

**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 6, 2014

ADMINISTERED IN CHUUK, 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.	10
II.	20
III.	12
IV.	14
V.	6
VI.	13
VII.	6
VIII.	12
IX.	7
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)

Attorney Haddock filed suit in the FSM Supreme Court against Imelda for passing \$680.72 worth of bad checks at his client's business. The parties stipulated to a judgment, wherein Imelda agreed to pay the principal on the debt, the returned check fees, pre-judgment interest, post-judgment interest, and past and future attorney's fees, and to an order in aid of judgment. Imelda was not represented by counsel when she agreed to this stipulation. Haddock drafted the stipulation. In it Imelda also waived any rights she might have under FSM Code Title 6, chapter 14 and FSM case law and provided that she pay \$138 an hour in attorney's fees and that 40% of her bi-weekly income would be used to satisfy her debt. The trial court entered judgment against Imelda. After a brief order in aid of judgment hearing at which Imelda was present and during which the judge was told that Imelda had agreed to the payments, the court entered an order in aid of judgment that adopted the stipulation's terms.

Imelda is a single mother of two and, when the order in aid of judgment was executed, she had just started a job paying \$250 bi-weekly. She made one \$100 payment to Haddock but used the rest of her income to feed and clothe her family, pay her children's school fees, and pay down the back rent she owed. Every month that Imelda did not pay, attorney Haddock filed a motion for an order to show cause why she should not be held in contempt of court for her failure to comply with the court's order in aid of judgment. Eventually, Imelda's employer paid Haddock \$720. When Imelda called Haddock's office to inquire how much she still owed, Haddock told her that, despite the \$820 in payments, she owed \$1,450, mostly in attorney's fees accrued during the filing of the multiple contempt motions.

Imelda complained to the court that attorney Haddock had written her telling her that she had passed bad checks and needed to resolve them. When she met him at his office she agreed that she needed to pay for the checks but informed Haddock of her precarious financial situation. Imelda alleged that when she met Haddock before the order in aid of judgment hearing, he told her that she had to pay the judgment first before anything else and that Haddock said, "You are lucky I am just asking you to pay because I can put you in jail for passing bad checks."

The court has now opened a disciplinary case and appointed disciplinary counsel.

A. (9 points) If Imelda's allegations are true, and based on the facts stated above, what ethical obligations, if any, might disciplinary counsel charge Haddock with violating?

B. (1 point) What burden of proof must disciplinary counsel meet before the court will discipline attorney Haddock?

Evidence

II.

(20 points)

You represent a local business that, among other things, sells new and used vehicles. The business is being sued by plaintiff Pone as the result of injuries he allegedly sustained after slipping on oil while in the business's car lot. You expect Pone to testify at trial about the fall and his resulting pain and suffering. Your investigator, Sam Sleuth, has uncovered some background information on Pone and on your client, the business. For each item discuss whether and how the evidence could be used.

- A. (3 points) witnesses will testify that Pone is known in his home village as a liar.
- B. (3 points) Pone made a false statement about a College of Micronesia degree on a job application last year, and a COM representative can testify that the statement was false.
- C. (3 points) Pone was convicted last year of a misdemeanor for making false statements to a police officer (in connection with a traffic accident). The prosecutor is willing to testify to the fact of the conviction.
- D. (2 points) Pone was convicted last year in state court of driving while intoxicated, which under that particular state's law is a felony.
- E. (3 points) a witness will testify that she heard Paul make an out-of-court statement to the effect that, "that fall didn't hurt a bit!"
- F. (3 points) The business carries a \$100,000 liability insurance policy.
- G. (3 points) After Pone's accident, the business changed its policies about oil spill clean-ups in the car lot.

III.

(12 points)

The largest store in your state was burned to the ground. The police called your office on Friday afternoon to tell you that they had just arrested Tommy "the Torch" Taylor and charged him with arson in connection with the fire. Tommy had been convicted of three previous arsons of small local stores, and was the police's prime suspect for this reason.

The police informed Tommy of his rights to be silent and to an attorney. Tommy said he wanted to talk to his lawyer and have his lawyer present before he answered any questions. He told them you were his lawyer. Unfortunately, you had left your office an hour earlier for a weekend retreat and you did not get the message until you returned to the office Monday morning.

Early Saturday afternoon, the police started questioning Tommy again. A frightened Tommy then confessed.

Monday morning you talk to Tommy and he tells you that he was hired by the store owner to burn down the store for the insurance proceeds. Tommy also tells you that the store owner is involved in drug trafficking, smuggling illegal drugs into the state in the shipping containers that the store's trade goods are imported in. The police do not have the information about the store owner hiring Tommy or about the store owner smuggling drugs.

Discuss what advice and strategy you would use in representing your client under these circumstances, and what motion you might make, on what basis, and what would likely be the court's ruling on the motion.

IV.
(14 points)

You have been retained to represent a client, Paula Plaintiff, who was injured while shopping in a grocery store. She tells you she went to the store and while walking down an aisle was struck by a cart pushed by a grocery store employee. The employee admitted to Paula that his attention had been temporarily diverted because he had been checking the text messages on his cell phone and did not see Paula until he hit her. Paula does not know the employee's name. Paula also said that there were two witnesses to the accident but she does not know their names.

According to the information you have from your investigation, you have found out that the store is incorporated and owns the land on which it is located. You file a complaint against the store. The defendant files an answer that is a general denial.

Discuss how you would use particular discovery methods and requests for admissions to help you obtain the following:

- (A) (3 points) the employee's name;
- (B) (3 points) the employee's version of the accident;
- (C) (3 points) the witnesses' names, if known to the defendant;
- (D) (3 points) the witnesses' versions of the accident; and
- (E) (2 points) the store's ownership.

Be specific — do not discuss a discovery method if it will not lead to the requested information.

General

V. (6 points)

In each of the two following tort cases in which punitive damages have been rewarded, read the specific question, limit your answer to the issue of punitive damages, and briefly state the reason for your conclusion.

A. (3 points) Plaintiff brought a tort action for both compensatory and punitive damages. After trial, the court concluded that the plaintiff did not present sufficient evidence that he sustained any actual damages as a result of the defendant's wrongdoing and thus awarded no compensatory damages. However, the court found that the defendant had acted maliciously with intent to harm the plaintiff and that the evidence entitled the plaintiff to an award of \$20,000 in punitive damages to punish the defendant, prevent further misconduct, and to deter others from similar outrageous acts.

Is the award of punitive damages likely to be upheld?

B. (3 points) The court awarded \$20,000 in compensatory damages and \$30,000 in punitive damages to a plaintiff for her personal injury claim for damages against the FSM national government.

Is the award of punitive damages likely to be upheld?

VI.
(13 points)

There are at least three ways a party may obtain a judgment without the necessity of a trial. For each of the three set forth below, discuss:

- (1) when a party can seek the remedy;
- (2) how the party seeks the remedy (that is, what motion or other material is filed); (3) what factors the court considers in granting or denying the relief requested; and (4) under what circumstances, if any, the adverse party is entitled to seek relief from such a judgment.

Please note you must answer all parts to receive full credit.

- A. (5 points) default judgment,
- B. (4 points) judgment on the pleadings,
- C. (4 points) summary judgment.

General

VII. (6 points)

In both of the following cases, the defendants removed the case to the FSM Supreme Court trial division from the state 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 state court in which it was filed because it had been improvidently removed — that is, that the case should not have been removed in the first place because 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 alleging trespass filed in Pohnpei Supreme Court by a Pohnpei citizen landowner against an adjoining business incorporated in Pohnpei and owned by a United States citizen from Saipan and a Pohnpei citizen.

B. (3 points) a suit filed in the State Court of Yap by a Philippines citizen for wrongful discharge from the employ of a locally incorporated tourist company owned by United States citizen from Guam and a citizen of Canada.

VIII.
(12 points)

On February 2, 2014, Xavier, a resident of Chuuk, noticed in the most recent *Kaselehlie Press* the following advertisement:

BRONZED SHOES. For only \$65, Yvonne will bronze any pair of shoes, up to size 12D. Please complete the following form and send along with a check for \$65 and a well-cleaned pair of shoes. You will receive your bronzed shoes within 15 days.

On February 12, 2014, Xavier completed the form and mailed it with his check and shoes to the Pohnpei address indicated in the advertisement.

A. (8 points) Xavier has changed his mind. Can Xavier cancel if Yvonne has already received the order form and check? What if Yvonne has already started bronzing Xavier's shoes?

B. (4 points) Yvonne has received so many responses to her advertisements that she is worried about her ability to finish all of the work as quickly as her advertisement promised. What are the possible contract law problems, if any, in Yvonne having another company, TD Company, do some of the work. Assume that a contract has been formed between Xavier and Yvonne.

IX.
(7 points)

Discuss the constitutionality of the following under the FSM Constitution:

A. (3 points) A national statute specifically naming certain persons as people who have damaged government property and requiring them to pay damages to the government before they can apply for government employment or receive any other government benefits such as the issuance or renewal of an FSM passport.

B. (4 points) A state statute enacted in an effort to lower the divorce rate in the state that requires that anyone under the age of 23 could not marry without first attending a three-day long workshop — funded by the state free of charge — on marriage, parenting, and divorce.