

**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 7, 1996

Administered in Kosrae, Pohnpei, Chuuk, 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 STATUTORY SUPPLEMENT IS PROVIDED THAT MAY BE USEFUL. A TOTAL OF 100 POINTS IS POSSIBLE, DIVIDED AS FOLLOWS:

| <u>QUESTION NO.</u> | <u>POINTS</u> |
|---------------------|---------------|
| I. | 15 |
| II. | 19 |
| III. | 18 |
| IV. | 18 |
| V. | 12 |
| VI. | 4 |
| VII. | 4 |
| 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 V-VII. THE ETHICS QUESTIONS ARE VIII-IX. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.
(15 points)

Ilario was taken into protective custody by the state police because he was drunk and disorderly in public. He was searched before being placed in a jail cell. The police discovered a vial in his pocket that contained drugs.

Testing showed the drugs to be crystallized methamphetamine ("ice"), a drug banned by under both chapter 11 of Title 11 of the FSM Code and the earlier Trust Territory Code. The state has never legislated on the subject of illegal drugs, but has enacted its own comprehensive criminal code that does not include a section concerning controlled substances. The state constitution contains a transition clause similar to the one in the FSM Constitution.

A prosecutor in the state attorney general's office filed an information in state court charging Ilario with possession of a controlled substance. The public defender has moved to dismiss on the ground that the state court does not have jurisdiction over such cases.

What arguments will the public defender make in support of his motion? What arguments can the prosecutor make in favor of state court jurisdiction? How do you conclude that the court will rule on the motion?

II.
(19 points)

Creditor Arlington and creditor Berkeley have both filed complaints against debtor Dartmouth. Both have obtained final money judgments for \$5000. Arlington's judgment is entered on January 30, 1992. Arlington filed a motion for a writ of execution on February 28, 1992, and the writ is issued on March 30, 1992. The police levy the writ of execution on April 3, 1992 by seizing Dartmouth's heavy cement mixer truck.

Berkeley also has his final money judgment entered on January 30, 1992. Berkeley files his motion for a writ of execution on February 25, 1992. The writ is issued on March 15, 1992. On April 6, 1992, the police execute the writ by re-seizing the cement mixer that is sitting in their parking lot. The cement mixer is only worth \$5,500.

Creditor Clarendon also filed a complaint against Dartmouth. She also obtained a final money judgment against Dartmouth for \$15,000 on January 30, 1992. She filed a motion for an order in aid of judgment on February 28, 1992. At the hearing on the motion on April 30, 1992, she learns that the writs of execution have been issued and levied upon. Upon examination of the debtor, Dartmouth, she learns that he owns four parcels of land. One parcel is a vacant and unused lot in a commercial district. It is worth about \$10,000. Dartmouth raises no objection to its sale. The court orders the lot's sale.

Assume that the cement mixer was sold at a court-ordered auction and that the costs of sale was \$100. Which creditor or creditors has the right to Dartmouth's cement mixer?

What arguments might Berkeley make that he has a priority right to Dartmouth's cement mixer?

What arguments might either Arlington or Berkeley make that he has priority to the proceeds from the judicial sale of Dartmouth's land set in motion by Clarendon?

Chapter 14 of Title 6 is attached.

III.
(18 points)

The State of Pohnpei acquired a longline fishing vessel named the *Dernita Bonita*. The state then hired Captain Kelly, a Canadian citizen, to run the vessel and train Pohnpeian citizens how to operate and maintain a commercial longline fishing vessel. He signed a one year contract to that effect.

After six months of successful fishing voyages the state, for unknown reasons, decided that it did not want to fund further operation of the *Dernita Bonita*. The *Dernita Bonita* was left tied up at the dock, and Captain Kelly was informed by the state that his services would no longer be needed.

Assume that the State of Pohnpei has an administrative procedures act that generally requires that administrative remedies be exhausted before a claimant against the state can sue in court. The act also provides that appeals from administrative decisions can only be made to the Pohnpei Supreme Court.

Captain Kelly asked the state to compensate him for the state's breach of his employment contract. He sent a letter to the state officials that he had dealt with when he was hired. He did not receive an answer. When he met them personally they said that they would do something.

A. (8 points) Three months later Captain Kelly filed suit against the state in the FSM Supreme Court. The state responded by filing two motions: (1) a motion to dismiss for failure to state a claim upon which relief can be granted because Captain Kelly had not exhausted his administrative remedies, and, in the alternative, if the court ruled that Captain Kelly had exhausted his administrative remedies, (2) a motion to dismiss for lack of jurisdiction on the ground that the Pohnpei Supreme Court had exclusive jurisdiction over appeals from administrative grievances.

Comment on the possible outcome of the motions and the reasoning behind it.

B. (6 points) Assume that the case proceeds in the FSM Supreme Court. The state files an answer denying that there was a contract between Captain Kelly and the state. It alleged that Captain Kelly's contract was not with the state, but was instead with Rock Enterprises, Inc., a corporation with a Pohnpei foreign investment permit and which is wholly owned by three U.S. citizens resident on Guam. The state in turn had a contract with Rock Enterprises, Inc. to hire and provide qualified personnel to train commercial fishermen. Copies of both contracts were attached to the answer as Defense Exhibits A and B. Shortly thereafter the state moved for judgment on the pleadings.

Assume that Captain Kelly acknowledges that the contracts are genuine. You are Captain Kelly's attorney. What possible steps might you take? How might the court rule and why? What is the likely result if the only step you take is to oppose the state's motion?

III. (cont.)

C. (4 points) Assume that Captain Kelly decides to drop his suit against the state because he is interested in future employment with the state and wants to remain on good terms with state officials. Captain Kelly is still interested in pursuing his compensation claim and decides to sue Rock Enterprises, Inc. In what court or courts can he pursue his breach of contract claim? And why?

IV.
(18 points)

The following happened in one of the states of the FSM. While visiting, Grover, a citizen of another state rented an automobile. He had no driver's license issued in his state or in any other place. The car rental owner, Rentall, did not ask him for his license.

After having one or two beers Grover was driving and while turning left off the main road was hit by a pickup traveling 35 miles per hour in a 20 mile per hour speed zone.

The pickup was owned by Junco, a corporation. Junco's stockholders are both citizens and non-citizens of the FSM. Junco has a foreign investment permit and was initially incorporated by the Trust Territory. The pickup was operated by Subco, a corporation wholly owned by Junco. On the day of the accident the pickup was being driven by Harrison, a local employee of Subco. Harrison had been assigned an errand by Subco. Instead of doing Subco's assignment, he first went in the opposite direction to pick up his children from school and take them home. The children were in the pickup at the time of the accident.

Both cars were damaged; Grover was injured. Grover decides to bring suit to collect damages caused by the accident. He comes to you to represent him.

Who could you name as defendants? In what court or courts could you file your action? What is the basis of the liability of each? What steps might the defendants take in response to your complaint? If any of the defendants makes a claim against Grover what response would Grover make?

V.
(12 points)

Jacko is the Vice-President of Universe, Inc. On January 10, 1996, he received a cash payment of \$1,000.00 from Georgia in full payment of her account at Universe, Inc. He issued her Cash Receipt No. 25 to her showing that the \$1,000.00 paid her account in full. He recorded the transaction in Universe, Inc.'s daily business journal, and put the cash in his pocket instead of the company's safe. Upon leaving Universe, Inc. Georgia showed her receipt to her friend, Carolina, and said, "Now I have no debts."

Jacko's father-in-law died the same day. Jacko spent the cash on the funeral.

Five days later Jacko invited his best friend, Rollo, to drink beer with him. While drinking Jacko tells Rollo that he had pocketed the \$1,000.00 paid by Jane and used it on his father-in-law's funeral and to buy the beer they were drinking.

On January 20, 1996, Universe, Inc.'s accountant discovered that Georgia's \$1,000.00 cash payment was missing. Jacko's secretary also recalls that on January 10, 1996, she had found the cash receipt book on her desk, but that there was no cash with it.

Jacko was arrested and a criminal information was filed against him charging him with embezzlement.

Georgia has taken her receipt and left the country so that she is unavailable for trial. Universe, Inc.'s cash receipt book cannot be found.

A. (5 points) The prosecution lists the relevant portion of Universe, Inc.'s daily business journal as evidence it intends to introduce at trial. The defense contends that it is inadmissible. How will the prosecution attempt to introduce it? And what is the likely result of any defense objection?

B. (3 points) At trial the prosecution calls Rollo as a witness. The defense objects to any testimony by Rollo about Jacko's statement about the alleged embezzlement. How should the judge rule and why?

C. (4 points) At trial the prosecution calls Carolina to testify about the receipt and Georgia's statement when she showed it to her. On what grounds will the defense object to Carolina's testimony? How is the judge likely to rule and why?

VI.
(4 points)

The plaintiff in a civil case offers for admission as evidence a portion of an affidavit sworn to by defendant Ling. Ling is not present and cannot be subjected to a subpoena because he had left the FSM sometime before trial was scheduled. In the portion of the affidavit that is offered by the plaintiff the defendant Ling admits the truthfulness of certain facts that are potentially at issue. Defense counsel objects on the ground that it is hearsay. How should the judge rule and why?

Assume that defense counsel's objection was overruled. Defense counsel then objects to the admission of only a portion of Ling's affidavit and insists that the court must admit the entire affidavit. How should the judge rule and why?

VII.
(4 points)

Banastare is a defendant in a burglary and arson case. Shortly after the events that gave rise to the charges, Tarleton overheard Banastare say to attorney Cornwallis "I think I am going to need a lawyer. Will you be my lawyer?"

The prosecution puts Tarleton on its witness list, intending to call him to testify only as to Banastare's statement to attorney Cornwallis. Would Tarleton's testimony be admissible?

Tarleton left the FSM to visit a sick relative before the prosecution got around to subpoenaing him for trial. At trial the prosecution decides to call attorney Cornwallis in order to elicit from him Tarleton's statement. Defense objects. Should the judge allow Cornwallis to testify?

VIII.
(5 points)

Attorney Yosarian was hired as special prosecutor in a criminal matter. After investigation he discovered he had a conflict if he were to prosecute Major Minor, the person who seemed to be the most likely defendant, and thus withdrew before any charges were filed. A new prosecutor was hired and he did file charges against Major Minor. Major Minor asked Yosarian to defend him, and Yosarian agreed to, but withdrew when Major Minor was unable to pay his retainer.

Major Minor then sought representation from a law firm, several members of which, it was evident from the filings in the case, were likely, although perhaps reluctant, prosecution witnesses. (No attorney-client privilege was involved and could not be asserted to prevent them from being subpoenaed and compelled to testify.) A newly hired member of that firm, Quince, with no personal knowledge of any of the events in question, agreed to represent Major Minor and moved to appear *pro hac vice*. His affidavit averred that he would have no contact with any other member of the law firm concerning this case until it was completed, and that Major Minor was unable to obtain representation from any other private law firm.

Discuss any ethical considerations that may have been present for both Yosarian and Quince. Should Quince's *pro hac* motion be granted?

IX.
(5 points)

In January 1995, a justice of the FSM Supreme Court in a pretrial order, required all parties to a complex lawsuit to file pretrial statements by May 31, 1995. Each party is required to include in their pretrial statement a list of all witnesses they expect to call at trial and a short summary of what the witness's testimony will contain. Absent special order of the court persons not on the list will not be allowed to testify at trial.

The attorney for the plaintiff, Harry Schurmensch, filed a pretrial statement on May 31, 1995. Included on the plaintiff's witness list was Dr. Harold. Plaintiff's pretrial statement's summary of Dr. Harold's testimony stated that he would provide expert testimony as to how a traditional Kosraean fish weir, or fish trap, worked, its value, its construction, and the present condition of the site where the plaintiff's fish weir had been before the defendants allegedly destroyed it.

At trial, in October, 1995, Harry Schurmensch called Dr. Harold to testify during the plaintiff's case in chief. Dr. Harold is qualified as an expert witness in coastal ecosystems. She testifies that in response to attorney Schurmensch's telephone call the day before trial she had taken her mask and fins out to the site and inspected its present condition from underwater as well as above. She then testifies as to the present condition of the site. Attorney Schurmensch next asks Dr. Harold if she is familiar with traditional Kosraean fish weirs. She answers, "No." Attorney Schurmensch repeats the inquiry, and she replies that she has never seen a traditional Kosraean fish weir and does not know how they work.

What ethical problem or problems might be raised by this series of events? Do the attorneys for the defendants have any ethical obligations or responsibilities here? Does the judge? What actions might attorney Schurmensch have exposed himself to?