

**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, 2012

ADMINISTERED IN 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, 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 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.	4
II.	6
III.	12
IV.	4
V.	4
VI.	5
VII.	16
VIII.	12
IX.	15
X.	9
XI.	<u>13</u>
TOTAL	100

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

GOOD LUCK.

Ethics

I. (4 points)

Lawyer A has been handling a client's case for over a year. Lawyer B calls Lawyer A and states that the client wishes to hire Lawyer B and discharge Lawyer A. Lawyer B asks Lawyer A to send over the file.

What are Lawyer A's ethics obligations?

Ethics

II. (6 points)

Lexus represented Alaric in an action against Bizco to collect on a series of promissory notes issued by Bizco to Alaric and obtained a judgment for Alaric against Bizco for \$275,000. The lawsuit was "amicable," in no small part, because Alaric was the father of Bizco's president and sole shareholder.

Exco, another, but less friendly, creditor of Bizco, challenged Alaric's judgment and sought priority over Alaric for debts Bizco owed to Exco. The trial court issued an order freezing Bizco's assets except for ongoing operating expenses. The trial court order read:

Bizco, its agents, employees, and officers, and all persons working at their direction or with them shall not sell, assign, transfer, alienate, encumber, waste, or otherwise dispose of Bizco's interests or claims to any property, income, or assets, or negotiate or attempt to do so without a court order permitting it, except that they may pay Bizco's ongoing operating expenses.

Despite the order freezing Bizco's assets and despite the fact that Lexus represented Alaric, Lexus, who was aware of the freeze order, accepted from Bizco two checks totaling \$3,000 for legal services that Lexus had rendered to Alaric.

Discuss whether Lexus's actions were ethical.

Evidence

III.

(12 points)

Jacky owned Sunshine Bakery for many years. In November, he had a "Grand Re-Opening" to celebrate his new redesigned store. Many people, including the local radio station and newspaper, were on hand for the event. Ms. Grundy, an 80-year old woman, attended the event. After buying a few items, she went to exit the building. Seeing a golden opportunity, Jacky held the door open for Ms. Grundy as she started down the steps while the newspaper photographer clicked away. Suddenly, Ms. Grundy fell from the top step. After the fall, Jacky helped Ms. Grundy to her feet, and an off-duty nurse provided some bandages for Ms. Grundy's scraped knees.

After about 30 minutes and as Ms. Grundy was about to leave, Jacky said, "I'm sorry about this, and even though it was not my fault, would you accept \$100 and a month's worth of free doughnuts if we can forget about this unfortunate event?" Ms. Grundy refused, stating, "It sure was your fault and I'll see you in court." As she left the scene she heard Jacky exclaim, "I knew I should have had that step repaired."

A week later, Ms. Grundy received in the mail a photograph of her at the time she started to fall. On her way to thank the news photographer, Ms. Grundy passed the bakery, where she saw to her amazement that the steps had been completely replaced. Angered, she went to see a lawyer, who filed a premises liability suit entitled Grundy v. Jacky and Sunshine Bakery. At trial, Ms. Grundy attorney sought to have his client testify on direct examination to the following:

- A. (3 points) That on leaving the scene she heard Jacky state, "I knew I should have had that step repaired."
- B. (3 points) That Jacky was negligent because he offered her \$100 and a month's doughnuts.
- C. (3 points) That within a week the faulty steps were replaced with new ones.
- D. (3 points) And, her lawyer also sought to have the photograph admitted through Ms. Grundy.

Defense counsel objected to the testimony, as well as the attempt to admit the photograph.

Discuss whether the testimony and the exhibit should be admitted. Explain.

Evidence

IV. (4 points)

Draco has been charged with murder in the death of his mother. According to police reports, she was found dead in her bathtub on January 16, 2010. According to the doctors at the state hospital, the cause of death was drowning. Draco has pleaded not guilty, stating that he was on the other side of the island at a fish-fry and movie night.

At Draco's trial, the prosecutor calls Nancy to the stand. Nancy worked as a nurse to Gladys, Draco's aunt and his mother's sister. Nancy testified that Gladys died on January 3, 2010, after a long illness. Nancy further testified that, on December 28, 2009, Gladys woke up after a long nap and made the following statement:

"Listen, I don't have much longer to live, and I have to let somebody know this before I die, just in case. Yesterday, Draco visited me and told me that he was very angry with his mother and wanted to kill her and would make it look like an accident. "

Defense counsel immediately objected stating that this unanticipated testimony was hearsay.

How should the trial court judge rule on defense counsel's objection?

Evidence

V.

(4 points)

Dudley Dowrong was driving down the main road when he was stopped for speeding. Officer Mickey Cee became suspicious when he noticed a faint smell of burnt marijuana. Officer Cee asked Dowrong if he had any drugs in the car. Dowrong responded that he did not, and told Officer Cee that he was free to "look around." During the course of the search, Officer Cee found a duffel bag stuffed under the front passenger seat. When he asked Dowrong if he could look inside, Dowrong responded, "Whatever." Inside the duffel bag were 150 grams of cocaine in a plastic bag. Despite his protestations that the duffel bag wasn't his, Dowrong was arrested and charged in the FSM Supreme Court with possession of a controlled substance.

At trial, Dowrong's defense was that he was "set up." He testified that the cocaine was not his and that he had never seen the cocaine before. In support of his defense, Dowrong called William Winston, a childhood friend, who testified that he knew from personal experience that Dowrong was an honest, hardworking person who would never become involved with drugs.

In an attempt to impeach Winston's testimony, the prosecutor called Rhonda Riley, Winston's ex-girlfriend. Over Dowrong's objection, Riley testified that Winston has a reputation of being a liar. Riley further testified, again over objection, that Winston is not worthy of belief because she once saw him falsify an application for a firearm permit.

The trial judge convicted Dowrong as charged. Dowrong has filed an appeal arguing that the trial court erred in allowing Riley to testify about Winston's claimed reputation for untruthfulness and about seeing him put false information on a firearms permit application.

You are an FSM Supreme Court law clerk. Your judge is a member of the appellate panel. Advise your judge on the merits of the issues raised by Dowrong's appeal.

VI.
(5 points)

You are a recently hired FSM Assistant Attorney General and you are taking over the FSM Supreme Court files of another FSM Assistant Attorney General who left due to a long, serious illness. In reviewing your newly acquired files, you discover an unfiled motion for summary disposition based on the lack of subject matter jurisdiction. However, the file also contains a scheduling order issued by the trial judge that states, among other things, that "all dispositive motions must be filed and served by December 7, 2011 and will be heard during the hearing on January 13, 2012." Trial is set for March 15, 2012.

You must meet the FSM Attorney General to discuss the status of your files. What will you tell her about whether the summary disposition motion should be filed, whether the court will hear it, and what other steps might be taken to protect the FSM's interests? Explain your answer.

General

VII. (16 points)

Police officers Jack and Semes were investigating drug trafficking among youths who were thought to be manufacturing methamphetamine and distributing it locally. They suspected that the drugs were being manufactured in the home where Dimitri lived with his parents, but they did not have enough evidence to obtain a search warrant. One day, while officer Semes was attending to some paperwork at the station, Officer Jack observed a group of youths enter through the front door of Dimitri's home. One of them appeared to be carrying a small propane tank. After about 30 minutes, Officer Jack knocked on the front door of Dimitri's home to inquire about the tank's contents. Officer Jack had not noticed that the youths had left through the rear door shortly after their arrival.

When nobody answered the front door, Jack went to the rear of the house and knocked on the rear door. Nobody answered. Officer Jack looked through the window located next to the home's rear door. He noticed that it was small room and inside there was a Bunsen burner with a very high flame burning under a petri dish filled with liquid and solid substances. Based on what he learned at a War on Drugs training on Guam, Jack believed this was a lab constructed for the manufacture of methamphetamine. Officer Jack knew that such labs often result in explosions that expose the public to hazardous chemicals. He feared that the unattended and excessively high flame burning under substances he suspected to be dangerous chemicals could result in an explosion. He again knocked loudly on the rear door, but no one responded. Believing that the residents in the nearby homes were in danger and recognizing that the evidence of a crime could be destroyed in an explosion, Jack forced his way into the home and extinguished the flame. Once in the small room, Officer Jack observed a large quantity of suspected methamphetamine located under the table where the Bunsen burner was.

Officer Jack searched the entire home and found several guns and \$8,000 cash hidden in a closet. Officer Jack seized the lab paraphernalia, the drugs, the guns, and the cash and called Officer Semes at the station to inform him of his find.

Officer Semes indicated that he was talking to Dimitri's parents. The parents had appeared at the police station to express their concern over the gang of youths with whom their son was associating. They were afraid that Dimitri was engaged in illegal drug activity. After learning of Officer Jack's discoveries, Officer Semes informed Dimitri's parents that the officer he was talking to on the phone observed through a window of their home activity that was consistent with the illegal manufacture of methamphetamine.

Officer Semes then asked the parents, "May the police have permission to search your home?" The parents freely and voluntarily consented to a search of their home.

VII. (Cont.)

Dimitri, aged 18, was charged in the FSM Supreme Court with the manufacture and distribution of methamphetamine and illegal firearms possession. His lawyer filed a motion to suppress the guns, the cash, the drugs, and the drug paraphernalia found in the home.

Discuss the legal arguments that may be advanced for and against Dimitri's motion and how the trial judge is likely to rule.

VIII.
(12 points)

Pam and Dan were friends and neighbors. One day, while Pam was visiting, Dan announced that he was going to spend the day building a tree house in his backyard. Dan showed Pam the materials and the ladder he had recently bought to build the tree house. He also showed Pam where he wanted to build the tree house — in a large, tall tree at the far side of his yard.

Pam volunteered to help Dan. Pam left, promising to return in an half hour or so. Before leaving, Pam specifically warned Dan not to use his ladder to climb up into the tree without first securing it to the tree or having someone hold it in place.

A half hour later, Pam returned and noticed to her alarm that, without anyone or anything holding the ladder in place, Dan had climbed nearly to the top of his ladder to inspect the tree at the far side of his yard. Afraid that the ladder was not stable and that Dan would fall, Pam began to run across the backyard so that she could hold the ladder in place. As she was crossing the yard, Pam fell and broke her ankle.

A short time later, Pam brought suit against Dan, specifically alleging that Dan's decision to climb the ladder without properly securing it was negligent and led her to break her ankle.

A. (9 points) Discuss which elements of negligence Dan should address, and how he should address them, in opposing Pam's specific claim.

B. (3 points) Now assume that Pam's fall resulted from her tripping over a drainage pipe that was hidden in the grass in Dan's backyard. Does that fact impact the claim(s) that Pam may assert against Dan, and if so, how?

IX.
(15 points)

In late 2010, a U.S. company, Surf City Unlimited, Inc. (SCUI), a purveyor of surfing accessories and apparel, signed a contract with Eco-Resort, a top-rated eco-tourist facility on Pohnpei in which SCUI reserved all of the rooms at Eco-Resort for the third week of April 2012, for its annual executive strategic planning retreat and motivational seminar. The Eco-Resort contract called for pre-payment of a non-refundable deposit of \$2,500 on signing (which was paid); and additional \$10,000 on April 1, 2012; with the remaining \$15,000 at the conclusion of the event. (The airfare and other travel costs were substantial.) The contract contained a clause stating that the contract constituted "a merger of all previous proposals, negotiations, and representations with reference to the reservation described in this contract." The contract further stated that any disputes would be resolved by applying FSM law.

SCUI's policy was to hold its retreats only at facilities that were top-rated eco-tourist resorts. In the 2010 discussions, SCUI told Eco-Resort that the eco-tourism top rating was a condition of its willingness to book and hold the event at Eco-Resort. Eco-Resort assured SCUI: "Don't worry about that. This resort has consistently held the eco-tourism top rating for the past twenty years." [This was true.] Relying on this statement, SCUI did not ask to put language in the contract to provide that it could cancel without penalty if Eco-Resort lost its top rating.

Both companies had a tough year in 2011. Eco-Resort was dropped from the top eco-tourism rating to the rating just below that. And because of a steep sales decline, SCUI started its strategic planning in October 2011 and cut most of its discretionary spending including executive retreats. On December 1, 2011, SCUI sent Eco-Resort a letter canceling the contract because (1) Eco-Resort no longer had the top eco-tourism rating, (2) SCUI no longer needed a strategic planning session, and (3) "other current conditions" made it "financially infeasible" to hold the retreat. SCUI did not offer to pay Eco-Resort anything because of the cancellation.

Eco-Resort comes to you on January 16, 2012, alarmed by this news and concerned that new reservations are drying up because of the economy. Eco-Resort tried but could not find another business willing to take the week SCUI had reserved. Eco-Resort wants to discourage other potential big customers from canceling. It is well-known that although SCUI has declining sales it is not in danger of going into bankruptcy.

Please advise and explain to Eco-Resort whether:

- A. (3 points) it can file suit against SCUI immediately or must it wait until the end of April;
- B. (8 points) SCUI will have valid defenses if Eco-Resort sues it for breach of contract; and
- C. (4 points) what damages Eco-Resort can recover if it is successful.

General

X.
(9 points)

In each of the following two 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 had been 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 the State Court of Yap in which Cyrus, a citizen of Yap, sued Stone Money Tours, Inc. for unpaid wages. Stone Money Tours, Inc. is a closely-held corporation that has only two shareholders, one is a Yap citizen, and the second is a United States citizen resident on Guam. Stone Money Tours, Inc. was incorporated under Yap state law and its only place of business is on Yap.

B. (3 points) A case originally filed in the Pohnpei Supreme Court in which a Pohnpei citizen sued another Pohnpei citizen and a Chuuk citizen for breach of contract.

And in the following case, discuss the constitutionality under the FSM Constitution of:

C. (3 points) A state statute imposing a 12.5% "sales tax" on the retail sale of prescription drugs when the tax is to be assessed on and paid by the seller.

General

XI. (13 points)

Today, Jerry Jerome came to your office with two documents. One was entitled "Complaint" and the other "Notice of Deposition." He indicated to you that he found them taped to the door of his home yesterday. The complaint relates to an auto accident that he was involved in exactly two and a half years earlier. Jerome told you that while he was driving his car on the road into town a car came abruptly out of a hidden driveway; he couldn't stop; and he collided with it. Unfortunately, the collision instantly killed Seth Plain, a child who was in the other car. Mary Plain, the child's mother and the driver of the vehicle coming out of the driveway, sustained a broken leg as a result of the collision.

At the time of the collision, Frank Plain, Mary's husband and the child's father, was in a back room and home office of the house which was located about 75 feet from the road. Frank did not realize what had happened until he came out of the house about five minutes after the incident. In addition to the personal injuries that were received, a computer in the back seat was destroyed. The computer was owned by Frank's employer, Plain Corporation, a corporation wholly owned by him. Jerome injured his neck in the accident. It still hurts.

The notice of deposition which Jerome gave you calls for his deposition at the law firm of the plaintiffs' attorneys in 25 days. Jerome tells you he doesn't want to be deposed on that date.

The complaint follows.

- A. (9 points) What should your response (on Jerry Jerome's behalf) be to the Complaint?
- B. (4 points) And to the notice of deposition?

IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
TRIAL DIVISION – STATE OF POHNPEI

FRANK PLAIN and MARY PLAIN,)	CIVIL ACTION NO. 2012-0__
individually and as)	
administrators for the ESTATE)	
OF SETH PLAIN,)	
)	
Plaintiff,)	COMPLIANT
)	
v.)	
)	
JERRY JEROME,)	
)	
Defendant.)	
_____)	

NOW COME the plaintiffs, by and through their attorneys, and hereby complain against Jerry Jerome as follows:

1. Plaintiffs Frank, Mary, and Seth Plain are citizens of Pohnpei.
2. Defendant Jerry Jerome is a citizen of Chuuk.
3. Jurisdiction in the FSM Supreme Court is therefore proper. FSM Const. art. XI, § 6(b).
4. On or about September 1, 2009, defendant Jerry Jerome, while on the Pohnpei Circumferential Road in U, negligently permitted his vehicle to collide with a vehicle operated by Mary Plain, in which Seth Plain was a passenger.

COUNT I

5. As a result of the collision, Frank Plain sustained the loss of a computer valued at \$2,000 and his vehicle with a value of \$5,000.

COUNT II

General

6. As a result of the collision, Mary Plain suffered personal injuries including, but not limited to, a broken leg. She lost wages, incurred medical bills, and experienced pain and suffering.

COUNT III

7. As a result of the collision, Frank and Mary Plain's minor son, Seth Plain, was killed.

COUNT IV

8. As a result of the collision, Frank and Mary Plain sustained mental distress.

PRAYER

WHEREFORE, the Plaintiffs demand judgment in an amount determined to be fair, just, and equitable by the court and further request costs.

DATED, February 29, 2012, at Kolonia, Pohnpei.

/s/
XYZ Law Firm
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