

**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 6, 2009**

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

**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.	10
II.	20
III.	9
IV.	8
V.	8
VI.	13
VII.	8
VIII.	14
IX.	<u>10</u>
TOTAL	100

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.

**I.  
(10 points)**

During the last month the following events occurred at the three-lawyer firm of which you are a partner.

A. (3 points) Arizona, a firm client, has incurred \$2,400 in unpaid attorney fees in connection with the defense of a criminal case against him. Your partner Virginia is representing him. Shortly after the firm billed Arizona, Arizona directed Virginia to withdraw her appearance in the case and send the entire original file to his new lawyer.

Virginia suggests that she tell Arizona that she will do what Arizona asks only after Arizona pays the outstanding bill. She asks your opinion on whether she should do so. What answer do you give her?

B. (2 points) Your other partner, Burr, has told you and Virginia that he intends to withdraw from the firm and go into partnership with a former assistant attorney general on the same island as you. When the three of you formed your law firm, you entered into a written partnership agreement that provided, in part, as follows: "If any partner should withdraw from the firm voluntarily, he or she, shall not practice law on this island for one year from and after the date of withdrawal."

Burr has asked you and Virginia to waive that provision. What answer will you give Burr?

C. (5 points) Following a review of the law firm's books, the firm's outside accountant informs both you and Virginia that Burr has used funds kept in the firm's Client Trust Account for personal purposes, with the result that the account is substantially depleted.

On the same day, the firm receives a demand from a client that the firm now deliver to him the net proceeds from the completed sale of the his 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.

Virginia asks what you and she should do. What do you advise?

## **Evidence**

### **II. (20 points)**

After Flynn assaulted Menino and stole his wallet, Menino commenced a civil suit in the FSM Supreme Court against Flynn for assault, conversion, and emotional distress. At trial,

A. (3 points) Menino called Bellotti, an investigator, who testified that he had no present memory of the matter but recalled making notes of his investigation. Bellotti further stated that as part of his job as an investigator, he took the notes which he kept on file. When shown the notes, Bellotti still had no recollection. Menino then offered the notes in evidence. Flynn objected. How should the judge rule and why?

B. (3 points) A portion of Bellotti's notes contained interviews with Flynn's neighbor which quoted the neighbor as affirming Flynn's general reputation as a thief. Flynn objected. How should the judge rule and why?

C. (3 points) Menino called Weld, another neighbor of Flynn's, to testify. Over Flynn's objection, which was overruled by the judge, she stated that in her opinion Flynn was a no-good low-life who would steal from his mother. Was the judge's ruling correct and why?

D. (3 points) Menino, while cross-examining Flynn, asked Flynn if he was the same Flynn who was convicted of armed robbery 12 years ago. Flynn's attorney objected. How should the judge rule and why?

E. (3 points) Menino offered a certified transcript of the deposition of Zonino, an eyewitness, who was now incarcerated in Guam. Flynn objected. How should the judge rule and why?

F. (3 points) Sullivan testified over Flynn's objection, which the judge overruled, that he heard Flynn whisper to his lawyer, "I made a big score with what I took from Menino." Was the judge's ruling correct and why?

G. (2 points) Menino called the Reverend Jones and asked him to testify about the content of his counseling sessions with Flynn. Flynn objected. How should the judge rule and why?

**III.  
(9 points)**

Phobos Corporation, a Guam corporation sued Deimos Law Offices, an FSM law firm, with its office on Pohnpei, for legal malpractice arising out of its representation of Phobos in a failed business deal. During the discovery phase of the case, the following events occurred:

A. (3 points) Deimos Law Offices designated as an expert expected to testify at trial, an attorney, who before coming to the FSM had served as an expert witness in three other legal malpractice actions.

Deimos 1) refused to provide Phobos any information about the expert's testimony other than a short general summary of it contained in an answer to an interrogatory, and 2) refused to produce copies or summaries of the proposed expert's testimony in those three other cases.

Phobos moved to strike Deimos's expert designation and preclude expert testimony by Deimos. Deimos has opposed the motion but offered to supplement its interrogatory answer. How should the judge rule and why?

B. (3 points) Deimos notified Phobos, through counsel, that it intended to depose several of Phobos's present and former officers and employees, all of whom reside on Guam. Deimos proposes to conduct the depositions on Pohnpei. Phobos has moved for a protective order. How should the judge rule and why?

C. (3 points) Phobos served a request for production of documents on Deimos Law Offices. Deimos objected to producing any documents, claiming that all the documents sought were either privileged or protected as trial preparation material. Phobos then asked Deimos to describe the nature of the withheld documents, but Deimos refused. Without further consultation with Deimos, Phobos has moved to compel production of the documents. How should the judge rule and why?

**IV.  
(8 points)**

**Defendant Theodric was charged with a felony in state court. The strongest evidence against him was a typewritten confession with his signature.**

**Theodric timely moved to suppress the confession on the grounds that it had been coerced from him while he was drunk and that he had been forced to sign it, unaware of its contents, before the police officers would allow him to get some sleep. The trial court denied the motion.**

**Theodric was convicted after a trial in which the confession was the key piece of evidence. Theodric appealed to the state court's appellate division which affirmed his conviction. Theodric then appealed to the FSM Supreme Court appellate division. The state constitution contains a provision prohibiting any appeal to the FSM Supreme Court from the state courts.**

**The state moves to dismiss the appeal on the grounds that the FSM Supreme Court lacks jurisdiction.**

**How will the FSM Supreme Court rule on the motion to dismiss the appeal and why?**

**What issues would the FSM Supreme Court consider if it hears the appeal on its merits?**

**What result is likely if the FSM Supreme Court decides the appeal on its merits? Explain.**

**V.  
(8 points)**

As the result of an armed robbery investigation, the state police arrested Edwin early Wednesday afternoon. It is now Monday morning. Edwin's mother is in your law office. She tells you that she has not heard from Edwin since he was arrested. You call the police station and they tell you that Edwin is still in custody. You call the state attorney general's office and the state court and the FSM Supreme Court and discover that no charges have been filed and that Edwin has not appeared in court. You go to the police station, but the police refuse to let you speak with Edwin.

**A. (4 points) What action or actions would you take on Edwin's behalf at this point?**

On Tuesday afternoon, the state attorney general filed an information, with supporting affidavit, in the FSM Supreme Court charging Edwin with illegal possession of a firearm, illegal possession of ammunition, carrying s firearm while under the influence of alcohol, and use of a firearm to commit a crime.

After Edwin was brought before a judge, the prosecution apologized to the court for the delay in getting Edwin to court. The prosecution said that the police had all been busy on Thursday providing services at functions for distinguished, visiting dignitaries, and that Friday had been a local holiday. The judge set the terms for Edwin's release pending trial.

During the discovery process prior to trial, the prosecution informs you that they intend to use as evidence at trial Edwin's signed confession, which Edwin gave on Friday morning.

**B. (4 points) What pretrial motion or motions might you file and on what grounds?**

**VI.  
(13 points)**

While walking on the aging sidewalks in old Colonia Town, Tourist tripped on a piece of broken sidewalk and fell and was knocked unconscious. She regained consciousness within minutes but, over her objections, was taken to Island Hospital's Emergency Room (ER) by Ambulance, Inc., a private company that had taken over ambulance services on the island when the state government had recently privatized some previously governmental functions.

As Tourist was being removed from the ambulance, the stretcher broke and Tourist fell to the ground, badly cutting her arm which then began to bleed profusely. Tourist insisted that there was nothing wrong with her and that she wanted to return to her hotel but the ER nurse, assisted by the Hospital's security guards, held her down while the cut on her arm was cleaned and Doctor, the ER physician, stitched the cut. She was then allowed to leave.

The next morning, Tourist's arm was red and puffy. Not wanting to return to the Hospital, Tourist waited until she returned and, by that time, Tourist's whole arm was swollen and badly infected. Although the infection was eventually cured, Tourist developed a hypersensitivity to antibiotic treatment and began to experience sharp pain and occasional tingling in her upper arm. She consulted a number of physicians, none of whom were able to identify a cause for the pain or to connect it to her treatment at Island Hospital.

About a year after the incident, Tourist contacted Ambulance, Inc. and asked to examine the broken stretcher. She also wrote a letter to Island Hospital complaining about the ER staff. Eighteen months later, Ambulance, Inc. responded that the broken stretcher had been lost. Island Hospital eventually answered that, while it had taken "corrective action" against Doctor, it was not at liberty to release the results of its investigation.

Tourist's pain persisted. During exploratory surgery five years after the original incident, Tourist's surgeon found a needle that had been left inside Tourist's arm at the site of the original cut.

What are the parties' rights? Assume that the state has a statute that requires that all claims against it or any of its subdivisions must first be presented in writing to the state or the relevant subdivision, and if settlement can't be reached, only then would a claimant have standing to institute a civil action against that governmental entity.

**VII.  
(8 points)**

In April 2009, Jackson went to Prince's retail store to look at a cement mixer. The parties discussed the Jackson's interest in the mixer. The cement mixer was about one year old. Prince had bought it new for about \$4,000. It was used briefly, and then remained idle for almost a year. Prince demonstrated the cement mixer's operation to Jackson. The cement mixer operated well, except that one of the tires was low. The next day, the Jackson went back to Prince's place and, without Prince's knowledge, removed the cement mixer.

Prince later met Jackson at the airport and asked Jackson if he intended to buy the mixer and told him that the price for the cement mixer was \$3,000. Jackson promised that he would pay for the mixer, and continued using the cement mixer in his construction business. At that time, Jackson had construction contracts to build five buildings. Jackson used the cement mixer in at least three of those construction projects. Jackson made some repairs and adjustments to the cement mixer, but did not report any problems to Prince. Jackson still retains possession of the cement mixer.

Prince approached Jackson several times to request payment for the cement mixer. Prince also approached Jackson about four checks, which had been returned by the bank unpaid and which Jackson had written to Prince's store for other purchases. The total amount of the returned checks, with bank penalty fees, was \$265.58.

Prince sues Jackson for \$3,265.58 plus an award of attorney fees and costs.

Jackson testified that he thought that Prince gave him the cement mixer free, as a gift. Jackson valued the cement mixer at \$500. Jackson stated that a similar cement mixer could be purchased new from Real Value Hardware in Pohnpei for approximately \$3,000, or from Guam for \$1,600, plus freight.

Analyze.

**VIII.  
(14 points)**

The State of Yap acquired a longline fishing vessel named the *Wa'ab Way*. The state then hired Captain Kelly, a Canadian citizen, to run the vessel and train Yapese citizens how to operate and maintain a commercial longline fishing vessel. He signed a one-year contract to that effect. After six months of successful fishing voyages, the state, for unknown reasons, decided that it would not fund further operation of the *Wa'ab Way*. The *Wa'ab Way* was left tied up at the dock, and the state informed Captain Kelly that his services were no longer needed.

Assume that the State of Yap has an administrative procedures act that generally requires that administrative remedies be exhausted before a claimant can sue the state in court. The act also provides that all appeals from administrative decisions can only be made to the Yap State Court.

Captain Kelly asked the state to compensate him for the state's breach of his employment contract. He sent a letter to the state officials that he had dealt with when he was hired. He did not receive an answer. When he met them personally they said that they would do something.

A. (6 points) Three months later Captain Kelly filed suit against the state in the FSM Supreme Court. The state responded by filing two motions: (1) a motion to dismiss for lack of subject matter jurisdiction on the ground that, under Yap statute, the Yap State Court had exclusive jurisdiction over appeals from administrative grievances, and, in the alternative, if the court ruled that the court had jurisdiction, (2) a motion to dismiss for failure to state a claim upon which relief can be granted since Kelly had not exhausted his administrative remedies.

Comment on the motions' possible outcome and the reasoning involved.

B. (5 points) Assume that the case proceeds in the FSM Supreme Court. The state's answer denies that there was a contract between it and Captain Kelly. It alleges that Captain Kelly's contract was not with it, but was instead with Rock Steady, Inc., a corporation wholly owned by three Taiwanese citizens (resident on Guam) with a Yap foreign investment permit. The state in turn had a contract with Rock Steady, Inc. to hire and provide qualified personnel to train commercial fishermen. Copies of both contracts are attached to the answer as exhibits. Shortly thereafter, the state moved for judgment on the pleadings.

Assume that Captain Kelly acknowledges that the contracts are genuine. You are Captain Kelly's attorney. What possible steps might you take? How might the court rule and why? What is the likely result if the only step you take is to oppose the state's motion?

C. (3 points) Assume that Captain Kelly decides to drop his suit against the state because he is interested in future employment with the state and wants

## **General**

**to remain on good terms with state officials. Captain Kelly is still wants to pursue his compensation claim and decides to sue Rock Enterprises, Inc. In what court or courts can he pursue his breach of contract claim? And why?**

**IX.  
(10 points)**

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

**A. (3 points) A state statute levying an 8% "entertainment tax" on all subscription fees received by enterprises providing cable television services to the public. The tax is to be paid only by the cable company.**

**B. (3 points) A state statute imposing an "inventory tax" levied annually on all merchants within the state on all inventory in stock on January 1st of each year. The tax is 1¼% of all goods in inventory, assessed on their wholesale or purchase or invoice price, including the cost, if any, of shipping the goods to the merchant.**

**C. (4 points) An FSM statute making it a criminal offense to steal, rob, extort, or embezzle money or negotiable instruments from any bank, insurance agency, or agency that makes money transfers by wire.**