

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 5, 1998

Administered in Pohnpei

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

* * * *
* * * *

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.	12
II.	10
III.	18
IV.	20
V.	10
VI.	11
VII.	5
VIII.	4
IX.	7
X.	<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-VIII. THE ETHICS QUESTIONS ARE IX-X. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.
(12 points)

Hertz borrowed \$2,000 at 15% interest from a commercial bank on Pohnpei. The terms included monthly payments until the loan was paid off. Hertz made one payment, and then moved to Chuuk, notifying the bank of his change of address.

He made no more payments. After one year, the bank charged the loan off its books as a non-performing loan, and its attorney brought suit against Hertz. The complaint, which followed the usual standardized form the bank's attorney had been using for its bank loan debt collection cases for the past five years, asked for the following relief: a judgment for the unpaid principal amount of \$1,960, 15% interest on the unpaid principal since the date of Hertz's only payment, and an award of reasonable attorney's fees and costs as provided for in the loan agreement and promissory note that Hertz signed.

A. (1 point) In what courts or courts could the bank file suit?

The complaint and summons were filed and properly served on Hertz. He did not respond to it in any way. After 45 days, the bank's attorney filed, with supporting affidavits, a request for entry of default, and a request for a default judgment for \$1,960 of principal, plus \$330.25 interest, attorney's fees of \$350 (calculated at \$100 per hour times 3½ hours), and service costs of \$15, for a total of \$2,655.25. (These filings also followed standardized forms the bank's attorney had been using.) The clerk of court entered the default.

B. (3 points) Should the clerk enter the default judgment as requested? If so, in what amount? If not, why not? In what amount should the judgment be issued?

One month after judgment was entered and served on Hertz, the bank's attorney filed a motion for an order in aid of judgment and served it and a subpoena to appear and testify on Hertz. At the hearing on the motion Hertz and the Bank's attorney stipulated to an order whereby Hertz would pay \$25 each biweekly pay period until the loan was paid off. The order also contained a clause acknowledging a \$5,000 judgment that Hertz had against the state and ordering Hertz to use as much of it as necessary to pay off the bank's judgment against him, if and when that state paid its judgment. Hertz, in open court, stated that he had agreed to the order, and that, since he had a job, he could make the \$25 after meeting all his familial and customary obligations. The order was entered and served. Hertz made one \$25 payment.

Six months later, the bank's attorney filed a motion for an order to show cause why Hertz should not be held in contempt of court for failure to continue making the \$25 payments. A show cause hearing is held. After Hertz's testimony, it becomes apparent that two months ago Hertz had received from the state \$5,000 in payment for his judgment and had used that payment plus a dividend from his UMDA stock to buy himself a new pickup truck last month. Hertz further testified that he now has no money, and that he left his job four months ago.

D. (2 points) What action or actions should Hertz have taken and when?

I.
(cont.)

- E. (2 points) What relief might the bank's attorney successfully request?
- F. (2 points) How should the judge rule on the contempt motion?
- G. (2 points) What further proceedings might be taken against Hertz?

II.
(10 points)

About 10 p.m. on Saturday, Vernon is attacked by Dingo who then robbed him. Vernon is seriously injured and was taken to the hospital. The admitting nurse promptly and properly notified the police of the injured patient. Wade saw the attack and accompanied Vernon to the hospital.

The police went to the hospital, observed Vernon's condition and interviewed Wade, who described the attack and identified Dingo. The police went to arrest Dingo. They find him asleep in the cookhouse behind his family's house at 1:00 a.m. Sunday. Dingo was arrested by patrolmen Payne and Penn. Patrolman Pinde remained in the police pickup. Patrolman Pinde received a radio report that Vernon had been interviewed and reported losing a bracelet and \$800 in the attack. Patrolman Pinde was instructed to look for this evidence. Patrolman Pinde gave this message to patrolman Payne who reentered the cookhouse as patrolmen Penn and Pinde took Dingo to the pickup. On the floor of the cookhouse patrolman Payne saw a short length of chain similar to a part of a bracelet chain. Under the mat upon which Dingo was found sleeping, patrolman Payne found \$800. Patrolman Payne took these items and later delivered them to the police property custodian.

Dingo was routinely booked and detained at the police station.

At 9 a.m. Sunday, the police interviewed Vernon further. Vernon told them that during the attack he had grabbed his assailant's tee shirt and tore the left sleeve. The police then went the Dingo's place of detention, saw that the left sleeve of Dingo's tee shirt was torn, and made Dingo take his shirt off and give it to them.

On Monday, the state prosecutor filed an information charging Dingo with robbery. In due course, the public defender moves for the suppression of the chain (which Vernon has identified as his), the money and the tee shirt.

Discuss.

III.
(18 points)

Chuuk State intended to build an air strip on Pulawat. The State chartered a ship which would carry all construction supplies to Pulawat. That ship was to depart the international port of Chuuk on June 1, 1997.

Chuuk contracted with Korea, Inc. to supply the cement required for the project for \$550,000 delivered to Chuuk. Aware of the danger of deterioration of cement over a relatively short period of time, Chuuk required that Korea, Inc.'s vessel load the cement and depart from Korea to arrive in Chuuk on May 20, 1997. Korea, Inc. knew that the cement was to be transhipped to the chartered ship for carriage to Pulawat on June 1st.

On May 15th Chuuk learned that Korea, Inc.'s vessel was only partly loaded. Chuuk faxed Korea, Inc. the same day canceling the contract on the ground that delivery on May 20th was impossible. Chuuk then canceled its ship charter and paid \$8,000 as liquidated damages, as specified in the charter agreement for cancellations within thirty days of departure date.

Korea, Inc. did not respond to the fax. It completed loading the cement. Korea, Inc.'s vessel arrived in Chuuk on June 3, 1997. Korea, Inc. successfully sold the cement for another large construction project in Chuuk for \$495,000.

On August 1, 1997 Korea, Inc. filed its complaint against Chuuk State seeking damages of \$55,000, being the difference between the contract price with Chuuk and the amount it was able to realize from the buyer, "and such other damage as the court finds the plaintiff entitled."

Chuuk State counterclaimed for alleged damages arising from the failure of Korea, Inc. to deliver on time, specifying the penalty it had to pay to the charterer caused by the cancellation and the other construction materials' storage cost between June 1st and the date when the project was re-scheduled.

Discuss the rights and obligations of each party, and the relief the each could obtain. Include a discussion of the different measures of damages and what applies and what does not.

IV.
(20 points)

A validly-enacted FSM law went into effect 2½ years ago. It provides in part: "An import tax is levied on all ice-making equipment imported into the FSM. The import tax shall be 5% of the value of the ice-making equipment. The Secretary of Finance shall adopt regulations to implement this law." Shortly thereafter, the Department of Finance prepared draft regulations to implement the law. The draft regulation provided in part: "During the calendar year in which ice-making equipment is imported into the FSM, the import tax shall be 5% of the invoice price paid by the importer. In all subsequent calendar years the import tax shall be 5% of the then-current market value of the ice-making equipment."

The draft regulations were posted for one week on the Department of Finance bulletin board. During that week, Mr. Kedwerer saw them there and read them. He immediately went to the Secretary's office and spoke to the Secretary of Finance in private. He told the Secretary that he was starting a new business which needed to import ice-making equipment, but that the new tax would increase his startup costs so much that starting the business might not be financially feasible. He said he would sue the government and have the law and regulations declared unconstitutional if he could find a lawyer to do it for nothing. The Secretary did not receive any public comments on the draft regulations, and he adopted them in their final form without any revisions.

One month later, Mr. Kedwerer formed Werer Company to manufacture organic fertilizer from sea cucumbers. Werer Company paid \$1 million for ice-making equipment, and then imported it into the FSM. Werer Company did not pay any import tax.

Two years later, the Commissioner of Revenue sent a demand letter to Mr. Kedwerer. The letter demanded "(1) import tax of \$50,000, 5% of price paid for the ice-making equipment, in 1996, the year it was imported, and (2) an import tax of \$45,000, for 1997, \$45,000 being 5% of the department's best estimate (\$900,000) of the equipment's current market value. If the \$95,000 is not paid, or satisfactory arrangements made to pay it, or you do not petition the Secretary of Finance to review my decision, within thirty days of this letter's date, I will instruct the Attorney General's Office to initiate action against you to collect the assessed tax."

Werer Company has not paid anything. Instead, Werer Company, upon receipt of the demand letter, immediately retained legal counsel who

IV.
(cont.)

filed a lawsuit in the FSM Supreme Court trial division, requesting as relief: (1) a declaratory judgment that the import tax statute was unconstitutional, (2) a declaratory judgment that the regulations were invalid, (3) a permanent injunction prohibiting the government from assessing the tax or maintaining further administrative proceedings against Werer Company, and (4) an order that Werer Company does not have to pay the assessed tax.

What preliminary legal grounds might the government raise to prevent the case from proceeding in the trial division?

Assume that the case proceeds in the trial division, identify and discuss the other issues likely to be presented to and decided by the court.

V.
(10 points)

Daniel has a leasehold interest in a piece of public land called Thistle Dew. His neighbor, Francis, has a leasehold interest in another piece of public land called Nevermore. The two parcels of land adjoin each other. Daniel wants to build rental apartments on his parcel. Francis claims that part of the land Daniel wants to build his apartments on is really part of Nevermore.

Daniel and Francis take their boundary dispute to the state public lands authority. Under the public land authority's rules such disputes are first investigated by a team of authority members who may take testimony, consider, and survey the site in reaching their decision on where the boundary between two leaseholders lie, or in other cases, on who might be the proper current leaseholder. The team's decision is always subject to review by the state public lands authority's Executive Board (the Director and two Assistant Directors), which may confirm, modify, or reject the team's decision and return it for further investigation. The Board may take its own testimony and evidence before deciding.

One of the team members was a nephew of Francis. Daniel asked that member to disqualify himself, which he did. The team's decision was favorable to Daniel.

Shortly before reviewing the team's decision one of the Executive Board members, while researching another case, stumbles across a forty-year old survey that to him seems to suggest that Francis's claim where the boundary of Nevermore was is right. He shows the survey to the other members of the Executive Board, one of whom is Francis's nephew, who had earlier disqualified himself from the team. The Board unanimously votes to change the decision so that the disputed land is determined to be part of Nevermore, not Thistle Dew.

You are Daniel's attorney. You have just received the Board's decision and learned what happened. What steps do you take for your client?

VI.
(11 points)

A. (4 points) Assume the facts in the previous question. Also assume that the state provides that appeals from the public lands authority are heard *de novo* by the state court trial division, and that the state court rules of evidence are patterned after the FSM Rules of Evidence.

Daniel contends that the boundary is a row of coconut trees. Francis contends that the boundary is a stream to the west of the coconut trees.

The controversy is appealed. At trial in state court Daniel calls Joseph as a witness. Joseph testifies that he has lived all his life in the community where Thistle Dew and Nevermore are located, that he remembers the day when the land authority team came as part of its investigation into the dispute, and that the dispute was of general knowledge in the community and something everybody was talking about. Joseph then testified that at the time of the team's visit everyone in the community said that the proper boundary was the row of coconut trees.

Francis objects. On what grounds? How should the judge rule, and why?

B. (7 points) Assume the same facts as in (A). Francis wants to introduce the survey described in the previous question's fourth paragraph.

It appears that the survey was prepared as a part of a general survey of all public land. It shows the boundary as the stream.

The field survey was initialed by someone who purportedly conducted the survey. No witness can be found who knows whose initials they are.

The name and signature of the registered land surveyor who approved the survey can be read, but no one knows the person. Witnesses are available who have seen the same signature on other surveys. One such witness is the presently-serving registered land surveyor.

You are Francis's counsel. What testimony would you offer, and what argument would you make in support of the admission of the survey as an exhibit? What objections from Daniel's counsel would you prepare for? How should the judge rule on the motion to admit the survey if the trial proceeds as you expect?

VII.
(5 points)

A statute reads: "The court cannot utilize custom in reaching a decision unless it receives satisfactory evidence of the custom."

At trial, a plaintiff requests the court to take judicial notice of a custom prevalent in the state.

How should the judge handle the request?

VIII.
(4 points)

Sabado is a heavy equipment operator. Early one morning just after the start of work at a construction site, Sabado unaccountably runs the heavy bulldozer he was operating up against a newly-built cinder block wall, causing it to collapse and injure several workers on the other side.

The injured workers, who were employed by a contractor other than Sabado's employer, sue Sabado and his employer. Sabado's employer claims that it is not liable to the injured employees because Sabado's actions were reckless and wanton and in violation of company policy that heavy equipment not be operated while under the influence of intoxicating substances.

At trial, during the company's cross-examination of one of the injured workers, the company's attorney asks if, during a traditional apology ceremony while he was still in the hospital, Sabado's wife had apologized for Sabado and said that Sabado had been up until 3 a.m. the night before and had been drinking beer and Pohnpeian *sakau* heavily.

Sabado objects. On what grounds? Should the judge allow the question to be asked?

IX.
(7 points)

Zacharias had a contract with Buccaneer George from Guam to supply him with FSM handicrafts. Under the agreement's terms, Zacharias was to receive \$3,000.00 thirty days after delivery of the handicrafts to George. It has now been 120 days since delivery and Zacharias has not received his check.

Zacharias consults Quentin. Quentin is a part-time attorney in private practice. He informs Zacharias that he is willing to take the case for his usual fee. He states that his usual fee is \$1,000.00 per case plus $\frac{1}{3}$ of any monetary recovery. Zacharias figures some money is better than none and hires Quentin.

Quentin writes George a letter saying that he has been retained by Zacharias, that George owes Zacharias \$3,000 for handicrafts as per their contract, and that if George does not remit full payment to Quentin within three days, he would take further steps that might include filing suit.

After two weeks Quentin started preparing the complaint and summons for filing. After three weeks were up, but before the complaint and summons were filed, Quentin received a letter from George with a check for \$3,035 enclosed. The letter said that George had thought he had paid Zacharias on time, but after he received Quentin's letter he checked his records and realized that Zacharias had not been paid, so he was apologizing and enclosing a check for \$35 more than what he owed because of the extra time Zacharias had to wait for his money and because he was very pleased with the quality of Zacharias's handicrafts, which were selling well, and would want to buy more from Zacharias sometime in the near future.

Quentin then deposited George's check in his personal bank account. After it cleared, he called Zacharias into his office and gave him a bill for \$1,000 plus $\frac{1}{3}$ of the recovery of \$3,000 [another \$1,000] for a total of \$2,000 that Zacharias owed Quentin, and his own check for \$1,000 made out to Zacharias.

Discuss.

X.
(3 points)

Tom Collins is an employee of a legal services corporation. Although not a lawyer, he appears in the FSM Supreme Court on a case-by-case basis under the supervision of an attorney in his office. He usually defends collection cases brought by banks.

Ann Masao asks Tom Collins to represent her and her husband John in a case brought by a bank against "John Masao and Ann Masao" in the FSM Supreme Court. She explains that John is away working on Guam. A complaint and summons were served on Ann personally at her place of employment. She gives them to Tom Collins. Tom Collins is admitted to practice for the case, and files and serves an answer for both defendants.

Discuss.