

**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 3, 1995**

**Administered in Kosrae, Pohnpei, and Chuuk**

**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 SUPPLEMENT IS PROVIDED THAT MAY BE USEFUL. A TOTAL OF 100 POINTS IS POSSIBLE, DIVIDED AMONG THE QUESTIONS AS FOLLOWS:

<u>NO.</u>	<u>POINTS</u>
I.	16
II.	9
III.	21
IV.	6
V.	18
VI.	4
VII.	6
VIII.	4
IX.	4
X.	4
XI.	<u>8</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 VIII-XI. THE ETHICS QUESTIONS ARE VI-VII. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.  
(16 points)

You are an attorney practicing in the State of Pohnpei. Awassio, a citizen of Chuuk and a resident of Pohnpei, comes to you for advice and tells you this story. Two years ago he entered into an oral agreement with Park, a citizen and resident of Korea, to import hardware for resale. Under the agreement Park agreed to sell him hardware to be paid on an open account. Awassio agreed to pay Park not less than \$5,200.00 per month beginning three months after delivery with an interest rate of 15% on the unpaid balance. The most recent delivery arrived over a month ago, and most, if not all, of the hardware in that shipment was of a markedly lower quality than what Awassio had received in earlier shipments.

Two months ago Awassio refused to continue paying because he is not selling hardware as quickly as before. He is currently experiencing cash flow problems because of stiff competition from other hardware stores on Pohnpei.

The State of Pohnpei has enacted a Statute of Frauds which requires, among other things, a written agreement for a contract the performance of which is not to occur within one year.

The prime rate at all relevant times has fluctuated between 7.9% and 10.3%.

Park has filed suit in the FSM Supreme Court for all amounts still due including the last shipment. Advise Awassio about his potential rights, responsibilities, and defenses in the matter.

II.  
(9 points)

Applicant A applied to the FSM Secretary of Resources and Development for a foreign investment permit to engage in business in Pohnpei and Kosrae. The purpose of the business was to provide tourists with accommodations in local houses in village settings.

The Secretary submitted the application to the two states and both recommended that the application be granted.

The Secretary also submitted the application to each hotel and tour company in the two states. A majority responded with one hotel and one tour company in Pohnpei and one hotel in Kosrae opposing the application and the rest recommending approval.

The Secretary denied the application on the ground that no sufficient economic, social or environmental need had been shown which would justify the granting of the permit to a non-citizen. Twenty-five days ago the Secretary's decision was submitted to the President of the FSM who took no action on the matter.

A seeks your advice. He wishes to take any legal steps he can to get the permit. What advice do you give him as to the avenues open to him?

III.  
(21 points)

Palm Airways, a company incorporated in the FSM, but with a majority of foreign shareholders and with its corporate headquarters on Guam, is engaged in providing air service between all the states in the FSM and Guam and Saipan, Palau, the Marshall Islands, and Honolulu. It annually produces a calendar which it distributes widely throughout the geographic area it serves in order to promote goodwill for its business. Each month on the calendar is illustrated with a colorful photograph of people or places in the Micronesia area.

The photograph for January, 1995 is a picture of a young woman, Genierose, from Kosrae holding a child. It is encaptioned "Kosrae — Mother and Child." Genierose is a senior at Kosrae High School. One day, when her classmates and one of her teachers made fun of her appearance in the calendar she became upset and abruptly left the classroom in tears.

A. (5 points) You are an attorney admitted to practice in Guam, the FSM Supreme Court, and all of the state courts in the FSM. Genierose hires you to sue Palm Airways. In what court or courts could you bring suit and what would be the basis of their jurisdiction?

B. (12 points) You file suit against Palm Airways and the photographer that sold the picture to Palm Airways specifically for use on its calendar in the trial division of the FSM Supreme Court on Kosrae. Defendants answer. After discovery you move for summary judgment on the issue of liability. The following facts are undisputed: 1) The photograph was of the plaintiff. 2) The plaintiff was unmarried. 3) The child was not hers. 4) Neither she nor anyone else ever signed a release permitting its publication. 5) The photographer was not an employee of Palm Airways, but did sell Palm Airways the specific right to use the photograph on its calendar which he had entitled "Kosrae — Mother and Child." 6) Palm Airways distributed large numbers of its calendars for free to any business in its operating area which wanted some, and actively encouraged their use. 7) The plaintiff was on private property when the photograph was taken. The defendants, however, dispute the plaintiff's allegations that the photograph was taken without her knowledge or consent and oppose summary judgment. What law will the court apply? What cause(s) of action might the plaintiff be seeking summary judgment for, and what is the likely outcome of the motion?

III.  
(cont.)

C. (4 points) Assume the court grants summary judgment on the issue of liability. Defendants' attorneys then file a notice of appeal in the trial division. What is the effect of this notice? What is your next step?

IV.  
(6 points)

Defendant Alaric was charged with a felony in state court. The strongest evidence against him was a typewritten confession with his signature. Alaric timely moved for suppression of the confession on the grounds that it had been coerced from him while he was drunk, and that he had been forced to sign it, unaware of its contents, before the police officers would allow him to get some sleep. The trial court denied the motion. Alaric was convicted after a trial in which the confession was the key piece of evidence. Alaric appealed to the state court's appellate division which affirmed his conviction. Alaric then appealed to the Appellate Division of the FSM Supreme Court. The state constitution contains a provision prohibiting appeals to the FSM Supreme Court from the state courts.

Is there a basis upon which the FSM Supreme Court could hear the appeal? What issues will the FSM Supreme Court consider if it hears the appeal on its merits?

V.  
(18 points)

George is the general manager of Victor, Inc., a retail office supply store. Victor, Inc., has both citizen and non-citizen shareholders and holds a foreign investment permit. George entered into the following agreements to build a second store on the property held by Victor, Inc. under a longterm lease from landowner Losap. The Board of Directors of Victor, Inc. did not know of the construction and George did not inform them.

George provided the plans and specifications for the new store. Contemplacion, an individual in the construction business, according to the agreement, was to provide and supervise the labor to erect the new store. Under the agreement Contemplacion was to submit the weekly timesheets of the workers to George, who then issued paychecks for them. George also was to pay Contemplacion each week an amount equal to 15% of the total of the payroll for the laborers as Contemplacion's compensation. Sigrah Corporation, owner of a general hardware and building supply store, will provide the construction supplies ordered by Contemplacion, for which Victor, Inc. will pay. As construction began, Contemplacion ordered the materials and specified the dates and times of delivery to the building site.

One day Sigrah Corp. delivered ceramic floor tile to the site as directed by Contemplacion. The pallets on which the tiles were carried were broken, and Sigrah Corp. stacked them higher than the height stated as safe on the side of the tile boxes. The forklift operator, an employee of Sigrah Corp., unloaded the pallets on ground which was not level.

Late that afternoon after working hours, Quincy, an inquisitive 12-year old who lived in the neighborhood, visited the site. He touched the boxes and they fell. Quincy was injured.

If an action were commenced on behalf of Quincy, what damages could be sought? From who and upon what grounds? What defenses might any of the defendants assert? Discuss.

VI.  
(4 points)

In the preceding question (#V), George hired Juan Holcombe to represent both him and Victor, Inc. after Quincy brought suit naming both George and Victor, Inc. (and others) as defendants. He has ably represented both George and Victor, Inc. throughout all the pretrial stages. Some members of Victor, Inc.'s Board of Directors reside in the state and some reside in other countries. The Chairman of the Board, a state resident, is in the United States visiting relatives. His wife, the Secretary to the Board, is accompanying him.

The day before trial Juan Holcombe moves for a continuance because he claims he has just realized there is a conflict. In the alternative he seeks withdrawal. You are the judge. Is there a conflict? Why or why not? What orders might you make?

VII.  
(6 points)

Able is a lawyer working for a state government in the FSM. He has also maintained an extensive private practice for several years. Four years ago he represented Masao in negotiating the lease of his land to Fiti. That matter was completed satisfactorily.

Fiti came to Able this year to represent him in defending a trespass action brought by Kotaro who claims ownership of the land included in the lease through adverse possession. The state is also a party, and will be represented by its attorney general. The complaint alleges that a water pumping station, power pole, and the powerlines running to it are all on the property without any grant from the owner [Kotaro] to the state.

Fiti gave the complaint to Able the day he hired him. Because of the pressure of both his private and state legal work, Able failed to note when the answer was due, and failed to serve an answer. Kotaro obtained an entry of default and a default judgment. Two months after the default judgment was entered Kotaro served a demand on Fiti to vacate the premises.

Are there any ethical issues presented here? If so, what are they?

What avenues of relief are available to Fiti?

VIII.  
(4 points)

At trial in a fraud action the following exchange took place during the direct examination of a witness in the plaintiff's case in chief.

Q: Did anyone ever tell you what had happened there?

DEFENSE COUNSEL: Objection, Your Honor.

A: Marlana told me that the defendant had told her when they were at a party that he felt he had never liked the plaintiff and that the plaintiff was not that smart so that it would not be difficult to cheat him out of his money.

Q: When was that party?

A: About one month after the accident.

COURT: Objection sustained.

Q: Was that the party at the ambassador's residence?

A: Yes.

The court's written findings of fact and conclusions of law granted judgment for the plaintiff and relied heavily upon the answer starting in line 7 above given in answer to the question on line 5 above.

Defendant appeals on the ground that the judgment was based on testimony not admitted into evidence and asks the appeal court to order a new trial. How should the appeals court rule and why?

IX.  
(4 points)

The following affidavit, in pertinent part, was offered as evidence in a summary judgment motion in a civil forfeiture case involving a foreign fishing vessel named the *Dernita No. 130*.

1. I, James Joyce, was on duty manning the radio equipment at Marine Surveillance headquarters at Palikir, on Pohnpei on June 16, 1995.
2. On June 16, 1995, at 1400 hours I received a radio message from the Mayor of Puluwat.
3. The Mayor of Puluwat stated that he had had a report of a foreign fishing vessel and had sent Jally Sally, Joshua Thomas, Kirino Otokichy, and Teichy Machuo in a boat to investigate.
4. The Mayor of Puluwat further stated that Jally Sally, Joshua Thomas, Kirino Otokichy, and Teichy Machuo had reported to him that they had seen a foreign fishing vessel one mile to the east of Puluwat reef, and that the name *Dernita No. 130* was painted on its bow.
5. The Mayor of Puluwat further stated that Jally Sally, Joshua Thomas, Kirino Otokichy, and Teichy Machuo had reported to him that the *Dernita No. 130* had appeared to be retrieving some fishing gear and that it had fled when they had approached it.

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Counsel for defendant vessel in her opposition to the motion for summary judgment contends that the affidavit should be stricken or disregarded. Should the judge strike or disregard the affidavit? Why or why not?

X.  
(4 points)

Please refer to Question V. above.

Assume that the case in Question V. proceeded to trial. Quincy is called as a witness to describe how his injury occurred. On cross-examination the lawyer for defendant Contemplacion asks, "Weren't you told by Frank, Contemplacion's foreman, to stay away from the construction site because it was too dangerous?" "Didn't Frank tell you he would tell your parents if he ever saw you on the premises?"

Plaintiffs object to the questions. Should the judge allow the questions? Why or why not?

XI.  
(8 points)

A. (3 points) Plaintiff contractor in a breach of contract case involving the construction of a two-mile causeway calls Henry, a citizen of the United States, to testify as to damages — specifically as to the cost of portions the plaintiff had already completed. Henry testified as to his five years experience as an independent contractor and his practice in estimating the cost of road construction projects and his success at it. He testified that he also had some experience in two dam construction projects, but that he had never been involved in building a causeway. Plaintiffs then offered Henry as an expert qualified to testify as to his opinion of the cost of building the causeway that was the subject of the suit. Defendants object. How should the judge rule and why?

B. (5 points) The judge allows Henry to testify. The defense on cross-examination asks Henry if he has ever been convicted of a felony. Plaintiff objects. Defense offers that if Henry is allowed to answer the question he will admit to having been convicted of draft evasion in the U.S. in 1963, and if necessary, they will offer a certified copy of Henry's conviction. Should the judge direct Henry to answer the question? If Henry answers no, should the judge allow the certified copy of the conviction into evidence?