

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, 1997

Administered in Chuuk, Kosrae, and 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 STATUTORY SUPPLEMENT THAT MAY BE USEFUL IS ATTACHED. A TOTAL OF 100 POINTS IS POSSIBLE, DIVIDED AS FOLLOWS:

<u>QUESTION NO.</u>	<u>POINTS</u>
I.	10
II.	6
III.	20
IV.	14
V.	20
VI.	5
VII.	4
VIII.	5
IX.	6
X.	6
XI.	4
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-IX. THE ETHICS QUESTIONS ARE X-XI. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.
(10 points)

Cable, Inc. provides television service to subscribers within the state. Some of Cable, Inc.'s programming is received by satellite signal. The remainder is from video cassettes of programs recorded in Japan and the United States and mailed to Cable, Inc. Cable, Inc. pays one monthly fee to the United States-based company which provides all the programs.

The FSM Department of Revenue gave notice to Cable, Inc. that it is liable for import taxes pursuant to Chapter 2 of Title 54 of the Code of the FSM, and that the tax will be assessed on that portion of the fee paid by Cable, Inc. for the satellite signal. The statute is attached.

Cable, Inc. objects to the imposition of the tax and seeks your advice. Analyze and discuss the problem presented.

Next, assume that you conclude that Cable, Inc. has good grounds to oppose the decision of the Department of Revenue. Set out the steps you would advise your client to take. If the steps include court action, state the relief you would seek.

II.
(6 points)

Define and illustrate the usage of the following terms of civil procedure and distinguish the terms:

- a. Impleader
- b. Interpleader
- c. Intervention

III.
(20 points)

After the state legislature appropriated funds, and after open bidding, the state entered into a contract with ABC Construction Co. for the following work:

Within eight months ABC was to provide, install, and operate a batch plant for the production of asphalt. Within a year of the batch plant's start of operation, ABC was to repair the paved roads on the island where the state capital was located. For the next five years ABC was to maintain the roads. Upon completion of the contract the batch plant was to become property of the state.

Consideration and Payment: For putting the batch plant in operation ABC is to receive \$500,000 with the first payment to be made three months after the signing of the contract, with the amount paid to reflect the percentage of work done, and the balance to be paid once the plant starts operating. For repair of the roads, \$3,000,000, payable quarterly based on percentage of work done. And for maintenance thereafter, \$600,000 annually, payable quarterly.

The state failed to make the first payment. ABC finished the batch plant within five and a half months (ahead of schedule). The state made no payments. ABC began to repair the roads, and after one month the state informed ABC that it had no funds to pay the contract.

If ABC had been paid for the batch plant its profit would have been 11%. ABC is an experienced contractor in all the Micronesian islands and estimates that its profit on the repair work would have been 6%, and that its profit on the maintenance work would have been 5%. It would cost \$175,000 to clean, dismantle and transport the batch plant to a ship, if that step were taken.

A. (8 points) Discuss what rights ABC may have because of the state's nonpayment. In a court action what cause(s) of action are probable, what judgment is probable, and what damages would a court award ABC if judgment were in its favor? If the state had made the first payment — \$500,000 — on time and ABC had then completed a little over half of the repair work after five months, but had not been paid for any of it before the state informed it that the state could not pay, how would the damages differ?

B. (6 points) Assume that ABC has been paid for the batch plant and started work on the road repair, completing only 10% after one month. The next two months ABC did no road repair, and instead devoted its energy and the output of the batch plant to a construction contract for a new hotel and tourist facility on the same island. ABC expects that work to be completed in the next seven months. The governor, however, is anxious that the repair work be finished within eight months because the island will be hosting a large development conference then and he would like the island to look good to the attendees.

III
(cont.)

What are the rights of the parties? What relief might each seek in court? What relief might a court grant?

C. (6 points) Assume the same contract. Assume that ABC completed the batch plant on time and the state paid as required. However, ABC lost money, that is, the \$500,000 did not cover ABC's costs in building the batch plant. Assume that after two months of repair work ABC realized that its costs were going to be much higher than it had estimated when it submitted its bid. ABC stopped all work, and informed the state that it did not have the resources to complete the contract because the payments fell far short of its costs. The contract did not provide a performance bond, and none was given.

What legal relief might the state be entitled to?

IV.
(14 points)

On December 12, 1996, Monaco went to get his mail at the post office. A slip in his mailbox said that he had a package. He went to the counter and they handed him a package, addressed to him, with a Guam return address.

As he was getting into his pickup with the package, two men approached Monaco and identified themselves as national police officers. They asked him about the package. Monaco said it contained some things he had asked his mother to send him from Guam. The police officers then arrested Monaco.

The same day the FSM Attorney General files an information in the FSM Supreme Court charging Monaco with possession of a controlled substance. The information charged that drugs had been found during a customs inspection in a package addressed to Monaco with a return address on Guam. The drugs were in a box of cookies inside the package. The package was then resealed, and later picked up by Monaco.

Monaco's public defender filed a motion to dismiss the information on the ground that the FSM Supreme Court does not have jurisdiction over the case.

What arguments might the public defender make in support of his motion? What arguments can the prosecutor make in favor of national court jurisdiction? How do you conclude that the court will rule on the motion?

V.
(20 points)

Krypton was trained in the Job Corps in auto repair. He returned home to Chuuk and began his own business on his father's land. Krypton always used proper equipment and was careful to instruct his assistants in their duties and the proper safety procedures and equipment to use. Krypton instructed each of his employees that before they go under a car that had been jacked up they must put a block under the axle or frame in order to prevent the car from falling on them if the jack gave way.

After operating the auto repair shop successfully for two years Krypton moved to Pohnpei to start another auto repair business. He left his Chuuk shop to be run by his brother Argon. Argon hired Xenon, a citizen of the Yap outer islands, as an assistant. Argon did not give Xenon any safety instructions.

One day Argon told Xenon to remove a tailpipe and muffler from a car. Xenon used a bumper jack to raise the car. (The shop did not have a hoist or a pit.) While working under the car Xenon's pulling on the tailpipe caused the car to slip off the jack and land on his arm. Xenon was permanently injured. He lost three fingers on his right hand.

Xenon spent a month in the hospital and another month afterward recuperating. Argon paid his Xenon his salary the whole time. Xenon then returned to work at the same auto repair shop. One year later Argon leaves Chuuk and moves to Guam. Another brother, Boron, takes over operation of the shop. Unfortunately, Boron does not know how to run a business, and after six months Boron closes the shop and lets all the employees, including Xenon, go.

Five months later, Xenon, who has not worked since the repair shop closed, consults you, an attorney in private practice.

- a) (8 points) Assume you decide to file suit. Draft the complaint that you would file. (Just the complaint, not any summonses.)
- b) (2 points) In which jurisdiction would you sue and why?
- c) (3 points) If Krypton is a defendant, how will you serve the complaint and summons on him?
- d) (2 points) Assume that you file suit in the trial division of the FSM Supreme Court. What law will govern this lawsuit?
- e) (5 points) What defenses might be raised, and with what probable results?

VI.
(5 points)

Assume that the case described in Question V went to trial. During the defendant's case in chief the physician who treated Krypton's injury in the emergency room is called. She will testify that as she was questioning Krypton to get a history of the injury, Krypton included as a part of his response, "I guess I was careless."

Krypton's attorney objects to the testimony. Discuss the grounds for and the opposition to the objection. How will the court rule?

Now assume that the physician wrote up the history of the injury based on what Krypton told her. Krypton's words "I guess I was careless" are recorded in the history, and made a part of Krypton's medical record.

The defendant calls the medical records custodian who brings Krypton's medical record with her. The defendant offers Krypton's statement in evidence. Krypton's attorney objects.

What result? Discuss.

VII.
(4 points)

Claudio has been charged with the crime of aggravated assault with a dangerous weapon. According to the information, the dangerous weapon used was a Willie McCovey model baseball bat, which the police found at the scene. The bat had blood stains on it. Claudio denies the charge. There is only one Willie McCovey baseball bat on island.

You are the prosecutor. You seek to introduce testimony that Claudio had used the exact same Willie McCovey baseball bat to smash the windows in someone else's pickup truck two months before the assault he is now charged with. The defense objects to its admission. On what grounds? What arguments do you make in favor of admission? How is the judge likely to rule?

VIII.
(5 points)

Pismo filed suit against Malibu for trespass. Pismo alleged that Malibu had hired Rincon to do some work on Malibu's land and that at Malibu's direction Rincon had driven a bulldozer across part of Pismo's property causing \$3,000 worth of damage. At trial Rincon testifies during the defense's case in chief that he never drove a bulldozer anywhere near Pismo's land.

On rebuttal the plaintiff takes the stand and testifies that the day after his land was damaged he had seen Rincon having breakfast in a local restaurant. Pismo testifies as follows:

PLAINTIFF'S COUNSEL: What did you do then?

PISMO: I asked Rincon if he was the one who had driven the bulldozer across my land, and damaged it.

PLAINTIFF'S COUNSEL: What was Rincon's reply?

DEFENSE COUNSEL: Objection.

Plaintiff's counsel then makes an offer of proof that if allowed to testify Pismo will say that Rincon's first reply was "What?" and that when Pismo repeated his question Rincon just smiled at him and then walked away.

How will the judge rule and why?

Would the judge's ruling, or the reasons for his ruling be different if Rincon had also been named as a defendant? Why or why not?

IX.
(6 points)

a) (2 points) In a lawsuit the plaintiff alleges that his injuries were caused by the defendant's reckless driving. At trial the defendant calls Fabio to the stand. Fabio intends to testify that the defendant is habitually a very careful person. The defendant seeks to offer this testimony to show that it is more likely than not that he was driving safely when the accident occurred.

You are the attorney for the plaintiff. Should you object to Fabio's testimony? If so, on what ground or grounds? How would you expect the judge to rule and why?

b) (2 points) Assume that the testimony is admitted. On cross-examination of Fabio the following occurred:

Q. Do you know that the defendant was recently terminated from his job at the warehouse?

A. I only know that he recently stopped working there.

Q. If you learned that the reason he no longer works there is that he was terminated because he damaged a large, fragile shipment while he was operating a forklift, would it affect your belief that the defendant is a very careful person?

Defense Counsel: Objection

How should the judge rule on this objection and why?

c) (2 points) Assume that the objection is overruled and the witness answers, "Yes." On rebuttal the plaintiff calls the defendant's warehouse supervisor. The plaintiff intends to ask her the reason for the defendant's termination. The defendant's attorney objects to any testimony by the supervisor.

Discuss and state what the judge's ruling will be.

X.
(6 points)

Attorney Reverb represented a private party, Subito, in a lawsuit against Otto. Reverb was also employed as a fulltime Assistant State Attorney General. At the same time he represented Subito in the lawsuit attorney Reverb represented the state in negotiations with Subito that resulted in a lease agreement whereby the state would lease a parcel of land owned by Subito for ten years for a lump sum payment of \$250,000.00.

One year after the lease was concluded and the state occupied the land Subito still had not been paid by the state. He decides to hire an attorney to pursue collection efforts from the state. The only attorney he can find willing to take the case is Arnez. Attorney Arnez is employed fulltime as an advocate by the FSM Public Defender's Office. Arnez warns Subito that his area of expertise is criminal law and that his training in civil cases is not that good. Arnez is still willing to take the case, but only if Subito signs a waiver acknowledging that Arnez has disclosed his lack of training in the civil area and promising not to sue Arnez for malpractice if Subito is unhappy with the result in the case. Subito signs the waiver, and Arnez then files suit against the state. An assistant attorney general other than Reverb represents the state.

Discuss any ethical problems apparent in the above chain of events.

XI.
(4 points)

Jean is an attorney admitted in several jurisdictions, but not the FSM. He is also a professor of law who is in demand as a lecturer to legal professional gatherings. He agrees to lecture at a judicial conference at which all FSM Supreme Court justices, and many of the state justices will be present. His chosen topic is international fisheries law. His lecture contract is approved and all the scheduling and travel arrangements are made.

Two weeks before the conference a large lawsuit is filed in the FSM Supreme Court. One of the plaintiffs' claims involves alleged improper interpretation and enforcement of a fishing treaty that the FSM is a party to. Jean is one of five attorneys who have signed the complaint. Attached to the complaint is Jean's motion to appear *pro hac vice*.

Discuss the propriety of Jean's actions and the possible courses of action available to any of the justices.