

**THE SUPREME COURT
OF THE
FEDERATED STATES OF MICRONESIA**

**Written Examination for Admission
to Practice Before the Supreme Court
of the Federated States of Micronesia**

August 21, 1997

Administered in Chuuk, Kosrae, Pohnpei and Yap

**Supreme Court of the
Federated States of Micronesia**

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NOTE

YOU WILL BE PERMITTED FIVE (5) HOURS TO COMPLETE THIS EXAMINATION. THIS IS DESIGNED TO PROVIDE AMPLE TIME FOR CONSIDERATION OF THE QUESTIONS AND ISSUES PRESENTED, AND TO PERMIT AN OPPORTUNITY TO FRAME YOUR ANALYSIS. TAKE YOUR TIME. BEFORE BEGINNING TO WRITE, REVIEW EACH QUESTION CAREFULLY SO THAT YOU UNDERSTAND PRECISELY WHAT IS BEING ASKED, THEN CONSIDER THE ORGANIZATION OF YOUR ANSWER. ANSWERING QUESTIONS NOT ACTUALLY ASKED WILL BE REGARDED AS INDICATING INADEQUATE UNDERSTANDING AND MAY RESULT IN LOSS OF POINTS. PLEASE TRY TO WRITE OR PRINT YOUR ANSWER LEGIBLY. AN ILLEGIBLE ANSWER MAY RESULT IN A LOSS OF POINTS. A TOTAL OF 100 POINTS IS POSSIBLE, DIVIDED AS FOLLOWS:

<u>QUESTION NO.</u>	<u>POINTS</u>
I.	14
II.	20
III.	6
IV.	15
V.	9
VI.	12
VII.	5
VIII.	4
IX.	5
X.	5
XI.	<u>5</u>
TOTAL	100

THE MINIMUM OVERALL PASSING GRADE WILL BE 65. FOR PURPOSES OF OBTAINING PARTIAL CREDIT UNDER GENERAL COURT ORDER 1986-2, THE EVIDENCE QUESTIONS ARE III and VII-IX. THE ETHICS QUESTIONS ARE X-XI. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.
(14 points)

Belle borrowed \$5,000 from a bank on Chuuk. Belle was a state employee. The bank required that Belle make an allotment from his state salary to cover the installment payments on the loan. One year later the state stopped paying the allotments to the allottees although it continued to withhold the allotments from its employees' paychecks. After two pay periods it became general knowledge among state employees that the state was not paying the allotments. Belle did not take any steps to terminate his paycheck allotment or to pay the bank directly. (The state considers loan payment allotments to be voluntary allotments that can be terminated at anytime.)

Six months later Belle left his state job and went to Guam to look for work. He did not return. Six months after that, the bank filed suit in the FSM Supreme Court in Chuuk to collect on the unpaid loan.

Belle received the complaint and summons. He filed an answer that admitted borrowing the \$5,000. The answer, however, also denied that the FSM Supreme Court had jurisdiction over the case on the ground that he was not a resident of Chuuk when the suit was filed.

A. (3 points) Comment on Belle's contention that the FSM Supreme lacks jurisdiction.

B. (6 points) As a further defense Belle contends that the loan was not in default because his state paycheck stubs show that the bank's allotment was withheld from his pay. He further claims that the state is the agent of the bank for collection purposes so therefore the bank had received his payments. Comment on this defense of Belle's. What arguments would the bank make in opposition?

C. (5 points) Assume that the judge ruled against Belle on his jurisdictional argument and his affirmative defense. The bank then brings a motion for summary judgment. What result?

II.
(20 points)

Barnard is a retailer on Yap. One of the products he sells is Vin Fiz, a soft drink that has recently become popular on Yap. Barnard has a standing agreement with Fizco, the bottler on Saipan, that Fizco will ship him three containers of Vin Fiz each month.

When Fizco ships Vin Fiz to Barnard it prepares a sight draft and a bill of lading which it then sends to the Bank of Hawaii branch on Yap. The bank then notifies Barnard that the documents have arrived. Barnard then pays the bank the amount of the sight draft and receives the bill of lading in return. Possession of the bill of lading allows Barnard to pick his containers up from the dock and to clear customs.

The sight draft and the bill of lading for the March, 1997 shipment arrived promptly as usual, the second week of the month. Barnard paid the sight draft and received the bill of lading. The *S.S. Dernita*, the ship carrying the March Vin Fiz shipment was delayed by mechanical troubles and bad weather and arrived later than usual. Barnard did not run out of Vin Fiz before the *S.S. Dernita's* arrival at the end of March.

After the ship unloaded its cargo in Yap, Barnard presented his bill of lading and received his three containers of Vin Fiz. Barnard opened and emptied one of the containers to restock his store. Two weeks later he opened a second container and discovered that the contents were damaged, and that Vin Fiz had leaked out of virtually every case. A state government public health official came by and determined that the contents were not fit for human consumption and told Barnard that he had to dispose of the Vin Fiz at his expense. It cost Barnard \$150 to dispose of the container's contents.

That next day Barnard received a call from the Bank of Hawaii that the sight draft and bill of lading had just arrived for his April, 1997 shipment of Vin Fiz. Barnard was still mad at receiving damaged goods that he had already paid for. He therefore ignored the call. When they arrived, the April containers just sat on the dock. Fizco did not send a shipment in May because they had not been paid for the April shipment.

In June, Fizco discovered that its April containers were still sitting on the dock in Yap. Fizco then found some other merchants on Yap willing to buy the Vin Fiz in the containers. After paying storage charges, Fizco received \$9,000.00 less for the containers than it would have if Barnard had paid the sight draft.

Shortly thereafter Barnard informed Fizco that he had received a damaged container in April. Barnard asked that Fizco give him one of the April containers at no cost to replace the damaged March container. Fizco then told him that the April containers had been sold.

Barnard then filed suit against Fizco in the FSM Supreme Court in Yap. The complaint's prayer asks for \$4,500.00 refund for the damaged container, reimbursement of the \$150.00 for disposing of the damaged containers, \$1,000,000.00 in damages for breach of contract for selling the April containers to other merchants on Yap instead of

(II cont.)

Barnard, punitive damages of \$2,000,000.00 for breach of contract for not notifying Barnard that Fizco would not send Barnard any Vin Fiz in May or June, and whatever other relief the court deems just and proper.

You are Fizco's attorney. How will you respond to Barnard's complaint? What law will the court apply? Discuss.

III.
(6 points)

Assume that the case in Question II goes to trial. The plaintiff, Barnard, seeks to prove that one container of Vin Fiz in the March shipment was damaged and unfit for human consumption and had to be destroyed. Vadis, the state public health inspector who allegedly ordered the destruction of the container's contents is off-island for extended medical treatment. He was not deposed before he left.

The plaintiff therefore calls the public health supervisor to the stand. The supervisor testifies that he regularly keeps a day book. In the day book the supervisor daily lists the activities of each public health inspector, a short summary of the inspector's written report, or reports, for the day along with the action taken.

The supervisor then authenticates a piece of paper as a true and accurate copy of a page in his day book for April 10, 1997. The plaintiff then moved for its admission as evidence. One entry in the day book reads as follows: "Vadis called to Barnard's. One container soft drink unfit. Ordered destroyed."

The defendant objects. On what grounds? How will the judge rule and why?

IV.
(15 points)

As the result of a homicide investigation the state police arrested Arnold early Monday afternoon. It is now Wednesday afternoon. Arnold's mother is in your office. She tells you that she has not heard from Arnold since he was arrested. You are an attorney. You call the police station and they tell you that Arnold is still in custody. You call the state attorney general's office and the state court and discover that no charges have been filed yet and that Arnold has not appeared in court. You go to the police station and the police refuse to let you speak with Arnold.

What action or actions would you take on Arnold's behalf at this point?

On Thursday afternoon, the state attorney general filed an information charging Arnold with manslaughter, and, after Arnold was brought before a judge, the judge set the terms for Arnold's release pending trial. The prosecution apologized to the court for the delay in getting Arnold to court. The prosecution said that the police had all been busy on Tuesday providing services at functions for distinguished, visiting off-island dignitaries, and that Wednesday had been a local holiday.

During the discovery process prior to trial, the prosecution informs you that they intend to use as evidence at trial Arnold's signed confession, which Arnold gave on Thursday morning.

What pretrial motion or motions might you file and on what grounds?

V.
(9 points)

Liacos has a judgment against Kramer for \$1,354.86.

On March 20, 1997, Kramer, after a hearing on a motion for an order in aid of judgment, consented to an order requiring him to pay \$40.00 every other week beginning March 31, 1997, toward the payment of the judgment.

You are the Liacos's lawyer. Your client reports that he has not received any payments. You have Kramer served with a motion that he show cause why he should not be found in contempt for his failure to obey the court's order in aid of judgment.

At the hearing on the motion on August 7, 1997, Kramer, under oath, states that he no longer has a job, that he quit his job to help his brother-in-law build his house, and that he receives no cash from his brother-in-law.

What relief will you request? Discuss the options open to you.

VI.
(12 points)

Xinmen, a citizen and resident of Chuuk, is the Chief of his lineage in Chuuk and is responsible for managing and controlling lineage land on behalf of, and for the benefit of his lineage. Xinmen's lineage owns one five acre parcel. One strip about 10 feet wide running the length of the eastern boundary has been in dispute for about 30 years between Xinmen's lineage and the adjoining lineage land owners. Each lineage has planted some trees and plants in the disputed land, and harvests what it planted. In this way the dispute has peacefully remained unresolved. The land is in a land registration area, but there has been no action to register the land. Both lineages' parcels are on the water's edge of the lagoon.

One day Xinmen discovers that construction of a cannery has just begun on the other parcel. Part of the cannery will be on part of the strip in dispute. Inquiry leads him to this information: the adjoining owners have granted a 25 year lease to Planet Kissed Tuna Canning Co., an Australian corporation, for the site of the cannery; and Planet Kissed has contracted with White Micro Construction Corp. for the erection of the cannery.

Xinmen is concerned by the encroachment. He is afraid that the cannery will produce a bad smell, raise the temperature of the water near the cannery and result in the discharge into the lagoon of fish by-products which attract sharks. He asks for your assistance.

You are an attorney. Discuss what steps that have a probable chance of success are open to you.

VII.
(5 points)

Assume that the case in Question VI goes to trial, and one issue is the ownership of the disputed strip.

Wyvern, a witness without any interest in the outcome of the issue, testifies that 40 years ago Yunan, the uncle of Xinmen and predecessor of Xinmen as the head of the lineage, early one morning said that he was going to cut the brush along the eastern side of his land; that late that day when Yunan did not return, Wyvern and others searched for Yunan and found him dead in the now disputed strip; and that the brush had been cut along the strip.

What probable objection? How will the court rule?

VIII.
(4 points)

Fidelis was a fisherman who often sold his fish to Hillbloom's Seaside Market and Gas Station. He usually ties his boat up at the landing next to the market. There is a set of concrete steps leading from the landing up to Hillbloom's Seaside Market. One day as Fidelis was returning to his boat he tripped on the concrete steps and was injured.

Fidelis sued Hillbloom for damages. He alleged that Hillbloom was negligent in failing to keep the steps in good repair and that that was the cause of his injuries. Hillbloom denies that the steps are on his property.

At trial, Fidelis offers evidence that Hillbloom has insurance to cover accidents on his property and that the description of the premises covered in the insurance contract includes the stairs Fidelis tripped on. Hillbloom objects to the admission of any evidence that he has liability insurance. How should the judge rule and why?

IX.

(5 points)

In a workplace accident case the plaintiff called Woxof as a witness. Woxof was listed on both the plaintiff's and defendant's witness lists. On direct examination Woxof testified only as to the safety conditions in the workplace during the weeks before the accident.

On cross-examination, after a number of questions concerning the workplace conditions in the weeks before the accident, the defendant asked about the workplace conditions on the day and at the time of the accident. Plaintiff's counsel then said, "Objection."

On what grounds did counsel object? Should the judge sustain the objection and why?

Assume that the judge sustained the objection, and assume that defense counsel does not want to wait until defendant's case-in-chief to try to ask Woxof these questions again. How might defense counsel be permitted to pursue his line of questioning? And under what conditions?

X.
(5 points)

Nero asks you to represent him and his brother and sister in defending an ejectment action brought against them by their cousin Claudius. Nero says that Claudius had been gone from their outer island for many years, living at the center of the state government. Nero tells you that Claudius came home three months ago and told Nero and his family that he was the owner of the land they were all living on; that the land had been his father's separate property and passed to Claudius upon the father's death. Nero said this was untrue — that he and his sisters had received the land from their aunt, who died several years ago.

You accept the case and fee arrangements are agreed upon.

At trial Claudius, as plaintiff, testifies as to his title, and that his case was brought because during his visit home after a 10 year absence, he found all his land occupied. He wanted Nero and his family removed because they had failed to respect his right to the land by asking his permission to occupy it, that he was the oldest and so the disrespect was in violation of custom, and that Nero and the others had from time to time come to the government center, met with Claudius, but had not said anything about the land.

As you consult with your clients in preparation for your presentation of your defense, it becomes clear to you that your clients do not dispute Claudius's testimony, and that the earlier words of Nero are false. Nero still intends to testify about getting the land from his aunt.

Discuss.

XI.

(5 points)

Client asks lawyer to represent him in a land dispute. Client tells you that he received a small house lot and three adjoining taro patches from his father, now deceased. Client returned to his outer island after living for several years with his sister in the state center, and found members of his extended family occupying his property. When he discussed this with them, they claimed ownership derived from client's aunt.

Client has no funds to pay lawyer's fee. Lawyer makes a preliminary search at the Land Commission and finds that client's father was given a certificate of title to the property as his separate property in 1952. Lawyer then tells client he will represent him and his fee will be two of the taro patches. Client accepts, feeling that he has no other choice.

Discuss any ethical issues.