolve policy issues. In re Cantero, 3 FSM Intrm. 481, 484 (Pon. 1988).

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).

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

In the course of the formation of the FSM, the allocation of responsibilities between states and nation was such that the impact of the national courts in criminal matters was to be in the area of major crimes and as the ultimate arbiter of human rights issues. Hawk v. Pohnpei, 4 FSM Intrm. 85, 93 (App. 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).

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).

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

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

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

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

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).

The scheme of national, constitutionally-authorized foreign investment legislation is so pervasive there is no room for the state to supplement it. Non-FSM citizen attorneys and their private practice of law are expressly subjected to the national legislative scheme. Insofar as attorneys who are engaged in the private practice of law and whose business activities are within the scope of the national FIA, the state FIA is invalid. Berman v. Pohnpei, 5 FSM Intrm. 303, 306 (Pon. 1992).

Although the FSM Supreme Court has the constitutional power to use its discretion to review a case from a state trial court, generally, proper respect for the state court requires that state appeal rights be exhausted before the FSM Supreme Court would grant appellate review especially when important state interests are involved. Damarlane v. Pohnpei Transp. Auth., 5 FSM Intrm. 322, 324 (App. 1992).

The FSM Constitution distinguishes national powers from state powers, FSM Const. art. VIII. FSM v. Kotobuki Maru No. 23 (I), 6 FSM Intrm. 65, 69 (Pon. 1993).

If a power is of an indisputable national character such that it is beyond the state's power to control, then that power is to be considered a national power, even though it is not an express power granted by the Constitution. FSM v. Kotobuki Maru No. 23 (I), 6 FSM Intrm. 65, 70-71 (Pon. 1993).

A state power can be concurrently national to the extent that the state cannot adequately exercise that power in the manner in which it is intended either by statute or by or constitutional framework for circumstances not foreseen by the framers of our Constitution. FSM v. Kotobuki Maru No. 23 (I), 6 FSM Intrm. 65, 72 (Pon. 1993).

To the extent that the state is unable to police its waters and enforce its fishing regulations of its own,

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

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

Nothing in the FSM constitutional framework suggests that a state can unilaterally avoid the effect of a valid international agreement, constitutionally arrived at, between the Federated States of Micronesia and another nation. In re Extradition of Jano, 6 FSM Intrm. 93, 103-04 (App. 1993).

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

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

Comity, the respect of one sovereign for another, and respect for state sovereignty are important principles. Pohnpei v. Ponape Constr. Co., 6 FSM Intrm. 221, 222-23 (App. 1993).

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

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

The absence of an express grant of authority to the national government to regulate marine resources within twelve miles of island baselines indicates the framers' intention that states have control over these resources. However, the state authority to regulate marine resources located within twelve miles of island baselines is primary but not exclusive. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM Intrm. 594, 598 (Pon. 1994).

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

The framers of the FSM Constitution favored state control over marine resources within twelve miles of island baselines. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM Intrm. 594, 601 (Pon. 1994).

Even when a national court places itself in the shoes of the state court and interprets state law, the state court is always the final arbiter of the meaning of a state law. State court interpretations of state law which contradict prior rulings of the national courts are controlling. Pohnpei v. MV Hai Hsiang #36 (I), 6 FSM Intrm. 594, 601 (Pon. 1994).

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

Only the national government may constitutionally tax income. The states' taxing power does not include

the power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM Intrm. 117, 119 (App. 1995).

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

Among the powers reserved to the states is the control of administration and policy-making of all branches of state government. Berman v. Santos, 7 FSM Intrm. 624, 626 (App. 1996).

The Constitution reserves to the states all powers not prohibited to them or expressly delegated to the national government or of such indisputably national character as to be beyond the power of a state to control. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 672 (App. 1996).

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).

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

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

The line between national and state power in a particular area of government is not always clear, and must be carefully and thoughtfully drawn. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 369 (Pon. 1998).

Although article IX, section 2(m) of the Constitution does not expressly state how revenues derived from regulatory activities in the EEZ should be distributed, the FSM Congress constitutionally is empowered to collect and distribute fishing fees as implied or incidental to the express grant of power in article IX, section 2(m), and that discretion over the ultimate division or appropriation of the fishing fees rests with the FSM national government. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 369-70 (Pon. 1998).

All express powers delegated to the national government contain within them innumerable incidental or implied powers. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 370 (Pon. 1998).

Each of the express powers delegated to the national government in Article IX of the FSM Constitution include the full authority for the national government to enact legislation and engage in activities necessary to exercise that express power. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 371 (Pon. 1998).

The express grant of power to the national government to regulate the ownership, exploration, and exploitation of natural resources, implicitly includes the power of the national government to collect revenues that are generated as a result. Thus, the national government has the authority to enact legislation related

to offshore marine resources, including legislation related to collection and distribution of revenues derived therefrom. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 371 (Pon. 1998).

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

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

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

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

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

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

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

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

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

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

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

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

The FSM national government has the exclusive right to harvest living marine resources in its EEZ, just as it has the exclusive right to harvest offshore mineral resources. As the holder of this exclusive right, the national government is allowed to dispose of this resource and receive revenue in return. Under the Convention on the Law of the Sea, each nation is entitled to exploit its marine resources to the extent it is able to achieve a maximum sustainable yield. When the FSM does not fully exploit its own resources, it is entitled to compensation at the appropriate market rate from foreign fishing vessels which it allows to fish in its waters. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 386 (Pon. 1998).

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

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

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).

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

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

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).

Unearmarked foreign financial assistance is divided into equal shares for each state and the national government, which means that the national government and every state each receive a 20% share. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 435 (App. 2000).

Not less than half of the national taxes must be paid to the state where collected, but fishing fees are not national taxes because they are imposed, not under the national government's power to impose taxes, but under its power to regulate exploitation of natural resources within the FSM exclusive economic zone. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 435 (App. 2000).

Revenue sharing is also mandated for net revenue derived from FSM EEZ ocean floor mineral resources exploited, which is to be divided equally between the national government and the appropriate state government. Chuuk v. Secretary of Finance, 9 FSM Intrm. 424, 435 (App. 2000).

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

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).

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

The states have the residual authority to regulate ownership, exploration and exploitation of natural resources within 12 miles from island baselines. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 63 (Pon. 2001).

The power of the states to regulate ownership, exploration and exploitation of natural resources in the marine area within 12 miles from the island baselines is not absolute as it is limited by the national powers to regulate navigation and shipping, and to regulate foreign and interstate commerce. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 63 & n.8 (Pon. 2001).

Control over areas within 12 miles from island baselines was reserved to the states, subject to the national government's control over foreign and interstate commerce, and navigation and shipping. Thus, under the transition clause, the "government" ownership referenced in 67 TTC 2 should be interpreted as "state" ownership within 12 miles from island baselines. Pohnpei v. KSVI No. 3, 10 FSM Intrm. 53, 65 n.13 (Pon. 2001).

In our federal system of government, state courts are not inferior tribunals to the FSM Supreme Court trial division. The national and state court systems are separate systems created by and serving different sovereigns. Neither system is superior to the other. Rather the systems are parallel. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM Intrm. 116, 120 (Pon. 2001).

A Trust Territory statute (except to the extent it is amended, repealed, or is inconsistent with the Constitution), which related to matters that now fall within the national government's legislative powers became national law upon the Constitution's ratification, and the other Trust Territory laws presumably became law of each of the states at the same time; and if neither state nor national powers alone are sufficient to carry out the statute's original purpose, or if state and national powers are invoked, then the statute is enforceable as both state and national law. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 409, 414-15 (Pon. 2001).

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

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

FOREIGN INVESTMENT LAWS

The national government has neither the constitutional authority nor the law enforcement capacity to oversee, on a worldwide basis, every noncitizen acquisition of an interest in a business operating within the FSM. Michelsen v. FSM, 3 FSM Intrm. 416, 423 (Pon. 1988).

The "applicant" referred to in the Foreign Investment Act is one interested in doing business, not just investing money, in the Federated States of Micronesia, and the considerations to be employed in determining whether to grant an application relate to business operations within the FSM, not to investment of funds. Michelsen v. FSM, 3 FSM Intrm. 416, 425 (Pon. 1988).

The Foreign Investment Act regulates the operation of noncitizen business within the Federated States of Micronesia, not individual investors. 32 F.S.M.C. §§ 203(2) and 204 have no application to acquisitions of

interests in a business operating in the Federated States of Micronesia with a national foreign investment permit. Michelsen v. FSM, 3 FSM Intrm. 416, 426 (Pon. 1988).

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

Based on the language and legislative history of the FSM Foreign Investment Act, 32 F.S.M.C. 201-232, and on that law's similarity to its Trust Territory predecessor, there is no indication that Congress intended the Foreign Investment Act to apply to the provision of legal services. Carlos v. FSM, 4 FSM Intrm. 17, 28-29 (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).

A foreign investment permit applicant aggrieved by a final permit decision may appeal the decision to the FSM Supreme Court. 32 F.S.M.C. 215. Michelsen v. FSM, 5 FSM Intrm. 249, 252-53 (App. 1991).

By statute the practice of law is specifically included in businesses engaged in by noncitizens requiring a foreign investment permit. 32 F.S.M.C. 203. Michelsen v. FSM, 5 FSM Intrm. 249, 254 (App. 1991).

The Foreign Investment Act does not explicitly limit judicial review therefore an aggrieved person affected by an agency decision may seek review under the Administrative Procedures Act. Michelsen v. FSM, 5 FSM Intrm. 249, 254 (App. 1991).

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).

The scheme of national, constitutionally-authorized foreign investment legislation is so pervasive there is no room for the state to supplement it. Non-FSM citizen attorneys and their private practice of law are expressly subjected to the national legislative scheme. Insofar as attorneys who are engaged in the private practice of law and whose business activities are within the scope of the national FIA, the state FIA is invalid. Berman v. Pohnpei, 5 FSM Intrm. 303, 306 (Pon. 1992).

An isolated, interest-free, unsecured loan is not engaging in business within the meaning of the Pohnpei State Foreign Investment law. Kihara v. Nanpei, 5 FSM Intrm. 342, 345 (Pon. 1992).

By statute, the national government guarantees that there will be no compulsory acquisition or expropriation of any foreign investment property for which a Foreign Investment Certificate has been issued and that the national government will not take action, or permit any state or other entity within the FSM to take action that although not formally designated or acknowledged as compulsory acquisition or expropriation, indirectly has the same injurious effect ("creeping expropriation") and that if such action nevertheless takes place, the national government is responsible for the prompt and adequate compensation of any injured noncitizen. This statute creates a cause of action by the aggrieved alien against the FSM for compensation for a state's conduct in violation of § 216(1) and (4). AHPW, Inc. v. FSM, 12 FSM Intrm. 114, 120 (Pon. 2003).

While injunctive relief would be available to prospectively enforce 32 F.S.M.C. 219, noticeably absent

from this section is any language which creates a cause of action for damages on the aggrieved party's part. AHPW, Inc. v. FSM, 12 FSM Intrm. 114, 122 (Pon. 2003).

An isolated interest-free, unsecured loan transaction plainly is not engaging in business within the meaning of the applicable Pohnpei law and regulations. Similarly, execution of an isolated promissory note and security agreement, to establish payment on an open account, is not engaging in business within the meaning of the Pohnpei foreign investment laws. Goyo Corp. v. Christian, 12 FSM Intrm. 140, 146 (Pon. 2003).

A foreign owned entity's isolated attempt to secure payment of a debt should not require that the foreign entity obtain a foreign investment permit. Goyo Corp. v. Christian, 12 FSM Intrm. 140, 147 (Pon. 2003).

The national government guarantees that there will be no compulsory acquisition or expropriation of the property of any foreign investment as to which a Foreign Investment Certificate has been issued. AHPW, Inc. v. FSM, 12 FSM Intrm. 164, 166 (Pon. 2003).

When a party has not alleged that the state has dispossessed it of any property, and that property is now in the possession of the state or its designee, the party has not stated a cause of action for expropriation under the FSM foreign investment statutes. AHPW, Inc. v. FSM, 12 FSM Intrm. 164, 167 (Pon. 2003).

While § 219 of the Foreign Investment Laws admits of a cause of action for prospective, injunctive relief against the FSM, it does not permit an action for damages. Chapter 3 provides a remedy for damages, but notwithstanding the fact that the remedy is against Pohnpei, and not the FSM, it is nevertheless a remedy. If the plaintiff prevails, the conduct alleged will not go unsanctioned. AHPW, Inc. v. FSM, 12 FSM Intrm. 164, 167 (Pon. 2003).

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

The Kosrae State Code provides that a state foreign investment permit may be temporarily suspended only if the permit holder a) begins operation in a different economic sector from the one(s) for which the permit was issued, or b) alters, changes, modifies or transfers the amount of the ownership interest which the non-citizen retains. 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).

A noncitizen cannot engage in business in the FSM unless that noncitizen holds a valid foreign investment permit. A "noncitizen" is any business entity in which any ownership interest is held by a person who is not a citizen of the FSM. Geoffrey Hughes (Export) Pty, Ltd. v. America Ducksan Co., 12 FSM Intrm. 413, 414-15 (Chk. 2004).

GAMBLING

Poker machines are not included within the term "slot machines" under Truk State law and a search warrant authorizing the seizure of slot machines does not permit the seizure of poker machines. In re Slot Machines, 3 FSM Intrm. 498, 500 (Truk S. Ct. Tr. 1988).

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

Poker machines involve the use of some skill, and are not based simply upon mere chance, therefore are not "slot machines," and are not subject to current Truk State legislative prohibition, specifically Truk District Law No. 25-3. In re Slot Machines, 3 FSM Intrm. 498, 502 (Truk S. Ct. Tr. 1988).

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).

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

Although there is an element of chance involved in the operation of both slot and poker machines, the fundamental difference between a slot machine and a poker machine is that a poker machine, as opposed to a slot machine, allows the user to exercise his skill to affect the odds and thereby the manner and result of its operation. Pacific Coast Enterprises v. Chuuk, 9 FSM Intrm. 543, 547 (Chk. S. Ct. Tr. 2000).

HABEAS CORPUS

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

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.

The FSM Supreme Court's constitutional jurisdiction to consider writs of habeas corpus is undiminished by the fact that the courts whose actions are under consideration, the Trust Territory High Court and a Community Court, were not contemplated by the Constitution of the Federated States of Micronesia. In re Iriarte (I), 1 FSM Intrm. 239, 244, 246 (Pon. 1983).

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).

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).

Judicial review of a certification of extraditability, although not appealable, is available to an accused in custody by seeking a writ of habeas corpus. In re Extradition of Jano, 6 FSM Intrm. 23, 25 (App. 1993).

4 F.S.M.C. 117 gives both the trial division and the appellate division the powers to issue all writs not inconsistent with law or with the rules of civil procedure. FSM Appellate Rule 22(a) requires petitions for writs of habeas corpus be first brought in the trial division. When the circumstances have been shown to warrant, the appellate division clearly has the authority to suspend the rule. In re Extradition of Jano, 6 FSM Intrm. 31, 32 (App. 1993).

Judicial review of an extradition hearing is by petition for a writ of habeas corpus. In re Extradition of Jano, 6 FSM Intrm. 93, 97 (App. 1993).

The scope of a habeas corpus review of an extradition proceeding is 1) whether the judge had jurisdiction, 2) whether the court had jurisdiction over the extraditee, 3) whether there is an extradition agreement in force, 4) whether the crimes charged fall within the terms of the agreement, and 5) whether there was sufficient evidence to support a finding of extraditability. In re Extradition of Jano, 6 FSM Intrm. 93, 104 (App. 1993).

Because a habeas corpus petition is a civil action (although the proceeding is unique), the clerk will assign the petition a civil action number and enter it on the civil side of the docket. Sangechik v. Cheipot, 10 FSM Intrm. 105, 106 (Chk. 2001).

When the pleadings clearly name a person as the *de facto* keeper of the detention facility where the petitioner is currently incarcerated and the petitioner seeks a writ of habeas corpus directed to that person in that capacity, that person is properly named as the respondent to the petition. Sangechik v. Cheipot, 10 FSM Intrm. 105, 106 (Chk. 2001).

Habeas corpus proceedings are commenced with an order, directed to the person having custody of the person detained, to show cause why the writ should not be issued. Sangechik v. Cheipot, 10 FSM Intrm. 105, 106 (Chk. 2001).

In order to ensure a citizen's right to life and liberty, Chuuk Constitution Article III, § 7 provides that the writ of habeas corpus shall exist in Chuuk and that it may not be suspended, except by the Governor and only when the public safety requires it in case of war, rebellion, insurrection or invasion. Consideration of the writ must take precedence over all other business of the court, and, if the court determines there is a proper basis, the writ shall issue without delay. In re Paul, 11 FSM Intrm. 273, 277 (Chk. S. Ct. Tr. 2002).

Only under certain limited and severely proscribed circumstances may the Governor suspend the writ of habeas corpus, thereby affecting the rights of detainees to petition the court for their release from unlawful detention. In re Paul, 11 FSM Intrm. 273, 277 (Chk. S. Ct. Tr. 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).

The writ of habeas corpus, like the civil rights of citizens, may under certain circumstances be suspended by the Governor, but suspension of the writ of habeas corpus may only occur when "the public safety requires it in case of war, rebellion, insurrection or invasion. 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).

A writ of habeas corpus will issue when the Governor's declaration of emergency did not suspend civil rights to due process of law, and when the petitioner's detention without charge and without initial appearance was unlawful and in violation of his right of due process. In re Paul, 11 FSM Intrm. 273, 280 (Chk. S. Ct. Tr. 2002).

IMMIGRATION

An alien must willfully fail to depart the Federated States of Micronesia upon expiration of entry authorization to be guilty of a violation of 50 F.S.M.C. 112. Knowledge of the requirement to depart coupled with failure to depart is not enough. There must be an element of voluntariness or purposefulness in the noncitizen's conduct, which will generally require showing a reasonable opportunity to depart, voluntarily rejected, without some justification for the rejection beyond mere personal preferences. FSM v. Jorg, 1 FSM Intrm. 378, 384 (Pon. 1983).

The FSM Supreme Court and the Federated States of Micronesia must not be lured into the role of mediator between visitors and their nations of citizenship. Only in the rarest of circumstances, if ever, would the court second-guess and scrutinize the conditions which other nations place upon offers of funds to their own citizens to assist those persons to comply with FSM immigration laws. FSM v. Jorg, 1 FSM Intrm. 378, 385-86 (Pon. 1983).

A rule that treats aliens unequally to citizens involves immigration and foreign affairs. 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).

All aircraft entering FSM ports of entry are subject to immigration inspection, customs inspections, agricultural inspections and quarantines, and other administrative inspections authorized by law. In Chuuk, the Chuuk International Airport is the only port of entry for aircraft. FSM v. Joseph, 9 FSM Intrm. 66, 70 (Chk. 1999).

The government may be directed to allow a plaintiff to enter the FSM as required for the limited purpose of prosecuting her lawsuit through trial. O'Sullivan v. Panuelo, 9 FSM Intrm. 229, 232 (Pon. 1999).

INSURANCE

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

Where a creditor accepts a premium payment for insurance that he has agreed to procure, where he makes a diligent effort to fulfill his agreement to do so, promptly notifies the debtor of his inability to procure insurance, he would not be held liable to the debtor, as he would have fulfilled his contract to attempt to procure insurance which is not a contract of insurance. FSM Dev. Bank v. Bruton, 7 FSM Intrm. 246, 250 (Chk. 1995).

The general rule is that where a creditor has failed to both procure credit insurance paid for by the debtor and to notify the debtor of his failure to procure the insurance requested, prior to loss, the debtor may plead such failure as a defense or setoff. FSM Dev. Bank v. Bruton, 7 FSM Intrm. 246, 250 (Chk. 1995).

Both contract and tort theories can be pursued by a debtor who alleges that a creditor has failed to procure credit insurance. FSM Dev. Bank v. Bruton, 7 FSM Intrm. 246, 251 (Chk. 1995).

A creditor who undertakes to secure credit insurance for a debtor is liable to the debtor for negligent performance of that duty or of duty to notify debtor if insurance not obtained. FSM Dev. Bank v. Bruton, 7 FSM Intrm. 246, 251 (Chk. 1995).

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

An insurance company that has no contractual obligation to persons other than its insured until a court determines the liability of its insured, cannot be joined as a party to a lawsuit to determine that liability. Wilson v. Pohnpei Family Headstart Program, Inc., 7 FSM Intrm. 411, 413 (Pon. 1996).

In the absence of a contractual or statutory provision authorizing a direct action against or the joinder of a liability insurer, an injured person, for lack of privity between himself and the insurer, has no right of action at law against the insurer and cannot join the insured and the liability insurer as parties defendant. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 52 (Chk. 2001).

An insurance company that has no contractual obligation to persons other than its insured until a court determines its insured's liability, cannot be joined as a party to a lawsuit to determine that liability. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 52 (Chk. 2001).

When no national or state statute or contractual provision authorizes a third party's suit against or joinder of an insurer, an injured party's causes of action against and joinder of an insurer will be dismissed. Moses v. M.V. Sea Chase, 10 FSM Intrm. 45, 52-53 (Chk. 2001).

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).

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).

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).

When the insurance contract language excludes bailment leases, a plaintiff vehicle rental business is not entitled to judgment as a matter of law on a claim that the defendants breached the insurance contract when they did not pay for a damaged rental vehicle. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 305 (Pon. 2004).

In an insurance contract that provides that when the word "insured" is utilized in an "unqualified" manner within the contract, the word will be understood to include all individuals who operate an insured vehicle with the permission of the named insured, but where an exclusion provision does not utilize the word "insured" in an unqualified manner and instead specifies that the provision applies to the "Named Insured," the effect of that qualification is to narrow the definition of "insured" to only those individuals who are actually named on the policy. The term "Named Insured" does not include permissive users. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 306 (Pon. 2004).

When there is a contradiction between the first and second sentences of an insurance policy exclusion, it must be construed against the insurance company that drafted the language and was in a superior bargaining position when the contract was entered into. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 306 n.3 (Pon. 2004).

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

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

Insureds frequently pay premiums by executing a promissory note – a "premium note," and, depending on the circumstances of its execution, may pay the premium in full through the execution of a premium note. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 309 (Pon. 2004).

Before an insurance company can obtain summary judgment on an action for enforcement of a premium note, the defenses available to the enforcement of a premium note must be addressed. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 301, 309 (Pon. 2004).

A measure of damages for the tort of negligent misrepresentation (also called deceit) employs the benefit of the bargain rule when damages can be proved with reasonable certainty. Under this principle, the insurer would be entitled to its premium, which would be set off against what it owed its insured. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 469 (Pon. 2004).

Rescission of an insurance contract would, if granted, absolve an insured from liability for the premium and could even entitle him to return of the premium paid. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 470 (Pon. 2004).

Reformation of an insurance contract may be sought under a theory of mutual mistake or mistake or fraud of the insurance agent. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 470 (Pon. 2004).

Reformation is an equitable doctrine that allows a court to conform a contract (even an insurance contract) to the true agreement between the parties rather than the agreement as written. Phillip v. Marianas Ins. Co., 12 FSM Intrm. 464, 470 (Pon. 2004).

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

INTEREST AND USURY

Although FSM Public Law No. 2-33, regarding usury, did not appear in the 1982 codification of FSM statutes, it remained effective as did every other law which took effect after October 1, 1981 and it is currently in effect as codified in the 1987 supplement to the FSM Code at 34 F.S.M.C. 201-207. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM Intrm. 33, 36 (App. 1989).

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).

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

Plaintiff's waiver of a portion of its monetary claim cannot summarily disprove an affirmative defense of usury. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (III), 7 FSM Intrm. 453, 455 (Pon. 1996).

All judgments, by statute, accrue nine percent simple interest a year from date of entry of judgment until satisfied. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 670 (App. 1996).

When a second action and judgment is necessary to enforce and satisfy an earlier judgment, the statutory interest on judgments will be computed from the date of entry of the original judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 670 (App. 1996).

As a general rule interest ceases to accrue on a judgment when the money is paid into a court of competent jurisdiction pursuant to the court's order, unless a statute provides otherwise. If a part of the principal is paid, then the statutory interest stops on that part. Partial payments on a judgment are first to be applied to the accrued interest and then to reduction of the principal. The subsequent statutory interest is computed only on the remaining principal. Payments into court accrue interest for the benefit of the ultimate recipient as earned in the court's depository institution. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 670-71 (App. 1996).

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).

The FSM does not have a statute which prescribes when a plaintiff may obtain prejudgment interest, but prejudgment interest has been awarded in the FSM. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM Intrm. 388, 392 (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).

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).

Attorney fee awards that are part of money judgments are entitled to bear interest at the judgment rate until satisfied. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM Intrm. 569, 570 (Chk. 2000).

Unsatisfied judgments accrue nine percent simple interest from date of entry because the statute does not authorize compounding. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM Intrm. 569, 570 (Chk. 2000).

The generally recognized rule is that interest should not bear interest, but compound interest may be awarded if authorized by statute. When the statute reads "nine percent a year" it is not an express authorization to compound interest annually, but is instead, without more, merely a statement of the rate of simple interest. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM Intrm. 569, 570 (Chk. 2000).

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).

Even assuming that the seller historically did not charge interest on its account with the buyer, nothing precludes the parties to a commercial transaction from coming to a new agreement regarding installment payments on the outstanding indebtedness that also included an interest component calculated over the prior 26 months period, so long as the interest rate charged did not contravene FSM public policy as set out in 34 F.S.M.C. 204. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM Intrm. 502, 504 (Pon. 2002).

When an agreement provides for 18% interest per annum on the principal remaining after the debtor's last payment, no usury issue arises, and when the interest charged cannot be said to be arbitrary and capricious on any other basis, the interest portion of the agreement is binding. Jayko Int'l, Inc. v. VCS Constr. & Supplies, 10 FSM Intrm. 502, 504 (Pon. 2002).

No person in a commercial credit transaction may directly or indirectly receive or charge interest which exceeds an annual percentage rate of twenty-four percent. Bank of the FSM v. Mori, 11 FSM Intrm. 13, 14 (Chk. 2002).

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

Payments on judgments are credited first to accrued interest, and then to principal. Interest accrues as simple interest. Narruhn v. Chuuk, 11 FSM Intrm. 48, 52 (Chk. S. Ct. Tr. 2002).

As a general rule, interest on a judgment ceases to accrue when money is paid into a court of competent jurisdiction pursuant to the court's order. If a part of the principal is paid, then the statutory interest stops on that part. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM Intrm. 514, 517 (Chk. 2003).

The statutory interest on judgments is simple interest and cannot be compounded. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM Intrm. 514, 517 (Chk. 2003).

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

The general rule is that, in the absence of express authorization, interest is to be computed on a simple basis rather than compounded. Lee v. Lee, 13 FSM Intrm. 68, 71 (Chk. 2004).

Nine percent a year is the legal or statutory interest rate on judgments. Such interest is only simple interest and is not compounded. Lee v. Lee, 13 FSM Intrm. 68, 71 (Chk. 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).

INTERNATIONAL LAW

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

The concept of admiralty is related uniquely to the law of nations. It consists of rules in large part intended to govern the conduct of various nations in their shipping and commercial activities. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 71 (Kos. 1982).

Retention of the power to play a major role in executive functions, to suspend legislation enacted by the Congress, and to entertain appeals from the court of last resort, the very essence of government suggests that the Trust Territory government remains, not a foreign state, but an integral part of the national government here. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 73-74 (Kos. 1982).

Under the present state of affairs, the Trust Territory government cannot be considered a foreign state, citizen or subject thereof within the meaning of article XI, section 6(b) of the Constitution. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 74 (Kos. 1982).

Under international law punitive damages are but rarely and then only reluctantly allowed against foreign national governments. Damarlane v. United States, 6 FSM Intrm. 357, 361 (Pon. 1994).

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another. It is not a rule of law, but one of practice, convenience, and expediency. Under principles of comity, courts will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM Intrm. 430, 431-32 (Pon. 1994).

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

International law does not impose vicarious liability on the chief of state or elected or appointed officials to whom governmental authority has been delegated to make military decisions having collateral consequences to noncombatants in theaters of operations. Alep v. United States, 7 FSM Intrm. 494, 498 (App. 1996).

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

The FSM national government has the exclusive right to harvest living marine resources in its EEZ, just as it has the exclusive right to harvest offshore mineral resources. As the holder of this exclusive right, the national government is allowed to dispose of this resource and receive revenue in return. Under the Convention on the Law of the Sea, each nation is entitled to exploit its marine resources to the extent it is able to achieve a maximum sustainable yield. When the FSM does not fully exploit its own resources, it is entitled to compensation at the appropriate market rate from foreign fishing vessels which it allows to fish in its waters. Chuuk v. Secretary of Finance, 8 FSM Intrm. 353, 386 (Pon. 1998).

The determination of whether Tonga and its agents are immune from suit is a decision that is better made by the FSM government's executive branch because the FSM Constitution expressly delegates the power to conduct foreign affairs to the President and because whether a party claiming immunity from suit has the status of a foreign sovereign is a matter for the executive branch's determination and is outside the

competence of the courts. Kosrae v. M/V Voea Lomipeau, 9 FSM Intrm. 366, 373 (Kos. 2000).

International organizations, their property, and their assets wherever located, and by whomsoever held, are accorded the same immunity from suit and every form of judicial process by the Federated States of Micronesia government that it accords to foreign governments, but the nature of the immunity the FSM affords foreign governments is still an open question. Kosrae v. M/V Voea Lomipeau, 9 FSM Intrm. 366, 373 n.5 (Kos. 2000).

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).

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

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

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

It would seem, as a matter of comity among sovereign nations, the Korean Embassy would expect that after the receipt of its diplomatic note, the FSM Department of Foreign Affairs would promptly and voluntarily, long before the trial court ordered it, file its determination that the Korean defendants had diplomatic immune from suit. McIlrath v. Amaraich, 11 FSM Intrm. 502, 507 (App. 2003).

Conduct attributable to a state that is intended to, and does, effectively deprive an alien of substantially all of the benefit of his interest in property, constitutes a taking of the property, even though the state does not deprive him of his entire legal interest in the property. If a government harasses a foreign entrepreneur in such a way as to make the enterprise unprofitable, one of two outcomes may follow: the entrepreneur may abandon the property or the entrepreneur may sell it to the government at a price which reflects only the diminished potential of the firm. The first is usually classified as a "creeping expropriation" and the second becomes a case of coercion. However, conduct attributable to a state may deprive an alien's property of value without constituting a taking. AHPW, Inc. v. FSM, 12 FSM Intrm. 114, 120-21 (Pon. 2003).

JUDGMENTS

The courts must apply three guidelines in determining whether a decision should be given retroactive effect. First, the decision, to be applied non-retroactively, must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied or by deciding an issue of first impression whose resolution was not clearly foreshadowed. Second, the court must weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation. Finally, the court must weigh the inequity imposed

by retroactive application. Innocenti v. Wainit, 2 FSM Intrm. 173, 185-86 (App. 1986).

Earlier legislation similar to the legislation at issue cannot serve as "past precedent" within the meaning of the first guideline for determining whether a decision should be given retroactive effect where that legislation has not been subjected to court review for constitutionality. Innocenti v. Wainit, 2 FSM Intrm. 173, 185 (App. 1986).

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).

Judgment entered pursuant to compromise and settlement is treated as a judgment on the merits barring any other action for the same cause. Truk v. Robi, 3 FSM Intrm. 556, 564 (Truk S. Ct. App. 1988).

The action of a trial court in refusing to vacate a judgment will not be disturbed on appeal unless it clearly appears that the trial court has abused its discretion. Truk v. Robi, 3 FSM Intrm. 556, 564 (Truk S. Ct. App. 1988).

Under Civil Rule 54(c) the court has full authority except in default judgments, to award the party granted judgment any relief to which it is entitled whether that party prayed for it or not. Billimon v. Chuuk, 5 FSM Intrm. 130, 137 (Chk. S. Ct. Tr. 1991).

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

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

Judgment creditors will be paid in their priority order except for those who release their claims in writing. Payment of a released judgment may be returned to the judgment debtor. Mid-Pacific Constr. Co. v. Senda, 7 FSM Intrm. 371, 373-75 (Pon. 1996).

Unclaimed balances of judgments paid into court may escheat to the government. Mid-Pacific Constr. Co. v. Senda, 7 FSM Intrm. 371, 375 (Pon. 1996).

An order granting summary judgment does not constitute a judgment. Before an adjudication can become an effective judgment, the judgment must be set forth in writing on a separate document, and the judgment so set forth must be entered in the civil docket. Bank of the FSM v. Kengin, 7 FSM Intrm. 381, 382 (Yap 1996).

Because dicta does not create a precedent and is not binding, no rehearing can be granted on dicta in an opinion. Ting Hong Oceanic Enterprises v. FSM, 7 FSM Intrm. 481, 484 (App. 1996).

In the Chuuk State Supreme Court a trial judge has the discretion to order on his own motion a hearing for the plaintiff to prove to the court by the applicable legal standard the amount of damages or other relief sought to be awarded by an offer of judgment. Rosokow v. Chuuk, 7 FSM Intrm. 507, 509-10 (Chk. S. Ct. App. 1996).

All judgments, by statute, accrue nine percent simple interest a year from date of entry of judgment until satisfied. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 670 (App. 1996).

When a second action and judgment is necessary to enforce and satisfy an earlier judgment, the statutory interest on judgments will be computed from the date of entry of the original judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 670 (App. 1996).

As a general rule interest ceases to accrue on a judgment when the money is paid into a court of competent jurisdiction pursuant to the court's order, unless a statute provides otherwise. If a part of the principal is paid, then the statutory interest stops on that part. Partial payments on a judgment are first to be applied to the accrued interest and then to reduction of the principal. The subsequent statutory interest is computed only on the remaining principal. Payments into court accrue interest for the benefit of the ultimate recipient as earned in the court's depository institution. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 670-71 (App. 1996).

A court should retain in its trust account any unclaimed judgments paid into court until the twenty years has run. Otherwise, a judgment creditor may appear and be unable to recover funds rightfully his without yet more litigation and collection efforts, and, if the funds have escheated to a government, a legislative act and appropriation. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 672 (App. 1996).

Generally, a judgment debtor who has paid damages for his wrongful act has no right to receive any part of the payment left unclaimed by the parties because the judgment debtor is not the rightful owner of unclaimed portions of the judgment. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM Intrm. 664, 672 (App. 1996).

A judgment that is reversed and remanded stands as if no trial has yet been held. A party whose convictions have been reversed stands in the position of an accused who has not yet been tried. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM Intrm. 1, 5 (App. 1997).

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

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

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).

The FSM does not have a statute which prescribes when a plaintiff may obtain prejudgment interest, but prejudgment interest has been awarded in the FSM. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM Intrm. 388, 392 (Kos. 1998).

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).

A final judgment that precisely defines a disputed boundary cannot be entered until the Land Commission completes the survey partitioning the land. Once the boundary is determined, the defendant may then meaningfully assess his situation for purposes of considering any appeal. Therefore a motion to stay the survey's completion pending appeal will be denied. Youngstrom v. Phillip, 9 FSM Intrm. 103, 106 (Kos. S. Ct. Tr. 1999).

As a general rule, a judgment for a defendant based on lack of jurisdiction does not bar the plaintiff from bringing another action on the same cause in another court having jurisdiction. National Fisheries Corp. v. New Quick Co., 9 FSM Intrm. 147, 148 (Pon. 1999).

A judgment entered upon a dismissal for lack of jurisdiction should recite that fact, so as to make clear that the dismissal is without prejudice to a different suit in a court that does have jurisdiction. Similar reasoning applies to the granting of a motion to dismiss for improper forum. National Fisheries Corp. v. New Quick Co., 9 FSM Intrm. 147, 148 (Pon. 1999).

Before the Chuuk State Supreme Court can enter a judgment against the state's public funds pursuant to an offer and acceptance of judgment under Civil Procedure Rule 68, a hearing for the purpose of having the benefit of evidence or hearing testimony as to the value of the plaintiff's claim, or the validity thereof, is an absolute necessity. Kama v. Chuuk, 9 FSM Intrm. 496, 499 (Chk. S. Ct. Tr. 1999).

Attorney fee awards that are part of money judgments are entitled to bear interest at the judgment rate until satisfied. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM Intrm. 569, 570 (Chk. 2000).

Unsatisfied judgments accrue nine percent simple interest from date of entry because the statute does not authorize compounding. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM Intrm. 569, 570 (Chk. 2000).

The generally recognized rule is that interest should not bear interest, but compound interest may be awarded if authorized by statute. When the statute reads "nine percent a year" it is not an express authorization to compound interest annually, but is instead, without more, merely a statement of the rate of simple interest. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM Intrm. 569, 570 (Chk. 2000).

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 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).

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).

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).

Payments totaling the principal amount of a judgment have been paid do not fully satisfy the judgment when the judgment expressly provides for 9% interest and for attorney's fees incurred in enforcing the judgment. Even if it did not so state, the judgment creditor would be entitled to statutory interest of 9% under

6 F.S.M.C. 1401. Until such time as all interest and a reasonable attorney's fee is paid, the judgment remains unsatisfied. Mobil Oil Micronesia, Inc. v. Benjamin, 10 FSM Intrm. 100, 103 (Kos. 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).

In the absence of a statute, an award of prejudgment interest is in the court's discretion. If pre-judgment interest is awarded, the statutory, post-judgment interest rate of 9% per annum is appropriate. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 196 (Kos. S. Ct. Tr. 2001).

Pre-judgment interest is not appropriate and a claim for it will be denied when there was no agreement involving a promise to pay money, when the plaintiff was not deprived of funds that he was entitled to because there was no contract made between the parties to pay money, and when the plaintiff was awarded damages based upon the equitable doctrine of promissory estoppel for the plaintiff's expenditures made in reliance on a promise. Kilafwakun v. Kilafwakun, 10 FSM Intrm. 189, 197 (Kos. S. Ct. Tr. 2001).

Payments should be applied first to interest, then principal. Davis v. Kutta, 10 FSM Intrm. 224, 226 (Chk. 2001).

When the court approves a stipulation that does not adjudicate all the claims or the rights and liabilities of all the parties, the stipulation does not constitute a final judgment. Bank of the FSM v. Hebel, 10 FSM Intrm. 279, 287 (Pon. 2001).

Judgments in the Federated States of Micronesia are valid and enforceable for twenty years, and therefore generally do not need to be "revived." Walter v. Chuuk, 10 FSM Intrm. 312, 315 (Chk. 2001).

A revived or renewed judgment is not a novation of contract. Walter v. Chuuk, 10 FSM Intrm. 312, 315 (Chk. 2001).

Under early common law and prior to the creation of the writ of scire facias, it was necessary to sue on the judgment in a new action, affording the defendant an opportunity of proving that he had discharged it, if he had really done so. The purpose of a writ of scire facias or of a revival of the judgment is to give a dormant judgment a new vitality so that it may be executed upon, although it is not a new action or judgment. Walter v. Chuuk, 10 FSM Intrm. 312, 315-16 (Chk. 2001).

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

Enforcement of a judgment may also be effected, if the court deems justice requires and so orders, by a civil action on the judgment or in any other manner known to American common law or common in courts in the United States. Walter v. Chuuk, 10 FSM Intrm. 312, 316 (Chk. 2001).

There is no provision in FSM law that makes a judgment dormant or that extinguishes a judgment-creditor's right to execution before the twenty-year statute of limitations has run. A dormant judgment is one upon which the statute of limitations has not yet run but which, because of lapse of time during which no enforcement action has been taken, may not be enforced unless certain steps are taken by the judgment holder to revive the judgment. Walter v. Chuuk, 10 FSM Intrm. 312, 316 (Chk. 2001).

An eight-year-old judgment not being dormant in the FSM (although some other jurisdiction may consider it dormant), it cannot be revived by an FSM court. The general rule is that a judgment, to be revived, must be dormant; if a judgment is not dormant, revivor is not necessary. An FSM judgment creditor may proceed

by bringing a new action on the judgment. Walter v. Chuuk, 10 FSM Intrm. 312, 316 (Chk. 2001).

Since any judgment *in personam* against an unknown defendant would be void, the court will dismiss John Doe defendants. Foods Pacific, Ltd. v. H.J. Heinz Co. Australia, 10 FSM Intrm. 409, 412-13 n.1 (Pon. 2001).

Final judgments, as a rule, generally bind only the parties to the case and all those in privity with them. If a judgment is final, then the doctrine of res judicata applies, and that doctrine bars any further litigation of the same issues between the same parties or anyone claiming under those parties. Phillip v. Moses, 10 FSM Intrm. 540, 546 (Chk. S. Ct. App. 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 the original trial judge had the discretion to hold, or not to hold, a Rule 68(b) hearing and when it appears that, based on the memorandum submitted with the offer and acceptance and the attorney general's authority to settle claims against the state, the trial judge exercised his discretion not to hold a Rule 68(b) hearing and instead issued the judgment, the holding that a Rule 68(b) hearing was an absolute necessity was an erroneous conclusion of law. Kama v. Chuuk, 10 FSM Intrm. 593, 599 (Chk. S. Ct. App. 2002).

The Chuuk State Supreme Court may correct any errors in judgments or orders resulting from oversight or omission prior to final judgment, which under Rule 54 does not occur until the rights and duties of all parties have been finally determined. Konman v. Adobad, 11 FSM Intrm. 34, 35 (Chk. S. Ct. Tr. 2002).

When an offer of judgment and an acceptance of offer of judgment were made solely between the plaintiff and one defendant and neither party had the power to bind the other defendants to any judgment by such offer and acceptance, the judgment will be modified under Civil Rule 60(a) to clearly reflect that the judgment is only against the one defendant. Konman v. Adobad, 11 FSM Intrm. 34, 35-36 (Chk. S. Ct. Tr. 2002).

An order that does not adjudicate all claims and the rights and liabilities of all parties is not a judgment or an order from which a judgment could be derived. Nor is such an order a partial final judgment when it does not have an express determination that there is no just reason for delay and an express direction for entry of judgment, both of which are required for the entry of a partial final judgment. Stephen v. Chuuk, 11 FSM Intrm. 36, 40 (Chk. S. Ct. Tr. 2002).

An order that did not adjudicate any of the claims against the defendants or adjudicate any of the defendants' defenses and did not dispose of or dismiss either the case or the complaint, but only disposed of and dismissed the plaintiffs' and both sets of intervenors' claims against each other was therefore not a judgment because all it did was to combine both sets of intervenors and the plaintiffs together as joint plaintiffs against the two defendants. Stephen v. Chuuk, 11 FSM Intrm. 36, 40-41 (Chk. S. Ct. Tr. 2002).

Payments on judgments are credited first to accrued interest, and then to principal. Interest accrues as simple interest. Narruhn v. Chuuk, 11 FSM Intrm. 48, 52 (Chk. S. Ct. Tr. 2002).

Any person or entity authorized by law to pay the state's debts, in the absence of legislation to the contrary, must use money appropriated by the Legislature to pay judgments against the state in the order in which the judgments were entered, paying the oldest judgment in full before any payments are made on the next oldest judgment. Narruhn v. Chuuk, 11 FSM Intrm. 48, 54 (Chk. S. Ct. Tr. 2002).

Under Rule 58, every judgment must be set forth in a separate document, and becomes effective only when docketed by the clerk under Rule 79(a). While an order may be final in some circumstances without Rule 58 compliance, the better course, and the one that the court endeavors to follow, is for the trial court to

avoid any ambiguity on the finality point by following Rule 58. Richmond Wholesale Meat Co. v. George, 11 FSM Intrm. 86, 87 (Kos. 2002).

When summary judgment is granted for a portion of the plaintiff's claim and when the court finds pursuant to Rule 54(b) that as to this portion of the claim there is no just reason for delay, the court will expressly direct entry of final judgment for that amount. Richmond Wholesale Meat Co. v. George, 11 FSM Intrm. 86, 88 (Kos. 2002).

In the FSM, a court judgment remains in effect for twenty years, which gives a judgment holder plenty of time to collect her judgment so that for although the judgment gives the plaintiff $5,000 worth of auto repairs and she may not have a vehicle now, that is not to say that she will never have one at any time in the future and be able to collect on her judgment. Farata v. Punzalan, 11 FSM Intrm. 175, 178 (Chk. 2002).

When the trial court concluded that its ruling would not change what had been established long ago and continued until today and what had been habitually practiced on an island but did not make a finding of what had been established long ago and what had been the habitual and normal practice on the island, the case will be remanded to the trial court for it to determine if the appellants had customary and traditional use rights to the island and what the extent of those rights is. Rosokow v. Bob, 11 FSM Intrm. 210, 216-17 (Chk. S. Ct. App. 2002).

A cause of action that alleges that the plaintiffs' customary and traditional rights to use an island might be better described as intentional interference with a customary and traditional property right than trespass. That the plaintiffs referred to it as a trespass should not, in itself, be an obstacle to them prevailing on this point if the evidence warrants, because except for judgments rendered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. Rosokow v. Bob, 11 FSM Intrm. 210, 217 (Chk. S. Ct. App. 2002).

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).

If money on deposit with the court is eventually paid out in partial satisfaction of a judgment, the statutory interest, at least on the sum paid into court, stops accruing on the date the money was paid into court and the only interest the judgment creditor would be entitled to on that money would be the amount it earned while on deposit with the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM Intrm. 514, 517 (Chk. 2003).

As a general rule, interest on a judgment ceases to accrue when money is paid into a court of competent jurisdiction pursuant to the court's order. If a part of the principal is paid, then the statutory interest stops on that part. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM Intrm. 514, 517 (Chk. 2003).

If money currently deposited with the court ultimately goes toward satisfaction of a judgment, then the statutory interest on whatever part of it that was attributable to the principal when paid into court will have ceased accruing on the date it was paid into court. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM Intrm. 514, 517 (Chk. 2003).

Partial payments on a judgment are first to be applied to the accrued interest and then to reduction of the principal. The subsequent statutory interest is computed only on the remaining principal. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM Intrm. 514, 517 n.1 (Chk. 2003).

The statutory interest on judgments is simple interest and cannot be compounded. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM Intrm. 514, 517 (Chk. 2003).

The deposited money's ultimate recipient is entitled to the interest the money earned while deposited with the court. Aggregate Sys., Inc. v. FSM Dev. Bank, 11 FSM Intrm. 514, 517 (Chk. 2003).

In the FSM, judgments, by statute, remain valid and enforceable for twenty years from date of entry.

In re Engichy, 11 FSM Intrm. 520, 525 (Chk. 2003).

While the court may determine (and has in the absence of statute) the priority of its judgments as to a debtor, the court is reluctant to assume that it may order the discharge of a judgment against a debtor when, by statute, the judgment is to remain valid and enforceable for twenty years. In re Engichy, 11 FSM Intrm. 520, 525 (Chk. 2003).

Assuming that the transfer of title to property by the judgment-debtors to a judgment-creditor was not a sham transaction with the judgment-debtors retaining ownership of it and the judgment-creditor merely selling it for them, but was a bona fide transfer of title, it was within the judgment-creditor's rights to take property instead of cash as payment on its judgment. In re Engichy, 11 FSM Intrm. 520, 533 (Chk. 2003).

When a judgment-creditor decides to take title to property as full payment for the outstanding judgment in lieu of a cash payment for the remainder of the judgment, the judgment is satisfied at that point, not at some later time when the judgment-creditor has managed to sell the property for cash. A judgment-creditor accepting title to property in lieu of cash as full satisfaction of its judgment takes the risk that its later sale of the property could amount to less (or the chance it could be more) than amount due on the judgment or that the sale might fall through. In re Engichy, 11 FSM Intrm. 520, 533 (Chk. 2003).

In calculating the amounts due on judgments, the 9% statutory interest ceases to accrue at the point the judgment-debtor pays the money credited to the principal into court and after that time the only interest a judgment-creditor is entitled to is that paid by the court's depository institution on the deposited money. In re Engichy, 11 FSM Intrm. 520, 534 (Chk. 2003).

Any post-judgment charges for attorney's fees and costs – any attorney's fees and costs beyond those awarded in the judgments themselves – must first be determined as reasonable and awarded by the court before the judgment-creditors are entitled to these amounts. In re Engichy, 11 FSM Intrm. 520, 534 (Chk. 2003).

While the Chuuk Financial Control Commission is precluded from paying any court ordered judgments unless specifically appropriated by law, it must, in a timely manner, develop in consultation with the Governor and Attorney General subsequent legislation for appropriation or other purposes for consideration by the Chuuk Legislature to address court judgments. That the Commission has disclaimed this responsibility imparted is in material part a basis for the court's ruling that ordering Chuuk to pay the judgment through taking the first step in that direction by proposing a payment plan is not a workable means of obtaining a satisfaction of the judgment, and the parlous state of Chuuk's finances is more reason, not less, why it should have been forthcoming with a plan for payment. Estate of Mori v. Chuuk, 11 FSM Intrm. 535, 540 (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).

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).

When a judgment was entered in a plaintiff's favor and against a defendant prior to the defendant's death, dismissal of the matter is not appropriate as the claim has not been extinguished. The unsatisfied portion of the judgment still exists. Bank of the FSM v. Rodriguez, 11 FSM Intrm. 542, 544 (Pon. 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).

A court has the inherent power to tailor its decision and remedies to prevent any adverse impact on the affairs of the public because it may, if it determines that the best interests of the parties and of the public require it, render a judgment in plaintiffs' favor on constitutional and statutory claims, and make the application of the judgment prospective only. Rubin v. Fefan Election Comm'n, 11 FSM Intrm. 573, 580 (Chk. S. Ct. Tr. 2003).

Judgment can be entered on less than all claims in a case if the court makes an express determination that there is no just cause for delay and expressly directs entry of judgment. Both elements must be present to give a partial adjudication final judgment status. When either element is absent, even if only because of oversight or a failure to appreciate that the case is one that is within Rule 54(b), the partial adjudication does not carry final judgment status. Kitti Mun. Gov't v. Pohnpei, 11 FSM Intrm. 622, 628 (App. 2003).

A partial adjudication in a consolidated case generally falls within Rule 54(b). Kitti Mun. Gov't v. Pohnpei, 11 FSM Intrm. 622, 628 (App. 2003).

When the provisions of the trial court's consolidation order and later order assigning one docket number indicated that the cases were consolidated for all purposes including trial, and when the trial court dismissed the claims between certain parties but did not make the required findings under Rule 54(b), that dismissal was not a final judgment and thus the plaintiff in one of the consolidated actions remained a party to the consolidated action for purposes of later appeal. Kitti Mun. Gov't v. Pohnpei, 11 FSM Intrm. 622, 629 (App. 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).

The only interest remitted to a judgment-creditor other than that earned before the money was deposited with the court will be whatever amount the court's depository institution has paid on the deposited money. In re Engichy, 12 FSM Intrm. 58, 71 (Chk. 2003).

Process to enforce a judgment for the payment of money will be a writ of execution, unless the court directs otherwise. The procedure on execution will be in accordance with the practice and procedure of the state in which the court is held, existing at the time the remedy is sought, except that any FSM statute governs to the extent that it is applicable. Barrett v. Chuuk, 12 FSM Intrm. 558, 560 (Chk. 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).

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 the usual case, payment of a money judgment against a state must abide a legislative appropriation. A state will have the ability to pay a judgment as contemplated by 6 F.S.M.C. 1409 when its legislature appropriates money for that purpose. Barrett v. Chuuk, 12 FSM Intrm. 558, 562 (Chk. 2004).

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

The general rule is that, in the absence of express authorization, interest is to be computed on a simple basis rather than compounded. Lee v. Lee, 13 FSM Intrm. 68, 71 (Chk. 2004).

Nine percent a year is the legal or statutory interest rate on judgments. Such interest is only simple interest and is not compounded. Lee v. Lee, 13 FSM Intrm. 68, 71 (Chk. 2004).

Every judgment must be set forth on a separate document. Nikichiw v. O'Sonis, 13 FSM Intrm. 132, 136 n.2 (Chk. S. Ct. App. 2005).

The principle of stare decisis is one of the guiding lights of our jurisprudence, and without a principled and compelling reason for overruling a long line of FSM cases, the court is disinclined to do so. Gilmete v. Carlos Etscheit Soap Co., 13 FSM Intrm. 145, 149 (App. 2005).

Although parties are free to stipulate to factual matters, they may not stipulate to conclusions of law to be reached by the court. FSM Social Sec. Admin. v. Jonas, 13 FSM Intrm. 171, 173 (Kos. 2005).

Although parties are free to stipulate to factual matters, they may not stipulate to legal conclusions to be reached by the court. FSM Social Sec. Admin. v. Jonas, 13 FSM Intrm. 171, 173 (Kos. 2005).

When a judgment on less than all claims in the pleadings is entered upon an express determination that there is no just reason for delay and upon an express direction for entry of judgment, that judgment is a final adjudication with regard to the claims disposed of by the judgment. A second judgment will issue later at the appropriate time that addresses the remaining claim. FSM Social Sec. Admin. v. Jonas, 13 FSM Intrm. 171, 173 (Kos. 2005).

The courts are not given the responsibility of interpreting the law, but deprived of the authority to apply it. The judiciary's power to pass judgment goes hand in hand with its power to enforce those judgments as justice requires. Chuuk v. Davis, 13 FSM Intrm. 178, 185 (App. 2005).

– Alter or Amend Judgment

Because until a final judgment has been entered a trial court has plenary power over its interlocutory orders, it may, without regard to the restrictive time limits in Rule 59, alter, amend, or modify such orders any time prior to the entry of judgment. Youngstrom v. Phillip, 8 FSM Intrm. 198, 201 (Kos. S. Ct. Tr. 1997).

A court may alter or amend a judgment under Rule 59 on any of four grounds: 1) to correct a manifest error of law or fact upon which the judgment is based; 2) the court is presented with newly discovered or previously unavailable evidence; 3) to prevent a manifest injustice; or 4) there is an intervening change in the controlling law. Chuuk v. Secretary of Finance, 9 FSM Intrm. 99, 100 (Pon. 1999).

A timely motion to alter or amend judgment is one served not later than 10 days after entry of the judgment. O'Sonis v. Bank of Guam, 9 FSM Intrm. 356, 359 (App. 2000).

A post-judgment motion for supplemental attorney's fees is not a motion to alter or amend judgment under FSM Civil Procedure Rule 59(e), and does not extend the time for the filing of the notice of appeal under

Appellate Procedure Rule 4(a)(4). O'Sonis v. Bank of Guam, 9 FSM Intrm. 356, 359 (App. 2000).

A motion that a judgment be amended to include a statement of the statutory interest and that its title be corrected to read "judgment" instead of "proposed order," is not one to amend, but rather more properly one to correct a judgment. As such Rule 60 applies, not Rule 59. Walter v. Chuuk, 10 FSM Intrm. 312, 315 (Chk. 2001).

The ten day time limit for a motion to alter or amend a judgment does not apply to an order which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties because that order does not terminate the action as to any of the claims or parties, and is subject to revision at any time before the entry of judgment. The appropriate means by which to raise concerns about such an order is not by a Rule 59 motion to alter or amend judgment, but by a Rule 54 motion for reconsideration. A motion for reconsideration can be brought any time before entry of judgment, and is not subject to the 10 day limit. Adams v. Island Homes Constr., Inc., 10 FSM Intrm. 466, 470 (Pon. 2001).

A Rule 59 motion must be brought within ten days of entry of judgment and can either be for a new trial or to alter or amend the judgment. Farata v. Punzalan, 11 FSM Intrm. 175, 177 (Chk. 2002).

A motion to alter or amend the judgment will be denied when it does not state what the judgment should be altered to or amended to read, but only states the movant's dissatisfaction with its current form and asks that the judgment be opened. Farata v. Punzalan, 11 FSM Intrm. 175, 178 (Chk. 2002).

Although the trial court, absent a remand, lacks jurisdiction to vacate or alter its judgment pending appeal, the trial court retains the power throughout the pendency of the appeal to simply preserve the status quo by granting a stay of the judgment. Konman v. Esa, 11 FSM Intrm. 291, 296 (Chk. S. Ct. Tr. 2002).

– Foreign

Comity is a recognition which one nation extends within its own territory to the legislative, executive, or judicial acts of another. It is not a rule of law, but one of practice, convenience, and expediency. Under principles of comity, courts will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM Intrm. 430, 431-32 (Pon. 1994).

An FSM court may reduce the amount of attorney's fees provided for under a foreign judgment, where that judgment is unenforceable as against public policy to the extent that the attorney fees in excess of 15% of debt are repugnant to fundamental notions of what is decent and just in the FSM. J.C. Tenorio Enterprises, Inc. v. Sado, 6 FSM Intrm. 430, 432 (Pon. 1994).

A certified copy of a judgment from a foreign court is admissible evidence as a properly authenticated public record of that jurisdiction. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM Intrm. 326, 327 (Chk. S. Ct. Tr. 1995).

The FSM Supreme Court will not enforce the part of a Northern Marianas' judgment imposing a CNMI statutory treble damages penalty for writing bad checks when the FSM has no similar public policy. Recovery will be limited to the outstanding principal amount of the bad checks and the plaintiff's undisputed additional costs – bank charges and court costs. Coca-Cola Beverage Co. (Micronesia) v. Edmond, 8 FSM Intrm. 388, 391 (Kos. 1998).

When the FSM Supreme Court's concern in inquiring into a Guam bankruptcy case was not to determine whether the principles of comity should be applied, but rather whether any order the court might issue would subject a party to liability for contempt in the other court because the party was required by two courts to obey contradictory orders and when that concern has been assuaged, the court will take no position on whether, and under what circumstances, it might recognize U.S. bankruptcy law or proceedings and whether or when

comity would apply in such a case. UNK Wholesale, Inc. v. Robinson, 11 FSM Intrm. 361, 366 (Chk. 2003).

Under principles of comity, the FSM Supreme Court will enforce foreign judgments, but not when the foreign court lacked jurisdiction, or where enforcement of the foreign judgment would violate a public policy, or where granting comity would result in prejudice to the forum's citizens. Northern Marianas Housing Corp. v. Finik, 12 FSM Intrm. 441, 444 (Chk. 2004).

The FSM Supreme Court will not enforce a foreign judgment entered by a court that lacked personal jurisdiction over the defendant when it entered its judgment against her. Northern Marianas Housing Corp. v. Finik, 12 FSM Intrm. 441, 446-47 (Chk. 2004).

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).

– Relief from Judgment

Rule 60(b)(6) of the FSM Rules of Civil Procedure permits the court to relieve a party from judgment for any reason justifying the relief. Bank of the FSM v. Bartolome, 4 FSM Intrm. 182, 184 (Pon. 1990).

Any judicial act, that has been done pursuant to a statute that does not confer the power to do that act, is void on its face. A judgment that is void on its face may be set aside by the court on its own motion. In re Jae Joong Hwang, 6 FSM Intrm. 331, 331-32 (Chk. S. Ct. Tr. 1994).

A motion for relief of a partial summary judgment under Civil Rule 59(e) is subject to a strict time limit of 10 days which cannot be enlarged by the court. Such a motion filed 10 months later is untimely. This very strict deadline cannot be avoided by an unsupported assertion that a copy of the judgment was not served. Kihara Real Estate, Inc. v. Estate of Nanpei (II), 6 FSM Intrm. 354, 355-56 (Pon. 1994).

While Civil Rule 60(a) may be used to correct clerical errors in a judgment such as those of transcription, copying, or calculation it cannot be used to obtain relief for acts deliberately done. Therefore where the court deliberately intended to enter in a judgment the amount prayed for in a party's motion and that amount is based on a special master's report not before the court, the party cannot obtain relief under Rule 60(a) for errors in the special master's report. Senda v. Mid-Pacific Constr. Co., 6 FSM Intrm. 440, 444-45 (App. 1994).

When a motion for relief from judgment is made pursuant to Civil Rule 60(b)(1), (2), or (3) the court must consider whether it was made within a reasonable time even when it is made within the one year time limit. Senda v. Mid-Pacific Constr. Co., 6 FSM Intrm. 440, 445-46 (App. 1994).

Relief from judgment cannot be granted when judgment was granted on two separate grounds and relief is only sought from one of the grounds. However, if meritorious, the record may be corrected to show that one ground ought to be stricken. Setik v. FSM, 6 FSM Intrm. 446, 448 (Chk. 1994).

Trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. Election Commissioner v. Petewon, 6 FSM Intrm. 491, 499 (Chk. S. Ct. App. 1994).

There are five essential elements to an independent action in equity to set aside a judgment. They are 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of any adequate remedy at law. If any one of these elements is missing the court cannot take equitable jurisdiction of the case. Election Commissioner v. Petewon, 6 FSM Intrm. 491, 499 (Chk. S. Ct. App. 1994).

Where there are one or more legal remedies still available to a litigant the trial court has no jurisdiction to grant relief from a judgment through an independent action in equity. Election Commissioner v. Petewon, 6 FSM Intrm. 491, 499 (Chk. S. Ct. App. 1994).

Failure of counsel to exercise due diligence in searching for "newly discovered" evidence is sufficient and independent grounds for denial of a motion for relief from judgment under FSM Civil Rule 60(b)(2). Nena v. Kosrae (III), 6 FSM Intrm. 564, 567 (App. 1994).

The purpose of Civil Rule 60(b) is to provide the trial court with a tool for navigating between the conflicting principles that litigation must be brought to an end and that justice should be done. Mid-Pacific Constr. Co. v. Senda, 7 FSM Intrm. 129, 133 (Pon. 1995).

Civil Rule 60(b) does not afford relief to a party where the errors complained of were calculated by that party, submitted to the court by that party, and judicially noticed upon that party's request, because it is apparent that that party seeks relief from the insufficient preparation, the carelessness, and the neglect of its own counsel. Mid-Pacific Constr. Co. v. Senda, 7 FSM Intrm. 129, 135 (Pon. 1995).

A party may be estopped from seeking Rule 60(b)(1) relief from acts voluntarily undertaken by that party. Mid-Pacific Constr. Co. v. Senda, 7 FSM Intrm. 129, 135 (Pon. 1995).

Even where a request for Rule 60(b) relief is filed within the stated one-year time limit, a court still must examine whether the filing was made within a "reasonable time." In determining this issue, the court reviews all of the facts and circumstances surrounding the case and may require the party seeking Rule 60 relief to offer a sufficient explanation for not having taken appropriate action in a more timely manner. Mid-Pacific Constr. Co. v. Senda, 7 FSM Intrm. 129, 136 (Pon. 1995).

In appropriate circumstances, a court will invoke its equitable jurisdiction and will permit an independent action to set aside a prior judgment. Union Indus. Co. v. Santos, 7 FSM Intrm. 242, 245 (Pon. 1995).

Where an identical action was dismissed with prejudice, the parties were represented by competent counsel, and defendant relied upon the dismissal of the prior action as a final and unequivocal resolution of both parties' claims, it would be inequitable to allow the plaintiff to relitigate the issue. Union Indus. Co. v. Santos, 7 FSM Intrm. 242, 245 (Pon. 1995).

Relief from judgment will be denied when the relief sought is for someone not a party. Damarlane v. United States, 7 FSM Intrm. 350, 352-53 (Pon. 1995).

A Rule 60 motion for relief from judgment cannot be granted when the order from which relief is sought is not a final judgment. In re Estate of Hartman, 7 FSM Intrm. 409, 410 (Chk. 1996).

After a judgment has been appealed, a trial court, without appellate court permission, has the power to both consider, and deny Rule 60(b) relief from judgment motions. A trial court, however, cannot grant a Rule 60(b) motion while an appeal is pending. If the trial court is inclined to grant the motion, it should issue a brief memorandum so indicating. Armed with this, movant may then request the appellate court to remand the action so that the trial court can vacate judgment and proceed with the action accordingly. Walter v. Meippen, 7 FSM Intrm. 515, 517-18 (Chk. 1996).

When a motion for relief from judgment is made pursuant to Civil Rule 60(b)(1), a court must first consider whether it was made within a reasonable time even when it is made within the one year time limit. To determine if the time was reasonable it considers whether the nonmoving party was prejudiced and whether the moving party had some good reason for his failure to take appropriate action sooner. Walter v. Meippen, 7 FSM Intrm. 515, 518 (Chk. 1996).

The time for making a motion for relief from judgment continues to run even while the case is on appeal. Walter v. Meippen, 7 FSM Intrm. 515, 518 (Chk. 1996).

Because relief from judgment may be granted upon such terms as are just, a court may order as relief that the trial be resumed at some point other than the beginning. Walter v. Meippen, 7 FSM Intrm. 515, 518 (Chk. 1996).

Relief from judgment is addressed to the discretion of the court, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. Walter v. Meippen, 7 FSM Intrm. 515, 518 (Chk. 1996).

Relief from judgment may be granted to a party who failed to appear at trial when he was unaware that trial had been scheduled. Walter v. Meippen, 7 FSM Intrm. 515, 519 (Chk. 1996).

Courts considering a Rule 60(b) motion also require that the moving party show a good claim or defense before relief from judgment may be granted. Walter v. Meippen, 7 FSM Intrm. 515, 519 (Chk. 1996).

A stay of judgment may be granted while a motion for relief from judgment is pending. Walter v. Meippen, 7 FSM Intrm. 515, 519 (Chk. 1996).

When a judgment is on appeal, a trial court, without appellate court permission, has the power to both consider and deny Rule 60(b) relief from judgment motions, but cannot grant such a motion while an appeal is pending. If inclined to grant the motion, the trial court issues a brief memorandum so indicating. Armed with this, the movant can then request the appellate court to remand the action so that judgment could be vacated. If the Rule 60(b) motion is denied, the movant may appeal from the order of denial. A trial court's jurisdiction to consider and deny a Rule 59(e) motion (motion to alter or amend judgment) after an appeal has been filed is similar to its power with respect to a Rule 60(b) motion. Stinnett v. Weno, 8 FSM Intrm. 142, 145 & n.1 (Chk. 1997).

When there was no showing that the movant tried to obtain the evidence before judgment and where the evidence would not change the result, it cannot be considered newly discovered evidence that could not have been discovered previously by the exercise of due diligence entitling the movant to relief from judgment. Stinnett v. Weno, 8 FSM Intrm. 142, 146 (Chk. 1997).

In the Kosrae State Court, motions for relief from judgment or to alter or amend a judgment are non-hearing motions. Langu v. Kosrae, 8 FSM Intrm. 455, 457 (Kos. S. Ct. Tr. 1998).

Failure to calendar the date for response and having only one attorney, busy handling a large volume of work, and a number of trial counselors in the office during the month the response was due is not "excusable neglect" entitling a party to relief from judgment. Even if the trial counselors were not prepared to handle the response to the submission, they were certainly capable of and experienced in drafting a motion for enlargement of time. Langu v. Kosrae, 8 FSM Intrm. 455, 459 (Kos. S. Ct. Tr. 1998).

A Rule 60(b) motion is for relief from the judgment of a trial court, not the reconsideration of an appellate order. A motion to reconsider before the Pohnpei Supreme Court appellate division is not analogous to a relief from judgment motion. It is instead analogous to the types of motions to reconsider specifically mentioned in FSM Appellate Rule 4(a)(4). Damarlane v. Pohnpei, 9 FSM Intrm. 114, 118-19 (App. 1999).

A motion for relief from judgment must allege facts sufficient to establish a meritorious defense. Such defendants must make a showing of a meritorious defense that if established at trial, would constitute a complete defense to the action. Irons v. Ruben, 9 FSM Intrm. 218, 219 (Chk. S. Ct. Tr. 1999).

Under Civil Procedure Rule 55(c), relief from an entry of default may be granted for good cause shown. A default entry may thus be set aside for reasons that would not be enough to open a default judgment. A Rule 55(c) motion is addressed to the trial court's discretion. Good cause is a mutable standard, varying from situation to situation, and it is likewise a liberal one, but not so elastic as to be devoid of substance. FSM Dev. Bank v. Gouland, 9 FSM Intrm. 375, 377 (Chk. 2000).

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b). FSM Dev. Bank v. Gouland, 9 FSM Intrm. 375, 377-78 (Chk. 2000).

The "good cause" threshold for Rule 55(c) relief is lower, ergo more easily overcome, than that which obtains under Rule 60(b) and the trial court should not read "good cause" too grudgingly. This more flexible approach reflects a policy decision that a default judgment should enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere default. FSM Dev. Bank v. Gouland, 9 FSM Intrm. 375, 378 (Chk. 2000).

Generally, "good cause" is a broader and more liberal standard that frees the court from some of the restraints imposed by the excusable neglect requirement. A motion for relief pursuant to Rule 55(c) must be liberally construed. The Rule 55(c) standard is lenient. FSM Dev. Bank v. Gouland, 9 FSM Intrm. 375, 378 (Chk. 2000).

In determining whether good cause to vacate an entry of default exists a court evaluates whether the default was willful, whether setting it aside would prejudice the adversary, and whether a meritorious defense is presented. A court may also examine into such things as the proffered explanation for the default, the good faith of the parties, the amount of money involved, and the timing of the motion. FSM Dev. Bank v. Gouland, 9 FSM Intrm. 375, 378 (Chk. 2000).

For the purpose of a Rule 55 motion to vacate an entry of default, the meritorious defense factor has a low threshold of adequacy and may be met although a court finds a defendant's meritorious defense argument tenuous. FSM Dev. Bank v. Gouland, 9 FSM Intrm. 375, 378 (Chk. 2000).

Because of the strong policies favoring resolution on the merits, the trial court has only a narrow scope of discretion, so that in a close case, a trial court should resolve its doubts in favor of a party seeking relief from the entry of a default. FSM Dev. Bank v. Gouland, 9 FSM Intrm. 375, 378-79 (Chk. 2000).

The Chuuk State Supreme Court may set aside any judgment for fraud upon the court, or if the judgment is void as in a case where the judgment is against public policy, or if it is no longer equitable that the judgment should have prospective application, or for any other reason justifying relief from the operation of the judgment. Kama v. Chuuk, 9 FSM Intrm. 496, 499-500 (Chk. S. Ct. Tr. 1999).

A default judgment will be set aside when one defendant was served the complaint and summons not by a policeman or some other specially appointed person in compliance with Civil Procedure Rule 4(c) but by plaintiff's counsel and the other defendant was not served at all. Simina v. Rayphand, 9 FSM Intrm. 500, 501 (Chk. S. Ct. Tr. 1999).

A motion to vacate an order of dismissal under Rule 60(b) that is not brought under any of the six enumerated bases set out in Rule 60(b), and reurges the same points made in the response to the original motion to dismiss is plainly not a Rule 60(b) motion, but is considered as a motion for reconsideration. Kosrae v. Worswick, 9 FSM Intrm. 536, 538 (Kos. 2000).

An entry of default may be set aside for good cause shown. Rule 55 distinguishes between relief from default, which is an interlocutory matter, and relief from a judgment by default, which involves final judicial action. Thus, a more liberal standard is applied to reviewing entry of default, as opposed to default judgments. Adams v. Island Homes Constr., Inc., 10 FSM Intrm. 159, 162 (Pon. 2001).

A court may set aside an entry of default for good cause shown. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 175, 180 (Pon. 2001).

A common statement of the criteria to set aside a default judgment is whether the default was willful, that is, caused by culpable conduct of the defendant, whether there is a meritorious defense, and whether setting aside the default judgment would prejudice the plaintiff. College of Micronesia-FSM v. Rosario, 10 FSM Intrm.

175, 180 (Pon. 2001).

Any of the reasons sufficient to justify the vacation of a default judgment normally will justify relief from a default entry and in various situations a default entry may be set aside for reasons that would not be enough to open a default judgment. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 175, 180 (Pon. 2001).

When a defendant did not willfully cause the default as he had appeared, filed motions, and attempted to defend himself pro se, when he had attempted to obtain counsel, when his papers submitted new defenses to the plaintiff's trespass claim, and when, because a preliminary injunction remained in effect, the only prejudice is the delay necessary to allow the case's merits to be heard, a motion to set aside entry of default will be granted. College of Micronesia-FSM v. Rosario, 10 FSM Intrm. 175, 180 (Pon. 2001).

Courts generally disfavor default judgments and readily set them aside rather than deprive a party of the opportunity to contest a claim on the merits. O'Sullivan v. Panuelo, 10 FSM Intrm. 257, 260 (Pon. 2001).

Relief from judgment under Rule 60 is addressed to the court's discretion. The discretion is not an arbitrary one to be capriciously exercised, but a sound legal discretion guided by accepted legal principles. Generally, the court's discretion does not reach neglect of counsel, which, without more, is not a basis for Rule 60(b) relief, except when the neglect itself is excusable. Elymore v. Walter, 10 FSM Intrm. 267, 268-69 (Pon. 2001).

Because clients are responsible for their counsel's conduct, the proper focus is upon whether the neglect of the clients and their counsel was excusable. Clients must be held accountable for their attorney's acts or omissions. Elymore v. Walter, 10 FSM Intrm. 267, 269 (Pon. 2001).

The conduct of both client and counsel is relevant to a determination of excusable neglect under Rule 60(b)(1). Elymore v. Walter, 10 FSM Intrm. 267, 269 (Pon. 2001).

When even if former counsel's neglect were excusable, plaintiffs' failure to secure new counsel in a more timely manner is conduct sufficient in itself to preclude relief under Rule 60(b)(1), the motion for relief from judgment must be denied based on the plaintiffs' own conduct. Elymore v. Walter, 10 FSM Intrm. 267, 269-70 (Pon. 2001).

A motion that a judgment be amended to include a statement of the statutory interest and that its title be corrected to read "judgment" instead of "proposed order," is not one to amend, but rather more properly one to correct a judgment. As such Rule 60 applies, not Rule 59. Walter v. Chuuk, 10 FSM Intrm. 312, 315 (Chk. 2001).

With the exception of void judgments under Rule 60(b)(4), the grant or denial of Rule 60 relief rests with the trial court's sound discretion. The discretion is not an arbitrary one to be capriciously exercised, but a sound legal discretion guided by accepted legal principles. Amayo v. MJ Co., 10 FSM Intrm. 371, 377 (Pon. 2001).

Serving the defendant himself and failure to serve defendant's counsel with documents was not improper conduct entitling the defendant to Rule 60(b)(3) relief from judgment when that defendant had no counsel of record and was appearing pro se. Amayo v. MJ Co., 10 FSM Intrm. 371, 380 (Pon. 2001).

Service of a motion upon an opposing party is expressly required under Civil Procedure Rule 6(d). Such is not the case with a trial subpoena. Therefore, in the absence of any pre-trial order requiring it, failure to serve trial subpoenas on an opposing party does not constitute improper conduct justifying relief from judgment under Rule 60(b)(3). Amayo v. MJ Co., 10 FSM Intrm. 371, 381 (Pon. 2001).

Attorney negligence, even gross negligence, if demonstrated, is not a separate basis for Rule 60(b)(6) relief from judgment. Under established FSM law, attorney neglect as a basis for Rule 60(b) relief falls within subsection Rule 60(b)(1), "mistake, inadvertence, surprise, or excusable neglect." Amayo v. MJ Co., 10 FSM

Intrm. 371, 381 (Pon. 2001).

Generally, attorney negligence is not a basis for Rule 60(b)(1) relief from judgment. Parties who freely choose their attorneys should not be allowed to avoid the ramification of the acts or omissions of their chosen counsel. A party in a civil case whose attorney's conduct has fallen below a reasonable standard has other remedies. To grant Rule 60(b)(1) relief in such circumstances would penalize the nonmoving party for the negligent conduct of the moving party's counsel. Amayo v. MJ Co., 10 FSM Intrm. 371, 381 (Pon. 2001).

The exception to the rule that attorney neglect does not state a basis for relief under Rule 60(b)(1) is where the neglect itself is excusable. Clients must be held accountable for their attorneys' acts or omissions. Amayo v. MJ Co., 10 FSM Intrm. 371, 381-82 (Pon. 2001).

Allegations of an attorney's gross negligence do not entitle his client to relief from judgment under the excusable neglect provision of Rule 60(b)(1). Amayo v. MJ Co., 10 FSM Intrm. 371, 382 (Pon. 2001).

An analysis of excusable neglect under Rule 60(b)(1) by its terms brings into play the conduct of the client, as well counsel because the proper focus is upon whether the neglect of the clients and their counsel was excusable. Amayo v. MJ Co., 10 FSM Intrm. 371, 382 (Pon. 2001).

A pro se party's lack of full involvement in the pretrial process for whatever reasons when he had the opportunity to participate – and indeed was required to do so but did not when it came to responding to plaintiffs' discovery – does not constitute excusable neglect under Civil Procedure Rule 60(b) when he has not demonstrated that his own neglect of the litigation, either in his role of client or attorney, was excusable. Amayo v. MJ Co., 10 FSM Intrm. 371, 382 (Pon. 2001).

Because procedural law cannot cast a sympathetic eye on the unprepared or it will soon fragment into a kaleidoscope of shifting rules, relief under Rule 60 is not appropriate when a party has demonstrated a pattern of delay and neglect. Amayo v. MJ Co., 10 FSM Intrm. 371, 382 n.5 (Pon. 2001).

Rule 59 provides a means for relief in cases in which a party has been unfairly made the victim of surprise, but relief will be denied if the party failed to seek a continuance. Surprise, along with excusable neglect, is also addressed by Rule 60(b)(1). Thus, if a party is surprised at trial he is amply protected by Rules 59(a) and 60(b). Amayo v. MJ Co., 10 FSM Intrm. 371, 383 (Pon. 2001).

For the limited purpose of Rule 60(b)(1) relief from judgment the court will not allow a party, having elected at relevant times to be his own counsel of record, to ascribe his own on-the-record conduct of the litigation after the fact to off-the-record counsel. Amayo v. MJ Co., 10 FSM Intrm. 371, 383 (Pon. 2001).

Subsection (6) is the grand reservoir of equitable power to do justice in a particular case, subject to the requirement that the provision is applicable only when the basis for relief is different from those enumerated in subsections (1) through (5) of Rule 60(b), and to the requirement that extraordinary circumstances exist for justifying relief. Extraordinary circumstances usually means that the movant himself was not at fault for his predicament. Conversely, the usual implication of fault on the movant's part is that there are no extraordinary circumstances. Amayo v. MJ Co., 10 FSM Intrm. 371, 383 (Pon. 2001).

Relief from judgment under Rule 60(b)(6) will be denied when there was sufficient action, and failure to act, on the movant's part to preclude the argument that there was no fault on his part and when there is also no distinct claim for relief that falls outside those specifically enumerated in subsections (b)(1) through (b)(5) of Rule 60. Amayo v. MJ Co., 10 FSM Intrm. 371, 383 (Pon. 2001).

A successor trial court judge has the same power to grant relief from judgment under Rule 60(b) that the original trial court judge had. A successor judge may vacate a judgment when the original judge would have had an adequate legal basis to do so. Kama v. Chuuk, 10 FSM Intrm. 593, 597 (Chk. S. Ct. App. 2002).

Appellate review of a grant or denial of a motion for relief from judgment is limited to determining whether

the trial court abused its discretion. Kama v. Chuuk, 10 FSM Intrm. 593, 598 (Chk. S. Ct. App. 2002).

The right to seek relief from judgment under Rule 60(b) is restricted to a party or a party's legal representative. Rule 60(b) explicitly requires a motion from the affected party, not from the trial court acting *sua sponte*. Kama v. Chuuk, 10 FSM Intrm. 593, 598 (Chk. S. Ct. App. 2002).

The Rule 60(b) requirement that a party seek relief is unlike a Rule 60(a) correction of a clerical error in a judgment, which may be corrected by the court of its own initiative or on any party's motion. Kama v. Chuuk, 10 FSM Intrm. 593, 598 (Chk. S. Ct. App. 2002).

It was an erroneous conclusion of law for a trial court to hold it had the authority to move *sua sponte* to relieve a party from judgment. 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).

Relief from judgment must be sought by motion with notice to opposing party and an opportunity for him to be heard. The motion must state the grounds for the relief, including the facts and the law on which the grounds are based, and why the movant believes that the motion is brought within a reasonable time, that is, the movant must show good reason for its failure to take appropriate action sooner. If the motion is brought pursuant to Rule 60(b)(6), the movant must also state the nature of the extraordinary circumstances that are the ground for relief. Kama v. Chuuk, 10 FSM Intrm. 593, 600 (Chk. S. Ct. App. 2002).

A motion for relief from judgment cannot be brought under Rule 60(b) subsections (1), (2), or (3) when it is more than one year after the judgment. Kama v. Chuuk, 10 FSM Intrm. 593, 600 (Chk. S. Ct. App. 2002).

The movant for relief from judgment must keep in mind that generally the standard for reopening a consent final judgment is a strict one. Kama v. Chuuk, 10 FSM Intrm. 593, 600 (Chk. S. Ct. App. 2002).

When there is no judgment in the case but only an interlocutory order confirming a settlement agreement between fewer than all the parties to the action, a motion for relief from judgment will properly be characterized, not as one for relief from judgment under Rule 60(b), but as one to reconsider an interlocutory order. A party cannot seek relief from a judgment that does not exist. Stephen v. Chuuk, 11 FSM Intrm. 36, 43 (Chk. S. Ct. Tr. 2002).

The standard test for whether a judgment is final for Rule 60(b) purposes is usually stated to be whether the judgment is sufficiently final to be appealed. Richmond Wholesale Meat Co. v. George, 11 FSM Intrm. 86, 87 (Kos. 2002).

In the absence of the Rule 60(b) finality requirement, the court will deem a putative Rule 60(b) motion as one for reconsideration of the court's order. Richmond Wholesale Meat Co. v. George, 11 FSM Intrm. 86, 88 (Kos. 2002).

Even when service on the defendants was proper, they may still obtain relief from a default judgment if they qualify under Rule 60. Courts generally disfavor default judgments and will, in proper Rule 60(b) cases, readily set them aside rather than deprive a party of the opportunity to contest, and the court to resolve, a claim on its merits, instead of on procedural grounds. UNK Wholesale, Inc. v. Robinson, 11 FSM Intrm. 118, 122 (Chk. 2002).

The criteria to be met in order to justify setting aside a default judgment are whether the default was willful, caused by the defendant's culpable conduct, whether the defendant has a meritorious defense, and whether setting aside the default would prejudice the plaintiff. Relief from judgment is addressed to the discretion of the court, which must balance the policy in favor of hearing a litigant's claims on the merits against the policy in favor of finality. UNK Wholesale, Inc. v. Robinson, 11 FSM Intrm. 118, 122 (Chk. 2002).

The determination of what sorts of neglect that can be considered excusable in order to justify relief from judgment is an equitable one. UNK Wholesale, Inc. v. Robinson, 11 FSM Intrm. 118, 122 (Chk. 2002).

Defendants' failure to move for relief from judgment until after a writ of execution has been issued and their property seized was not an unreasonable delay when the plaintiff was so prompt in obtaining a default judgment, a writ of execution, and then levying on the writ. UNK Wholesale, Inc. v. Robinson, 11 FSM Intrm. 118, 122 (Chk. 2002).

Bad checks that, in part, gave rise to the lawsuit are not culpable conduct after the lawsuit's inception that would bar relief from judgment, and neither are the defendants' other instances of alleged culpable conduct (such as moving or closing other businesses) that do not appear to be related to the lawsuit. UNK Wholesale, Inc. v. Robinson, 11 FSM Intrm. 118, 123 (Chk. 2002).

In order to obtain relief from a default judgment, the defendant must have a meritorious defense. A defense that would constitute a complete defense to the action if proven at trial would be a meritorious defense justifying relief from judgment when some evidence to support the defense has been produced, although more evidence may be needed to prevail at trial. UNK Wholesale, Inc. v. Robinson, 11 FSM Intrm. 118, 123 (Chk. 2002).

Relief from judgment may be granted only on motion and upon such terms as are just. The requirement of a bond is a just term upon which to grant relief from judgment, especially in a close case that tips in the defendants' favor because of the court's policy favoring resolutions on the merits over defaults. UNK Wholesale, Inc. v. Robinson, 11 FSM Intrm. 118, 123 (Chk. 2002).

Rule 60(b) may not allow a party in whose favor a judgment is entered to seek relief from that judgment because stipulated judgments, while they are judicial acts, also have many attributes of voluntarily-undertaken contracts, and when the parties have made a freely calculated, deliberate choice to submit to an agreed upon judgment rather than seek a more favorable litigated outcome (or risk a less favorable litigated outcome), the burden under Rule 60(b) is probably more formidable than had they litigated and lost. Farata v. Punzalan, 11 FSM Intrm. 175, 178 (Chk. 2002).

Relief under Rule 60(b)(6) is reserved for extraordinary circumstances. Farata v. Punzalan, 11 FSM Intrm. 175, 178 (Chk. 2002).

Relief from judgment will be denied when the movant has not shown the extraordinary circumstances required by Rule 60(b)(6) for her to be granted relief from a judgment, which was in her favor and which she had agreed to, and has not shown unforeseeable changed circumstances. Farata v. Punzalan, 11 FSM Intrm. 175, 178 (Chk. 2002).

A judgment may be vacated for nonjoinder of a necessary or indispensable party or where it affects persons who were never made parties to the suit. Pastor v. Ngusun, 11 FSM Intrm. 281, 285 (Chk. S. Ct. Tr. 2002).

When a default judgment that affects persons, who claim ownership of the land and who were never made parties to the suit, but against whom the judgment is sought to be enforced those persons are clearly entitled to relief from the default judgment under Chuuk Civil Rule 60(b)(6), and no time limits are imposed on the granting of such relief because the court may, in its discretion, treat a complaint as a Rule 60(b)(6) motion for relief from judgment. Pastor v. Ngusun, 11 FSM Intrm. 281, 285 (Chk. S. Ct. Tr. 2002).

After a default judgment has been entered, a motion to dismiss cannot be granted unless the motion to set aside the default is successful. Konman v. Esa, 11 FSM Intrm. 291, 294 n.2 (Chk. S. Ct. Tr. 2002).

Although the trial court, absent a remand, lacks jurisdiction to vacate or alter its judgment pending appeal, the trial court retains the power throughout the pendency of the appeal to simply preserve the status quo by granting a stay of the judgment. Konman v. Esa, 11 FSM Intrm. 291, 296 (Chk. S. Ct. Tr. 2002).

Rule 60(b) draws a distinction between relief from judgment for "fraud," which is subject to a one-year limitation, and for "fraud upon the court," which is not subject to such a limitation. These are two distinct types of fraud, since any other conclusion would render nugatory the one-year limitations period that is placed on "ordinary" fraud under Rule 60(b)(3). Ramp v. Ramp, 11 FSM Intrm. 630, 635 (Pon. 2003).

The adversary process is designed to ferret out perjured testimony and the like, and if a party does not litigate vigorously and effectively to accomplish this, then he must live with the result. Thus, the advantage of focusing the inquiry on what the party seeking relief should have accomplished at the earlier trial serves all the purposes of the "intrinsic" versus "extrinsic" fraud distinction. It protects the sanctity of final judgments from those who did not adequately litigate the issues the first time around. The preservation of the sanctity of judgments and the certainty that this is meant to provide in the lives of litigants, irrespective of whether they win or lose, is the rationale for the heightened showing necessary for relief from judgment after one year has elapsed from the time of the entry of judgment. Ramp v. Ramp, 11 FSM Intrm. 630, 636 (Pon. 2003).

A finding of fraud on the court is justified only by the most egregious misconduct directed to the court itself, such as bribery of a judge or jury or fabrication of evidence by counsel, and must be supported by clear, unequivocal and convincing evidence. Ramp v. Ramp, 11 FSM Intrm. 630, 636 (Pon. 2003).

Nondisclosure is not a basis for seeking relief from an order or judgment based on allegations of fraud on the court. Ramp v. Ramp, 11 FSM Intrm. 630, 638 (Pon. 2003).

When a party has received a copy of an instrument evidencing the property transfer that she now claims was concealed from her, notwithstanding this omission, and regardless of the fact that the opponent answered the interrogatory "no," when the only correct answer was "yes," it remains that the discovery responses that were served on her attorney of record and are a part of the court file contain a copy of the document conveying the half interest. Thus, she cannot now say this transaction was not disclosed to her. At most, the inconsistency between the request for production and the interrogatory created an issue for resolution by further discovery. In light of the property transfer document, even the patently incorrect interrogatory answer does not entitle her to any relief under the fraud on the court provision. Ramp v. Ramp, 11 FSM Intrm. 630, 638-39 (Pon. 2003).

Miscategorization of the property cannot be a basis for a fraud on the court claim when the statement of the parties' assets and liabilities was, and is a part of the record, when the alleged miscategorization was evidently not an issue at the time the parties executed the separation agreement since the listing is attached to that agreement, and when it was not an issue when the parties stipulated to the entry of the divorce decree that incorporated the separation agreement with the attached asset listing. Ramp v. Ramp, 11 FSM Intrm. 630, 639 (Pon. 2003).

When a motion to relieve a party from a final order on the basis of surprise is filed after the order has been appealed, the court may deny the motion and leave the order appealed from intact, or, if the court is inclined to grant the motion it may only state on the record what it would do in the event that the case were remanded to it since the filing of the notice of appeal transferred jurisdiction to the appellate division. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 9 (Chk. 2003).

A trial court may stay the execution of any proceedings to enforce a judgment pending the disposition of a motion for relief from a judgment or order made pursuant to Rule 60. Estate of Mori v. Chuuk, 12 FSM Intrm. 3, 12 (Chk. 2003).

Chuuk state trial courts have jurisdiction to set aside judgments either by a Rule 60 relief from judgment motion or by an independent action in equity. The FSM Supreme Court trial division therefore also has the power in a proper case to entertain an independent action for relief from a state court judgment. Enlet v. Bruton, 12 FSM Intrm. 187, 189-90 (Chk. 2003).

There are five essential elements to an independent action in equity to set aside a judgment: 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged

cause of action on which the judgment is founded; 3) fraud, accident or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the defendant's part; and 5) the absence of any adequate remedy at law. Enlet v. Bruton, 12 FSM Intrm. 187, 190 (Chk. 2003).

A motion for relief from judgment under Rule 60(b) allows the court to consider a motion for relief from a final judgment for several listed reasons, but such a motion must be made within a reasonable time not more than one year after judgment was entered or taken. When the decision was entered nearly three years ago, the one year deadline in which to file a Rule 60(b) motion has long since expired and the motion is thus untimely and must also be rejected on that basis. Edwin v. Heirs of Mongkeya, 12 FSM Intrm. 220, 222 (Kos. S. Ct. Tr. 2003).

The grant or denial of relief under Civil Procedure Rule 60 rests with the sound discretion of the trial court. Panuelo v. Amayo, 12 FSM Intrm. 365, 372 (App. 2004).

An appellate court reviews a trial court denial of a Rule 60(b) motion under an abuse of discretion standard. Panuelo v. Amayo, 12 FSM Intrm. 365, 372 (App. 2004).

Rule 60(b)(1) provides that a court may relieve an affected party from judgment on the basis of mistake, inadvertence, surprise, or excusable neglect. Panuelo v. Amayo, 12 FSM Intrm. 365, 372 (App. 2004).

A trial court commits an abuse of discretion when it commits legal error by denying a motion for relief from judgment when a defendant was surprised by the date and time of trial since he was never served with a notice of trial because the trial court erred when, through its clerks' office, it failed to serve notice of the trial date and time on the *pro se* litigant. This error seriously affected the judicial proceedings' fairness, integrity, and public reputation, regardless of opposing counsel's service of a trial subpoena on the litigant. 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).

JURISDICTION

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

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

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

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

There is no statutory limitation on the FSM Supreme Court's jurisdiction; the Judiciary Act of 1979 plainly contemplates that that court will exercise all the jurisdiction available to it under the Constitution. 4 F.S.M.C.

201-208. In re Nahnsen, 1 FSM Intrm. 97, 106 (Pon. 1982).

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

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

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

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

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

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

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

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

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

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

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

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

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

In a case in which the High Court of the Trust Territory of the Pacific Islands did not transfer the case to the FSM Supreme Court or to the Truk State Court because it failed to act in conformity with the purpose of Secretarial Order No. 3039 which was to provide maximum permissible self government to the newly self-governing entities, and because the High Court's determination that the case was in active trial and therefore need not be transferred was incorrect, the High Court is not deprived of jurisdiction where the presently objecting party failed to make any objection before the High Court and where the judgment by the High Court is being collaterally attacked. United Church of Christ v. Hamo, 3 FSM Intrm. 445, 451-52 (Truk 1988).

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

In light of the Trust Territory High Court's insistence on maintaining control over cases within the Federated States of Micronesia in disregard of Secretarial Order 3039 and to the exclusion of the new constitutional courts, its characterizations of Joint Rule No. 1 as "simply a memorandum" and of the words "active trial" in Secretarial Order 3039 as merely "administrative guidance," its acceptance of appeals after it was precluded from doing so by Secretarial Order 3039, its decision of appeals after Secretarial Order 3039 was terminated and its continued remand of cases to the High Court trial division for further action even after November 3, 1986, there can be no doubt that for purposes of res judicata analysis, the High Court was a court lacking capacity to make an adequately informed determination of a question concerning its own jurisdiction United Church of Christ v. Hamo, 4 FSM Intrm. 95, 118 (App. 1989).

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

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

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

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

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

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

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

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).

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).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The FSM Supreme Court has jurisdiction over a suit against the national government by the states alleging that under the Constitution the states are entitled to 50% of all revenues from the EEZ because the FSM Supreme Court has the ultimate responsibility for interpretation of the Constitution. Chuuk v. Secretary of Finance, 7 FSM Intrm. 563, 567 (Pon. 1996).

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

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

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

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

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

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

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

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

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

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

8 FSM Intrm. 524, 527 (Chk. 1998).

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

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

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

A foreign government is an entity over whom the FSM Supreme Court may exercise jurisdiction if it engages in certain acts. Kosrae v. M/V Voea Lomipeau, 9 FSM Intrm. 366, 371 n.1 (Kos. 2000).

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

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

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

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

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

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

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

The Pohnpei Supreme Court is a court of general jurisdiction, which has subject matter jurisdiction over a landlord/tenant dispute. Pernet v. Woodruff, 10 FSM Intrm. 239, 242 (App. 2001).

Under the Chuuk Constitution, article VII, § 3(c), the Chuuk State Supreme Court has only appellate or

review jurisdiction over the Land Commission, and thus a motion for review de novo of matters not raised before the Land Commission must be denied. Enengeitaw Clan v. Shirai, 10 FSM Intrm. 309, 311 (Chk. S. Ct. Tr. 2001).

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

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

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

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

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

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

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

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

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

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

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

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

Whether a court has subject matter jurisdiction is an issue which may be raised at any time, even after judgment. Ben v. Chuuk, 11 FSM Intrm. 649, 651 (Chk. S. Ct. Tr. 2003).

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

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

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

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

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

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

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

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

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

Any case over which the trial division has jurisdiction may be heard by any of the justices as assigned

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

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

– Arising Under National Law

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

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

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

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

The FSM Supreme Court has jurisdiction to try Title 11 Trust Territory Code cases if they arise under a national law. Title 11 of the Trust Territory Code is not a national law. It was not adopted by Congress as a national law and it did not become national law by virtue of the transition article. Truk v. Hartman, 1 FSM Intrm. 174, 178 (Truk 1982).

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

The National Government has exclusive jurisdiction over crimes arising under national law. 11 F.S.M.C. 901. Truk v. Hartman, 1 FSM Intrm. 174, 181 (Truk 1982).

Sections of Title 11 of the Trust Territory Code covering matters within the jurisdiction of Congress owe their continuing vitality to section 102 of the National Criminal Code. Thus, the criminal prosecutions thereunder are a national matter and fall within the FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102. In re Otokichy, 1 FSM Intrm. 183, 185 (App. 1982).

Section 102(2), the savings clause of the National Criminal Code, authorizes prosecutions of Title 11 Trust Territory Code offenses occurring prior to the enactment of the National Criminal Code. Therefore, these prosecutions fall within the FSM Supreme Court's constitutional jurisdiction. 11 F.S.M.C. 102(2). In re Otokichy, 1 FSM Intrm. 183, 190 (App. 1982).

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

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

Where petitioners raise serious and substantial constitutional claims supported by authorities and reasoning of legal substance, the case falls within the jurisdiction of the FSM Supreme Court under article XI, section 6(b) of the Constitution. Ponape Chamber of Commerce v. Nett, 1 FSM Intrm. 389, 391 (Pon. 1984).

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

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

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

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

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

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

Article XI, section 6(b) and 8 of the FSM Constitution places primary responsibility in the national courts for the kind of cases arising under the constitution or requiring interpretation of the Constitution, national law or treaties; and in disputes between a state and a citizen of another state, between state, citizen, of different

states, and between a state or a citizen, a foreign state, citizen, or subject but they do not prohibit state court jurisdiction over issues of national law or cases which arise under national law. Gimnang v. Yap, 5 FSM Intrm. 13, 18 (App. 1991).

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

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

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

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

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

The national court should not abstain from deciding a criminal case where the crime took place before the effective date of the 1991 amendment removing federal jurisdiction over major crimes because of the firmly expressed intention by the Constitutional Convention delegates as to the manner of transition from national jurisdiction to state jurisdiction. In re Ress, 5 FSM Intrm. 273, 276 (Chk. 1992).

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

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

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

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

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

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

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).

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

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

Determination of whether a case arises under the Constitution, national law, or a treaty is based on the plaintiff's statement of his cause of action, not on whatever defenses that are or that might be raised. Enlet v. Bruton, 10 FSM Intrm. 36, 40 (Chk. 2001).

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

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

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

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

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

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

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

When a state law makes a specific reference to a national statute, any interpretation of that state law

must simultaneously present a question of national law. The FSM Supreme Court would have subject matter jurisdiction over such a case. Shrew v. Sigrah, 13 FSM Intrm. 30, 32 (Kos. 2004).

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

– Diversity

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

Under the present state of affairs, the Trust Territory government cannot be considered a foreign state, citizen or subject thereof within the meaning of article XI, section 6(b) of the Constitution. Lonno v. Trust Territory (I), 1 FSM Intrm. 53, 74 (Kos. 1982).

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

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

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

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

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

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

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

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

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

v. Pohnpei, 3 FSM Intrm. 350, 360 n.22 (Pon. 1988).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Intrm. 243, 248 (Pon. 1991).

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

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

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

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

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

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

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

For the purposes of diversity jurisdiction the citizenship of a corporation is considered foreign if any of its shareholders are not FSM citizens or if it was organized under the laws of a foreign government. The citizenship of a corporation formed in the FSM and wholly owned by FSM citizens is in the state of its principal place of business. Ladore v. U Corp., 7 FSM Intrm. 296, 298 (Pon. 1995).

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

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

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

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

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

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

Yap, 9 FSM Intrm. 288, 290 (Yap 1999).

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

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

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

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

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

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

The FSM Constitution grants the FSM Supreme Court jurisdiction over disputes between a citizen of an FSM state and a citizen of a foreign state. Pernet v. Woodruff, 10 FSM Intrm. 239, 242 (App. 2001).

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

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

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

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

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

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

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

Failure to file a removal petition within the time requirements of FSM General Court Order 1992-2

constitutes a waiver of the right to invoke national court jurisdiction in cases involving parties of diverse citizenship. Pernet v. Woodruff, 10 FSM Intrm. 239, 243 (App. 2001).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6(a) contains a single jurisdictional exception limited in scope to a case involving the national government as a party. In contrast, Section 6(b) contains no exception of any kind. This admits of no conclusion other than the obvious one: the Framers intended that the limited exception stated in Section 6(a) apply to cases involving an interest in land in which the national government is a party, and with equal force intended that no such exception apply to any of the kinds of cases specified in Section 6(b). Gilmete v. Carlos

Etscheit Soap Co., 13 FSM Intrm. 145, 148 (App. 2005).