

**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 6, 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. ATTACHED IS A STATUTORY SUPPLEMENT THAT MAY BE HELPFUL. 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.	20
II.	3
III.	2
IV.	5
V.	19
VI.	6
VII.	16
VIII.	7
IX.	<u>22</u>
TOTAL	100

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

I.
(20 points)

After a night out, Ricky was driving home with his wife, Lucy, and their friends Fred and Ethel. On the way, Ricky was stopped by a policeman and charged with reckless driving.

Before the criminal trial, a hearing was held to resolve anticipated evidentiary problems. The following issues arise. In each instance, under the FSM Rules of Evidence state:

(1) any objection(s) that could be plausibly raised; and

(2) how the court should rule and why.

A. (3 points). The prosecution wants to call Lucy, who is now divorced from Ricky, Lucy is willing to testify that at the time of the stop, when the policeman wasn't listening but they were all still in the car, she said to Ricky, "How fast were you going?" and he replied, "Sixty."

B. (3 points). The prosecution wishes to call Desi, who will testify that he was passed by Ricky immediately before the stop and in his opinion Ricky was going over 50 at that time.

C. (3 points). The prosecution wants to call the policeman. He will testify that at the time of the stop, he said to Ricky, "Friend, you were really going fast," to which Ricky just nodded his head up and down.

D. (3 points) The prosecution wants to introduce the cover sheet of a report, written by the policeman at the time of the stop, stating the location of the offense, a fact which the policeman no longer remembers.

E. (3 points). The prosecution wants to call the policeman to testify that the day after the stop, Fred called him and said, "Thanks so much for stopping Ricky. I was terrified by the way he was driving."

F. (2 points) Ricky wants to call his pastor as the first defense witness to testify that Ricky is a truthful individual.

G. (3 points) To impeach the policeman, Ricky wants to introduce evidence that the policeman was convicted two years ago for taking trochus out of season.

II.
(3 points)

Attorney Aruba represented a company being sued by a number of persons, who all sought damages on the ground that the company had sold a defective product in the FSM. One particular plaintiff, Curacao, was represented by attorney Bonaire. Aruba found attorney Bonaire to be a particularly effective opponent. The company decided to settle with Bonaire's client.

Aruba drafted a settlement agreement that included a provision that, in return for a very generous settlement, the amount of the settlement was to be kept confidential and that attorney Bonaire was not to represent other plaintiffs in product liability suits against the company. Bonaire's client, Curacao, is very eager to accept the offer. Bonaire, who will earn a very substantial contingent fee, urges Curacao to accept.

Comment.

III.
(2 points)

In a civil action between commercial companies, the court ordered that one party provide certain documents to opposing counsel for review, but that opposing counsel cannot reveal the documents' contents to anyone without further court order. Opposing counsel's client then tells his counsel that he must tell him what was in the documents because an attorney is ethically required to keep his client informed.

Comment.

IV.
(5 points)

You are an attorney who has been hired to represent Sauron. Sauron is charged with three counts of attempted murder and two counts of aggravated assault and one count of selling betel nut without a business license. The prosecution's witness list includes Orc, formerly Sauron's best friend.

In a private meeting, Sauron is incensed at Orc being a government witness and tells you, "That's no way for a best friend to act. He shouldn't testify against me, and I'm going to make sure that he doesn't!"

Discuss your ethical responsibilities under these circumstances.

V.
(19 points)

Cook, a local citizen, works for Peary's Pizza, a local business. Cook was driving his car one day while delivering pizzas for Peary when his car struck Amundsen, an FSM citizen visiting from another state. Amundsen had just started walking across the street in front of Ellsworth's truck and outside of the usual place where the locals crossed the street. Ellsworth had parked his truck where people usually crossed the street, totally blocking any crossing there. Cook did not see Amundsen until a second before his car hit Amundsen.

Cook was driving within the speed limit and applied the brakes as soon as he saw Amundsen. The brakes failed. Cook had noticed earlier that day that the brakes were not working properly. Cook had never obtained a driver's license. No one at Peary's Pizza knew this.

Amundsen had a rare bone disease, and suffered many more broken bones than a healthy person would have. Byrd, Amundsen's wife, suffered a stroke when she saw Cook's car hit Amundsen.

Nansen was out walking and witnessed the accident. Nansen told Cook he would call the police. Cook got out of his car and swore at Nansen. Cook then punched Nansen and destroyed Nansen's glasses and broke his nose.

De Long, Peary's Pizza's manager, phoned Nansen and told Nansen that she was very sorry about Cook's behavior and that she knew when she hired Cook that Cook had a very bad temper.

A. (15 points) Discuss any tort claims the following individuals may have and any defenses to their claims:

1. Amundsen
2. Nansen
3. Byrd

B. (4 points) Discuss any claims that Peary's Pizza may have against Cook.

VI.
(6 points)

Define and discuss the requirements of the following terms in FSM law:

- A. third party defendant
- B. admiralty and maritime
- C. nolo contendere

VII.
(16 points)

Roy fatally shot Dale in their home on Shady Road. Roy hid Dale's body in the trunk of the family car. Unaware of the killing, Roy's adult daughter Patsy drove the car that afternoon.

Police officer Wyatt lawfully stopped and cited Patsy for speeding. As Patsy prepared to drive away, Wyatt told her that he was thinking of buying a car like the one she was driving but was worried that the trunk was not big enough so he asked her if he could look in the trunk to see the trunk capacity. Patsy said, "Sure" and opened the trunk revealing Dale's body. Shortly thereafter Wyatt wrote a search warrant application for "Roy's residence on Shandy Street to search for and seize the gun used to kill Roy."

A part-time state judge reviewed and approved the search warrant application. The state pays its part-time judges \$10 for every search warrant application approved and \$5 for each one rejected.

Wyatt arrived at Roy's residence with the search warrant. He noticed the door unlocked and slightly open, so he pushed the door all the way open and stepped inside. Wyatt called out "Roy — Officer Wyatt here, I have a warrant to search your house. Where are you?" Roy answered, "How did you get in the house? I'm in the bedroom." When Wyatt entered the bedroom, Roy handed him the gun saying, "I suppose you are looking for this." Wyatt continued the search and found a bullet hole in the living room wall and some bloody clothing.

Wyatt asked Roy why he shot Dale. Roy replied, "Do you think I should have a lawyer here like they say on TV?" Wyatt said, "It sounds like you know your rights from watching TV." Roy said, "Yes, I know my rights. I love police shows." Wyatt again asked Roy why he shot Dale. Roy replied, "I was mad at her for hiding the TV remote control."

Roy now seeks to suppress all statements and evidence against him. Analyze the constitutionality of the following four issues under the FSM Constitution and what ruling the court should make on each issue. Discuss each issue independently.

- A. (3 points) The discovery of Dale's body in the car trunk.
- B. (4 points) The search warrant.
- C. (5 points) The search of Roy's residence.
- D. (4 points) The statements made by Roy to Wyatt.

VIII.
(7 points)

Tony and Julio orally agreed that Tony would buy a used van from Julio; that the purchase price would be \$2,500; and that Tony would pay \$1,000 down and the rest in instalments. No agreement was made as to the amount and timing of the installments.

Tony paid the \$1,000 and took the van home. He replaced the tires (cost \$54) and the fuel pump (cost \$231), but made no more payments. After four months, Julio repossessed the van and sold it to someone else.

Tony files suit for \$3,000 in damages for breach of contract.

You are the judge. How do you decide this suit and why? Calculate any damages awarded.

IX.
(22 points)

Welsh and Cornish went into the tourist business together. They formed a corporation called Manx Co. Each owned 50% of the shares. The incorporation documents filed with the FSM national government recited that each of the two incorporators had paid in \$20,000 in startup capital, when, in fact, Welsh only paid in \$5,000 in startup capital and Cornish paid in nothing.

Manx Co. then bought a vessel to be used as a combination eco-tourism cruise vessel/dive boat, and named it M/V *Dernita's Pride*, and registered it in the FSM. Manx Co. financed the purchase with a large loan from the FSM Development Bank. To secure this loan, Manx Co. granted a preferred first mortgage on the M/V *Dernita's Pride* to the FSM Development Bank. Manx Co. then arranged a loan from the Bank of Hawaii to pay for refitting the M/V *Dernita's Pride* to the needs of the tourist trade that it expected to attract. Manx Co. also granted the Bank of Hawaii a "preferred first" mortgage on the M/V *Dernita's Pride*, which the Bank of Hawaii promptly recorded its mortgage at the office of the FSM Registrar of Ships in Palikir.

For a while, the business proceeded satisfactorily, making a small profit after paying all of its operating expenses and loan payments on time. Most of its customers were eco-tourists supplied by a small travel company in the U.S. Unfortunately, that company went out of business two months after the September 11th terrorist attacks in the U.S. Manx Co. had few customers after that because it was not widely known among other travel companies.

Manx Co. soon fell behind in its loan payments. The FSM Development Bank checked its files and realized that it had not recorded its mortgage on the M/V *Dernita's Pride*. The FSM Development Bank rushed to record its mortgage. The FSM Development Bank was relieved when its messenger recorded its mortgage at Palikir and reported that no other mortgages and liens had been filed on the M/V *Dernita's Pride*.

Unknown to the FSM Development Bank, the Bank of Hawaii's ship mortgage had been properly recorded earlier, but inexperienced personnel in the Registrar's office had not realized that it should have been shown to the FSM Development Bank's messenger and listed on the paperwork they returned to him.

Manx Co. also got behind in paying its other bills and in filing and paying its gross revenue tax, its employee income tax withholdings, and the social security contributions for its employees' wages. Then its employees' paychecks started to bounce.

Manx Co. is sued by its office employees, M/V *Dernita's Pride's* officers and crew, the Social Security Administration, the FSM Finance Department, the FSM Development Bank, the Bank of Hawaii, and by the supplier of groceries and other necessities for the M/V *Dernita's Pride's* last voyage.

IX.
(cont.)

- A. (3 points) In which court or courts could each of these plaintiffs sue? And why?
- B. (5 points) Most of the plaintiffs also name Welsh and Cornish as defendants in the suits against Manx Co. Both Welsh and Cornish move to dismiss the complaints against them on the ground that the lawsuits are for Manx Co.'s debts and that because Manx Co. is a corporation they, as shareholders, cannot be held personally liable for its debts. Discuss.

C. (5 points) All of the plaintiffs realize that Manx Co.'s major asset is the M/V *Dernita's Pride* and seek to proceed against it. Which plaintiffs would you expect would be allowed to name the M/V *Dernita's Pride* as a defendant? What procedure would they follow? How would the other plaintiffs proceed?

D. (6 points) Assume that the M/V *Dernita's Pride* is sold at public auction and because it was a sound vessel and well maintained that it brings a good price. How and to whom will the court distribute the auction proceeds?

E. (3 points) Assume that at least some of the plaintiffs have obtained personal money judgments against both Welsh and Cornish. Cornish died shortly after the judgment was issued. Welsh is afraid that the judgment creditors will obtain writs of execution against his personal property before he can try to work out a payment plan. Welsh does not think that he could obtain a stay of judgment even if he filed a notice of appeal because he cannot afford a supersedeas bond, and he does not think any appeal will succeed.

How can Welsh delay or prevent the issuance of a writ of execution? How would the judgment creditors try to collect on their judgments against Cornish?