

**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**

MARCH 4, 2004

ADMINISTERED IN KOSRAE AND POHNPEI

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

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NOTE

YOU ARE 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 STARTING TO WRITE, REVIEW EACH QUESTION CAREFULLY SO THAT YOU UNDERSTAND PRECISELY WHAT IS BEING ASKED, THEN CONSIDER THE ORGANIZATION OF YOUR ANSWER. ATTACHED IS A STATUTORY SUPPLEMENT THAT MAY BE HELPFUL. 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.	5
III.	5
IV.	20
V.	16
VI.	21
VII.	5
VIII.	8
TOTAL	<u>100</u>

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

I.
(20 points)

Phobos was driving her car. Deimos, acting within the course and scope of his employment as a delivery driver for his employer, Ceres, was driving Ceres's truck. Phobos and Deimos collided at an intersection. Phobos was injured and sued Ceres in the FSM Supreme Court. At trial, timely objections were made to the following relevant evidence.

Under the FSM Rules of Evidence, state whether this evidence should be admitted, and fully explain the reasons for your answers.

A. (4 points) officer Juno arrived at the scene shortly after the accident, and interviewed Deimos. Phobos calls Juno to testify that, during this interview, Deimos said that he probably wasn't paying close enough attention to his driving. Ceres objects.

B. (4 points) after the accident, Phobos retained Vesta to examine the skid marks caused by the truck driven by Deimos. Vesta examined the skid marks. Phobos calls Vesta to testify that, in his opinion, Deimos might have been driving faster than the posted speed limit.

C. (4 points) Phobos calls Metis to testify that he saw Deimos's state driver's license shortly after the accident and that it stated that Deimos must wear corrective lenses. It is undisputed that Deimos was not wearing corrective lenses at the time of the accident. Deimos, who has since moved to Guam, can no longer find his state driver's license.

D. (3 points) At the time of the accident,Adrastea was standing nearby. During Phobos's case,Adrastea testifies that she saw Deimos fail to stop at the stop sign at the intersection where the accident occurred. Later in the trial, Ceres calls Hektor to testify that he heard Adrastea say months before trial that it was Phobos who failed to stop at the stop sign. Phobos objects to Hektor's testimony.

E. (3 points) Ceres calls Thebe to testify that she often rides to work with Phobos and that Phobos often doesn't stop at stop signs while driving. Phobos objects.

F. (2 points) Before trial, Ceres's representative attended a settlement conference with Phobos and their counsel. Ceres's representative is called to testify that during this conference Phobos said: "So what if I might have driven through the stop sign? I was the one injured, not Deimos!" Phobos objects.

II.
(5 points)

Oberon was charged with a criminal offense in a state court and released on bail and ordered not to leave the state. He began residing in Guam under an assumed name. He informed his attorney, Portia, and asked Portia to keep him informed of any developments and that he would return for trial. The state police realize that Oberon has left the state and demand that Portia tell them where he is. Portia refuses, but informs Oberon of the demand. Has Portia engaged in misconduct?

III.
(5 points)

Patria consulted lawyer Ladrone, hoping to hire Ladrone to represent her as a plaintiff in a medical malpractice suit against Dr. Doolittle. Without mentioning Dr. Doolittle's name, Patria described the alleged acts of malpractice and said that they happened a year and a half ago. Only at this point did Patria mention Dr. Doolittle's name.

Ladrone immediately stopped Patria and said, "I'm sorry, but I can't represent you in this matter. I'm currently representing Dr. Doolittle in an entirely unrelated lawsuit. But that means I cannot represent you. You will need to consult another lawyer." That was the end of the conversation.

Patria did nothing for another year, at which point she consulted another lawyer. By that time, the statute of limitations had run on Patria's claim against Dr. Doolittle. Patria then sued Ladrone for legal malpractice alleging that Ladrone was negligent in not warning her about the statute of limitations.

Identify Ladrone's ethical obligations in this situation and discuss whether Ladrone's conduct met those obligations.

**IV.
(20 points)**

When the Redemption Church's board of trustees met to name a successor to Argon, the congregation's retiring minister, they considered two candidates: Krypton and Xenon, the congregation's two assistant ministers, neither of whom were present for the discussion. During this meeting, Argon described Krypton as "very bright, with impressive academic credentials, but not very spiritual." Argon strongly recommended Xenon, although noting, "in terms of academic and administrative abilities, he is far behind Krypton, but he is a good man for the job and will catch up." The trustees selected Xenon to succeed Argon.

Angry at not being selected, Krypton sent letter to the entire congregation, asserting that he was entitled to be minister because (1) he was the better candidate, and (2) because his employment contract with the Redemption Church promised that

In the event of Argon's death, resignation, retirement, or removal, Krypton shall have the right of succession to Argon's position as minister.

After receiving Krypton's letter, the trustees, including one who was a member of the local police force, met on a day when they knew Krypton was off-island, and voted to fire him, and then visited his office where, while searching through his desk, they found a small quantity of marijuana.

The trustees called the police who later charged Krypton with possession of a controlled substance.

While the criminal case was pending, Krypton sued the Redemption Church for an injunction requiring his appointment as minister.

In the criminal case, the trial judge admitted the marijuana into evidence over Krypton's objection and he was convicted.

In the civil case, the court entered an injunction ordering the trustees to hire Krypton as minister.

Krypton has appealed his conviction. The trustees have appealed the entry of the injunction.

How should the appellate court rule in each appeal?

V.
(16 points)

Discuss the constitutionality under the FSM Constitution of the following:

A. (4 points) An FSM statute prohibiting any FSM national government funds and any funds any FSM state or municipality receives from the FSM government from being spent on goods from the country of Rurutania.

B. (3 points) An FSM statute prohibiting all states from spending any of their funds being on goods from the country of Rurutania.

C. (3 points) An FSM statute barring the import of any goods produced in the country of Rurutania.

D. (3 points) A state statute barring the use of state funds to purchase goods from the country of Rurutania.

E. (3 points) A state statute barring anyone in the state from spending money on or importing goods from the country of Rurutania.

VI.
(21 points)

On March 25, 2002, Pallas and municipal government executed a written contract for contractual services. Pallas, who had a University of Guam civil engineering degree, signed the contract on his own behalf. Pallas's hiring was authorized by a town council resolution adopted in December 2001, which authorized the mayor to hire a person on a short or long term contract, to help document and supervise ongoing construction projects. The town's elected mayor then hired Pallas and executed a written contract by signing it on the town's behalf.

The written contract provided that the Pallas, as a contractor, would provide services "to follow-up all paper works for the remaining municipal projects and to supervise the remaining projects during construction until the completion of these projects." The written contract further provided that the Pallas would be paid \$32 per day from project funds, and that the contract would end on December 31, 2002. The written contract did not specify how many hours per day, how many days per week, or on which days the Pallas was expected to perform services under the written contract.

After Pallas was hired, he was assigned a desk and work space in an upstairs office of the municipal building. Pallas performed most of his work there. Pallas also stored various personal materials in and around his desk.

Pallas performed services in accordance with the written contract. Pallas worked different hours each week, depending on the need for his services. Pallas submitted time sheets to the town on a regular basis to document the hours he worked. Pallas was paid bi-weekly, based upon the hours that he worked, as submitted in his time sheets. Pallas was paid by checks drawn on the municipal treasury account.

Before January 2003, Pallas and the mayor met to discuss an extension to Pallas's contract. Pallas and the mayor executed a second written contract, to be effective from January 1, 2003 until the end of 2003, under the same terms and conditions as the previous written contract, except that the daily rate of compensation was reduced to \$20 per day.

Although, the town council did not approve Pallas's second written contract by ordinance or by resolution, Pallas continued to provide his services to the town from January 2003 through March 2003. During that time, Pallas continued to use the desk and work space assigned to him in the municipal building's upstairs office.

At all relevant times, the municipal building was locked after working

hours and when the building was not in use. The mayor, several town council members and several town government staff persons had keys to the

**VI.
(cont'd)**

municipal building doors, as did a woman who performed cleaning and janitorial services. The mayor and council chairman were responsible for the distribution of keys and providing access to the municipal building. Pallas never had any keys to the municipal building.

On March 17, 2003, the town council adopted a resolution reminding the mayor of the Town Charter's requirement that the council approve Pallas's second contract. The resolution asked the mayor to terminate Pallas's contract. Pallas and the mayor met together to discuss the town council's actions. At that meeting, the mayor asked the Pallas to stop coming to work because of the town council's inquiries. The mayor told the Pallas that he would contact him when his services were again needed. The mayor did not contact Pallas again.

Also in March 2003, Pallas's desk was moved from its designated location in the municipal building's upstairs office to another room in the same building. At that same time, Pallas's personal possessions (his college diploma, college transcripts, reference letters, construction designs, blueprints, textbooks, various drawing and measuring tools), which were stored in his desk and work area disappeared. These items were never recovered. There was no evidence of a forced entry into the municipal building, or into the office where Pallas's desk and personal property were stored. Keys had been used to open the municipal building's doors to allow access to Pallas's desk and property. It was unknown who was involved in moving Pallas's desk or the removal of his personal property.

Pallas claims that he suffered embarrassment, loss of dignity and ridicule from the termination of his employment contract and the loss of his personal property. Pallas also attached sentimental value to some of the personal property that disappeared. Most of it could be replaced for a cost.

A. (6 points) What causes of action would you expect Pallas to assert in a lawsuit against the town council or town government?

B. (4 points) What defenses would you expect the town council or government to raise?

C. (11 points) Discuss how the court would rule.

**VII.
(5 points)**

Neffertiti, a citizen of another state, has paid a state license fee taxes for three years. She believes she has overpaid those taxes and files suit in the FSM Supreme Court to recover the overpayments.

The state moves to dismiss the case on the ground that a state statute provides that the state court has original and exclusive jurisdiction over any actions to recover state tax payments.

How will the FSM Supreme Court rule on the motion to dismiss?

**VIII.
(8 points)**

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

- A. pendent jurisdiction**
- B. temporary restraining order**
- C. pro hac vice**
- D. custom and tradition**