CUSTOM AND TRADITION

A customary privilege to enter one's cousin's house cannot be exercised by pounding on the walls of the house at two a.m. until a hole for entry is created and shouting threats at the occupants. FSM v. Boaz (I), 1 FSM R. 22, 26 (Pon. 1981).

The fact that one may have a general customary privilege to enter property does not necessarily mean that the privilege may be exercised at all times and in every conceivable manner. FSM v. Ruben, 1 FSM R. 34, 39 (Truk 1981).

Familial relationships are at the core of Micronesian society and are the source of numerous rights and obligations which influence practically every aspect of the lives of individual Micronesians. FSM v. Ruben, 1 FSM R. 34, 40 (Truk 1981).

Familial relationships are an important segment, perhaps the most important component, of the custom and tradition referred to generally in the Constitution, FSM Const. art. V, art. XI, § 11, and more specifically in the National Criminal Code, 11 F.S.M.C. 108, 1003. FSM v. Ruben, 1 FSM R. 34, 40 (Truk 1981).

While the court may find that a criminal defendant's conduct did not violate the criminal law and the defendant owes no debt to society in general, this does not suggest that the defendant has necessarily fulfilled all customary obligations he may owe to a relative who was the victim of his actions. FSM v. Ruben, 1 FSM R. 34, 41 (Truk 1981).

The court is willing to assume that the homeowner whose wife's brother is seeking to enter the house by force late at night in a threatening manner should as a matter of customary law go lightly and use less force than he might to expel some other intruder. FSM v. Ruben, 1 FSM R. 34, 41 (Truk 1981).

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

Under appropriate circumstances, customary law may assume importance equal to or greater than particular written provisions in the National Criminal Code. 11 F.S.M.C. 108. FSM v. Mudong, 1 FSM R. 135, 139-40 (Pon. 1982).

Customary law is placed in neither an overriding nor inferior position by the FSM Constitution and statutes. FSM v. Mudong, 1 FSM R. 135, 139 (Pon. 1982).

Customary settlements do not require court dismissal of court proceedings if no exceptional circumstances are shown. FSM v. Mudong, 1 FSM R. 135, 140 (Pon. 1982).

The FSM Supreme Court is required by the National Criminal Code to recognize generally accepted customs and to determine the applicability and effect of customary law in a criminal case; it is not authorized to develop new customary law. 11 F.S.M.C. 108. FSM v. Mudong, 1 FSM R. 135, 140, 146-47 (Pon. 1982).

The prosecutor does not have authority to dismiss an existing prosecution on the basis of

customary law, but the court does have power to respond to a prosecutorial suggestion for dismissal because of customary considerations. FSM v. Mudong, 1 FSM R. 135, 141 (Pon. 1982).

The burden of proof is on a defendant to establish effect of customary law; the effect of customary apology ceremony on court proceedings is not self-evident. 11 F.S.M.C. 108(3). FSM v. Mudong, 1 FSM R. 135, 141-43.

Customary law and the constitutional legal system perform different roles; they may mutually support each other. Neither system controls the other. FSM v. Mudong, 1 FSM R. 135, 145 (Kos. 1982).

Custom is more properly considered during sentencing than at other stages of a criminal prosecution. FSM v. Mudong, 1 FSM R. 135, 147-48 (Pon. 1982).

The constitutional government seeks not to override custom but to work in cooperation with the traditional system in an atmosphere of mutual respect. In re Iriarte (II), 1 FSM R. 255, 271 (Pon. 1982).

When no custom is established by a preponderance of the evidence that the vile phrases used are sufficient provocation for a serious attack on the speaker, that alleged custom will not be considered in determining the criminal culpability of the person who attacks the one who has used vile phrases. FSM v. Raitoun, 1 FSM R. 589, 591-92 (Truk 1984).

The Major Crimes Clause, with its admonition to Congress to have due regard for local custom and tradition, unmistakably reflects awareness of the framers that Congress would be empowered under this clause to regulate crimes that would require consideration of local custom and tradition. Tammow v. FSM, 2 FSM R. 53, 57 (App. 1985).

Even where the parties have not asserted that any principle of custom or tradition applies, the court has an obligation of its own to consider custom and tradition. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 140 (Pon. 1985).

Where the business activities which gave rise to the lawsuit are not of a local or traditional nature, and the work setting and the work itself are of a markedly non-local, international character, the court need not conduct an intense search for applicable customary laws and traditional rules when none have been brought to its attention by the parties. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 140 (Pon. 1985).

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).

Defendants are not within the coverage of FSM Constitution article V, section 1, preserving "the role or function of a traditional leader as recognized by custom and tradition," simply by virtue of their status as municipal police officers. Teruo v. FSM, 2 FSM R. 167, 172 (App. 1986).

Whether interference with the efforts of a non-FSM citizen engaged in business within the Federated States of Micronesia is an abuse of process is not an issue which may be resolved

by reference to traditional or customary principles. Mailo v. Twum-Barimah, 2 FSM R. 265, 268 (Pon. 1986).

An agreement between the FSM National Government and operators of a United States fishing vessel in an attempt to terminate court proceedings, is not the kind of matter that historically came within principles of custom and tradition. FSM v. Ocean Pearl, 3 FSM R. 87, 91 (Pon. 1987).

In a case of first impression concerning national employment contracts, when no party points to applicable customary principles of law or traditional values, the FSM Supreme Court looks to the common law in other jurisdictions to assist in developing legal principles suitable for Micronesia. Falcam v. FSM Postal Serv., 3 FSM R. 112, 120 (Pon. 1987).

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).

Sentencing courts are not free to bar from consideration beatings that were grounded upon, or were products of custom and tradition when considering sentencing, and failure to consider the customary implications of those beatings violates not only the implicit statutory requirement of individualized sentencing, but also mandate of 11 F.S.M.C. 1003, enacted pursuant to article V, section 2 of the Constitution, as well as the judicial guidance clause. Tammed v. FSM, 4 FSM R. 266, 278 (App. 1990).

The duty of a national court justice to give full and careful consideration to a request to consider a particular customary practice or value in arriving at a decision requires careful investigation of the nature and customary effect of the specific practice at issue, a serious effort to reconcile the custom and tradition with other constitutional requirements, and an individualized decision as to whether the specific custom or tradition should be given effect in the particular contexts of the case before the court. Tammed v. FSM, 4 FSM R. 266, 279 (App. 1990).

When a trial court is asked to give special mitigative effect to customary punishment during its sentencing proceedings, the court must first consider whether these customary activities have become so imbued with official state action so that the actions of the assailants are seen as actions of the state itself; if so the punishments must be tested by the same standards that would be applied if state officials carried out these punishments directly. Tammed v. FSM, 4 FSM R. 266, 283 (App. 1990).

The judicial guidance clause prohibits a sentencing court from giving special effect to customary beatings administered to the defendant, unless the court finds that such recognition would be consistent with the protections guaranteed to individuals by the Declaration of Rights. Tammed v. FSM, 4 FSM R. 266, 284 (App. 1990).

Congress has no power to specify voting requirements for the Constitutional Convention and therefore any attempt to exercise this power so as to uphold tradition is also outside the powers of Congress under article V, section 2 of the Constitution, which is not an independent source of congressional power but which merely confirms the power of Congress, in exercising

national legislative powers, to make special provisions for Micronesian tradition. Constitutional Convention 1990 v. President, 4 FSM R. 320, 328 (App. 1990).

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 Federated States of Micronesia. 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).

Determining the relevancy of custom in carrying out the mandate of article XI, section 11 of the FSM Constitution must proceed on a case-by-case basis. Wito Clan v. United Church of Christ, 6 FSM R. 129, 132 (App. 1993).

Where entitlement to customary relief has been proven and the means to execute such a remedy are within the trial court's authority and discretion, the trial court should as a matter of equity and constitutional duty grant the relief. Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

FSM courts must consider customary law where relevant to a decision, but it is not error for a court to consider custom and find that it is not relevant to its decision because a Certificate of Title had been issued for the land. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 50 (App. 1995).

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

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

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

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

Micronesian custom, and the constitutional legal system established by the people of the FSM, flow from differing (not necessarily inconsistent) premises and purposes. These two

systems, then, can be seen as supplementary and complementary, not contradictory. Each has a valuable role to perform, independent of the other. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

One of our courts' express functions is to apply and interpret the duly enacted and promulgated laws and regulations which lie at the heart of a dispute. Our court system exists to speak to the very issues to which Pohnpeian custom and tradition are silent. In this way, the two systems complement each other. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

Allowing a contribution claim between parties who are relatives, and who are equally liable under a duly promulgated regulation for a corporation's debts, is consistent with the customary principle that relatives should assist one another. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

A contention that custom and tradition as a procedural device may prevent an equitable claim for contribution based on violation of a regulation governing the formation of corporations is an insufficient defense as a matter of law. Senda v. Semes, 8 FSM R. 484, 499 (Pon. 1998).

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

The FSM Constitution requires court decisions be consistent with Micronesian customs and traditions, and provides that the FSM Congress may enact statutes to protect the traditions of the people of the FSM. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

The filing of the appeal over land was not a breach of the defendant's condition and was not a breach of a customary settlement when the appeal was filed before the customary settlement and condition were made; and when the appeal was not decided in the defendant's favor, the defendant's condition regarding his promised grant of a portion of land was satisfied and the customary settlement and the defendant's promise were therefore enforceable. Robert v. Semuda, 11 FSM R. 165, 168 (Kos. S. Ct. Tr. 2002).

Customary and traditional use rights to an island are a form of property right. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

Since the FSM people's traditions may be protected by statute and if challenged as violative of the fundamental rights in Article IV, protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action, Kosrae may pass a law which protects the Kosraean people's traditions. Kosrae v. Waguk, 11 FSM R. 388, 390 (Kos. S. Ct. Tr. 2003).

Reconciliation is not a basis for dismissal of a criminal information. The law of our nation in this regard is clear. Custom, including customary apology and reconciliation, is to be considered during the sentencing of a criminal prosecution. Kosrae v. Nena, 12 FSM R. 20, 22 (Kos. S. Ct. Tr. 2003).

While the doctrine of unjust enrichment has not been explicitly discussed or adopted, Pohnpei state law and Micronesian custom and tradition dictate that a party who has benefitted

unjustly from another should, under certain circumstances, be made to repay that benefit. Fonoton Municipality v. Ponape Island Transp. Co., 12 FSM R. 337, 346 (Pon. 2004).

Custom, including customary apology and reconciliation, is to be considered during the sentencing of a criminal prosecution, but when there was no customary reconciliation reached among the defendant and the victims, there is no consideration of this factor for sentencing. Kosrae v. Kilafwakun, 13 FSM R. 368, 369 (Kos. S. Ct. Tr. 2005).

An obligation to give aid to someone in need does not mean that it may be done in an illegal manner. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 22 & n.7 (App. 2006).

When the defendant argued that the court should recognize custom regarding the relationship between him and the victim, but did not present any evidence of the relationship between victim and him, and did not present any evidence of custom, specifically evidence that due to the relationship between victim and the defendant, it would be customary for the defendant to show up drunk at a relative's home and commit a battery upon the relative, the court may not utilize tradition in reaching a decision because it has not received satisfactory evidence of the tradition. When a defendant has not provided any evidence of custom or tradition, it cannot be considered. Kosrae v. Tilfas, 14 FSM R. 27, 30-31 (Kos. S. Ct. Tr. 2006).

Customary business practice is distinguished from customary law, that is, from the "custom and tradition" enshrined in the Constitution. Amayo v. MJ Co., 14 FSM R. 487, 489 (Pon. 2006).

Parties who proffer custom as a basis for a claim must prove the relevant custom by a preponderance of the evidence. Narruhn v. Aisek, 16 FSM R. 236, 240 (App. 2009).

There is a general deference to local officials' knowledge of local customs. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

While the ultimate burden of persuasion remains with the government, a defendant, asserting an affirmative defense, has some burden of proof or of going forward with sufficient evidence to raise the defense as an issue at trial. When custom is raised, it is usually more properly considered during sentencing than at other stages of a criminal prosecution. FSM v. Aliven, 16 FSM R. 520, 534 (Chk. 2009).

A defendant's motion to dismiss on the ground of custom will be denied, but he will be free to present evidence at trial concerning his defense(s), if applicable. FSM v. Aliven, 16 FSM R. 520, 534 (Chk. 2009).

Custom does not divest Congress of its power to regulate shipping and commerce or render the limitation of liability statute, 19 F.S.M.C. 1101-1108, unconstitutional. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 538 (Yap 2013).

Before the establishment of the FSM constitutional government, customary law was inferior in legal status to written law promulgated by the administering authority, or any official or legislative body, which often disregarded, or considered void, any custom or customary law in conflict with written law, but under FSM law, customary law is not placed in an exalted or overriding posture under the FSM Constitution and statues, but neither is it relegated to its previous inferior status. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641 (Pon. 2016).

The FSM Supreme Court is indisputably charged with the duty of considering customary law when relevant to a decision since the constitutional government works not to override custom, but to work in cooperation with the traditional system in an atmosphere of mutual respect. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

While Trust Territory High Court opinions are not binding precedent on the FSM Supreme Court, they serve as useful advisory precedent, especially considering they contain important information regarding the customs and traditions of the people of Micronesia. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 n.2 (Pon. 2016).

Custom is a law established by long usage and is by common consent and uniform practice so that it becomes the law of the place, or of the subject matter, to which it relates. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

It is only when a local custom is firmly established and generally known and been peacefully and fairly uniformly acquiesced in by those whose rights would naturally be affected that it will be judicially noticed by the court. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

When there is a dispute about the existence or effect of a local custom, and the court is not satisfied about either its existence or its applicability, such custom becomes a mixed question of law and fact, and the party relying upon it must prove it to the court's satisfaction. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642-43 (Pon. 2016).

Rare is the case where the court benefits from clear, uncontradicted evidence of custom on point in a given matter presented by knowledgeable authorities. The great difficulty in applying custom is that unlike other sources of law, it is uncodified. Custom is revealed through human practice and oral description, and owing to the diversity of cultures and languages in the FSM, the court must rely almost entirely on witness testimony to elucidate particular customs and traditions. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

Under the FSM Constitution's Judicial Guidance Clause, the FSM Supreme Court's decisions must be consistent with, *inter alia*, Micronesian customs and traditions. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

– Chuuk

In Trukese society, the husband, as the head of the household, is responsible for taking care of the family legal matters such as signing of documents, and overseeing all family financial matters. O'Sonis v. Truk, 3 FSM R. 516, 518 (Truk S. Ct. Tr. 1988).

Either the husband or the wife may prosecute or defend a civil action in which one or both are parties, provided that he or she has informed his or her spouse of the representation. O'Sonis v. Truk, 3 FSM R. 516, 518 (Truk S. Ct. Tr. 1988).

Even when the parties have not raised an issue of custom or tradition, the court has an obligation of its own to consider custom and tradition. O'Sonis v. Truk, 3 FSM R. 516, 518 (Truk S. Ct. Tr. 1988).

Since the judicial system and customary settlement in Truk are fundamentally different and serve different goals, the primary concern of customary settlement being community harmony rather than compensation for loss, the use of one should not prevent the use of the other. Suka v. Truk, 4 FSM R. 123, 128 (Truk S. Ct. Tr. 1989).

Offers or acceptances of customary settlement should neither be used in court to prove liability on the part of the wrongdoer, nor be deemed the same as a legal release on the part of the plaintiff. Suka v. Truk, 4 FSM R. 123, 129 (Truk S. Ct. Tr. 1989).

To the extent that customary settlements are given any binding effect at all, they should be only binding as to those persons that are part of custom; state agencies and non-Trukese persons are not part of that system. Suka v. Truk, 4 FSM R. 123, 129 (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).

The traditional remedy for the original landowners in an "ammot" transaction when the grantee no longer used the land for the purpose for which it was given was repossession of the land and nothing more. Wito Clan v. United Church of Christ, 6 FSM R. 129, 134 (App. 1993).

Patrilineal descendants – or *afokur* – have no rights to lineage land in Chuuk. They only enjoy permissive rights of usage from the members of the lineage. Mere usage of lineage land by *afokur* does not constitute title of any sort even if the usage lasts a lifetime. Transfer of lineage land to any descendants of male members requires the clear agreement of the Clan. Chipuelong v. Chuuk, 6 FSM R. 188, 196 (Chk. S. Ct. Tr. 1993).

It is an established principle of Chuukese land tenure, that lineage land is owned by the matrilineal descendants and not by the patrilineal descendants or "afokur." Chipuelong v. Chuuk, 6 FSM R. 188, 197 (Chk. S. Ct. Tr. 1993).

The people of Chuuk have always considered themselves to have rights and ownership of the tidelands, and thereby hold the property rights in them, throughout all of the several foreign administrations. These traditional and customary claims came down from time immemorial. Nimeisa v. Department of Public Works, 6 FSM R. 205, 208 (Chk. S. Ct. Tr. 1993).

The sanction imposed on one who controls and manages the land of a group who does not fairly and according to custom concern himself with the rights of the other members or another member of the group is the censure of the community. In re Estate of Hartman, 6 FSM R. 326, 328 (Chk. 1994).

When the children of a landowner with full title to land inherit the land they form a land-owning group ("corporation"). The senior male, the *mwääniichi*, is required to manage the property in the interest of the "corporation." The corporation owns the land even if one part or another is allotted to a member for his use. In re Estate of Hartman, 6 FSM R. 326, 329 (Chk. 1994).

Individuals have full title to the improvements (as distinguished from the soil) made upon land owned by a land-owning group or "corporation." In re Estate of Hartman, 6 FSM R. 326,

330 (Chk. 1994).

The property owned in full title by one who dies is inherited by the children of the deceased. Personal property suited for use by women is inherited by daughters and sisters. In re Estate of Hartman, 6 FSM R. 326, 330 (Chk. 1994).

A court should not order a traditional apology, compensation, and settlement when none has been offered voluntarily because traditional settlements are customarily non-adversarial and arrived at without outside coercion and court decisions must be consistent with custom. Alafonso v. Sarep, 7 FSM R. 288, 290-91 (Chk. S. Ct. Tr. 1995).

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

A court's finding of guilt and sentencing would not render illegal, or prevent, customary forgiveness of the defendant by the victim's family or clan. Whatever the court does, customary settlement may remain desirable to resolve lingering hostility and disputes between the families. Chuuk v. Sound, 8 FSM R. 577, 579 (Chk. S. Ct. Tr. 1998).

A customary forgiveness ceremony resolving disputes among families or clans may not prevent the court system from determining the individual guilt of the defendant and considering whether societal notions of justice and the need to uphold law and order require fining, imprisonment or other restriction of the defendant's freedom. Chuuk v. Sound, 8 FSM R. 577, 579 (Chk. S. Ct. Tr. 1998).

Because the trend of the application of customary settlements in the criminal justice system, is its use as excuse, justification or mitigation during the imposition of sentence after conviction for a crime and not as an element of guilt or the dismissal of an information and complaint charging a criminal offense, a motion for dismissal of a major criminal charge on the grounds that a customary settlement has been reached will be denied. Chuuk v. Sound, 8 FSM R. 577, 579-80 (Chk. S. Ct. Tr. 1998).

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

When tidelands were never properly divided during the father's lifetime, the logical conclusion is that those tidelands remain lineage or family property according to Chuukese tradition and custom and cannot be transferred without the consent of all male adults of the lineage, subject only to the traditional rights of afokur as consented to. Lukas v. Stanley, 10 FSM R. 365, 366 (Chk. S. Ct. Tr. 2001).

Under Chuukese custom and tradition the oldest sister may have the authority in family and lineage matters to sign for younger family members, but the youngest sister does not have the authority, under custom and tradition, to sign for the older ones. Stephen v. Chuuk, 11 FSM R. 36, 44 (Chk. S. Ct. Tr. 2002).

An *afokur*'s rights to lineage land are permissive use rights only. Marcus v. Truk Trading Corp., 11 FSM R. 152, 159 (Chk. 2002).

The consent of all adult members of the lineage is needed to sell lineage land. Marcus v. Truk Trading Corp., 11 FSM R. 152, 159 (Chk. 2002).

It would seem that for a long-term land lease (especially one that could last two or three or more generations) the level of lineage members' consent needed should be equivalent to that needed for a sale. Marcus v. Truk Trading Corp., 11 FSM R. 152, 160 (Chk. 2002).

An entity, such as a corporation, which must act through agents or representatives, can, by its conduct, ratify an unauthorized agreement. A lineage or a clan is a similar entity in that it is recognized by courts in Chuuk as a personable entity – a entity capable of suing and being sued and of entering into contracts. This parallels and recognizes the clan's or lineage's position under custom and tradition in which the clan or lineage is an entity capable of owning, acquiring, and alienating land. Marcus v. Truk Trading Corp., 11 FSM R. 152, 160 (Chk. 2002).

A clan or lineage in some respects functions as a corporation – it is, or can be, composed of many members, but is considered a single legal entity, capable of owning land, suing and being sued, and performing other acts, and which must necessarily act through its representatives. In this respect a corporation and a clan or lineage are analogous. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Generally, any ratification of an unauthorized agreement must be in its entirety because an entity cannot accept the benefits of an unauthorized act, but reject its burdens. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

When a lineage as a whole has accepted all of the benefits of a lease – all of the payments that the lessee was required to make – up to the present and even beyond, it cannot now reject the burden of the lessee exercising its options to renew. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Distribution of benefits within a lineage is an internal lineage matter. Courts generally will not involve themselves in a lineage's internal affairs. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Community censure is the sanction imposed on one who controls and manages the land of a group who does not fairly and according to custom concern himself with the rights of other members or another member of the group. That is not a sanction that a court can order or relief that a court could grant. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

The court is unaware of any tradition or custom within Chuukese society for a child, or even an adult, to carry the last name of his or her step-father or step-mother, and finds and concludes that no such tradition or custom exists. In re Suda, 11 FSM R. 564, 566 (Chk. S. Ct. Tr. 2003).

Acheche is traditionally a gift of land at the time of the birth of the first son so there could not have been any acheche of the land later because the transfer would have had to have taken place when the son was born. In re Lot No. 014-A-21, 11 FSM R. 582, 593 (Chk. S. Ct. Tr. 2003).

When the project control document did not say otherwise, the community halls

contemplated by the Uman Social Project project control document are the customary and traditional community hall (an *wuut* or *uut*) found in Uman (and throughout the Southern Namoneas and Chuuk Lagoon) because this is the meaning of the term community hall (*wuut* or *uut*) as understood by the defendants, who are all from the Southern Namoneas and because is this is not only the only logical conclusion to draw under the circumstances, this result is mandated by the Judicial Guidance Clause, which requires all judicial decisions to be consistent with custom and tradition. FSM v. Este, 12 FSM R. 476, 481 (Chk. 2004).

It is generally recognized that in order to sell lineage land in Chuuk, lineage heads need the lineage members' consent. Nakamura v. Moen Municipality, 15 FSM R. 213, 218 (Chk. S. Ct. App. 2007).

A lineage is an entity similar to a corporation in that it is recognized by courts in Chuuk as a personable entity – a entity capable of suing and being sued and of entering into contracts. This parallels the lineage's position under Chuukese custom and tradition in which a lineage is an entity capable of owning, acquiring, and alienating land. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

It is possible for an agreement not authorized by all lineage members to be ratified by the later conduct of those who did not authorize it. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

Lineage members' consent or acquiesce to the sale of lineage land can be shown by affirmative assent, or an acquiescence, or by ratification of the act. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

Under Mortlockese custom, a person would be considered related to his relative's stepson, but the added generation that results from his relative being another's step-grandmother – as opposed to his step-mother – cuts off the relationship under Mortlockese custom so that in actual fact a person is not considered related to the other. In such circumstances, a judge would not need to disqualify himself since he lacks a relationship to the other. Berman v. Rosario, 15 FSM R. 337, 339 n.1 (Pon. 2007).

A traditional gift of *nechop* is a Chuukese custom through which someone gives property to another in gratitude for care giving. Narruhn v. Aisek, 16 FSM R. 236, 240 (App. 2009).

When the testimony on *nechop* is sufficient to establish that it existed as a custom and that, when employed, it operated to disrupt the status quo of matrilineal descent, the trial court did not ignore the established custom of Chuukese matrilineal descent in accepting that a *nechop* took place since it was proven by a preponderance of the evidence that the *nechop* took place. Narruhn v. Aisek, 16 FSM R. 236, 242 (App. 2009).

Proof of the existence of a custom is a factual issue. The burden is therefore on the proponents to prove by a preponderance of the evidence that achemwir is a custom practiced in Chuuk, and they have the further burden of proving that the requirements of the custom were met. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

To prove an achemwir adoption, the consent of the adoptive lineage's members must be proven. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

Consent of lineage members, if not given contemporaneously, may, at least in some contexts, be shown by evidence of ratification through the lineage members' later conduct. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

When Epen Inong brought Yosko Epen to live among members of his lineage, but his lineage members did not treat her as a lineage member since she did not participate in lineage member meetings and decision-making and since she was referred to as Epen Inong's daughter and not as a "sister" as would be proper if she had been a lineage member through an achemwir adoption, there is no admitted evidence showing that the lineage members, by their subsequent conduct, consented to or ratified an achemwir adoption of Yosko Epen. Peter v. Jessy, 17 FSM R. 163, 171-72 (Chk. S. Ct. App. 2010).

When the proponents did not present any evidence or argument to support their contention that achemwir doesn't require lineage member consent or to otherwise impeach the testimony of their own expert to that effect and when they had ample opportunity, at the trial level, to raise any issues regarding achemwir's requirements and their own expert witness presented evidence that the trial court found credible, and which clearly articulated its requirements including the lineage member consent requirement, they failed to meet their burden of proof to show otherwise at trial. The appellate court will not, therefore, entertain a new theory regarding achemwir's requirements. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Lineage rights descend through the female lineage members and that patrilineal descendants, as afokur, have only permissive use rights in lineage land. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Once all the lineage members died, the intervener, as an afokur to the lineage ceased having even permissive rights to lineage lands because once the lineage was extinct, all lineage rights ceased. The lands were then validly acquired by another person and her descendants, not as lineage members, but as heirs. Peter v. Jessy, 17 FSM R. 163, 175-76 (Chk. S. Ct. App. 2010).

Under Chuukese custom, children are expected to and do in fact contribute to support of their parents. If they are not married and are employed they give larger amounts than when they have a family of their own, but the support in some amount will continue, in a normal relationship, as long as the parents live. Whether there is an obligation under the custom to support parents or other members of the family, largely depending on their need, does not affect the next of kin's entitlement to damages for pecuniary loss. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

If a decedent had been married, this would not eliminate parental support under custom, nor would it relieve the wrongdoer under the wrongful death statute. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

Since there is no indication that parental support has ceased to be the custom in Chuuk and since parents are undoubtedly "other next of kin" under the Chuuk wrongful death statute, parents of adult children, consistent with custom, are included within the single class of persons entitled to recover in a wrongful death action even when there are other members (surviving spouse and children) of the class present. But even when a plaintiff is within the class of persons who may benefit from a wrongful death action, that plaintiff still must prove pecuniary

damages in order for a money judgment to be awarded, and, of course, the plaintiff must also prove the other elements of a wrongful death cause of action. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

Traditionally, when someone no longer had the right to reside on another's land, he would be allowed to dismantle the house he had built and take the materials to rebuild somewhere else because he owned the building materials. This is usually not feasible with modern houses. Killion v. Nero, 18 FSM R. 381, 385 n.3 (Chk. S. Ct. Tr. 2012).

Chuukese custom generally follows the rule that a person who makes improvements on property has full title to these improvements even though he does not hold title to the property on which they are made. Killion v. Nero, 18 FSM R. 381, 385 n.4 (Chk. S. Ct. Tr. 2012).

– Kosrae

When the land commission concludes that a traditional gift of land, a "kewosr," has been made, but is unable to determine who made the gift, and when, and does not explain any details about the customary gift sufficient to explain how it has determined that a kewosr was made, the opinion does not reflect proper resolution of the legal issues or reasonable assessment of the evidence and therefore must be set aside. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 395, 402 (Kos. S. Ct. Tr. 1988).

Pursuant to the Kosrae State Code, the court cannot consider tradition unless satisfactory evidence of it is introduced. Kosrae Code 6.303. Seymour v. Kosrae, 3 FSM R. 537, 540 (Kos. S. Ct. Tr. 1988).

Because farming of short term crops, such as sugar cane, on someone else's land is not uncommon in Kosrae, the fruits of such farming are considered the personal property of the person planting them. Kosrae v. Tolenoa, 4 FSM R. 201, 204 (Kos. S. Ct. Tr. 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).

Until proven contrary to Kosraean custom the Kosrae State Court will entertain actions for negligence as tort liability for negligence is consistent with Micronesian culture. Nena v. Kosrae, 5 FSM R. 417, 420 (Kos. S. Ct. Tr. 1990).

On Kosrae, *usru* is a gift of land by a parent to one's children, and *kewosr* is an outright gift of land from a man to a favored lover. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 36 (Kos. S. Ct. Tr. 1997).

Under Kosraen custom one does not openly declare that a *kewosr* has taken place, but simply acts, with a witness present, in a certain fashion. A *kewosr* is a secret way of giving land that only the man and woman involved know about. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 36 (Kos. S. Ct. Tr. 1997).

Although transfer of land by *kewosr* fell out of favor after the arrival of Christianity on

Kosrae, *kewosr* did continue afterward. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 37 (Kos. S. Ct. Tr. 1997).

Under the Kosrae Code, a court cannot consider tradition unless satisfactory evidence of tradition is introduced. Nelson v. Kosrae, 8 FSM R. 397, 406 (App. 1998).

The Kosrae Constitution provides that the state government protect the state's traditions as the public interest may require. Anton v. Heirs of Shrew, 10 FSM R. 162, 165 (Kos. S. Ct. Tr. 2001).

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

Kosrae customary practice is to hold wedding ceremonies at a church or at the home of the bride or groom. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

The burden of proving custom and tradition relies on the party asserting its effect. When both parties were specifically given the opportunity to offer such evidence, but neither party took that opportunity, the court correctly concluded that no Kosraean customary transfer or acquisition of land could be considered because no party offered evidence. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 298-99 (Kos. S. Ct. Tr. 2007).

Kosrae State Code § 6.303 prohibits the trial court's application of custom and tradition unless there is satisfactory evidence of the tradition or custom. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

When the appellees' general right to enter the land to tend to existing burial sites is established by the undisputed facts but the same cannot be said of the ten-foot buffer zone that was ordered to be maintained around the exiting burial sites since the trial court did not elaborate as to the exact operation of this "perimeter"; when the undisputed facts which establish the right of way do not support such a precisely defined area being designated; when the case relied upon by the trial court is factually distinguishable and does not alone justify the trial court's mandate of such a large buffer zone; and when the invocation of custom remains as the only basis for the trial court's order but the trial court was not provided supporting evidence of a custom or tradition involving such a specifically demarcated perimeter around burial sites, this single issue will be remanded to the trial court with instructions to strike the portion of its order that provides a 10-foot perimeter around the existing burial sites. The trial court may then receive supporting evidence of custom or tradition about the size of perimeters around graves and thereafter may enter an amended order based upon its findings. Akinaga v. Heirs of Mike, 15 FSM R. 391, 399 (App. 2007).

In resolving a land claim, it is irrelevant whether *kewosr* is a legally-recognized tradition with the force of law today when the *kewosr* land transfer at issue occurred about 1912. The relevant question would thus be whether *kewosr* was a tradition when the *kewosr* occurred. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375 (Kos. S. Ct. Tr. 2009).

Since the Land Court's jurisdiction includes all matters concerning the title to land and any interests therein, that would necessarily include whether *kewosr* was a tradition affecting land tenure when the alleged transfer took place and whether a *kewosr* did in fact occur. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375 (Kos. S. Ct. Tr. 2009).

– Pohnpei

The court must try to apply the Court Rules of Civil Procedure in a way that is consistent with local customary practice. Hadley v. Board of Trustees, 3 FSM R. 14, 16 (Pon. S. Ct. Tr. 1985).

Judicial decisions, including interpretations of rules of civil procedure, should be consistent with the Constitution and with the Pohnpeian concept of justice. Hadley v. Board of Trustees, 3 FSM R. 14, 16 (Pon. S. Ct. Tr. 1985).

The Pohnpeian custom of "Ke pwurohng omw mwur," according to which one reaps the fruit of one's misdeed, requires the lessor to bear the consequences of his failure to repossess the rented vehicle from the lessee. Phillip v. Aldis, 3 FSM R. 33, 38 (Pon. S. Ct. Tr. 1987).

Customary law takes precedence over the common law, according to Pon. Const. art. 5, § 1; 1 TTC 103; 1 F.S.M.C. 203. Phillip v. Aldis, 3 FSM R. 33, 38 (Pon. S. Ct. Tr. 1987).

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

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 Products, Inc., 3 FSM R. 57, 67 (Pon. S. Ct. Tr. 1986).

According to the Pohnpeian view of civil wrongs, if one damages another's property, he must repair or replace it; if one injures another person, he must apologize and provide assistance to the injured person and his family; if one kills another person, he must provide the assistance that the victim would have provided and may have to offer another person to take the place of victim in his family. Koike v. Ponape Rock Products, Inc., 3 FSM R. 57, 70-71 (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 Products, Inc., 3 FSM R. 57, 74 (Pon. S. Ct. Tr. 1986).

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).

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).

The Pohnpei court system has to be extra cautious applying the foreignly developed concepts of criminal justice into its own, so that in adopting or applying such concepts it does so without doing injustice to Pohnpeian culture and traditional values. Pohnpei v. Weilbacher, 5 FSM R. 431, 449 (Pon. S. Ct. Tr. 1992).

The Pohnpeian customary practice of quickly resolving conflict resulting from the commission of an act is closely related to, if not the counterpart of the Western concept of a speedy trial. Pohnpei v. Weilbacher, 5 FSM R. 431, 450 (Pon. S. Ct. Tr. 1992).

Should Pohnpeian custom and tradition not be determinative, the FSM Supreme Court will look to its earlier holding and decisions of United States courts for guidance as to relevant common law tort principles, and will evaluate the persuasiveness of the reasoning in these decisions against the background of pertinent aspects of Micronesian society and culture in Pohnpei. Mauricio v. Phoenix of Micronesia, Inc., 8 FSM R. 248, 253 (Pon. 1998).

Although under Pohnpeian custom it is inappropriate for a parent, or an individual who stands in the place of a parent, to see his daughter come home late at night with a boyfriend, it is not a corollary that that person is justified under custom in inflicting a battery on the boyfriend, or damaging car he is driving. Elymore v. Walter, 9 FSM R. 450, 456 (Pon. 2000).

When there was no evidence to suggest that a parent's customary privilege to discipline ran beyond the daughter to encompass her boyfriend as well, when there was no evidence to suggest that when the boyfriend dropped the daughter off he was threatening or in any other way posing a danger of physical harm to her such that the parent was entitled to inflict a battery upon the boyfriend in order to defend the daughter as he may have been obligated to do under custom, and when there was no evidence that under custom a parent could attack the car driven by the daughter's boyfriend with the baseball bat as a way of demonstrating his displeasure with the boyfriend for his role in keeping her out late, and in dropping her off under circumstances where he would see them together, Pohnpeian custom does not constitute a defense to either the battery or property damage claims. Elymore v. Walter, 9 FSM R. 450, 456 (Pon. 2000).

The people of Pohnpei's traditional and customary rights to freely navigate the reef, engage in subsistence fishing in that area, and control the use of and materials in that marine environment is recognized in 67 TTC 2(1)(e), in the FSM Constitution, and the Pohnpei Constitution. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

The construction of a multistory building using imported technology is not imbued with Pohnpeian custom and tradition so as to lend itself to an analysis in those terms. Amayo v. MJ Co., 10 FSM R. 371, 384 (Pon. 2001).

Customary law takes precedence over the common law. Louis v. FSM Social Sec. Admin.,

20 FSM R. 268, 272 n.3 (Pon. 2015).

Customary marriage is based on a flexible standard and is not established by a single test or a defined set of parameters because the solemnization of a customary marriage can take many forms. Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 273 (Pon. 2015).

In a civil case, the party advancing Pohnpeian customary practice or law must establish, by a preponderance of the evidence, the relevant custom and tradition. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 640 (Pon. 2016).

The court recognizes the customary and traditional rights of municipalities, clans, families, and individuals to control the use of, or material in, marine areas below the ordinary high watermark and otherwise engage in the harvesting of fish and other marine resources from reef areas, but any traditional and customary right to control the use of, or material in, marine areas below the ordinary high watermark is subject to, and limited by, the inherent rights of the Pohnpei Public Lands Trust as the owner of such marine areas. Accordingly, the Mwoalen Wahu does not have standing on the basis that there exists a customary law that gives the traditional leaders the right to control the use of marine areas in their respective municipalities. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641-42 & n.1 (Pon. 2016).

The Pohnpei Constitution provides protection for custom and tradition, and mandates that the Pohnpei government shall respect and protect the customs and traditions of Pohnpei. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

To the extent a claimed customary right is still in effect, the Mwoalen Wahu members have a legal right under the Pohnpei Constitution to institute legal proceedings in order to protect their constitutionally protected interests. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

In order to be protected by the Pohnpei Constitution, the customary law must still exist. Custom is a practice that by its common adoption and long, unvarying habit has come to have the force of law. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 642 (Pon. 2016).

The traditional and customary right of the Nahnmwarki of each established municipality of Pohnpei to receive offerings from their respective subjects is firmly established in history and still widely known and peacefully accepted by the citizens of Pohnpei, thereby making it a judicially noticeable fact. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

Even assuming *arguendo* that wide recognition and practice of the custom has disappeared so as to preclude judicial notice of its existence, testimony given by the Iso Nahnken of Nett provides a sufficient basis to conclude that the custom is still practiced today when he testified that the custom is still practiced and the defendants failed to sufficiently rebut that testimony and a conclusory argument to the contrary was not evidence. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 643 (Pon. 2016).

The custom that Mwoalen Wahu members receive from their constituents various marine life that inhabit Pohnpei waters, allegedly threatened by the proposed harvesting scheme, remains an active customary law. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R.

632, 643 (Pon. 2016).

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– Yap

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).

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).

Under Yap traditional rights and ownership of natural resources and marine areas inside the Yap fringing reef – the rights to use and exploit, to the exclusion of all others, the marine resources of particular areas of the submerged lands inside the fringing reef around Yap – stem from a concept called a *tabinaw*. A *tabinaw* entails rights, duties and obligations for its members, and includes families and households. But a *tabinaw* is more than a concept. A *tabinaw* includes an estate in identifiable land and specific areas within the Yap fringing reef within which a *tabinaw* member can exploit the marine resources. A *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*. Each village includes a number of *tabinaw*. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

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member can exploit the marine resources. A *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*. Each village includes a number of *tabinaw*. People of Gilman ex rel. Tamagken v. M/V Nationwide I, 16 FSM R. 34, 38 (Yap 2008).

The court can take judicial notice that the social configuration of the outer islands in the State of Yap differs significantly from the Yap main island (even the vernacular language is significantly different) since it is a fact not subject to reasonable dispute in that it is generally known within the trial court's territorial jurisdiction and since the court's decisions are required to be consistent with the social and geographic configuration of Micronesia. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267 (Yap 2012).

Tabinaw are a salient social feature of the main island of Yap, but may not be in Yap's outer islands or on Eauripik. Thus, the failure to mention *tabinaw* membership in the plaintiffs' proposed class definition may not make the class designation indefinite. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 262, 267 (Yap 2012).

CUSTOMS

All aircraft entering FSM ports of entry are subject to immigration inspection, customs inspections, agricultural inspections and quarantines, and other administrative inspections authorized by law. In Chuuk, the Chuuk International Airport is the only port of entry for aircraft. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

Customs officers have the right to examine all goods subject to customs control, and it is unlawful to import into the FSM any goods whose use, possession or import is prohibited or contrary to restrictions imposed by the FSM or the state into which the goods are imported. FSM v. Joseph, 9 FSM R. 66, 70 (Chk. 1999).

The Customs Act of 1996 gives the FSM the authority to investigate and perform post-audits of declared CIF values after the release of the goods. Ruben v. FSM, 15 FSM R. 508, 514 (Pon. 2008).

An importer has the responsibility of fully and accurately declaring the value of all dutiable goods. The amount of penalties for understating the value of the imported goods depends on who discovers the understatement and the timing of the discovery in relation to the release of the goods. If the FSM discovers the understatement before the release of the goods, a 100% penalty applies. A 100% penalty also applies if the importer or owner discovers and reports the understatement within 10 days of the release of the goods. A 200% penalty applies in all other cases of understatement. Ruben v. FSM, 15 FSM R. 508, 514 (Pon. 2008).

While the statute is not explicit, instances where a 200% penalty will apply include when the importer or owner discovers and reports the understatement more than 10 days after the release of the goods and when the FSM discovers the understatement anytime after the release of the goods. Ruben v. FSM, 15 FSM R. 508, 514 (Pon. 2008).

The FSM is within its statutory authority to conduct a post-audit investigation after the goods have been released. Ruben v. FSM, 15 FSM R. 508, 514 (Pon. 2008).

Appraisement is just one of the valuation methods set forth in Section 223; there are several

other preferred methods for arriving at an equivalent CIF price when the CIF price cannot be reasonably determined. For instance, an equivalent CIF price can be established through the value of identical goods at the CIF location. Only when all other preferable methods fail to render an equivalent CIF price does the statute permit the use of appraisement to arrive at the CIF price. Ruben v. FSM, 15 FSM R. 508, 516 (Pon. 2008).

Civil penalties and interest for understating the amount of duty due on imported goods cannot be avoided through lack of knowledge, however innocent the importer's lack of knowledge may be. Laxmi Enterprises v. FSM Dep't of Fin. & Admin., 21 FSM R. 601, 603 (Chk. 2018).

Unlike most goods, the customs duty for cigarettes is based on the number of cigarettes imported, not on the imported cigarettes' monetary value. Laxmi Enterprises v. FSM Dep't of Fin. & Admin., 21 FSM R. 601, 603 n.1 (Chk. 2018).

If an importer, correctly reporting the types, quantities, and values of the dutiable goods, were to prove that it was affirmatively misled by customs officials to understate the amount of duty due, it may have an equitable estoppel claim against the government. Laxmi Enterprises v. FSM Dep't of Fin. & Admin., 21 FSM R. 601, 603 (Chk. 2018).

A Customs officer has the right to examine all goods subject to Customs control, and among the goods subject to Customs control are all goods for export, from the time such goods are brought to any port, airport, or other place for export until their exportation to any country outside of the FSM. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

A facility that is not itself a port or airport, but is in close proximity to both the port and airport, can be considered an "other place for export" to the extent that it is a container yard – it stores packed containers ready for shipment abroad. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

A CY-CY container is a container in which all goods packed in it are for the one consignee and the container is consigned from one container yard to another container yard and will not normally be unpacked at the wharf. CY-CY containers are typically subjected to customs inspection, not on the wharf, but at a container yard. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

That an examination was not done by a customs officer, but by the national police, a different FSM law enforcement agency, but one that is tasked with the general enforcement of all FSM national law, instead of the narrow specialized area that customs officers are restricted to, should not invalidate the examination when it was one that was permissible for Customs officers to do. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

Ports, airports, and other places for export such as a container yard are functional equivalents of a border. Border searches and searches at the functional equivalent of a border are an exception to the warrant requirement of section 5 of the FSM Declaration of Rights. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).

The border search exception to the constitutional search warrant requirement applies equally to persons and goods leaving the country as it does to persons and goods entering the country. A border search, or a search at the functional equivalent of a border, of outgoing passengers or goods requires neither a warrant nor probable cause. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 461 (Pon. 2020).