

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**

April 7, 1994

**Administered in Kosrae, Pohnpei, Yap, and at the
FSM Mission to the United Nations, NYC**

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

*** * * ***

*** * * ***

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. A SUPPLEMENT IS PROVIDED THAT MAY BE USEFUL IN ANSWERING ONE OR MORE QUESTIONS.

A TOTAL OF 100 POINTS IS POSSIBLE, DIVIDED AMONG THE QUESTIONS AS FOLLOWS:

<u>NO.</u>	<u>POINTS</u>
I.	26
II.	20
III.	12
IV.	12
V.	7
VI.	7
VII.	3
VIII.	3
IX.	6
X.	<u>4</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 V-VIII. THE ETHICS QUESTIONS ARE IX AND X. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

I.
(26 Points)

Bino, Inc. was incorporated pursuant to Yap law and does business in Yap. Its shareholders are all FSM citizens. Its business is the sale of fiberglass boats and motors. In support of this business it has a large supply of spare parts for the engines it sells, a repair shop for motorboat engine repair, a fiberglass boat repair facility which also customizes boats with floorboards, seats, operators' stations, etc., and a dock facility selling gasoline and lubricants.

In the early years of the Compact, Bino did a good business. With the step-down in Compact funding, and a change of direction of development projects from fishing to water distribution, Bino's business declined. It is now unable to pay its obligations on time and its liabilities exceed its assets.

You practice law in Yap.

Philippine Sea Outboards (PSO), a Guam Corporation, hires you to represent it in the collection of \$130,000 owed to PSO by Bino for outboard engines supplied. For 10 years PSO has shipped engines to Bino upon Bino's order, with terms of payment 30 days after delivery. The present balance represents payment owed for three deliveries made in the past six months of which a \$3,000 payment had been made five months ago. PSO further states that an invoice had been delivered with each shipment, and a copy of the same invoice mailed to Bino. PSO also prepared and mailed monthly statements to Bino. PSO also tells you that Bino, Inc. has never disputed any statement or invoice.

By informal inquiry, by an examination of courthouse records, and by a search of Land Management records you learn:

1. A judgment was entered against Bino, Inc. in favor of Nippon Boats on January 5, 1994 for \$63,000.00.
2. The Bank of Hawaii commenced a civil action on October 20, 1993 to collect a promissory note of \$25,000.00.
3. Bino, Inc is delinquent in its payment to the FSM of wage and salary tax and gross revenue tax.
4. Fujita Bino is the owner of most of the land on which Bino, Inc. has its operation. No lease to Bino, Inc. I. (con't) is on record.

5. A part of the Bino, Inc. operation is on land leased to Bino, Inc. by a third party. The lease expires in 2004.

6. Three employees have quit recently because Bino, Inc. has not paid them for the last two months.

7. Bino, Inc. still has in stock 40 of the outboard engines supplied by PSO.

What action could you take which would result in the best result for your client?

What alternative actions could you take? (The answer in part depends upon actions of others - whose actions should be taken into consideration.)

If you commence a civil action, what cause(s) of action will it contain?

Your answer should include a discussion of priority of payment from the assets of a corporation in the financial situation of Bino, Inc.

II.
(20 Points)

State Police Officer Umwes is advised by an informer on a Wednesday that Fred Marco, a part time worker at the FSM Postal Service in Chuuk, is dealing in marijuana and will receive a large shipment on Friday. Since this informer has often given reliable information to Officer Umwes in the past, Officer Umwes presents the above information (but no additional facts) to a State Court Judge, who issues a Search Warrant applicable both to Marco's house and to a cookhouse which located about 20 feet away from Marco's house owned by Marco but occupied by his estranged wife.

In executing the warrant on Saturday, the police locate and seize large quantities of marijuana in the garage of Marco's house. They then locate Marco and arrest him, pursuant to a state statute making it a misdemeanor to possess marijuana. Marco resists the arrest and a reasonable amount of force must be used to subdue and arrest him.

Immediately after the arrest, officer Umwes asks Marco what he keeps in his garage, whereupon Marco blurts out, "That ain't my marijuana." Marco is then searched and more marijuana is found in his pocket. At the police station, Marco is properly and fully advised of his rights and he then demands an attorney.

Assume that you are appointed to represent Marco. What issues would you raise in an attempt to gain his acquittal on charges of possession of marijuana and resisting arrest? Discuss.

III.
(12 Points)

A. You are Peter Togas and you represent Pihna Enterprises in its suit against Mary Linn before the FSM Supreme Court. You filed suit last October. You want to get a judgment as soon as possible. So you prepare the papers on the following three pages for filing with the clerk of the FSM Supreme Court, and for the clerk's signature. Will the clerk sign and enter the default judgment you have submitted? If so, why? If not, why not?

B. Assume that the clerk has signed and entered the default judgment (shown on page 7) against Mary Linn. You are Attorney Rorrho. Mary Linn comes to you with the default judgment. She asks you to help because it doesn't seem fair. She admits that she was served with the complaint and summons and did not answer or otherwise defend. She also admits that she signed the promissory note, and that its terms are as described and that she has never made any payments on the note, so she knows she owes the \$600.00. You agree to try to help. What step or steps will you take, and what arguments will you make, with what probable results?

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
TRIAL DIVISION — STATE OF CHUUK

PIHNA ENTERPRISES,)	CIVIL ACTION NO. 1993-1111
)	
Plaintiff,)	
vs.)	
)	REQUEST FOR DEFAULT JUDGMENT
MARY LINN,)	
)	
Defendant.)	
<hr/>		

To: Clerk of Court:

The Plaintiff in the above captioned matter requests you enter a default judgment against Defendant Mary Linn for \$945.85 as provided by Rule 55(b)(1) of the FSM Rules of Civil Procedure. This is based on the attached affidavit and the other papers and documents on file.

DATED, April 6, 1994, at Saipan, CNMI.

/s/
Peter Togas, Esq.
P.O. Box 8888
Saipan, MH 96950
Telephone: 390-9898

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
TRIAL DIVISION — STATE OF CHUUK

PIHNA ENTERPRISES,)	CIVIL ACTION NO. 1993-1111
)	
Plaintiff,)	
vs.)	AFFIDAVIT
)	IN SUPPORT OF DEFAULT JUDGMENT
MARY LINN,)	
)	
Defendant.)	
<hr/>		

I, Peter Togas, being first duly sworn according to law do hereby depose and state:

1. I am legal counsel for Plaintiff Pihna Enterprises.

QUESTION III (con't).

2. Defendant Mary Linn was served with the Complaint and Summons in this action on October 31, 1993. See Return of Service, Kerson Narruhn filed herein.
3. More than 20 days have expired since the Defendant was served with the Complaint in this action.
4. Defendant has failed to answer or otherwise defend in response to the Complaint and is not an infant or incompetent.
5. As of April 6, 1994, the Defendant owes on his promissory note to the plaintiff the principal of \$600 and \$25.85 accrued interest.
6. The promissory note provides that the promisor shall be liable for costs of collection including actual attorney's fees accrued.
7. Actual attorney's fees in this matter are \$300. This is my usual hourly rate of \$120 multiplied by the 2½ hours spent on this matter.
8. Other costs consist only of police service fees in the amount of \$20 for a total balance owed of \$945.85.

FURTHER AFFIANT SAYETH NAUGHT.

Subscribed and sworn to before me
this 6th day of April, 1994.

_____/s/
Murphy Leeway, Notary Public,
Commonwealth of the Northern Marianas
My commission expires: 12/31/1997

L.S.

_____/s/
Peter Togas, Esq.
Attorney for the Plaintiff
P.O. Box 8888
Saipan, MH 96950
Telephone: 390-9898

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
TRIAL DIVISION — STATE OF CHUUK

PIHNA ENTERPRISES,)	CIVIL ACTION NO. 1993-1111
)	
Plaintiff,)	
vs.)	
)	DEFAULT JUDGMENT
MARY LINN,)	
)	
Defendant.)	
_____)	

The Defendant, Mary Linn, having been properly served with process, and having failed to appear and answer or otherwise respond to Plaintiff's Complaint filed herein, and it appearing by the Affidavit of legal counsel for Plaintiff that Plaintiff is entitled to judgment herein,

IT IS HEREBY ORDERED ADJUDGED, AND DECREED that Plaintiff Pihna Enterprises has judgement against Defendant Mary Linn in the sum of \$925.85 and interest on the judgment at the statutory rate of nine percent per annum until paid and \$20 costs of action.

DATE: _____

Assistant Clerk of Court
FSM Supreme Court

IV.
(12 Points)

The state has collected business license fees for three years from Eiron Gas Station. Last year Eiron, the sole owner and a citizen of the state, renovated the station and began selling unleaded gasoline in addition to regular gasoline, kerosene and lubricants.

The income increased greatly because of the improvements. Consequently, the amount assessed for his license fee increased from \$200 per year to \$500 per year.

Eiron asks that you represent him.

A state statute provides that its state court has original and exclusive jurisdiction of a taxpayer's action to recover any tax alleged to have been unlawfully collected.

What rights, if any, does Eiron have? In what court or courts may he assert his rights? Discuss any possible issues of certification, abstention or removal as they appear.

V.
(7 Points)

You have recently been hired as an assistant attorney general. The Supreme Court has just reversed on appeal, the conviction in a criminal case that had originally been tried two years ago. The trial lasted three days. The information was not dismissed. The key prosecution witness, the complaining victim Ava, left the island shortly after the original trial and is living somewhere in Europe. She is not subject to process and even if she could be found and your budget could afford it. It is doubtful she would be willing to return for a retrial in the case. The investigating police officer has since died.

Your boss has assigned the case to you for your advice on whether to continue the prosecution. He would prefer to, if possible, because it involved a violent crime. He will make his decision based on whether he has sufficient admissible evidence so that he can reasonably expect to obtain a conviction. Specifically he has asked that you advise him on the admissibility of the following evidence:

1. Ava's (the witness) statements to the investigating police officers.

2. Ava's statements to medical personnel shortly after the incident.

3. The deceased police officer's records of his observation of the victim.

4. Ava's testimony at the first trial.

5. The deceased police officer's testimony at trial.
What if any of the above evidence is admissible and why?

VI.
(7 Points)

A. You represent the plaintiff, Kerrigan, in a civil action against Harding. The complaint's causes of action are defamation, conversion, breach of contract, assault, and fraud.

In your case in chief your witness Michelle testifies as to her opinion of the plaintiff's character and as to the plaintiff's reputation. Michelle starts to testify to specific instances of Kerrigan's conduct to illustrate her character.

Harding's attorney objects. How should the judge rule? And why?

B. You offer a second witness, Oskana, who testifies that the defendant was caught cheating at bingo at Victor's Bingo Palace the night before defendant's counsel objects on the grounds of relevancy. Discuss.

Assume that the defendant's objection is overruled. What further objections may be raised? What result? And why?

VII.
(3 Points)

You are representing Cito in a breach of contract action. Your client is on the witness stand. Your client has just testified that when he spoke to the defendant on March 17, 1993, the defendant stated, "Yes, I will deliver 20 carved dolphins to your hotel gift shop by April 30th and the price will be \$18.00 each."

The defendant's attorney objects. What are the possible grounds for his objection? Should the judge sustain the objection? Why or why not?

VIII.
(3 Points)

In a civil suit for breach of contract plaintiff offers the testimony of the attending physician that the plaintiff's dying mother's last words were, "I was there. Johnny [the defendant] did promise to buy all of my son's woodcarvings for \$1,000 and now he has gone back on his word. The rat!" Defense objects. You are the judge. How do you rule and why?

IX.
(6 Points)

Attorney Jimi is not admitted to practice in the FSM. He is partners with Janis. They each own 50 out of 100 shares of The Holding Company, Inc. Each share has a par value of \$100. Jimi paid in his \$5,000.00 of the initial \$10,000 start-up capital. Janis did not.

The Holding Company, Inc. is the sole owner of a fashionable nightspot on Pohnpei called The Experience. One evening at The Experience one of the patrons, Morrison, passes out after drinking a six-pack. It was very crowded that night. Janis wanted to use the space for paying customers so she had the bartender help her carry Morrison out into the parking lot where they left him lying on a soft spot on the ground. A few hours later Elvis walked in and asked, "You know there's a dead body in your parking lot?"

Morrison's next of kin filed suit for wrongful death, asking \$100,000.00. They named as defendants Janis and Jimi, as managers of the Experience for negligent training of the staff, Janis and the bartender for negligence in carrying Morrison outside and abandoning him there, and The Holding Company d/b/a The Experience.

Since Jimi has been named as a party he figures he will save the business some money by appearing pro se and representing all the defendants. He does so. After trial the court returns a \$100,000.00 verdict for the plaintiffs, and a \$500 Rule 11 sanction against Jimi for filing motions that were interposed solely for delay.

The Experience's liabilities were equal to its assets before the judgment. The Experience carried liability insurance of only \$50,000. Jimi used the insurance company's \$50,000 to post a supersedeas bond for the appeal and pay his \$500 sanction. He filed a notice of appeal and the appellant's opening brief.

Discuss the ethical implications of Jimi's actions.

X.
(4 Points)

Attorney Gardens represented his client Burton in a controversial law suit before the FSM Supreme Court. His client did not prevail. He filed an emergency appeal, including a request for a stay of judgment from a single justice of the appellate division, the same day. That evening he went to the local state radio station and made an announcement over the air. He stated that the trial justice's decision was wrong, that his client had been denied his constitutional rights, that an appeals court would surely realize that, and that nobody should pay any attention to the trial court's decision because it was worthless.

Discuss any ethical problems raised by the above sequence of events.