PROPERTY

The fact that one may have general privilege to enter property does not necessarily mean that the privilege may be exercised at all times and in every conceivable manner. FSM v. Ruben, 1 FSM R. 34, 39 (Truk 1981).

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

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

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

State officials generally should have greater knowledge of use, local custom and expectations concerning land and personal property. They should be better equipped than the national government to control and regulate these matters. The framers of the Constitution specifically considered this issue and felt that powers of this sort should be state powers. In re Nahnsen, 1 FSM R. 97, 107, 109 (Pon. 1982).

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

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

When an individual claiming an interest in land has no prior knowledge of an impending transaction of other parties concerning that land, his failure to forewarn those parties of his claim cannot be interpreted as a knowing waiver of his rights. Etpison v. Perman, 1 FSM R. 405, 418 (Pon. 1984).

Governmental bodies' adjudicatory decisions affecting property rights are subject to the procedural due process requirements of article IV, section 3 of the Constitution. Etpison v. Perman, 1 FSM R. 405, 422-23 (Pon. 1984).

There is a substantial state interest in assuring that land disputes are decided fairly because of the fundamental role that land plays in Micronesia. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 98 (Kos. S. Ct. Tr. 1987).

A claim that decision-makers in a land adjudication were biased raises serious statutory and constitutional issues and is entitled to careful consideration. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 92, 99 (Kos. S. Ct. Tr. 1987).

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

In an action brought to enforce an agreement among three parties to "meet and divide up" land which is the subject of an ownership dispute, the court will enforce the agreement and, where there is no evidence to establish that any party is entitled to a larger share than the others, the court will presume that they intended to divide the land equally. Tauleng v. Palik, 3 FSM R. 434, 436 (Kos. S. Ct. Tr. 1988).

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).

Plaintiff's possessory interest in land is sufficient to maintain standing to bring action for damages wrought when a road was built across the land. Benjamin v. Kosrae, 3 FSM R. 508, 511 (Kos. S. Ct. Tr. 1988).

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

The FSM Constitution terminated all existing indefinite term land use agreements five years after the effective date of the Constitution. After that date, without a new lease agreement the occupier becomes a trespasser on the land. Billimon v. Chuuk, 5 FSM R. 130, 132 (Chk. S. Ct. Tr. 1991).

Because of the special importance land has in Micronesian society the state has a substantial interest in assuring that land disputes are settled fairly. Nena v. Kosrae, 5 FSM R. 417, 424 (Kos. S. Ct. Tr. 1990).

When a landowner voluntarily enters into a statement of intent to grant the state an easement the state has not violated the landowner's constitutional rights by "taking" his property without just compensation, and is not liable for trespass. Nena v. Kosrae, 5 FSM R. 417, 425 (Kos. S. Ct. Tr. 1990).

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

Because land ownership determinations in the FSM are conducted using different procedures and resources than in the United States, it is not appropriate to adopt the same legal prerequisites to title employed by U.S. jurisdictions. Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

The issue of indefinite parcel boundaries can be resolved by the state Land Commission subsequent to a declaration of title by the court. Wito Clan v. United Church of Christ, 6 FSM R. 129, 133 (App. 1993).

The traditional remedy for the original landowners in an "ammot" transaction when the grantee no longer used the land for the purpose for which it was given was repossession of the land and nothing more. Wito Clan v. United Church of Christ, 6 FSM R. 129, 134 (App. 1993).

Patrilineal descendants – or *afokur* – have no rights to lineage land in Chuuk. They only enjoy permissive rights of usage from the members of the lineage. Mere usage of lineage land by *afokur* does not constitute title of any sort even if the usage lasts a lifetime. Transfer of lineage land to any descendants of male members requires the clear agreement of the Clan. Chipuelong v. Chuuk, 6 FSM R. 188, 196 (Chk. S. Ct. Tr. 1993).

It is an established principle of Chuukese land tenure, that lineage land is owned by the matrilineal descendants and not by the patrilineal descendants or "afokur." Chipuelong v. Chuuk, 6 FSM R. 188, 197 (Chk. S. Ct. Tr. 1993).

When land is granted for "for so long as it is used for missionary purposes," the original grantors retain a reversionary interest. Dobich v. Kapriel, 6 FSM R. 199, 201 (Chk. S. Ct. Tr. 1993).

Land granted for "for so long as it is used for missionary purposes," is not a constitutionally prohibited indefinite land use agreement because the length of the term of the land use will continue, with all certainty, as long as a court determines that the land is still being used for missionary purposes. The term is definite, because its termination can be determined with certainty. Dobich v. Kapriel, 6 FSM R. 199, 202 (Chk. S. Ct. Tr. 1993).

The Constitutional prohibition against indefinite land use agreements does not apply to an agreement where none of the parties are a non-citizen, a corporation not wholly owned by citizens, or a government. Dobich v. Kapriel, 6 FSM R. 199, 202 (Chk. S. Ct. Tr. 1993).

The sanction imposed on one who controls and manages the land of a group who does not fairly and according to custom concern himself with the rights of the other members or another member of the group is the censure of the community. In re Estate of Hartman, 6 FSM R. 326, 328 (Chk. 1994).

When the children of a landowner with full title to land inherit the land they form a land-owning group ("corporation"). The senior male, the *mwäänii chi*, is required to manage the property in the interest of the "corporation." The corporation owns the land even if one part or another is allotted to a member for his use. In re Estate of Hartman, 6 FSM R. 326, 329 (Chk. 1994).

Where a party has merely alleged inadequate notice at the time of the title determination by the Land Commission but has offered no evidence the a court must conclude the certificate of title is valid, especially when the party only entered the property nine years after the determination process and offers no evidence of interest in property dating back to the time of the determination process. Ponape Enterprises Co. v. Soumwei, 6 FSM R. 341, 344 (Pon. 1994).

Where the T.T. High Court found that a particular parcel of land was not public land in a suit brought by the Nanmwarki and Nahnken of Nett on behalf of all their constituents and subjects the doctrine of res judicata bars a party from presenting that issue as a counterclaim or defense. Ponape Enterprises Co. v. Soumwei, 6 FSM R. 341, 344 (Pon. 1994).

An action for damages for negligent surveying is not an action for the recovery of an interest in land, for which the twenty year statute of limitation would apply, therefore it may be barred by the lesser statue of limitations. Damarlane v. United States, 6 FSM R. 357, 361 (Pon. 1994).

German land reforms instituting the rule of primogeniture and prohibiting sale of land without approval of the Governor and the Nanmwarki and requiring a certain number of days of free labor to the Nanmwarki applied only to the public lands that were taken from the Nanmwarkis and given to the ethnic Pohnpeians actually farming them and not to lands already individually owned. Etscheit v. Adams, 6 FSM R. 365, 374-75 (Pon. 1994).

Japanese land law on Pohnpei disregarded the rule of primogeniture instituted by the Germans and often allowed the division of land and ownership by women. Etscheit v. Adams, 6 FSM R. 365, 376-77 (Pon. 1994).

Under the Trust Territory government the rule of primogeniture was only applied to land held under the standard German form deeds which stated the rule, and even then the courts frequently made exceptions to the restrictions. Etscheit v. Adams, 6 FSM R. 365, 377-80 (Pon. 1994).

Because the customary Pohnpeian title system was primarily matrilineal and the court's decisions should be consistent with local custom, the primogeniture provisions of the standard form German deeds should be given narrow application and not applied more broadly than it was by the German, Japanese, or Trust Territory governments. Etscheit v. Adams, 6 FSM R. 365, 381 (Pon. 1994).

Where the rule of primogeniture was not in effect when the land was individually acquired in 1903, was never fully in effect at any time, was largely ignored by the Japanese when the land was passed by will contrary to primogeniture, and has been repudiated by the state government, and where the person who would have inherited if primogeniture had applied never made that claim, and where primogeniture appears contrary to custom, the court must conclude that primogeniture never applied to the land in question. Etscheit v. Adams, 6 FSM R. 365, 381-82 (Pon. 1994).

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

A U.S. statute requiring aliens to dispose of landholdings within ten years of acquisition never applied in the Trust Territory because the Trust Territory never had the status of a U.S. territory and the U.S. Congress never specifically extended its application to the Trust Territory. Nahnken of Nett v. United States (III), 6 FSM R. 508, 524-25 (Pon. 1994).

A party who has not disturbed the natural contours of the land is not liable for loss of lateral support for removing fill pushed over the common boundary by the other party when the other party created the need for lateral support by altering the natural contours of the land at their

common boundary. Setik v. Sana, 6 FSM R. 549, 553 & n.3 (Chk. S. Ct. App. 1994).

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

Where a judge's pretrial order states that the only issue for trial is the ownership of land within certain boundaries as described on a certain map later litigants cannot claim that the determination of title does not include land that they admit is within those boundaries. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 49-50 (App. 1995).

On Kosrae, *usru* is a gift of land by a parent to one's children, and *kewosr* is an outright gift of land from a man to a favored lover. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 36 (Kos. S. Ct. Tr. 1997).

Under Kosraen custom one does not openly declare that a *kewosr* has taken place, but simply acts, with a witness present, in a certain fashion. A *kewosr* is a secret way of giving land that only the man and woman involved know about. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 36 (Kos. S. Ct. Tr. 1997).

In Kosrae, land ownership determinations are conducted using different procedures and resources than those in the United States. It is not appropriate to adopt the same legal reasoning employed in U.S. jurisdictions. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 37 n.6 (Kos. S. Ct. Tr. 1997).

Although transfer of land by *kewosr* fell out of favor after the arrival of Christianity on Kosrae, *kewosr* did continue afterward. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 37 (Kos. S. Ct. Tr. 1997).

Profit à prendre, the right to enter land for cultivation and to take the products of such cultivation, is an interest separate from ownership. It may be created by either grant or prescription. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

The FSM Supreme Court does not need to rule on whether to recognize to recognize the legal doctrine of *profit à prendre* when the claimant cannot satisfy the elements of that doctrine. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

The ownership of realty carries with it, as an incident thereto, the prima facie presumption of the ownership of both the natural products of the land and the annually sown crops. Nelson v. Kosrae, 8 FSM R. 397, 404 (App. 1998).

The criminal law is not to be used to settle conflicting claims to property. Property disputes in Micronesia strain the social fabric of the communities in which they occur. The filing of a criminal action injects an element of criminality into a matter which is, at its core, civil, and increases that strain. Nelson v. Kosrae, 8 FSM R. 397, 406 (App. 1998).

Trust Territory Code Title 67 remains in effect in Chuuk through the Chuuk Constitution Transition Clause. Pau v. Kansou, 8 FSM R. 524, 526 (Chk. 1998).

When a traditional and customary settlement provides a life estate in property, the land reverts to the grantor or his heirs upon the life estate's owner's demise. Muritok v. William, 8

FSM R. 574, 576 (Chk. S. Ct. Tr. 1998).

A person may only transfer such title to land as that person lawfully possesses. Muritok v. William, 8 FSM R. 574, 576 (Chk. S. Ct. Tr. 1998).

If the seller had no authority to sell property, plainly, the buyer acquired no title to the property. Mere possession is not probative of title, because one in possession acquires no better title than his seller. Muritok v. William, 8 FSM R. 574, 576 (Chk. S. Ct. Tr. 1998).

A party who purchased the land from the life estate owner only purchased a life estate and upon the seller's death has no further title or interest in the land. Muritok v. William, 8 FSM R. 574, 576 (Chk. S. Ct. Tr. 1998).

Actions for the recovery of land or any interest therein must be commenced within twenty years after the cause of action accrues. Hartman v. Chuuk, 9 FSM R. 28, 31 (Chk. S. Ct. App. 1999).

A dedication is generally defined as the appropriation of land by the owner for the use of the public. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

An owner may be deemed to have dedicated his property based on his actions, which included throwing the property open to the public and his acquiescence in the property's maintenance by the municipality. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

In land cases, notice requirements must be followed. Failure to serve actual notice is a violation of due process of law and contrary to law. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94 (Kos. S. Ct. Tr. 1999).

The purpose of a quiet title action is to determine, as between the parties to the proceeding, who has the better title. Elaija v. Edmond, 9 FSM R. 175, 179 (Kos. S. Ct. Tr. 1999).

Implicit in the concept of ownership of property is the right to exclude others; that is, a true owner of land exercises full dominion and control over it and possesses the right to expel intruders. Elaija v. Edmond, 9 FSM R. 175, 179 (Kos. S. Ct. Tr. 1999).

The fact that a claimant's name is shown on the 1932 Japanese survey map of Kosrae is not dispositive as to the land's ownership. Ownership will be determined on the basis of all the evidence. Elaija v. Edmond, 9 FSM R. 175, 180 (Kos. S. Ct. Tr. 1999).

Determination of land ownership rests primarily with the Land Commission. After a designation of any registration area has been filed, a court will entertain only those land title cases where there is a showing of special cause why action by a court is desirable. Simina v. Rayphand, 9 FSM R. 508, 509 (Chk. S. Ct. Tr. 2000).

The German Land Code of 1912 applies only to land on Pohnpei, not to submerged areas. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 64 (Pon. 2001).

In order for a court to have jurisdiction over an action involving real property, particularly an action involving title, the real property must be within that court's territorial jurisdiction. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

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

When a trespass action is not an action to set boundaries or to determine the ownership of any particular property and when the defendant never directly asserts an ownership interest in the land on which he allegedly trespasses, but rather asserts the rights of third parties, who (and any claims they may have) are not currently before the court, it is not an "action with regard to interests in land" within the meaning of 67 TTC 105 requiring a showing of special cause why action by a court is desirable before it is likely the Land Commission can make a determination on the matter. College of Micronesia-FSM v. Rosario, 10 FSM R. 175, 180 (Pon. 2001).

A case that appears to rest on the assertion that the Land Commission gave title to the land in question to a clan will be dismissed when the Determination of Ownership names a person as the sole owner of the land. Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2001).

Trust Territory Code Title 67 remains in effect in Chuuk through the Chuuk Constitution Transition Clause. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 369 (Chk. 2001).

It is a well-recognized rule of law in Chuuk that lineage land cannot be transferred, distributed or sold by an individual member of the lineage without the consent or acquiescence of all adult members of that lineage, and it is assumed that this rule of law applies to "transfers" by lease as well. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389 (Chk. 2001).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389 (Chk. 2001).

In Kosrae, due to the customs regarding land inheritance and the delays in adjudicating title to land, many parcels are possessed and used by persons who do not have title to land. Land use agreements may be made in writing, but when the agreements involve family members, the agreements are usually verbal. James v. Lelu Town, 10 FSM R. 648, 649 (Kos. S. Ct. Tr. 2002).

The consent of all adult members of the lineage is needed to sell lineage land. Marcus v. Truk Trading Corp., 11 FSM R. 152, 159 (Chk. 2002).

Community censure is the sanction imposed on one who controls and manages the land of a group who does not fairly and according to custom concern himself with the rights of other members or another member of the group. That is not a sanction that a court can order or relief that a court could grant. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Customary and traditional use rights to an island are a form of property right. Rosokow v. Bob, 11 FSM R. 210, 217 (Chk. S. Ct. App. 2002).

"Color of title" is susceptible to ready definition: Any instrument having a grantor and a grantee, and containing a description of the lands intended to be conveyed, and apt words for their conveyance, gives a color of title to the lands described. When the College had color of title to the property because it held a quitclaim deed to the property, that recognition served as a means of assessing and comparing the quality of the respective possessory interests claimed by it and another. Rosario v. College of Micronesia-FSM, 11 FSM R. 355, 359 (App. 2003).

A trial court can hold that, as between the parties to the case, who had the better claim to ownership, but that is all the trial court could have decided regarding ownership. Its ruling could not apply to any claims to ownership by non-parties or to other claims not raised in the pleadings or at trial. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

When the parties' position at trial, and on this appeal (until now), was that it was a dispute over ownership, the trial court's decision was limited to who among the parties had a better claim to ownership and did not include a claim that no one owned Fayu. Thus the claim that Fayu was owned by no one was not before the trial court. The appellate court's affirmance of the trial court thus does not preclude a non-party from later successfully maintaining a claim that no one owns Fayu. Rosokow v. Bob, 11 FSM R. 454, 457 (Chk. S. Ct. App. 2003).

The transfer of a void title to another does not make the title any more valid when the other also had notice that the title was being challenged on appeal. In re Lot No. 014-A-21, 11 FSM R. 582, 591 (Chk. S. Ct. Tr. 2003).

Acheche is traditionally a gift of land at the time of the birth of the first son so there could not have been any acheche of the land later because the transfer would have had to have taken place when the son was born. In re Lot No. 014-A-21, 11 FSM R. 582, 593 (Chk. S. Ct. Tr. 2003).

A party can have no legal interest in a lot when she never alleged that she purchased the lot from the true landowning group. In re Lot No. 014-A-21, 11 FSM R. 582, 595 (Chk. S. Ct. Tr. 2003).

The law presumes that an owner of land knows his own property and truly represents it. Tulenkun v. Abraham, 12 FSM R. 13, 17 (Kos. S. Ct. Tr. 2003).

When the Chuuk Legislature has made no effort to repeal, supersede or amend the Trust Territory Code regarding land tenure in Chuuk, pursuant to Article XV, § 9 of the Chuuk Constitution, the Trust Territory Code provisions still apply to land disputes. Chuuk v. Ernist Family, 12 FSM R. 154, 158 n.3 (Chk. S. Ct. Tr. 2003).

When determinations of ownership for adjoining land show that title to those lands is held not only by the named parties but by their brothers and sisters as well, these persons should be named in a boundary dispute and trespass case's pleadings and at least once in the caption, because as co-owners, they may be indispensable parties. In re FSM Telecomm. Corp. Cellular Tower, 12 FSM R. 243, 248 (Chk. 2003).

A party who seeks to quiet title to a piece of land must join all known persons who are claiming title in order to settle the property's ownership without additional litigation. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

All co-tenants are indispensable parties to the litigation when someone else claims complete ownership of the land. Otherwise, the co-tenants would either be deprived of their property interest without due process of law or they would be forced to share their property with a hostile co-owner who believes he should be the sole owner. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

An appeal will be dismissed for the lack of indispensable parties because an appellant's failure to join all the co-owners as parties is fatal to his appeal. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

All co-tenants would not be indispensable parties if a litigant were claiming only one co-tenant's share and not the other shares. Then only that co-tenant need be joined. Anton v. Heirs of Shrew, 12 FSM R. 274, 279 (App. 2003).

When there is no clear evidence in the record that anyone else had significant involvement with the parcel, and given the trial court's judgment as to the witness's credibility, there is no significant evidence to overcome even "some evidence" of Timothy's ownership as presented by the 1932 Japanese Map. George v. Nena, 12 FSM R. 310, 318 (App. 2004).

Whether or not someone had a valid claim of land ownership arising out of his alleged purchase in 1959, he lost any claim he may have had to it by failing to raise the claim or perfect his interest prior to the issuance of a Certificate of Title for it in 1981. Hartman v. Chuuk, 12 FSM R. 388, 400 (Chk. S. Ct. Tr. 2004).

A claim to land clearly could not be renewed when the statute of limitations on an action to recover land or an interest therein is twenty years and more than twenty years have passed since the Certificate of Title in another's favor was issued and since the court decision affirming ownership. Any subsequent attempt to litigate the land's ownership is barred by the statute of limitations. Hartman v. Chuuk, 12 FSM R. 388, 400 (Chk. S. Ct. Tr. 2004).

The law of Chuuk provides that lineage land is owned by the matrilineal members of the lineage. Lineage land may only be transferred with the consent of the lineage, and since the land is owned by the matrilineal members of the lineage, their consent is necessary. Hartman v. Chuuk, 12 FSM R. 388, 401 (Chk. S. Ct. Tr. 2004).

Interests in land include fee simple ownership, easements, rights of way and leases. Sigrah v. Kosrae, 12 FSM R. 531, 535 (Kos. S. Ct. Tr. 2004).

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

Implicit in the concept of ownership of property is the right to exclude others; that is a true owner of land exercises full dominion and control over it and possesses the right to expel intruders. Benjamin v. Youngstrom, 13 FSM R. 72, 76 (Kos. S. Ct. Tr. 2004).

Fee simple title to land which is held by a group of heirs is held as tenants-in-common. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

Co-owners of land are generally considered indispensable parties to any litigation involving

the land. A party who seeks to quiet title to a piece of land must join all known persons who are claiming title in order to settle the property's ownership. Sigrah v. Heirs of Nena, 13 FSM R. 192, 196 (Kos. S. Ct. Tr. 2005).

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

Land use agreements involving family members are usually verbal. Norita v. Tilfas, 13 FSM R. 424, 426 (Kos. S. Ct. Tr. 2005).

Customary land use rights, such as for burials and gravesites, are a form of property right. Norita v. Tilfas, 13 FSM R. 424, 426 (Kos. S. Ct. Tr. 2005).

It is difficult to see how the after-acquired title doctrine could be any other way. The general rule is that a person may only transfer such title to land as that person lawfully possesses. However, if a person should transfer more than he lawfully possesses and then later comes to lawfully possess what he purported to transfer, it is only fair and just that he and the law honor his prior transfer. If a person should transfer an interest that he mistakenly believes he holds and then it is discovered that he does not hold it, the law should encourage him to cure this defective transfer and acquire the interest so that the innocent transferee continues to receive the benefit of his bargain and quietly enjoy what he has leased or bought. If the doctrine of after-acquired title (also called estoppel by deed and estoppel by lease for sales and leases respectively) were not the rule, an innocent transferee would be deprived of the benefit of his bargain, while permitting the after-acquiring transferor to unfairly benefit by disregarding the sale or lease although he has now acquired the right he earlier claimed that he had. Mailo v. Chuuk, 13 FSM R. 462, 469 (Chk. 2005).

A person may only transfer such title to land as that person lawfully possesses. If the seller had no authority to sell property, plainly the buyer acquired no title to the property. Mere possession is not probative of title, because one in possession acquired no better title than his seller. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

All causes of action arising out of the same event (and all defenses to a cause of action) must be raised in one case or else they are barred. A plaintiff cannot file one suit claiming title based on a will and then be allowed to file a second lawsuit for title to the same land claiming fraud and breach of contract. He must raise all causes of action for title to the land in the same case. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 496 (Kos. S. Ct. Tr. 2006).

Japanese survey maps, alone, contain no assurance of who should be shown as owners as they were primarily concerned with boundaries but when the Trust Territory Court cases relied on them, along with the other evidence, in reaching their decisions, the Japanese survey maps, along with the sketches and boundary descriptions, may be used to give effect to those decisions. Heirs of Livaie v. Palik, 14 FSM R. 512, 516 (Kos. S. Ct. Tr. 2006).

Courts have no jurisdiction to hear cases with regard to interests in land in land registration areas unless there has been a showing of special cause, and a finding by the court, that action by a court is desirable or the Land Commission has asked the court to assume jurisdiction without the Land Commission having made a determination. Mathias v. Engichy, 15 FSM R. 90,

95 (Chk. S. Ct. App. 2007).

It is generally recognized that in order to sell lineage land in Chuuk, lineage heads need the lineage members' consent. Nakamura v. Moen Municipality, 15 FSM R. 213, 218 (Chk. S. Ct. App. 2007).

Lineage members' consent or acquiesce to the sale of lineage land can be shown by affirmative assent, or an acquiescence, or by ratification of the act. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. 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).

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 bona fide, or "innocent," purchaser rule arises from the statutory recording requirements for interests in real estate. For all real estate in each district, the clerk of court is required to make and keep in a permanent record a copy of all documents submitted to him for recording. No transfer of or encumbrance upon title to real estate or any interest therein, other than a lease for a term not exceeding one year, is valid against any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer or encumbrance, or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded. Mori v. Haruo, 15 FSM R. 468, 472 (Chk. S. Ct. App. 2008).

The "registration" of interests in land, pursuant to 67 TTC 119 "has the same force and effect as to such land as a recording" under 57 TTC 301. In order for a subsequent, bona fide, or "innocent," purchaser to have valid title against a prior holder of an interest in the same real estate the subsequent purchaser must "register" or "record" the interest before the prior holder. Mori v. Haruo, 15 FSM R. 468, 472 (Chk. S. Ct. App. 2008).

A buyer is not a bona fide purchaser for value without notice when she executes a purchase agreement with an individual seller when an earlier determination of ownership was notice to the world, and thus to her, of the lineage's interest in the property. Mori v. Haruo, 15 FSM R. 468, 473 (Chk. S. Ct. App. 2008).

Lineage heads need the adult lineage members' consent for transfers of lineage land. Mori v. Haruo, 15 FSM R. 468, 474 (Chk. S. Ct. App. 2008).

The rule of law that has gained precedence in Chuuk based on customary practice, and which the court is bound to apply, does not provide for any legally recognizable means to assure that the sale of lineage land will be valid other than by proving that all living, adult members of the lineage have consented to the sale. Mori v. Haruo, 15 FSM R. 468, 474-75 (Chk. S. Ct. App. 2008).

When adult lineage members did not consent to the sale of their interest, as lineage members, in lineage land and the buyer had notice of the lineage's ownership through the February 10, 1976 determination of ownership and therefore was not a bona fide purchaser without notice, the lineage head's transfer of the property was not valid since the lineage members did not ratify the unauthorized transfer of lineage land. Mori v. Haruo, 15 FSM R. 468, 475 (Chk. S. Ct. App. 2008).

A judgment affecting an interest in land becomes enforceable, by registering the judgment with the appropriate land authority. Salik v. U Corp., 15 FSM R. 534, 537 (Pon. 2008).

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

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

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).

When the appellate court does not find anything in the trial court record to suggest that the trial court should have found, by a preponderance of the evidence, that appellants were granted any an alleged enduring, customary right, the trial court's finding was not clearly erroneous. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

The bona fide, or "innocent," purchaser rule arises from the statutory recording requirements for interests in real estate. For all real estate in each district, the clerk of court is required to make and keep in a permanent record a copy of all documents submitted to him for recording. No transfer of or encumbrance upon title to real estate or any interest therein, other than a lease for a term not exceeding one year, is valid against any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer or encumbrance, or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded. The "registration" of interests in land has the same force and effect as to such land as a recording. Therefore, a subsequent, bona fide, or "innocent," purchaser has valid title against a prior holder of an interest in the same real estate if one "registers" or "records" the interest before the prior holder. Setik v. Ruben, 16 FSM R. 158, 164-65 (Chk. S. Ct. 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).

A tenancy in common is a form of co-ownership where two or more persons have equal and undivided shares in the whole with each having an equal right to the whole, but no right of survivorship. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 372 n.1 (Kos. S. Ct.

Tr. 2009).

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

In resolving a land claim, it is irrelevant whether *kewosr* is a legally-recognized tradition with the force of law today when the *kewosr* land transfer at issue occurred about 1912. The relevant question would thus be whether *kewosr* was a tradition when the *kewosr* occurred. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375 (Kos. S. Ct. Tr. 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).

When the boundaries described in two May 9, 1957 land use agreements, one in which Kun Mongkeya granted about ¾ hectare for use by the Kusaie Intermediate School, and in the other in which Allen Mackwelung (and Daniel Aliksa) granted four hectares for the same purpose, and which were both signed not only by the grantors but also by a Tafunsak village chief, the Chief Magistrate of Kusaie, and five members of the Land Advisory Committee of Seven, including the District Administrator and the clerk of courts, abut each other; when the Land Commission-ordered "subdivision" reflects the boundary descriptions in both agreements; and when the boundary location was corroborated by witnesses who had been present in 1957 when the boundary was marked on the ground as personally directed by Allen Mackwelung, this all constitutes substantial evidence in support of the Land Court finding that the 1957 land use agreements reflect the true ownership of the land. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 377-78 (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).

There is no property right that is recognized by the law of the FSM as "damages." Damages is a legal term of art that refers generally to a remedy which may be granted by the court to a party in a civil action. Ehsa v. Kinkatsukyo, 16 FSM R. 450, 456 (Pon. 2009).

A land title determination that someone is "the sole owner" means just that – she is the sole owner and that the land is individually owned by her and any further language in the determination identifying the individual's lineage and lineage head is a means of identifying further who the individual is, particularly if she did not have a surname. Enengeitaw Clan v.

Heirs of Shirai, 16 FSM R. 547, 554 (Chk. S. Ct. App. 2009).

Generally, what constitutes property and interests in property is purely a matter of state law. Narruhn v. Chuuk, 16 FSM R. 558, 562 (Chk. 2009).

Lineage rights descend through the female lineage members and that patrilineal descendants, as afokur, have only permissive use rights in lineage land. Peter v. Jessy, 17 FSM R. 163, 175 (Chk. S. Ct. App. 2010).

Once all the lineage members died, the intervener, as an afokur to the lineage ceased having even permissive rights to lineage lands because once the lineage was extinct, all lineage rights ceased. The lands were then validly acquired by another person and her descendants, not as lineage members, but as heirs. Peter v. Jessy, 17 FSM R. 163, 175-76 (Chk. S. Ct. App. 2010).

A court does not need the presence of all owners of all property abutting the land's purported boundaries, and any other landowners in the vicinity whose property or property lines would have to appear on a certified survey map to decide the limited issue raised by a plaintiff's cause of action for trespass, that is, to decide whether the defendant is trespassing or occupying land to which the plaintiff church has a better right to possess or occupy. The court does not need to (and without the other necessary parties cannot) determine where all of the other boundaries lie because 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 that the land the plaintiff leased was owned by the lessor and because the determination of boundaries of any other parts of the land which the plaintiff does not claim a leasehold or of the boundaries of any other parcels of land in the area is not before the court. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233-34 (Chk. 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 Barrett decision does not stand for the proposition that a judgment is a property right which affords judgment-creditors due process rights under the national Constitution. The FSM Supreme Court has not to date, made such a determination. Narruhn v. Chuuk, 17 FSM R. 289, 299 (App. 2010).

A person may acquire a vested interest in his living parent's land in many ways, such as by a gift, by becoming a trustee, by becoming a beneficiary, or by being named in a registered or otherwise evidenced will or other testamentary device. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

In Chuuk, lineage land cannot be transferred, distributed, or sold by an individual member of the lineage without the consent of all adult members of that lineage. Setik v. Ruben, 17 FSM R. 465, 474 (App. 2011).

The bona fide purchaser rule is a rule of property law, and as such is a question of state law. Setik v. Ruben, 17 FSM R. 465, 475 (App. 2011).

Good faith is an objective standard. Setik v. Ruben, 17 FSM R. 465, 475 (App. 2011).

The bona fide purchaser rule does not apply when the land was lineage land which the seller had no authority to convey since the courts have historically been wary of applying the rule where the purported seller has no authority to sell, and when the Land Commission's determination of ownership was invalid for lack of notice to the occupants since a certificate of title must be based on a valid determination of ownership. Setik v. Ruben, 17 FSM R. 465, 476 (App. 2011).

When an earlier trial court decision and the appellate opinion affirming it clearly stated in no uncertain terms that that case only concerned a tideland and did not concern the adjacent filled land; when the appellate opinion court noted that the owner of dry land is not necessarily the owner of the adjacent tideland; and when that entire proceeding was premised on the supposition that certain persons owned the filled land that they were living on, no plausible reading of the earlier decision can support a claim that it ruled that another was the owner of the filled land because only the most twisted logic could pervert that decision, in which the filled land's ownership was presumed undisputed, into a decision that awarded title of that land to that other. Phillip v. Moses, 18 FSM R. 247, 251 (Chk. S. Ct. App. 2012).

The Constitution does not create property interests, property interests are created and their dimensions are defined by existing rules or understandings that stem from an independent source, such as state law, that secure certain benefits and that support claims of entitlement to those benefits. Kama v. Chuuk, 18 FSM R. 326, 331 (Chk. S. Ct. Tr. 2012).

The hallmark of property is an individual entitlement grounded in state law, which cannot be removed except for cause. Once that characteristic is found, the types of interests protected as "property" are varied and, as often as not, intangible, relating to the whole domain of social and economic fact. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

Property is more than mere ownership. It includes the right to acquire, use, enjoy, and dispose of acquisitions subject only to the law of the land. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

The property right created by a judgment against a government entity is not a right to payment at a particular time but merely the recognition of a continuing debt of that government entity. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

Since the court, adhering to the authority vested in the judicial branch, should only interpret the laws regarding property in Chuuk and should not take over the legislative branch's role, when there has been no legislative intent shown of a specific desire to ascribe a property right to judgments, therefore, absent a specific Chuuk State legislation creating a specific property right, such a right cannot be ascribed to judgments. Kama v. Chuuk, 18 FSM R. 326, 332 (Chk. S. Ct. Tr. 2012).

Although no state shall deprive any person of life, liberty, or property without due process of law is the mandate of the constitution, a party cannot be said to be deprived of his property in a judgment because at the time he is unable to collect it. Kama v. Chuuk, 18 FSM R. 326, 333

(Chk. S. Ct. Tr. 2012).

Plaintiffs are not deprived of their judgments, so long as they continue to be existing liabilities against the entity. Therefore a failure to timely fulfill a judgment does not constitute a taking in violation of the due process clause as there continues to be an existing liability against the state. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

When the issued judgment s valid, it represents an existing liability against the State of Chuuk. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

When no property right can be ascribed to the judgment at issue; the due process standard is not applicable. Kama v. Chuuk, 18 FSM R. 326, 333 (Chk. S. Ct. Tr. 2012).

Traditionally, when someone no longer had the right to reside on another's land, he would be allowed to dismantle the house he had built and take the materials to rebuild somewhere else because he owned the building materials. This is usually not feasible with modern houses. Killion v. Nero, 18 FSM R. 381, 385 n.3 (Chk. S. Ct. Tr. 2012).

Chuukese custom generally follows the rule that a person who makes improvements on property has full title to these improvements even though he does not hold title to the property on which they are made. Killion v. Nero, 18 FSM R. 381, 385 n.4 (Chk. S. Ct. Tr. 2012).

When the parties had agreed to a land exchange and the defendant has built houses on the land he received but the plaintiff did not receive any land because the defendant did not have the land to exchange, instead of returning the land to the plaintiff and having the plaintiff pay the defendant the value of the houses the defendant built the most equitable remedy (and the easiest for the court to fashion) is monetary compensation to the plaintiff for the value of the land that he did not receive in an exchange agreement that provided that he was to receive in exchange land of an equal amount to the land transferred to the defendants. To effectuate justice, the defendants should pay the plaintiff the value of the land the defendants received. Killion v. Nero, 18 FSM R. 381, 386 (Chk. S. Ct. Tr. 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).

The court will not award the plaintiff the land's rental value as well as its sale price when there was no evidence before the court that the plaintiff would have or would have been able to rent that land to someone else if the defendant was not occupying it because to recover both the sale price and the rental value would be a double recovery. Double recovery is not permissible. Killion v. Nero, 18 FSM R. 381, 387 (Chk. S. Ct. Tr. 2012).

Land does not "earn" interest. It may increase or appreciate in value, in which case, the current fair market value includes the increase or appreciation. Killion v. Nero, 18 FSM R. 381, 387 (Chk. S. Ct. Tr. 2012).

Real property is land and anything growing on, attached to, or erected on it, excluding

anything that may be severed without injury to the land. Real property can be either corporeal (soil and buildings) or incorporeal (easements). A factory building is thus real property. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 597 (Kos. 2013).

When, although the factory building is real property to which the secured party does not have a right to pre-judgment possession, the secured party must be afforded access to the building so that it may take possession of the chattels to which it does have a right of pre-judgment possession. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 599 (Kos. 2013).

When, if the buyer had diligently inquired into or investigated the matter, all he would have found would have been a Pohnpei Supreme Court final distribution probate order transferring title to all the shares to the seller and stating that this was the final disposition of the case at bar, it was sufficient to create a prima facie case that the buyer was without notice of any prior adverse claims to seller's ownership of the shares and since the buyer paid good and valuable consideration for the shares he was a bona fide purchaser for value. Mori v. Hasiguchi, 19 FSM R. 16, 22 (Chk. 2013).

In rem jurisdiction includes registration of land titles, mortgages, and probate proceedings involving land. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

No court located in Chuuk can exercise jurisdiction over land in Pohnpei. Only a court in Pohnpei can do that. Setik v. FSM Dev. Bank, 21 FSM R. 505, 519 (App. 2018).

A court's jurisdiction over land is in the nature of an in rem proceeding. "In rem" proceedings encompass any action in which essential purpose of suit is to determine title to or affect interests in specific property located within the territory over which court has jurisdiction. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

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

Land on Pohnpei is not physically present in the Chuuk State Supreme Court's territorial jurisdiction. Thus, neither it, nor any court in Chuuk, can exercise jurisdiction over any Pohnpei land. Only a court in Pohnpei can do that. Setik v. Mendiola, 21 FSM R. 537, 551 (App. 2018).

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

Real property, or realty, is land and anything growing on, attached to, or erected on it, except anything that can be moved without injury to the land. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

Realty – real property cannot be "converted." Any such conversion claim is misconceived. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

A litigant's "conversion" claim over real estate can be conceived as a quiet title claim. Setik

v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

A home may be owned by someone other than the owner of the land on which it sits. Robert v. Chuuk Public Utility Corp., 22 FSM R. 150, 155 n.1 (Chk. 2019).

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

When a co-ownership is not a joint tenency (with right of survivorship), it is a tenancy in common. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 n.1 (Chk. 2019).

A tenancy in common is a form of co-ownership where two or more persons have equal and undivided shares in the whole with each having an equal right to the whole, but no right of survivorship. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 n.2 (Chk. 2019).

A co-owner's trespass case will be dismissed for failure to join the land's other co-owner as an indispensable party plaintiff because any judgment rendered in the other co-owner's absence would prejudice the defendant(s). This is because the other co-owner could later sue for the same trespass, thus subjecting the defendant(s) to multiple judgments for the same acts; because even a judgment in the defendant's favor would not prevent another co-owner from suing for the same acts; because no protective provisions could be included in a judgment that would lessen the defendant's prejudice; and because the plaintiff has an adequate remedy since the dismissal is without prejudice, and he may then refile the case with all the other co-owners included as plaintiffs. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 (Chk. 2019).

In a claim for damages to land, such as trespass, all the affected land's co-owners are indispensable parties to the action and must be joined if they are not already parties; otherwise the defendant faces the substantial risk that it may be subject to multiple or inconsistent judgments if any of the other co-owners later sue. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 242 n.4 (Chk. 2019).

When the plaintiff's averments in his proposed first amended complaint do not cure the complaint's indispensable party problem, the best course is to dismiss this case without prejudice to any future litigation by all of the land's co-owners (whoever they then are), claiming that the defendants are trespassing on the land. Nicky v. Chuuk Public Utility Corp., 22 FSM R. 239, 243 (Chk. 2019).

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

The states generally have power over land law and other local issues including personal property law, inheritance law, and domestic law including marriage, divorce, and adoption.

However, where the national government concurrently has the power to acquire title to land within the FSM under powers expressly delegated to it, and state law purports to restrict it, the state law must fail as applied to the national government. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 331-32 (Pon. 2019).

Neither Secretarial Order No. 2969 nor Secretarial Order No. 3039 relates to privately held land, nor do they dictate how the FSM as a nation should structure its government to deal with issues related to private lands and their title, transfer, and ownership. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 332 (Pon. 2019).

A litigant's judgments against Chuuk are not vested property rights, and Chuuk's failure to pay those judgments is not a due process or civil rights violation. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

When the only basis the plaintiff asserts for subject-matter jurisdiction is that his state court judgments are property and the state's failure to pay is a taking of his property without due process, the plaintiff's suit does not involve subject matter over which the FSM Supreme Court has jurisdiction because the plaintiff's state court judgments are not property, and the state's failure to pay his judgments against it does not violate his due process or civil rights. Suzuki v. Chuuk, 22 FSM R. 491, 494 (Chk. 2020).

While the Chuuk Constitution provides the Chuuk State Supreme Court with concurrent jurisdiction over land disputes, Article VII, § 3(d) of the Chuuk Constitution allows the specific court to be prescribed by statute. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

– Adverse Possession

Adverse possession must continue unabated for 20 years in order for the doctrine of adverse possession to be applicable in a land case. Similarly, the common law doctrine of prescriptive right is inapplicable if the 20-year statutory period is not completed. Etpison v. Perman, 1 FSM R. 405, 416 (Pon. 1984).

There was not the kind of consistent assertion of ownership, as distinguished from right of use, that would allow the doctrine of adverse possession to apply in this case. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM R. 465, 468 (Kos. S. Ct. Tr. 1988).

For the state to acquire an easement by prescription, the state's use must by open, notorious, hostile, and continuous for the statutory period under a claim of right. Palik v. Kosrae, 5 FSM R. 147, 154 (Kos. S. Ct. Tr. 1991).

In order for an action over an interest in land to be barred by the statute of limitations, the cause of action must arise more than twenty years before the action is brought. If the claim could have been made over twenty years before it was actually made, then the action can no longer be maintained, no matter how meritorious. Chipuelong v. Chuuk, 6 FSM R. 188, 194 (Chk. S. Ct. Tr. 1993).

When 38 years have elapsed since the determination of ownership of a tract of land in the Wito Clan, when there have been public notices posted concerning the determination and

concerning its later lease to the Trust Territory; two separate High Court decisions and three determinations of ownership concerning the land, and when construction activity on he land began 36 years ago; this constitutes both constructive and actual notice of the Wito Clan's claim to the land to another clan whose numerous members lived on the same small island. Chipuelong v. Chuuk, 6 FSM R. 188, 195 (Chk. S. Ct. Tr. 1993).

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously and under a claim of right, and the owner does not challenge such action until after the statute of limitations has run. Etscheit v. Adams, 6 FSM R. 365, 389 (Pon. 1994).

Because the Trust Territory statute of limitations did not go into effect until May 28, 1951 the 20-year period of unchallenged possession necessary to make out a claim for title to land under adverse possession cannot be met if possession was challenged before May 28, 1971. Etscheit v. Adams, 6 FSM R. 365, 389 (Pon. 1994).

It is a general principle that members of a family may not acquire adverse possession against each other in the absence of a clear, positive, and continued disclaimer and disavowal of title, and an assertion of adverse right brought home to the true owner a sufficient length of time to bar him under the statute of limitations from asserting his rights. Etscheit v. Adams, 6 FSM R. 365, 390 (Pon. 1994).

For adverse possession to be shown, the statute of limitations under which a challenge to possession can be made must have expired. Etscheit v. Adams, 6 FSM R. 365, 390 (Pon. 1994).

Adverse possession is a method, which is not favored, of acquiring title to property, which has been defined as the open and notorious possession and occupation of real property under an evident claim or color of right. This possession must be exclusive and in opposition to the true owner of the land. Usually adverse possession is controlled by statute, including the length of time needed to qualify, which is often the same as the statute of limitation. Cheni v. Ngusun, 6 FSM R. 544, 547 (Chk. S. Ct. App. 1994).

One may not claim adverse possession against the government. Cheni v. Ngusun, 6 FSM R. 544, 548 (Chk. S. Ct. App. 1994).

Where government title to the tidelands reverted to the traditional owners in 1989, and because the right to bring an action for trespass or ejection must be available to the owner before the time period for adverse possession has run, whether the doctrine of adverse possession exists in Chuukese land law need not be decided because the twenty-year statute of limitations did not start to run until 1989. Cheni v. Ngusun, 6 FSM R. 544, 548 (Chk. S. Ct. App. 1994).

The doctrine of adverse possession is unrelated to the defense of laches. Nahnken of Nett v. Pohnpei, 7 FSM R. 171, 176 n.8 (Pon. 1995).

Adverse possession refers to the acquisition of the full benefit of a piece of property, whereas *profit à prendre* refers to the acquisition of a right of entry and the right to remove and take from the land the designated products or profits. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 393 n.3 (Pon. 1996).

In addition to actual possession for the twenty-year statutory period, adverse possession requires the possessor's occupancy to have been open and notorious, exclusive, continuous and under a claim of right. Thus, a party claiming property rights based on adverse possession must demonstrate that he came onto the land with the intent of taking complete and exclusive control of the property. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 395 (Pon. 1996).

Parties that claim they entered the land with permission to do exactly what they were doing, and did not take any affirmative steps to assert outright ownership, cannot be said to have been in "adverse" possession of the land in dispute. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 396 (Pon. 1996).

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously and under claim of right, and the owner does not challenge such action until after the statute of limitations has run. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

The applicable statute of limitations period for adverse possession is twenty years. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

The adverse possession element of "under claim of right" means that the claimant intends to hold the land as his own to the exclusion of all others. It has the same meaning as "hostile." Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

When the requisite element of hostility is absent from a party's assertion of adverse possession it is irrelevant whether the party had occupied the land for twenty years before the certificate of title was issued because their occupation was not hostile. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

The FSM Supreme Court does not acknowledge that ownership in land can be gained by adverse possession because when a party cannot satisfy elements to make out claim of adverse possession it is unnecessary to decide whether to recognize that doctrine. Even in those jurisdictions in which adverse possession is recognized, it is not favored as a method of acquiring title. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

An argument that a certificate of title is invalid because of an adverse possession claim must fail when the twenty years necessary for adverse possession has not passed. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

When parties' claim to possession of land changes from permission of someone without authority to give permission to hostility an adverse possession claim will fail if the period of hostility has not yet run twenty years. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

Profit à prendre, the right to enter land for cultivation and to take the products of such cultivation, is an interest separate from ownership. It may be created by either grant or prescription. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

Acquisition by prescription of the right to *profit à prendre* requires the same claim of right or hostility as required to gain ownership by adverse possession. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

When a party's possession of land was not hostile so as to give rise to an adverse possession or to a *profit à prendre* claim, failure to give the party notice is not a violation of the party's due process rights. Iriarte v. Etscheit, 8 FSM R. 231, 240 (App. 1998).

A party's claim to land after a municipality has continued its open, notorious, exclusive and hostile occupation of the land for a period of 27 years before he files suit is barred by the twenty-year statute of limitations, and the municipality is the true and lawful owner of title to the land in dispute on the theory of adverse possession. Hartman v. Chuuk, 9 FSM R. 28, 31 (Chk. S. Ct. App. 1999).

Adverse possession is an acknowledged doctrine under the common law which is fully applicable in Chuuk state court. Hartman v. Chuuk, 9 FSM R. 28, 31 (Chk. S. Ct. App. 1999).

The presumptive rights in land arising from long possession and use, together with delay on the part of the lawful owner in asserting his title, have often been found to be sufficient grounds for taking title from a legal owner and granting it to the user. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

The doctrine of adverse possession provides that long-continued peaceful possession under claim of right is a strong indication of ownership. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

If a person of full age and sound mind stands by, or he and his predecessors in interest together have stood by, for twenty years or more and let someone else openly and actively use land under claim of ownership for that period or more, the person who so stood by will ordinarily be held to have lost whatever rights he may previously have had in the land and the courts will not, and should not, assist him in regaining such rights. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

To avoid trouble, a person who believes he owns certain land and raises no objection to someone else using it, should at least obtain some clear and definite acknowledgment of his ownership by the user's word or acts at intervals of less than twenty years. If he cannot obtain such an acknowledgment, he should bring the matter to the court for determination before the use has continued for more than twenty years either from the time it began or from the time of the last such acknowledgment. Hartman v. Chuuk, 9 FSM R. 28, 32 (Chk. S. Ct. App. 1999).

When in 1968 the Trust Territory entered the land in question and, pursuant to 6 TTC 302, acquired title by adverse possession 20 years later in 1988, Chuuk is the successor to the title. Sefich v. Chuuk, 9 FSM R. 517, 519 (Chk. S. Ct. Tr. 2000).

When the defendants have failed to show the elements of adverse possession have been met and have thus failed to show that they own or have a right to possess the property they presently occupy, the defendants' claim of long use and occupation of the land does not create a genuine issue as to a material fact since the defendants failed to establish that they acquired ownership or a right to possession. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 103 (Pon. 2002).

An adverse possession claim will never prevail over a validly-issued certificate of title. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

Since someone claiming land by adverse possession must prove that his possession was open, notorious, hostile, continuous, and exclusive for the required statutory (twenty-year) time limit, failure to prove any one of these elements causes the whole claim to fail. A court's conclusion concerning another's continuous use of the land can only mean that the claimant, at a minimum, failed to show that his claimed possession was "exclusive" for any twenty-year period. His failure to prove that element is enough so that the lower court did not need to further discuss adverse possession because his adverse possession claim had failed at that point. Anton v. Cornelius, 12 FSM R. 280, 288 (App. 2003).

Adverse possession is not a claim that can be made against registered land, or land that has been one step (determination of boundaries) away from being registered land since 1981, and the filing of a trespass suit tolls (suspends) any running of the time period needed to assert an adverse possession claim. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e (Chk. 2004).

The doctrine of adverse possession does not apply when the use of the land was made with the owner's permission. Heirs of Nena v. Sigrah, 14 FSM R. 283, 286 (Kos. S. Ct. Tr. 2006).

The doctrine of adverse possession requires continuous use of the land for at least twenty years. An adverse possession claim must fail when the twenty years necessary for adverse possession has not passed. Heirs of Nena v. Sigrah, 14 FSM R. 283, 286 (Kos. S. Ct. Tr. 2006).

In order to successfully assert a claim that property rights have been acquired through adverse possession, a party must establish that he entered the land at issue and remained in possession of the land for the entire statutory period of 20 years. In addition to actual possession for the statutory period, adverse possession requires the possessor's occupancy to have been open and notorious, exclusive, continuous and under a claim of right. Thus, a party claiming property rights based on adverse possession must demonstrate that he came onto the land with the intent of taking complete and exclusive control of the property. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

Persons claiming land by adverse possession must show they had actual, exclusive, continuous, open and notorious possession under a claim of right for the statutory period of limitations, twenty years, before successfully asserting ownership of the land under this doctrine. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

Once a claim is filed in court, the time set under a statute of limitations stops running. This means that a claim for adverse possession does not include the time after an action has been filed in a court. Therefore, the 20-year period for the claimants to occupy land openly, notoriously, exclusively, continuously, and under a claim of right must run prior to the time claims were filed. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

The appellants did not cite any facts in the record to show that they exclusively and continuously possessed the land for any twenty year period prior to the time the claims were filed when the testimony showed that the appellees gave permission for others to use the land, that the appellees sometimes occupied the land, and that the appellees placed markers claiming ownership at the time of the survey. This evidence shows that the appellants did not have exclusive and continuous possession of the land. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

All elements of adverse possession must be demonstrated before title is issued based on this doctrine and when the appellants did not prove all of the elements, their claim of ownership based on adverse possession could not be upheld. Heirs of Obet v. Heirs of Wakap, 15 FSM R. 141, 145 (Kos. S. Ct. Tr. 2007).

Adverse possession is a disfavored method or doctrine of acquiring title to land. To prove a adverse possession claim, a claimant must demonstrate that the occupation was without the owner's permission, the land was used openly, notoriously, exclusively, continuously and under claim of right, and that the owner did not challenge such action until after the statute of limitations had run. A claimant must prove all elements of adverse possession before title is issued based on the doctrine. Setik v. Ruben, 16 FSM R. 158, 165 (Chk. S. Ct. App. 2008).

The adverse possession element of "under claim of right" means that the claimant intends to hold the land as his own to the exclusion of all others. It has the same meaning as "hostile." Adverse possession does not apply when the use of the land is with the owner's permission. The consistent assertion of ownership necessary for a claim of adverse possession must, therefore, be distinguished from a mere right of use. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

When the requisite element of hostility is absent from a party's assertion of adverse possession, it is irrelevant whether the party had occupied the land for twenty years before the certificate of title was issued because the occupation was not hostile. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

A trial court finding that the appellants occupied the land during the prior ownership under a right of use will not be overruled unless it is clearly erroneous, and when there is nothing in the record to indicate that the appellants ever challenged the ownership of the land, the court will not overturn the trial court's ruling against the claim for adverse possession without anything to indicate error in the trial court's finding that the appellants' use was permissive. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

An adverse possession claim will never prevail over a validly issued certificate of title. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously, and under claim of right, and the owner does not challenge such action until after the statute of limitations has run. Setik v. Ruben, 17 FSM R. 465, 476 (App. 2011).

For an adverse possession claim, the occupation must be without permission, open, notorious, and exclusive. Thus when the occupation of the land was permissive and non-hostile, the occupants have not adversely possessed the land. Setik v. Ruben, 17 FSM R. 465, 476-77 (App. 2011).

Adverse possession is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively, continuously and under claim of right, and the owner does not challenge such action until after the statute of limitations has run. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 (App. 2011).

Land Court proceedings are the time and place adverse possession can and should be raised since Land Court jurisdiction includes all matters concerning the title of land and any interests therein. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 (App. 2011).

Land has a "true owner" or a rightful owner or a legal owner before any Land Court proceedings have been conducted even though it may be uncertain until the proceedings have concluded just who that owner is. A land occupant asserting adverse possession would have to prove that all the elements of adverse possession were satisfied against whoever would be the true owner or against all persons who could possibly be the true owner. Some authorities state that the possessor does not hold adversely unless he intends to hold against the whole world, including the rightful owner, but the really significant fact is that he hold against, that is, not in subordination to the rights of the legal owner. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Once an owner has a certificate of title to land, that ownership can never be lost through adverse possession. Under a Torrens land title registration system, such as the one in Kosrae, an adverse possession claim will never prevail over a validly-issued certificate of title. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Claims founded on adverse possession or prescription, are not permitted to come into existence once the title has been registered. Once a title is registered, it is impossible thereafter to acquire title to the registered land by holding adversely to the registered owner. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

One of the attractions of a land registration system (as opposed to a land recordation system) and one of the great benefits of land title registration (as opposed to title recordation) is that once a landowner has gone through the laborious process of validly registering title to land, that landowner and that landowner's successors can never lose that land to an adverse possession claim. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

The proper time and place to make adverse possession claims, if a land occupant has one, is in a Land Court (or other) proceeding before the land title has been registered. Afterward is too late. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Adverse possession is a disfavored method or doctrine for acquiring title to land and a claimant must prove all the elements of adverse possession before title can be issued based on that doctrine. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Adverse possession is a doctrine under which one can acquire ownership of land if that individual, absent the owner's permission, uses the land openly, notoriously, exclusively, continuously and under claim of right, coupled with a requirement that the owner does not challenge such action until after the statute of limitation has run. The applicable statute of limitation period for adverse possession is twenty years. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58 (App. 2016).

In order to successfully assert a claim that property rights have become vested through adverse possession, a claimant must establish that he entered the land in issue and remained in possession of it for the entire twenty-year statutory period, and such possession, pursuant to a claim of right, must be continuous (i.e. uninterrupted, as far as being challenged by the owner). Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58 (App. 2016).

When, in 1990, the Land Commission conducted preliminary and formal hearings, with contested ownership claims in order to determine ownership rights; when others expanded their boundaries, encroaching, and overlapping on the land in 2005; and when there were Land Court status conferences conducted to determine ownership rights during 2011, the requisite twenty-year "continuous" unchallenged time period needed for adverse possession was suspended by these interludes. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 58-59 (App. 2016).

In order to uphold a claim of ownership based on adverse possession, all elements of adverse possession must be demonstrated. Tilfas v. Heirs of Lonno, 21 FSM R. 51, 59 (App. 2016).

– Deeds

Where two clauses within an agreement are inconsistent, the court should attempt to interpret the agreement so that each provision has meaning, but the paramount rule is that the deed must be construed so as to give effect to the intention of the parties as collected from the whole instrument. Melander v. Kosrae, 3 FSM R. 324, 327 (Kos. S. Ct. Tr. 1988).

A court interpreting a deed should attempt to determine the meaning of the words used rather than what the signatory later says he intended. Melander v. Kosrae, 3 FSM R. 324, 328 (Kos. S. Ct. Tr. 1988).

Where fraud or mistake are involved, the court can reform or cancel a deed, but relief will be denied in either situation if the misunderstanding of the aggrieved party was caused by his unexplained failure to read the necessary documents. Melander v. Kosrae, 3 FSM R. 324, 329 (Kos. S. Ct. Tr. 1988).

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

Where there is an issue of fact regarding the authenticity of a deed, summary judgment will not be granted to the parties claiming under the deed, and both sides will be allowed to present evidence on the issue. Etscheit v. Adams, 6 FSM R. 365, 389 (Pon. 1994).

When a deed may be legally insufficient to transfer a property because of an inaccurate recitation of its size it may still be relied on as an expression of the intent of the parties at the time. Nakamura v. Moen Municipality, 7 FSM R. 375, 379 (Chk. S. Ct. Tr. 1996).

On Pohnpei, German land deeds were issued only for land taken from the Nahnmwarkis and distributed to ethnic Pohnpeians. The lack of a German land deed for land acquired in another way and thus not subject to German deeds is not an infirmity of title. Nahnken of Nett v. United States, 7 FSM R. 581, 588 (App. 1996).

A court interpreting a deed should attempt to determine the meaning of the words used. Isaac v. Palik, 13 FSM R. 396, 399 (Kos. S. Ct. Tr. 2005).

A court interpreting a deed should attempt to determine the meaning of the words used

rather than what the signatory or a relative later says he intended. Benjamin v. Youngstrom, 13 FSM R. 542, 547 (Kos. S. Ct. Tr. 2005).

When a quitclaim deed conveys all of the seller's rights, title and interest in a parcel to a buyer, his children and all his future heirs; when there is no reference made to the plaintiffs or to reservation of any rights for the plaintiffs; and when the quitclaim deed clearly indicates the parties' intent: the sale of all rights, title and interest in the parcel for $3000; the quitclaim deed was not made especially for the benefit of third persons. As the plaintiffs were not the intended beneficiaries on the contract, and do not satisfy the requirements of third party beneficiaries, they cannot recover on the breach of contract claim. Benjamin v. Youngstrom, 13 FSM R. 542, 547 (Kos. S. Ct. Tr. 2005).

When there is no reference to a "portion" or "part" or "subdivision" of a parcel in a deed and no language in it that would suggest the grantor's intent to transfer only a portion of the parcel to the grantees although it recites 682 square meters as the area, the clear inference drawn is that the Kosrae Land Court analyzed the deeds and determined that the grantor's intent was to transfer the entire parcel and not just a portion thereof, the Kosrae Land Court, in issuing the certificates of title utilized the full area of the parcel, as reflected in the prior grantor's certificate of title and as reflected in the cadastral plat map. The title to the entire 958 square meter parcel was effectively and validly transferred by the quitclaim deed. Benjamin v. Youngstrom, 13 FSM R. 542, 548 (Kos. S. Ct. Tr. 2005).

Deeds, in describing or identifying the land affected in the transaction, may simply reference an appropriate parcel number on the official map. Benjamin v. Youngstrom, 13 FSM R. 542, 549 (Kos. S. Ct. Tr. 2005).

A deed is effective when it is delivered. Benjamin v. Youngstrom, 13 FSM R. 542, 549 (Kos. S. Ct. Tr. 2005).

When a certificate of title was never issued to Tulpe Alokoa for parcel 006-K-07 and she was never determined by a Land Commission proceeding to be the title holder of that parcel and therefore could not transfer title to land that she did not own, her deed of gift was invalid, and should have been rejected for filing by the Land Commission. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

A deed of gift that only described the gifted land as a "portion of 006-K-07" with no description of boundaries, no reference to a map or drawing of the portion, and no designation of the area of the portion on the deed of gift, is defective due to its failure to adequately describe or identify the affected land because a deed, to be valid, must describe or otherwise identify the land affected. George v. Abraham, 14 FSM R. 102, 108-09 (Kos. S. Ct. Tr. 2006).

A land purchase agreement's intent and effect was to transfer title to the lot to the State upon execution of the agreement; otherwise there would have been no need to include a clause requiring that the land be deeded back to the seller if she was not paid in full by a date certain. Uehara v. Chuuk, 14 FSM R. 221, 226 (Chk. 2006).

Forfeitures are abhorrent to the law, and are construed strictly. Because the law abhors a forfeiture, the language effecting defeasance in a deed must clearly spell that fact out. Uehara v. Chuuk, 14 FSM R. 221, 227 (Chk. 2006).

Since under Chuukese customary law, any contract may be oral, that the deed was an inadequate writing to convey land is irrelevant. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

When credible evidence in the record more clearly supported the conclusion that Naau, Fonomu, and Ipis were three separate and distinct parcels of land, a 1910 German administration deed indicating the ownership of Naau was not germane since it did not involve the disputed island, Fonomu. Narruhn v. Aisek, 16 FSM R. 236, 241 (App. 2009).

When the deed conveying the land to the national government, only required it to "commence" development within five years, an argument that development of the land was not "completed" within that finite period of time, is without merit. FSM v. Falan, 20 FSM R. 59, 61 (Pon. 2015).

A deed of trust is a deed conveying title to real property to a trustee as security until the grantor repays a loan. Edmond v. FSM Dev. Bank, 22 FSM R. 77, 79 n.1 (App. 2018).

When, despite the use of the words "will" and "inherited," a document titled "Deed of Will" can only be an inter vivos deed transferring, on the date it was executed, whatever interest the grantor had on that date in the land to his son, because, if it were meant to be a will, it would undoubtedly have included bequests to some or all of the grantor's other children and mention other holdings, but it does not. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

– Easements

Read in the light of its legislative history, article XIII, section 5 of the Constitution of the Federated States of Micronesia was intended to cover leases, not easements, and therefore an easement that is indefinite in term does not violate this constitutional section. Melander v. Kosrae, 3 FSM R. 324, 330 (Kos. S. Ct. Tr. 1988).

For the state to acquire an easement by prescription, the state's use must by open, notorious, hostile, and continuous for the statutory period under a claim of right. Palik v. Kosrae, 5 FSM R. 147, 154 (Kos. S. Ct. Tr. 1991).

Utility poles do not constitute trespass on land when the owner consented to their placement, accepted compensation for crop damage, and signed an agreement which effectively granted an easement for placement of utility poles. Palik v. Kosrae, 5 FSM R. 147, 155-56 (Kos. S. Ct. Tr. 1991).

Encroachment of a road on adjacent parcels is a trespass when the state has not used the property without interruption for the statutory period, nor for a period of time that would make the assertion of plaintiff's rights unfair. Palik v. Kosrae, 5 FSM R. 147, 156 (Kos. S. Ct. Tr. 1991).

Easements are not indefinite land use agreements prohibited by the Constitution because "indefinite land use agreement" is a term of art referring to Trust Territory leases for an indefinite term. Nena v. Kosrae, 5 FSM R. 417, 423 (Kos. S. Ct. Tr. 1990).

An easement for a road is not an indefinite land use agreement prohibited by the

Constitution because it is perpetual. It is not indefinite in that it is effective into perpetuity. Nena v. Kosrae (I), 6 FSM R. 251, 254 (App. 1993).

An easement may be created for a permanent duration, or, as it is sometimes stated, in fee, which will ordinarily continue in operation and be enforceable forever. The grant of a permanent easement is for as definite a term as the grant of a fee simple estate. Both are permanent and not for a definite term. Nena v. Kosrae (II), 6 FSM R. 437, 439 (App. 1994).

A grant of a permanent or perpetual easement is definite in the same sense that a grant of a fee simple estate is definite – it is a permanent transfer of an interest in land. Nena v. Kosrae (III), 6 FSM R. 564, 568 (App. 1994).

Although no Trust Territory statute expressly authorizes easements, they are recognized by clear implication in the Trust Territory Code. Island Cable TV v. Gilmete, 9 FSM R. 264, 266 (Pon. 1999).

Under Kosrae State Code § 11.615(3), land held under a certificate of title may be subject to a right of way whether or not the right of way is stated in the certificate of title. Sigrah v. Kosrae, 12 FSM R. 513, 518 (Kos. S. Ct. Tr. 2004).

A pre-existing right of way, such as an access road, passes with and remains necessarily attached to a parcel until it is cut off in a lawful manner Sigrah v. Kosrae, 12 FSM R. 513, 518-19 (Kos. S. Ct. Tr. 2004).

A holder or user of an existing right of way does not have the right to widen or modify the right of way without the landowner's consent. Sigrah v. Kosrae, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

An easement by prescription is a doctrine under which one can acquire ownership of land if he, without the owner's permission, uses the land openly, notoriously, exclusively and continuously for the statutory period under a claim of right. The statutory period for easement by prescription, which is an action for the recovery for an interest in land, is twenty years. Sigrah v. Kosrae, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

A preexisting easement or other right appurtenant to the land remains appurtenant, even if it is not described in the certificate of title. Norita v. Tilfas, 13 FSM R. 424, 426 (Kos. S. Ct. Tr. 2005).

When, pursuant to state law, parties were granted and therefore maintain a permanent land use right to access a parcel and use a portion thereof for maintenance of their existing gravesites, this permanent land use right passes with the parcel until it is extinguished in a lawful manner independent of the certificate of title. Norita v. Tilfas, 13 FSM R. 424, 427 (Kos. S. Ct. Tr. 2005).

When the subject parcel was utilized for gravesites pursuant to a verbal land use right, prior to the certificate of title's issuance, and the land was utilized by the defendants for many years without interference by the plaintiff, the land use right granted to the defendants for their burial sites was necessarily a permanent right. When the permission granted to the defendants to utilize the parcels included construction of permanent burial sites and necessarily included

permission for continuing access and care of the burial sites, by virtue of the permanent nature of burial sites, the defendants' rights pertaining to access and care for the burial sites are rights appurtenant to the parcel and pass with the parcel. Akinaga v. Heirs of Mike, 14 FSM R. 91, 93 (Kos. S. Ct. Tr. 2006).

A permissive land use right, often referred to as an easement or right of way, constitutes a valid property interest in Kosrae. Land use rights in Kosrae are frequently granted verbally, particularly when the land use agreements are between family members. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397 (App. 2007).

Kosrae State Code § 11.615(4), which governs the issuance of certificates of title, establishes that a preexisting easement or other right of way over the land remains appurtenant even if it is not described in the certificate; and passes with the land until cut off or extinguished in a lawful manner independent of the certificate. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397 (App. 2007).

When the Trust Territory judgment that the appellant relies upon explicitly states that the judgment will not affect any rights of way there may be over the lands in question and when it is undisputed that the appellees were granted their right of way prior to the Trust Territory judgment, the Trust Territory judgment did nothing to alter the preexisting right of way. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397-98 (App. 2007).

In general, an easement granted without a specified term is considered to be of permanent duration and may continue in operation forever and is not extinguished by the grantor's death. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

A grant of a right of way does not constitute a trespass because trespass laws are intended to protect those who have a right to possess and use land, and the doctrine of trespass does not act to prohibit the grantees' usage of land provided that they stay within the easement or right of way granted to them. Akinaga v. Heirs of Mike, 15 FSM R. 391, 398 (App. 2007).

When the appellees' general right to enter the land to tend to existing burial sites is established by the undisputed facts but the same cannot be said of the ten-foot buffer zone that was ordered to be maintained around the exiting burial sites since the trial court did not elaborate as to the exact operation of this "perimeter"; when the undisputed facts which establish the right of way do not support such a precisely defined area being designated; when the case relied upon by the trial court is factually distinguishable and does not alone justify the trial court's mandate of such a large buffer zone; and when the invocation of custom remains as the only basis for the trial court's order but the trial court was not provided supporting evidence of a custom or tradition involving such a specifically demarcated perimeter around burial sites, this single issue will be remanded to the trial court with instructions to strike the portion of its order that provides a 10-foot perimeter around the existing burial sites. The trial court may then receive supporting evidence of custom or tradition about the size of perimeters around graves and thereafter may enter an amended order based upon its findings. Akinaga v. Heirs of Mike, 15 FSM R. 391, 399 (App. 2007).

A proposed settlement is unimportant and only confuses the issues since even if the settlement made no issue of ingress or egress, the November 1997 court order ruled in favor of the appellant's right of way through the subject parcel onto his land behind it, ordering the appellee and his family members to refrain from any acts that may interfere with ingress or

egress of appellant and his family members on the subject parcel. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

"Rights of way" over land are such things as roads, footpaths, and utility easements. A "right of way" is the right to pass through property owned by another or the strip of land subject to a nonowner's right to pass through. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 296, 302 (App. 2014).

The Kosrae Land Court is entitled to determine an easement or right of way, because the land registration process is, with certain exceptions, supposed to determine all interests in the land, not just ownership interests. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

By statute, a certificate of title must show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year and the certificate is conclusive upon all persons who have had notice of the proceedings and all those claiming under them. A "right of way" over land is a thing such as a road, or footpath, or utility easement. A "right of way" is the right to pass through property owned by another or the strip of land subject to a nonowner's right to pass through. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

Any rights of way there may be over the land in question need not be stated in the certificate of title. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

A certificate of title's failure to mention the roadway or government right of way cannot extinguish the government's ownership of the roadway right of way. That right remained vested in the state government. When the government owned a right of way across the land that predated the current owners' ownership of the land, that right of way existed on the land when the land was homesteaded and thus still existed after a later buyer bought part of that homestead lot. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

The certificate of title statute does not exempt mineral rights if they are not mentioned. Iwo v. Chuuk, 20 FSM R. 652, 655 n.1 (Chk. 2016).

The government owners and users of a right of way across land are not liable for the landowners' neighbors' alleged encroachment on the land. Any remedy for that alleged encroachment, the landowners must seek from their neighbors. Iwo v. Chuuk, 20 FSM R. 652, 656 (Chk. 2016).

An easement that provides ingress and egress to a parcel, necessarily touches and concerns that parcel, with that parcel being the dominant estate or tenement and the parcel over which the easement runs, being the subservient estate or tenement. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 172-73 (Pon. 2017).

By Chuuk state law, a public utility may enter on any private land to dig out and replace or redistribute at the landowner's instruction earth or soil for the maintenance of any pipe or line, but the landowner's instruction is required only if the soil is to be redistributed. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 422 (Chk. S. Ct. Tr. 2019).

No trespass was committed when the public utility already had an easement over the pipes that it replaced on the plaintiff's land, and the law did not require instruction from the land owner

since the soil that the utility dug up to replace the pipes was never redistributed – it was placed over the pipes again. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 423 (Chk. S. Ct. Tr. 2019).

No trespass was committed when the public utility placed primary utility poles to connect the general public in that area to electricity because the landowner's right to possessory interest remains subject to the public utility's right to use the soil above and below the land for public utility purposes. Thus, no interference with the land owner's possessory interest occurred. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 423 (Chk. S. Ct. Tr. 2019).

A public utility did not create a nuisance when it installed primary electric poles and replaced pipes because neither qualify as unreasonable conduct nor an abnormally dangerous activity. Public utilities often engage in the installation and replacement of utilities to provide the entire community with a higher standard of living. Neither create any realistic danger to the landowner or surrounding landowners and they provide benefits to the community. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 423-24 (Chk. S. Ct. Tr. 2019).

Chuuk state law requires a public utility to consult with the land owner and announce entry before it works on public utilities – but provides no relief for failure to consult. Due process requires consultation with the landowner before installing a new structure on the land (or extending another easement through that land), but the replacement of existing pipes falls outside that due process requirement since that easement already existed. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

The respect for real property, as implicitly recognized under the Chuuk Constitution, requires that if the real property owner is known, a public utility must consult with the landowner before creating a new easement over a land – in part to alleviate the landowner's concerns and to create a practical easement which limits the easement's effect on the owner. But consultation with the real landowner may sometimes be impossible; so when the real property owner is absent or unknown, a public utility company may broadcast two radio announcements about its intent to place a new structure on a particular parcel of land and invite any parties who might have an ownership claim to attend a consultation meeting. Francis v. Chuuk Public Utilities Corp., 22 FSM R. 417, 424 (Chk. S. Ct. Tr. 2019).

– Eminent Domain

A motion for removal will be denied where, in an action in eminent domain under Truk State law the only defense available are those relating to the taking, and the counterclaims asserted as a basis for national court jurisdiction do not fall within a defense to the taking. Chuuk v. Land Known as Mononong, 5 FSM R. 272, 273 (Chk. 1992).

The acquisition of interests in private land by the state for a public purpose without the consent of the interested parties is permitted under the Kosrae Constitution, Article XI, § 5, which requires specific procedures to be followed, which are set forth in Kosrae State Code § 11.103. The state must first negotiate with each interested party, provide a written statement of the public purpose for which the interest is sought and negotiate in good faith. If the negotiations are not successful, the state may begin a court action to acquire the interest in land. Sigrah v. Kosrae, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

Since the state's statutory authority to acquire interests in land through court action has never been utilized to forcibly purchase an interest in private land for a public purpose, the court cannot conclude that the state is likely to prevail on the merits of its claim due to a complete absence of court decisions applying or interpreting this authority. Sigrah v. Kosrae, 12 FSM R. 513, 519 (Kos. S. Ct. Tr. 2004).

Under the Chuuk Eminent Domain statute, the applicable Rules of Civil Procedures for the Chuuk State Supreme Court govern the procedure for the condemnation of private lands under the power of eminent domain, except as otherwise provided in the statute. In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

When the only relief pleaded by the respondent in his answer that could possibly be considered a counterclaim was his prayer for attorney's fees and costs and when the eminent domain statute precludes this type of relief, even if this part of the respondent's prayer for relief is considered a counterclaim, it is a counterclaim that the statute clearly forbids and therefore should not hinder a dismissal under Rule 41(a)(2). In re Lot No. 029-A-16, 18 FSM R. 422, 424 (Chk. S. Ct. Tr. 2012).

In an eminent domain case, just compensation must be fully tendered before a taking may occur and the Chuuk government must deposit in court, for the benefit of the landowners entitled thereto, the amount of just compensation stated in the declaration. In re Lot No. 029-A-47, 18 FSM R. 456, 458 (Chk. S. Ct. Tr. 2012).

The statutory provision adopting the Asian Development Bank Valuation System in the Governor's Executive Order 04-2007 and recognizing it as the prevailing land valuation system for all government land transactions only applied to land values without regard to any permanent structures that the landowner may also own on the condemned property. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

The Chuuk eminent domain statute and its provision allowing the court to increase (or decrease) a land's valuation by 10% applies only to the taking of the land and the land valuation and it does not apply to permanent structures erected on the land that the state is taking. The 10% increase possible for any other reasonable factor could include such improvements to the land itself such as the installation of a drainage system, or leveling the land in preparation for building, or adding retaining walls or lateral support. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

Even if the Trust Territory statute requiring payment for the improvements on land taken by eminent domain, 67 TTC 453 and 454, has been repealed by implication (it was not expressly repealed), the constitutional provision requiring just compensation for property taken would require compensation for a permanent structure on the land at its fair market value. In re Lot No. 029-A-47, 18 FSM R. 456, 459 (Chk. S. Ct. Tr. 2012).

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

An award of reasonable relocation or business interruption expenses may be the better view since such damages could be calculated with greater certainty than "lost profits," which would be too speculative. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

When the parties, by their settlement agreement, have liquidated all damages and compensation claims between them including the respondent's lost profits claim, the issue of whether the respondent in an eminent domain action can obtain damages for lost profits is moot. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

A respondent in an eminent domain action cannot recover attorney's fees under a private attorney general theory since the court's ruling monetarily benefits only him. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

Attorney's fees and expenses are not recoverable under 11 F.S.M.C. 701(3) in an eminent domain case filed by the petitioner state since it is not a civil rights case and the respondent is receiving the process due him under the Chuuk statute and Constitution and thus his civil rights have not been violated In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

Since the Chuuk eminent domain statute specifically prohibits an award for the expenses of litigation for either side in an eminent domain case, no attorney's fees or other costs of litigation can be awarded in an eminent domain case. In re Lot No. 029-A-47, 18 FSM R. 456, 460 (Chk. S. Ct. Tr. 2012).

– Gifts

On Kosrae, *usru* is a gift of land by a parent to one's children, and *kewosr* is an outright gift of land from a man to a favored lover. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 36 (Kos. S. Ct. Tr. 1997).

There must be a clear, unmistakable, and unequivocal intention on the part of a donor to make a gift of his property in order to constitute a valid, effective gift inter vivos. Elaija v. Edmond, 9 FSM R. 175, 180 (Kos. S. Ct. Tr. 1999).

Gifts inter vivos must be fully and completely executed – that is, there must be a donative intent to transfer title to the property, a delivery by the donor, and an acceptance by the donee. The intention to make a gift must be executed by a complete and unconditional delivery. Elaija v. Edmond, 9 FSM R. 175, 180 (Kos. S. Ct. Tr. 1999).

Gifts inter vivos, during the life of the owner, must be fully and completely executed. In other words, there must be donative intent to transfer title to the property, a delivery by the donor, and an acceptance by the donee. The intention to make a gift must be executed by a complete and unconditional delivery. George v. Abraham, 14 FSM R. 102, 106 (Kos. S. Ct. Tr. 2006).

When the certificate holder and owner, did not complete or submit any document of transfer for the subject portion of the parcel to the defendant and he did not survey or arrange for the survey of the subject portion of the parcel claimed by the defendant, there was no compliance with the statutory provisions governing a transfer of interest in land or transfer of interest in a portion of parcel by the certificate holder, and therefore, pursuant to state law, there was no gift of land made from the certificate holder to the defendant. George v. Abraham, 14 FSM R. 102,

107 (Kos. S. Ct. Tr. 2006).

– Improvements

Where the court cannot compel the state to honor an illegal and/or unconstitutional lease it can order the state to restore the illegally held land, with any and all public improvements removed, to its rightful owner who may also be entitled to damages. Billimon v. Chuuk, 5 FSM R. 130, 137 (Chk. S. Ct. Tr. 1991).

Individuals have full title to the improvements (as distinguished from the soil) made upon land owned by a land-owning group or "corporation." In re Estate of Hartman, 6 FSM R. 326, 330 (Chk. 1994).

Under Pohnpei law, damage to reefs or soil under the high water mark resulting from dredging activities, the object of which is for public purposes, does not justify compensation to abutting land owners. If the Pohnpei Public Land Board of Trustees had granted certain rights in writing to an individual or group of individuals, and acting on that grant the grantees erected or constructed certain improvements, including fish maii (fish trap) in shallow waters, and if destroyed or value reduced as a result of state dredging activities, the owners thereof may be entitled to just compensation in accordance with the Pohnpei Constitution. Damarlane v. United States, 7 FSM R. 56, 69 (Pon. S. Ct. App. 1995).

A person may make improvements to land he possesses even if he does not own the land. The issue of making improvements is a matter between the owner of the land and possessor of the land. James v. Lelu Town, 10 FSM R. 648, 649 (Kos. S. Ct. Tr. 2002).

Individuals may have full title to the improvements (as distinguished from the soil) they make upon land not owned by them. Bank of the FSM v. Aisek, 13 FSM R. 162, 166 (Chk. 2005).

The Pohnpei Development Leasehold Act says that every development lease must contain a covenant stating that the lessor shall have the rights of future benefit to the improvements placed on the land by or on behalf of the lessee and that, upon the lease's termination, existing improvements thereon shall become the property of the lessor thereof or his successor in interest without further cost or condition to be met by the lessor, the property's title holder or any successor in interest to said property. Mobil Oil Micronesia, Inc. v. Pohnpei Port Auth., 13 FSM R. 223, 225 n.1 (Pon. 2005).

Plaintiff landowners should not be permitted to unjustly enrich themselves through obtaining a house and other improvements built at the defendant's expense. Heirs of Nena v. Sigrah, 14 FSM R. 283, 286 (Kos. S. Ct. Tr. 2006).

Individuals may have full title to the improvements (as distinguished from the soil) they make upon land not owned by them and thus may be entitled to compensation if it is determined that they do not own the land on which the improvements were made and cannot remove those improvements to another site. Phillip v. Moses, 18 FSM R. 247, 251 (Chk. S. Ct. App. 2012).

– Land Commission or Land Court

Under Kosrae state statute KC 11.614, which says appeals will be heard "on the record" unless "good cause" exists for a trial of the matter, the court does not have statutory guidance as to the standard to be used in reviewing the Land Commission's decision and therefore, in reviewing the commission's procedure and decision, normally should merely consider whether the commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 395, 398 (Kos. S. Ct. Tr. 1988).

When the land commission concludes that a traditional gift of land, a "kewosr," has been made, but is unable to determine who made the gift, and when, and does not explain any details about the customary gift sufficient to explain how it has determined that a kewosr was made, the opinion does not reflect proper resolution of the legal issues or reasonable assessment of the evidence and therefore must be set aside. Heirs of Mongkeya v. Heirs of Mackwelung, 3 FSM R. 395, 402 (Kos. S. Ct. Tr. 1988).

Kosrae State Land Commission properly relied on the decision of the Trust Territory High Court in Civil Action No. 47 (1953) as establishing that a person's name on the Japanese Survey of Kosrae was not conclusive evidence of ownership in 1932 of the land indicated. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM R. 465, 468 (Kos. S. Ct. Tr. 1988).

Kosrae State Land Commission was not required as a matter of law to accept as true the Japanese Survey's designation of Fred Likiaksa as owner, in 1932, of certain lands called Limes, in Lelu, parcel No. 050-K-00. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM R. 465, 468 (Kos. S. Ct. Tr. 1988).

Kosrae State Land Commission properly relied on the decision of the Trust Territory High Court in Civil Action No. 47 (1953) as establishing that no rights given to plaintiff's family could have extended beyond the death of Nena Kuang in 1970. Heirs of Likiaksa v. Heirs of Lonno, 3 FSM R. 465, 468 (Kos. S. Ct. Tr. 1988).

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

Land Commission procedures result in a determination of ownership wherein title to registered land is settled and declared by the government. The certificate of title issued by the government shows the state of the title and in whom it is vested. Chipuelong v. Chuuk, 6 FSM R. 188, 196 (Chk. S. Ct. Tr. 1993).

Where a certificate of title issued by the Land Commission goes beyond the findings of its own determination of ownership as affirmed by the court's findings, the certificate of title is invalid to the extent that it goes beyond the determination. Chipuelong v. Chuuk, 6 FSM R. 188, 197 (Chk. S. Ct. Tr. 1993).

Actions concerning the determination of land titles rest primarily with the Land Commission, which is statutorily charged with the registration and determination of land ownership. When the Land Commission has designated a registration area the courts cannot entertain any action with regard to interests in land within that registration area without a showing of special cause, although any determination of the Commission may be appealed to the Trial Division of the Chuuk State Supreme Court. Otherwise, it becomes final and conclusive. Barker v. Paul, 6

FSM R. 473, 475-76 (Chk. S. Ct. App. 1994).

Absent a finding of "special cause" on the record the trial court had no jurisdiction to entertain an action asserting an interest in land located within a designated registration area. Barker v. Paul, 6 FSM R. 473, 476 (Chk. S. Ct. App. 1994).

When the Land Commission has issued a Determination of Ownership which has become final upon the lapse of the time to appeal, the trial court has no authority or power to alter the final determination of ownership and boundaries. Barker v. Paul, 6 FSM R. 473, 476 (Chk. S. Ct. App. 1994).

Once a section of land is considered for registration the Land Commission undertakes a five-step program: 1) survey and establish tentative boundaries, 2) notice and conduct preliminary inquiry, 3) notice and conduct formal hearing, 4) notice and issue determination of ownership, and 5) issue certificate of title. These duties are both administrative and adjudicative. Palik v. Henry, 7 FSM R. 571, 574 (Kos. S. Ct. Tr. 1996).

Before a preliminary inquiry is conducted, the Land Commission must notify any person who claims a portion of the area in dispute so that they might attend the inquiry and be heard. Palik v. Henry, 7 FSM R. 571, 575 (Kos. S. Ct. Tr. 1996).

It is critical that the Land Commission post notice on the land, at the municipal office, and at the principal village meeting place and serve notice on all interested parties at least thirty days in advance of a formal hearing and give similar notice of its determination of ownership. Notice is required because it gives a chance to be heard. Palik v. Henry, 7 FSM R. 571, 576 (Kos. S. Ct. Tr. 1996).

Judgments of the Land Commission are void when it has failed to serve notice as required by law. Palik v. Henry, 7 FSM R. 571, 576-77 (Kos. S. Ct. Tr. 1996).

The Land Commission is required by statute to give actual, not constructive notice for hearings to all interested parties and to post notice on the land, at the municipal office and principal meeting place at least thirty days in advance of the hearing. Palik v. Henry, 7 FSM R. 571, 577 (Kos. S. Ct. Tr. 1996).

Without a claim to the land in question there is no right to notice of a land commission proceeding or finding. Nahnken of Nett v. United States, 7 FSM R. 581, 589 (App. 1996).

An appeal from the land commission will be on the record unless the court finds good cause for a trial of the matter. At a trial de novo the parties may offer any competent evidence, including the record of proceedings before the land commission, but the question of whether the commission considered the evidence submitted to it is not normally a part of judicial scrutiny. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 35 (Kos. S. Ct. Tr. 1997).

On appeal the court should not substitute its judgment for those well-founded findings of the land commission, but questions of law are reserved to the court. Heirs of Mongkeya v. Heirs of Mackwelung, 8 FSM R. 31, 35 (Kos. S. Ct. Tr. 1997).

Chuuk land commissioners have considerable adjudicatory powers under 67 TTC 109. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

State law specifically prohibits persons with an interest from being members of a land registration team, but no such statute specifically requires the disqualification of land commissioners with an interest from reviewing the registration team's determination. This brings constitutional due process concerns into play. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Adjudicatory decisions affecting property rights are subject to the procedural due process requirements of article IV, section 3 of the Constitution. Due process demands impartiality on the part of adjudicators, including quasi-judicial officials, such as land commissioners. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Grounds that require a person's recusal from the land registration team also require his disqualification as a land commissioner reviewing the land registration team's adjudication. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

When the statute requires the signature of at least two land commissioners in order to constitute an action of the commission and only two commissioners signed the section 109 review, and at least one of those should have disqualified himself, the review is void. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Review of a land registration team's decision should, in the first instance, be done by the Land Commission, not a court. A land commission review that is void will therefore be remanded for a new review. Wito Clan v. United Church of Christ, 8 FSM R. 116, 118 (Chk. 1997).

Once land has been declared part of a registration area, courts shall not entertain any action with regard to interests in land within that registration area without a showing of special cause why action by a court is desirable before it is likely the land commission can make a determination on the matter. Pau v. Kansou, 8 FSM R. 524, 526-27 (Chk. 1998).

When title to land in a designated registration area becomes an issue in a case involving damage claims for trespass, and there is no pending case before the land commission concerning this land or a previous final determination of ownership, a court may remand the question of ownership to the land commission to be determined within a limited time. Once ownership is determined, the court may proceed because more than an interest in land is at stake, and the land commission can only adjudicate interests in land. Pau v. Kansou, 8 FSM R. 524, 527 (Chk. 1998).

The standard required for the review of a Land Commission decision by the Chuuk State Supreme Court trial division is whether the decision of the Land Commission is supported by substantial evidence. Nakamura v. Moen Municipality, 8 FSM R. 552, 554 (Chk. S. Ct. App. 1998).

When a court case containing a count for trespass and injunctive relief raises the issue of who holds title to the land in question, the case will be transferred to the Chuuk Land Commission for adjudication of the parties' claims to ownership pursuant to its administrative procedure. Choisa v. Osia, 8 FSM R. 567, 568 (Chk. S. Ct. Tr. 1998).

Administrative agencies in the form of Registration Teams and the Land Commission are

created and an administrative procedure are provided for the purpose of determining the ownership of land and the registration thereof. Choisa v. Osia, 8 FSM R. 567, 568 (Chk. S. Ct. Tr. 1998).

When a person, who has applied for registration of land included within the boundaries of an area on which hearings are held and who, based upon his application, was, as required by 67 TTC 110, entitled to be served notice of the hearings, was not served notice of the hearings and was also not served a copy of the Determination of Ownership, there was no substantial compliance with the notice requirements specified by law. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties, and is required to post notice on the land, at the municipal office and principal meeting place at least thirty days in advance of the hearing. Failure to provide notice to an interested party is violation of due process. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

The policy reasons supporting actual notice of hearings to land claimants, as required by law, are very important. There is a substantial interest in assuring that land disputes are decided fairly because of the fundamental role that land plays in Kosrae and throughout Micronesia. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 94-95 (Kos. S. Ct. Tr. 1999).

In reviewing the Land Commission's decision, the Kosrae State Court should merely consider whether the Land Commission exceeded its constitutional or statutory authority, has conducted a fair proceeding, has properly resolved any legal issues and has reasonably assessed the evidence presented. Isaac v. Benjamin, 9 FSM R. 258, 259 (Kos. S. Ct. Tr. 1999).

It is critical that before a preliminary inquiry is conducted, the Land Commission must serve notice at least thirty days in advance of a formal hearing on any person who claims a portion of the area in dispute so that they might attend the inquiry and be heard. Notice is required because it gives a chance to be heard. Isaac v. Benjamin, 9 FSM R. 258, 259 (Kos. S. Ct. Tr. 1999).

The Land Commission is required by statute to give actual, not constructive notice for hearings to all interested parties at least thirty days in advance of the hearing. Judgments of the Land Commission are void when it has failed to serve notice as required by law. Isaac v. Benjamin, 9 FSM R. 258, 259 (Kos. S. Ct. Tr. 1999).

When the record reflects that the Kosrae State Land Commission failed to serve notice, as required by law, on the appellants for the preliminary and formal hearings on adjoining parcels to which the appellants are interested parties its failure to serve notice as required by law makes its judgments void. The Kosrae State Court will vacate and remand to the Land Commission to, as necessary, give proper notice and conduct preliminary inquiries and formal hearings and take evidence from appellants and other interested parties regarding the boundaries and issue any new Determinations of Ownership. Isaac v. Benjamin, 9 FSM R. 258, 259-60 (Kos. S. Ct. Tr. 1999).

Because a Kosrae Land Commission determination of ownership is subject to appeal to the Kosrae State Court within one hundred twenty days from the date of receipt of notice of the determination, when that time has passed and someone claims that he was never given notice

of the original Kosrae Land Commission title determination proceedings as required under KC 11.609, his remedy lies with the Kosrae State Court. If he wishes to pursue that remedy on a lack of notice basis, he must file a complaint seeking to set aside the title determinations. His remedy is not to pursue his claims either within the confines of an earlier case concerning other land, or with the Land Commission. Palik v. Henry, 9 FSM R. 309, 312 (Kos. S. Ct. Tr. 2000).

Under the Chuuk Constitution's transition clause, Trust Territory Code Title 67, which authorizes and empowers land commissions to determine the ownership of any land in its district, applies in Chuuk. In re Lot No. 014-A-21, 9 FSM R. 484, 490 (Chk. S. Ct. Tr. 1999).

A land commission may appoint one or more land registration teams and may designate the area or areas for which each team shall be responsible. Each land registration team is responsible for adjudicating claims to land within that area. In re Lot No. 014-A-21, 9 FSM R. 484, 490 (Chk. S. Ct. Tr. 1999).

Land registration teams may administer oaths to witnesses, take testimony under oath and subpoena witnesses. Once a decision is reached on any claim where a dispute has arisen, the land registration team shall include in the team's record the substance of all pertinent testimony it took. Land registration teams are to be guided by the civil procedure and evidence rules, and their determinations are subject to review by the land commission. In re Lot No. 014-A-21, 9 FSM R. 484, 490 (Chk. S. Ct. Tr. 1999).

Land registration teams may decline to adjudicate a disputed claim and instead refer it to the land commission along with any record, including the substance of all pertinent testimony, taken by the team. The land commission may then adjudicate the claim or refer it to court. In re Lot No. 014-A-21, 9 FSM R. 484, 490 n.2 (Chk. S. Ct. Tr. 1999).

The land commission, upon receipt of a land registration team adjudication and the record upon which it is based, may accept the land registration team's determination or reject it, and if it rejects the team's determination, the land commission may either remand the matter to the land registration team or itself hold further hearings and make its own determination of ownership. In re Lot No. 014-A-21, 9 FSM R. 484, 490, 492 (Chk. S. Ct. Tr. 1999).

If the land commission rejects a land registration team determination and instead holds further hearings, it may administer oaths to witnesses, take testimony under oath and subpoena witnesses, and it is to be guided by the civil procedure and evidence rules. In re Lot No. 014-A-21, 9 FSM R. 484, 490 (Chk. S. Ct. Tr. 1999).

Any aggrieved party may appeal a land commission determination of ownership at any time within 120 days from the date of determination. If it is not appealed within 120 days, then the land commission shall issue a certificate of title which is conclusive evidence of ownership of the land as to all persons who received notice of the land commission's action. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

The Chuuk State Supreme Court trial division may review decisions of an administrative agency, including the land commission. The court reviews the whole record and gives due account to the rule of prejudicial error. The court may conduct a *de novo* review of an administrative determination when the agency action was adjudicative in nature and the fact finding procedures employed by the agency were inadequate. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

A court reviewing a land commission determination must have before it a full and complete record upon which the land commission's final decision on the parties' claims was based. An agency action is subject to *de novo* review when the agency action is adjudicative in nature and its fact finding procedures are inadequate. In re Lot No. 014-A-21, 9 FSM R. 484, 492 (Chk. S. Ct. Tr. 1999).

Just as the courts in the judiciary confirm their role in society by adjudicating claims in civil matters, so to must the land commission. When a court fails to provide an adequate record of its proceedings, the role of the judiciary fails. Because claims over land are of no lesser importance than claims in civil matters, the requirement of a full and complete record applies to the land commission. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

Not only is a full and complete record of the land commission's action needed for court review, but the Trust Territory Code requires that there be a full and complete record of any land commission determinations. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

Although the land commission may appoint a land registration team to conduct hearings and adjudicate the parties' competing claims, the land registration team's determination, including the record upon which it is based, is not the final determination of ownership. Rather, it is the subsequent action of the land commission that establishes a determination of ownership and which is, in turn, subject to judicial review. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

If the land commission approves the land registration team's report, either initially or after remand for further hearings, and issues a determination, it is the land registration team's record that will be subject to judicial review. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

When the land commission conducts its own hearings and reaches a determination of ownership, it must be based upon the record from the land registration team along with the record from the land commission's hearings. In re Lot No. 014-A-21, 9 FSM R. 484, 493 (Chk. S. Ct. Tr. 1999).

When the land commission has made a determination that results in a reversal of a land registration team's earlier determination, the record must also include an adequate basis supporting the land commission rationale for rejecting the land registration team's earlier findings. The absence of such information in the record gives the appearance that the land commission has acted arbitrarily in reaching its determination and has employed inadequate fact finding procedures. In re Lot No. 014-A-21, 9 FSM R. 484, 494 (Chk. S. Ct. Tr. 1999).

Without a full and complete record of the land commission's determination, a reviewing court cannot conduct a fair and meaningful review of the land commission's actions. In re Lot No. 014-A-21, 9 FSM R. 484, 494 (Chk. S. Ct. Tr. 1999).

When the land commission's determination provides no explanation as to why it apparently rejected the land registration team's determination or how it reached its own determination, when the absence of a complete record makes it impossible for the court to review the land commission's determination, and when even if the court were to review the matter giving due regard for the rule of prejudicial error, the land commission's decision would be set aside for its failure to observe procedures required by the Trust Territory Code, the court, given the land

commission's failure to prepare a complete record and the time elapsed, will conduct a *de novo* review of the land commission action. In re Lot No. 014-A-21, 9 FSM R. 484, 494-95 (Chk. S. Ct. Tr. 1999).

The Chuuk State Supreme Court will not set aside a Land Commission determination on the ground that members of the land registration team were not residents of Weno when that issue was not raised and argued before the Land Commission. O'Sonis v. Sana, 9 FSM R. 501, 502 (Chk. S. Ct. Tr. 2000).

Jurisdiction of the Chuuk State Supreme Court trial division in appeals from the Land Commission is limited to a review of the Land Commission record and is not a trial de novo. O'Sonis v. Sana, 9 FSM R. 501, 502-03 (Chk. S. Ct. Tr. 2000).

Determination of land ownership rests primarily with the Land Commission. After a designation of any registration area has been filed, a court will entertain only those land title cases where there is a showing of special cause why action by a court is desirable. Simina v. Rayphand, 9 FSM R. 508, 509 (Chk. S. Ct. Tr. 2000).

Because a court is without jurisdiction to entertain an action asserting an interest in land located within a designated registration area and because all such actions must first be filed with the Chuuk State Land Commission, a quiet title action filed in the Chuuk State Supreme Court will be transferred to the Land Commission for consideration of ownership. Simina v. Rayphand, 9 FSM R. 508, 509 (Chk. S. Ct. Tr. 2000).

One method to claim an interest in a parcel is to file a written claim with the Land Commission before the hearing. A verbal claim is invalid. Jonas v. Paulino, 9 FSM R. 513, 516 (Kos. S. Ct. Tr. 2000).

It is the claimant's duty to submit a written claim to the Land Commission. The Land Commission does not have any statutory obligation to write down a claimant's verbal claim. Jonas v. Paulino, 9 FSM R. 519, 521 (Kos. S. Ct. Tr. 2000).

The court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Nena v. Heirs of Melander, 9 FSM R. 523, 524-25 (Kos. S. Ct. Tr. 2000).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice to an interested party is violation of due process. Nena v. Heirs of Melander, 9 FSM R. 523, 525 (Kos. S. Ct. Tr. 2000).

The registration team is required to serve actual notice of the hearing upon all parties shown by the preliminary inquiry to have an interest in the parcel either by personal service or registered air mail. It is also required to serve actual notice of a determination of ownership upon all persons shown to have an interest in the parcel. Nena v. Heirs of Melander, 9 FSM R. 523, 525 (Kos. S. Ct. Tr. 2000).

When the land commission voids one person's certificate of title and issues a new certificate of title covering the same land to another person without notice to the first person and affording

the first person an opportunity to be heard, it is a denial of due process and the certificates of title will be vacated and the case remanded to the land commission to conduct the statutorily-required hearings. Enlet v. Chee Young Family Store, 9 FSM R. 563, 564-65 (Chk. S. Ct. Tr. 2000).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Anton v. Heirs of Shrew, 10 FSM R. 162, 164 (Kos. S. Ct. Tr. 2001).

On appeal the Kosrae State Court should not substitute its judgment for those well-founded findings of the Land Commission because it is primarily the task of the Land Commission, and not the reviewing court, to assess the witnesses' credibility and resolve factual disputes, since it is the Land Commission, and not the court, who is present during the testimony. Therefore, the Kosrae State Court should review the Land Commission record and determine whether the Land Commission reasonably assessed the evidence presented, with respect to factual issues. Anton v. Heirs of Shrew, 10 FSM R. 162, 164 (Kos. S. Ct. Tr. 2001).

A Land Commission opinion must reflect a proper resolution of the legal issues. If it does not, the decision must be set aside. Anton v. Heirs of Shrew, 10 FSM R. 162, 164 (Kos. S. Ct. Tr. 2001).

When the Land Commission reasonably assessed the evidence with respect to who owned the land, its findings are not clearly erroneous, and when those findings are that Ittu never took back ownership of the land, the Land Commission did not reach the issue of applying Kosrae tradition and thus properly resolved that legal issue and did not exceed its constitutional authority. That Land Commission decision will be affirmed. Anton v. Heirs of Shrew, 10 FSM R. 162, 165 (Kos. S. Ct. Tr. 2001).

When a person who has asserted a claim to land was not given notice of the registration proceedings as required by law, the Determination of Ownership for that land is not conclusive as upon him. Kun v. Kilafwakun, 10 FSM R. 214, 216 (Kos. S. Ct. Tr. 2001).

When a person had asserted a claim to a parcel and was identified as a claimant early in the Land Commission proceedings and also testified in support of his boundary dispute at several hearings, but was not served notice of the formal hearing and was also not served a copy of the Determination of Ownership for the parcel, the Determination of Ownership for the parcel is not conclusive upon him. Kun v. Kilafwakun, 10 FSM R. 214, 216 (Kos. S. Ct. Tr. 2001).

In land cases, statutory notice requirements must be followed. Personal service of the notice of hearing and the Determination of Ownership upon all parties shown by the preliminary inquiry to have an interest in the parcel is required. Failure to serve actual notice on a claimant is a denial of due process and violation of law, which will cause a Determination of Ownership to be set aside as void, and the case remanded to the Land Commission to hold the formal hearings and to issue the determination of ownership for that parcel. Kun v. Kilafwakun, 10 FSM R. 214, 216 (Kos. S. Ct. Tr. 2001).

Under the Chuuk Constitution, article VII, § 3(c), the Chuuk State Supreme Court has only

appellate or review jurisdiction over the Land Commission, and thus a motion for review de novo of matters not raised before the Land Commission must be denied. Enengeitaw Clan v. Shirai, 10 FSM R. 309, 311 (Chk. S. Ct. Tr. 2001).

The Kosrae State Court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

The Land Commission does not conduct a fair proceeding when it issues a determination of ownership without compliance with statutory notice requirements. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice to an interested party is violation of due process. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

The registration team is required to service actual notice of the hearing, either by personal service or registered air mail, upon all parties shown by the preliminary inquiry to have an interest in the parcel, and is also required to serve actual notice of a determination of ownership upon all persons shown to have an interest in the parcel. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

When the land registration team was informed at the preliminary inquiry that someone was an interested party due to his boundary dispute, but the land registration team failed to serve him actual notice of the formal hearing and the determination of ownership issued for the parcel, there was no substantial compliance with the notice requirements specified by law, and due to the violations of the statutory notice requirement, the determinations of ownership for both adjoining parcels must be set aside as void and remanded to the Land Commission. Nena v. Heirs of Melander, 10 FSM R. 362, 364 (Kos. S. Ct. Tr. 2001).

Once land has been declared part of a registration area a court cannot entertain any action with regard to interests in land within that registration area without a showing of special cause why court action is desirable before it is likely a determination can be made on the matter by the land commission. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 369 (Chk. 2001).

Boundary determination in designated registration areas is a statutory function of the Land Commission. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

When the plaintiffs have not shown any special cause why action by a court is desirable before the land commission can determine the boundary between the plaintiffs' and the defendants' land and when there is a case pending before the Land Commission concerning the land, the issue of the land's boundaries will be remanded to the Land Commission. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

Under the doctrine of primary jurisdiction it is for the Land Commission, not the court, to decide land boundaries, and the Land Commission must be given the chance to conclude its

administrative process. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

Adjudicatory decisions of governmental bodies affecting property rights are subject to the procedural due process requirements of the Constitution. Due process requirements are applicable to the proceedings of the Kosrae Land Commission. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 447 (Kos. S. Ct. Tr. 2001).

When a party was not given an opportunity to comment or rebut the evidence presented by the adverse claimants at the formal Land Commission hearing, and was not given an opportunity to cross examine adverse witnesses or an opportunity to present his own testimony to rebut adverse claims, this procedural failure is a violation of the due process protection provided by the Kosrae Constitution; and the issued determination of ownership will be set aside, and held null and void and the matter remanded to the Land Commission. Ittu v. Heirs of Mongkeya, 10 FSM R. 446, 448 (Kos. S. Ct. Tr. 2001).

When the Senior Land Commissioner failed to disqualify himself after the parcel was recorded for adjudication, took part in the hearing and consideration of the parcel by appointing the two pro-tempore members of the registration team, and failed to disqualify himself from the matter until after the two Associate Land Commissioners had concurred on the findings and decision, awarding ownership of the parcel to his family, his actions violated Kosrae State Code, Section 11.602 and the due process protection provided by the Kosrae Constitution. Langu v. Heirs of Jonas, 10 FSM R. 547, 549 (Kos. S. Ct. Tr. 2002).

Due process demands impartiality on the part of adjudicators, such as land commissioners. Langu v. Heirs of Jonas, 10 FSM R. 547, 549 (Kos. S. Ct. Tr. 2002).

It is a land commissioner's duty to disqualify himself when necessary, as soon as the commissioner is aware of the grounds for his disqualification. Langu v. Heirs of Jonas, 10 FSM R. 547, 549-50 (Kos. S. Ct. Tr. 2002).

When there has been a violation of law or a denial of due process, a determination of ownership must be vacated and the matter remanded for further proceedings. Land Commission judgments are void when the Land Commission has failed to follow the requirements of the law. Langu v. Heirs of Jonas, 10 FSM R. 547, 550 (Kos. S. Ct. Tr. 2002).

When the Land Commission has not served an interested party statutory notice, the law is clear. Determinations of ownership and certificates of title have been held void and vacated when proper notice was not given pursuant to statute. Actual notice by personal service to an interested party is required. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 174 (Kos. S. Ct. Tr. 2002).

When an interested party was never served proper statutory notice of the formal hearings or Determinations of Ownership issued for the land in question, the 120-day appeal period never began to run and has never expired. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 174 (Kos. S. Ct. Tr. 2002).

The twenty year statute of limitation does not apply to claims against the Land Commission for violation of due process, violation of statute and for failure to apply an earlier judgment as they are not claims for the recovery of land. These claims are subject to a limitations period of

six years and are barred by the statute of limitations and will be dismissed when the Land Commission actions all occurred more than six years ago. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 169, 175 (Kos. S. Ct. Tr. 2002).

The law is clear when the Land Commission knew of a civil action judgment and that a person was a claimant and interested party for the parcels, which were the subject of the judgment and later the subject of Land Commission proceedings, but that person was not served personal notice of the formal hearings or the Determinations of Ownership for the parcels. Pursuant to established precedent, Determinations of Ownership and Certificates of Title will be held void and vacated when proper notice was not given pursuant to statute. Actual notice to an interested party is required by personal service. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 246, 248 (Kos. S. Ct. Tr. 2002).

The law does not require notice to potential adverse claimants in completing the preliminary inquiry. The preliminary inquiry's purpose was to record all claims for a parcel, so that the claimants would be on record and would then be notified of the formal hearing. Heirs of Henry v. Palik, 11 FSM R. 419, 422 (Kos. S. Ct. Tr. 2003).

The Land Commission may withdraw a disputed claim from a registration team. If that withdrawal takes place, then the Land Commissioners must hold the hearing, hear the evidence and make an adjudication. Heirs of Henry v. Palik, 11 FSM R. 419, 422 (Kos. S. Ct. Tr. 2003).

When testimony presented at the first formal hearing was not heard by the full panel of adjudicators due to a Land Commissioner's late disqualification and the addition of temporary adjudicators, only one person of the adjudication panel heard that testimony. This resulted in a due process violation because the testimony was not heard by the full adjudication panel when the acting replacement commissioners did not hear the testimony, yet they participated in the findings of fact, opinion and decision. The Land Commission exceeded it constitutional and statutory authority by the adjudication panel's failure to hear all the evidence presented at the hearings. Heirs of Henry v. Palik, 11 FSM R. 419, 422 (Kos. S. Ct. Tr. 2003).

When the Land Commission has not followed statutory requirements for the formal hearings and there was no substantial compliance with the requirements specified by law, the Kosrae State Court must set aside the Determination of Ownership as void and remanded to Kosrae Land Court for further proceedings. Heirs of Henry v. Palik, 11 FSM R. 419, 423 (Kos. S. Ct. Tr. 2003).

The Land Commission is required by statute to give actual, and not constructive notice for hearings to all interested parties. Failure to provide notice as required by law to an interested party is violation of due process. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

The registration team is required to serve actual notice of the hearing upon all parties shown to have an interest in the parcel either by personal service or registered air mail. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

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 no detailed findings of fact are included either in the Land Commission Registration Team's two decisions or in the full Land Commission's one decision; when the full Land Commission gave no reason for reversing the Registration Team's determinations and supports its decision with nothing but a mere conclusion; when the newly-discovered Land Commission hearing transcripts do not assist the court in determining how the Land Commission reached its decision; and when there is no indication in the Land Commission record that witness testimony was taken under oath, or that the admitted exhibits were properly authenticated and identified and the exhibits were not contained within the record, there was no basis for the court to review the Land Commission's actions, and a trial de novo was necessary. In re Lot No. 014-A-21, 11 FSM R. 582, 589 (Chk. S. Ct. Tr. 2003).

De novo review is appropriate when reviewing an administrative hearing when the action is adjudicative in nature and the fact finding procedures employed by the agency are inadequate. In re Lot No. 014-A-21, 11 FSM R. 582, 589 (Chk. S. Ct. Tr. 2003).

Since the Land Commission only has authority to issue a certificate of title after the time for appeal from a Land Commission determination of ownership has expired without any notice of appeal having been filed, when a notice of appeal was timely filed with the Chuuk State Supreme Court and the appellee had notice of the appeal, she is precluded from using the certificate of title against the appellant, and its issuance has no conclusive effect because once a notice of appeal had been filed, the Land Commission acted ultra vires, or outside of its authority, when it issued the certificate of title. The certificate is thus void. In re Lot No. 014-A-21, 11 FSM R. 582, 590 (Chk. S. Ct. Tr. 2003).

Where the provisions of former Kosrae State Code, Title 11, Chapter 6, were applicable to the Land Commission proceedings now on appeal, the court will apply the provisions of former Kosrae State Code, Title 11, Chapter (repealed) to its review of the Land Commission's procedure and decision in the matter. Tulenkun v. Abraham, 12 FSM R. 13, 15-16 (Kos. S. Ct. Tr. 2003).

The court, in reviewing the Land Commission's procedure and decision, should consider whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Tulenkun v. Abraham, 12 FSM R. 13, 16 (Kos. S. Ct. Tr. 2003).

When the determined parcels' boundaries are clear by either permanent markers or by readily recognizable natural features, the Land Commission is not required to give written notice to the claimants before planting monuments. The planting of monuments is an administrative task and is completed pursuant to the Land Commission's instructions. The Division of Survey's planting of monuments, by itself, does not establish boundaries for purposes of an appeal. Tulenkun v. Abraham, 12 FSM R. 13, 16 (Kos. S. Ct. Tr. 2003).

When the Land Commission did not exceed its constitutional or statutory authority, and did conduct a fair proceeding for determination of title, there was no violation of state law and no violation of constitutional and statutory due process based upon the Land Commission's failure to notify the appellant in writing of the planting of monuments. Tulenkun v. Abraham, 12 FSM

R. 13, 16 (Kos. S. Ct. Tr. 2003).

The Kosrae State Court, on appeal, will not substitute its judgment for the Land Commission's well-founded evidentiary findings. An appellate court will not reweigh the evidence presented at the hearing. When the court, in reviewing the Land Commission's record and decision in a matter, concludes that the Commission has reasonably assessed the evidence presented regarding the parcel's size, the Land Commission's factual finding of the parcel's size is adequately supported by substantial evidence in the record, and its findings of fact are not clearly erroneous and will not be disturbed on appeal. Tulenkun v. Abraham, 12 FSM R. 13, 17 (Kos. S. Ct. Tr. 2003).

If the land registration team deems that consideration of a disputed claim will seriously interfere with accomplishment of the purpose of land registration, it may refer the claim to the Land Commission without the team's making any decision thereon and if a Land Commission deems that a team is spending an undesirable amount of time on a particular disputed claim, it may withdraw that claim from the team's consideration. In either of these situations, the Land Commission may then proceed itself to hear the parties and witnesses and make a determination on the claim or it may refer the claim to Chuuk State Supreme Court trial division for adjudication without any determination by the Commission. Chuuk v. Ernist Family, 12 FSM R. 154, 158 (Chk. S. Ct. Tr. 2003).

While ordinarily the court does not have jurisdiction over claims arising in land registration areas subject to the Land Commission's jurisdiction, an exception is that whenever the Land Commission, in its discretion, makes either of the determinations set forth in 67 TTC 108(1) or (2), it may refer the claim to the Chuuk State Supreme Court trial division for adjudication without itself making any determination. The statute thus expressly confers jurisdiction on the court upon a matter's referral from the Land Commission whenever cause appears pursuant to 67 TTC 108(1) or (2). The "special cause" is established by the statute, and the trial division clearly has jurisdiction if the circumstances meet the statute's requirements. Chuuk v. Ernist Family, 12 FSM R. 154, 159 (Chk. S. Ct. Tr. 2003).

In order for the Land Commission to exercise its discretion pursuant to statute and send a dispute to the trial division, either the land registration team must conclude that the dispute is interfering with the purpose of the law, and send the dispute to the Land Commission, or the Land Commission must determine that the land registration team is spending too much time on a particular dispute, and take control over the dispute from the land registration team. Chuuk v. Ernist Family, 12 FSM R. 154, 159 (Chk. S. Ct. Tr. 2003).

The Land Commission's decision to refer a dispute to the court was not arbitrary and capricious when the land registration team failed to resolve the dispute over the twenty-eight years since the first claim to the land was presented and when the Land Commission's request for transfer recited the problems in resolving the dispute and the lack of sufficient Land Commissioners (due to disqualification) to render a decision. Chuuk v. Ernist Family, 12 FSM R. 154, 160 (Chk. S. Ct. Tr. 2003).

In an appeal from a Land Commission determination of ownership, the reviewing court will apply the clearly erroneous standard of review. If the agency decision is a considered judgment, arrived at on the basis of a full record and careful reflection, the court is more likely to rely on the agency's knowledge and judgment and to restrict the scope of review. Chuuk v. Ernist Family, 12 FSM R. 154, 160 (Chk. S. Ct. Tr. 2003).

The Land Commission has primary jurisdiction to determine and register land titles. Once an area has been designated as a land registration area, courts cannot entertain any action regarding land titles in that area unless special cause has been shown. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

The statute authorizes only the Land Commission to declare a land registration area. No authority has been identified that would permit a court to designate a land registration area, or to order the Land Commission to designate one. The statute leaves that to the Land Commission's discretion based upon its determination of desirability and practicability, which is uniquely within its expertise and authority to make. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

While the Land Commission has the statutory authority to determine and register land titles, whether the Land Commission has the legal authority and the technical ability to determine, survey, and register tidelands is an unanswered question. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

The 120-day statutory time limit to appeal from the Kosrae Land Commission to the Kosrae State Court is jurisdictional because deadlines set by statute, especially deadlines to appeal including those from administrative agency decisions, are generally jurisdictional. Anton v. Heirs of Shrew, 12 FSM R. 274, 278 (App. 2003).

An assertion that a Land Commission decision was tainted and a party denied due process because various members of the Land Commission and Land Registration Team were close relatives of the appellee or the appellee's wife is a serious allegation that, if true, would usually be enough to vacate the decision and remand the case to the Land Court for new proceedings with a new determination to be made by impartial adjudicators. Anton v. Cornelius, 12 FSM R. 280, 284 (App. 2003).

Since the Kosrae State Court has not been shy in vacating and remanding Land Commission decisions for due process violations, including involvement of commissioners who should have disqualified themselves, Kosrae's social configuration should not prevent an appellant from timely raising the issue of disqualification of persons in the Land Commission proceedings. Anton v. Cornelius, 12 FSM R. 280, 285 (App. 2003).

The Kosrae State Court must hear an appeal from the Land Commission on the record unless it finds good cause exists for a trial of the matter. The Land Commission's failure to follow the Kosrae Rules of Evidence does not constitute good cause for a trial *de novo* because those rules do not apply in the Land Commission. Anton v. Cornelius, 12 FSM R. 280, 286 (App. 2003).

That the Land Commission did not properly consider certain evidence, is an issue the Kosrae State Court may properly consider under its standard of review without the need for a trial *de novo*, and, if the appellant should prevail, it can order a remand. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

The statute contemplates that judicial review of a Land Commission appeal would be the norm and that a trial *de novo* would be held only in the uncommon event that the Kosrae State Court had found good cause for one. When that court did not, and when there has been no

showing that would warrant a conclusion of good cause, the Kosrae State Court has not abused its discretion by not holding a trial *de novo*. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

The Kosrae State Court, in reviewing Land Commission appeals, properly uses the following standard of review – it considers whether the Commission: a) has exceeded its constitutional or statutory authority, b) has conducted a fair proceeding, c) has properly resolved any legal issues, and d) has reasonably assessed the evidence presented. Under this standard, that court cannot substitute its judgment for the Land Commission's well-founded findings, but questions of law are reserved to it. Anton v. Cornelius, 12 FSM R. 280, 287 (App. 2003).

It violates due process for the Land Commission to hold a hearing and adjudicate ownership of a parcel of land without giving notice to a party with a demonstrated interest in that land. George v. Nena, 12 FSM R. 310, 316 (App. 2004).

When title to land in a designated registration area becomes an issue in a case involving damage claims for trespass, a court may remand the question of ownership to the land commission to be determined within a limited time. Once the land commission has determined ownership, the court may proceed because more than an interest in land is at stake, and the land commission can only adjudicate interests in land. Kiniol v. Kansou, 12 FSM R. 335, 336 (Chk. 2004).

When the plaintiffs have not shown any special cause why court action is desirable before the land commission can determine the boundary between the plaintiffs' and the defendants' land, the issue of the land's boundaries will be remanded to the land commission. Kiniol v. Kansou, 12 FSM R. 335, 336 (Chk. 2004).

When the issue of the location of the boundary between the plaintiffs' land and the defendant's land is remanded to the Chuuk Land Commission, the owner of the tower on the land with the defendant's permission is not a party to the remanded Land Commission proceedings as that proceeding only concerns title, not trespass to or possession of, land. But it remains a party to the trespass action in court. Kiniol v. Kansou, 12 FSM R. 335, 337 (Chk. 2004).

A default judgment must be vacated when the Chuuk State Supreme Court never had jurisdiction over the action to determine ownership of real property in the first place because, despite being framed as a declaratory relief action, the case sought a determination of ownership of land lying within a land registration area and only the Land Commission has jurisdiction to determine ownership of land within a land registration area. Hartman v. Chuuk, 12 FSM R. 388, 398-99 (Chk. S. Ct. Tr. 2004).

When someone offers no evidence of irregularity in the Land Commission proceedings and no evidence that her father (through whom she claims the land) was deprived in some way of participating in the proceedings, and when, to the contrary, documents establish that the Land Commission followed all statutory requirements regarding notice of the proceedings involving the land, any action taken thereafter must be conclusively presumed valid. Hartman v. Chuuk, 12 FSM R. 388, 400 (Chk. S. Ct. Tr. 2004).

Questions regarding interests in land must be raised before the Land Commission. The Chuuk State Supreme Court has no jurisdiction to hear or decide such claims. The court can only refer the matter to the Land Commission, so that the Land Commission can resolve the dispute. Hartman v. Chuuk, 12 FSM R. 388, 401-02 (Chk. S. Ct. Tr. 2004).

A Land Commission determination of ownership is subject to appeal to the Kosrae State Court within 120 days from the date of receipt of notice of the determination. If the determination was not received, then the appeal time limit of 120 days never began to run. Kinere v. Kosrae Land Comm'n, 13 FSM R. 78, 80 (Kos. S. Ct. Tr. 2004).

When a partial transcript's inclusion in the record for a parcel infers the Land Commission's reliance upon that transcript in making its Determination of Ownership for that parcel and when the partial transcript contains evidence that was not properly before the Land Commission because the appellants were not provided statutory notice of that hearing, and were not provided an opportunity to participate in the hearing and cross-examine a witness on his testimony regarding the parcel, the Land Commission did not conduct a fair proceeding because it did not comply with statutory notice requirements and because it considered evidence not properly before the Commission. Heirs of Wakap v. Heirs of Obet, 13 FSM R. 418, 420 (Kos. S. Ct. Tr. 2005).

When title to land in a designated registration area or its boundaries becomes an issue in a trespass case, a court may remand the ownership question to the Land Commission for it to determine within a limited time. If no special cause has been shown why court action is desirable before the Land Commission can make its boundary determination, the boundary issue should be remanded to the Land Commission. Once the Land Commission has determined ownership or boundaries, the court may proceed when more than an interest in land is at stake, and the Land Commission can only adjudicate interests in land. Kiniol v. Kansou, 13 FSM R. 456, 458 (Chk. 2005).

Determination of property boundaries is generally the responsibility of the state land commission because under the primary jurisdiction doctrine it is for the Land Commission, not the court, to decide land boundaries, and the Land Commission must be given the chance to conclude its administrative process. Kiniol v. Kansou, 13 FSM R. 456, 459 (Chk. 2005).

When the plaintiffs have not shown that the Land Commission committed an error of law or that its findings lacked a substantial factual basis, the court will accept the Land Commission's finding that no part of the tower is on the plaintiffs' property. Kiniol v. Kansou, 13 FSM R. 456, 459 (Chk. 2005).

The Kosrae State Land Commission was never a court nor an instrumentality of the Kosrae state judiciary. Isaac v. Saimon, 14 FSM R. 33, 36 (Kos. S. Ct. Tr. 2006).

A six years' statute of limitations applies to all claims to which neither the specific twenty-year, or two-year statutes, apply. Claims against the Land Commission for violation of due process, as they are not claims for the recovery of land (twenty-year statute of limitation), are subject to a six-year limitations period and are barred and will be dismissed when the Land Commission actions are all over six years old since a complaint against the Land Commission cannot assert a claim for the recovery of an interest in land against the defendant Land Commission because it does not own any interest in the land at issue. Dereas v. Eas, 14 FSM R. 446, 456 n.5 (Chk. S. Ct. Tr. 2006).

The Land Court took over the Land Commission's responsibilities and is required by statute to give effect to determinations issued by the Land Commission. It does not have the discretion to ignore a Land Commission determination because it is handwritten or because it has not yet been served on the parties. The Land Court's duty is to take over, or "succeed" to the Land Commission's responsibilities, not re-hear matters previously decided by it. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

In reviewing a Land Commission decision, the Kosrae State Court considers whether the Land Commission exceeded its constitutional or statutory authority, has conducted a fair proceeding, has properly resolved any legal issues, and has reasonably assessed the evidence presented. Heirs of Tara v. Heirs of Kurr, 14 FSM R. 521, 525 (Kos. S. Ct. Tr. 2007).

When creating the Land Court, the Kosrae Legislature provided for the transition of cases from the Land Commission to the Land Court and the Land Court succeeded to all Land Commission responsibilities, registers, properties and assets and Land Commission land determinations and registrations are equivalent to Land Court title determinations and registrations. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 558 (Kos. S. Ct. Tr. 2007).

Since The Land Court took over the Land Commission's responsibilities and is required by statute to give effect to Land Commission determinations, it does not have the discretion to ignore a Land Commission determination even when the Commissioners signed an adjudication to indicate their decision rather than issue a separate document. The Land Court does not have the discretion to ignore a Land Commission determination because it has not yet been served on the parties. The Land Court's duty is to take over, or "succeed" the Land Commission's responsibilities, not re-hear matters previously decided by them. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 559 (Kos. S. Ct. Tr. 2007).

That the Land Commission determination was not timely served on the parties since it was signed in 1990 and not served until the Land Court took action to complete the matter in January 2006, is not a ground to set aside the determination or to ignore the record made by the Land Commission because Kosrae Code § 11.616 requires that the Land Court treat the Land Commission's determinations as equivalent to its own determinations and there is no language setting a time restriction on this requirement. Despite the extended delay in service, the Land Court correctly gave force and effect to the Land Commission's determination. Heirs of George v. Heirs of Dizon, 14 FSM R. 556, 559 (Kos. S. Ct. Tr. 2007).

Courts have no jurisdiction to hear cases with regard to interests in land in land registration areas unless there has been a showing of special cause, and a finding by the court, that action by a court is desirable or the Land Commission has asked the court to assume jurisdiction without the Land Commission having made a determination. Mathias v. Engichy, 15 FSM R. 90, 95 (Chk. S. Ct. App. 2007).

A trial court can determine no more than who among the parties before it has a better claim to title or in the case of trespass, possession. A court cannot determine who has title good against the world. Land registration (determination of title presumptively good against the world) is the province of the Land Commission and its procedures, not of a court. Ruben v. Hartman, 15 FSM R. 100, 112 (Chk. S. Ct. App. 2007).

Since the trial court stated that it was using a "clearly erroneous" standard of review on the Land Commission's findings, it would have had to examine, as one of the three possible ways to

satisfy the clearly erroneous standard, whether the Land Commission decision was supported by substantial evidence in the record, the standard that the statute requires. Thus, although it may not have correctly named the standard, the trial court did use the proper standard of review as part of its review. Nakamura v. Moen Municipality, 15 FSM R. 213, 217 (Chk. S. Ct. App. 2007).

When the matter is remanded to the trial court for it to rule on whether the lineage members consented or acquiesced to the sale of the land in question and if the trial court is unable to determine whether the requisite consent or acquiescence was shown in the Land Commission proceeding or determines that the record is inadequate to make that determination, the trial court shall then remand the matter to the Land Commission for it to make further findings of fact on whether such consent or acquiescence or ratification was made. The Land Commission may rely on the record and transcript and may take further evidence if it is necessary to make the inquiry. Nakamura v. Moen Municipality, 15 FSM R. 213, 219 (Chk. S. Ct. App. 2007).

The Land Commission is vested with the authority to register land. The Commission's statutory powers and duties include designating land to be registered, surveying the land and establishing boundaries, and determining title and adjudicating disputed claims through investigation, notice, and public hearings. Mori v. Haruo, 15 FSM R. 468, 471 (Chk. S. Ct. App. 2008).

Adjoining landowners, even if not claimants, would, because of their common boundaries, be interested parties, along with anyone else who holds some interest in the land, such as a mortgagee, an easement holder, or a holder of a covenant running with the land. But even if the adjoining landowners were not interested parties, Land Court notice to them is not contrary to law. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Because of the conclusive nature of a certificate of title, the Land Court should give the adjoining landowners notice of the formal hearing so that the resulting boundaries will be conclusive against them. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Notice of land registration hearings must be given to the public in general. The hearings are public, and anyone may attend. Land Court proceedings are not ones which only the known claimants may attend. One purpose of public notice at various stages of the registration process is to reach as many persons as possible so that, at the end, the certificate of title will be conclusive against as many persons as possible, which is to the certificate holder's considerable benefit. The statute requiring that actual notice be given to claimants, is a minimum requirement, not the maximum permissible. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

The Kosrae Land Assessor must prepare one or more preliminary sketches clearly marking the land and the boundaries claimed by each claimant, and a qualified surveyor must make a survey based on the preliminary sketch, do the survey, and prepare a preliminary map, which the Land Assessor is required to post the preliminary map so that it will be visible to the presiding judge and any witness on the witness stand. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

Once a new claim arose, the other claimants were entitled to notice of it and to have a preliminary map showing the claims in dispute posted during a formal hearing. Due process requires that the new claim be surveyed, a new preliminary map prepared showing the

overlapping claims, and a new, or second, formal hearing held with the new preliminary map posted. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

The process due to land claimants under the Kosrae Land Court Rules requires that a preliminary map showing all claims be posted at a formal hearing so that the presiding judge and the witnesses can view it and the claimants have an opportunity to be heard on any disputes. When the Land Court based its decision on a map prepared long after the formal hearing and on which the appellants had no opportunity to comment and no map showing the overlapping claims was available at the hearing, a second formal hearing should have been held once the new (second) preliminary map was prepared showing both sides' claims. The matter will therefore be remanded to the Land Court for that court to hold another formal hearing at which a map showing all the claimed boundaries must be posted and at which the parties will have the opportunity to be heard on the matter of the overlapping claims and the two preliminary maps and for which the Land Court will give actual notice to all claimants and to all interested parties. Interested parties shall be interpreted to include the adjoining landowners. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 573 (App. 2008).

Claims against the Land Commission for negligence, violation of due process and failing to apply statutes are actions against the government which fall within the limitations period of six years. Allen v. Allen, 15 FSM R. 613, 619 (Kos. S. Ct. Tr. 2008).

The Kosrae Land Court is statutorily created as an inferior court within the State Court. It was created for specific purposes – title investigation, title determination, and the registration of interests in lands within Kosrae and to provide one system of filing all recorded interests in land. Thus, it is a court granted specific, limited jurisdiction. It is not a court of general jurisdiction. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

Equitable relief is not generally necessary for a court to resolve disputes relating to title because establishment of title is available by law. This is true for the Kosrae Land Court. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662 (Kos. S. Ct. Tr. 2008).

Common law, or case law, and statutes provide the basis for Land Court orders, in other words, a complete and adequate remedy. The Legislature established the Land Court's authority to hear and decide title determinations. Statutes require that Land Court decisions not be contrary to law and must be based on substantial evidence. Case law guides the Land Court on what constitutes substantial evidence to support a decision; this is legal precedent. The Land Court must establish title based on substantial evidence by considering the testimony and record before it. There is no need to resort to equitable jurisdiction to make a title determination. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662-63 (Kos. S. Ct. Tr. 2008).

The Land Commission's statutory powers and duties include designating land to be registered, surveying the land and establishing boundaries, and determining title and adjudicating disputed claims through investigation, notice, and public hearings. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

The Land Court's "subdivision" of land was not reversible error nor was it arbitrary when the original 1982 Land Commission determination of ownership explicitly divided the unsurveyed part of the land in its determination and since this division recognized the different history (with

different evidence) for the two parts. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 375-76 (Kos. S. Ct. Tr. 2009).

There was no reversible error when the parties certainly had adequate notice of a "subdivision" before the October 18, 2005 Land Court hearing since they knew of it before the 2003 appeal and the 2005 remand and hearing; when one side's assertion that they were not "given the chance to stake out their claims" before the land was subdivided would be a cause of concern if they had claimed less than the entire land, but they claimed the whole unsurveyed land, as did the other side; and since, if the Land Commission erred, it was harmless error because neither side can show that they were prejudiced by this "subdivision" and both sides had the opportunity to assert and to prove their respective claims to both parcels and because the "subdivision" did not prevent or hinder either side from claiming, and trying to prove, that they had title to both parcels. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 376 (Kos. S. Ct. Tr. 2009).

A court instruction to the Land Commission to take further action consistent with its decision, including a preliminary survey, and such preliminary and formal hearings as might be necessary to make a determination of ownership, would not be necessary on remand if all that Land Commission was required to do was issue a determination of ownership in a calmant's favor with a certificate of title to follow. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 376 (Kos. S. Ct. Tr. 2009).

Since a determination of ownership for the unsurveyed portion of Yekula was not before the court when it rendered its 1997 decision on the other parcels involved in the dispute between the claimants, the State Court's 1997 instructions to Land Commission about Yekula can only be considered further guidance (beyond and in addition to that given in 1988) to the Land Commission on how it ought to proceed in resolving the remainder of the dispute. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 368, 376-77 (Kos. S. Ct. Tr. 2009).

Even if the Land Commission thinks it is only correcting its own error, due process still requires that it give notice and an opportunity to be heard to any party which the "correction" might appear to adversely affect. Although the Land Commission may think it is only correcting its own error, it is always possible that its "correction" could be an error. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 554 (Chk. S. Ct. App. 2009).

When an owner of any interest in registered land dies, the Land Commission's duty is to cancel the original and duplicate certificates and issue new ones in the name(s) of the decedent's devisees or heirs. A certificate of title cannot be issued in the name of a person already deceased. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 555 (Chk. S. Ct. App. 2009).

When the owner of registered land is deceased, it is the Land Commission's statutory responsibility to make a determination of the devisee or devisees or heir or heirs and the interests or respective interests to which each are entitled, and, to make this determination, the Land Commission must conduct a hearing at which evidence shall be heard for the purpose of determining the heir or heirs or devisee or devisees entitled to the decedent's land. Proper notice must be given for the hearing, and within 30 days after the hearing's conclusion, the Land Commission should issue its finding as to the heir or heirs or devisee or devisees and the respective interest or interests to which each are entitled. Once the Land Commission has issued its determination, it cannot issue any certificates of title unless and until after one

hundred twenty days – the time to appeal – has passed, and only then, if the 120 days have passed without an appeal or if an appeal has been taken and decided, can the Land Commission issue certificates of title. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 555 (Chk. S. Ct. App. 2009).

A suit against the Land Commission (or successor institution) cannot end with a land title transferred to a successful plaintiff. Only a successful suit against the current titleholder, a necessary and indispensable party to any suit over title, could result in the transfer of the land title to the successful plaintiff although a successful suit against a Land Commission might result in a money damages award. Allen v. Allen, 17 FSM R. 35, 40 (App. 2010).

Determination of a land's exact boundaries, certification of a survey map for the area, and the issuance of a certificate of title for the land, are all acts that a court is legally unable to do when the court would need before it all the current owners of the part of the land not claimed by the plaintiff, all owners of all property abutting the land's purported boundaries, and any other landowners in the vicinity whose property or property lines would have to appear on a certified survey map for the land and when none of these necessary parties, with the exception of the defendant are before the court and because the court cannot make rulings that would affect or determine their rights without their presence or participation. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 233 (Chk. 2010).

A court will not order the Land Commission to issue a certificate of title when that would require a determination of the current lessor(s), that is, who the lessor's heirs are since a Land Commission heirship proceeding is needed to determine current owners before an certificate of title can issue. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 235 (Chk. 2010).

The court will not order the Land Commission to certify a survey map when that would require the determination of boundary lines to properties whose owners and claimants are not before the court. Church of the Latter Day Saints v. Esiron, 17 FSM R. 229, 235 (Chk. 2010).

Before a land registration team commences hearing with respect to any claim, the Land Commission must provide notice at least thirty (30) days in advance. Specific notice must be served upon all parties shown by the preliminary inquiry to be interested. Setik v. Ruben, 17 FSM R. 465, 473 (App. 2011).

In failing to make a reasonable inquiry as to the Setiks' occupation of the land, in failing to provide notice to the Setiks of the determination of ownership hearing, and in issuing the determination of ownership to another without an application by her, the Land Commission deprived the Setiks of due process. The determination of ownership was thus not valid, and the matter must be remanded to the Land Commission for a new determination. Setik v. Ruben, 17 FSM R. 465, 474 (App. 2011).

Due process demands impartiality on the part of the adjudicators, including Kosrae Land Court judges. Heirs of Mackwelung v. Heirs of Mackwelung, 17 FSM R. 500, 503 (App. 2011).

By statute, the standard under which the Kosrae State Court must review Land Court decisions is by applying the "substantial evidence rule." And, if the State Court finds the Land Court decision was not based upon substantial evidence or that the Land Court decision was contrary to law, it must remand the case to the Land Court with instructions and guidance for re-

hearing the matter in its entirety or such portions of the case as may be appropriate. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655 (App. 2011).

When reviewing a Land Court decision, the State Court, applying the substantial-evidence rule, does not determine where, in its view, the preponderance of the evidence lies. Under the substantial-evidence rule, the court's sole obligation is to review the entire record and determine whether the evidence as a whole is such that reasonable minds could have reached the same conclusion. The State Court thus must determine if the record contained evidence supporting the Land Court decision that was more than a mere scintilla or even more than some evidence. If there was, the State Court must affirm the Land Court decision even if the evidence would not, in the State Court's view, amount to a preponderance of the evidence but would be somewhat less and even if the State Court would have decided it differently. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 655-56 (App. 2011).

The Kosrae State Court cannot assume the role of fact-finder. The statute mandates that the standard of review that the State Court must apply to a Land Court decision is whether there was substantial evidence in the record to support it, not whether the Land Court "reasonably assessed" the evidence. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 656 (App. 2011).

The Kosrae Legislature has mandated that the State Court must use the substantial-evidence rule when it reviews all Land Court decisions. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 (App. 2011).

Land Court proceedings are the time and place adverse possession can and should be raised since Land Court jurisdiction includes all matters concerning the title of land and any interests therein. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 657 (App. 2011).

The proper time and place to make adverse possession claims, if a land occupant has one, is in a Land Court (or other) proceeding before the land title has been registered. Afterward is too late. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

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).

The statute does not give the State Court the power to reverse the Land Court and order it to enter a decree the opposite of the Land Court's original decision, but it does allow the State Court to vacate the Land Court decision and to give the Land Court such instructions and guidance that may result in a reversal after the Land Court re-hearing. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 660 (App. 2011).

A Land Court case is in fact a title dispute rather than a boundary dispute when the case was remanded to the lower court specifically directed a party's boundary claim be heard and in order to have the claim on display for the hearing, the lower court gave the party the opportunity to stake out his claim on subject land parcel and the party staked out his boundary claim as encompassing the entire parcel rather than just a portion of it. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

When a party claimed a boundary to subject land, but now claims the entire parcel, that caused the court to find and conclude that the party was uncertain as to what he was claiming and because of the inconsistencies the land court questioned his credibility. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

Due regard must be given to the trial judge's opportunity to weigh the witnesses' credibility. In considering whether the decision is based upon substantial evidence, the reviewing court recognizes that it is primarily the Land Court's task to assess the witnesses' credibility, the admissibility of evidence, and to resolve factual disputes. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

Land Court findings of fact will not be set aside unless clearly erroneous. To reverse its findings of fact, the appellate court must find that 1) its findings are not supported by substantial evidence; 2) there was an erroneous conception by the Land Court of the applicable law; and 3) the appellate court has a definite and firm conviction that a mistake has been made. Ittu v. Ittu, 19 FSM R. 258, 262 (Kos. S. Ct. Tr. 2014).

A proposed settlement is unimportant and only confuses the issues since even if the settlement made no issue of ingress or egress, the November 1997 court order ruled in favor of the appellant's right of way through the subject parcel onto his land behind it, ordering the appellee and his family members to refrain from any acts that may interfere with ingress or egress of appellant and his family members on the subject parcel. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

A land case was a boundary dispute until the appellant claimed the entire parcel. Ittu v. Ittu, 19 FSM R. 258, 263, 264 (Kos. S. Ct. Tr. 2014).

It is primarily the Land Court's task to assess the admissibility of evidence and when it was reasonably assessed, the reviewing court will accept its finding. Ittu v. Ittu, 19 FSM R. 258, 263 (Kos. S. Ct. Tr. 2014).

The Land Court's finding is based on substantial evidence in the record and not clearly erroneous when the appellant spends most of his argument repeating the same point that this matter is a boundary dispute within a parcel and not a title dispute but he not only claimed the entire parcel before the lower court, but he also surreptitiously asks for the Certificate of Title for the parcel in the same brief in which he calls for it boundary dispute. The appellant's repeated arguments are disingenuous. Ittu v. Ittu, 19 FSM R. 258, 264 (Kos. S. Ct. Tr. 2014).

Under the res judicata effect as enshrined by Kosrae statute, a Land Court justice must not adjudicate a matter previously decided by a court between the same parties or those under whom the parties claim which dispute involves the same parcel. The Kosrae Land Court must accept prior judgments as res judicata and determine those issues without evidence. Andrew v. Heirs of Seymour, 19 FSM R. 331, 339 (App. 2014).

When a previous court case has res judicata effect and status, it is conclusive only between the parties to the case and those claiming under them and no one else. But there could be persons who were not parties to the court case and who do not claim under those parties but who have their own claim to the land. The Land Court must still go through all of its usual procedures to determine if there are other claimants and, if there are, adjudicate their claims,

before it can issue a determination of ownership and, if there is no appeal or if its decision is affirmed on appeal, a certificate of title. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 367 (App. 2014).

A view that only successful land claimants have to be notified of the Land Commission's determination of ownership is gross legal error. All claimants to a parcel of land must be notified of the determination of ownership for that parcel, and if boundary determinations are involved, the adjoining landowners must also be notified. Aritos v. Muller, 19 FSM R. 533, 536 & n.1 (Chk. S. Ct. App. 2014).

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

There is no time limit to seek relief from a void Land Commission decision. To rule otherwise would leave an interested party without any recourse even though that party was unconstitutionally deprived of notice and an opportunity to be heard at the Land Commission formal hearing or was denied the opportunity to file a timely appeal of an adverse determination of ownership of which they never had timely notice. This is similar to the principle that there is no time limit to seek relief from a void judgment because if a judgment is void when issued, it is always void, and a court has no discretion but must grant relief from a void judgment whenever relief is sought. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. App. 2014).

Courts have no jurisdiction to hear cases about interests in land in land registration areas unless there has been a showing of special cause, and a court finding, that action by a court is desirable or that the Land Commission has asked the court to assume jurisdiction without the Land Commission having made a determination. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

By statute, the Chuuk State Supreme Court trial division jurisdiction in appeals from the Land Commission is limited to a review of the Land Commission record and cannot act as a trier of fact unless it grants a trial de novo. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

When the case was not an appeal from a Land Commission determination of ownership because it was filed too late for that and when it was not, at least initially, a trial court action with regard to interests in land within that registration area before it is likely a determination can be made on the matter by the Land Commission because the Land Commission had already made a decision, the trial court action was, instead, an action to collaterally attack (an allegedly) void Land Commission final decision. Once the trial court had determined that the Land Commission decision was void for the lack of due process, then the statute applied to the case before it and if the trial court wanted to proceed on the merits it had to first find special cause existed. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

When, while the trial court might have been able to make out a showing of special cause, it never did so, the appellate court must vacate the trial court determination of ownership and remand the matter to the Land Commission for it to conduct the formal hearing after at least 30 days notice to all interested parties and notice to the general public on the island. Aritos v.

Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

An answer or a Rule 12(b) motion is not untimely and will not be disregarded or stricken when no default has yet been requested and entered. Killion v. Chuuk, 19 FSM R. 539, 540 (Chk. 2014).

When, while the trial court might have been able to make out a showing of special cause, it never did so, the appellate court must vacate the trial court determination of ownership and remand the matter to the Land Commission for it to conduct the formal hearing after at least 30 days notice to all interested parties and notice to the general public on the island. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

The Chuuk Constitution provides that the trial division of the State Supreme Court has "concurrent original jurisdiction with other courts to try all civil, criminal, probate, juvenile, traffic, and land cases." The word "concurrent" modifies the term "original jurisdiction" and when jurisdiction is concurrent, the appropriate court may be prescribed by statute. The appropriate court for land cases in declared land registration areas was prescribed by statute as an administrative agency, the Chuuk Land Commission. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

While it is a matter of some concern, whether the Land Commission will be able to decide the case in a timely manner because of certain vacancies on the Commission, it is not a ground on which the appellate court can base its decision whether to remand to the Land Commission. Aritos v. Muller, 19 FSM R. 574, 575 (Chk. S. Ct. App. 2014).

The Chuuk Land Commission is not a court as that word is used in the Chuuk Constitution. It is an administrative agency that functions as a quasi-judicial tribunal. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The Chuuk Legislature, by statute, has determined that a land case in a declared land registration area must first go through the Land Commission procedure before it can become a land case in the Chuuk State Supreme Court trial division. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The constitutional grant of original court jurisdiction does not prevent the Legislature from prescribing by statute that certain land cases must first go to an administrative agency, the Chuuk Land Commission, before the trial court can exercise its original jurisdiction over them. Aritos v. Muller, 19 FSM R. 612, 613 (Chk. S. Ct. App. 2014).

The Kosrae Land Court is entitled to determine an easement or right of way, because the land registration process is, with certain exceptions, supposed to determine all interests in the land, not just ownership interests. Ittu v. Ittu, 20 FSM R. 178, 187 (App. 2015).

While limited, the Kosrae Land Court's subject-matter jurisdiction is broad enough to encompass factual determinations of fraud and misrepresentation to the extent that they affect the validity of titles or conveyances of land. Indeed, that is the Land Court's very purpose. Waguk v. Waguk, 21 FSM R. 60, 73 (App. 2016).

When the Kosrae Land Court itself is implicated in the allegations of fraud, that court is not competent to adjudicate the subject matter. Waguk v. Waguk, 21 FSM R. 60, 74 (App. 2016).

The Kosrae Land Court's written decision must be served on all claimants who appeared at the hearing, pursuant to the State Court rules prescribing service requirements. Esau v. Penrose, 21 FSM R. 75, 80 (App. 2016).

Any subsequent transfer from a registered owner, does not require notice, much less a hearing, to determine ownership anew or a written decision. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 102 (App. 2016).

The Kosrae Land Court's statutory jurisdiction includes all matters concerning the title of land and any interest therein. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 578 (App. 2018).

An action alleging fraud or negligence or due process violation and in which the plaintiffs seek to regain the registered title to a land parcel their predecessor once held and in which the defendants seek to retain the registered title in their predecessor's name so that, in the future, they will become the parcel's registered owners, is a dispute over the parcel's title and is thus a matter concerning the title of land and the interests therein, over which the Kosrae Land Court has original jurisdiction. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 578-79 (App. 2018).

In past practice, it was common for the Kosrae Land Commission to be named a defendant when a party had occasion to complain about one of its acts or omissions since administrative agencies were often named as defendants when a party sought judicial review of the administrative agency's act or omission. But there is no reason why the Land Court should be a party to such an action because the Kosrae Land Court, unlike its predecessor, is not an administrative agency; it is a court. It is not proper to make the lower court a defendant when seeking judicial review of its actions in a higher court. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

When the Land Court does not own, or claim to own, any interest in a land parcel, it is not a proper party to any dispute over title to that parcel. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 579 (App. 2018).

The Land Court is not a proper party – a real party in interest – to any dispute over title because no judgment against the Land Court could ever give the plaintiffs the relief they seek – ownership of a parcel, which can only be done by an action against the current registered owner or his heirs, if he is deceased. Alik v. Heirs of Alik, 21 FSM R. 606, 620 (App. 2018).

Although the Kosrae Legislature did not vest exclusive jurisdiction in the Kosrae Land Court, it did create the Land Court as the court with original jurisdiction over land matters, and reserved appellate jurisdiction in the Kosrae State Court. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

When the proper place for a suit to have started was the Kosrae Land Court, but it was filed on the Kosrae State Court, the Kosrae State Court should have dismissed the Kosrae Land Court and the Kosrae state government as parties and, since it is the superior court in a unified court system, transferred the case from its docket to the Land Court's docket. Alik v. Heirs of Alik, 21 FSM R. 606, 623 (App. 2018).

The land registration team is designated to settle claims and adjudicate competing claims for parcels of land within a registration area, and if the Land Commission, upon review the record, is satisfied, it will issue a determination of ownership. If the Land Commission remains unsatisfied with the record, it can either remand with instructions to the registration team or hold further adjudications itself. It must provide notice of the determination of ownership to the interested parties, who then have 120 days to appeal, and if the time for appeal expires without any notice of appeal having been filed, the Commission must issue a certificate of title setting forth the names of all persons holding an interest in the land pursuant to the determination, and such certificate of title shall be conclusive proof upon all persons who have had actual or constructive notice of the proceedings. Hartman v. Mailo, 21 FSM R. 657, 660 (Chk. S. Ct. Tr. 2018).

Land Registration Team findings are superseded by a legal presumption of ownership over a parcel when the Land Commission has issued a valid and un-appealed determination of ownership. Hartman v. Mailo, 21 FSM R. 657, 660 (Chk. S. Ct. Tr. 2018).

The Senior Land Commissioner is a public officer who oversees the Land Commission and who has the non-discretionary legal duty to issue a certificate of title to persons holding an interest in the land pursuant to the determination after the 120-day time limit for appeal has expired without an appeal. The Land Commission's continuous failure to issue a certificate of title for over 37 years following an un-appealed determination of ownership constitutes a breach of its duty and leaves the petitioner without any legal remedy other than to petition for a writ of mandamus, and to prevent this manifest injustice, equity requires that the court compel the Land Commission to fulfill its legal duty to issue a certificate of title to petitioner. Hartman v. Mailo, 21 FSM R. 657, 661 (Chk. S. Ct. Tr. 2018).

Because Fefan and all areas under its political jurisdiction were designated as Land Registration Area 14, and because a tideland in Fefan falls under the political jurisdiction of Fefan, it thus lies within Registration Area 14, and the Land Commission therefore has primary jurisdiction to determine its ownership, as opposed to the court – unless, special cause is shown. Irons v. Rudolph, 22 FSM R. 408, 410 (Chk. S. Ct. Tr. 2019).

While an action for trespass remains proper for the court to hear because it is a court of general jurisdiction under the Chuuk State Judiciary Act of 1990, the Land Commission must resolve the question of title before the court can determine the trespass issue since the tideland was in a land registration area and no special cause was shown for court jurisdiction. Irons v. Rudolph, 22 FSM R. 408, 410 (Chk. S. Ct. Tr. 2019).

Upon the filing of a registration area with the court, courts cannot entertain any action with regard to interests in land within that registration area without a showing of special cause why action by a court is desirable before it is likely that the land commission can determine the matter. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

Land registration teams are to adjudicate claims to as much land within a registration area as practical within a year of the designation. If the registration team deems that a disputed claim's consideration will seriously interfere with accomplishing this or the land commission deems that one of its teams is spending an undesirable amount of time on a claim, the land commission may withdraw the claim from that team's consideration, and may then proceed to

hear the claim itself or to refer the claim to the Chuuk State Supreme Court trial division for adjudication. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

Upon receipt of a land registration team's adjudication, the Land Commission may issue a determination of ownership if satisfied, but, if not satisfied with the adjudication, the Land Commission may either hold hearings on the matter or remand the issue back to the registration team, but the Land Commission has no authority to refer the matter to the Chuuk State Supreme Court. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

When a land commission consists of more than a senior commissioner, the concurrence of at least two members is necessary to constitute action by the commission. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576-77 (Chk. S. Ct. App. 2020).

When the Senior Land Commissioner's letter of referral states that the land registration team would take an undesirable amount of time over the matter as the dispute had numerous issues of law which the land registration team was incapable of resolving, and when it states that the Land Commission decided against adjudicating since the parties and commissioners exhibited ill-will towards each other and therefore, the commissioners felt conflicted and prejudiced, that written explanation satisfies the statutory requirements for removal of an adjudication from a registration team in order to refer it to the Chuuk State Supreme Court trial division. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 578 (Chk. S. Ct. App. 2020).

When the entire commission body suffered from a conflict of interest in the matter as a result of ill feeling towards one of the parties, and the Senior Land Commissioner appeared to have the only valid signature for a decision, the statutory two-commissioner requirement does not apply to a decision as in that matter, because the Senior Land Commissioner's one signature referral to the court does not violate 67 TTC 116, since the two-signature requirement is for a valid Land Commission action or decision on substantive matters concerning property rights, not for a decision on procedural matters such as referral of a dispute to the Chuuk State Supreme Court. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 579 (Chk. S. Ct. App. 2020).

– Leases

Although the court is powerless to compel Chuuk State to honor its lease agreement it has full power to restore unlawfully held property to its rightful owner as a remedy for forcible entry and unlawful detainer. Billimon v. Chuuk, 5 FSM R. 130, 136-37 (Chk. S. Ct. Tr. 1991).

Where a party purchases land subject to prior liens and a lease is a prior lien noted on the title the purchase was made subject to the lease. Chipuelong v. Chuuk, 6 FSM R. 188, 198 (Chk. S. Ct. Tr. 1993).

A person, who acquires leased land from the lessees and the houses the lessees built on it, has no rights superior to the rights given the lessees in the lease. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

When a lease provides that lessees may build "such buildings as they see fit" on the land and that such buildings will become the lessor's property when the lease ended, the lessor has a vested future interest in the buildings if they are built. The interest is executory, resulting from a springing use, the event of which is when and if the lessees built structures. The lessor has a

vested future interest in the buildings, once built, which ripens into possession at the lease's termination. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

A lessor's vested future interest in houses may be protected from an alteration which would change the structures' character. A wrongful eviction counterclaim based on the lessor's refusal to allow the houses to be turned into a bar will therefore be dismissed. Wolphagen v. Ramp, 8 FSM R. 241, 244 (Pon. 1998).

When a lease provides that the lessees have the right to build such structures as they see fit with the buildings to become the lessor's property upon the lease termination and the lessees built two houses, they built such structures as they saw fit, and in doing so defined the nature of those structures. Once built, those structures became the lessor's property, although not until the lease's termination. At that time, the lessor was entitled to find himself the owner of dwellings, not a bar. He was within his rights to prevent the houses from being renovated for use in that manner. Wolphagen v. Ramp, 9 FSM R. 191, 195 (App. 1999).

It is a well-recognized rule of law in Chuuk that lineage land cannot be transferred, distributed or sold by an individual member of the lineage without the consent or acquiescence of all adult members of that lineage, and it is assumed that this rule of law applies to "transfers" by lease as well. Marcus v. Truk Trading Corp., 10 FSM R. 387, 389 (Chk. 2001).

It would seem that for a long-term land lease (especially one that could last two or three or more generations) the level of lineage members' consent needed should be equivalent to that needed for a sale. Marcus v. Truk Trading Corp., 11 FSM R. 152, 160 (Chk. 2002).

When a lineage as a whole has accepted all of the benefits of a lease – all of the payments that the lessee was required to make – up to the present and even beyond, it cannot now reject the burden of the lessee exercising its options to renew. Marcus v. Truk Trading Corp., 11 FSM R. 152, 161 (Chk. 2002).

Under the after-acquired title doctrine as it applies to leases, if a lessor purports to make a lease at a time when the lessor does not have title to the realty that is subject to that lease but then subsequently acquires legal title to the realty, such after-acquired title will inure to the lessee's benefit by means of estoppel and will be subject to the lessee's rights under the lease. Mailo v. Chuuk, 13 FSM R. 462, 468 (Chk. 2005).

The after-acquired title doctrine may be applied in favor of one holding the lease under an assignment from the original lessee, because an assignee of a landlord or tenant by estoppel stands in as good a position as his assignor and may sue on the lease's covenants. Mailo v. Chuuk, 13 FSM R. 462, 469 (Chk. 2005).

A lease agreement entered into by the parties was a valid contract because the promise to pay rent in exchange for exclusive use of the property constituted an offer, acceptance, and consideration and the agreement's terms were definite and enforceable. Harden v. Inek, 19 FSM R. 244, 249 (Pon. 2014).

A lease is a contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usually rent. A leasehold is a tenant's possessory estate in land or premises or an estate in realty held under a lease. FSM v. Tihpen,

21 FSM R. 463, 466 n.2 (Pon. 2018).

A leasehold is the right to use property on which a lease is held for the purposes of the lease. FSM v. Tihpen, 21 FSM R. 463, 466 n.2 (Pon. 2018).

Any lease or use rights for a term not exceeding one year does not need to be stated in the certificate of title to be effective. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

A long-term lease (a lease for greater than one year), is an interest in land subject to Land Commission adjudication and must be stated in the certificate of title for it to be effective against third parties. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

A long-term lessee is entitled to notice as an interested party – as a claimant to an interest in that land – when that land is first registered. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

Persons, including a purported long-term lessee, known to a claimant, if not to the Land Commission, to claim interests in the land, are entitled, as interested parties, to actual notice of any Land Commission proceedings determining the land's ownership and other interests therein. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

When the lease did not require the lessee, at the lease's termination, to remove the structures and foundations, the lessor's requested damages will be reduced because the lessee should not have to pay for the removal of slabs and foundations that remain on the property. Hartman v. Henry, 22 FSM R. 292, 298 (Pon. 2019).

– Mortgages

In an action on a delinquent promissory note brought by an instrumentality of the national government which seeks to foreclose the mortgage securing the payment of the note, prior to the filing of an answer no interest in land is at issue, and therefore, the motion to dismiss on the ground that the court lacked jurisdiction is denied. FSM Dev. Bank v. Mori, 2 FSM R. 242, 244 (Truk 1987).

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

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

When loan collateral is in the lender's possession and the borrower has made a reasonable request that the lender liquidate the collateral to preserve its value, the lender should do so; but there is no duty in law requiring the lender to take possession of the collateral and foreclose on property at the borrowers' request when that property is not in the lender's possession, unless

there is a provision in the mortgage requiring it. FSM Dev. Bank v. Gouland, 9 FSM R. 605, 607 (Chk. 2000).

A mortgage foreclosure generally does not involve a dispute over who owns the land, but rather the mortgagor's undisputed ownership being transferred, often involuntarily, to a buyer or to the mortgagee to satisfy the mortgagor's debt. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 4 (Chk. 2001).

The Constitution does appear not to bar the FSM Supreme Court from exercising jurisdiction over FSM Development Bank mortgage foreclosures. FSM Dev. Bank v. Ifraim, 10 FSM R. 1, 5 (Chk. 2001).

Only two courts have jurisdiction over the territory of Chuuk – the Chuuk State Supreme Court and the FSM Supreme Court. A mortgage foreclosure on land in Chuuk therefore could not be in any court other than those two. FSM Dev. Bank v. Ifraim, 10 FSM R. 107, 110 (Chk. 2001).

Mandamus lies to compel a public official to perform a clear, nondiscretionary duty. When the petition is devoid of any allegation that the respondent is acting in an official capacity, when the Kosrae deed of trust statute does not confer on the respondent either the obligation or the express power to act as a trustee under a deed of trust, and when the petition is silent as to any other mechanism or source of authority by which the respondent in his official capacity has assumed the duties of the trustee under the deed of trust at issue so as to make the performance of those duties a "clear and nondiscretionary," mandamus is not available. FSM Dev. Bank v. Director of Commerce & Indus., 10 FSM R. 317, 319 (Kos. 2001).

A statute that requires the creditor to give written notice to the debtor of the creditor's intention to foreclose prior to foreclosing on the property, is inapplicable to setoffs because foreclosures and setoffs are very different things. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

A foreclosure is a legal proceeding to terminate a mortgagor's interest in property, instituted by the lender (the mortgagee) either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

Generally, money deposited in a bank account is a debt that the bank owes to the depositor – the bank is obligated to repay the money to the depositor, either on demand or at a fixed time. Money deposited in a bank account is thus not property mortgaged to the bank. Bank of the FSM v. Asugar, 10 FSM R. 340, 342 (Chk. 2001).

If a judgment-creditor were to attempt to execute against a piece of land for which there was a certificate of title and that certificate showed an outstanding mortgage on the land, or if there was no certificate of title for the land but a mortgage had been duly and properly recorded at the Land Commission so that anyone searching the records there should necessarily find it, then that would be a security interest that was not a secret lien and therefore valid against third parties. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 (Chk. 2003).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. A mortgage can and must show on the

certificate to be effective against third parties. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 n.2 (Chk. 2003).

A buyer would usually expect to buy land without a mortgage or, if the land carries a mortgage, that a part of his purchase price will be used to pay off the mortgage so that he receives title free and clear of any mortgage. (Alternatively, a buyer might reduce his offer by the mortgage's outstanding balance and then pay off the mortgage himself.). In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

If a creditor's judgment is secured by a mortgage, it would have priority over the other unsecured judgment-creditors for the proceeds from the sale of the mortgaged property. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

If a judgment-creditor were to attempt to execute against a piece of land for which there was a certificate of title and that certificate showed an outstanding mortgage on the land, or if there was no certificate of title for the land but a mortgage had been duly and properly recorded at the Land Commission so that anyone searching the records there should necessarily find it, then that would be a security interest that was not a secret lien and therefore valid against third parties. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. Therefore a mortgage can and must be shown on the certificate of title to be perfected and thus effective against third parties. If the property has not been issued a certificate of title, then the mortgage must be properly recorded in the chain of title so that someone searching the Land Commission files would expect to find it. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

A perfected security interest in land (the mortgage either shown on the certificate of title, or if no certificate, properly recorded) would have priority over any unsecured judgment-creditors, even those with writs of execution, should the mortgaged property be sold to satisfy the landowners' debts. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

The proper way to record a mortgage under the Torrens land registration system in use in Chuuk is for the mortgage and the landowner's [duplicate] certificate of title to be submitted to the Land Commission at the same time. The mortgage document is then recorded; the mortgage is endorsed on the certificate of title permanently on file at the Land Commission; and then a (new) duplicate certificate of title, showing the endorsement of the newly-recorded mortgage, is given (or returned) to the landowner. If this is done, then the security interest is perfected and the mortgage is valid and enforceable against all the world and has priority over all other claims to the proceeds from the sale of the mortgaged property. If all these steps are not done, then the security interest is not perfected and the mortgage does not carry priority over and is not effective against parties without notice of it – it is a disfavored secret lien. In re Engichy, 11 FSM R. 520, 531 (Chk. 2003).

Failure to perfect a security interest does not affect the mortgage's validity and enforceability between the parties to it. In re Engichy, 11 FSM R. 520, 531 (Chk. 2003).

A social security tax lien has priority over a mortgage because section 607 grants social security tax liens priority over all other liens regardless of whether the other liens arose earlier.

In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

Under the general rule a mortgage first in time has superior right in the absence of the applicability of a statutory provision to the contrary. Section 607 is a statutory provision to the contrary because it grants social security tax liens priority over all other liens regardless of whether the other liens arose earlier. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

A mortgagee's due process rights are not violated by a statute making another lien superior to its mortgage when the statute was enacted prior to the mortgage's execution. In re Engichy, 12 FSM R. 58, 65 (Chk. 2003).

By state statute, a mortgage creates a lien on the land, but does not pass title to the mortgagee. In re Engichy, 12 FSM R. 58, 68 (Chk. 2003).

Any land may be mortgaged by its owners, and such a mortgage may be recorded. But a mortgage on unregistered land can only be recorded, not registered because no certificate of title had been issued for it. In re Engichy, 12 FSM R. 58, 68 (Chk. 2003).

The Chuuk Real Estate Mortgage Law confirms and adopts by reference rather than modifying or repealing the Title 67 provisions applicable to the endorsement of mortgages on certificates of title. In re Engichy, 12 FSM R. 58, 70 (Chk. 2003).

A mortgage endorsed on a certificate of title cannot be given retroactive effect. To do so would destroy the purpose of the land registration system – that the original certificate of title at the Land Commission is conclusive and if there are no endorsements anyone searching the state of the title need look nowhere else for mortgages and for the other encumbrances that, with certain exceptions, are required to be listed there. In re Engichy, 12 FSM R. 58, 71 (Chk. 2003).

A mortgagee will have a secured interest in any future funds that from the sale of the mortgaged land when, although the mortgage was not endorsed on the certificate of title before the case was consolidated with other judgment-creditors', all of the necessary documents for the Land Commission to endorse the mortgage had been submitted to the Land Commission by then. In re Engichy, 12 FSM R. 58, 71 (Chk. 2003).

While a mortgagee bank may have policies and rules it must follow that require it to inquire into the purported collateral or security and require ownership documents and certified maps of the property's location when land is used as collateral or security for its loans, it has not been shown that violation of these policies and rules creates a duty to a stranger to the mortgage. They may create a duty to the bank's shareholder, and failure to follow them may result in the bank holding worthless security, but the bank has not been shown to have a general duty to all landowners not to accept a mortgage to land one of them might later claim. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 127-28 (Chk. 2005).

The result of "negligence" in failing to properly record a mortgage on unregistered land is that the mortgage is ineffective against third parties – someone other than the mortgagor who had no notice of the mortgage (and the result is the same for registered land when a mortgage is not properly endorsed on the certificate of title). Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 & n.4 (Chk. 2005).

A mortgagor can only mortgage an interest in land that he owns at the time the mortgage is granted. If the mortgagors held no interest in the land they mortgaged, the bank would never be able to foreclose the mortgage (essentially it holds no security) since it can only foreclose the interests that the mortgagors held and mortgaged. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

There is some authority that a mortgagor can mortgage land that he does not own but will own in the future and that the mortgage then becomes effective when he acquires the land. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 n.5 (Chk. 2005).

A mortgagee that fails to ascertain the mortgagor's true interest in the mortgaged property does so at its own risk. Its punishment, if it can be called that, is that it has no security for the debt it is owed. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

When a plaintiff's determination of ownership is for a lot with one number and the bank holds mortgages on lots with other numbers, the bank does not have a mortgage for the plaintiff's lot and there is no proximate cause between the bank acquiring the mortgage and any later alleged damage to the plaintiff's lot. Whether the mortgage was properly recorded is immaterial. If the plaintiff was damaged, the mortgage did not cause it. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

Since a bank owed no duty of care to a plaintiff when it took a mortgage to secure a loan to another, and that mortgage, even if it is unenforceable, was not the proximate cause of the plaintiff's alleged damages, the bank is entitled to summary judgment as a matter of law on the plaintiff's negligence and void mortgage causes of action. Additional reasons for this are that the bank has not attempted to foreclose its mortgage and that the mortgage does not cover the lot for which the plaintiff has a determination of ownership. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 128 (Chk. 2005).

Holding a mortgage to property in which the mortgagor had no interest cannot be taking dominion over property. A mortgagee may take dominion over a mortgaged property only when it has foreclosed on the property and either taken title to it itself or had it sold to another. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129 (Chk. 2005).

By taking a mortgage, a mortgagee does not claim title to (or dominion over) the property. A mortgage creates a lien on the land, but does not pass title to the mortgagee. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129 n.6 (Chk. 2005).

A mortgagee, is not an insurer or guarantor of the mortgagor's actions. Rudolph v. Louis Family, Inc., 13 FSM R. 118, 129 (Chk. 2005).

Since national court jurisdiction is proper when the parties are diverse, a Kosrae statute that requires a foreclosure action to be filed in Kosrae State Court cannot divest the FSM Supreme Court of its constitutionally mandated jurisdiction under the FSM Constitution. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

Public policy cannot abide by the perverse result that would never leave a title quiet if the court were to recognize an indefinite expectancy right for a person to inherit his living parent's land and require a complainant to name all the landowner's children. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

When a landowner's children do not have a vested interest in the land, the foreclosure statute does not require a judgment creditor to name them as defendants. FSM Dev. Bank v. Jonah, 17 FSM R. 318, 325 (Kos. 2011).

In a collection case based on a defaulted loan, no interest in land was ever at issue when the fee simple ownership of the parcel was never at issue and when the bank's registered mortgage lien was not at issue, so the jurisdictional language in section 6(a) is not applicable. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 (Chk. 2011).

When the complaint alleges that a person is bound by the mortgage because another defendant, who signed the mortgage, held that person's power of attorney to act on his behalf in regard to the land, the plaintiff is estopped from and cannot deny that that person is a party to the mortgage and, since he is a party to the mortgage, he has standing to enforce its provisions. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

The court will enforce a forum selection clause when the bank drafted the real estate mortgage and the bank chose to include the forum selection clause as one of the terms it insisted upon in the preprinted mortgage form it used to execute the mortgage; when a mortgagor not only does not expressly waive the bank's forum selection but he affirmatively insists upon the forum selection clause's enforcement; and when no other valid reason is apparent or has been asserted by the bank that would allow the clause's waiver. The bank may thus assert its real estate mortgage foreclosure remedy in the Yap State Court, the forum it chose, and the mortgagor may raise his defenses to the mortgage's validity there and the FSM Supreme Court will adjudicate the bank's action on the promissory note and on the chattel mortgage. FSM Dev. Bank v. Ayin, 18 FSM R. 90, 94 (Yap 2011).

A mortgagee does not have title to the land, only a lien. Helgenberger v. FSM Dev. Bank, 18 FSM R. 498, 500 (App. 2013).

A mortgagee under the provisions of a chattel mortgage covering all the personal property of the insolvent may, on default, be entitled to take possession of the property and sell it to satisfy his claim. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 (Kos. 2013).

Since the Secured Transactions Act does not apply to the transfer of an interest in real property except as provided with respect to fixtures, crops, timber to be cut, or minerals to be extracted, a lender cannot have perfected a security interest in a factory building unless it had obtained a mortgage on the factory building (and presumably the land underneath it or an easement) and recorded that mortgage. The lender is therefore not entitled to pre-judgment possession of the factory building since it does not have a perfected security interest in it under the Act. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 597 (Kos. 2013).

The Pohnpei Mortgage Law requires that the complaint name all persons having or claiming an interest in the property subordinate to the mortgage interest. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

When there are no transfers or encumbrances registered against the mortgaged parcels except for the bank's mortgages and a separate conveyance of a property interest in the land to the bank; when all the parties with an interest in the parcels are parties to the litigation; and when it is undisputed that the named defendants were duly served with a summons and

complaint, an argument that the bank failed to comply with the statutory notice requirements must fail. FSM Dev. Bank v. Setik, 19 FSM R. 233, 235 (Pon. 2013).

A mortgage foreclosure generally does not involve a dispute over who owns the land, but rather the mortgagor's undisputed ownership being transferred, often involuntarily, to a buyer or to the mortgagee to satisfy the mortgagor's debt. FSM Dev. Bank v. Estate of Edmond, 19 FSM R. 425, 432 (App. 2014).

When the subject mortgage required that the mortgagor not only refrain from removing or demolishing the buildings on the premises but also maintain the structures in good repair, as well as assign to the mortgagee all rents and profits derived from same, this language reflects that the buildings, and not just the land they were on, were expressly contemplated, in ascribing the respective value to the mortgage, as security for the underlying loan. FSM Dev. Bank v. Setik, 20 FSM R. 85, 88 (Pon. 2015).

When the previously court-appointed land sales agent has died and the mortgagee has proposed a successor agent and when the defendants have failed to cite any legal authority in support of their opposition to this proposed successor, the court will confirm the successor since he is familiar with the case's operative facts and is an employee of the mortgagee whose services would thus require no additional compensation. FSM Dev. Bank v. Setik, 20 FSM R. 85, 90 (Pon. 2015).

A mortgage foreclosure generally does not constitute an interest in land being at issue because in a mortgage foreclosure the interests in land are not in dispute – the parties all agree who owns the land and who holds the mortgage. The mortgagee just seeks to foreclose the mortgage which a mortgagor has pledged as security for a debt and which the mortgagor earlier agreed, when he signed the mortgage, could be sold if the debt remained unpaid. Thus, the Exception Clause does not preclude jurisdiction. Sam v. FSM Dev. Bank, 20 FSM R. 409, 416 (App. 2016).

When security, such as a guaranty, is given as part of the same transaction that created the debt to the bank, no further or independent consideration is needed. The loan itself is sufficient consideration. This principle holds true when a mortgage is the security given for a loan to a third party. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

The consideration for a mortgage may consist of a loan to a third person. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

It is not essential to a mortgage's validity that the mortgagor should have received the consideration. It is sufficient that the mortgagee parted with consideration. The consideration need not go directly from the mortgagee to the mortgagor. Sam v. FSM Dev. Bank, 20 FSM R. 409, 417 (App. 2016).

When a parcel was pledged as collateral for a loan in an executed security instrument and when the borrowers defaulted on the loan and the lender bank instituted enforcement proceedings and was allowed to enforce the mortgage's terms, the borrowers surrendered their ownership interest in this parcel and the ultimate transfer of ownership, as approved by the FSM Supreme Court, cannot be categorized as "wrongful or unauthorized," or a "frozen asset," when the borrowers had earlier obtained a Pohnpei Court of Land Tenure determination of heirship for

the parcel that named them as the legal heirs to the property. Setik v. Perman, 21 FSM R. 31, 37-38 (Pon. 2016).

The Pohnpei Supreme Court is not the only forum with jurisdiction to foreclose a mortgage on Pohnpei real estate because it is undisputed that the FSM Supreme Court may exercise such jurisdiction when the FSM Development Bank is the mortgagee since a state statute cannot divest the FSM Supreme Court of its jurisdiction. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 172 (Pon. 2017).

That the bank has also named persons in the mortgage foreclosure whose inclusion may be superfluous, does not affect the validity of the foreclosure against the registered owner as long as that person is named and all the proper steps for foreclosure are taken against that person. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 173 (Pon. 2017).

When no stay pending appeal had been granted, the trial court had the jurisdiction to not only deny the defendants' Rule 60(b) motion for relief from judgment, but it also had the jurisdiction to enforce the money judgment by mortgage foreclosure. Setik v. FSM Dev. Bank, 21 FSM R. 505, 518 (App. 2018).

The trial court's issuance of an order transferring title six days after the bank filed its motion and notice of payment was not reversible error when an earlier order in aid of judgment required that a court order transferring title to the parcel had to be issued no later than ten days after notice is given of delivery of a cashier's check in the full amount and when the appellants do not contend that there were any procedural defects in the sale on which they could base a challenge to its outcome. Setik v. FSM Dev. Bank, 21 FSM R. 505, 520 (App. 2018).

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

FSM Development Bank loans that are determined to be no longer collectable are subject to write-off, but when the mortgaged parcel securing the loan is still generating income, in the form of monthly rent, the loan is still deemed to be capable of being paid off. FSM Dev. Bank v. Carl, 21 FSM R. 640, 643-44 (Pon. 2018).

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

Under Pohnpei law, when a bank is entitled to a foreclosure of the mortgaged land as a matter of law, and the full judgment amount is not paid into court within three months of the judgment date, the court may, order the foreclosed property sold for the mortgagee's (the bank's) benefit. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 478 (Pon. 2020).

When the defaulting borrowers had executed a chattel mortgage to help secure a loan, and when the bank registered and thereby perfected its security interests in the chattels, the bank is entitled to a judgment on its claim to foreclose its chattel mortgage. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 478 (Pon. 2020).

When the FSM Development Bank has a statutory right to reduce its claim to judgment and to foreclose its perfected security interest in the borrowers' medical equipment and also has the contractual right to do the same, the Constitution's Professional Services Clause does not make that contract illegal. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 481 (Pon. 2020).

– Personal

Because farming of short term crops, such as sugar cane, on someone else's land is not uncommon in Kosrae, the fruits of such farming are considered the personal property of the person planting them. Kosrae v. Tolenoa, 4 FSM R. 201, 204 (Kos. S. Ct. Tr. 1990).

The property owned in full title by one who dies is inherited by the children of the deceased. Personal property suited for use by women is inherited by daughters and sisters. In re Estate of Hartman, 6 FSM R. 326, 330 (Chk. 1994).

Personal property is property other than land or interests in land. House of Travel v. Neth, 7 FSM R. 228, 229 (Pon. 1995).

Personal property is property other than land or interests in land. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

When a judgment-creditor has requested a writ and no motion for an order in aid of judgment is pending, he is entitled to a writ of execution against the judgment-debtor's non-exempt personal property. Personal property is property other than land or interests in land. Saimon v. Wainit, 18 FSM R. 211, 214 (Chk. 2012).

A mortgagee under the provisions of a chattel mortgage covering all the personal property of the insolvent may, on default, be entitled to take possession of the property and sell it to satisfy his claim. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 596 (Kos. 2013).

Fixtures are goods that are fixed to real property, or are intended to become fixed to real property in a manner that causes a property right to arise in the goods under the prevailing law. Goods are all things that are movable when a security interest attaches and the term includes fixtures. Readily removable factory machines, office machines, and domestic appliances are not fixtures. FSM Dev. Bank v. Tropical Waters Kosrae, Inc., 18 FSM R. 590, 598 (Kos. 2013).

A bona fide purchaser for value is someone who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims. Mori v. Hasiguchi, 19 FSM R. 16, 21-22 (Chk. 2013).

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

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

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

The elements of a conversion action are the plaintiff's ownership and right to possession of the personalty, the defendant's wrongful or unauthorized act of dominion over the plaintiff's property inconsistent with or hostile to the owner's right, and resulting damages. "Personalty" is personal property as distinguished from real property. Setik v. Mendiola, 21 FSM R. 537, 555 (App. 2018).

When the defaulting borrowers had executed a chattel mortgage to help secure a loan, and when the bank registered and thereby perfected its security interests in the chattels, the bank is entitled to a judgment on its claim to foreclose its chattel mortgage. FSM Dev. Bank v. Salomon, 22 FSM R. 468, 478 (Pon. 2020).

– Personal – Bailment

Bailment occurs when one person has lawfully acquired possession of another's personal property; the bailor retains ownership, but the bailee has lawful possession and exclusive control over the property for the duration of the term of the lease. Vehicle rental agreements are bailment leases. Phillip v. Marianas Ins. Co., 12 FSM R. 301, 305 (Pon. 2004).

A bailment is created by the delivery of personal property by one person to another, in trust for a specific purpose, pursuant to an express or implied contract to fulfill the trust. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

The delivery of property to another under an agreement to repair is a bailment. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

The bailee, having custody of the bailor's property, has the obligation to exercise due care to protect the property from loss, damage or destruction. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

A presumption arises that a bailee who has sole actual and exclusive possession of the goods has been negligent if he cannot explain the loss, disappearance or damage of the bailed property, its parts or contents. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S. Ct. Tr. 2004).

A bailee is liable for all repairs and replacement for the bailed property that are necessary due to his neglect or lack of care. Palik v. PKC Auto Repair Shop, 13 FSM R. 93, 96 (Kos. S.

Ct. Tr. 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).

A bailment is created by the delivery of personal property by one person to another, in trust for a specific purpose, pursuant to an express or implied contract to fulfill the trust. The delivery of property to another under an agreement to repair is a bailment. Pelep v. Mai Xiong Inc., 21 FSM R. 182, 189 (Pon. 2017).

– Public Land

Basic notions of fair play, as well as the Constitution, require that Public Lands Authority decisions be made openly and after giving appropriate opportunity for participation by the public an interested parties. Etpison v. Perman, 1 FSM R. 405, 420-21 (Pon. 1984).

When there is reason to believe that provisions of a public land lease may have been violated by the lessee, and where another person has notified the Public Lands Authority of his claim of a right to have the land leased to him, the Public Lands Authority may not consider itself bound by the lease's renewal provision but is required to consider whether it has a right to cancel the lease and, if so, whether the right should be exercised. These are decisions to be made after a rational decision-making process in compliance with procedural due process requirements of article IV, section 3 of the FSM Constitution. Etpison v. Perman, 1 FSM R. 405, 421 (Pon. 1984).

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

The Pohnpei Public Lands laws do not provide for the disposal or lease of public lands in Kolonia Town by the Pohnpei Public Lands Authority. Micronesian Legal Servs. Corp. v. Ludwig, 3 FSM R. 241, 247 (Pon. S. Ct. Tr. 1987).

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

Plaintiff's due process rights were not violated where the government did not use condemnation procedures specified in 67 TTC 451, but followed land registration procedures to obtain title and treated the plaintiff fairly and in the same way it treated other landowners. Palik v. Kosrae, 5 FSM R. 147, 152-54 (Kos. S. Ct. Tr. 1991).

Where the alleged trespassers did not claim to have an interest in the land at the time of the determination of ownership they cannot now raise as a defense a claim that the land in question is public land when that issue was decided in the determination of ownership process and certificates of title issued. In re Parcel No. 046-A-01, 6 FSM R. 149, 156-57 (Pon. 1993).

A Certificate of Title issued by a state land commission precludes a claim by the state that the land is public land. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 51 (App. 1995).

Since under 67 TTC 1 public lands were lands situated within the Trust Territory as the government of the Trust Territory had acquired or would acquire for public purposes, in Chuuk public lands are those lands located in Chuuk that the state has acquired or will acquire for public purposes. Sana v. Chuuk, 7 FSM R. 252, 254 (Chk. S. Ct. Tr. 1995).

In Chuuk the leasing of private land by the government for public purposes is an exercise of the state's eminent domain power because the Chuuk Constitution requires that the state should negotiate a voluntary lease, sale or exchange, if possible, instead of an involuntary taking. Sana v. Chuuk, 7 FSM R. 252, 254 (Chk. S. Ct. Tr. 1995).

In Chuuk land leased by the government for a public purpose is public land for the duration of the term of the lease. Sana v. Chuuk, 7 FSM R. 252, 255 (Chk. S. Ct. Tr. 1995).

Early termination of a lease for which the State of Chuuk has fully paid is a disposal of public land which the governor cannot do without the advice and consent of the legislature. Sana v. Chuuk, 7 FSM R. 252, 255 (Chk. S. Ct. Tr. 1995).

Prior to the effective date of the Chuuk Constitution the ownership of the filled marineland was with the Japanese government and that title was transferred to the Trust Territory pursuant to 67 TTC §§ 1 and 2 and later to Truk State. Atin v. Eram, 7 FSM R. 269, 271 (Chk. S. Ct. Tr. 1995).

A forced sale of land under duress to the Japanese government does not make that land public land. Nahnken of Nett v. United States, 7 FSM R. 581, 588 (App. 1996).

Private individuals lack standing to assert claims on behalf of the public and cannot bring claims against the state on behalf of the public with respect to state land. Therefore a private landowner does not have standing to sue the state with respect to black rocks deposited below the ordinary high water mark because that is state land, but he does have standing to sue with respect to black rocks located above the high water mark and on his land. Jonah v. Kosrae, 9 FSM R. 335, 341 (Kos. S. Ct. Tr. 2000).

A claim that no one owned an island is in the nature of a claim that the island is public land. Generally, but not always, it is the state government that would assert that some land is public land. Rosokow v. Bob, 11 FSM R. 454, 457 & n.2 (Chk. S. Ct. App. 2003).

When a plaintiff obtained an assignment that was registered and subsequently dissolved by the Public Lands Board, the plaintiff was directly and adversely affected by the Board's decision, and thus has standing to sue the Board. There can be no question that the plaintiff is the real party in interest. Asumen Venture, Inc. v. Board of Trustees, 12 FSM R. 84, 90 (Pon. 2003).

The Board of Trustees of the Pohnpei Public Lands Trust is the sole entity empowered and authorized to execute a lease agreement in regard to Pohnpei public lands, and when the Board has executed a residential lease agreement, the holder of the residential lease for the property is the present tenant and enjoys privity of contract and privity of estate in relation to that parcel. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 212 (Pon. 2003).

Under Pohnpei law, an executory interest in the assignment of a public lands leasehold expires on the grantor's death. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 212 (Pon. 2003).

When an assignment of public land was never approved by the Board and by the form lease agreement's terms, the tenant could not sublease, transfer or assign any interest in the premises without the Board's prior written consent, the assignment could not become a possessory interest until the Board gave its written approval. Upon the assignor's death, the leasehold interest became part of the assignor's estate, and the assignment was extinguished. Ambros & Co. v. Board of Trustees, 12 FSM R. 206, 213 (Pon. 2003).

The doctrine of equitable estoppel operates to preclude a party from asserting a right he otherwise might have had, based upon his previous conduct. Equitable estoppel is applied to governments in the FSM when this is necessary to prevent manifest injustice and where the interests of the public will not be significantly prejudiced. Equitable estoppel thus applies to prevent (or estop) the Board of Trustees from claiming that a party had no existing right to a lot when it had given that party a lease (which was duly recorded at the State Land Registry) to that lot and had taken that party's lease payments for years. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 462 (Pon. 2006).

When a party had some right to a lot, it was, at a minimum, entitled to notice that the Board of Trustees believed the party's lease was invalid and that the Board intended to revoke the lease and put that lot up for public bid. The party was also entitled to notice and an opportunity to be heard on the issue of the lease's validity before the Board revoked the lease. When the Board did not give the party any notice and revoked its lease and issued a lease to another, this lack of notice to the party would thus make the later issuance of a lease invalid. Carlos Etscheit Soap Co. v. McVey, 14 FSM R. 458, 462 (Pon. 2006).

Since in 2004 the plaintiff held an unexpired, recorded lease to Lot No. 014-A-08 for which the lease payments were current and up to date, it was entitled to notice and an opportunity to be heard before the Board of Trustees could disregard or void that lease and advertise Lot No. 014-A-08 for immediate lease or could lease Lot No. 014-A-08 to another. This is true even if the Board considered the lease "illegal" due to omissions in the approval process. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 109 (Pon. 2010).

When the plaintiff's lease had not been voided after notice and an opportunity to be heard before its leased lot was advertised for immediate commercial lease, the Board violated the plaintiff's civil rights because it denied the plaintiff the due process of law when it did not give the plaintiff prior notice and an opportunity to be heard on the validity of its lease. This is because notice and an opportunity to be heard are the essence of due process of law. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

A public land lease is void when it was issued without any prior notice to the then current lessee of record and without any opportunity for the current lessee to be heard and when it was issued without any prior notice to the then current lessee during the term of the lease held by the then current lessee and since it was set to start on a date during the term of the lease held by the then current lessee. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 110 (Pon. 2010).

When no one holds a valid lease for a lot, no one owes any lease payments for the lot. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 111 (Pon. 2010).

A public land lease that has a provision that a holdover by a lessee does not give rise to any right to a renewal of the lease by the holdover lessee, indicates that any right to renew would not be automatic. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 111 (Pon. 2010).

Since one of the Board's purposes is to administer, manage and regulate the use of public lands for the people of Pohnpei, this purpose is not served by leaving a lot without a lessee and not in productive use, especially when, the Pohnpei Legislature has directed that public lands in the cadastral plat including that lot be leased in an expeditious manner with the intent that all public land within that plat should be fully leased. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 111 (Pon. 2010).

When a plaintiff, based on its paid-up and unexpired prior lease, had a right superior to a later lessee to possess or occupy a public land lot No. 014-A-08, when the later lessees occupied that lot, they were trespassing. This is because the issue in a trespass action is who among the parties has the superior right to possession. Carlos Etscheit Soap Co. v. McVey, 17 FSM R. 102, 112 (Pon. 2010).

It cannot be said that consequential damages were contemplated for the termination of a lease five months early when the leased land had remained undeveloped for a long while and when it is difficult to see what development could have taken place in those five months that would have earned the plaintiff a profit during those five months, that is, whether there would be any consequential damages because the plaintiff was deprived of the use of an undeveloped lot for the last five months of its lease. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 377 (Pon. 2014).

Where the evidentiary hearing or trial mandated by the appellate court is to determine the plaintiff's actual damages for the defendant's violation of the plaintiff's civil rights when it terminated the lot lease five months early, and where damages beyond the five-month period are contingent on whether the plaintiff should be granted a new or renewed lease to the lot, that is not the subject of the trial but is the subject of what will be a different proceeding. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 378 (Pon. 2014).

When, if specific performance were ordered, the court would order that the plaintiff be allowed to resume possession of a lot for five more months, but when, because that lot was undeveloped and did not generate any revenue, five months of resumed occupation by the plaintiff would not affect the plaintiff's income and thus specific performance of the last five months of the lease would seem pointless, a money award for actual damages should suffice. Carlos Etscheit Soap Co. v. McVey, 19 FSM R. 374, 378 (Pon. 2014).

The Pohnpei Residential Shoreline Act of 2009 outlines procedures to be followed in applying for a residential leasehold from the Chief of the Division of Public Land of the Department of Land and Natural Resources. It mandates that, upon the receipt of an application pursuant to the Act, the Chief of the Division of Public Land shall orchestrate a survey of the filled land for which the application has been submitted, and upon satisfaction that the applicant and the land meet the Act's criteria, the Chief must issue a certificate of eligibility for a residential leasehold to the applicant. Damarlane v. Damarlane, 19 FSM R. 519, 529 (Pon. 2014).

Under Pohnpei state law, submerged public trust lands to a distance of not more than 150 feet extending seaward from a residential shoreline that have been filled for the purpose of constructing all or a portion of a residence thereon before December 31, 2008 are designated as available for residential lease. Damarlane v. Damarlane, 19 FSM R. 519, 529 (Pon. 2014).

When the court cannot establish that the plaintiffs' pending application under the Pohnpei Residential Shoreline Act of 2009 complies with the Act's requirements, the plaintiffs have not demonstrated an inchoate possessory interest over the landfill by virtue of their pending application for a leasehold interest, and since the plaintiffs do not have title or a leasehold interest in the landfill and cannot demonstrate an inchoate possessory interest under the Act, they cannot demonstrate a legally cognizable property right to exclusive possession of the landfill and therefore their trespass claim must fail. Damarlane v. Damarlane, 19 FSM R. 519, 530 (Pon. 2014).

Under a plain reading of Secretarial Order 2969, Trust Territory public lands were transferred to the respective Trust Territory districts, and thus Trust Territory public lands on Weno were earlier transferred to the Truk District government. Although, on July 12, 1979, when the FSM Constitution took effect, any Trust Territory government interest in property was transferred to the FSM for retention or distribution in accordance with the FSM Constitution, public land on Weno was not Trust Territory government property since all Trust Territory public land there had already been transferred to the Truk district government. It would thus have been Truk district government property. Chuuk v. Weno Municipality, 20 FSM R. 582, 584-85 (Chk. 2016).

In Pohnpei, all marine areas below the ordinary high watermark belong to the government, and such lands are a part of the Pohnpei Public Lands Trust with certain exceptions reestablishing customary rights to the people in areas below the high watermark. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641 (Pon. 2016).

By law, public land cannot be subdivided for homesteading or development unless public roads were laid out or established insuring public access to each new lot or parcel. Iwo v. Chuuk, 20 FSM R. 652, 654 (Chk. 2016).

Under Secretarial Order 2969, Amendment No. 1, Trust Territory public lands in Chuuk were conveyed to the Chartered Truk District Government, and the Chuuk state government is the legal successor to the Truk district government. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

Even though the lessee's inertia could lead the Board to reasonably conclude that the leased lot would remain undeveloped, this dormancy did not relieve the Board from providing notice and an opportunity to be heard with regard to the improperly executed lease to a different lessee. Carlos Etscheit Soap Co. v. McVey, 21 FSM R. 525, 534 (App. 2018).

A court will not overturn a Pohnpei Public Lands Trust Board decision for which there was a rational basis unless that decision was rendered unlawfully – in violation of one or more subsections of 8 Pon. C. § 3-104(2). Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 143 (Pon. 2019).

A Public Lands Trust Board decision had a sound basis in reason and with regard to the facts when it favored the expansion of an existing business that serves the general population over another's proposed new business that would serve a narrow market segment because it was not unreasonable or irrational for the Board to favor assisting or encouraging an existing business with a proven track record rather than take a chance on the possible success of a proposed new development of uncertain utility or usefulness; because the Board had sufficient evidence upon which to make this determination; and because it followed procedures that should have assured a fair and rational decision-making process. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 144 (Pon. 2019).

Being the prior lessee of Pohnpei public land does not entitle that party to an automatic renewal of its lease upon request, especially when the lessee has not yet developed the lot. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 145 (Pon. 2019).

When the Public Lands Trust Board, in reaching its decision, did not act in excess of its jurisdiction, or violate lawful procedure, or act arbitrarily and capriciously, or in abuse of its power, the court has no alternative but to confirm the Board's determination that the lot should be leased to one of two bidders. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 137, 145 (Pon. 2019).

A clear legislative directive, that all public lands in a certain cadastral plat should be fully leased in an expeditious manner, is a clear statement of the public interest about that particular public land. Carlos Etscheit Soap Co. v. McVey, 22 FSM R. 203, 210 (Pon. 2019).

The Pohnpei Public Lands Authority is a legal entity that receives, holds, and disposes of Pohnpei public lands, but does not relate to the national government's ability to hold title to private land through the FSM Development Bank. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 332 (Pon. 2019).

The FSM Constitution, art. XV, § 3, states that a property interest held by the Trust Territory government is transferred to the FSM for retention or distribution in accordance with the Constitution. Other FSM Constitution provisions govern land ownership and use, and FSM law allows for national government eminent domain and real property acquisition. FSM Dev. Bank v. Lighor, 22 FSM R. 321, 333 (Pon. 2019).

– Registered Land

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

Where parties had no claims to the land at the time the title was determined they were not entitled to notice. The lack of notice to them does not raise a genuine issue of material fact as to the validity of a Certificate of Title. Where a court proceeding determined title, the lack of a record of notice in the Land Commission files does not raise a genuine issue of material fact as to the validity of the Certificate of Title because the Land Commission did not conduct the hearing on title and so would not have any record of notice. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 49 (App. 1995).

FSM courts must consider customary law where relevant to a decision, but it is not error for a court to consider custom and find that it is not relevant to its decision because a Certificate of Title had been issued for the land. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 50 (App. 1995).

While, as a general rule, res judicata applies only to parties, and their privies, to an earlier proceeding, a Torrens system land registration Certificate of Title is, by statute, prima facie evidence of ownership stated therein as against the world, and conclusive upon all persons who had notice and those claiming under them. As a general rule a Certificate of Title can be set aside only on the grounds of fraudulent registration. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 50-51 (App. 1995).

A Certificate of Title issued by a state land commission precludes a claim by the state that the land is public land. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 51 (App. 1995).

A court need not decide whether a party who is being sued for trespass, and who does not claim ownership, may raise as an affirmative defense a challenge to the validity of a plaintiff's Certificate of Title issued under the Torrens land registration system when the issues raised by the defendant are insufficient to challenge the Certificate of Title. Luzama v. Ponape Enterprises Co., 7 FSM R. 40, 51-52 (App. 1995).

Certificates of Title to real property are conclusive upon all persons who have had notice of the proceedings that resulted in the issuance of the certificates, and all those claiming under them, and are prima facie evidence of ownership as therein stated against the world. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 392 (Pon. 1996).

Because Certificates of Title are prima facie evidence of ownership as therein stated against the world, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Etscheit v. Nahnken of Nett, 7 FSM R. 390, 394 (Pon. 1996).

Once a Designation of Land Registration Area is made, courts should not entertain actions with regard to interests in such land unless special cause is shown for so doing. Iriarte v. Etscheit, 8 FSM R. 231, 238 (App. 1998).

The statutory provisions required for notice to those the land registration team might find from preliminary inquiry to have claims includes both actual service on known claimants and posting. Iriarte v. Etscheit, 8 FSM R. 231, 238 (App. 1998).

When a court makes the determination of ownership the Land Commission is not relieved from giving notice of that determination prior to issuing the certificate of title. Iriarte v. Etscheit, 8 FSM R. 231, 238 (App. 1998).

An argument that a certificate of title is invalid because of an adverse possession claim must fail when the twenty years necessary for adverse possession has not passed. Iriarte v. Etscheit, 8 FSM R. 231, 239 (App. 1998).

Because Certificates of Title are prima facie evidence of ownership as therein stated against the world, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Sigrah v. Kosrae State Land Comm'n, 9

FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

As a general rule, a Torrens system land registration Certificate of Title is, by statute, prima facie evidence of ownership stated therein as against the world, and conclusive upon all persons who had notice and those claiming under them; but when a person has asserted a claim to the land and was not given notice of the registration proceedings as required by law, the Determination of Ownership and the Certificate of Title for that land is not conclusive as upon him. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 93 (Kos. S. Ct. Tr. 1999).

In land cases, notice requirements shall be followed. Failure to serve actual notice on a claimant is a denial of due process and violation of law. Due to the violations of the statutory notice requirement, Determinations of Ownership and Certificates of Title will be set aside as void. Sigrah v. Kosrae State Land Comm'n, 9 FSM R. 89, 95 (Kos. S. Ct. Tr. 1999).

Any aggrieved party may appeal a land commission determination of ownership at any time within 120 days from the date of determination. If it is not appealed within 120 days, then the land commission shall issue a certificate of title which is conclusive evidence of ownership of the land as to all persons who received notice of the land commission's action. In re Lot No. 014-A-21, 9 FSM R. 484, 491 (Chk. S. Ct. Tr. 1999).

A Certificate of Title is prima facie evidence of ownership and is conclusive upon a person who appeared as a witness at the formal hearing and those claiming under her. Jonas v. Paulino, 9 FSM R. 513, 516 (Kos. S. Ct. Tr. 2000).

As a general rule, a Torrens system land registration Certificate of Title is, by statute, prima facie evidence of ownership stated therein as against the world, and conclusive upon all persons who had notice and those claiming under them. However, when a person has asserted a claim to the land and was not given notice of the registration proceedings as required by law, the Determination of Ownership and the Certificate of Title for that land is not conclusive as upon him. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

A Determination of Ownership is not conclusive upon a claimant who was identified early in the Land Commission proceedings and who also testified in support of his claim at the formal hearing but was not served a copy of the Determination of Ownership. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

In land cases, statutory notice requirements must be followed. Failure to serve actual notice on a claimant is a denial of due process and violation of law. Due to the violations of the statutory notice requirement, Determinations of Ownership and Certificates of Title will be set aside as void. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

When a party, who had shown an interest in the parcel, was not served the Determination of Ownership as required by law, the parcel's Determination of Ownership and the Certificate of Title will, due to the violations of the statutory notice requirement, be vacated and set aside as void and remanded to the Land Commission to again issue and serve the Determination of Ownership for the parcel in accordance with statutory requirements. Nena v. Heirs of Nena, 9 FSM R. 528, 530 (Kos. S. Ct. Tr. 2000).

The issuance of a Determination of Ownership is not the final step in the land registration process. Issuance of a Certificate of Title is. Generally, certificates of title are to be issued shortly after the time to appeal a determination of ownership has expired or shortly after an

appeal has been determined. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

A Certificate of Title must, with exception of rights of way, taxes, and leases of less than one year, set forth the names of all persons or groups of persons holding interest in the land, and should include a description of the land's boundaries. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

When a Determination of Ownership has been issued but no Certificate of Title has been issued, the Land Commission's ownership determination process has been started but has not been completed. Small v. Roosevelt, Innocenti, Bruce & Crisostomo, 10 FSM R. 367, 370 (Chk. 2001).

A plaintiff with a certificate of title for a parcel clearly has greater possessory interest to the disputed property so that a defendant is liable for trespass on the plaintiff's parcel when he has entered, cleared and planted crops inside the established boundaries of the plaintiff's parcel without the plaintiff's consent. Shrew v. Killin, 10 FSM R. 672, 674 (Kos. S. Ct. Tr. 2002).

Certificates of title are by statute, prima facie evidence of ownership stated therein as against the world. Because of this, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Stephen v. Chuuk, 11 FSM R. 36, 41 (Chk. S. Ct. Tr. 2002).

Because certificates of title to real property are prima facie evidence of ownership as stated therein against the world, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. A party challenging the certificates' validity thus bears the burden of proving that they are not valid or authentic. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 101 (Pon. 2002).

When to dispute the plaintiffs' ownership of the property, the defendants have the burden of showing that the plaintiffs' certificates of title are not valid or authentic, or that the relevant certificate of title does not cover the land the defendants occupy, whether the land the defendants occupy was part of the land in a 1903 auction is not a genuine issue of material fact because the defendants' unsupported contention does not dispute the validity of the certificates showing the plaintiffs to be the property's owners. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 101 (Pon. 2002).

That a later survey was performed and another certificate of title issued for the same land does not somehow dilute the certificate holders' ownership of the property, or make defendants' claim to it any more substantial. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 102 (Pon. 2002).

Whether a certificate of title issued in 1983 was voidable is not a genuine issue as to a material fact which would prevent the granting of summary judgment because the plaintiffs presently hold a certificate of title for the property defendants presently occupy. The party challenging the certificate's validity bears the burden of proving that it is not valid or authentic, and when the defendants have failed to show that the relevant certificate of title is invalid, their argument does not create a genuine issue of material fact. Carlos Etscheit Soap Co. v. Gilmete, 11 FSM R. 94, 104 (Pon. 2002).

Courts are required to attach a presumption of correctness to a certificate of title. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158 (Chk. 2002).

It would seem that due process would require that in any lawsuit to remove someone's name from a certificate of title that that person would be an indispensable party to the action. Marcus v. Truk Trading Corp., 11 FSM R. 152, 158 n.4 (Chk. 2002).

When the plaintiffs are entitled to continued use of a parcel on a permanent land use basis pursuant to a land use grant made in 1974 by the defendant's now decreased father, title to the parcel will be issued in the defendant's name as fee simple owner, but the Certificate of Title to that parcel must also reflect the plaintiffs' permanent land use right. Robert v. Semuda, 11 FSM R. 165, 168 (Kos. S. Ct. Tr. 2002).

The law is clear when the Land Commission knew of a civil action judgment and that a person was a claimant and interested party for the parcels, which were the subject of the judgment and later the subject of Land Commission proceedings, but that person was not served personal notice of the formal hearings or the Determinations of Ownership for the parcels. Pursuant to established precedent, Determinations of Ownership and Certificates of Title will be held void and vacated when proper notice was not given pursuant to statute. Actual notice to an interested party is required by personal service. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 246, 248 (Kos. S. Ct. Tr. 2002).

When the plaintiff was never served statutory notice of the formal hearings or Determinations of Ownership issued for the parcels, those Determinations of Ownership and Certificates of Title must be vacated and set aside as void and the matter remanded for further proceedings consistent with statute. Sigrah v. Kosrae State Land Comm'n, 11 FSM R. 246, 248 (Kos. S. Ct. Tr. 2002).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. A mortgage can and must show on the certificate to be effective against third parties. UNK Wholesale, Inc. v. Robinson, 11 FSM R. 361, 365 n.2 (Chk. 2003).

When a person, entitled to be served notice of the hearing, was not served actual notice of the hearing by personal service, there was no substantial compliance with the notice requirements specified by law and when there was no substantial compliance with the notice requirements specified by law, the Certificate of Title and the Determination of Ownership will be vacated and set aside as void, and the matter remanded to Kosrae Land Court for further proceedings. Albert v. Jim, 11 FSM R. 487, 490 (Kos. S. Ct. Tr. 2003).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year. Therefore a mortgage can and must be shown on the certificate of title to be perfected and thus effective against third parties. If the property has not been issued a certificate of title, then the mortgage must be properly recorded in the chain of title so that someone searching the Land Commission files would expect to find it. In re Engichy, 11 FSM R. 520, 530 (Chk. 2003).

The proper way to record a mortgage under the Torrens land registration system in use in Chuuk is for the mortgage and the landowner's [duplicate] certificate of title to be submitted to the Land Commission at the same time. The mortgage document is then recorded; the

mortgage is endorsed on the certificate of title permanently on file at the Land Commission; and then a (new) duplicate certificate of title, showing the endorsement of the newly-recorded mortgage, is given (or returned) to the landowner. If this is done, then the security interest is perfected and the mortgage is valid and enforceable against all the world and has priority over all other claims to the proceeds from the sale of the mortgaged property. If all these steps are not done, then the security interest is not perfected and the mortgage does not carry priority over and is not effective against parties without notice of it – it is a disfavored secret lien. In re Engichy, 11 FSM R. 520, 531 (Chk. 2003).

A party must comply strictly with the Torrens land registration system's procedures in order to claim its benefits. In re Engichy, 11 FSM R. 520, 531 (Chk. 2003).

Since the Land Commission only has authority to issue a certificate of title after the time for appeal from a Land Commission determination of ownership has expired without any notice of appeal having been filed, when a notice of appeal was timely filed with the Chuuk State Supreme Court and the appellee had notice of the appeal, she is precluded from using the certificate of title against the appellant, and its issuance has no conclusive effect because once a notice of appeal had been filed, the Land Commission acted ultra vires, or outside of its authority, when it issued the certificate of title. The certificate is thus void. In re Lot No. 014-A-21, 11 FSM R. 582, 590 (Chk. S. Ct. Tr. 2003).

It is fairly clear that a purchaser who has actual knowledge of some adverse claim to the land will take subject to it, even though the certificate of title fails to memorialize it. In re Engichy, 12 FSM R. 58, 67 n.4 (Chk. 2003).

On registered land encumbrances such as a mortgage must be endorsed upon the certificate of title. In re Engichy, 12 FSM R. 58, 68 (Chk. 2003).

American common law authorities are applicable in the Federated States of Micronesia, if they are applicable at all, only to "recorded" land – to land that has not been issued a certificate of title. Land with a certificate of title is not part of a land recordation system but is part of a Torrens land registration system. In re Engichy, 12 FSM R. 58, 68 (Chk. 2003).

A Torrens land registration system is a legal concept completely foreign to American common law and the related recording statutes. Common law precedents and procedures do not apply to registered land. Land registration is wholly statutory. In re Engichy, 12 FSM R. 58, 68-69 (Chk. 2003).

The purpose and benefit of the lengthy procedure and notice requirements needed to register land is that a certificate of title, once issued, is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and shall be prima facie evidence of ownership as therein stated against the world. This is unlike a "conventional" recording system, which makes no averments to the public about the state of title to any parcel of land. Instead it merely invites searchers to inspect the copies of the instruments which it contains and to draw their own conclusions as to title. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

The ownership as stated in the certificate of title is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and prima facie evidence against the world. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

No lengthy title searches, which may fail to turn up important claims, need be done on registered land because all transfers and encumbrances of any interest in the land covered by a certificate of title must be noted thereon or therewith except for rights of way over the land, taxes on the land due within the two years prior to the certificate's issuance, and leases or use rights of less than one year. One only needs to consult the Land Commission's original certificate of title, which will show at a glance the ownership of, and the encumbrances on, the property, and the title searcher need then only read and evaluate the documents referred to by the current endorsements. No historical search of the title is ever necessary or relevant. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

An adverse possession claim will never prevail over a validly-issued certificate of title. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

The benefits of land registration all flow from the adherence to the Torrens land registration statutes and people's ability to rely on the certificate of title. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

The Chuuk Real Estate Mortgage Law confirms and adopts by reference rather than modifying or repealing the Title 67 provisions applicable to the endorsement of mortgages on certificates of title. In re Engichy, 12 FSM R. 58, 70 (Chk. 2003).

Although preferable, endorsements on certificates of title are not required to be typewritten. Hand printing would suffice. In re Engichy, 12 FSM R. 58, 70 (Chk. 2003).

In some Torrens land registration system jurisdictions, considering that the purpose of land registration acts is to allow confident reliance upon the land registration agency's original certificate of title, the absence of even an obvious encumbrance (or an encumbrance of which there is actual knowledge) from the certificate is fatal because the certificate itself is conclusive. In re Engichy, 12 FSM R. 58, 70-71 (Chk. 2003).

A mortgage endorsed on a certificate of title cannot be given retroactive effect. To do so would destroy the purpose of the land registration system – that the original certificate of title at the Land Commission is conclusive and if there are no endorsements anyone searching the state of the title need look nowhere else for mortgages and for the other encumbrances that, with certain exceptions, are required to be listed there. In re Engichy, 12 FSM R. 58, 71 (Chk. 2003).

A mortgagee will have a secured interest in any future funds that from the sale of the mortgaged land when, although the mortgage was not endorsed on the certificate of title before the case was consolidated with other judgment-creditors', all of the necessary documents for the Land Commission to endorse the mortgage had been submitted to the Land Commission by then. In re Engichy, 12 FSM R. 58, 71 (Chk. 2003).

The Land Commission has primary jurisdiction to determine and register land titles. Once an area has been designated as a land registration area, courts cannot entertain any action regarding land titles in that area unless special cause has been shown. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

The statute authorizes only the Land Commission to declare a land registration area. No

authority has been identified that would permit a court to designate a land registration area, or to order the Land Commission to designate one. The statute leaves that to the Land Commission's discretion based upon its determination of desirability and practicability, which is uniquely within its expertise and authority to make. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

A court can determine no more than who among the parties before it has a better claim to title (or in the case of trespass – possession). A court usually cannot determine who has title good against the world. Land registration (determination of title presumptively good against the world) is the province of the Land Commission and its procedures. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

No court could grant as relief a sweeping request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Heirs of Shrew, 12 FSM R. 274, 277 (App. 2003).

Courts must attach a presumption of correctness to a certificate of title. Anton v. Heirs of Shrew, 12 FSM R. 274, 277 (App. 2003).

Co-owners of land are generally considered indispensable parties to any litigation involving that land. This should be especially true when full title to the land is at stake, and even more important when the land will be registered and a certificate of title issued for it because a certificate of title, once issued, is conclusive upon a person who had notice of the proceedings and a person claiming under him and is prima facie evidence of ownership. This is because a cotenant cannot be divested of his interest by a proceeding against all the co-owners of the common property unless he is made a party to the proceeding and served with legal process. Anton v. Heirs of Shrew, 12 FSM R. 274, 278-79 (App. 2003).

No court could grant as relief a far-reaching request to nullify all certificates of title to all persons who are not heirs of legatees pursuant to a will when such a request would reverse long-settled, final cases not now before the court, with parties not now before the court, and award others title to land for which certificates of title have already been issued because that would have the court void certificates of title in a manner that would violate every notion of due process of law. Anton v. Cornelius, 12 FSM R. 280, 288-89 (App. 2003).

Properly issued certificates of title are by statute *prima facie* evidence of the ownership stated therein as against the whole world, and a court is required to attach a presumption of correctness to them. Hartman v. Chuuk, 12 FSM R. 388, 400 (Chk. S. Ct. Tr. 2004).

Under Kosrae State Code § 11.615(3), land held under a certificate of title may be subject to a right of way whether or not the right of way is stated in the certificate of title. Sigrah v. Kosrae, 12 FSM R. 513, 518 (Kos. S. Ct. Tr. 2004).

Certificates of title are prima facie evidence of ownership as therein stated against the world. Therefore the court, pursuant to established precedent and in accordance with Kosrae's Torrens system land registration process, must attach a presumption of correctness to a

certificate of title for a parcel, including its ownership and its boundaries. Sigrah v. Kosrae, 12 FSM R. 531, 533-34 (Kos. S. Ct. Tr. 2004).

A quiet title court judgment is only good against the parties to the case and those in privity with them, while a certificate of title to registered land is presumptively valid against the world. Dereas v. Eas, 12 FSM R. 629, 633 (Chk. S. Ct. Tr. 2004).

Certificates of title are prima facie evidence of ownership as therein stated against the world, and a court is required to attach a presumption of correctness to them when considering challenges to their validity. Since a certificate of title issued to the defendant carries a presumption of correctness, it must be presumed that the defendant is the true owner of the parcel. Benjamin v. Youngstrom, 13 FSM R. 72, 75 (Kos. S. Ct. Tr. 2004).

The Land Commission has no authority to reopen a 1981 determination of ownership that is final and res judicata, but it must determine the land's exact boundaries before it can issue a certificate of title. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e (Chk. 2004).

Adverse possession is not a claim that can be made against registered land, or land that has been one step (determination of boundaries) away from being registered land since 1981, and the filing of a trespass suit tolls (suspends) any running of the time period needed to assert an adverse possession claim. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e (Chk. 2004).

In light of the appellate court's insistence that the Land Commission should have the primary responsibility for determining, surveying, and certifying the land's exact final boundary, and the court's general unsuitability to perform those functions, the court will remand the case to the Land Commission to perform this work. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99e (Chk. 2004).

Since a certificate of title must describe the land's exact boundaries, the Land Commission must, before it can issue a certificate of title, locate, survey, and certify all of the boundaries, which must be as they existed when its determination of ownership was made. The certificate must also show that it is subject to a 99-year lease, if that lease was, is, or becomes properly recorded. Church of the Latter Day Saints v. Esiron, 13 FSM R. 99a, 99f (Chk. 2004).

Under 67 TTC 106, upon the designation of a registration area, the district surveyor's duty was to cause an accurate survey to be made of the area's exterior bounds and thereafter to make such surveys of plots or claims and place such markers within the area as the commission may direct; and under former Kosrae State Code Section 11.605 (repealed) upon designation of a registration area, a qualified person designated by the Land Commission made an accurate survey of the area's exterior bounds and claimed parcels within the area, placing markers at the Commission's direction. The Land Commission and surveyors were to recognize and mark claims made within a designation area. Sigrah v. Heirs of Nena, 13 FSM R. 192, 197-98 (Kos. S. Ct. Tr. 2005).

Nothing in former Title 11 of the Kosrae State Code required that the boundaries of Japanese Lots be maintained during the registration process, and it was the Land Commission's established practice of recognizing claims for plots and portions of Japanese Lots, and partitioning Japanese Lots into smaller parcels during the registration process. Sigrah v. Heirs of Nena, 13 FSM R. 192, 198 (Kos. S. Ct. Tr. 2005).

The partitioning of Japanese Lots into smaller parcels for the land registration process has been a continuing Land Commission practice, and is completed in accordance with statutory mandates for the recognition of claims of plots made within a designation area. No statutes or regulations prohibit the partitioning of Japanese Lots into smaller parcels for the land registration process. Sigrah v. Heirs of Nena, 13 FSM R. 192, 198 (Kos. S. Ct. Tr. 2005).

The Kosrae Land Commission was required by Trust Territory law and by Kosrae state law to recognize and survey claims of plots made within a registration area. Sigrah v. Heirs of Nena, 13 FSM R. 192, 198 (Kos. S. Ct. Tr. 2005).

Since a certificate of title is prima facie evidence of ownership and courts are required to attach a presumption of correctness to a certificate of title, a plaintiff with a certificate of title is presumed to be an owner of the subject parcels and thus the factor of the likelihood of success on the merits weighs in the plaintiffs' favor. Akinaga v. Heirs of Mike, 13 FSM R. 296, 299 (Kos. S. Ct. Tr. 2005).

A certificate of title is prima facie evidence of ownership, and courts are required to attach a presumption of correctness to a certificate of title. Norita v. Tilfas, 13 FSM R. 321, 323 (Kos. S. Ct. Tr. 2005).

Certificates of title are prima facie evidence of ownership. Norita v. Tilfas, 13 FSM R. 424, 426 (Kos. S. Ct. Tr. 2005).

A preexisting easement or other right appurtenant to the land remains appurtenant, even if it is not described in the certificate of title. Norita v. Tilfas, 13 FSM R. 424, 426 (Kos. S. Ct. Tr. 2005).

When, pursuant to state law, parties were granted and therefore maintain a permanent land use right to access a parcel and use a portion thereof for maintenance of their existing gravesites, this permanent land use right passes with the parcel until it is extinguished in a lawful manner independent of the certificate of title. Norita v. Tilfas, 13 FSM R. 424, 427 (Kos. S. Ct. Tr. 2005).

The law regarding the validity of certificates of title is well established in Kosrae and the FSM. Certificates of title are prima facie evidence of ownership as stated against the world. A court is required to attach a presumption of correctness to them when there are challenges to their validity. Benjamin v. Youngstrom, 13 FSM R. 542, 546 (Kos. S. Ct. Tr. 2005).

The Kosrae Constitution permits certain conveyances of land to be subject to conditions. Article II, Section 3 provides that any conveyance of land from a parent or parents to a child or children, may be subject to such conditions as the parent or parents deem appropriate, provided, that such conditions are in writing at the time of conveyance and duly reflected in the certificate of title. Benjamin v. Youngstrom, 13 FSM R. 542, 546 (Kos. S. Ct. Tr. 2005).

It is the Kosrae Land Court's statutory duty to issue certificates of title. Benjamin v. Youngstrom, 13 FSM R. 542, 548 (Kos. S. Ct. Tr. 2005).

A cause of action based upon a claim of defective certificate of title, must fail when the issuing entity, the Kosrae Land Court, is not a party to this action. Benjamin v. Youngstrom, 13 FSM R. 542, 548 (Kos. S. Ct. Tr. 2005).

The notice required by state law is intended to reach all parties, claimants and provide notice to the general public on the schedule of proceedings. The statutory notice required includes notice to the public: posting of the notice in at least three conspicuous places or at least two areas of public access and further notice to the public is required by posting at the municipal building of the municipality where the property is located and through announcements on the Kosrae radio station on several occasions. Notice to parties, claimants, and public is provided by at least two separate postings of the notice in different locations, and notice by radio broadcast. These substantial requirements for notice of land proceedings reflect the Kosrae Land Court's calculated goal to reach as many claimants, parties and members of the general public as possible. Kun v. Heirs of Abraham, 13 FSM R. 558, 561 (Kos. S. Ct. Tr. 2005).

A party challenging a certificate of title bears the burden of proving that the certificate of title is not valid or authentic, and when the party has failed to show that the relevant certificate of title is invalid, their argument does not create a genuine issue of material fact. Kinere v. Sigrah, 13 FSM R. 562, 567 (Kos. S. Ct. Tr. 2005).

Generally, Kosrae State Code, Title 11, former Chapter 6 (repealed) specified the former Kosrae State Land Commission's duties and responsibilities, and the procedures for determination and registration of interests in land. It did not specify any duties of private party claimants, or govern the conduct of private party claimants. When the defendants are individuals and private parties, Kosrae State Code, Title 11, including former Chapter 6, does not create a cause of action against the defendants. Kinere v. Sigrah, 13 FSM R. 562, 570 (Kos. S. Ct. Tr. 2005).

When the complete absence of any map or sketch from the entire Land Court record raises grave concerns as to the correct identification of the subject parcel, area and boundaries at the hearing; as to the parties' potential confusion; and regarding notice to the claimants of the area and boundaries of the subject parcel, and when the parties were not, as required, provided the map or sketch with the Land Court's memorandum of decision, this failure resulted in inadequate notice of the decision to the parties, and was contrary to law. The memorandum of decision must thus be vacated and the matter remanded to the Land Court for further proceedings. Heirs of Weilbacher v. Heirs of Luke, 14 FSM R. 99, 101 (Kos. S. Ct. Tr. 2006).

Certificates of Title must show all interests in the land except for with rights of way, taxes due and lease or use rights of less than one year. George v. Abraham, 14 FSM R. 102, 107 (Kos. S. Ct. Tr. 2006).

When the owner did not execute nor record any lease for a portion of the parcel in the defendant's favor, any lease granted to the defendant in excess of one year did not comply with law as it was not recorded on the certificate of title, and since legal recognition of a grant of a permanent land use right also requires written documentation to be executed by the grantor, there was no permanent land use right granted by the owner in the defendant's favor. George v. Abraham, 14 FSM R. 102, 107 (Kos. S. Ct. Tr. 2006).

Since the Land Commission is required to make a determination of lawful devisees or heirs and their respective interests following a hearing, when the Land Commission did not hold any hearing to determine the devisees or heirs and their interests following the owner's death, and when the Registrar's personal evaluation of the owner's oral will and determination of its validity was contrary to law, it is therefore vacated and the certificate of title issued based upon the

invalid oral will is therefore also invalid. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

When a certificate of title was never issued to Tulpe Alokoa for parcel 006-K-07 and she was never determined by a Land Commission proceeding to be the title holder of that parcel and therefore could not transfer title to land that she did not own, her deed of gift was invalid, and should have been rejected for filing by the Land Commission. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

Certificates of Title are prima facie evidence of ownership as therein stated against the world. Heirs of Nena v. Sigrah, 14 FSM R. 283, 285 (Kos. S. Ct. Tr. 2006).

A party has standing to challenge a certificate of title when, although he admits that some of the land was sold to others, he asserts that even after those sales, he still retained part of the land. Dereas v. Eas, 14 FSM R. 446, 453-54 (Chk. S. Ct. Tr. 2006).

Certificates of title are by statute, prima facie evidence of ownership stated therein as against the world, and because of this, a court must attach a presumption of correctness to them when considering challenges to their validity or authenticity. Dereas v. Eas, 14 FSM R. 446, 454 (Chk. S. Ct. Tr. 2006).

No court can grant as relief a request to set aside or nullify a certificate of title to a person who is not a party before the court and effectively award someone else ownership to some or all of the land for which the certificate of title was issued because that would have the court void a certificate of title in a manner that would violate every notion of due process of law. Dereas v. Eas, 14 FSM R. 446, 454 (Chk. S. Ct. Tr. 2006).

In any lawsuit to remove someone's name from a certificate of title, that is, to deprive a person of ownership of the registered land that the certificate represents, due process requires that that person is an indispensable party to the action. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

No court can set aside, void, nullify, invalidate, or alter a person's certificate of title to land without that person first having been made a party to the action before the court. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

As a general rule, a certificate of title can be set aside only on the grounds of fraudulent registration. While the Land Commission may be a necessary party to such an action, the titleholder is an indispensable party to any action to set aside, void, nullify, or alter the titleholder's certificate of title who must be joined, or any ensuing adjudication is void. Dereas v. Eas, 14 FSM R. 446, 455 n.3 (Chk. S. Ct. Tr. 2006).

A court is not competent to rule on the validity of a certificate of title to land when the court does not have (by its own statement) subject matter jurisdiction over the case and does not have personal jurisdiction over indispensable parties (the titleholders) or give them notice or an opportunity to be heard. Its orders were void and an order invalidating a person's certificate of title may even be void on its face when it held that that person was an indispensable party who was not present in the case and then proceeded to invalidate his certificate of title without him having been made a party to the case. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

When the one person's certificate of title was voided and a new certificate of title covering the same land issued to another person without notice to the first person and affording the first person an opportunity to be heard, it was a denial of due process and that action was void. Dereas v. Eas, 14 FSM R. 446, 455 (Chk. S. Ct. Tr. 2006).

A person's certificate of title on file at the Chuuk Land Commission constituted notice to the world of that person's ownership of all of the land it was for and that certificate and the Plat No. cited constituted notice of the boundaries of the ownership. Dereas v. Eas, 14 FSM R. 446, 457 (Chk. S. Ct. Tr. 2006).

When no court with jurisdiction to do so has ever invalidated or altered a person's certificate of title to a lot and the statute of limitations bars any further action to invalidate that certificate, the presumption of that certificate's correctness has not been overcome and the titleholder's motion to quiet title to that lot will be granted. Dereas v. Eas, 14 FSM R. 446, 458 (Chk. S. Ct. Tr. 2006).

The registration process for Land Court is designed to ensure all interested parties and claimants receive notice. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 496 (Kos. S. Ct. Tr. 2006).

When title to land is at issue, all known persons who are claiming title must be joined in order to settle ownership without additional litigation. The policy supporting this rule is that all persons needed for a full, fair, and just adjudication should be part of the case and have an opportunity to be heard. Heirs of Mackwelung v. Heirs of Taulung, 14 FSM R. 494, 496 (Kos. S. Ct. Tr. 2006).

Trust Territory Court decisions are valid and binding, consistent with the Kosrae constitutional provisions on transition of government. The doctrine of res judicata applies and Trust Territory Court decisions must be upheld. Therefore, the Land Court lacked jurisdiction to receive additional evidence and issue a new decision in a case where the Trust Territory Court, in three previous cases, had established the ownership and boundaries of the land in question. Heirs of Livaie v. Palik, 14 FSM R. 512, 516 (Kos. S. Ct. Tr. 2006).

A Land Court decision is contrary to law when it failed to give effect to the decisions in previous Trust Territory Court cases, and will therefore be remanded to the Kosrae Land Court with instructions and guidance to re-survey the parcels, if needed to issue a memorandum of decision consistent with the Trust Territory Court decisions. Heirs of Livaie v. Palik, 14 FSM R. 512, 516 (Kos. S. Ct. Tr. 2006).

In any lawsuit to, in effect, remove someone's name from a certificate of title, that is, to change the registered ownership of the land that the certificate represents and deprive the certificate titleholder of the titleholder's property interest, due process requires that that person is an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has already been issued, must, at a minimum, name the registered titleholder as a party. Ruben v. Hartman, 15 FSM R. 100, 110 (Chk. S. Ct. App. 2007).

Certificates of title are required to show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year and are conclusive upon all persons

who have had notice of the proceedings and all those claiming under them and are prima facie evidence of ownership as stated therein against the world. Ruben v. Hartman, 15 FSM R. 100, 112-13 (Chk. S. Ct. App. 2007).

In order for a judgment granting ownership to land to which someone else has a certificate of title to be valid, the judgment would first have to have set aside the other's certificate of title and as a general rule a certificate of title can be set aside only on the grounds of fraudulent registration. When the pleadings never addressed, or even mentioned the existence of, the certificate of title, this was a fatal flaw. Ruben v. Hartman, 15 FSM R. 100, 113 (Chk. S. Ct. App. 2007).

Title is prima facie proof of ownership and is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and it is prima facie evidence of ownership as therein stated against the world. But when the plaintiff filed his request for a subdivision of the parcels with the Land Commission but never had notice of any proceedings or an opportunity to be heard on his claim, the title issued in 2002 was not conclusive as to his interest. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

For the process of issuing title to be fair and rational, it must address all claimed interests in title. If a person claims an interest in land, that claim must be considered before title is issued to someone else. Siba v. Noah, 15 FSM R. 189, 194 (Kos. S. Ct. Tr. 2007).

When, before issuing title to someone else, the Land Court never gave the plaintiff notice or an opportunity to be heard on his claim of ownership based on a subdivision and since having notice and an opportunity to be heard are the core requirements of due process and fundamental fairness, the Land Commission and Land Court deprived the plaintiff of his right to due process when title was issued in 2002 without giving the plaintiff notice or an opportunity to be heard on his claim of ownership filed with the Land Commission in 1987, and therefore, the 2002 title is not valid as to the plaintiff. Siba v. Noah, 15 FSM R. 189, 194-95 (Kos. S. Ct. Tr. 2007).

A certificate of title is conclusive upon any person who had notice of the proceedings and all those claiming under that person and is prima facie evidence of ownership against all others. Thus, the land registration statute creates conclusive title, a title that cannot be challenged, as to anyone who had notice of the proceedings and as to anyone whose interest is derived from a person with notice. As to the world at large this statute creates a presumption of ownership. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

For a person who has asserted a claim to the land and was not given notice of the registration proceedings as required by law, the determination of ownership and the certificate of title for that land is not conclusive as upon him. When that person is claiming ownership of land, another person has title, and the appeals period has expired, then that person now claiming ownership must at least show enough facts to establish that the previous ownership decision is incorrect. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

When a plaintiff failed to submit evidence that he was entitled to notice in the previous Land Commission proceedings and testimony shows that he was not entitled to notice in the proceedings, and when the plaintiff's interests are derived from someone who received notice and participated and the record even suggests that the plaintiff himself was present at the hearing, the issued certificate of title is conclusive title and cannot be challenged by the plaintiff. Even if the plaintiff had submitted sufficient evidence showing he was entitled to notice and did

not receive it, he must also show enough facts to establish the previous ownership decision was incorrect, and when he submitted no evidence on this issue, he has not carried his burden of proof on claims of ownership of land and he is not entitled to the requested relief. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

The need for finality in litigation is particularly important for claims to land. The statute covering designation of registration areas, recognizes this need and provides 1) that a justice must not adjudicate a matter previously decided by a court between the same parties or those under whom the parties claim which dispute involves the same parcel and 2) that the Land Court must accept prior judgments as res judicata and determine those issues without receiving evidence. Andon v. Shrew, 15 FSM R. 315, 321 (Kos. S. Ct. Tr. 2007).

When an earlier civil action heard and determined the subject land's ownership and the plaintiff was in privity to one of the parties, he cannot relitigate the subject land's ownership. The earlier case determined ownership in a final judgment and, based on res judicata, the plaintiff is barred from re-litigating that case again. The Land Commission was statutorily created to address disputes about ownership and to issue a Torrens Title that is conclusively correct as to the parties and presumptively correct as to everyone else. When the plaintiff's interests are derived from a party in the Land Commission proceedings, that title is conclusive as to his interests and he is barred, under the statutorily adopted doctrine of res judicata, from relitigating an ownership claim already determined. Andon v. Shrew, 15 FSM R. 315, 321-22 (Kos. S. Ct. Tr. 2007).

Kosrae State Code § 11.615(4), which governs the issuance of certificates of title, establishes that a preexisting easement or other right of way over the land remains appurtenant even if it is not described in the certificate; and passes with the land until cut off or extinguished in a lawful manner independent of the certificate. Akinaga v. Heirs of Mike, 15 FSM R. 391, 397 (App. 2007).

The current system of land registration in Chuuk dates from the Trust Territory period. Title 67 of the Trust Territory Code, governing land registration, has been retained by the Chuuk. Mori v. Haruo, 15 FSM R. 468, 471 (Chk. S. Ct. App. 2008).

Land registration is based on the Torrens system of land registration, whereby land ownership is conclusively determined and certified by the government and thereby is easy to determine. The certificate of title issued by the government shows the state of the title and the person in whom it is vested. Determination of title is the system's basic requirement. To that end, the Land Commission holds a proceeding to settle and declare the state of the title. Once the Commission completes its inquiry and conducts a public hearing, it must issue a determination of ownership, pursuant to which a certificate of title is issued. Determinations of ownership are appealable to the Chuuk State Supreme Court trial division. Mori v. Haruo, 15 FSM R. 468, 471 (Chk. S. Ct. App. 2008).

A party claiming ownership of 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. Mori v. Haruo, 15 FSM R. 468, 471 (Chk. S. Ct. App. 2008).

When a determination of ownership was issued to a party, but no certificate of title was issued, and there has been no allegation that the determination of ownership was incorrect, the

court proceeds as if a certificate of title had been issued. Mori v. Haruo, 15 FSM R. 468, 472 (Chk. S. Ct. App. 2008).

The "registration" of interests in land, pursuant to 67 TTC 119 "has the same force and effect as to such land as a recording" under 57 TTC 301. In order for a subsequent, bona fide, or "innocent," purchaser to have valid title against a prior holder of an interest in the same real estate the subsequent purchaser must "register" or "record" the interest before the prior holder. Mori v. Haruo, 15 FSM R. 468, 472 (Chk. S. Ct. App. 2008).

Individual lineage members are not required to register their interest in their individual names in order to protect their interests as lineage members in the property. There is no legal requirement that the individual names of the lineage members appear in a registration or recording in order to give notice of their interest or otherwise protect their legal interest in lineage property. Such a requirement would be impracticable under the system of lineage land ownership. If such a requirement existed, each new member of the lineage would be required to seek an amendment of the ownership documents to the lineage land in order to obtain a legally protected right in the disposition of the land. Mori v. Haruo, 15 FSM R. 468, 472-73 (Chk. S. Ct. App. 2008).

The identification of a person as the lineage head in a determination of ownership was for the purpose of clarifying the identification of the lineage. It is not the Land Commission's function to vest, in any particular person, the authority to sell lineage land. Mori v. Haruo, 15 FSM R. 468, 473 (Chk. S. Ct. App. 2008).

The statute requires that a notice of a land registration hearing be given to all interested parties and claimants, and to the public. "Interested parties" is not defined. Claimants are presumably those persons who are known to have filed a claim to register the land. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

In a Torrens land registration system, it is in the land owner's interest for notice to be given as broadly as possible since the certificate of title the landowner gets at the end of the process is conclusive upon any person who had notice of the proceedings and all those claiming under that person, but only prima facie evidence of ownership against all others. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Adjoining landowners, even if not claimants, would, because of their common boundaries, be interested parties, along with anyone else who holds some interest in the land, such as a mortgagee, an easement holder, or a holder of a covenant running with the land. But even if the adjoining landowners were not interested parties, Land Court notice to them is not contrary to law. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Because of the conclusive nature of a certificate of title, the Land Court should give the adjoining landowners notice of the formal hearing so that the resulting boundaries will be conclusive against them. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 571 (App. 2008).

Notice of land registration hearings must be given to the public in general. The hearings are public, and anyone may attend. Land Court proceedings are not ones which only the known claimants may attend. One purpose of public notice at various stages of the registration process is to reach as many persons as possible so that, at the end, the certificate of title will be conclusive against as many persons as possible, which is to the certificate holder's considerable

benefit. The statute requiring that actual notice be given to claimants, is a minimum requirement, not the maximum permissible. Heirs of Jerry v. Heirs of Abraham, 15 FSM R. 567, 572 (App. 2008).

Common law, or case law, and statutes provide the basis for Land Court orders, in other words, a complete and adequate remedy. The Legislature established the Land Court's authority to hear and decide title determinations. Statutes require that Land Court decisions not be contrary to law and must be based on substantial evidence. Case law guides the Land Court on what constitutes substantial evidence to support a decision; this is legal precedent. The Land Court must establish title based on substantial evidence by considering the testimony and record before it. There is no need to resort to equitable jurisdiction to make a title determination. Heirs of Benjamin v. Heirs of Benjamin, 15 FSM R. 657, 662-63 (Kos. S. Ct. Tr. 2008).

In order to ensure the legal protection of any right they had in the land, parties are required to register that interest. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

Land registration is based on the Torrens system of land registration, whereby land ownership is conclusively determined and certified by the government and thereby is easy to determine. The certificate of title issued by the government shows the state of the title and the person in whom it is vested. Determination of title is the basic requirement of the system. Setik v. Ruben, 16 FSM R. 158, 163 (Chk. S. Ct. App. 2008).

Certificates of title are prima facie evidence of ownership as stated therein against the world. 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. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008).

In order for a judgment granting ownership to land to which someone else has a certificate of title to be valid, the judgment would first have to have set aside the other's certificate of title. As a general rule, a certificate of title can be set aside only on the grounds of fraudulent registration. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008).

Land claimants are not exempted from the registration and recording requirements due to their alleged rights being of a customary nature. The preservation of customary rights, as with other enduring rights in property, requires that it be registered. A certificate of title must show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year and are conclusive upon all persons who have had notice of the proceedings and all those claiming under them. A claim of customary interest in land will not be implicitly recognized in a land registration, but must be explicitly identified. In cases where a certificate of title has been issued, therefore, it is not clearly erroneous for a trial court to disregard the existence of a purported customary right arising prior to the certificate of title's issuance. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008).

Under Chuuk's statutory system of land registration, which is designed to ensure good title through the land registration proceedings, it is not for the appellate court to determine whether or not someone had a valid claim of land ownership arising prior to the issuance of a certificate of title, if the claim was never raised or perfected. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008).

When neither the 1989 determination of ownership nor the 2000 certificate of title identifies any customary rights in appellants; when in order to preserve the customary rights the appellants contend they were granted in 1973, they were required to register them; when the appellants do not contend that there was anything fraudulent in the registration of the land or that they were in any way deprived of their rights through the registration proceedings; when the appellants do not otherwise present any basis for setting aside the 1989 land registration proceedings; and when they appellants do not present any reason to justify why they failed to assert their alleged customary rights when the land was registered and recorded that might provide a basis to set aside the Land Commission's determination, the 1989 determination of ownership was therefore conclusive as between appellants and appellees. Setik v. Ruben, 16 FSM R. 158, 164 (Chk. S. Ct. App. 2008).

The purpose and benefit of the lengthy procedure and notice requirements needed to register land is that a certificate of title, once issued, is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and is prima facie evidence of ownership as therein stated against the world. This is unlike a "conventional" recording system, which makes no averments to the public about the state of title to any parcel of land but merely invites searchers to inspect the copies of the instruments which it contains and to draw their own conclusions as to the state of title. Rather, Chuuk's statutory system of land registration is designed to ensure that buyers can rely on the determination of ownership as a representation of good title. Setik v. Ruben, 16 FSM R. 158, 165 (Chk. S. Ct. App. 2008).

When the appellants' claim is based on a customary grant in 1973 and the grantors' successors in interest registered the land when the Land Commission issued a determination of ownership to them in 1989 and when the Land Commission issued a certificate of title in 2000 to the appellees based on the 1989 determination of ownership and the appellees' 1999 purchase of the property from the grantors' successors in interest; and when the appellants did not object that they failed to receive notice of the Land Commission proceedings or that they were entitled to notice, the appellees, as purchasers, were entitled to rely on the 1989 determination of ownership as conclusive evidence of all interests in the property since the appellants were, in order to preserve any rights they had to the property with respect to appellees, required to assert those rights prior to appellees' registering or recording their interest. When there is no evidence to suggest the appellants ever attempted to register or record their alleged interest, it will not be recognized implicitly and the appellees were therefore bona fide purchasers without notice of appellants' claim when they sought and received a certificate of ownership in 2000. Setik v. Ruben, 16 FSM R. 158, 165 (Chk. S. Ct. App. 2008).

An adverse possession claim will never prevail over a validly issued certificate of title. Setik v. Ruben, 16 FSM R. 158, 166 (Chk. S. Ct. App. 2008).

The Kosrae Land Court is required to set forth on every certificate of title the names of all persons holding an interest in the land. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 535, 536 (Kos. S. Ct. Tr. 2009).

The Kosrae Land Court must make orders and decisions which determine any claim of heirship to a deceased person's title or interest in the lands, and once the Land Court heirship proceeding has determined the names of all persons who are heirs to a parcel, it may then issue a certificate of title for that parcel. Heirs of Mackwelung v. Heirs of Mongkeya, 16 FSM R. 535, 536 (Kos. S. Ct. Tr. 2009).

When there were no valid certificates of title for the land at the time of the Land Commission decision, the decision was a determination from which any party aggrieved thereby had 120 days to appeal, and, as such, the Chuuk State Supreme Court's trial division could exercise review jurisdiction over a timely appeal from that Land Commission decision, and the appellate division could exercise review jurisdiction over a timely appeal from the trial division review decision. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 553 (Chk. S. Ct. App. 2009).

The issuance of a certificate of title is generally not appealable, but since the Land Commission is not authorized to issue certificates of title until after the 120-day appeal period has passed or until after an appeal has been duly taken and decided, certificates of title issued before then are prematurely issued and are thus invalid and may be canceled. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 553 (Chk. S. Ct. App. 2009).

When an owner of any interest in registered land dies, the Land Commission's duty is to cancel the original and duplicate certificates and issue new ones in the name(s) of the decedent's devisees or heirs. A certificate of title cannot be issued in the name of a person already deceased. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 555 (Chk. S. Ct. App. 2009).

When the owner of registered land is deceased, it is the Land Commission's statutory responsibility to make a determination of the devisee or devisees or heir or heirs and the interests or respective interests to which each are entitled, and, to make this determination, the Land Commission must conduct a hearing at which evidence shall be heard for the purpose of determining the heir or heirs or devisee or devisees entitled to the decedent's land. Proper notice must be given for the hearing, and within 30 days after the hearing's conclusion, the Land Commission should issue its finding as to the heir or heirs or devisee or devisees and the respective interest or interests to which each are entitled. Once the Land Commission has issued its determination, it cannot issue any certificates of title unless and until after one hundred twenty days – the time to appeal – has passed, and only then, if the 120 days have passed without an appeal or if an appeal has been taken and decided, can the Land Commission issue certificates of title. Enengeitaw Clan v. Heirs of Shirai, 16 FSM R. 547, 555 (Chk. S. Ct. App. 2009).

A 1986 determination of ownership in the Land Commission's records constituted notice to the world that the named owner owned the land, and that if any potential purchaser of the land had sought to buy it from the plaintiff, the purchaser would be charged with notice that named owner, and not the plaintiff, owned the parcel. Allen v. Allen, 17 FSM R. 35, 41 (App. 2010).

In any lawsuit that, in effect, seeks to change the registered ownership of the land that a certificate of title represents and deprive the certificate titleholder of the titleholder's property interest, due process would require that that person be an indispensable party to the action. Any action that seeks to claim an interest in land for which a certificate of title or a determination of ownership has been issued, must, at a minimum, name the registered titleholder as a party. Setik v. Pacific Int'l, Inc., 17 FSM R. 304, 306 (Chk. 2010).

Certificates of title are by statute, prima facie evidence of ownership stated therein as against the world. Because of this, a court is required to attach a presumption of correctness to them when considering challenges to their validity or authenticity. Truk Trading Co. v. John, 17

FSM R. 382, 384 (Chk. S. Ct. Tr. 2010).

When the defendants do not dispute the veracity of the certificates of title provided, nor have they presented or offered any relevant or even meaningful evidence that would support a claim that the plaintiff uses or occupies or has otherwise encroached upon land it does not own, the court, accepting the certificates of title as prima facie evidence, will find that the land ownership is certain and a remand to the Land Commission for the purpose of establishing ownership is not warranted because ownership is not at issue. Truk Trading Co. v. John, 17 FSM R. 382, 384 (Chk. S. Ct. Tr. 2010).

A certificate of title must, with exception of rights of way, taxes, and leases of less than one year, set forth the names of all persons or groups of persons holding interest in the land and should include a description of the land's boundaries. Truk Trading Co. v. John, 17 FSM R. 382, 384 (Chk. S. Ct. Tr. 2010).

If the plaintiff requires a description of the boundaries of lots that he unquestionably owns, then it behooves him to obtain the relevant documentation from Land Commission directly, especially in light of its trespass accusations since it has demonstrated no special circumstances that would justify or otherwise necessitate the court ordering the Land Commission to re-survey the lots. Truk Trading Co. v. John, 17 FSM R. 382, 384 (Chk. S. Ct. Tr. 2010).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral, but in some situations, a customary oral transfer must be registered to be enforceable. The reason is not that the Torrens land registration system must supplant custom and tradition. Rather, the reason is one of evidence because certificates of title are prima facie evidence of ownership as stated therein against the world. Setik v. Ruben, 17 FSM R. 465, 472 (App. 2011).

A determination of ownership is presumed valid and cannot be set aside unless a challenger proves by a preponderance of the evidence that there has been fraud in the registration process. Setik v. Ruben, 17 FSM R. 465, 472 (App. 2011).

Chuuk has retained Title 67 of the Trust Territory Code, governing land registration, which is based on the Torrens system. Setik v. Ruben, 17 FSM R. 465, 473 (App. 2011).

The purpose and benefit of the lengthy procedure and notice requirements needed to register land is that a certificate of title, once issued, is conclusive upon all persons who have had notice of the proceedings and all those claiming under them and shall be prima facie evidence of ownership as therein stated against the world. Setik v. Ruben, 17 FSM R. 465, 475 (App. 2011).

Since a certificate of title must be based on a valid determination of ownership, the invalidity of a determination of ownership means that the subsequent certificate of title is likewise invalid and thus cannot be conclusive against the world. Setik v. Ruben, 17 FSM R. 465, 476 (App. 2011).

A certificate of title is conclusive upon all persons who have had notice of the proceedings

and all those claiming under them and is prima facie evidence of ownership as stated therein against the world. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 607-08 (Chk. 2011).

Title 67 of the Trust Territory Code remains Chuuk state law pursuant to the Chuuk Constitution's Transition Clause and because it has not been amended or repealed. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 n.2 (Chk. 2011).

When the land is registered land, the interests in it that are registered are the only interests that exist. FSM Dev. Bank v. Kansou, 17 FSM R. 605, 608 (Chk. 2011).

Once an owner has a certificate of title to land, that ownership can never be lost through adverse possession. Under a Torrens land title registration system, such as the one in Kosrae, an adverse possession claim will never prevail over a validly-issued certificate of title. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Claims founded on adverse possession or prescription, are not permitted to come into existence once the title has been registered. Once a title is registered, it is impossible thereafter to acquire title to the registered land by holding adversely to the registered owner. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

One of the attractions of a land registration system (as opposed to a land recordation system) and one of the great benefits of land title registration (as opposed to title recordation) is that once a landowner has gone through the laborious process of validly registering title to land, that landowner and that landowner's successors can never lose that land to an adverse possession claim. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

The proper time and place to make adverse possession claims, if a land occupant has one, is in a Land Court (or other) proceeding before the land title has been registered. Afterward is too late. Heirs of Benjamin v. Heirs of Benjamin, 17 FSM R. 650, 658 (App. 2011).

Certificates of title that state that the owners are the heirs of a person, who died three years before the certificates were issued and who has now been dead for twenty-eight years, have remained for too long in what should only be a very temporary designation because the Kosrae Land Court, like the Land Commission before it, has the power to make orders and decisions which determine any claim of heirship to a deceased person's title or interest in lands. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

Certificates of title naming the heirs of someone as the owners do not conform to the statutory requirement that a certificate of title must set forth the names of all persons holding an interest in the land. None of the co-owners' names are set forth on the certificates of title, although all of their names should be set forth on the certificates, when the only name on the certificate is that of a person who does not hold an interest in the land since he is deceased. For those persons who are the deceased's true and only heirs, their names, only their names, should be on the certificates of title. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

One of the purposes of a Torrens land registration system, such as Kosrae's, is that one document – the certificate of title – names every person who has an interest in the parcel covered by that certificate and describes the extent of that interest without the need to consult other sources to determine who the owners and the interest holders are and the interests they hold. That purpose is defeated if the ownership interests are listed as held by unnamed

persons whose identity can only be determined by consulting birth and death records or the decedent's will, if there was one. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

The issuance of certificates of title to "the Heirs of" should be done only sparingly, if at all, and the Land Court should determine who the heirs are and name them and the interest they hold on any certificates of title it issues. A certificate that designates "the Heirs of" as the owners does not set forth the name of any person, let alone the names of all persons, holding an interest in the land and that phrase does not name an "entity." It just designates a group of unnamed persons whose identities and interests will presumably be identified at some later time. Nena v. Saimon, 19 FSM R. 317, 327 (App. 2014).

The presence of others on the land for over 60 years who had never been notified of the land registration proceedings would lessen the plaintiffs' likelihood of success on the merits of a trespass action because persons who have been openly residing on land for a long time are persons who must be given notice of any land registration proceedings for that land, otherwise the determination of ownership (and any subsequent certificate of title) is not valid – when a person has a claim to the land and was not given notice of the registration proceedings as required by law, the determination of ownership and the certificate of title for that land is not conclusive as upon him. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

The argument that someone who had occupied or used the land for a long time did not have to be given notice because they did not own the land must be rejected because the determination of who the land owners are is made at the end of the land registration process, not before it has started. Their long-term presence on the land entitled them to notice of the land registration proceeding for the land. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

The land registration process is, with certain exceptions, supposed to determine all interests in the land, not just ownership interests. Thus, even if someone does not own the land, they may hold some other interest, such as a use interest exceeding one year, that has to be determined and included in the certificate of title. Nena v. Saimon, 19 FSM R. 317, 328 (App. 2014).

A Trust Territory High Court case that renders a judgment about ownership of land between certain parties does not, by itself, entitle one of those parties (or a party claiming under that party) to a certificate of title for that land because there may be other persons who have claims, even better claims to ownership than the parties in the Trust Territory case. Andrew v. Heirs of Seymour, 19 FSM R. 331, 340 (App. 2014).

When a previous court case has res judicata effect and status, it is conclusive only between the parties to the case and those claiming under them and no one else. But there could be persons who were not parties to the court case and who do not claim under those parties but who have their own claim to the land. The Land Court must still go through all of its usual procedures to determine if there are other claimants and, if there are, adjudicate their claims, before it can issue a determination of ownership and, if there is no appeal or if its decision is affirmed on appeal, a certificate of title. Heirs of Henry v. Heirs of Akinaga, 19 FSM R. 364, 367 (App. 2014).

A view that only successful land claimants have to be notified of the Land Commission's determination of ownership is gross legal error. All claimants to a parcel of land must be notified

of the determination of ownership for that parcel, and if boundary determinations are involved, the adjoining landowners must also be notified. Aritos v. Muller, 19 FSM R. 533, 536 & n.1 (Chk. S. Ct. App. 2014).

The Chuuk State Supreme Court trial division certainly has jurisdiction to consider an attack on a Land Commission determination of ownership as void due to the lack of notice of the formal hearings and lack of notice of the issuance of the determination of ownership because the Chuuk State Supreme Court has jurisdiction to review administrative agency decisions as provided by law, its trial division can exercise appellate review of Land Commission decisions. Aritos v. Muller, 19 FSM R. 533, 537 (Chk. S. Ct. App. 2014).

When the case was not an appeal from a Land Commission determination of ownership because it was filed too late for that and when it was not, at least initially, a trial court action with regard to interests in land within that registration area before it is likely a determination can be made on the matter by the Land Commission because the Land Commission had already made a decision, the trial court action was, instead, an action to collaterally attack (an allegedly) void Land Commission final decision. Once the trial court had determined that the Land Commission decision was void for the lack of due process, then the statute applied to the case before it and if the trial court wanted to proceed on the merits it had to first find special cause existed. Aritos v. Muller, 19 FSM R. 533, 538 (Chk. S. Ct. App. 2014).

Courts must attach a presumption of correctness to a Certificate of Title. FSM v. Falan, 20 FSM R. 59, 61 (Pon. 2015).

By statute, a certificate of title must show all interests in the land except for rights of way, taxes due, and lease or use rights of less than one year and the certificate is conclusive upon all persons who have had notice of the proceedings and all those claiming under them. A "right of way" over land is a thing such as a road, or footpath, or utility easement. A "right of way" is the right to pass through property owned by another or the strip of land subject to a nonowner's right to pass through. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

Any rights of way there may be over the land in question need not be stated in the certificate of title. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

A certificate of title's failure to mention the roadway or government right of way cannot extinguish the government's ownership of the roadway right of way. That right remained vested in the state government. When the government owned a right of way across the land that predated the current owners' ownership of the land, that right of way existed on the land when the land was homesteaded and thus still existed after a later buyer bought part of that homestead lot. Iwo v. Chuuk, 20 FSM R. 652, 655 (Chk. 2016).

The certificate of title statute does not exempt mineral rights if they are not mentioned. Iwo v. Chuuk, 20 FSM R. 652, 655 n.1 (Chk. 2016).

The government owners and users of a right of way across land are not liable for the landowners' neighbors' alleged encroachment on the land. Any remedy for that alleged encroachment, the landowners must seek from their neighbors. Iwo v. Chuuk, 20 FSM R. 652, 656 (Chk. 2016).

A valid certificate of title constitutes *prima facie* evidence of ownership. Courts must attach

a presumption of correctness to a certificate of title. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

A "registration area," is any area, which has been designated for treatment by the Kosrae Land Court, to determine boundaries and ownership interests. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 101 (App. 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).

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

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

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

When the type of interest allegedly harmed is land ownership; when the right that the plaintiffs sue upon is their right to own a certain land parcel; when the remedy sought is to recover registered title to that land parcel that the plaintiffs contend that was lost through the defendants' predecessor's wrongful act; and when the primary interest that the alleged wrongdoer invaded was the plaintiffs' predecessor's registered ownership of that parcel, the action is one for the recovery of title to land. The theory of recovery might be fraud, or due process violation, or negligence, or some other theory such as reformation of contract, but that theory does not change the action's nature for statute of limitations purposes. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 580 (App. 2018).

For registered land, strict compliance with the Torrens land registration system's procedures is a must in order to claim the system's benefits of title good against the world. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

For registered land, strict compliance with the Torrens land registration system's procedures is a must in order to claim the system's benefits of a valid certificate of title with a title good against the world. Alik v. Heirs of Alik, 21 FSM R. 606, 618 (App. 2018).

The proper way for someone to acquire a valid certificate of title for a decedent's previously registered parcel is for the Kosrae Land Court to conduct an heirship proceeding to determine the landowner's heirs and to issue a new certificate of title in those persons' names. Then, if those persons wish to transfer the parcel's title (give or sell) to one of themselves, they will execute a deed, with all their signatures properly notarized, and then present that deed to the Land Court while also surrendering their new certificate of title to the Land Court. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

A certificate of title must set forth the names of all persons holding an interest in the land. Alik v. Heirs of Alik, 21 FSM R. 606, 619 n.4 (App. 2018).

When the record supports a prima facie case that a certificate of title was issued without the process due the plaintiffs as the supposed grantors and that therefore title was fraudulently registered in another's name, they may challenge that certificate of title's validity. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

When the alleged fraudulent registration of a parcel is based on the alleged misrepresentation in the "deed of gift" that the "grantor" had the ability to grant and convey full title to parcel to the grantee, the plaintiffs have stated a claim for which they could be granted relief. Alik v. Heirs of Alik, 21 FSM R. 606, 619-20 (App. 2018).

When the plaintiffs do not seek money damages, but only seek undisturbed registered title to a parcel, the entity alleged to be negligent, the Kosrae Land Court, should not be a party to the action. Alik v. Heirs of Alik, 21 FSM R. 606, 620 (App. 2018).

In past practice, the Kosrae Land Commission, was often named a defendant when a plaintiff complained about one of its acts or omissions because plaintiffs often named administrative agencies as defendants when they sought judicial review of that administrative agency's act or omission. But the Kosrae Land Court, unlike the Kosrae Land Commission, is not an administrative agency. It is a court. It should not be a party to the action. Alik v. Heirs of Alik, 21 FSM R. 606, 620 (App. 2018).

The titleholder is an indispensable party to any action to set aside, void, nullify, or alter the titleholder's certificate of title because due process makes that person an indispensable party to the action. Courts generally hold court orders void when the real party of interest was not present and the matter concerned the removal of that (indispensable) party from a certificate of title. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130L (Chk. S. Ct. Tr. 2018).

Default judgments against a real party of interest will be voided for lack of due process when that party lacked a notice and hearing before being disposed of its claim to a property – even when the real party of interest lacked a certificate of title. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130L (Chk. S. Ct. Tr. 2018).

A stipulated motion, that proffers no proof of service on the real party of interest, but asks the court to void the real party in interest's years-old, un-appealed determination of ownership and thus seeks to dispossess her of her property rights without notice or hearing, asks the court to issue an order in violation of the real party in interest's due process rights. The court will deny any such motion because voiding a determination of ownership based on stipulation that fails to provide notice to the real party of interest violates the real party of interest's due process rights under the Chuuk Constitution. Einat v. Chuuk Land Comm'n, 22 FSM R. 130j, 130m (Chk. S. Ct. Tr. 2018).

Any lease or use rights for a term not exceeding one year does not need to be stated in the certificate of title to be effective. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

A long-term lease (a lease for greater than one year), is an interest in land subject to Land Commission adjudication and must be stated in the certificate of title for it to be effective against third parties. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 163 (Chk. 2019).

A long-term lessee is entitled to notice as an interested party – as a claimant to an interest in that land – when that land is first registered. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

Persons, including a purported long-term lessee, known to a claimant, if not to the Land Commission, to claim interests in the land, are entitled, as interested parties, to actual notice of any Land Commission proceedings determining the land's ownership and other interests therein. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

It is to a land claimant's advantage and great benefit to make sure that the Land Commission gives actual notice to everyone that the land claimant knows has or makes some sort of claim to the land that the claimant claims is his own. That is because a certificate of title, once issued, is conclusive upon all persons who have had actual or constructive notice of the proceedings and all those claiming under them, but is otherwise only "prima facie evidence of such ownership. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

When a long-term lessee was an interested party entitled to notice of the Land Commission proceedings determining the ownership of and interests in the land and when it never received any actual or constructive notice of the proceedings that determined ownership, the new owner's certificate of title is not conclusive against the lessee. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

Even when not conclusive, a certificate of title is generally prima facie evidence of such ownership. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

A certificate of title is ineffective against someone who was entitled to notice of the determination of ownership proceedings but did not receive any. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

When the plaintiff's certificate of title (and underlying determination of ownership) is ineffective against the lessee, the plaintiff has not shown by the preponderance of the evidence that he has a current possessory interest in the land superior to that of the lessee on the land. Irons v. Corporation of the President of the Church of Latter Day Saints, 22 FSM R. 158, 164 (Chk. 2019).

Upon receipt of a land registration team's adjudication, the Land Commission may issue a determination of ownership if satisfied, but, if not satisfied with the adjudication, the Land Commission may either hold hearings on the matter or remand the issue back to the registration team, but the Land Commission has no authority to refer the matter to the Chuuk State Supreme Court. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 576 (Chk. S. Ct. App. 2020).

When the Senior Land Commissioner's letter of referral states that the land registration team would take an undesirable amount of time over the matter as the dispute had numerous issues of law which the land registration team was incapable of resolving, and when it states that the Land Commission decided against adjudicating since the parties and commissioners exhibited ill-will towards each other and therefore, the commissioners felt conflicted and prejudiced, that written explanation satisfies the statutory requirements for removal of an adjudication from a registration team in order to refer it to the Chuuk State Supreme Court trial division. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 578 (Chk. S. Ct. App. 2020).

When the entire commission body suffered from a conflict of interest in the matter as a result of ill feeling towards one of the parties, and the Senior Land Commissioner appeared to have the only valid signature for a decision, the statutory two-commissioner requirement does not apply to a decision as in that matter, because the Senior Land Commissioner's one signature referral to the court does not violate 67 TTC 116, since the two-signature requirement is for a valid Land Commission action or decision on substantive matters concerning property rights, not for a decision on procedural matters such as referral of a dispute to the Chuuk State Supreme Court. Chuuk State Land Mgt. v. Jesse, 22 FSM R. 573, 579 (Chk. S. Ct. App. 2020).

– Registered Land – Transfer

Someone who by her written request transferred the Certificate of Title to her daughter is no longer the fee owner of that parcel, and therefore has no rights to the parcel and no standing to bring an action concerning the parcel. Jack v. Paulino, 10 FSM R. 335, 336 (Kos. S. Ct. Tr. 2001).

No lengthy title searches, which may fail to turn up important claims, need be done on registered land because all transfers and encumbrances of any interest in the land covered by a certificate of title must be noted thereon or therewith except for rights of way over the land, taxes on the land due within the two years prior to the certificate's issuance, and leases or use rights of less than one year. One only needs to consult the Land Commission's original certificate of title, which will show at a glance the ownership of, and the encumbrances on, the property, and the title searcher need then only read and evaluate the documents referred to by the current endorsements. No historical search of the title is ever necessary or relevant. In re Engichy, 12 FSM R. 58, 69 (Chk. 2003).

It is the owner's duty in requesting any transfer or upon notice that an involuntary transfer has been effected to submit his owner's duplicate certificate for proper endorsement or cancellation, if it is physically practicable for him to do so and if the owner is unable to physically submit the certificate because it has been lost or destroyed, there is a method whereby he may obtain a new duplicate certificate for submission. In re Engichy, 12 FSM R. 58, 70 (Chk. 2003).

Someone who has transferred the certificate of title to another person is no longer the fee owner of the parcel and therefore has no rights to the parcel. Benjamin v. Youngstrom, 13 FSM R. 72, 75 (Kos. S. Ct. Tr. 2004).

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

Before noting a transfer of interest in a parcel, the Land Commission was required to determine that the document of transfer was in proper form, including a correct description of the parcel and for a transfer of a portion of a parcel, the Land Commission may require that the certificate holder have the transferred portion be surveyed at his expense. George v. Abraham, 14 FSM R. 102, 106 (Kos. S. Ct. Tr. 2006).

When the certificate holder and owner, did not complete or submit any document of transfer for the subject portion of the parcel to the defendant and he did not survey or arrange for the survey of the subject portion of the parcel claimed by the defendant, there was no compliance with the statutory provisions governing a transfer of interest in land or transfer of interest in a portion of parcel by the certificate holder, and therefore, pursuant to state law, there was no gift of land made from the certificate holder to the defendant. George v. Abraham, 14 FSM R. 102, 107 (Kos. S. Ct. Tr. 2006).

When a certificate of title was never issued to Tulpe Alokoa for parcel 006-K-07 and she was never determined by a Land Commission proceeding to be the title holder of that parcel and therefore could not transfer title to land that she did not own, her deed of gift was invalid, and should have been rejected for filing by the Land Commission. George v. Abraham, 14 FSM R. 102, 108 (Kos. S. Ct. Tr. 2006).

The identification of a person as the lineage head in a determination of ownership was for the purpose of clarifying the identification of the lineage. It is not the Land Commission's function to vest, in any particular person, the authority to sell lineage land. Mori v. Haruo, 15 FSM R. 468, 473 (Chk. S. Ct. App. 2008).

A buyer is not a bona fide purchaser for value without notice when she executes a purchase agreement with an individual seller when an earlier determination of ownership was notice to the world, and thus to her, of the lineage's interest in the property. Mori v. Haruo, 15 FSM R. 468, 473 (Chk. S. Ct. App. 2008).

The bona fide, or "innocent," purchaser rule arises from the statutory recording requirements for interests in real estate. For all real estate in each district, the clerk of court is required to make and keep in a permanent record a copy of all documents submitted to him for recording. No transfer of or encumbrance upon title to real estate or any interest therein, other than a lease for a term not exceeding one year, is valid against any subsequent purchaser or mortgagee of the same real estate or interest, or any part thereof, in good faith for a valuable consideration without notice of such transfer or encumbrance, or against any person claiming under them, if the transfer to the subsequent purchaser or mortgagee is first duly recorded. The "registration" of interests in land has the same force and effect as to such land as a recording. Therefore, a subsequent, bona fide, or "innocent," purchaser has valid title against a prior holder of an interest in the same real estate if one "registers" or "records" the interest before the prior holder. Setik v. Ruben, 16 FSM R. 158, 164-65 (Chk. S. Ct. App. 2008).

There is no statute of frauds – a law requiring that certain agreements or contracts to be in writing before they are enforceable in court – in Chuuk. Customarily, any agreement, even that selling land, might be oral, but in some situations, a customary oral transfer must be registered to be enforceable. The reason is not that the Torrens land registration system must supplant custom and tradition. Rather, the reason is one of evidence because certificates of title are prima facie evidence of ownership as stated therein against the world. Setik v. Ruben, 17 FSM

R. 465, 472 (App. 2011).

Land Commission determinations of ownership are meant to dispose of all competing claims to land. When a customary oral transfer has been confirmed in a writing, that writing constitutes tangible prima facie evidence of the claim, which preserves the claim, and as such assists any tribunal, including the Land Commission, before which the claim is raised. Setik v. Ruben, 17 FSM R. 465, 472 (App. 2011).

The bona fide purchaser rule does not apply when the land was lineage land which the seller had no authority to convey since the courts have historically been wary of applying the rule where the purported seller has no authority to sell, and when the Land Commission's determination of ownership was invalid for lack of notice to the occupants since a certificate of title must be based on a valid determination of ownership. Setik v. Ruben, 17 FSM R. 465, 476 (App. 2011).

Since a seller cannot sell more than he owns, when a purchaser bought land with a roadway right of way across it, that right of way remained even though the right of way was not mentioned in the later issued certificate of title. Iwo v. Chuuk, 20 FSM R. 652, 656 (Chk. 2016).

There is no need for the Pohnpei Court of Land Tenure to go through the whole process of having to designate the land, serve notice of the hearing, conduct a hearing, determine ownership and service notice of an issuance of this new title when the land already had a certificate of title and the FSM Supreme Court had issued an order transferring that title. Setik v. Perman, 21 FSM R. 31, 39 (Pon. 2016).

When registered land is later transferred by deed, there is no need to again designate, serve notice, hold hearings, and determine ownership, in order to issue a certificate of title to the new owner. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 101 (App. 2016).

Any subsequent transfer from a registered owner, does not require notice, much less a hearing, to determine ownership anew or a written decision. Heirs of Alokoa v. Heirs of Preston, 21 FSM R. 94, 102 (App. 2016).

Under Kosrae Court Rule 13, when registered land is transferred, the owner of the parcel must surrender the certificate of title to the Registrar to transfer title. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

A landowner's failure to surrender the his certificate of title may indicate that the landowner does not intend to transfer title to the land. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

Kosrae Land Court Rules (and good practice) require that all documents concerning transfer of title must be notarized and submitted to the Registrar for recordation. Signatures that are executed at different times or in different locations must be notarized separately. The signature page of each document may consist of as many duplicate pages as necessary for proper notarization. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

When the purported transferor's signature and that of his witnesses were not notarized on a duplicate page, but the notarization was instead on a page separate from their signatures, and since the Registrar must not accept any document which is not properly notarized, it is doubtful that the Land Court should have accepted for filing a deed of gift in this form, even if it had been

accompanied by the surrender of the old certificate of title, which it was not. Since the deed of gift was in a doubtful form and since the transferor's certificate of title was not surrendered with it, the Land Court should not have issued the transferee a certificate of title for that parcel. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 581 (App. 2018).

The hearing and notice procedure in Kosrae State Code § 11.612 is inapplicable to the transfer of already registered land. It only governs the registration of unregistered land. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 582 (App. 2018).

When the owner of registered land sells or gifts registered land, all that is needed for a valid transfer is the delivery to the Land Court of a properly notarized deed (with each needed signature properly notarized) combined with the surrender of the grantor's old duplicate certificate of title. Proper and strict compliance with these requirements is the due process that is sufficient (and required) for the issuance of a new certificate of title to the grantee. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 582 (App. 2018).

On rare occasions, when the landowner's old certificate has been lost, mislaid, or destroyed and the landowner wishes to transfer title, the proper practice is for the Land Court, following its practices and procedures for replacing a lost, mislaid, or destroyed certificate, to issue and deliver to the grantor a new duplicate certificate of title so that the grantor may turn around and surrender that certificate to Land Court when the deed is presented for registration. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 582 (App. 2018).

Whenever a landowner of registered land wishes to transfer an interest in the registered land (such as subjecting it to a lien such as a mortgage) or to transfer title, it is the landowner's duty in requesting any transfer to submit his or her owner's duplicate certificate for proper endorsement or cancellation. When the landowner has not done so, the landowner's intent might reasonably be questioned and the Land Court ought not to act. Heirs of Preston v. Heirs of Alokoa, 21 FSM R. 572, 582 (App. 2018).

The Kosrae Land Court Rules (and good practice) require that all documents concerning transfer of title be notarized and submitted to the Registrar for recordation. Each document must reflect the printed name and signature of each person signing the document, and the date of the signing. Signatures which are executed at different times or in different locations must be notarized separately, and the signature page of each document may consist of as many duplicate pages as necessary for proper notarization. The Registrar shall not accept any document which is not properly notarized. Alik v. Heirs of Alik, 21 FSM R. 606, 618 (App. 2018).

When registered land is transferred, the parcel's owner must surrender the certificate of title to the Registrar for title transfer. A landowner's (or the landowner's heirs') failure to surrender the old certificate of title could indicate that the landowner (or his heirs) do not intend to transfer land title. Alik v. Heirs of Alik, 21 FSM R. 606, 618 (App. 2018).

When the "deed of gift" was not signed by all of the registered landowner's heirs; when it was not signed by the registered owner, since he was deceased; when the "land deed," which did contain the (unnotarized) signatures of all the other heirs, did not show an unequivocal intent to do anything other than to permit the grantee to build a house on the parcel; since the "deed of gift" was in a doubtful form and the "land deed" was equivocal; and since the old certificate of title was not surrendered with the deed of gift when it was filed, the Land Court should not have

issued a new certificate of title for parcel to the grantee. Alik v. Heirs of Alik, 21 FSM R. 606, 618 (App. 2018).

Kosrae State Code § 11.612 does not apply to the transfer of registered land. It governs only the registration of unregistered land. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

When the owner of registered land sells or gifts registered land, all that is needed for a valid transfer is the delivery to the Land Court of a properly notarized deed (with each needed signature properly notarized) combined with the surrender of the grantor's old duplicate certificate of title. Proper and strict compliance with those requirements is the due process that is sufficient (and required) for the valid issuance of a new certificate of title to the grantee. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

If the landowner's old certificate has been lost, mislaid, or destroyed, the proper practice to transfer title is for the Land Court, following its practices and procedures for replacing a lost, mislaid, or destroyed certificate, to issue and deliver to the would-be grantor a new duplicate certificate of title so that the would-be grantor may then turn around and surrender that certificate to the Land Court at the same time that the deed is presented for registration. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

Whenever a landowner of registered land wishes to transfer an interest in that land (such as subjecting it to a lien such as a mortgage) or to transfer title, it is the landowner's duty in requesting any transfer to submit or surrender his or her owner's duplicate certificate for proper endorsement or cancellation. When the landowner has not done so, the landowner's intent might reasonably be questioned and the Land Court ought not to act. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

The proper way for someone to acquire a valid certificate of title for a decedent's previously registered parcel is for the Kosrae Land Court to conduct an heirship proceeding to determine the landowner's heirs and to issue a new certificate of title in those persons' names. Then, if those persons wish to transfer the parcel's title (give or sell) to one of themselves, they will execute a deed, with all their signatures properly notarized, and then present that deed to the Land Court while also surrendering their new certificate of title to the Land Court. Alik v. Heirs of Alik, 21 FSM R. 606, 619 (App. 2018).

When the alleged fraudulent registration of a parcel is based on the alleged misrepresentation in the "deed of gift" that the "grantor" had the ability to grant and convey full title to parcel to the grantee, the plaintiffs have stated a claim for which they could be granted relief. Alik v. Heirs of Alik, 21 FSM R. 606, 619-20 (App. 2018).

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

– Tidelands

The people of Chuuk have always considered themselves to have rights and ownership of the tidelands, and thereby hold the property rights in them, throughout all of the several foreign

administrations. These traditional and customary claims came down from time immemorial. Nimeisa v. Department of Public Works, 6 FSM R. 205, 208 (Chk. S. Ct. Tr. 1993).

The Chuuk State Constitution recognizes all traditional rights and ownership over all reefs, tidelands, and other submerged lands subject to legislative regulation of their reasonable use. Nimeisa v. Department of Public Works, 6 FSM R. 205, 209 (Chk. S. Ct. Tr. 1993).

It was the intent of the framers of the Chuuk State Constitution to return the rights and ownership of all reefs, tidelands (all areas below the ordinary high watermark), and other submerged lands to the individual people of Chuuk State. Nimeisa v. Department of Public Works, 6 FSM R. 205, 210 (Chk. S. Ct. Tr. 1993).

The constitutional grant of ownership of the tidelands back to the rightful individual owners, shall be given prospective application only. Nimeisa v. Department of Public Works, 6 FSM R. 205, 212 (Chk. S. Ct. Tr. 1993).

The reversion of reefs, tidelands and other submerged lands to private owners granted by article IV, section 4 of the Chuuk Constitution does not apply to any tidelands that were previously filled or reclaimed. Nena v. Walter, 6 FSM R. 233, 236 (Chk. S. Ct. Tr. 1993).

Tideland is land below the ordinary high water mark. Filled or reclaimed land, by its nature, is not land below the ordinary high water mark, and it cannot be considered tideland or submerged land. Nena v. Walter, 6 FSM R. 233, 236 (Chk. S. Ct. Tr. 1993).

Where government title to the tidelands reverted to the traditional owners in 1989, and because the right to bring an action for trespass or ejection must be available to the owner before the time period for adverse possession has run, whether the doctrine of adverse possession exists in Chuukese land law need not be decided because the twenty-year statute of limitations did not start to run until 1989. Cheni v. Ngusun, 6 FSM R. 544, 548 (Chk. S. Ct. App. 1994).

The Chuuk State Constitution, effective on October 1, 1989, recognizes traditional rights over all reefs, tidelands, and other submerged lands. Tidelands, including man-made islands, that were filled prior to this effective date are no longer classed as tidelands and have become dry land. Sellem v. Maras, 7 FSM R. 1, 3-4 (Chk. S. Ct. Tr. 1995).

Tidelands traditionally are those lands from the dry land to the deep water at the edge of the reef, and must be shallow enough for Chuukese women to engage in traditional methods of fishing. Sellem v. Maras, 7 FSM R. 1, 4 (Chk. S. Ct. Tr. 1995).

A deep water passage through a reef too deep for Chuukese women to engage in their traditional fishing methods is not a tideland. While under Chuukese tradition and custom channels may have been owned, the constitution does not recognize traditional rights over channels. The state thus retains ownership of the channels, as was the situation prior to the adoption of the Chuuk Constitution. Sellem v. Maras, 7 FSM R. 1, 5 & n.9 (Chk. S. Ct. Tr. 1995).

Tidelands within the meaning of article IV, section 4 of the Chuuk Constitution are those marine lands from the shore to the face of the reef that are shallow enough for traditional fishing activity by women. The constitutional recognition of traditional rights in tidelands does not

include deep water channels or tidelands that have become dry land prior to the effective date of the constitution, through filling or other activity that raised the level of the marine lands above the mean high tide mark. Sellem v. Maras, 7 FSM R. 1, 7 (Chk. S. Ct. Tr. 1995).

Under Pohnpei state law, owners of the land adjacent to the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land. Damarlane v. United States, 7 FSM R. 56, 59-60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law persons simply possessing a permit in the lagoon do not have sufficient property rights in the reef and the lagoon as to entitle them to monetary compensation or other relief for damage to the reef caused by unauthorized dredging activity in the lagoon near their land unless there has been some affirmative action such as prior written approval from the appropriate authority and effecting some development in the area in question. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a reef is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are not entitled to a payment of just compensation for the depreciation of the value of the reef and fishing grounds. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

Under Pohnpei state law, if a fish maii [trap] is damaged by persons carrying out dredging activities authorized by state officials for a public purpose, adjacent or nearby coastal landowners are entitled to a payment of just compensation for the damage to a fish maii which they had constructed in the lagoon, if the fish maii was constructed pursuant to the dictate of customary law as a joint enterprise of the villagers, supervised by the village chief, managed, maintained and owned in common by the villagers; or, if an individual constructed the fish maii, prior written permission from the District Administrator, now the Pohnpei Public Land Board of Trustees, was obtained. Damarlane v. United States, 7 FSM R. 56, 60 (Pon. S. Ct. App. 1995).

The rights of citizens of Pohnpei in areas below the high watermark are prescribed by 67 TTC 2. Damarlane v. United States, 7 FSM R. 56, 63-64 (Pon. S. Ct. App. 1995).

Under Pohnpei law, damage to reefs or soil under the high water mark resulting from dredging activities, the object of which is for public purposes, does not justify compensation to abutting land owners. If the Pohnpei Public Land Board of Trustees had granted certain rights in writing to an individual or group of individuals, and acting on that grant the grantees erected or constructed certain improvements, including fish maii (fish trap) in shallow waters, and if destroyed or value reduced as a result of state dredging activities, the owners thereof may be entitled to just compensation in accordance with the Pohnpei Constitution. Damarlane v. United States, 7 FSM R. 56, 69 (Pon. S. Ct. App. 1995).

Prior to the effective date of the Chuuk Constitution the ownership of the filled marineland was with the Japanese government and that title was transferred to the Trust Territory pursuant to 67 TTC §§ 1 and 2 and later to Truk State. Atin v. Eram, 7 FSM R. 269, 271 (Chk. S. Ct. Tr. 1995).

Any filling of marineland prior to the effective date of the Chuuk Constitution is dry land and has become part of the land adjacent to the fill activity. Atin v. Eram, 7 FSM R. 269, 271 (Chk. S. Ct. Tr. 1995).

An owner of dry land that erodes has no legal basis to claim ownership of tideland. Mailo v. Atonesia, 7 FSM R. 294, 295 (Chk. S. Ct. Tr. 1995).

Claims for damages for violation of the FSM Environmental Protection Act and for damage based on an alleged property interest in the reef and lagoon adjoining plaintiffs' land will be dismissed for failure to state a claim for which relief may be granted. Damarlane v. FSM, 8 FSM R. 119, 121 (Pon. 1997).

Traditional claims of exclusive ownership of marine resources have been recognized only in areas immediately adjacent to an island or submerged reef. Claims involving custom and tradition were recognized by the Constitution's drafters, but were restricted to areas within lagoons and near reef areas. Chuuk v. Secretary of Finance, 8 FSM R. 353, 377 (Pon. 1998).

The waters, land, and other natural resources within the marine space of Kosrae are public property, the use of which the state government shall regulate by law in the public interest, subject to the right of the owner of land abutting the marine space to fill in and construct on or over the marine space. Jonah v. Kosrae, 9 FSM R. 335, 340 (Kos. S. Ct. Tr. 2000).

All marine areas below the ordinary high water mark belong to the Kosrae state government. Jonah v. Kosrae, 9 FSM R. 335, 340 (Kos. S. Ct. Tr. 2000).

Private individuals lack standing to assert claims on behalf of the public and cannot bring claims against the state on behalf of the public with respect to state land. Therefore a private landowner does not have standing to sue the state with respect to black rocks deposited below the ordinary high water mark because that is state land, but he does have standing to sue with respect to black rocks located above the high water mark and on his land. Jonah v. Kosrae, 9 FSM R. 335, 341 (Kos. S. Ct. Tr. 2000).

A Kosrae state regulation that covers all persons wanting to fill in and construct on or over land below the ordinary high water mark does not provide any private right of action and cannot be the basis of a claim against the state for violation of law or regulation even if it did not have a specific plan for the seawall that was part of a road-widening project for which it had an overall plan. Jonah v. Kosrae, 9 FSM R. 335, 342-43 (Kos. S. Ct. Tr. 2000).

The customary and traditional rights of municipalities, clans, families and individuals to engage in subsistence fishing, and to harvest fish and other living marine resources from reef areas are recognized, but a municipality is not directly entitled to compensation when resources in a particular reef area of Pohnpei are damaged. Thus, absent any damage to municipal property besides the reef itself or the living marine resources, the municipality is entitled only to that amount which Pohnpei appropriates to the municipality to compensate it for damage to its traditional subsistence fishing rights. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 60-61 (Pon. 2001).

The state owns the submerged reef areas, but this ownership carries with it certain responsibilities with respect to the people in whose trust these areas are held. It must preserve and respect the traditionally recognized fishing rights of the people of Pohnpei. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 61 (Pon. 2001).

Submerged reef areas are government lands which passed from the Trust Territory to Pohnpei, and the rights of the municipalities to use these areas are subject to the state's

ownership rights. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 61 (Pon. 2001).

Under the Trust Territory Code the state has the power to control all marine areas below the ordinary high water mark, subject to a few notable exceptions. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 62 (Pon. 2001).

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

Pohnpei has legal ownership of the submerged reef area as long as none of the relevant exceptions to 67 TTC 2 are applicable. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 63 (Pon. 2001).

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

The German Land Code of 1912 applies only to land on Pohnpei, not to submerged areas. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 64 (Pon. 2001).

The Japanese owned all areas below the high water mark during their administration, then ownership of this land passed to the Trust Territory, and subsequently to the State of Pohnpei. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 65 (Pon. 2001).

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

Because the state has assumed the duty of regulating exploration, exploitation and conservation of natural resources within the 12 mile zone from island baselines, and it is presumably the state which bears the costs associated with enforcing state laws related to such natural resources within state waters, it is logical that the state should recover the damages flowing from injury to these resources. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 65 (Pon. 2001).

Title 67, Section 2 of the Trust Territory Code continues in effect under the transition clause of the FSM Constitution, is consistent with other provisions in the FSM and Pohnpei Constitutions, and clearly confirms that all marine areas below the ordinary high water mark belong to the government. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

Pohnpei does not have a proprietary ownership interest in the tideland, as it is public land which is intended to benefit the public. Thus, Pohnpei may not sell submerged reef areas, or destroy or waste these resources with impunity because such actions would violate the public trust, and any damages recovered by Pohnpei should be returned in kind to the people in accordance with Pohnpei's obligation to protect and preserve the natural resources for the

people's use. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

The ownership of submerged land and marine resources has a public character, being held by all of the people for purposes in which all of the people are interested. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

The people of Pohnpei's traditional and customary rights to freely navigate the reef, engage in subsistence fishing in that area, and control the use of and materials in that marine environment is recognized in 67 TTC 2(1)(e), in the FSM Constitution, and the Pohnpei Constitution. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 66 (Pon. 2001).

A municipality is precluded from recovering damages for injury to the submerged lands and living marine resources damaged by a fishing vessel grounding, but will be provided an opportunity at trial to prove any damage to other municipal resources. Pohnpei v. KSVI No. 3, 10 FSM R. 53, 67 (Pon. 2001).

When tidelands were never properly divided during the father's lifetime, the logical conclusion is that those tidelands remain lineage or family property according to Chuukese tradition and custom and cannot be transferred without the consent of all male adults of the lineage, subject only to the traditional rights of afokur as consented to. Lukas v. Stanley, 10 FSM R. 365, 366 (Chk. 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 owner of dry land is not necessarily the owner of the adjacent tideland. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

Tideland ownership derives from the Chuuk Constitution's recognition (as of its effective date, October 1, 1989) of traditional rights in the tidelands. Phillip v. Moses, 10 FSM R. 540, 544 (Chk. S. Ct. App. 2002).

Since traditional rights in tideland were not recognized in the law until October 1, 1989, no prior assertion of ownership over filled land could affect the traditional tideland rights. Phillip v. Moses, 10 FSM R. 540, 545 (Chk. S. Ct. App. 2002).

Any assertion of ownership over the filled land in a different case could not affect the continuing traditional rights in the adjacent tidelands. Phillip v. Moses, 10 FSM R. 540, 545 (Chk. S. Ct. App. 2002).

Prior to the effective date of the Chuuk Constitution, all tidelands were owned by the government. When the Chuuk Constitution became effective, traditional tideland rights were restored over only those areas that were still tidelands on that date (Oct. 1, 1989). Stephen v. Chuuk, 11 FSM R. 36, 41 (Chk. S. Ct. Tr. 2002).

The tideland that is subject to traditional claims of ownership does not include deep water. Stephen v. Chuuk, 11 FSM R. 36, 42 n.2 (Chk. S. Ct. Tr. 2002).

While the Land Commission has the statutory authority to determine and register land titles, whether the Land Commission has the legal authority and the technical ability to determine,

survey, and register tidelands is an unanswered question. Enlet v. Bruton, 12 FSM R. 187, 191 (Chk. 2003).

During the German Administration, it was widely known on Ponape that all property from high-water mark out was considered to belong to the German Government with the exception of three private mangrove reserves. Subsequently, the Japanese claimed everything below the high water mark. In due course this passed to the Trust Territory, which shortly before the Trust Territory broke up, granted its rights to the several districts. In the area that became the Federated States of Micronesia, the districts became states. Pohnpei thus became the owner of the marine areas below the high water mark. Such ownership rests with the sovereign, and in this case the sovereign is the State of Pohnpei. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 508 (App. 2005).

The national government does not own or control tidelands, reefs, or natural resources within 12 nautical miles of the island baselines. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 509 (App. 2005).

Chuuk, in its Constitution, retroceded tideland rights to their traditional holders. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 509 (App. 2005).

When the people of Kitti, as opposed to the municipal government, were not parties to the case, the trial court decision did not affect were the traditional rights of the people of the various municipalities to fish in the submerged reef areas. These rights of the people to marine resources remain unaffected and are protected by Trust Territory statute. Kitti Mun. Gov't v. Pohnpei, 13 FSM R. 503, 509 (App. 2005).

The Yap Constitution provides that the state recognizes traditional rights and ownership of natural resources and areas within the marine space of the State within 12 miles from island baselines and Yap statutory law provides that traditionally recognized fishing rights wherever located within the State Fishery Zone and internal waters must be preserved and respected and also preserves existing private rights of action for civil damages, for damage to coral reefs, seagrass areas, and mangroves. Thus 67 TTC 2 is no longer Yap state law. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 414 (Yap 2006).

Under Yap traditional rights and ownership of natural resources and marine areas inside the Yap fringing reef – the rights to use and exploit, to the exclusion of all others, the marine resources of particular areas of the submerged lands inside the fringing reef around Yap – stem from a concept called a *tabinaw*. A *tabinaw* entails rights, duties and obligations for its members, and includes families and households. But a *tabinaw* is more than a concept. A *tabinaw* includes an estate in identifiable land and specific areas within the Yap fringing reef within which a *tabinaw* member can exploit the marine resources. A *tabinaw* member can only exploit marine resources in the marine area that appertains to his *tabinaw*. Each village includes a number of *tabinaw*. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 415 (Yap 2006).

When a vessel's grounding and subsequent oil spill was an unreasonable interference with the interests in the affected marine resources, resulting in significant damage, and resulted in physical injury to the reef and mangroves, and other features of the lagoon environment, a significant harm, and when the plaintiffs have suffered an injury special in kind from other Yap

residents because of their traditional ownership and use interests in the particularly affected natural resources, the defendants are thus liable to plaintiffs on the theory of both public and private nuisance since the court considers the interest of the Yapese in exclusive use and exploitation of the submerged lands inside the fringing reef analogous to interests in dry land in other common law countries. People of Rull ex rel. Ruepong v. M/V Kyowa Violet, 14 FSM R. 403, 417 (Yap 2006).

A trial court case that when affirmed on appeal held that the decision – that the State of Pohnpei and not its municipalities owned the marine areas in Pohnpei – concerned only Pohnpei and not the other three FSM states, is clearly not controlling precedent for the resolving issues unique to the State of Yap, including the interpretation of its Constitution and Code when, unlike Pohnpei, Yap not only repealed the relevant Trust Territory Code provision, but Yap's Constitution expressly recognizes the traditional rights and ownership over the natural resources and the marine space within the state of Yap. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

The State of Yap's ownership of public lands as provided for at 9 Y.S.C. 901, is not mutually exclusive with the traditional rights of ownership over these lands and related marine resources by the people of Yap through the *tabinaw*, as recognized in the Yap Constitution. M/V Kyowa Violet v. People of Rull ex rel. Mafel, 16 FSM R. 49, 58 (App. 2008).

FSM admiralty law recognizes a cause of action for nuisance. The Yapese interest in exclusive use and exploitation of their submerged lands on and within the fringing reef is analogous to interests in dry land. A nuisance is a substantial interference with the use and enjoyment of another's land (either dry or submerged in Yap) resulting from intentional and unreasonable conduct or caused unintentionally by negligent or reckless conduct. People of Gilman ex rel. Tamagken v. Woodman Easternline Sdn. Bhd., 18 FSM R. 165, 176 (Yap 2012).

The Pohnpei Residential Shoreline Act of 2009 outlines procedures to be followed in applying for a residential leasehold from the Chief of the Division of Public Land of the Department of Land and Natural Resources. It mandates that, upon the receipt of an application pursuant to the Act, the Chief of the Division of Public Land shall orchestrate a survey of the filled land for which the application has been submitted, and upon satisfaction that the applicant and the land meet the Act's criteria, the Chief must issue a certificate of eligibility for a residential leasehold to the applicant. Damarlane v. Damarlane, 19 FSM R. 519, 529 (Pon. 2014).

Under Pohnpei state law, submerged public trust lands to a distance of not more than 150 feet extending seaward from a residential shoreline that have been filled for the purpose of constructing all or a portion of a residence thereon before December 31, 2008 are designated as available for residential lease. Damarlane v. Damarlane, 19 FSM R. 519, 529 (Pon. 2014).

A plaintiff whose tideland is being dredged by another is threatened with irreparable harm because once a tideland has been dredged its very nature is altered and cannot easily be restored and because, analogously, harm to land is often considered irreparable since land is unique. Killion v. Chuuk, 19 FSM R. 539, 541 (Chk. 2014).

Harm to land is often considered irreparable because land is unique. The same should hold true of the reef and surrounding environment where harvesting is to occur as well as the precious population of sea cucumbers. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 546, 551 (Pon. 2016).

In Pohnpei, all marine areas below the ordinary high watermark belong to the government, and such lands are a part of the Pohnpei Public Lands Trust with certain exceptions reestablishing customary rights to the people in areas below the high watermark. Mwoalen Wahu Ileile en Pohnpei v. Peterson, 20 FSM R. 632, 641 (Pon. 2016).

Because Fefan and all areas under its political jurisdiction were designated as Land Registration Area 14, and because a tideland in Fefan falls under the political jurisdiction of Fefan, it thus lies within Registration Area 14, and the Land Commission therefore has primary jurisdiction to determine its ownership, as opposed to the court – unless, special cause is shown. Irons v. Rudolph, 22 FSM R. 408, 410 (Chk. S. Ct. Tr. 2019).