

**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 6, 2015

ADMINISTERED IN CHUUK, KOSRAE, AND POHNPEI

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

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INSTRUCTIONS

YOU HAVE FIVE (5) HOURS TO FINISH THIS TEST. THIS SHOULD PROVIDE AMPLE TIME TO CONSIDER THE QUESTIONS AND ISSUES PRESENTED AND TO ALLOW AN OPPORTUNITY TO FRAME YOUR ANALYSIS. BEFORE YOU START WRITING, 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 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.	13
III.	3
IV.	4
V.	12
VI.	10
VII.	11
VIII.	9
IX.	6
X.	11
XI.	<u>11</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 QUESTIONS ARE II-IV. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

GOOD LUCK.

Ethics

I.

(10 points)

Jan is a woman who was injured in a collision with a truck. She suffered only minor physical injuries when the truck grazed her car after running a stop sign. She, however, claims that she has been completely disabled by mental trauma caused by the accident and is no longer able to work or engage in other activities.

A. Brad, Esq. has significant experience in filing infliction of emotional distress cases. After reading about Jan in the newspaper, he sends her a copy of an article about himself and his emotional distress cases with a cover letter suggesting that she may want to consult him. The letter, the envelope, and the enclosed article are all clearly marked "advertising material" and were also sent to about 20 other people. The letter does not mention a fee arrangement.

B. Jan is impressed. She visits his office. After discussing her case with her for about an hour, Brad raises the issue of his fee. He tells her that he will take her case on a contingent fee basis, which means that she will not owe him a fee unless they recover money from the defendant. He also tells her that his fee will be 45% of any recovery, whether through a settlement or a court judgment. Brad explains that other FSM lawyers usually charge 30-35% contingency, but he tells her his reasons for charging more. Jan agrees to his 45% fee and Brad provides a written fee agreement, which she signs.

C. After their meeting, Brad calls Jan and tells her that she needs to visit a mental health professional who will serve as an expert witness and that she needs to pay the mental health professional's fee. Jan begins sobbing on the phone. She tells Brad that she has gone through all her savings since the accident, that she is broke, and that she has no more credit. Brad tells her not to worry. He can advance the costs of the fee and any other litigation expense and that if they are successful in obtaining a recovery from the defendant, he'll deduct the expenses from those funds and that if they're unsuccessful, she won't owe him a dime.

D. After filing the lawsuit, Brad receives a call from Jan's mother. She reports that the defendant's lawyer left her a voice-mail, saying that he wanted to speak to the mother about Jan's condition. The mother says she wouldn't mind talking to the lawyer, but that she wants to do what's best for her daughter. She says that, in her opinion, Jan's condition is improving a great deal recently. Brad asks Jan's mother not to speak to the defendant's lawyer.

Jan's case goes badly and she ultimately agrees to settle for \$10,000. After Brad deducts his 45% fee and all of the expenses, Jan receives only \$4,100. She feels victimized by Brad and files an ethics complaint against him. The ethics investigation reveals the facts above. Analyze whether Brad violated any ethical rules with respect to the facts in paragraphs A through D.

Evidence

II. (13 points)

On April 15, 2015, at 2 p.m. along the waterfront, Vick was hit from behind and temporarily knocked unconscious. Upon regaining consciousness moments later, Vick discovered his bag containing money and valuables had been stolen.

Later that day, Police Officer, while investigating the crime, interviewed Wila. Wila told Police Officer that she had seen the robbery and recognized Defendant, a resident of the area, as the perpetrator. She also told Police Officer that Defendant had a reputation in the area for violence, and that everyone was afraid of him, and that she shouldn't be talking to the police at all. Nevertheless, Wila agreed to accompany Police Officer to police headquarters, where she looked at photographs of suspects and signed a written statement which read,

I was walking near the waterfront on April 15, 2015, at 2 p.m. when I saw Defendant. I saw Defendant attack Vick and then run away with Vick's bag. I know Defendant from the area and recognized Defendant as suspect number 2 in the 8-person photographic display shown to me by Police Officer.

At Defendant's trial, Prosecutor called Wila to the stand. In response to Prosecutor's questions, Wila testified that she had no memory of the incident. She stated that she did not remember seeing anyone near the waterfront at the time of the alleged robbery. When Prosecutor asked Wila whether her sudden memory loss was because she was afraid of Defendant. Wila replied that she had never seen Defendant before in her life and was not afraid of him because she did not know him. When Wila was asked whether she had told Police Officer that she saw Defendant rob Vick, she denied ever making that statement.

Immediately after this testimony, Prosecutor offered Wila's signed statement into evidence to impeach Wila's credibility and to prove that Defendant was at the waterfront and attacked Vick. An authenticated copy of Wila's statement had been provided to Defense Counsel earlier. Defense Counsel raised no constitutional challenges to Wila's identification of Defendant at police headquarters. However, Defense Counsel objected to Prosecutor questioning Wila about the statement and to admission of the copy of the statement. The judge sustained both objections.

After the prosecution rested, Defense Counsel called Buddy to the stand. Buddy testified that he had never met Defendant. He also testified that some of his friends had recently met Defendant a few times, and that they think that Defendant is an honest and gentle person who would never hurt anyone. Prosecutor objected to this testimony. The judge sustained the objection and excluded Buddy's testimony.

The rules of evidence in this jurisdiction are identical to the FSM Rules of Evidence.

A. (5 points) Should the judge have permitted Prosecutor to question Wila about Wila's written statement and admitted the copy to impeach Wila's credibility? Explain.

B. (5 points) Should the judge have admitted Wila's written statement to prove that Defendant was at the waterfront and attacked Vick? Explain.

C. (3 points) Should the judge have admitted Buddy's testimony to prove Defendant's character for honesty and gentleness? Explain.

II.
(Cont.)

Evidence

Evidence

III. (4 points)

During the trial on a breach of construction contract action, the plaintiff offers a witness who testifies about the amount of work that was contracted. It included an area that had to be filled with landfill. The witness testifies that the area that had to be filled to the height of six feet was about 110 feet long by 25 feet wide. He says that he knows that it was this size because he had measured it by pacing it off, and in the past when he had paced off distances it had always proved to be accurate within 5% when later measured with a tape measure. Defense attorney immediately says, "Objection! Your honor, Best Evidence rule! The best evidence would have been for the witness to use a measuring tape, not to pace it off."

A. (3 points) Discuss.

The judge overrules the objection. The defense attorney states, "Note my exception."

B. (1 point) Discuss.

Evidence

IV. (3 points)

Able, Baker, and Charlie are accused by information of assault and battery of William. Each defendant is represented by his own counsel. Before trial Baker enters into a plea agreement with the government. One part of the agreement obligates Baker to testify fully and truthfully at the trial of the two remaining defendants.

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

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

Discuss the objection.

General

V. (12 points)

In response to a growing plague of graffiti vandalism in the downtown tourist area, the Port Town Municipal Council has just passed a new ordinance as part of its graffiti control program. The new ordinance provides:

Section 101: It shall be unlawful for any person holding a retail business license to sell paint in spray cans to any person.

Section 102: It shall be unlawful for any person to possess a spray paint container except within the person's own home.

Vandalism and trespass are already crimes, but criminal prosecution has not proven effective at curtailing the spread of graffiti, which impacts tourism and costs the municipality too much money to clean. Graffiti has become a serious problem in Port Town and spray paint is the most popular graffiti tool.

Two different lawsuits have been filed in the FSM Supreme Court seeking to overturn the new ordinance. First, a group of Port Town businesses that have sold spray paint have challenged Section 101 prohibiting the sale of spray paint in Port Town. There are no spray paint manufacturers in the FSM.

Henry Knox, a prominent Port Town graffiti artist, filed the second legal challenge. Knox has become famous for spray painting fish on downtown buildings. In the last few years he has been commissioned to decorate a number of Port Town buildings with his signature spray-painted fish. He is afraid enforcement of Section 102 will deprive him of his art and livelihood because spray cans are unique to his painting style and there are no adequate substitutes.

A. (6 points) What FSM constitutional arguments should the Port Town spray paint sellers raise in their challenge to Section 101? Discuss.

B. (6 points) How should the FSM constitutional arguments raised by Knox in his challenge to Section 102 differ from the Port Town spray paint sellers' arguments? Discuss.

General

VI. (10 points)

Phobos sued Deimos in the FSM Supreme Court. On January 31, 2014, Phobos obtained a final judgment against Deimos for \$24,100. Deimos has filed a appeal of that judgment but has neither posted a security or supersedeas bond nor sought to obtain a stay. Through his own investigation, Phobos has learned that Deimos owns (1) Thistle Dew, a home in the state center, worth \$15,000, free and clear; (2) an 18-foot Yamaha outboard motor boat, worth \$3,000, free and clear; (3) and an escrow account at the Bank of the FSM in Deimos's name into which someone is making monthly payments on some property Deimos sold several years ago.

Phobos has come to you for advice on how to collect his judgment against Deimos. Advise Phobos on the following questions:

A. (5 points) Of the above-mentioned assets of Deimos, which are subject to execution? Explain and support your answer.

B. (3 points) Phobos is not certain his investigation has uncovered all of Deimos's assets. What legal procedures are available to Phobos to locate additional assets?

C. (2 points) What effect if any, does the fact that Deimos has appealed the judgment have on your advice to Phobos? Briefly explain and support your answer.

General

VII. (11 points)

Three weeks ago, Bob was charged with sexual assault. He was released on bail. Last week, the police learned that Bob had threatened Alice, a witness to the sexual assault. Officer Smith, a long-time friend of Bob's, was responsible for the investigating these threats.

Smith mounted a small hidden tape recorder in his patrol car, and then drove to Bob's workplace. Smith, who was wearing his police uniform, found Bob outside, cleaning the curb next to the sidewalk. Smith told Bob, "Come over and sit in my car."

Bob sat down next to Smith in the front seat of Smith's patrol car. Smith told Bob, "I know you've threatened Alice. I think you need to talk to somebody about what's going on. You and I go back a long way. Trust me, nothing you tell me is going to be used against you at your rape trial."

In response, Bob confessed that he had threatened Alice to discourage her from testifying against him. Smith immediately arrested Bob for "obstructing administration of law." An information was later filed against Bob charging him with this crime.

You have been appointed Bob's defense counsel for the "obstructing administration of law" prosecution. Identify and discuss potential bases for a motion to suppress the tape recording of Bob's confession.

**VIII.
(9 points)**

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

- A. (3 points) interpleader**
- B. (3 points) impleader**
- C. (3 points) nolo contendere**

General

IX.

(6 points)

In the two 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) A suit in the State Court of Yap filed by the Yap state government seeking, under Yap state law, the civil forfeiture of a foreign fishing vessel found fishing within twelve miles of the fringing reef around the main island of Yap.

B. (3 points) A negligence suit arising from a traffic accident filed in the Pohnpei Supreme Court by a Pohnpei citizen plaintiff against the other vehicle's Pohnpei citizen driver and that vehicle's owner, a corporation incorporated in Pohnpei with its only place of business located on Pohnpei but owned by Philippine citizens.

X.
(11 points)

Father's adult child, Son, was seriously injured in a car accident. Doctor, a licensed physician, who happened by the scene of the accident, found Son unconscious, treated him at the scene, and took him to his hospital. A few days later, Father came to the hospital and told Doctor, "If you continue treating Son, I'll pay all your fees, those for your services already rendered and those you will deliver to Son in the future." Doctor thanked Father and continued to treat Son until he died a few days later, never having regained consciousness.

The reasonable value of Doctor's services before his conversation with father was \$2,000; the reasonable value of services after the conversation and before Son's death was \$1,000. Father refused to pay for any of Doctor's services.

Discuss:

Any theories that Doctor may have to recover for his services against Son's estate and Father; the defenses Son's estate and Father may assert against Doctor's claim.

XI.
(11 points)

Oscar operates a rock quarry on land in Pohnpei. Oscar has conducted blasting with explosives at various times as part of its quarrying operations. Plaintiff Malaspina owns and occasionally occupies one third of a parcel that is adjacent to Oscar's rock quarry. She has a three-bedroom concrete house on that part of the parcel close to the quarry site.

Malaspina claims that vibrations from Oscar's blasting and quarrying operations have caused damage to her, to her house, and to her land. Specifically, she claims that Oscar's blasting has: (1) caused structural and other damage to her home; (2) prevented her from using or accessing her house or land when blasting is occurring; and (3) caused her emotional distress by dislodging rocks close to her house and making her fear for her family's safety and the safety of her home. Malaspina also claim that Oscar's quarrying activities have resulted in the creation of a cliff line at the boundary of her property, removing lateral support and leaving her land susceptible to erosion. Finally, Malaspina contends that she was never fully compensated by Oscar for Oscar's construction of an access road over part of her land, or for Oscar's use of part of her land for a turnaround area.

Based on Malaspina's allegations, describe what causes of actions she might have against Oscar and what elements would she have to prove.