

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, 2000

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.	13
II.	10
III.	14
IV.	15
V.	6
VI.	9
VII.	9
VIII.	6
IX.	8
X.	6
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 V, VIII-IX. THE ETHICS QUESTIONS ARE X-XI. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.
(13 points)

On February 14, 2000, the FSM Congress enacted a bill that, among other things, raised the customs duty on imported vehicles with steering wheels on the right-hand side from 4% ad valorem to 50% ad valorem, and made the 50% duty retroactive to January 1, 2000. On February 29, 2000, the President signed the bill into law.

Importco, an FSM corporation, had imported 30 brand-new, right-hand drive automobiles on January 15, 2000, and 10 more on February, 22, 2000, and has already paid the 4% duty on both shipments. Importco has removed the vehicles to its business premises.

On March 1, 2000, Importco filed suit in the FSM Supreme Court to enjoin enforcement of the retroactive portion of the law and for a declaratory judgment. Importco contends that the retroactive portion of the new statute is an unconstitutional ex post facto law.

A hearing, with notice, is held on the morning of March 2, 2000 on Importco's motion for a temporary restraining order or, in the alternative, for a preliminary injunction. The FSM attorney general appears and opposes the motion.

You are the judge at the hearing. Do you grant any injunctive relief? Analyze the reasons for and against. What orders might you make?

II.
(10 points)

Define and discuss the requirements of the following terms:

- A. Mandamus**
- B. Writ of Prohibition**
- C. Clearly erroneous**
- D. Pendent jurisdiction**
- E. Exclusionary rule**
- F. Personal jurisdiction**

III.
(14 points)

One elementary school in an FSM state had only a very small area for recreation adjoining the school. The school principal, Platinum, decided that a trampoline would be a good way for the students to use the small space. Platinum learned of the supplier, the cost and description of a suitable trampoline and asked the State Director of Education to buy one. The Director, Dubnium, agreed with Platinum's reasoning and submitted the purchase order to the State Finance Officer, Fermium. Dubnium so convinced Fermium of the desirability of the purchase that Fermium used for payment funds that had been appropriated for school maintenance.

When the trampoline arrived, Platinum placed warning signs near it which gave warnings, in large letters in the local language, concerning the trampoline's use. The warnings included that the trampoline was for student use only. Platinum assigned two teachers' aides to place the trampoline on its edge and chain it to the school wall at the end of each school day.

One Friday, the aides forgot their assignment. Saturday morning, a four-year old neighbor child entered the school grounds and climbed onto the trampoline and enjoyed it as best she could. She fell and broke her arm. A doctor at the state hospital set the arm defectively so that the child can no longer extend her arm straight.

The state has a sovereign immunity waiver statute identical to the FSM statute.

The child's parents ask you to bring suit against those responsible. Discuss the possible defendants, the basis for the alleged liability of each, the grounds for any damages and the amounts possible.

IV.
(15 points)

An Air Nauru plane landed on Pohnpei as scheduled. It was supposed to continue on to Guam but did not because a strong typhoon was lashing Guam at the time. All of the Guam-bound passengers were deplaned at Pohnpei and found local lodging until the next day when the weather at Guam was expected to clear.

The flight crew checked the plane after the passengers had exited and discovered that a carry-on bag had been left in coach. It did not have a name tag on it. The flight crew took it to the terminal in order to leave it at the check-in counter, hoping that one of their passengers would claim it or that a name or address would be found in it that matched one of their passengers. The bag was opened in the presence of customs and agricultural inspection agents who would not let it be brought to the check-in counter without their inspection. They discovered at the bottom of the bag several vials with a crystalline substance in them. One of the customs officers says, "I went to that War on Ice training on Guam and that looks like the samples of 'ice' they showed us."

They also discovered a name, Aaron Burr, in the bag that matched one on the passenger manifest. The bag and information was turned over to the national police. With a little work they found which hotel Aaron Burr was staying in. Along with one member of airline ground crew, the police went to the passenger's hotel. The crew member knocked on his door. When he answered and identified himself as Aaron Burr the crew member asked, "Is this your carry-on bag? We found it on the plane near your seat."

Aaron Burr answered, "Why yes, it is. I'd forgotten about it." The police with the crew member suggested he look into it to check to see if everything was there. Burr opened and glanced in it and said, "Seems to be, thanks."

The police then arrested him and took him to the station. Burr's checked luggage was then off-loaded from the airplane before it continued onto Guam. The luggage was taken directly to the police station without being checked by the airport customs inspectors. The national police opened the checked luggage and made a detailed list of everything they found inside. Included in what they found was — more "ice," two handguns, a Guam firearms identification card, and a small amount of marijuana.

An information is filed charging Burr with illegal possession of a controlled substance — crystal methamphetamine ("ice"); trafficking in a

IV.
(cont.)

controlled substance— crystal methamphetamine ("ice"); illegal possession of two handguns; and illegal possession of one ounce of marijuana.

The defense files a pretrial motion to suppress all the evidence on the grounds that it was seized as a result of a warrantless search in violation of the FSM Constitution's protection against unreasonable searches and seizures.

You represent the government at the hearing on the motion. What evidence do you put forward and what legal arguments do you make in support of the validity of the government's searches and seizures? What are the chances your arguments will succeed?

V.
(6 points)

Monaco sued Andorra for injuries he sustained when he fell on the floor in Andorra's new, modern movie theater. Monaco 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. Andorra admits that Monaco fell in his theater but denies that the lighting was poor or that there was any liquid on the floor when Monaco slipped. Andorra claims that Monaco fell because he was intoxicated.

As part of his case in chief Andorra submits a copy of the hospital record made by the attending physician in the emergency room where Monaco was treated. It reads: "Fracture of hip; apparently sustained in fall when Monaco tripped on floor of Andorra's theater. Monaco too drunk to see steps in darkened theater."

A. (3 points) If you are Monaco's counsel do you object to this evidence? On what grounds? Is the court likely to sustain your objection?

B. (3 points) If you are Andorra's counsel what arguments might you make or what steps might you take to get the emergency room report admitted?

VI.
(9 points)

Assume the facts in the previous question.

During pretrial discovery, Monaco learned that the architect and engineering firm from California that designed and oversaw construction of the movie theater failed to follow U.S. standard building codes which, for safety reasons, have specific requirements about lighting, allowed slope of ramps, and the tread (width of the step) and rise (vertical distance between steps) of the stairs. The contract between Andorra and the architect, Liechtenstein, and the engineering firm San Marino & Associates, specified that they were to provide Andorra with a new, modern state-of-the art modern movie theater suitable for operation in the tropical climate of Micronesia.

What further pleadings might either party file? Explain how each party might use this information, if at all, and the likelihood of success of its use at trial.

VII.
(9 points)

Qatar, a citizen of Yap, visited Chuuk to attend a conference. He rented a car. While Qatar's car was stopped at a stop sign at an intersection, a Chuuk State Police with its siren wailing approached the intersection from another direction at a high rate of speed and tried to make a turn onto the road that Qatar was on. In making the turn the state police car hit Qatar's car. Qatar was mildly injured and the rental car was substantially damaged.

Qatar sued the State of Chuuk in the FSM Supreme Court. The state filed a motion to abstain.

A. (3 points) What are the grounds for the abstention motion and what are its chances of success?

No answer is filed. While the abstention motion is still pending, forty days after the complaint and summons were served, with a proof of service to that effect in the file, Qatar files a request for an entry of default and a default judgment.

B. (6 points) Should the clerk enter the default? Should the clerk enter a default judgment? Why or why not?

VIII.
(6 points)

Wiranto is a witness called by the plaintiff in a civil suit. On cross-examination Wiranto is asked if he was ever arrested on a charge of disorderly conduct, an offense carrying a three-month maximum sentence.

A. (2 points) Plaintiff's counsel objects. Why? What result?

Defense counsel then asks Wiranto if he was ever convicted of a charge of possession of untaxed alcoholic beverages, an offense carrying a six-month maximum sentence and a maximum possible fine of \$5,000, or both. Wiranto replies, "It's on appeal."

Plaintiff's counsel objects and moves that the answer be stricken. Defense counsel also asks that the answer be stricken and that Wiranto be instructed to answer the question either "yes" or "no."

B. (4 points) How will the judge rule on each counsel's motion?

IX.
(8 points)

Baku is a state employee. His job requires him to ferry other state employees in a small outboard boat to a small island in the lagoon where they work mining sand for the state's use in its road-building and maintenance projects and on other state construction projects.

Early one morning, Baku had eight state employees in the outboard and he was running the engine at full throttle. There was a light fog and light rain which reduced the visibility somewhat. The outboard collided with an anchored foreign fishing vessel that was waiting for the fog to lift before docking. The outboard sank. One man drowned. The rest were rescued.

The family of the drowned man sue Baku and the state. At trial one of the drowned man's family is called to testify that Baku's wife, Yerevan, appeared at a customary apology ceremony several days after the event and stated that her family was very sorry but that Baku had told her that he had been drinking beer and sakau most of the night before the accident and had gotten very little sleep.

A. (2 points) The defense objects. What ruling and why?

The plaintiffs then called Baku's former wife, Yerevan, to the witness stand. Sometime after the accident and before the trial she and Baku had divorced. The divorce had been very bitter. Yerevan offers to testify that Baku had told her at the hospital on the day of the accident that he had been drinking beer and sakau most of the night before and had gotten very little sleep.

B. (4 points) Baku objects. On what grounds? How will the judge probably rule?

The plaintiffs then call, Tiblisi, a hospital worker. Tiblisi offers to testify that on the day of the accident while Baku was a patient in the hospital he overheard Baku tell Yerevan that he had been drinking beer and sakau most of the night before and had gotten very little sleep.

C. (2 points) Baku objects. How should the judge rule and why?

X.
(6 points)

You are an attorney. You represent a landowner, Kyzyl, in negotiating an easement agreement with a foreign corporation, Diveco, for access across Kyzyl's land to the new resort that Diveco is developing. The agreement includes compensation for Kyzyl.

After the agreement has been concluded and Diveco's operation started you are approached by Tuva. Tuva asserts that the parcel of land that Kyzyl had granted an easement across is really two parcels, and he owns one of them. Tuva asserts that part of Diveco's access goes across his land and that he is unhappy with all the traffic going to Diveco and wants to be compensated for the use of his land. Tuva asks for your help.

You go to Land Commission and can find no records that show either Kyzyl or Tuva as owners of any of the land. In fact, you find no ownership records at all for the land.

What assistance can you give Tuva?

XI.
(4 points)

You are counsel for a state foreign investment board. Artash Corporation seeks a foreign investment permit, which many of the state's citizens oppose. Hearings are held, and you are asked to prepare a report. Your report recommends that the permit be granted. Based largely on your recommendation, the board grants the permit.

Shortly thereafter, Artash Corp. offers you a position as its "General Counsel for Micronesian Operations." The salary is twice what you have ever been paid anywhere else.

Can you accept this position? Discuss.