

**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 1, 2002

Administered in Chuuk, Kosrae, Pohnpei, and Yap

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

* * * *

* * * *

NOTE

YOU ARE 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 STARTING 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.	16
II.	8
III.	11
IV.	21
V.	14
VI.	10
VII.	4
VIII.	6
IX.	7
X.	<u>3</u>
TOTAL	100

THE MINIMUM OVERALL PASSING GRADE IS 65. FOR PURPOSES OF OBTAINING PARTIAL CREDIT UNDER GENERAL COURT ORDER 1986-2, THE EVIDENCE QUESTIONS ARE VI-VIII. THE ETHICS QUESTIONS ARE IX-X. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.
(16 points)

Suva was sleeping alone at home at 11:00 p.m. when a man broke into her house. The sound awoke her. It was dark, with no moon. No lights or lanterns were on in the house. Suva shouted at the man. "What are you doing?" He attacked her and beat her, telling her several times, "Shut up!" He then grabbed some money and Suva's clock-radio and fled.

The first thing the next morning, Suva went to Public Safety and reported the incident. She was referred to Detective Wellington. She told him what happened. He asked if she could identify the man. She said she was sure that it was Canberra because she knew him very well and she recognized his voice.

The next day, Detective Wellington, while out on other business, passed by a house where Canberra was known to stay from time to time. The house was on public property, land owned by the state. Detective Wellington decided to stop even though he did not have an arrest warrant. Canberra answered the door and Detective Wellington said, "I'm here to arrest you on charges of aggravated assault and burglary, and I'd like to look around." Canberra shrugged and replied, "What can I do?" and backed away from the door. Wellington followed him into the house for about six steps. He then noticed that he could see into another room where there was a clock-radio on the floor. Thinking that it is probably Suva's, he takes it and Canberra to police headquarters. Suva later positively identifies the clock-radio as hers.

Canberra was arrested and charged with aggravated assault and burglary. He was immediately taken to the state court, without legal counsel, for an initial appearance, including a bail hearing. Bail was set. He provided the bail money and was promptly released.

Canberra filed a motion, under the relevant provisions of both the state and FSM constitutions, to suppress the clock-radio as evidence. He also filed a motion to dismiss the information on the ground that Canberra had made a formal traditional apology that Suva and her family had accepted. The motions were denied. The case went to trial and Canberra was convicted.

The case now comes to the FSM Supreme Court appellate division on appeal from the highest state court. How would you expect the FSM Supreme Court to rule? On which issues and why?

II.
(8 points)

Define and discuss the requirements of the following terms in FSM law:

- A. interpleader**
- B. entry of default**
- C. clear and convincing evidence**
- D. standing**

III.
(11 points)

Aristotle, a citizen of Kosrae and the FSM, has for several years owned, operated, and captained a small commercial vessel carrying cargo and passengers between the islands and atolls of the FSM. He considers that his knowledge of the waters and harbors his vessel frequents to be intimate.

The State of Chuuk recently enacted a law which provides in part that all commercial vessels entering or leaving Truk Lagoon must have a pilot on board licensed by the state. To obtain a license an applicant must demonstrate detailed knowledge of the passages, reefs, channels and anchorages of Truk Lagoon and fluency in the Chuukese language. Aristotle is fluent only in Kosraean, Pingelapese, and English.

Aristotle feels that the burden of hiring pilots for each trip to Truk Lagoon will make it uneconomical for him to operate, and decides to contest the law.

- A. (3 points) Which court or courts are available for various stages of the litigation?
- B. (8 points) What are the likely contentions of the parties, and what outcome would you expect?

IV.
(21 points)

A. (12 points) Blast Co. is a joint venture holding a foreign investment permit and is jointly owned by Hiro Fuji, a resident and citizen of Japan, and David Santos, a resident and citizen of Pohnpei. Its main office is located in Kolonia, Pohnpei. Blast Co. has leased a rocky outcropping in Tofol, Kosrae, and has obtained all of the necessary state permits from Kosrae State to engage in basalt quarry activities on the site. The state permit specifically limits Blast Co. to blasting for basalt three times a day, with not more than 10 sticks of dynamite per blast, and specifies that Blast Co. must make an announcement on the local radio station of proposed blasting times at least one hour in advance of any blasting.

The Smith family owns the land adjoining the Blast Co. site in Tofol. After three months of blasting, the Smith family has come to you to complain about the situation. Mr. Smith states the following:

The blasting has caused two landslides, resulting in the deposit of approximately ten square meters of rock and soil on his property, which has knocked down several banana trees. The family is never certain when blasting is going to take place, and the entire family is frightened of the noise to a point where they are nervous and cannot sleep. Mrs. Smith and their two children often stay with her family in Utwe because they feel safer. The family home has developed cracks in the ceiling. Also, an employee of Blast Co., Manny Miner, drove a Blast Co. truck through the Smiths' driveway and crushed their family sedan when an unstable load of rock fell from the truck.

You investigate and find that the Smiths' property is damaged as stated above, that Blast Co. often does not announce their blasting activities on the radio, and that Blast Co. has on occasion used up to 15 sticks of dynamite per blast.

- (1) In what court or courts could you file suit on behalf of the Smiths based upon the above information?
- (2) What causes of action could you assert and against whom?
- (3) The Smiths have asked you if there is any way they can seek to have the blasting halted immediately. What specific relief can they request from the court, and what factors would you have to prove?

IV.
(cont.)

B. (9 points) Mrs. Smith decides to replace the family sedan and visits Utwe Auto Mart and Kosrae Klunkers on July 23, 2002.

At Utwe Auto Mart, she sees a Toyota she really likes for \$800 and offers the owner \$10.00 if he will not sell the car to anyone else for a week. The owner says, "Thank you," and buys himself a nice dinner with her money.

At Kosrae Klunkers she finds her dream car, a Nissan Bluebird. She agrees to buy it for up to \$1200 if the Yap Team wins 10 medals in the Micro Games, and if the car is sufficient to take her up the very steep hill to the Kosrae State Court office building. Kosrae Klunkers agrees to this, and states that the car is sufficient to travel up the hill to the Kosrae State Court.

Utwe Auto sells the Toyota on July 24, 2002. The Yap Team wins 12 medals in the Micro Games, but Mrs. Smith has decided that she no longer wants a Nissan Bluebird. She goes to Kosrae Klunkers and takes the Bluebird for a test drive. She does not think it is strong enough to safely travel up the hill to the Kosrae State Court, and tells Kosrae Klunkers she will not purchase the car. Discuss each transaction, including any causes of action that may be available by the parties.

V.
(14 points)

Pommy, an Australian citizen, wished to establish a business, to operate only in the State of Pohnpei, advising both the state and private construction companies on proper water catchment and drainage methods and their economical and efficient use. The state Foreign Investment Board approved his permit application. The FSM Secretary of Resources and Development refused to issue the permit. The Secretary's denial read in full, "The permit is denied. Pommy's service is not needed."

You represent Pommy. Can you compel the issuance of the permit? What steps would you take? If you sought relief directly from the FSM Supreme Court appellate division, what form would it take and what procedure would you use? If the relief you sought was initially from the trial division, what form would it take and what procedure would or could you use? Can you seek relief in a court other than the FSM Supreme Court?

VI.
(10 points)

Discuss the admissibility of the following evidence under the FSM Rules of Evidence in a civil action for damages for personal injury:

- A. (3 points) A physical therapist's testimony that the plaintiff has suffered a permanent injury;
- B. (3 points) Testimony of the plaintiff's husband that the plaintiff is permanently disabled from working in her usual job as a clerk-typist.
- C. (4 points) During cross-examination of the plaintiff the following occurred:

DEFENDANT'S LAWYER: Have you ever been convicted of a crime?

PLAINTIFF'S LAWYER: Objection, your honor, improper question.

TRIAL JUDGE: Objection sustained.

DEFENDANT'S LAWYER: I think the question is proper.

TRIAL JUDGE: The objection's sustained.

DEFENDANT'S LAWYER: Your honor, I—

TRIAL JUDGE: The objection is sustained.

DEFENDANT'S LAWYER: Thank you, your honor.

On appeal, the defendant assigns as an error the trial court's refusal to permit the above cross-examination. How should the appellate court rule and why?

VII.
(4 points)

You represent lowas in a breach of contract action. Your client has just testified that when he spoke to the defendant on April 1, 2002, the defendant stated, "Yes, I agree to buy from you up to 20 carved sharks, similar to the one you just showed me, for \$18 each, if you deliver them to my hotel gift shop by June 28, 2002."

The defendant's attorney objects on the ground of hearsay. How would you respond? Will the judge sustain the objection?

VIII.
(6 points)

During the defendant's case-in-chief at trial, the defendant calls Odavacer as a witness. Odavacer's testimony includes a recounting of an out-of-court statement made by Theodric. Theodric's out-of-court statement is admitted over opposing counsel's hearsay objection.

Theodric is unavailable to testify, and has left the country and is not subject to an FSM subpoena.

During the plaintiff's rebuttal, the plaintiff calls Alaric to testify. Plaintiff's counsel makes an offer of proof that Alaric will testify that before Theodric left the FSM he had a reputation in the community as an untrustworthy and unreliable person and that Theodric had made statements prior to making the hearsay statement that was admitted that were inconsistent with the admitted hearsay statement. The defendant objects to Alaric testifying.

Will Alaric's testimony be admitted? How will the judge rule and why?

IX.
(7 points)

Bismuth is arrested and charged with assaulting Radon. Bismuth wants to hire Astatine as his lawyer. She tells Bismuth that she requires a retainer of \$5,000 and will bill her time at \$100 per hour. Bismuth agrees and pays the retainer. Astatine, low on finances, decides to immediately use \$2,750 to pay her office rent and other bills.

Astatine hires an outside investigator to work on Bismuth's case and pays him the \$1,250 remaining from Bismuth's retainer. The investigator learns that Radon was drunk the night of the assault. He also learns, and reminds Astatine, that she represented Radon three years earlier when he was charged with driving under the influence.

Discuss:

- A. Astatine's handling of the \$5,000.
- B. Whether Astatine can continue to represent Bismuth after learning that she had previously represented Radon.

X.
(3 points)

Minsk, a staff attorney for FSM Congress who is admitted to the FSM Supreme Court bar, is asked by the Office of the Public Defender to represent a criminal defendant in the FSM Supreme Court that the public defender cannot represent because of a conflict. Minsk declines on the ground that she works for the government and cannot ethically oppose a governmental prosecution. Discuss.