

**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 2, 1993

Administered in Chuuk, Kosrae, Pohnpei, and Yap

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

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NOTE

YOU WILL BE PERMITTED FIVE (5) HOURS TO COMPLETE THE 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 TOTAL OF 100 POINTS IS POSSIBLE, DIVIDED AMONG THE QUESTIONS AS FOLLOWS:

| <u>NO.</u> | <u>POINTS</u> |
|------------|---------------|
| I. | 20 |
| II. | 27 |
| III. | 23 |
| IV. | 20 |
| V. | <u>10</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 QUESTION IS IV. THE ETHICS QUESTION IS V. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

I.
(20 points)

Kim Lee's family owns a factory in Macau which manufactures prefabricated buildings. Kim Lee applied for and received a foreign investor's permit to carry out the business of the construction of pre-fabricated houses, warehouses, and other buildings in Kosrae and Pohnpei. The permit was issued on January 16, 1992, and was to expire January 15, 1997. The business had a promising beginning, but because of loss of business locally in Macau, the family had to close its factory.

This cut off Kim Lee's source of supply. Instead of closing his business Lee continued in business using an alternative process. The Foreign Investment Board heard of this change, and scheduled a hearing to determine whether the permit should be modified, suspended, or revoked. Kim received notice of the hearing and was present. He contended that the process he was using did fall within the terms of the permit.

On August 24, 1993, the Board issued notice of its action revoking the permit. Kim received a copy the same day. It was also given to the Division of Immigration.

On August 31, 1993, Lee received notice from immigration that his entry permit was revoked and that he was required to depart the FSM by September 15, 1993. Should he fail to depart, deportation proceedings would begin.

Mr. Lee comes to you today and engages your services as a lawyer. What are the rights of Mr. Lee? What steps are appropriate to take now, and what steps may be called for in the future?

II.
(27 points)

Benido, 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, fifty foot, "state of the art" fishing boat from the Elanzo Boat Company which imported and sold boats of all kinds. The Elanzo Boat Company guaranteed the seaworthiness of its merchandise for one year, as did the boat's manufacturer, Sheldon Shipwrights, Inc., a U.S.-based concern.

Most of the new boats it sold, the Elanzo Boat Company bought directly from Sheldon Shipwrights, Inc.

Benido named his new fishing boat the "Dernita II." Benido planned to use the boat to fish for tuna, and make a lot of money, which he would use to pay back the loan. Benido insured his boat with the Equitable Management Insurance Co. (EMI) 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, "*Dernita II*" started to respond to the helm sluggishly.

Benido, who was the skipper as well as the owner, was having a hard time steering her.

"*The Star of Siis*," a boat owned and piloted by Kerio, a citizen of Chuuk, often fished in the same waters. The "*Dernita II*" and "*The Star of Siis*" collided. There was extensive damage to each.

Kerio is sure that the accident was Benido's fault. Kerio is positive that the accident took place because Benido was inexperienced and did not know how to handle sail and steer a boat properly. To recover his damages he brings suit against Benido in Chuuk State Supreme Court, alleging that Benido 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 Benido were a citizen of Chuuk would the Chuuk State Supreme Court have jurisdiction to hear the case? Why or why not?

3. (3 points) Benido 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 Kerio to bring suit against Benido for the collision of the "*Dernita II*" and "*The Star of Siis*?"

II. (con't)

Benido has the severely damaged "*Dernita II*" towed back to Pohnpei. His repairmen discover that the steering mechanism was defective. Benido 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 Elanzo Boat Company. The Elanzo Boat Company insists that they sold the "*Dernita II*" to Benido in the same condition as it was received from its manufacturer, Sheldon Shipwrights, Inc. The EMI Insurance Co., pointing to an obscure clause in the insurance policy, has refused to pay Benido for the damage to the "*Dernita II*" or to cover any damage the "*Dernita II*" may have caused to "*The Star of Siis*."

Benido feels that if he is liable to Kerio for the damage to "*The Star of Siis*" then either the EMI Insurance Co., or the Elanzo Boat Co., or Sheldon Shipwrights, Inc. should pay those damages.

B. (5 points) Can Benido include a) the EMI Insurance Co., b) the Elanzo Boat Co., or c) Sheldon Shipwrights, Inc. in Kerio's lawsuit against him? And if so, how?

Assume that Benido brings a separate lawsuit in the FSM Supreme Court against the Elanzo Boat Company and Sheldon Shipwrights, Inc. for selling him a boat with a defective steering mechanism. Benido lists as his causes of action: a product liability theory, a breach of contract claim, and a claim that Elanzo and Sheldon were negligent in failing to inspect or repair the steering mechanism before selling the "*Dernita II*" to Benido. On the negligence cause of action Elanzo raises the defense of contributory negligence as a complete bar to recovery. Elanzo claims that Benido was contributorily negligent in failing to do the required maintenance on the steering mechanism and in his navigation of the "*Dernita II*."

C. (4 points) Assume that Benido 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 "*Dernita II*," but that the faulty steering mechanism was largely responsible for the accident with "*The Star of Siis*." Discuss the applicability of contributory negligence as a defense to a negligence claim in Micronesia.

II. (con't)

D. Sheldon 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 Sheldon 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.

In the meantime Benido 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 "*Dernita II*" and go back fishing. The Bank wants to bring suit to recover its loan.

E.

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

When Benido 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 Benido, but that the other lawsuits have not been settled and Benido still does not have the money. Discuss the procedures the Bank might follow to make sure that it can collect on its judgment.

III.
(23 points)

Michael is a prisoner serving a long sentence imposed by the FSM Supreme Court, and confined in the state jail pursuant to a formal written agreement between the FSM and the State.

Another prisoner, Jackson, is serving a life sentence for murder. He was earlier convicted of one murder and of one aggravated assault which resulted in the severance of his victim's arm. He has a pattern of assaulting those prisoners who resist his demands. Most are afraid of him.

George, the guard on duty at the time of the incident later described, was hired two years earlier by the Director of Public Safety on the basis of his reputation as a good fighter of whom many were afraid. He had several arrests for disorderly conduct because of his fighting. George received no instruction in the performance of his work other than being told what his hours of work would be. A majority of the other guards are either related to or afraid of Jackson and so turn away when he exhibits assaultive behavior.

On the day of the incident Jackson finished his meal first. He then tried to take the metal plate of Michael to eat Michael's food. Michael resisted so Jackson suddenly stopped pulling and pushed the plate into Michael's face. The plate struck Michael's eye, permanently damaging it. George observed the scene as it quickly happened, and did not try to take any action. All persons involved are citizens of the state.

Other than criminal action, does Michael have any causes of action? If so, what and against whom? What is the extent of the remedy or remedies available to Michael? What court(s) would have jurisdiction and why?

IV.
(20 points)

Assume that the civil case referred to in question III goes to trial with Michael as plaintiff.

1. (5 points) A defendant proffers evidence that plaintiff's lineage leader, according to custom, arranged and made an apology to plaintiff's lineage leader in plaintiff's presence. Suitable gifts accompanied the apology. The apology and gifts were accepted.

What defendant would proffer such evidence, and to what purpose? Plaintiff objects. Discuss its admissibility.

2. (5 points) Defendant calls the medical records custodian and offers the portion of Michael's history taken when he went to the hospital for treatment of his eye which quotes Michael as saying, "we were playing and the metal dish hit my eye". Michael objects. What result and why?

3. (5 points) The plaintiff proffers testimony of a former prisoner to testify both as to Jackson's reputation for violence and to particular instances where Jackson was violent.

What purpose would plaintiff have in doing this? Defendants object. Decide and discuss.

4. (5 points) Plaintiff proffers testimony of Jackson's assault on another prisoner six months before the incident in question. This resulted in the disciplining of Jackson by the jailer.

Admissible? As against which defendants?

V.
(10 points)

A. (2 points) Lawyer Danielle has competently represented Marc in a civil matter for the past three years. The final pretrial hearing is scheduled for late in June with trial contemplated for early August. In early June Danielle files with the court a motion to withdraw as counsel and sends a copy to her client. Danielle asserts that she is not competent to handle the trial because it might involve a question of custom and tradition with which she is not familiar and because she is leaving the FSM in early July for a new job in Florida. Discuss Danielle's obligations.

B. (8 points) Miss Pah, an FSM citizen, asked her two tenants, Alpha and Beta, what had happened to the furniture in the office she had rented them. They got into a fight with Miss Pah and then moved out after telling everyone what a bad landlady Miss Pah had been and that her rent was outrageous.

The next day Miss Pah hired Attorney Wito to assist her in pursuing any claims she might have against her former tenants.

When Miss Pah inquired of Attorney Wito how he was going to pursue the matter and what type of recourse she had Attorney Wito replied, "Now, don't you worry about that. I'll take care of everything."

Shortly thereafter Wito induced Miss Pah to rent her office space to R & E Enterprises for half the rent Alpha and Beta had been paying. Wito is the majority stockholder of R & E Enterprises.

Two and a half years later Wito filed suit against Alpha and Beta for assault and battery, slander, and conversion of the missing furniture in FSM Supreme Court. Alpha and Beta are foreign citizens. Alpha has been resident in the FSM continuously for the last three years, but Beta has only recently returned to the FSM after a year and a half spent in her country of origin.

Discuss the ethical implications of Attorney Wito's actions and any liability he might have.