

**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 3, 2011

ADMINISTERED IN YAP, 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 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. | 11 |
| II. | 9 |
| III. | 6 |
| IV. | 4 |
| V. | 16 |
| VI. | 9 |
| VII. | 12 |
| VIII. | 18 |
| IX. | 13 |
| X. | <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 ETHICS QUESTIONS ARE III AND IV AND THE EVIDENCE QUESTIONS ARE I AND II. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

GOOD LUCK.

Evidence

I. (11 points)

In August 2010, Dan was speeding across the lagoon in his 18-foot Yamaha with Evenrude outboard with his friend Ken as a passenger. Phil was paddling his canoe along the shore. As Dan neared the shore, he saw Phil but did not slow down. Dan intended to miss Phil and only scare him a little, but he hit the front of the canoe instead. As a result of the collision, Phil's canoe capsized and he suffered a back injury. Ken fell to the bottom of the boat and broke his nose. Wanda was on shore and saw the incident. Wanda saw Ken fall and heard him yell at Dan, "Man, you were going way too fast!"

A month after the incident Dan and Ken were telling their friend Jack what happened. Jack, who also knew Phil, said to Dan, "Wow, you were driving that boat way too fast." Dan grinned and nodded in response.

Phil sued Dan claiming that Dan's negligence caused the damages resulting from the accident. The case proceeded to trial in the FSM Supreme Court.

A. (3 points) Phil's attorney called Wanda as a witness and asked her what she heard Ken say. Dan's attorney objected. Discuss any theories supporting the admissibility of Wanda's testimony about Ken's statement and the court's likely ruling.

B. (3 points) Phil's attorney called Jack as a witness and asked him what he said to Dan after hearing about the accident and what Dan's response was. Should the court allow Jack's testimony? Explain.

C. (2 points) Dan's attorney called Ken as a witness. On cross-examination, Phil's attorney asked Ken if Dan had paid Ken's medical bills for his broken nose. Dan's attorney objected. Should the court allow Ken's testimony? Explain.

D. (3 points) After Dan testified during his own case-in-chief, Phil's attorney asked him on cross-examination if he had been convicted of robbery in 2007 and offered a certified copy of the conviction. Is the conviction admissible? Explain.

Evidence

II. (9 points)

Portman sued Delano for negligence resulting from Portman's fall on an allegedly defective staircase at Delano's place of business. At trial in the FSM Supreme Court, the following issues arose. In each instance, how should the court rule and why?

A. (3 points) On cross-examination, Portman's counsel asked Delano: "Did you repair the staircase after the accident?" Delano's counsel objected.

B. (3 points) Delano's counsel called Portman's former wife to testify and asked her what Portman told her, while they were married, about how the accident had happened. Portman's counsel objected.

C. (3 points) Delano's counsel offered the deposition of a witness to the accident who at the time of trial was on a two-week vacation off-island.

III.
(6 points)

After eight years of representing his client, Zenobia, and five days before her trial was to start, attorney Jim suggested to Zenobia that the judge hearing her case was hostile towards attorney Jim and that this hostility would adversely affect Zenobia's case.

Jim then contacted another attorney, Henry, to possibly substitute as Zenobia's counsel. Henry agreed to review the case and Jim sent Zenobia's file to Henry for his review.

Henry arranged two meetings with Zenobia, but she was unable to attend due either to illness or to the inability to raise funds to pay Henry's retainer fee.

Attorney Henry appeared on the day of trial and informed the court that he was not taking Zenobia's case, at which time he handed Zenobia her case file and left. Attorney Jim did not appear.

The trial was continued until later that week. Zenobia represented herself at trial and the court granted judgment for her opponents in the amount of \$76,570.

Discuss any ethical considerations.

Ethics

IV. (4 points)

You and Ben formed a partnership and opened a law office four years ago. Last month, Ben told you that the partnership is dissolved and that he and his wife were moving back to their home state where he will open a law office. Yesterday, your accountant informed you that an audit of the partnership books reveals that Ben has used funds kept in the law firm's Client Trust Account for personal purposes, with the result that the account is substantially depleted.

Today, you received a client's demand for the immediate payment of the net proceeds from the completed sale of the client's business. Those proceeds had been kept in the client trust account. The funds currently in the account are insufficient to meet the client's demand.

What must you do?

V.
(16 points)

The College of Micronesia's education department wanted to increase the enrollment of students from outer islands in its special teaching credential program because outer island schools have not been able to find enough qualified teachers. Even offering higher salaries hasn't alleviated the teacher shortage. The shortage of qualified teachers has resulted in lower test scores for outer-island school children. The College's own survey seems to indicate that education students from the outer islands are more likely to return to and remain on outer islands as teachers after they graduate than other students. The professors have persuaded the admission officers to admit outer-island applicants to the special teaching credential program over main island applicants if all other factors are equal.

Jk is a student from the main island where a College of Micronesia campus is located. He wants to enter the special teaching credential program at the College because he wants to get a teaching job on the main island after he graduates. It is unlikely that the state would hire him to teach without the special teaching credential. Jk works as a disc jockey at the campus radio station. The station is staffed entirely by student and community volunteers. Jk has a three-hour show on Thursday nights during which he plays whatever music he likes and rambles on about whatever topical issues interest him. Often he chooses to talk about political issues and castigates politicians with intemperate language. The College finances and owns the radio station and maintains control over its operation including assigning the disc jockeys to their time slots. Over the years, the College has taken a hands-off approach to the broadcasts' content, allowing the disc jockeys to broadcast their personal opinions about controversial topics. The College did reprimand one disc jockey for identifying a fellow student by name during a show about asking stupid questions in class.

Jk applied to enter the special teaching credential program but was denied admission because of the preference for outer-island students. Jk found out about his rejection two weeks before finals. He was upset and during his next radio program he railed against the admissions policy and the College administration.

A week before finals, the Dean of Students, who had not actually heard the broadcast, e-mailed Jk and asked why he had engaged in unprofessional conduct. The Dean accused Jk of using inappropriate language. Jk responded by e-mail, explaining that he was expressing his opinion on the admissions policy's validity and the College President's competence. He also objected to the Dean's characterization of his broadcast and said the Dean should talk to the other radio station volunteers who were working that night because they would confirm that nothing inappropriate was said. The Dean then sent Jk an e-mail suspending Jk from all classes and College activities effective immediately. Jk will miss all of his finals if he misses the next three weeks of school. As a result he will flunk all of his classes and will not be able to get into the special teaching credential program.

Discuss any claims Jk might have under the FSM Constitution:

- A. (6 points) challenging the outer-island preference, and
- B. (10 points) challenging his suspension from the College.

VI.
(9 points)

In each of the following cases, the defendants removed the case from the state court in which it was filed to the FSM Supreme Court trial division.

In each case, the plaintiff has filed a motion in the FSM Supreme Court, asking that the case be remanded to state court in which it was filed on the ground that it was improvidently removed — that is, that the case should not have been removed in the first place. How should the FSM Supreme Court rule on each motion to remand and why?

A. (3 points) A case originally filed in Pohnpei Supreme Court in which Ioanis, a citizen of Pohnpei, sued Sadaleur Co. on a breach of contract claim. Sadaleur Co. is a closely-held corporation that has only three shareholders, one is a Pohnpei citizen, the second is a citizen of Chuuk, and the third is a United States citizen resident on Guam. Sadaleur Co. was incorporated under Pohnpei state law and its only place of business is on Pohnpei.

B. (3 points) A case originally filed in Chuuk State Supreme Court in which the plaintiffs, who were seamen on the state's field trip ship, sued the state government for hazardous duty differential pay that they believe should have been included in their seamen's wages crewing the field trip ship during a typhoon.

C. (3 points) A case originally filed in the Kosrae State Court in which the plaintiff Kosrae citizen sued the Kosrae citizen director of the College of Micronesia, Kosrae campus, for wrongful termination from the College staff. The Director was sued in his official capacity.

VII.
(12 points)

For several years, Boss employed Worker at Custom Computers in Kolonia, Pohnpei. Worker was Boss's sole employee. Together they assembled and sold customized computer hardware and software to government agencies and local businesses on Pohnpei. Boss is a citizen of Pohnpei. Worker is a Chuuk citizen.

On January 1, 2010, Boss fired Worker. On February 1, 2010, Worker opened a new business, Worker's Customized Computers, in Sokehs, Pohnpei, and began soliciting customers from among the businesses and agencies that had previously done business with Boss's firm. Worker won business, in part, by telling Boss's former customers that "I did all the work when I worked for Boss" and "Boss is a drunken bum who can't be relied upon."

In late 2010, Boss sued Worker in the FSM Supreme Court, alleging that Worker had stolen most of Boss's customers and caused Boss damages of more than \$55,000. The complaint alleged that Worker had "maliciously interfered with Boss's contractual relationships with former customers by lying about the extent of Worker's role in Boss's business and by lying about Boss's drinking habits."

A summons and complaint in the action were served on Worker by a process server who went to Worker's home. Not finding Worker there, the process server slid the summons and complaint under the front door. Worker found the summons and complaint when he returned home that evening.

Assume that the State of Pohnpei recognizes the tort of malicious interference with contractual relations, and that Pohnpei law provides that "malice" exists only when one person interferes with another's contractual relationships either (a) with improper motive — that is, with intent to injure the plaintiff's business for a purpose other than competition, or (b) by improper means — that is, by means that are civilly actionable or criminally unlawful.

Worker filed a motion to dismiss the complaint for failure to state a claim upon which relief could be granted. Worker attached to the motion to dismiss an affidavit in which Worker swore "that Worker's efforts to take Boss's customers away were motivated not by malice but by an honest desire to compete and win the business for Worker."

The trial judge accepted Worker's motion and affidavit, treated the motion as a motion for summary judgment, and gave Boss the opportunity to file opposing affidavits. Boss filed a memorandum in opposition to Worker's motion but did not attach any documents or affidavits. The judge then denied Worker's motion.

Following the first motion's denial, Worker filed a second motion to dismiss the action, this time on the ground of insufficiency of service of process. The trial judge granted the second motion and dismissed the action.

Did the trial judge rule correctly on Worker's two motions? Explain.

VIII.
(18 points)

Sal is a 16-year old who lives on-island. One evening he goes down to the causeway about a half-mile from his house. In the bushes on the causeway, there is an old campfire site where teens frequently meet in the evening. Sal goes there at 9:00 p.m. hoping to run into some of his friends. A 19-year old youth named Jesse arrives at the campfire site about 15 minutes after Sal.

Jesse seems a little excited, and brags to Sal that he just broke into a nearby home and took some jewelry. Jesse pulls some valuable jewelry out of his pocket and throws a pair of gold earrings to Sal. He tells Sal, "Keep them. You can have them." Jesse seems very confident and pleased with his accomplishment.

The boys start a small campfire as they have done in the past. Jesse had also brought with him a couple of six-packs of beer. Both boys are drinking beer and had been there about a half hour when the state police appear. The police ask the boys what they are doing there and other questions to determine the boys' identities and purpose for being there.

About a half hour earlier, the police had received a phone call from the mayor's wife saying that she had just seen a young man, who she did not recognize, leaving the home of one of her neighbors who she knew to be off-island attending their daughter's graduation on Guam. She told the police that she became suspicious and went to her neighbor's house to see if everything was okay. She found the front door partially open. She became concerned that the male may have stolen some items from the home.

The campfire site was about a half mile from the house that the mayor's wife feels was broken into. At the campfire site, the police separate the young men. One takes Sal aside out of Jesse's earshot. Sal is visibly nervous, and doesn't know what to say or do. The officer specifically asks Sal his age, and Sal replies that he's sixteen. Eventually, Sal tells the officer that Jesse met him at the campfire site and gave him a pair of gold earrings. The officer asks to see the earrings and Sal shows them to him. When the officer asks Sal if he knows where Jesse got the earrings, Sal admits that Jesse confessed to stealing them.

At this point, the officer takes Sal to where Jesse is with the other officer, and the two officers confer. The officers tell Jesse they are taking him back to the police station for further questioning. As one of the officers walks around the campfire, he accidentally knocks over one of the empty beer cans. The officer hears a rattling noise coming from inside the can, so he picks up the can to examine the contents. Inside he finds a gold necklace and several rings which appear to have precious stones. The police seize the empty can as well as the jewelry inside, and proceed to pat down and frisk Jesse. During the pat down they find other jewelry in Jesse's pants pockets. At this point they tell Jesse that he is under arrest and take both boys back to the police station.

At the station, the police contact Sal's parents. Both boys are processed for criminal charges. Sal is charged with misdemeanor possession of stolen property, and Jesse is charged with burglary. When the neighbors of the mayor's wife return home, they confirm that all of the jewelry seized from the boys was, in fact, stolen from their home.

The prosecution offers Sal a deal in order to get him to testify against Jesse. Under pressure from his parents, Sal accepts a deferred adjudication under which there will be no finding and his case will be dismissed after two years if he doesn't violate his pretrial release conditions.

Jesse is assigned a public defender and decides he wants to go to trial.

- A. Assume that you are Jesse's public defender. What pretrial motions will you file on his behalf?
- B. If you are the prosecutor, how will you respond to each of Jesse's motions?
- C. What is the likely outcome or the court's likely ruling with respect to each motion? Explain your reasoning.

IX.
(13 points)

While trying to dock her motorboat in a slip alongside Peter's boat, which was properly docked, Dot maneuvered her boat into such a position that she knew there was a risk of bumping Peter's boat and damaging it. Peter was in his boat, but Dot did not see him. Dot asked Theo, a stranger who was standing on the dock, to help her by directing her maneuvers from his superior vantage point. Theo said no, and walked on. Dot nevertheless proceeded to dock her boat without assistance and bumped into Peter's boat. Peter fell into the water when Dot hit his boat. Peter was knocked unconscious as he fell and nearly drowned before he was pulled from the water. He was hospitalized for a couple of weeks as a result of his injuries.

Peter had been instructed in boating classes that he had attended, "For your own safety, ALWAYS wear your life jacket when you are in your boat." If Peter had been wearing a life jacket, he would not have been as severely injured.

What issues should be raised in an appropriate action by Peter against Dot and Theo, and what affirmative defenses might Dot and Theo reasonably raise? (Assume that neither admiralty nor maritime law applies.)

X.
(2 points)

**Define and discuss the requirements of the following term in FSM law:
Standing.**