

**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 1, 2007

ADMINISTERED IN CHUUK, KOSRAE, POHNPEI, AND YAP

**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.	11
III.	4
IV.	12
V.	15
VI.	7
VII.	13
VIII.	4
IX.	4
X.	8
XI.	<u>2</u>
TOTAL	100

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

GOOD LUCK.

Evidence

I. (20 points)

Phobos has commenced an intentional tort action against Deimos, alleging injuries suffered from stab wounds inflicted by Deimos, and seeking damages. At trial in the FSM Supreme Court, Phobos was called as the first witness and the following questions were asked and answers given:

At each objection, indicate what objection or objections should have been made and how the court should have ruled:

DIRECT EXAMINATION OF PHOBOS

Q. What is your name?

A. Palindrome Phobos.

Q. Where do you live?

A. On Asuncion St., in Kolonia.

Q. And you've lived there for the past six years?

[OBJECTION A (2 points)]

A. That's right.

Q. What do you do for a living?

A. For the past four years, I've been the Assistant Dean at the College of Micronesia.

Q. Directing your attention to January 11th of last year at about 8:00 a.m., where were you?

A. I was standing in the college's reception area.

Q. Please tell the court what happened when you were standing there.

A. Well, the first thing I remember is that a student, Bonnie Blue, said, "Dean Phobos, here comes Professor Deimos and he seems to be pointing at you."

[OBJECTION B (3 points)]

Q. Then what happened?

A. I noticed that defendant Deimos was rushing toward the office, screaming at me, and waving his arms.

Q. Okay. What happened after he rushed toward you screaming and waving a knife?

[OBJECTION C (2 points)]

Evidence

A. Well, I just turned and ran down the hall.

Q. I see. So you didn't say anything to him or provoke him in any way?

[OBJECTION D (2 points)]

A. Yes, definitely. I didn't know what had gotten into him.

[Phobos proceeded to testify about the chase, the attack, and its aftermath]

Q. Where were you interviewed by the police?

A. At the hospital.

Q. And did you tell them anything different from what you've told the court today?

A. No, I told the police exactly what I've said here. I have a clear recollection of what happened ever since that day.

[OBJECTION E (2 points)]

[Phobos was then examined about his damages]

Q. How much were your medical expenses?

A. I don't remember specifically.

Q. Would it refresh your recollection if I told you it was \$925?

[OBJECTION F (2 points)]

A. No but it's on the bill from Pohnpei Hospital.

Q. Showing you the bill, do you now remember the specific amount?

A. (reading from the bill) It says here \$925.

[OBJECTION G (3 points)]

CROSS-EXAMINATION OF PLAINTIFF PHOBOS

Q. You testified that you didn't know what had provoked Deimos, but the day before the incident you expelled three of his students for no reason and changed the lock on his office. Isn't that correct?

[OBJECTION H (2 points)]

A. That's not right.

Q. You would agree that Deimos and you had your differences?

A. No, we always got along well, but when he came after me that morning he had a lethal weapon.

[OBJECTION I (2 points)]

II.
(11 points)

Al Catraz, a famous politician, asked his sister, Beth, to hire a Hawaiian band from Guam known as "Catatonic" to play at Al Catraz's wedding to Desrine. Al wanted to surprise Desrine, so he did not tell her that he was hiring the band.

Wishing to protect Al's and Desrine's privacy, Beth, two months before the wedding date, contracted with Catatonic in her own name, never revealing Al's or Desrine's names. The written contract, executed on Pohnpei while Catatonic was passing through there on an all-Micronesia concert tour, called for a \$1,000 deposit, which Beth paid (intending it to be her wedding gift to Al and Desrine), and another \$6,000 payable to Catatonic on the wedding day. The contract also provided that if the wedding were canceled, Catatonic could keep the \$1,000 deposit and Beth would have to pay another \$3,000 as liquidated damages.

Desrine canceled the wedding a month before it was to take place upon learning that Al Catraz's previous marriage had not been dissolved.

Beth at once informed Catatonic of the cancellation and demanded her \$1,000 back. Catatonic refused, and demanded that Beth pay an additional \$3,000. At that time, Beth told Catatonic's manager that she had hired the band on behalf of Al Catraz and Desrine. Catatonic then booked a concert on Guam for the same date as the wedding and was paid \$12,000.

What are the rights of the parties?

**III.
(4 points)**

A. (2 points) Assume that in the previous question, the band Catatonic sued Al Catraz, Beth, and Desrine. In what court or courts, could Catatonic file its suit?

B. (2points) Assume that in the previous question, Beth sued Catatonic for the return of her \$1,000. In what court or courts, could Beth file suit and obtain jurisdiction over Catatonic?

**IV.
(12 points)**

Jack was employed by Boatlife as the skipper of a racing sailboat. Boatlife and other sailboat owners traveled to various parts of the world to hold sailboat races there in order to raise the profile of and to popularize the sport of yachting and also so that the boat owners and crew could visit various parts of the world that they had always wanted to see. To increase local interest the races, the boats would often take on one or two local crew members.

Boatlife and several other racing sailboats scheduled some sailboat races in Truk Lagoon. Sally volunteered to serve as part of Jack's crew in a sailboat race. She told Jack she could swim, although in fact she could not. Jack had Sally sign a waiver of responsibility form printed by Boatlife that read: "In recognition of the risks of sailing, I relieve Boatlife of liability for any injuries I might receive in the course of this sailboat racing event." The vessel did not have any life jackets on board, in violation of both FSM regulations and regulations of the country in which Boatlife's vessel was registered, both of which required that there should be one life jacket for each person on board.

During the race around Truk Lagoon, Jack was joking with the crew and failed to notice that another boat approaching too closely. Without giving any warning to his crew, Jack suddenly swerved his boat, and Sally fell overboard, hurting her back in the fall. Sally's husband, Ivan, who was on shore watching the race through binoculars, became hysterical when he saw Sally struggling in the water. Although Sally was quickly rescued, her fall and her struggling in the water caused her to become partially paralyzed from the waist down.

Fully discuss the common law tort claims that might be brought arising from this incident and all potential defenses:

- A. (7 points) Sally v. Jack;
- B. (2 points) Sally v. Boatlife; and
- C. (3 points) Ivan v. Jack.

V.
(15 points)

On December 6, 2006, Paul filed suit in the FSM Supreme Court on Pohnpei against MaruCo, a Guam corporation, and Dynx, Lynx, and Jinks, three MaruCo corporate officers, alleging (a) a right to monies deposited in a certain checking account in the Bank of the Federated States of Micronesia, and (b) an interest in certain shares of MaruCo stock in the bank's custody. MaruCo maintained an office in Chuuk, but its principal place of business was on Guam. Dynx lived on Guam, but made occasional trips to Chuuk.

A. (4 points) Paul sent a copy of the complaint and summons to MaruCo's lawyer on Chuuk by first-class mail. Paul learned that Dynx would be at MaruCo's Chuuk office and sent, Nix, a nineteen-year-old on Chuuk who he occasionally hired to run errands and serve papers, to deliver a summons and complaint to Dynx. Nix left the summons and complaint with MaruCo's office secretary, who promised to give it to Dynx. Nix neglected to file a return of service. MaruCo and Dynx move to dismiss the complaint alleging improper service. How should the court rule on both motions and why?

B. (3 points) On December 13, 2006, Paul served a summons and complaint on Lynx, together with a notice for a videotaped deposition of Lynx to be held on December 18, 2006. Lynx refused to attend and, a week later moved for a protective order. Paul moved for sanctions. How should the court rule on both motions and why?

C. (3 points) In discovery, Paul produced a document in which he completely contradicted several allegations in his complaint against Lynx. What pretrial remedies are available to Lynx?

D. (2 points) On January 10, 2007, Jinks answered the complaint and filed a third-party complaint against the Bank as a party. The Bank answered Jinks's complaint by denying the allegations and requesting the court to take custody of the disputed funds and stock certificates. How should the court rule?

E. (3 points) On February 2, 2007, Jinks wrote to Paul and offered to pay 10% of the amount alleged in Paul's complaint if Paul would drop him as a party; several days later, Paul sent Jinks a letter accepting his proposal. Paul then filed motion to dismiss the complaint against Jinks, attaching copies of Jinks's letter and his response. The Bank objected and asked that Jinks be required to remain a party. How should the court rule?

**VI.
(7 points)**

On an outer island, the mother of an eighteen-year-old daughter refused to permit her to marry Romeo. The couple ran away. A search ensued, and the couple was found in the jungle. They were handcuffed together and brought to the woman's father. He told the police to take the couple away from his residence. The couple was taken to the municipal building. The father, then outside the municipal building, told the police that Romeo was carrying a handgun. The police, who previously had had no intention of searching either of the two, then patted Romeo down and found a .38 revolver. Romeo was then placed in a separate room in the municipal building.

Romeo was charged with the possession of an illegal firearm. He moved to suppress his arrest and to suppress the evidence.

How should the court rule and why?

**VII.
(13 points)**

Callisto is the sole owner of Primo Tuba, Inc. (PTI). PTI has been making and marketing tuba since 1991. Tuba is an alcoholic beverage made from coconut sap. Callisto is very proud of the strength of his 22 proof tuba.

In June 2006, the state alcoholic control board, in an unannounced closed meeting adopted a regulation prohibiting the sale of tuba stronger than 20 proof. The regulation states that anyone selling stronger tuba will lose his or her liquor license, which is required in order to sell or manufacture liquor in the state. The regulation was effective as of June 30, 2006.

The regulation was properly published and distributed. When Callisto learned of the regulation in July, 2006, he petitioned the state alcoholic control board for a declaratory ruling on whether the new regulation applied to PTI. He received a form letter stating, "This agency does not make declaratory rulings."

In September 2006, Europa, a state liquor control board investigator, inspected PTI and suspected that the tuba it produced violated the new regulation. One week later, Callisto received a letter from the state alcoholic control board stating that the state alcoholic control board would hold a meeting during the third week in November, 2006 concerning PTI's alleged production of illegally potent tuba.

By camping outside the state alcoholic control board office, Callisto was able to be present at the start of his hearing. Callisto entered the room with his attorney, Ganymede. The hearing officer appointed by the state alcoholic control board for Callisto's hearing was Io, Europa's assistant. When Callisto and Ganymede entered the room, Io pointed at Ganymede and asked, "Who's that?" Callisto replied, "My attorney." Io responded, "This isn't a courtroom. He has to leave."

After Ganymede left, Io administered oaths to both Europa and Callisto and took their testimony. Their entire testimony, as recorded in the official record is reprinted below.

Europa: I think PTI violated our regulations by making 22 proof tuba. Besides, that tuba tastes so bad, PTI should be out of business.

Callisto: What on earth is going on here?

After considering this testimony, Io revoked PTI's state alcoholic control board liquor license.

Assume that the state has an administrative procedures act identical to the national administrative procedures act.

General

Discuss fully Callisto's position and options under the administrative procedures act.

**VIII.
(4 points)**

Assume that as the result of the state alcoholic control board's revocation of PTI's liquor license in the previous question, state alcoholic control board agents seized a shipment of PTI tuba being sent to another state where 22 proof tuba was legal. Instead of destroying the offending tuba, the state alcoholic control board delivered the tuba to the state employees' Christmas party where it was served to those attending.

For the purpose of this question assume that the revocation of PTI's liquor license was proper. Discuss the propriety of the state alcoholic control board's action in seizing and serving the tuba.

**IX.
(4 points)**

Discuss the constitutionality of the following under the FSM Constitution:

A. A state law requiring all insurance agents to pay a tax of 5% on all premiums collected.

B. A state statute prohibiting the importation of radioactive substances including those used in medical procedures.

**X.
(8 points)**

Lawyer represented Buyer in a suit for breach of contract by Seller to sell a luxury SUV to Buyer. In conferences in preparation of the case, Buyer made the following requests to Lawyer:

A. When having a witness subpoena served on the owner of the mechanic's shop that customized the SUV after it arrived from Japan, Lawyer should pay him \$250 "to show we value highly the time he will be spending in court and away from his business."

B. Lawyer should arrange for the Buyer's secretary, who took notes at the meeting between Buyer and Seller, to be off-island during any scheduled trial dates, so that she could not be subpoenaed as a witness.

C. In settlement negotiations with Seller's attorney, Lawyer should be sure to tell Seller's attorney that "we have evidence which documents the fact that he, Seller's attorney, commingled the pre-delivery SUV deposit with his own personal funds."

D. Lawyer should place an advertisement in the local newspaper describing the case and asking for persons to contact him with evidence that it was Seller's established practice to refuse to go through with vehicle sales in order to obtain more than the agreed-upon price.

What should be the Lawyer's responses?

**XI.
(2 points)**

Attorney Sara decided to incorporate her law practice for tax purposes. In order to insure that her husband would be able to access her law firm's assets in the event of her untimely death or incapacity, Sara makes him the half-owner of her law firm. Her husband is not a lawyer, but does administrative work in her office.

Comment.