STATUTES

A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. FSM v. Nota, 1 FSM R. 299, 304 (Truk 1983).

An unconstitutional statute may not be redeemed by voluntary administrative action. Suldan v. FSM (II), 1 FSM R. 339, 357 (Pon. 1983).

A criminal statute must not be so vague and indefinite as to fail to give fair notice of what acts will be punished but the right to be informed of the nature of the accusation does not require absolute precision of perfection of criminal statutory language. Laion v. FSM, 1 FSM R. 503, 507 (App. 1984).

The right to be informed of the nature of accusation requires that a statute be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that persons of common intelligence must necessarily guess at its meaning. Laion v. FSM, 1 FSM R. 503, 507 (App. 1984).

The required degree of precision under the right to be informed of the nature of the accusation may be affected by considerations such as limits upon the capacity for human expression and difficulties inherent in attempts to employ alternative methods of stating the concept. Laion v. FSM, 1 FSM R. 503, 508 (App. 1984).

Some generality may be inescapable in proscribing conduct but the standard of precision required under the right to be informed of the nature of the accusation is greater in criminal statutes than in civil statutes. Laion v. FSM, 1 FSM R. 503, 508 (App. 1984).

Since the Trust Territory High Court and District Courts were still active at the time of codification, provisions in the FSM Code referring only to them quite likely were intended only to regulate those courts. Rauzi v. FSM, 2 FSM R. 8, 14 (Pon. 1985).

Public Law No. 2-48, promulgating the codification of the FSM statutes and speaking only of "All enacted law of the Interim Congress of Micronesia . . . and all enacted law of the Congress of the Federated States of Micronesia" as "readopted and reenacted as positive law of the Federated States of Micronesia," may not be interpreted as an attempt to repeal or purge the Trust Territory law from the law of the Federated States of Micronesia. Joker v. FSM, 2 FSM R. 38, 43 (App. 1985).

In approving the current codification of laws, the Congress "readopted and reenacted as positive law" those portions of the Code relating to laws enacted by the FSM Congress or the Interim Congress of the Federated States of Micronesia. For such laws then the Code itself indisputably is the official version. In the event of conflict between the Code and the language of the statute as reported in other sources, including congressional journals, the Code would be deemed accurate and would prevail. FSM v. George, 2 FSM R. 88, 91 (Kos. 1985).

In declining to "reenact" in Public Law No. 2-48 provisions originating with High Commissioners or Congress of Micronesia, Congress seems to have been motivated by transitional considerations rather than a desire to withhold official status from those laws. FSM v. George, 2 FSM R. 88, 92 (Kos. 1985).

The FSM Code was adopted by Congress to facilitate "law making and legal research," since Congress recognized that a "single body of laws" was "needed to organize all applicable statutes into one source." FSM v. George, 2 FSM R. 88, 92 (Kos. 1985).

The Code of the Federated States of Micronesia is intended by Congress to be regarded as the official and controlling version of the language of any legislation reported in the Code. FSM v. George, 2 FSM R. 88, 92 (Kos. 1985).

Where the legislature has a rational basis for a statutorily non-suspect classification, the court will not inquire into the wisdom of that statute. Paulus v. Pohnpei, 3 FSM R. 208, 218 (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).

When there is no statement in an act or implication in its regulative history that Congress intended court deference to administrative interpretations of the statute, courts make their own independent determination as to the meaning of the statute. Michelsen v. FSM, 3 FSM R. 416, 421 (Pon. 1988).

It may not simply be assumed that a reference in a carryover statute to the district administrator always translates directly to governor, or that high commissioner always means president. FSM v. Oliver, 3 FSM R. 469, 475 (Pon. 1988).

Unchartered and unincorporated municipalities in Truk State have authority to enact curfew ordinances as long as they do not conflict with Truk State laws. David v. Fanapanges Municipality, 3 FSM R. 495, 497 (Truk S. Ct. App. 1988).

Although FSM Public Law 2-33, regarding usury, did not appear in the 1982 codification of FSM statutes, it remained effective as did every other law which took effect after October 1, 1981 and it is currently in effect as codified in the 1987 supplement to the FSM Code at 34 F.S.M.C. 201-207. Bernard's Retail Store & Wholesale v. Johnny, 4 FSM R. 33, 36 (App. 1989).

A claim that the FSM liaison office did not fulfill its medical referral obligations as required by law falls within the embrace of 6 F.S.M.C. 702(2), which authorizes damage claims against the government for alleged improper administration of statutory laws or regulations. Leeruw v. FSM, 4 FSM R. 350, 363 (Yap 1990).

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).

Where a statute creates a cause of action and then places exclusive, original jurisdiction

over all controversies arising from that cause of action in a particular court, another court will have no jurisdiction to entertain claims under that statute. Damarlane v. United States, 6 FSM R. 357, 360 (Pon. 1994).

Criminal statutes in effect on the effective date of the State of Chuuk Constitution (Oct. 1, 1989) that are consistent with the Constitution continue in effect. Chuuk v. Arnish, 6 FSM R. 611, 613 (Chk. S. Ct. Tr. 1994).

When an ordinance is not void upon its face, but its invalidity is dependent upon facts, it is incumbent upon the party relying upon the invalidity to aver and prove the facts which make it so. It is also the rule that one who seeks to overthrow an ordinance on the ground that it was not regularly or properly enacted has the burden of proving that fact. Esechu v. Mariano, 8 FSM R. 555, 556 (Chk. S. Ct. Tr. 1998).

Trust Territory statutes continue in effect except to the extent they are inconsistent with the Constitution, or are amended or repealed. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 62 (Pon. 2001).

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

Foreign law is a fact which must be pled and proven. But state law does not need to be expressly pled, because the court may take judicial notice of any state law. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

A statute takes precedence over the procedural rules because while the chief justice has the power to promulgate procedural rules, the rules may be amended by statute, and since the chief justice does not have the power to amend a statute, when Congress has enacted a procedural rule, it is valid. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

A statute that purports to allow Congress to step around the bill-making process and approve fishing access agreements by resolution, is surely unconstitutional because under the Constitution, Congress may make law only by statute, and may enact statutes only by bill. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 546 (App. 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).

By its terms, a statute enacted by the U.S. Congress that permits declarations in place of affidavits affects only U.S. rules and regulations. When the FSM Congress has not enacted an equivalent statute and no procedural rule has been promulgated to bring about the same result, an unsworn declaration, even when the declarant avers or asserts that it is made "under the penalty of perjury," is not the equivalent of an affidavit required by the FSM rules. This is not a matter of interpreting an FSM procedural rule similar to a U.S. rule, but is rather a matter of not

applying a foreign statute that has no FSM counterpart. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 297, 300 & n.1 (Yap 2012).

A statute in force in Chuuk on the Chuuk Constitution's effective date continues in effect to the extent it is consistent with the Chuuk Constitution or until it is amended or repealed. Thus 1TTC 103 is still effective statutory law in Chuuk. Ruben v. Chuuk, 18 FSM R. 425, 430 n.1 (Chk. 2012).

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

While foreign law is a fact which must be pled and proven, national (or state law) does not need to be expressly pled since the court may take judicial notice of any national (or state) law. Thus, the FSM salvage contract statute's application cannot be avoided by trying to characterize a salvage contract as some other kind of contract. Adams Bros. Corp. v. SS Thorfinn, 19 FSM R. 1, 8 (Pon. 2013).

While rights are often freely assignable, duties are not freely delegated. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 19 FSM R. 227, 232 (Yap 2013).

A statute takes precedence over the procedural rules because, while the Chief Justice has the power to promulgate procedural rules, those rules may be amended by statute, and because the Chief Justice does not have the power to amend a statute, a Congressionally enacted procedural rule is valid. Setik v. FSM Dev. Bank, 21 FSM R. 505, 517 (App. 2018).

A statute takes precedence over the procedural rules because, while the Chief Justice can promulgate procedural rules, the rules may be amended by statute, and because the Chief Justice does not have the power to amend a statute, a Congressionally enacted procedural rule is valid. Setik v. Mendiola, 21 FSM R. 537, 550 (App. 2018).

Courts have no responsibility for the justice or wisdom of legislation, and no duty except to enforce the law as it is written, unless it is clearly beyond the lawmaking body's constitutional power. FSM v. Kuo Rong 113, 22 FSM R. 515, 526 (App. 2020).

Chuuk State Constitution's transition clause provides that statutes in force at the time the Constitution took effect remain in effect to the extent they comply with the Constitution, or until amended or repealed. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

– Amendment

The Constitution permits the Chief Justice to promulgate civil procedure rules, which Congress may amend by statute. Since Congress has the authority to amend or create procedural rules by statute, when Congress has enacted a procedural rule, it is valid. The Chief Justice does not have the authority to amend Congressionally-enacted statutes. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Tipingeni v. Chuuk, 14 FSM R. 539, 542 n.1 (Chk. 2007).

A statute takes precedence over the procedural rules because while the chief justice has the power to promulgate procedural rules, the rules may be amended by statute, and since the chief justice does not have the power to amend a statute, when Congress has enacted a procedural rule, it is valid. People of Tomil ex rel. Mar v. M/V Mell Sentosa, 17 FSM R. 478, 479 (Yap 2011).

Congress enacted an exemption statute, 6 F.S.M.C. 1415, and courts cannot broaden statutes beyond their original meaning. Nor do courts have the power to amend a statute. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

The Chuuk Legislature may amend any of its earlier statutes that created a governmental agency, in order to alter, or vary, or eliminate any of that agency's powers or duties. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

The power to amend statutes belongs exclusively to the legislature. Existing legislation is subject to amendment in any manner consistent with constitutional limitations. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

A state agency has only such rights, powers, and duties as the state legislature sees fit to bestow upon it through a duly enacted statute. Thus the legislature may, through another duly enacted statute, alter or may revoke any of those rights, powers, and duties. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

– Construction

A fundamental principle of statutory interpretation is that when a statute can be read in two ways, one raising constitutional issues and the other interpreting the language as affecting matters clearly within the constitutional reach of Congress, the latter interpretation should prevail so that the constitutional issue is avoided. FSM v. Boaz (II), 1 FSM R. 28, 32 (Pon. 1981).

When interpreting a statute, courts should try to avoid interpretations which may bring the constitutionality of the statute into doubt. Tosie v. Tosie, 1 FSM R. 149, 157 (Kos. 1982).

While courts will not refuse to pass on the constitutionality of statutes in a proceeding in which such a determination is involved, needless consideration of attacks on their validity and unnecessary decisions striking down statutes will be avoided. Legislative acts are presumed to be constitutional; where fairly possible a construction of a statute will be made that avoids constitutional questions. Truk v. Hartman, 1 FSM R. 174, 180-81 (Truk 1982).

Courts should avoid, where possible, selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. In re Otokichy, 1 FSM R. 183, 190 (App. 1982).

Constitutional issues should not be decided if the statute in question may be interpreted in such a way as clearly to conform with constitutional requirements. Suldan v. FSM (I), 1 FSM R. 201, 205 (Pon. 1982).

If construction of a statute by which a serious doubt of constitutionality may be avoided is fairly possible, a court should adopt that construction. Suldan v. FSM (II), 1 FSM R. 339, 357-58 (Pon. 1983).

It is a settled rule of statutory construction that a statute adopted from another jurisdiction is presumed to have been adopted as construed by the courts of that jurisdiction. Andohn v. FSM, 1 FSM R. 433, 441 (App. 1984).

Commonly accepted meanings arising out of prior court interpretations in the jurisdictions from which statutes are borrowed may be considered in testing claim that the statute is unconstitutionally vague. Laion v. FSM, 1 FSM R. 503, 509-10 (App. 1984).

Interpretations by other jurisdictions may be considered in determining the meaning of language borrowed from those other jurisdictions. Laion v. FSM, 1 FSM R. 503, 517 n.7 (App. 1984).

The statutory construction rule of lenity reflects the reluctance of courts to increase or multiply punishments absent a clear and definite legislative direction. Laion v. FSM, 1 FSM R. 503, 528 (App. 1984).

Where possible, statutory provisions should be interpreted in such a way as to avoid any potential conflicts between the statute and the Constitution of the Federated States of Micronesia. Ishizawa v. Pohnpei, 2 FSM R. 67, 76 (Pon. 1985).

The Code will determine the content of statutory language to be enforced, although other sources such as congressional journals and even the original version of the statute might be consulted to indicate legislative intent when the language in the Code is ambiguous. FSM v. George, 2 FSM R. 88, 92 (Kos. 1985).

Interpretations which strip clauses of substance and effect run against the norms of interpretation and are greatly disfavored. FSM v. George, 2 FSM R. 88, 94 (Kos. 1985).

Where there is a conflict between a statute of general application to numerous agencies or situations, such as the APA, and a statute specifically aimed at a particular agency or procedure, such as the National Election Code, the more particularized provision will prevail. This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the affected agency and procedure. Olter v. National Election Comm'r, 3 FSM R. 123, 129 (App. 1987).

If a dispute properly may be resolved on statutory grounds without reaching potential constitutional issues and without discussing constitutional principles, the court should do so. FSM v. Edward, 3 FSM R. 224, 230 (Pon. 1987).

A cardinal principle of statutory interpretation is to avoid interpretations which might bring into question the constitutionality of the statute. Edwards v. Pohnpei, 3 FSM R. 350, 359 (Pon. 1988).

When dealing with statutes, before discussing constitutional issues a court must first address any threshold issues of statutory interpretation which may obviate the need for a constitutional ruling. Michelsen v. FSM, 3 FSM R. 416, 419 (Pon. 1988).

Where legislative history does not conclusively establish which meaning Congress intended, the statutory provision must be considered against the background of the entire act to

arrive at an interpretation consistent with other provisions and with the general design of the act. Michelsen v. FSM, 3 FSM R. 416, 422 (Pon. 1988).

Unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result. Michelsen v. FSM, 3 FSM R. 416, 426 (Pon. 1988).

Statutory provisions designed to enhance the capacity of the government to enforce penalties for failure to pay taxes are penal, not remedial, and should be strictly construed. In re Island Hardware, Inc., 3 FSM R. 428, 432 (Pon. 1988).

Courts should not broaden statutes beyond the meaning of the law as written, even if it means that gambling devices just as harmful socially as slot machines, such as poker machines, will be excluded from statutory prohibition of slot machines. In re Slot Machines, 3 FSM R. 498, 500-01 (Truk S. Ct. Tr. 1988).

Courts may not speculate as to the powers and duties of the office of the Attorney General, but must look to the wording of the relevant law, and further, may not speculate as to the probable intent of the legislature apart from the words. Truk v. Robi, 3 FSM R. 556, 562 (Truk S. Ct. App. 1988).

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

Statutory changes overruling previous judicial rulings may fundamentally alter the general law in the area newly governed by statute. Federal Business Dev. Bank v. S.S. Thorfinn, 4 FSM R. 367, 372 (App. 1990).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should look to United States' court decisions under 42 U.S.C. § 1983 for assistance in determining the liability of a governmental body under 11 F.S.M.C. 701(3). Plais v. Panuelo, 5 FSM R. 179, 204 (Pon. 1991).

In providing for civil liability under 11 F.S.M.C. 701(3), Congress intended that the word person would include governmental bodies. Plais v. Panuelo, 5 FSM R. 179, 204-05 (Pon. 1991).

The plain meaning of a statutory provision must be given effect whenever possible. Setik v. FSM, 5 FSM R. 407, 410 (App. 1992).

Where a statute of general application conflicts with a statute of more particular application concerning the same subject matter, the more particularized provision prevails. However, remedial provisions that are merely cumulative and not duplicative apply equally. Setik v. FSM, 5 FSM R. 407, 410 (App. 1992).

That certain provisions of a general statute are overridden by a more specific statute does

not imply that the general statute in its entirety is superseded. Setik v. FSM, 5 FSM R. 407, 411 (App. 1992).

When the language in the Code is ambiguous, other sources such as congressional journals may be consulted. Bank of the FSM v. FSM, 6 FSM R. 5, 7 (Pon. 1993).

Statutes should be interpreted so that they are internally consistent. Provisions should be considered against the background of the entire act so as to arrive at a reasonable interpretation consistent with other specific provisions and the general design of the act. Bank of the FSM v. FSM, 6 FSM R. 5, 8 (Pon. 1993).

Where licenses are to be issued to each bank branch, and each bank branch must be scrutinized as to its qualifications for a license, it is a reasonable statutory interpretation that the regulatory license fee must be paid for each bank branch. Bank of the FSM v. FSM, 6 FSM R. 5, 8 (Pon. 1993).

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

A long-standing norm of statutory construction holds that provisions of law must be read so as to be internally consistent and sensible. McCaffrey v. FSM Supreme Court, 6 FSM R. 279, 281 (App. 1993).

Pronouncements by a later legislature concerning the meaning of actions taken by an earlier legislature are generally unreliable, especially when the later legislative body is a part of an entirely different government. Etscheit v. Adams, 6 FSM R. 365, 381 (Pon. 1994).

Courts prefer to read different sections of the same statute in a manner that permits them to be consistent with each other rather than to be inconsistent or at cross purposes. FSM v. Moroni, 6 FSM R. 575, 579 (App. 1994).

The intention of the legislature as to whether a provision is mandatory or not is determined from the language used. The use of the word shall is the language of command and considered mandatory. In re Failure of Justice to Resign, 7 FSM R. 105, 109 (Chk. S. Ct. App. 1995).

Statutes and constitutional provisions must be read together when the statutes are pre-constitution and because they are only effective to the extent they are not in conflict with the Chuuk Constitution. Sana v. Chuuk, 7 FSM R. 252, 254-55 (Chk. S. Ct. Tr. 1995).

Provisions of a law must be read so as to be internally consistent and sensible, and where a term in a statute is unambiguous and dispositive, a court should not examine other materials that might indicate legislative intent. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 284 (Yap 1995).

When the statute is not ambiguous there is no need to examine legislative intent, but when the language of the Code is ambiguous, other sources, such as Congressional journals or the original version of the statute may be consulted to give an indication of Congressional intent.

FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 286 (Yap 1995).

Where FSM Code provisions are based on U.S. law FSM courts may, in order to shed light on legislative intent, consider statutory interpretations by U.S. courts without being bound by those cases, but cases interpreting sections of the U.S. Code that were not enacted into the FSM Code are not relevant as an indication of the intent of the FSM Congress. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (I), 7 FSM R. 280, 286 (Yap 1995).

A statute that imposes a penalty is subject to strict construction, particularly where a penalty may be imposed without requiring a finding of a culpable state of mind. FSM Social Sec. Admin. v. Kingtex (FSM), Inc. (II), 7 FSM R. 365, 368 (Yap 1996).

The unambiguous words of a statute which imposes criminal penalties cannot be altered by judicial construction to punish someone not otherwise within its reach, no matter how much he deserves punishment. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

A general section in a statute cannot expand the class of principals to whom the more specific sections are directed. FSM v. Webster George & Co., 7 FSM R. 437, 440 (Kos. 1996).

Because the provision permitting an automatic increase back to their former salaries by the Governor, Lieutenant Governor, and the members of the legislature, is severable, it thus may be ruled unconstitutional without affecting the validity of the rest of the statute. Chuuk State Supreme Court v. Umwech (II), 7 FSM R. 630, 632 (Chk. S. Ct. Tr. 1996).

Statutes authorizing attachment must be construed strictly. In general, attachment is available only in certain kinds of actions and then only upon a showing of special grounds. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 662 (Pon. 1996).

The legislature's intention as to whether a provision is mandatory is determined from the language used. The use of the word shall is the language of command and considered mandatory. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 670 (App. 1996).

When the fishing statute sets forth a list of prohibited acts in the disjunctive, commission of any one of the listed acts is unlawful, and the government may pursue separate civil penalties for each. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 79, 90 (Pon. 1997).

A court should construe a statute as the legislature intended. Legislative intent is determined by the wording of the statute. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Thus a court must give effect to the plain meaning of a statutory provision whenever possible. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 131 (App. 1997).

A provision of law must be read so as to be internally consistent and sensible. Courts should read different sections of the same statute, or even the two sentences that form one subsection, in a manner that permits them to be consistent with each other rather than to be inconsistent or at cross purposes. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 131-32 (App. 1997).

Basing legal analysis on dictionary definitions can be an uncertain proposition. This is particularly so where Congress has explicitly defined the term in the statute. FSM Social Sec.

Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 132 n.2 (App. 1997).

When Congress has determined that the application of two subsections together would deter tax delinquencies, it is not a court's function to make a contrary determination. A court's function is to apply the statute as Congress intended unless doing so would violate the Constitution. FSM Social Sec. Admin. v. Kingtex (FSM) Inc., 8 FSM R. 129, 133 (App. 1997).

The Supreme Court may exercise personal jurisdiction in civil cases only over persons residing or found in the Federated States of Micronesia or who have been duly summoned and voluntarily appear, except as provided in the long arm statute. The terms "resides in," "is a resident of," and "residence is in" are roughly synonymous. Alik v. Moses, 8 FSM R. 148, 149-50 (Pon. 1997).

Because of the verbs in the statute, only "carry" is defined in the Weapons Control Act, "possess" is given its usual meaning of taking into one's possession, and possession means to have in one's control. FSM v. Fal, 8 FSM R. 151, 155 (Yap 1997).

An obligation of the state to pay a litigant a sum in exchange for dismissal of claims sought that arises from the judgment of dismissal of that case is not contrary to the legislative intent expressed in any provision of the Financial Management Act. Otherwise, no settlement of litigation requiring payment by the state could ever be made. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

It is the purpose of the Financial Management Act to ensure that public funds are only used or promised in a manner provided by law and a judgment of the Chuuk State Supreme Court trial division is a manner provided by law. Ham v. Chuuk, 8 FSM R. 300i, 300k (Chk. S. Ct. App. 1998).

When interpreting a statute, the plain meaning of the statutory provision must be given meaning whenever possible. Courts should not broaden statutes beyond the meaning of the law as written. Joy Enterprises, Inc. v. Pohnpei Utilities Corp., 8 FSM R. 306, 310 (Pon. 1998).

A court should avoid unnecessary constitutional adjudications. When interpreting a statute, courts should, where possible, avoid selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. If construction of a statute by which a serious doubt of constitutionality may be avoided is fairly possible, a court should adopt that construction. Cornelius v. Kosrae, 8 FSM R. 345, 348 (Kos. S. Ct. Tr. 1998).

Acts of Congress are presumed to be constitutional. Chuuk v. Secretary of Finance, 8 FSM R. 353, 374, 387 (Pon. 1998).

The statutory and regulatory authorities in effect during the time the employees' grievances took place will be applied to the decision. Langu v. Kosrae, 8 FSM R. 427, 432 (Kos. S. Ct. Tr. 1998).

It is a well settled rule of law that an ordinance will be presumed to be valid, unless the contrary appears on its face. Esechu v. Mariano, 8 FSM R. 555, 556 (Chk. S. Ct. Tr. 1998).

Via the analogy implicated by the Transition Clause, under a statute carried over from the Trust Territory which speaks in terms of the Trust Territory and any of its political subdivisions as being persons, Pohnpei is also a person to the same extent that a Trust Territory political

subdivision was a person under the statute's prior incarnation. AHPW, Inc. v. FSM, 9 FSM R. 301, 305 (Pon. 2000).

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

When a case's disposition and the plaintiffs' sought relief do not require construction of statute as to its constitutionality, courts will not undertake a decision based upon a constitutional issue. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

The court will not rule on a statute's constitutionality when it can limit the case's disposition to interpretation of the statute's language as it applies to the question. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 545 (Chk. S. Ct. Tr. 2000).

When an act lists 23 different and distinct prohibited gaming devices, including "slot machines," but makes no mention of "poker machines" whatsoever, by its failing to list "poker machines" in an extended list of prohibited items, the legislature excluded such machines from the application of the law, and the court will not include the machines into the proscription of the statute something which the Legislature intended to exclude. Pacific Coast Enterprises v. Chuuk, 9 FSM R. 543, 547 (Chk. S. Ct. Tr. 2000).

Without a separate statute of limitations in the act creating a public corporation, the state legislature obviously intended for suit to be brought against the corporation within the same time period that suit must be brought against the state and its various related entities even though the corporation may act on its own and sue and be sued in its own name. E.M. Chen & Assocs. (FSM), Inc. v. Pohnpei Port Auth., 9 FSM R. 551, 558 (Pon. 2000).

The generally recognized rule is that interest should not bear interest, but compound interest may be awarded if authorized by statute. When the statute reads "nine percent a year" it is not an express authorization to compound interest annually, but is instead, without more, merely a statement of the rate of simple interest. Aggregate Sys., Inc. v. FSM Dev. Bank, 9 FSM R. 569, 570 (Chk. 2000).

Title 6, chapter 10, subchapter 1 of the FSM Code is replete with references to officials who either do not exist now or who no longer carry out the functions with which they are identified in the statute, and when confronted with such language in a section thereof, the FSM Supreme Court has generally ruled that the section applies only to the Trust Territory High Court. FSM v. Kuranaga, 9 FSM R. 584, 586 (Chk. 2000).

Because the FSM statute is based upon the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 and § 1988 for assistance in determining the intended meaning of, and governmental liability under 11 F.S.M.C. 701(3). Estate of Mori v. Chuuk, 10 FSM R. 6, 13 (Chk. 2001).

If a statutory provision is unconstitutional and can be severed from the rest of the legislative act, only that provision will be struck down. MGM Import-Export Co. v. Chuuk, 10 FSM R. 42, 44 (Chk. 2001).

A savings clause that merely states that private parties who could previously seek civil

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

The plain meaning of a statutory provision must be given effect whenever possible. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 62 n.7 (Pon. 2001).

When statutes are pre-constitution, the statutes and constitutional provisions must be read together because the statutes are only effective to the extent they are not in conflict with the constitution. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 63 (Pon. 2001).

The assertion that municipalities own submerged reef areas is not sound because 67 TTC 2(1) expressly states that the law established by the Japanese administration was that all marine areas below the ordinary high watermark belong to the government and because a finding that the municipalities were the underlying owners of all submerged reef areas, would render the statute granting them the right to use marine resources there superfluous and inconsistent with the rest of the statute. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 64 (Pon. 2001).

A long-standing norm of statutory construction states that provisions of law must be read so as to be internally consistent and sensible. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 64 (Pon. 2001).

Generally, statutes and enactments in derogation of the common law – existing law – are to be strictly construed. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 122 (Pon. 2001).

Although it is generally agreed that a statute in the derogation of the common law must be strictly construed, this rule of statutory construction cannot be used to defeat the obvious purpose of the legislature, nor to lessen the scope plainly intended to be given the statute. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 122 (Pon. 2001).

When a Pohnpei statute does not show any legislative intent to abolish the well-established principle of absolute judicial immunity for the judicial act of timing the issuance of court decisions and to allow a private suit for damages in such cases, a court can only conclude that the Pohnpei Legislature did not intend to abolish absolute judicial immunity in this instance and did not intend to create a right for damage suits against judges if their decisions were not timely. Damarlane v. Pohnpei Supreme Court Appellate Division, 10 FSM R. 116, 122 (Pon. 2001).

When the statute requires that a statement of contest must be filed within five days "after declaration of the result of the election by the body canvassing the returns" and also provides that upon "tabulation of each of the precinct votes, the Commission shall tabulate or cause to be tabulated the cumulative results, including the total of election results for each nominee, and make these results known to the public," the declaration is when the results are made known to the public. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 153 (Chk. S. Ct. App. 2001).

If a current law is unconstitutional, the previous law generally applies. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 145, 154 (Chk. S. Ct. App. 2001).

Generally, statutes and enactments in derogation of the common law, or existing law, are to be strictly construed. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

The court's task is to apply the law in the manner the Legislature intended as evidenced by the language it used in the statute. If this is unfair, it is a matter for the Legislature to correct, not the court. Cholymay v. Chuuk State Election Comm'n, 10 FSM R. 220, 223 (Chk. S. Ct. App. 2001).

FSM Code provisions must be construed with a view to effect their object. Bank of the FSM v. Pacific Foods & Servs., Inc., 10 FSM R. 327, 334 (Pon. 2001).

Generally, a provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. Jonas v. Kosrae, 10 FSM R. 453, 459 (Kos. S. Ct. Tr. 2001).

The over-obligation of funds statute, 55 F.S.M.C. 220(3), was not intended to create a basis for private parties to sue government officials, but for the government to be able to punish employees and officials who are found to be misusing public funds. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 634 (Pon. 2002).

Statutes which do not, by their terms, provide private citizens with a cause of action for money damages cannot be the basis for private damages claims. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 634 (Pon. 2002).

The court will not infer the existence of a private cause of action in the absence of a clear intent expressed in the statute that such a private cause of action be created. Pohnpei Cmty. Action Agency v. Christian, 10 FSM R. 623, 634 (Pon. 2002).

The court must begin with the presumption that acts of Congress are constitutional. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

Acts of the Kosrae Legislature are presumed to be constitutional. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

Courts should avoid, where possible, selecting interpretations of a statute which may bring into doubt the constitutionality of that statute. Accordingly, a defendant is burdened with a high standard of proof in establishing the unconstitutionality of a state law. Kosrae v. Sigrah, 11 FSM R. 249, 256 (Kos. S. Ct. Tr. 2002).

The word "demand" means "ask as by right." When a police officer did request and ask as by right for the defendant's driver's license, even though the officer did not use the word "demand," the officer's request to the defendant for his driver's license satisfies the statute's "demand" requirement. Kosrae v. Sigrah, 11 FSM R. 263, 264 (Kos. S. Ct. Tr. 2002).

The plain meaning of a statutory provision must be given effect whenever possible. Courts should not broaden statutes beyond the meaning of the law as written. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 378 (App. 2003).

The court's role is to construe the relevant statute as the legislature intended. Legislative intent is determined, first and foremost, by the statute's wording. The statute's text is considered the best evidence of legislative intent or will. The court must give effect to the plain meaning of a statutory provision whenever possible. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 379 (App. 2003).

When 53 F.S.M.C. 604 does not contain the broader language of, "or other legal processes," it cannot be interpreted in a manner identical to the U.S. statute that does. The FSM provision is more restrictive than the U.S. provision, as it protects Social Security benefits only from execution, attachment, garnishment, and assignment and not from other legal processes. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 379 (App. 2003).

The nation's laws are presumed to be constitutional, and when possible, statutory provisions should be interpreted in such a way as to avoid any potential conflicts between the statute and the Constitution. Rodriguez v. Bank of the FSM, 11 FSM R. 367, 382 (App. 2003).

Statutes are presumed constitutional until challenged, and the burden is on the challenger to clearly demonstrate that a statute is unconstitutional. Parkinson v. Island Dev. Co., 11 FSM R. 451, 453 (Yap 2003).

A court should construe a statute as the legislature intended. Legislative intent is determined by the statute's wording. What a legislature says in the statute's text is considered the best evidence of the legislative intent or will. In re Mid-Mortlocks Interim Election, 11 FSM R. 470, 477 (Chk. S. Ct. App. 2003).

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

All statutes are presumed to be constitutional and if there is any other way of disposing of an issue other than on a constitutional ground, then the court should decide the issue in that manner. Thus the court addresses a statute's constitutionality only with reluctance. Estate of Mori v. Chuuk, 11 FSM R. 535, 541 (Chk. 2003).

The conclusion that the statute is unconstitutional to the extent that it denies payment of judgments based on civil rights violations at least implies that the statute may be judicially tailored in application to make the statute otherwise workable. Estate of Mori v. Chuuk, 12 FSM R. 3, 12 (Chk. 2003).

A statutory provision repugnant to the Constitution, would be invalid to the extent of the conflict. FSM v. Udot Municipality, 12 FSM R. 29, 47 (App. 2003).

One principle of statutory construction is that the specific provision prevails over the more general. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

If two statutes conflict, the more recent expression of the legislature's will (that is, the most recently enacted statute) prevails over the earlier to the extent of the conflict. In re Engichy, 12 FSM R. 58, 64 (Chk. 2003).

Generally, a specific statutory provision will control rather than a general statute to the extent that they conflict. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

Since "enter" means to place anything before a court, or upon or among the records, in a formal and regular manner, and usually in writing, and since common sense must play a part in the way that an agency's statutorily mandated procedures are interpreted, a letter from the Social Security Board stating that it is a final decision by the Board, and that the petitioner has the option of appealing to the FSM Supreme Court, is a final, entered order within the meaning of 53 F.S.M.C. 208. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 103-04 (Kos. 2003).

When there is an apparent, or even putative, conflict between a statute of general application like the Administrative Procedures Act, and a statute directed toward a particular agency, the more specific provisions will apply. Andrew v. FSM Social Sec. Admin., 12 FSM R. 101, 104 (Kos. 2003).

Although statutes of limitation on criminal prosecutions must be accorded a rational meaning in harmony with the obvious intent and purpose of the law, such statutes must be liberally construed in favor of the accused, and exceptions from the benefits of such statutes must be construed narrowly or strictly against the government. The rule of strict construction will not justify an unreasonable interpretation – one contrary to the law's intent. The rule of strict construction simply means that ordinary words are to be given their ordinary meaning. FSM v. Wainit, 12 FSM R. 105, 109-10 (Chk. 2003).

By deliberately using a different term in 11 F.S.M.C. 105(3)(b) from the one defined in 11 F.S.M.C. 104(11), the drafters can only have intended that the meaning be different, and, by not defining it, that the term's meaning should be the common, ordinary English language meaning of the term because words and phrases as used in the code must be read with their context and be construed according to the common and approved usage of the English language. FSM v. Wainit, 12 FSM R. 105, 110 (Chk. 2003).

The common and approved usage in the English language of the term "public officer" is a person holding a post to which he has been legally elected or appointed and exercising governmental functions. "Public officer" is not a legal term of art but carries only its common, ordinary, and unambiguous English language meaning as found in the dictionary. FSM v. Wainit, 12 FSM R. 105, 110-11 (Chk. 2003).

Strictly construing the term "public officer" by using only its plain, ordinary, and unambiguous meaning (or in the code's terms "its common and approved usage"), a mayor falls within the public officer exception to the criminal statute of limitations. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

A statute's policy is to be found in the legislative intent, and it is the cardinal rule in the construction of statutes that such intent is, itself, to be found solely in the statute's words if they are free from ambiguity and express a sensible meaning. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

A court should construe a statute as the legislature intended. Legislative intent is determined by the statute's wording. What a legislature says in a statute's text is considered the best evidence of the legislative intent or will. Thus a court must give effect to the plain

meaning of a statutory provision whenever possible. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

When the statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

When the statute's drafters deliberately chose the term "public officer" in an exception to the criminal statute of limitations instead of using the term "public servant," as they did in so many other criminal code sections, the statute's object and the drafters' intent was to apply this exception to all public officers, not just to those the criminal code defined as "public servants." This is the statute's plain and unambiguous meaning. If the drafters had intended to restrict the exception to just those persons that had been defined as "public servants," they could easily have inserted that term instead. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

FSM Code provisions are to be construed according to the fair construction of their terms, with a view to effect its object and to promote justice. FSM v. Wainit, 12 FSM R. 105, 111 (Chk. 2003).

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).

It is an elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it. AHPW, Inc. v. FSM, 12 FSM R. 114, 122 (Pon. 2003).

The question of whether a statute acts retrospectively or only prospectively is one of legislative intent. Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

An Act was not intended to be retroactive when it provided that the Act's "revision" should "not be construed to extinguish any rights or remedies of any party which may have arisen prior to such revision, unless specifically provided otherwise." Herman v. Municipality of Patta, 12 FSM R. 130, 136 (Chk. 2003).

When the statute does not provide for an alternative, the court may not read into a statute words which do not exist therein. Chuuk v. Ernist Family, 12 FSM R. 154, 160 (Chk. S. Ct. Tr. 2003).

Basing legal analysis on dictionary definitions can be an uncertain proposition. Not the least of such concerns is that a comprehensive dictionary aims at setting out all meanings of a word, while a court must determine the precise intended meaning of a word or phrase in a specified context. AHPW, Inc. v. FSM, 12 FSM R. 164, 166 (Pon. 2003).

Even where a litigant may have concerns over its ability to realize on a judgment against the

state defendant, that concern alone does not serve to enlarge the scope of a statute to create liability for the national government, against which a judgment may be more collectible. Such issues are for the legislature. AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 2003).

There is no meaningful distinction between the terms "compulsory acquisition" and "expropriation." AHPW, Inc. v. FSM, 12 FSM R. 164, 167 (Pon. 2003).

The court cannot read words into a statute that are not there. AHPW, Inc. v. FSM, 12 FSM R. 164, 167-68 (Pon. 2003).

National laws are often applied to persons based on their status, even when that status is defined solely by another government. FSM v. Wainit, 12 FSM R. 201, 205 (Chk. 2003).

Words and phrases as used in the FSM code shall be construed according to the common and approved usage of the English language. FSM v. Wainit, 12 FSM R. 201, 205 (Chk. 2003).

The legislature's intention as to whether a statutory provision is mandatory is determined from the language used. Generally, a provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. Buruta v. Walter, 12 FSM R. 289, 293 (Chk. 2004).

A cardinal principle of statutory construction is to avoid an interpretation which may call into question the statute's, or the rule's, constitutionality. Adams v. Island Homes Constr., Inc., 12 FSM R. 348, 353 (Pon. 2004).

"Competition" means the effort of two or more parties, acting independently, to secure the business of a third party by the offer of the most favorable terms. "Merchandise" and "commodity" are similar enough in meaning to be interchangeable: "merchandise" is defined as each commodity bought and sold by merchants, while "commodity" is defined as any movable or tangible thing used in commerce as the subject of trade or barter. "Produce" as a noun means articles produced or grown from or on the soil. AHPW, Inc. v. FSM, 12 FSM R. 544, 551 (Pon. 2004).

The nation's laws are presumed to be constitutional. A fundamental principle of statutory interpretation is that where a statute can be read in two ways, one raising constitutional issues and the other interpreting the language as affecting matters clearly within Congress's constitutional reach, the latter interpretation should prevail so that the constitutional issue is avoided. Jano v. FSM, 12 FSM R. 569, 572-73 (App. 2004).

Courts should, where possible, avoid selecting interpretations of a statute which may bring into doubt that statute's constitutionality. Jano v. FSM, 12 FSM R. 569, 573 (App. 2004).

Statutes are presumptively constitutional. Urusemal v. Capelle, 12 FSM R. 577, 586 (App. 2004).

Decisions of the United States courts have been consulted by our nation's courts when the language of the FSM Constitution or statute is comparable to language of the United State Constitution, but when there has been no showing that the Kosrae statutory language is comparable to the language addressed by the United States Supreme Court, those decisions will not be considered, especially when the FSM Supreme Court appellate division has

addressed the issue. Melander v. Heirs of Tilfas, 13 FSM R. 25, 27 (Kos. S. Ct. Tr. 2004).

When a state law makes a specific reference to a national statute, any interpretation of that state law must simultaneously present a question of national law. The FSM Supreme Court would have subject matter jurisdiction over such a case. Shrew v. Sigrah, 13 FSM R. 30, 32 (Kos. 2004).

When under the plain language of 30 F.S.M.C. 202(1), only unobligated funds are subject to the Governor's request for distribution and while Kosrae State Law No. 8-17 does not make reference to obligated funds, it makes a specific reference to 30 F.S.M.C. 202(1), there is no conflict between the two laws, because the Kosrae statute, by reference to the national statute, incorporates the qualification for distribution contained in the national statute that only unobligated funds are subject to distribution. A statute must be given its plain meaning wherever possible, and when that plain meaning is derived by looking to the national statute specifically referred to in the state statute, the Governor has an obligation to request the distribution of only unobligated funds. Shrew v. Sigrah, 13 FSM R. 30, 33 (Kos. 2004).

An otherwise valid national statute must control over a state statute. AHPW, Inc. v. FSM, 13 FSM R. 36, 43 (Pon. 2004).

In considering a challenge to a statute's constitutionality, the initial premise upon which the court must begin is that acts of the Kosrae State Legislature and the state's laws are presumed to be constitutional. The court should avoid selecting an interpretation of a statute which may bring into doubt that statute's constitutionality. Kosrae v. Phillip, 13 FSM R. 285, 288 (Kos. S. Ct. Tr. 2005).

A practice which has been followed by a government for a significant period of time is entitled to great weight in establishing that practice's constitutionality. The party that raises the issue has the burden of proof as to the statute's unconstitutionality. Kosrae v. Phillip, 13 FSM R. 285, 288 (Kos. S. Ct. Tr. 2005).

The standard for consideration whether a statute is unconstitutionally vague is that a criminal statute must give fair notice of what acts are criminal conduct and subject to punishment; and the statute must be sufficiently explicit to prescribe the offense with reasonable certainty and not be so vague that person of common intelligence must necessarily guess at its meaning. However, it is accepted that some generality may be necessary in describing the prohibited conduct. Kosrae v. Phillip, 13 FSM R. 285, 289 (Kos. S. Ct. Tr. 2005).

When the language of the Kosrae statute and the United States statute are similar, it is appropriate to look to interpretations by United States courts. Kosrae v. Phillip, 13 FSM R. 285, 289 (Kos. S. Ct. Tr. 2005).

When interpreting the FSM Code, words and phrases must be read with their context and must be construed according to the common and approved usage of the English language. FSM v. Wainit, 13 FSM R. 532, 537, 538, 540 (Chk. 2005).

By deliberately using a different term, "public officer," in 11 F.S.M.C. 105(3)(b) from the ones defined in 11 F.S.M.C. 104(11) and in 11 F.S.M.C. 1301(2), the drafters can only have intended that the meaning be different, and, by not defining it, that the term's meaning should be its common, ordinary English language meaning. FSM v. Wainit, 13 FSM R. 532, 538 (Chk.

2005).

A statute's policy is to be found in the legislative intent. And it is the cardinal rule in the construction of statutes that such intent is, itself, to be found solely in the statute's words, if they are free from ambiguity and express a sensible meaning. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

A court should construe a statute as the legislature intended. Legislative intent is determined by the statute's wording. What a legislature says in a statute's text is considered the best evidence of the legislative intent or will. Thus a court must give effect to a statutory provision's plain meaning whenever possible. In other words, when the statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. FSM v. Wainit, 13 FSM R. 532, 539 (Chk. 2005).

The views of a later Congress about what an earlier Congress intended carry little or no weight. As a matter of law, such evidence can only be given little or no weight. FSM v. Wainit, 13 FSM R. 532, 540 (Chk. 2005).

Since by statute, the classification of the titles, chapters, subchapters, and sections of the FSM Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and since Congress has specifically prohibited that any implication, inference, or presumption of a legislative construction be drawn therefrom, the court can give no weight or credence to and must reject any argument, implication, inference, or presumption to be draw from a subchapter's heading or from a subsection's arrangement in that subchapter. FSM v. Wainit, 14 FSM R. 51, 54 (Chk. 2006).

Since a statutory provision's plain meaning must be given effect whenever possible and courts should not broaden statutes beyond the meaning of the law as written, when there is no requirement in Section 13.201's express language that the accused be absent at the time the offense was committed, absence is thus not an essential element of the offense of accessory. Nena v. Kosrae, 14 FSM R. 73, 82 (App. 2006).

Generally, when the word "district" appears in an FSM Code provision carried over from the Trust Territory Code by virtue of the Constitution's Transition Clause, "state" will be read in its place. FSM v. Kansou, 14 FSM R. 136, 138 n.1 (Chk. 2006).

An FSM Code provision is to be construed according to the fair construction of its terms, with a view to effect its object and to promote justice. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 n.1 (Pon. 2006).

When the plaintiff has a claim de jure that the power conferred (on the court to treble damages) should be exercised because it had proved its right to damages under 32 F.S.M.C. 301 *et seq.* and when, considering the whole anticompetitive practices statute and its nature and object, Congress's intent was to impose a positive duty to treble damages, not a discretionary power to do so, the court will therefore award treble damages. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

When the defendant's anticompetitive acts did not just harm the plaintiff's business, but those acts put it out of business, even if treble damages were discretionary, there would be no more appropriate a case to exercise the discretion to treble damages than one where the

anticompetitive acts put the plaintiff out of business. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

The court's obligation is to construe the statute to implement the legislature's intent and the best evidence of its intent is the words used (or not used) in the statute. Robert v. Simina, 14 FSM R. 257, 260 (Chk. 2006).

By deliberately using a different term in 11 F.S.M.C. 105(3)(b) from the one defined in 11 F.S.M.C. 104(11), the drafters must have intended that the meaning be different, and, by not defining it, that the term's meaning should be its common, ordinary English language meaning because words and phrases as used in the FSM Code must be read with their context and be construed according to the common and approved usage of the English language. FSM v. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

The common and approved English language usage of the term "public officer" is a person holding a post to which he has been legally elected or appointed and exercising governmental functions. Strictly construing the term "public officer" by using only its plain, ordinary, and unambiguous meaning (or in the code's terms "its common and approved usage"), a mayor falls within the public officer tolling provision to the criminal statute of limitations, since the plain, unambiguous, and ordinary meaning of "public officer" (an ordinary term for which no construction is required) is that the term includes any person holding a post to which he has been legally elected or appointed and exercising governmental functions. FSM v. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

Words and phrases, as used in the FSM Code or in any act of the Congress or in any regulation issued pursuant thereto must be read with their context and must be construed according to the common and approved usage of the English language. FSM v. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

Under the English language's common and approved usage, words and phrases that modify other words or phrases are positioned as closely as possible to the word or phrase they modify because referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent. FSM v. Nifon, 14 FSM R. 309, 313 (Chk. 2006).

When the maximum possible penalty for an alleged offense is ten years and the limitations period for offenses "punishable by imprisonment for ten years or more" is six years, the applicable limitations period is six years. The phrase, "ten years or more" does not mean that the maximum possible sentence must be more than ten years. The disjunctive "or" clearly means that, for subsection 105(2) to apply, a maximum possible sentence of only ten years is enough. FSM v. Nifon, 14 FSM R. 309, 314 (Chk. 2006).

Words and phrases, as used in the FSM Code or in any act of the Congress must be read with their context and shall be construed according to the common and approved usage of the English language. FSM v. Sam, 14 FSM R. 328, 334 n.2 (Chk. 2006).

Court-promulgated rules are interpreted using the principles of statutory construction. FSM v. Petewon, 14 FSM R. 463, 466 (Chk. 2006).

The Constitution permits the Chief Justice to promulgate civil procedure rules, which Congress may amend by statute. Since Congress has the authority to amend or create

procedural rules by statute, when Congress has enacted a procedural rule, it is valid. The Chief Justice does not have the authority to amend Congressionally-enacted statutes. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Tipingeni v. Chuuk, 14 FSM R. 539, 542 n.1 (Chk. 2007).

If the current law is unconstitutional, the previous law generally applies. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 588 (Chk. S. Ct. App. 2007).

A specific statutory provision prevails over a general provision. Samuel v. Chuuk State Election Comm'n, 14 FSM R. 586, 590 (Chk. S. Ct. App. 2007).

The legislature's intention as to whether a statutory provision is mandatory is determined from the language used. Generally, a provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. FSM v. Zhang Xiaohui, 14 FSM R. 602, 611 (Pon. 2007).

Although Section 1306 of Title 19 of the FSM Code authorizes the Secretary of the Department of Transportation, Communication and Infrastructure to investigate violations, there is no provision in Title 19 that prescribes what action shall be taken if an investigation is not undertaken. As such, the requirement that an investigation be undertaken prior to the filing of an information is not mandatory. FSM v. Zhang Xiaohui, 14 FSM R. 602, 611 (Pon. 2007).

When the Legislature has altered the statutory framework only to increase, and not decrease, Kosrae's hiring discretion for contract employees by removing the single qualification that it had placed on the contract employees exemption, the court cannot limit the hiring discretion thus conferred by the Kosrae Legislature in the absence of a statutory basis for doing so since it is the Kosrae Legislature's role to consider and determine the public policy that supports a statute, and to enact legislation that reflects that public policy. Allen v. Kosrae, 15 FSM R. 18, 22 (App. 2007).

When the Bankruptcy Act states the debtor's estate consists of "all property owned by the debtor on the date of the application," the Act should not be interpreted to mean something other than what it says. "All" means "all." Since statutes are to be interpreted according to their plain meaning, and when a statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. The meaning of "all" is plain and unambiguous." In re Panuelo, 15 FSM R. 23, 27 (Pon. 2007).

Words and phrases used in the FSM Code (of which the Bankruptcy Act is a part) must be read with their context and must be construed according to their common and approved English language usage. In re Panuelo, 15 FSM R. 23, 27 n.1 (Pon. 2007).

Since the FSM Code provisions are construed according to the fair construction of their terms with a view to effect its object and to promote justice, to construe the phrase "all property," to include the debtor's property outside the FSM would construe the Bankruptcy Act and 31 F.S.M.C. 203(1)(a) according to the fair construction of their terms or with a view to effect the Bankruptcy Act's object and to promote justice. In re Panuelo, 15 FSM R. 23, 28 (Pon. 2007).

Statutes are presumed to be constitutional. FSM v. Masis, 15 FSM R. 172, 175 (Chk. 2007).

Courts observe a strict rule of construction against a retrospective operation, and indulge in the presumption that the legislature intended statutes, or amendments thereof, enacted by it, to operate prospectively only, and not retroactively. A contrary determination will be made only when the legislature's intention to make a statute retroactive is stated in express terms, or is clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously shown. Esa v. Elimo, 15 FSM R. 198, 204-05 (Chk. 2007).

It is generally considered violative of the constitutional right to due process to apply a law retroactively that would divest someone of a vested right or property interest. Esa v. Elimo, 15 FSM R. 198, 205 (Chk. 2007).

Since the courts are the final authority on issues of statutory construction, when, based on the undisputed record and reasonable inferences drawn therefrom, the court concludes that the plaintiff is not selling imported items, the case is ripe for summary judgment on the issue of whether the tax statute applies to locally produced aggregate. K&I Enterprises v. Francis, 15 FSM R. 414, 418 (Chk. S. Ct. Tr. 2007).

When "first sale" is defined as "the sale first made after the date of receipt in Chuuk State of taxable tangible items, a tax on first sale in the State of Chuuk of all tangible items, except gasoline and unprocessed and unpackaged items, means that in order for an item to be taxable, there must be "receipt of the item" in Chuuk. The only reasonable inference to be drawn from the definition of "first sale" is that items which have never left Chuuk, that is, locally produced goods are not subject to the statute because they have no "date of receipt" in Chuuk. K&I Enterprises v. Francis, 15 FSM R. 414, 418 (Chk. S. Ct. Tr. 2007).

The time periods running from "discovery" of the offense and the date the offense was committed are subject to the qualifier, "whichever is longer." The court will not read into the statute a qualifier of "whichever is shorter" because this would be directly contrary to the statute's plain meaning. The longer of the two possible calculations of the statutory limitations period applies. FSM v. Narruhn, 15 FSM R. 530, 533 (Chk. 2008).

Although it is a settled rule of statutory construction that a statute adopted from another jurisdiction is presumed to have been adopted as construed by the courts of that jurisdiction, when the statute's substance departs from the other jurisdiction's statute, the result will also differ. In re Panuelo, 15 FSM R. 640, 641 (Pon. 2008).

While there is no statutory definition of exploitation of an economic resource, these words' plain meaning leads to the conclusion that it includes fishing because the FSM's fisheries are undoubtedly a natural resource, marine in character, that are subject to economic exploitation as a result of the market demand for fish. It follows that fishing in the FSM EEZ constitutes the exploitation of a natural resource that subjects a party to the personal jurisdiction of the FSM Supreme Court. FSM v. Fu Yuan Yu 096, 16 FSM R. 1, 3 (Pon. 2008).

When criminal liability is explicitly imposed for the use of a firearm "in connection with or in aid of the commission of any crime against the laws of the Federated States of Micronesia," the use of the term "laws of the Federated States of Micronesia" does not make the statute unconstitutionally vague. This term refers to any or all criminal laws in the Federated States of Micronesia, national, state, or local because if it were otherwise, it would not be possible for the

statute to have its obviously intended purpose and effect – to discourage the use of, and to punish the use of, firearms during the commission of other crimes. The plural form of the word "laws" further compels this conclusion. FSM v. Aiken, 16 FSM R. 178, 183 (Chk. 2008).

The appellate division should avoid unnecessary constitutional adjudication, and when interpreting statutes should try to avoid interpretations which may bring the constitutionality of the statute into doubt. Barrett v. Chuuk, 16 FSM R. 229, 234 (App. 2009).

Statutes setting salaries of public officials, like any other statutes, are presumed constitutional, and it is the court's duty to determine whether statutes conform to the Constitution, and if they do not, they will be treated as null and void. Doone v. Simina, 16 FSM R. 487, 490 (Chk. S. Ct. Tr. 2009).

A statutory construction that ends in an absurd result must be rejected. This is because a provision of law must be read so as to be internally consistent and sensible. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

Congress has mandated that words and phrases in the FSM Code must be read with their context, and that statutory provisions must be construed according to the fair construction of their terms, with a view to effect its object and to promote justice. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

Statutes are to be construed as Congress intended, which is first and foremost determined by the statute's language. FSM v. GMP Hawaii, Inc., 16 FSM R. 601, 604 (Pon. 2009).

Because issues of statutory construction and constitutional construction are issues of law, courts have final authority over them, and the issues are ripe for summary judgment, which will be granted to the party that is entitled to it as a matter of law. In ruling on these issues of law, the language of the statutory and constitutional provisions is controlling and the court will construe and give effect to the provisions' plain meaning. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 60 (Chk. S. Ct. Tr. 2010).

The Board of Education Act should be read so that its provisions are internally consistent and sensible and each provision should be considered against the entire Act's background so as to arrive at a reasonable interpretation consistent with other specific provisions and the Act's general design. Since the Board's statutorily-mandated purpose is to provide control and direction and to formulate policy for the Chuuk educational system, if the Act were construed so as to render the Board unable to perform its duties each time members' terms expired without replacements having been confirmed, the Board's ability to discharge its duties would be severely handicapped and its purpose to act towards the betterment of education in Chuuk would be undermined and since the Act contemplates an independent board with the power to perform its functions without interruption, construing the provisions for filling vacancies and appointments, and taking into account the Board's statutory purpose and the Act's overall intent, holdover incumbents continue to hold their seat until there are new incumbents. Chuuk State Bd. of Educ. v. Sony, 17 FSM R. 56, 61 (Chk. S. Ct. Tr. 2010).

11 F.S.M.C. 1023(7), which prohibits firearms use in connection with or in aid of the commission of "any crime against the laws of the Federated States of Micronesia," does not restrict liability for firearms use to only those crimes defined in the FSM Code because the term

"any crime against the laws of the Federated States of Micronesia," when read in context must refer to any or all criminal laws in the Federated States of Micronesia, national, state, or local, since, if it were otherwise, it would not be possible for the statute to have its obviously intended purpose and effect – to discourage the use of, and to punish the use of, firearms during the commission of other crimes. FSM v. Suzuki, 17 FSM R. 70, 76 (Chk. 2010).

The Constitution unmistakably places upon the judicial branch the ultimate responsibility for interpretation of the Constitution and for determining the constitutionality of statutes. It is the special province and duty of the courts, and the courts alone, to say what the law is and to determine whether a statute is constitutional. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 187 (Pon. 2010).

The question of a statute's constitutionality is not a nonjusticiable political question textually reserved to Congress. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 187 (Pon. 2010).

While the court is mindful that a practice which has been engaged in by a branch of the government for a long period of time is entitled to great weight in establishing the constitutionality of that practice, the passage of time does not automatically make a practice (or a statute) constitutional. Pacific Foods & Servs., Inc. v. National Oceanic Res. Mgt. Auth., 17 FSM R. 181, 190 (Pon. 2010).

The Chuuk wrongful death statute phrases the class of persons entitled to recovery in the conjunctive ("and"), not the disjunctive ("or"). Generally the use of the conjunctive "and" instead of the disjunctive "or" would mean that all three named beneficiaries – surviving spouse, children, and next of kin – are within the class of persons for whose benefit a wrongful death action may be brought and construing "and" according to its common and approved English usage would mean that all three groups, spouse, children, and next of kin, compose a single class of beneficiaries in a wrongful death action. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

Words and phrases as used in the Trust Territory Code must be read with their context and must be construed according to the common and approved usage of the English language. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

There is no evidence that the Trust Territory Congress of Micronesia's legislative intent in the wrongful death statute was that "other next of kin" meant only those who would inherit under intestate succession acts, especially since, at the time the Trust Territory wrongful death statute was enacted, there were no intestate succession acts. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 211 (Chk. 2010).

Trust Territory Code provisions must be construed according to the fair construction of their terms, with a view to effect its object and to promote justice. Roosevelt v. Truk Island Developers, 17 FSM R. 207, 212 (Chk. 2010).

When there is a conflict between a statute of general application and a statute specifically aimed, the more particularized provision will prevail. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 324 (Kos. 2011).

Because "display" means a fixed display such as being posted on a bulkhead, not being produced and displayed on demand, the FSM has proven a violation of the requirement to prominently display a fishing permit in the vessel's wheelhouse when the displayed permit had expired and was thus invalid, and the captain, only when asked for a current permit, promptly displayed one. FSM v. Kana Maru No. 1, 17 FSM R. 399, 405-06 (Chk. 2011).

Before starting an analysis of arguments concerning a statute's constitutionality, it is necessary to review any issues of statutory interpretation which may obviate the need for a constitutional ruling. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

Although parties may stipulate to factual matters, they may not stipulate to interpretations of law. Berman v. Lambert, 17 FSM R. 442, 446, 450-51 (App. 2011).

It is not competent for the parties or their attorneys to determine by stipulation questions as to the existence or proper construction or application of a statute. Berman v. Lambert, 17 FSM R. 442, 446 (App. 2011).

When comparing the terms from different parts of the code, the court must presume that by using different terms, in this case "legal residents" and "residents," the drafters could have only intended that the meaning would also be different. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

Statutes must be interpreted to remain internally sensible and consistent. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

A cardinal rule of statutory construction is that, where possible, courts avoid interpreting a law which may bring its constitutionality into doubt. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

In interpreting a statute, the statutory provision's plain meaning must be given full effect whenever possible. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

If the legislature wanted the statute to provide a hiring and promotion preference to Pohnpeian or FSM citizens, then the legislature would have used "citizen" rather than "legal resident." By not defining the term "legal residents" the term's meaning must be the term's common, recognized definition. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

A court should not interpret a statute in a way that would cause a question as to the statute's constitutionality. Berman v. Lambert, 17 FSM R. 442, 448 (App. 2011).

If a statutory provision is unconstitutional and can be severed from the rest of the legislative act, only that provision will be struck down. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 551 (App. 2011).

A legal conclusion that a statute is unconstitutional implies that it may be judicially tailored to make the statute otherwise workable. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 551 (App. 2011).

Under 24 F.S.M.C. 121, all of the Marine Resources Act's components are severable. Congress v. Pacific Food & Servs., Inc., 17 FSM R. 542, 551 (App. 2011).

The question of whether a statute acts retrospectively or only prospectively is one of legislative intent. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

Courts observe a strict rule of construction against a statute's retrospective operation, and indulge in the presumption that a legislature intends the statutes it enacts, or amendments thereto, to operate prospectively only, and not retroactively. A contrary determination can be made only when the legislature's intention to make a statute retroactive is stated in express terms, or is clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously shown. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

It generally violates the constitutional right to due process to apply a law retroactively that would divest someone of a vested right or property interest. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

When a public law's statutory language seems to speak only in prospective terms and certainly does not expressly state or clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously show legislative intent to make the statute retroactive or for it to be applied retrospectively to previously-awarded public contracts, the movant is entitled to summary judgment and a declaration that the public law does not apply to the parties' earlier contract. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 592 (Pon. 2011).

The term "Trust Territory" in statutes carried over from the Trust Territory Code should generally be read as meaning "Federated States of Micronesia" when the power involved is a national power. Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619 n.1 (Chk. 2011).

When, by its own terms, the 51 F.S.M.C. 112(7) definition of a "nonresident worker" applies only to FSM Code Title 51, chapter 1, and not even to the rest of the FSM Code, it certainly does not apply to the Chuuk Health Care Act, which contains its own definition for the term "resident." Chuuk Health Care Plan v. Pacific Int'l, Inc., 17 FSM R. 617, 619-20 (Chk. 2011).

A central principle of statutory interpretation is that, when a statute lends itself to two or more readings, a court shall choose the interpretation that is clearly constitutional. Genesis Pharmacy v. Department of Treasury & Admin., 18 FSM R. 27, 31 (Pon. 2011).

Generally, when the word "district" appears in an FSM Code provision carried over from the Trust Territory Code by virtue of the Constitution's Transition Clause, "state" will be read in its place. Likewise, "Trust Territory" should be read as "Federated States of Micronesia." Marsolo v. Esa, 18 FSM R. 59, 66 n.5 (Chk. 2011).

Because the FSM civil rights statute is based on the United States model, the FSM Supreme Court should consider United States court decisions under 42 U.S.C. § 1983 and § 1988 for guidance in determining 11 F.S.M.C. 701(3)'s intended meaning and governmental liability thereunder. Kaminanga v. Chuuk, 18 FSM R. 216, 219 n.1 (Chk. 2012).

Under a plain reading of the statute, the FSM Development Bank is not required to obtain permission on a case-by-case basis before starting collection actions for Federated Development Authority loans, and the court will not broaden the statute beyond the meaning of the law as written. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos.

2012).

Statutes are not to be construed by singling out a particular phrase, because the court must construe the words and terms at issue in the context of the other language used in the statute. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

A common maxim of statutory construction is that the expression of one thing means the exclusion of others. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

When both general and specific statutes address a matter, the specific controls the subject. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

A plain reading of the statutes, in context, includes a case-by-case requirement for refinancing FDA loans and by its specific inclusion excludes that requirement from collection efforts. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 378, 380 (Kos. 2012).

When the FSM civil rights statute is not as expansive as 42 U.S.C. § 1988 because it allows an attorney's fee award only in an action brought under 11 F.S.M.C. 701(3) and when an "action" is a court case while a "proceeding" includes both administrative and judicial proceedings, 11 F.S.M.C. 701(3) does not authorize the award of attorney's fees for administrative proceedings, even for administrative proceedings that were a prerequisite to a later court action (the exhaustion of administrative remedies requirement). It authorizes an attorney's fee award only for actions (court cases) brought under 11 F.S.M.C. 701(3). Poll v. Victor, 18 FSM R. 402, 405 (Pon. 2012).

Statutes are presumed constitutional. In re Lot No. 029-A-47, 18 FSM R. 456, 458 (Chk. S. Ct. Tr. 2012).

Since, under the Transition Clause, a statute in force in the State of Chuuk on the effective date of the Chuuk Constitution continues in effect to the extent it is consistent with the Chuuk Constitution or until it is amended or repealed, both 67 TTC 453 and 454 remain as Chuuk state law until amended or repealed since both are consistent with the Chuuk Constitution which requires "just compensation," and since they have not been repealed by implication because they occupy gaps in the recently enacted Chuuk eminent domain statute. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

A statute that provides only that the Plan's Board "may prescribe" or "may establish" differing premium amounts based on the number of the enrollee's dependants, or on their risk factors, does not appear to require that differing premium amounts be set. Mailo v. Chuuk Health Care Plan, 18 FSM R. 501, 506 (Chk. 2013).

When an FSM secured transactions statute mirrors and appears to have been drawn from a U.S. statute, U.S. caselaw construing the U.S. statute may be consulted for guidance in construing the FSM statute. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 & n.6 (Kos. 2013).

The FSM Development Bank is not defunct because if the public law that restructured it were unconstitutional, then the previous FSM Development Bank statute would apply. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 618 (Pon. 2013).

Congressionally-enacted statutes are presumed to be constitutional. FSM Dev. Bank v. Ehsa, 18 FSM R. 608, 619 (Pon. 2013).

Wording in the FSM Code or in statutes enacted by Congress must be construed according to the English language's common and approved usage. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

When the people's intent as voiced through its duly elected Congress is expressed in a statute, a court must give effect to the statutory provision's plain meaning whenever possible. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

It is a canon of construction that statutes that are *in pari materia* may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject. Esiel v. FSM Dep't of Fin., 19 FSM R. 72, 77 (Pon. 2013).

The court will not recharacterize damages as a part of the uninjured spouse's loss-of-consortium claim and alter the nature of the damages claim solely to circumvent the FSM's statutory limited waiver of its sovereign immunity that prevents the injured spouse from being awarded the full amount of the damages she suffered. The court will comply with Congress's policy choice and its intent in enacting the limited waiver. Lee v. FSM, 19 FSM R. 80, 85 (Pon. 2013).

Congress enacted an exemption statute, 6 F.S.M.C. 1415, and courts cannot broaden statutes beyond their original meaning. Nor do courts have the power to amend a statute. Dison v. Bank of Hawaii, 19 FSM R. 157, 161 (App. 2013).

Generally, a statutory provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 188 (Chk. 2013).

When the statute is silent about what result should follow if the Health Care Board does not submit draft legislation for the selection of its members by citizen enrolles and when that statute only directs the submission of draft legislation but does not require (nor could it) its enactment, the Board's failure to comply does not render the Board's composition illegal or its acts ultra vires. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 188 (Chk. 2013).

When the statute provides only that the Chuuk Health Care Plan's Board "may prescribe" or "may establish" differing premium amounts based on the number of the enrollee's dependants or on their "risk" factors, the statute does not require it, but leaves it to the Board's discretion, the Board may choose to assess premiums in a different manner. Mailo v. Chuuk Health Care Plan, 19 FSM R. 185, 189 (Chk. 2013).

When the word "district" appears in an FSM Code provision carried over from the Trust Territory Code by virtue of the Constitution's Transition Clause, "state" will be read in its place. Mori v. Hasiguchi, 19 FSM R. 222, 224 (Chk. 2013).

The statute's use of the indefinite article "a" before the word "court" instead of the definite article "the" indicates that in this particular instance no specific court is referred to and thus other tribunals are included in § 11.612(6)'s reference to "a court." Heirs of Henry v. Heirs of

Akinaga, 19 FSM R. 296, 301-02 (App. 2014).

The phrase "whether or not acting under color of law" in the civil rights criminal statute plainly means that Congress, by enacting the statute, made it a crime for a private person to willfully deprive another of, or injure, oppress, threaten, or intimidate the other in the free exercise of his or her rights under the FSM Constitution or laws. FSM v. Tipingeni, 19 FSM R. 439, 445 (Chk. 2014).

By its nature, a statute is a declaration of public policy. Congress determines and declares public policy by enacting statues. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

A statute declares public policy. If that statute is constitutional it can never be declared to be against public policy. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

When the legislature, by enacting a statute, declares the public policy, the judicial branch must defer to that pronouncement. Thus, when the legislature has declared, by law, the public policy, the judicial department must remain silent, and if a modification or change in such policy is desired the law-making department must be applied to, not the judiciary whose function is to declare the law but not to make it. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

When Congress enacted unambiguous statutes it chose what the public policy is – that the FSM national government be paid in full for its expenses in clearing the ships and planes after hours and that those ships and planes pay for actual overtime work. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

If the appellants believe that their arguments reflect a public policy better than the one Congress adopted by statute, they can apply to Congress for a modification or change in the statutes. Esiel v. FSM Dep't of Fin., 19 FSM R. 590, 594 (App. 2014).

When there is a conflict between a statute of general application to numerous agencies or situations, such as an Administrative Procedures Act, and a statute specifically aimed at a particular agency or procedure the more particularized provision will prevail. This rule is based upon recognition that the legislative body, in enacting the law of specific application, is better focused and speaks more directly to the affected agency and procedure. Macayon v. Chuuk State Bd. of Educ., 19 FSM R. 644, 648 (Chk. S. Ct. Tr. 2015).

Generally, a statutory provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result which should follow if those actions are not completed. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 25 (App. 2015).

The legislature's intention as to whether a statutory provision is mandatory is determined from the language used. Generally, a provision is directory and not mandatory if it requires that certain actions be completed, but does not prescribe the result that should follow if those actions are not completed. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 25 n.6 (App. 2015).

Whether cumulative statutory penalties are permissible is properly determined by seeking out the legislative intent as expressed in the statute's language. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

A statute imposing a penalty is to be strictly construed against the government and in favor

of one against whom penalties are sought to be imposed. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

When a penalty provision's statutory language is ambiguous, this ambiguity should be resolved against punishing the same action under two different statutes. FSM v. Kuo Rong 113, 20 FSM R. 27, 31 (Yap 2015).

Read in proper context, 24 F.S.M.C. 611(1)(b) and (c) are aimed at similar types of wrongdoing and uphold a public interest of the same nature. Thus, a vessel's failure to maintain its transponder in good working order, and its consequent failure to ensure transmission of required information from the transponder, is a solitary act that caused only one injury and therefore 24 F.S.M.C. 611(5) should not be construed to authorize cumulative penalties. FSM v. Kuo Rong 113, 20 FSM R. 27, 32 (Yap 2015).

Since Subsection (1) allows NORMA to require that operators perform an integrated act which, when completed in its entirety, ensures transmission of required information from a vessel's transponder and this is reflected in the use of the word "and" between 24 F.S.M.C. 611(1)(b) and (c); since the failure to perform any one part of the integrated act required under subsection 611(1) is sufficient to frustrate entirely the purpose of the subsection; and since a failure to perform multiple component parts of the act required under the subsection is no more frustrating to the statute's purpose than failure to perform only one part, the court will, in the absence of clear legislative intent to impose cumulative penalties, construe 24 F.S.M.C. 611(5) to impose only a single penalty for the failure to comply with the integrated requirements imposed on them under 24 F.S.M.C. 611(1). FSM v. Kuo Rong 113, 20 FSM R. 27, 33 (Yap 2015).

To prove a violation of section 611(1), the government has to show that a defendant: 1) entered into an access agreement or secured a fishing permit; 2) that the access agreement or permit required the defendant to conform to the requirements that NORMA is authorized to impose under section 611(1), and 3) that the defendant failed to comply with these requirements. It follows that a defendant's failure to comply with section 611(1), will, ipso facto, constitute a violation of a permit or access agreement as proscribed by section 906(1)(a),(c). FSM v. Kuo Rong 113, 20 FSM R. 27, 34 (Yap 2015).

In the absence of clear legislative intent to impose cumulative penalties against a single violative act, the court will construe 24 F.S.M.C. 611(5), 906(1) and 920 to impose only one penalty for failure to comply with the integrated requirements imposed as a condition of a permit or access agreement pursuant to 24 F.S.M.C. 611(1). But since 24 F.S.M.C. 901(2) evinces clear legislative intent for the imposition of cumulative penalties by making each day of a continuing violation a separate offense for violations of subtitle I and since the entire Marine Resources Act of 2002 constitutes FSM Code Title 24, Subtitle I, it is proper to impose a separate penalty for each of the four days between April 27, 2013 and April 30, 2013, inclusive, during which the vessel violated a provision of that Act. FSM v. Kuo Rong 113, 20 FSM R. 27, 34-35 (Yap 2015).

That the criminal offense of contempt of court statute is in Title 4, instead of Title 11, is meaningless and no inference that it is not a crime can be drawn from it. This is because the classification of the titles, chapters, subchapters, and sections of the FSM Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference, or presumption of a legislative construction can be drawn therefrom. FSM v. Ehsa, 20 FSM R. 106, 110 (Pon. 2015).

The addition of the language "in the same manner as the levy of an execution" in 54 F.S.M.C. 153 shows that a different meaning was intended than if the statute had read "by writ of execution." Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

Statutes are to be interpreted as the legislature intended and a statute's words are the best indication of what the legislature intended. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

It is presumed that words included in a statute are not meaningless surplusage because it is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 125 (Pon. 2015).

Since the nation's statutes are presumed to be constitutional, a bank is not required to challenge, on a depositor's behalf, the tax lien statute's constitutionality. The bank may rely on the statute. Fuji Enterprises v. Jacob, 20 FSM R. 121, 126 (Pon. 2015).

Since, in interpreting Kosrae State Code sections, the singular can mean the plural, therefore "permit" can mean permits if the law otherwise requires more than one permit. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

The court should construe a statute as the legislature intended. Lee v. Kosrae, 20 FSM R. 160, 165 (App. 2015).

Since 4 F.S.M.C. 124(1) is based on the United States model and its statutory language is verbatim thereto, the court should consider United States legal authority under 28 U.S.C. § 455 for guidance in determining 4 F.S.M.C. 124's meaning concerning recusal as a result of a financial relationship with a lending institution. Christopher Corp. v. FSM Dev. Bank, 21 FSM R. 42, 46 (App. 2016).

Generally, when the word "district" appears in an FSM Code provision carried over from the Trust Territory Code by virtue of the Constitution's Transition Clause, the word "state" will be read in its place. Pt. Alorinda Shipping v. Alorinda 251, 21 FSM R. 129, 131 (Pon. 2017).

Since the human trafficking statute does not define recruiting, transporting, harboring, transferring, or receiving, these words' plain meaning will be used to determine whether the actions alleged in each count of the criminal information are included within the statute. FSM v. Shiro, 21 FSM R. 195, 203 (Chk. 2017).

Generally statements made by others [that is, by persons other than congressmen or the bill's draftsman] at the committee hearings concerning the nature and effect of a bill are not accorded much or any weight. FSM v. Siega, 21 FSM R. 291, 296 (Chk. 2017).

When a statute sets forth a list in the disjunctive (using the word "or"), the existence of any one of the listed conditions makes the statute applicable. FSM v. Siega, 21 FSM R. 291, 298 (Chk. 2017).

In the interpretation of statutes, the legislative will is the all-important or controlling factor. The primary rule of construction of statutes is to ascertain and declare the legislature's intention, and to carry such intention into effect to the fullest degree. Chuuk Health Care Plan v. FSM

Dev. Bank, 21 FSM R. 300, 305 (Chk. 2017).

A statutory provision's plain meaning must be given effect whenever possible. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 305 (Chk. 2017).

A court should construe a statute as the legislature intended as determined by the statute's wording. What a legislature says in the statute's text is considered the best evidence of the legislative intent or will. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 305 (Chk. 2017).

A long-standing norm of statutory construction holds that provisions of law must be read so as to be internally consistent and sensible. Interpretations which strip clauses of substance and effect go against the norms of interpretation and are greatly disfavored. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 305 (Chk. 2017).

Unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 305 (Chk. 2017).

Chuuk State Law No. 2-94-06 contemplates a comprehensive health insurance system whereby premium payments were required on behalf of eligible enrollees employed by the national government. The statute's language contemplates a system of "universal" coverage automatically extending to all eligible enrollees, which includes all employed Chuuk residents regardless of their employer. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 306 (Chk. 2017).

When the issue of a bank releasing funds under 54 F.S.M.C. 153 is a matter of first impression, the court may look to case law of other jurisdictions, particularly the United States, for comparison and guidance. Fuji Enterprises v. Jacob, 21 FSM R. 355, 361 (App. 2017).

Statutes are to be interpreted as the legislature intended and a statute's words are the best indication of that intent. Fuji Enterprises v. Jacob, 21 FSM R. 355, 361-62 (App. 2017).

A court should construe a statute as the legislature intended. Legislative intent is determined by the statute's wording because what a legislature says in the statute's text is considered the best evidence of the legislative intent or will. Thus, a court must give effect to the plain meaning of a statutory provision whenever possible. FSM v. Mumma, 21 FSM R. 387, 398 (Kos. 2017).

A long-standing norm of statutory construction holds that provisions of law must be read to be internally consistent and sensible. FSM v. Mumma, 21 FSM R. 387, 398 (Kos. 2017).

The FSM Social Security Act is patterned after United States statutes, and it is well settled rule of statutory construction that a statute adopted from another jurisdiction is presumed to have been adopted as construed by that jurisdiction's courts. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 417 (App. 2018).

A statutory provision's plain meaning must be given effect whenever possible. Because issues of statutory construction are issues of law, courts have final authority over them and the

court will construe and give effect to the provisions' plain meaning. Chuuk v. Jose, 21 FSM R. 566, 569 (Chk. S. Ct. Tr. 2018).

A court should construe a statute as the legislature intended. Legislative intent is determined by the statute's wording – what a legislature says in a statute's text is considered the best evidence of the legislative intent or will. Chuuk v. Jose, 21 FSM R. 566, 569 (Chk. S. Ct. Tr. 2018).

A court must give effect to a statutory provision's plain meaning whenever possible. Chuuk v. Jose, 21 FSM R. 566, 569 (Chk. S. Ct. Tr. 2018).

When the statute never defines imprisonment, the plain meaning of the term governs, which could leave the possibility of defining imprisonment to include house arrest, but the statute's context narrows the definition of imprisonment to refer only to confinement in jail. Chuuk v. Jose, 21 FSM R. 566, 570 (Chk. S. Ct. Tr. 2018).

Only those sections that contain a provision which mandates that defendant shall serve a mandatory x year jail sentence supersede § 1110 and thereby actually remove the court's equitable power to suspend such jail sentence. Chuuk v. Jose, 21 FSM R. 566, 572 (Chk. S. Ct. Tr. 2018).

It is a well-established canon of statutory construction that statutes are presumed to be constitutional. Chuuk v. Silluk, 21 FSM R. 649, 652 (Chk. S. Ct. Tr. 2018).

When a statute's language is plain and unambiguous, it declares its own meaning and there is no room for construction. However, a statute that either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. A statute that is so vague and ill-defined that the acts prohibited cannot be understood by people of ordinary intelligence, cannot serve as a basis for criminal prosecution. Chuuk v. Silluk, 21 FSM R. 649, 652 (Chk. S. Ct. Tr. 2018).

A court cannot strike down or enjoin statutes merely because they might be unwise and some other course of action is better. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 267 (Chk. 2019).

When a Chuuk Criminal Procedure Rule conflicts with a Chuuk statute, the statute's language prevails because the Chuuk Constitution vests the Chief Justice with the authority to promulgate Criminal Procedure Rules, which the legislature may amend by statute, but the Chief Justice has no authority to amend a statute enacted by the legislature. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Chuuk v. Phillip, 22 FSM R. 425, 428 (Chk. S. Ct. Tr. 2019).

When a Chuuk Criminal Procedure Rule conflicts with a Chuuk statute, the statute's language prevails because the Chuuk Constitution vests the Chief Justice with the authority to promulgate Procedure Rules, which the legislature may amend by statute, but the Chief Justice has no authority to amend a statute enacted by the legislature. Therefore, if the statute applies and the statute and the rule conflict, the statute must prevail. Chuuk v. Fred, 22 FSM R. 429, 432 (Chk. S. Ct. Tr. 2019).

The only relevant question when evaluating a strict liability statute is whether there was compliance. A finding of discreet or overt acts in violation of the Marine Resources Act need not be established in order to find continuing violations under 24 F.M.S.C. 901(2). Thus, when the lack of compliance continued for four days, the court will impose penalties for each day of noncompliance. FSM v. Kuo Rong 113, 22 FSM R. 515, 526-27 (App. 2020).

FSM law does not recognize retroactive application of statutes without specific legislative instructions. FSM v. Kuo Rong 113, 22 FSM R. 515, 528 (App. 2020).

Courts observe a strict rule of construction against a statute's retrospective operation, and indulge in the presumption that a legislature intends the statutes it enacts, or amendments thereto, to operate prospectively only, and not retroactively. A contrary determination can be made only when the legislature's intention to make a statute retroactive is stated in express terms, or is clearly, explicitly, positively, unequivocally, unmistakably, and unambiguously shown. FSM v. Kuo Rong 113, 22 FSM R. 515, 528 (App. 2020).

When the later enacted public law is silent about whether sections 611(4) and 611(5) were retroactively repealed, the law in effect at the time of the violations will control the imposition of the penalty. FSM v. Kuo Rong 113, 22 FSM R. 515, 528 (App. 2020).

That one section follows another in the FSM Criminal Code is not particularly relevant because the classification of the titles, chapters, subchapters, and sections in the code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and no implication, inference, or presumption of a legislative construction can be drawn therefrom. FSM v. Buchun, 22 FSM R. 529, 535-36 & n.5 (Yap 2020).

The 11 F.S.M.C. 1006(2) statutory presumption about who possesses a firearm or ammunition found in a vehicle or a vessel applies generally to any charge based on the possession of firearms or ammunition found in a vehicle or vessel, and would apply to a prosecution under 11 F.S.M.C. 1005(1). FSM v. Buchun, 22 FSM R. 529, 536 (Yap 2020).

The statute that authorizes the President to delegate his authority to issue entry permits and to permit entry into the FSM of persons, vessels, and aircraft under the provisions of this chapter and regulations promulgated thereto also authorizes the President to delegate his authority to deny issuance of an entry permit and his authority to deny entry of persons, vessels, and aircraft into the FSM because if an official has the delegated authority to issue an entry permit, then that official must also have the authority not to issue the entry permit – that is, to deny an entry permit application or renewal. Macayon v. FSM, 22 FSM R. 544, 553 (Chk. 2020).

– Construction – Adoption by Reference

Under general rules of statutory construction, when a statute adopts a provision by reference, it adopts that provision as it was at the time of adoption and any later changes to the referred provision will have no effect on the statute unless the statute specifically so provides or strongly implies. A statutory provision adopted by reference thus cannot be altered except by further action of the adopting legislature. That is because once the legislature has adopted a provision by reference, it makes that referenced provision its own law just as if it had entirely enacted the provision itself. No other rule would furnish any certainty as to what is the law.

Anton v. Cornelius, 12 FSM R. 280, 285 n.1 (App. 2003).

Under the principles of statutory construction, when a statute adopts a provision by reference, it adopts that provision as it was at the time of adoption and any later changes to the referred provision will have no effect on the statute unless the statute specifically so provides or strongly implies. Otherwise, a statutory provision adopted by reference cannot be altered except by further action of the adopting legislature. That is because once the legislature has adopted a provision by reference, it makes that referenced provision its own law just as if it had entirely enacted the provision itself and because no other rule would furnish any certainty as to what is the law. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 629 & n.4 (Yap 2013).

When the FSM statute specifically defines the "Limitation of Liability Convention" as "the Convention on Limitation of Liability for Maritime Claims done at London on November 19, 1976 as modified by its protocols and as amended from time to time, " 19 F.S.M.C. 106(11), the statute specifically provides that later changes to the Liability Convention will be part of FSM law without further action by Congress. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 623, 629 (Yap 2013).

– Construction – "May" and "Shall"

The use of the word shall in a statute is the language of command and considered mandatory. Ting Hong Oceanic Enterprises v. Supreme Court, 8 FSM R. 1, 5 (App. 1997).

While it is true in construction of statutes and rules that the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, the context in which the word appears must be the controlling factor. Kama v. Chuuk, 10 FSM R. 593, 599 (Chk. S. Ct. App. 2002).

While it is true in construction of statutes that the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, the context in which the word appears must be the controlling factor. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20-21 (App. 2006).

In construction of statutes the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, but the context in which the word appears must be the controlling factor. The fact that the word "may" was used is not conclusive, since it is well settled that permissive words may be interpreted as mandatory where such construction is necessary to effectuate the legislative intent. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 190 (Pon. 2006).

Treble damages were proper when the discretion denoted by the word "may" in the statute lies with the injured party and not the court – the injured party "may" sue and recover treble damages – and when Congress's intent was to give the injured party treble damages if it sues and proves its case. The statute's context compels this conclusion. AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 190-91 (Pon. 2006).

When, from the consideration of the whole statute, and its nature and object, it appears that the legislature's intent was to impose a positive duty rather than a discretionary power, the word

"may" will be held to be mandatory. A mandatory construction will usually be given to the word "may" when public interests are concerned, and the public or third persons have a claim de jure that the power conferred should be exercised, or whenever something is directed to be done for the sake of justice or for the public good; but never for the purpose of creating a right. In a proper case the word "may" will be construed as "must" or "shall." AHPW, Inc. v. Pohnpei, 14 FSM R. 188, 191 (Pon. 2006).

In construing statutes, the word "may" as opposed to "shall" is indicative of discretion or a choice between two or more alternatives, but the context in which the word appears must be the controlling factor. When, from the consideration of the whole statute, and its nature and object, it appears that the legislature's intent was to impose a positive duty rather than a discretionary power, the word "may" will be held to be mandatory. A mandatory construction will usually be given to the word "may" when public interests are concerned, and the public or third persons have a claim de jure that the power conferred should be exercised, or whenever something is directed to be done for the sake of justice or for the public good; but never for the purpose of creating a right. Accordingly, in a proper case the word "may" will be construed as "must" or "shall." Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 621, 628 (App. 2011).

Despite the usage of the word "shall," FSM case law dictates that if the statute does not advise what will happen if the action is not carried out, then the statutory provision is directory rather than mandatory. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 25 (App. 2015).

When discretionary language "may" is used, which indicates that the insurance board has the power to consider these factors when assessing the insurance premiums and may exercise the power of applying these factors in the future, the discretion to do so is left with the board, and not with the court. Mailo v. Chuuk Health Care Plan, 20 FSM R. 18, 26 (App. 2015).

– Presumptions

Since by statute, the classification of the titles, chapters, subchapters, and sections of the FSM Code, and the headings thereto, are made for the purpose of convenient reference and orderly arrangement, and since Congress has specifically prohibited that any implication, inference, or presumption of a legislative construction be drawn therefrom, the court can give no weight or credence to and must reject any argument, implication, inference, or presumption to be draw from a subchapter's heading or from a subsection's arrangement in that subchapter. FSM v. Wainit, 14 FSM R. 51, 54 (Chk. 2006).

A "mini bag," which is an easily-transportable article similar in that nature to a purse, handbag, brief case, attache case, or backpack, is not an "enclosed customary depository" within the meaning of the statutory exception to the statutory presumption that a firearm, dangerous device, or ammunition found in a vehicle or vessel, is prima facie evidence that such firearm, dangerous device, or ammunition is in the possession of all persons in the vehicle or vessel. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

Statutory presumptions come in three types: permissive inference, mandatory rebuttable presumption, and conclusive mandatory presumption. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

Under the permissive inference type of criminal statutory presumptions, the prosecution is

not relieved of the burden of persuasion since the presumption is effective only so long as there is no substantial evidence contradicting the conclusion flowing from the presumption, and the factfinder is left free to accept or reject the inference. FSM v. Aliven, 16 FSM R. 520, 533 (Chk. 2009).

A presumption in a criminal statute creates a permissive inference. Because this permissive presumption leaves the trier of fact free to credit or reject the inference and does not shift the burden of proof, it affects the application of the "beyond a reasonable doubt" standard only if, under the facts of the case, there is no rational way the trier could make the connection permitted by the inference. This is the manner in which the FSM Supreme Court should and will handle a criminal presumption that is "prima facie evidence." FSM v. Aliven, 16 FSM R. 520, 533-34 (Chk. 2009).

The 6 F.S.M.C. 801 provision that: "[a] judgment of any court shall be presumed to be paid and satisfied at the expiration of twenty years after it is rendered" reflects the common-law rebuttable presumption of payment after a lapse of twenty years. It can therefore be implied that the 20-year statute of limitations for enforcing a judgment is a rule that creates a rebuttable presumption of payment. Kama v. Chuuk, 18 FSM R. 326, 336 (Chk. S. Ct. Tr. 2012).

The doctrine of prescription or presumption of payment of a judgment does not apply when 20 years has not yet elapsed. Kama v. Chuuk, 18 FSM R. 326, 336 (Chk. S. Ct. Tr. 2012).

Statutory presumptions come in three types: permissive inference, mandatory rebuttable presumption, and conclusive mandatory presumption. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

Under a mandatory rebuttable presumption, once the predicate facts have been proven, the burden of persuasion shifts to the defense to rebut the presumption, although the burden of proving guilt beyond a reasonable doubt remains with the prosecution, or in a civil case, liability by the preponderance of the evidence. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

Under the permissive inference type of statutory presumptions, the state is not relieved of the burden of persuasion since the presumption is effective only so long as there is no substantial evidence contradicting the conclusion flowing from the presumption, and the fact-finder is left free to accept or reject the inference. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

Unless a cigarette importer produces evidence to overcome the Chuuk tax act's presumption that the cigarettes were sold after importation, the statutory presumption that he sold the cigarettes he brought into Chuuk would stand and he therefore would be liable to the state for the sales tax he should have collected from the buyers when the cigarettes were sold. Harper v. Chuuk State Dep't of Admin. Servs., 19 FSM R. 147, 154 (Chk. 2013).

The statutory presumption that judgments over twenty years old have been satisfied is a rebuttable presumption. Kama v. Chuuk, 20 FSM R. 522, 534 (Chk. S. Ct. App. 2016).

A statutory rebuttable presumption that an FSM passport-holder that has had his or her passport renewed twice in a row, has renounced the citizenship of another nation and that he or she is solely an FSM citizen, has been overcome when a person has conceded that he has not

formally renounced any claim he may have to U.S. citizenship and does not wish to do so now. Hartmann v. Department of Justice, 20 FSM R. 619, 623 (Chk. 2016).

The argument that the presumptions "cancel each other out" is not viable. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 393 (Kos. 2019).

When a plaintiff successfully creates a presumption, he not only satisfies his burden of going forward but also shifts that burden to the defendant. The defendant then must rebut the presumption to satisfy his burden of going forward. The burden of persuasion normally remains on the plaintiff for his claim throughout the trial. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 393 (Kos. 2019).

The 11 F.S.M.C. 1006(2) statutory presumption about who possesses a firearm or ammunition found in a vehicle or a vessel applies generally to any charge based on the possession of firearms or ammunition found in a vehicle or vessel, and would apply to a prosecution under 11 F.S.M.C. 1005(1). FSM v. Buchun, 22 FSM R. 529, 536 (Yap 2020).

– Repeal

Amendment or repeal of a Trust Territory statute by Congress need not be explicit to be effective. If a Trust Territory statutory provision is inconsistent or in conflict with a statutory provision enacted by Congress, that provision is repealed by implication. FSM v. Albert, 1 FSM R. 14, 15-16 (Pon. 1981).

Under article XV, section 1 of the Constitution, a Trust Territory Code provision is repealed by a subsequent statutory provision enacted by the Congress only if the statutory provisions in question are inconsistent or in conflict. Even if certain provisions are repealed, other provisions of that same statute may remain intact if the statute, without the deleted provision, is self-sustaining and capable of separate enforcement. FSM v. Boaz (II), 1 FSM R. 28, 29 (Pon. 1981).

The fact that Congress repealed many provisions of Title 11 of the Trust Territory Code by implication does not lead to the conclusion that all provisions of Title 11 are repealed. FSM v. Boaz (II), 1 FSM R. 28, 29 (Pon. 1981).

Since the national government does not have major crimes jurisdiction over Title 11 Trust Territory Code assaults calling for imprisonment of no more than six months, the repealer clause of the National Criminal Code would not appear to repeal those sections. FSM v. Boaz (II), 1 FSM R. 28, 30 (Pon. 1981).

The repealer clause of the National Criminal Code repealed those provisions of Title 11 of the Trust Territory code above the monetary minimum of $1,000 set for major crimes. Where the value is below $1,000, section 2 does not apply because it is not within the national court jurisdiction. FSM v. Hartman, 1 FSM R. 43, 46 (Truk 1981).

At common law, repeal of a criminal statute abated all criminal prosecutions which had not reached final disposition in the highest court authorized to review them. In re Otokichy, 1 FSM R. 183, 189-90 n.4 (App. 1982).

A statute is repealed by implication by a constitutional provision when the legislature, under the new constitutional provision, no longer has the present right to enact statutes substantially similar to the statute in question. FSM v. Jano, 6 FSM R. 9, 11 (Pon. 1993).

The test to determine whether the 1991 constitutional amendment repealed a statute by implication is: Does Congress, under the current constitutional provision, have the present right to enact a statute substantially like the statute in question? FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

Because the repeal of a statutory prohibition against usury releases any penalties imposed and permits enforcement of the debtor's obligation in accordance with the parties' agreement, it follows that as to a usury defense, the parties' agreement is governed by the law existing when the agreement is enforced. Bank of the FSM v. Mori, 11 FSM R. 13, 15 (Chk. 2002).

When the constitutional amendment to article IX, § 2(p) was ratified, it eliminated Congress's power to define major crimes and repealed by implication Title 11's major crimes provisions. FSM v. Anson, 11 FSM R. 69, 74 (Pon. 2002).

Chuuk municipalities once had the delegated right to regulate alcoholic beverage sales, but in 2001 the state legislature made major revisions to the law pertaining to intoxicating liquors and placed exclusive jurisdiction over the regulation of alcoholic beverages in the state. The Chuuk Legislature's enactment removed any prior municipal authority to regulate the possession and sale of alcoholic beverages – a municipality may not by imposition of licensing fees or taxes regulate the possession or sale of such substances. Ceasar v. Uman Municipality, 12 FSM R. 354, 358 (Chk. S. Ct. Tr. 2004).

When the state statute authorizing municipal tax powers reserved the state's right to enact legislation to assess, levy and collect taxes on any subject for which a tax has been assessed and levied by municipal ordinance and provided that in the event that the state enacted legislation on that same subject, the enactment would repeal the ordinance on the same subject, and when the state has in fact enacted legislation imposing fees on businesses engaged in alcoholic beverage sales, any municipal ordinance imposing business license fees on businesses engaged in alcoholic beverage sales is repealed and a municipality does not have the authority to impose business license fees or taxes on alcoholic beverage sellers. Ceasar v. Uman Municipality, 12 FSM R. 354, 358-59 (Chk. S. Ct. Tr. 2004).

The final test in determining whether a statute is repealed by implication by a new constitutional provision is: Has the legislature, under the new constitutional provision, the present right to enact statutes substantially like the statutes in question? Jano v. FSM, 12 FSM R. 569, 574 (App. 2004).

When the Trust Territory Code Title 67, chapter three, which includes 67 TTC 115, was repealed and replaced by a similar Chuuk state law in 2004, and since the Land Commission acts complained of took place in 1998, and the trial division case was filed in 2000, the Trust Territory Code, Title 67, chapter 3 is the applicable law, but the 2004 Chuuk state statute enacted will apply to the further proceedings on remand. Aritos v. Muller, 19 FSM R. 533, 537 n.2 (Chk. S. Ct. App. 2014).

A state legislature that has created a commission by statute can abolish that commission by statute, just as it could, by statute, abolish most any governmental agency that it has created by statute, except those agencies which the state's constitution requires it to create. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 & n.8 (Chk. 2019).

The power to legislate is the power to repeal. A legislature may not bind itself or a future legislature by enacting an irrepealable law. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 266 (Chk. 2019).

If a legislature has the power to abolish an agency, it certainly has the power to exercise a less drastic regulation of the agency's affairs by suspending it. In re Constitutionality of Chuuk State Law No. 14-18-23, 22 FSM R. 258, 267 (Chk. 2019).

If the viability of a statutory provision is questioned because it was meant to be codified but was omitted from the statute books when the FSM laws were codified in 2014 and might thus have been repealed by implication, the court can still rely on the part of the public law that was not meant to be codified and which will thus remain a viable statute until expressly repealed. Basu v. Amor, 22 FSM R. 557, 565 n.9 (Pon. 2020).