

**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**

September 4, 1998

Administered in 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.	11
II.	8
III.	12
IV.	11
V.	12
VI.	10
VII.	6
VIII.	3
IX.	3
X.	4
XI.	5
XII.	<u>15</u>
TOTAL	100

THE MINIMUM OVERALL PASSING GRADE WILL BE 65. FOR PURPOSES OF OBTAINING PARTIAL CREDIT UNDER GENERAL COURT ORDER 1986-2, THE ETHICS QUESTIONS ARE VIII-X. THE EVIDENCE QUESTIONS ARE XI-XII. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.
(11 points)

On paydays in the government and commercial center of one of the FSM states, the police patrol is increased during the day because of frequent fights and disorderly conduct by a few people who buy and drink alcohol, using money acquired from their friends and relatives. A common trouble spot is the place where people leave on boats and buses to their villages.

One payday, a person who had apparently been drinking came up to a police officer, who was sitting in his parked police pickup at this location, and reported that the driver of a white pickup, license plate # 4415, was carrying a .38 revolver. The police officer did not know the man, where he was from, or ask his name. The man then walked off.

The police officer began patrolling the street. He soon saw a white Toyota pickup with a license plate # 4415, with only a driver in it. He stopped the pickup and searched the driver and pickup. He found a .38 revolver under the driver's seat and arrested the driver for possession of a handgun.

An information is filed against the driver in the FSM Supreme Court. You are the driver's attorney. What steps will you take? Discuss the probable outcome of your efforts and give your reasoning.

II.
(8 points)

Locke sued Rousseau in the FSM Supreme Court. You represent Rousseau. At the end of trial yesterday afternoon, the judge ruled from the bench, and awarded Locke \$10,000. You expect that the clerk will issue the written judgment sometime today.

Rousseau has about \$12,000 on deposit in the local bank. He has told you that to keep his business running smoothly he should maintain a minimum balance in his bank accounts of \$5,000, and that he is afraid that if he has to pay the \$10,000 all at once it will disrupt his business and may have a long-range effect on his business reputation.

Rousseau has indicated to you that he is not interested in appealing the money judgment, primarily because of the time and expense and because he realizes that he is not likely to prevail on appeal. Locke's attorney has informed you that his client has instructed him to seek a writ of execution as soon as possible.

Are there any legal steps you might take to accommodate Rousseau's desire to avoid disruption of his business? If so, describe.

III.
(12 points)

Masao has worked in the warehouse of the Department of Finance located at the port of Pohnpei (Dekehtik Island) for eight years. In August 1995, he was promoted to Stevedore II earning \$2.04 per hour. A Personnel Action was issued reflecting this change.

In May 1998, Masao's boss, the warehouse supervisor told him that his pay of \$2.04 was in error, that it should be \$1.36 per hour. The supervisor was delivering a message from the department administrator when he gave this news to Masao. The supervisor showed Masao the appropriation bill which listed each government position with the pay for each position. The fiscal year 1998 bill stated that Stevedore II pay was \$1.36 per hour.

The supervisor tried to get Masao's pay changed back to \$2.04 by arguing with the administrator, but was unsuccessful.

The pay checks that Masao has received since May, 1998 have been based on an hourly pay of \$1.36. The department administrator has indicated that the department wants to be repaid for the extra money it has paid Masao during fiscal year 1998.

Masao comes to you with his problem. You agree to represent him.

Discuss each step you would take in representing Masao's interest. Give the probable result of each step and the reasoning.

A complete answer requires discussion of every step that might be involved in the problem. Thus even if at any step you decide the outcome is in Masao's favor, for purposes of the question, assume the next step must be taken.

IV.
(11 points)

Benido, a citizen of Pohnpei, negotiated a loan from the Bank of Tinian, a newly-established non-citizen banking organization with offices in the FSM, for \$1,500.00 at 15% interest per annum. The promissory note Benido signed included, among others, the following provisions: "For each payment, or part of a payment not made within 15 days after the due date, the borrower will be required to pay a late charge of \$100." and "I agree to pay the attorney fees incurred by the bank in enforcing this note."

Benido faithfully paid the monthly installments on time until his wife became seriously ill and was medivaced to Honolulu for medical treatment. Benido accompanied her. When he returned to Pohnpei eight months later, his sixteen-year old daughter, Tammy, handed him a copy of a motion for an order in aid of judgment, to which was attached a default judgment the Bank of Tinian had obtained against Benido in the amount of \$1,697.20, including \$400 in late charges and \$400 in attorney fees. The hearing on the order in aid of judgment is scheduled for three weeks from now.

The daughter explained that the police had given her some papers called a "summons" and a "complaint" at the family home three months earlier and had explained what they were and told her she should give them to Benido, but she had not because she did not want to trouble him while he was taking care of his seriously-ill wife who was also Tammy's mother.

You are an attorney on Pohnpei. Benido comes to you for your help and advice. Discuss what rights Benido may have and any steps that may now be taken on his behalf.

V.
(12 points)

The Chuuk state legislature passed a law instituting an "inventory tax." The inventory tax was a tax levied annually on all merchants within the state on all inventory they have in stock on February 1st of each year. The tax was 2% of all goods in inventory, assessed on their wholesale or purchase or invoice price, including the cost of shipping the goods to the state.

You represent Chuukco, a large wholesale/retail business in the state. Ninety percent or more of its inventory is imported from the United States, Australia, Japan, and New Zealand. Chuukco also offers for sale pepper and coconut soap products imported from Pohnpei, as well as local coconut products and Chuukese handicrafts. Chuukco also has business exporting sea slugs, trochus shells for button manufacture, and other marine products as well as some locally produced handicrafts. At any one time, Chuukco has a fairly large stock of these items in inventory awaiting either a foreign buyer, more favorable prices, or because of the shipping schedule.

Chuukco feels it is burdened enough by the taxes it already pays. It seeks your assistance in challenging the state inventory tax. Discuss the grounds on which you might be able to challenge the tax, and what legal steps you might take on Chuukco's behalf.

VI.
(10 points)

Local Construction Company purchased the rights to tidelands in 1986, obtained proper authority to fill the land, and built a single-family, one-story concrete house on the property in 1988, which Xavier bought the same year.

Xavier sold the land and the house to Abraham in 1993. In 1994, Abraham gave the land and the house to his daughter Selena as a wedding gift.

In 1996, cracks appeared in the floor and walls of the house. In 1997, Selena filed a complaint against Local Construction Company for damages and "such further relief as the plaintiff may be entitled."

Discuss the liability issue.

Next assume that Local Construction Company is liable to Selena and discuss the different theories of damages or other relief, and why they would or would not apply in this case. What is the appropriate measure in this case?

VII.
(6 points)

Hagar successfully represented his client, Helga, before the FSM Supreme Court trial division. The opposing party, Snirf, appealed.

The clerk certified the record, and set a briefing schedule. The appellant's counsel timely filed his brief. Hagar did not file a brief, but 45 days after Snirf's brief was filed and served, Hagar filed a motion for enlargement of time to file the appellee's brief. Hagar's ground for the motion was that no fee arrangements for the appeal had been made yet. The motion was granted because it was unopposed and would not require the postponement of oral argument.

Hagar did not file a brief by the new due date either. Oral argument was held as scheduled, and Hagar did not appear. Two weeks later, Hagar filed a motion stating that satisfactory fee arrangements had now been concluded, and requesting a further two weeks within which to file the appellee's brief.

A. (2 points) How should the appellate court rule on Hagar's motion? Give reasons for your answer.

B. (2 points) What affect does Hagar's failure to file a brief or appear at oral argument have on Snirf's appeal?

C. (2 points) If Hagar had appeared at oral argument and asked to argue Helga's case, would the appellate court have permitted this?

VIII.
(3 points)

Discuss any ethical problems raised by Hagar's conduct in the previous question.

IX.
(3 points)

Fermat consulted attorney Descartes about a civil matter. The matter involved Fermat's claim to a sum of money. Descartes agreed to pursue Fermat's claim. Descartes did some work on the case and then filed suit on Fermat's behalf.

In a different lawsuit, Fermat is a judgment-debtor. The judgment-creditor, during a hearing on its motion for an order in aid of judgment, put Fermat on the witness stand and inquired into Fermat's assets and liabilities and his general ability to pay the judgment. The subject of the lawsuit Descartes was handling for Fermat came up. Fermat stated that if and when he recovered anything he would owe Descartes some money. When asked how much or what the fee arrangement was, Fermat stated that he did not know how much, that a fee arrangement was never discussed, and that the local custom was that when the case was over the attorney would tell his client how much he owed.

Comment.

X.
(4 points)

Phat's lawyer, Phlogiston, filed and served a complaint against Dernita for the balance owed on a debt.

Dernita engages Dalton to represent her. Dalton prepared an answer and placed it in Phlogiston's box at the clerk of court's office. Dalton did not take any other action.

The clerk has a box for each practitioner. The clerk puts pleadings, court orders, and other documents he wishes a practitioner to have in the box assigned to that practitioner. It is also a common, but not uniform, practice for lawyers to serve pleadings by placing them in the opposing lawyer's box. The boxes are not locked and access is not entirely limited to the lawyer assigned to the box. No rule of procedure promulgated by the court or enacted by the legislature authorizes this practice.

Phlogiston did not receive the answer. After due time he obtained the entry of Dernita's default and a default judgment. He then applied for a writ of execution, which was duly issued. Learning that Dernita's small cargo vessel was about to depart the state, Phlogiston instructed the chief of police to seize the vessel. This was done, causing Dernita great hardship.

Discuss any ethical issues.

XI.
(5 points)

Zelazny was involved in a minor traffic accident. After the accident, the two drivers, one of whom was Zelazny, got out of their cars and argued over whose fault the accident was. The argument developed into a fight with the drivers swinging tire irons at each other.

Zelazny was later charged with aggravated assault. The criminal case was filed in the FSM Supreme Court on the ground that the fight took place on the grounds of the national capital at Palikir and that the capital area was under exclusive national government jurisdiction. During the preliminary motions over the court's jurisdiction, Zelazny filed an affidavit averring that the incident took place on the road just outside of the national capital area, not inside as the prosecution alleged.

The motions were denied and the case proceeded to trial. The sides exchanged witness and other information before trial. The prosecution included Zelazny on its witness list, claiming that because Zelazny had already testified in the matter he had waived his right against self-incrimination. The defense moved to have Zelazny's name stricken from the prosecution's witness list and to quash any subpoena for Zelazny, if one had been issued. The prosecution moved for an order determining that Zelazny could be required to testify.

How should the judge rule and why?

XII.
(15 points)

Concerto was assaulted by a man with a machete. The assailant was not someone he recognized. Concerto spent four weeks in the hospital. Shortly before he was released from the hospital the police arrested Ballard and charged him with aggravated assault of Concerto.

A. (5 points) At trial, the prosecution called Carol to the stand. The prosecution sought to have her testify that at about the time Concerto was assaulted she had taken Ballard's clothes to be washed and going through his pockets had found a receipt for the purchase of a machete in one of his shirt pockets.

On voir dire Carol testifies that Ballard had lived with her for several years, had borne Ballard two children, one of whom they had raised together and the other was raised by her mother. Carol further testified that she and Ballard had been fighting for some time and that she had recently thrown him out of their residence which was on her land. Carol and Ballard had not been married in church, or by any government official. They had no marriage certificate, and neither had taken any steps to obtain a divorce.

Ballad objects to Carol being allowed to testify. Discuss the nature of the objection and how the judge might rule.

B. (4 points) The prosecution also called Stanza to testify that three years earlier Ballard had tried to attack him with a machete while he was trying to walk down the road. Ballard objected. How should the judge rule and why?

C. (3 points) The defense called Aria, a nurse at the hospital, to testify that while Concerto was in the hospital that he said to her that Psalm might have been his assailant because Psalm owned land near where he was assaulted. The prosecution objected. On what basis did the prosecution object and how should the judge rule?

D. (3 points) Ballard took the stand and testified in his own defense. He testified that he was a peaceful, church-going man with no criminal record. If the prosecution objects to this testimony will its objection be sustained or overruled and why?