TITLE 58

CIVIL REMEDIES AND DEFENSES

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TITLE 58
CIVIL REMEDIES AND DEFENSES

CHAPTER 1
STATUTE OF FRAUDS

§1-101. Short title. — This chapter is known and may be cited as the "Pohnpei Statute of Frauds Act of 1980."

Source: S.L. No. 2L-38-80 §1, 10/29/80

§1-102. Rationale. — In order to prevent fraudulent practices, which are commonly endeavored to be upheld by perjury and subornation of perjury, this chapter is enacted to require certain classes of contracts to be in writing.

Source: S.L. No. 2L-38-80 §2, 10/29/80

§1-103. Certain contracts, when actionable. — No action may be brought and maintained in any of the following cases:

(1) To charge an executor or administrator upon any special promise to answer for damages out of his own estate;

(2) To charge any person upon any special promise to answer for the debt, default or misdoing of another;

(3) To charge any person upon an agreement made in consideration of marriage;

(4) Upon any contract for the sale of lands, tenements or hereditaments, or of any interest in or concerning them;

(5) Upon any agreement that is not to be performed within one year from the making thereof;

(6) To charge any person upon any agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or commission; or

(7) To charge the estate of any deceased person upon any agreement which by its terms is not to be performed during the lifetime of the promisor, or of an agreement to devise or bequeath any property, or to make any provision for any person by will; unless the promise, contract or agreement, upon which the action is brought or some memorandum or note thereof, is in writing, and is signed by the party to be charged therewith, or by some person legally authorized to sign for that party. Such writing need not be in English.

Source: S.L. No. 2L-38-80 §3, 10/29/80

§1-104. Previous contracts not affected. — Nothing in this chapter shall affect promises, contracts or agreements made prior to the effective date hereof.

Source: S.L. No. 2L-38-80 §4, 10/29/80

CHAPTER 2
SOVEREIGN IMMUNITY

Section

§2-101. Short title. — This chapter is known and may be cited as the "Government Liability Act of 1991."

Source: S.L. No. 2L-192-91 §1, 4/3/91

§2-102. Declaration of sovereign immunity. — The state of Pohnpei, for the purpose of protecting the people, public monies, governmental operations, and other interests of the state, declares that the Pohnpei Government maintains the sovereign immunity of the state and for its employees against all civil suits and other forms of relief or award except as allowed under this chapter and any subsequent amendments to this chapter or as otherwise specifically provided by state law.

Source: S.L. No. 2L-192-91 §2, 4/3/91

§2-103. Definitions. — As used in this chapter, these terms shall have the following meanings:

(1) "Attorney General" means the Attorney General, or such other attorney as the Attorney General may designate either generally or with respect to a singular action or class of actions to undertake the functions of Attorney General for purposes of this chapter.

(2) "Chief Executive" includes the Public Auditor with respect to that Office.

(3) "Computer-based system" includes any computer or other information technology system, and any electronic device that controls, operates, monitors or assists in the operation or functioning of any equipment, machinery, plant or device using an embedded or installed microprocessor or chip.

(4) "Government employee" or "employee" means any officer or employee (including contract employees but excluding independent contractors) of the Pohnpei Government, whether permanent or temporary, and whether or not compensated, including any employee working for a hospital or other medical institution which is principally funded by public monies from the Pohnpei Government, and

including any officer or employee of a local government of this state who is within the scope of performing services for the state under a valid joint law enforcement agreement between the state government and that local government, but only during such time that he or she is performing such services. The term "government employee" includes any former officer or employee with respect to any act or omission thereof occurring during the term and within the scope of his or her public duties or employment.

(5) "Pohnpei Government" or "state" includes all branches of government, any corporation, and other person or entity primarily acting as instrumentalities or agencies of the government, and all boards, commissions, public corporations, authorities, departments, divisions or offices of the government.

(6) "Year 2000 error" is the failure of a computer-based system to accurately store, display, transmit, receive, process, calculate, compare or sequence date and time data from, into, or between the 20th and 21st centuries, the years 1999 and 2000 and beyond, and leap year calculations.

Source: S.L. No. 2L-192-91 §3, 4/3/91; S.L. No. 4L-112-99 §2, 7/12/99; S.L. No. 4L-119-99 §9, 7/23/99; S.L. No. 5L-14-00 §3-35, 10/1/00

Note: S.L. No. 4L-112-99 §1, 7/12/99 statement of purpose provision reads:

The purpose of this act is to amend the immunity provisions established by the Pohnpei State Liability Act (S.L. No. 2L-192-91) to afford protection to the state as to claims arising out of or relating to a year 2000 error produced, calculated or generated by a computer-based system, regardless of the cause for the year 2000 error. These amendments are intended to be applied retroactively to protect the government from serving as a deep pocket for claims based on year 2000 errors produced, calculated or generated by computer-based systems.

§2-104. Allowable actions. — Except as otherwise provided by this chapter and subsequent amendments hereto, the following actions against the state shall be allowed to the limit specified in §2-106.

(1) *Tort claims*. Claims for wrongful death, personal injury or loss of property caused by the negligent or wrongful act or omission of a government employee while acting within the scope of his or her employment, under circumstances and upon such legal evidence where the state, if a private person or corporation, would be liable to the claimant.

(2) *Tax claims*. Claims for the recovery of any tax alleged to have been erroneously or illegally assessed or collected, or any tax penalty claimed to have been collected without authority, or any sum alleged to have been excessive or improperly collected under applicable tax laws of Pohnpei.

(3) *Contract claims*. Claims based upon express or implied contract with the state.

(4) *Breach of fundamental rights*. Claims for any injuries suffered consequent to conduct of a government employee, acting under color of law, which violates fundamental rights defined in Article 4 of the Pohnpei Constitution.

(5) Claims for damages, injunctive relief or writ of mandamus arising from the alleged unconstitutionality or improper administration of the statutes of Pohnpei, or any regulations issued pursuant to such statutes.

(6) Any other civil action or claim against the state founded upon any law of this jurisdiction or any regulation issued under such law, or upon any express or implied contract with the Pohnpei Government or for liquidated or unliquidated damages in cases not sounding in tort.

(7) Actions for collection of judgments based on claims allowed in this statute.

Source: S.L. No. 2L-192-91 §4, 4/3/91

§2-105. Exceptions to liability. — Notwithstanding §2-104, the government and employees acting within the scope of their public duties or employment whose acts are not wanton or malicious are not liable for the following claims:

(1) Any claim for damages based upon an act or omission of an employee of the state, exercising due care, in the execution of a statute or regulation, whether or not the statute or regulation is valid, or based upon the exercise or performance of or the failure to exercise or perform a discretionary

function or duty on the part of a state agency or an employee of the state, whether or not the discretion is abused;

(2) Any claim for damages caused by the fiscal operations of the Treasury, by the regulations of the monetary system or by the assessment or collection of any tax except as provided in §2-104;

(3) Any claim based on denial of, or failure to make, a medical referral to a medical facility outside the state;

(4) Any claim based on the detention of any goods or merchandise by any law enforcement, excise, revenue, health or agricultural officer;

(5) The imposition or establishment of a quarantine;

(6) Any claim arising in a foreign country;

(7) Any claim or action, including, without limitation, any action for declaratory or injunctive relief, may not be brought against the Government or a Government employee based upon the Government's failure to perform an act or activity because of a year 2000 error, regardless of the cause for the year 2000 error; and

(8) Any claim for damages arising from the transfer of an interest in public trust land.

Source: S.L. No. 2L-192-91 §5, 4/3/91; S.L. No. 4L-112-99 §3, 7/12/99; S.L. No. 4L-128-99 §12, 10/15/99

§2-106. Limitation of state's fiscal responsibility. — Punitive damages may not be awarded against the state. Maximum proven compensatory relief, including court fees, attorneys' fees when permitted by this chapter, and witness fees granted for damages incurred for such claims listed in §2-104, shall be as follows:

(1) Wrongful death and personal injury up to a maximum of $100,000;

(2) Damage to personal property, not more than $50,000 per individual and $100,000 per transaction or occurrence;

(3) Damages for violation of fundamental rights, not more than $15,000 except that, in cases requiring "just compensation" for property taken, damages shall not exceed the value of property so taken; and

(4) Damages for improper administration of Pohnpei statutes, or any regulations thereunder, not more than $20,000.

Source: S.L. No. 2L-192-91 §6, 4/3/91

§2-107. Employees acting within the scope of public duties or employment. — Sections 2-104 through 2-106 shall apply to government employees acting within the scope of their public duties or employment, to the same extent that each section applies to the state, regardless of whether the employee is sued in his or her official capacity or as an individual.

Source: S.L. No. 2L-192-91 §7, 4/3/91

§2-108. State to be named party defendant; duty to notify employee. —

(1) No action arising out of an act or omission within the scope of his or her public duties or employment may be brought against any employee, either in his or her official capacity or as an individual, unless the state is named as party defendant under this chapter. Such employee shall be entitled to all exceptions in liability, defenses, and limitations in awards, penalties, and fees available to the state unless otherwise provided by this chapter.

(2) The complaint, summons or other legal document commencing the action against the employee shall contain a statement in a form approved by the Attorney General informing the employee of his rights and responsibilities under this chapter. A copy of such document shall be served on the Attorney General within three days following its service on the employee. Upon receipt of such service, the Attorney General shall by every means practical seek to personally contact the employee and verbally explain to the employee his or her rights and responsibilities under this chapter.

Source: S.L. No. 2L-192-91 §8, 4/3/91

§2-109. When Attorney General to provide defense. — The Attorney General shall provide for the defense, including the defense of crossclaims and counterclaims, of any employee in any civil action brought against that person based on any alleged act or omission relating to his or her public duties or employment, if:

(1) Within 15 days after service of a copy of the summons and complaint or other legal document commencing the action, he or she submits a written request to the Attorney General for his or her defense; PROVIDED that the Attorney General shall accept later requests for defense by the person upon a showing of good cause; and

(2) The Attorney General has determined that the act or omission on which the action taken is based appears to be within the scope of public duty or employment and appears to have been performed or omitted in good faith.

Source: S.L. No. 2L-192-91 §9, 4/3/91

§2-110. Determination by Attorney General whether to tender defense. —

(1) The Attorney General shall determine as promptly as possible whether or not to tender the defense of the person submitting the request. Until the decision is made, the Attorney General shall take appropriate action to defend or otherwise protect the time of the person submitting the request to file a responsive pleading.

(2) In any case in which the Attorney General determines not to defend, the Attorney General shall give written notice, with reason for the decision stated therein, to the person who requested the defense, either:

(a) Ten days before the date an answer or other responsive pleading must be filed with court; or

(b) If the defense has been commenced, 20 days before the time an application is made with the court to withdraw as the attorney of record in accordance with this chapter.

Source: S.L. No. 2L-192-91 §10, 4/3/91

§2-111. Arrangements and circumstances not admissible in evidence. — No fact pertaining to arrangements or circumstances by which the state or any attorney thereof or retained thereby defends any person or does not do so is admissible in evidence at trial or in any other proceeding in the civil action in which that person is a defendant, except in connection with an application to withdraw as attorney of record.

Source: S.L. No. 2L-192-91 §11, 4/3/91

§2-112. No waiver of attorney-client privilege. — The state may not require a waiver of attorney-client privilege may not be required as a condition of tendering the defense of any of its employees, but nothing in this section precludes an application to withdraw as the attorney of record.

Source: S.L. No. 2L-192-91 §12, 4/3/91

§2-113. Defendant may employ own counsel. — At any time after written request for defense is submitted to the Attorney General, the person requesting the defense may employ his or her own counsel to defend the action. At that time, the state is excused from any further duty to represent that person and is not liable for any expenses in defending the action, including court costs and attorneys' fees.

Source: S.L. No. 2L-192-91 §13, 4/3/91

§2-114. Withdrawal of Attorney General as attorney of record. —

(1) At any time after the Attorney General has appeared in any civil action and commenced to defend any person sued as a government employee, the Attorney General may apply to the court to withdraw as the attorney of record for that person based upon:

(a) Discovery of any new material fact that was not known at the time the defense was tendered and which would have altered the decision to tender the defense;
(b) Misrepresentation of any material fact by the person requesting the defense, if that fact would have altered the decision to tender the defense if the misrepresentation had not occurred;
(c) Discovery of any fact which was material to the decision to tender the defense and which would have altered the decision, if known when the decision was made;
(d) Discovery of any fact that indicates that the act or omission on which the civil action is based was not within the scope of public duty or employment or was wanton or malicious;
(e) Failure of the defendant to cooperate in good faith with the defense of a case; or
(f) If the action has been brought in a court of competent jurisdiction of this state, failure to name the state as party defendant, if there is sufficient evidence to establish that the civil action is clearly not based on any act or omission relating to the defendant's public duty or employment.

(2) If the court grants a motion to withdraw brought by the Attorney General on any of the grounds set forth in Subsection (1) of this section, the state has no duty to continue to defend any person who is the subject of the motion to withdraw.

Source: S.L. No. 2L-192-91 §14, 4/3/91

§2-115. Liability of state for failure to defend. — If the Attorney General does not provide a defense of an employee in any civil action in which the state is also a named defendant, or which was brought in a court other than a court of competent jurisdiction of this state, and if it is judicially determined that the injuries arose out of an act or omission of that person during the performance of any duty within the scope of his or her public duty or employment and that his or her act is not wanton or malicious, and that such person requested defense by the state pursuant to this chapter, the state is liable to that person for reasonable expenses in prosecuting his or her own defense, inclusive of court costs and attorneys' fees.

Source: S.L. No. 2L-192-91 §15, 4/3/91

§2-116. No judgment against the state for acts outside scope of public duties or employment. — No judgment may be entered against the state for any act or omission of an employee that was outside the scope of his or her public duties or employment.

Source: S.L. No. 2L-192-91 §16, 4/3/91

§2-117. Special verdict required. — In every action or proceeding in any court of competent jurisdiction in which both the state and the employee are named defendants, the court rendering any final judgment, verdict or other disposition shall return a special verdict in the form of written findings which determine whether:

(1) The employee was acting within the scope of his or her public duty or employment; and
(2) The alleged act or omission by the employee was wanton or malicious.

Source: S.L. No. 2L-192-91 §17, 4/3/91

§2-118. Indemnification; holding harmless; satisfaction of judgment against employee. —

(1) The state shall indemnify and hold harmless all employees from all claims and causes of action, regardless of whether suit is actually brought, for acts or omissions of the employee acting within the scope of his or her public duty or employment which act or omission is not wanton or malicious; PROVIDED that the employee is in substantial compliance with the requirements of this chapter.

(2) Satisfaction of a judgment on an action rendered against an employee in which the court has found the employee to be acting within the scope of his or her public duty or employment and whose

act or omission was not wanton or malicious may only be levied against and paid from the Civil Action Liability Fund established by §2-130, unless:

(a) The person failed to submit a timely request to the Attorney General for defense, and his or her failure was a material cause in the rendering of an adverse decision; or

(b) The person failed to cooperate in good faith in defense of the action.

Source: S.L. No. 2L-192-91 §18, 4/3/91

§2-119. Jurisdiction. — Except as otherwise provided by law or by express contract with the Pohnpei Government, original jurisdiction on a claim against the Pohnpei Government or claim against any employee thereof for acts or omissions arising from his or her public duty or employment shall reside in the Trial Division of the Pohnpei Supreme Court. Jurisdiction shall extend to any off-set, affirmative defense, counterclaim or other claim or demand pleaded by the Government of Pohnpei or other properly joined party to such action, against any plaintiff commencing action under this chapter.

Source: S.L. No. 2L-192-91 §19, 4/3/91

§2-120. Civil action by the state government not limited. — Nothing in this chapter shall be construed as a limitation upon the rights of the state to bring a civil action upon claims of any nature. In any civil action brought by the state government, the jurisdiction of the court shall extend to any off-set, affirmative defense, counterclaim or other claim or demand pleaded by the named defendant(s), or other properly joined party to such action, against the state of Pohnpei.

Source: S.L. No. 2L-192-91 §20, 4/3/91

§2-121. Attorney fees. —

(1) Unless otherwise expressly provided in a written contract between the state and the claimant, no attorney may charge, demand, receive or collect for services rendered, fees (excluding costs) in excess of $100 per hour of research time and $150 of court time, or twenty-five percent (25%)of any compromise or settlement, if the case is settled prior to trial; thirty-three and a third percent (33 1/3%) of any judgment, award, compromise or settlement obtained after trial; and forty percent (40%) of any judgment, award, compromise or settlement after re-trial or appeal, whichever is less; PROVIDED that the court may allow higher attorney fees in those cases where the attorney establishes to the satisfaction of the trial court judge that these limitations would be unjust.

(2) Any attorney who charges, demands, receives or collects for services rendered in connection with such claim any amount in excess of that allowed under Subsection (1) of this section shall be fined not more than $2,000, or imprisoned not more than one year, or both such fine and imprisonment.

Source: S.L. No. 2L-192-91 §21, 4/3/91

§2-122. Interest, court fees, attorneys' fees, and witness fees. — Unless otherwise expressly provided in a written contract between the state and the claimant, the state shall not be liable for interest prior to judgment, court fees, attorneys' fees or witness fees.

Source: S.L. No. 2L-192-91 §22, 4/3/91

§2-123. Insurance coverage. —

(1) If the Pohnpei Government is insured for a greater amount than provided for in §2-104, the maximum governmental liability shall be the same as the insurance coverage.

(2) This chapter does not in any way impair, limit or modify the rights and obligations under any government insurance policy.

Source: S.L. No. 2L-192-91 §23, 4/3/91

§2-124. Disposition by the governmental agency. —

(1) An action shall not be instituted upon a claim against the state or an employee acting within the scope of his or her public duties or employment unless the claimant shall have first presented the claim to the appropriate governmental agency and the claim shall have been finally denied by the agency in writing. The administrative procedure heretofore or hereafter adopted by statute, if applicable, shall be followed. If such statutory procedure has not been established or is not applicable, then the failure of the governmental agency to make a final disposition of a claim within 50 days after it is filed shall, at the claimant's option, be deemed a final denial of the claim for purposes of this section. The statute of limitations shall not toll during the period of administrative appeal and review. This subsection shall not apply to such claims as may be asserted under the Court's Rules of Civil Procedure by third party complaint, cross-claim or counterclaim.

(2) Court actions under this section shall not be instituted for any sum in excess of the amount of the claim presented to the governmental agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the governmental agency, or upon allegation and proof of intervening facts relating to the amount of the claim; PROVIDED that in no event shall the claim exceed the limit set out in §2-106.

Source: S.L. No. 2L-192-91 §24, 4/3/91

§2-125. Settlement. — The Attorney General may, upon concurrence of the chief executive of the affected branch of government, settle any claim against the state at any time. The Attorney General shall prepare, for each fiscal year, a report of all claims settled which report shall be submitted to the Legislature no later than October 15 each year.

Source: S.L. No. 2L-192-91 §25, 4/3/91

§2-126. Judgment or settlement as bar. — The judgment in an action under this chapter or settlement relative to a claim under this chapter which relieves the state from liability shall constitute a complete bar to any action by the claimant by reason of the same subject matter, against the employee of the state whose act or omission gave rise to the claim.

Source: S.L. No. 2L-192-91 §26, 4/3/91

§2-127. Statute of limitations. — A lawsuit based on any of the claims described in §2-104, except claims for medical or dental malpractice, must be filed in a court of competent jurisdiction within two years from the date the cause of action arose, or the claim shall be forever barred. Action based on medical or dental malpractice, must be filed in a court of competent jurisdiction within one year from the date the cause of action arose or the claim shall be forever barred. For the purpose of this section, a cause of action has arisen when all of the facts comprising said cause of action exist, regardless whether said facts are known or have been discovered by the claimant. Notwithstanding the foregoing provisions of this section, a lawsuit may be filed on a claim described in §2-104 following the expiration of the statute of limitations prescribed herein; PROVIDED that the action is filed prior to the expiration of the statute of limitations provided in state law for the filing of such actions, generally; PROVIDED FURTHER that this extension shall only apply to causes of actions arising prior to the effective date of this chapter [*April 3, 1991*].

Source: S.L. No. 2L-192-91 §27, 4/3/91

§2-128. Service of process. — All lawsuits permitted by this chapter that are instituted against the state shall be served on the Attorney General or his designee. The Attorney General or his designee is hereby appointed as the duly authorized agent of the Pohnpei Government to receive the service of process that may be required by statute or the rules of the court.

Source: S.L. No. 2L-192-91 §28, 4/3/91

§2-129. Attorney General to represent state. — The state shall be represented by the Attorney General in all actions under this chapter.

Source: S.L. No. 2L-192-91 §29, 4/3/91

§2-130. Payment of judgments. — Money judgments rendered against the state of Pohnpei and its employees pursuant to this chapter shall only be paid from funds specifically appropriated for that purpose by the Legislature and deposited in the Civil Action Liability Fund established by this chapter or otherwise paid into the fund under this chapter. Funds set aside by law as security for the repayment of debts and other contractual obligations of the state government shall be deemed to be paid into the fund for the satisfaction of judgments with respect thereto.

Source: S.L. No. 2L-192-91 §30, 4/3/91

§2-131. Civil Action Liability Fund; authorization for appropriation; administration. —

(1) There is hereby established within the state Treasury a Civil Action Liability Fund for the satisfaction of judgments rendered against the state and its employees as provided in this chapter. The fund shall be administered by the Governor through the Director of the Department of Treasury and Administration solely for the purpose provided in this chapter.

(2) There is hereby authorized for appropriation from the general fund of Pohnpei, a sum or sums to be determined annually in the Comprehensive Budget Act for deposit in the Civil Action Liability Fund. Monies may be appropriated generally to the fund or allocated to the payment of specific judgments.

(3) If there are not sufficient funds in the Civil Action Liability Fund to cover all final judgments against the state in any given fiscal year, the Director of the Department of Treasury and Administration shall make pro rata payments from the fund in relation to the ratio of a claim to the then existing composite liability of final judgments against the state under this chapter.

(4) All appropriations to the fund under the authorization of this chapter shall remain available until fully expended. In the case of a specific allocation, when the relevant judgment has been satisfied any remaining balance shall revert to the general fund.

(5) The Governor shall annually report to the Legislature within 15 days following the close of the fiscal year on all matters concerning the management of the fund and expenditures therefrom.

Source: S.L. No. 2L-192-91 §31, 4/3/91

§2-132. Interest on judgments. — On all final judgments entered against the state in actions instituted under this chapter, interest shall be computed at nine percent (9%) per year. Interest shall accrue until the judgment is paid in full.

Source: S.L. No. 2L-192-91 §32, 4/3/91

§2-133. Chapter retroactive. — This chapter shall apply to every action defined in this chapter which has not been reduced to judgment as of the effective date hereof, regardless of when the action was filed.

Source: S.L. No. 2L-192-91 §33, 4/3/91

Note: S.L. No. 2L-192-91 §34 superseding provision has been omitted.

CHAPTER 3
LIMITATIONS OF ACTIONS

Section

§3-101. Limitation of time for commencing actions. — A civil action or proceeding to enforce a cause of action mentioned in this chapter may be commenced within the period of limitation herein prescribed, and not thereafter, except as otherwise provided in this chapter.

Source: S.L. No. 3L-99-95 §7-1, 7/20/95

§3-102. Reckoning of period. — Except as otherwise provided in this chapter, periods herein prescribed shall be reckoned from the date when the cause of action accrued.

Source: S.L. No. 3L-99-95 §7-2, 7/20/95

§3-103. Contrary agreements. — No agreement made subsequent to the effective date of this chapter [*July 20, 1995*] for a period of limitation different from the period described in this chapter shall be valid.

Source: S.L. No. 3L-99-95 §7-3, 7/20/95

§3-104. Existing rights of action. — Enactment of this chapter and subsequent revisions hereto shall not be construed to extinguish any rights or remedies that may have accrued to any party prior to enactment or revision, unless specifically provided otherwise.

Source: S.L. No. 3L-99-95 §7-4, 7/20/95

§3-105. Limitation of 20 years. —

(1) The following actions shall be commenced only within 20 years after the cause of action accrues:

(a) Actions upon a judgment; and

(b) Actions for the recovery of land or any interest therein.

(2) If the cause of action first accrued to an ancestor or predecessor of the person who presents the action, or to any other person under whom he claims, the 20 years shall be computed from the time when the cause of action first accrued.

Source: S.L. No. 3L-99-95 §7-5, 7/20/95

§3-106. Limitation of two years. — The following actions shall be commenced only within two years after the cause of action accrues:

(1) Actions for assault, battery, false imprisonment, libel or slander;

(2) Actions against a police officer or other person duly authorized to serve process, for any act or omission in connection with the performance of his official duties;

(3) Actions for malpractice, error or mistake against physicians, surgeons, dentists, medical or dental practitioners, and medical or dental assistants;

(4) Actions for injuries to or for the death of one caused by the wrongful act or neglect of another, except as otherwise provided in Chapter 6 Parts A and B; and

(5) Actions of a depositor against a bank or similar institution for the payment of a forged or raised check, or a check which bears a forged or unauthorized endorsement.

Source: S.L. No. 3L-99-95 §7-6, 7/20/95

§3-107. Limitation of six years. — All actions other than those covered in §§3-101 through 3-106 shall be commenced only within six years after the cause of action accrues.

Source: S.L. No. 3L-99-95 §7-7, 7/20/95

§3-108. Special conditions. — The limitation on actions prescribed by this chapter shall be modified as prescribed below in the following circumstances:

(1) *Actions by or against the estate of a deceased person.* Any action by or against the executor, administrator or other representative of a deceased person for a cause of action in favor of or against the deceased shall be brought only within two years after the executor, administrator or other representative is appointed or first takes possession of the assets of the deceased.

(2) *Disabilities.* If the person entitled to a cause of action is a minor or is insane or is imprisoned when the cause of action first accrues, the action may be commenced within the time limits of this chapter after the disability is removed.

(3) *Mutual account.* In an action brought to recover the balance due upon a mutual and open account, or upon a cause of action upon which partial payments have been made, the cause of action shall be considered to have accrued at the time of the last item proved in the account.

(4) *Extension of time by absence from the state.* If at the time a cause of action shall accrue against any person he shall be out of the state, such action may be commenced within the times limited in this chapter after he comes into the state. If after a cause of action shall have accrued against a person he shall depart from and reside out of the state, the time of his absence shall be excluded in determining the time limited for commencement of the action.

(5) *Extension of time by fraudulent concealment.* If any person who is liable to any action shall fraudulently conceal the cause of action from the knowledge of the person entitled to bring it, the action may be commenced at any time within the times limited within this chapter after the person who is entitled to bring the same shall discover or shall have had reasonable opportunity to discover that he has such cause of action, and not afterwards.

(6) *Statutory direction.* Notwithstanding any other provision of this chapter, any cause of action created or controlled by statute which specifically prescribes the time limited for the commencement of the action may only be commenced within the time so prescribed by that statute.

Source: S.L. No. 3L-99-95 §7-8, 7/20/95

CHAPTER 4
[RESERVED]

CHAPTER 5
[RESERVED – JUDICIAL FORECLOSURES]

Note: See Title 41 Chapter 6 for judicial foreclosures of mortgages.

CHAPTER 6
TORT ACTIONS

Section

PART A SURVIVAL OF ACTIONS

§6-101. Survival of claims after death of liable person. —

(1) A cause of action based on tort shall not be lost or abated because of the death of the tort-feasor or other person liable. An action thereon may be brought or continued against the personal representative of the deceased person, but punitive or exemplary damages may not be awarded nor penalties adjudged in the action.

(2) Where a cause of action arises simultaneously with or after the death of the tort-feasor or other person who would have been liable if his death had not occurred simultaneously with the act, omission, circumstance or event giving rise to the cause of action, or if his death had not intervened between the wrongful act, omission, circumstance or event and the coming into being of the cause of action, an action to enforce it may be maintained against the personal representative of the tort-feasor or other person.

Source: S.L. No. 3L-99-95 §8-1, 7/20/95

§§6-102 – 6-110. [RESERVED]

PART B ACTIONS FOR WRONGFUL DEATH

§6-111. Liability in action for wrongful death; proceedings. —

(1) When the death of a person is caused by wrongful act, neglect or default such as would have entitled the party injured to maintain an action and recover damages in respect thereof if death had not ensued, the person or corporation which would have been liable if death had not ensued, or the administrator or executor of the estate of such person, as such administrator or executor, shall be liable

to an action for damages notwithstanding the death of the person injured, and although the death was caused under circumstances which make it a violation of criminal law.

(2) When the action is against such administrator or executor, the damages recovered shall be a valid claim against the estate of such deceased person.

(3) When the death is caused by wrongful act or neglect in another state, territory or foreign country, for which a right to maintain an action and recover damages in respect thereof is given by a statute of that jurisdiction, such right of action may be enforced in the state of Pohnpei. Every such action brought under this subsection shall be commenced within the time prescribed for such actions by the statute of such other state, territory or foreign country.

Source: S.L. No. 3L-99-95 §9-1, 7/20/95

§6-112. Action to be brought in the name of personal representative; beneficiaries of action. — Every action for wrongful death must be brought in the name of the personal representative of the deceased, but shall be for the exclusive benefit of the surviving spouse, the children, and other next of kin, if any, of the decedent, as the court may direct.

Source: S.L. No. 3L-99-95 §9-2, 7/20/95

§6-113. Damages. — The trial court may award such damages, not exceeding the sum of $100,000, as it may think proportioned to the pecuniary injury resulting from such death, to the persons, respectively, for whose benefit the action was brought; PROVIDED, HOWEVER, that where the decedent was a child, and where the plaintiff in the suit brought under this chapter is the parent of such child, or one who stands in the place of a parent pursuant to customary law, such damages shall include his or her mental pain and suffering for the loss of such child, without regard to provable pecuniary damages.

Source: S.L. No. 3L-99-95 §9-3, 7/20/95

§6-114. Limitation of actions. — Except as otherwise provided, every action under this chapter shall be commenced within two years after the death of such person.

Source: S.L. No. 3L-99-95 §9-4, 7/20/95

§6-115. Settlements. — A personal representative appointed in the state may, with the consent of the court making such appointment, at any time before or after the commencement of the suit, settle with the defendant the amount to be paid.

Source: S.L. No. 3L-99-95 §9-5, 7/20/95

§§6-116 – 6-120. [RESERVED]

PART C [RESERVED]

§§6-121 – 6-130. [RESERVED]

PART D CONTRIBUTION AMONG JOINT TORT-FEASORS

§6-131. Right to contribution. —

(1) Except as otherwise provided in this part, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there

is a right of contribution among them even though judgment has not been recovered against all or any of them.

(2) The contribution exists only in favor of a tort-feasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tort-feasor is compelled to make a contribution beyond his own pro rata share of the entire liability.

(3) There is no right of contribution in favor of any tort-feasor who has intentionally, willfully or wantonly caused or contributed to the injury or wrongful death.

(4) A tort-feasor who enters into a settlement with a claimant is not entitled to recover contribution from another tort-feasor whose liability for the injury or wrongful death is not extinguished by the settlement nor is he entitled to recover in respect to any amount paid in a settlement which is in excess of what is reasonable.

(5) A liability insurer, which by payment has discharged in full or in part the liability of a tort-feasor and has thereby discharged in full its obligation as insurer, is subrogated to the tort-feasor's right of contribution to the extent of the amount it has paid in excess of the tort-feasor's pro rata share of the common liability. This provision does not impair any right of subrogation arising from any other relationship.

(6) This part does not impair any right of indemnity under existing law. Where one tort-feasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

(7) This part shall not apply to breaches of trust or of other fiduciary obligation.

Source: S.L. No. 3L-99-95 §12-1, 7/20/95

§6-132. Pro rata shares. — In determining the pro rata shares of the tort-feasors in the entire liability:

(1) Their relative degrees of fault shall not be considered;

(2) If equity requires, the collective liability of some as a group shall constitute a single share; and

(3) Principles of equity applicable to contribution generally shall apply.

Source: S.L. No. 3L-99-95 §12-2, 7/20/95

§6-133. Enforcement . —

(1) Whether or not judgment has been entered in an action against two or more tort-feasors for the same injury or wrongful death, contribution may be enforced by separate action.

(2) Where a judgment has been entered in an action against two or more tort-feasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

(3) If there is a judgment for the injury or wrongful death against the tort-feasor seeking contribution, any separate action by him to enforce contribution must be commenced within one year after the judgment has become final by lapse of time for appeal or after appellate review.

(4) If there is no judgment for the injury or wrongful death against the tort-feasor seeking contribution, his right of contribution is barred unless he has either:

(a) Discharged by payment the common liability within the statute of limitations period applicable to the claimant's right of action against him and has commenced his action for contribution within one year of payment; or

(b) Agreed while the action is pending against him to discharge the common liability and has within one year after the agreement paid the liability and commenced his action for contribution.

(5) The recovery of a judgment for an injury or wrongful death against one tort-feasor does not of itself discharge the other tort-feasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

Source: S.L. No. 3L-99-95 §12-3, 7/20/95

§6-134. Release or covenant not to sue. — When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

(1) It does not discharge any of the other tort-feasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the other to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is greater; and

(2) It discharges the tort-feasor to whom it is given from all liability for contribution to any other tort-feasor.

Source: S.L. No. 3L-99-95 §12-4, 7/20/95

§6-135. Retroactivity; continuation. — This part shall not be deemed to create any right or remedy to any joint tort-feasor in favor of whom this part would otherwise apply, where such joint tort-feasor's cause of action accrued before the effective date of this title [*July 20, 1995*], and to this extent this part is not retroactive, but such tort-feasor's rights of contribution shall continue to be controlled by 6 TTC §§551 – 556 (1980) notwithstanding the supersession of those sections by this title.

Source: S.L. No. 3L-99-95 §12-5, 7/20/95

CHAPTER 7
[RESERVED]

CHAPTER 8
HABEAS CORPUS

Section

§8-101. Power to grant writs of habeas corpus. — Writs of habeas corpus may be granted by the Trial Division of the Pohnpei Supreme Court. Every person unlawfully imprisoned or restrained of his liberty under any pretense whatsoever, or any person on behalf of an unlawfully imprisoned individual, may apply for a writ of habeas corpus to inquire into the cause of such imprisonment or restraint.

Source: S.L. No. 3L-99-95 §13-3, 7/20/95

§8-102. Application for writ of habeas corpus. — Application for the writ of habeas corpus shall be made to the Trial Division of the Pohnpei Supreme Court or to a local court of the state within whose jurisdiction the person is claimed to be unlawfully detained. Application for the writ shall be made by a written statement under oath signed by the party for whose relief it is intended, or by some person on his behalf. The statement shall set forth the facts concerning the imprisonment or restraint of the person for whose relief it is intended, and, if known, the name of the person who has custody over him, and by virtue of what claim of authority the imprisonment or restraint is being practiced.

Source: S.L. No. 3L-99-95 §13-4, 7/20/95

§8-103. Preliminary examination and recommendation by lower court. — If the application for a writ of habeas corpus is received by a lower court, the judge thereof shall, without delay, make preliminary findings of facts and recommendations as to the issuance or denial of the writ, and the disposition of the person detained, and submit these by dispatch or other speedy method to the Trial Division of the Pohnpei Supreme Court.

Source: S.L. No. 3L-99-95 §13-5, 7/20/95

§8-104. Show-cause order. —

(1) Upon receipt of an application or recommendation from the lower court, the Trial Division of the Pohnpei Supreme Court shall issue an order directing the person against whom the writ is requested to show cause why the writ should not be granted, unless it appears from the application that the person detained is not entitled thereto.

(2) The order to show cause shall be directed to the person having custody of the person detained. The order shall set the time and place for hearing, which shall be as early as the court deems practicable, preferably within three days.

(3) The person to whom the order is directed shall, at or before the time set for the hearing, make a return certifying the true cause of detention and unless the application for the writ and the return present only issues of law, the person to whom the order is directed shall produce at the hearing the person detained, unless the person is so sick or so weak that this cannot be safely done.

(4) The applicant, or the person detained, may, under oath, deny any of the facts set forth in the return, or declare any other material facts. The application, the return, and any suggestions made against either of them may be amended by leave of the court.

(5) If the person to whom the order is directed does not make a return as required above, or does not appear at the time and place set for the hearing, the court may proceed without him.

Source: S.L. No. 3L-99-95 §13-6, 7/20/95

§8-105. Evidence. —

(1) On receipt by the Trial Division of the Pohnpei Supreme Court of an application for a writ of habeas corpus or the recommendation of the lower court thereon, evidence may be taken orally or by deposition, or in the discretion of the Trial Division, by written statement under oath.

(2) If written statements under oath are admitted, any party shall have the right to propound written interrogatories to the person who made such statements or to file answering written statements under oath.

(3) On application for a writ of habeas corpus, documentary evidence, transcripts of proceedings upon arraignments, plea, sentence, and a transcript of the oral testimony introduced on any previous similar application by or on behalf of the same person shall be admissible in evidence.

(4) The declarations of a return to an order to show cause in a habeas corpus proceeding, if not formally denied, shall be accepted as true, except to the extent that the court finds from the evidence that they are not true.

Source: S.L. No. 3L-99-95 §13-7, 7/20/95

§8-106. Issuance or denial of writ. —

(1) The Trial Division of the Pohnpei Supreme Court hearing the application for a writ of habeas corpus shall, without delay or formality, determine the facts and thereafter:

(a) Grant the writ unconditionally;

(b) Deny the writ;

(c) Grant the writ on terms fixed by the court and discharge the person for whose relief the application has been brought; or

(d) Make any order, to the court's disposition, as law and justice may require.

(2) When the Trial Division hearing an application has received the report and recommendation of the lower court thereon as provided under §8-103, the Trial Division may act upon the matter, by dispatch or other speedy method, on the basis of the lower court's report, or may order such further hearing or the submission of such further evidence as the court deems law and justice require. The Trial Division may direct the lower court which filed the report to take such additional action as the Trial Division deems law and justice requires.

Source: S.L. No. 3L-99-95 §13-8, 7/20/95

§8-107. Appeals. —

(1) The final order of the Trial Division of the Pohnpei Supreme Court in a habeas corpus proceeding shall be subject to appeal to the Appellate Division of the Supreme Court; PROVIDED that notice of appeal is filed within 30 days after entry of the final order.

(2) Pending the possibility of appeal, the Trial Division may in its discretion:

(a) Stay execution of the order;

(b) Admit the person imprisoned or restrained to bail pending action by the Appellate Division; or

(c) Direct that the final order take effect pending such action without waiting for the time for filing such notice of appeal to expire.

Source: S.L. No. 3L-99-95 §13-9, 7/20/95

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