EVIDENCE

An actor's intention must be inferred from what he says and what he does. FSM v. Boaz (I), 1 FSM R. 22, 24-25 (Pon. 1981).

The FSM Supreme Court is vested, by statute, with authority to suppress or exclude, evidence obtained by unlawful search and seizure. 12 F.S.M.C. 312. FSM v. Tipen, 1 FSM R. 79, 92 (Pon. 1982).

When a purported state employment contract erroneously and consistently recites that it is between the employee and the Trust Territory of the Pacific Islands and contains other statements demonstrating that the contract words were not taken seriously and did not comport with reality, the document is unpersuasive evidence of the relationships among the employee, the state, and the national government. Manahane v. FSM, 1 FSM R. 161, 165-67 (Pon. 1982).

As a matter of constitutional due process, a trial court presented with an alibi defense should consider evidence concerning the alibi along with all other evidence and shall not find the defendant guilty if after considering all of that evidence, the judge feels there is a reasonable doubt as to the defendant's guilt. Alaphonso v. FSM, 1 FSM R. 209, 223-25 (App. 1982).

Unsubstantiated speculations raised after trial are not sufficient to raise reasonable doubt as to a person's guilt in the light of eyewitness testimony. Alaphonso v. FSM, 1 FSM R. 209, 225-27 (App. 1982).

The existence of plea negotiations says little to the court about defendant's actual guilt. FSM v. Skilling, 1 FSM R. 464, 483 (Kos. 1984).

When there is sufficient evidence of other force in the record to support a conviction for forces sexual penetration, there is no inconsistency in finding the use of force even without ruling that a knife compelled the victim to submit. Buekea v. FSM, 1 FSM R. 487, 494 (App. 1984).

It is not unreasonable for a trial court to conclude that a police officer, claiming to effect an arrest, who hits a person four times with a mangrove coconut husker and kills him was trying to kill him. Loch v. FSM, 1 FSM R. 566, 576 (App. 1984).

Death and the cause of death can be shown by circumstantial evidence. Loch v. FSM, 1 FSM R. 566, 577 (App. 1984).

It is generally recognized by courts that nonmedical persons may be capable of recognizing when someone is intoxicated. Ludwig v. FSM, 2 FSM R. 27, 33 n.3 (App. 1985).

An affidavit unsupported by factual detail is not sufficient to cast doubt on the proposition that a project manager of a joint venture, who is in charge of all activities of a corporate member of the joint venture within a state, is a managing or general agent of that corporation. Luda v. Maeda Road Constr. Co., 2 FSM R. 107, 110 (Pon. 1985).

That a land commission's determination is not sufficiently supported by either reasoning or evidence furnishes "good cause" to permit the reviewing court to conduct its own evidentiary proceeding. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 395, 398 (Kos. S. Ct. Tr.

1988).

In adopting the rules of evidence used by the United States federal courts, the Kosrae State Court also adopted the reasons for those rules and the case law which interprets them, insofar as those are appropriate for Kosrae. Nena v. Kosrae, 3 FSM R. 502, 506 (Kos. S. Ct. Tr. 1988).

A request for admission as to the genuineness of a letter, excludable as evidence under Kosrae Evidence Rule 408 because it relates to settlement negotiations, is reasonably calculated to lead to evidence which could be admissible, and an objecting party may not obtain a protective order pursuant to Kosrae Civil Rule 26 to avoid responding to the request. Nena v. Kosrae, 3 FSM R. 502, 507 (Kos. S. Ct. Tr. 1988).

An inference is not permitted if it cannot reasonably be drawn from the facts in evidence. Este v. FSM, 4 FSM R. 132, 138 (App. 1989).

In a contempt trial, the trial court may consider information in addition to evidence adduced in the contempt hearing itself when the other information came to the knowledge of the trial court in previous judicial hearings related to the matter which gave rise to the contempt charge, and when the judge identified the "outside" information and gave the defendant an opportunity to object but the defendant failed to do so. Semes v. FSM, 5 FSM R. 49, 52 (App. 1991).

The trier of fact determines what should be accepted as the truth and what should be rejected as untrue or false, and in doing so is free to select from conflicting evidence, and inferences that which it considers most reasonable. Epiti v. Chuuk, 5 FSM R. 162, 166 (Chk. S. Ct. Tr. 1991).

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).

Generally, a breach of duty is proven by the testimony of witnesses who describe what a reasonable person, acting in compliance with the duty of care, would have done or not done in the same situation. In rare circumstances when the facts are indisputable and when they raise such a strong inference that all reasonable people agree on the duty of care, the court can decide, as a matter of law, the person has breached his duty of care. Nena v. Kosrae, 5 FSM R. 417, 421 (Kos. S. Ct. Tr. 1990).

It is error for a trial court to rely on exhibits never identified, described or marked at trial. Waguk v. Kosrae Island Credit Union, 6 FSM R. 14, 18 (App. 1993).

Where exhibits are identified and marked at trial but never introduced, and where there is extensive testimony and cross examination of witnesses concerning the contents of these exhibits except for interest and late charges, an award for interest and late charges must be deleted because it is not supported by testimony. Waguk v. Kosrae Island Credit Union, 6 FSM R. 14, 18 (App. 1993).

Unless a malfunction is alleged or proven, the printout of a functioning Global Positioning System unit will be presumed correct as to a ship's position regardless of assertions to the contrary. FSM v. Kotobuki Maru No. 23 (II), 6 FSM R. 159, 164-65 (Pon. 1993).

If a judge does not specifically rely on the objected to evidence, the appellate court must

presume that he did not rely on that evidence and therefore that any error in admitting the evidence did not result in substantial hardship or prejudice to a party. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 349 (App. 1994).

Where there is no indication that the trial court relied on certain evidence, the presumption is there was no such reliance, and any error in its admission is not prejudicial. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 351 (App. 1994).

The presumption that a written contract that is complete on its face embodies the final and entire agreement between the parties may be rebutted by evidence presented at trial. Etscheit v. Adams, 6 FSM R. 365, 384 (Pon. 1994).

Representations of counsel in a probable cause hearing are not a substitute for competent, reliable evidence in the form of testimony or appropriately detailed affidavits. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 305 (Kos. 1995).

A court cannot infer that someone attended a hearing because they might have attended another hearing that might have taken place an hour beforehand at the same place. Palik v. Henry, 7 FSM R. 571, 575 (Kos. S. Ct. Tr. 1996).

The issue of the court's jurisdiction to try a case is a preliminary matter that the accused, by testifying upon, does not subject himself to cross-examination as to other issues in the case. FSM v. Fal, 8 FSM R. 151, 154 (Yap 1997).

Proof of guilt may be by either direct evidence, circumstantial evidence or both. Direct evidence is evidence, which if believed, proves the existence of facts in issue without inference or presumption. Circumstantial evidence is evidence of facts and circumstances from which the existence or nonexistence of facts in issue may be inferred. FSM v. Ting Hong Oceanic Enterprises, 8 FSM R. 166, 171 (Pon. 1997).

An appellate court will not reweigh the evidence presented at trial. Credibility determinations are uniquely the province of the factfinder, not the appellate court. Johnny v. FSM, 8 FSM R. 203, 207 (App. 1997).

It is not a manifest error of fact requiring a new trial that certain evidence that parties felt was compelling was not recited in the court's decision or given the weight they thought proper, when the parties were afforded a full hearing and the court considered all evidence on the record in reaching its decision. Conrad v. Kolonia Town, 8 FSM R. 215, 217 (Pon. 1997).

A court may suppress evidence obtained by an unlawful search and seizure. FSM v. Santa, 8 FSM R. 266, 268 (Chk. 1998).

Any reliance on the contents of a further investigation that have never been a part of the record is improper. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

It is improper for counsel to argue facts only within the counsel's knowledge and not in the record. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

Any reliance on a "proposed disposition" to prove the respondent attorney's misconduct is improper when the respondent attorney's statements show that any admissions of misconduct

were only for the purpose of the reviewing justice's approval of the proposed disposition and if it was not accepted, the respondent attorney would have to call defense witnesses. Such equivocation is not an admission of professional misconduct. It is thus inadmissible under FSM Evidence Rules 410 and 408, which bar the admission of pleas, plea discussions, and related statements and compromises and offers to settle, respectively. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

When no party raised a best evidence objection about two checks during the trial, when the trial court did not preclude or limit the introduction of evidence about either check, when both checks were involved in much of the testimony offered by the plaintiff and both also formed the subject of direct examination testimony by defense witnesses, when the trial judge himself questioned defense witnesses at length concerning the two checks, and when defense witnesses acknowledged both checks' existence, their amounts and that they were made out to the plaintiff, the trial court cannot be said to have applied the "best evidence" rule, which is exclusionary in character, and requires the production of originals unless specified exceptions are met. Tulensru v. Wakuk, 10 FSM R. 128, 133 (App. 2001).

The weight to be accorded admissible evidence is for the trier of fact to determine. Tulensru v. Wakuk, 10 FSM R. 128, 134 (App. 2001).

Rule 59 provides a means for relief in cases in which a party has been unfairly made the victim of surprise, but relief will be denied if the party failed to seek a continuance. Surprise, along with excusable neglect, is also addressed by Rule 60(b)(1). Thus, if a party is surprised at trial he is amply protected by Rules 59(a) and 60(b). Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

A party may not derive benefit post trial from tendering evidence that which he was under a discovery obligation to produce pre-trial, and did not. Amayo v. MJ Co., 10 FSM R. 371, 385 (Pon. 2001).

When a sketch proffered to the appellate court, even if it had been admitted at trial, would not have been enough to demonstrate that a trial court's factual finding was clearly erroneous, the factual finding must stand. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

When the plaintiff's complaint claimed he performed "over 714 hours of overtime work," the defendant was given notice of the plaintiff's overtime claims. The defendant thus cannot exclude evidence that the plaintiff worked 1184.5 overtime hours, and the plaintiff does not need to amend his complaint, because 1184.5 hours is more than 714 hours. Palsis v. Kosrae, 10 FSM R. 551, 552 (Kos. S. Ct. Tr. 2002).

When the alleged defect in the kerosene resulted from the contamination of the product, and not its design, logic dictates that the plaintiff must show a high degree of similarity between the accident in this case and the accidents in the other cases before the other accidents will be admitted on the question of the dangerous condition of the allegedly contaminated product. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

Speculation, guess and surmise may not be substituted for competent evidence, and where there are several possible causes of one accident, one or more of which a defendant is not responsible for, a plaintiff cannot recover without proving that the injury was sustained wholly or in part by a cause for which the defendant was responsible. William v. Mobil Oil Micronesia,

Inc., 10 FSM R. 584, 587 (Pon. 2002).

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

A trial court's errors in admitting or excluding evidence are not grounds for reversal when the appellants have not explained what the evidence would have shown had it been admitted and how this evidence would or could have changed the court's decision because error in admitting or excluding evidence is not ground for vacating judgment unless refusal to do so is inconsistent with substantial justice. Rosokow v. Bob, 11 FSM R. 210, 216 (Chk. S. Ct. App. 2002).

Authentic school and hospital documents, which reflect the correct birth date of a petitioner may be used to establish the petitioner's correct birth date. In re Phillip, 11 FSM R. 301, 302 (Kos. S. Ct. Tr. 2002).

An appellate ruling that only determined that certain testimony was admissible did not instruct the trial court as to what weight to give his testimony or what inferences it must draw from it on remand. Rosokow v. Bob, 11 FSM R. 454, 458 (Chk. S. Ct. App. 2003).

When in discovery responses the amount of the plaintiffs' damages was stated as slightly more than the amount actually proven at trial, the invoices offered and received into evidence at trial establish by a preponderance of the evidence the amount of plaintiffs' damages. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 241-42 (Pon. 2003).

The court's pretrial order did not prevent the bank from adequately defending on the question of damages when all witnesses specified in the bank's pretrial statement whose testimony summaries indicated that they had testimony to offer relevant to the question of damages were permitted to testify. Further, when the bank did not object before trial to the court's limitation of its damages witnesses, it waived any objection in this regard. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 242 (Pon. 2003).

In order to prove lost rental damages, a business should be prepared to show that all other similar available vehicles were rented and that the had to turn away customers who would otherwise had rented the damaged pickup, and the number of days it would have been rented. A long-term, ongoing business might show this by comparing the average of the total rental days of all pickups combined for each month before the pickup was damaged with the average total rental days for each month after the accident. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

Under the traditional "new business rule," which applies to any business without a history of profits, it has been recognized that evidence of expected profits from a new business is too speculative, uncertain, and remote to be considered and does not meet the legal standard of reasonable certainty. But lost profits can be recovered by a new business when it is possible to show, by competent evidence and with reasonable certainty, that profits would have been made in the particular situation, and the amount of those profits. Phillip v. Marianas Ins. Co., 12 FSM R. 464, 472 (Pon. 2004).

When the boundary claimed by appellants was supported by testimony of a neutral observer and the appellees' was based only on their testimony, the Land Court decision, which

accepted the appellees' boundary claim was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23 (Kos. S. Ct. Tr. 2004).

When there was no evidence presented to the Land Court regarding the parties' acceptance of the river as the boundary between their parcels, but the Land Court relied upon an alleged settlement between the parties which was never presented or accepted as evidence at the hearing, the Land Court decision which determined the river as the boundary was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23 (Kos. S. Ct. Tr. 2004).

When the parties' settlement to divide the islands in the swampy area such that each party is owner of two islands was accepted into evidence at the Land Court hearing, but was not reflected in the Land Court decision, that decision regarding the swampy area, was not based upon substantial evidence. Heirs of Noda v. Heirs of Joseph, 13 FSM R. 21, 23-24 (Kos. S. Ct. Tr. 2004).

Representations of counsel at a hearing are not a substitute for competent, reliable evidence in the form of testimony or detailed affidavits. Counsel's statements constitute only argument of counsel and are not evidence. Kosrae v. Nena, 13 FSM R. 63, 67 (Kos. S. Ct. Tr. 2004).

A certified map is conclusive only as to the location and boundaries of the land within it. It is not conclusive as to the boundaries and locations of other parcels of land, although it may be some evidence. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99f (Chk. 2004).

Evidence first introduced in response to questioning by the trial judge during defendant's closing argument was not properly in evidence before the trial court as it was made during the closing arguments and such statements were not made under oath, not subject to cross-examination, and not subject to any rebuttal testimony by any witness. Argument does not constitute evidence. Livaie v. Weilbacher, 13 FSM R. 139, 144 (App. 2005).

When the trial court's assessment of restitution damages was specifically calculated using a figure based on a statement made during closing argument, it was not supported by evidence properly before the trial court. As such, the amount of restitution assessed by the trial court is clearly erroneous and must be vacated and the case remanded to the trial court to determine the amount of restitution based on the evidence properly before it or to hold a further evidentiary hearing on the issue. Livaie v. Weilbacher, 13 FSM R. 139, 144-45 (App. 2005).

When the plaintiff tendered receipts for the equipment rental, but the receipts were not original documents, nor copies of the originals: the receipts had been reconstructed recently for the purpose of the hearing, the receipts were not accepted into evidence. Livaie v. Weilbacher, 13 FSM R. 206, 208 (Kos. S. Ct. Tr. 2005).

When at trial of the matter, the defendant had argued that only 25% of the excavated fill materials had met specifications and had actually been hauled to the road project site, but, at the hearing held on April 14, 2005, did not present any evidence in support of this argument, the plaintiff is entitled to restitution for the market value of all the materials excavated from the quarry. Livaie v. Weilbacher, 13 FSM R. 206, 208 (Kos. S. Ct. Tr. 2005).

When the Plaintiff seeks as a component of restitution, ground rent for his quarry and argues that ground rent is "normally compensated in similar contracts," but did not present any

evidence during the June 2003 trial nor at the April 14, 2005 hearing in support of his claim for ground rent and did not offer any "similar contracts" to establish that ground rent is "normally compensated" for the use of land for a quarry, the plaintiff's request for restitution for ground rent must be denied. Livaie v. Weilbacher, 13 FSM R. 206, 208 (Kos. S. Ct. Tr. 2005).

When the defendants had the burden of proof to establish their claim for damages in an amount different than that presented by the plaintiffs, but failed to present any witnesses or other evidence to contradict or modify the calculations presented by the plaintiffs, the court cannot jump to an inference when the underlying testimony does not support the inference. Livaie v. Weilbacher, 13 FSM R. 249, 251 (Kos. S. Ct. Tr. 2005).

When an unrepresented party made statements as a preamble to the questions he posed to another claimant, the Land Court, recognizing that the claimants were lay persons and not trained in legal hearing procedures, should have provided instructions that cross-examination is limited to asking questions of the witness. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

Since it is error for a court to rely upon evidence never presented at a hearing or trial, the Land Court's reference in its decision to statements not in evidence properly before it was contrary to law. Edmond v. Alik, 13 FSM R. 413, 416 (Kos. S. Ct. Tr. 2005).

The weight to be accorded admissible evidence is for the trier of fact to determine. Kosrae v. Tilfas, 14 FSM R. 27, 30 (Kos. S. Ct. Tr. 2006).

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

When there was undisputed evidence presented of the defendant's performance of other physical activity, the court can infer that the defendant's ailments did permit the defendant to complete a variety of activities requiring movement of his arms, legs and body, and did not affect his performance of the field sobriety tests. Kosrae v. Tulensru, 14 FSM R. 115, 122 (Kos. S. Ct. Tr. 2006).

When it is undisputed that a public road is a public place and that the defendant was carrying and possessing an open beer can on the public road, the court can draw the inference from the facts in evidence that the open beer can possessed by the defendant on the public road was an open beer can containing beer, which is an alcoholic drink. Kosrae v. Tulensru, 14 FSM R. 115, 122 (Kos. S. Ct. Tr. 2006).

The Kosrae Rules of Evidence do not require corroboration of undisputed testimony. Kosrae v. Tulensru, 14 FSM R. 115, 125 (Kos. S. Ct. Tr. 2006).

Even assuming that the photos not admitted would have shown that the defendant was not at fault in the accident, that would have had no bearing on his state of intoxication because even

if the other driver were 100% at fault, there is no question that the defendant was driving a vehicle, and he would still have been subject to conviction under the driving under the influence statute if he were driving that vehicle while under the influence. Tulensru v. Kosrae, 15 FSM R. 122, 127 (App. 2007).

It was not error to exclude photos from evidence when the probative value of the photos of an accident scene taken some months after the accident, and without the vehicles present, is negligible. Tulensru v. Kosrae, 15 FSM R. 122, 127 (App. 2007).

Japanese survey maps, alone, contain no assurance of who should be shown as owners as they were primarily concerned with boundaries. The survey maps are some evidence of ownership, but that there must be substantial evidence to support the decision of ownership. Testimony from many witnesses to determine that the appellees controlled and used the land from over ten to fifteen years prior to the survey map through the time of filing claims, in excess of fifty years, is substantial evidence. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 298 (Kos. S. Ct. Tr. 2007).

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

When the Land Court findings consist of testimony of a number of witnesses of a family's undisputed use, control and development of the parcel without interference for over 50 years and that family continues to do so today, the Land Court finding was based on substantial evidence to support the family's ownership, even though another's name was on the Japanese survey map and when considering the evidence in a light favorable to the appellees, the appellants, the Land Court's decision was not clearly erroneous. Heirs of Taulung v. Heirs of Wakuk, 15 FSM R. 294, 299 (Kos. S. Ct. Tr. 2007).

The application of the Kosrae Rules of Evidence is expressly excluded from proceedings with respect to release on bail. Nedlic v. Kosrae, 15 FSM R. 435, 438 (App. 2007).

A defendant's suppressed statement may not be used against him at trial unless he chooses to testify on his own behalf, in which case, the statement may be used to impeach his credibility. FSM v. Sam, 15 FSM R. 491, 493 (Chk. 2008).

The trial court used a co-defendant's pre-trial, out-of-court affidavit only against the declarant since the judge's discourses with the prosecutor stated that it was only being offered or used against the declarant and the trial court's made specific findings with regard to the affidavit that only concerned the declarant co-defendant and since the court's special findings delineated other pieces of evidence, independent of that affidavit, that supported the other defendants' participation in the conspiracy. Engichy v. FSM, 15 FSM R. 546, 556-57 (App. 2008).

The best practice for a trial court finding itself in the situation where a non-testifying defendant's out-of-court statement will be introduced into evidence in a joint or multi-defendant trial, is to make an early, clear and uniform record identifying those defendants against whom the out-of-court statement will and will not be used. A trial court is not generally prohibited from

admitting the statement. Engichy v. FSM, 15 FSM R. 546, 557 (App. 2008).

When the record was uniform in signifying that the trial court did not consider one co-defendant's affidavit against the other defendants and when the trial court, in its special findings made at the trial's conclusion identified the other pieces of admitted evidence that it relied upon and that exist independent of the one co-defendant's affidavit; when a review of this specifically relied upon evidence, in addition to the complete record on appeal, presents a sufficient evidentiary basis to support the other defendants' participation in the conspiracy wholly independent of and detached from the one co-defendant's affidavit, the appellate court will conclude that the trial court was successful in excluding the one co-defendant's affidavit as evidence against the other defendants. Engichy v. FSM, 15 FSM R. 546, 557 (App. 2008).

When the trial court asked the government to redact the other defendants' names from one co-defendant's affidavit but no redacted version offered into evidence, and when a physical redaction under these circumstances would have been superfluous, merely replicating the mental exercise of compartmentalizing already successfully undertaken by the trial court, if the trial court proceeded with the trial despite the government's failure to provide a redacted copy of the statement, that choice was within the trial court's discretion and did not unfairly result in substantial hardship or prejudice to any party and thus was not reversible error. Engichy v. FSM, 15 FSM R. 546, 557-58 (App. 2008).

If challenged, previous ledger pages constituting the rest of an open account may be needed to support a plaintiff's case for any items whose accuracy the defendant has not stipulated to because when a writing or recorded statement or part thereof is introduced by a party, an adverse party may require him at that time to introduce any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it. Albert v. George, 15 FSM R. 574, 581 (App. 2008).

Various writings, admitted into evidence, which were signed on the behalf of Chuuk, the party to be charged, can establish by a preponderance of the evidence that the plaintiff and Chuuk entered into an agreement whereby the plaintiff would obtain insurance on Chuuk's vessels for the two periods in question, and that Chuuk would pay for the premiums for the insurance obtained. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 651 (Pon. 2008).

Counsel's argument about a memo's effect is not a substitute for evidence. Actouka Executive Ins. Underwriters v. Simina, 15 FSM R. 642, 653 (Pon. 2008).

The remedy for a defendant's unlawful detention over 24 hours is not the dismissal of the information against him or the suppression of all evidence and statements obtained from him. His only remedy in a criminal prosecution (as opposed to a civil suit) is suppression of any evidence obtained as a result of the illegal detention. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

When an FSM Evidence Rule is modeled after a United States rule, the court should look to United States court decisions interpreting that rule. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

Evidence that speaks for itself is evidence that is significant or self-evident. Fritz v. FSM, 16 FSM R. 192, 198 (App. 2008).

An agreement granting fishing rights is not alone conclusive evidence of land ownership. Narruhn v. Aisek, 16 FSM R. 236, 241-42 (App. 2009).

Speculation may not be substituted for competent evidence. Jano v. Fujita, 16 FSM R. 323, 328 (Pon. 2009).

Although the presence of a person's name on the 1932 Japanese Survey Map as the owner of a parcel of land is not conclusive or dispositive of that person's ownership but may be overcome or rebutted by other evidence, when there was substantial evidence in the record before the Land Court that Mackwelung used, controlled, and occupied Yekula continuously after 1932, including evidence and testimony presented at the original 1979 Land Commission proceeding, the Land Court reasonably assessed this evidence as supporting the Mackwelungs' position that a *kewosr* to Sra Nuarar had taken place, and since the testimony that a previously unmentioned person had owned the land and had later transferred it to Kun Mongkeya was reasonably assessed as not credible, the evidence did not overcome the 1932 Japanese survey map. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 377 (Kos. S. Ct. Tr. 2009).

It was not error for the Land Court not to award one side all of the disputed land based on an option agreement that was never exercised and that only refers to a parcel situated somewhere in the disputed land and not all of it and so it does not support a claim to all of the land, even assuming it is some evidence of ownership of some part. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 378-79 (Kos. S. Ct. Tr. 2009).

The FSM Rules of Evidence would appear to be inapplicable to proceedings with respect to release of an arrested vessel on bond. People of Tomil ex rel. Mar v. M/C Jumbo Rock Carrier III, 16 FSM R. 543, 546 (Yap 2009).

It is constitutional error for a trial court to rely on exhibits never identified, described, or marked at trial, but the trial court does not commit reversible error when there was extensive testimony and cross-examination of witnesses concerning the exhibits' contents. In such an instance, it is the witness testimony that is the evidence before the court. George v. George, 17 FSM R. 8, 10 (App. 2010).

Although the court must first look to FSM sources of law for purposes of establishing legal requirements in criminal cases, when an FSM court has not previously construed an FSM evidence rule which is identical or similar to a U.S. counterpart, the court may look to U.S. sources on the United States Federal Rules of Evidence for guidance. Cholymay v. FSM, 17 FSM R. 11, 19 (App. 2010).

A litigant's constitutional right to due process is violated when a trial court relies on evidence, not a part of the record, without prior notice to the parties or without an opportunity for the parties to comment on it, and it is constitutional error for the court to rely on exhibits never identified, described or marked at trial. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

Trial court judgments that were, in part, based on documents that were never authenticated by affidavit or by testimony and their accuracy was never vouched for by affidavit, or testimony, or other evidence will be vacated. George v. Albert, 17 FSM R. 25, 32 (App. 2010).

When the receipts relied upon by the trial court were never identified, marked, described, or admitted at trial or evidentiary hearing; when those receipts were provided to the court post-trial and were never authenticated, introduced, or admitted into evidence; and when neither side had

the opportunity to examine witnesses, or to produce witnesses to testify, on the accuracy, meaning, or completeness of the receipts or about the receipts that the trial court disallowed because someone else had signed them, the documents supplied to the court after trial were not evidence that was properly before that court and thus were not evidence in the record and the trial court's use of these documents violated due process. There is therefore no substantial evidence in the record to support the judgment amount. The judgment amount finding is thus clearly erroneous, and the judgment will be vacated since that figure is not supported by substantial evidence in the record, and, in fact, is not supported by any evidence in the record. George v. Albert, 17 FSM R. 25, 32-33 (App. 2010).

Although physical evidence or the lack thereof may be compelling in some cases, it is not a requirement of proof when the victim herself testified credibly to the alleged act and when her testimony was neither impeached nor rebutted. The lack of physical evidence may even be expected in a case charging sexual abuse because, unlike sexual assault, proof of sexual abuse does not require proof of sexual penetration, but only of sexual contact. Sexual contact is defined as any touching of the sexual or other intimate parts of a person not married to the defendant, done with the intent of gratifying the sexual desire of either party. It would be highly unlikely for a doctor examining a person days after her genitalia or intimate parts had been touched to be able to determine whether she had in fact been touched. Thus, the lack of physical evidence in a sexual abuse case is rather to be anticipated, and does not provide the defendant with a defense. Chuuk v. Inek, 17 FSM R. 137, 145 (Chk. S. Ct. Tr. 2010).

The weight to be accorded admissible evidence is for the court as trier of fact to determine. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

In reviewing a dismissal for insufficiency of evidence, once the appellate court determines the trial court's findings are not clearly erroneous, the appellate court asks whether those factual findings are sufficient or insufficient to meet the plaintiff's burden of proof. The trial court's answer to that question forms a legal conclusion, and as such is a ruling on a point of law that is reviewed de novo. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Uncontradicted and unimpeached evidence will be taken as true to the extent that it cannot arbitrarily be disregarded. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Reversible error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected and no error in the admission or the exclusion of evidence is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

A conclusory argument is not evidence. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 324 (Kos. 2011).

When the FSM proved by a preponderance of the evidence that the fishing boat's HF radio was not on and it also proved that the vessel had a VHF radio, but there was no evidence whether the VHF radio was on or off or whether it was tuned to channel 16, the FSM's claim that the vessel was not monitoring a required radio frequency fails for lack of proof because the statute, the Foreign Fishing Agreement, and the foreign fishing permit all require that the vessel monitor only one of those two frequencies and the evidence shows that the vessel had the ability to monitor the VHF channel 16 and there is no evidence that it was not being monitored.

FSM v. Kana Maru No. 1, 17 FSM R. 399, 405 (Chk. 2011).

The circumstantial evidence proves proximate cause even though exactly how the reef was damaged – whether anchors and/or chains were dragged on the reef; or whether a detached or slack cable or chain used to connect the barge to the tugboat struck the reef; or whether one or both of the vessels struck the reef; or whether some combination of these was responsible – is undetermined since the damages occurred while the two vessels were on the site (or while just the barge was there) and since no other vessels were present at the time and the damage was of the type that must have been caused by one or more of the methods described. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 174-75 (Yap 2012).

The court will not attach any deference to a state agency's findings of fact when the defendant was never a party to any proceeding in that agency and was not even aware of the proceeding and no state agency ever initiated any action against the defendant or imposed any fines or penalties on it and when this court case is not a judicial review of an adversarial agency action so the agency report is not entitled to the judicial deference given such agency action. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 175 (Yap 2012).

Evidence is exculpatory if it clears or tends to clear from alleged fault or guilt. FSM v. Kool, 18 FSM R. 291, 293 n.1 (Chk. 2012).

When the appellants do not contend that the checks are not authentic but contend that the signature endorsements are all forgeries, and when the trial court found as fact that, except for one or two or a few that she had signed herself, Lilly Iriarte had authorized Santos to sign her name on the premium checks, the appellate court cannot conclude that the finding was clearly erroneous since substantial evidence in the record supports that finding. Since a forgery is a signature of a person that is made without the person's consent and without the person otherwise authorizing it, Lilly Iriarte's signatures are not forgeries even if made by Santos and having the original checks could not have altered the finding that Lilly Iriarte were authorized. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

Counsel's assertion in one post-trial filing that the plaintiff's land occupied by the defendant was worth $26,000 and consisted of 2,000 square meters with an annual rental value of $20 per square meter was not competent evidence because counsel's assertions in argument do not constitute evidence before the court. Killion v. Nero, 18 FSM R. 381, 387 (Chk. S. Ct. Tr. 2012).

When no evidence was presented at trial that the Director of Public Safety was personally involved in the plaintiff's arrest and jailing or that he directed its manner or timing, the court cannot presume that because his wife was the complainant that he ordered or directed that the plaintiff be arrested and jailed because, in the absence of evidence, an inference just as likely is that a zealous subordinate, believing it would curry favor with his superior, decided that a quick arrest and some jail time were in order. The court therefore will not hold the Director, in his personal capacity, liable to the plaintiff. Alexander v. Pohnpei, 18 FSM R. 392, 400 (Pon. 2012).

It is within the court's sound discretion whether to admit additional evidence after trial. Exercise of such discretion must take into account the evidence's probative value against the danger of injuring the opposite party through surprise. The opposing party cannot properly

examine or counter evidence offered after trial, and so the burden is on the party offering the evidence to demonstrate good cause why the evidence should be admitted. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 269 (Pon. 2014).

While it is appropriate for a Chief Justice to engage with all the relevant stake-holders in the process of promulgating a general court order, the decision making process is quite different for a justice called upon to render an evidentiary ruling in a criminal case. Even when a party raises a question of first impression, a judge presiding over a criminal case has a responsibility to apply the law to the case's facts, and it would be an abuse of judicial discretion to delay an evidentiary ruling in order to solicit advice from non-parties suggesting what the law should be. This judicial power is curtailed by the process of appellate review. FSM v. Halbert, 20 FSM R. 49, 53 (Pon. 2015).

An affidavit, not introduced at trial and which the defendants never had the opportunity to address or to cross-examine a witness concerning its contents, will be stricken as evidence since the opposing party cannot properly examine or counter evidence offered after trial and since the burden is on the party offering the evidence to demonstrate good cause why the evidence should be admitted. George v. Palsis, 20 FSM R. 111, 114 (Kos. 2015).

Just because an affidavit was filed while the court was considering cross motions for summary judgment does not mean that it is automatically admitted into evidence at the later trial. To be evidence that the court can consider, the affidavit should be offered at trial in the usual manner. Then it might be admitted in the usual manner, or it might be objected to and the objection sustained, or the affiant himself might instead be called to testify. George v. Palsis, 20 FSM R. 111, 114 (Kos. 2015).

A court cannot award damages based on matter "introduced" during argument after the presentation of evidence has ended. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

In the FSM, a "declaration under the penalty of perjury" is not the equivalent of an affidavit as it would be in the United States where a statute makes it so. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

Since, 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 and since 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. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

A party's insistence that the case solely involved a boundary dispute within a parcel is belied by his claim to the parcel *in toto*. Ittu v. Ittu, 20 FSM R. 178, 185 (App. 2015).

Counsel's representation does not constitute competent evidence. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

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

An argument contained within a brief does not constitute evidence. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 122 (App. 2017).

Direct evidence is evidence, which if believed, proves the existence of facts in issue without inference or presumption. Circumstantial evidence is evidence of facts and circumstances from which the existence or nonexistence of facts in issue may be inferred. Chuuk v. Roman, 21 FSM R. 138, 142 (Chk. S. Ct. Tr. 2017).

A judge is required to engage in a conscious balancing of the proffered evidence's probative value against the harms likely to result from its introduction into evidence. FSM v. Wolphagen, 21 FSM R. 247, 249 (Pon. 2017).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. Eliam v. FSM Social Sec. Admin., 21 FSM R. 412, 416 (App. 2018).

Evidence must be in the nature of facts – not conclusions or counsel's unsupported allegations. An argument contained in a brief does not constitute evidence. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 533 (App. 2018).

Because a preliminary injunction can be granted on basis of procedures that are less formal and evidence that is less complete than in a trial on the merits, the evidence rules are relaxed when considering requests for a temporary restraining order or preliminary injunction. In re Gross Revenue Tax, 22 FSM R. 124, 129 (Pon. 2018).

Because a preliminary injunction hearing is less formal than a full trial, less complete evidence is required for an injunction than at trial. Therefore, a petitioner's affidavits submitted on the record may be sufficient evidence when considering a temporary restraining order or a preliminary injunction. In re Gross Revenue Tax, 22 FSM R. 124, 129 (Pon. 2018).

As a general rule, the state is expected to produce all evidence available to it at the time of trial. This rule exists for the purposes of judicial economy, an efficient disposition of cases, and to not delay the defendant's rights to a speedy trial. Some instances merit exception to this general rule. Chuuk v. Nowell, 22 FSM R. 130a, 130d (Chk. S. Ct. Tr. 2018).

Under the court's inherent common law authority to administer the order of proof before it, the court may entertain a party's motion to reopen its case in the interest of justice, such as when the state had inadvertently forgotten to introduce a piece of evidence, the other party had notice through discovery that such evidence will be introduced, and the other party was not unduly prejudiced by the evidence's introduction. Chuuk v. Nowell, 22 FSM R. 130a, 130e (Chk. S. Ct. Tr. 2018).

The factors that are relevant for deciding whether to grant the state's motion to reopen its case in chief are: 1) the seriousness of the crime alleged; 2) whether motion to re-open case resulted from lack of preparation for trial; 3) timeliness of motion to reopen case in chief; 4) good cause; 5) whether motion to reopen case in chief resulted from a decision of the court after the case in chief, which was contrary to the state's understanding of the applicable law; 6) whether the other party would be unfairly prejudiced by reopening such case; and 7) whether re-opening the case will unduly delay the disposition of the case. Chuuk v. Nowell, 22 FSM R. 130a, 130d-0e (Chk. S. Ct. Tr. 2018).

When a movant has provided an affidavit verifying an attached payment history and no contrary evidence is provided, the court normally would accept this evidence as an accurate account of what was owed if the affidavit and the ledger sheet were regular on their face, but the court will not if it is apparent that the numbers do not add up. FSM Dev. Bank v. Carl, 22 FSM R. 365, 376 (Pon. 2019).

Evidence-gathering orders, under 12 F.S.M.C. 1709(1)(b), involve the gathering of evidence by methods other than by a search warrant, under 12 F.S.M.C. 1709(1)(a), commanding the search for, and seizure of, particular things. An evidence-gathering order may involve taking testimony, the collecting or recording of data, or producing things, documents, or copies. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 463 (Pon. 2020).

Proof may be made by testimony as to reputation or by testimony in the form of an opinion, and the contents of writings, recordings, or photographs may be proved by the testimony of the party against whom offered, without accounting for the nonproduction of the original. Pelep v. Lapaii, 22 FSM R. 482, 487 (Pon. 2020).

– Admissibility

Evidence will not be stricken when most previously introduced evidence is unquestionably related to counts still before the court; when the description of the defendants' duties before and after July 12, 1981 did not vary significantly; when the auditor's activities uncovered illegal transactions both before and after July 12, 1981; when various Mobil employees' conversations before July 12, 1981 related to the existence of a pattern of conduct and planning and carrying out illegal transactions and are relevant about whether a conspiracy existed after July 12, 1981. FSM v. Jonas (II), 1 FSM R. 306, 310-12 (Pon. 1983).

Evidence of the earlier alterations is not rendered inadmissible on grounds that it relates to other crimes, wrongs, or acts when the fact a defendant was able to use his position with Mobil to embezzle funds in a particular way before July 12, 1981, lends itself to an inference that the same defendant, holding the same position after July 11, 1981, had the opportunity to carry out the same kind of transaction thereafter and because information concerning pre-July 12, 1981 transactions and activities may also: 1) suggest that defendants who engaged in illegal activities earlier still intended to do so at a later time; 2) indicate preparation for later actions; 3) establish a plan extending beyond July 12, 1981; 4) suggest knowledge of similar later actions; 5) imply identity of people involved in subsequent similar ICR alterations later; and 6) reduce likelihood that ICR alterations after July 12, 1981 occurred by mistake or accident. These legitimate purposes overcome the general prohibition against evidence of prior misconduct merely to show the defendant's character. FSM v. Jonas (II), 1 FSM R. 306, 313 (Pon. 1983).

If the offered item possesses characteristics which are fairly unique and readily identifiable, and if the substance of which the item is composed is relatively impervious to change, the trial court has broad discretion to admit merely on the basis of testimony that the item is the one in question and is in substantially unchanged condition. Joker v. FSM, 2 FSM R. 38, 46 (App. 1985).

The FSM Rules of Evidence for identification, authentication and admissibility of evidence do not require that exhibits related to an essential element of the crime may be admitted into

evidence only if identified beyond a reasonable doubt. Joker v. FSM, 2 FSM R. 38, 47 (App. 1985).

Kosrae Evidence Rule 408, which renders evidence of settlement negotiations inadmissible in the trial, is based upon the court's commitment to encourage out of court settlements and includes offers made in the early stages of a dispute. Nena v. Kosrae, 3 FSM R. 502, 505-06 (Kos. S. Ct. Tr. 1988).

Pursuant to Kosrae Evidence Rule 408, all statements, including factual assertions, made during the settlement process are protected and inadmissible in court to prove liability or invalidity of a claim. Nena v. Kosrae, 3 FSM R. 502, 506 (Kos. S. Ct. Tr. 1988).

Although Kosrae Evidence Rule 408 does not require the exclusion of factual evidence "otherwise discoverable" simply because it was presented during compromise negotiations, a statement made in a letter seeking to settle a dispute, which statement is clearly connected to and part of the settlement offer, is not otherwise discoverable. Nena v. Kosrae, 3 FSM R. 502, 507 (Kos. S. Ct. Tr. 1988).

A party seeking to offer evidence after trial must show good cause why it should be admitted. The court, in exercising its discretion, must weigh the evidence's probative value against the danger of injuring the opposite party through surprise because the opposing party cannot properly examine or counter the evidence, and without good cause shown the court should deny its admission as untimely. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 121 (Pon. 1993).

It is not an abuse of the trial court's discretion for a trial court to admit testimony that is inconsistent with that witness's answer to an interrogatory. Admissions made in interrogatories are not binding and the answering party may introduce other evidence on the subject of the admissions at trial. Contradictions between a party's answers to interrogatories and court testimony go to the weight and credibility of the testimony, not to its admissibility. Conflicting testimony may be admitted, and it is the responsibility of the finder of fact to weigh all the answers and resolve the conflict. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 350 (App. 1994).

Inconsistencies between a party's responses to discovery and trial testimony properly go to the weight and credibility of the testimony and not to its admissibility. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 352 (App. 1994).

Hearsay is not admissible in a hearing or trial. Hearsay is an out-of-court statement offered as evidence to prove the truth of the matter asserted. A statement is an oral or written assertion. An affidavit is hearsay which is inadmissible unless allowed by an exception to the hearsay rule. In re Disqualification of Justice, 7 FSM R. 278, 279 (Chk. S. Ct. Tr. 1995).

A certified copy of a judgment from a foreign court is admissible evidence as a properly authenticated public record of that jurisdiction. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

Statements made for purposes of medical diagnosis or treatment are not excluded from admissibility by the hearsay rule. Primo v. Refalopei, 7 FSM R. 423, 436 n.28 (Pon. 1996).

Business records are normally authenticated by a custodian of records. A duplicate of an original writing is not admissible if there is a genuine issue as to the authenticity of the original. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (III), 7 FSM R. 453, 455 (Pon. 1996).

In order for a deposition to be admissible a deponent must physically appear before someone who can identify and administer the oath even if the deposition is taken telephonically. FSM v. Skico, Ltd. (III), 7 FSM R. 558, 559 (Chk. 1996).

Expert opinion testimony is admissible if the witness is qualified by knowledge, skill, experience, training, education, or otherwise; and that the expert's opinion will assist the trier of fact to understand the fact at issue. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 622 (App. 1996).

Hearsay within hearsay is inadmissible. Hearsay otherwise admissible may be excluded where it consists primarily of reiteration of a statement made by some other unidentified person. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 663 (Pon. 1996).

Maps attached to a filing without any sort of foundation or any type of authentication cannot be considered as evidence. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 38 (Kos. S. Ct. Tr. 1997).

A statement, which if it had been made by the defendant would have been admissible as an admission of a party-opponent, is inadmissible hearsay when made by the defendant's then spouse as part of a traditional apology, and cannot be considered on a summary judgment motion. Glocke v. Pohnpei, 8 FSM R. 60, 62 (Pon. 1997).

Counsel's statements concerning an answer constitute argument of counsel, not evidence. Only the answer itself is admissible evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 172 (App. 1999).

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Elaija v. Edmond, 9 FSM R. 175, 182 (Kos. S. Ct. Tr. 1999).

On a design defect products liability claim, evidence of other accidents is admissible to show a dangerous condition so long as the proponent makes a foundational showing that the prior accidents occurred under substantially the same circumstances. Further, evidence proffered to illustrate the existence of a dangerous condition necessitates a high degree of similarity because it weighs directly on the ultimate issue to be decided by the finder of fact. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

When the instant case is similar to the other accidents to the extent that the alleged defect is the same, i.e., contaminated kerosene, but the manner in which the other accidents occurred is quite different, the other accidents are not sufficiently similar to be admissible on the question of dangerousness. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

Generally, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith, but such evidence is admissible as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or

absence of mistake or accident. FSM v. Wainit, 11 FSM R. 1, 5 (Chk. 2002).

Production of an original document, although preferable, is not absolutely required. Other evidence of its contents could be admissible if all originals have been lost or destroyed (unless the proponent destroyed them in bad faith), or if no original can be obtained by any available judicial process or procedure, or if the original is under the control of the party against whom it is offered and he does not produce the original, or if it is not closely related to a controlling issue. FSM v. Wainit, 11 FSM R. 1, 6 (Chk. 2002).

The testimony of one Constitutional Convention delegate as to the meaning of a constitutional provision would reflect his personal opinions and beliefs on the interpretation of the subject constitutional provision, and not the opinions of the entire twenty-two member Convention, and will therefore not be admitted. Kosrae v. Sigrah, 11 FSM R. 26, 30 (Kos. S. Ct. Tr. 2002).

There is no "dead man's statute" barring the admission of a deceased person's statements as evidence in Kosrae state law or in the rules of evidence. Taulung v. Jack, 11 FSM R. 345, 348 (Kos. S. Ct. Tr. 2003).

Ultimately, the determination as to whether or not to admit evidence is left to the trial court's discretion. The weight to be accorded admissible evidence is for the trier of fact to determine. Kosrae v. Phillip, 13 FSM R. 449, 455 (Kos. S. Ct. Tr. 2005).

The test for the admissibility of field sobriety test results is that the court must consider evidence of the police officers' knowledge of the tests, his training and his ability to interpret his observations. Any testimony concerning the defendant's performance would be subjected to cross-examination and defense counsel could question any inadequacy regarding the administration of the tests. The test results' admissibility must be determined at trial, following such testimony. The test results' admissibility for each accused will necessarily depend upon the facts of his or her case, and must therefore depend upon the evidence presented for each individual accused in each case. The results may be admissible in one case, but not admissible in another. Kosrae v. Phillip, 13 FSM R. 449, 455 (Kos. S. Ct. Tr. 2005).

A duplicate is admissible to the same extent as an original unless a genuine question is raised as to the original's authenticity or in the circumstances it would be unfair to admit the duplicate in lieu of the original. Since an original is not required, other evidence of a writing's contents is admissible if at a time when an original was under the control of the party against whom offered, the party was put on notice that the contents would be a subject of proof at the hearing, and the party does not produce the original at the hearing. When the party had the originals and did not produce them, it has no ground to complain. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

Even if the evidence is of events that took place in periods for which prosecution may be time-barred, it is not necessarily inadmissible. Nor is hearsay necessarily inadmissible. FSM v. Kansou, 14 FSM R. 139, 140-41 (Chk. 2006).

Statements by a party-opponent offered against that party are not hearsay and are admissible. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

A statement by a party's co-conspirator made during the course and in furtherance of the

conspiracy is not hearsay and is admissible. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

An account of evidence adduced in a hearing in another case to which the movant was not a party and a hearing at which he was not present or had an opportunity to be heard, even presuming (which the court cannot do) that the evidence presented then is accurately characterized now, is not admissible and cannot be used against the movant's summary judgment motion. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

Former testimony is not admissible unless the party against whom the testimony is now offered (or a predecessor in interest) had an opportunity and similar motive to develop that testimony by direct, cross, or redirect examination. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

Failure to inform an accused of his rights does not in and of itself entitle an accused to an acquittal, but no evidence obtained as a result of such violation shall be admissible against the accused. FSM v. Louis, 15 FSM R. 348, 352 (Pon. 2007).

Evidence and statements lawfully obtained from a defendant before he had been illegally detained over 24 hours will be admissible, but the defendant is entitled to the suppression of any evidence or statements obtained from him after his first 24 hours of detention. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

By statute, 12 F.S.M.C. 218, statements taken (even if made voluntarily) and evidence obtained as a result of a violation of the defendant's statutory right to be brought before a judicial officer without unnecessary delay are inadmissible, but when none of the evidence the defendant seeks to suppress was obtained as a result of his being detained for more than 24 hours, the motion to suppress will be denied. FSM v. Sato, 16 FSM R. 26, 30 (Chk. 2008).

Business records are normally authenticated by a custodian of records. The custodian or other qualified witness who must authenticate business records need not be the person who prepared or maintained the records, or even an employee of the record-keeping entity, as long as the witness understands the system used to prepare the records. Objections concerning the identity or competency of preparer of a record might go to the evidentiary weight or credibility of a record but not to the record's admissibility. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

To prove the content of a writing the original is required, but a duplicate of an original writing is admissible when the original cannot be found and if there is no genuine issue as to the original's authenticity. Cholymay v. FSM, 17 FSM R. 11, 22-23 (App. 2010).

Arguments concerning the accuracy of the record go to their weight and not their admissibility. The question then is whether the photocopy was a duplicate of what the government claimed it to be. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

When the trial court excluded an affidavit from admission because the prima facie authenticity for notarized documents extended by Evidence Rule 902(8) was rebutted by the clerk's testimony that he should not have notarized it because the affiant had not appeared before him and it was not signed in his presence, whereupon the court concluded that the affidavit could not be authenticated under Rule 902(8) and when the proponents did not seek to authenticate the affidavit by other means such as by calling another witness to authenticate the signature on the affidavit despite its defective notary seal, the trial court, without any additional

testimony to authenticate the signature, had no way of determining whether the signature on the affidavit was in fact genuine. The court's determination not to admit the affidavit was thus within its discretion. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

Grounds for admission of a document that were not raised in the trial court, may be considered waived. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the proponents failed to raise any other basis for admission of an affidavit other than as a self-authenticating document, the appellate court is left to review whether the trial court's exclusion was proper on the basis that the document was not authenticated. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the trial court denies admission of documentary evidence on the basis that it was not properly authenticated, the appellate court's review is limited to determining whether the trial court abused its discretion in deciding whether the movant made a prima facie showing as to the document's authenticity. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

Generally, the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the affidavit was not acknowledged in the manner provided for by law since the affiant was not present at the time that the affidavit was acknowledged, the trial court's determination that the presumption of self-authentication had been rebutted and that the affidavit was not otherwise authenticated was proper. There was therefore no abuse of discretion in the trial court's denial of the affidavit's admission into evidence for the reason that it was not authenticated. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

When an affidavit's substance was only read into the record for the purpose of ruling on its admissibility, the better practice may have been to allow the presentation of a foundation for admission, including establishing the document's authenticity, before proceeding with testimony regarding its contents. That practice would avoid confusion as to whether the substance of inadmissible documentary evidence has become a part of the evidentiary record. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

Extrinsic evidence of authenticity, as a condition precedent to admissibility, is not required with respect to documents accompanied by a certificate of acknowledgment, executed by a notary public in the manner provided by law. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

Although to prove the content of a writing the original writing is required, FSM Evidence Rule 1003 makes a duplicate admissible to the same extent as an original unless 1) a genuine question is raised as to the authenticity of the original or 2) in the circumstances it would be unfair to admit the duplicate in lieu of the original. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

When the defendant has not indicated what specific pieces of evidence he seeks to exclude and the prosecution does not appear to have informed the defendant what specific evidence it will seek to introduce at trial, the court is not in a position to rule on the evidence's admissibility and will deny the defendant's current motion in limine and will rule on the admissibility of any

particular evidence that the defendant objects to if and when that issue comes properly before the court. FSM v. Tipingeni, 19 FSM R. 439, 447 (Chk. 2014).

When the plaintiff's claim for damages to his car from a break-in were not tried by the parties' consent during the trial on the plaintiff's claim for failure to repair his car; when the break-in damages claim was not raised by the pleadings and admitting evidence about it would prejudice the defendant who had not had adequate notice that the issue would be tried; when excluding the evidence about the break-in would not prejudice the plaintiff; and when the break-in was not part of a common nucleus of operative fact with the defendant's alleged behavior in failing to properly repair the plaintiff's vehicle but represented an entirely new claim that the plaintiff could file against the defendant for failure to properly safeguard his property, all evidence that pertained to the alleged break-in would be excluded and not considered. Etse v. Pohnpei Mascot, Inc., 19 FSM R. 468, 471-72 (Pon. 2014).

A motion to reopen a case should be denied when unfair prejudice towards the defendant results, such as when the state wants to introduce a document or evidence not disclosed in discovery, of which defendant lacked any notice, and against which defendant could not adequately defend due to the lack of time to prepare a defense. But when the defendant had notice of the confession statement; and when a preliminary hearing determined that the confession statement was admissible at trial, and so that the defendant was put on notice that the confession would be introduced at trial, no unfair prejudice would result from allowing the state to introduce the defendant's confession statement upon re-opening its case. Chuuk v. Nowell, 22 FSM R. 130a, 130e-0f (Chk. S. Ct. Tr. 2018).

A statement made by an alleged co-conspirator during the course of and in furtherance of the conspiracy is not hearsay and is admissible. FSM v. Jappan, 22 FSM R. 81, 84 n.2 (Chk. 2018).

A party's copies of the original copies in an insttution are admissible to the same extent as the institution's originals. FSM Dev. Bank v. Salomon, 22 FSM R. 175, 183 (Pon. 2019).

– Authentication

Rule 901(a) of our Rules of Evidence provides that the requirement of authentication "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Testimony of two witnesses supporting such a claim is fully adequate to justify the action of the trial court in accepting that matter as evidence. Joker v. FSM, 2 FSM R. 38, 46 (App. 1985).

The FSM Rules of Evidence for identification, authentication and admissibility of evidence do not require that exhibits related to an essential element of the crime may be admitted into evidence only if identified beyond a reasonable doubt. Joker v. FSM, 2 FSM R. 38, 47 (App. 1985).

A certified copy of a judgment from a foreign court is admissible evidence as a properly authenticated public record of that jurisdiction. Joeten Motor Co. v. Jae Joong Hwang, 7 FSM R. 326, 327 (Chk. S. Ct. Tr. 1995).

Business records are normally authenticated by a custodian of records. A duplicate of an

original writing is not admissible if there is a genuine issue as to the authenticity of the original. Richmond Wholesale Meat Co. v. Kolonia Consumer Coop. Ass'n (III), 7 FSM R. 453, 455 (Pon. 1996).

Maps attached to a filing without any sort of foundation or any type of authentication cannot be considered as evidence. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 38 (Kos. S. Ct. Tr. 1997).

An open account is not self-proving. An account must be supported by an evidentiary foundation to demonstrate the accuracy of the account. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 15 (Yap 1999).

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Elaija v. Edmond, 9 FSM R. 175, 182 (Kos. S. Ct. Tr. 1999).

An ancient document or data compilation is authenticated if evidence that the document or data compilation, in any form, is in such condition as to create no suspicion concerning its authenticity, was in a place where it, if authentic, would likely be, and has been in existence 20 years or more at the time it is offered. Elaija v. Edmond, 9 FSM R. 175, 182 (Kos. S. Ct. Tr. 1999).

For a plaintiff to succeed, she must come forward with a preponderance of creditable evidence to establish the authenticity of the document upon which her claim is based. Lukas v. Stanley, 10 FSM R. 365, 366 (Chk. S. Ct. Tr. 2001).

A plaintiff has not met the necessary burden of proof when the affidavit offered by plaintiff to prove her claim is highly suspect in that the plaintiff's father, whom she claims gave the property to her, did not appear in person before the Clerk of Court when he signed the document and the plaintiff presented conflicting evidence in court at which place or where the document was signed. Lukas v. Stanley, 10 FSM R. 365, 366 (Chk. S. Ct. Tr. 2001).

The Kosrae Rules of Evidence, Article IX, require authentication and identification of documentary evidence, sufficient to support a finding that the document is what its proponent claims. When the author of a written statement was not present to identify and authenticate the document and no other person was presented to identify and authenticate the subject statement the prosecution has failed to satisfy the requirements of authentication and identification of documents and the written statement will be suppressed. Kosrae v. Kilafwakun, 13 FSM R. 333, 335 (Kos. S. Ct. Tr. 2005).

Business records are normally authenticated by a custodian of records. The custodian or other qualified witness who must authenticate business records need not be the person who prepared or maintained the records, or even an employee of the record-keeping entity, as long as the witness understands the system used to prepare the records. Objections concerning the identity or competency of preparer of a record might go to the evidentiary weight or credibility of a record but not to the record's admissibility. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

Authentication is satisfied by evidence sufficient to support a finding that the matter in question is what it its proponent claims. The appellate court's review is limited to determining whether the trial court abused its discretion in deciding that the government made a prima facie

showing as to the documents' authenticity. Cholymay v. FSM, 17 FSM R. 11, 21 (App. 2010).

When the defendants did not claim that the exhibits were something other than what the government claimed them to be, but instead stated that the exhibits were illegible, incomplete, or had notes written on them raising substantial doubts as to their authenticity, that is a question of what weight or credibility the exhibits should be given, not whether they should be admitted. Cholymay v. FSM, 17 FSM R. 11, 22 (App. 2010).

When the government's witnesses testified as to what the exhibits were and, if a witness did not know what an exhibit was, it was not admitted, the weight or credibility that an exhibit was given was for the trial court to decide. When the trial court took into account the defendants' stated concerns regarding the documents but there was no requirement that the exhibits be excluded after the witnesses had testified that they were what the government claimed them to be, the trial court, having heard adequate testimony, did not abuse its discretion by admitting the exhibits. Cholymay v. FSM, 17 FSM R. 11, 22 (App. 2010).

Arguments concerning the accuracy of the record go to their weight and not their admissibility. The question then is whether the photocopy was a duplicate of what the government claimed it to be. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

When the defendants' argument is not a true objection to the records' admissibility but is instead a question concerning the weight or credibility that the exhibits should be given because the defendants dispute the exhibits' accuracy; when the government stated that the originals were unobtainable due to judicial process because the documents were collected by the court in the related criminal matters and were not available for the trial of this case; and when FSM Evidence Rule 1004 does not require originals when they cannot be obtained, the trial court did not err or abuse its discretion in admitting the government's exhibits over the defendants' best evidence objections. Cholymay v. FSM, 17 FSM R. 11, 23 (App. 2010).

Prima facie authenticity is extended so long as the proffered document is accompanied by a certificate of acknowledgment under the seal of a notary public or other authorized officer. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the trial court excluded an affidavit from admission because the prima facie authenticity for notarized documents extended by Evidence Rule 902(8) was rebutted by the clerk's testimony that he should not have notarized it because the affiant had not appeared before him and it was not signed in his presence, whereupon the court concluded that the affidavit could not be authenticated under Rule 902(8) and when the proponents did not seek to authenticate the affidavit by other means such as by calling another witness to authenticate the signature on the affidavit despite its defective notary seal, the trial court, without any additional testimony to authenticate the signature, had no way of determining whether the signature on the affidavit was in fact genuine. The court's determination not to admit the affidavit was thus within its discretion. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the proponents failed to raise any other basis for admission of an affidavit other than as a self-authenticating document, the appellate court is left to review whether the trial court's exclusion was proper on the basis that the document was not authenticated. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When the trial court denies admission of documentary evidence on the basis that it was not properly authenticated, the appellate court's review is limited to determining whether the trial

court abused its discretion in deciding whether the movant made a prima facie showing as to the document's authenticity. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

Generally, the requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

A notarized affidavit may be authenticated without the affiant's testimony, as it is presumed to be authentic so long as it is acknowledged in the manner provided for by law. A clerk of court's manner of acknowledging an affidavit is for the affiant to swear to it under oath in the clerk's presence. Peter v. Jessy, 17 FSM R. 163, 173-74 (Chk. S. Ct. App. 2010).

When the affidavit was not acknowledged in the manner provided for by law since the affiant was not present at the time that the affidavit was acknowledged, the trial court's determination that the presumption of self-authentication had been rebutted and that the affidavit was not otherwise authenticated was proper. There was therefore no abuse of discretion in the trial court's denial of the affidavit's admission into evidence for the reason that it was not authenticated. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

When an affidavit's substance was only read into the record for the purpose of ruling on its admissibility, the better practice may have been to allow the presentation of a foundation for admission, including establishing the document's authenticity, before proceeding with testimony regarding its contents. That practice would avoid confusion as to whether the substance of inadmissible documentary evidence has become a part of the evidentiary record. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

Extrinsic evidence of authenticity, as a condition precedent to admissibility, is not required with respect to documents accompanied by a certificate of acknowledgment, executed by a notary public in the manner provided by law. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 29 (App. 2016).

An ancient document is authenticated if evidence that the document, in any form, is in such condition, as to create no suspicion concerning its authenticity, was in a place where if authentic, would likely be, and has been in existence 20 years or more at the time it is offered. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

– Burden of Proof

In a case of civil conspiracy, the burden of proof is a preponderance of the evidence, not a clear and convincing standard, in order to establish the conspiracy. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 164 (App. 1987).

A party claiming ownership in land for which there is a determination of ownership showing another as owner, with the appeal period expired, has, at a minimum, the burden of showing facts to establish that the determination of ownership is incorrect. Benjamin v. Kosrae, 3 FSM R. 508, 510 (Kos. S. Ct. Tr. 1988).

The concept of Burden of Proof has two aspects. First the plaintiff in a civil case must produce sufficient evidence to establish a prima facie case in order to avoid a nonsuit. Second,

the sufficiency of evidence necessary to prove a disputed fact in a civil case is proof by a preponderance of the evidence – the facts asserted by the plaintiff are more probably true than false. Meitou v. Uwera, 5 FSM R. 139, 141-42 (Chk. S. Ct. Tr. 1991).

The plaintiff, whose duty it is to introduce evidence to prove her case by a preponderance of the evidence, carries the burden of proof. This "burden of going forward with the evidence," or "burden of producing evidence," lies with the party who seeks to prove an affirmative fact. Nimeisa v. Department of Public Works, 6 FSM R. 205, 212 (Chk. S. Ct. Tr. 1993).

The defendant has the burden of proving affirmative defenses. A defense raised for the first time in a defendant's written closing argument does not meet the burden of proof. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 619 (App. 1996).

The burden of producing evidence in a civil trial generally lies with the plaintiff, who must establish a prima facie case to avoid a nonsuit or other adverse ruling. Berman v. Santos, 7 FSM R. 624, 627 (App. 1996).

The defendants have the burden of proof with respect to each affirmative defense, and must prove that defense by a preponderance of the evidence. Senda v. Semes, 8 FSM R. 484, 496 (Pon. 1998).

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

Preponderance of the evidence is not evidence to a moral certainty or clear and convincing evidence. As a standard of proof, preponderance of the evidence has been held to mean that the facts asserted by the plaintiff are more probably true than false. The party having the burden of establishing his claim by a preponderance of the evidence must establish the facts by evidence at least sufficient to destroy the equilibrium and overbalance any weight of evidence produced by the other party. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 12 (Yap 1999).

If the plaintiff's evidence is more convincing than that which defendant offers in opposition, then plaintiff has met its burden of showing that the facts for which it contends are more probably true than false. If, on the other hand, plaintiff's evidence is less convincing than that offered in opposition, then defendant's version of events is the more likely, and the plaintiff fails to meet its burden of proof. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 12 (Yap 1999).

When the plaintiff has demonstrated that it billed the defendant for long distance services according to its usual and customary practice, and that its billing practices accurately reflect its customers' usage of the communications services which it offers to the public and when the defendant's 1998 testimony about her long distance usage habits during September 1990 through July 1, 1992 does not persuade the court that she received inaccurate telephone bills from plaintiff at relevant times under the terms of the parties' valid and enforceable contract, the plaintiff has met its burden of proof. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 15 (Yap 1999).

A plaintiff, who has testified that in 1991 the defendant gave him $500 and that this payment

was a portion of a $3,000 check issued by the FSM Finance Office as payment to the plaintiff, but who does not present any other evidence of the $3,000 check or the $500 payment and does not show that documentary proof relating to the $500 payment or the $3,000 check was unavailable through discovery or by subpoena, has failed to sustain his burden of proof. When the plaintiff has testified that in 1996 the FSM Finance Office issued another check in his name, but presents no documentary proof of this check, the plaintiff has again failed to sustain his burden of proof. Tulensru v. Utwe, 9 FSM R. 95, 97 (Kos. S. Ct. Tr. 1999).

A plaintiff must prove the allegations of the complaint by a preponderance of admissible evidence in order to prevail. Chipen v. Reynold, 9 FSM R. 148, 149 (Chk. S. Ct. Tr. 1999).

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

The disciplinary counsel's burden is to prove attorney misconduct by clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 171 (App. 1999).

The standard of proof for establishing allegations of attorney misconduct is clear and convincing evidence. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

Clear and convincing evidence is a higher burden of proof than mere preponderance of the evidence, but not quite as high as beyond a reasonable doubt. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

The clear and convincing evidence standard is the most demanding standard applied in civil cases. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

To be clear and convincing evidence must be of extraordinary persuasiveness. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

Clear and convincing evidence means evidence establishing that the truth of the facts asserted is highly probable. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

The clear and convincing evidentiary standard is that weight of proof which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not. Clear and convincing evidence, on the other hand, reflects a more exacting standard of proof. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173 (App. 1999).

Although stated in terms of reasonable doubt, clear and convincing evidence is considered to be more than a preponderance while not quite approaching the degree of proof necessary to convict a person of a criminal offense. In re Attorney Disciplinary Proceeding, 9 FSM R. 165,

173 (App. 1999).

The spectrum of increasing degrees of proof, from preponderance of the evidence, to clear and convincing evidence, to beyond a reasonable doubt is widely recognized, and it has been suggested that the standard of proof required would be clearer if the degrees of proof were defined, respectively, as probably true, highly probably true and almost certainly true. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 173-74 (App. 1999).

Evidence may be uncontroverted, and yet not be clear and convincing. Conversely, evidence may be clear and convincing despite the fact it has been contradicted. In re Attorney Disciplinary Proceeding, 9 FSM R. 165, 174 (App. 1999).

The clear and convincing standard is that which enables the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts of the case. In re Robert, 9 FSM R. 278a, 278g (Pon. 1999).

The proper standard of proof for inherent power sanctions is clear and convincing evidence standard rather than the lower standard of preponderance of the evidence standard. This heightened standard of proof is particularly appropriate because most inherent power sanctions are fundamentally punitive and because an inherent power sanction requires a finding of bad faith, and a bad faith finding requires heightened certainty. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

For those inherent power sanctions that are fundamentally penal – and default judgments, as well as contempt orders, awards of attorneys' fees and the imposition of fines – the trial court must find clear and convincing evidence of the predicate misconduct. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

The clear and convincing evidence standard of an inherent powers sanction is also consistent with the standard of proof needed to discipline an attorney. It would be inequitable if a court could avoid the heightened standard of a disciplinary proceeding by instead resorting to its inherent powers to sanction an attorney. In re Sanction of Woodruff, 10 FSM R. 79, 88 (App. 2001).

At trial, the plaintiff has the burden of proving each element of his breach of contract claim by a preponderance of the evidence. If he fails to do so, it is appropriate for the trial court to enter judgment against him. Tulensru v. Wakuk, 10 FSM R. 128, 132 (App. 2001).

When a trial court has found that all parties fulfilled their obligations under the contract, and the plaintiff did not offer competent evidence of breach sufficient to establish that the trial court's findings were improper, there was no clear error in the trial court's factual findings on the liability issue. Tulensru v. Wakuk, 10 FSM R. 128, 133 (App. 2001).

When defendants did not submit any proof at trial in support of their affirmative defense, they did not carry their burden of proof. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 196 (Kos. S. Ct. Tr. 2001).

When there was no evidence presented at trial that two defendants had made any promise to the plaintiff and they were not a parties to any agreement or promise with the plaintiff, the

plaintiff has not carried his burden of proof with respect to claims made against them and justice requires that the complaint against them be dismissed. Kilafwakun v. Kilafwakun, 10 FSM R. 189, 197 (Kos. S. Ct. Tr. 2001).

A plaintiff who establishes the existence of risk factors which may have caused the injury, must show that these risk factors did in fact cause the injury. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

It is enough that the plaintiff introduce evidence from which reasonable men may conclude that it is more probable that the event was caused by the defendant than that it was not. Stated another way, it does not require that the proof eliminate every possible cause other than the one on which plaintiff relies, but only such other causes, if any, which fairly arise from the evidence. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

When no product defect is found, causes of action based on strict product liability and on breach of warranty fail and *res ipsa loquitur* is not applicable. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 353 (Pon. 2001).

The clear and convincing evidence standard involves a higher burden of proof than a mere preponderance of the evidence, but not quite as high as beyond a reasonable doubt. "Clear evidence to the contrary" would be a similar standard. FSM v. Wainit, 11 FSM R. 1, 8 n.1 (Chk. 2002).

If the Chuuk State Supreme Court determines that a de novo review of an appeal from Land Commission is appropriate, the plaintiff must prove his case by a preponderance of the evidence, and the court may make its own findings of fact based on the total record in this case, but if the court does not conduct a de novo review of the case, it merely determines whether the Land Commission's decision was arbitrary and capricious, and whether the facts as found by the Land Commission were clearly erroneous. In re Lot No. 014-A-21, 11 FSM R. 582, 588-89 (Chk. S. Ct. Tr. 2003).

When, at a trial de novo, the plaintiff's testimony was credible and supported by other credible testimonial and physical evidence and the defendant's claim was inconsistent and not supported by convincing evidence, the plaintiff's evidence is more convincing and he has met his burden of proving ownership. In re Lot No. 014-A-21, 11 FSM R. 582, 591-94 (Chk. S. Ct. Tr. 2003).

The plaintiffs' reply to a defendant's written closing argument will not be stricken because the plaintiffs have the burden of proof, and therefore may have the last word. Adams v. Island Homes Constr., Inc., 12 FSM R. 234, 242 (Pon. 2003).

When a case proceeds to trial, the burden of going forward with evidence as to affirmative defenses is normally on the defendant. However, when the plaintiff seeks summary judgment on the question of liability, the plaintiff must initiate the inquiry even as to affirmative defenses. The party moving for summary judgment has the burden of clearly establishing the lack of any triable issues of fact. The burden extends to affirmative defenses as well as to the plaintiff's own positive allegations. Sigrah v. Microlife Plus, 13 FSM R. 375, 379 (Kos. 2005).

It is the claimant's burden to present his or her evidence to the Land Court and it is the claimant's burden to request admission of evidence which had been previously presented to the

Land Commission in prior proceedings. Wesley v. Carl, 13 FSM R. 429, 431 (Kos. S. Ct. Tr. 2005).

In a civil case the burden of proof lies generally with the plaintiff, who must make a showing of a prima facie case to avoid an adverse ruling such as a nonsuit. At the same time, a defendant has the burden of proof with respect to each affirmative defense, which he must prove by a preponderance of the evidence. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 519 (App. 2005).

In a prima facie case, a party has produced enough evidence to allow the fact-finder to infer the fact at issue and rule in the party's favor. Hauk v. Lokopwe, 14 FSM R. 61, 64 n.1 (Chk. 2006).

The government has met the standard of proof and proved by a preponderance of the evidence that the defendant has waived his rights knowingly and intelligently when the defendant's signed waiver showed that he was informed of his right to silence and his right to counsel and waived those rights and when, considering that signed waiver and the testimony presented, the court has considered the defendant's evidence and argument and cannot find that the manner in which the statement was elicited coerced the defendant into making it. FSM v. Kansou, 14 FSM R. 150, 152 (Chk. 2006).

The plaintiff has the burden of proving each element of a claim by a preponderance of evidence. Siba v. Noah, 15 FSM R. 189, 195 (Kos. S. Ct. Tr. 2007).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 n.1 (Chk. S. Ct. App. 2007).

In a civil case, a plaintiff must prove the allegations of their complaint by a preponderance of evidence in order to prevail. Preponderance of the evidence is not evidence to a moral certainty or clear and convincing evidence. As a standard of proof, preponderance of the evidence means that the facts asserted by the plaintiff are more probably true than false. But, if the plaintiff's evidence is less convincing than that offered in opposition, then defendant's version of events is the more likely, and the plaintiff fails to meet its burden of proof. George v. George, 15 FSM R. 270, 274 (Kos. S. Ct. Tr. 2007).

An open account is not self-proving; it must be supported by enough evidence to show the account's accuracy. George v. George, 15 FSM R. 270, 274 (Kos. S. Ct. Tr. 2007).

When the evidence offered to support the amount claimed in the complaint is minimal and receipts, which the plaintiff's own witnesses testified were available, were not offered into evidence; when one page of the ledger was identified and marked, but never offered into evidence; when the evidence to support the plaintiff's claims consists of his former employees' testimony on the amount owed and the defendant's acknowledgment that she owes some amount but not the amount claimed; when the defendant could have used the receipts to show they did not support the amount in the ledger but did not and did not question the plaintiff's witnesses as to the specific amounts shown in the receipts, the court was given no evidence to weigh in support of an alternative explanation and can only look at the testimony offered and determine whether the facts asserted by the plaintiff are more probably true than false. Thus,

based on the defendant's acknowledgment that some amount is owed, but not the $14,431.58 claimed by the plaintiff, and based on the testimony of the plaintiff's witnesses about the ledger and the balance, the evidence weighs slightly to the plaintiff and that it is more probably true than false that the defendant owes the amount of $6,220.52. George v. George, 15 FSM R. 270, 274-75 (Kos. S. Ct. Tr. 2007).

When evidence is available but not offered, the question is raised whether the withheld evidence supported the claim. George v. George, 15 FSM R. 270, 274 (Kos. S. Ct. Tr. 2007).

The parties have the responsibility to put forward the evidence to support their client's case. This is not the court's responsibility. George v. George, 15 FSM R. 270, 275 (Kos. S. Ct. Tr. 2007).

The burden of proof in a civil case is on the plaintiff. Plaintiffs must prove each element of their causes of action. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

When the plaintiff offered no evidence that he was entitled to notice in the Land Commission proceedings so there was no proof of a negligent or wrongful act or omission, he did not prove a violation of his due process rights, and when Land Commission records would have contained evidence about his entitlement to notice and whether he was served with notice, but, the plaintiff did not present those records and did not offer proof that he owned any portion of the disputed land and the only evidence of land ownership showed ownership by another, the plaintiff's claims against the government based on negligence and a violation of due process fail. Andon v. Shrew, 15 FSM R. 315, 320 (Kos. S. Ct. Tr. 2007).

In a civil case, a plaintiff must prove the allegations by a preponderance of evidence in order to prevail. Preponderance of the evidence is not evidence to a moral certainty or clear and convincing evidence. As a standard of proof, preponderance of the evidence means that the facts asserted by the plaintiff are more probably true than false. But, if the plaintiff's evidence is less convincing than that offered in opposition, then the defendant's version of events is the more likely, and the plaintiff fails to meet its burden of proof. George v. Albert, 15 FSM R. 323, 327 (Kos. S. Ct. Tr. 2007).

When the receipts did not support the amount stated in the ledger and claimed by the plaintiff even though the plaintiff's witness testified that the receipts would support the full amount; when the plaintiff was specifically ordered to produce at trial the original of all receipts, ledgers, and any other documents pertaining to the defendant's account but failed to submit receipts supporting the amount in the ledger produced and failed to submit the full ledger for the defendant's account; and when the defendant acknowledged owing some amount and did not dispute the receipts signed by him, the court will award the plaintiff the amounts shown in the receipts and ledger with credit for the defendant's payments. George v. Albert, 15 FSM R. 323, 327 (Kos. S. Ct. Tr. 2007).

When a petitioner has presented sufficient evidence to support a *prima facie* case for relief, a respondent's motion for dismissal at the close of the petitioner's case-in-chief will be denied. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 372 (Chk. S. Ct. App. 2007).

After the parties rest, the court makes findings of fact based on the total record in the case. The petitioner (election contestant) has the burden of proof to prove his case by a preponderance of the evidence. The petitioner satisfies his burden of proof if his evidence is

more convincing to the court than that of the respondents. Therefore, the petitioner must establish facts in support of his claim by evidence at least sufficient to overbalance any weight of evidence produced by the other parties. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 372 (Chk. S. Ct. App. 2007).

When, given the weight of the evidence indicating that the petitioner was born on October 26, 1972, which was generated both before, when he did not have a vested interest in the election, and after his application for a delayed birth certificate, the court could not find that his evidence that he was born on October 26, 1971, was more convincing than that of the respondents, and therefore, he has not proven his case by a preponderance of the evidence. Miochy v. Chuuk State Election Comm'n, 15 FSM R. 369, 372 (Chk. S. Ct. App. 2007).

When the defendants did not stipulate to their ledger sheets' accuracy, that would have left one genuine issue of material fact before the court for trial because an open account is not self-proving. An open account must be supported by an evidentiary foundation to demonstrate the account's accuracy. Albert v. George, 15 FSM R. 574, 581 (App. 2008).

The burden at trial is on the party asserting the existence of a customary right to prove it by a preponderance of the evidence. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

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

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

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. Jano v. Fujita, 16 FSM R. 323, 327 (Pon. 2009).

When the plaintiff's testimony on the element of damages is speculative, conclusory, and lacking in foundation, the plaintiff did not meet his burden of proof on the issue of damages and a judgment in the defendant's favor is therefore appropriate. Jano v. Fujita, 16 FSM R. 323, 328 (Pon. 2009).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 374 (Kos. S. Ct. Tr. 2009).

When there is no way of determining what portion of an amount deposited into a bank account was also converted by another defendant and since the plaintiff has the burden of proof, that other defendant will receive the benefit of the doubt created by this question and will not be held liable for the deposited sums. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 447 (Pon. 2009).

In a civil case, the plaintiff has the burden of proving each element of his cause of action by

a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. The preponderance of the evidence standard also applies to a civil action for conspiracy. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 456 (Pon. 2009).

In an election contest, the court makes findings of fact based on the total record in the case. The petitioner has the burden of proof to prove his case by a preponderance of the evidence. The petitioner satisfies his burden of proof if his evidence is more convincing to the court than that of the respondents. Thus, the petitioners must establish facts in support of their claim by evidence at least sufficient to overbalance any weight of evidence produced by the other parties. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

When there was no evidence to contradict the election commission's finding of the dates that the election results were announced, the petitioners cannot prove by a preponderance of the evidence that the declaration of the election was after April 11, 2009, which, if it had been, would have made their petition timely and the panel would have remanded the contest to the election commission for a third time. Doone v. Chuuk State Election Comm'n, 16 FSM R. 513, 519 (Chk. S. Ct. App. 2009).

A plaintiff has not met her burden of showing that the state is liable to her for "summary punishment" when she did not disclose what specific conduct she believed constituted summary punishment and her complaint was silent on that point as well. Berman v. Pohnpei, 16 FSM R. 567, 575 (Pon. 2009).

When the first question is whether there is a valid contract, the plaintiff has the burden of proving each element of that claim by a preponderance of evidence. Heirs of Tulenkun v. Simon, 16 FSM R. 636, 645 (Kos. S. Ct. Tr. 2009).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. George v. Albert, 17 FSM R. 25, 33 n.3 (App. 2010).

In a prima facie case, a party has produced enough evidence to allow the fact-finder to infer the fact at issue and rule in the party's favor. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 41, 45 n.2 (Chk. 2010).

When the discharged employee has not presented any evidence about whether and where he sought employment during a certain time period, he has introduced no evidence of his efforts to mitigate his damages by attempting to secure a job during his periods of unemployment, and he is thus precluded from recovery of damages for those periods since it is the plaintiff's burden to prove every element of his case, including all of his damages. Sandy v. Mori, 17 FSM R. 92, 95 (Chk. 2010).

Since hearsay testimony is inherently unreliable, the court cannot be required to or presumed to rely on hearsay testimony over contrary direct evidence to determine where the preponderance of evidence lies. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

The findings of fact made at the end of trial may differ somewhat from those the court made after the close of the plaintiffs' case-in-chief for the purpose of the defense Rule 41(b) motion since then it still awaited the presentations of the defendant and third-party defendant; since nothing contained in the court's Rule 41(b) memorandum was intended to foreclose the

defendant and the third-party defendant of their opportunity to be heard; and since what may then have been reasonable and logical inferences from the evidence might later be shown to be something entirely different. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 121 & n.1 (Chk. 2010).

In a civil case, the plaintiff has the burden of proving each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to prove any one element, judgment will be entered against the plaintiff. Nakamura v. FSM Telecomm. Corp., 17 FSM R. 119, 123 (Chk. 2010).

In ruling on a 41(b) motion to dismiss, the trial court, in determining whether the plaintiff has shown a right to relief, is not required to view the facts in the light most favorable to the plaintiff but draws permissible inferences. If the court determines that the plaintiff has not made out a prima facie case, the defendant is entitled to have the case dismissed. Even if a plaintiff makes out a prima facie case, the court as the trier of fact, may, in assessing the evidence on a Rule 41(b) motion, weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance of the evidence lies. In weighing the evidence, the trial court is required to view the evidence with an unbiased eye, without any attendant favorable inferences, but it is also required to sift and to balance the evidence, and to give the evidence such weight as it deems fit. Peter v. Jessy, 17 FSM R. 163, 171 (Chk. S. Ct. App. 2010).

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

Even if an affidavit were admitted, the proponents have the burden to come forward with a preponderance of credible evidence to establish the document's veracity because notarization does not conclusively establish the truth of the statements made in the document, but only the identity and signature of the person who signed the document. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The plaintiffs' burden of proof to show the truth of the statements in a notarized affidavit is not met when the purported affiant did not appear in person to have the document notarized and there is no other evidence regarding the circumstances of its signing. Without even testimony to authenticate her signature, let alone the circumstances surrounding her signature, the trial court, as finder of fact, had no way to determine whether the purported affiant fully understood and freely signed the document, or whether she signed it under coercion, mistake, or as a result of fraud, or misunderstanding, let alone whether it was indeed her who signed her name to it. Thus, the affidavit, even if it had been admitted into evidence, would rightly be accorded little weight since significant questions were raised regarding its authenticity, reliability, and veracity. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

The mental disease, disorder or defect defense established by 11 F.S.M.C. 302 is an affirmative defense. Under 11 F.S.M.C. 302(3), the party asserting this defense has the burden of proving the existence of the physical or mental disease, disorder, or defect by clear and convincing evidence. FSM v. Andrew, 17 FSM R. 213, 216 (Pon. 2010).

Traditionally, the movant has the burden to show that the debtor has the ability to comply with the court order; once this burden has been met, it is then the debtor's burden to show that

he no longer has the ability to comply through no fault of his own despite due diligence. Thus, it is the moving party's burden not only to submit a proper motion for a show cause hearing, but also, at the hearing, to prove by a preponderance that the judgment debtor has the ability to pay. If the movant cannot provide evidentiary support, or certify his information and belief that such support is likely after a reasonable opportunity for further investigation or discovery, the court must deny the motion, but if the court does set a hearing and order parties to appear, and if at the hearing the moving party presents such evidence, only then will the burden shift to the debtor to show that he does not in fact have the ability to pay. FSM Social Sec. Admin. v. Weilbacher, 17 FSM R. 217, 226-27 (Kos. 2010).

In a trespass dispute over land, the only issue properly before the court, and the only issue the court may rule upon without violating the due process rights of non-parties, is whether it is more likely than not, and not whether it is certain beyond all doubt, or whether it is certain beyond a reasonable doubt, or whether it is clear and convincing that, as between the parties, the plaintiff has the superior right to possess the land. The plaintiff only has to prove its case by a preponderance of the evidence, that is, to show that it is more likely than not that its rights are superior. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233 & n.4 (Chk. 2010).

The standard of review on a question of the sufficiency of the evidence is whether the trial court's findings are clearly erroneous. A finding is clearly erroneous and reversible error if: 1) the findings are not supported by substantial evidence in the record; 2) the finding was the result of an erroneous conception of the applicable law; or 3) after reviewing the entire body of the evidence in the light most favorable to the appellee, the reviewing court is left with a definite and firm conviction that a mistake has been made. Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Palsis v. Kosrae, 17 FSM R. 236, 243 (App. 2010).

An element of criminal contempt is the subjective intent to defy the court's authority, and the requisite intent is specific intent. There is thus more to prove to show criminal contempt. There is also a higher burden of proof, beyond a reasonable doubt than the civil contempt burden of clear and convincing evidence of the predicate misconduct. Berman v. Pohnpei Legislature, 17 FSM R. 339, 354 (App. 2011).

When no evidence was presented at trial to support the defendants' counterclaims, those counterclaims fail and are dismissed because the defendants have not met their burden of proof. A counterclaimant has the same burden of proof as a plaintiff – to prove the counterclaim by a preponderance of the evidence. FSM v. Kana Maru No. 1, 17 FSM R. 399, 406 (Chk. 2011).

The substantial-evidence rule is the principle that a reviewing court should uphold an administrative body's ruling if it is supported by evidence on which the administrative body could reasonably base its decision. Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655 (App. 2011).

The record may contain evidence which preponderates one way and yet include substantial evidence to support an order reaching an opposite result. Substantial evidence need not be

much evidence, and though "substantial" means more than a mere scintilla, or some evidence, it is less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. The substantial-evidence rule is a very deferential standard of review. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

"Some evidence" may be a higher standard than the scintilla of evidence standard, but "some evidence" still does not equate with "substantial evidence." "Substantial evidence" is a higher standard than "some evidence" but it is not as high as the "preponderance of the evidence" standard. It can be less. Substantial evidence is more than a mere scintilla or some evidence, but less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. The trial court does not assume the role of fact finder, the issue is purely one of law. In fact, the evidence may be substantial and yet greatly preponderate the other way. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

The "burden of proof" is a party's duty to prove a disputed assertion or charge. The burden of proof includes both the burden of persuasion and the burden of production. Congress v. Pacific Food & Servs., Inc., 18 FSM R. 76, 77 (App. 2011).

When a trial court ruling did not involve disputed facts, the only burden was that of persuasion. Congress v. Pacific Food & Servs., Inc., 18 FSM R. 76, 77 (App. 2011).

The burden of proof is on the party alleging and relying on estoppel. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 363 (App. 2012).

Only when there is a duty of care, breach of this duty, damage caused by the breach, and determination of the value of the damage can there be a liability for negligence. The plaintiffs have the burden of proving each these elements in order to prevail on a negligence claim, and if the plaintiffs fail to prove any one element, judgment will be entered against them. William v. Kosrae State Hosp., 18 FSM R. 575, 580 (Kos. 2013).

When damages are calculated based on figures in statements made during closing argument, those damage amounts are not supported by evidence properly before the trial court, and, as such, any judgment based on them would be vacated and the court cannot take the "judicial notice" of the plaintiffs' requested figures. William v. Kosrae State Hosp., 18 FSM R. 575, 582-83 (Kos. 2013).

Determination of damages is an essential element of the plaintiffs' causes of action. Trial is the time for plaintiffs to present evidence about the amount of their damages since, in civil cases, the plaintiff has the burden of proving at trial each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to do so, judgment will be entered against the plaintiff. William v. Kosrae State Hosp., 18 FSM R. 575, 583 (Kos. 2013).

When the plaintiff testified that he was uncertain whether he lost any pay because of his absences from work due to the September 8, 2010 and the November 4, 2010 arrests and no other evidence was introduced about his state employee pay or its amount, the court must find as fact that he did not lose any pay as the result of the September 8, and November 4, 2010 arrests and detentions since he had the burden of proof to establish that he lost pay and the amount of that lost pay and he did not meet that burden. Inek v. Chuuk, 19 FSM R. 195, 199 (Chk. 2013).

It is within the court's sound discretion whether to admit additional evidence after trial. Exercise of such discretion must take into account the evidence's probative value against the danger of injuring the opposite party through surprise. The opposing party cannot properly examine or counter evidence offered after trial, and so the burden is on the party offering the evidence to demonstrate good cause why the evidence should be admitted. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 269 (Pon. 2014).

In a civil case, the plaintiff has the burden of proving each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to prove any one element, judgment will be entered against the plaintiff. George v. Palsis, 19 FSM R. 558, 566 (Kos. 2014).

A plaintiff has the burden to persuade the court, with competent evidence, as to the amount of his damages. Parties have the responsibility to put forward the evidence to support their case. This is not the court's responsibility. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

A plaintiff must introduce his evidence during his case-in-chief so the defendants will have an opportunity to address it, or to stipulate to it, or to challenge it and to cross-examine witnesses about it, and where, if the defendants feel the need, they can introduce evidence to counter it when it their turn comes. George v. Palsis, 20 FSM R. 111, 117 (Kos. 2015).

Since the defendants pled the plaintiff's failure to mitigate damages as an affirmative defense, if the plaintiff had put on evidence of his damages, the burden would have shifted to the defendants to prove that the plaintiff failed to mitigate his damages or to prove to what extent he did mitigate his damages. But since the plaintiff put on no evidence about the amount of his damages, the burden of proof about damages never shifted to the defendants. George v. Palsis, 20 FSM R. 111, 116 (Kos. 2015).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion and it consists of more than a scintilla of evidence but may be less than a preponderance. Heirs of Benjamin v. Heirs of Benjamin, 20 FSM R. 188, 193 (App. 2015).

The movant bears the burden of establishing the elements of civil contempt by clear and convincing evidence, which is a higher standard than the preponderance of the evidence standard, common in civil cases, although not as high as beyond a reasonable doubt. In re Contempt of Jack, 20 FSM R. 452, 464 (Pon. 2016).

The standard of review for a criminal contempt conviction under 4 F.S.M.C. 119(1)(b), like the standard for any criminal conviction, is whether the appellate court can conclude that the trier of fact reasonably could have been convinced beyond a reasonable doubt. In re Contempt of Jack, 20 FSM R. 452, 464 n.11 (Pon. 2016).

A contemnor's intent must be ascertained from all the acts, words, and circumstances surrounding the occurrence. Ultimately, most *bona fide* representations tend to excuse, but cannot justify the act. Notably, an attorney's good faith belief that they were not obligated to appear at that time may be accepted or rejected. In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

The clear and convincing standard will be applied to the evidence in a civil contempt case.

In re Contempt of Jack, 20 FSM R. 452, 465 (Pon. 2016).

The burden of proof is upon the plaintiffs to show the fact and extent of the injury and the amount or value of damages. Determination of damages is an essential element of the plaintiffs' cause of action, which, at trial, the plaintiffs must prove as to amount by a preponderance of evidence. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

When the evidence shows that the plaintiffs did in fact perform work during the relevant time period and that the standard operating procedure for many years was to submit employee-created time sheets similar to those that the plaintiffs submitted and when the government concedes that, if there was a valid contract, the plaintiffs would have been paid based on the submission of the same time sheets, there is sufficient evidence to carry the plaintiffs' burden on damages. Linter v. FSM, 20 FSM R. 553, 562 (Pon. 2016).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion. It consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Substantial evidence is also evidence of such quality and weight that reasonable and fair-minded men in the exercise of impartial judgment might reach different conclusions. Thalman v. FSM Social Sec. Admin., 20 FSM R. 625, 628 (Yap 2016).

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

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. Pohnpei Transfer & Storage, Inc. v. Shoniber, 21 FSM R. 14, 17 (Pon. 2016).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 98 (App. 2016).

Parties have the responsibility to put forward the evidence to support their case. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 122 (App. 2017).

Preponderance of the evidence is not evidence to a "moral certainty" or "clear and convincing evidence." As a standard of proof, "preponderance of the evidence" means that the facts asserted by the plaintiff are more probably true than false. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 187 (Pon. 2017).

If the plaintiff's evidence is more convincing than that which defendant offers in opposition, then the plaintiff has met its burden of showing that the facts for which it contends are more probably true than false. If, on the other hand, the plaintiff's evidence is less convincing than that offered in opposition, then the defendant's version of events is the more likely, and the plaintiff fails to meet its burden of proof. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 187 (Pon. 2017).

In a civil case, a plaintiff must prove the allegations by a preponderance of evidence in

order to prevail. Preponderance of the evidence is not evidence to a moral certainty or clear and convincing evidence. As a standard of proof, preponderance of the evidence means that the facts asserted by the plaintiff are more probably true than false. But, if the plaintiff's evidence is less convincing than that offered in opposition, then the defendant's version of events is the more likely, and the plaintiff fails to meet its burden of proof. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 188 n.7 (Pon. 2017).

The court will not speculate as to under what authority was the plaintiff's vehicle being kept at an auto shop, because the burden is on the plaintiff to establish why the vehicle was being kept by the shop. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 189 (Pon. 2017).

A contractor may attack a contracting officer's decision to terminate on the grounds that such decision was an abuse of discretion or arbitrary and capricious, but the contractor has the burden of proving arbitrary and capricious conduct. Pacific Int'l, Inc. v. FSM, 21 FSM R. 283, 289 (Pon. 2017).

Even if substantial evidence were proffered to demonstrate the existence of fraud, that proffer was inadequate. Ordinarily, a proponent's burden to establish fraud is clear and convincing evidence, which is the highest burden of proof in civil cases. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 315 (App. 2017).

Since "substantial evidence" is "more than a scintilla, but less than a preponderance, substantial evidence would be insufficient to prove fraud, even if the usual, lower burden of proof – preponderance of the evidence – was applied. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 310, 315 (App. 2017).

In reviewing the evidence in the record below, the court must recognize that it is primarily Social Security's task to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes since substantial evidence is a deferential standard, which is more than a scintilla or some evidence, but less than a preponderance of evidence. The court does not assume the fact-finder's role, since the issue is purely one of law. Hadley v. FSM Social Sec. Admin., 21 FSM R. 420, 428 (App. 2018).

Any purportedly erroneous trial court finding about specific boundary lines' accuracy of the lot are safely ameliorated as harmless error, when the plaintiff's proffer of evidence was inadequate to show that it would have developed this lot during the divested five-month period of its respective lease. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 532 (App. 2018).

The parties have the responsibility to put forward the evidence to support their case. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 532 (App. 2018).

Evidence must be in the nature of facts – not conclusions or counsel's unsupported allegations. An argument contained in a brief does not constitute evidence. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 533 (App. 2018).

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. Palasko v. Pohnpei, 21 FSM R. 562, 565 (Pon. 2018).

Preponderance of the evidence is not evidence to a "moral certainty" or "clear and convincing evidence." As a standard of proof, preponderance of the evidence means that the facts asserted by the plaintiff are more probably true than false. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 595 (Pon. 2018).

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. Donre v. FSM Nat'l Gov't Employees' Health Ins. Plan, 21 FSM R. 592, 597 (Pon. 2018).

Substantial evidence is more than a scintilla. It means such relevant evidence as a reasonable mind might accept to support a conclusion. It is evidence affording a substantial basis of fact from which the fact in issue can be reasonably inferred. FSM v. Shiro, 21 FSM R. 627, 631 (Chk. 2018).

In a civil case, the plaintiff has the burden of proving each element of his cause of action by a preponderance of the evidence, and if he fails to do so, judgment will be entered against him. FSM v. Mikel, 22 FSM R. 33, 36 (Chk. 2018).

Preponderance of the evidence is not evidence to a "moral certainty" or "clear and convincing evidence." As a standard of proof, "preponderance of the evidence" means that the facts asserted by the plaintiff are more probably true than false. FSM v. Mikel, 22 FSM R. 33, 36 (Chk. 2018).

Rationality is what is reviewed under both the substantial evidence rule and the arbitrary and capricious standard. An action is arbitrary and capricious when it is taken without sound basis in reason or regard to the facts. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 143-44 (Pon. 2019).

Substantial evidence need not be much evidence, and though "substantial" means more than a mere scintilla, or some evidence, it is less than is required to sustain a verdict being attacked as against the great weight and preponderance of the evidence. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 144 n.4 (Pon. 2019).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to support a conclusion, and it consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. George v. Palsis, 22 FSM R. 165, 171 (App. 2019).

A plaintiff has the burden to persuade the court with competent evidence about the amount of damages. Reasonably calculated damages must be shown as part of a *prima facie* case. George v. Palsis, 22 FSM R. 165, 174 (App. 2019).

When a plaintiff fails to offer evidence of calculated damages at trial, the trial court may use its discretion to strike a document listing damages that was submitted after trial, and, in striking that submitted documentation, the trial court does not abuse its discretion because the opposing party cannot properly examine or counter evidence offered after trial. George v. Palsis, 22 FSM R. 165, 174 (App. 2019).

The burden to demonstrate good cause why evidence offered after trial should be admitted is on the party offering the evidence. George v. Palsis, 22 FSM R. 165, 174 (App. 2019).

Substantial evidence is evidence which a reasoning mind would accept as sufficient to

support a conclusion, and it consists of more than a mere scintilla of evidence, but may be somewhat less than a preponderance. Jackson v. Siba, 22 FSM R. 224, 230 (App. 2019).

"Clear and convincing evidence" is the standard of proof required to prove the existence of a defendant's physical or mental disease, disorder, or defect. FSM v. Pillias, 22 FSM R. 334, 338 n.5 (Chk. 2019).

While the court recognizes the difficulties a Social Security claimant may have in substantiating her claim, the burden of proof remains with the applicant as a matter of law and does not shift to the Social Security Administration. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 396 (Kos. 2019).

To prevail on a claim of trespass, nuisance, or a civil action for a due process violation, the plaintiff must prove each element of the claims by the preponderance of the evidence. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 421 (Chk. S. Ct. Tr. 2019).

In a civil case, the plaintiff has the burden of proving each element of the plaintiff's cause of action by a preponderance of the evidence, and if the plaintiff fails to prove any one element, judgment will be entered against the plaintiff. Pelep v. Lapaii, 22 FSM R. 482, 486 (Pon. 2020).

Even in a criminal case, eyewitness testimony may not be necessary if there is abundant evidence in the record to support the court's conclusion. In civil matters, a less rigorous standard of proof applies. Pelep v. Lapaii, 22 FSM R. 482, 487 (Pon. 2020).

– Expert Opinion

Opinion testimony by experts has no such conclusive force that there is an error of law in not following it. The trier of fact may decide what weight, if any, is to be given such testimony, and even if the testimony is uncontroverted, may exercise independent judgment. Setik v. Sana, 6 FSM R. 549, 553-54 (Chk. S. Ct. App. 1994).

Expert opinion testimony is admissible if the witness is qualified by knowledge, skill, experience, training, education, or otherwise; and that the expert's opinion will assist the trier of fact to understand the fact at issue. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 622 (App. 1996).

A trial court's qualification of a witness as an expert and the admission of his opinion testimony will not be reversed unless clearly erroneous. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 622 (App. 1996).

To be qualified as an expert witness, the witness must have skill and knowledge superior to the trier of fact, but expert opinion testimony is not restricted to the person best qualified to give an opinion. Pohnpei v. Ponape Constr. Co., 7 FSM R. 613, 622 (App. 1996).

Under the work product doctrine, even if a plaintiff demonstrates substantial need for factual information contained in the report of a consulting expert whose services a defendant sought in anticipation of litigation, he would have to show exceptional circumstances under FSM Civil Rule 26(b)(4)(B) before being entitled to discover the consulting expert's opinions. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 476 (Pon. 1998).

Rule 26 does not authorize any discovery concerning experts who the other party does not intend to call as a trial witness absent a showing of exceptional circumstances. It would be "unfair" to allow a party to extract his adversaries' consulting expert's knowledge or opinion without having to bear any of the financial cost of retaining that expert and to take unwarranted advantage of the opponent's trial preparation or investigations. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 482-83 (Pon. 1998).

Absent the requisite showing of exceptional circumstances, FSM Civil Rule 26 does not permit a party to obtain any information specific to an adversary's nontestifying experts through interrogatories. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 483 (Pon. 1998).

If a person is to be used by the defendants as a testifying expert, the plaintiff would be entitled to all the discovery authorized by FSM Civil Rule 26(b)(4)(A), and all documents the expert considered in forming his opinions would be discoverable as well. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 483 (Pon. 1998).

If specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill experience, training, or education, may testify thereto in the form of an opinion. Senda v. Semes, 8 FSM R. 484, 497-98 (Pon. 1998).

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 15 (Yap 1999).

When an expert's testimony, although not objected to, lacks the foundation contemplated by Evidence Rule 703, it is, at best, entitled to slight weight. FSM Telecomm. Corp. v. Worswick, 9 FSM R. 6, 16 (Yap 1999).

The appellate court begins its review of trial court rulings by presuming that the trial court's factual findings are correct. The trial court's grant or refusal to adopt an expert's opinion is a question of fact and factual questions are reviewed by this court under the clearly erroneous standard. Sellem v. Maras, 9 FSM R. 36, 38 (Chk. S. Ct. App. 1999).

To state an opinion is not to set forth specific facts. In the context of a summary judgment motion, an expert must back up his opinion with specific facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 580 (Pon. 2002).

No expert opinion arises simultaneously with the events that ultimately gives rise to that opinion, but comes to harvest in the course of a lawsuit and in the usual case is a gloss on the occurrence or events on which the lawsuit is based. In that sense an opinion is not a "fact" within the meaning of Civil Rule 56(e), but since Evidence Rules 702-704 expressly allow for expert witnesses' opinion testimony, the question is whether any given opinion is backed up with specific facts. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 580 (Pon. 2002).

The precise combustive characteristics of kerosene, gasoline, and mixtures of the two lie beyond the ordinary ken of the court. In these circumstances, an expert's opinion is

indispensable to the finder of fact in determining whether questions of fact may be reasonably resolved only in favor of the moving party. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 581 (Pon. 2002).

An expert may opine on a particular case's facts as they are made known to him at or before the hearing at which the expert testifies and the expert may offer an opinion that embraces an ultimate issue to be decided by the trier of fact. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 581 (Pon. 2002).

When the expert opinion offered by the nonmovant does not go to the causation issue presented by the facts, and on which the movant's expert offered his opinion, it does not create a fact issue under Rule 56. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 582 (Pon. 2002).

The litigation process is designed not only to discover information, but also to reduce it to the essentials necessary to advance a party's case. When a lawsuit deals with scientific, technical, or other specialized knowledge, an expert's opinion is a useful tool in this paring process. Its value derives in no insubstantial part from the fact that it reflects a synthesis of relevant facts. When such an opinion goes to a necessary element of the case, and stands unopposed by a countervailing, factually supported expert opinion that fairly meets the moving party's opinion, it may be dispositive in the context of a summary judgment motion. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 582 (Pon. 2002).

When the plaintiff's expert's testimony does not set forth specific facts showing that there is a genuine issue of fact as to the kerosene contamination issue and since the defect's existence goes to a necessary element of the plaintiff's case, the plaintiff has failed to make a showing sufficient to establish the existence of an element essential to his case, and on which he will bear the burden of proof at trial and summary judgment in the defendants' favor is therefore appropriate. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583 (Pon. 2002).

Facts that go to the question of a contamination source are rendered immaterial in light of the defendants' expert's competent, uncontroverted expert testimony that nothing about the combustion event that caused the injury led him to believe that the kerosene was contaminated. Suldan v. Mobil Oil Micronesia, Inc., 10 FSM R. 574, 583-84 (Pon. 2002).

When the defendants' expert has testified, and the plaintiff conceded, that gasoline and kerosene are completely miscible, when the plain inference from expert's miscibility testimony is that the fuel which first burned normally was identical in its chemical makeup to the fuel which the plaintiff later claimed exploded, and when the defendant offers nothing in her response to address the anomaly created by the expert's specific testimony on the miscibility point as it relates to her memory of what occurred, in the absence of such evidence, and given the expert's competency to opine on a verifiable physical phenomenon like miscibility, no issue of fact exists on this specific point. George v. Mobil Oil Micronesia, Inc., 10 FSM R. 590, 592 (Pon. 2002).

An economist, who holds a master's degree in economics, is qualified as an expert by knowledge, skill, experience, training, or education under FSM Evidence Rule 702, since his expert testimony, if admissible, will assist the trier of fact to understand the evidence or to determine the economic damages in issue. AHPW, Inc. v. FSM, 12 FSM R. 544, 556-57 (Pon. 2004).

The court may appoint an expert witness to assist both the state and the defendant in evaluating a criminal defendant's mental condition. Kosrae v. Charley, 13 FSM R. 214, 215 (Kos. S. Ct. Tr. 2005).

A Certified Public Accountant's testimony based on his compilation of financial records and some computations that a layman could have done and drawing conclusions from them is something an accountant does based on his technical knowledge, skill, experience, and education and he would therefore qualify as an expert witness. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19-20 (App. 2006).

Expert testimony based on ideal conditions and not reality would not make the testimony irrelevant; it would only bear on the weight it would be given. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 (App. 2006).

Generally, although absent a statute or contract expert witness fees and research expenses are not taxable costs, successful litigants may be awarded their out-of-pocket expenses for an expert witness when the expert witness was an indispensable part of the trial and was crucial to the ultimate resolution of the issues and the costs were appropriate and not excessive. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 75 (Yap 2007).

The Rules of Evidence expressly permit an expert witness to testify that he had made assessments of the damage to submerged reefs in numerous other cases, and, as such, the trial court was free to assess whatever weight it saw fit with regard to the expert's testimony when determining the damages that should be assessed. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 60-61 (App. 2008).

Expert opinions have no such conclusive force that there is an error of law in refusing to follow them. It is for the trier of fact to decide whether any, and if any what, weight is to be given to such testimony. Even if the testimony is uncontroverted the trier of fact may exercise independent judgment. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 61 (App. 2008).

An issue of whether the trial court erred by failing to recognize someone as an expert witness is reviewed for an abuse of discretion. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of opinion or otherwise. It is not the witness, but the trial judge who has the responsibility and discretion to determine whether a witness is qualified as an expert. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

Once faced with the proffer of an expert witness, the question of whether the witness may be qualified as an expert is a preliminary fact to be decided by the trial court. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

When the defendant never presented a witness as an expert witness at trial, the appellate court cannot find that the trial court abused its discretion in declining or otherwise refusing to qualify that witness as an expert witness. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

Although Evidence Rule 706 provides that the court may, on its own motion, enter an order to show cause why an expert witness should not be appointed, a trial court in not acting *sua sponte* to have a defense witness qualified as an expert witness did not abuse its discretion. Fritz v. FSM, 16 FSM R. 192, 197-98 (App. 2008).

A motion to exclude an expert witness's deposition testimony is premature when it is made before his deposition has been completed, and any motion to exclude his trial testimony on the ground of relevance before the deposition is complete is also premature. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 652 (Pon. 2009).

A trial court's grant or refusal to adopt an expert's opinion is a question of fact and will not be reversed unless clearly erroneous. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

A party needs to finish deposing the opposing party's witness far enough ahead of trial so that it would have a fair opportunity to meet that witness's expected expert opinion testimony. FSM v. GMP Hawaii, Inc., 17 FSM R. 192, 194 (Pon. 2010).

Ordinarily, a determination that the care, skill, and diligence exercised by a professional engaged in furnishing skilled services for compensation was less than that normally possessed and exercised by members of that profession in good standing and that the damage sustained resulted from the variance requires expert testimony to establish the prevailing standard and the consequences of departure from it in the case under consideration. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 580-81 (Pon. 2011).

Because the fact-finder is not permitted to speculate as to the standard against which to measure the acts of the professional in determining whether he exercised a reasonable degree of care, expert testimony is required. Only in a few very clear and palpable cases can a court dispense with the expert testimony requirement to establish the parameters of professional conduct and find damages to have been caused by a professional's failure to exercise reasonable care, skill, and diligence. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 581 (Pon. 2011).

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

– Hearsay

The excited utterance exception to the hearsay rule, FSM Evid. R. 803, does not permit admission of a statement made under stress of excitement caused by a startling event or condition, if the statement does not relate to the event or condition. Jonah v. FSM, 5 FSM R. 308, 313 (App. 1992).

Hearsay is not admissible in a hearing or trial. Hearsay is an out-of-court statement offered

as evidence to prove the truth of the matter asserted. A statement is an oral or written assertion. An affidavit is hearsay which is inadmissible unless allowed by an exception to the hearsay rule. In re Disqualification of Justice, 7 FSM R. 278, 279 (Chk. S. Ct. Tr. 1995).

A court may rely on hearsay evidence for the purpose of finding probable cause at a post-seizure hearing. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 303 (Kos. 1995).

Although procedural and evidentiary rules are relaxed at a probable cause hearing a prosecutor may not rely solely on hearsay evidence when other, more competent testimony is available. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 304 (Kos. 1995).

A court may discount inherently unreliable evidence. The more levels of hearsay or the more hearsay statements contained within an affidavit, which is hearsay itself, the more unreliable the evidence is. FSM v. Yue Yuan Yu No. 708, 7 FSM R. 300, 304 (Kos. 1995).

Statements made for purposes of medical diagnosis or treatment are not excluded from admissibility by the hearsay rule. Primo v. Refalopei, 7 FSM R. 423, 436 n.28 (Pon. 1996).

In order for a deposition to be admissible a deponent must physically appear before someone who can identify and administer the oath even if the deposition is taken telephonically. FSM v. Skico, Ltd. (III), 7 FSM R. 558, 559 (Chk. 1996).

Out of court admissions by a party-opponent are not hearsay statements. FSM v. Skico, Ltd. (IV), 7 FSM R. 628, 630 (Chk. 1996).

Hearsay within hearsay is inadmissible. Hearsay otherwise admissible may be excluded where it consists primarily of reiteration of a statement made by some other unidentified person. Bank of Hawaii v. Kolonia Consumer Coop. Ass'n, 7 FSM R. 659, 663 (Pon. 1996).

A statement, which if it had been made by the defendant would have been admissible as an admission of a party-opponent, is inadmissible hearsay when made by the defendant's then spouse as part of a traditional apology, and cannot be considered on a summary judgment motion. Glocke v. Pohnpei, 8 FSM R. 60, 62 (Pon. 1997).

Official government documents submitted to Congress are evidence that falls within an exception to the hearsay rule. Chuuk v. Secretary of Finance, 8 FSM R. 353, 364 n.8 (Pon. 1998).

Counsel's conversations with persons involved in drafting the Constitution are hearsay, especially when there is no competent evidence in the record, or in the Constitutional Convention Journal, to support counsel's assertion. Chuuk v. Secretary of Finance, 8 FSM R. 353, 386 n.27 (Pon. 1998).

Statements in a document in existence twenty years or more the authenticity of which is established are excepted from the hearsay rule. Elaija v. Edmond, 9 FSM R. 175, 182 (Kos. S. Ct. Tr. 1999).

The finding of probable cause may be based upon hearsay evidence in whole or in part. FSM v. Wainit, 10 FSM R. 618, 621 (Chk. 2002).

The evidence rules define a letter from a criminal defendant as non-hearsay – an admission by a party-opponent, and if the defendant were not to testify on his own behalf, as is his right, it could also be admissible under the hearsay exception for statements against interest when the declarant is unavailable to testify. If produced and properly authenticated, the letter itself would be admissible evidence. FSM v. Wainit, 11 FSM R. 1, 6 (Chk. 2002).

Merely because a person who holds a public office creates a document does not necessarily make that document a public record admissible under the hearsay exception for public documents. FSM v. Wainit, 11 FSM R. 1, 6 (Chk. 2002).

As a general rule, hearsay evidence is inadmissible unless it falls within an exception to the hearsay rule. The reputation in a community, arising before the controversy, as to boundaries of or customs affecting lands in the community, and reputation as to events of general history important to the community or state or nation in which located, is such an exception and is admissible as evidence. Rosokow v. Bob, 11 FSM R. 210, 215 (Chk. S. Ct. App. 2002).

The subject himself cannot provide the factual basis for the date of his birth, as his knowledge of this information is based upon hearsay only. A person does not have personal knowledge of his date of birth. In re Phillip, 11 FSM R. 243, 245 (Kos. S. Ct. Tr. 2002).

The Kosrae Rules of Evidence do not apply in the Land Commission or Land Court. In the case of hearsay testimony, the Land Commission or presiding justice shall determine the testimony's relevancy and the credibility of the witness. The purpose of allowing hearsay testimony and other evidence at land proceedings, without application of the Kosrae Rules of Evidence, is to allow all relevant evidence on the claims presented before the Land Commission and Land Court, without limitations imposed by the Rules of Evidence. The determination of relevancy of evidence and credibility of witnesses is made by the adjudicators, the Land Commission or a justice of the Kosrae Land Court. Taulung v. Jack, 11 FSM R. 345, 348 (Kos. S. Ct. Tr. 2003).

A log of payments in which entries were made at or about the same time as the transactions took place, and that they were records he kept in the normal course of business can be admitted into evidence. In re Lot No. 014-A-21, 11 FSM R. 582, 592 (Chk. S. Ct. Tr. 2003).

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Hearsay is generally not admissible, and therefore cannot be relied upon to create a material issue of fact when opposing a summary judgment motion. Goyo Corp. v. Christian, 12 FSM R. 140, 147 (Pon. 2003).

It is the Land Court's duty to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes and it retains discretion to accord weight to evidence presented at hearing, including appropriate weight to hearsay evidence made by a person, now deceased, and therefore not subject to cross-examination. Wesley v. Carl, 13 FSM R. 429, 432 (Kos. S. Ct. Tr. 2005).

Any requests deemed admitted may be used only against the party deemed admitting it. This is because admissions obtained under Rule 36 may be offered in evidence, but are subject to all pertinent objections to admissibility that may be interposed. It is only when the admission

is offered against the party that made it that it comes within the exception to the definition of hearsay as an admission of a party opponent. Mailo v. Chuuk, 13 FSM R. 462, 471 (Chk. 2005).

When there was testimony concerning the world price for pepper and its relation to Pohnpei's price; when the trial court only determined that Pohnpei set its price without any regard to the world price, not that it bore a certain relationship to the world price; and when someone in the pepper export business would be expected to have first-hand knowledge concerning world prices, the trial court finding that Pohnpei set its buying price without regard to the world price or to the sustainability of the pepper processing facility as a profit-making venture is not error. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 20 (App. 2006).

Even if the evidence is of events that took place in periods for which prosecution may be time-barred, it is not necessarily inadmissible. Nor is hearsay necessarily inadmissible. FSM v. Kansou, 14 FSM R. 139, 140-41 (Chk. 2006).

Statements by a party-opponent offered against that party are not hearsay and are admissible. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

A statement by a party's co-conspirator made during the course and in furtherance of the conspiracy is not hearsay and is admissible. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

An FSM police report, if relevant, may be considered in a proceeding to release a vessel when it is not a criminal case, since police reports, as matters observed pursuant to duty imposed by law as to which matters there was a duty to report, are admissible as an exception to the rule that hearsay is generally inadmissible and since a motion for a vessel's release is in the nature of a bond or bail hearing, and the rules of evidence generally do not apply to proceedings with respect to release on bail or otherwise. FSM v. Kana Maru No. 1, 14 FSM R. 300, 302 (Chk. 2006).

An account of evidence adduced in a hearing in another case to which the movant was not a party and a hearing at which he was not present or had an opportunity to be heard, even presuming (which the court cannot do) that the evidence presented then is accurately characterized now, is not admissible and cannot be used against the movant's summary judgment motion. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

Former testimony is not admissible unless the party against whom the testimony is now offered (or a predecessor in interest) had an opportunity and similar motive to develop that testimony by direct, cross, or redirect examination. Dereas v. Eas, 14 FSM R. 446, 456 (Chk. S. Ct. Tr. 2006).

Although the strict guidelines against the admission of hearsay evidence do not apply in a probable cause determination, a prosecutor may not rely solely on hearsay testimony when other, more competent testimony is available. The court may therefore discount unreliable hearsay or other evidence that is inherently untrustworthy or suspicious, unless additional measures are taken to ensure reliability or to explain those exigent circumstances that make it impossible to produce more reliable or competent evidence. A prosecutor's own representations are not a substitute for competent, reliable evidence in the form of first-hand testimony or appropriately detailed affidavits from investigating officers who obtained first-hand accounts. Chuuk v. Chosa, 16 FSM R. 95, 98 (Chk. S. Ct. Tr. 2008).

When the affiant's belief that probable cause existed was based solely on affiant's review of a police report, which presumably was prepared by an officer who investigated the crime scene; when the affiant does not state whether the affiant spoke with the reporting officer, or even identify the reporting officer; when there is no explanation of how the information contained in the police report was obtained; when there is no evidence that the affiant or the unknown reporting officer interviewed witnesses or investigated the incident and there is no way to determine the extent to which the report itself was based on hearsay or any assurance that it was based on the investigating officer's reasonable belief rather than on pure speculation, then the "affidavit of probable cause" is deficient because the affidavit suffers from multiple layers of hearsay, and multiple levels of hearsay become less reliable as the number of levels of hearsay increase and because the affidavit fails to adequately identify the information's source or sources and may be based on unattributed hearsay statements of one or more declarants. As the number of included hearsay statements increases, the guarantees of reliability that justify admission become attenuated. Hearsay that is otherwise admissible may be excluded where it primarily reiterates statements of other, unidentified persons. Chuuk v. Chosa, 16 FSM R. 95, 98-99 (Chk. S. Ct. Tr. 2008).

Hearsay is inadmissible unless it falls within an exception to the hearsay rule. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

FSM Evidence Rule 803(6) authorizes the admission, over a hearsay objection, of a record made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the record, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

Business records are normally authenticated by a custodian of records. The custodian or other qualified witness who must authenticate business records need not be the person who prepared or maintained the records, or even an employee of the record-keeping entity, as long as the witness understands the system used to prepare the records. Objections concerning the identity or competency of preparer of a record might go to the evidentiary weight or credibility of a record but not to the record's admissibility. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

Because of the general trustworthiness of regularly kept records and the need for such evidence in many cases, the business records exception has been construed generously in favor of admissibility. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

No evidence rule requires that the custodian have personal knowledge of the business record. The custodian is merely a person with knowledge of what the proponent claims the record to be. Rule 803 also does not require that the custodian be the author of the record or even an employee of the business from which the record originated. The witness need only be a qualified witness to satisfy the requirements of Rule 803(6). Whether the witness was qualified to satisfy those requirements is a decision within the trial court's discretion. Cholymay v. FSM, 17 FSM R. 11, 21 (App. 2010).

When an extensive evidentiary foundation had been laid before the business records exhibits were admitted over the defendants' hearsay objections, the trial court, having heard adequate foundational testimony, did not abuse its discretion by admitting the exhibits.

Cholymay v. FSM, 17 FSM R. 11, 21 (App. 2010).

When compiling of debts owed to businesses was a regular transaction of any company regardless of whether or not it had been prepared at or near the time of pending litigation and when the accountant/bookkeeper was specifically hired to address accounts receivables information for the businesses, her compilation of debts owed by an authority was in the regular course of her duties and a typical business practice, and therefore the trial court did not abuse its discretion by admitting the debt compilation. Cholymay v. FSM, 17 FSM R. 11, 21 (App. 2010).

When the government's witnesses testified as to what the exhibits were and, if a witness did not know what an exhibit was, it was not admitted, the weight or credibility that an exhibit was given was for the trial court to decide. When the trial court took into account the defendants' stated concerns regarding the documents but there was no requirement that the exhibits be excluded after the witnesses had testified that they were what the government claimed them to be, the trial court, having heard adequate testimony, did not abuse its discretion by admitting the exhibits. Cholymay v. FSM, 17 FSM R. 11, 22 (App. 2010).

Since hearsay testimony is inherently unreliable, the court cannot be required to or presumed to rely on hearsay testimony over contrary direct evidence to determine where the preponderance of evidence lies. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

Although a criminal defendant may seek introduction of a police report as an offering against the government of a factual finding resulting from an investigation made pursuant to authority granted by law and the declarant's availability would have been immaterial for the purposes of ruling on the report's admission, when the defendant did not seek to admit the report and the report was not part of the record, the court will not consider it as a basis to challenge the sufficiency of its findings. Chuuk v. Inek, 17 FSM R. 137, 144 (Chk. S. Ct. Tr. 2010).

To admit statements regarding personal or family history under Evidence Rule 804(b)(4), the proponent would have to show that the declarant was unavailable. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

When a letter is hearsay and the proponent does not argue its admissibility under any exception to the hearsay rule and when the letter's contents were irrelevant and inadmissible since the letter was proffered as evidence that, in terminating the proponent, the Director was acting in conformity with other wrongs he allegedly committed, the Kosrae State Court correctly granted the State's motion in limine to exclude the letter since evidence of other crimes, wrongs, or acts is not admissible to prove a person's character in order to show that he acted in conformity therewith. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Chuuk v. Hauk, 17 FSM R. 508, 512 (Chk. S. Ct. Tr. 2011).

If it appears from the complaint, or from affidavit or affidavit filed with the complaint, that there is probable cause to believe that an offense has been committed and that the defendant has committed it, a warrant for the defendant's arrest will issue to any officer authorized by law to execute it. The probable cause finding may be based upon hearsay evidence in whole or in

part. Chuuk v. Hauk, 17 FSM R. 508, 512 (Chk. S. Ct. Tr. 2011).

As the levels of hearsay included in the affidavit increase, the guarantees of reliability that justify admission become attenuated. Hearsay that is otherwise admissible may be excluded where it primarily reiterates statements of other, unidentified persons. Chuuk v. Hauk, 17 FSM R. 508, 512 (Chk. S. Ct. Tr. 2011).

A statement by a party's co-conspirator made during the course and in furtherance of a conspiracy is not hearsay and is admissible. FSM v. Sorim, 17 FSM R. 515, 525 n.3 (Chk. 2011).

Hearsay as is an unsworn, out-of-court statement offered to prove the truth of the matter asserted. Chuuk v. Mitipok, 17 FSM R. 552, 553 (Chk. S. Ct. Tr. 2011).

Evidence Rule 803(22) is an exception to the general rule that makes hearsay inadmissible. This exception allows evidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment even when the declarant is available as a witness. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

Evidence Rule 803(22) merely makes a person's conviction admissible evidence. To make that evidence conclusive in a summary judgment motion, a plaintiff must rely on a legal principle known as collateral estoppel or issue preclusion. FSM v. Muty, 19 FSM R. 453, 458 (Chk. 2014).

An ancient document is authenticated if evidence that the document, in any form, is in such condition, as to create no suspicion concerning its authenticity, was in a place where if authentic, would likely be, and has been in existence 20 years or more at the time it is offered. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 121 (App. 2017).

A statement made by an alleged co-conspirator during the course of and in furtherance of the conspiracy is not hearsay and is admissible. FSM v. Jappan, 22 FSM R. 81, 84 n.2 (Chk. 2018).

A court may attach the most limited amount of credibility to hearsay testimony that fails to fall under any exception, but to which no objection was made. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 422 (Chk. S. Ct. Tr. 2019).

It is well-established that hearsay may be used to establish probable cause. The finding of probable cause may be based upon hearsay evidence in whole or in part. In re Wrecked/Damaged Helicopter, 22 FSM R. 447, 456 (Pon. 2020).

– Judicial Notice

A trial court is entitled to take judicial notice of an agreement authorizing state police officers to act on behalf of the FSM. Doone v. FSM, 2 FSM R. 103, 106 (App. 1985).

In a case in which the defendant proposes a standard of requiring clear and convincing evidence in civil conspiracy cases rather than a preponderance based upon conditions, customs

and traditions in Micronesia, it is incumbent upon him to establish such conditions by evidence, because the court will not take judicial notice of such conditions, customs or traditions. Opet v. Mobil Oil Micronesia, Inc., 3 FSM R. 159, 164 (App. 1987).

The trial court may take judicial notice at any stage of the proceedings and may do so when he gives his findings. Este v. FSM, 4 FSM R. 132, 135 (App. 1989).

When the trial court states that it is taking judicial notice of a fact the parties can raise the issue of the propriety thereof. Este v. FSM, 4 FSM R. 132, 135 (App. 1989).

It is mandatory for a court to take judicial notice of the amount of judgments in favor of creditors when a request has been made and the court has been given all necessary information. Senda v. Mid-Pac Constr. Co., 5 FSM R. 277, 280 (App. 1992).

Judicial notice may be taken on appeal. Welson v. FSM, 5 FSM R. 281, 284 (App. 1992).

When requested to by a party, and once it has been supplied with all the necessary information, a court must take judicial notice of an adjudicative fact, only if it is either generally known within the territorial jurisdiction of the trial court or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Counsel's oral argument to that effect is not enough. Stinnett v. Weno, 6 FSM R. 312, 313 (Chk. 1994).

A court may take judicial notice at any stage of the proceedings including during a petition for rehearing on the appellate level. Nena v. Kosrae (III), 6 FSM R. 564, 566 (App. 1994).

A court may take judicial notice of its own reported decisions. Berman v. FSM Supreme Court (I), 7 FSM R. 8, 11 n.2 (App. 1995).

A court may consider as evidence against pleader, in the action in which they are filed, a party's earlier admissions in its responsive pleadings even though it was later withdrawn or superseded by amended pleadings. A court may take judicial notice of them as part of the record. FSM Dev. Bank v. Bruton, 7 FSM R. 246, 249 (Chk. 1995).

When portions of court files in other cases are introduced into evidence a court may take judicial notice of all the papers and pleadings on file in those other cases. Kaminaga v. Chuuk, 7 FSM R. 272, 273 (Chk. S. Ct. Tr. 1995).

When most documents provided in support of a party's submission are official records of the opponent state government, the Kosrae State Court may take judicial notice of the records. Langu v. Kosrae, 8 FSM R. 455, 459 (Kos. S. Ct. Tr. 1998).

In a land case, the Kosrae State Court may take judicial notice of the documents in the file of a Trust Territory land case to clarify if the judgment in that case concerned the land in this case. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

In determining damages, the court may take judicial notice regarding the replacement costs for college transcripts and a college diploma, when they are easily ascertainable and available on the University of Guam Internet site and from the University of Guam Office of Admissions and Records. Talley v. Lelu Town Council, 10 FSM R. 226, 239 (Kos. S. Ct. Tr. 2001).

When deciding the ownership of tideland, the trial court did not err in not taking judicial notice of and following the judgment in a different case that dealt only with the boundaries and ownership of adjacent filled land. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

An appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot. Wainit v. Weno, 10 FSM R. 601, 610 (Chk. S. Ct. App. 2002).

Judicial notice may be taken of a statutory provision. Hauk v. Board of Dirs., 11 FSM R. 236, 240 (Chk. S. Ct. Tr. 2002).

The court may take judicial notice that a person's status as a chief implies his residence within the area of which they are chief. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 12 FSM R. 192, 199 (Yap 2003).

If it were an adjudicative fact, the court could take judicial notice of another suit's existence but not of that complaint's contents when the necessary information has not been supplied. FSM v. Kansou, 12 FSM R. 637, 641 n.3 (Chk. 2004).

In assessing damages, the court may take judicial notice of the prevailing cost in Kosrae of items similar to the ones lost. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

When portions of court files in other cases are introduced into evidence, a court may take judicial notice of all the papers and pleadings on file in those other cases. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 125 n.2 (Chk. 2005).

The court may take judicial notice of a fact not subject to reasonable dispute in that it is either 1) generally known within the trial court's territorial jurisdiction or 2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. The court must take judicial notice if requested by a party and supplied with the necessary information, but when the existence of the documents is disputed by the plaintiffs and the defendants have not provided the court with the information necessary to take judicial notice of it, such as either copies of the filed document or copy of the docket book showing that such a document was filed, the court will decline to take judicial notice. Ruben v. Petewon, 13 FSM R. 383, 387 n.1 (Chk. 2005).

The court may take judicial notice that the airport departure fee from Chuuk is $15 per person and that this is included in the contractual repatriation travel costs. Pohl v. Chuuk Public Utility Corp., 13 FSM R. 550, 555 (Chk. 2005).

When, at argument, the state presented the defendant's certificate of live birth, which indicated his age as less than 21 years of age on the date of the offense, the court can take judicial notice of the defendant's certificate of live birth, which is an official public Kosrae state government record. Kosrae v. Jonithan, 14 FSM R. 94, 96 (Kos. S. Ct. Tr. 2006).

Since an appellate court may receive proof or take notice of facts outside the record for determining whether a question presented to it is moot, the court therefore may take notice of the opinion in a related appeal case. Nikichiw v. Marsolo, 15 FSM R. 177, 178 (Chk. S. Ct. App.

2007).

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).

Since the court must take judicial notice if requested by a party and supplied with the necessary information, a party, at some point, may have had to provide the trial court and the opposing party with a copy of the statute and its provisions or make them aware of it if they were not. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

The court can take judicial notice of a fact not subject to reasonable dispute in that it is either 1) generally known within the trial court's territorial jurisdiction or 2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and the court must take judicial notice if requested by a party and supplied with the necessary information. John v. Chuuk Public Utility Corp., 16 FSM R. 66, 69 (Chk. 2008).

When the court has not been supplied with the information necessary for the court to take judicial notice that life insurance was a state employee benefit when CPUC was created and what the insurance coverage's terms were or to conclude that CPUC has not adopted its own merit system with changed benefits, there are genuine issues of material fact that preclude either party being entitled to summary judgment: 1) whether state employees in 1997 were afforded life insurance benefits and on what terms (contributory, non-contributory; on the job only, 24-hour; etc.); 2) whether CPUC has since established its own merit system and then altered the benefits; and 3) whether, if notice of the lapse of insurance coverage was required, it was given for the July 2004 lapse. John v. Chuuk Public Utility Corp., 16 FSM R. 66, 69 (Chk. 2008).

A court may take judicial notice of its own reported decisions and of papers and pleadings on file in other cases before it when portions of those cases have been introduced into evidence. Arthur v. Pohnpei, 16 FSM R. 581, 588 n.3 (Pon. 2009).

On a Rule 12(b)(6) motion to dismiss, only the well-pled or well-pleaded facts are to be accepted as true, and, no matter how artfully the allegations may be crafted, the court does not assume the truth of legal conclusions merely because they are cast in the form of factual allegations since conclusory allegations or legal allegations masquerading as factual conclusions will not suffice to prevent a motion to dismiss. Furthermore, the court need not accept as true allegations that contradict facts which may be judicially noticed; for example, the court may consider matters of public record including pleadings, orders and other papers filed with the court. And the court does not have to credit invective, bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

Although the court may take judicial notice of documents filed in earlier related cases without converting the Rule 12(b)(6) motion to a summary judgment motion, the court, when it has given notice in open court that it would consider the motions as summary judgment motions, will follow that course. Arthur v. Pohnpei, 16 FSM R. 581, 593 (Pon. 2009).

A court must, if requested by a party and supplied with the necessary information, take judicial notice of a fact not subject to reasonable dispute in that it is capable of accurate and

ready determination by resort to sources whose accuracy cannot reasonably be questioned, but when the necessary information has not been supplied, the court cannot take judicial notice. Counsel's oral representation or argument is inadequate if the necessary information has not been supplied to the court. FSM v. Suzuki, 17 FSM R. 70, 74 (Chk. 2010).

Defense counsel's representations of what the testimony was in and what facts a state court proceeding found involving a defendant's statements, was inadequate for the FSM Supreme Court to take judicial notice of those adjudicative facts when the court has not been supplied with the necessary information for it to take judicial notice. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

By statute, no evidence or testimony can be considered at the appeal hearing except those matters which constituted the official record, transcripts, and exhibits received at the Land Court hearing. Thus, when a transcript of 2004 Land Court hearing testimony and 1991 testimony before the Land Registration team were part of the title registration process, they should have been part of the official Land Court record and thus reviewable by the State Court. And when a Trust Territory High Court case that was mentioned in the Land Court decision both that court and the State Court could properly take judicial notice of its files if the files had been given to the Land Court and to the other parties. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

When portions of court files in other cases are introduced into evidence, a court may take judicial notice of all papers and pleadings in those cases. Sorech v. FSM Dev. Bank, 18 FSM R. 151, 154 n.1 (Pon. 2012).

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

When the parties neglected to put any admissible evidence of land values before the court, the Asian Development Bank valuation system, although officially adopted only for governmental transactions, is evidence of Chuuk land values of which a court may take judicial notice because it is information capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Killion v. Nero, 18 FSM R. 381, 386-87 (Chk. S. Ct. Tr. 2012).

While it may be uncontested that the value of the reef on the main island of Yap is $600 per square meter, the court cannot presume, without evidence, that $600 a square meter is an accurate value for any particular Yap outer island reef, especially where on the outer island there may be more reef and fewer people who have the right to rely on or depend on the reef's resources. People of Eauripik ex rel. Sarongelfeg v. F/V Teraka No. 168, 18 FSM R. 532, 541 (Yap 2013).

The court may take judicial notice of its files in related cases. Chuuk Health Care Plan v. Waite, 20 FSM R. 282, 284 n.1 (Chk. 2016).

The court may take judicial notice of its own files in related cases. Onanu Municipality v.

Elimo, 20 FSM R. 535, 541 (Chk. 2016).

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

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

A judicially noticed fact must be one not subject to reasonable dispute, in that it is either 1) generally known within the trial court's territorial jurisdiction or 2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 30 (App. 2016).

The fact that it was widely known that Philippine immigration stamps were frequently forged, was capable of accurate and ready determination, by resorting to official Republic of the Philippines websites, the veracity of which cannot be reasonably questioned. As such, that recitation qualified as a fact, to which judicial notice could properly be ascribed. Ehsa v. FSM Dev. Bank, 21 FSM R. 22, 30 (App. 2016).

State law does not need to be expressly pled because the court may take judicial notice of any state law. Chuuk Health Care Plan v. FSM Dev. Bank, 21 FSM R. 300, 304 (Chk. 2017).

A party opposed to a court taking judicial notice must make a timely objection. Setik v. FSM Dev. Bank, 21 FSM R. 505, 514 (App. 2018).

A court may take judicial notice of its own files in related cases. Setik v. Perman, 22 FSM R. 105, 117 (App. 2018).

A court may take judicial notice of its own reported decisions and of papers and pleadings on file in other cases before it when parts of those cases have been introduced into evidence, and the court may take judicial notice of its own files in related cases. Panuelo v. Sigrah, 22 FSM R. 341, 352 (Pon. 2019).

A court must take judicial notice if requested by a party and supplied with the necessary information and the necessary information is not subject to reasonable dispute. Panuelo v. Sigrah, 22 FSM R. 341, 352 (Pon. 2019).

– Objections

FSM Evidence Rule 103 contemplates timely objection and statement of reasons in support of evidentiary objections. Failure to offer reasons in timely fashion, especially when coupled with pointed avoidance by counsel of inquiry into the matters at issue, places a party in a poor position for mounting an effective challenge to an evidentiary ruling. Joker v. FSM, 2 FSM R. 38, 47 (App. 1985).

Failure to raise objections which must be made prior to trial constitutes a waiver of objections, FSM Crim. R. 12(f). Moses v. FSM, 5 FSM R. 156, 159 (App. 1991).

A defendant that has failed to raise and preserve the issue has waived his right to object to the admission of evidence, but when a plain error that affects the constitutional rights of the defendant has occurred the court may notice the error. Moses v. FSM, 5 FSM R. 156, 161 (App. 1991).

Generally, failure to object or to seek a continuance results in a waiver of the objection. Amayo v. MJ Co., 10 FSM R. 371, 383 (Pon. 2001).

An objection to the admission of evidence not made at trial is not preserved for appeal because in the absence of an objection in the trial court an issue cannot properly come before the appellate division for review and the appellate division will refuse to consider the issue. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

When none of the objections to admission of evidence are of the type that should be addressed in a pretrial motion to suppress, which is generally reserved for evidence allegedly obtained illegally, the motion to suppress should be denied and the issue of whether any of the evidence is admissible is a question that should, and will, come up in an orderly fashion during trial and be ruled upon if offered and objected to. FSM v. Kansou, 14 FSM R. 139, 141 (Chk. 2006).

Business records are normally authenticated by a custodian of records. The custodian or other qualified witness who must authenticate business records need not be the person who prepared or maintained the records, or even an employee of the record-keeping entity, as long as the witness understands the system used to prepare the records. Objections concerning the identity or competency of preparer of a record might go to the evidentiary weight or credibility of a record but not to the record's admissibility. Cholymay v. FSM, 17 FSM R. 11, 20 (App. 2010).

If an objection to the admission of evidence is not raised at the trial level, it is not preserved for appeal and the appellate court will not consider the issue. In rulings excluding evidence, however, the issue is preserved for appeal so long as the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked. The offering of the evidence must otherwise be on the record and it must reveal the grounds for admission. Peter v. Jessy, 17 FSM R. 163, 173 (Chk. S. Ct. App. 2010).

If an objection to the admission of evidence is not raised at the trial level, it is not preserved for appeal, and the appellate court will not consider the issue. But, in rulings excluding evidence, the issue is preserved so long as the substance of the evidence was made known to the court by an offer of proof or was apparent from the context within which questions were asked and the offering of the evidence must otherwise be on the record, and it must reveal the grounds for admission. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

When the trial court granted a motion in limine excluding a letter, the proponent did not need to take any further steps to preserve the issue for appeal since, as an interlocutory order excluding evidence, the denial order merged with the final judgment because the letter's substance had been made known to the trial court before its ruling. Palsis v. Kosrae, 17 FSM R. 236, 244 (App. 2010).

– Presumptions

By statute, only the cargo actually used illegally, or the fish actually caught illegally, are subject to forfeiture, although the burden of proof (presumptions) rest on different parties depending on whether fish or cargo is involved. It is a rebuttable presumption that all fish found a board a vessel seized for Title 24 violations were illegally taken, but there is no such presumption that the cargo found aboard was "cargo used" in the alleged violation. FSM v. Skico, Ltd. (I), 7 FSM R. 550, 552 (Chk. 1996).

Since hearsay testimony is inherently unreliable, the court cannot be required to or presumed to rely on hearsay testimony over contrary direct evidence to determine where the preponderance of evidence lies. FSM v. Suzuki, 17 FSM R. 114, 116 (Chk. 2010).

A notarized affidavit may be authenticated without the affiant's testimony, as it is presumed to be authentic so long as it is acknowledged in the manner provided for by law. A clerk of court's manner of acknowledging an affidavit is for the affiant to swear to it under oath in the clerk's presence. Peter v. Jessy, 17 FSM R. 163, 173-74 (Chk. S. Ct. App. 2010).

When the affidavit was not acknowledged in the manner provided for by law since the affiant was not present at the time that the affidavit was acknowledged, the trial court's determination that the presumption of self-authentication had been rebutted and that the affidavit was not otherwise authenticated was proper. There was therefore no abuse of discretion in the trial court's denial of the affidavit's admission into evidence for the reason that it was not authenticated. Peter v. Jessy, 17 FSM R. 163, 174 (Chk. S. Ct. App. 2010).

Every person is competent to testify. When challenged on the basis of impairment or diminished capacity, the general rule of competency is presumed, and the witness is almost invariably pronounced competent unless shown otherwise. FSM Dev. Bank v. Carl, 20 FSM R. 329, 334 (Pon. 2016).

The party challenging the authenticity or validity of a certificate of title, bears the burden of proving it is not authentic or valid because a certificate of title is *prima facie* evidence of ownership and courts must attach a presumption of correctness to it. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 120-21 (App. 2017).

There are a number of presumptions in collision law that are directed to the issue of fault. When a vessel under its own power collides with an anchored vessel or a navigational structure, the burden of proving absence of fault or inevitable accident rests with the moving vessel. The presumption also applies when an unmoored, drifting vessel hits an anchored vessel or structure. The presumption does not apply, however, in the case of an allision with a submerged hidden object. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

Since the presumption of fault does not apply to allisions with sunken or hidden objects, the party who is invoking the presumption has the burden of proving either that the object was visible or that the vessel otherwise possessed knowledge of the object's location. While this presumption generally does not apply to allisions with sunken or hidden objects, knowledge of an otherwise nonvisible object warrants imposition of presumed negligence against those

operating the vessel who possessed this knowledge because, if the submerged object's presence is known, then the accident was neither fortuitous nor unavoidable. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

The *res ipsa loquitur* doctrine creates a rebuttable presumption of negligence on the part of a party who is in exclusive control of an instrumentality with regard to a mishap that ordinarily does not occur in the absence of negligence. It is primarily applicable in allision cases. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

When the vessel, while moving under its own power, struck a stationary object – the outer edge of a reef – and ran hard aground on it, causing damage; when the vessel's captain knew that the reef's outer edge was located off the vessel's port side, although he was unsure of its exact location; when the vessel deliberately ran parallel to the reef while the captain looked for its outer edge with his own eyes; when the reef was submerged, but it was not hidden; and when the reef was visible when not staring directly into the sunlight's glare, the allision presumption applies and none of the exceptions to that principle applies. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20 (Yap 2018).

When the vessel was running at 5 knots in an easterly direction toward the early morning sun; when the atoll and its reef were off the vessel's port side; when if the vessel had wanted to avoid the reef, a turn to starboard, where there was plenty of sea room, no shipping, and no reef, would have sufficed; when even the use of the vessel's sonar depth finders or the posting of lookouts should have prevented the allision, the court must discount the presence of inaccurate navigational charts on the vessel because, even if the vessel had been using the inaccurate charts to navigate when it grounded on the reef, that grounding would still have to be considered the result of maritime negligence because of the captain's other failures. People of Sorol ex rel. Marpa v. M/Y Truk Master, 22 FSM R. 14, 20-21 (Yap 2018).

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).

Regardless of arguments about the application of presumptions, case law requires a determination of the adoptive children's "actual dependency" on the deceased adoptive parent. This does not regard a presumption. It is a factual inquiry and primarily focused on documentary evidence. Robert v. FSM Social Sec. Admin., 22 FSM R. 388, 394 (Kos. 2019).

– Privileges

Information concerning the source of funds for payment of attorney's fees of a particular party normally is not privileged information. Mailo v. Twum-Barimah, 3 FSM R. 179, 181 (Pon. 1987).

The appropriate test to determine the scope of work product protection to be afforded a

document which serves the dual purpose of assisting with future litigation the outcome of which may be affected by a business decision, is that documents should be deemed prepared in anticipation of litigation if in light of the nature of the document and the factual situation in the particular case, the document can fairly be said to have been prepared or obtained because of the prospect of litigation. Where a document is created because of the prospect of litigation, analyzing the likely outcome of that litigation, it does not lose protection under this formulation merely because it is created to assist with a business decision. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 479 (Pon. 1998).

Work product protection extends to subsequent litigation as long as the materials sought were prepared by or for a party to the subsequent litigation. Lebehn v. Mobil Oil Micronesia, Inc., 8 FSM R. 471, 481 (Pon. 1998).

It is appropriate to allow the deposition of a party's attorney either when 1) the deposition is the only practical means of obtaining the information, 2) the information sought will not invade the attorney-client privilege or the work product doctrine, and 3) the information sought is relevant and the need for it outweighs the disadvantages inherent in deposing a party's attorney; or when it is shown that no other means exist to obtain the information, and that the information sought is crucial to the preparation of the case. Pohnpei v. KSVI No. 3, 9 FSM R. 273, 278 (Pon. 1999).

A privilege is a peculiar right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 n.1 (Pon. 2001).

A witness's privilege is governed by common law principles as they may be interpreted by FSM courts in the light of reason and experience, including local custom and tradition. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 (Pon. 2001).

When the court looks to common law sources in considering the nature of the legislative privilege enjoyed by members of the Pohnpei Legislature, it is mindful of Article XI, section 11 of the FSM Constitution, which requires that FSM Supreme Court decisions be consistent with the Constitution, Micronesian customs and traditions, and the social and geographical configuration of Micronesia. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 (Pon. 2001).

Legislative privilege has a long history, and was well established at common law even before the founding of the United States. AHPW, Inc. v. FSM, 10 FSM R. 420, 423 (Pon. 2001).

Legislative immunity for state legislators exists under United States federal law independent of state constitutional speech or debate provisions. Legislative freedom has no less vitality in the FSM than in the United States. Our national Constitution and all four state constitutions contain speech or debate clauses. AHPW, Inc. v. FSM, 10 FSM R. 420, 424 (Pon. 2001).

A member of the Pohnpei Legislature is responsible only to the Legislature for statements in the Legislature or a committee thereof. AHPW, Inc. v. FSM, 10 FSM R. 420, 424 (Pon. 2001).

A lawmaker engages in many activities which are not covered by the legislative privilege, such as a wide range of legitimate errands performed for constituents, making of appointments with government agencies, assistance in securing government contracts, preparing news letters to constituents, news releases, and outside speeches. Such activities, though entirely

legitimate, are political in nature rather than legislative, and such political matters do not have speech or debate clause protection. But when a legislator is acting within the legitimate legislative sphere, the speech or debate clause is an absolute bar to interference. AHPW, Inc. v. FSM, 10 FSM R. 420, 424-25 (Pon. 2001).

Legislative privilege should be read broadly to include anything generally done in a session of the legislature by one of its members in relation to the business before it. The ambit of the privilege extends beyond speech and debate per se to cover voting, circulation of information to other legislators, participation in the work of legislative committees, and a host of kindred activities. AHPW, Inc. v. FSM, 10 FSM R. 420, 425 (Pon. 2001).

The legislative privilege doctrine has both substantive and evidentiary aspects. In substance, the doctrine renders legislators immune from civil and criminal liability based on either speech or debate in the course of proceedings in the legislature. From an evidentiary standpoint, a legislator may claim the privilege in declining to answer any questions outside the legislature itself where those questions concern how a legislator voted, acted, or decided on matters within the sphere of legitimate legislative activity. AHPW, Inc. v. FSM, 10 FSM R. 420, 425 (Pon. 2001).

A Pohnpei legislator may decline to answer any questions that fall within the legitimate legislative activity of the Pohnpei legislature. AHPW, Inc. v. FSM, 10 FSM R. 420, 425 (Pon. 2001).

Questions that are casually or incidentally related to legislative affairs but not a part of the legislative process itself, do not fall within the legislative privilege. Such questions, when otherwise appropriate under Rule 26(b)(1), should be answered. AHPW, Inc. v. FSM, 10 FSM R. 420, 426 (Pon. 2001).

There is no banker-client (i.e., customer) privilege, and no analytical reason to raise an understandably confidential commercial situation of principal-agent or customer-banker to a privilege. A privacy or confidentiality interest must be balanced against a litigant's interest in obtaining relevant and probative information even if the privacy interest implicated is that of non-parties. Adams v. Island Homes Constr., Inc., 11 FSM R. 218, 227 (Pon. 2002).

There is no privilege provided by law to protect the victim daughter from testifying against the defendant father. Kosrae State Code § 6.302 provides a privilege to persons from testifying against their spouse, but when the family victim is not the defendant's spouse, no privilege exists. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

For a defendant's former counsel to testify regarding communications made during the course of the case at hearing on a motion to withdraw the defendant's plea, the defendant must be advised that if counsel is permitted to testify, the attorney-client privilege must be waived. Kosrae v. Kinere, 13 FSM R. 230, 236 (Kos. S. Ct. Tr. 2005).

Privilege is governed by the principles of the common law as they may be interpreted by the courts of the Federated States of Micronesia in the light of reason and experience, including local custom and tradition. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

The general rule appears to be that there exists no common law privilege with respect to bank customer information, but a court should indulge in a careful balancing of the right of civil

litigants to discover relevant facts, on the one hand, with the right of bank customers to maintain reasonable privacy regarding their financial affairs, on the other. FSM Dev. Bank v. Adams, 14 FSM R. 234, 247 (App. 2006).

When an attorney's fee award has been requested, matters concerning attorney's fees are generally not privileged and a blanket refusal to disclose to opposing counsel any supporting documentation showing the date, the work done, and the amount of time spent on each service for which a compensation claim was made, goes far beyond any possible assertion of attorney-client or work-product privilege. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 15 FSM R. 53, 62 (Yap 2007).

Since the rule with respect to privileges applies at all stages of all actions, cases, and proceedings, it therefore applies during discovery. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

Except as otherwise required by the FSM Constitution or provided by Act of Congress or in rules prescribed by the Chief Justice, the privilege of a witness, person, government, state, or political subdivision thereof is governed by the principles of the common law as they may be interpreted by FSM courts in the light of reason and experience. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

The government, by instituting an action, does not waive any privilege it may have and thereby submit to unlimited discovery. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

Although it may be true in the general case that when the FSM is claiming executive privilege it has an initial duty to provide a sworn declaration demonstrating that the discovery at issue is privileged, but when discovery is sought from a president, no such declaration will be required since presidential communications are "presumptively privileged." This is because a court is not required to proceed against the president as against an ordinary individual. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

Although a former president may not retain the capacity to either assert or waive an executive privilege, an incumbent president can claim the privilege on his predecessor's behalf. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 511 (Pon. 2009).

The presidential executive privilege is rooted in the separation of powers doctrine and in the principle that confidentiality in communications between the president and his advisors should enhance the quality of discussion and government decisions. However, this presumptive privilege is not absolute and must be considered in the light of the rule of law. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

While the public and the courts have a right to every person's evidence, except for that protected by constitutional, statutory, or other privilege, these privileges are not expansively construed. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

A party seeking discovery, who is confronted with an executive privilege claim, may overcome that claim if the discovery would 1) lead to admissible evidence; 2) is essential to the party's case; 3) is not available through any alternative source or less burdensome means; and 4) will not significantly interfere with the official's ability to perform his governmental duties.

FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

When the plaintiff contends that the depositions of the president, vice president, and former president would yield admissible evidence about the discussions during high-level national-state government meetings on replacing the plaintiff as the Project Management Unit since the presidents and vice president were the only persons present at all of those meetings and should thus have unique, relevant testimony, the plaintiff has not met its burden to show that information about those meetings cannot be obtained through alternative sources or less burdensome means since a number of other persons were present at each of those meetings. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

When the plaintiff has corroborating testimony from two witnesses, it has not shown why the former president's testimony on the same subject is essential to its case or that what it seeks to obtain from him it has not already obtained from the alternative sources. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512 (Pon. 2009).

When the president has unique, personal knowledge of an essential relevant issue because only the president, and no alternative source, is available to corroborate testimony, the court will limit discovery from the president to this one narrow topic. Since discovery will be limited to this one narrow point, the president's oral deposition will be more burdensome than needed. The court will therefore craft a protective order so that another means of discovery will be used – the plaintiff may seek discovery from the president through either a Rule 31 deposition upon written questions or through Rule 33 written interrogatories, whichever the plaintiff finds best-suited to its purposes. FSM v. GMP Hawaii, Inc., 16 FSM R. 508, 512-13 (Pon. 2009).

It is appropriate to depose another party's attorney only when 1) the deposition is the only practical means of obtaining the information, 2) the information sought will not invade the attorney-client privilege or the work product doctrine, and 3) the information sought is relevant and the need for it outweighs the disadvantages inherent in deposing a party's attorney; or when it has been shown that no other means exist to obtain the information, and that the information sought is crucial to the case's preparation. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

Since any communication made to or from an attorney can always be sought from the person or entity on the other end of the communication, there should always be another practical means of obtaining the substance of that communication if it does not violate attorney-client privilege or the work product doctrine. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

To the extent that the discovery a party seeks constitutes internal workings of the Attorney General's Office – attorney work product – it is privileged and not discoverable. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

Any confidential patient-doctor's information can be redacted from documents provided in discovery. The fact that a medical clinic received certain sums as payments for medical services should be discoverable, but what those medical services were and for which patients, need not be provided. That the clinic received an aggregate total payment of some amount for a particular type of service may be provided without violating doctor-patient privilege. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 442 (Pon. 2016).

The mere allegation that the work product doctrine applies, is insufficient to claim the privilege. The party who asserts the work product privilege must demonstrate that the doctrine applies. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

Because the work product doctrine is intended only to guard against divulging the attorney's strategies and legal impressions, it does not protect facts concerning the creation of work product or facts contained within work product. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 443 (Pon. 2016).

Evidence privileges will be governed by the principles of the common law, as they may be interpreted by the FSM courts. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 666 (Pon. 2016).

When prior FSM cases have not addressed a precise point, the court, in such instances, may look to authority from other jurisdictions in the common law tradition, such as the U.S. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 666 (Pon. 2016).

The attorney-client privilege protects communications between an attorney and client that were made for the purpose of providing legal services. The privilege's effect is to safeguard these communications from being disclosed in litigation, since it acts a shield, to prevent adversaries from obtaining such exchanged information. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 666 (Pon. 2016).

The attorney-client privilege is deeply rooted in public policy and essential to the administration of justice. The privilege is traditionally deemed worthy of maximum legal protection. It remains one of the most carefully guarded privileges and is not readily to be whittled down. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 666 (Pon. 2016).

The attorney-client privilege applies only if: 1) the asserted holder of the privilege is or sought to become a client; 2) the person to whom the communication was made is a member of the bar of a court or his or her subordinate and in connection with this communication, is acting as a lawyer; 3) the communication relates to a fact of which the attorney was informed by the client, without the presence of strangers, for the purpose of securing primarily either an opinion on law, or legal services, or assistance in some legal proceeding, and not for the purpose of committing a crime or tort; and 4) the client has claimed and not waived the privilege. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 667 (Pon. 2016).

A justification for the attorney-client privilege is that it promotes disclosure of all relevant information by the client; enabling the attorney to effectively represent the client and dispense thorough legal advice. Without the privilege, there would most likely be a chilling effect, in that many clients would be reluctant to disclose all relevant information to the attorney, if adverse parties could utilize same against them in subsequent litigation. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 667 (Pon. 2016).

A justification for the attorney-client privilege is that an attorney must be able to openly communicate legal advice and strategy to the client, in order to adequately represent him or her and counsel would be hesitant to engage in such discourse, if adverse litigants could discover such communication in subsequent litigation. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 667 (Pon. 2016).

Because sound legal advice or advocacy serves public ends, the attorney-client privilege is necessary to promote full and unrestricted communication; consonant with the attorney-client relationship. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 667 (Pon. 2016).

Whether the attorney-client privilege attaches depends on the nature of the communication. In examining the nature of the communication, courts look to whether the attorney was retained to act in a capacity other than as an attorney, in which case, the communications may not be privileged. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 667 (Pon. 2016).

An uncertain attorney-client privilege – or one which purports to be certain, but results in widely varying applications by courts – is little better than no privilege. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

In determining the dominant purpose of the communication and thus whether the attorney-client privilege is implicated, the relevant question boils down to: was the exchange of information relevant to the rendition of legal services. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

The attorney-client privilege does not require the communication to contain purely legal analysis or advice to be privileged. Instead, if a communication between lawyer and client would facilitate the rendition of legal services or advice, the communication is privileged. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

When the communication documents exchanged by an attorney were intended to be confidential, the attorney-client privilege prevents their disclosure. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

Since parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, a request for communication documents to and from an attorney are shielded by the attorney-client privilege and a motion to compel their production will be denied, but a motion to compel the production of communication documents to and from an engineer co-project manager will be granted. Pacific Int'l, Inc. v. FSM, 20 FSM R. 663, 668 (Pon. 2016).

– Relevant

"Relevant evidence" is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. FSM v. Jonas (II), 1 FSM R. 306, 312 (Pon. 1983).

Introduction of other burn cases to show that defective fuel in those cases tended to show the fuel was defective in the present case is relevant if the other cases are similar. Lebehn v. Mobil Oil Micronesia, Inc., 10 FSM R. 348, 352 (Pon. 2001).

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the action's determination more probable or less probable than it would be without the evidence, and all relevant evidence is admissible, except for the specific exceptions set out in the FSM Rules of Evidence. Adams v. Island Homes Constr., Inc., 10 FSM R. 466, 473 (Pon. 2001).

When prosecuting criminal acts alleged to have occurred during the national election, the government may introduce evidence of acts in relation to the Chuuk state election held on the same day so long as those acts are relevant and are evidence of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident in relation to the national election offenses charged in the information. FSM v. Wainit, 11 FSM R. 1, 6 (Chk. 2002).

When the government, in prosecuting criminal acts alleged to have occurred during the national election, may introduce evidence of acts in relation to the Chuuk state election held on the same day so long as those acts are relevant and are evidence of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident in relation to the national election offenses, the defendant may have the State Election Director as a witness give evidence so long as it is restricted to relevant evidence of which he has first-hand knowledge and which is within the scope of evidence the prosecution has introduced concerning the state election during the government's case-in-chief. FSM v. Wainit, 11 FSM R. 1, 7 (Chk. 2002).

The Kosrae Rules of Evidence do not apply in the Land Commission or Land Court. In the case of hearsay testimony, the Land Commission or presiding justice shall determine the testimony's relevancy and the credibility of the witness. The purpose of allowing hearsay testimony and other evidence at land proceedings, without application of the Kosrae Rules of Evidence, is to allow all relevant evidence on the claims presented before the Land Commission and Land Court, without limitations imposed by the Rules of Evidence. The determination of relevancy of evidence and credibility of witnesses is made by the adjudicators, the Land Commission or a justice of the Kosrae Land Court. Taulung v. Jack, 11 FSM R. 345, 348 (Kos. S. Ct. Tr. 2003).

All relevant documents are not necessarily those required to prove a party's case by the preponderance of the evidence. AHPW, Inc. v. FSM, 12 FSM R. 164, 168 (Pon. 2003).

The Kosrae State Court Rules of Evidence do not apply to Land Court proceedings. Evidence which is relevant and material to the claim or the issues may be presented at the Land Court hearing and the presiding justice will determine the relevancy and credibility of all evidence offered at the hearing, and will determine whether the evidence is admissible in the hearing. This allows the presiding Land Court justice to hear all offered evidence and determine whether the evidence is relevant and credible. The evidentiary standard for Land Court proceedings is very broad and allows the admission and consideration of hearsay and other evidence that would normally be excluded under the Kosrae Rules of Evidence, in Kosrae State Court proceedings. This broad evidentiary standard is applied to allow all relevant evidence of claims and statements to be presented without the limitations imposed by the Kosrae Rules of Evidence. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 627 (Kos. S. Ct. Tr. 2004).

When an agreement stating that the defendant had received full payment for the 27 motors and still owed the plaintiff 14 motors is relevant and is admissible as an admission of a party-opponent, the trial court did not err by relying on it when making a finding of fact since the exhibit was properly admitted, and the trial court was entitled to give it such weight as it saw fit. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 518 (App. 2005).

When a February 19, 1999 letter clearly refers to state legislative seats, but also asks for support for the Government of Udot's candidates, the question of who are the Government of

Udot's candidates allowed the court to consider all evidence relevant to the issue, and when further evidence established that the incumbent candidate for the Chuuk Fourth Congressional District was one of those candidates, it was upon this basis that defendant was convicted of interfering in the national election. Thus this evidentiary issue is not substantial. FSM v. Wainit, 14 FSM R. 164, 169 (Chk. 2006).

A blanket claim that all evidence should have been excluded will not be considered a close or substantial question on appeal. Nor is a claim that prejudicial evidence was admitted a substantial issue because relevant evidence is inherently prejudicial; but it is only unfair prejudice, substantially outweighing probative value, which permits exclusion of relevant matter. FSM v. Petewon, 14 FSM R. 320, 326 (Chk. 2006).

A motion to exclude an expert witness's deposition testimony is premature when it is made before his deposition has been completed, and any motion to exclude his trial testimony on the ground of relevance before the deposition is complete is also premature. FSM v. GMP Hawaii, Inc., 16 FSM R. 648, 652 (Pon. 2009).

The Land Court should not exclude any relevant evidence and the Kosrae Rules of Evidence do not apply in the Land Court, but the State Court cannot consider evidence that was not "received" in the Land Court. "Received" in the statute is read to include evidence offered or introduced but improperly excluded. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the action's determination more probable or less probable than it would be without the evidence. All relevant evidence is admissible, except for the specific exceptions set out in the FSM Rules of Evidence. Mori v. Hasiguchi, 19 FSM R. 222, 225 (Chk. 2013).

When the plaintiff contends that the defendants attempted to interfere with his purchase of Transco stock by trying to get the seller to rescind the sale to him and to purchase it themselves, a past pattern of stock purchases might make it more probable than it would be without the evidence that the defendants tried to get the seller to sell them the shares and, furthermore, written correspondence received by Transco about this matter must also be relevant. Mori v. Hasiguchi, 19 FSM R. 222, 225 (Chk. 2013).

Evidence must be in the nature of facts – not conclusions or unsupported allegations of counsel. Heirs of Henry v. Heirs of Akinaga, 21 FSM R. 113, 122 (App. 2017).

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the action's determination more probable or less probable than it would be without the evidence. All relevant evidence is admissible, except for the specific exceptions set out in the FSM Rules of Evidence. FSM v. Wolphagen, 21 FSM R. 247, 249 (Pon. 2017).

A state court accusation of harassment and disorderly conduct against the defendant has no bearing on the current FSM court charges of obstruction, retaliation, and tampering since the state court case's contents would not make the pending charges more or less probable because of the different facts and circumstances surrounding each case and, since the state court

charges were later dropped, those accusations are no longer relevant because it will be construed as though those allegations were never filed. FSM v. Wolphagen, 21 FSM R. 247, 249 (Pon. 2017).

Irrelevant evidence that will be extremely prejudicial towards the defendant, should be excluded from the record. FSM v. Wolphagen, 21 FSM R. 247, 249 (Pon. 2017).

Generally, evidence of other crimes, wrongs, or acts is not admissible to prove a person's character in order to show that he acted in conformity therewith, but such evidence is admissible as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. FSM v. Wolphagen, 21 FSM R. 247, 250 (Pon. 2017).

Evidence that the defendant suffered from a physical or mental disease, disorder, or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the crime. FSM v. Pillias, 22 FSM R. 334, 337 n.2 (Chk. 2019).

– Stipulations

Since a trial's purpose is to resolve disputed factual issues and to determine the ultimate facts, no trial would have been needed if all the necessary facts had been stipulated. Berman v. Pohnpei Legislature, 17 FSM R. 339, 347 n.1 (App. 2011).

In construing a stipulation, a court should not extend its terms beyond that which fair construction justifies. Berman v. Pohnpei Legislature, 17 FSM R. 339, 348 (App. 2011).

When, by its terms, a stipulation refers only to the attorneys' number of years of legal experience and not to the nature or quality of that experience, it cannot be relied on to prove that a party had the same qualifications as another and thus was entitled to the higher pay that other received. Berman v. Pohnpei Legislature, 17 FSM R. 339, 348 (App. 2011).

Notwithstanding the effect of stipulation as binding judicial admissions dispensing with the necessity of legal proof, when the court makes findings of fact contrary to such stipulations and when ample evidence supports the court's findings, the parties who failed to object or to assert the stipulation in rebuttal to such evidence, have waived their right to rely on the stipulated facts. Berman v. Pohnpei Legislature, 17 FSM R. 339, 348 (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).

– When Evidence Rules Apply

The Kosrae Rules of Evidence do not apply in the Land Commission or Land Court. In the case of hearsay testimony, the Land Commission or presiding justice shall determine the testimony's relevancy and the credibility of the witness. The purpose of allowing hearsay testimony and other evidence at land proceedings, without application of the Kosrae Rules of Evidence, is to allow all relevant evidence on the claims presented before the Land Commission and Land Court, without limitations imposed by the Rules of Evidence. The determination of relevancy of evidence and credibility of witnesses is made by the adjudicators, the Land Commission or a justice of the Kosrae Land Court. Taulung v. Jack, 11 FSM R. 345, 348 (Kos.

S. Ct. Tr. 2003).

The Kosrae State Court Rules of Evidence do not apply to Land Court proceedings. Evidence which is relevant and material to the claim or the issues may be presented at the Land Court hearing and the presiding justice will determine the relevancy and credibility of all evidence offered at the hearing, and will determine whether the evidence is admissible in the hearing. This allows the presiding Land Court justice to hear all offered evidence and determine whether the evidence is relevant and credible. The evidentiary standard for Land Court proceedings is very broad and allows the admission and consideration of hearsay and other evidence that would normally be excluded under the Kosrae Rules of Evidence, in Kosrae State Court proceedings. This broad evidentiary standard is applied to allow all relevant evidence of claims and statements to be presented without the limitations imposed by the Kosrae Rules of Evidence. Heirs of Palik v. Heirs of Henry, 12 FSM R. 625, 627 (Kos. S. Ct. Tr. 2004).

Depositions, warrants or other papers may be admitted into evidence in an extradition case if properly authenticated and the FSM Rules of Evidence by their terms do not apply to extradition proceedings. In re Extradition of Benny Law Boon Leng, 13 FSM R. 370, 373 (Yap 2005).

The Kosrae Rules of Evidence apply to civil, criminal and contempt proceedings, but are not applicable to miscellaneous proceedings, such as preliminary examinations for criminal cases and bail proceedings. The rules do not reference their applicability or inapplicability to juvenile proceedings or to preliminary proceedings to determine whether to treat a minor defendant as an adult. Kosrae v. Ned, 14 FSM R. 86, 89 (Kos. S. Ct. Tr. 2006).

An FSM police report, if relevant, may be considered in a proceeding to release a vessel when it is not a criminal case, since police reports, as matters observed pursuant to duty imposed by law as to which matters there was a duty to report, are admissible as an exception to the rule that hearsay is generally inadmissible and since a motion for a vessel's release is in the nature of a bond or bail hearing, and the rules of evidence generally do not apply to proceedings with respect to release on bail or otherwise. FSM v. Kana Maru No. 1, 14 FSM R. 300, 302 (Chk. 2006).

Although the strict guidelines against the admission of hearsay evidence do not apply in a probable cause determination, a prosecutor may not rely solely on hearsay testimony when other, more competent testimony is available. The court may therefore discount unreliable hearsay or other evidence that is inherently untrustworthy or suspicious, unless additional measures are taken to ensure reliability or to explain those exigent circumstances that make it impossible to produce more reliable or competent evidence. A prosecutor's own representations are not a substitute for competent, reliable evidence in the form of first-hand testimony or appropriately detailed affidavits from investigating officers who obtained first-hand accounts. Chuuk v. Chosa, 16 FSM R. 95, 98 (Chk. S. Ct. Tr. 2008).

The Land Court should not exclude any relevant evidence and the Kosrae Rules of Evidence do not apply in the Land Court, but the State Court cannot consider evidence that was not "received" in the Land Court. "Received" in the statute is read to include evidence offered or introduced but improperly excluded. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 659 (App. 2011).

– Witnesses

At the core of the task of the trier of fact is the power and obligation to determine credibility of witnesses. The court may rely upon that testimony which he finds credible and disregard testimony which does not appear credible. To do this, the trial court must be a sensitive observer of tones, hesitations, inflections, mannerisms and general demeanor of actual witnesses. Engichy v. FSM, 1 FSM R. 532, 556 (App. 1984).

Normally, it is primarily the task of the land commission, not the reviewing court, to assess the credibility of witnesses and to resolve factual disputes, since it is the commission, not the court that is present when witnesses testify and only the commission sees the manner their testimony but commission's major findings, and if no such explanation is made, the reviewing court may conduct its own evidentiary hearings or may remand the case to the commission for further proceedings. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 395, 401 (Kos. S. Ct. Tr. 1988).

A witness's credibility may not be attacked by evidence of a prior criminal conviction if the crime did not involve dishonesty or false statement, or was not for a felony whose punishment ended within the past ten years, or if the prejudicial effect outweighs the probative value. Ponape Constr. Co. v. Pohnpei, 6 FSM R. 114, 122 (Pon. 1993).

A lawyer generally cannot appear as an advocate when he also appears as a witness, although there is an exception when the testimony relates to an uncontested issue. FSM Dev. Bank v. Ifraim, 10 FSM R. 342, 344 (Chk. 2001).

A witness summons can be issued for any witness, including the victim, for his or her appearance and testimony at trial. This process is utilized frequently in trials of criminal cases where witnesses are reluctant to appear and testify. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

A person's failure to obey a witness summons is considered contempt of court, and may subject the offending witness to arrest and imprisonment. Kosrae v. Nena, 12 FSM R. 20, 23 (Kos. S. Ct. Tr. 2003).

Every person is competent to be witness except as otherwise provided by the Evidence Rules. A witness must have personal knowledge of the matter testified to and must, prior to testifying, declare, by oath or affirmation that she will testify truthfully. Kosrae v. Jackson, 12 FSM R. 93, 97 (Kos. S. Ct. Tr. 2003).

The Rules do not specify any mental qualifications for testifying as a witness. The issue is better suited to the fact finder in its determination of the witness's weight and credibility. Kosrae v. Jackson, 12 FSM R. 93, 97 (Kos. S. Ct. Tr. 2003).

The question of a witness's competency goes to the issue of credibility, which is for the trier of fact. Even a finding of criminal insanity and incompetence does not make a person incompetent to testify. As long as the person had a sufficient memory, could understand the oath, and could communicate what the person saw, the person was competent to serve as a witness. Kosrae v. Jackson, 12 FSM R. 93, 97 (Kos. S. Ct. Tr. 2003).

A witness's competency to testify requires a minimum ability to observe, record, recollect and recount an event, as well as an understanding to tell the truth. The fact finder hears the testimony and judges the witness's credibility. Therefore, mental capacity generally functions as an effect on the weight of the testimony to be given, instead of precluding admissibility of the testimony. Generally, any showing of memory about the event is sufficient to make the witness competent to testify. If the witness is capable of communicating in any manner, the witness is competent. Kosrae v. Jackson, 12 FSM R. 93, 97 (Kos. S. Ct. Tr. 2003).

A witness will not be disqualified to testify as witness in a trial due to her mental handicap when she took an oath to testify truthfully; had the memory of what actions had taken place; and, based upon her testimony, showed her ability to observe, record, recollect and recount that event. Kosrae v. Jackson, 12 FSM R. 93, 97 (Kos. S. Ct. Tr. 2003).

Kosrae Rule of Evidence 609 permits impeachment through evidence of conviction of a felony, where the date of the conviction is less than ten years and it also requires the court to determine that the probative value of admitted the prior conviction outweighs its prejudicial effect to the defendant. Kosrae v. Jackson, 12 FSM R. 93, 98 (Kos. S. Ct. Tr. 2003).

Every person is competent to be a witness except as otherwise provided in the Rules. Rule 602 requires lay witnesses to have personal knowledge of the matters that they are testifying to. Rule 603 requires every witness to declare that he will testify truthfully. The Rules do not exclude potential witnesses based upon their status as prisoners. Kosrae v. Sigrah, 12 FSM R. 562, 566 (Kos. S. Ct. Tr. 2004).

When a prisoner's testimony complied with the requirements of Rules 601, 602 and 603 and the defendant had the opportunity to cross examine him and attack his credibility by evidence of prior criminal convictions, there is no legal authority for the automatic exclusion of a prisoner's testimony. Ultimately, it is the task of trier of fact to determine the witnesses' credibility and to determine what should be accepted as the truth and what should be rejected as untrue or false. Kosrae v. Sigrah, 12 FSM R. 562, 566 (Kos. S. Ct. Tr. 2004).

A party is entitled to question any witness as to the basis of his knowledge. This is relevant evidence. Thus when the history of the land claim is relevant, an attorney should not be prevented from asking a witness about his family's claim to the land and why his testimony on that subject differed from that of his father. Any witness may be impeached. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e, 99f (Chk. 2004).

Criminal Rule 26.2 creates no right to production of statements of witnesses until the witness has testified on direct examination, but if the prosecution insists upon literal compliance with Rule 26.2(a) the practical result is that a recess must be taken at the conclusion of the direct examination of every witness, and the court would very likely abuse its discretion if it refused to grant a recess. The usual practice in the FSM under Rule 26.2 has been that the prosecution voluntarily provides defense counsel access to witness statements in advance of their testimony and the court finds this a salutary and commendable practice. FSM v. Walter, 13 FSM R. 264, 267-68 (Chk. 2005).

A defendant may obtain a witness's statement in the government's hands either through Rule 16 discovery or through Rule 26.2(a) procedures. It is not obtainable by deposition. FSM v. Wainit, 13 FSM R. 301, 304-05 (Chk. 2005).

A non-party under subpoena may move to quash the subpoena directed to him. FSM v. Wainit, 13 FSM R. 301, 305 (Chk. 2005).

It is for the trial judge to assess a witness' credibility, because he has the opportunity to observe the witness and the manner in which he testifies. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 514 (App. 2005).

There is no rule that would require a party wishing to prove a money transfer to do so by documentary evidence only. Every time a witness takes the stand the trier of fact must determine whether that witness is believable. A trier of fact can perform this function regardless of whether financial transactions are the subject of the testimony. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 514 (App. 2005).

The fact that the appellant challenges the credibility of a witness's testimony does not mean that the trier of fact could not accept it as true, since it is for the trier of fact to assess a witness' credibility. Ponape Island Transp. Co. v. Fonoton Municipality, 13 FSM R. 510, 519 (App. 2005).

Civil Rule 32(a)(3) permits any party to use a witness's deposition for any purpose if the court finds that the witness is off of the island at which the trial or hearing is being held, unless it appears that the witness's absence was procured by the party offering the deposition. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

The use of a witness's deposition at trial because the witness was off-island was proper when the witness's current job meant he no longer traveled to the Pacific and that he did not expect to be in Pohnpei in the next six months and that, since he was in Texas, an FSM Supreme Court subpoena could not compel him to appear. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 (App. 2006).

A subpoena directed to someone in a foreign country is considered valid and enforceable only if the person it is directed to is an FSM national or resident. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 19 n.4 (App. 2006).

The trial court did not commit error when it denied the defendant's request during trial to permit the State Auditor to be called as a witness when the State Auditor was not on the state's witness list; he had not been subpoenaed; and the plaintiff had no prior notice that this witness would be called. Pohnpei v. AHPW, Inc., 14 FSM R. 1, 21 (App. 2006).

Neither state law nor the Kosrae Juvenile Rules require a witness to be qualified as an expert witness under the Evidence Rules in order to accept her testimony and report in a preliminary proceeding to determine whether to treat the defendant as an adult. The court may accept the witness's qualifications based upon her training as a physician and her position as Clinical Director of the FSM National Health Substance Abuse and Mental Health Program. Kosrae v. Ned, 14 FSM R. 86, 90 (Kos. S. Ct. Tr. 2006).

A witness must obey the subpoena that summoned him or her or get that subpoena quashed. Amayo v. MJ Co., 14 FSM R. 355, 361 n.1 (Pon. 2006).

A motion to suppress all witness statements on the ground they were given without the warnings required by law will be denied since the court is not aware of any warnings required to

be given a witness before the witness makes a statement and neither the accused's written motion nor oral argument cited any authority that legal warnings are required to be given before a witness's statement may be taken. This does not mean that the FSM Rules of Evidence, especially those concerning hearsay, would not apply at trial. FSM v. Aiken, 16 FSM R. 178, 184 (Chk. 2008).

Matters regarding a person's qualification to be a witness must be determined by the trial court, and the proponent must establish the qualification. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

Once faced with the proffer of an expert witness, the question of whether the witness may be qualified as an expert is a preliminary fact to be decided by the trial court. Fritz v. FSM, 16 FSM R. 192, 197 (App. 2008).

At the core of the trier-of-fact's task is the power and obligation to determine the witnesses' credibility. The trial court may rely upon that testimony which it finds credible and disregard testimony which does not appear credible. Fritz v. FSM, 16 FSM R. 192, 199 (App. 2008).

Although an argument that it is not logical that one outsider of the clan would know about the history of a *nechop* land transfer when no testifying clan member had knowledge of the *nechop* and that for this reason the testimony is not credible, may affect credibility, the court cannot say that the trial court abused its discretion in accepting and relying upon the testimony when the witness could have attained this knowledge from his wife's uncle. Narruhn v. Aisek, 16 FSM R. 236, 241 (App. 2009).

Although the appellants may consider the timing of a witness's rebuttal testimony to be problematic, when the witness's testimony is not contradictory to his testimony before rebuttal and when the trial court's findings are supported by other testimony, the finding will not be set aside based on an alleged inconsistency between the witness's direct and later rebuttal testimony. Narruhn v. Aisek, 16 FSM R. 236, 241 (App. 2009).

A court cannot assess the credibility of parties, whose deposition testimony was admitted but who declined to appear at trial, because in order to make this assessment the court must carefully observe the witness's tone, hesitations, inflections, mannerisms, and general demeanor. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 439 (Pon. 2009).

The trial court is in the best position to judge the demeanor and credibility of the witnesses. Cholymay v. FSM, 17 FSM R. 11, 17 (App. 2010).

FSM Evidence Rule 611(b) allows the court to permit a procedure where the plaintiff would call the witnesses but each party would be able to treat each witness as if the witness were its own, that is, each defendant could ask each witness any relevant question regardless of whether that question was within the scope of the plaintiff's direct examination. In effect, each party put on its case-in-chief simultaneously with the others. Chuuk v. Actouka Executive Ins. Underwriters, 18 FSM R. 111, 117 & n.2 (App. 2011).

The trier of fact, whose duty it is to assess a witness's credibility, could accept as true some witnesses' testimony and thereby reject another witness's contrary deposition testimony. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

That the trial court found other testimony more credible than one witness's is not a ground for reversal because the trial court was in the best position to judge the witnesses' demeanor and credibility since the trial judge had the opportunity to observe the witnesses and the manner in which they testified. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

Although the trial judge did not have the opportunity the manner in which a witness testified when she testified by deposition, the appellate court cannot presume that even if she had testified in person that the trial judge would have found her more credible than the other witnesses and then decided the case in her favor since there was substantial evidence in the record to support the trial court's findings. Iriarte v. Individual Assurance Co., 18 FSM R. 340, 352 (App. 2012).

A witness is unavailable if he is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means. A foreign resident's attendance at trial cannot be secured by process since the FSM Supreme Court's subpoena power does not extend into other countries. Chuuk v. Emilio, 19 FSM R. 33, 36 (Chk. S. Ct. Tr. 2013).

When the plaintiffs had ample opportunity to impeach a witness's testimony at trial; when all the arguments and evidence presented by the plaintiffs in their post-trial motion were available at trial and should have been presented at trial; when, if the plaintiffs were sincere in their desire to see the witness prosecuted, then they would have brought the matter to the attention of the appropriate authorities rather than asking the court to refer the matter for a perjury prosecution by a separate branch of government; and when the motion's filing suggests that the true motive was to impeach the witness's credibility, the plaintiffs' motion for an order referring the witness to the FSM Department of Justice for violation of the perjury statute will be denied, and the court will not consider the motion's contents in reaching a decision. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 269 (Pon. 2014).

Judging the credibility of witness testimony is the exclusive responsibility of the justice presiding over the matter. Harden v. Inek, 19 FSM R. 278, 280 n.1 (Pon. 2014).

When, in general, the witnesses' emotional attachment to the lot is irrelevant to the plaintiff's actual damages from the Board's violation of its civil right to due process, and when, without knowing what the witnesses' testimony will be, it is unknown whether testimony about the lot's necessary background history will unavoidably include some mention of emotional attachment, the court cannot make a blanket ruling barring all mention of a witness's emotional attachment to the lot. During trial, the defendant may object to any irrelevant questions and move to strike any irrelevant matter in a witness's answer to a relevant question. That should be sufficient protection. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377-78 (Pon. 2014).

Although the Civil Procedure Rules provide that FSM nationals and residents are subject to the court's subpoenas even in foreign countries, there is no similar provision in the Criminal Procedure Rules. The only relevant Criminal Procedure Rule states that a subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the FSM. FSM v. Tipingeni, 19 FSM R. 439, 448 n.3 (Chk. 2014).

The FSM's confrontation clause does not always require a physical confrontation before the fact-finder. For example, there are certain well-established exceptions to the rule barring hearsay that, because of their indicia of reliability or trustworthiness, allow the introduction of

evidence from witnesses a defendant will be unable to confront. FSM v. Tipingeni, 19 FSM R. 439, 449 (Chk. 2014).

Since, generally, a lawyer must not act as advocate at a trial in which the lawyer is likely to be a necessary witness, it follows that a party should not be able to potentially disqualify another litigant's advocate by making the other litigant's lawyer into a witness by noticing that advocate's deposition. Luen Thai Fishing Venture, Ltd. v. Pohnpei, 20 FSM R. 41a, 41d (Pon. 2015).

Testimony may be admissible so long as it contains the essential indicia of reliability, including 1) the giving of testimony under oath; 2) the opportunity for cross examination; 3) the ability of the fact-finder to observe demeanor evidence; and 4) the reduced risk that a witness will wrongfully implicate an innocent defendant when testifying in his presence. FSM v. Halbert, 20 FSM R. 42, 46 (Pon. 2015).

FSM Supreme Court justices, even temporary justices, should be guided by permissible considerations rather than by one party's unsupported supposition that other justices would have ruled differently on a question of first impression. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

Since for the issue of the admissibility of Skype testimony to be properly before the court, there must be a threshold showing that Skype testimony is feasible and since in the absence of such a showing the government would be asking for a mere advisory opinion, it was proper for the court to require the government to demonstrate Skype testimony's feasibility before ruling on the parties' legal arguments. FSM v. Halbert, 20 FSM R. 49, 52 (Pon. 2015).

A witness's prior inconsistent statement bears on his credibility. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

An appellate court cannot say that the trial court's finding was clearly erroneous when it was the result of weighing conflicting evidence. When the trial judge believed one witness's testimony and not the other's and gave an extensive analysis of the testimony before him that led to the conclusion, there is no reason for the appellate court to disturb the trial court's conclusion since it was supported by credible evidence and the trial judge had the opportunity to observe the witnesses and the manner of testimony and the appellate court did not have that opportunity. Ittu v. Ittu, 20 FSM R. 178, 186 (App. 2015).

Every person is competent to testify. When challenged on the basis of impairment or diminished capacity, the general rule of competency is presumed, and the witness is almost invariably pronounced competent unless shown otherwise. FSM Dev. Bank v. Carl, 20 FSM R. 329, 334 (Pon. 2016).

The burden of proof as to witness competency rests with the objecting party. In determining competence a judge has great latitude in the procedure he may follow. Typically, the court will simply permit the witness to begin direct examination testimony, and then consider the witness's competency in light of the content of that testimony and the manner in which it was given. Alternatively, the court may conduct a preliminary examination, or even hold a separate competency hearing, wherein the prospective witness is subjected to questioning, and other witnesses may testify and external evidence may be submitted to help the court assess the claim because the assistance of experts is sometimes necessary to aid in the determination. FSM Dev. Bank v. Carl, 20 FSM R. 329, 334 (Pon. 2016).

Witness competence is a preliminary question to be decided by the judge. FSM Dev. Bank v. Carl, 20 FSM R. 329, 334 (Pon. 2016).

A diagnosis of diabetes is insufficient to overcome the general rule that every person is competent to testify. FSM Dev. Bank v. Carl, 20 FSM R. 329, 334 (Pon. 2016).

Under FSM Evidence Rule 601, every person is competent to testify, and, if challenged on the basis of impairment, the general rule is that competency is presumed. FSM Dev. Bank v. Salomon, 20 FSM R. 431, 438 (Pon. 2016).

By trying to take a party's deposition, the parties can reach an informed opinion about that party's competence to testify. Whether she is physically or mentally incapable of testifying is a factual, not a legal, question which can be resolved by taking her deposition. FSM Dev. Bank v. Salomon, 20 FSM R. 565, 573 (Pon. 2016).

An FSM court may order the issuance of a subpoena requiring the appearance as a witness before it, or before a person or body designated by it, of an FSM national who is in a foreign country if it is necessary in the interest of justice and if it is not possible to obtain that evidence otherwise. FSM Dev. Bank v. Salomon, 21 FSM R. 327, 329 (Pon. 2017).

The FSM Supreme Court may issue a subpoena directed to an FSM citizen, who is present in a foreign country, to appear to testify at a deposition, as well as to appear and testify at a trial or hearing. FSM Dev. Bank v. Salomon, 21 FSM R. 327, 329 (Pon. 2017).

In all Kosrae State Court criminal trials, the testimony of witnesses must be taken orally in open court, unless otherwise provided by an Act of the Kosrae State Legislature or by a Kosrae State Court rule. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

The criminal procedure rules are silent about whether video testimony is admissible in a criminal trial, and there is no legislation on this. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

Rule 26 does not seem to preclude the admissibility of video testimony because remote video testimony will be taken orally in open court as required by the rules. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

Whether remote video testimony is admissible in a criminal trial is left to the court's sound discretion since Rule 26 does not seem to preclude the admissibility of video testimony because the remote video testimony will be taken orally in open court as required by the rules. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

Live video testimony is not the equivalent of in-person testimony, and the decision to excuse a witness's presence in the courtroom should be weighed carefully. Kosrae v. Tilfas, 22 FSM R. 72, 75 (Kos. S. Ct. Tr. 2018).

Although remote testimony via video chat is not equivalent to in-person testimony, when the testimonies of the alleged victims seem to be crucial to the determination of the issues, the court will exercise its discretion to ensure a fair and just criminal trial by allowing the alleged victims to testify via video chat at trial. Kosrae v. Tilfas, 22 FSM R. 72, 75-76 (Kos. S. Ct. Tr. 2018).

The confrontation clause requires the defendant to cross examine the adverse witness face-to-face, thereby permitting the finder of fact to evaluate the witness's credibility, but this is not an absolute right. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

Confrontation rights may, in limited circumstances, be satisfied without a physical, face-to-face confrontation at trial when the reliability of the testimony is otherwise assured and when there is an individualized determination that the denial of a face-to-face confrontation is necessary to further an important public policy. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

Testimony may be admissible so long as it contains the essential indicia of reliability, including 1) the giving of testimony under oath; 2) the opportunity for cross examination; 3) the ability of the fact-finder to observe demeanor evidence; and 4) the reduced risk that a witness will wrongfully implicate an innocent defendant when testifying in his presence. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

When the traditional indicia of reliability safeguards remote video testimony, a court must decide whether, under the case's circumstances, allowing witnesses to testify via video chat is necessary to further an important public policy. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

A defendant's constitutional right to confront his accuser is not absolute. It can be met even without a face-to-face confrontation when it is necessary to further an important public policy and it is assured that the testimony is reliable. Thus, when the alleged victims testify by appearing visibly on a screen to the court and to the defendant and her counsel, these witnesses will, through video chat, deliver their testimonies orally, under oath, and in open court where the defendant will have an opportunity to cross-examine them and the court will be able to observe their demeanor. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).

Considering our people's migration realities, there are important public policies to uphold as the FSM's and Kosrae's geographical configuration make the ability to use video conferencing an advantage for the process by significantly reducing costs for plane tickets to and from Kosrae, by helping to reduce delay, and by allowing testimony of witnesses who otherwise would not be able to appear at all. Kosrae v. Tilfas, 22 FSM R. 72, 76 (Kos. S. Ct. Tr. 2018).