DOMESTIC RELATIONS

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).

All persons, whether male or female, residing in the state of Pohnpei, who have attained the age of 18 years are regarded as of legal age and their period of minority to have ceased. Welson v. FSM Social Sec. Admin., 21 FSM R. 348, 351 n.1 (Pon. 2017).

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

The states generally have power over land law and other local issues including personal property law, inheritance law, and domestic law including marriage, divorce, and adoption. However, where the national government concurrently has the power to acquire title to land within the FSM under powers expressly delegated to it, and state law purports to restrict it, the state law must fail as applied to the national government. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 331-32 (Pon. 2019).

– Adoption

6 F.S.M.C. 1614 exempts adoptions effected in accordance with local custom from the domestic relations law of the FSM. 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).

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).

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).

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).

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).

A valid claim for Social Security benefits as an adopted child requires proof of adoption and of dependency of the adopted child on the wage earner. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Changed circumstances may require the adopted child to move away and to no longer be dependent on the adopted parent. In these situations, the child no longer depends on the wage earner for support, and the child would fall outside of Social Security's statutory scheme. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 368 (Pon. 2016).

Social Security has the regulatory authority to request additional proof of dependency and the claimant is required to submit such proof. Actual dependency upon the adoptive parent is a prerequisite for an adopted minor to receive surviving child Social Security benefits after the adoptive parent's death. Neth v. FSM Social Sec. Admin., 20 FSM R. 362, 370-71 (Pon. 2016).

A valid claim for adopted child benefits requires proof of adoption and of the adopted child's dependency on the wage earner. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

Social Security's statutory scheme is not unconstitutional, and the exercise of its investigatory functions, which would include the request for evidence of dependency in adoption matters, is lawful as long as it is authorized by law. Thus, Social Security regulations are not *ultra vires*. Miguel v. FSM Social Sec. Admin., 20 FSM R. 475, 479 (Pon. 2016).

A child who is dependent upon a person entitled to old age benefits or who was dependent upon an individual who died fully insured or currently insured, is entitled, upon filing an application, to a child's insurance benefit, but actual dependency upon the adoptive parent is a prerequisite for an adopted minor to receive surviving social security benefits after the adoptive parent's death. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 417 (App. 2018).

When an applicant was notified that evidence of dependency was lacking and did not apply to adduce additional evidence, the Board's findings as to the facts, if supported by competent, material and substantial evidence, are conclusive since there was no further evidence of dependency proffered. Thus, the trial court's grant of summary judgment in Social Security's favor was proper, since the applicant failed to adduce sufficient evidence of dependency, as required by statute. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 419 (App. 2018).

An adopted child applying for benefits under the FSM Social Security system must complete an application and show dependency on the insured. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 493 (Kos. 2018).

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Social Security has the regulatory authority to request additional proof of dependency and the claimant is required to submit such proof since actual dependency upon the adoptive parent is a prerequisite for an adopted minor to receive surviving child Social Security benefits after the adoptive parent's death. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 493-94 (Kos. 2018).

When the immunization records that listed the children's natural mothers did not support the benefits claim because it did not show the children's dependency on the adoptive parents; when no additional evidence was submitted after the hearing for the court to consider; and when the census records show the adopted children in the same household as the wage-earner adoptive parent and his daughters, the natural mothers, the court will remand the matter to the Board to determine whether the children were dependent on the wage-earner's disability payments; whether the children's mothers were employed at the time; and whether dependency would be presumed if the child lived with the adoptive parents. Robert v. FSM Social Sec. Admin., 21 FSM R. 490, 494-95 (Kos. 2018).

– Child Support and Custody

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).

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).

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).

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).

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).

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).

Factual determinations of a trial court, such as the appropriate size and period for an award of child support, will be overturned on appeal only if the findings of the trial court are clearly erroneous. Youngstrom v. Youngstrom, 7 FSM R. 34, 36 (App. 1995).

Citation to other cases is of limited assistance in framing an award for child support because a child support award is an inherently fact specific determination that must be made on a case by case basis. Youngstrom v. Youngstrom, 7 FSM R. 34, 37 (App. 1995).

The reciprocal child support enforcement provisions of chapter 17 of Title 6 of the FSM Code remain in effect as part of state law. Burke v. Torwal, 7 FSM R. 531, 534 (Pon. 1996).

A proceeding for enforcement in the FSM of a CNMI child support order is properly filed in state court by the state attorney general, not in national court by the FSM Attorney General. Burke v. Torwal, 7 FSM R. 531, 535-36 (Pon. 1996).

Although national law provides for the reciprocal enforcement of child support orders, case law supports the conclusion that FSM Supreme Court should abstain from exercising its

jurisdiction at least until the state court has had the opportunity to rule on the issues. Villazon v. Mafnas, 11 FSM R. 309, 310 (Pon. 2003).

Based on the traditional state jurisdiction over matters of domestic relations and on the applicable statutory provisions' language and history, a proceeding for enforcement of a foreign support order is properly commenced in the state court in which the defendant resides, rather than in the FSM Supreme Court and for the same reasons, these cases are properly prosecuted by the Pohnpei Attorney General's office, rather than by the FSM Attorney General's office. Villazon v. Mafnas, 11 FSM R. 309, 310-11 (Pon. 2003).

Pohnpei state law anticipates the prosecution of child support enforcement actions in foreign jurisdictions, and provides plaintiffs with a procedure and remedy that is identical to that which they would enjoy under the national code. Villazon v. Mafnas, 11 FSM R. 309, 311 (Pon. 2003).

A biological father whose paternity has been established owes his natural child a duty of support. Tolenoa v. Timothy, 11 FSM R. 485, 487 (Kos. S. Ct. Tr. 2003).

The interests of justice require an award of child support based upon the custom, tradition, prevailing economic status of Kosrae, the child's needs, the plaintiff's household status, and the defendant's earning capacity in Guam. Tolenoa v. Timothy, 11 FSM R. 485, 487 (Kos. S. Ct. Tr. 2003).

In domestic relations matters, the national court should abstain from exercising jurisdiction until the state court has had the opportunity to rule on the issues presented when it is a proceeding for enforcement of a foreign support order. These cases are properly commenced in the state court in which the defendant resides, rather than in the FSM Supreme Court and are properly prosecuted by a state attorney general, rather than by the FSM Attorney General. Anson v. Rutmag, 11 FSM R. 570, 571-72 (Pon. 2003).

Plaintiffs seeking to prosecute a foreign child support enforcement action must file their action in state court, where they will be provided with a procedure and remedy that is identical to that which they would enjoy under the national code. When such a case has been filed in the FSM Supreme Court, it will be ordered transferred to a state court with the proviso that if that court has not ruled on the issues presented within 45 days, the FSM Supreme Court may reinstitute active proceedings. The national court's role is to docket and transfer the case to a state court for determination of the paternity and child support issues. Anson v. Rutmag, 11 FSM R. 570, 572 (Pon. 2003).

When a state has not enacted laws in an area within its jurisdiction such as child support, national law is applicable to the state court proceeding, because the Trust Territory Code reciprocal support enforcement provisions, now codified at 6 F.S.M.C. 1711, are imputed to be state law under the FSM Constitution's Transition Clause. Under that clause, Trust Territory statutes that were applicable to the states became part of the states' laws regardless of whether they were published thereby. They stand as the laws of the states until amended, superseded or repealed. Anson v. Rutmag, 11 FSM R. 570, 572 (Pon. 2003).

Reciprocal support enforcement procedure requires that a state attorney general's office be diligent in its prosecution of it, and that, after a hearing, the state court will issue an order that decides the paternity question and determines the amount of child support and medical

insurance coverage, if any, to which the petitioner is entitled. Anson v. Rutmag, 11 FSM R. 570, 572-73 (Pon. 2003).

Since any decree as to custody or support of the parties' minor children is subject to revision by the court at any time upon motion of either party, the court has on-going jurisdiction to reconsider the question of child support previously decided. Ramp v. Ramp, 11 FSM R. 630, 639 (Pon. 2003).

In the context of a confirmation of a customary divorce, the court has awarded reimbursement for child support expenses where the father made no support payments, even when part of the reimbursement is sought for a period when no pendente lite order requiring support payments was in effect. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

When it is a court-ordered divorce decree's child support provisions, not a confirmation of a customary divorce, that a party seeks to modify, the court, bearing in mind the suitability to the FSM of any specific common law principle, may, in determining Pohnpei law, look to the Restatements (compilations of U.S. common law according to subject matter) and decisions from jurisdictions outside the FSM that also follow the common law tradition. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

Court-ordered child support payments may be modified at any time circumstances render such a change appropriate, but the modification operates prospectively only. Child support cannot be modified retroactively. This is consistent with the equitable principle, suitable for Micronesia or elsewhere, that one having a claim should pursue it when he or she first has notice of it. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

While a child support decree may be subject to revision by the court at any time, a party seeking modification of child support must show a substantial change in circumstances not anticipated by the original decree in order to justify the modification. For determination is the question of the children's needs, and not the standard of living desired by the custodial parent. Ramp v. Ramp, 11 FSM R. 630, 641 (Pon. 2003).

While a divorced party's ability to help defray the alleged increased child support costs is certainly a valid consideration generally, it does not go to the question of the children's alleged changed circumstances (i.e., increased needs), which is the primary issue for determination in a support modification proceeding. When the custodial parent was aware in 1993 of these needs, her remedy was to move for modification under 6 F.S.M.C. 1622 at the time when she first had notice. It was not to wait nearly ten years until she had learned that his income had increased and her child support was about to terminate when during this period, he was making all of the court-ordered payments, a factor which the court may legitimately give some attention to in judging the equities as between the parties and their children's welfare. Ramp v. Ramp, 11 FSM R. 630, 642 (Pon. 2003).

Under Pohnpei law, both the mother and the father are responsible for their children's support. The parties' obligation to support their children is in accordance with their respective abilities. It is sound public policy to require both parents to make some contribution toward the support of their children regardless of income disparity. Ramp v. Ramp, 11 FSM R. 630, 642 (Pon. 2003).

Even if one divorced party's income is greater than the other's, that fact alone does not

support a proposed modification to shift all of the pre-motion child-rearing costs retroactively to the higher-income party. Ramp v. Ramp, 11 FSM R. 630, 642 (Pon. 2003).

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

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

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

– Divorce

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

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

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

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

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

Spousal and child support and child visitation and custody rights are, under Chuuk State Supreme Court Civil Procedure Rule 13(a), compulsory counterclaims that must be pled in the earlier state court divorce action, if they have not been already pled there. O'Sonis v. O'Sonis, 22 FSM R. 268, 270 (Chk. 2019).

Any claim which is filed as an independent, separate action by one spouse during the pendency of a prior claim filed by the other spouse and which may be denominated a compulsory counterclaim under Rule 13(a), may not be independently prosecuted during the pendency of the prior action but must be dismissed with the leave to file it as a counterclaim in the prior action or stayed until final judgment has been entered in that action. O'Sonis v. O'Sonis, 22 FSM R. 268, 270 (Chk. 2019).

In a divorce action, even final support and custody and visitation orders might later be modified if materially changed circumstances warrant it. O'Sonis v. O'Sonis, 22 FSM R. 268, 270 (Chk. 2019).

– Marriage

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).

The right to marry is a fundamental constitutional right. Prisoners retain that right, but the right is subject to substantial restrictions as a result of imprisonment. Prisons may regulate the time and place of the wedding ceremony. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A prisoner's right to marry has not been violated when the wedding ceremony will take place at the Kosrae state jail because the prison has authority to regulate a prisoner's wedding ceremony, including the regulation of the ceremony's time and place. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

A prisoner's rights to privacy and association, including intimate association, do not include the right to be married at his family home. The prisoner's right to privacy and association are necessarily limited during his period of imprisonment. Sigrah v. Noda, 14 FSM R. 295, 298 (Kos. S. Ct. Tr. 2006).

Since a prisoner's rights to marry, privacy and association are not violated by the jailer's restriction of the location of prisoner's wedding ceremony to the Kosrae state jail, there is no unlawful restraint of the prisoner's liberty, and thus, a petition for the writ of habeas corpus to be married at home will be denied. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

The Kosrae State Court recognizes the universal importance of marriage in our societies; the social and geographical configuration of Kosrae; and the importance of family relationships in our communities and of the building of new family relationships through marriages. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

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).

Considering the state's geographic and social configuration, the customary importance of marriages in the state and its effects upon the family and community relationships in Kosrae, the customary location of wedding ceremonies in Kosrae and the absence of any held at the state jail, a request for a prisoner to be married outside of the jail may be granted, in part, upon fulfillment of conditions. Sigrah v. Noda, 14 FSM R. 295, 299 (Kos. S. Ct. Tr. 2006).

When a woman, living together with a man for three years, has a title that is taken from the man's Pohnpeian title and that is derived from being his wife, the Social Security Board's decision to cease spousal survival benefit payments to her because she has remarried will be upheld when the evidence submitted on record, taken in its entirety, is competent, material, and substantial and supports the Board's findings in denying benefits to her based on her remarriage. Hadley v. FSM Social Sec. Admin., 20 FSM R. 197, 200-01 (Pon. 2015).

The Pohnpei Supreme Court recognizes three types of marriages: 1) statutory civil marriage under 39 TTC 51; 2) statutory "religious marriage" commonly known in Pohnpei as "inou sarawi" meaning (a sacrosanct) and 3) statutory customary marriage known in Pohnpei as "pwopwoud en tiahk en sahpw." Louis v. FSM Social Sec. Admin., 20 FSM R. 268, 271-72 (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).

Under Pohnpei law, marriage contracts between parties, both of whom are FSM citizens, that are solemnized in accordance with recognized customs, are valid. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 427 (App. 2018).

To find that there was a Pohnpeian customary marriage, the court need not find that the coconut oil and head lei ritual was performed, only that there is substantial evidence in the record to make a finding that the families of both parties to the marriage contract consented to the marriage, expressly or impliedly. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 427 (App. 2018).

When the applicant testified at the administrative level that the marriage was accepted by members of her community; that she and her partner had been living together for three years; that she has a sacred Pohnpeian title exclusively given to the wife of the second in chief, which is her partner's title; that her title is derived from being her partner's customary wife; and that she serves as her partner's wife at traditional feasts, Social Security's determination that she had remarried was valid since there was a reasonable basis, or substantial evidence, for its decision. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 427-28 (App. 2018).

It is generally recognized that interference with existing contractual relations applies to any type of contract, except a contract to marry – marriage contracts are specifically excluded from the tort of intentional interference with contract. Panuelo v. FSM, 22 FSM R. 498, 505 (Pon. 2020).

A plaintiff cannot sue for tortious interference with a contract when that contract is a marriage contract. Panuelo v. FSM, 22 FSM R. 498, 505, 511 (Pon. 2020).

– Probate

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

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

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

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

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

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

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

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

Where a person is constitutionally prohibited from inheriting land that person's valid assignment of expectancy to a person who may acquire land will operate only to assign the non-land holdings in the expectancy. Etscheit v. Adams, 6 FSM R. 365, 382-83 (Pon. 1994).

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

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

A probate appeal may be remanded when a number of essential issues and facts have yet

to be established and the ends of justice require that additional matters must be considered, including whether the appellants are proper parties to the proceedings and who are the beneficiaries or the exact persons entitled to share in the assets of the estate and what the proposed division of the assets is. In re Malon, 8 FSM R. 591, 592 (Chk. S. Ct. App. 1998).

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

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

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

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

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

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

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

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

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

When the court has determined the portion of a decedent's estate that one heir is to inherit,

the court may permit all the heirs to agree to divide the estate to satisfy that heir's judgment. In re Estate of Setik, 12 FSM R. 423, 431 (Chk. S. Ct. Tr. 2004).

The filing requirements in probate proceedings, specifically require that all heirs be listed in the verified petition. The term "heirs" include the decedent's surviving adopted children. In re Skilling, 12 FSM R. 447, 449 (Kos. S. Ct. Tr. 2004).

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

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

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

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

Pursuant to state law, when the Land Court found that Lonno was the "previous land owner" of the subject parcels and that Lonno died without leaving a will, all heirs of Lonno were therefore interested parties to the parcels. Heirs of Lonno v. Heirs of Lonno, 13 FSM R. 421, 423 (Kos. S. Ct. Tr. 2005).

When a person by virtue of a quitclaim deed that he executed and delivered, no longer owned a parcel on the date that he executed his will, he had no rights, interest or title to the parcel and could not bequeath the parcel in his will. Benjamin v. Youngstrom, 13 FSM R. 542, 549-50 (Kos. S. Ct. Tr. 2005).

Upon the undisputed owner's death, title to land transfers pursuant to a valid will to the devisees specified in the will, or if there is no valid will, to the owner's heirs, according to intestate succession. George v. Abraham, 14 FSM R. 102, 106 (Kos. S. Ct. Tr. 2006).

In Kosrae, an oral will is valid only if made by a person in imminent peril of death, whether from illness or otherwise, and if 1) the testator dies as a result of the peril and 2) the testator declares it to be his will before two disinterested witnesses and the court receives the will for probate within six months following the testator's death unless for good cause the court permits it to be submitted later. An oral will may dispose of personal property only and to an aggregate value not exceeding one thousand dollars. George v. Abraham, 14 FSM R. 102, 107-08 (Kos.

S. Ct. Tr. 2006).

In Kosrae, an oral will neither revokes nor changes an existing written will. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

In Kosrae, real property, including land, may not be disposed of by oral will. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

All wills executed after the Kosrae State Code's October 1, 1985 effective date must comply with Title 16, Chapter 2. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 289 (Kos. S. Ct. Tr. 2006).

Oral wills may only dispose of personal property only and must meet other requirements. Oral wills may not dispose of real property or land, and any oral will which disposes of land or interests in land is invalid to that land. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 287, 289 (Kos. S. Ct. Tr. 2006).

Only if a life insurance policy had no designated or named beneficiary, would the policy benefits be payable to his estate to be distributed through probate to his heirs or devisees. John v. Chuuk Public Utility Corp., 15 FSM R. 169, 171 (Chk. 2007).

As the purpose of probate is not to determine issues of ownership, probate petitioners should resolve issues regarding land ownership, if any, before they proceed with probate. Otherwise, the probate proceeding may be subject to collateral attack from those who may claim an interest in the property and who were not given notice or made a party to this proceeding. In re Land Noota, Neppi, 15 FSM R. 518, 519 (Chk. S. Ct. Tr. 2008).

When it was established that a decedent's real property at issue was lineage land, it continues to be property of the lineage, and is not part of the decedent's estate. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

Title to land is not generally subject to probate but transfers pursuant to a valid will to the devisees specified in the will, or if there is no valid will, to the owner's heirs according to intestate succession. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

Social security benefits are not subject to probate, as the Social Security Board, not the court, has initial jurisdiction over applications for social security benefits, whether by a surviving spouse or surviving children. The procedure for such applications is set forth in the Social Security Act. In re Estate of Manas, 15 FSM R. 609, 611 (Chk. S. Ct. Tr. 2008).

When the sole owner of land dies his fee simple interest would be inherited by his multiple heirs who would hold that fee simple estate as a tenancy in common. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 372 n.1 (Kos. S. Ct. Tr. 2009).

One does not have heirs until one has passed away. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 324 n.2, 325 (Kos. 2011).

Under the Pohnpei Intestate Succession Act of 1977, _ of an intestate decedent's estate is to be distributed to the surviving spouse and the rest (_) is to be divided equally among the

decedent's children. Pohnpei probate courts will deviate from this statutorily-required division of an intestate decedent's assets only when a family agreement has been presented to and approved by the probate court. Mori v. Hasiguchi, 19 FSM R. 16, 19 n.1 (Chk. 2013).

An improper sale by a fiduciary (estate administrator) that has already taken place can be vacated, but not if the buyer was a bona-fide purchaser because, when property of an estate has been transferred to a bona-fide purchaser for value, the latter is protected even if the fiduciary was acting improperly. The beneficiaries' remedy is not to void the transaction but to seek damages for the personal representative's breach of his fiduciary duty. Mori v. Hasiguchi, 19 FSM R. 16, 22 (Chk. 2013).

A bona fide purchaser for value and without notice, should be as protected buying shares from the distributee as he would have been buying them from the fiduciary administrator, especially when it was the same person. Mori v. Hasiguchi, 19 FSM R. 16, 23 (Chk. 2013).

Someone who has wrongfully sold property to a bona fide purchaser for value without notice can be compelled to buy a replacement if this is reasonably possible. Sometimes damages are the only appropriate remedy. Either way, the rightful heir's remedy is against estate administrator. If it were any other way, then anyone who ever bought property after it had been inherited and distributed by a Pohnpei probate court final order could never be certain that his or her title would not be taken away by a future final probate court order that the distributee seller was not the proper distributee. Mori v. Hasiguchi, 19 FSM R. 16, 23 (Chk. 2013).

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

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

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

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

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

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

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

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

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

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

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

Preference toward state courts adjudicating the bulk of probate matters should be read narrowly, to permit creditors and other third parties to protect financial interests by initiating probate proceedings and resolving many auxiliary matters. The national courts are not barred from exercising subject matter jurisdiction over probate matters, and when an independent basis for jurisdiction is established, the national courts may proceed with the probate matter in its

entirety. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

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

Under Civil Rule 17's third party beneficiary clause, judgment creditors are real parties in interest when pursuing many preliminary and auxiliary matters relating to the probate of estates. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 436 (App. 2014).

The purpose of ancillary probate proceedings in places other than where the main probate case is, is to probate the decedent's properties in those locations. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

An ancillary probate proceeding for registered land (land with a certificate of title) on Pohnpei is through an heirship proceeding in the Pohnpei Court of Land Tenure. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

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

The only reason for ancillary probate proceedings in Pohnpei, Guam, and Hawaii would be to probate the decedent's properties in those places. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

The only place to "probate" registered land in Pohnpei would be through an heirship proceeding in the Pohnpei Court of Land Tenure. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

A decedent's estate ceased to own Pohnpei land once the Pohnpei Court of Land Tenure ruled on the heirship petition for that land and the time to appeal that decision expired. Because the decedent's estate does not have, and, since Pohnpei Court of Land Tenure ruling, has not had, any interest in the property, it has no standing to seek the relief regarding that land. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

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

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

Even if there had not been an heirship proceeding for the Pohnpei property in the Pohnpei Court of Land Tenure, the Chuuk State Supreme Court would still lack jurisdiction to probate the property since the land and real estate are outside of Chuuk. Setik v. Mendiola, 21 FSM R. 624, 626 (App. 2018).

The Pohnpei State Mortgage Law provides that a deceased mortgagor's heirs and devisees take subject to a mortgage. FSM Dev. Bank v. Carl, 21 FSM R. 640, 643 (Pon. 2018).

An administrator is a person appointed by the court to manage the assets and liabilities of an intestate decedent. FSM Dev. Bank v. Carl, 21 FSM R. 640, 644 (Pon. 2018).

An estate of a deceased is the property that one leaves after death – a dead person's collective assets and liabilities. FSM Dev. Bank v. Carl, 21 FSM R. 640, 644 (Pon. 2018).

An administrator of a decedent's estate is liable to manage the estate, including the decedent's debts and liabilities – financial or pecuniary obligations. A decedent's debt passes down to her estate's administrator to manage and settle. FSM Dev. Bank v. Carl, 21 FSM R. 640, 644 & n.9 (Pon. 2018).

A temporary co-administrator's powers include only those powers specifically expressed in the order of appointment and as may be expressed in the appointing court's subsequent orders. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 9 (Pon. 2018).

When no particular powers were expressed in an administrator's temporary appointment, although he was expected to help resolve the "overlappings" between two estates, and when the subsequent order granted extensive powers to the co-administrators without making any distinction between the two full co-administrators and the temporary one, the court must, solely for the purpose of the pending motions, take as true the temporary administrator's assertion that he remains the estate's co-administrator and assume that since his administrator's powers were not otherwise limited, he has the power to sue on the estate's behalf to preserve the estate's assets. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 9 (Pon. 2018).

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

State courts should normally handle probate and inheritance matters. Helgenberger v. Ramp & Mida Law Firm, 22 FSM R. 4, 13 (Pon. 2018).

A joint tenancy gives each joint tenant the right of survivorship – to automatically become sole owner of the property on the other joint tenant's death. It differs from a tenancy in common because each joint tenant has a right of survivorship to the other's share. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 n.1 (Chk. 2019).

When the owner of registered land passes away, the Land Commission has the statutory duty to determine the devisee or devisees or heir or heirs and their interests or respective interests to which each is entitled. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 n.3 (Chk. 2019).

The general principle is that an administratrix stands in decedent's shoes and has no greater or other rights or powers than the decedent would have if living. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

If the decedent would, if living, have standing to bring the suit, then the administratrix of his estate would have standing to do so. Panuelo v. Sigrah, 22 FSM R. 341, 356 (Pon. 2019).

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. Panuelo v. Sigrah, 22 FSM R. 341, 358 (Pon. 2019).

An administratrix of a decedent's estate is the successor in interest to the decedent, and is his privy. Panuelo v. Sigrah, 22 FSM R. 341, 359 (Pon. 2019).