

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 4, 1999

Administered in 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.	7
II.	15
III.	16
IV.	14
V.	18
VI.	5
VII.	7
VIII.	6
IX.	2
X.	3
XI.	4
XII.	<u>3</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 X-XII. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.
(7 points)

A contract case was tried in the FSM Supreme Court trial division. The plaintiff alleged the existence of an oral contract. The trial judge found that certain words were spoken and acts took place and that taken together constituted the formation of a legally enforceable contract.

The defendant appealed. He contends that there was insufficient evidence to prove beyond a reasonable doubt that those words were spoken and acts had taken place, and that even if they did, those words and acts were insufficient to form a legally-binding contract.

What standard of review will the appellate court apply to the defendant's two assignments of error?

II.
(15 points)

Yosiwo is an employee of Fitikoko Construction Co. Fitikoko Construction Co. has filed a police report that six sticks of dynamite and dynamite caps and fuse had been stolen from its construction camp by person or persons unknown.

One payday weekend, Yosiwo is driving his new sedan around town. As luck would have it, he collides with a police car at an intersection. It is only a minor accident. But while giving Yosiwo a ticket for failure to stop at a stop sign, the police notice a strong odor of alcohol on Yosiwo's breath and that he is not steady on his feet. Yosiwo is then arrested for driving while intoxicated and taken to the police station.

A police officer then enters Yosiwo's sedan and makes a cursory search of the passenger area. He finds a small plastic bag filled with a green leafy substance that appears to be marijuana. The police officer then drives the car to the police station where the entire car is searched and four sticks of dynamite with fuses and caps are found in the car trunk.

Yosiwo is known to police. They also know that he has a reputation of liking to fish using dynamite.

Yosiwo is charged with Driving While Intoxicated, Possession of a Controlled Substance — Marijuana, Possession of a Dangerous Device — the Dynamite, and Possession of Stolen Property.

A. (12 points) You are Yosiwo's attorney. What steps will you take on Yosiwo's behalf before trial? What result is likely? And why?

B. (3 points) Assume that the either the charges are dropped or that Yosiwo is acquitted. Yosiwo then goes to the court and asks for the return of his property — the car, the marijuana, and the dynamite. What result and why?

III.
(16 points)

Keske, a citizen of Chuuk, and Palmerston, a citizen of Kosrae, met at a development conference on Majuro in the Republic of the Marshall Islands. One evening after the day's proceedings were over, Keske and Palmerston and several other Micronesians met for dinner at one of the finest hotels on Majuro. During dinner, Palmerston told the gathering about his latest business enterprise. He said he had bought a small, 50-ton ship and was using it to ship fresh citrus fruit from Kosrae to Pohnpei where it sold at a good profit. He said the ship, the M/V *Dernita's Fancy*, also carried a small number of passengers and general cargo, especially on its return trips to Kosrae. *Dernita's Fancy* also stopped at Mwoakilloa and Pingelap when there was paying freight or passengers for those atolls. Palmerston also said that the business had been quite profitable and that the loan he had gotten to help buy the ship was almost paid off — he had only one payment left.

Keske listened very intently to Palmerston's account. After dinner, many stayed at the table drinking. Eventually, only Keske and Palmerston were left. Keske said he thought a similar shipping business would be very successful in Chuuk. As they were leaving, Keske said that he had recently sold his business on Chuuk and had also inherited a substantial sum and told Palmerston that he would really like to buy the *Dernita's Fancy* and offered Palmerston \$275,000.00 for the ship. Palmerston replied, "Sure, sure, whatever you want."

The next morning, Keske offers Palmerston his check for \$275,000. Palmerston says, "What's this for?" Keske replied, "For the *Dernita's Fancy*. You sold it to me last night." Palmerston then said, "I don't want to sell you my ship." Keske replied, "You already have." "No, I have not," Palmerston retorted.

Palmerston refused to accept the check and refused to convey the *Dernita's Fancy*. Three weeks later, Palmerston received a complaint with a summons issued by the Chuuk State Supreme Court trial division, naming Keske as the plaintiff and Palmerston as the defendant, and seeking specific performance of Palmerston's alleged promise to sell the *Dernita's Fancy*.

You are Palmerston's attorney. He tells you that neither he nor the *Dernita's Fancy* has ever been in Chuuk. He also says that he is fearful of litigating the case in the Chuuk State Supreme Court because he understands that Keske is very popular in Chuuk and is good friends with most of the powerful and important people in that state. Palmerston also says that it is the custom in the part of Kosrae he comes from that no important agreement, such as the transfer of land or the sale of something large and important like an ocean-going ship, is considered completed until the parties have drunk sakau together or feasted on turtle meat together. He states that he did neither of these with Keske, so there is no agreement. You expect Keske to deny that sakau or turtle meat is necessary to make a binding agreement, and you know from experience that there is no sakau in Chuuk.

III.
(cont.)

Advise Palmerston on any pertinent issue, procedural or substantive, that you see. Explain what steps you may take to assert Palmerston's rights, what arguments you will make, what you expect the outcome to be and why.

IV.
(14 points)

Noah owned a printing company. He had a five-year contract with the national government to supply all of its printing needs, except for the security printing needed for passports. The contract contained an escape clause allowing either party to terminate the contract with six months' notice.

Noah satisfactorily supplied the national government's printing needs for over two years. He did not receive any complaints concerning either the quality or timeliness of his printing work. In fact, several times he was complimented on the fine job his company was doing for the national government.

While on a business trip to another state, Noah got into an argument with one of that state's citizens while drinking in a bar. When he returned to Pohnpei he learned that the Secretary of the department that oversaw government contracts and supplies had terminated his printing contract immediately. He discovered that the Secretary was the brother of the man he had had an argument with while on his business trip.

Noah then consulted an attorney who immediately filed suit seeking an order restraining the Secretary for terminating the contract or reinstatement of the contract, and in the alternative, if the court did not order specific performance of the contract, an award of damages.

The national government answered, raising as defenses sovereign immunity and failure to exhaust administrative remedies.

Discuss the effectiveness of these defenses. What standard will the court use to review the Secretary's action? If the court awards damages instead of reinstating the contract how will those damages be determined?

V.
(18 points)

Armour lived on an island in the FSM that did not have television. He thought there were enough people on the island interested in receiving cable television that such a business would turn a profit. He entered into a joint venture agreement with Tinian Television Inc., a CNMI corporation. The joint venture was called Micronesian Cable Inc. (MCI).

MCI obtained all the necessary permits and permissions from the government and from the public utility corporation on whose telephone poles it strung its TV cables. MCI built a small studio on land owned by Armour and rented by Armour to MCI at \$120 per year. MCI also started construction of a satellite dish on land next to the studio. That land, called Isenuff, was also owned by Armour, who had recently prevailed in a quiet title action over Isenuff with Sinclair, who had also claimed ownership. The state court had issued its judgment eight months ago and no notice of appeal had been filed. MCI had a separate lease for Isenuff for which the annual payment was also \$120.

Sinclair noticed the construction on Isenuff just as the satellite dish was being completed and made ready for testing. Broadcasting was scheduled to start in two days. The next day, Sinclair went to state court and filed a trespass action against MCI. As soon as the suit was filed with the clerk, Sinclair met with a judge in chambers and obtained a Temporary Restraining Order, banning Armour and MCI from finishing work on the satellite dish and from broadcasting any television programs until the satellite dish was removed.

Sinclair claimed that there was no harm to MCI because it could just move its dish to the land the studio was on. He therefore did not post any bond. Thirty days later, after hearing, Sinclair's request for a preliminary injunction is denied on the ground that he had not shown irreparable injury.

In the meantime, MCI received many irate phone calls from its subscribers, many of whom wanted to know why they couldn't watch TV, especially the World Series because their favorite ballclub, the Seattle Mariners, was in it. Fifteen subscribers canceled their subscriptions outright and the rest were not charged for the month. The monthly fee was \$25 with an initial hookup charge of \$15.

A. (11 points) You are MCI's attorney. What relief do you seek for MCI's lost business? What cause or causes of action might you bring? How would damages be calculated?

Later, Sinclair and several others file a different trespass action against MCI. They claim that MCI is trespassing on their land because MCI's cables are strung on telephone poles on their land and MCI has not paid them for the right to do so. Sinclair even cuts the TV cable on telephone poles that cross land that is undisputedly his. Fifteen subscribers are cut off. The public utilities corporation that owns the telephone poles has valid easements for all of its poles. Some of the telephone poles also carry FSM Telecom wires. FSM Telecom has an agreement with the public utility company identical to MCI's. FSM Telecom has never

V.
(cont.)

made any payments to landowners and has never been sued.

MCI counterclaimed against Sinclair.

B. (7 points) Discuss the parties' rights and liabilities in the second trespass action.

VI.
(5 points)

At trial of a wrongful termination lawsuit, plaintiff's attorney objected to the defendant's office manager's testimony concerning the defendant's personnel policies. The ground for the objection was that according to the defendant's responses to interrogatories and the witness's deposition, the defendant's personnel policies were different from the policy the witness was now testifying to and that the plaintiff was surprised and unprepared for this defense.

How might the judge best respond to the plaintiff's objection?

VII.
(7 points)

In a dispute over an inheritance, one of the claimants, Ermine, offered as evidence that she was the deceased's eldest daughter a copy of her own baptismal certificate, which included the names of her natural parents. Opposing counsel objects.

A. (2 points) How should the judge rule on the baptismal certificate's admission?

A second claimant, Rolina, asserts that she is the deceased's eldest daughter and offers a birth certificate recently issued by the state court as evidence.

Ermine's counsel objects. He offers that the state court issues birth certificates when an applicant supplies documents from the state hospital stating that the applicant was born there on a certain date.

He further offers that if the birth certificate should be admitted into evidence that he will offer evidence that the state hospital patient records do not show that the deceased was a patient at the hospital anywhere near the time of birth, and that the hospital records further show that no births took place at the hospital on the date on the birth certificate.

B. (5 points) How should the judge rule on the birth certificate's admission? If admitted, will Ermine's counsel be permitted to show that the absence of hospital birth records for that day and how?

VIII.
(6 points)

Avalon brought a personal injury suit against Fitikoko Construction Co. one year, eleven months and twenty-nine days after the injury took place. Fitikoko Construction promptly answered the complaint and denied that it was liable and that it had been negligent. It raised as affirmative defenses laches and comparative negligence.

At trial, Avalon testifies during his case-in-chief. His attorney asks him if Fitikoko Construction had, at anytime before suit was filed, offered to compromise or settle Avalon's claim against it.

Fitikoko's attorney objects.

Avalon's attorney makes an offer that, if Avalon is allowed to answer the question, Avalon will testify that nine months after the injury Fitikoko Construction had made an offer to settle and that settlement negotiations had dragged on for over a year after that, but they ended without agreement and that Fitikoko had initially paid some of his medical bills and had promised to pay the rest should the settlement negotiations conclude successfully.

Fitikoko's attorney maintains his objection.

You are the judge. How do you rule and why?

IX.
(2 points)

At a bail hearing for a criminal defendant, one of the government's witnesses testifies that he overheard a friend of the accused boast that when the court let the accused out on bail he was going to help the accused get to Guam. The accused's attorney objects on the ground of hearsay.

How should the judge rule and why?

X.
(3 points)

Attorney Hastings arrived in the FSM from California. He provided all the proper documentation and was allowed to sit for the FSM bar exam. He passed and was admitted to the FSM bar. After his admission to the FSM bar, Hastings received a notice from the California bar that it was investigating some ethical complaints against him. Sometime later he received a notice that he had been suspended from the practice of law in California for failure to pay his bar dues. He promptly paid his dues and was reinstated in good standing.

Comment on any ethical lapses.

XI.
(4 points)

On July 1, 1998, the FSM Supreme Court suspended attorney Emory from the practice of law for a period of one year pursuant to the FSM Disciplinary Rules. The court also ordered that Emory submit a report by August 14, 1998, detailing the steps taken to wind up his law practice.

On August 10, 1998, Emory delivered to Nectar, a long-standing client of his, a copy of an Appellant's Opening Brief he had prepared in an appeal case in which Emory had been representing Nectar. He instructed Nectar to either sign it himself or hand it over to his new attorney, once one was retained, and have him sign it and file it before the August 17, 1998 deadline. Nectar signed and filed it. Five weeks later Emory prepared a reply brief which he delivered to Nectar with the same instructions.

Emory did not charge Nectar for his work in preparing the briefs or any costs related to their preparation.

You were Disciplinary Counsel in the proceeding that resulted in Emory's one-year suspension. The above facts come to your attention. What steps do you take and what results are likely?

XII.
(3 points)

Attorney Gonzaga was retained to represent the Xerxes family lineage in a land dispute and a related commercial matter. He was hired by Darius, the *mwääniichi*, or senior male member of the Xerxes family lineage.

Gonzaga faithfully represented the Xerxes family lineage for several years, always receiving his instructions from Darius.

Darius died. Cyrus became the new *mwääniichi*, and continued to retain Gonzaga as Xerxes's counsel. Cyrus instructed Gonzaga to file suit against Darius's estate for the return of assets that Cyrus believes are Xerxes family lineage property.

The Executor of Darius's estate now demands that Gonzaga be disqualified from any action resulting from Cyrus's instruction.

Comment.

