

**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 1, 2001

Administered in Kosrae and 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 AS FOLLOWS:

| <u>QUESTION NO.</u> | <u>POINTS</u> |
|---------------------|---------------|
| I. | 17 |
| II. | 17 |
| III. | 14 |
| IV. | 10 |
| V. | 12 |
| VI. | 4 |
| VII. | 5 |
| VIII. | 5 |
| IX. | 6 |
| 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 VI-IX. THE ETHICS QUESTIONS ARE X-XI. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.
(17 points)

The complaint seeks the collection of a debt on a loan. There are no counterclaims or cross-claims. The plaintiff ABC Company files a summary judgment motion with an affidavit containing the following:

1. I, John Smith, am the president of ABC Company and could testify to the truth of the statements in this affidavit.
2. On July 10, 1998, I, on behalf of ABC Company loaned \$5000.00 to the defendant Bill Jones. A true and correct copy of the loan agreement is attached as Exhibit A to this affidavit.
3. The terms of the agreement were that Bill Jones would repay the loan in four payments of \$1250.00 each, starting July 31, 1998. The three remaining payments would be August 31, 1998, September 30, 1998, and October 31, 1998.
4. Bill Jones made one payment of \$1250.00, on August 10, 1998, and has made no other payments.
5. After we signed the agreement, on September 1, 1998, Bill Jones and I orally agreed that if he could not make the payments, interest at 15% per year would accrue on the unpaid balance starting November 30, 1998.

Bill Jones opposes the motion for summary judgment, by stating in his affidavit:

1. I agree that I signed the agreement and got the money, but on July 31, 1998 I lost my job and could not afford the payments.
2. ABC Company should not have fired me for missing work, because I was really sick, and I had enough sick days to cover me. If I had my job I would have paid the money back.
3. John Smith asked me if I could pay interest on the loan, but I told him how could I pay interest if I do not have a job? We never talked about it again.

ABC Company seeks summary judgment for the sum of \$3750.00 plus interest at 15% since November 30, 1998 on the \$3750.00.

I.
(cont.)

A. (10 points) You are the judge. Without referencing anything else, (you do not need a copy of the note or complaint) should you grant the summary judgment, in whole or in part? Discuss each paragraph in Bill Jones's affidavit as to its effect on the motion for summary judgment.

B. (7 points) Would there be any difference in your ruling if John Smith's affidavit had instead stated the following in its fifth paragraph? (Assume that the rest of his affidavit and all of Bill Jones's affidavit remained the same.)

5. Before we signed the agreement, Bill Jones and I orally agreed that if he could not make the payments, interest at 15% per year would accrue on the unpaid balance starting November 30, 1998.

Why, or why not would your ruling change? If your ruling would be different, how would it change?

II.
(17 points)

Bhutan, a citizen of the FSM, worked for Nepal Corp., a foreign-owned company with a foreign investment permit to do business in the Federated States of Micronesia. Bhutan's job was to operate and move heavy equipment to the Nepal's work sites. One day he is ordered to move a bulldozer to a certain work site and have it there in time for Nepal's other employees to start using it right after the lunch hour. Bhutan loaded the bulldozer on the back of a flatbed truck that morning. Instead of taking the flatbed truck with the bulldozer directly to the work site he took a small detour to his own home where he had lunch with his wife and took a nap. When he left his house with the truck and bulldozer he still had time to get to the work site before the bulldozer was needed there. He did not check to see if the bulldozer was properly secured to the flatbed. He was in a hurry to get to the work site before lunch hour ended. As he went through the sharp turn where the road from his house intersected the road that led to the work site, the bulldozer shifted on the flatbed and slid off of the truck and into the house and outbuildings along the side of the road. Luckily, no one was injured, but the house and a car next to it sustained substantial damage.

Sikkim, the home and car owner and a local citizen, filed suit against Bhutan and Nepal Corp. in state court. Nepal Corp. filed a motion to dismiss saying 1) that only Bhutan was negligent and that therefore Sikkim had no claim against Nepal Corp., and 2) that the state court had no jurisdiction over the case. The state court denied the motion.

Nepal Corp. then filed a verified petition to remove in the FSM Supreme Court and removed the case to the FSM Supreme Court. A copy of the petition was served on the other parties and also filed with the state court. Sikkim filed a motion in the FSM Supreme Court for it to remand the case back to the state court on the ground that it had been improvidently removed. The motion is denied.

Sikkim then filed a motion for partial summary judgment against Bhutan based on Bhutan's negligence in failing to make sure the bulldozer was secured on the back of the flatbed. This was supported by Sikkim's affidavit confirming these facts based on statements Bhutan made to him and on his own personal observations. Bhutan and Nepal Corp. file a brief in opposition, relying on their answer to Sikkim's complaint, denying that Bhutan was negligent, and blaming the bulldozer's coming loose on the trees on Sikkim's property overhanging the road that knocked into it. The FSM trial court granted the partial summary judgment to liability only. Damages were not calculated.

II.
(cont.)

Nepal Corp. immediately filed a notice of appeal with the FSM Supreme Court appellate division, seeking immediate interlocutory review. The FSM Supreme Court appellate division summarily dismissed the appeal.

Were the court rulings correct? Explain each answer.

A. (4 points) — State court denying the motion to dismiss?

- B. (5 points) — Denying the motion to remand for improvident removal?
- C. (5 points) — Granting the motion for partial summary judgment?
- D. (3 points) — Dismissing the appeal?

III.
(14 points)

Kyowa Line provides regular ship cargo service to Chuuk, coming for eight to ten days about once a month. While tied up in Chuuk, the captain of Kyowa Line Number 3 hired a local company, LC Welding, to repair a broken stanchion by welding. The captain agreed to pay as soon as the work was completed. The work was completed satisfactorily after three days. Payment was not made as agreed.

Upon the captain's request, a local store, the Keep on Truiking Co., supplied the ship's provisions for the coming three weeks of No. 3's voyage. Payment has not been made.

During the offloading operations the first day in port, one member of the crew, Abe, became exceedingly angry with another seaman working with him. Unprovoked, he struck his coworker, Ono, with a crowbar, intending to hit his shoulder, but instead hit his head, causing an injury to his eye.

Three days before No. 3 was to leave Chuuk the welder, the store owner and Ono, the injured seaman, all come to you wishing relief from their losses.

Kyowa Lines has an agent in Chuuk. It is unknown when No. 3 will return to Chuuk once it leaves.

If your advice is to take court action, what cause of action against what defendants and in what court(s) would you be entitled to file as to each court case? What form of relief would you seek?

IV.
(10 points)

Warsaw is lineage leader of her family, and she and neighbors applied for the project money to build a seawall at the water's edge of the family's property. One Friday, Helsinki received a message for his wife, Warsaw, from Senator Sofia's office that the check for her family's project could be picked up at the senator's office. Helsinki went to Senator Sofia's office and picked up his wife's check, and went to the bank where the teller, knowing that Helsinki was Warsaw's husband, cashed the check.

In the past three years, Helsinki had picked up Warsaw's employment check twice, once when she was sick, and once when Warsaw went to another island for her mother's funeral. Each time Warsaw angrily objected, because the money was not given to her or used for the family. These were two examples of the problems between Helsinki and Warsaw.

Helsinki, using Warsaw's project money, spent the weekend drinking and playing poker with his friends. By Monday morning the money was all gone.

A week or so later Warsaw learned of the check and where it had gone. Helsinki sheepishly admitted his wrongdoing.

After negotiation failed, Warsaw filed a case in the FSM Supreme Court against the bank for the amount of the check. The alleged causes of action were conversion and negligence. The bank defended the action by relying on a passage in a state court trial division opinion which read in part, "In our society, tradition dictates that the husband, as the head of the household, customarily is responsible for taking care of the family's legal matters such as signing of documents, and overseeing of all financial affairs in which the family may be involved."

Discuss.

V.
(12 points)

Warsaw and Helsinki had domestic trouble, most of which arose out of Helsinki's drinking and not working. Because of earlier physical abuse, Warsaw asked police officers Paris and Ottawa to stand by as she moved her belongings out of the house she was sharing with Helsinki.

Paris and Ottawa did so. As she left after taking the last of her bags, Warsaw told Paris and Ottawa that Helsinki had marijuana in the house. When she said this, Helsinki was standing outside the house, and started to enter his house. Paris prevented him from entering the house, saying that he could not go in unless he permitted a policeman to accompany him, and that his alternative was to wait outside until Ottawa returned with a search warrant.

Helsinki did not allow Paris to enter the house, and he and Paris remained outside until Ottawa returned about three hours later with a warrant to search Helsinki's house for marijuana. Paris and Ottawa's search revealed two ounces of marijuana. The marijuana was seized, and Helsinki arrested for possession of a controlled substance.

You represent Helsinki. What pretrial motions would you make concerning the use of the marijuana at trial and the restraint on Helsinki from entering his house for the three hours? What arguments would you make in support of any motions? What result would you expect from the court and for what reasons?

VI.
(4 points)

Assume the case described in Question V goes to trial. Paris is called as a government witness. She testifies that Warsaw spoke to the police officers as she left the house with the last of her bags. When asked what Warsaw said, defense counsel objects.

On what grounds? Is there a way the prosecution can get the answer admitted?

Assume Paris is allowed to answer. The prosecutor then asks what Helsinki did or said following Warsaw's words. Defense objects. What grounds for the objection? What ruling do you expect? What reason?

VII.
(5 points)

Assume again the facts of Question V. Assume further that Paris prepared the police report in accordance with required procedures. She related in the report what she and Ottawa had seen and done. Warsaw gave a written statement which conformed to the events set out in the question, signed the statement in the presence of the custodian of records who signed as witness to her signature. The statement was then properly attached to the police report.

Assume that two years elapse before trial, that Ottawa has forgotten the details of the case, Paris has moved to Guam, and Warsaw is on medical referral in the Philippines. The prosecutor calls the custodian of records who had proper custody of the report and its attached statement. After laying a foundation for the admission of the report, the prosecutor offers it in evidence.

What arguments in support of and in opposition to the admission will be made? What ruling by the court? On what ground?

VIII.
(5 points)

Pilaf became severely ill from food poisoning. Two others came to the hospital with the same symptoms. A careful history of each was taken. All had eaten chicken purchased from Kiev Store.

Pilaf had heard of food poisoning occurring earlier. By inquiry he found Haggis, who had food poisoning six weeks earlier, had gone to the hospital with the same symptoms. Haggis had also purchased chicken from Kiev Store. After his illness, Haggis returned to Kiev Store and complained about the chicken.

Pilaf then sued Kiev Store. At trial, Pilaf, the two others, and medical and laboratory witnesses testify. Pilaf offers Haggis who suffered food poisoning earlier. The Kiev Store objects.

For what purpose would Pilaf want Haggis's testimony? On what grounds would Kiev Store object? What ruling would you expect from the court, and for what reasons?

IX.
(6 points)

A. (3 points) You represent the plaintiff, William, in a civil action against Starr. The complaint's causes of action are defamation, conversion, breach of contract, and fraud. In your case in chief, your witness, Lewin, testifies as to her opinion of the William's character and reputation. Lewin starts to testify to specific instances of William's conduct to illustrate his character. Starr's attorney objects. How should the judge rule?

B. (3 points) You offer a second witness, Carvelle, who testifies that Starr was caught cheating in a poker game the night before. Starr's counsel objects on the ground of relevancy. Discuss.

Assume that Starr's objection is overruled. What further objections may be raised? What result and why?

X.
(6 points)

Sana, the sole proprietor of a business, hired Kabul, an attorney, to collect debts owed to her. Kabul, on Sana's behalf, filed suit against Dacca. The complaint alleged that Dacca had bought a car from Sana for \$3,500 but had failed to make payments pursuant to the purchase agreement. The Complaint also sought payment of \$1,234 for unpaid rental charges on a separate debt Dacca owed. Kabul also filed a summary judgment motion, with affidavits, for those amounts.

The debtor, Dacca, hired Amman as his attorney to defend the suit, giving Amman copies of the complaint and summons he had been served. Dacca told Amman that the reason he had stopped making payments on the car was that Sana had repossessed it. Dacca also told Amman that Jakarta, Sana's former secretary, had told him that she knew that Sana had repossessed the car.

Based on this information, Amman called Jakarta at her new place of employment, which was located in the same building as Sana's business. Jakarta confirmed that Sana had repossessed the car and added that Sana's primary interest in suing Dacca was to collect on the other, unrelated debt. When Amman pressed Jakarta on this point, she handed the telephone to Muscat, a current Sana employee, who happened to be standing nearby. Muscat confirmed that the car had been repossessed and that Sana was mainly interested in collecting the other outstanding debt. Amman then encouraged Muscat to inform Sana's attorney, Kabul, that the car had been repossessed so that he could amend the complaint.

When he heard of these two conversations, Kabul filed an ethics complaint against Amman. Kabul did not file any amended pleadings in the civil matter or withdraw the summary judgment motion.

Discuss any ethical concerns you have with the attorneys' conduct.

XI.
(4 points)

Bamako defended Dakar in a criminal matter in the FSM Supreme Court. After the prosecution presented its case-in-chief and the defense had presented a number of witnesses, the trial was continued to a date one month later at the defense's request and with the government's acquiescence. This accommodated not only the judge's travel plans but also the defense's ability to call witnesses in its favor.

One week before the scheduled resumption of the trial Bamako notified his client, Dakar, and the court that he had been offered, and was going to accept a job as the Attorney General of the Republic of the Marshall Islands and was scheduled to start at the end of the week that Dakar's trial was scheduled to resume.

Dakar then discharged Bamako as counsel on the ground that he did not think that Bamako would adequately prepare for his trial if he was busy packing to leave. Dakar moved the court to continue his trial indefinitely while he sought substitute counsel. The government opposed. The motion was denied.

Discuss Bamako's ethical obligations.