

## **CHAPTER 16**

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## SUBCHAPTER I

### General Provisions

#### **§ 1611. Jurisdiction of High Court.**

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

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

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

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

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

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

divorce of the marriage in question or for separation under it, in this or any other jurisdiction, and the result of such application, if known.

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

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

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

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

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

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

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

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

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

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

#### **Case annotations:**

#### **Adoption**

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

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

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

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

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

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

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

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

**Case annotations:**

**Adoption**

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

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

Evidence that a customary adoption has taken place may be offered via affidavits from the natural parents of the child, consenting and attesting to the customary adoption. *In re Marquez*, 5 FSM R. 381, 384 (Pon. 1992).

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

### **§ 1616. Age of majority.**

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

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

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

## **SUBCHAPTER II**

### **Annulment and Divorce**

### **§ 1621. Competency of community and District courts.**

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

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

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

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

In granting or denying an annulment or a divorce, the court may make such orders for custody of minor children for their support, for support of either party, and for the disposition of either or both parties' interest in any property in

which both have interests, as it deems justice and the best interests of all concerned may require. While an action for annulment or divorce is pending, the court may make temporary orders covering any of these matters pending final decree. Any decree as to custody or support of minor children or of the parties shall be subject to revision by the court at any time upon motion of either party and such notice, if any, as the court deems justice requires.

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

### **§ 1623. Annulment—Authorized—Grounds.**

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

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

### **§ 1624. Annulment—Residency requirements.**

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

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

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

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

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

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

### **§ 1626. Divorce—Grounds.**

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

- (1) adultery;
- (2) the guilt of either party toward the other of such cruel treatment, neglect, or personal indignities, whether

or not amounting to physical cruelty, as to render the life of the other burdensome and intolerable and their further living together unsupportable;

- (3) willful desertion continued for a period of not less than one year;
- (4) habitual intemperance in the use of intoxicating liquor or drugs continued for a period of not less than one year;
- (5) the sentencing of either party to imprisonment for life or for three years or more. After divorce for such cause, no pardon granted to the party so sentenced shall affect such divorce;
- (6) the insanity of either party where the same has existed for three years or more;
- (7) the contracting by either party of leprosy;
- (8) the separation of the parties for two consecutive years without cohabitation, whether or not by mutual consent;
- (9) willful neglect by the husband to provide suitable support for his wife when able to do so when failure to do so is because of his idleness, profligacy, or dissipation.

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

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

Statutory provisions in the Trust Territory Code concerning domestic relations are part of state law because domestic relations fall within the powers of the states and not the national government. *Pernet v. Aflague*, 4 FSM R. 222, 224 (Pon. 1990).

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

Since the determination of support payments payable by a divorced husband is a matter governed by state law, the FSM Supreme Court in addressing such an issue is obligated to attempt to apply the pertinent state statutes in the same fashion as would the highest state court in the pertinent jurisdiction. *Pernet v. Aflague*, 4 FSM R. 222, 224 (Pon. 1990).

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

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

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

Since a divorce case involves the status or condition of a person and his relation to other persons the law to be applied is the law of the domicile. *Youngstrom v. Youngstrom*, 5 FSM R. 335, 337 (Pon. 1992).

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

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

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

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

### **§ 1627. Divorce—Residency requirements.**

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

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

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

### **§ 1628. Divorce—Forgiveness as defense.**

No divorce shall be granted where the ground for the divorce has been forgiven by the injured party. Such forgiveness may be shown by express proof or by the voluntary cohabitation of the parties with knowledge of the fact

and restoration of the forgiving party to all marital rights. Such forgiveness implies a condition that the forgiving party must be treated with conjugal kindness. This forgiveness is revoked and the original ground for divorce is revived if the party forgiven commits an act of constituting a like or other ground for divorce or is guilty of conjugal unkindness sufficiently habitual and gross to show that the conditions of forgiveness have not been accepted in good faith or have not been fulfilled.

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

### **§ 1629. Divorce—Procurement or connivance as defense.**

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

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

## **SUBCHAPTER III**

### **Adoption**

### **§ 1631. Competency of District courts and High Court.**

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

**Source:** TT Code 1966 § 709; TT Code 1970, 39 TTC 251; COM PL 4C\_56 § 5; TT Code 1980, 39 TTC 251.

### **§ 1632. Adoption by decree.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§ 1635. Effect of decree.**

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

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

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

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

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