

**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 7, 2014**

**ADMINISTERED IN CHUUK AND POHNPEI**

**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 TO CONSIDER THE QUESTIONS AND ISSUES PRESENTED AND TO PERMIT AN OPPORTUNITY TO FRAME YOUR ANALYSIS. BEFORE STARTING TO WRITE, READ 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.                  | 10            |
| II.                 | 5             |
| III.                | 4             |
| IV.                 | 4             |
| V.                  | 7             |
| VI.                 | 15            |
| VII.                | 9             |
| VIII.               | 3             |
| IX.                 | 12            |
| X.                  | 14            |
| Xi.                 | 9             |
| XII.                | <u>8</u>      |
| TOTAL               | 100           |

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

**GOOD LUCK.**

## Ethics

### I. (10 points)

After investigation into the sales practices of William Lowman, a purveyor of a reptile-based weight loss cream, the state attorney general's office concluded that Lowman's sales activities violate the state's consumer fraud law. Lowman is so informed and he was advised that if the matter wasn't settled promptly, he would face proceedings in which the state will seek civil penalties of \$25,000.

Lowman engaged legal counsel to represent him, and Attorney Newby, recently admitted to the FSM bar, discussed settlement options with Lowman. In the course of those discussions, Lowman directed Newby to get rid of the case, quickly and cheaply. "There is no way I can afford the \$25,000 they're talking about," Lowman says. Newby commented, "No promises, but I think we ought to be able to get rid of this for under \$7,000. I went to law school with the Assistant Attorney General and he owes me one." Lowman responded, "Just get it done. I have a business to run and have no time for this stuff."

Newby then contacted the Assistant Attorney General to discuss settlement. They negotiated settlement terms under which Lowman must cease and desist from selling the product, offer refunds totaling \$3,500 to all state residents who have bought the reptile-based weight loss cream, and pay \$2,500 to the state to pay the costs of its investigation. Newby says, "Done deal. Send me the paperworks."

The settlement papers required Lowman to acknowledge that his sale of reptile-based weight loss cream constituted consumer fraud, to cease and desist selling the product, to refund his customers, and to pay the Attorney General's investigation costs, all as discussed with attorney Newby. Newby presented the settlement papers to Lowman who refused to sign and asked, "Why should I talk to you? Looks to me like you're working for the state." After Newby assured Lowman that he was in fact his counsel and that their conversation was covered by attorney-client privilege, Lowman told Newby the settlement was unsatisfactory — it costs too much and it eliminates a lucrative product line from his business. Lowman became upset when Newby told him that he has already agreed to the settlement on his behalf. Lowman then signed the settlement in a huff, said he didn't care what the lawyers say he's done nothing wrong and he's selling a good product. Nor, he said, will he pay "one cent to the state or to you, you crummy lawyer." He left, telling Newby he was fired and that he'll sue Newby if Newby said anything to anyone about his plans to continue selling the product. Newby forwarded the signed settlement to the Assistant Attorney General.

Newby now comes to you for advice. Advise him about whether and of his conduct violates the FSM Model Rules of Professional Responsibility.

## **Evidence**

### **II. (5 points)**

Mary Bates, an administrative assistant, wrote a telephone message for Mr. Gains, her boss at XYZ Company, and put her initials and the date on it.

It read: "Joan King called and said her husband, Ned King, was going to Guam." The Kings are not employees or customers of XYZ Company.

Is this document likely to be admitted in the FSM Supreme Court to prove that Ned was going to Guam? Give your reasons for your conclusion.

## **Evidence**

### **III.**

**(4 points)**

**Congratulations! You are now a member of the FSM bar! Your very first client, Fred, was injured in an automobile collision with another vehicle at an intersection of two roads in your state..**

**At the trial of Fred's negligence action in the FSM Supreme Court against the driver of the other vehicle, you want to introduce, for use as demonstrative evidence, photographs of the scene of the accident, which you took six months after the collision.**

**Discuss the requirements, including the foundation, which must be satisfied for admission of the photographs.**

## **Evidence**

### **IV. (4 points)**

Doleful Dan is on trial for aggravated robbery. Two witnesses for Dan have testified that he has a reputation in the community for being a peaceful, honest person. Dan then took the witness stand and denied any involvement in the crime.

On cross-examination of Dan, the prosecutor asked Dan about his participation in a bar fight and a shoplifting incident, both of which had occurred within the past year. Dan's attorney objected to these questions claiming that the questions called for improper character evidence. In response, the prosecutor stated that Dan's two witnesses shouldn't have been allowed to testify as they did, but since they did, the defense had opened the door to Dan's character. Thus, the prosecutor argued, he was now allowed to rebut their evidence by inquiring into specific instances of conduct.

Discuss the prosecutor's claims about the admissibility of character evidence under the FSM Rules of Evidence.

## **Evidence**

V.

(7 points)

Dangerous Dan McGrew is on trial for the murder of Cameron Cole, McGrew's arch-nemesis and the primary sales competitor to McGrew's marijuana business. According to the prosecutor's theory, McGrew opened fire on Cole as he left a local pizza place. McGrew intends to present an alibi defense that he was cha-cha dancing at a club with his longtime girlfriend, Kelli Kolada.

The trial prosecutor, Blaze Starr, wants to present a couple pieces of evidence in the trial against McGrew:

A) (4 points) during the preliminary plea discussions with the prosecution, McGrew offered to turn over the murder weapon in exchange for a reduced charge; and

B) (3 points) the prosecutor plans to call FSM Supreme Court Associate Justice Fred, who overheard McGrew coaching Kelli Kolada in the courthouse hallway about his alibi defense concerning their evening of cha-cha dancing.

Using the FSM Rules of Evidence, assess the admissibility of the prosecutor's evidence. Explain your answer.

## General

### VI. (15 points)

You are a new public defender, assigned to represent Harry Hothead, who has been charged with murder in connection with the shooting death of his neighbor, Nora Needles. Harry's past criminal record consists of a misdemeanor conviction for shoplifting and several driving related offenses. He has been living in the ground floor apartment of a small, multi-unit apartment building for several years, holding down a job at a local bakery (requiring him to rise at 4 a.m. and work until 2 p.m.) and staying out of trouble. His after-work routine typically involved going to a gym, preparing and eating dinner, watching the news on cable-TV, and then going to bed around 8 p.m.

Three weeks ago Friday, a new neighbor, Nora Needles, moved in to the apartment directly above his. Problems began almost immediately. The first Monday following Nora's arrival, Harry was awakened at midnight by the sound of Nora's motorcycle pulling into the driveway, followed by running feet on the stairs, and then loud music from Nora's DVD player. Harry finally got out of bed, went upstairs, and knocked on Nora's door. Nora opened the door and immediately Harry could smell alcohol on her breath. Nora took one look at Harry, laughed, and before Harry could speak, slammed the door in his face. The music was then turned down. Too tired to deal with the situation further, Harry went back to bed.

The next few nights, the pattern repeated itself — Harry was repeatedly awakened by noise from Nora's apartment. After a week, Harry was exhausted and his nerves were beginning to fray. So before going to bed, he left a note on Nora's door asking again that she keep the noise down when she returned home. At 2 a.m., Harry awoke to the sound of Nora repeatedly revving her motorcycle engine outside his window with its headlight shining directly into his bedroom.

Harry had had enough. He retrieved a .38 handgun from his closet shelf and went outside to confront Nora. As he approached her she continued to rev her bike. Harry yelled for her to stop and then raised the gun firing a single shot toward the motorcycle. The bullet struck Nora in the chest, killing her. Dazed and frightened, Harry retreated into his apartment. Other neighbors called the police.

The police arrived and determined from the neighbors that Harry was the likely shooter so they surrounded his building and called his apartment. When Harry picked up the phone, they said, "We heard you had some trouble. Is anyone else hurt?" Harry responded, "She was getting on my nerves. I finally had to shut her up." He then hung up. After a one-hour standoff, the police talked him out of the building, put him in handcuffs and into the back of a police vehicle for transportation to the police station.

### VI. (continued)

During the drive, the officers chatted about the weather and the upcoming Micro Games while Harry remained silent. Finally, as they approached the station, Harry said, "You know, I really didn't mean to kill her. I just wanted to put a scare in her." The officers then told Harry to keep quiet about it until they got him inside. Inside the station, Harry was searched, booked, and then taken into an interview room and given his rights. He said, "Well, I already told you some of this anyway, so I might as well talk to you now," and then waived his rights, signed the advice of rights and consent form, and gave a complete statement.

Harry is charged with murder. Now you must defend him. To prepare for trial, please evaluate the likelihood of success of a pretrial motion to suppress each of Harry's statements to the police:

## **General**

- a. (5 points) the statement on the telephone;
- b. (5 points) the statement in the police cruiser; and
- c. (5 points) the statement at the police station.

**VII.  
(9 points)**

**Define and discuss the requirements of the following terms in FSM law:**

- A. (3 points) case or dispute**
- B. (3 points) standing**
- C. (3 points) personal jurisdiction**

**VIII.**  
**(3 points)**

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

**A municipal ordinance imposing annual business license fees ranging from \$100 to \$2,000 depending on the business on local businesses as follows:**

- A. Lawyers: \$1,000 plus 5% of any fees earned suing the municipal or state governments;**
- B. Travel agencies: \$2,000; and**
- C. Companies that import and setup solar power systems: \$500.**

## General

### IX.

(12 points)

Sam Seller is an accountant whose hobby is cooking. He likes to spend his Friday evenings preparing a batch of tamales, then selling them at the public market on Saturday. Bob Buyer tried one of his tamales and liked it, and asked Sam if he would like to prepare some dishes for the following Friday for the annual banquet of the local Revelations Church, a denomination that forbids eating pork. The theme for this year's banquet is China so Bob asked Sam if he could prepare 400 spring rolls. Sam agreed, and says that he could do it for \$2 per spring roll. As a reminder to himself, he writes on a brown paper bag, "400 spring rolls @ \$2.00, Bob's Revelations Church, Friday July 11, 2014." He asks Bob to write his name and phone number underneath, which Bob does.

On Friday evening, Sam appears at the meeting hall with the spring rolls. Bob tries one out, and discovers to his horror that it contains pork. Sam tells him, "Of course it has pork! Everyone knows that spring rolls contain pork!" Bob refuses to take the spring rolls, pointing out what he considers to be obvious — that members of the Revelations Church don't eat pork, and he refuses to pay Sam. He calls a local restaurant and learns that an order of 400 spring rolls (without pork), to be delivered within an hour and a half, will cost him \$3 per spring roll. He makes the order and pays the extra cost. Upon learning how much over budget the banquet has gone, the governing board of the church removes Bob as president, much to his embarrassment. In the meantime, Sam tries to sell the spring rolls at the public market, but because they are not fresh, he has to sell them for only \$1 a piece.

Sam sues Bob for \$400, the amount of money that he lost as a result of Bob's refusal to accept the spring rolls. Bob counterclaims for \$400, the amount of money that he had to spend as a result of Sam providing spring rolls with pork. He also sues for his lost income as president of his church.

For each question, please state the rule of law and apply the rule to the facts to determine the answer.

- A. (4 points) Did Bob and Sam have an enforceable contract for the sale of the spring rolls?
- B. (5 points) Assume that Bob has rightfully rejected the spring rolls. What are Bob's remedies and damages?
- C. (3 points) Did Sam breach any warranties by providing spring rolls containing pork?

## General

X.

(14 points)

Pete was checking out "Gifts Galore" on the main road in the state center. After perusing the offerings on the first floor, he climbed the rickety stairs to the second floor of the shop. When he got there, he ran into Debra Owner, a former high school friend with whom he'd had a falling out years ago. Debra was the sole owner of the unincorporated business and the building in which it was housed. Their conversation was friendly at first, but as they began to rehash old conflicts, it became more heated. Eventually, Debra asked Pete to leave her store.

Pete refused. "It's a free country," he said. He stood his ground after she repeated her request several times. Pete finally turned to leave a couple of minutes later, after Debra picked up the phone to call the police. As he bounded down the stairs toward the exit, clad in zoris, Pete looked back at Debra and offered a few parting words. At that moment, he lost his balance. He reached toward the side of the stairwell as he tumbled but there was no bannister for him to use to catch himself. Pete fell down seven steps, landing hard at the base of the stairs. He cut his leg in the fall, and began losing a lot of blood.

Debra was still feeling angry at Pete. Though she was a trained paramedic, she didn't help Pete after he fell. Instead, she called an ambulance and then stormed away in anger. When the ambulance arrived, Pete was taken to the hospital for treatment.

Pete's leg healed relatively quickly. However, because he had lost a lot of blood, he required a blood transfusion. Due to a defect in the local blood supply, Pete developed a rare, blood-borne illness that will affect his health significantly in the future.

After the incident, Pete had a building contractor look at the stairwell where he fell. He discovered that some of the treads near the top of the stairs were loose and too narrow and of varying sizes. He's considering suing Debra for damages, including those relating to the blood-borne illness. He has retained your services.

Your assignment is to analyze the potential legal and factual bases for any claims that Debra is liable for damages relating to Pete's injuries, including his illness. Anticipate and analyze Debra's responses and potential defenses and offer counter-arguments to those responses and defenses. (You are not asked to consider the liability of any other party.)

## General

### XI. (9 points)

In the three following cases, the defendants removed the case to the FSM Supreme Court trial division from the state court in which it was originally filed. In each case, the plaintiff has filed a motion in the FSM Supreme Court, asking that the case be remanded to the state court in which it was filed because it had been improvidently removed — that is, that the case should not have been removed in the first place because the FSM Supreme Court does not have subject-matter jurisdiction over it. How should the FSM Supreme Court rule on each motion to remand and why?

A. (3 points) Case removed from Kosrae State Court in which Kosrae citizen plaintiff sued for breach of contract a company incorporated in Kosrae but owned by a U.S. citizen from Hawaii and a Kosraean.

B. (3 points) A negligence suit arising from a traffic accident filed in the State Court of Yap by a Japanese citizen plaintiff against a Philippine citizen defendant.

C. (3 points) An action based alternatively in breach of contract or negligence filed in the Chuuk State Supreme Court alleging that the defendant is liable for losing the plaintiff's goods overboard from the defendant's vessel that the plaintiff had contracted to transport his goods from Weno, the state center of Chuuk, to Nama Island in the Mortlocks, an outer island in the State of Chuuk.

**XII.**  
**(8 points)**

On May 6, 2014, Phobos filed suit against Deimos on several causes of action. Service of process was effected on Deimos on the same day. On May 27, 2014, Deimos filed a motion to dismiss Phobos's suit because her complaint failed to state a claim on which the court could grant relief since the complaint's factual allegations did not cover all the elements of the causes of actions that she alleged. Deimos did not file an answer.

On June 16, 2014, Phobos filed and served an amended complaint on Deimos. The amended complaint's factual allegations did cover all of the elements of the causes of action that Phobos asserted.

On June 30, 2014, Deimos moved to strike the amended complaint because it was filed without leave of court and further asserted that his motion to dismiss should be granted because it had never been opposed.

Should the court grant Deimos's motion to strike and his unopposed motion to dismiss? Explain.