

**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 2, 2007

ADMINISTERED IN 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.	20
II.	2
III.	4
IV.	4
V.	14
VI.	5
VII.	13
VIII.	13
IX.	10
X.	7
XI.	4
XII.	<u>4</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 II THROUGH IV. THE EVIDENCE QUESTION IS I. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

GOOD LUCK.

Evidence

I. (20 points)

Phobos was injured in a head-on collision between a vehicle driven by him and a vehicle driven by Deimos. Phobos sued Deimos and U-drive, the car rental company from which Deimos had rented the car, claiming that the front axle of Deimos's car broke, causing Deimos to cross the center line, thus causing the collision. Deimos contended that he did not cross the center line, but that Phobos did, under the influence of alcohol.

How should the court rule on each of the following objections which occurred during the trial?

A. (2 Points) An engineer retained by Phobos had obtained the axle of Deimos's vehicle for examination and wrote a detailed report of his findings. Later when the engineer was transporting the axle by boat to his island, and the boat struck a sharp rock and sank. He lost the axle. Phobos asked the engineer to give his opinion concerning the axle and its relationship to the accident. U-drive objected.

B. (3 points) On direct examination during Phobos's case-in-chief, Phobos's wife was asked, "What did Phobos say to you about his condition when you visited him in the hospital after the accident?" Deimos objected.

C. (2 points) on cross-examination, Phobos's wife was asked by U-drive, "Please describe Phobos's emotional condition when you visited him in the hospital alone after the accident." Deimos objected.

D. (3 points) Phobos offered in evidence the annual report kept by U-drive's repair shop which showed that many axles on U-drive's cars were damaged during the year. Deimos objected.

E. (2 points) On cross-examination, Phobos was asked by U-drive, "Weren't you in two other accidents where you claimed the other car crossed the center line?" Phobos objected.

F. (3 points) Phobos, offered through his investigator, the signed statement that the investigator had obtained from Deimos. In the signed statement, Deimos wrote that, at the time of the accident, he heard the crack of an axle and then the car lurched to the left. U-drive objected.

G. (2 points) Phobos's daughter, at the time of the accident and for some time previously had been in therapy with a psychologist who was treating her. In a therapy session, she said that her father had admitted that he was drunk at the time of the accident. Deimos summoned the psychologist to testify to his patient's statements. Phobos objected.

H. (3 points) Deimos summoned the bartender to whom Phobos's lawyer stated that Phobos told the lawyer in a conference that he was drunk

Evidence

at the time of the accident. Phobos objected to Deimos's questions seeking to elicit this.

**II.
(2 points)**

Discuss the ethical responsibilities and possible lapses of Phobos's lawyer in the previous question [#1(H)].

**III.
(4 points)**

Defendant Iwan Santos was served a Summons and the following Complaint. The defendant, after being served, consulted Attorney Malcolm. He told Attorney Malcolm that he had bought the goods for the price stated in the Complaint. He further informed Attorney Malcolm that he does not have the funds available at this time to pay the plaintiff, but expects to have the necessary funds sometime in the near future. Attorney Malcolm then prepared, signed, and filed the following Answer on behalf of the defendant.

Discuss any ethical considerations raised by this sequence of events, and mention all obligations or standards which guide lawyers' conduct that have a bearing on this case.

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

NINA'S JEANS, INC.,)	CIVIL ACTION NO. 2007-1007
)	
Plaintiff,)	
)	
v.)	COMPLAINT
)	
IOWANES SANTOS,)	
)	
Defendant.)	
_____)	

1. The plaintiff is a corporation organized under the laws of the Territory of Guam, having its principal place of business in Guam.

2. The defendant is a citizen and resident of the State of Chuuk, Federated States of Micronesia.

3. The court has jurisdiction of this case by virtue of Section 6(b) of Article XI of the Constitution of the FSM.

4. On or about October 20, 2006 the plaintiff shipped to the defendant ten dozen jeans of assorted sizes.

5 The shipment set out in paragraph 4 above fulfilled the order of the defendant given to the plaintiff's agent on Weno on or about October 1, 2006.

6. The agreed upon purchase price of the shipment of jeans was \$600.00.

7. The purchase price, according to order, was to be paid 30 days after receipt of the jeans by the defendant.

8. The jeans, shipped as alleged in paragraph 4, were

received in good condition by the defendant on Weno on or about October 28, 2006.

9. More than 30 days have elapsed since October 28, 2006.

10. The defendant has failed to pay for the shipment of jeans.

11. The defendant owes the plaintiff the sum of \$600.00 for goods sold and delivered to the defendant as alleged.

Wherefore the plaintiff demands judgment against the defendant for \$600.00 together with the costs of this action.

Dated July 4, 2007.

Attorney for Nina's Jeans, Inc.
Methodius Firth
Post Office Box X
Weno, Chuuk FM 96942
Telephone: 330-8936

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

NINA'S JEANS, INC.,)	CIVIL ACTION NO. 2007-1007
)	
Plaintiff,)	
)	
v.)	ANSWER
)	
IOWANES SANTOS,)	
)	
Defendant.)	
_____)	

1. Paragraphs 1, 2, and 3 of the Complaint are admitted.
2. Paragraphs 4 through 11 are denied and the plaintiff is put upon his proof.

Wherefore defendant demands that the Plaintiff's Complaint be dismissed with costs to the defendant.

Dated July 27, 2007.

Attorney for Iowanes Santos
Xavier Malcolm
Post Office Box Q
Weno, Chuuk FM 96942
Telephone: 330-8765

Certificate of Service

This 27th day of July, 2007, I mailed a copy of this Answer, postage prepaid, to Methodius Firth, Esq., P.O. Box X, Weno, Chuuk FM 96942

Xavier Malcolm

**IV.
(4 points)**

Attorney, a sole practitioner, was hired by Client to create a corporation for Client's new business and to obtain all the necessary tax and business registrations. Attorney stated that his fee would be \$100 per hour plus expenses, such as all government fees and taxes, and asked for a \$1,500 advance deposit.

Client paid Attorney \$1,500. Attorney deposited the money in his bank account. Attorney drew up the proper papers and filed them with the appropriate government agencies. He spent \$350 on various business license and incorporation fees. Attorney presented Client with a bill for 9½ hours of work and the \$350 in expenses and a check drawn on Attorney's own account for \$200. Client looked at the bill and said, "What is this 1½ hours 'client consultation' on July 28th? That's a Saturday! Is that the time you and I went drinking at Bayview? I'm not paying that!"

Attorney replied, "You already have," and walked away.

Discuss any ethical implications raised by the above events.

**V.
(14 points)**

Buyer, a local businessman, owns a complex that included a tourist hotel, supermarket, restaurant, hardware store, offices rented to other local businesses, a laundromat, and twenty rental houses used for residences. Buyer has been very concerned about the effect on his businesses of Island Power's unreliable service. Buyer vows to have his own turbine generator installed so that his complex will have a reliable 24-hour electrical supply. He asks Seller, one of his regular suppliers, to submit a proposal for a turbine generator, suited to local conditions, that will supply all of Buyer's needs. The turbine must be able to switch on automatically, with a twenty-second delay, when Island Power goes off, and switch back off when Island Power comes back on so long as the Island Power was steady and does not come on with surges. The turbine also had to be able to generate supplemental electricity through a windmill during the months that the trade winds blow steadily and through solar panels on the roof, year-round.

Seller telephoned Buyer and agreed to produce and install a generator pursuant to the specifications Buyer had supplied, at a price to be agreed upon at a later time when all of Seller's costs were known. During this telephone conversation, Buyer accepted this offer "so long as the price does not exceed \$400,000," and emphasized that delivery by July 15, 2007 was essential, since installation of the generator was vital to Buyer's completion of the expansion of his business and hotel complex.

The next day, Buyer sent Seller a written confirmation that referred to the specifications that Buyer had given Seller, and stated that the price was "not to exceed \$400,000," required delivery by July 15, 2007, and provided for damages of \$500 per day for any delay in delivery, specified "the usual warranties," and stated that "any changes in this agreement must be in writing." Shortly after receiving this confirmation, Seller began producing the turbine.

On June 15, 2007, Buyer received a fax from Seller asking for a one-month delay in the delivery date. Buyer phoned Seller and after hearing seller's reasons for the request, said that a one-month delivery delay would be acceptable.

On July 20, 2007, Buyer learned from a reliable source that Seller had completed the generator and was about to deliver it to Trader, another FSM businessman in a different state, for \$430,000.

What are Buyer's rights and to what relief and remedies, if any, is he entitled? Discuss.

**VI.
(5 points)**

Suppose that in the previous question [#V], Seller maintained his business and residence in Guam and that Buyer's businesses and residence are on Pohnpei. Further suppose that Seller has never visited Pohnpei.

As a result of the facts in the question above, Buyer sues Seller in the FSM Supreme Court on Pohnpei. Can the court maintain jurisdiction over the case and over the parties? Discuss.

**VII.
(13 points)**

The state legislature has enacted the "State Home Television Movie Control Act" in response to complaints by the local clergy. The Act provides:

1. It is unlawful for any person or enterprise to transmit motion pictures via a cable television system to a home television receiver in violation of this Act.
2. No motion picture rated as "R" (restricted to be viewed only when accompanied by an adult) or "X" (adults only) shall be transmitted to any household in the State so as to be received except between 12:01 a.m. and 4:30 a.m., local time.
3. Any person or enterprise that violates this Act is subject to a fine of not less than \$100 nor more than \$500 per household in the State that subscribes to that violator's transmission system.
4. This Act does not apply to any cable channel or system owned by the State.

The president of Microsystem, a company which owns and operates the cable system on the state's main island, has retained you to consider bringing a suit challenging the Act's validity. She claims that the State's enforcement of the act will put her company out of business. Her experience has shown that "R" and "X" rated movies are a significant revenue source for Microsystem since the movies are shown only on premium channels for which subscribers have to pay an extra \$10 per month for the "R" rated movies and \$20 per month for the "X" rated movies. "R" rated movies are shown daily starting at 2 p.m. and "X" rated movies are shown nightly starting at 9 p.m.

You contemplate filing an action for declaratory relief for Microsystem in the FSM Supreme Court with the State Attorney General's Office, which is charged under state law with the Act's enforcement, named as defendant.

What arguments under the FSM Constitution should you make against the Act's validity, what defenses would you expect the State AG to assert as to each argument, and how should the FSM Supreme Court rule on these contentions? Discuss.

**VIII.
(13 points)**

State Police Officer Umwes is advised by an informer on a Wednesday that Fred Marco, a part time worker at the Pohnpei Port Authority, is dealing in methamphetamine and will receive a large shipment on Friday. Since this informer had often given reliable information to Officer Umwes in the past, Officer Umwes presents the above information (but no additional facts) to a state court judge, who issues a search warrant applicable both to Marco's house and to a cookhouse which located about 20 feet away from Marco's house owned by Marco but occupied by his estranged wife.

In executing the warrant on Saturday, the police locate and seize a large quantity of methamphetamine in the garage of Marco's house. They then locate Marco and arrest him, pursuant to a state statute making it a misdemeanor to possess methamphetamine. Marco resists the arrest and a reasonable amount of force was used to subdue and arrest him.

Immediately after the arrest, officer Umwes asks Marco what he keeps in his garage, whereupon Marco blurts out, "That ain't my meth." Marco is then searched and more methamphetamine is found in his pocket. At the police station, Marco is properly and fully advised of his rights and he then demands an attorney.

Assume that you are appointed to represent Marco. What issues would you raise in an attempt to gain his acquittal on charges of possession of methamphetamine and resisting arrest? Discuss.

**IX.
(10 points)**

While working at home with her sewing machine, Pallas noticed the lights dimming and brightening repeatedly and fan slowing down and speeding up. Fearing for the electrical system in her house and all of the items plugged into it, Pallas rushed to the master switch next to the fusebox so that she can shut off the power before anything was damaged by the power surges. She grabs the switch handle and managed to turn off the power but received a very bad electrical shock to her hand.

Her neighbors rushed Pallas to the state hospital. Not far from Pallas's house they passed a work crew from island power working on a transformer and the lines on a telephone pole. At the hospital, the doctors conclude that the flesh in two of her fingertips is dead and amputate those fingers at the first joint. Pallas the Sues Island Power.

A. (6 points) What cause, or causes, of action might Pallas bring against island power?

The trial court, after trial, denied Pallas any recovery on the ground that she had been contributorily negligent in trying to turn off the power while it was surging and had therefore assumed the risk by grabbing the metal switch handle to shut off the power. Pallas appeals.

B. (4 points) How should the appellate court rule and why?

**X.
(7 points)**

During discovery in a case in the FSM Supreme Court, the plaintiff refused to respond to the defendant's request for production of documents, claiming that all such documents were privileged. The defendant moved to compel production and prevailed. Plaintiff then produced what purported to be all responsive documents.

On the first day of trial, the plaintiff offered in evidence numerous documents, which, though in the scope of the discovery request, had not previously been produced. The documents appeared to be admissible in every respect. The defendant asks you, his lawyer, "What do we do now?"

What will you advise the defendant?

**XI.
(4 points)**

Discuss the constitutionality of the following under the FSM Constitution:

A. A statute enacted by Congress imposing a 1% surtax added to the current FSM income tax except in those states where the state has provided for its own state health insurance program for all employees.

B. A municipal ordinance that foreign citizens residing in the municipality must pay an annual "head tax" every January.

**XII.
(4 points)**

Define and discuss the requirements of the following terms in FSM law:

- A. standing**
- B. temporary restraining order**