

**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**

August 2, 2001

Administered in Chuuk, Kosrae, and Pohnpei

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

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N O T E

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.	13
II.	16
III.	14
IV.	14
V.	5
VI.	8
VII.	3
VIII.	17
IX.	4
X.	<u>6</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 VII-VIII. THE ETHICS QUESTIONS ARE IX-X. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.
(13 points)

At the 2000 Annual Meeting of shareholders of Yap's Best Dang Tuna, Inc., held on October 8, 2000, shareholders were asked to choose between two competing slates of directors. The existing directors of Yap's Best Dang Tuna, Inc. who are also shareholders (the "Incumbent Directors") nominated themselves as the first slate. Dissenting shareholders (the Challengers"), nominated a second slate. The Corporate Secretary tabulated the ballots and announced that the Incumbent Directors had all been re-elected. The Challengers file suit against the Incumbent Directors and Yap's Best Dang Tuna, Inc., in the FSM Supreme Court.

A problem exists. There is a dispute as to the ownership of a block of over 2 million shares of Yap's Best Dang Tuna, Inc. stock owned either by Far East Pohnpei, Inc., a Pohnpei corporation ("FEPI"), or by Charleen Lava. The 2 million shares were not tabulated and counted by the Corporate Secretary because of the dispute. The vote of that block of stock, if it had been counted, would have determined who was elected as directors at the Annual Meeting.

Charleen Lava has filed a separate suit in the FSM Supreme Court seeking to have the 2 million shares issued to her because she alleges they were improperly transferred to FEPI by the action of Steven Schiffer, the former Chairperson of Yap's Best Dang Tuna, Inc.

FEPI has apparently filed suit in the FSM Supreme Court as well alleging that it is the owner of the shares claimed by Charleen Lava. Lava wants to vote her shares for the Challengers, while FEPI supports the Incumbent Directors.

On October 27, 2000, the Challengers filed their Motion for Preliminary Injunction in the FSM Supreme Court seeking to immediately take over management of Yap's Best Dang Tuna, Inc. On November 3, 2000, the defendant Incumbent Directors moved for summary judgment.

YOUR TASK:

You are the judge. Decide the Challengers' Motion for Preliminary Injunction. In addition, should the various pending cases be consolidated?

II.
(16 points)

Discuss the constitutionality under the FSM national Constitution of the following:

A. (3 points) a state statute that imposes an "excise tax" or a "possession and use tax" of 10% ad valorem on all heavy machinery 75 days after it has entered the state and that provides for a pro rata rebate of the tax should the heavy machinery ever leave the state.

B. (3 points) a provision in a state constitution that prohibits anyone from acquiring an interest in land in that state unless they are both a citizen of that state and at least two of their grandparents had been citizens of that state or citizens of that state's predecessor Trust Territory district.

C. (3 points) a municipal ordinance that levies a \$500 business license fees on all businesses with an office in the municipality with the following exceptions: 1) \$1,000 fee for a travel agency; 2) \$5,000 for a bank; 3) \$400 for fast food take-out; 4) \$600 for a restaurant; and 5) 12½ % of all hotel room rentals.

D. (3 points) an FSM Code provision that adds a \$1,000 surcharge on the importation of any motor vehicle with the steering wheel on the right-hand side and a further \$500 tax on the resale of any such vehicle.

E. (2 points) a national statute making a high school diploma, or its equivalent, a requirement to be eligible to run for Congress.

F. (2 points) a provision in a state constitution that permits the final order or judgment in any case in the state court appellate division to be appealed to the FSM Supreme Court appellate division whose decision is final.

III.
(14 points)

The Salamander Dive Club executed a twenty-five year lease of shoreline property called Hardscrabble from George Clinton, who held a Certificate of Title to that property. The Salamander Club then constructed a small eco-tourist hotel, restaurant and dive shop operation on the property. It scheduled its grand opening for August 8, 2001. Its first customers, who have already paid for their accommodations and dives, are scheduled to arrive that day.

You represent the Salamander Club. The police served the following document on Elbridge Gerry, the Salamander Club's owner, on the morning of August 2nd and he brings it to you immediately. He was not served with any other documents, but he understands that Aaron Burr has some claim to Hardscrabble. What immediate steps do you take? Why? What steps will you take thereafter?

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
TRIAL DIVISION

AARON BURR,	)	CIVIL ACTION NO. 2000-4011
	)	
Plaintiff,	)	
	)	ORDER GRANTING MOTION FOR
v.	)	TEMPORARY RESTRAINING
	)	ORDER
ELBRIDGE GERRY d/b/a THE	)	
SALAMANDER DIVE CLUB,	)	
	)	
Defendant.	)	
_____	)	

This case came before the Court on Plaintiffs' Verified Complaint, Motion for Preliminary Injunction, Ex Parte Motion for Temporary Restraining Order and Affidavit in support thereof, and it appearing therefrom that Defendant, unless restrained forthwith, that there is substantial risk that Defendant will willfully and unlawfully enter upon the land known as Hardscrabble in violation of the

Plaintiff's rights and open for business and such acts will alter the status quo before a hearing on the preliminary injunction can be held, therefore:

IT IS HEREBY ORDERED that Defendant, his agents, successors, employees, attorneys, assigns, and all persons acting in concert or cooperation with Defendant or at his direction, are temporarily enjoined and restrained pursuant to Rule 65, from entering on Hardscrabble and from conducting any business thereon whatsoever.

IT IS FURTHER ORDERED that the Plaintiff shall provide security in the amount of \$1,000.00 pursuant to Rule 65.

FURTHER ORDERED that the Defendant shall appear at a hearing on Plaintiff's motion for a preliminary injunction at 9:00 a.m., August 20, 2001.

SO ORDERED the 2nd day of August, 2001.

/s/
Associate Justice

Entered this 2nd day of August, 2001.

/s/
Clerk of Court

IV.
(14 points)

Phobos was taking his mail out of his post office box one day when part of the ceiling fell on top of him and injured him. Deimos, a contracting company owned by a local women, whose non-citizen husband runs the company and supervises most of its jobs, had just finished repairing that part of the post office pursuant to a repair contract between it and the post office. Phobos suffered a broken shoulder, and was taken to the local hospital. The hospital did not do a good job in setting the broken shoulder and it did not heal properly. Additionally, Phobos now has trouble sleeping and is nervous much of the time because he is afraid that something will fall on him.

Phobos's attorney filed suit in state court against Deimos and the post office.

A. (8 points) What cause or causes of action based on what theories of liability might Phobos bring against which defendants?

B. (3 points) Deimos does not want to defend the case in state court. What possible steps might his attorney take?

C. (3 points) Deimos claims that most of Phobos's damages are the result of his poor treatment at the hospital. Can Deimos raise that as a defense? or somehow use that to lessen the damages it must pay if it is found liable for Phobos's injuries?

V.
(5 points)

Ganymede comes to your office 11:00 o'clock a.m. one Monday. She relates that her husband, Callisto, was arrested for drinking an alcoholic beverage, in violation of a municipal ordinance, about 1:00 a.m. that morning. Callisto is still in jail and Ganymede asks for your help.

You call the clerks of the courts which could have jurisdiction and learn that no complaint or information has been filed against Callisto. You also know that the uniform practice in such cases is to detain the one arrested for 24 hours, and then release, without any court involvement.

What action, if any, can you take on Callisto's behalf? If it includes a court action, in what court(s)?

Discuss.

VI.
(8 points)

Io was arrested for possession of a controlled substance and detained. Sixteen hours later he was interviewed by a detective, Europa. Europa informed Io of his right to remain silent, that any statement he does make may be used against him, that he has the right to the presence of an attorney, and that if he cannot afford an attorney, one will be appointed to represent him. Io signed a statement that he understood these rights, that he waived them and would answer Detective Europa's questions. He then gave a statement concerning the incident.

An information was then filed. Two days later at the initial appearance, Io's first appearance before a judge, Io asked for an attorney, and you are assigned. At the appropriate time you file a motion for the suppression of the statement given by Io. What should the court's decision be, and on what grounds?

VII.
(3 points)

On his guilty plea, Nereid was convicted of illegal possession and use of a firearm in the FSM Supreme Court. Nereid got drunk one night and waved a loaded pistol around in the bar's parking lot and fired one shot into the ground. He was sentenced to one month in jail, and eight months probation. One of the conditions of probation was that he not consume any alcoholic beverages.

At a hearing on the revocation of Nereid's probation the government called Chiron as a witness. Chiron testified that Triton had told him that Nereid came over to Triton's house every night with a couple of six-packs, which they drank together.

Defense counsel objects. Why? And what result is likely?

VIII.
(17 points)

Pitcairn and Ducie are neighbors. In March, 2000, Ducie builds a volleyball and basketball court that encroaches on Pitcairn's property. The wild, all-night volleyball and basketball parties keep Pitcairn awake and cause him to develop a nervous condition. Pitcairn files suit against Ducie for trespass and intentional infliction of emotional distress.

Discuss the admissibility under the FSM Supreme Court Rules of Evidence of the following:

A. (3 points) Ducie calls Henderson, Pitcairn's high school guidance counselor, as a witness. Henderson has a degree in secondary education, with a minor in psychology. Henderson has not spoken to Pitcairn since he graduated from high school ten years before. Henderson testifies that in his expert opinion Pitcairn's testimony cannot be believed because he has been crazy for years.

B. (3 points) Pitcairn hires a surveyor to establish the boundaries between his property and Ducie's. At the time of trial the surveyor is on vacation in Bali. Pitcairn offers a letter he received from the surveyor, stating that Ducie's volleyball court is encroaching on Pitcairn's property.

C. (3 points) Before trial, Ducie is shown a videotape, made by an unknown person, which shows Pitcairn playing in one of Ducie's late-night volleyball tournaments. Ducie makes a copy of this tape and offers it as evidence at trial.

D. (3 points) Pitcairn offers a certified copy of Ducie's 1999 conviction for disorderly conduct, a misdemeanor. The document states on its face that the crime occurred while Ducie was entertaining friends at home.

E. (3 points) Pitcairn calls, Oneo, another neighbor, as a witness. Oneo testifies that Ducie told him, "I know this is Pitcairn's property, but it is the only place that I can build my volleyball court."

F. (2 points) Ducie offers a certified copy of a recorded deed containing a legal description of the property he owns.

IX.
(4 points)

You and your good friend Lima are attorneys. Lima has been in private practice for quite some time and over the years has handled most of Quito's legal work. Quito has been satisfied with Lima's representation. Currently Quito owes Lima \$11,000 in legal bills. Although Quito owns a lot of property including land, several boats and cars, and a nice house, Quito does not have much ready cash.

Recently, Quito asked Lima to draft a will. Quito stated that she does not expect to live much longer. Quito acknowledged the \$11,000 debt to Lima and proposed to pay Lima in the following manner: She asked that Lima put a provision in her will bequeathing to Lima a large enough sum to cover all that she owed Lima to date plus enough to cover drafting the will and a little extra to cover the time Lima would have to wait until she dies and her estate is probated. She also asks that the will name Lima as her executor.

Lima did as she asked.

Lima has been thinking about what he did and now comes to you to ask your advice concerning Quito's will and if he should take any action.

What advice can you give Lima?

X.
(6 points)

Wolfram, a foreign attorney licensed and resident in the Federated States of Micronesia, included the phrase "International Lawyer" on his letterhead, on his business cards, on his shingle, and in his advertisement in the telephone book yellow pages.

In a civil case, Wolfram, filed an affidavit that averred in part that "[opposing counsel, a local citizen] suffers from a minority complex because he is not truly Micronesian and he is reminded of this fact every day of his miserable existence in Micronesia. This makes him a nasty, impertinent, offensive boor of low class and poor taste who takes out his frustration on anyone who dares cross his path."

When he learned of the affidavit opposing counsel Leon sent a letter to attorney Wolfram in which he used a vulgar term to describe what he thought of Wolfram's characterization of him in the affidavit. Both lawyers file disciplinary complaints against the other. Leon's complaint against Wolfram included the affidavit's contents and Wolfram's use of the term "International Lawyer." Wolfram's complaint against Leon was restricted to the contents of Leon's letter to him.

You have been appointed Disciplinary Counsel for both complaints. What findings and recommendations do you put in your report to the reviewing justice?