

**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 5, 1999

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.	10
II.	8
III.	12
IV.	39
V.	11
VI.	4
VII.	7
VIII.	5
IX.	<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 VI-IX. THE ETHICS QUESTIONS ARE I(A)-(E). ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.
(10 points)

You are a sole practitioner attorney in an FSM state. Your largest client is X Corporation, whose billings account for 50% of your annual gross billings. X Corp. pays promptly, and is the backbone of your practice. In addition, Mr. X, founder and sole owner of X Corp., is a fishing buddy and personal friend of yours. You also have a variety of other clients, including Y Corp., a struggling company whose billings account for less than 1% of your annual gross billings. Because you work so little for Y Corp. and your dealings are almost exclusively with Y Corp.'s accountant, you barely know its owner and President. You currently handling two small collection cases for Y Corp.

In order to remain afloat, Y Corp. borrowed \$500,000 from X Corp. on a promissory note payable in six months. Y Corp. has defaulted. X Corp. wants to be paid immediately, or at the very least, within three months.

Y Corp. wants the payments spread out over one year and feels it ought to be given a \$75,000 credit toward the debt because of an earlier transaction with X Corp. that hadn't worked out the way Y Corp. had expected. The two owners have been negotiating the issue and have reached an impasse.

Mr. A, a citizen landowner, and Ms. B, a non-citizen in the business of exporting farm products, are shareholders in Z Corporation. Three years ago you prepared the documents to form Z Corp., which was to engage in commercial farming. Ms. B was to provide \$200,000 cash in start-up capital and would get 40% of Z Corp.'s shares. Mr. A would lease to Z Corp. the land where the crops were to be grown and would get 60% of the shares. You prepared the lease, the incorporation documents, the foreign investment application, the printed stock certificates representing the owners' respective shares, and represented them before the foreign investment board. Z Corp. got a foreign investment permit. You represented Z Corp. and both Mr. A and Ms. B for about six months during Z Corp.'s formation stage, although Ms. B paid all of the legal fees. You were last consulted 2½ years ago and you have no continuing relationship with any of them.

X Corp. is prospering and would like to buy Ms. B's shares in Z Corp., thinking it would be a good business investment and that Mr. A would be an honorable partner. Ms. B is eager to sell her shares because of her difficulties with Mr. A. Despite their specific agreement, Mr. A has not executed the land lease to Z Corp., and refuses to sign Ms. B's share certificate. Although X Corp.'s net worth is excellent, the economy is struggling and its bank is unwilling to loan X Corp. any money at this time. X Corp. therefore needs to collect the \$500,000 Y Corp. owes it so that it can buy Ms. B's shares in Z Corp.

One day, you receive an irate phone call from Ms. B. She reminds you that she invested \$200,000 cash in Z Corp. based on the written agreement you prepared that said that Mr. A would lease his land to Z Corp. in return for 60% of Z Corp. and Ms. B would receive 40%. She tells you that he has preformed neither promise and that she thinks that Mr. A feels that he can get away with cheating her because she is a woman and a foreigner. You dimly remember the work you did for Ms. B, Mr. A and Z Corp., and you remember Ms. B as a very able, competent businesswoman. Ms. B tells you in confidence that Mr. X wants to buy her Z Corp. shares and that she would like to sell because at her last meeting with Mr. A, Mr. A laughed at her and refused to sign either the lease or the stock

certificate and told her he had changed his mind and had already spent her money, but if he ever became wealthy in the future he might give her her money back. She asks you to sue Mr. A for specific performance of the agreement and compensatory and punitive damages.

Shortly after Ms. B's call and while you are thinking over her problem and considering what to do, you receive a call from Mr. X. He tells you that he wants to buy Ms. B's Z Corp. shares and that he needs Y Corp. to repay the \$500,000 in order to have enough cash to buy Ms. B's shares. It is apparent that Mr. X is unaware of Ms. B's problems with Mr. A and Z Corp. Mr. X asks you to pressure Y Corp. to pay and to sue them, if necessary. You tell him that Y Corp. is a client for which you do a little work. Mr. X reminds you of your friendship with him and the size of X Corp.'s monthly billings and how important it is to him to get the cash to buy Ms. B's shares.

A. (2 points) Can you represent Ms. B in an action against Mr. A over the enforcement of the agreement you had drafted for Mr. A and Ms. B?

B. (2 points) Can you pressure, and sue if necessary, Y Corp. on behalf of X Corp. for the \$500,000?

C. (2 points) Can you serve as an intermediary between X Corp. and Y Corp. in their negotiations over the \$500,000 debt? If so, what steps must you take?

D. (2 points) If you serve as intermediary, how do you handle any confidential material learned from X Corp. and Y Corp. about their respective sides of the dispute?

E. (2 points) Can you ethically inform Mr. X of Ms. B's difficulties with Mr. A and are you disloyal to your client, Mr. X, if you don't inform him?

II.
(8 points)

Assume that Ms. B in the previous question prevailed in a suit against Mr. A. Assess her likelihood of recovery on each of her various claims for relief — specific performance, compensatory damages and punitive damages. When analyzing damages, discuss which theory of recovery will be used and why and suggest an appropriate amount.

III.
(12 points)

The Public Auditor discovered serious financial irregularities in the accounts of another government office. Because of the discovery, the office is ordered temporarily closed and its personnel are placed on administrative leave.

In the early evening of the day the office was closed, a member of the FSM Attorney General's staff and several national police officers proceeded to the office to secure the records and property in the office. They are surprised to find the office director and his top assistant there. As the police entered the room the director threw something into his open briefcase and shut and locked the briefcase.

The assistant attorney general with the police asked to see what was inside the briefcase and told the Director he had the right to refuse. The Director refused to open it. The assistant attorney general then informed the Director that if he did not voluntarily open the brief case and allow it to be searched, the briefcase would remain right where it was until they could obtain a search warrant, although the Director and his assistant were free to go at anytime. After some hesitation, the Director opened the briefcase and turned it toward the assistant attorney general. The assistant attorney general searched the briefcase and removed some office records and a personal savings account passbook and checkbook from the briefcase. He gave the Director a receipt for the items he took.

Sometime later the Director is charged with embezzlement. The items seized from the briefcase feature prominently in the evidence against him. The Director moved to suppress the evidence seized from the briefcase.

What arguments might the Director make in support of his motion and what arguments might the government respond with? Suggest the outcome or outcomes you think likely.

IV.
(39 points)

Xenon Ltd. is a Malaysian-owned construction company incorporated in the FSM. Xenon Ltd. has just been awarded a contract to build an new airport in an FSM state. Although Xenon Ltd.'s contract is with the state all of the funds for the project come from the national government. Part of Xenon Ltd.'s contract requires that a certain number of local citizens be trained in the use of Xenon Ltd.'s equipment.

Quick Co. is a California corporation and a dealer in construction equipment. Xenon Ltd. arranged to purchase a new state-of-the-art laser-guided asphalt spreader, the Super Spreader 7, from Quick Co. for use on the airport project. An Xenon Ltd. agent negotiated the deal while visiting Quick Co.'s place of business in California.

One of the terms of purchase was that Xenon Ltd. was to pay $\frac{1}{3}$ of the purchase price, including insurance and freight, before shipping and pay the balance within 5 days of receipt of the Super Spreader 7. Another term was that Quick Co. would retain a security interest in the machinery until paid in full.

Because of the local training clause in its contract Xenon Ltd. subcontracted with Yttrium Inc., a locally-owned construction company, to provide much of the manpower to operate the new equipment. The subcontract provided that Yttrium Inc.'s local employees would be trained on the Super Spreader 7, and that when the project was completed the Super Spreader 7 would become property of Yttrium Inc. In return Xenon Ltd. would pay Yttrium Inc. a sum no greater than half of the wages Yttrium Inc. paid its employees on the airport project.

Xenon Ltd. did not want to pay the substantial import duty on the Super Spreader 7 when it was not going to get to keep it, it asked Yttrium Inc. to help. Somehow Yttrium Inc. arranged for the national government to issue the check for the $\frac{1}{3}$ payment and had the shipping invoice made out to the state government. Yttrium Inc. picked the Super Spreader up at the dock and managed to deliver it to Xenon Ltd. without paying any customs duty.

Quick Co. never received payment for the $\frac{2}{3}$ balance. It engaged local counsel and filed suit against Xenon Ltd. in the FSM Supreme Court seeking the balance due plus fees and costs or, in the alternative, to enforce its security interest in the Super Spreader 7 and repossess and sell it recoup its losses.

A. (4 points) The FSM Supreme Court, on its own motion, raised the issue of whether it had jurisdiction. Why? And what is the likely result?

After further investigation and discovery Quick Co. decided that it was best to dismiss the first case and start all over. Quick Co. again filed suit seeking the balance due plus fees and costs or, in the alternative, to enforce its security interest in the Super Spreader 7 and repossess and sell it to recoup its losses, and this time named as defendants the national government, the state government, Xenon Ltd., and Yttrium Inc.

B. (3 points) In what court or courts could Quick Co. file its suit?

IV.
(cont.)

C. (10 points) What cause or causes of action could Quick Co. assert against each of the named defendants?

Yttrium Inc. filed and served an answer denying everything except the identity of the parties. Xenon Ltd. filed and served an answer admitting most of the allegations but denying ownership or current possession of the Super Spreader 7. The state government failed to file anything. The national government filed and served an answer that denied ownership or possession of the Super Spreader 7 at any time and also raised as affirmative defenses lack of privity, sovereign immunity, and failure to exhaust administrative remedies. The national government also filed and served cross-claims against the other three defendants for the unpaid customs duty plus penalties and interest on the Super Spreader 7 and a counterclaim against Quick Co. for $\frac{1}{2}$ of the customs duty due on the Super Spreader 7. Xenon Ltd. then filed a third-party complaint against Yttrium Inc. for the customs duty claim. Yttrium Inc. answered the third-party complaint and filed and served a fourth-party complaint against the state for the customs duty claim.

- D. (4 points) What is the next step that Quick Co. should take against Yttrium Inc.?
- E. (4 points) What is the next step that Quick Co. should take against Xenon Ltd.?
- F. (2 points) What is the next step that Quick Co. should take against the state government?
- G. (4 points) What is the next step that Quick Co. should take against national government?
- H. (8 points) Discuss the parties' liability for the national government's customs duty claim.

V.
(11 points)

You are a justice of the FSM Supreme Court sitting in the trial division preparing for the sentencing hearing of Antimony, a former FSM public official who has pled no contest to embezzlement charges.

Antimony has filed a motion seeking your recusal from the case. The motion is accompanied by an affidavit which includes the following sworn statement: "During the sentencing hearing in FSM v. Mercury, where the defendant had also been convicted of embezzlement the judge presently presiding over this case said, 'Public corruption is a major threat to the Federated States of Micronesia and anyone who embezzles from public funds must receive the maximum sentence.'"

Antimony's motion relies upon the Judiciary Act of 1979 subsections 124(1) and (2)(a) which read:

§ 124. *Disqualification of Supreme Court Justice.*

- (1) A Supreme Court justice shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- (2) He shall also disqualify himself in the following circumstances:
 - (a) where he has a personal bias or prejudice concerning a party or his counsel, or personal knowledge of disputed evidentiary facts concerning the proceeding;

You recall the Mercury case but don't remember making that statement. You listen to Mercury sentencing hearing recording. It confirms that your statement was, "A judge should not be sympathetic simply because only money was taken. A judge should consider embezzlement a serious threat to the proper functioning and well-being of the government and should start the sentencing hearing with the presumption that the maximum sentence authorized by statute could be imposed."

Antimony's motion also contends that, as a matter of due process, you must ask another judge to rule on the recusal motion because you will obviously be biased against the motion.

- A. (3 points) Must you transfer this motion to another judge? Why or why not?
- B. (8 points) Should the motion be granted? Why or why not?

VI.
(4 points)

Bismuth was charged with the robbery of and assault and battery of Radon and assault and battery of Astatine. The government alleged in the charging information that Bismuth punched Radon and grabbed his briefcase and that while fleeing the scene knocked Astatine to the ground. Astatine suffered a broken arm and other injuries.

As a result of a plea agreement Bismuth entered a no contest plea on the assault and battery charges. The robbery charge was dropped.

Astatine sued Bismuth for damages for battery. At trial, Astatine called Bismuth as a witness during her case in chief. Astatine then asked Bismuth if he had been convicted of assaulting Astatine and Radon.

Defense counsel objects. Why? And what result is likely?

VII.
(7 points)

Pandinus sued Detor for injuries he sustained when he fell on the floor in Detor's new, modern movie theater. Pandinus claims that he fell because he slipped on some liquid on the floor that he could not see due to the poor lighting in the theater. Detor admits that Pandinus fell in his theater but denies that the lighting was poor or that there was any liquid on the floor when Pandinus slipped. Detor claims that Pandinus fell because he was intoxicated.

A. (3 points) As part of his case in chief Pandinus submits a copy of the hospital record made by the attending physician in the emergency room where Pandinus was treated. It reads: "Fracture of hip; apparently sustained in fall when Pandinus slipped on liquid on floor of Detor's theater." You are Detor's counsel. Do you object to this evidence? On what grounds? Is the court likely to sustain your objection?

B. (4 points) In his defense Detor called Walter, a neighbor of Pandinus's, to the witness stand. Walter testifies that on the day of the fall Pandinus had been drinking, that Pandinus drinks every day, and that Pandinus was a well-known drunk. Pandinus's attorney objects. What portions, if any, of Walter's testimony are admissible, and under what circumstances?

VIII.
(5 points)

In a suit against the state government for breach of contract, or in the alternative, conversion, the plaintiff testified that he had agreed to supply the state government with coral road-building material from his tidelands in return the state had agreed to provide the plaintiff landfill that it had excavated from its drainage and sewage project. The plaintiff does not dispute that he had received all of the agreed upon landfill.

The plaintiff further testifies that the state had received a development project check from the FSM national government, made out to him as payee, as payment for the coral, but that the state government had not given it, or any money, to him.

The defense counsel objects to any testimony about the check. On what grounds? With what likely result?

IX.
(5 points)

Asimov, a business on Guam, had a contract with Clarke, a citizen and resident of an FSM state, to supply Asimov with a steady supply of carvings and other handicrafts. To assure a reliable supply of product the contract specified that time was of the essence and that Clarke had to ship a minimum amount of goods no later than the 30th of each month. Once shipped, it generally took about a ten to twelve days before Asimov received the shipment on Guam.

One month Asimov did not receive a shipment. Its supply ran out and Asimov lost customers because it had no carvings to sell. After some investigation, Asimov wrote a letter demanding to know why the June 30th shipment was not sent until July 19th, and asking for an adjustment in his payments. The letter also had some complaints about the quality of some of the shipment.

Clarke wrote a letter back. It said in part, "About your complaint that the June shipment was not sent until July 19th, once I ship the goods it is not my responsibility how long the shipping company takes to deliver it to you."

Asimov eventually files suit for breach of contract. His letter and Clarke's reply letter are attached to the complaint as Exhibits A and B. Asimov later moves for partial summary judgment on the issue that Clarke has breached their contract by not shipping the June 30th shipment until July 19th. Clarke's opposition contends that summary judgment is improper because the shipment date is a material fact and that there is no evidence in the record that indicates that July 19th was the shipment date except Asimov's letter, and that is not enough.

You are Asimov's attorney. How do you respond to Clarke's opposition?