

**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 5, 2010

ADMINISTERED IN YAP, CHUUK, POHNPEI, AND KOSRAE

**SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA**

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INSTRUCTIONS

YOU HAVE FIVE (5) HOURS TO COMPLETE THIS TEST. THIS IS DESIGNED TO PROVIDE AMPLE TIME FOR CONSIDERATION OF THE QUESTIONS AND ISSUES PRESENTED, AND TO PERMIT AN OPPORTUNITY TO FRAME YOUR ANALYSIS. BEFORE STARTING TO WRITE, REVIEW EACH QUESTION CAREFULLY SO THAT YOU UNDERSTAND EXACTLY 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.	20
II.	7
III.	3
IV.	10
V.	14
VI.	4
VII.	9
VIII.	15
IX.	9
X.	9
TOTAL	<u>100</u>

THE MINIMUM OVERALL PASSING GRADE IS 65. FOR PURPOSES OF OBTAINING PARTIAL CREDIT UNDER GENERAL COURT ORDER 1986-2, THE ETHICS QUESTIONS ARE II AND III AND THE EVIDENCE QUESTION IS I. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

GOOD LUCK.

Evidence

I. (20 points)

Plaintiff, driving alone in his car one rainy night, was injured when the car suddenly veered across the road's centerline and struck an oncoming car. Plaintiff started an action in the FSM Supreme Court against Defendant, the repair shop that had fixed the car's steering and the braking systems the day before.

At trial, the parties sought to introduce the following documentary evidence:

A. (3 points) By Plaintiff: A portion of the official police accident report that contained a statement by Witness, a pedestrian who had observed the accident, that in his opinion Plaintiff had not been exceeding the speed of 30 miles an hour.

B. (3 points) By Plaintiff: A handwritten diary prepared by Plaintiff's wife, now deceased, which described in detail the pain and discomfort Plaintiff had suffered as a result of his injuries from the accident, and conversations between Plaintiff and his wife.

C. (3 points) By Plaintiff: The books of Plaintiff's employer, which contained Plaintiff's salary records for the year prior to the accident.

D. (2 points) By Plaintiff: A letter from Defendant offering to arrange a traditional apology from Defendant's lineage to Plaintiff's.

E. (3 points) By Defendant: A written report, prepared, signed, and sworn by Doctor, a physician who stated that he had not personally examined or treated Plaintiff, but had carefully reviewed Plaintiff's hospital and medical records, and that it was his expert opinion that certain of plaintiff's injuries, which he described, were not proximately caused by the accident.

F. (3 points) By Defendant: (1) A tape-recorded interview with Plaintiff, and (2) a written statement signed by Plaintiff, both of which described the accident and were given to Defendant's insurance adjuster by Plaintiff five days after the accident.

G. (3 points) By Defendant: Portions of Plaintiff's hospital record, which contained notations made by the emergency room physician who admitted Plaintiff that (1) "Plaintiff appears to be intoxicated and has an odor of alcohol on his breath," and (2) "Plaintiff's wife says the accident occurred when Plaintiff was enraged and out of control . . . she felt he was going to have a nervous breakdown but had the accident instead."

In each instance how should the trial judge rule and why?

**II.
(7 points)**

Your friend, Claudius, comes to your law office one day. He asks for your help. He has been sued in the FSM Supreme Court by Grecko Inc., a foreign corporation, that has leased the property next to Claudius's. Grecko alleges that Claudius has encroached on its leasehold by building a cook shed and a little store on it. Grecko also alleges that Claudius vandalized some its vehicles when the vehicles were parked overnight close to Claudius' cook shed making it hard for some customers to reach Claudius's little store.

Claudius, who you know does not have much ready cash and who is known to be unusually thrifty, perhaps even stingy, asks you what he should do. You correctly advise him that if he does nothing the court will, upon Grecko's request, enter a default judgment against him. Claudius doesn't want that. In order to keep his expenses low, Claudius asks you, and you agree, to draft appropriate responsive papers for him to file "pro se." You do so and charge him \$75. He files the papers with his name and address on them.

Later, when the court schedules a pretrial conference, Claudius asks you to accompany him to court so that he will understand the proceedings and make sure he isn't taken advantage of by Grecko's lawyers. You agree to do so for \$60. At the conference, the judge asks you what you're doing there. You reply that you're there to represent Claudius at the hearing. The judge doesn't ask you any further questions on the topic.

Afterward, the court clerk, assuming from your appearance that you are counsel of record, serves you various court orders in Claudius's case. Sometimes, when a different assistant court clerk serves court orders in the case, those orders are served directly on Claudius. Yesterday, you receive in the mail a court notice that trial in Claudius's case is set for October 4, 2010.

Discuss any ethical considerations raised by the above facts.

**III.
(3 points)**

You are an attorney who has just entered private practice after serving many years as an assistant legislative counsel. So far your only clients have been friends and relatives and three criminal defendants who entered plea bargains. None of your "clients" have paid you yet.

The court has just appointed you to represent Malolo, a defendant in a criminal case. When you were a child, Malolo was a bully who continually beat up your older brother until he left for school in Hawaii and then beat you up until you left for college (and later law school) on the mainland.

Are you ethically bound to comply with the court appointment?

**IV.
(10 points)**

Sam needed major repairs on his boat, and arranged for the work to be done at Bill's Boat Repairs. Bill was the only mechanic at the shop and performed all the work on the boat himself. Sam didn't know that Bill had a partner in the business, Corky, who kept the accounting records and handled other administrative affairs for the shop. About four months after Bill finished the work, Sam's boat caught fire and sank at the dock due to mechanical problems. Luckily, Sam was the boat's only occupant and wasn't hurt.

In the FSM Supreme Court, Sam sued Bill personally for negligent repair of his boat, alleging in his timely-filed complaint that his boat would not have burned and sunk if the repairs had been done properly. Bill denied these allegations in his answer. During discovery, but after the statute of limitations for negligence actions had expired, Sam learned that Corky was a partner in the repair shop and filed an amended complaint naming Corky as a second defendant. Corky has been aware of the lawsuit since the original complaint was filed, and had followed the case closely.

Also, during discovery, Andy, a mechanic hired by Sam to examine the engine, stated in his deposition that while the engine most likely caught fire because of improper repairs by Bill, there was a small chance that the engine burned because Sam didn't maintain the engine according to factory specifications.

A. (6 points) if Sam brings a motion for judgment on the pleadings against Bill and attaches Andy's deposition transcript in support of his motion, is Sam likely to prevail? Discuss and explain your answer and include an analysis of the court's likely ruling, and its action in response to Sam's inclusion of Andy's deposition transcript.

B. (4 points) If Corky files a motion to dismiss the case against her solely on the ground that the amended complaint naming her as a defendant was filed after the statute of limits expired, is Corky likely to prevail? Discuss and explain your answer.

V.
(14 points)

Hawk was driving a car accompanied by his wife, Wilma, and their ten-year old daughter, Darla. He approached an intersection from one direction just as Carrie approached the same intersection from a cross street. As he entered the intersection, Hawk did not stop since the stop sign in his lane was missing, having been knocked down several months earlier. The state Department of Public Works had received numerous complaints about the missing stop sign, but due to budget cutbacks, had not yet replaced it. Carrie, who was lighting a cigarette, failed to see the stop sign for her lane of traffic and also did not stop.

The cars collided, and Hawk and Wilma were both seriously injured. Darla, although not injured from the collision, became violently ill and collapsed as a result of seeing the injuries to her parents. They were all rushed to the hospital where Wilma, in great pain, was given a commonly-used prescription pain medicine by Bones, the admitting physician. Bones did not tell Wilma that a possible, though remote, side effect of the medicine was to cause brain damage. Bones knew of the possible side effect from information he had received from Drugco, the medicine's manufacturer. Wilma was not aware of it. As a result of taking the medicine, Wilma sustained brain damage and is now totally disabled. Hawk suffered great pain from his injuries and died a week after the accident. Ever since the accident, Darla has experienced recurrent and severe depression.

What are the rights of the parties?

**VI.
(4 points)**

Able, Baker, and Charlie are accused by information of assault and battery of William. Each defendant is represented by his own counsel.

After arrest, Baker gave a statement to the police concerning his involvement and the involvement of Able and Charlie in the assault. Baker did not knowingly and intelligently waive his right to remain silent before he gave his confession.

Before trial Baker enters into a plea agreement with the government. Part of the agreement obligates Baker to testify fully and truthfully at the trial of the two remaining defendants.

As Baker begins his testimony as a witness at the trial, counsel for the defendants object on the ground that Baker's FSM constitutional rights were violated.

Discuss.

**VII.
(9 points)**

The following cases were removed from the state court in which they were filed to the FSM Supreme Court trial division by the defendants in each case.

In each case, the plaintiff has filed a motion in the FSM Supreme Court to remand the case to state court on the ground that it should not have been removed. How should the FSM Supreme Court rule on each motion to remand and why?

A. (3 points) A case originally filed in Kosrae State Court in which Tosie, a Kosrae citizen, sued Koship, Inc., a company incorporated in Kosrae and wholly owned by two Kosrae citizens, for breaching their contract to transport his tangerine crop from Kosrae to Pohnpei on the company's vessel. Tosie's tangerine crop was lost overboard during a storm on the trip from Kosrae to Pohnpei.

B. (3 points) A case originally filed in Pohnpei Supreme Court in which Chen, a Taiwan citizen and Pohnpei resident, sued Kim, a Korean citizen and Guam resident, for breach of his employment contract. Kim had hired Chen to do design work for a building it was going to construct in Kolonia.

C. (3 points) A case originally filed in Yap State Court in which Darius sued the Yap campus of the College of Micronesia for wrongful termination from his teaching position.

**VIII.
(15 points)**

Pluto, a resident of Palau, brought a medical malpractice action in the FSM Supreme Court in Pohnpei against two Pohnpei doctors, Dr. A and Dr. B. Dr. A, represented by counsel, answered Pluto's complaint and noticed Pluto's deposition for Pohnpei. Pluto refused to travel to Pohnpei, claiming he did not have the money to travel to Pohnpei and that his health prevented him from doing so even if he had the money.

A. (3 points) Dr. A's lawyer obtained a court order requiring Pluto to be examined by a physician in Palau. The examining physician forwarded his report to Dr. A's counsel, who refused to provide Pluto's lawyer despite repeated requests to do so. Pluto's lawyer then asked the court to order Dr. A to give Pluto a copy. How should the court rule and why?

B. (3 points) Pluto's lawyer noticed Dr. A's deposition, including a notation that the deposition was to be video-taped. On the day of Dr. A's deposition, Dr. A's lawyer objected to the video-taping and refused to allow the deposition to proceed. Pluto's lawyer refused to proceed with the deposition without video-taping and moved to obtain the costs in scheduling and canceling the deposition. How should the court rule and why?

C. (3 points) Dr. B answered the complaint but failed to respond to Pluto's interrogatories. Pluto's lawyer sent Dr. B's lawyer a copy of Pluto's motion for the entry of a default and a default judgment. Dr. B's lawyer did not file a response to the motion, and a default was entered against Dr. B. Twenty days later, Dr. B's lawyer moved to remove the default. How should the court rule and why?

D. (3 points) Pluto's lawyer requested copies of Pluto's surgical x-rays, some of which Dr. A claimed to have misfiled. After Dr. A's lawyer submitted Dr. A's written response to Pluto's request for the x-rays, the missing films were located but not given to Pluto's lawyer. Some weeks later, Pluto's lawyer, having learned that the missing x-rays had been found, filed a motion requesting payment of counsel fees and expenses as well as production of the x-rays. How should the court rule and why?

E. (3 points) after several more attempts to get Pluto to appear in Pohnpei for his deposition, Dr. A moved to dismiss Pluto's complaint based on Pluto's failure to appear at his deposition. How should the court rule and why?

**IX.
(9 points)**

Defendant Attila was charged with a felony in state court. The strongest evidence against him was a typewritten confession with his signature.

Attila timely moved for suppression of the confession on the grounds that it had been coerced from him while he was drunk, and that he had been forced to sign it, unaware of its contents, before the police officers would allow him to get some sleep. It is undisputed that when Attila was arrested that he was drunk and that he had not slept in over 24 hours, and that he had not signed the confession until six hours after he was arrested.

The trial court denied the motion. Attila was convicted after a trial in which the confession was the key piece of evidence. Attila appealed to the state court's appellate division which affirmed his conviction. Attila then appealed to the FSM Supreme Court appellate division. The state constitution contains a provision prohibiting appeals to the FSM Supreme Court from the state courts.

Will the FSM Supreme Court hear the appeal? What issues will the FSM Supreme Court consider if it hears the appeal? What is the likely result and why?

**X.
(9 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.

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?