

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**

October 11, 1994

**Administered in Kosrae, Pohnpei, Yap, and at the
FSM Mission to the United Nations, NYC**

**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. A SUPPLEMENT IS PROVIDED THAT MAY BE USEFUL IN ANSWERING ONE OR MORE QUESTIONS.

A TOTAL OF 100 POINTS IS POSSIBLE, DIVIDED AMONG THE QUESTIONS AS FOLLOWS:

<u>NO.</u>	<u>POINTS</u>
I.	14
II.	24
III.	14
IV.	18
V.	10
VI.	5
VII.	5
VIII.	5
IX.	<u>5</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-VII. THE ETHICS QUESTIONS ARE VIII AND IX. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.
(14 points)

You are an attorney practicing in the State of Chuuk. One day while working in your office, Abel Esor, an old client of yours walks in. He is upset. A year ago he bought 300 shell necklace mwarmwars from the ladies on his island who made them.

He sold these to the FSM Department of External Affairs on Pohnpei for \$600.00 for their use as gifts at diplomatic receptions and other occasions. He shows you a copy of his invoice. It reads:

"Aug. 3, 1993.
300 shell necklace mwarmwars @\$2.00 Total:
\$600.00. Plus \$50.00 shipping cost. Grand Total:
\$650.00.
Net payable within 60 days."

He also shows you a letter he received from the Department of External Affairs. It reads:

"August 12, 1993
Dear Mr. Abel Esor,
Thank you for the 300 shell necklace mwarmwars.
They look very nice. We will see that you receive
payment shortly.
Kahlangan,
/s/John George
Administrative Officer"

He says that External Affairs never paid him. He asks you to help. You agree to take the case. After investigation you conclude that you are going to have to file suit.

Draft the Complaint and Summons you are going to file in this case. Include the heading and caption. Also indicate what if anything will be attached to the Complaint.

II.
(24 points)

It was a dark and stormy night. The ship *Dernita Maru*, on a voyage from Yokohama, Japan, bound for Sydney, Australia, was making 15 knots in a heavy wind. She was owned by a Japanese company called Rose Shipping Company, and was registered in, and flew the flag of, the Republic of the Marshall Islands. She carried a cargo of new sports cars for sale in Australia.

The *Dernita Maru* collided with another ship, the *Georgia Star*, which was owned by the Outer Islands Development & Trade Corp., a company wholly owned by the Yap State government. The *Dernita Maru* sustained damage to her rudder and screws and thus was not able to steer or make much headway. The ship's captain therefore ran her aground as gently as he could on the Satawal reef in Yap State, which was about 30 miles from where the collision occurred and was the nearest land.

The *Georgia Star* lost all the cargo, mostly copra, on her decks when it washed overboard in the aftermath of the collision, but made it safely back to port at Colonia, Yap. A number of the sports cars that had been on the *Dernita Maru's* deck slid off into the lagoon at Satawal. Three days after the collision an ocean-going tug hired by the Rose Shipping Co. pulled the *Dernita Maru* off the reef and towed it to Chuuk Lagoon where repairs were made to the rudder and screws.

The crew of the *Dernita Maru*, who were mostly from Kiribati, were unhappy because the treatment they had been receiving from their officers and because they had not been paid for two and a half months. The Rose Shipping Company therefore discharged them in Chuuk and flew in a new crew to man the ship so it could resume its voyage to Australia as soon as the repairs were satisfactorily completed.

Both ships claim that the collision was the other ship's fault. The *Dernita Maru* claims that the *Georgia Star* was running without lights and that if it had been lit up the *Dernita Maru* would have seen the *Georgia Star* and avoided the collision.

The *Georgia Star* claims that she had the right of way and that the collision would not have occurred if the *Dernita Maru* had properly changed course.

The State of Yap has a state law that says that the trial division of the Yap State Court has exclusive jurisdiction over

any claims brought by or against a company owned by the state government.

The Rose Shipping Company has never done business anywhere in the FSM.

A. (5 points) The Outer Islands Development & Trade Corp. wishes to file suit against the *Dernita Maru* and the Rose Shipping Co. for the damage to the *Georgia Star*, and its loss of cargo. Which court or courts in which state or states have jurisdiction and what is the nature of the plaintiff's claim?

B. (5 points) If the *Dernita Maru* wishes to sue the *Georgia Star* what court or courts and in which state or states have jurisdiction? What is the nature of *Dernita Maru's* claim and who may she name as defendants?

C. (5 points) The discharged crew of the *Dernita Maru* wish to make sure they are paid their back wages. They consult an attorney on Chuuk who agrees to help. What immediate actions should he take?

D. (5 points) The inhabitants of Satawal want to make sure that the owners of the *Dernita Maru* pay for any environmental damage and cleanup costs from the ship running aground on the reef and for the sports cars that ended up in the lagoon. Both the State of Yap and the national government are also concerned that their respective environmental protection regulations be upheld. What are the causes of action of the inhabitants of Satawal, the State of Yap, and the FSM government? Where will they properly file suit? What additional steps should each take to safeguard their rights?

E. (4 points) If the *Dernita Maru* leaves the port of Chuuk and continues its voyage to Australia before any claimant has filed suit against it what steps may any of the possible claimants against the *Dernita Maru* take to obtain relief? What steps may be taken if suit is filed and served and then *Dernita Maru* leaves for Australia?

III.
(14 points)

Kiwi, a citizen of New Zealand, wished to establish a business to be operated only in the State of Kosrae advising both the state and private construction companies on proper water catchment and drainage methods and their economical and efficient use. The state Foreign Investment Board approved his permit application. The FSM Secretary of Resources and Development refused to issue the permit.

You represent Kiwi. What steps can you take to compel the issuance of the permit? If you sought relief directly from the FSM Supreme Court appellate division, what form would it take and what procedure would you use? If the relief you sought was initially from the trial division, what form would it take and what procedure would or could you use?

IV.
(18 points)

A witness to a burglary named Odavacer as a participant. The police asked Odavacer to come to the police station. Upon his arrival the detective informed Odavacer as follows:

"You have the right to remain silent. You are not required to say anything to us at any time or to answer any questions. Anything you say can and will be used against you in court.

"You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning.

"If you cannot afford a lawyer and want one, a lawyer will be provided you free of charge."

The detective then asked, "Do you understand?" Odavacer said, "Yes." Next the detective asked, "Are you willing to answer my questions?" Odavacer said, "Yes." The detective then took Odavacer's statement in which Odavacer implicated himself in the burglary.

Odavacer is accused by information of burglary. You represent him. You make a motion to suppress the statement based on these facts alone. Discuss the arguments available to you and the government, what you expect the court's reasoning to be, and the reasoning which supports it.

V.
(10 points)

In the case in question #IV the motion to suppress is denied. The case proceeds to trial. In the interval between the taking of the statement and trial the detective has resigned and moved to Guam. A subpoena for her to appear for trial was served on her but she did not appear.

A. (5 points) The government offers through the records and testimony of the custodian of Public Safety the report of the detective of her interview with the defendant, her advice of rights to the defendant, and the defendant's responses. Departmental policy requires that such reports be made by the interrogators and kept by the custodian. The purpose of this was to provide a foundation for the admission of the defendant's statement.

The defendant objects to the admission of the detective's report.

Should the court sustain or overrule the objection? Why?

B. (5 points) Several years ago Public Safety wisely decided to electronically record all custodial interrogations in order to protect the rights of the suspect and the rights of the public in the fair administration of police work.

In the prosecution's case-in-chief the government places the records custodian on the witness stand because the detective failed to come from Guam for the trial. The records custodian testifies as to the departmental policy concerning the practice, his receipt of each cassette marked, dated and identified the interrogators and his instruction to all interrogators as to marking and preservation of cassettes. He also identifies the cassette in his possession having Odavacer's interrogation.

The government also calls the technician responsible for the maintenance and testing of the equipment on a regular basis. He testifies as to his instruction to all interrogators, including the detective who took Odavacer's statement, as to proper operation of the recording device.

The government then offers the cassette in evidence and asks that it be played in court.

Defense objects. What ruling and why?

VI.
(5 points)

Ted was a fisherman who often sold his fish to Hillman's Seaside Market and Gas Station. He usually ties his boat up at the landing next to the market. There is a set of concrete steps leading from the landing up to Hillman's Seaside Market.

One day as Ted is returning to his boat he trips on the concrete steps and is injured.

Ted sues Hillman for damages. He alleges that Hillman was negligent in failing to keep the steps in good repair and that that was the cause of his injuries. Hillman denies that the steps are on his property. At trial Ted offers evidence that Hillman's employees repaired the broken step that Ted tripped on the day after Ted's accident. Hillman objects. How should the judge rule and why?

VII.
(5 points)

During the trial on a breach of construction contract action the plaintiff offers a witness who testifies as to the amount of work that was contracted. It included an area that had to be filled with landfill. Witness testifies that the area that had to be filled to the height of six feet was about 120 feet long by 30 feet wide. He says that he knows that it was this size because he had measured it by pacing it off, and in the past when he had paced off distances it had always proved to be accurate within 5% when later measured with a tape measure.

Defense attorney immediately says, "Objection! Best Evidence rule. The best evidence would have been for the witness to use a measuring tape, not to pace it off."

Discuss. The judge overrules the objection. The defense attorney states, "Note my exception." Discuss.

VIII.
(5 points)

Attorney Jimi, a citizen of Australia, who was not admitted before the FSM Supreme Court, filed a suit in the FSM Supreme Court in which he represented himself. His suit alleged that the FSM Rules of Admission were biased against foreign attorneys and named the Chief Justice in his official capacity, and the court itself as defendants. The defendants were represented by the FSM Attorney General. Both sides brought motions for summary judgment. At the conclusion of the hearing the associate justice who had been assigned the case orally granted the defendants' motion for summary judgment and denied the plaintiff's stating that a written opinion setting forth the reasoning would follow.

When no written opinion had been received after 5 weeks, Attorney Jimi wrote a letter to the judge asking when there might be a written opinion so he could appeal it. In the letter he stated: "I can understand why it must be taking so long. It will be a results-oriented opinion and it must be hard to get it to come out the way you ruled."

Discuss any ethical problems raised by the conduct of attorney Jimi. What actions, if any, could or should the trial judge take?

IX.
(5 points)

In 1989 you were employed by Wallace and Worth to obtain a corporation charter for their construction firm. Wallace, his wife and Worth were the incorporators, directors, and the three subscribers to the capital stock.

Through your efforts a charter was issued by the Registrar of Corporations for 2W Enterprises, Inc., and your representation ceased.

This month Enteracor, Inc. an Oregon supplier, and a creditor of 2W asks you to represent it to collect past due billings of 2W.

Because of various reasons affecting the other lawyers practicing in your state, you are the only lawyer available to represent Enteracor.

Does this pose any ethical problem? If so, of what nature, and what actions will you take in light of any problem? Or discuss any ethical considerations.