

**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**

**August 7, 2003**

**Administered in Kosrae, Pohnpei, and Yap**

**Supreme Court of the  
Federated States of Micronesia**

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**NOTE**

YOU ARE 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 STARTING 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.	10
II.	10
III.	8
IV.	2
V.	19
VI.	26
VII.	15
VIII.	<u>10</u>
TOTAL	100

THE MINIMUM OVERALL PASSING GRADE IS 65. FOR PURPOSES OF OBTAINING PARTIAL CREDIT UNDER GENERAL COURT ORDER 1986-2, THE EVIDENCE QUESTIONS ARE I-II. THE ETHICS QUESTIONS ARE III-IV. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.  
(10 points)

Boston was being criminally prosecuted for arson after the "Coconut Grove Cafe" burned to the ground. The Coconut Grove Cafe was owned by Boston's ex-wife, Augusta. Boston testified in his own defense that he was trying to clean the cafe. The following events occur during his trial. In each instance, under the FSM Rules of Evidence discuss:

- (1) the objection(s) that could be plausibly raised; and
- (2) how the court should rule on admissibility and why.

A. (3 points) Hartford, a cook at the Coconut Grove, testified that before the cafe burst into flames, Montpelier ran into the kitchen shouting, "Boston is spilling gasoline all over the lobby and will kill us all!" Montpelier cannot be located by either party.

B. (4 points) The defense called, Mr. Concord, a high school math teacher. He testified that based on his careful pretrial review of the standard scientific treatises, as well as his own experimentation, it was his expert opinion that although the use of gasoline as a cleaning fluid cannot be recommended, its use for that purpose in normal circumstances is reasonably safe and effective.

C. (3 points) The prosecution offered Augusta's testimony. She testified that during her marriage to Boston he frequently used "ice" and other drugs but had attempted to conceal his drug use from her.

II.  
(10 points)

An automobile owned and operated by Herbert collided with a taxi driven by Ron and owned by Speedy Taxi. Herbert and Ron were injured. Vicky, a passenger in Herbert's car, suffered a broken leg. During the necessary surgery to repair the fracture, Vicky suffered cardiac arrest and died. Herbert brought an action against Speedy Taxi for personal injuries. The following events occur during his trial. In each instance, under the FSM Rules of Evidence discuss:

- (1) the objection(s) that could be plausibly raised; and
  - (2) how the court should rule on admissibility and why.
- A. (4 points) Herbert testified: "After the accident I went over to the taxi. Ron was hurting real bad, and he said 'This wouldn't have happened if I hadn't been in such a hurry to pick up a customer.'"
- B. (3 points) Speedy Taxi's counsel asked Herbert on cross-examination if he had ever had a traffic accident. Herbert answered, "No." Speedy Taxi's counsel then introduced a properly authenticated copy of a three-year old unrelated conviction of Herbert for vehicular manslaughter, a felony.
- C. (3 points) Vicky's doctor testified that while Vicky was being prepared for surgery he asked her how the accident happened and that she responded, "Don't tell anybody, but Herbert and I were drinking beer. I dropped the beer and Herbert had his head down looking for it when we hit the taxi."

III.  
(8 points)

Nessie, an FSM citizen resident in Nevada, and her brothers and sisters inherited some land in the FSM. They divided the lands among themselves. Each of them obtained a certificate of title for their piece of land. Nessie decided to accept a \$50,000 offer from an unrelated buyer to buy her parcel. She hired a lawyer, Yeti, to negotiate and finalize the sale for her. Yeti's fee was to be \$1,000. Believing that the sale was complete except for her signature, Nessie flew back to the FSM expecting to be paid as soon as she signed the papers.

On arrival she discovers that the sale won't be completed for another three months. She also learns that one of her siblings, Sasquatch, has filed suit on behalf of all the brothers and sisters, laying claim to another piece of land, which when (and if) they win the suit will be sold and the proceeds divided among themselves.

When Nessie learned that she would not be paid for three months for her land sale, she complains bitterly to Yeti, saying that she had to return to Nevada very soon and that she didn't have any money to make the trip. She started crying and begged Yeti to pay her \$10,000 for her expected recovery from Sasquatch's suit. Yeti demurred, citing ethical reasons. Finally he agreed that his mother would buy Nessie's expectancy. He drew up an agreement, Nessie signed it, and Yeti paid Nessie \$10,000 out of his own savings account. Nessie returned to Nevada.

On her next trip to the FSM, Nessie's land sale was completed. Yeti received the \$50,000 from the sale, and put it in his client funds trust account. He then paid Nessie \$38,000 from that account. Yeti told Nessie that it was their understanding that when she got paid from her land sale that she would return the \$10,000 to Yeti and take back her expectancy in Sasquatch's lawsuit. Yeti also stated that he was keeping his \$1,000 fee for selling her land and that he was keeping \$1,000 for the work involved with his mother buying Nessie's expectancy. Nessie disagrees. Yeti then took \$1,000 from his clients' trust account, but left the other \$11,000 in it.

Nessie then filed a disciplinary complaint against Yeti and asked that Yeti be ordered to "return" her \$11,000. Yeti later gave her a check for \$10,000.

You have been appointed Disciplinary Counsel in the matter. Discuss any ethical considerations in Yeti's conduct and which, if any, of his actions may be sanctionable.

IV.  
(2 points)

Clara Darrow is an attorney new to private practice. She is motivated by a burning desire to correct the wrongs and injustices she believes have occurred in the state's legal system over the years. She wants the name of her new law firm to reflect this high ideal and goal. She names her firm "The State Justice Center" and has cards and letterheads printed reading:

**THE STATE JUSTICE CENTER**

Clara Darrow, Esq.

Comment.

V.  
(19 points)

Patrick is hired by Conco as a salesman. Patrick and Dernita, Conco's owner, agree that Patrick will receive a 10% sales commission in addition to a biweekly salary of \$600. Using another contract as an example, Dernita prepares an employment agreement which Patrick signs without reading. It provides:

Conco hereby employs Patrick as a salesperson. Patrick will receive a biweekly salary of \$400 and such incentive compensation as may be set by Conco from time to time.

This agreement contains the entire understanding between the parties and can modified only in writing.

/s/ Patrick

Patrick discovers the errors in his contract one week later and tells Dernita. Dernita responded, "Don't worry, I'll pay you the \$600 biweekly and the 10% commission." Relying on Dernita's promise Patrick turns down a job with another employer that would have paid \$700 biweekly. Dernita has a change of heart. Two months go by and Dernita pays only \$400 biweekly and no commission saying to Patrick, "Read your contract." Patrick then quits, after having sold \$25,000 worth of goods.

Discuss

- A. (8 points) whether the terms of the written employment contract are enforceable.
- B. (4 points) whether Dernita's later promises modify the written agreement?
- C. (7 points) what are Patrick's remedies and Conco's defenses, if any?

VI.  
(26 points)

Ben, a citizen of Pohnpei, took out a loan from the Pohnpei branch of the FSM Development Bank. He used the money to buy a brand-new, sixty foot, "state of the art" fishing boat from the Turtle Boat Company which imported and sold boats of all kinds. The Turtle Boat Company guaranteed the seaworthiness of its merchandise for one year, as did the boat's manufacturer, Seldom Shipwrights, Inc., a U.S.-based concern. Most of the new boats it sold, the Turtle Boat Company bought directly from Seldom Shipwrights, Inc.

Ben named his new fishing boat the "Pihna's Pride." Ben planned to use the boat to fish for tuna, and make a lot of money, which he would use to pay back the loan. Ben insured his boat with the Equitable Insurance Co. of Pohnpei.

On its maiden voyage, while chasing a school of tuna about thirty miles off the coast of one of the Mortlocks in the State of Chuuk, "*Pihna's Pride*" started to respond to the helm sluggishly. Ben, who was the skipper as well as the owner, was having a hard time steering her.

The "*Roxanne*," a boat owned and piloted by Kachuo, a citizen of Chuuk, often fished in the same waters. The "*Pihna's Pride*" and the "*Roxanne*" collided. There was extensive damage to each.

Kachuo is sure that the accident was Ben's fault. Kachuo is positive that the accident took place because Ben was inexperienced and did not know how to handle, sail, and steer a boat properly. To recover his damages he brings suit against Ben in Chuuk State Supreme Court, alleging that Ben was negligent.

A.

1. (2 points) Does the Chuuk State Supreme Court have jurisdiction to hear the suit? Why or why not?
2. (1 point) If Ben were a citizen of Chuuk would the Chuuk State Supreme Court have jurisdiction to hear the case? Why or why not?
3. (3 points) Ben does not want the case to be decided by the Chuuk State Supreme Court. What procedural step or steps can he take to see that the Chuuk State Supreme Court does not decide the case?
4. (3 points) In what court or courts, and in which state or states, is it proper for Kachuo to bring suit against Ben for the collision of the "*Pihna's Pride*" and the "*Roxanne*?"

## VI. (con' t)

Ben has the severely damaged "*Pihna's Pride*" towed back to Pohnpei. His repairmen discover that the steering mechanism was defective. Ben believes that the defective steering mechanism was the cause of the accident and that the steering mechanism was defective when he bought the boat from the Turtle Boat Company. The Turtle Boat Company insists that they sold the "*Pihna's Pride*" to Ben in the same condition as it was received from its manufacturer, Seldom Shipwrights, Inc. The Equitable Insurance Co., pointing to an obscure clause in the insurance policy, has refused to pay Ben for the damage to the "*Pihna's Pride*" or to cover any damage the "*Pihna's Pride*" may have caused to the "*Roxanne*."

Ben feels that if he is liable to Kachuo for the damage to the "*Roxanne*" then either the Equitable Insurance Co., or the Turtle Boat Co., or Seldom Shipwrights, Inc. should pay those damages.

B. (5 points) Can Ben include (1) the Equitable Insurance Co., (2) the Turtle Boat Co., or (3) Seldom Shipwrights, Inc. in Kachuo's lawsuit against him? And if so, how?

Assume that Ben brings a separate lawsuit in the FSM Supreme Court against the Turtle Boat Company and Seldom Shipwrights, Inc. for selling him a boat with a defective steering mechanism. Ben lists as his causes of action: a product liability theory, a breach of contract claim, and a claim that Turtle and Seldom were negligent in failing to inspect or repair the steering mechanism before selling the "*Pihna's Pride*" to Ben.

On the negligence cause of action Turtle raises the defense of contributory negligence as a complete bar to recovery. Turtle claims that Ben was contributorily negligent in failing to do the required maintenance on the steering mechanism and in his navigation of the "*Pihna's Pride*."

C. (3 points) Assume that Ben was somewhat negligent in failing to do proper maintenance on the steering mechanism and that he was slightly at fault in the manner in which he navigated the "*Pihna's Pride*," but that the faulty steering mechanism was largely responsible for the accident with the "*Roxanne*." Discuss the applicability of contributory negligence as a defense to a negligence claim in Micronesia.

VI. (con't)

D. Seldom Shipwrights, Inc. wishes to raise as a defense its claim that no court in the FSM has jurisdiction over it since it has no offices or assets in the FSM and none of its employees have ever been to the FSM.

1. (1 point) Can Seldom Shipwrights raise this defense without subjecting itself to FSM jurisdiction by appearing in the FSM Supreme Court? And if so, how?
2. (3 points) Discuss the merits of this defense.

E. In the meantime Ben has not been able to make any payments on his loan from the FSM Development Bank because he has not had the money to finish repairing the "*Pihna's Pride*" and go back fishing. The Bank wants to bring suit to recover its loan.

1. (1 point) In which court or courts can the FSM Development Bank bring suit, and why?

When Ben received a copy of the complaint he wrote the Bank's attorney a letter stating, "I realize I owe the money, but I don't have any money now. If you will be patient, I am sure that I will be able to repay you as soon as all the other pending lawsuits are settled." He did not do anything else. After three months had passed the Bank filed a motion for entry of default and a motion for a default judgment to be entered by the clerk.

2. (2 points) Has the Bank followed the correct procedure?
3. (2 points) Assume that the Bank has obtained a money judgment against Ben, but that the other lawsuits have not been settled and Ben still does not have the money. Discuss the procedures the Bank might follow to make sure that it can collect on its judgment.

VII.  
(15 points)

Joanna lives near the end of a road that leads to a small dock. One night at about 1 a.m., she called the police and told them she had just heard what sounded like gunshots and screaming coming from the direction of the dock.

The police went to investigate and found one unoccupied car and a small building that formerly had been used as a warehouse with a small office. There was no door on the building and the officers stepped inside. They heard voices coming from the office area, the only separate room in the building, so they walked to the door and knocked, saying, "Police officers! Let us in!"

One man, Castor, opened the door for them. Another man, Pollux, was sitting behind a desk. The officers stepped inside and immediately smelled what they thought to be marijuana. One of the officers went to the desk and opened all the drawers, and found a lit marijuana joint, a handgun, and a large plastic bag. The police then arrested both men. Inside the plastic bag, they found what was later proven to be six pounds of marijuana and two ounces of "ice."

Both Castor and Pollux are charged with unlawful possession of a handgun in violation of 11 F.S.M.C. 1023(5) and possession of marijuana and "ice" with intent to distribute in violation of 11 F.S.M.C. 1141(1)(a).

You are counsel for Castor and learn that the prosecution has no evidence other than what has been described.

What issues would you expect to raise on Castor's behalf?

How and when would you present each issue to the court?

Analyze each issue and how you would expect it to be resolved.

VIII.  
(10 points)

Discuss the constitutionality under the FSM Constitution of the following:

- A. (3 points) A municipal ordinance that provides that anyone found intoxicated in public and disturbing the peace will be arrested by the municipal police and held in the municipal jail for 36 hours.
- B. (3 points) A state statute requiring all state citizens boarding planes at the airport owned and operated by the state, to pay a departure fee of \$5, and for all other persons boarding planes there to pay a departure fee of \$10.
- C. (2 points) An FSM statute levying a \$5 fee on all airplane tickets sold in the FSM.
- D. (2 points) A state statute levying a 2½% tax on all agricultural produce exported from the state.