

**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 4, 2016

ADMINISTERED IN POHNPEI

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

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INSTRUCTIONS

YOU HAVE FIVE 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 YOUR ANSWER'S ORGANIZATION. 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.	20
III.	8
IV.	9
V.	17
VI.	6
VII.	6
VIII.	4
IX.	9
X.	11
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 QUESTION IS I, AND THE EVIDENCE QUESTION IS II. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

GOOD LUCK.

Ethics

I. (10 points)

After being admitted to the FSM bar, Ivan Hunt worked for many years in a law office where the other two attorneys defended the local hospital's doctors in medical malpractice cases. Although he did not personally work on the cases, Ivan occasionally reviewed the other attorneys' memorandums and briefs and was sometimes consulted informally about strategy. Ivan eventually left the firm and started his own practice which he incorporated as a professional corporation using the name "I. Hunt & Slaughter, P.C."

Ivan was interested in plaintiffs' medical malpractice cases and mentioned that interest to his friend, Bill, a physical therapist at the hospital. Thereafter, from time to time, Bill would refer patients to Ivan for representation in connection with claims against the hospital and Ivan in gratitude for the referrals always sent Bill a small gift and a thank-you note for each referral. Ivan also handled collection matters for Bill at no charge.

Bill occasionally gave Ivan the names and addresses of patients who had suffered serious complications during their hospital stay. Ivan would then write a tasteful letter to those patients wishing them a speedy recovery and introducing himself. Ivan would state that he specialized in medical malpractice and that he had never lost a case. He would also offer to handle any case at no cost whatsoever to the client unless a recovery was obtained. Finally, Ivan would add that if the patient was having difficulty paying Bill's physical therapy fees, he would be willing to advance the cost of their physical therapy.

Ivan had also worked out an arrangement with Bill where Bill would not charge Ivan's clients for physical therapy until the end of the case and Bill would then take 110% of the value of his services rendered if a recovery was obtained and nothing if there was no recovery. Ivan also routinely had Bill testify at trial as an expert in order to support the patient's damage claims.

Discuss the ethical issues raised.

Evidence

II. (20 points)

Defendant is charged with the murder of his wife. Defendant originally told police officers at the scene that his wife had committed suicide. A post-mortem examination revealed that the victim had been shot twice. One shot was from the front from a distance of 16 to 18 inches and the other one was from the back at close range. The police have determined that the weapon was a rifle owned by the defendant.

Two days after the shooting, Defendant gave a formal statement to the police in his lawyer's presence and maintained that his wife had committed suicide.

Defendant's prior record includes a conviction in 2007 for False Information to the Police, a misdemeanor.

The police have learned that the victim and the defendant had numerous marital problems. The victim had told a friend a few days before the shooting that she was planning on leaving the defendant, was looking for a place to stay, and was considering enrolling in the College of Micronesia to finish her degree. Her friend also indicated that the victim was emotionally stable and would not have committed suicide because she loved her children and would not have left them.

The victim's mother told police officers that the victim told her a week before the shooting that the defendant had threatened to kill her if she ever left him.

The prosecutor files a pretrial motion to admit the following:

- A. (5 points) Evidence of the defendant's prior conviction.
- B. (6 points) The friend's statement that the victim was stable and would not commit suicide; that the victim was planning on leaving the defendant; that the victim was looking for a place to stay; and that the victim was considering going back to college.
- C. (9 points) Statement of the victim's mother that the victim told her that the defendant threatened to kill the victim if she ever left him.

Discuss each of these issues and how you would expect the judge to rule. Assume that the court the prosecution is in uses rules of evidence that are identical to the FSM Rules of Evidence.

General

III. (8 points)

Mark and Rex lived together in Mark's home. Mark provided Rex with room and board in exchange for Rex's help with household tasks. One night, Rex began to berate Mark, complaining that Mark did not pay him enough and that Mark did not appreciate him. Rex threatened to leave, and began calling Mark bad names. Other than telling Rex that he was free to leave, Mark ignored Rex's words. Eventually, Rex left the room and went outside.

After Rex left the room, Mark retrieved a handgun from his bedroom. He returned to the living room and hid the gun next to his leg in a chair. Shortly after, Rex returned and sat down on the sofa. Within minutes Rex began shouting that he was going to leave. Jane, a friend who was visiting, tried to calm Rex, but was unsuccessful. Rex shouted at Mark that he was "going to knock him out of that %\$#@!%\$#! chair." Rex then leaned forward as if to stand up. Mark pulled out his handgun and shot Rex. Rex died almost immediately.

Jane called the police and reported that a shooting had occurred. The state police responded and found Rex's body still on the sofa; Mark was in the living room sitting nearby. Paramedics arrived at Mark's house and tried to revive Rex. Officer Jonas moved Mark into the kitchen to give the paramedics more space. Mark asked to go back to the living room but Jonas refused as long as the paramedics were working. Jonas then asked Mark what had happened and Mark said, "He got what he deserved." A short time later, detectives arrived, handcuffed Mark, put him under arrest, and took him to the station where Detective Gray tried to interview him. The following exchange took place at the station:

Gray: What I'd like to do is, I'd like to find out what your side of the story is, so you can tell me. However, because you're under arrest, I want to read you these constitutional rights. Have you ever heard of them before?

Mark: Oh, Cripes.

Gray: Well you know, we all have a job to do. You know where I'm coming from?

Mark: Well, I'm not gonna answer anything.

Gray: You're not going to answer any questions at all?

Mark: It's my house. I'm not gonna be put in any position. The man lived with me and took good care of me, but nobody gives me crap. Crap comes down to crap. And that's it.

Assume you are Mark's defense attorney. What is the likelihood of successfully moving to suppress the statements made to Officer Jonas and to Detective Gray?

IV. (9 points)

John Buyer wanted to buy a fancy cabin cruiser for his sport fishing business on Pohnpei. He regularly takes foreign tourists out on fishing trips. Buyer sees an ad in his favorite recreational boating magazine:

Cruiser Express-deluxe 880 - immaculate condition, F.O.B. San Diego, Calif. Joe Seller, boat broker (619) 555-1234.

Buyer called Seller on March 15. After several phone conversations that day, they tentatively agreed to a price of \$105,000 for the boat. Seller agreed as part of the price to pay for delivery to Pohnpei by July 1. The parties did

General

not discuss the advertisement's "F.O.B. San Diego, Calif." term. The deal was contingent only on Buyer providing written intent to purchase by April 15. Buyer told Seller that he wanted to be sure he would have enough new customers to afford the boat.

Between March 15 and April 14, Buyer accepted reservations from a number of new customers. On April 15, he e-mailed the following message to Seller:

This will confirm my agreement to purchase the Cruiser Express-deluxe 880 for \$105,000, provided the boat is delivered to Pohnpei, FSM by July 1. After April 19, I will be out of touch in the outer islands until I return to Pohnpei on June 28 to pick up the boat.

On April 23, Seller e-mailed the following to Buyer's office on Pohnpei:

Seller confirms Buyer's agreement to purchase Cruiser Express-deluxe 880 for \$105,000, F.O.B. San Diego, Calif, with delivery to Pohnpei by July 1.

Buyer did not see the e-mail until he returned to Pohnpei on June 28. On April 24, Seller tendered the boat to a freight carrier for shipment to Pohnpei. Neither Buyer nor Seller made any provision for insuring the boat during transit nor had they discussed insuring the boat. On April 30, the boat was destroyed while in transit to Pohnpei. Assume that neither the freight carrier nor any third party has any liability for the loss.

Due to the loss, Buyer has refused to pay Seller for the boat. Seller's lawyer sent Buyer a demand letter threatening to sue Buyer in the FSM Supreme Court for the boat's \$105,000 agreed upon purchase price.

Buyer has come to you for advice and asks if he has to pay for the boat. Analyze all appropriate theories and defenses.

General

V. (17 points)

Anne, a Philippine citizen, owns and runs a sports shop in Kolonia. She sells and repairs bikes, skateboards, and hoverboards. Bob, a Kosrae citizen, owns and runs a repair and "handyman" business in Kolonia. Both Anne and Bob are Pohnpei residents.

In early 2015, Anne and Bob made two separate agreements. Under the first agreement, Bob promised to repair bikes for Anne's business during 2015 in exchange for \$3,000 to be paid at the end of the year. In the second agreement, Bob promised to provide general maintenance for Anne's business during 2015 for an advance payment of \$8,000 for all maintenance services.

There are two different versions of the maintenance agreement. The first version is a short, hand-written document that both parties signed on January 1, 2015. Anne and Bob signed the second version on January 10, 2015. It is a much longer form that was downloaded by Anne from the internet. The second version includes a provision in its long "boilerplate" that was not part of the first maintenance agreement: "The maintenance contractor shall bear no liability for any damages caused by delays in performance."

At the end of 2016, Anne refused to pay Bob for the bike repair work. Bob's attorney files suit in the FSM Supreme Court on Kosrae (where Bob's lawyer resides) for breach of the bike repair agreement. On February 10, 2016, Anne was served with a Summons, Complaint, Interrogatories, and Requests for Production of Documents.

The Interrogatories ask if Anne has ever been convicted of a crime or has had an extramarital affair, and they also ask for the opinions of all experts consulted on anything related to Anne's and Bob's business relationship. The Production of Documents request asks for all written documents related to the performance of the bicycle repair agreement and the maintenance contract signed January 1, 2015.

Anne tells her lawyer that the bike repair work was satisfactory, but the maintenance work was delayed. Anne claims she had to spend \$4,000 to replace an air-conditioning system because Bob did not maintain it on time. Anne says she never read the boilerplate in the January 10 contract, and that Bob had not paid any attention to that contract and that she had never given Bob a copy of that contract after they'd both signed it.

Anne's attorney consults an expert on the timing of Bob's maintenance work. The expert writes a report stating that the timing of the maintenance work probably had little to do with the air-conditioning system's failure. Anne's attorney consults a second expert who writes a report concluding that delays in Bob's maintenance work caused the need for the air-conditioning system's replacement and resulted in \$4,000

V. (cont.)

in replacement costs. Anne's attorney retains the second witness for trial.

A. (2 points) Describe and explain the deadlines for Anne to respond to the Complaint and the types of responses she might file.

B. (3 points) Describe and explain the affirmative defenses that Anne might have regarding the choice of court where the suit was filed and when and how such defense(s) should be raised.

C. (3 points) Describe and explain when and in what form Anne should make a claim against Bob alleging breach of the maintenance contract.

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- D. (3 points) Describe and explain any objection(s) Anne might make to the written interrogatories.
- E. (3 points) Describe and explain Anne's obligations to disclose her two experts' reports.
- F. (3 points) Describe and explain how Anne's attorney should react to Anne's instruction that the January 10 contract should not be provided.

VI.
(6 points)

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

- A. (2 points) exhaustion of remedies
- C. (2 points) case or dispute
- D. (2 points) standing

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VII. (6 points)

In the two following cases, the defendants removed the case to the FSM Supreme Court trial division from the state or municipal 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 court in which it had originally been filed because the case had been improvidently removed — that is, because the case should not have been removed in the first place since 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 filed in the Kitti Municipal Court (on Pohnpei) by International Supply Co., an Oregon corporation, against a local small store on an "account stated" cause of action.

B. (3 points) A suit filed in the Chuuk State Supreme Court by a Taiwanese corporation against a Philippine corporation over the ownership of a sea-going vessel arrested by the Pohnpei state police for violating Pohnpei environmental regulations inside the Pohnpei fringing reef.

General

VIII. (4 points)

Plaintiff's original complaint alleged that while the plaintiff was using the telephone in the defendant's laundromat, the Plaintiff received an electrical shock resulting in personal injuries. The complaint further alleged that the defendant had negligently installed the wiring to a coffee-maker, so that a loose connection or exposed wire made contact with a metal cabinet, which the plaintiff touched while using the phone, thereby causing the plaintiff's injury.

After the defendant's answer, but before trial, the plaintiff moved the court for leave to file an amended complaint alleging that the electrical shock had resulted from damage to the coffee-maker done by unknown vandals who had broken into the laundromat after business hours as the result of the defendant's negligent maintenance of the lock to the outside door. The defendant opposed the filing of an amended complaint because the statute of limitations had expired since the original complaint was filed.

Should the court grant the plaintiff leave to file an amended complaint? Why or why not?

General

IX. (9 points)

Discuss the constitutionality under the FSM Constitution of:

A. (3 points) A state constitutional provision banning anyone other than a state citizen from fishing within fifty miles of a certain named atoll within that state without the state legislature's permission.

B. (3 points) A municipal constitution provision requiring that all development or assistance funds from the state, national, or from foreign governments must be given to the municipal government for appropriation before any such funds can be spent in the municipality and a municipal ordinance imposing criminal penalties upon the recipients of any funds received in violation of the above municipal constitution provision.

C. (3 points) A state law requiring all insurance agents to pay a tax of 2.5% on all insurance premiums collected.

General

X.
(11 points)

Bang Co. is a joint venture holding a foreign investment permit and is jointly owned by Hiro Fuji, a resident and citizen of Japan, and David Santos, a resident and citizen of Chuuk. Its main office is located in Weno, Chuuk. Bang Co. has leased a rocky outcropping in Utwe, Kosrae, and has obtained all of the necessary state permits from Kosrae State to engage in basalt quarry activities on the site. The state permit specifically limits Bang Co. to blasting for basalt three times a day, with not more than 10 sticks of dynamite per blast, and specifies that Bang Co. must make an announcement on the local radio station of proposed blasting times at least one hour in advance of any blasting.

The Smith family owns the land adjoining the Bang Co. site in Utwe. After three months of blasting, the Smith family has come to you to complain about the situation. Mr. Smith states the following:

The blasting has caused two landslides, resulting in the deposit of approximately ten square meters of rock and soil on his property, which has knocked down several banana trees. The family is never certain when blasting is going to take place, and the entire family is frightened of the noise to a point where they are nervous and cannot sleep. Mrs. Smith and their two children often stay with her family in Utwe because they feel safer. The family home has developed cracks in the ceiling. Also, an employee of Bang Co., Manny Miner, drove a Bang Co. truck through the Smiths' driveway and crushed their family sedan when an unstable load of rock fell from the truck.

You investigate and find that the Smiths' property is damaged as stated above, that Bang Co. often does not announce their blasting activities on the radio, and that Bang Co. has on occasion used up to 15 sticks of dynamite per blast.

- A. (8 points) What causes of action could you assert and against whom?
- B. (3 points) The Smiths have asked you if there is any way they can seek to have the blasting halted immediately. What specific relief can they request from the court, and what factors would you have to prove?