FEDERALISM

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

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

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

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

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

The FSM Supreme Court will not interfere in a pending state court proceeding where no authority has been cited to allow it to do so, where the case has not been removed from state court, where it has not been shown that the national government is a party to the state court proceeding thereby putting the case within the FSM Supreme Court's exclusive jurisdiction, and where it has not been shown that the movants are parties to the state court proceeding and thus have standing to seek national court intervention. Pohnpei v. Kailis, 6 FSM R. 460, 463 (Pon. 1994).

Congress has the sole power to legislate the regulation of natural resources in the marine space of the Federated States of Micronesia beyond 12 miles from island baselines, and the states have the constitutional power to legislate the regulation of natural resources within that twelve miles of sea. Congress may also legislate concerning navigation and shipping within the

twelve-mile limit except within lagoons, lakes, and rivers. M/V Hai Hsiang #36 v. Pohnpei, 7 FSM R. 456, 459 (App. 1996).

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

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

The Constitution's broadly stated express grants of power to the national government contain within them innumerable incidental or implied powers, as well as certain inherent powers. Jano v. FSM, 12 FSM R. 569, 576 (App. 2004).

A litigant may assert a claim in state or local court based upon a right provided under both a state and FSM Constitutions, and if a state constitution grants fewer rights than the FSM Constitution, a litigant may rely upon and assert his rights under the FSM Constitution. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

Although a state court's determination of a litigant's rights under that state's constitution may be final and not subject to review by the FSM Supreme Court, a state court's determination of a litigant's rights guaranteed under the FSM Constitution is subject to de novo review by the FSM Supreme Court since a state constitution cannot deprive the FSM Supreme Court of its jurisdiction granted under the FSM Constitution because the FSM Constitution is the supreme law of the land. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

Any conflict between the Pohnpei Constitution provision that no appeal of any matter relating to the Pohnpei Constitution, Pohnpei law, customs or traditions may be made to any court except the Pohnpei Supreme Court and the FSM Supreme Court's jurisdiction to hear cases under the FSM Constitution is resolved under the FSM Constitution's supremacy clause, which provides that any act of a government that conflicts with the FSM Constitution is invalid, to the extent of the conflict. Damarlane v. Pohnpei Legislature, 15 FSM R. 301, 307 (App. 2007).

When the FSM Supreme Court decides matters of tort and contract law, it will apply, in the same way the highest state court would, the state's substantive law, which includes its common law as well as its statutory law. Peniknos v. Nakasone, 18 FSM R. 470, 479 & n.5 (Pon. 2012).

When the FSM Supreme Court is deciding matters of tort and contract law, it will apply in the same way the highest state court would the state's substantive state law, which includes the state's common law as well as its statutory law. Ihara v. Vitt, 18 FSM R. 516, 524 & n.3 (Pon. 2013).

The territorial sea is the waters within 12 nautical miles seaward of FSM island baselines, and the exclusive economic zone is the water seaward of the territorial sea outward to 200 nautical miles from the island baselines. FSM v. Kimura, 20 FSM R. 297, 302 (Pon. 2016).

A decision of the highest state court about a state law matter is controlling and the FSM Supreme Court will apply it. A state court trial division decision may be deemed not to be controlling if it appears that the highest state court would decide the question differently. If there is no controlling state case law, then the court should decide the case according to how it thinks the highest state court would, and if the state's highest court later decides the issue differently, then that case will prospectively serve as controlling precedent for the national court on that state law issue. Panuelo v. FSM, 22 FSM R. 498, 506-07 n.3 (Pon. 2020).

– Abstention

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

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

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

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

Even though the requirements for pendent jurisdiction are met in a case, a national court has discretion to decline to exercise jurisdiction over state claims. This determination should turn on considerations of judicial economy, convenience and fairness to litigants and should be instructed by a desire of the federal or national court to avoid needless decisions of state law. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 397 (Pon. 1984).

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

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

Where neither land, inheritance nor any other crucial interest of the state is involved; where the state has developed no extensive administrative apparatus or practical knowledge relating

to the state issue with which a state court would be more familiar; where the state issue is not, strictly speaking, constitutional; and where the state has tendered the issue to the FSM Supreme Court and no party has requested abstention, the FSM Supreme Court should decide the issue rather than abstaining in favor of the state court. Panuelo v. Pohnpei (I), 2 FSM R. 150, 157-59 (Pon. 1986).

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

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

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

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

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

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

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

In a case brought before the FSM Supreme Court where similar litigation involving the same parties and issues is already pending before a state court, and a decision by the state court in the litigation would resolve all controversies among the parties, the risk of costly, duplicative

litigation is one factor to be considered by the national court in determining whether to abstain. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 44 (Pon. 1989).

Although foreign and interstate commerce and shipping involve profound national interests, where Congress has not seen fit to assert those interests and there is no national regulation or law to enforce, the fact that a case affects interstate and foreign commerce and shipping is not sufficient to deny abstention if other strong grounds for abstention exist. Ponape Transfer & Storage, Inc. v. Federated Shipping Co., 4 FSM R. 37, 47 (Pon. 1989).

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

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

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

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

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

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

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

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

Gimnang v. Yap, 4 FSM R. 212, 214 (Yap 1990).

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

The national courts, in carrying out their judicial responsibilities, do have inherent power to certify issues, or to abstain partially or completely from exercising jurisdiction in a particular issue or to exercise jurisdiction over part or all of a case. Gimnang v. Yap, 5 FSM R. 13, 19 (App. 1991).

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

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

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

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

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

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

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

Where a claim is against the national government and an interest in land is not placed at

issue the claim is within the exclusive jurisdiction of the FSM Supreme Court and it cannot abstain on the claim. Damarlane v. Pohnpei Transp. Auth., 5 FSM R. 67A, 67E (Pon. 1991).

The national court should not abstain from deciding a criminal case where the crime took place before the effective date of the 1991 amendment removing federal jurisdiction over major crimes because of the firmly expressed intention by the Constitutional Convention delegates as to the manner of transition from national jurisdiction to state jurisdiction. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

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

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

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

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

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

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

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

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

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

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

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

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

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

Because speedy and final resolution of questions regarding the constitutional roles of the state and national governments will avoid unnecessary conflict and possible jurisdictional tension between the state and national courts, it is proper to stay an order of abstention pending appeal in such cases. Pohnpei v. MV Hai Hsiang #36 (II), 6 FSM R. 604, 605 (Pon. 1994).

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

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

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

There is a presumption favoring abstention in claims involving state law and money damages against the state that touch upon the particularly strong state interest of fiscal autonomy and federalism. Even in those cases the FSM Supreme Court will not abstain when abstention will result in substantial delay or additional cost. Conrad v. Kolonia Town, 7 FSM R. 97, 100 (Pon. 1995).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A defense is that which is offered and alleged by the party proceeded against in an action or suit, as a reason in law or fact why plaintiff should not recover or establish what he seeks. A

motion for abstention has little common ground with the concept of a defense because abstention by no means precludes a plaintiff from obtaining the requested relief but rather goes to the question of the appropriate forum in which to pursue that relief. Island Dev. Co. v. Yap, 9 FSM R. 279, 283 (Yap 1999).

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

There is no reason that answers could not be filed in due course during the pendency of an abstention motion, and there is also no reason that discovery could not have been ongoing during an abstention motion's pendency, since discovery was just as inevitable as the answer. Island Dev. Co. v. Yap, 9 FSM R. 279, 284 (Yap 1999).

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

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

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

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

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).

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

619, 621 (Chk. 2003).

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

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

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

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

While the FSM Supreme Court may abstain from a part of a case, it may not abstain from interpretation of the FSM Constitution. Mailo v. Chuuk, 12 FSM R. 597, 601 (Chk. 2004).

A national court has discretion to decline to exercise jurisdiction over state claims, but this determination should turn on considerations of judicial economy, convenience and fairness to litigants and should be instructed by the national court's desire to avoid needless decisions of state law. Judicial economy, convenience and fairness to litigants, especially in light of the expedited determination sought by the parties, would seem to dictate that the entire case proceed in the same forum. Mailo v. Chuuk, 12 FSM R. 597, 601 (Chk. 2004).

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

Motions to abstain cannot be brought before the defendants have pled by filing an answer. The only motions to dismiss that a defendant may file before answering the complaint are those based on 1) lack of subject matter jurisdiction, 2) lack of personal jurisdiction, 3) improper venue, 4) insufficiency of process, 5) insufficiency of service of process, 6) failure to state a claim upon which relief can be granted, or 7) failure to join a party under Rule 19. McVey v. Etscheit, 13 FSM R. 473, 476-77 (Pon. 2005).

An abstention request that comes after trial, and after the case had been pending for

approximately five years, is untimely. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

Although the national courts, in carrying out their judicial responsibilities, do have inherent power to certify issues, or to abstain partially or completely from exercising jurisdiction over a particular issue, or to exercise jurisdiction over part or all of a case; and although the trial court may raise the question of abstention or certification on its own motion; it is not mandatory that the court do so. And even if such a motion had been made, the choice of whether to abstain from a decision or to certify questions is one that lies wholly within the trial court's discretion. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

When no motion to abstain or to certify a question to the state court was made, the trial court could not abuse its discretion by not abstaining from deciding or by not certifying the ownership question to the state court. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

The choice to abstain from a decision lies wholly within the trial court's sound discretion. Certain circumstances may give rise to an inclination in favor of abstention, such as a state request for abstention when there are identifiable, particularly strong state interests such as monetary claims against the state or questions concerning ownership of land, but national courts still have the obligation to carry out their own jurisdictional responsibilities. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 158 (Pon. 2006).

A national court may not abstain from exercising its constitutional jurisdiction when it is directly faced with a constitutional issue and surely may never abstain completely from exercising jurisdiction in a case where there remains to be resolved a substantial issue under the national constitution. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 159 (Pon. 2006).

When the case does not involve a question of land ownership, although land use rights are involved because the fairness and constitutionality of the process by which those rights were granted, is the central issue; when trying to separate the national constitutional issues from the state law issues would be difficult and impractical and would also cause considerable delay; and when abstaining from those parts of the case which do not involve interpretation of the FSM Constitution due process clause (and the FSM civil rights statute) and separating it from the rest of the case would be difficult and impractical and cause unreasonable delay, the factors that favor the court's retention of the case outweigh those that favor abstention. Carlos Etscheit Soap Co. v. Do It Best Hardware, 14 FSM R. 152, 159 (Pon. 2006).

Since an allegation of police brutality implicates both the national and state constitutions and a plaintiff asserting a right arising under national law has a right to be heard in the FSM Supreme Court even if state courts may also assert jurisdiction, the fact that the Pohnpei Supreme Court may be equally equipped to decide the case will not divest the plaintiff of his day in the FSM Supreme Court. Annes v. Primo, 14 FSM R. 196, 201 (Pon. 2006).

That unsettled state law issues are involved in a case about the Lt. Governor's proclamation concerning a municipal election is insufficient grounds to dismiss the case, especially when a significant body of state law has already developed around the Governor's powers over municipal governments. Esa v. Elimo, 14 FSM R. 216, 220 (Chk. 2006).

Generally, a motion for the FSM Supreme Court to abstain from all or part of a case should proceed as a post-answer motion, and not a motion in lieu of answer under FSM Civil Procedure Rule 12(b) since abstention is not one of the enumerated grounds for a Rule 12(b) motion. But when, in one of those rare instances, where the material facts are not in dispute and an answer would not help to identify or to narrow the factual issues since only legal matters are contested, it may be appropriate to permit an abstention motion without an answer. Narruhn v. Chuuk, 16 FSM R. 558, 561 (Chk. 2009).

Even cases which arise under the national Constitution sometimes call for deference to state courts. For example, courts generally strive to avoid unnecessarily or prematurely addressing issues of national constitutional law. A national court ordinarily should refrain from deciding a case in which state action is challenged as violating the national Constitution, if unsettled questions of state law may be dispositive and obviate the need for the constitutional determination. Under such circumstances, the national court may appropriately give the state court the opportunity to provide a definitive ruling as to state law. Narruhn v. Chuuk, 16 FSM R. 558, 562 (Chk. 2009).

When there are identifiable, particularly strong state interests, such as when there are monetary claims against the state or its agencies, the national courts should exercise restraint and look with sympathy upon a state request for abstention. Narruhn v. Chuuk, 16 FSM R. 558, 562 (Chk. 2009).

The likelihood of abstention, always discretionary, is increased when the state is a party; when the subject matter of the requested abstention is one involving local concerns that lie solidly within a state's sphere of interest; when the state has developed an administrative approach to deal with the specified issues; and when the issue presented is a "clean" legal issue, as opposed to a factual one. Narruhn v. Chuuk, 16 FSM R. 558, 562 (Chk. 2009).

When what constitutes property and interests in property is purely a matter of state law; when the strong state interests in fiscal autonomy militate in favor of abstention in lawsuits against the state for monetary damages; and when the state is attempting (finally) to develop an administrative approach and policies to address monetary claims against it and its debts (both matters solidly within the state's sphere of interest), all of these considerations favor abstention. Narruhn v. Chuuk, 16 FSM R. 558, 562 (Chk. 2009).

In a case arising under national law, the analysis must begin with an especially strong presumption against full abstention. Narruhn v. Chuuk, 16 FSM R. 558, 563 (Chk. 2009).

Although, in a case arising under national law, the analysis must begin with an especially strong presumption against full abstention, when the national law question cannot even be reached unless a purely state law question is first resolved in the plaintiff's favor and is thus wholly dependent upon favorable resolution of that issue first and since the national court ordinarily should refrain from deciding a case in which state action is challenged as violating the national Constitution, if unsettled questions of state law may be dispositive and obviate the need for the constitutional determination, the state court should be given an opportunity to resolve that issue first. Narruhn v. Chuuk, 16 FSM R. 558, 563 (Chk. 2009).

That claims in an FSM case might involve injunctive relief to enforce a state court order in aid of judgment is not an adequate basis to deny abstention or to even retain partial jurisdiction. Narruhn v. Chuuk, 16 FSM R. 558, 563 (Chk. 2009).

National court abstention or certification of issues may also be justified on occasion by a desire to avoid unsettling a delicate balance in national-state relationships. Narruhn v. Chuuk, 16 FSM R. 558, 564 (Chk. 2009).

The appellants' likelihood of success on their claim that the court should have abstained or certified their "novel issues" to the state court is virtually zero when they never moved for certification or abstention and when, even if they had, the court is not required to certify or abstain from every "unsettled" state law issue. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 270 (Pon. 2010).

The choice to abstain from hearing a case, like the decision to certify a question, lies wholly within the trial court's sound discretion, and this is reviewed on an abuse of discretion standard. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

A trial court's abuse of discretion occurs when its decision is clearly unreasonable, arbitrary, or fanciful; when it is based on an erroneous conclusion of law; or when the record contains no evidence upon which the court could rationally have based its decision. Such abuses must be unusual and exceptional; an appeals court will not substitute its judgment for that of the trial judge. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

An appellant must show that there was an abuse of discretion for an appellate panel to reverse a trial court's order of abstention. Narruhn v. Chuuk, 17 FSM R. 289, 294 (App. 2010).

When a trial court's abstention order is well-reasoned and reaches no arbitrary or fanciful conclusions because the trial court provided a careful analysis of the questions before it and citation to the legal precedents on which it relied and no erroneous conclusions of law are apparent and the record contains sufficient evidence on which it could have rationally based its decision, there is no basis under the abuse of discretion standard by which to reverse the trial court. The trial court's decision to abstain was not an abuse of discretion. Narruhn v. Chuuk, 17 FSM R. 289, 296 (App. 2010).

When there are no clear due process rights to be preserved before the national trial court, the appellate court will not remand the matter to the trial court for modification that the trial court retain some jurisdiction over the case or to resume jurisdiction if the state court fails to act within a year. Narruhn v. Chuuk, 17 FSM R. 289, 297 (App. 2010).

Generally, although the national courts have primary responsibility in litigation under article XI, section 6(b), cases which arise under national law are distinguishable from diversity cases, and the courts should be more reluctant to abstain in cases arising under national law. It therefore follows that the national courts' jurisdiction in cases solely within article XI, section 6(b) by virtue of diversity of citizenship is far less compelling. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 (Pon. 2011).

When the national courts are asked to rule on areas of the law which fall within state powers and in which there are identifiable, particularly strong, state interests and particularly when a state is attempting to establish a coherent administrative policy in a complex field in which there is substantial public concern, abstention becomes increasingly appropriate. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 (Pon. 2011).

The point of abstention is not to identify a particular agency to resolve questions of state law, but to relinquish jurisdiction to avoid needless conflict with a state's administration of its own affairs. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 (Pon. 2011).

Because the plaintiffs' causes of action are rooted in questions of state law, and because the field of wage and hour laws is a complex one in which there is substantial public concern and in which the State of Pohnpei has the right to establish a coherent administrative policy, it is altogether appropriate for the FSM Supreme Court to relinquish jurisdiction through abstention. Villarena v. Abello-Alfonso, 18 FSM R. 100, 103 (Pon. 2011).

When the plaintiffs have not stated a claim based on national law on which the FSM Supreme Court may grant relief and when all that remains is state law, including state environmental regulations, they have not persuaded the court to retain the case, and the court will therefore abstain. Damarlane v. Damarlane, 18 FSM R. 177, 181 (Pon. 2012).

In order to accord respect to a Kosrae State Court criminal proceeding, the FSM Supreme Court will abstain from granting a petitioner's application for a writ habeas corpus when the petitioner is currently the subject of an ongoing criminal proceeding in the Kosrae State Court that has not reached final adjudication; when those proceedings afford the petitioner an opportunity to raise his constitutional claims; when the State has an important interest in protecting the public through criminal prosecutions; and when pre-conviction habeas corpus relief is being sought; when the state court remedies have not been fully exhausted; and when no extraordinary circumstances have been presented. In re Anzures, 18 FSM R. 316, 324-25 (Kos. 2012).

An appellate court reviews an abstention order on an abuse of discretion standard. A trial court abuses its discretion when its decision is clearly unreasonable, arbitrary, or fanciful; or it is based on an erroneous conclusion of law; or the record contains no evidence on which the court could rationally have based its decision. Damarlane v. Damarlane, 19 FSM R. 97, 106 (App. 2013).

While a plaintiff's lawyer may misconceive the proper legal theory of the claim but the complaint shows that the plaintiff is entitled to some relief which the court can grant, regardless of whether it asks for the proper relief, the complaint is sufficient and will not be dismissed. This same principle applies to abstention – even if the plaintiff's lawyer has misconceived the legal theory as one under the environmental regulations rather than a common law tort, that misconception should not be the basis for a dismissal on abstention grounds. The court must consider the actual nature of the case pled. Damarlane v. Damarlane, 19 FSM R. 97, 107 (App. 2013).

The major rationale for abstention is that the state court is the better court to decide an issue which involves state powers and particularly strong, identifiable state interests. Certain circumstances give rise to an inclination in favor of abstention, such as a state request for abstention where there are identifiable, particularly strong state interests such as monetary claims against the state or questions concerning ownership of land, but national courts still have the obligation to carry out their own jurisdictional responsibilities. Damarlane v. Damarlane, 19 FSM R. 97, 107 (App. 2013).

When unsettled areas of state law are the key to the case's resolution, abstention may also be appropriate if it would avoid unsettling a delicate balance in national-state relationships and

would avoid threatening the state's fiscal autonomy. Damarlane v. Damarlane, 19 FSM R. 97, 107 (App. 2013).

None of the circumstances favoring abstention applies in a case where there is no state request for abstention; the state is not even a party; and none of its agencies or regulations is involved and the plaintiffs' factual allegations set forth an action between private parties based on two common law torts, nuisance and trespass, plus a breach of contract claim, none of which involves unsettled areas of state law. Damarlane v. Damarlane, 19 FSM R. 97, 107 (App. 2013).

Parties to a dispute within the scope of article XI, section 6(b) diversity jurisdiction have a constitutional right to invoke the FSM Supreme Court's jurisdiction and it is the solemn obligation of the court and all others within the Federated States of Micronesia to uphold the constitutional right to invoke national court jurisdiction under article XI, section 6(b). Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

While, when issues of national law are involved there is a particularly strong presumption against abstention, there is still a presumption against abstention when the court's jurisdiction is based solely on diversity of citizenship. As a general rule, the FSM Supreme Court trial division is obliged to exercise its jurisdiction and may not abstain simply because unsettled state law issues are presented. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

The FSM Supreme Court's solemn obligation to consider the interests and protect the rights of those who wish to invoke its constitutional jurisdiction counsels against the unfettered use of abstention. The benefit the Constitution secures to diverse parties is the right to litigate in national court. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

A diverse party's constitutional right to litigate in the FSM Supreme Court should not lightly be disregarded, and the FSM Supreme Court's discretionary power to abstain must be exercised carefully and sparingly. Damarlane v. Damarlane, 19 FSM R. 97, 108 (App. 2013).

When evaluating a motion to abstain, the FSM Supreme Court must recall its responsibility to exercise its jurisdiction under article XI, section 6 of the Constitution, and a judge must not undertake the decision to abstain lightly, since the national courts do have responsibility to exercise their own jurisdiction under article XI, section 6 of the Constitution. The FSM court cannot foist off on the state courts difficult state law questions presented in cases within the FSM Supreme Court's jurisdiction. Damarlane v. Damarlane, 19 FSM R. 97, 108-09 (App. 2013).

Diversity cases where the causes of action are state law are not subject to abstention and dismissal at a judge's whim. That would make the constitutional right for diverse parties to litigate in the FSM Supreme Court an empty one. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

The presumption is always that the FSM Supreme Court will exercise its constitutionally-defined jurisdiction. For the trial court to abstain, this presumption must be overcome. Damarlane v. Damarlane, 19 FSM R. 97, 109 (App. 2013).

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).

The FSM Supreme Court may and should abstain in a case where land use rights are at issue, where the state is attempting to develop a coherent policy concerning the disposition of public lands, where there is a similar litigation already pending in state court, where the state requests abstention as defendant in an action which may expose it to monetary damages, where Congress has not asserted any national interests that may be affected by the litigation's outcome, and where abstention will not result in delay or injustice to the parties. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

When there is similar litigation involving the same parties and issues already pending in a state court, and a state court decision in that litigation would resolve all disputes between the parties, the risk of costly, duplicative litigation is an important factor for the FSM Supreme Court to consider in determining whether to abstain. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

When the case involves a leasehold of public land and is between a plaintiff with a recorded lease and an occupier of the lot; when the lessee's children have been added as third-party beneficiaries so this court would have diversity jurisdiction; when the usual third-party beneficiary claim is by a third-party beneficiary to a contract against a defendant who is one of the contracting parties; when the defendant is not a party to any contract of which the lessee's children would be third-party beneficiaries; when there already is a pending case in the Pohnpei Supreme Court over possession of the leasehold lot; and when the parties may have a remedy in the Pohnpei Supreme Court appellate division through mandamus or procedendo for the trial division's neglect or dilatory behavior, the FSM Supreme Court will abstain from the case. Carius v. Johnson, 20 FSM R. 143, 146 (Pon. 2015).

The exclusive nature of the national court jurisdiction is such that the FSM Supreme Court does not have the power to abstain from admiralty and maritime cases. Gilmete v. Peckalibe, 20 FSM R. 444, 448 (Pon. 2016).

The FSM Supreme Court should consider and weigh in each pendent jurisdiction case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity in order to decide whether to exercise jurisdiction over a case brought in that court involving pendent law state-law claims. When the balance of these factors indicates that a case properly belongs in state court, as when the national-law claims have dropped out of the lawsuit at its early stages and only state-law claims remain, the national court should decline to exercise jurisdiction by dismissing the case without prejudice. The doctrine of pendent jurisdiction thus is a doctrine of flexibility. When the national law claims must all be dismissed, it may be an abuse of discretion to take pendent jurisdiction of a claim that depends on novel questions of state law. Panuelo v. FSM, 22 FSM R. 498, 513-14 (Pon. 2020).

– Certification to State Court

Where litigation in which a state of the Federated States of Micronesia is a defendant involves an issue concerning the meaning of a provision of the state Constitution, and the parties in that litigation request that the issue of the meaning of the provision be certified to the supreme court of the state, it is an appropriate exercise of the inherent powers of the FSM

Supreme Court to devise a procedure for tendering the issue to the state supreme court, so long as the state court approves. Panuelo v. Pohnpei (III), 2 FSM R. 244, 246 (Pon. 1986).

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

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

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

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

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

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

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

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

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

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

The choice of whether to abstain from a decision or certify questions is one that lies wholly

within the discretion of the FSM Supreme Court, and the judge must not undertake that decision lightly. Pryor v. Moses, 4 FSM R. 138, 141 (Pon. 1989).

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

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

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

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

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

The national courts, in carrying out their judicial responsibilities, do have inherent power to certify issues, or to abstain partially or completely from exercising jurisdiction in a particular issue or to exercise jurisdiction over part or all of a case. Gimnang v. Yap, 5 FSM R. 13, 19 (App. 1991).

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

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

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

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

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

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

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

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

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

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

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

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

Certification is normally granted by the court that will be applying the guidance sought to its decision, not yet made, not by the court that is requested to hear the certified question. Etscheit

v. Adams, 6 FSM R. 608, 610 (App. 1994).

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

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

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

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

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

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

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

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

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

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

A court is hesitant to initiate the somewhat cumbersome certification procedure until it is satisfied that putative issues raised exist, and that they have been precisely defined. Island

Cable TV v. Gilmete, 9 FSM R. 264, 266-67 (Pon. 1999).

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

Although the national courts, in carrying out their judicial responsibilities, do have inherent power to certify issues, or to abstain partially or completely from exercising jurisdiction over a particular issue, or to exercise jurisdiction over part or all of a case; and although the trial court may raise the question of abstention or certification on its own motion; it is not mandatory that the court do so. And even if such a motion had been made, the choice of whether to abstain from a decision or to certify questions is one that lies wholly within the trial court's discretion. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

When no motion to abstain or to certify a question to the state court was made, the trial court could not abuse its discretion by not abstaining from deciding or by not certifying the ownership question to the state court. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 507 (App. 2005).

National court abstention or certification of issues may also be justified on occasion by a desire to avoid unsettling a delicate balance in national-state relationships. Narruhn v. Chuuk, 16 FSM R. 558, 564 (Chk. 2009).

The appellants' likelihood of success on their claim that the court should have abstained or certified their "novel issues" to the state court is virtually zero when they never moved for certification or abstention and when, even if they had, the court is not required to certify or abstain from every "unsettled" state law issue. FSM Dev. Bank v. Helgenberger, 17 FSM R. 266, 270 (Pon. 2010).

The choice to abstain from hearing a case, like the decision to certify a question, lies wholly within the trial court's sound discretion, and this is reviewed on an abuse of discretion standard. Narruhn v. Chuuk, 17 FSM R. 289, 293 (App. 2010).

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When no motion to certify was ever made, the trial court could not abuse its discretion by not certifying a question to the state court. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

– National/State Power

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

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

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

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

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

State officials generally should have greater knowledge of use, local custom and expectations concerning land and personal property. They should be better equipped than the national government to control and regulate these matters. The 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).

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

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

Exclusive national government jurisdiction over major crimes is not mandated by the Constitution; such jurisdiction would be exclusive in any event only if criminal jurisdiction was a power of indisputably national character. Truk v. Hartman, 1 FSM R. 174, 181 (Truk 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 powers of states (e.g., probate, inheritance an land issue) may be involved. Ponape Chamber of Commerce v. Nett Mun. Gov't, 1 FSM R. 389, 396 (Pon. 1984).

While the FSM Constitution is the supreme law of the land and the FSM Supreme Court may under no circumstances acquiesce in unconstitutional governmental action, states should be given a full opportunity to exercise their legitimate powers in a manner consistent with the commands of the Constitution without unnecessary intervention by national courts. Etpison v. Perman, 1 FSM R. 405, 428 (Pon. 1984).

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

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

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

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

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

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

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

The nature of the expressly delegated powers in article IX, section 2, of the Constitution – including the powers to impose taxes, to provide for the national defense, ratify treaties, regulate immigration and citizenship, regulate currency, foreign commerce and navigation, and to

provide for a postal system – strongly suggests that they are intended to be the exclusive province of the national government, since they call for a uniform nationally coordinated approach. Innocenti v. Wainit, 2 FSM R. 173, 181-82 (App. 1986).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In the course of the formation of the FSM, the allocation of responsibilities between states and nation was such that the impact of the national courts in criminal matters was to be in the area of major crimes and as the ultimate arbiter of human rights issues. Hawk v. Pohnpei, 4 FSM R. 85, 93 (App. 1989).

Questions regarding the validity of the provisions of promissory notes for personal loans, executed with a national bank operating in each state of the FSM and having in part foreign ownership, are closely connected to the powers of the national legislature to regulate banking, foreign and interstate commerce, and bankruptcy, and to establish usury limits, and they have a distinctly national character. The FSM Supreme Court therefore will formulate and apply rules of national law in assessing such issues. Bank of Hawaii v. Jack, 4 FSM R. 216, 218 (Pon. 1990).

A state law provision attempting to place "original and exclusive jurisdiction" in the Yap State Court cannot divest a national court of responsibilities placed upon it by the national constitution, which is the "supreme law of the Federated States of Micronesia." Gimnang v. Yap, 5 FSM R. 13, 23 (App. 1991).

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

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

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

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

The national court should not abstain from deciding a criminal case where the crime took place before the effective date of the 1991 amendment removing federal jurisdiction over major crimes because of the firmly expressed intention by the Constitutional Convention delegates as to the manner of transition from national jurisdiction to state jurisdiction. In re Ress, 5 FSM R. 273, 276 (Chk. 1992).

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

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

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

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

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

To the extent that the state is unable to police its waters and enforce its fishing regulations of its own, the national government has an obligation to provide assistance. However, to the extent that the national government must provide assistance, the power to regulate state waters is beyond the state's control and is in fact a concurrent national power. FSM v. Kotobuki Maru No. 23 (I), 6 FSM R. 65, 73 (Pon. 1993).

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

Nothing in the FSM constitutional framework suggests that a state can unilaterally avoid the effect of a valid international agreement, constitutionally arrived at, between the Federated

States of Micronesia and another nation. In re Extradition of Jano, 6 FSM R. 93, 103-04 (App. 1993).

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

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

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

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

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

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

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

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

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

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

Only the national government may constitutionally tax income. The states' taxing power

does not include the power to tax income. Truk Continental Hotel, Inc. v. Chuuk, 7 FSM R. 117, 119 (App. 1995).

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

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

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

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

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

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

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

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

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

of Finance, 8 FSM R. 353, 369-70 (Pon. 1998).

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

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

The express grant of power to the national government to regulate the ownership, exploration, and exploitation of natural resources, implicitly includes the power of the national government to collect revenues that are generated as a result. Thus, the national government has the authority to enact legislation related to offshore marine resources, including legislation related to collection and distribution of revenues derived therefrom. Chuuk v. Secretary of Finance, 8 FSM R. 353, 371 (Pon. 1998).

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

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

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

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

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

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

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

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

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

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

Issues related to the EEZ cannot be determined by relying on custom and tradition, as the commercial value of the EEZ to the Federated States of Micronesia was first realized when the nation acceded to the Law of the Sea Convention. While the rights of individual Micronesians, families and clans to living marine resources under particular circumstances might be amenable to determination by custom and tradition, the states' legal entitlement to share in fishing fees derived from commercial fishing ventures, extending to 200 miles from island baselines, is not. Chuuk v. Secretary of Finance, 8 FSM 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 FSM national government has the exclusive right to harvest living marine resources in its EEZ, just as it has the exclusive right to harvest offshore mineral resources. As the holder of this exclusive right, the national government is allowed to dispose of this resource and receive revenue in return. Under the Convention on the Law of the Sea, each nation is entitled to exploit its marine resources to the extent it is able to achieve a maximum sustainable yield. When the FSM does not fully exploit its own resources, it is entitled to compensation at the appropriate market rate from foreign fishing vessels which it allows to fish in its waters. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 (Pon. 1998).

Because a Congressional statute set up Telecom to serve the public interest and foster economic development, because Telecom may seek appropriations from Congress and, to the extent approved by the President, grants from sources outside of the FSM, because Telecom's

board of directors must submit an annual report reflecting its activities, including financial statements, to the government, and because Telecom has no independent shareholders and is fully owned by the national government, Telecom is deemed, for taxation purposes, to be a part of the national government, and its efforts to carry out its mission should not be hindered by any state's efforts to tax its business activities. FSM Telecomm. Corp. v. Department of Treasury, 9 FSM R. 380, 385 (Pon. 2000).

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

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

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

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

When a government has the power to collect money, it has the power to disburse that money at its discretion unless the Constitution or applicable laws should provide otherwise. Chuuk v. Secretary of Finance, 9 FSM R. 424, 431 (App. 2000).

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

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

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

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

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

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

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

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

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

Article IX, section 2(g) of the Constitution expressly delegates to Congress the power to regulate foreign and interstate commerce. A delegation of power to the national government under section 2 of Article IX is exclusive. Department of Treasury v. FSM Telecomm. Corp., 9 FSM R. 575, 581-82 (App. 2000).

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

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

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

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

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

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

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

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

A Pohnpei state law exempting it from anticompetitive practices liability does not apply to a case brought under the national anticompetitive practices statute since the lawsuit is based on a cause of action created by the national, not the state, statute covering an activity – foreign and

interstate commerce – over which the national government may legislate. It would, of course, apply to an action brought under the state anticompetitive practices statute. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

A state cannot nullify a valid exercise of national power by enacting a state statute. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 16 (App. 2006).

A municipality is not a separate sovereign. A municipality is a creature of a state's sovereignty. Unlike states, municipalities are not sovereigns, but exercise that portion of a state's sovereignty that the state authorizes it to. FSM v. Nifon, 14 FSM R. 309, 315 (Chk. 2006).

The national government has the power to ban the possession and use of Philippine slingshots in those places under its jurisdiction and in those circumstances that make the offense "inherently national in character" such as when the offense is committed in the FSM Exclusive Economic Zone or in FSM airspace, or on FSM-flagged vessels, or is committed against an FSM public servant in connection with that servant's service. FSM v. Masis, 15 FSM R. 172, 175-76 (Chk. 2007).

The regulation of possession of firearms and ammunition involved a national activity or function because of the international commerce aspects of their manufacture and movement together with the national government interest in protecting the national security under the national defense clause, and that these, in combination, provided the national government's jurisdictional basis to regulate the possession of firearms and ammunition. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

In an examination to determine whether it is a national crime, the focus is: Does the regulation involve a national activity or function, or is it one of an indisputably national character? FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

The possession or use of a Philippine slingshot does not implicate the national government's functions and activities in the sphere of national defense or security and the connection, if there is one, is too tenuous to give the national government authority to regulate Philippine slingshots. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

The national government certainly has the power to criminalize possession or use of explosive, incendiary or poison gas bomb, grenade, mine or similar devices on the same basis that it has the power to regulate the possession and use of firearms and ammunition because these items definitely implicate both national defense and security and foreign commerce interests on which the Jano court concluded that the national government had the authority to regulate firearms and ammunition. But Philippine slingshots do not. FSM v. Masis, 15 FSM R. 172, 176 (Chk. 2007).

Weapons control has long been recognized as a subject on which both the national and state governments may legislate. It is thus within the power of the State of Chuuk to regulate the possession and use of Philippine slingshots. If it has not done so, that does not mean that it cannot. FSM v. Masis, 15 FSM R. 172, 177 (Chk. 2007).

It has long been recognized that both the national and state governments may enact

legislation regulating the possession of firearms. There is nothing particularly absurd about a weapons control scheme that recognizes that both the national and the state governments have an interest in controlling the possession, use 1and sale of weapons. FSM v. Louis, 15 FSM R. 206, 211 (Pon. 2007).

Congress has an independent jurisdictional basis for the Weapons Control Act under FSM Constitution Article IX, Section 2(g) on foreign and interstate commerce and Article IX, Section 2(a) on national defense. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

Congress has always had the power to define national crimes. The power to define national crimes is inherent in the national government and existed before the 1991 amendment made the power express. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

The 1991 constitutional amendment did not proscribe Congress's authority to enact legislation pursuant to its independent authority under the national defense and foreign and interstate commerce clauses. Thus, the 1991 amendment did nothing to curtail Congress's authority to regulate the possession of firearms. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

Congress does not lack the authority to regulate possession of firearms because it was the framers' clear intent that commerce within a particular state should be regulated locally since there is an international commerce aspect to the regulation of possession of firearms and ammunition that is related to its manufacture outside of the FSM and to its movement through the nation's customs and immigration borders. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

In concluding that Congress has the authority to regulate the possession of firearms as part of its power to provide for the national defense, the court does not focus on the defendant's intended use of the firearm at issue, but instead focuses on the potential uses of firearms in general. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

Congress's authority to regulate firearms is not dependent on the defendant's subjective intent because the national government interest in regulating the possession of firearms and ammunition in order to provide for the national security in combination with the international commerce aspects provides a jurisdictional basis for the national government's regulation of the possession of firearms and ammunition. Congress's jurisdiction over the possession of firearms is not tied to the intent of a particular defendant. FSM v. Louis, 15 FSM R. 206, 212 (Pon. 2007).

The national government's power to regulate firearms is derived from both its ability to protect the national security under its power to provide for the national defense and its power to regulate international commerce aspects because of the international commerce aspect of firearms manufacture and movement. In combination, these provide the national government with a jurisdictional basis to regulate the possession of firearms and ammunition. FSM v. Tosy, 15 FSM R. 238, 239 (Chk. 2007).

The national government's jurisdiction over firearms is not limited to only certain circumstances or certain quantities. What the national government can regulate in aggregate, it is able to regulate piece by piece; otherwise it would not be able to regulate it at all, and that, is clearly not the case. FSM v. Tosy, 15 FSM R. 238, 239 (Chk. 2007).

Since engaging in business is defined as carrying out any activity relating to the conduct of a business and expressly includes leasing property of any kind for commercial purposes, when a foreign investment permittee engaged in the business of providing operational and maintenance support to helicopters servicing fishing vessels in the FSM, its leasing helicopters is one aspect of its business that relates to its fishing activity and is therefore that leasing activity is subject to the FSM's exclusive jurisdiction and regulation for foreign investment purposes. Thus Pohnpei may not require it to apply for a foreign investment permit. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335 (Pon. 2007).

Since, by statute, an economic sector included in any of the Categories for National Regulation must not appear in any of the Categories for State Regulation, the statutory provision contemplates that state and national regulation will be mutually exclusive, and works hand in glove with the stated purpose of the Foreign Investment Act, which is to encourage foreign investment. Helicopter Aerial Survey Pty., Ltd. v. Pohnpei, 15 FSM R. 329, 335-36 (Pon. 2007).

A state constitution cannot control or restrict the actions of the national government, whose powers and limitations are derived solely from the national constitution, which is the supreme law of the land. Thus, a state constitution's protections cannot be invoked against the national government. FSM v. Aiken, 16 FSM R. 178, 182 (Chk. 2008).

The dual sovereignty doctrine provides an important limitation on the application of double jeopardy to related state and national prosecutions. Under the dual sovereignty doctrine, a state prosecution does not bar a subsequent national prosecution of the same person for the same acts, and a national prosecution does not bar a subsequent state prosecution. The reason is that the national government and its individual states are independent sovereigns, and prosecutions under the laws of those separate sovereigns do not subject a defendant to be twice put in jeopardy. If the constitutional protection against double jeopardy did apply to prosecutions under the laws of independent sovereigns, then prosecution by one sovereign for a relatively minor offense might bar prosecution by another sovereign for a much graver offense, effectively depriving the latter of the right to enforce its laws, and defendants would always race to stand trial in the court where the charges were less severe in order to bar the second action. Chuuk v. Kasmiro, 16 FSM R. 404, 406 (Chk. S. Ct. Tr. 2009).

The Chuuk State Supreme Court is perfectly competent to adjudicate a civil rights claim against the state made under 11 F.S.M.C. 701(3) (violation of national constitutional rights) and also claims made under Chuuk's own constitutional provision barring deprivation of property. Narruhn v. Chuuk, 16 FSM R. 558, 564 (Chk. 2009).

No national statute regulates a state's duties and functions, except to the extent that a national statute may limit the state's lawmaking ability in specific areas through the supremacy clause. Arthur v. FSM Dev. Bank, 16 FSM R. 653, 659 (App. 2009).

The Constitution grants the national government, not the state governments, the power to regulate foreign and interstate commerce and taxation is regulation just as prohibition is. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

A service tax on plane passengers does not have only an incidental effect on foreign commerce; its only effect is on foreign commerce. A tax on shipping cargo or freight affects only foreign commerce or interstate commerce since the airline does not fly to anywhere in Chuuk except Weno. Since state and local governments are prohibited from imposing taxes

which restrict interstate commerce, to the extent that the tax is imposed on freight or cargo shipped from Chuuk to other FSM states, would appear to be specifically barred by the Constitution and to the extent it is imposed on cargo or freight shipped elsewhere, it would be regulation of foreign commerce – in effect, an export tax. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 152, 160 (Chk. 2010).

While the interplay between national and state power does mean that, in land cases, the court must apply state law, or certify unsettled questions to the state courts, when the national court has maintained jurisdiction, national rules of procedure prevail. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

The Constitution's investment in the national government of the power to regulate immigration, emigration, naturalization, and citizenship does not deprive the states of the ability to regulate employment within their own jurisdictions whenever such employment involves non-residents. To the degree that a state law regulating employment of non-resident workers does not directly conflict with national law, such state law is not preempted; and when there is possible conflict, the state law should be construed so as to avoid such conflict. Smith v. Nimea, 17 FSM R. 333, 337-38 (Pon. 2011).

When the FSM Supreme Court decides a matter of state law its goal is to apply the law the same way the highest state court would. If there is a decision of the highest state court it is controlling. If there is no controlling state law, then the court would decide the case according to how it thinks the highest state court would. Should the state's highest court later decide the issue differently, then that case will prospectively serve as controlling precedent for the national court on that state law issue. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

The unconditional 50% transfer of national taxes to the state treasuries is part of the constitutional framework that, through mandatory revenue sharing, allows the states a high degree of fiscal autonomy while at the same time avoiding undesirable vertical multiple taxation. Continental Micronesia, Inc. v. Chuuk, 17 FSM R. 526, 530 n.3 (Chk. 2011).

Under the FSM Constitution's Supremacy Clause, a national statute must control over a conflicting state statute. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619 (Chk. 2011).

Under the FSM Constitution, the power to establish systems of social security and public welfare may be exercised concurrently by Congress and the states. The State of Chuuk therefore has the constitutional authority to establish a system of health insurance since it is a system created to promote and advance the public welfare of Chuuk. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496 (Chk. 2013).

Payment of Chuuk state employees' contributions and of the employer's contribution out of the Chuuk state funds held in the FSM Treasury is not be a tax or a levy on the national government or an illegal expenditure of FSM funds since the payment would be from Chuuk state funds and, because the obligation to withhold the Plan insurance premium contributions arises by operation of law, the Plan insurance premium contributions would be properly obligated and should be paid. Chuuk Health Care Plan v. Department of Educ., 18 FSM R. 491, 496-97 (Chk. 2013).

The Constitution does not mandate 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).

Only the national government can impose taxes on imports and no state may impose taxes that restrict interstate commerce. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 153 (Chk. 2013).

While a state may be designated as the administrator and allottee of Compact sector funds that are used to pay state employees, those funds are appropriated by the FSM Congress and remain subject to the provisions of the FSM Financial Management Act and the Compact of Free Association financial controls. The FSM Secretary of Finance has full and complete oversight over, and at all times full and complete access to all financial records for, all Compact funds of the state and national governments of the FSM. FSM v. Muty, 19 FSM R. 453, 460 (Chk. 2014).

Taxing income and taxing imports are both powers reserved exclusively to the national government, and therefore forbidden to municipal governments. Isamu Nakasone Store v. David, 20 FSM R. 53, 57 (Pon. 2015).

A state law vesting exclusive jurisdiction in a state court cannot divest the FSM Supreme Court of jurisdiction over a matter it would otherwise have jurisdiction, as mandated by the FSM Constitution. FSM Dev. Bank v. Ehsa, 20 FSM R. 608, 613 (Pon. 2016).

The regulation of banking and of commercial paper are powers expressly delegated to the national government. "Commercial paper" is any instrument, other than cash, for the payment of money and is generally viewed as synonymous with negotiable paper or bills. Promissory notes are commercial paper. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 170 n.4 (Pon. 2017).

A national power is one which is expressly delegated to the national government, or a power of such an indisputably national character as to be beyond the power of the state to control. FSM v. Tihpen, 21 FSM R. 463, 466 (Pon. 2018).

The Constitution expressly grants the FSM national government the power to tax income, and the further provides that not less than 50% of the tax revenues be paid into the treasury of the state where collected. Chuuk v. FSM, 22 FSM R. 85, 90 (Chk. 2018).

The Constitution's framers intended that at least half of all income taxes and import taxes received by the national government would be paid to the states. Chuuk v. FSM, 22 FSM R. 85, 90-91 (Chk. 2018).

The Constitution's framers contemplated and created a system wherein (at least) half of the income tax money received by the national government would go into one or another state treasury. Chuuk v. FSM, 22 FSM R. 85, 91 (Chk. 2018).

The state share of a major corporation's income tax should be paid into state treasury of the state of incorporation and this share is determined after the Micronesia Registrar Advisor has first taken its percentage of the corporate income taxes paid by the major corporations it induced to incorporate in the FSM – the state's 50% share should be calculated from the net amount "collected" by the national government, that is, 50% of the amount of tax levied after the Registration Advisor's percentage is deducted. Chuuk v. FSM, 22 FSM R. 85, 92 (Chk. 2018).

National government revenues derived from constitutional provisions other than its authority to tax income and imports, are not (with one exception) constitutionally subjected to revenue-sharing. Chuuk v. FSM, 22 FSM R. 85, 93 (Chk. 2018).

A power expressly delegated to the national government, or a power of such an indisputably national character as to be beyond the power of a state to control, is a national power, and a power not expressly delegated to the national government or prohibited to the states is a state power. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 329, 331 (Pon. 2019).

The power to regulate banking is expressly delegated to Congress. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 329, 330 (Pon. 2019).

The Constitution establishes a federal system of government in which the national government reigns supreme in its very limited and narrowly defined sphere of responsibility and the state governments are supreme in their much broader sphere. The powers of the national are "express powers" and those of the states, "residual." Included within the "indisputedly national" category are numerous powers, many of which are of minor significance, but which nevertheless collectively contribute to the national government's ability to function. This includes its power to buy land. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 329 (Pon. 2019).

Determination of whether a power falls within the indisputedly national category lies initially with the national legislature and national chief executive, and if their conclusions are challenged, the final decision rests with the Supreme Court. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 329 (Pon. 2019).

The enactment of FSM Code, Title 30 falls squarely within the Congress's express powers as delegated by the FSM Constitution. That 30 F.S.M.C. 137 deals with the FSM Development Bank's ability to acquire title to land places this activity squarely in the category of indisputedly national government powers. To function, the Bank must be able to deal with mortgages, as well as deeds and land titles, as land is the primary collateral possessed by most Micronesians. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

Powers that are indisputedly national include the national government's power to buy land, and, as an instrumentality of the national government, the FSM Development Bank has the authority to act in that capacity according to laws enacted by the Congress under its express and implied powers under the Constitution. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon. 2019).

Since the FSM Congress specified in 30 F.S.M.C. 137 that the FSM Development Bank must have and retain the legal capacity to acquire, own title to, dispose of, and otherwise deal in land and waters in the FSM, restrictions imposed by Pohnpei must fail as applied to the Bank's ability to acquire title to Pohnpei land. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330 (Pon.

2019).

If the FSM Development Bank's right to acquire, own title to, dispose of, and otherwise deal in FSM land and waters could be impaired in different ways by each of the four states, based on the states' Constitutions or statutes, it would eviscerate the national government's power to regulate the Bank under the express powers granted to it under the FSM Constitution. If each state could deny the Bank the right to acquire land, its essential functions would be impaired, and it would be unable to achieve the stated purpose of operating as an independent financial institution within the framework of the national government's general economic plans, policies, and priorities. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 330-31 (Pon. 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).

Pohnpei may not, by Constitution or statute, restrict the national government in the exercise of its expressly delegated powers under the FSM Constitution. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 332 (Pon. 2019).