

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**

March 2, 1995

Administered in Kosrae, Pohnpei,

**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 AMONG THE QUESTIONS AS FOLLOWS:

<u>NO.</u>	<u>POINTS</u>
I.	15
II.	25
III.	10
IV.	20
V.	2
VI.	2
VII.	6
VIII.	3
IX.	10
X.	3
XI.	<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 VIII-XI. THE ETHICS QUESTIONS ARE V-VII. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.
(15 points)

The national government has licensed the *Dernita's Pride*, a foreign flagged vessel, to fish commercially within the FSM Exclusive Economic Zone. The license contains a number of conditions. Violation of any of the conditions is grounds for revocation of the license and subject to forfeiture of the vessel. One of the conditions is: "Fishing within 12 miles of the Federated States of Micronesia is prohibited unless authorized by the State which has jurisdiction." No state currently issues permits for fishing within twelve miles of its shores. All states prohibit any fishing within their waters by foreign vessels.

One day a FSM surveillance vessel spotted the *Dernita's Pride* 10 miles offshore. *Dernita's Pride* appeared to be fishing. The surveillance vessel pursues the *Dernita's Pride* and stops and boards her. The *Dernita's Pride* is seized and brought to port. The FSM Attorney General commenced a civil action in the FSM Supreme Court against the *Dernita's Pride* for forfeiture. The attorney for *Dernita's Pride* files a motion to dismiss the action on the ground that only the states have the power to regulate fishing within the twelve mile limit.

Discuss how the judge should rule and why.

II.
(25 points)

Eneriko, is the local manager of Lohn Construction Co., a local corporation which is a wholly owned subsidiary of Godzilla Construction Co., a corporation with Japanese shareholders. Lohn Construction Co. is involved in numerous construction projects around the state.

The state recently awarded a \$2.5 million construction contract to Indigene Construction Co., a local rival construction company, to build and pave a new road which included a $\frac{3}{4}$ mile long causeway. Lohn Construction Co. had also applied for the road construction contract. After receiving the contract Indigene Construction Co. ordered new construction equipment which cost \$150,000.00.

Eneriko was interviewed on a public affairs program on the local radio station about his company's activities in the state and its plans for the future. Most of the interview focused on employment and training opportunities with Lohn Construction Co. for local citizens. At one point in the interview the subject of the road construction contract came up. Eneriko expressed his disappointment that his company was not awarded the contract and that he had his doubts about Indigene Construction Co.'s ability to successfully complete perform under the contract because Indigene Construction Co. had never done a job of that size before and because Indigene Construction Co. did not have the proper resources or equipment for the job.

Three weeks later the state government terminated Indigene Construction Co.'s contract on the basis that it was not capable of doing the job.

Based on these events Indigene Construction Co. filed suit against both Eneriko and Lohn Construction Co. in the trial division of the FSM Supreme Court for tortious interference with a contractual relationship. Indigene Construction Co.'s prayer for relief seeks actual damages of \$2.5 million and punitive damages of \$32 million.

- A. (5 points) Does the FSM Supreme Court have jurisdiction to hear this case and why or why not?
- B. (5 points) Assume that the plaintiff can prove its case. Discuss the possible damage award and how it might be arrived at.

Two months after Lohn Construction Co. filed its answer and after discovery had only begun Indigene Construction Co. moved for summary judgment on the issue of liability alone. Eneriko and Lohn Construction Co.'s attorney, Bilbo, although properly served, failed to timely respond to Indigene Construction Co.'s motion for summary judgment. After hearing during which Bilbo was not allowed to argue, the court granted summary judgment for Indigene Construction Co. on the issue of liability and scheduled a hearing date the two months later for the determination of damages.

II. (cont.)

- C. (6 points) Discuss the propriety of the court's grant of summary judgment under these circumstances.

Bilbo realizes that because punitive damages are sought Indigene Construction Co. may seek discovery of his clients' finances. Lohn Construction Co. does not want to open its books to Indigene Construction Co. because Indigene Construction Co. is a competitor, and Indigene Construction Co. might learn some of its trade secrets. Bilbo also realizes that if the damage award against his clients is very large they may not be able to afford to post the supersedeas bond necessary for a stay of judgment while an appeal is pending. Bilbo therefore quickly files a notice of appeal of the grant of summary judgment. Indigene Construction Co. immediately moves that the appellate division dismiss the appeal.

- D. (4 points) What are the potential grounds for Indigene Construction Co.'s motion for dismissal? How should the appellate division rule on the motion?

- E. (5 points) Assume that the appellate division promptly grants the motion dismissing the appeal. What other procedure(s) may Bilbo attempt to use to have the trial division's summary judgment on the issue of liability reversed a) in the trial division? b) in the appellate division?

III.
(10 points)

You are attorney Charles Lite. You represent the plaintiff in FSM Civil Action No. 1995-1001. The case file in the FSM Supreme Court in Chuuk contains the following two documents. Also included in the case file is Exhibit "A," a copy of the promissory note executed by the parties, a Summons, and a Return of Service for the Complaint and Summons.

You plan to next visit Chuuk on March 17, 1995. Please draft the document that you intend to file in Civil Action No. 1995-1001 at that time. Remember to include the heading and caption.

III. (cont.)

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

BANK OF TINIAN,)	CIVIL ACTION NO. 1995-1001
)	
Plaintiff,)	
vs.)	
)	COMPLAINT
PARVUS SOLE,)	
)	
Defendant.)	
_____)	

PARTIES

1. Plaintiff is a corporation organized and operating under the banking laws of the Commonwealth of the Northern Marianas, whose shareholders are citizens of the United States.

2. Defendant Parvus Sole is a citizen and resident of the State of Chuuk.

3. Jurisdiction is vested in this Court by virtue of diversity of citizenship pursuant to Article IX, section 6(b) of the Constitution of the Federated States of Micronesia.

CAUSE OF ACTION

4. Defendant executed a promissory note and borrowed the sum of \$10,130.00, on December 28, 1987 as a commercial loan at an interest rate of 10.75%. A copy of the Note is attached to this complaint, labeled Exhibit "A" and incorporated herein by reference.

III. (cont.)

5. Defendant has defaulted pursuant to the terms of the Note in that defendant has not made the payments provided for therein, and full principal and interest is now due and owing.

6. There is now due and owing by defendant to plaintiff under the terms of the Note the principal sum of \$6,480.70, together with interest thereon at the rate of 10.75% per annum from December 28, 1987.

7. Notwithstanding frequent demand, defendant has failed, refused, and neglected, and still fails, refuses, and neglects to make payment to the plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendant together with interest thereon at the rate of 10.75% per annum for the principal sum of \$6,480.70, together with interest thereon at the rate of 10.75% per annum from December 28, 1987 and together with reasonable attorneys fees pursuant to the terms of the Note and in such amount as to be approved by the Court; for court costs; and for post-judgment interest at the maximum rate provided by law.

DATED, January 16, 1995, at Saipan, CNMI.

Charles Lite, Esq.
P.O. Box 8888
Saipan, MH 96950

III. (cont.)

Telephone: 390-9898

III. (cont.)

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

BANK OF TINIAN,)	CIVIL ACTION NO. 1995-1001
)	
Plaintiff,)	
vs.)	ANSWER
)	
PARVUS SOLE,)	
)	
Defendant.)	
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1. Admit.
2. Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit.

7. Business has not been good lately, and I have also had extra family expenses. I am not currently able to make the payments. As soon as I am able I will make payments again. Please give me some more time. I am expecting payment in May of a \$20,000.00 judgment against the State of Chuuk.

Parvus Sole
P.O. Box 987
Weno, Chuuk, FM 96942
Telephone: 330-9876

Certificate of Service

This 25th day of January, 1995 I mailed a copy of this Answer, postage prepaid, to Charles Lite, Esq., P.O. Box 8888, Saipan, MH 96950

III. (cont.)

Parvus Sole

IV.
(20 points)

The State of Chuuk decided that it needed to improve its appearance, in order to increase its revenues from the tourist trade. Chuuk enacted a statute creating the Chuuk Beautification Agency. The statute granted the Chuuk Beautification Agency's Board of Directors authority to promulgate regulations, to act as an adjudicatory body with respect to any alleged violations, and required the Board to establish its hearing procedures by regulation within one year after the Board selected its administrative head of the agency [Executive Director].

The Chuuk Beautification Agency is subject to an abbreviated state Administrative Procedures Act which requires public notice and an opportunity to be heard before regulations may be adopted. Under the APA the public notice required is that radio announcements be read on V6AK radio at least seven times a day on at least seven different days, and that the notice of the proposed regulations be posted in the municipal offices of all of the municipalities to be affected.

Eighteen months after the Executive Director was appointed the Chuuk Beautification Agency adopted its "bylaws," which included regulations not only for board membership and agency management but also established the procedure for the board's adjudicatory hearings. No public notice of the bylaws was given and the public had no opportunity to comment on them. The bylaws require that an alleged violator of the Chuuk Beautification Agency regulations be given at least eight days notice before any adjudicatory hearing, and that notice must be served in the same manner as required for the service of a complaint and summons in a civil case in either the Chuuk State Supreme Court or the FSM Supreme Court.

The Chuuk Beautification Agency then adopted its Beautification Regulations, which included a provision prohibiting the storage of junk (no longer running) motor vehicles on residential property where they could be seen from any public road. It also prohibited the storage of junk vehicles on property used for commercial purposes without a permit issued by the Chuuk Beautification Agency.

Public notice was given prior to the adoption of the Beautification Regulations. Notice was read on the radio four times a day for five days. Notice was also posted at the municipal offices of about half of the municipalities in the Lagoon, but not at the Weno Municipal Office, and not at any of the outer island municipal offices. Notice was also posted at the Governor's Office, which is located in Weno Municipality.

KM lives alongside a public road on Weno. He runs his computer repair service out of an office at his house. One of his relatives, LN, got into an automobile accident nearby and was able to push his disabled vehicle to KM's property. KM gave LN permission to leave the vehicle on his property in front of his house. LN took the tires off the car and propped it up on its side and left.

IV. (cont.)

Ten days later Chuuk Beautification Agency scheduled an adjudicatory hearing and commanded KM's presence. Eight days notice was given by letter to you. You are KM's attorney. In that letter the Chuuk Beautification Agency's attorney advised of his conclusion of KM's guilt with respect to his violation of the Chuuk Beautification Agency's regulations prohibiting the storage of junk cars. He advised that at that hearing he would be serving in both a prosecutorial role and as a legal advisor to the Chuuk Beautification Agency board.

You object to Chuuk Beautification Agency's attorney performing both prosecutorial and advisory roles, and request a copy of the Chuuk Beautification Agency regulations, stating that neither you nor KM would attend any hearing until at least eight days after you had received a copy of the regulations and bylaws promulgated by the Chuuk Beautification Agency Board. Two days before the scheduled hearing you receive a copy of the regulations and bylaws. The hearing proceeds as scheduled. Neither you nor KM attend. Nevertheless Chuuk Beautification Agency fines KM and advises you that there will be future hearings regarding further fines.

KM asks you to seek judicial relief. What causes of action does KM have? What remedies would be appropriate to seek? What is the probable outcome of the litigation? And why?

V.
(2 points)

Discuss any ethical problems raised by the behavior of the attorney for the Chuuk Beautification Agency in the last three paragraphs of the preceding (#IV.) question.

VI.
(2 points)

A trial counsellor accepts a request to represent a client who has a claim for wrongful termination from her employment. After accepting a retainer fee and obtaining the facts of the case from the client, the trial counsellor assures the client that he will look after the case and bring a complaint against her former employer. From time to time, whenever the client asks about the case, the trial counsellor assures her that he is pursuing the matter and that he will tell her when the matter comes to trial.

In fact the trial counsellor does nothing, but the client believes the case is progressing properly because of his assurances.

Have there been violations of the Model Rules of Professional Conduct by the trial counsellor?

VII.
(6 points)

Defendant Iwanes Santos was served the following Complaint and Summons. The defendant, after being served, consulted Attorney Malcolm. He told Attorney Malcolm that he had bought the goods for the price recited in the Complaint. He further informs Attorney Malcolm that he does not have the funds available at this time to pay the plaintiff, but expects to have the necessary funds sometime in the not too distant future.

Attorney Malcolm prepares, signs, and files the following Answer on behalf of the defendant. Discuss any ethical considerations raised by this sequence of events, and mention all obligations or standards which guide the conduct of lawyers that have a bearing on this case.

VII. (cont.)

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

NINA'S JEANS, INC.,)	CIVIL ACTION NO. 1994-1007
)	
Plaintiff,)	
)	
v.)	COMPLAINT
)	
IOWANES SANTOS,)	
)	
Defendant.)	
_____)	

1. The plaintiff is a corporation organized under the laws of the Territory of Guam, having its principal place of business in Guam.

2. The defendant is a citizen and resident of the State of Chuuk, Federated States of Micronesia.

3. The court has jurisdiction of this case by virtue of Section 6(b) of Article XI of the Constitution of the FSM.

4. On or about October 20, 1994 the plaintiff shipped to the defendant ten dozen jeans of assorted sizes.

5 The shipment set out in paragraph 4 above fulfilled the order of the defendant given to the plaintiff's agent on Weno on or about October 1, 1994.

6. The agreed upon purchase price of the shipment of jeans was \$600.00.

VII. (cont.)

7. The purchase price, according to order, was to be paid 30 days after receipt of the jeans by the defendant.

8. The jeans, shipped as alleged in paragraph 4, were received in good condition by the defendant on Weno on or about October 28, 1994.

9. More than 30 days have elapsed since October 28, 1994.

10. The defendant has failed to pay for the shipment of jeans.

11. The defendant owes the plaintiff the sum of \$600.00 for goods sold and delivered to the defendant as alleged.

Wherefore the plaintiff demands judgment against the defendant for \$600.00 together with the costs of this action.

Dated February 14, 1995.

Attorney for Nina's Jeans, Inc.
Methodius Firth
Post Office Box X
Weno, Chuuk FM 96942
Telephone: 330-8936

VII. (cont.)

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

NINA'S JEANS, INC.,)	CIVIL ACTION NO. 1994-1007
)	
Plaintiff,)	
)	
v.)	ANSWER
)	
IOWANES SANTOS,)	
)	
Defendant.)	
_____)	

1. Paragraphs 1, 2, and 3 of the Complaint are admitted.
2. Paragraphs 4 through 11 are denied and the plaintiff is put upon his proof.

Wherefore defendant demands that the Plaintiff's Complaint be dismissed.

Dated February 28, 1995.

Attorney for Iowanes Santos
Xavier Malcolm
Post Office Box Q
Weno, Chuuk FM 96942
Telephone: 330-8765

Certificate of Service

This 28th day of February, 1995 I mailed a copy of this Answer, postage prepaid, to Methodius Firth, Esq., P.O. Box X, Weno, Chuuk FM 96942

VII. (cont.)

Xavier Malcolm

VIII.
(3 points)

In 1966 Pete, a father of two sons and a daughter set aside parts of his land for his children. The sons, both grown men, occupied the parts given to each of them. The daughter Florence, a teenager, was in the United States to further her education at the time Pete designated the three parts to be given his children, and she did not know about it.

Because of her absence, Pete wanted to mark her part. He told Lorenzo, his close friend, "Florence may be gone for many years. I want her part marked. I am going out and plant coconut trees along three sides of her part to mark the boundaries. The road is the boundary on the fourth side."

Pete carried out his intention and the rows of trees are still standing.

Although in apparent good health and strong, Pete died unexpectedly in 1969. Florence came back for the funeral but was so grieved that she did not inquire at all into the status of the property. The family, on its part, knew of Pete's division of the land and saw no reason to raise the issue at that time.

The sons died and another person, Fred, began occupying Florence's part of the land in 1973.

Florence, in the meantime, had obtained an education, married, and had children. For personal reasons she returned to the FSM in 1994 with the intention to live permanently on her home island.

In inquiring into her rights to her family land she spoke to Lorenzo and learned of her father's plan.

Florence's action against Fred and any other making a claim to her part of the land came on for trial. Her lawyer asked Lorenzo, a witness, to repeat Pete's words. Fred's lawyer objects.

Discuss.

IX.
(10 points)

Charles is called as a witness by the plaintiff in a negligence action. He testifies as to the defendant's carelessness and the plaintiff's lack of fault. The defendant, on cross-examination, inquires if the reason Charles left his last job was because he was involved in the diversion of government funds to his own personal use. The plaintiff objects.

How should the judge rule, and why?

The judge overrules the objection and the defendant repeats the question. Charles refuses to answer. The defendant asks the judge to instruct Charles that he must answer the question.

Should the judge so instruct Charles? Why or why not?

The defendant then offers to call its own witness to testify that Charles was let go from his last government job because he embezzled funds. The plaintiff objects.

How should the judge rule, and why?

X.

(3 points)

Paulus was injured as the result of a fight in Tiny Troubles Bar. He files suit against William for assault and battery. At trial during his case in chief Paulus testifies that William threw an unopened can of beer across the room which struck Paulus in the eye, causing some loss of vision and requiring medical treatment. Paulus described William, who he did not know, and said William was wearing a yellow teeshirt that evening.

William, as part of his defense, then offers Kasiano as a witness. Kasiano's only testimony will be that William does not own a yellow teeshirt and William thinks that it is unlucky to wear the color yellow. Paulus objects to the witness.

Should the judge allow the witness to testify? Why or why not?

XI.
(4 points)

Able, Baker, and Charlie are accused by information of assault and battery of William. Each defendant is represented by his own counsel. Prior to trial Baker enters into a plea agreement with the government. One part of the agreement obligates Baker to testify fully and truthfully at the trial of the two remaining defendants.

After arrest, Baker gave a statement to the police concerning his involvement and the involvement of Able and Charlie in the assault. Prior to giving his confession he did not knowingly and intelligently waive his right to remain silent.

As Baker begins his testimony as a witness at the trial, counsel for the defendants object on the ground that Baker's constitutional rights were violated.

Discuss.