

**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**

**AUGUST 4, 2005**

**ADMINISTERED IN CHUUK, KOSRAE, AND POHNPEI**

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

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## **INSTRUCTIONS**

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. 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.	8
II.	2
III.	20
IV.	16
V.	8
VI.	4
VII.	18
VIII.	4
IX.	<u>20</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 I-II. THE EVIDENCE QUESTION IS III. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

GOOD LUCK.

I.  
(8 points)

Rose and Dan were both expert divers, and each owned 50% of their dive tour corporation, which owned a live-aboard dive boat and other dive-related facilities. They were married for five years. They decided to get divorced and filed a joint petition for divorce. They agreed that neither would receive support payments from the other since they were both self-supporting. They each appeared in court *pro se*, and the judge entered a divorce decree that gave Dan the right to buy Rose's corporate shares for their fair value. Dan then sued Rose for a declaratory judgment to determine the fair value of her shares.

Rose retained Lloyd, who negotiated a written fee agreement with her that provided that Lloyd would represent her in the suit, advance the funds for depositions, experts, and other expenses, and receive as a fee 30% of the fair value determination. Lloyd conducted discovery, took depositions, and represented Rose at her deposition, and represented her at trial. Trial was held in June 2003. Lloyd spent 75 hours on the case. His usual hourly rate was \$100. The judge took the case under advisement.

In December, 2003, Rose was charged with attempting to murder Dan. Rose again retained Lloyd and they negotiated a written fee agreement that provided for her to immediately pay him a retainer of \$15,000 for the defense of the criminal case and granted Lloyd the exclusive right to write and publish a book or newspaper and magazine articles about Rose and Dan after the trial's end. Lloyd represented Rose at the criminal trial and she was acquitted in September 2004.

In October, 2004, the judge in the declaratory judgment suit made his findings and entered a judgment declaring that the fair value of Rose's shares in the dive tour operation was \$1.4 million.

In November, 2004, Rose sued Lloyd seeking (1) the return of the \$15,000 retainer, (2) a declaratory judgment that she owes Lloyd nothing for the expenses or fees in Dan's suit against her, and (3) that Lloyd be prohibited from writing any articles or books about her and Dan. She also filed a disciplinary complaint against Lloyd with the FSM Supreme Court Chief Justice.

What results and why?

**II.**  
**(2 points)**

**Attorney Huygens, represented client Cassini in a civil matter. While the matter was pending attorney Huygens was hired by the state government in a legal capacity. His state employment contract specified that he could not work for payment with other employers, companies, or persons while the contract was in force and while Huygens was employed by the state. This contract provision complies with an applicable state statute.**

**Huygens then filed with the court and served on the opposing parties' counsel, a "Notice of Withdrawal" stating that because of his employment contract with the state he was withdrawing from the case. He did not appear in court at the previously-scheduled status conference held the next day.**

**Comment.**

**III.  
(20 points)**

**In the FSM Supreme Court, Tycoon is sued for sexual harassment by Linda, a former employee.**

**Under the FSM Rules of Evidence:**

**Discuss all objections Tycoon's attorney could raise, any argument in response, and the court's likely ruling, on the following:**

**A. (4 points) While Tycoon is the witness, Linda's offer of a letter from Tycoon on his company's letterhead to Monica, another former employee, in which Tycoon compliments Monica on her appearance.**

**B, (4 points) Linda's offer of a copy of an audio tape recording containing an excerpt of a telephone conversation between Linda and Monica discussing Tycoon's sexual advances toward them.**

**C. (2 points) Linda's offer of the testimony of five other former female employees of Tycoon regarding Tycoon's unwanted sexual advances toward them.**

**D. (2 points) Linda's offer of the testimony of Dr. Marlyce, a psychiatrist, regarding Dr. Marlyce's opinion that Tycoon is suffering from a newly discovered form of sexual addiction afflicting entrepreneurial businessmen.**

**Discuss all objections Linda's attorney could raise, any argument in response, and the court's likely ruling, on the following:**

**E. (4 points) Tycoon's offer of a copy of a police report of Linda's arrest for shoplifting twelve years ago after Linda testified that: "In my job application, I swore under oath that I had never been arrested.**

**F. (2 points) Tycoon's offer of the testimony of Linda's previous attorney regarding the advice he gave her about whether she could legally tape record telephone conversations.**

**G. (2 points) Tycoon's offer of the testimony of Competitor who would testify that while Tycoon is friendly, he would never sexually harass anyone and anyone who says so is not telling the truth.**

**IV.  
(16 points)**

**Cygnus called Ajax, a house painter, to discuss an interior painting project. Cygnus wanted to have faux finish painting done. Ajax sent Cygnus a contract on his printed form, setting forth the price at \$5,000.00 for faux painting, and describing the three-step process that would be used in applying the treatment. The form stated that the painting would be done to the customer's satisfaction. The form also contained the following language:**

**This contract contains all the terms agreed to by the parties. It is a final and complete statement of the agreement entered into between the parties.**

**Cygnus signed in the appropriate spot on Ajax's form and sent it back.**

**Wanting to have bookcases built into the walls, Cygnus offered Thor a job doing finished carpentry in the house. Cygnus told Thor that he would pay \$10 per hour, with a guarantee of forty hours of work for three months. Cygnus, said, however, that Thor could terminate the arrangement at any time with 21 days notice. Thor told Cygnus that he accepted his offer, and would give two weeks notice to his current employer that he would be leaving.**

**The painting and carpentry got underway. However, Cygnus was displeased with both. Cygnus took Thor off the carpentry work because of shoddy workmanship. Cygnus offered Thor a job on another project doing rough carpentry work on a garage for \$6 per hour. Thor was upset about this and refused the rough carpentry job, because he had left a finished carpentry position paying \$8 per hour.**

**Cygnus was also disappointed with the painting. Cygnus claimed that when he and Ajax discussed the painting project, Ajax said the walls would be glazed, however, Ajax claims that glazing is not part of the deal. Ajax also claims he is entitled to \$5,500 for the job. Partway through the job Ajax told Cygnus he needed an additional \$500 and Cygnus agreed feeling that he had no alternative because no one else on the island could do faux painting. Cygnus says he is not satisfied with the finished walls. Along with the glazing, Cygnus expected a more sponge-like finish to the walls than there was in the finished project. Cygnus refused to pay Ajax.**

**Both Ajax and Thor have sued Cygnus for breach of contract. Ajax seeks to recover \$5,500 and Thor seeks \$5,200.**

**A. Analyze the defenses that Cygnus might raise to these breach of**

**contract claims.**

**B. Analyze the expected rebuttals to Cygnus's defenses.**

**V.**  
**(8 points)**

Defendant Attila was charged with a felony in state court. The strongest evidence against him was a typewritten confession with his signature. Attila timely moved for suppression of the confession on the grounds that it had been coerced from him while he was drunk, that he had been forced to sign it, unaware of its contents, before the police officers would allow him to get some sleep, and that he did not remember being informed of his rights. The trial court denied the motion. Attila was convicted after a trial in which his confession was the key piece of evidence. Attila appealed to the state court's appellate division which affirmed his conviction.

Attila then appealed to the Appellate Division of the FSM Supreme Court. The state constitution contains a provision prohibiting appeals to the FSM Supreme Court from the state courts.

A. (3 points) Does the FSM Supreme Court have jurisdiction to hear Attila's appeal?

B. (5 points) What issues will the FSM Supreme Court consider if it hears Attila's appeal on its merits? And what possible result?

**VI.**  
**(4 points)**

**Zero filed a complaint against Arbor for tortious interference with a contractual relationship and civil conspiracy. The complaint and summons was duly served on Arbor. Arbor timely filed a Rule 12(b)(6) motion to dismiss the complaint for failure to state a claim upon which the court could grant relief.**

**Zero did not file an opposition to the motion to dismiss, but instead filed and served, without seeking leave of court, an amended complaint, which purported to cure the defects in the original complaint that the motion to dismiss had relied upon. The court then denied the motion to dismiss because it did not address the amended complaint.**

**Was the court's denial of the motion proper?**

**VII.  
(18 points)**

**Discuss the constitutionality under the FSM Constitution of the following:**

- A. (3 points) A state statute taxing hotel owners \$50 per room per year plus 5% of all room rental charges.**
- B. (3 points) A state constitutional provision banning anyone other than a state citizen from fishing within fifty (50) miles of a certain named atoll within that state without permission of the state legislature.**
- C. (3 points) An act of Congress finding that a certain named foreign person living and working in the FSM had committed a certain offense and requiring that the President deport that person as an undesirable.**
- D. (3 points) A state governor's pardon of person lawfully convicted in the FSM Supreme Court in 1989 of an offense that is now punishable only under state law.**
- E. (3 points) A municipal ordinance imposing an annual \$10 tax on each resident of the municipality over the age of 18.**
- F. (3 points) A state statute raising the drinking age from 18 to 30 and voiding any drinking permit already issued to anyone under 30, based on a legislative finding that drinkers under 30 were involved in 80% of the driving under the influence cases and 90% of the suicides in the state. The statute contained an exemption for visitors from out-of-state who purchased a temporary 30 day drinking permit.**

**VIII.**  
**(4 points)**

Protagoras taught law to a poor student named Euarthlus. They agreed that Euarthlus would pay Protagoras's fee as soon as Euarthlus won his first case. Upon completing his studies, Euarthlus abandoned the law for a career in politics. After waiting some time to receive his fee, Protagoras finally sued Euarthlus for his fee. In defense, Euarthlus contended that Protagoras was not entitled to payment because the condition for payment had not been met.

**Discuss.**

**IX.  
(20 points)**

Hauk, a Chuukese citizen, and George a British citizen, were co-owners of Lagoon Truking Co., business primarily engaged in hauling containers and heavy equipment around Chuuk. George was also Lagoon Truking Co.'s general manager. In that capacity, George hired Phil, a Philippine citizen, to be Lagoon Truking Co.'s chief mechanic.

On April 15, 2003, Phil was working at Lagoon Truking Co.'s maintenance facility on Weno, Chuuk. Phil's leg was injured when some equipment machinery fell on it. He was treated properly at Chuuk State Hospital, but walked with a limp after that.

Sometime later Phil decided he was entitled to compensation for his injury. He drafted a complaint and summons himself. On April 12, 2005, he filed suit in the FSM Supreme Court in Chuuk for his injury. He named George as the only defendant. George was properly served with the complaint and summons on April 16, 2005. A return of service was filed to that effect. On April 18, 2005, George informed Phil that his services were no longer required.

- A. (3 points) On May 2, 2005, George's lawyer filed a motion to dismiss. On what ground or grounds? And what result?
- B. (3 points) Assume that the case was dismissed. You are a lawyer. Phil comes to you for help on June 3, 2005. You agree to take the case. You file suit on June 14, 2005, and name both George and Lagoon Truking Co. as defendants. What court or courts might you file suit in?
- C. (4 points) What cause or causes of action might you allege in the complaint? Against which defendant?
- D. (4 points) What defenses might the defendants raise? What outcome is likely?

Kadalino, a citizen of Pohnpei, was also employed by Lagoon Truking Co. He was injured while at work on April 1, 2005. He decides to sue for compensation after hearing about Phil's suit. He files suit against Lagoon Truking Co. for negligence.

- E. (3 points) Discovery revealed that Kadalino's injury may have been partly his fault. Lagoon Truking Co. then raised contributory negligence as an affirmative defense. Comment.
- F. (3 points) Kadalino moved for summary judgment on his claim, but did not include any points and authorities with the motion. Comment.