TITLE 6
JUDICIAL PROCEDURE

CHAPTERS

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SUBCHAPTER I
Issuance, Service, and Return

§ 111. Definition; Issuance of process.

(1) *Definition.* As used in this code, the term "process" shall include all forms of writs, warrants, summonses, citations, libels, and orders used in judicial proceedings.

(2) *Designation of private persons.* The court issuing any process in any proceeding may specially appoint and name in the process any person it deems suitable to execute or serve the process, except that a witness summons may not be served by a party or by a person who is less than 18 years of age.

(3) A private person to whom a process is directed for service or execution shall, upon acceptance of the said process, be responsible for the proper execution or service of such process according to law. No private person shall be compelled by any court or official to accept

a process directed to him for service or execution. The special appointments authorized by this section shall be used freely when this will effect a saving of time or expense.

Source: TT Code 1966 § 249(a), (c); TT Code 1970, 6 TTC 1; TT Code 1980, 6 TTC 1.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

§ 112. Service and execution of process.

Every official who is made responsible by law for the service or execution of process and every private person who accepts the responsibility for the service or execution of process shall serve or execute such process as prescribed by law within a reasonable time after the receipt of such process unless prevented from doing so by conditions beyond his control.

Source: TT Code 1966 § 250; TT Code 1970, 6 TTC 2; TT Code 1980, 6 TTC 2.

§ 113. Return of service or execution.

The chief of police or policemen shall certify, and a private person shall report under oath, or affirm by endorsement on or attached to every process delivered to him for execution or service the manner and time of such execution or service or the reason for failure to make such execution or service. The process so endorsed, together with a statement of all fees and expenses charged, shall be returned without delay to the court or official by which issued. In no event shall the process be returned later than the date specified by the issuing court or official.

Source: TT Code 1966 § 251; TT Code 1970, 6 TTC 3; TT Code 1980, 6 TTC 3.

Case annotations: Statutes governing procedures or decision-making approaches for Trust Territory courts might not apply to constitutional courts. *Semens v. Continental Airlines, Inc. (II)*, 2 FSM R. 200, 204 (Pon. 1986).

SUBCHAPTER II
Fees and Costs

§ 121. Fees.

Each chief of police, policeman, or other person authorized to execute or serve process, other than a member of the Micronesia police executing or serving a process in a criminal or civil contempt proceedings, or in juvenile delinquency proceedings, shall be entitled to collect the following fees for duties performed by him:

(1) For serving any form of process, one dollar plus three cents per mile for any travel actually performed and necessary in connection with the service. Any process delivered to the chief of police or any policeman shall be sent by him to a policeman who is located where he can serve it more quickly or with less travel;

(2) For levying a writ of execution and making a sale thereunder, the fees provided above for serving of any process, plus five dollars for conducting the sale, and five cents for every dollar collected up to 50 dollars, and two cents for every dollar collected over 50 dollars.

(3) In addition to the above, any chief of police shall be allowed his actual, reasonable, and necessary expenses for caring for any property seized under an attachment or levy of execution; provided, however, that no caretaker or watchman shall be allowed in excess of one dollar for each 12 hours of service.

Source: TT Code 1966 §§ 256, 249(b); TT Code 1970, 6 TTC 31; TT Code 1980, 6 TTC 31.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

Editor's note: The word "other" in the first sentence of this section was contained in the 1966 edition of the Trust Territory Code, but was omitted from the 1970 and 1980 editions.

§ 122. Prepayment for service.

Except when the process is issued on behalf of the Trust Territory or an officer or agency thereof, or under section 1014 of this title, any chief of police, policeman, or other person authorized to serve or execute process may require the person requesting him to act to prepay his fees and estimated expenses or give reasonable security therefor before serving or executing any process.

Source: TT Code 1966 § 257; TT Code 1970, 6 TTC 32; TT Code 1980, 6 TTC 32.

Editor's note: The 1970 edition of the Trust Territory Code refers to "section 704, Chapter 29 of this title." The 1980 edition refers to "section 704 of this title." Both references are incorrect. The 1966 edition refers to § 262 of that edition, which was codified in the 1970 and 1980 editions as 6 TTC 404. This section is codified as section 1014 of this title.

§ 123. Disposition of proceeds.

Each chief of police, policeman, or other person authorized to serve or execute process, shall be entitled to retain for his own use the fees authorized in this subchapter, provided he is not an employee of the Trust Territory as a member of the Micronesia police or otherwise when the services are performed. If he is such an employee, he shall remit monthly to the treasurer of the Trust Territory all fees collected for services and travel in servicing or executing process, less any reasonable expenses actually paid by him personally for travel in connection with these duties. Being a salaried employee of a municipality, however, shall not prevent a policeman or other authorized person from retaining his fees for his own use.

Source: TT Code 1966 § 258; TT Code 1970, 6 TTC 33; TT Code 1980, 6 TTC 33.

SUBCHAPTER III
Foreign Service of Process

§ 131. Jurisdiction over acts of nonresidents.

Any person, corporation, or legal entity, whether or not a citizen or resident of the Trust Territory, who in person or through an agent does any of the acts enumerated in this subchapter, thereby submits himself or its personal representative to the jurisdiction of the courts of the Trust Territory as to any cause of action arising from:

(1) the transaction of any business within the Trust Territory;

(2) the operation of a motor vehicle within the Trust Territory;

(3) the operation of a vessel or craft within the territorial waters or airspace of the Trust Territory;

(4) the commission of a tortious act within the Trust Territory;

(5) contracting to insure any person, property, or risk located within the Trust Territory at the time of contracting;

(6) the ownership, use, or possession of any real estate within the Trust Territory;

(7) entering into an express or implied contract, by mail or otherwise, with a resident of the Trust Territory to be performed in whole or in part by either party in the Trust Territory;

(8) acting within the Trust Territory as director, manager, trustee, or other officer of any corporation organized under the laws of or having a place of business within the Trust Territory, or as executor or administrator of any estate within the Trust Territory;

(9) causing injury to persons or property within the Trust Territory arising out of an act or omission outside of the Trust Territory by the defendant, provided in addition, that at the time of the injury either:

(a) the defendant was engaged in the solicitation or sales activities within the Trust Territory, or

(b) products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within the Trust Territory; and

(10) living in the marital relationship within the Trust Territory notwithstanding subsequent departure from the Trust Territory, as to all obligations arising for alimony, child support or property rights under chapter 16 of this title, if the other party to the marital relationship continues to reside in the Trust Territory.

Source: COM PL 7-24 § 1; TT Code 1980, 6 TTC 41; PL 4-114 § 1.

Errata: 6 F.S.M.C. 131(9) corrected to read "act or omission." PL 4-114 § 1 (emphasis added). See errata in first cumulative supplement.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

§ 132. Personal service outside the Trust Territory.

Service of process may be made upon any person subject to the jurisdiction of the courts of the Trust Territory under this subchapter by personally serving the summons upon the defendant outside the Trust Territory. Such service has the same force and effect as though service had been personally made within the Trust Territory.

Source: COM PL 7-24 § 2; TT Code 1980, 6 TTC 42.

§ 133. Manner of service.

Service of summons shall be made under this subchapter in like manner as service within the Trust Territory by any officer or person authorized to make service of summons in the State or jurisdiction where the defendant is served. An affidavit of the server shall be filed with the court issuing said summons stating the time, manner, and place of service. The court may consider the affidavit or any other competent proofs in determining whether service has been properly made.

Source: COM PL 7-24 § 3; TT Code 1980, 6 TTC 43.

§ 134. Default.

No default shall be entered until the expiration of at least 30 days after service. A default judgment rendered on service made under this subchapter may be set aside only on a showing which would be timely and sufficient to set aside a default judgment entered upon personal service within the Trust Territory.

Source: COM PL 7-24 § 4; TT Code 1980, 6 TTC 44.

§ 135. Effect of jurisdiction limited.

Only causes of action arising from acts or omissions enumerated in this subchapter may be asserted against a defendant in an action in which jurisdiction over him is based upon this subchapter.

Source: COM PL 7-24, § 5; TT Code 1980, 6 TTC 45.

§ 136. Effect of act on other methods of service.

Nothing contained in this subchapter limits or affects the right to serve any process in any other manner now or hereafter provided by law.

Source: COM PL 7-24 § 6; TT Code 1980, 6 TTC 46.

CHAPTER 2
Absent Defendants

SECTIONS

§ 201. Order to appear or plead.

In any action in the High Court for annulment, divorce, or adoption or to enforce or remove any lien upon or claim to real or personal property within the Trust Territory, or to adjudicate title to any interest in such property, where any defendant cannot be served within the Trust Territory, or does not voluntarily appear, the court may order the absent defendant to appear or plead by a certain day.

Source: TT Code 1966 § 338; TT Code 1970, 6 TTC 51; TT Code 1980, 6 TTC 51.

§ 202. Personal service of order.

Such orders may be served on the absent defendant personally, wherever found, or, in the case of property, upon the person or persons in possession or charge thereof, if any, or by mailing, postage prepaid, a copy of the order to the absent defendant at his last known address. Where personal service is not practicable, the order shall be posted in one or more conspicuous places as the court may direct, for a period of not less than two weeks.

Source: TT Code 1966 § 338; TT Code 1970, 6 TTC 52; TT Code 1980, 6 TTC 52.

§ 203. Procedure if absent defendant fails to appear or plead.

If an absent defendant does not appear or plead within the time allowed, the court may proceed as if the absent defendant had been served with process within the Trust Territory, but any adjudication shall, as regards the absent defendant without appearance, affect only the property or status which is the subject of the action.

Source: TT Code 1966 § 338; TT Code 1970, 6 TTC 53, TT Code 1980, 6 TTC 53.

§ 204. Judgment may be set aside.

Any defendant not so personally notified may at any time within one year after final judgment enter his appearance and thereupon the court shall set aside the judgment and permit such defendant to plead, on payment of such costs as the court deems best; provided, however, that this right shall not extend to decrees of annulment, divorce, or adoption.

Source: TT Code 1966 § 338; TT Code 1970, 6 TTC 54; TT Code 1980, 6 TTC 54.

CHAPTER 3
Venue

SECTIONS

§ 301. General provisions.

(1) Except as otherwise provided, a civil action in which one of the defendants lives in the Trust Territory shall be brought in a court within whose jurisdiction the defendant or the largest number of defendants live or have their usual places of business or employment.

(2) If an action is based on a wrong not connected with a contract, it may be brought in a court within whose jurisdiction the cause of action arose.

(3) An action to collect a tax may be brought in a court within whose jurisdiction the defendant may be served.

(4) A civil action against a defendant who does not live in the Trust Territory may be brought in a court within whose jurisdiction the defendant can be served or his property can be attached.

(5) A civil action by or against the executor, administrator, or other representative of a deceased person for a cause of action in favor of or against the deceased may be brought in any court in which it might have been brought by or against the deceased.

Source: TT Code 1966 § 339(a); TT Code 1970, 6 TTC 101; TT Code 1980, 6 TTC 101.

Editor's note: In subsection (c) of this section a typographical error has been corrected. After the words ". . . jurisdiction the" the word "case" has been changed to "cause".

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

Case annotation: When an alleged tax liability arose in a state and the government attempted to collect the tax in that state, venue is proper in that state under 6 F.S.M.C. 301(2), which allows an action, other than contract, to be brought where the cause of action arose. *Dorval Tankship Pty, Ltd. v. Department of Finance*, 8 FSM R. 111, 114 (Chk. 1997).

§ 302. Admiralty and maritime.

Suit in an admiralty and maritime matter shall be brought in the District within which the defendant can be served, or within which his property can be attached, or, when the suit is against property itself, in the District within which the ship, goods, or other thing involved can be seized.

Source: TT Code 1966 § 339(b); TT Code 1970, 6 TTC 102; TT Code 1980, 6 TTC 102.

Case annotations: In an admiralty and maritime case for the *in rem* forfeiture of a vessel, jurisdiction and venue are so interrelated that the government, or its agents, may not move a defendant vessel from the state in which it was arrested where the FSM admiralty venue statute does not anticipate transfer even though the civil rules allow improper venue to be raised as a defense or to be waived. It is unclear what the result of such a move would be. *FSM v. M.T. HL Achiever (I)*, 7 FSM R. 221, 222-23 (Chk. 1995).

Cross-references: The statutory provisions on Admiralty and Maritime are found in title 19 of this code.

§ 303. Actions brought in High Court.

(1) An action in the High Court to enforce or remove any lien upon or claim to real or personal property within the Trust Territory, or to adjudicate title to any interest in such property, or any action affecting title to land within the Trust Territory, or any interest therein, shall be brought in the District where the property or some part of it is located.

(2) Any other action in the High Court in which one of the parties is a resident of the Trust Territory shall be brought in the District in which one of the parties thereto lives or has his usual place of business or employment or, if the action is based upon a wrong not connected with a contract, it may be brought in the District in which the cause of action arose.

(3) In all other cases, actions in the High Court may be brought in the District within which any defendant can be served or his property attached.

Source: TT Code 1966 § 339(c); TT Code 1980, 6 TTC 103; TT Code 1980, 6 TTC 103.

§ 304. Change of venue.

(1) Nothing in this chapter shall impair the jurisdiction of a court over any matter involving a party who does not make timely and sufficient objection to the venue.

(2) If a matter is brought in the wrong venue, the court in which it is brought may, on its own motion or otherwise, transfer it to any court in which the matter might properly have been brought.

(3) The High Court, if it deems the interests of justice will be served thereby, may hear any matter in a District other than that in which it is brought, or may hear it partly in one District and partly in another District or Districts, or may transfer it from one District to another.

Source: TT Code § 339(d); TT Code 1970, 6 TTC 104; TT Code 1980, 6 TTC 104.

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

6 F.S.M.C. 304(3) allows part or all of a case to be heard in a state other than the one in which it was brought "if the interests of justice were served thereby." *Dorval Tankship Pty, Ltd. v. Department of Finance*, 8 FSM R. 111, 114 (Chk. 1997).

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

CHAPTER 4
Survival of Actions

SECTIONS

§ 401. Survival of claims after death of tort-feasor or other person liable.

(1) A cause of action based on tort shall not be lost or abated because of the death of the tort-feasor or other person liable. An action thereon may be brought or continued against the personal representative of the deceased person, but punitive or exemplary damages may not be awarded nor penalties adjudged in the action.

(2) Where a cause of action arises simultaneously with or after the death of the tort-feasor or other person who would have been liable if his death had not occurred simultaneously with the act, omission, circumstance, or event giving rise to the cause of action, or if his death had not intervened between the wrongful act, omission, circumstance, or event and the coming into being of the cause of action, an action to enforce it may be maintained against the personal representative of the tort-feasor or other person.

Source: TT Code 1966 § 25-A; TT Code 1970, 6 TTC 151; TT Code 1980, 6 TTC 151.

CHAPTER 5
Actions in Wrongful Death

SECTIONS

§ 501. Liability in action for wrongful death; Proceedings.

(1) When the death of a person is caused by wrongful act, neglect, or default such as would have entitled the party injured to maintain an action and recover damages in respect thereof if death had not ensued, the person or corporation which would have been liable if death had not ensued, or the administrator or executor of the estate of such person, as such administrator or executor, shall be liable to an action for damages notwithstanding the death of the person injured, and although the death was caused under circumstances which make it in law murder in the first or second degree, or manslaughter.

(2) When the action is against such administrator or executor the damages recovered shall be a valid claim against the estate of such deceased person.

(3) When death is caused by wrongful act, neglect, or default in another State, territory, or foreign country, for which a right to maintain an action and recover damages in respect thereof is given by a statute of that jurisdiction, such right of action may be enforced in the Trust Territory. Every such action brought under this section shall be commenced within the time prescribed for the commencement of such actions by the statute of such other State, territory, or foreign country.

Source: TT Code 1966 § 25(a); TT Code 1970, 6 TTC 201; TT Code 1980, 6 TTC 201.

Case annotations:

Wrongful Death

The common law today reflects no policy against wrongful death actions. The Federated States of Micronesia Supreme Court is not required to adopt the restrictive method of interpretation employed by the first courts who approached wrongful death statutes more than a century ago. *Luda v. Maeda Road Constr. Co., Ltd.*, 2 FSM R. 107, 113 (Pon. 1985).

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

Wrongful death statutes, including the $100,000 ceiling on wrongful death claims, are part of the law of the states and are not national law. *Edward v. Pohnpei*, 3 FSM R. 350, 360 (Pon. 1988).

In a case where a patient died following the normal delivery of her child, where the evidence fails to show any demonstrable effort at diagnosis and no treatment as a result of diagnosis, the standard of care expected of a doctor at the Truk State Hospital was not met and the evidence proves negligence. *Asan v. Truk*, 4 FSM R. 51, 56 (Truk S. Ct. Tr. 1989).

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

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

Although the death, and all key events giving rise to the wrongful death claim, occurred in Guam, damages should be determined under FSM law when the claim is brought under 6 F.S.M.C. 503, the FSM wrongful death statute. *Leeruw v. FSM*, 4 FSM R. 350, 365 (Yap 1990).

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

Since under Yapese custom a daughter in her adult years may be expected to provide certain services for her mother, the loss of such customary services should be considered in calculating the mother's pecuniary injury resulting from her daughter's death. *Leeruw v. FSM*, 4 FSM R. 350, 365 (Yap 1990).

That a plaintiff parent of a decedent child can be awarded damages to include mental pain and suffering for the loss of such child is an exception to the general rule that wrongful death actions exclude compensation for pain and suffering, medical expenses, emotional distress or sorrow, or loss of companionship or consortium. *Leeruw v. FSM*, 4 FSM R. 350, 366 (Yap 1990).

Given that a 19-year old daughter is considered a child under Yapese custom, that the decedent was a 19-year old daughter who up to the time of her death continued to live with her parents in Yap and to perform those household chores expected under custom of young female persons within families in Yap, and that the parents were accompanying their daughter en route to obtain medical services when she died, the daughter was a child within the meaning of 6 F.S.M.C. 503. *Leeruw v. FSM*, 4 FSM R. 350, 366 (Yap 1990).

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

Families of wrongful death victims do not constitute a suspect class for purposes of equal protection analysis. *Tosie v. Healy-Tibbets Builders, Inc.*, 5 FSM R. 358, 362 (Kos. 1992).

There is no fundamental interest in unbounded wrongful death recovery requiring strict scrutiny of a state law imposing a recovery cap. *Tosie v. Healy-Tibbets Builders, Inc.*, 5 FSM R. 358, 362 (Kos. 1992).

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

§ 502. Action to be brought in name of personal representative; Beneficiaries of action.

Every action for wrongful death must be brought in the name of the personal representative of the deceased, but shall be for the exclusive benefit of the surviving spouse, the children, and other next of kin, if any, of the decedent as the court may direct.

Source: TT Code 1966 § 25(b); TT Code 1970, 6 TTC 202; TT Code 1980, 6 TTC 202.

§ 503. Damages; Limitation period; Action may be settled by personal representative.

(1) The trial court may award such damages, not exceeding the sum of $100,000, as it may think proportioned to the pecuniary injury resulting from such death, to the persons, respectively, for whose benefit the action was brought; provided, however, that where the decedent was a child, and where the plaintiff in the suit brought under this chapter is the parent of such child, or one who stands in the place of a parent pursuant to customary law, such damages shall include his mental pain and suffering for the loss of such child, without regard to provable pecuniary damages.

(2) Except as otherwise provided, every such action shall be commenced within two years after the death of such person.

(3) A personal representative appointed in the Trust Territory may, with the consent of the court making such appointment, at any time before or after the commencement of the suit, settle with the defendant the amount to be paid.

Source: TT Code 1966 § 25(c); TT Code 1970, 6 TTC 203; COM PL 4C-36 § 1; TT Code 1980, 6 TTC 203.

Case annotations: Given that a 19-year old daughter is considered a child under Yapese custom, that the decedent was a 19-year old daughter who up to the time of her death continued to live with her parents in Yap and to perform those household chores expected under custom of young female persons within families in Yap, and that the parents were accompanying their daughter en route to obtain medical services when she died, the daughter was a child within the meaning of 6 F.S.M.C. 503. *Leeruw v. FSM*, 4 FSM R. 350, 366 (Yap 1990).

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

Although the death, and all key events giving rise to the wrongful death claim, occurred in Guam, damages should be determined under FSM law when the claim is brought under 6 F.S.M.C. 503, the FSM wrongful death statute. *Leeruw v. FSM*, 4 FSM R. 350, 365 (Yap 1990).

CHAPTER 6
Actions Against the Trust Territory

SECTIONS

§ 601. Claims permitted in trial division; Set-offs, counterclaims, etc.; Jury; Funds for payments of judgments.

(1) Actions upon the following claims may be brought against the Government of the Trust Territory in the Trial Division of the High Court which shall have exclusive original jurisdiction thereof:

(a) civil actions against the Government of the Trust Territory for the recovery of any tax alleged to have been erroneously or illegally collected, or any penalty claimed to have been collected without authority, or any sum alleged to have been excessive or in any manner wrongfully collected under the tax laws.

(b) any other civil action or claim accruing on or after September 23, 1967, against the Government of the Trust Territory founded upon any law of this jurisdiction or any regulation issued under such law, or upon any express or implied contract with the Government of the Trust Territory, or for liquidated or unliquidated damages in cases not sounding in tort.

(c) civil actions against the Government of the Trust Territory on claims for money damages, accruing on or after September 23, 1967, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the Government of the Trust Territory, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

(2) In any claim or proceeding brought pursuant to this section, the Trial Division of the High Court's jurisdiction shall extend to any set-off, counterclaim, or other claim or demand whatever on the part of the Government of the Trust Territory against any plaintiff commencing an action under this section.

(3) Notwithstanding the provisions of chapter 8 of title 5 or any District legislation that may be adopted pursuant thereto, all actions brought under this section shall be tried by the court without a jury.

(4) Judgments rendered pursuant to this section shall be paid from such funds as may be appropriated by the Congress of Micronesia or the Congress of the United States for that purpose.

Source: TT Code 1966 Ch. 5; TT Code 1970, 6 TTC 251; TT Code 1980, 6 TTC 251.

§ 602. Exceptions.

The Trial Division of the High Court shall not have jurisdiction under the foregoing section 601 of:

(1) any civil action or claim for a pension;

(2) any claim based on an act or omission of an employee of the Government, exercising due care, in the execution of a law or regulation, whether or not such law or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of any agency or employee of the Government, whether or not the discretion involved be abused;

(3) any claim arising in respect of the detention of any goods or merchandise by any officer of customs or excise or any other law enforcement officer;

(4) any claim for damages caused by the imposition or establishment of a quarantine by the Government of the Trust Territory or any agency thereof;

(5) any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse or process, libel, slander, misrepresentation, deceit, or interference with contract rights;

(6) any claim arising outside of the Trust Territory.

Source: TT Code 1966 Ch. 5; TT Code 1970, 6 TTC 252; TT Code 1980, 6 TTC 252.

§ 603. Actions in tort.

Actions may be brought against the Government of the Trust Territory, which shall be liable to the same extent as a private person under like circumstances, for tort claims; provided, that the Government of the Trust Territory shall not be liable for interest prior to judgment or for punitive damages.

Source: TT Code 1966 Ch. 5; TT Code 1970, 6 TTC 253; TT Code 1980, 6 TTC 253.

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

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

CHAPTER 7
Actions Against the Federated States of Micronesia

SECTIONS

§ 701. Policy.

Implicit in the sovereignty of a Nation is the right and power to determine whether, how, when, and under what circumstances civil actions of any nature may be brought against it. The Constitutional Convention determined that the National Government be accountable for civil wrongs to its citizenry at such time and under such terms and conditions as found appropriate from the national experience. It is, therefore, at this time in our National history the policy of the National Government of the Federated States of Micronesia to grant redress for civil wrongs by waiving sovereign immunity to the extent prescribed in this chapter.

Source: PL 1-141 § 1.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

§ 702. Limited waiver of sovereign immunity.

Actions upon the following claims may be brought against the Federated States of Micronesia with original and exclusive jurisdiction residing in the Trial Division of the Supreme Court of the Federated States of Micronesia, and prior to its organization, in the Trial Division of the High Court of the Trust Territory of the Pacific Islands:

(1) Claims for recovery of any tax alleged to have been erroneously or illegally collected, or any penalty claimed to have been collected without or beyond legal authorization, or any sum alleged to have been excessive or improperly collected under applicable tax laws of the Federated States of Micronesia.

(2) Claims for damages, injunction, or mandamus arising out of alleged improper administration of statutory laws of the Federated States of Micronesia, or any regulations issued pursuant to such statutory laws.

(3) Claims, whether liquidated or unliquidated, upon an express or implied contract with the Federated States of Micronesia.

(4) Claims for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of an employee of the National Government while acting within the scope of his office or employment, under circumstances where the National

Government, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. Recovery on an individual claim as set out in this subsection shall not exceed $20,000.

(5) Claims for any injuries suffered consequent upon conduct of a National Government employee or agent acting under color of authority which violates those individual rights secured under article IV of the Constitution of the Federated States of Micronesia. Compensatory relief granted for damages incurred from such violation shall not exceed $20,000.

Source: PL 1-141 § 2.

Cross-references: Section 112 of title 54 (Taxation and Customs) provides exemptions from gross revenue and wages and salaries taxation for certain foreign and international entities and foreign citizens when required by foreign aid agreements.

Case annotations: Under the common law there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the possible liability of the principal for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. Earlier common law rules making distinctions for this purpose have for the most part been supplanted by social legislation such as workers' compensation, fair labor standards, social security, minimum wage and income tax laws. *Rauzi v. FSM*, 2 FSM R. 8, 15 (Pon. 1985).

6 F.S.M.C. 702(3) waives the FSM's sovereign immunity only for claims, whether liquidated or unliquidated, upon an express or implied contract with the FSM. But, although the equitable doctrine of unjust enrichment operates in the absence of an enforceable contract when a party has received something of value and neither paid for it or returned it, unjust enrichment is a theory applicable to implied contracts. Thus, depending upon the facts of a case, 6 F.S.M.C. 702(3) does not bar an unjust enrichment claim since it does waive the FSM's sovereign immunity for implied (as well as express) contract claims. *FSM v. GMP Hawaii, Inc.*, 16 FSM R. 601, 605 (Pon. 2009).

When whether 6 F.S.M.C. 702(2), which does not limit the FSM's liability to a certain dollar amount, or 6 F.S.M.C. 702(4), which limits recovery on an individual claim in that subsection to $20,000, applies, must await the presentation of facts not yet in evidence and requires that certain facts be proven and certain rulings of law made before it can be resolved, the claims against the FSM of over $20,000 will not be dismissed for failure to state a claim. *FSM v. Kana Maru No. 1*, 14 FSM R. 368, 373 (Chk. 2006).

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

The emphasis in governmental tort liability cases has been on the special status of government, its functions and its officials rather than on the degree of control tests commonly employed in nongovernmental cases. Even those commentators who specifically note that the *respondeat superior* doctrine applies to the government analyze governmental liability issues in terms of public policy considerations rather than through a degree of control analysis which distinguishes between closely supervised and high-ranking officials. *Rauzi v. FSM*, 2 FSM R. 8, 16 (Pon. 1985).

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

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

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

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

Immunity

The granting of immunity is traditionally a matter within the powers of the prosecution. This is so because grants of immunity call for the balancing of numerous factors and weighing of important prosecutorial policies. *Engichy v. FSM*, 1 FSM R. 532, 551 (App. 1984).

The FSM Supreme Court may have the power to grant immunity, but the granting of immunity is traditionally a matter of executive or prosecutorial discretion. In the FSM, where there is no right to trial by jury and the trial judge is the trier of both fact and law, it seems especially unwise for the court to play an aggressive or active role concerning grants of immunity. *Engichy v. FSM*, 1 FSM R. 532, 552 (App. 1984).

Courts generally have recognized that they should grant immunity only under extraordinary circumstances. *Engichy v. FSM*, 1 FSM R. 532, 552 (App. 1984).

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

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

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

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

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

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

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

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

§ 703. Extent of court's jurisdiction.

The jurisdiction of the court shall extend to any set-off, affirmative defense, counterclaim, or other claim or demand whatever pleaded by the National Government of the Federated States of Micronesia, or other properly joined party to such action, against any plaintiff commencing an action under this chapter.

Source: PL 1-141 § 3; PL 4-114 § 2.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

Errata: 6 F.S.M.C. 703 corrected to read "joined party," PL 4-114 § 2.

§ 704. Civil actions by the National Government not limited.

Nothing in this chapter shall be construed as a limitation upon the right of the Federated States of Micronesia to bring a civil action upon claims of any nature. In any civil action brought by the Federated States of Micronesia, the jurisdiction of the Court shall extend to any set-off, affirmative defense, counterclaim, or other claim or demand whatever pleaded by the named defendant or defendants, or other properly joined party to such action, against the Federated States of Micronesia.

Source: PL 1-141 § 4.

Errata: 6 F.S.M.C. 704 corrected to read "joined party".

§ 705. Payment of judgments.

Money judgments rendered against the Federated States of Micronesia pursuant to the provisions of this chapter shall be paid from such funds as may be appropriated from time to time by the Congress of the Federated States of Micronesia for the purpose of paying a specific judgment or for the purpose of paying judgments in general.

Source: PL 1-141 § 5; amended by PL 5-123 § 1.

Cross-reference: The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 706. Date of accrual of claims.

Claims for which actions are permitted against the Federated States of Micronesia under the provisions of this chapter must accrue on or after the effective date of this chapter.

Source: PL 1-141 § 6.

Editor's note: PL 1-141, section 7, states: "This act shall become law upon approval by the President of the Federated States of Micronesia, or upon its becoming law without such approval." The act was signed by the President on February 12, 1981. See, however, Secretarial Order No. 3039 of the Department of the Interior, section 4 b, which states: "No law shall take effect until the period during which the High Commissioner may suspend the law has expired unless the High Commissioner earlier notifies the chief executive of the jurisdiction in which the law was enacted that he does not intent to exercise his authority to suspend the law..." The High Commissioner concurred with PL 1-141 on March 9, 1981.

§ 707. Garnishment of funds or other assets owed by the National Government to a State.

The National Government of the Federated States of Micronesia shall not be subject to writ of garnishment or other judicial process to apply funds or other assets owed by it to a State of the Federated States of Micronesia to satisfy an obligation of the State to a third person. Nothing herein shall imply that authority exists to issue a writ of garnishment or other process against the National Government in any other circumstance.

Source: PL 10-142 § 1.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

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

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

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

The finding of unconstitutionality of 6 F.S.M.C. 707 (the anti-garnishment statute) applies only to the facts of cases which involve judgments based on violation of constitutional rights guaranteed under the FSM Constitution's Declaration of Rights, and for which a cause of action is expressly conferred by national civil rights statute. *Estate of Mori v. Chuuk*, 12 FSM R. 3, 9 (Chk. 2003).

CHAPTER 8
Limitation of Action

SECTIONS

§ 801. Presumption of satisfaction of judgment.

A judgment of any court shall be presumed to be paid and satisfied at the expiration of 20 years after it is rendered.

Source: TT Code 1966 § 315; TT Code 1970, 6 TTC 301; TT Code 1980, 6 TTC 301.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

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

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

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

§ 802. Limitation of twenty years.

(1) The following actions shall be commenced only within 20 years after the cause of action accrues:

(a) actions upon a judgment;

(b) actions for the recovery of land or any interest therein.

(2) If the cause of action first accrued to an ancestor or predecessor of the person who presents the action, or to any other person under whom he claims, the 20 years shall be computed from the time when the cause of action first accrued.

Source: TT Code 1966 § 316; TT Code 1970, 6 TTC 302; TT Code 1980, 6 TTC 302.

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

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

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

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

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

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

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

The 20 year statute of limitation to contest land title did not take effect until 1951 so that it could not be asserted as a defense until 1971. *Chipuelong v. Chuuk*, 6 FSM R. 188, 194 (Chk. S. Ct. Tr. 1993).

In order for an action over an interest in land to be barred by the statute of limitations, the cause of action must arise more than 20 years before the action is brought. If the claim could have been made over 20 years before it was actually made, then the action can no longer be maintained, no matter how meritorious. *Chipuelong v. Chuuk*, 6 FSM R. 188, 194 (Chk. S. Ct. Tr. 1993).

When 38 years have elapsed since the determination of ownership of a tract of land in the Wito Clan, when there have been public notices posted concerning the determination and concerning its later lease to the Trust Territory; two separate High Court decisions and three determinations of ownership concerning the land, and when construction activity on he land began 36 years ago; this constitutes both constructive and actual notice of the Wito Clan's claim to the land to another clan whose numerous members lived on the same small island. *Chipuelong v. Chuuk*, 6 FSM R. 188, 195 (Chk. S. Ct. Tr. 1993).

§ 803. Limitation of two years.

The following actions shall be commenced only within two years after the cause of action accrues:

(1) actions for assault and battery, false imprisonment, or slander;

(2) actions against a chief of police, policeman, or other person duly authorized to serve process, for any act or omission in connection with the performance of his official duties;

(3) actions for malpractice, error, or mistake against physicians, surgeons, dentists, medical or dental practitioners, and medical or dental assistants;

(4) actions for injury to or for the death of one caused by the wrongful act or neglect of another, except as otherwise provided in chapter 5 of this title, or a depositor against a bank for the payment of a forged or raised check, or a check which bears a forged or unauthorized endorsement.

Source: TT Code 1966 § 317; TT Code 1970, 6 TTC 303; TT Code 1980, 6 TTC 303.

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

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

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

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

§ 804. Actions by or against the estate of a deceased person.

Any action by or against the executor, administrator, or other representative of a deceased person for a cause of action in favor of, or against, the deceased shall be brought only within two years after the executor, administrator, or other representative is appointed or first takes possession of the assets of the deceased.

Source: TT Code 1966 § 318; TT Code 1970, 6 TTC 304; TT Code 1980, 6 TTC 304.

§ 805. Limitation of six years.

All actions other than those covered in the preceding sections of this chapter shall be commenced within six years after the cause of action accrues.

Source: TT Code 1966 § 319; TT Code 1970, 6 TTC 305; TT Code 1980, 6 TTC 305.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In general, a cause of action accrues when the right to bring suit on a claim is complete, the true test in determining when a cause of action arises or accrues is to establish the time when the plaintiff could have

first maintained the action to a successful conclusion. *Mid-Pacific Constr. Co. v. Semes (I)*, 6 FSM R. 171, 176 (Pon. 1993).

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

A cause of action based on violation of Corporations, Partnerships, and Associations Regulation 2.7 accrues from the point of insolvency of the corporation. *Mid-Pacific Constr. Co. v. Semes (I)*, 6 FSM R. 171, 176-77 (Pon. 1993).

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

An action for damages for negligent surveying is not an action for the recovery of an interest in land, for which the 20 year statute of limitation would apply, therefore it may be barred by the lesser statute of limitations. *Damarlane v. United States*, 6 FSM R. 357, 361 (Pon. 1994).

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

Where government title to the tidelands reverted to the traditional owners in 1989, and because the right to bring an action for trespass or ejection must be available to the owner before the time period for adverse possession has run, whether the doctrine of adverse possession exists in Chuukese land law need not be decided because the 20 year statute of limitations did not start to run until 1989. *Cheni v. Ngusun*, 6 FSM R. 544, 548 (Chk. S. Ct. App. 1994).

§ 806. Disabilities.

If the person entitled to a cause of action is a minor or is insane or is imprisoned when the cause of action first accrues, the action may be commenced within the times limited in this chapter after the disability is removed.

Source: TT Code 1966 § 320; TT Code 1970, 6 TTC 306; TT Code 1980, 6 TTC 306.

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

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

§ 807. Mutual account.

In an action brought to recover the balance due upon a mutual and open account, or upon a cause of action upon which partial payments have been made, the cause of action shall be considered to have accrued at the time of the last item proved in the account.

Source: TT Code 1966 § 321; TT Code 1970, 6 TTC 307; TT Code 1980, 6 TTC 307.

§ 808. Extension of time by absence from the Trust Territory.

If at the time a cause of action shall accrue against any person he shall be out of the Trust Territory, such action may be commenced within the times limited in this chapter after he comes into the Trust Territory. If, after a cause of action shall have accrued against a person he shall depart from and reside out of the Trust Territory, the time of his absence shall be excluded in determining the time limited for commencement of the action.

Source: TT Code 1966 § 322; TT Code 1970, 6 TTC 308; COM PL 4C_55 § 1; TT Code 1980, 6 TTC 308.

§ 809. Extension of time by fraudulent concealment.

If any person who is liable to any action shall fraudulently conceal the cause of action from the knowledge of the person entitled to bring it, the action may be commenced at any time within the times limited within this chapter after the person who is entitled to bring the same shall discover or shall have had reasonable opportunity to discover that he has such cause of action, and not afterwards.

Source: TT Code 1966 § 323; TT Code 1970, 6 TTC 309; COM PL 4C-55 §2; TT Code 1980, 6 TTC 309.

§ 810. Effect upon causes existing on May 28, 1951.

For the purposes of computing the limitations of time provided in this chapter, any cause of action existing on May 28, 1951 shall be considered to have accrued on that date.

Source: TT Code 1966 § 324; TT Code 1970, 6 TTC 310; TT Code 1980, 6 TTC 310.

Case annotations: The 20 year statute of limitation to contest land title did not take effect until 1951 so that it could not be asserted as a defense until 1971. *Chipuelong v. Chuuk*, 6 FSM R. 188, 194 (Chk. S. Ct. Tr. 1993).

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

§ 811. Limitation of time for commencing.

A civil action or proceedings to enforce a cause of action mentioned in this chapter may be commenced within the period of limitation herein prescribed, and not thereafter, except as otherwise provided in this chapter.

Source: COM PL 4C-55 § 3; TT Code 1980, 6 TTC 311.

§ 812. Reckoning of period.

Except as otherwise provided, periods herein prescribed shall be reckoned from the date when the cause of action accrued.

Source: COM PL 4C-55 § 3; TT Code 1980, 6 TTC 312.

§ 813. Contrary agreements.

No agreement made subsequent to the effective date of this section for a period of limitation different from the period described in this chapter shall be valid.

Source: COM PL 4C-55 § 3; TT Code 1980, 6 TTC 313.

§ 814. Existing rights of action.

Revision of this chapter shall not be construed to extinguish any rights or remedies which have accrued to any party prior to such revision, unless specifically provided otherwise.

Source: COM PL 4C-55 § 3; TT Code 1980, 6 TTC 314.

CHAPTER 9
New Trial—Appeal and Review

SECTIONS

§ 901. Effect of irregularities.

No error in either the admission or exclusion of evidence, and no error or defect in any ruling or order, or in anything done or omitted by the court, or by any of the parties shall constitute a ground for granting a new trial, or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice.

Source: TT Code 1966 § 337; TT Code 1970, 6 TTC 351; TT Code 1980, 6 TTC 351.

§ 902. When appeals may be taken.

Any appeal authorized by law may be taken by filing a notice of appeal with the presiding judge of the court from which the appeal is taken, or with the clerk of the court for the District in which the court was held, within 30 days after the imposition of sentence or entry of the judgment, order, or decree appealed from, or within such longer time as may be prescribed by rules of procedure adopted by the Chief Justice of the Trust Territory under section 502 of title 5 of this code.

Source: TT Code 1966 § 198; TT Code 1970, 6 TTC 352; TT Code 1980, 6 TTC 352.

§ 903. Right of Trust Territory Government to appeal.

(1) In a criminal case, the Government shall have the right of appeal only when a written enactment intended to have the force and effect of law has been held invalid. Action on any such appeal shall be limited as provided in section 905 of this chapter.

(2) In civil cases, the Government shall have the same right of appeal as private parties.

Source: TT Code 1966 § 198; TT Code 1970, 6 TTC 353; TT Code 1980, 6 TTC 353.

§ 904. Review of District and community courts' decisions.

The Trial Division of the High Court shall review on the record every final decision of the District courts and the community courts in annulment, divorce, and adoption cases in which no appeal has been taken, and it may, in its discretion, review on the record any other final decision of a District or community court in which no appeal has been taken.

Source: TT Code 1966 § 199; TT Code 1970, 6 TTC 354; TT Code 1980, 6 TTC 354.

§ 905. Powers of courts on appeal or review.

(1) The High Court on appeal or review and the District court on appeal shall have power to affirm, modify, set aside, or reverse the judgment or order appealed from or reviewed and to remand the case with such directions for a new trial or for the entry of judgment as may be just.

(2) The findings of fact of the Trial Division of the High Court in cases tried by it shall not be set aside by the Appellate Division of that court unless clearly erroneous, but in all other cases the appellate or reviewing Court may review the facts as well as the law.

(3) In a criminal case, the appellate or reviewing Court may set aside the judgment of conviction, or may commute, reduce (but not increase), or suspend the execution of the sentence, and, if the defendant has appealed or requested a new trial, the appellate or reviewing Court may order a new trial; but if the Government has appealed in a criminal case as authorized in section 903 of this chapter, the appellate or reviewing Court may not reverse any finding of not guilty, and its powers shall be limited to a reversal of any determination of invalidity of an enactment intended to have the force of law.

Source: TT Code 1966 § 200; TT Code 1970, 6 TTC 355; TT Code 1980, 6 TTC 355.

§ 906. Stay of execution.

Pending review or the hearing and determination of an appeal, execution of the judgment, order, or sentence of a court will not be stayed unless:

(1) the appellate court, reviewing court, or the trial court orders a stay for cause shown and upon such terms as it may fix; or

(2) as otherwise provided by law.

Source: TT Code 1966 § 201; TT Code 1970, 6 TTC 356; TT Code 1980, 6 TTC 356.

§ 907. Decisions of Appellate Division of High Court final until action by U.S. Congress.

Unless and until the Congress of the United States provides for an appeal to a court created by Act of Congress, the decisions of the Appellate Division of the High Court shall be final.

Source: TT Code 1966 § 202; TT Code 1970, 6 TTC 357; TT Code 1980, 6 TTC 357.

Cross-reference: The FSM Supreme Court website can be found at http://www.fsmsupremecourt.fm/.

Editor's note: The following are case annotations dealing with appeals to the FSM Supreme Court Appellate Division that are placed here as reference.

Case annotations:

Cases On Appellate Procedures to the FSM Supreme Court Appellate Division

If the appellate court determines that an appeal is frivolous, it may award just damages and single or double costs to the appellee. *Phillip v. Moses*, 10 FSM R. 540, 546 (Chk. S. Ct. App. 2002).

Appellees intending to ask for Rule 38 costs and damages because the appeal is frivolous must, although the rule does not require a motion filed separately from the brief, give the appellant more notice than first raising the issue at the end of appellees' oral argument. *Phillip v. Moses*, 10 FSM R. 540, 546-47 (Chk. S. Ct. App. 2002).

The determination of whether to award Rule 38 damages is a two step process. First, it must be determined that the appeal was frivolous and second, it must be determined that sanctions are appropriate. *FSM Dev. Bank v. Yinug*, 12 FSM R. 437, 440 (App. 2004).

An appeal is frivolous when the result is obvious to the court or when the appellant's arguments are wholly without merit or groundless or when the court has previously ruled on the question on appeal. *FSM Dev. Bank v. Yinug*, 12 FSM R. 437, 440 (App. 2004).

Rule 38 damages may be awarded when a mandamus petition is frivolous. *FSM Dev. Bank v. Yinug*, 12 FSM R. 437, 440 (App. 2004).

When the court refused to allow the original petition for a writ of mandamus to be amended and provided that the amended petition would be considered a separate petition involving the same parties, the petitioners' pursuit of the petition after the order denying amendment did not made the original petition frivolous. *FSM Dev. Bank v. Yinug*, 12 FSM R. 437, 440 (App. 2004).

Merely being a case of first impression does not automatically make a petition not frivolous. *FSM Dev. Bank v. Yinug*, 12 FSM R. 437, 440-41 (App. 2004).

Rule 38 sanctions will not be awarded when the petition was not wholly without merit or was frivolous since the constitutional issues relating to a privacy right had not been previously ruled upon. *FSM Dev. Bank v. Yinug*, 12 FSM R. 437, 441 (App. 2004).

In all cases in which an appellee seeks Rule 38 damages, an appellee shall file a separate written motion at least seven days before the date scheduled for oral argument in order to give the appellant time to respond to the motion. The appellee's motion gives the appellant the notice it is due, and its opportunity to be heard may be through filing a written response. If a written response is filed, the court, in its discretion, may allow inclusion of the issue in the oral argument on the merits; otherwise it will be decided on the papers. *FSM Dev. Bank v. Yinug*, 12 FSM R. 437, 441 (App. 2004).

Rule 38 damages are determined in the appellate court and not remanded to the trial court for determination. Rule 38 gives the appellate court discretion in the damage amount awarded, which can be up to double the amount of actual expenses, and unlike other awards that may include attorney's fees, Rule 38 awards are uniquely the province of the appellate court based on its determination of the frivolous nature of the appeal. A trial court does not have jurisdiction to impose Appellate Rule 38 sanctions. *FSM Dev. Bank v. Yinug*, 12 FSM R. 437, 441 (App. 2004).

CHAPTER 10
Fees, Costs, and Fines

SUBCHAPTER I
Fees and Costs

SECTIONS

SUBCHAPTER II
Disposition of Fines

SECTIONS

SUBCHAPTER I
Fees and Costs

§ 1011. Witness fees for travel.

(1) Except as otherwise provided in this chapter, every person attending as a witness in any judicial proceeding shall be entitled to receive three cents per mile for going from and returning to his place of residence or usual place of business or employment, whichever is nearer, to the place where he is to appear as a witness, unless suitable transportation is provided without expense to him.

(2) If transportation is not provided without expense to him, the witness shall be entitled to receive the generally accepted prevailing charge for such transportation, in place of the three cents per mile, for the part of his travel for which such transportation is reasonably needed and this charge shall be considered as part of his mileage.

(3) If part, but not all, of his transportation is provided without expense to him, the witness shall only be entitled to receive mileage for the part of his travel for which transportation is not provided to him without expense to him. Except as otherwise provided by subsection (4) of section 1014 of this chapter, this mileage shall be paid by the party on whose behalf the witness is called or summoned, for each trip the witness is reasonably required to make.

(4) If the witness is summoned, the mileage for one round trip shall be tendered to him at the time the witness summons is served, and the mileage for any further trips required

shall be tendered in advance of each trip, except when the witness summons is issued on behalf of the Trust Territory or an officer or agency thereof or under section 1014 of this chapter.

Source: TT Code 1966 § 259; TT Code 1970, 6 TTC 401; TT Code 1980, 6 TTC 401.

§ 1012. Witness fees for subsistence.

In any case in which a witness has attended or been summoned to attend before any court and it is necessary for him to remain in attendance for more than one day at a point so far removed from his residence or usual place of business or employment as to prohibit return thereto from day to day, the court before whom he has attended or been summoned may determine the amount reasonably needed to cover the witness' subsistence per day while in attendance, and this sum shall be tendered to the witness in advance by the party on whose behalf the witness was called or summoned, except when the summons is issued under section 1014 of this chapter or where suitable subsistence is provided without expense to the witness.

Source: TT Code 1966 § 260; TT Code 1970, 6 TTC 402; TT Code 1980, 6 TTC 402.

§ 1013. Effect of failure to tender sufficient witness fees.

The failure to tender the sums specified in sections 1011 and 1012 of this chapter for mileage or subsistence, or any part of either or both, however, shall not exempt the witness from complying with the summons if he has the means to comply. Any question as to the sufficiency of the amount tendered shall be brought promptly to the attention of the court or official before whom appearance is required, and the same is hereby authorized to make such order as to payment of the witness fees as is just.

Source: TT Code 1966 § 261; TT Code 1970, 6 TTC 403; TT Code 1980, 6 TTC 403.

§ 1014. Proceedings when persons unable to pay fees.

(1) Any court may authorize the commencement, prosecution, or defense of any case, action, or proceeding, civil or criminal, or any appeal therein, without prepayment of fees for serving of process, jury fees, witness fees, or filing fees, or giving security therefore by a permanent resident of the Trust Territory who makes a statement under oath that he is unable to pay such fees or give security therefor. This statement under oath shall state the nature of the case, action, or proceedings, defense, or appeal, and that the person making the statement believes that he is entitled to relief.

(2) The officers of the court and the designated policeman shall issue and serve all process, and perform all duties in such cases without prepayment of fees or the giving of security therefor. Witnesses shall attend as in other cases.

(3) The court may dismiss the case, action, or proceeding if the statement that the person is unable to pay fees is untrue, or if the court is satisfied that the case, action, or proceeding is malicious or has no substantial basis.

(4) The court before whom any criminal case is pending or a judge thereof may order at any time that a witness summons be issued and served without prepayment of fees upon request of an accused who cannot pay witness fees. The request shall be supported by a statement under oath in which the accused shall state the name and address of each witness and the testimony which he is expected by the accused to give if summoned, and shall show that the

evidence of the witness is material to the defense, that the accused cannot safely go to the trial without the witness, and that the accused is actually unable to pay the fees of the witness. If the court or judge orders the witness summons to be issued and served without prepayment of fees the fees of the witness so summoned shall be paid in the same manner in which similar fees are paid in case of a witness summoned on behalf of the Government.

(5) In the event that a court authorizes a party to proceed without payment of fees pursuant to this section, the director of the Administrative Office, Trust Territory judiciary, shall pay all fees which would otherwise be due under subsection (3) of section 1015 of this chapter to the court reporter or other person who prepares a transcript. Such payment shall be made from funds appropriated for the operation of the judiciary and allocated to the District in which the proceeding appealed from was held.

Source: TT Code 1966 § 262; TT Code 1970, 6 TTC 404; COM PL 6-101 § 2; TT Code 1980, 6 TTC 404.

§ 1015. Schedule of court fees.

Each clerk of courts shall charge and collect the following fees with regard to work handled by his office, and each community court shall charge and collect these fees with regard to work handled by it:

(1) *Filing fees in civil actions.*

(a) for filing of notice of appeal to the Appellate Division of the High Court, five dollars;

(b) for filing of notice of appeal from the District court to the Trial Division of the High Court, one dollar;

(c) for trial in the Trial Division of the High Court, two dollars and fifty cents;

(d) for filing of complaint under the small claims procedure, twenty-five cents;

(e) for filing of motion for new trial under the usual procedure after a small claims judgment, twenty-five cents;

(f) for filing of complaint in a District court or community court under the small claims judgment, fifty cents;

(g) for filing of complaint in the Trial Division of the High Court, one dollar.

(2) *Copy of records.* For a copy of any record or other paper in his custody, comparison thereof, and certifying it to be a true copy, twenty-five cents plus ten cents for each 100 words in excess of the first 100.

(3) *Transcripts of evidence and notes of hearing.* For a transcript of evidence in case of appeal from the Trial Division of the High Court in either criminal or civil cases, one dollar per page, or part thereof, for the original and two copies ordered at the same time, and fifty cents per page, or part thereof, for each additional copy ordered at the same time. Any party desiring to raise an issue on appeal from the Trial Division to the Appellate Division of the High Court depending on the whole or any part of the evidence, shall order at his own expense an original and not less than two copies of the transcript of evidence, the original for the court, one copy for the party ordering the transcript, and one copy for each of the opposite parties.

(4) *Recording land transfer documents.* For recording of all land transfers, fifty cents, except that there shall be no charge where the Trust Territory is the grantor.

Source: TT Code 1966 § 263; TT Code 1970, 6 TTC 405; COM PL 6-101 § 4; TT Code 1980, 6 TTC 405.

§ 1016. Disposition of court fees.

(1) All court fees collected under section 1015 of this chapter by any community court shall be remitted monthly or as nearly so as reliable means of transmission will reasonably permit to the clerk of courts for the District.

(2) All court fees collected by any clerk of courts under subsections (1), (2), and (4) of section 1015 of this chapter, or received by him from any community court, shall be remitted monthly or as more often as may be directed by the Chief Justice, to the treasurer of the Trust Territory through the District finance officer.

(3) All court fees collected by any clerk of courts under subsection (3) of section 1015 of this chapter shall be paid to the court reporter or other person who prepares the transcript, in addition to the regular compensation provided to such reporter or other person.

Source: TT Code 1966 § 264; TT Code 1970, 6 TTC 406; COM PL 6-101 § 1; TT Code 1980, 6 TTC 406.

§ 1017. Allocation of costs.

All fees and expenses paid or incurred under this chapter for the service of process, witness fees, or filing fees on appeal, by any party prevailing in any matter other than a criminal proceeding, shall be taxed as part of the costs against the losing party or parties unless the court shall otherwise order; provided that no fees paid to a witness who is a party in interest and is called and examined on his own behalf or on behalf of others jointly interested with him shall be allowed or taxed as costs; and provided further that no costs shall be taxed against the United States of America or the Trust Territory.

Source: TT Code 1966 § 265; TT Code 1970, 6 TTC 408; TT Code 1980, 6 TTC 408.

§ 1018. Additional costs may be taxed.

The court may allow and tax any additional items of cost or actual disbursement, other than fees of counsel, which it deems just and finds have been necessarily incurred for services which were actually and necessarily performed.

Source: TT Code 1966 § 265; TT Code 1970, 6 TTC 407; TT Code 1980, 6 TTC 407.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

Case annotations: The FSM Supreme Court's Trial Division is not precluded from allowing reasonable travel expenses of an attorney for a prevailing party as costs under 6 F.S.M.C. 1018 where there is a showing that no attorney is available on the island where the litigation is taking place. *Ray v. Elec. Contracting Corp.*, 2 FSM R. 21, 26 (App. 1985).

Procedural statute, 6 F.S.M.C. 1018, providing that the court may tax any additional costs incurred in litigation against the losing party other than fees of counsel, applies only to Trust Territory courts and not to courts of the FSM, and therefore does not preclude the FSM Supreme Court from awarding attorney's fees as costs. *Semens v. Continental Airlines, Inc. (II)*, 2 FSM R. 200, 205 (Pon. 1986).

The rule that each party to a suit normally must pay its own attorney's fees is the proper foundation upon which the system in the FSM should be built. *Semens v. Continental Airlines, Inc. (II)*, 2 FSM R. 200, 208 (Pon. 1986).

There is flexibility to modify the normal rule that each party pays its own attorney's fees when justice requires, and thus attorney's fees may be assessed for willful violation of a court order, when a party acts vexatiously or in bad faith, presses frivolous claims, or employs oppressive litigation practices, or when the successful efforts of a party have generated a common fund or extended substantial benefits to a class. *Semens v. Continental Airlines, Inc. (II)*, 2 FSM R. 200, 208 (Pon. 1986).

Recognizing that courts in most of the world normally do award attorney's fees to the prevailing party, the rule allowing a prevailing party to obtain an award of attorney's fees should perhaps be applied more liberally in the FSM than in the United States. *Semens v. Continental Airlines, Inc. (II)*, 2 FSM R. 200, 208 (Pon. 1986).

§ 1019. Apportionment of costs.

Where there is more than one prevailing or losing party, costs may be apportioned by the court as it deems just.

Source: TT Code 1966 § 265; TT Code 1970, 6 TTC 409; TT Code 1980, 6 TTC 409.

Case annotations: The determination of costs to be awarded to the prevailing party in litigation is a matter generally within the discretion of the trial court. *Ray v. Elec. Contracting Corp.*, 2 FSM R. 21, 25 (App. 1985).

Where plaintiff's complaint is written in English and the defendant requests a written translation into a local Micronesian language, and where appears that this is the only language the defendant can speak or read, the trial judge may order that the court provide a written translation and that the expense of providing the translation shall be taxed as a cost to the party not prevailing in the action. *Rawepi v. Billimon*, 2 FSM R. 240, 241 (Truk 1986).

Where there is dismissal of an action, even though the dismissal is voluntary and without prejudice, the defendant is the prevailing party within the meaning of Rule 54(d) which provides for awards of costs to the prevailing party. *Mailo v. Twum-Barimah*, 3 FSM R. 411, 413 (Pon. 1988).

FSM Civil Rule 68, allowing for taxation of costs against a plaintiff who declines the defendant's offer of judgment and who then obtains a judgment less favorable than the amount of the offer, does not apply when the litigation is dismissed. *Mailo v. Twum-Barimah*, 3 FSM R. 411, 413 (Pon. 1988).

Where a plaintiff seeks dismissal of her own complaint without prejudice under Rule 41(a)(2), it is generally thought that the court should at least require the plaintiff to pay the defendant's costs of the litigation as a condition to such dismissal and these costs may include travel expenses of plaintiff's attorney. *Mailo v. Twum-Barimah*, 3 FSM R. 411, 415 (Pon. 1988).

Where the court set aside a default judgment upon the payment by defendant to plaintiff of air fare to attend the trial, no modification will be granted to require the defendant to pay the costs of the plaintiff's counsel to go to plaintiff's residence to take his deposition which is being noticed by the plaintiff, especially where there is no showing that plaintiff could not attend the trial, nor will the court decide before trial whether such deposition could be used at trial. *Morris v. Truk*, 3 FSM R. 454, 456-57 (Truk 1988).

Expenses such as faxing and telephoning to and from counsel, and travel, incurred because the defendant selected off-island counsel, fall outside the kind of expenses traditionally payable by the losing party and

will be disallowed as costs, except where there is a showing of the unavailability of local counsel. *Salik v. U Corp.*, 4 FSM R. 48, 49 (Pon. 1989).

As a general rule, attorney's fees will be awarded as an element of costs only if it is shown that such fees were traceable to unreasonable or vexatious actions of the opposing party, but where the basic litigation flows from a reasonable difference of interpretation of a lease, the court is disinclined to attempt to sort out or isolate particular aspects of one claim or another of the parties and to earmark attorney's fees awards for those specific aspects. *Salik v. U Corp.*, 4 FSM R. 48, 49-50 (Pon. 1989).

The court commits no error, when a question of sufficiency of witness fees is not brought promptly to the attention of the court, to consider the matter as an allowance of costs. *In re Island Hardware, Inc.*, 5 FSM R. 170, 175 (App. 1991).

Where there are elements of victory and loss for both parties there is not a prevailing party to which costs could be allowed. *In re Island Hardware, Inc.*, 5 FSM R. 170, 175 (App. 1991).

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

When a plaintiff's motion is denied on the merits, the defendant may recover costs under FSM Civil Rule 54(d) if properly verified. *Berman v. Kolonia Town*, 6 FSM R. 242, 244 (Pon. 1993).

When a judgment is affirmed on appeal, costs are usually taxable against the appellant if the appellee timely files its bill of costs with the appellate division. A bill of costs for trial transcripts must be filed in trial court appealed from. *Nena v. Kosrae (III)*, 6 FSM R. 564, 568-69 (App. 1994).

The filing of a petition for rehearing does not automatically extend the time for filing a bill of costs or for opposing a timely filed bill of costs, to a period beyond the ruling on the petition for rehearing. *Nena v. Kosrae (III)*, 6 FSM R. 564, 569 n.5 (App. 1994).

Taxation of costs is not an additional award for the prevailing party. It is a reimbursement to the prevailing party of actual expenses (costs) incurred. A motion for taxation of costs must be denied if it fails to adequately verify appellee's actual costs. *Nena v. Kosrae (III)*, 6 FSM R. 564, 569-70 (App. 1994).

The provision that the cost of printing or otherwise producing necessary copies of briefs, appendices or copies of the record shall be taxable in the Supreme Court appellate division at rates not higher than those generally charged for such work in the area where the clerk's office is located, does not set the amount to be awarded; it sets a cap or upper limit on the actual costs incurred that can be reimbursed. *Nena v. Kosrae (III)*, 6 FSM R. 564, 569-70 (App. 1994).

SUBCHAPTER II
Disposition of Fines

§ 1021. Court fines.

All fines imposed by any court shall be paid into the Treasury of the Trust Territory; except that any fine imposed by any court under the authority of any District or municipal law shall be paid into the treasury of the jurisdiction which enacted the law.

Source: TT Code 1966 § 175(a); TT Code 1970, 6 TTC 451; COM PL 5-54 § 1; TT Code 1980, 6 TTC 451.

§ 1022. Civil fines.

(1) Any fine imposed in accordance with law by anyone other than a court shall be paid into the Treasury of the Trust Territory, unless the law under which it is imposed otherwise directs. Such fines shall be considered civil fines and no person shall be imprisoned solely for failure to pay them, but any such fine may be collected in the manner provided for collection of taxes in chapter 1 of title 54 of this code, or as may be provided in the law under which the fine is imposed, provided it is not inconsistent with this section.

(2) In any civil suit to collect such a fine, the written statement of the person who assessed the fine shall have the same effect as that of the treasurer of a taxing unit under section 202 of title 54 of this code.

Source: TT Code 1966 § 175(c); TT Code 1970, 6 TTC 452; TT Code 1980, 6 TTC 452.

Cross-reference: Title 54 of this code is on Taxation and Customs.

CHAPTER 11
Uniform Single Publication Act

SECTIONS

§ 1101. Single publication to give rise to one cause of action only.

No person shall have more than one cause of action for damages for libel or slander or invasion of privacy or any other tort founded upon any single publication or exhibition or utterance, such as any one edition of a newspaper or book or magazine or any one presentation to an audience or any one broadcast over radio or television or any one exhibition of a motion picture. Recovery in any action shall include all damages for any such tort suffered by the plaintiff in all jurisdictions. Nothing in this section shall be construed as creating a cause of action which does not otherwise exist.

Source: COM PL 4C-20 § 1; TT Code 1980, 6 TTC 501.

§ 1102. Judgment as bar to other actions.

A judgment in any jurisdiction or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication or exhibition or utterance as described in section 1101 of this chapter shall bar any other action for damages by the same plaintiff against the same defendant founded upon the same publication or exhibition or utterance.

Source: COM PL 4C-20 § 1; TT Code 1980, 6 TTC 502.

CHAPTER 12
Contribution Among Joint Tort-feasors Act

SECTIONS

§ 1201. Short title.

This chapter may be cited as the "Contribution Among Joint Tort-feasors Act."

Source: COM PL 4C-22 § 1; TT Code 1980, 6 TTC 551.

§ 1202. Right of contribution.

(1) Except as otherwise provided in this chapter, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them.

(2) The right of contribution exists only in favor of a tort-feasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tort-feasor is compelled to make contribution beyond his own pro rata share of the entire liability.

(3) There is no right of contribution in favor of any tort-feasor who has intentionally, willfully, or wantonly caused or contributed to the injury or wrongful death.

(4) A tort-feasor who enters into a settlement with a claimant is not entitled to recover contribution from another tort-feasor whose liability for the injury or wrongful death is not extinguished by the settlement nor is he entitled to recover in respect to any amount paid in a settlement which is in excess of what was reasonable.

(5) A liability insurer, who by payment has discharged in full or in part the liability of a tort-feasor and has thereby discharged in full its obligation as insurer, is subrogated to the tort-feasor's right of contribution to the extent of the amount it has paid in excess of the tort-feasor's *pro rata* share of the common liability. This provision does not limit or impair any right of subrogation arising from any other relationship.

(6) This chapter does not impair any right of indemnity under existing law. Where one tort-feasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

(7) This chapter shall not apply to breaches of trust or of other fiduciary obligation.

Source: COM PL 4C-22 § 1; TT Code 1980, 6 TTC 552.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other

information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

Case annotations: The following are case annotations discussing various concepts of tort law and are included here for reference:

Comparative Negligence

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

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

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

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

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

Where an employee is commanded to take 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 R. 162, 169 (Chk. S. Ct. Tr. 1991).

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

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

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

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

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

Contributory Negligence and Assumption of the Risk

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

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

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

Assumption of risk typically involves one of the following situations: 1) plaintiff has given his consent in advance to relieve defendant of an obligation of conduct toward him, and to take his chances of injury from a known risk arising from what defendant is to do or leave undone; 2) plaintiff voluntarily enters into a relation with defendant, with knowledge that defendant will not protect him against the risk; 3) plaintiff is aware of a risk already created by defendant's negligence, but proceeds to encounter it by voluntarily taking part even after the danger is known to him. *Koike v. Ponape Rock Prods., Inc.*, 3 FSM R. 57, 67-68 (Pon. S. Ct. Tr. 1986).

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

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

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

Damages

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

To determine damages in a personal injury case, the Pohnpei Supreme Court will consider the victim's loss of income, as well as his inability to provide support through fishing and farming as a result of his disability. To determine the total loss of income, the court will assume that income would be earned until the age of 60, which is the mandatory retirement age for government employees, though not for private employees. *Koike v. Ponape Rock Prods., Inc.*, 3 FSM R. 57, 73 (Pon. S. Ct. Tr. 1986).

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

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

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

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

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

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

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

Although in the usual case in Truk the damages for loss of income will be lower than, for instance, Guam or Hawaii because of the wage scale there, and medical expense damages will normally be greatly reduced because in the usual case the government absorbs the medical bills, there is no justification for reducing a mental pain and suffering award because of the citizenship of the parents or the geographic location of the accident causing the injury. *Suka v. Truk*, 4 FSM R. 123, 131 (Truk S. Ct. Tr. 1989).

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

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

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

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

An employer generally may not be held liable for punitive damages for the tortious acts of its employees. However, an employer may be held liable for punitive damages if 1) the employer authorized the act, 2) the employer knew the employee was unfit for the position at the time of the hiring, or 3) the employer ratified the tortious act of the employee. *Meitou v. Uwera*, 5 FSM R. 139, 146 (Chk. S. Ct. Tr. 1991).

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

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

There is no authority to award punitive damages against a foreign national government even when it is otherwise liable for damages. *Damarlane v. United States*, 6 FSM R. 357, 361 (Pon. 1994).

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

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

Punitive damages are not recoverable for ordinary negligence. *Elwise v. Bonneville Constr. Co.*, 6 FSM R. 570, 572 (Pon. 1994).

One whose property is converted is entitled to interest at the legal rate from the time of conversion. *Bank of Guam v. Nukuto*, 6 FSM R. 615, 617 (Chk. 1994).

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

Duty of Care

In a jurisdiction like Pohnpei, where individual and economic development is beginning to take place and people are not quite sophisticated about the uses or proper handling of certain machinery or equipment introduced into the community to support such development, the procurer, user, owner, or seller of such equipment or machinery must take precautionary measures to educate people, either through written or oral explanation, about the proper handling, operation or storing of such equipment or machinery, and to inform them about the harm that might result if such equipment or machinery is not properly handled, operated or stored. *Koike v. Ponape Rock Prods., Inc.*, 3 FSM R. 57, 68 (Pon. S. Ct. Tr. 1986).

Once a state health services decision has been made that a particular medicine should be obtained for patients, the state health services staff and other responsible state officials are under a duty to take reasonable steps to obtain the medicine. *Amor v. Pohnpei*, 3 FSM R. 519, 531 (Pon. 1988).

So long as a state retains its role as the primary provider of health care services in that state, it is legally obligated to make a reasonable effort to provide a health care system reasonably calculated to meet the needs of the people of the state, but the state may make decisions to limit the scope of medicines to be maintained, so long as the decisions are based upon sound medical judgment arrived at through consideration of the health needs and financial realities of the state. *Amor v. Pohnpei*, 3 FSM R. 519, 530-31 (Pon. 1988).

The standard of care for doctors at the Truk State hospital is that they are to exercise professional judgment in the attempt to diagnose the illness of the patient, and then, consistent with available facilities and supplies, act on that diagnosis. *Asan v. Truk*, 4 FSM R. 51, 56 (Truk S. Ct. Tr. 1989).

When a person elects to operate a vehicle on the public streets he owes a duty to pedestrians and others using the road and adjacent areas to operate the vehicle in a safe and prudent manner. When the breach of this duty by driving in a fast and careless manner is the proximate cause of an injury the driver will by held liable. *Ludwig v. Mailo*, 5 FSM R. 256, 259 (Chk. S. Ct. Tr. 1992).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. *Nena v. Kosrae*, 5 FSM R. 417, 420 (Kos. S. Ct. Tr. 1990).

Everyone has a duty of care to act in such a way that other people are not harmed. Duties of care differ according to the circumstances and the exact parameters of each person's responsibilities towards others will be defined through time by judicial decisions and statutes. *Nena v. Kosrae*, 5 FSM R. 417, 421 (Kos. S. Ct. Tr. 1990).

The state, when building a road, has a duty of care to take precautions to avoid foreseeable harm, and it has a duty of care not to take undue advantage of a landowner's generosity and lack of understanding of his rights. *Nena v. Kosrae*, 5 FSM R. 417, 421 (Kos. S. Ct. Tr. 1990).

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

When the state fails to tell a landowner that he has the option to refuse to grant the state an easement for a road, it has breached its duty of care. *Nena v. Kosrae*, 5 FSM R. 417, 421-22 (Kos. S. Ct. Tr. 1990).

In order to be liable for a breach of the duty of care the breach must cause damage. *Nena v. Kosrae*, 5 FSM R. 417, 422 (Kos. S. Ct. Tr. 1990).

§ 1203. *Pro rata* shares.

In determining the *pro rata* shares of tort-feasors in the entire liability:

(1) their relative degrees of fault shall not be considered;

(2) if equity requires, the collective liability of some as a group shall constitute a single share; and

(3) principles of equity applicable to contribution generally shall apply.

Source: COM PL 4C-22 § 1; TT Code 1980, 6 TTC 553.

Case annotations: Comparative negligence, which has displaced contributory negligence in most jurisdictions in the United States, should be given careful consideration by courts even though the Restatement (Second) of Torts refers only to contributory negligence and is silent about comparative

negligence. There is reason to doubt that the FSM Supreme Court is bound by 1 F.S.M.C. 203 pointing to the Restatements as a guide for determining and applying the common law. *Ray v. Elec. Contracting Corp.*, 2 FSM R. 21, 22 n.1 (App. 1985).

§ 1204. Enforcement.

(1) Whether or not judgment has been entered in an action against two or more tort-feasors for the same injury or wrongful death, contribution may be enforced by separate action.

(2) Where a judgment has been entered in an action against two or more tort-feasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

(3) If there is a judgment for the injury or wrongful death against the tort-feasor seeking contribution, any separate action by him to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review.

(4) If there is no judgment for the injury or wrongful death against the tort-feasor seeking contribution, his right of contribution is barred unless he has either:

(a) discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against him and has commenced his action for contribution within one year after payment; or

(b) agreed while action is pending against him to discharge the common liability and has within one year after agreement paid the liability and commenced his action for contribution.

(5) The recovery of a judgment for an injury or wrongful death against one tort-feasor does not of itself discharge the other tort-feasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(6) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution.

Source: COM PL 4C-22 § 1; TT Code 1980, 6 TTC 554.

§ 1205. Release or covenant not to sue.

When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) It does not discharge any of the other tort-feasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the other to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is greater; and,

(2) It discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor.

Source: COM PL 4C-22 § 1; TT Code 1980, 6 TTC 555.

§ 1206. Retroactivity.

This chapter shall not be deemed to create any right or remedy to any joint tort-feasor in favor of whom the provisions of this chapter would otherwise apply, where such joint tort-feasor's cause of action accrued prior to the effective date of this chapter, and to this extent the provisions of this chapter are not retroactive.

Source: COM PL 4C-22 § 1; TT Code 1980, 6 TTC 556.

CHAPTER 13
Evidence

SECTIONS

§ 1301. Spouses.

Neither husband nor wife shall be compelled to testify against the other in the trial of an information, complaint, citation, or other criminal proceeding.

Source: TT Code 1966 § 341; TT Code 1970, 7 TTC 1; TT Code 1980, 7 TTC 1.

§ 1302. Official records.

Books or records of account or minutes of proceedings of any department or agency of the United States of America or of the Trust Territory, or of any predecessor thereof, shall be admissible to prove the act, transaction, or occurrence as a memorandum of which the same were made or kept. Copies or transcripts (authenticated by the official having custody thereof) of any books, records, papers, or documents of any department or agency of the United States of America or of the Trust Territory, or of any predecessor thereof, shall be admitted in evidence equally with the originals thereof.

Source: TT Code 1966 § 340; TT Code 1970, 7 TTC 51; TT Code 1980, 7 TTC 51.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

Case annotations: The following are case annotations which interpret various court evidentiary rules and are included here for reference:

Admissions

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 R. 502, 507 (Kos. S. Ct. Tr. 1988).

Although the court may allow for an enlargement or a restriction of the time in which to respond to a request for admissions, a complete failure to respond within that allotted time automatically constitutes an admission, without any need for the requesting party to move for a declaration by the court that the matters are deemed admitted. *Leeruw v. Yap*, 4 FSM R. 145, 148 (Yap 1989).

Once matters have been admitted through a failure to respond to a request for admissions, a motion by the responding party to file a late response to the request for admissions will be treated as a motion to withdraw and amend the admissions. *Leeruw v. Yap*, 4 FSM R. 145, 148 (Yap 1989).

One purpose of requests for admissions is to relieve the parties of having to prove facts which are not really in dispute. *Leeruw v. Yap*, 4 FSM R. 145, 149 (Yap 1989).

If a requesting party relies on admissions to its prejudice, it would be manifestly unjust to allow the responding party to amend its responses at a later time, but the sort of prejudice contemplated by the rule regards the difficulty the requesting party may have in proving the facts previously admitted, because of lack of time or unavailability of witnesses or evidence, not simply that the party who initially obtained the admission will now have to convince the fact finder of its truth. *Leeruw v. Yap*, 4 FSM R. 145, 149 (Yap 1989).

FSM Civil Rule 36, regarding requests for admissions, is intended to expedite discovery and trial, to simplify issues and make litigation more efficient. *Leeruw v. Yap*, 4 FSM R. 145, 149 (Yap 1989).

When a party who has admitted matters through a failure to respond to a request for admissions later moves to withdraw and amend its response, and the requesting party has not relied on the admissions to its detriment, the imposition of penalties other than conclusive admission is a sensible approach, as it both avoids binding a party to an untrue and unintended admission and yet helps insure respect for the importance of the rules of procedure and the need for the efficient administration of justice. *Leeruw v. Yap*, 4 FSM R. 145, 149-50 (Yap 1989).

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 R. 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 R. 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 R. 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 Pub. Works*, 6 FSM R. 205, 212 (Chk. S. Ct. Tr. 1993).

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 R. 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 R. 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 R. 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 R. 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-Pacific Constr. Co.*, 5 FSM R. 277, 280 (App. 1992).

Judicial notice may be taken on appeal. *Welson v. FSM*, 5 FSM R. 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 R. 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 R. 564, 566 (App. 1994).

Privileges

The intention of an actor must be inferred from what he says and what he does. *FSM v. Boaz (I)*, 1 FSM R. 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 R. 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 nat'l government. *Manahane v. FSM*, 1 FSM R. 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 R. 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 R. 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 R. 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 R. 487, 494 (App. 1984).

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 R. 532, 556 (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 R. 566, 576 (App. 1984).

Death and the cause of death can be shown by circumstantial evidence. *Loch v. FSM*, 1 FSM R. 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 R. 27, 33 n.3 (App. 1985).

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 R. 38, 46 (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 R. 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 R. 38, 47 (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 R. 38, 47 (App. 1985).

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 R. 179, 181 (Pon. 1987).

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 R. 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 R. 395, 398 (Kos. S. Ct. Tr. 1988).

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 R. 395, 401 (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 R. 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 R. 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 R. 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 R. 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 R. 162, 166 (Chk. S. Ct. Tr. 1991).

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 R. 308, 313 (App. 1992).

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 R. 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 R. 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 R. 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 R. 14, 18 (App. 1993).

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 R. 345, 350 (App. 1994).

§ 1303. Legal status of laws included in the F.S.M.C. enacted after the First Supplement.

(1) Pursuant to the authority provided in section 11 of Public Law No. 2-48 and in this Act, the laws contained in the 1997 edition of the F.S.M.C. that are printed and published under contract with the Congress of the Federated States of Micronesia and as authorized by law, shall constitute *prima facie* the laws of the Federated States of Micronesia for those laws contained therein, and as they purport to represent reproductions of statutory amendments to the F.S.M.C., as stated in accompanying notes or source cites.

(2) Future supplements or updates published pursuant to section 230 of title 1 of this code shall constitute *prima facie* the laws of the Federated States of Micronesia for those laws set forth in the latest publication in which they appear.

(3) In the event of a conflict between the text of a provision set out in the 1997 edition of the F.S.M.C. or set out in any future supplement or update thereto and the text contained in a public law as originally enacted by Congress and as approved or allowed to become law by the President of the Federated States of Micronesia pursuant to the laws and customs of the FSM, the text of the law as it became effective shall constitute the positive law and shall control.

(4) The official authenticated texts of public laws as enacted by Congress and as approved or allowed to become law by the President of the Federated States of Micronesia and the 1997 edition of the F.S.M.C. (as may be later updated or supplemented) shall constitute evidence of the law of the Federated States of Micronesia.

Source: PL 10-25 § 17, modified.

Cross-reference: The provisions of PL 2-48 are found at the beginning of this code after the Table of Contents. It is included as part of the Introduction to Original 1982 Code.

The statutory provisions on the Code of the Federated States of Micronesia are found in subchapter II of chapter 2 (Interpretation of Law and Code) of title 1 (General Provisions) of this code.

Editor's note: The reference to section 223 of title 1 in subsection (2) of this section is clearly erroneous as it has nothing to do with publication of future supplements or updates. The reference should be to section 230 of title 1.

CHAPTER 14
Enforcement of Judgments

SECTIONS

§ 1401. Money judgments.

Every judgment for the payment of money shall bear interest at the rate of nine percent a year from the date it is entered. The process to enforce a judgment for the payment of money may be a writ of execution or an order in aid of judgment, as provided in sections 1405 through 1415 of this chapter.

Source: TT Code 1966 § 282; TT Code 1970, 8 TTC 1; COM PL 6-97 § 5; TT Code 1980, 8 TTC 1.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

Case annotations: An intervenor must make a three part showing to qualify for intervention as a matter of right: an interest, impairment of that interest, and inadequacy of representation by existing parties. A tax lien holder and a judgment creditor with an unsatisfied writ of execution may intervene as a matter of right where an assignee is compromising a debtor's accounts receivable. *California Pac. Assocs. v. Alexander*, 7 FSM R. 198, 200 (Pon. 1995).

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 R. 100, 103 (Kos. 2001).

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 R. 338, 341 n.2 (Chk. 1998).

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 Enters., Inc. v. Sado*, 6 FSM R. 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 Enters., Inc. v. Sado*, 6 FSM R. 430, 432 (Pon. 1994).

§ 1402. Judgments affecting land.

A judgment adjudicating an interest in land shall, after the time for appeal therefrom has expired without notice of appeal being filed or after any appeal duly taken has been finally determined or after an order has been entered that an appeal shall not stay the judgment, operate the release, or transfer any interest in land in accordance with the terms of the judgment, when a copy thereof, certified by the Clerk of Courts, or any Judge of the Court, is recorded in the Office of the Clerk of Courts, in the case of unregistered land, or in the District registrar's office, in the case of registered land, for the District in which the land lies.

Source: TT Code 1966 § 283; TT Code 1970, 8 TTC 2; COM PL 4C-34 § 1; TT Code 1980, 8 TTC 2.

§ 1403. Other judgments—Enforcement by contempt proceedings.

(1) Judgment for any form of relief other than the payment of money or the adjudication of an interest in land, after the time for appeal therefrom has expired without notice of appeal being filed or after any appeal duly taken has been finally determined or after an order has been entered that an appeal shall not stay the judgment, may be enforced by contempt proceedings; provided, that enforcement at such time is required to prevent irreparable injury or multiple damage to the interests of the winning party and is otherwise in the interests of justice.

(2) Upon a finding of contempt, the person against whom the judgment has been rendered may be fined or imprisoned at the discretion of the Court until he or she complies with the judgment or is released by the Court or has been imprisoned for six months, whichever happens first.

Source: TT Code 1966 § 284; TT Code 1970, 8 TTC 3; COM PL 4C-34 § 1; TT Code 1980, 8 TTC 3.

§ 1404. Other methods of enforcement.

Enforcement of judgment may also be effected, if the Trial Division of the High Court deems justice requires and so orders by the appointment of a receiver, or receivers, by taking possession of property and disposing of it in accordance with the orders of the Court, or 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.

Source: TT Code 1966 § 285; TT Code 1970, 8 TTC 4; TT Code 1980, 8 TTC 4.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other

information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

Case annotations: 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 R. 173, 185-86 (App. 1986).

The remedy of garnishment exists in the FSM, and does so on the basis that 6 F.S.M.C. 1404 provides that judgments may be enforced "in any. . . manner known to American common law or common in courts in the United States." *FSM Social Sec. Admin. v. Lelu Town*, 13 FSM R. 60, 61 (Kos. 2004).

At common law, garnishment did not exist as a remedy where the judgment debtor was a municipality because it is generally held that the funds or credits of a municipality or other public body exercising governmental functions, acquired by it in its governmental capacity, may not be reached by its creditors by garnishment served upon the debtor or depository of the municipality. *FSM Social Sec. Admin. v. Lelu Town*, 13 FSM R. 60, 62 (Kos. 2004).

The FSM Supreme Court has issued writs of garnishment directed toward the assets of a state government where the underlying cause of action is based on a violation of the national civil rights statute. The rationale for those writs was the Supremacy Article of the FSM Constitution, which must control regardless of a state constitutional provision, or national law, to the contrary. It has declined to issue a writ of garnishment where the judgment debtor was a state government and the judgment was based on ordinary breach of contract. *FSM Social Sec. Admin. v. Lelu Town*, 13 FSM R. 60, 62 (Kos. 2004).

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

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

When, only after repeated attempts to satisfy those judgments by less drastic measures, writs of garnishment were issued in a civil rights case after over six and a half years had elapsed since judgment and in another civil rights case, in which a writ of garnishment was issued at the same time, after over two years since judgment, but when in the present case, it has only been about four months since the first payment on the consent judgment was due, and since legislative appropriation can be a time-consuming process, the state must be given a reasonable time and opportunity to complete the process and given further opportunity to meet its obligation in some other manner before the plaintiffs can resort to a writ of garnishment. *Tipingeni v. Chuuk*, 14 FSM R. 539, 543 (Chk. 2007).

Default Judgments

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. *Lonno v. Trust Territory (III)*, 1 FSM R. 279, 280 (Kos. 1984).

In the interest of the finality of legal proceedings, the court will not set aside a default judgment in a case in which the defendant had access to legal advice yet failed to make a timely defense of the case and presented no meritorious defense, although the plaintiff could not be prejudiced if the default judgment were set aside. *Truk Transp. Co. v. Trans Pac. Import Ltd.*, 3 FSM R. 440, 444 (Truk 1988).

Where the defendant had satisfied a default judgment and the judgment was later set aside, the court will order the amount received by the plaintiff paid into an account under the control of the court pending final disposition of the case on the merits, where it appears that the plaintiff's health and place of residence are uncertain, and where the passage of time renders the plaintiff's ability to produce the amount more uncertain, should the outcome of the case require this. *Morris v. Truk*, 3 FSM R. 454, 458 (Truk 1988).

The clerk's office only has authority to grant default judgments for a sum certain or for a sum which can by computation be made certain. Any award of attorney's fees must be based upon a judicial finding and thus is not for a sum certain and cannot be granted by the clerk. *Bank of the FSM v. Bartolome*, 4 FSM R. 182, 184 (Pon. 1990).

Where a plaintiff files an amended complaint without leave of court and no motion for leave was ever filed the court may order the amended complaint stricken from the record. An entry of default based on such stricken amended complaint will be set aside. *Berman v. FSM Supreme Court*, 6 FSM R. 109, 112-13 (Pon. 1993).

Entry of a default judgment is a two step process. There must first be an entry of default before a default judgment can be entered. A default judgment can then be entered, by the clerk if it is for a sum certain; otherwise it must be entered by the court. *Poll v. Paul*, 6 FSM R. 324, 325 (Pon. 1994).

An improperly filed amended complaint cannot serve as the basis for a default judgment. *Berman v. FSM Supreme Court (II)*, 7 FSM R. 11, 16 (App. 1995).

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 R. 182, 184 (Pon. 1990).

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 R. 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 R. 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 R. 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 of the grounds ought to be stricken. *Setik v. FSM*, 6 FSM R. 446, 448 (Chk. 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 R. 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 R. 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 R. 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 R. 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 R. 129, 136 (Pon. 1995).

§ 1405. Writs of attachment.

(1) Writs of attachment may be issued only by the Trial Division of the High Court for special cause shown, supported by statement under oath. Such writs when so issued shall authorize and require the chief of police, any policeman, or other person named therein, to attach and safely keep so much of the personal property of the person against whom the writ is issued as will be sufficient to satisfy the demand set forth in the action, including interest and costs. The chief of police, policeman, or other person named in the writ shall not attach any personal property which is exempt from attachment, nor any kinds or types of personal property which the Court may specify in the writ.

(2) Debts payable to the defendant may be similarly attached by special order issued by the Trial Division of the High Court, which shall exempt from the attachment so much of any salary or wages as the Court deems necessary for the support of the person against whom the order is issued or his dependents.

Source: TT Code 1966 § 280; TT Code 1970, 8 TTC 51; TT Code 1980, 8 TTC 51.

Editor's note: Changes were made in the phraseology of the 1966 edition of the Trust Territory Code. In subsection (1) the phrase "supported by statement of the High Court for special cause shown," is deleted to correct an error in the 1982 edition of the FSM Code. See errata below.

Errata: In 6 F.S.M.C. 1405(1), delete "supported by statement by High Court for special cause shown, ".

Case annotations: The statutes concerning writs of execution protect certain property of the debtor from execution but contain no suggestion that other creditors can obtain rights superior to that of the judgment

creditor in property covered by a writ of execution. *Bank of Guam v. Island Hardware, Inc.*, 2 FSM R. 282, 285 (Pon. 1986).

While the statute authorizing execution against "the personal property of the person against whom the judgment has been rendered" contains no exceptions for third party creditors, neither does it purport to sweep away pre-existing property rights, including security interests, of such creditors, nor does the statute authorize the sale of property owned by others which happens to be in possession of the debtor at the time of execution. 6 F.S.M.C. 1407. *Bank of Guam v. Island Hardware, Inc.*, 2 FSM R. 281, 285 (Pon. 1986).

A writ of attachment is a process by which property is seized and held to satisfy an established debt or prospective judgment and may only issue against the property of a defendant debtor. The property of a third party, to which the debtor has no possessory rights , may not be seized, held, and eventually sold to satisfy the obligations of the debtor. *Pan Oceania Maritime Servs. (Guam) Ltd. v. Micronesia Shipping*, 7 FSM R. 37, 38 (Pon. 1995).

That a defendant debtor is a shareholder of a corporation that might receive a favorable settlement in the future and might pay a dividend to its shareholders does not entitle creditors to attach that corporation's assets. *Pan Oceania Maritime Servs. (Guam) Ltd. v. Micronesia Shipping*, 7 FSM R. 37, 39 (Pon. 1995).

FSM Civil Rule 70 provides for five different remedies, one of which is a writ of attachment. Garnishment exists in the FSM through judicial interpretation of the FSM attachment statute, 6 F.S.M.C. 1405(2), and because attachment is an available remedy under Rule 70, it follows that garnishment is also. *Louis v. Kutta*, 8 FSM R. 312, 314 n.1 (Chk. 1998).

§ 1406. Release and modification.

The Trial Division of the High Court, upon application of either party or of its own motion, may make and, from time to time, modify such orders as it deems just for the release of property from attachment or for the sale thereof if perishable or if the owner of the property shall so request, and for the safekeeping of the proceeds of the sale.

Source: TT Code 1966 § 281; TT Code 1970, 8 TTC 52; TT Code 1980, 8 TTC 52.

§ 1407. Writs of execution.

Every court, at the request of the party recovering any civil judgment in that court for the payment of money, shall issue a writ of execution against the personal property of the party against whom the judgment has been rendered, except as provided in section 1415 of this chapter.

Source: TT Code 1966 § 286; TT Code 1970, 8 TTC 53; COM PL 4C_21 § 1; TT Code 1980, 8 TTC 53.

Case annotations: The statutes concerning writs of execution protect certain property of the debtor from execution but contain no suggestion that other creditors can obtain rights superior to that of the judgment creditor in property covered by a writ of execution. *Bank of Guam v. Island Hardware, Inc.*, 2 FSM R. 281, 285 (Pon. 1986).

Attachment and seizure create statutory and possessory lien rights which will be unaffected by subsequent writs of execution, but will be subject to national government's wage and salary tax lien claims under 54 F.S.M.C. 135(2), to wage claims of low level employees and laborers, and to pre-existing nat'l gov't lien rights under 54 F.S.M.C. 153. *In re Mid-Pacific Constr. Co.*, 3 FSM R. 292, 303 (Pon. 1988).

An execution creditor holds a more powerful position than a mere judgment creditor. *In re Mid-Pacific Constr. Co.*, 3 FSM R. 292, 306 (Pon. 1988).

Writs of execution will not be granted on an automatic basis, but only when it has been shown that judgment creditors have seriously explored the possibility of satisfying the judgment through other means, in order to avoid bankruptcies or economic hardships. *In re Mid-Pacific Constr. Co.*, 3 FSM R. 292, 306 (Pon. 1988).

Where it becomes apparent that claims or 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 R. 292, 306 (Pon. 1988).

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

Creditors with judgments more than 10 days old are entitled to writs of execution upon request. *In re Pacific Islands Distributing Co.*, 3 FSM R. 575, 584 (Pon. 1988).

Although technically attachment and garnishment are distinct processes, attachment applying to assets in the defendant's possession and garnishment involving assets in the possession of a third party, the statutory language regarding attachment would seem to apply to both cases. *Bank of Guam v. Elwise*, 4 FSM R. 150, 152 (Pon. 1989).

Although there is no provision for garnishment in Pohnpei state law nor any national statute explicitly providing for garnishment, garnishment of wages is an acceptable means for enforcing an unpaid judgment, pursuant to the FSM Supreme Court's statutory "general powers," its power to enforce judgments in any manner common in courts in the United States, and its power to issue writs of attachment. *Bank of Guam v. Elwise*, 4 FSM R. 150, 152 (Pon. 1989).

The requirements and procedures for issuing a writ of garnishment should be the same as those applied to attachment proceedings. *Bank of Guam v. Elwise*, 4 FSM R. 150, 152 (Pon. 1989).

FSM Supreme Court's power to issue writs of garnishment is clearly discretionary. *Bank of Guam v. Elwise*, 4 FSM R. 150, 152 (Pon. 1989).

Where garnishment is warranted, then anything beyond what is reasonably necessary for the defendant to support himself and his dependents can be garnished. *Bank of Guam v. Elwise*, 4 FSM R. 150, 153 (Pon. 1989).

Among execution creditors the claims of those whose writs are dated earliest have priority to an insolvent's assets over those whose writs are dated later. Individual writ-holders are to be paid on the basis of first-in-time, first-in-right rule according to the dates of their writs. *Western Sales Trading Co. v. Ponape Fed'n of Coop. Ass'ns*, 6 FSM R. 592, 593 (Pon. 1994).

While the statute authorizing execution against "the personal property of the person against whom the judgment has been rendered" contains no exceptions for third party creditors, neither does it purport to sweep away pre-existing property rights, including security interests, of such creditors, nor does the statute authorize the sale of property owned by others which happens to be in possession of the debtor at the time of execution. 6 F.S.M.C. 1407. *Bank of Guam v. Island Hardware, Inc.*, 2 FSM R. 281, 285 (Pon. 1986).

A writ of execution may issue without seriously exploring other possible means of satisfying the judgment. *House of Travel v. Neth*, 7 FSM R. 228, 229 (Pon. 1994).

Execution may be had against a judgment debtor's non-exempt personal property, not against his interests in land. *House of Travel v. Neth*, 7 FSM R. 228, 229 (Pon. 1994).

Personal property is property other than land or interests in land. *House of Travel v. Neth*, 7 FSM R. 228, 229 (Pon. 1994).

Property may not be taken by government, even in aid of a judgment, without due process of law. In executing the writ, due process of law may be assured by directing the executing officer to comply strictly with the statutory provisions for levying a writ of execution. *House of Travel v. Neth*, 7 FSM R. 228, 229-30 (Pon. 1994).

The attempt to execute a judgment on the judgment debtor's bank accounts constitutes a garnishment, since it is a debt owed by a third party to the judgment debtor. This remedy is recognized in the FSM, and should go forward as a separate proceeding. The writ of execution will issue upon the court's receipt of a simplified form of writ that conforms with 6 F.S.M.C. 1407. *Amayo v. MJ Co.*, 10 FSM R. 371, 386 (Pon. 2001).

§ 1408. Levying execution.

Every chief of police, policeman, or other person duly authorized receiving a writ of execution issued by any court, shall levy or cause a chief of police or policeman to levy execution as follows:

(1) *Demand of payment—Seizure of property.* He shall demand of the person against whom the execution is issued, if he may be found within the municipality where the levy is being attempted, that the person pay the execution or exhibit sufficient property subject to execution. If such person has property of a kind exempt from execution but to an amount exceeding the exemption, he may select the portion of this property provided by law which he desires to retain under the exemption, providing he makes this selection known promptly to the person making the levy. Otherwise, the person making the levy shall make the selection. If the person against whom the execution is issued does not pay the execution in full, including interest and costs and expenses thereof, the person making the levy shall take into his possession property of the person against whom the execution is issued, not exempt from execution, sufficient in his opinion to cover the amount of the execution. He shall take first any property under attachment in the action in which the execution was issued; next, property, if any, indicated by the person against whom the execution was issued. He may, if he thinks best, remove the property to a safe place, or place a caretaker in charge of it. He shall make a list of the property levied upon.

(2) *Notice of sale.* The person making the levy shall, after levy, give public notice of the sale at least seven days in advance of the time and place of sale, by notifying the magistrate of the municipality or municipalities in which the levy was made, by posting a written notice of the sale in a conspicuous place at or near the municipal office in the municipality in which the sale is to be held, and must notify the person against whom the execution is issued, if he can be found within the municipality or municipalities where the levy was made, or notify any agent who had custody of the property levied upon at the time of levy.

(3) *Sale—Procedure—Disposition of proceeds.* The person making the levy on the day and at the place set for the sale, unless payment has been made of the amount of the judgment and interest and the costs and expenses in connection with the levy, shall sell the property levied upon at public auction to the highest bidder. He shall deduct from the proceeds of the sale sufficient money for the full payment of his fees and expenses, and shall then pay the person in whose favor the execution was issued, or his counsel, such balance as remains up to the

amount due on the execution. If there are any proceeds of the sale left after the deduction and payment directed above, such remaining proceeds shall be paid over to the person against whom the execution was issued. The person making the levy shall then return the writ to the court with a report of his doings thereon, showing the amounts collected and paid out thereon.

Editor's note: The word "properly" has been revised to "property" to correct a typographical error made in the 1982 edition of this code.

(4) *Postponement of sale.* Whenever a request in writing signed by the debtor and creditor for a postponement of the sale to an agreed date and hour is given to the person conducting the sale under execution, such person shall thereupon by public declaration postpone the sale to the day and hour so fixed in such request and at the place originally fixed by the person for the sale. In the case of postponements, notice of each thereof must be given by public declaration by the person conducting the sale at the time and place last appointed for the sale. No other notice of postponed sale need be given.

(5) *Completion of sale by person other than one making levy.* If a chief of police, policeman, or other person duly authorized starts to levy execution and for any reason is prevented from or fails to complete the matter, any chief of police, policeman, or other person duly authorized may complete the levy, sale, and payment of proceeds as provided in this section.

Source: TT Code 1966 § 287; TT Code 1970, 8 TTC 54; COM PL 4C-21 § 2; TT Code 1980, 8 TTC 54.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

Case annotations: The current practice that where a judgment creditor who holds a national court judgment wants national police officers to execute on the judgment, he must bear the transportation and per diem costs of bringing national police personnel to Yap to execute on the writ since Yap has no resident national law enforcement officer. While this involves substantial up-front costs to the judgment creditor, those costs are recoverable from the judgment debtor under 6 F.S.M.C. 1408. *Parkinson v. Island Dev. Co.*, 11 FSM R. 451, 453 (Yap 2003).

The court is reluctant to opine on 6 F.S.M.C. 1408's constitutionality when the judgment creditor has an enforcement remedy, if not an ideal one, notwithstanding any constitutional adjudication which this court might render on the division of powers issue that Yap raised regarding a writ of execution directed to the Yap chief of police. *Parkinson v. Island Dev. Co.*, 11 FSM R. 451, 453 (Yap 2003).

§ 1409. Orders in aid of judgment—Application.

At any time after a finding for the payment of money by one party to another and before any judgment based thereon has been satisfied in full, either party may apply to the Court for an order in aid of judgment. Thereupon the Court, after notice to the opposite party, shall hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. In making this determination the Court shall allow the debtor to retain such property and such portion of his income as may be necessary to provide the reasonable living requirements of the debtor and his dependents, including fulfillment of any obligations he may have to any clan, lineage, or other similar group,

in return for which obligations he, or his dependents, receive any necessary part of the food, goods, shelter, or services required for their living.

Source: TT Code 1966 § 289; TT Code 1970, 8 TTC 55; TT Code 1980, 8 TTC 55.

Cross-reference: The FSM Supreme Court website can be found at http://www.fsmsupremecourt.fm/.

Case annotation: When the drawdown amounts that Chuuk receives from the FSM national government are greater by more than an order of magnitude than the judgment amount remaining and when, looking to the case's more than six and a half year post-judgment history, the anti-garnishment statute deprives the judgment creditor of the only reasonably expeditious means of obtaining satisfaction of her judgment. Thus the fastest manner in which the debtor can reasonably pay the judgment under 6 F.S.M.C. 1409 is by an order of garnishment directed to the national government. *Davis v. Kutta*, 11 FSM R. 545, 549 (Chk. 2003).

Under 6 F.S.M.C. 1409, an individual judgment debtor is allowed to "retain such property and such portion of his income as may be necessary to provide the reasonable living requirements of the debtor and his dependents," but if the debtor has some limited ability to pay, the court can order some payment. *Davis v. Kutta*, 8 FSM R. 338, 342 (Chk. 1998).

Under 6 F.S.M.C. 1409, the court makes two inquiries: the judgment debtor's ability to pay, and the fastest manner to accomplish payment. *Davis v. Kutta*, 8 FSM R. 338, 343 (Chk. 1998).

Because the court must consider the debtor's ability to pay, an order which takes this factor properly into consideration will not result, in and of itself, in the financial undoing of a debtor. *Davis v. Kutta*, 8 FSM R. 338, 344 (Chk. 1998).

A judgment debtor's request to the court for a hearing, pursuant to 6 F.S.M.C. 1409 to determine its ability to pay the debt and the fastest means to pay and satisfy the judgment constitutes a motion for an order in aid of judgment. *Walter v. Chuuk*, 10 FSM R. 312, 316 (Chk. 2001).

Either party may apply for an order in aid of judgment. Once it has, the court must, after notice to the opposite party, hold a hearing on the question of the debtor's ability to pay and determine the fastest manner in which the debtor can reasonably pay a judgment based on the finding. *Walter v. Chuuk*, 10 FSM R. 312, 316-17 (Chk. 2001).

§ 1410. Orders in aid of judgment—Hearings.

(1) At the hearing provided by section 1409 of this chapter, the debtor may be examined orally before the Court, or the Court may refer the examination to a single judge of the Court or to a master to take evidence and report his findings. In either case any evidence properly bearing on the question may be introduced by either party or by the Court, the single judge or master in the same manner as at the trial of a civil action. Upon having heard the evidence or having received the report of the single judge or master, the Court shall make such order in aid of judgment as is just for the payment of any judgment based on the finding.

(2) This order in aid of judgment may provide for the transfer of particular assets at a price determined by the Court, or for the sale of particular assets and payment of the net proceeds to the creditor, or for payments, in specified installments on particular dates or at specified intervals, or for any other method of payment which the Court deems just.

Source: TT Code 1966 § 290; TT Code 1970, 8 TTC 56; COM PL 4C-21 § 3; TT Code 1980, 8 TTC 56.

Case annotation: Under 6 F.S.M.C. 1410(2), an order in aid of judgment may provide for the sale of particular assets, such as unencumbered property that is not necessary for the debtor to meet his family and customary obligations, and payment of the net proceeds to the creditor. *Davis v. Kutta*, 8 FSM R. 338, 343 (Chk. 1998).

§ 1411. Orders in aid of judgment—Modification of orders.

Any order in aid of judgment made under this chapter may be modified by the Court as justice may require, at any time, upon application of either party and notice to the other, or on the Court's own motion.

Source: TT Code 1966 § 291; TT Code 1970, 8 TTC 57; TT Code 1980, 8 TTC 57.

§ 1412. Orders in aid of judgment—Punishment of violations.

If any debtor fails without good cause to comply with any order in aid of judgment made under this chapter, he may be adjudged in contempt as a civil matter, after notice to show cause why he should not be so adjudged and an opportunity to be heard thereon, and upon such adjudication shall be committed to jail until he complies with the order or is released by the Court or serves a period fixed by the Court of not more than six months in jail, whichever happens first.

Source: TT Code 1966 § 292; TT Code 1970, 8 TTC 58; TT Code 1980, 8 TTC 58.

Case annotations: The constitutional provision prohibiting imprisonment for debt does not restrict the manner in which 6 F.S.M.C. 1412 is applied, although that statute includes imprisonment as one possible sanction for violating an order in aid of judgment. *Rodriguez v. Bank of the FSM*, 11 FSM R. 367, 381 (App. 2003).

The constitutional prohibition prohibiting imprisonment for debt is a restriction on the courts against the enforcement of judgments of a certain character, but does not restrict a court's power to enforce its lawful orders by imprisonment for contempt. Even when the violation of the order is for failure to make payments for the recovery of a judgment enforceable by an order in aid of judgment, if the order is one which the court could lawfully make, the imprisonment is not for failure to pay the debt, but failure to obey a lawful court order. *Rodriguez v. Bank of the FSM*, 11 FSM R. 367, 382 (App. 2003).

A person sent to jail after being adjudged in civil contempt can get out of jail anytime he or she chooses merely by complying with the court order and thereby purging himself or herself of the contempt because 6 F.S.M.C. 1412 provides that upon an adjudication of civil contempt, the contemnor shall be committed to jail until he complies with the order. The purpose of a civil contempt adjudication is to secure compliance with a lawful court order when the contemnor has the ability to do so. *Rodriguez v. Bank of the FSM*, 11 FSM R. 367, 382 (App. 2003).

Criminal contempt is not a specified remedy in 6 F.S.M.C. 1412, but is an available remedy under the general FSM contempt statute, 4 F.S.M.C. 119, under which the court may punish any intentional disobedience to a lawful court order. *Davis v. Kutta*, 10 FSM R. 125, 127 (Chk. 2001).

FSM law allows imprisonment of a debtor for "not more than six months" if he is "adjudged in contempt as a civil matter" for failure "without good cause to comply with any order in aid of judgment." 6 F.S.M.C. 1412. The inability of a judgment debtor to comply with an order in aid of judgment without fault on his part after his exercise of due diligence constitutes "good cause" within the meaning of the statute. *Hadley v. Bank of Hawaii*, 7 FSM R. 449, 452 (App. 1996).

Generally, a person who seeks to satisfy the court that his failure to obey an order or decree was due entirely to his inability to render obedience, without fault on his part, must prove such inability. The FSM Supreme Court places the burden on the movant to show that the debtor has the ability to comply. Once this burden has been met and the debtor has been held in contempt, it is then the debtor's burden to show that he no longer has the ability to comply through no fault of his own despite his exercise of due diligence. *Hadley v. Bank of Hawaii*, 7 FSM R. 449, 452-53 (App. 1996).

In order to hold a debtor in contempt for failure to comply with an order in aid of judgment it is not enough that the debtor's noncompliance was found to be willful. There must also be a recital, or a finding somewhere in the record, that the debtor was able to comply. *Hadley v. Bank of Hawaii*, 7 FSM R. 449, 453 (App. 1996).

§ 1413. Orders in aid of judgment—Stay of execution.

(1) After an application for an order in aid of judgment has been filed in any action, no writ of execution shall be issued therein except under an order in aid of judgment as provided in this chapter, or by special order of the court for cause shown.

(2) If a writ of execution is outstanding, a judgment creditor applying for an order in aid of judgment shall file the writ of execution with his application, and a judgment debtor applying for an order in aid of judgment may request a stay of execution which may be granted by the Court on such terms, if any, as it deems just.

Source: TT Code 1966 § 293; TT Code 1970, 8 TTC 59; TT Code 1980, 8 TTC 59.

§ 1414. Orders in aid of judgment—Application to community or District court.

A judgment creditor who has obtained an execution may, instead of applying to the court in which the action was tried, apply for an order in aid of judgment to the District court or community court within whose jurisdiction the judgment debtor lives or has his usual place of business or employment. The court so applied to shall then proceed with notice to the opposite party, hearing, determination, and the issuance of such order in aid of judgment as it deems just, as provided in this chapter.

Source: TT Code 1966 § 294; TT Code 1970, 8 TTC 60; TT Code 1980, 8 TTC 60.

§ 1415. Exemptions.

The following described property shall be exempt from attachment and execution:

(1) *Personal and household goods*. All necessary household furniture, cooking and eating utensils, and all necessary wearing apparel, bedding, and provisions for household use sufficient for four months.

(2) *Necessities for trade or occupation*. All tools, implements, utensils, two work animals, and equipment necessary to enable the person against whom the attachment or execution is issued to carry on his usual occupation.

(3) *Land and interests in land*. All interests in land, but any interest owned solely by a judgment debtor, in his own right, may be ordered sold or transferred under an order in aid of judgment if the court making the order deems that justice so requires and finds as a fact that after the sale or transfer, the debtor will have sufficient land remaining to support himself and those persons directly dependent on him according to recognized local custom and the law of the Trust Territory. No person not an indigenous inhabitant of the Trust Territory may acquire any interest

in such land by sale, transfer, or otherwise, except with the prior approval of the High Commissioner.

Source: TT Code 1966 § 288; TT Code 1970, 8 TTC 61; TT Code 1980, 8 TTC 61.

CHAPTER 15
Special Proceedings

SECTIONS

§ 1501. Authority of courts to render.

In a case of actual controversy within its jurisdiction, the High Court or a District Court, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

Source: TT Code 1966 § 118; TT Code 1970, 9 TTC 1; TT Code 1980, 9 TTC 1.

§ 1502. Conciliation jurisdiction.

(1) District and community courts may, at the request of a party to any civil controversy (other than annulment, divorce, or adoption), endeavor to effect an amicable settlement of the controversy, and to that end, may invite the other party or parties to the controversy to appear before the judge for an informal hearing.

(2) Such a request shall be made in the District or community court within whose territorial jurisdiction the other party or the largest number of the other parties live or have their usual places of business or employment.

(3) If an agreement in settlement of the controversy is reached, the judge shall reduce it to writing and his report of the settlement agreement, when signed by the parties, shall have the force and effect of a judgment even though the subject matter of the controversy may be beyond the jurisdiction of the court for purposes other than conciliation.

Source: TT Code 1966 § 164; TT Code 1970, 9 TTC 51; TT Code 1980, 9 TTC 51.

§ 1503. Power to grant writs of *habeas corpus*.

Writs of habeas corpus may be granted by the Trial Division of the High Court or any judge authorized to be assigned by the Chief Justice in the Appellate Division of the High Court. Every person unlawfully imprisoned or restrained of his liberty under any pretense whatsoever,

or any person on behalf of an unlawfully imprisoned individual, may apply for a writ of *habeas corpus* to inquire into the cause of such imprisonment or restraint.

Source: TT Code 1966 § 300; TT Code 1970, 9 TTC 101; TT Code 1980, 9 TTC 101.

§ 1504. Application for writ.

Application for the writ of *habeas corpus* shall be made to a court or judge authorized to issue the same, or to a judge of a District court or a clerk of courts, by a written statement under oath signed by the party for whose relief it is intended, or by some person in his behalf. It shall set forth the facts concerning the imprisonment or restraint of the person for whose relief it is intended, and, if known, the name of the person who has custody over him, and by virtue of what claim or authority the restraint or imprisonment is being practiced.

Source: TT Code 1966 § 301; TT Code 1970, 9 TTC 102; TT Code 1980, 9 TTC 102.

§ 1505. Action by clerk of courts upon application for writ.

If the application for a writ of habeas corpus is made to a clerk of courts, the clerk shall immediately bring the application to the personal attention of a court or judge authorized to issue the writ, or a judge of the District court.

Source: TT Code 1966 § 302; TT Code 1970, 9 TTC 103; TT Code 1980, 9 TTC 103.

§ 1506. Show-cause order; Returns; Response.

(1) A court or judge entertaining an application for a writ of habeas corpus shall issue an order directing the person against whom the writ is requested to show cause why the writ should not be granted, unless it appears from the application that the person detained is not entitled thereto. The order to show cause shall be directed to the person having custody of the person detained. The order shall set the time and place for hearing, which shall be as early as the court or judge issuing the order deems practicable, preferably within three days.

(2) The person to whom the order is directed shall at or before the time set for hearing make a return certifying the true cause of the detention and unless the application for the writ and the return present only issues of law, the person to whom the order is directed shall produce at the hearing the person detained, unless the person is so sick or so weak that this cannot with safety be done.

(3) The applicant, or the person detained may, under oath, deny any of the facts set forth in the return, or declare any other material facts.

(4) The application, the return, and any suggestions made against either of them may be amended by leave of the court or judge.

(5) If the person to whom the order is directed does not make a return as above required, or does not appear at the time and place set for hearing, the court or judge may proceed without him.

Source: TT Code 1966 § 303; TT Code 1970, 9 TTC 104; TT Code 1980, 9 TTC 104.

§ 1507. Preliminary examination and recommendation by District court judge.

If the application for a writ of habeas corpus is heard by a judge of a District court, he shall, without delay or formality, make preliminary findings of fact and recommendations as to the issuance or denial of the writ, and the disposition of the person detained, and submit these by dispatch or other speedy method to the Chief Justice or to the most accessible court or judge authorized to issue the writ.

Source: TT Code 1966 § 304; TT Code 1970, 9 TTC 105; TT Code 1980, 9 TTC 105.

§ 1508. Issuance or denial of writ.

A court or judge hearing the application for a writ of habeas corpus, and authorized to issue the writ, shall, without delay or formality, determine the facts, grant the writ unconditionally, deny the writ, or grant the writ on terms fixed by the court and discharge the person for whose relief the application has been brought, or make any order as to his disposition that law and justice may require. The court or judge authorized to issue the writ and receiving the report and recommendations of a judge of a District court as provided in section 1507 of this chapter, may act upon the matter, by dispatch or other speedy method, on the basis of the District court judge's report, or may order such further hearing or the submission of such further evidence as he deems law and justice require, and the clerk of courts of the District in which the matter is pending shall take such action in the matter as the judge or court may direct.

Source: TT Code 1966 § 305; TT Code 1970, 9 TTC 106; TT Code 1980, 9 TTC 106.

§ 1509. Evidence.

On application for a writ of *habeas corpus*, evidence may be taken orally or by deposition, or in the discretion of the court or judge, by written statement under oath. If written statements under oath are admitted, any party shall have the right to propound written interrogatories to the person who made such statements or to file answering written statements under oath. On application for a writ of *habeas corpus*, documentary evidence, transcripts of proceedings upon arraignments, plea, sentence, and a transcript of the oral testimony introduced on any previous similar application by or on behalf of the same person shall be admissible in evidence. The declarations of a return to an order to show cause in a *habeas corpus* proceeding, if not formally denied, shall be accepted as true, except to the extent that the court or judge finds from the evidence that they are not true.

Source: TT Code 1966 § 306; TT Code 1970, 9 TTC 107; TT Code 1980, 9 TTC 107.

Case annotations: The following case annotations are for FSM Supreme Court issuance of the writ of *habeas corpus*:

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 R. 114, 118 (Pon. 1982).

Art. XI, § 6(b) of the FSM Constitution 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 R. 239, 243-44 (Pon. 1983).

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 FSM Constitution. *In re Iriarte (I)*, 1 FSM R. 239, 244, 246 (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 R. 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 R. 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 R. 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 R. 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 R. 93, 104 (App. 1993).

§ 1510. Appeals.

In a *habeas corpus* proceeding in which the final order is made by the Trial Division of the High Court or a Judge thereof, the final order shall be subject to appeal to the Appellate Division of the High Court, provided notice of appeal is filed within 30 days after entry of the final order. The Court or Judge issuing the final orders may in its or his discretion stay execution of the order, admit the person imprisoned or restrained to bail pending action by the Appellate Division of the High Court, or direct that the final order take effect pending such action or without waiting for the time for filing such notice of appeal to expire.

Source: TT Code 1966 § 307; TT Code 1970, 9 TTC 108; TT Code 1980, 9 TTC 108.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

CHAPTER 16
Domestic Relations

SUBCHAPTER I
General Provisions

SECTIONS

SUBCHAPTER II
Annulment and Divorce

SECTIONS

SUBCHAPTR III
Adoption

SECTIONS

SUBCHAPTER I
General Provisions

§ 1611. Jurisdiction of High Court.

The High Court shall have concurrent jurisdiction with the District courts to grant any adoption, and with the community and District courts to grant any annulment or divorce authorized under this chapter, and may, for cause shown, order any proceeding in annulment, divorce, or adoption pending before another court transferred to the High Court for disposition. Proceedings in annulment, divorce, or adoption in the High Court may be filed in any administrative District within which the matter might have been handled by a community court or a District court.

Source: TT Code 1966 § 711; TT Code 1970, 39 TTC 1; COM PL 4C-56 § 1; TT Code 1980, 39 TTC 1.

§ 1612. Proceedings in annulment, divorce, or adoption—Petitions.

(1) All proceedings for annulment, divorce, or adoption shall be commenced by petition signed and sworn to by the petitioner or petitioners personally, except that a community court may accept an oral petition under oath if it deems best.

(2) The petition shall set forth sufficient facts as to the residence of the parties to show jurisdiction under this chapter.

(3) A petition for annulment or divorce shall, so far as practicable, include the date and place of marriage of the parties, the cause for the annulment or divorce, and the approximate date and place where it occurred if the cause consists of individual acts, otherwise sufficient details as to cause to identify with reasonable certainty the facts relied upon, and a statement as to any prior application which is known to have been made by either party for annulment or divorce of the marriage in question or for separation under it, in this or any other jurisdiction, and the result of such application, if known.

(4) Service of petitions filed under this section shall be made upon any respondent or respondents, if any, in the manner provided by law for service of complaints. In such cases, any respondent or respondents shall be accorded such time as may be provided by law for filing an answer to complaints to file an answer to the petition.

Source: TT Code 1966 § 712; TT Code 1977, 39 TTC 2; COM PL 4C-56 § 2; TT Code 1980, 39 TTC 2.

§ 1613. Proceedings in annulment, divorce, or adoption—Appeal and review; Procedure.

(1) All decrees for annulment, divorce, or adoption under this chapter shall be subject to appeal, and in the case of community courts and District courts to review as in other civil cases, and no such decree shall become absolute or affect the legal status of the parties until the case has been reviewed, if subject to review by the High Court, and until the period for appeal has expired without any appeal having been filed or until any appeal taken shall have been finally dispatched.

(2) Except as otherwise expressly provided by this chapter, annulment, divorce, and adoption proceedings shall be governed by the provisions of law and rules of civil procedure applicable to civil actions.

Source: TT Code 1966 § 713; TT Code 1970, 39 TTC 3; TT Code 1980, 39 TTC 3.

§ 1614. Proceedings in annulment, divorce, or adoption—Local custom recognized.

Nothing contained in this chapter, except for the provisions of section 1615 of this chapter, shall apply to any annulment, divorce, or adoption effected in accordance with local custom, nor shall any restrictions or limitations be imposed upon the granting of annulments, divorces, or adoptions in accordance with local custom.

Source: TT Code 1966 § 714; TT Code 1970, 39 TTC § 4; TT Code 1980, 39 TTC § 4, modified.

Cross-reference: For general provisions on local custom, see section 113 of title 1 (General Provisions) of this code.

Case annotations:

Adoption

6 F.S.M.C. 1614 exempts adoptions effected in accordance with local custom from the domestic relations law of the Federated States of Micronesia. Customary adoptions are an alternative to court-ordered adoptions which are established by the Code. *In re Marquez*, 5 FSM R. 381, 383 (Pon. 1992).

Parties who wish to adopt a child have a choice of method of adoption. They may adopt according to local custom, or they may adopt according to the laws of the FSM. What a petitioner may not do is seek the court's involvement in a customary adoption. *In re Marquez*, 5 FSM R. 381, 383 (Pon. 1992).

The court has no statutory authority to enter a decree of adoption, pursuant to statute, for an adult. *In re Jae Joong Hwang*, 6 FSM R. 331, 331 (Chk. S. Ct. Tr. 1994).

An adoption of an adult may qualify for recognition by the court if done under Chuukese custom. *In re Jae Joong Hwang*, 6 FSM R. 331, 332 (Chk. S. Ct. Tr. 1994).

§ 1615. Proceedings in annulment, divorce, or adoption—Confirmation in accordance with recognized custom.

When an annulment, divorce, or adoption has been effected in the Trust Territory in accordance with recognized custom and the validity thereof is questioned or disputed by anyone in such a manner as to cause serious embarrassment to or affect the property rights of any of the parties or their children, any party thereto or any of his children may bring a petition in the High Court for a decree confirming the annulment, divorce, or adoption effected in accordance with recognized custom. Such a petition shall be signed and sworn to by the petitioner personally, and shall be filed in the District where the annulment, divorce, or adoption was effected. If, after notice to all parties still living and a hearing, the Court is satisfied that the annulment, divorce, or adoption alleged is valid in accordance with recognized custom in the part of the Trust Territory where it was effected, the High Court shall enter a decree confirming the annulment, divorce, or adoption and may include in this decree the date it finds the annulment, divorce, or adoption was absolute until the period for appealing has expired without any appeal having been filed or until any appeal taken shall have been filed or until any appeal taken shall have been finally dispatched.

Source: TT Code 1966 § 715; TT Code 1970, 39 TTC 5; COM PL 4C-56 § 3; TT Code 1980, 39 TTC 5.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

Case annotations:

Adoption

6 F.S.M.C. 1615 grants the court jurisdiction to confirm customary adoptions. For the court to hear a petition to confirm a customary adoption there must first be a challenge to the validity of that adoption. Furthermore, the challenge must either cause "serious embarrassment" to one of the parties, or affect their property rights. Mere speculation or gossip will not suffice. *In re Marquez*, 5 FSM R. 381, 383-84 (Pon. 1992).

Before the court may confirm a customary adoption, there must first have occurred a customary adoption. Thus, a threshold question is whether a customary adoption has taken place. *In re Marquez*, 5 FSM R. 381, 384 (Pon. 1992).

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 R. 381, 384 (Pon. 1992).

A petition to confirm a customary adoption which fails to indicate that the customary adoption has occurred is premature and unreviewable. *In re Marquez*, 5 FSM R. 381, 385 (Pon. 1992).

§ 1616. Age of majority.

All persons, whether male or female, residing in the Trust Territory, who shall have attained the age of eighteen years shall be regarded as of legal age and their period of minority to have ceased.

Source: TT Code 1970, 39 TTC § 6; TT Code 1980, 39 TTC 6.

Cross-reference: FSM Const., art. VI. The provisions of the Constitution are found in Part I of this code.

SUBCHAPTER II
Annulment and Divorce

§ 1621. Competency of community and District courts.

An annulment or a divorce authorized by this subchapter may be granted by any community court or District court within whose jurisdiction either of the parties has resided for three months immediately prior to the filing of the complaint.

Source: TT Code 1966 § 702; TT Code 1970, 39 TTC 101; TT Code 1980, 39 TTC 101.

Cross-reference: See also §§ 1610 and 1613 of this chapter.

§ 1622. Orders for custody, support, and alimony.

In granting or denying an annulment or a divorce, the court may make such orders for custody of minor children for their support, for support of either party, and for the disposition of either or both parties' interest in any property in which both have interests, as it deems justice and the best interests of all concerned may require. While an action for annulment or divorce is pending, the court may make temporary orders covering any of these matters pending final decree. Any decree as to custody or support of minor children or of the parties shall be subject to

revision by the court at any time upon motion of either party and such notice, if any, as the court deems justice requires.

Source: TT Code 1966 § 704; TT Code 1970, 39 TTC 103; TT Code 1980, 39 TTC 103.

§ 1623. Annulment—Authorized—Grounds.

A decree annulling a marriage may be rendered on any ground existing at the time of the marriage which makes the marriage illegal and void or voidable. A court may, however, refuse to annul a marriage which has been ratified and confirmed by voluntary cohabitation after the obstacle to the validity of the marriage has ceased, unless the public interest requires that the marriage be annulled.

Source: TT Code 1966 § 695; TT Code 1970, 39 TTC 151; TT Code 1980, 39 TTC 151.

§ 1624. Annulment—Residency requirements.

No annulment shall be granted unless one of the parties shall have resided in the Trust Territory for the three months immediately preceding the filing of the complaint.

Source: TT Code 1966 § 696; TT Code 1970, 39 TTC 152; TT Code 1980, 39 TTC 152.

Cross-reference: See also § 1607 of this chapter.

§ 1625. Annulment—Legitimacy of issue of annulled marriage.

The issue of a marriage annulled under this subchapter shall be legitimate.

Source: TT Code 1966 § 697; TT Code 1970, 39 TTC 153; TT Code 1980, 39 TTC 153.

§ 1626. Divorce—Grounds.

Divorces from marriage may be granted under this subchapter for the following causes and no other:

(1) adultery;

(2) the guilt of either party toward the other of such cruel treatment, neglect, or personal indignities, whether or not amounting to physical cruelty, as to render the life of the other burdensome and intolerable and their further living together unsupportable;

(3) willful desertion continued for a period of not less than one year;

(4) habitual intemperance in the use of intoxicating liquor or drugs continued for a period of not less than one year;

(5) the sentencing of either party to imprisonment for life or for three years or more. After divorce for such cause, no pardon granted to the party so sentenced shall affect such divorce;

(6) the insanity of either party where the same has existed for three years or more;

(7) the contracting by either party of leprosy;

(8) the separation of the parties for two consecutive years without cohabitation, whether or not by mutual consent;

(9) willful neglect by the husband to provide suitable support for his wife when able to do so when failure to do so is because of his idleness, profligacy, or dissipation.

Source: TT Code 1966 § 698; TT Code 1970, 39 TTC 201; TT Code 1980, 39 TTC 201.

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

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 R. 222, 224 (Pon. 1990).

In litigation brought by a mother seeking child support payments from the father, the court will not grant the defendant-father's motion to change the venue to the FSM state in which he now resides from the FSM state in which: (1) the mother initiated the litigation; (2) the couple was married and resided together; (3) their children were born and have always lived; and (4) the mother still resides. *Pernet v. Aflague*, 4 FSM R. 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 R. 222, 224 (Pon. 1990).

Under Pohnpeian state law after confirmation of a customary separation or divorce under 39 TTC 5, the court may order custody and child support under 39 TTC 103. *Pernet v. Aflague*, 4 FSM R. 222, 225 (Pon. 1990).

Although under historical Pohnpeian customary law only the husband had rights over the children of the marriage, now both parents have rights and responsibilities in connection with a marriage and the court should take this into consideration in determining child custody rights and support payment obligations in cases of customary divorce. *Pernet v. Aflague*, 4 FSM R. 222, 225 (Pon. 1990).

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

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 R. 335, 337 (Pon. 1992).

Under the law of Pohnpei a court may award child custody, and, if necessary order child support. The standard to be applied is the "best interests of the child." *Youngstrom v. Youngstrom*, 5 FSM R. 335, 337 (Pon. 1992).

A marriage procured and induced by fraud is void *ab initio* and the party whose consent was so procured is entitled to a judgment annulling the marriage. *Burrow v. Burrow*, 6 FSM R. 203, 204-05 (Pon. 1993).

Under the law of Pohnpei support of the children is the responsibility of both parents. A court may order the parent without custody to make support payments. In granting or denying a divorce, the court may make such orders for custody of minor children, for their support as it deems justice and the best interests of all concerned may require. *Youngstrom v. Youngstrom*, 6 FSM R. 304, 306 (Pon. 1993).

If a court deems justice and the best interest of all concerned so require, it may award past child support. When considering child support, it is the best interests of the children with which a court is most concerned. *Youngstrom v. Youngstrom*, 6 FSM R. 304, 306 (Pon. 1993).

§ 1627. Divorce—Residency requirements.

No divorce shall be granted unless one of the parties shall have resided in the Trust Territory for the two years immediately preceding the filing of the complaint.

Source: TT Code 1966 § 699; TT Code 1970, 39 TTC 202; TT Code 1980, 39 TTC 202.

Cross-reference: See also § 1607 of this chapter.

§ 1628. Divorce—Forgiveness as defense.

No divorce shall be granted where the ground for the divorce has been forgiven by the injured party. Such forgiveness may be shown by express proof or by the voluntary cohabitation of the parties with knowledge of the fact and restoration of the forgiving party to all marital rights. Such forgiveness implies a condition that the forgiving party must be treated with conjugal kindness. This forgiveness is revoked and the original ground for divorce is revived if the party forgiven commits an act of constituting a like or other ground for divorce or is guilty of conjugal unkindness sufficiently habitual and gross to show that the conditions of forgiveness have not been accepted in good faith or have not been fulfilled.

Source: TT Code 1966 § 700; TT Code 1970, 39 TTC 203; TT Code 1980, 39 TTC 203.

§ 1629. Divorce—Procurement or connivance as defense.

No divorce for the cause of adultery shall be granted where the offense has been committed by the procurement or with the connivance of the plaintiff.

Source: TT Code 1966 § 701; TT Code 1970, 39 TTC 204; TT Code 1980, 39 TTC 204.

SUBCHAPTER III
Adoption

§ 1631. Competency of District courts and High Court.

An adoption authorized under this subchapter may be granted by any District court within whose territorial jurisdiction the person or persons requesting the adoption reside or within whose jurisdiction the child resides, or by the Trial Division of the High Court in such jurisdiction.

Source: TT Code 1966 § 709; TT Code 1970, 39 TTC 251; COM PL 4C_56 § 5; TT Code 1980, 39 TTC 251.

§ 1632. Adoption by decree.

(1) Any suitable person who is not married, or is married to the father or mother of a minor child, or a husband and wife jointly may by decree of court adopt a minor child, not theirs by birth, and the decree may provide for change of the name of the child. If the child is adopted by a person married to the father or mother of the child, the same rights and duties which previously existed between such natural parent and child shall be and remain the same, subject,

however, to the rights acquired by and the duties imposed upon the adopting parent by reason of the adoption.

(2) The term "child," as used in this subchapter and section 1615 of this chapter shall refer to the parent-child relationship.

Source: TT Code 1966 § 706; TT Code 1970, 39 TTC 252; TT Code 1980, 39 TTC 252.

Editor's note: The word "minor" appears twice in the first sentence of this section in the 1966 edition of the Trust Territory Code, but was deleted from the 1970 and 1980 editions of the Trust Territory Code.

§ 1633. Persons to be notified or consents to be obtained.

No adoption shall be granted without either the written consent of, or notice to, each of the known living legal parents who has not been adjudged insane or incompetent or has not abandoned the child for a period of six months, nor shall any adoption of a child of over the age of 12 years be granted without the consent of the child.

Source: TT Code 1966 § 707; TT Code 1970, 39 TTC 253; COM PL 4C-56 § 6; TT Code 1980, 39 TTC 253.

§ 1634. Best interests of child to control; Appearance of child.

(1) No adoption shall be granted under this subchapter without the child proposed for adoption appearing before the court, and the adoption shall be granted only if the court is satisfied that the interests of the child will be promoted thereby.

(2) Whenever an adoption petition is filed by a person who is not a citizen of the Trust Territory for the adoption of a Micronesian child who is either under the age of twelve years or not the petitioner's stepchild, the court shall:

(a) determine, after reasonable inquiry, whether any member of the child's immediate or extended family residing in the Trust Territory, or any other Trust Territory citizen residing in the State of the Federated States of Micronesia in which the petition is brought, is willing, able, and suitable to adopt the child;

(b) give preference in the adoption of a Micronesian child to a Trust Territory citizen whenever practicable;

(c) appoint a guardian ad litem or attorney to represent the child;

(d) not issue a final decree until the child has lived in the proposed adoptive home for a length of time sufficient for the court to determine that the placement is satisfactory; and

(e) not grant the adoption unless the petitioner has resided in the Trust Territory for at least three years prior to the filing of the petition.

(3) The standards to be applied in judging the interests of a Micronesian child shall be the prevailing social and cultural standards of the Micronesian community from which the child comes or in which the court is located.

(4) The term "Micronesian child," as used in this section, shall mean a child born in the Trust Territory, one or both of whose parents is a Trust Territory citizen.

Source: TT Code 1966 § 708; TT Code 1970, 39 TTC 254; TT Code 1980, 39 TTC 254; PL IC-28 § 1.

§ 1635. Effect of decree.

(1) After a decree of adoption has become absolute, the child adopted and the adopting parent or parents shall hold towards each other the legal relation of parent and child and have all the rights and be subject to all the duties of that relationship. The natural parents of the adopted child are, from the time of adoption, relieved of all parental duties toward the child and all responsibilities for the child so adopted, and have no right over it.

(2) A child adopted under this subchapter shall have the same rights of inheritance as a person adopted in accordance with recognized custom at the place where the land is situated in the case of real estate, and at the place where the decedent was a resident at the time of his death in the case of personal property. Where there is no recognized custom as to rights of inheritance of adopted children, a child adopted under this subchapter shall inherit from his adopting parents the same as if he were the natural child of the adopting parent or parents, and he may also inherit from his natural parents and kindred the same as if no adoption has taken place.

Source: TT Code 1966 § 710; TT Code 1970, 39 TTC 255; TT Code 1980, 39 TTC 255.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

Editor's note: The phrase "parent or" appears in the first and final sentences of this section in the 1966 edition of the Trust Territory Code, but was deleted from the 1970 and 1980 editions of the Trust Territory Code.

CHAPTER 17
Reciprocal Enforcement of Support

SUBCHAPTER I
General Provisions

SECTIONS

SUBCHAPTER II
Criminal Enforcement

SECTIONS

SUBCHAPTER III
Civil Enforcement

SECTIONS

SUBCHAPTER I
General Provisions

§ 1711. Purposes.

The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 301.

§ 1712. Definitions.

For the purposes of this chapter:

(1) "Court" means the Trial Division of the High Court of the Trust Territory, and when the context requires means the court of any State as defined in a substantially similar reciprocal law.

(2) "District attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(3) "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise, and includes the duty to pay arrearages of support past due and unpaid.

(4) "Governor" includes the High Commissioner of the Trust Territory and any person performing the functions of Governor or the executive authority of any State covered by this chapter.

(5) "Initiating State" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

(6) "Law" includes both common and statutory law.

(7) "Obligee" means a person, including a State or political subdivision, to whom a duty of support is owed, or a person, including a State or political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial whether the person to whom a duty of support is owed is a recipient of public assistance.

(8) "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(9) "Register" means to file in the Registry of Foreign Support Orders.

(10) "Registering court" means any court of the Trust Territory in which a support order of a rendering State is registered.

(11) "Rendering State" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(12) "Responding State" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "Responding court" means the court in which the responsive proceeding is commenced.

(13) "State" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(14) "Support order" means any judgment, decree, or order of support in favor of an obligee, whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 302.

Editor's note: Subsections rearranged in alphabetical order in the 1982 edition of this code.

§ 1713. Remedies of chapter in addition to those now existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 303.

§ 1714. Duties of support regardless of presence or residency.

Duties of support arising under the law of the Trust Territory, when applicable under this code, bind the obligor present in the Trust Territory regardless of the presence or residence of the obligee.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 304.

SUBCHAPTER II
Criminal Enforcement

§ 1721. Interstate rendition—Authority of High Commissioner.

The High Commissioner of the Trust Territory may:

(1) demand of the Governor of another State the surrender of a person found in that State who is charged criminally in the Trust Territory with the failure to abide by an order of a court ordering him to provide for the support of any person; or

(2) surrender on demand by the Governor of another State a person found in the Trust Territory who is charged criminally in that State with failing to provide for the support of any

person. Provisions for extradition of criminals not inconsistent with this chapter apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or that at the time of the commission of the crime said person was in the demanding State.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 351.

§ 1722. Interstate rendition—Investigations of circumstances.

(1) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in the Trust Territory with the failure to abide by an order of a court ordering him to provide for the support of a person, the High Commissioner of the Trust Territory may require the Attorney General of the Trust Territory to satisfy him that at least sixty days prior thereto the obligee initiated proceedings for support under this chapter or that any such proceeding would be of no avail.

(2) If, under a substantially similar act, the Governor of another State makes a demand upon the High Commissioner of the Trust Territory for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the High Commissioner may require the Attorney General to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the High Commissioner that a proceeding would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If proceedings have been initiated, and the person demanded has prevailed therein, the High Commissioner may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the High Commissioner may decline to honor the demand if the person demanded is complying with the support order.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 352.

SUBCHAPTER III
Civil Enforcement

§ 1731. Choice of law.

Duties of support applicable under this chapter are those imposed under the laws of any jurisdiction where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding jurisdiction during the period for which support is sought until otherwise shown.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 401.

§ 1732. Rights of jurisdiction or political subdivision furnishing support.

If a State or a political subdivision thereof furnishes support to an individual obligee, it has the same right to initiate a proceeding under this chapter as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 402.

§ 1733. How duties of support enforced.

All duties of support, including the duty to pay arrearages, are enforceable by an action under this chapter, including a proceeding for contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 403.

§ 1734. Jurisdiction.

Jurisdiction of any proceeding under this chapter is vested in the Trial Division of the High Court.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 404.

§ 1735. Contents and filing of complaint for support.

(1) The complaint shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information and such information as may be required by the Trust Territory rules of civil procedure. The obligee may include in or attach to the complaint any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(2) The complaint may be filed in the appropriate court of any jurisdiction in which the obligee resides. The court shall not decline or refuse to accept and forward the complaint on the ground that it should be filed with some other court of this or any other jurisdiction where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 405.

§ 1736. Attorney General to represent obligee.

If the Trust Territory is acting as an initiating State, the Attorney General or his representative, upon the request of the court, shall represent the obligee in any proceeding under this chapter.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 406.

§ 1737. Complaint on behalf of minor.

A complaint on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 407.

§ 1738. Duty of initiating court.

If the initiating court finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the complaint and its certificate and one copy of this chapter to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause the copies to be sent to the State information agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 408.

§ 1739. Costs and fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in the Trust Territory when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the State or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 409.

§ 1740. Jurisdiction by arrest.

If a court of the Trust Territory believes that the obligor may flee, it may:

(1) as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) as a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 410.

§ 1741. Information agency; Efforts of Attorney General to locate obligors.

(1) The Attorney General's Office is designated as the information agency under this chapter. It shall:

(a) compile a list of the courts and their addresses in the Trust Territory having jurisdiction under this chapter and transmit the same to the State information agency of every other State which has adopted this or a substantially similar law;

(b) maintain a register of such lists of courts received from other States and transmit copies thereof promptly to every court in the Trust Territory having jurisdiction under this chapter;

(c) distribute copies of this chapter and any amendments thereto and a statement of their effective dates to all other State information agencies; and

(d) forward to the court in the Trust Territory which has jurisdiction over the obligor or his property petitions, certificates, and copies of the act it receives from courts or information agencies of other States.

(2) If the Attorney General does not know the location of the obligor or his property in the Trust Territory, he shall use all means at his disposal to obtain this information, including but not limited to the examination of any official records, as he may deem appropriate.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 411.

§ 1742. Duties of the Court and officials of the Trust Territory as responding State—Prosecution of case.

(1) After the responding Court receives copies of the complaint, certificate, and act from the initiating court, the Clerk of Courts shall docket the case and notify the District Attorney of his action.

(2) The District Attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of the Trust Territory to enable the Court to obtain jurisdiction over the obligor or his property and shall request the Clerk of Courts to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 412.

§ 1743. Duties of the Court and officials of the Trust Territory responding State—Location of obligors.

(1) The District Attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if, because of inaccuracies in the complaint or otherwise, the Court cannot obtain jurisdiction, the District Attorney shall inform the Court of what he has done and request the Court to continue the case pending receipt of more accurate information or an amended complaint from the initiating court.

(2) If the obligor or his property is not found in the District, and the District Attorney discovers that the obligor or his property may be found in another District of the Trust Territory or in another State, he shall so inform the Court. Thereupon the Clerk of Courts shall forward the documents received from the Court in the initiating jurisdiction to a court in the other District or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this chapter apply to the recipient of the documents so forwarded. If the clerk of a court of the Trust Territory forwards documents to another court, he shall forthwith notify the initiating court.

(3) If the District Attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 413.

§ 1744. Continuance of case.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the Court, upon request of either party, may continue the case for further hearing and the submission of evidence by both parties by deposition or by appearing in person before the Court. The Court may designate the judge of the initiating court as a person before whom a deposition may be taken.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 414.

§ 1745. Waiver of privilege against self-incrimination and immunity from criminal prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the Court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 415.

§ 1746. Testimony of husband and wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter including marriage and parentage, the provisions of section 1301 of this title and rule 28 of the Trust Territory rules of evidence notwithstanding.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 416.

§ 1747. Rules of evidence.

In any hearing for the civil enforcement of this chapter the Court is governed by the rules of evidence set forth in chapter 13 of this title and in the Trust Territory rules of evidence, except as otherwise provided in this chapter. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity as set forth in section 1751 of this chapter or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 417.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.

§ 1748. Orders of support; Authorized; Enforcement.

(1) If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this chapter shall require that payments be made to the clerk of the court of the responding State.

(2) The Court and District Attorney of any District of the Trust Territory in which the obligor is present or has property shall have the same powers and duties to enforce the order as have those of the District in which it was first issued. If enforcement is impossible or cannot be completed in the District in which the order was issued, the District Attorney shall send a certified copy of the order to the District Attorney of any District in which it appears that proceedings to enforce the order would be effective. The District Attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 418.

§ 1749. Orders of support—Responding court to transmit copies to initiating court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 419.

§ 1750. Orders of support—Additional powers of responding court.

In addition to the foregoing powers, a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) require the obligor to furnish a cash deposit or a bond of a character and amount to be specified by the court to assure payment of any amount due;

(2) require the obligor to report personally and to make payments at specified intervals to the Clerk of Courts; and

(3) punish under the power of contempt the obligor who violates any order of the court.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 420.

§ 1751. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 421.

§ 1752. Forwarding of payments and payment records by responding court.

A responding court has the following duties which may be carried out through the Clerk of Courts:

(1) to transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) to furnish to the initiating court upon request a certified statement of all payments made by the obligor.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 422.

§ 1753. Receipt and disbursal of payments by initiating court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the Clerk of Courts.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 423.

§ 1754. Proceedings not to be stayed.

A responding court shall not stay the proceeding or refuse a hearing under this chapter because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other jurisdiction. The court shall hold a hearing and may issue a support order *pendente lite*. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the complaint being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 424.

§ 1755. Application of payments made under orders of another court.

A support order made by a court of the Trust Territory pursuant to this chapter does not nullify and is not nullified by a support order made by a court of another State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by a court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by a court of the Trust Territory.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 425.

§ 1756. Jurisdictional effect of participation in proceeding.

Participation in any proceeding under this chapter does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 426.

§ 1757. Interdistrict application.

This chapter applies if both the obligee and the obligor are in the Trust Territory but in different Districts. If the court of the District in which the complaint is filed finds that the

complaint sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another District in the Trust Territory may obtain jurisdiction over the obligor or his property, the clerk of courts shall send the complaint and a certification of the findings to the court of the District in which the obligor or his property is found. The clerk of courts of the District receiving these documents shall notify the District Attorney of their receipt. The District Attorney and the court in the District to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for the Trust Territory as a responding State.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 427.

§ 1758. Appeals.

If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(1) perfect an appeal to the proper appellate court if the support order was issued by a court of the Trust Territory; or

(2) if the support order was issued in another State, cause the appeal to be taken in the other State. In either case, expenses of appeal may be paid on his order from funds appropriated for his office.

Source: COM PL 4C-37 § 1; TT Code 1980, 39 TTC 428.

CHAPTER 18
Mental Illness

SECTIONS

§ 1801. Execution of diagnosis, treatment, and care generally.

The diagnosis, treatment, and care of persons suffering from mental disorder shall be carried out in such manner and in such places as may be prescribed by the director of Health Services or his designated representative. When commitment for insanity is indicated, persons may be committed pursuant to the provisions of section 1802 of this chapter. Feebleminded or mentally ill persons shall not be confined in jails or penal institutions, except temporarily in case of emergency.

Source: TT Code 1966 § 622; TT Code 1970, 63 TTC 401; TT Code 1980, 63 TTC 401.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 1802. Commitment of incompetents—Authorized—Prerequisites; Orders.

(1) The Trial Division of the High Court, or any District court, may, after hearing, commit an insane person within its jurisdiction to any hospital for the care and keeping of the insane in the Trust Territory, or if the court deems best, to a member of the insane person's family lineage or clan, who may thereafter restrain the insane person to the extent necessary for his own safety and that of the public.

(2) Such commitment of an insane person shall be made only on the testimony of two or more witnesses who personally testify in open court and at least one of whom is a doctor of medicine or medical practitioner authorized to practice medicine in the Trust Territory. Before testifying, the medical witness shall have personally examined the person sought to be committed, and shall establish to the satisfaction of the court that the person is insane.

(3) Except when the court is satisfied that the delay incident to giving such notice will be detrimental to the public interest or the welfare of the patient, such a commitment shall not be made until after notice to the allegedly insane person's husband or wife, if any, or one of his parents or one of his children, or next of kin, if any, as determined by local custom.

(4) In making such commitment the court may make such order as it deems in the best interest of the public and of the patient for the patient's temporary custody and transportation to the hospital.

Source: TT Code 1966 § 330; TT Code 1970, 63 TTC 402; TT Code 1980, 63 TTC 402.

§ 1803. Commitment of incompetents—Temporary commitments.

(1) The Trial Division of the High Court, any District court, or any community court, may, after hearing, commit for observation of possible mental illness any person within its jurisdiction. Such commitment shall be made only after testimony presented personally in open court has been received from at least one doctor or medical practitioner authorized to practice medicine in the Trust Territory, or from a nurse, health aide, or nurse's aide, who has personally examined the person sought to be committed, indicating to the satisfaction of the court that the public welfare or the interest of the person demands such commitment; provided, that the court shall, whenever practicable, endeavor to secure the testimony of a doctor or medical practitioner.

(2) Such commitment for observation may be to any person or institution willing to accept the patient, and shall only authorize the patient's detention for a period of not more than thirty days if the services of a doctor or medical practitioner are reasonably available. If such services are not reasonably available, commitment for observation may authorize the patient's detention until he may be brought to a doctor or medical practitioner or until a doctor or a medical practitioner visits the community in which the patient is detained, and for not more than thirty days thereafter. Notice of each such commitment for observation shall be sent by the court making the commitment to the District director of health services by the quickest means practicable.

Source: TT Code 1966 § 331; TT Code 1970, 63 TTC 403; TT Code 1980, 63 TTC 403.

§ 1804. Commitment of incompetents—Transfers.

Any person committed under this chapter may be transferred to any institution deemed suitable for his care by order of the director of Health Services for the Trust Territory or, within any one District, by the district director of health services.

Source: TT Code 1966 § 332; TT Code 1970, 63 TTC 404; TT Code 1980, 63 TTC 404.

§ 1805. Commitment of incompetents—Release.

(1) *By the court.* The husband, wife, parent, or child, or any of the next of kin as determined by local custom of any person committed for observation or as insane under this chapter, may at any time petition the Trial Division of the High Court or the District court of the District where the patient is detained, requesting that the commitment be terminated or the patient paroled, and the court may, after notice to the District director of health services and to the person in charge of the hospital or other place where the patient is detained, and after public hearing, make such order for the release of the patient or his parole under limited supervision or under specified conditions, if any, as it deems appropriate.

(2) *By medical authorities.* The doctor in charge of any hospital for the insane in the Trust Territory may discharge or parole on such conditions as he deems best any patient, except one held on order of a court having criminal jurisdiction in a proceeding arising out of a criminal offense as follows:

(a) upon filing with the clerk of courts in the District in which the hospital is located a written certificate by the doctor in charge that such patient is considered to be recovered, and airmailing a copy of this certificate, postage prepaid, to the clerk of courts of the District from which the patient was committed, if he was committed in another District.

(b) upon filing with the clerk of courts of the Districts in which the hospital is located a written certificate by the doctor in charge that such patient, while not recovered, is considered in remission and is not deemed dangerous to himself or others and is not likely to become a public charge, and airmailing a copy of this certificate, postage prepaid, to the clerk of courts of the District from which the patient was committed, if he was committed in another District.

(c) upon transfer of such patient to an institution for care of mental cases outside of the Trust Territory.

(3) *Temporary leave of absence.* The doctor in charge of any hospital for the insane in the Trust Territory may permit leave of absence for a stated period to any of his hospital patients, under conditions that are satisfactory to the doctor, when in his judgment absence on leave will not be detrimental to the public welfare and will be of benefit to such patient. The doctor in charge of the hospital for the insane from which a patient is absent on leave may, even before the period stated in the leave has expired, terminate the leave and authorize and direct the physical return of such patient to the hospital whenever in the judgment of the doctor the return of the patient would be in the best interest of the public and the patient.

(4) *By person in charge of one committed for observation.* The person to whom or the person in charge of the institution to which a person has been temporarily committed for observation under this code may release such a patient whenever the person to whom or the person in charge of the institution to which the patient has been temporarily committed, deems such release is safe.

Source: TT Code 1966 § 333; TT Code 1970, 63 TTC 405; TT Code 1980, 63 TTC 405.

§ 1806. Commitment of incompetents—Apprehension of absentees or escapes.

Any patient who has been committed under this chapter who is absent on leave, or on parole, or escapes from the hospital or other place of detention to which he has been committed may upon direction of the person in charge of such hospital or place of detention be returned thereto by any policeman, or any official, or employee of such hospital or place of detention, using such force as may be reasonably necessary to effect such return.

Source: TT Code 1966 § 334; TT Code 1970, 63 TTC 406; TT Code 1980, 63 TTC 406.

Cross-reference: The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at http://www.fsmsupremecourt.org/.