

**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 2, 2006

ADMINISTERED IN CHUUK, KOSRAE, 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.	7
III.	9
IV.	3
V.	15
VI.	12
VII.	16
VIII.	6
IX.	8
X.	4
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 QUESTIONS ARE II AND IV. THE EVIDENCE QUESTION IS I. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

GOOD LUCK.

I.
(20 points)

During trial in the FSM Supreme Court, on the Wife's suit for divorce from Husband, the following evidence was offered. An objection was made to each offer. In each instance, what was the objection and how should the trial judge rule under the FSM Rules of Evidence?

A. (4 points) On direct examination of Wife, after Wife could not remember an event which occurred several years earlier, an entry, which was made by Wife in her diary shortly after the event occurred and which described the event in detail, was offered in evidence. Husband objects.

B, (3 points) On direct examination of Husband's best friend, his testimony about a statement Husband made to him admitting that Husband had secret bank accounts unknown to Wife. Husband objects.

C. (4 points) Wife offers the official police report prepared by an officer who investigated an incident of alleged physical abuse of Wife by Husband, a portion of which contained a statement made to the officer by Neighbor, a witness who had observed the incident. Husband objects.

D. (3 points) On cross-examination of Wife's expert, a business appraiser who had given his opinion of the fair market value of Husband's business, testified that he was familiar with *The Handbook of Business Appraisals*, a book published by the Pacific Institute of Business Appraisers. He further testified that the book was a reliable authority among appraisers in the North Pacific. Over Wife's objection, the expert was then directed to read into the record a passage from the book which directly contradicted certain principles that the expert had testified that he had relied upon in rendering his opinion and was asked whether he agreed or disagreed with the passage.

E. (3 points) On direct examination of Husband, his testimony giving his opinion of the fair market value of a condominium that he and Wife jointly own on Guam. Wife objects.

F. (3 points) On direct examination of Wife's employer, Wife's biweekly wage records for the previous three years were offered into evidence. Wife objects.

II.
(7 points)

Anita, Bill, and Clare consulted lawyer Primo for guidance in creating a business entity or entities, which would operate a textile manufacturing business. Each of them had been clients of lawyer Primo on various matters in the past and had been introduced to one another by lawyer Primo.

Anita, Bill, and Clare told lawyer Primo the following facts: Anita had substantial capital to invest in a business venture. Bill owned several high-speed looms and had another one on order. Clare owned a large, empty industrial building suitable for a manufacturing business and had experience in marketing and sales. They wanted to create a business, using Clare's building.

Anita, Bill, and Clare told lawyer Primo that they wished to have advice on how to achieve their business purposes, including the use of Clare's building, using the various entities available to them under FSM law. They also offered to let lawyer Primo have, in lieu of fees for his legal work, an interest in one or another of any suitable business entity.

Lawyer Primo told Anita, Bill, and Clare the requested advice would be forthcoming. Before doing so, lawyer Primo told lawyer Segundo, a friend of his, about the conversation with Anita, Bill, and Clare.

Analyze any professional responsibility issues that may exist for lawyer Primo.

III.
(9 points)

A. (4 points) Explain what type of business entities Anita, Bill, and Clare in the previous question might form under FSM law that could be used to achieve their business purpose and the advantages and disadvantages of each.

B. (5 points) Assume that Anita, Bill, and Clare formed a corporation to manufacture textiles. (Other business entities were formed to handle sales and marketing and to own Clare's building.) The articles of incorporation required paid-in capital before the start of business of \$250,000, with Anita to provide \$210,000, and both Bill and Clare to provide \$20,000 each. Anita paid in her share in full before the corporation, Textiles Unlimited, started. Clare paid her \$20,000 share in full one month after Textiles Unlimited started by using the proceeds from the sale of her industrial building to another business entity of Anita, Bill, and Clare. Bill, however, only paid in \$1,000.

Three years later, Textiles Unlimited became insolvent. Creditors' suits in the FSM Supreme Court against Textiles Unlimited were consolidated. What liability, if any, would the FSM Supreme Court impose on Anita, Bill, and Clare? Under previous FSM case precedent, how would the creditors be paid? What other avenue of relief might the creditors have?

**IV.
(3 points)**

Lawyer Asquith agreed to help out an old friend by hiring the friend's daughter to do secretarial work on a part-time, as-needed basis. The first time she showed up for work, Asquith had just finished interviewing a potential client, Gates. Asquith handed Dolores the detailed notes he had taken during the interview and told her to type them up and put them in the file he just opened for Gates. He gave her no other instructions.

The notes included Gates's admission that he has been evading payment of customs duties on many of the goods he had been importing and had smuggled in some contraband. Dolores typed them up and put them in the file as instructed and gave the file back to Asquith.

That night when she went home she said to her husband, "You'll never guess what Gates has been doing," and told him about what she had seen in the notes she typed. Her husband told a friend of his who was employed by the national police.

Discuss the professional responsibility aspects of these events.

V.
(15 points)

The national police officer who received the information in the previous question felt that the information from Dolores's husband was reliable enough that he should open an investigation. He checked all the customs records against the Gates's gross revenue tax reports. Trying to reconcile the two sets of records, he concluded that Gates has been selling goods far in excess of the goods he has reported in his customs forms and paid import tax on.

The officer then informally questioned some of Gates's employees who confirmed that 95% of the goods listed as sales in Gates's gross receipt tax forms were imported. Based on all of the above [including question III], an FSM Assistant Attorney General applied for a search warrant. An FSM Supreme Court justice granted the application and a search warrant duly issued.

The search warrant authorized the police to search Gates's office for documents concerning his purchase and importation of goods. It also authorized a search of Gates's warehouse for the same documents and for handguns and ammunition that the police believed Gates had been smuggling in. The police seized many documents in both places and seized six .38 caliber handguns with ten boxes of ammunition from the warehouse. They also found a small vial hidden in the water closet (or water tank) of the toilet in the warehouse. The vial's contents, when tested, proved to be cocaine, a controlled substance under FSM statute.

The FSM charged Gates with tax evasion, bribery of customs officials, possession of illegal firearms, and possession of a controlled substance. Gates then moved to suppress all evidence seized and for the return of all items seized. He also moved to dismiss the firearms and the controlled substance charges on the ground that the FSM statutes regulating firearms and controlled substances were unconstitutional exercises of power by the national government.

Discuss:

- a) whether any or which of the items seized should be suppressed and why;
- b) whether any or which of the items seized should be returned to Gates and why; and
- c) whether the FSM Supreme Court should rule that the firearms and controlled substance charges unconstitutional and dismiss those charges.

VI.
(12 points)

Plato filed suit against for an account stated. Plato's complaint alleged that Diogenes had ordered merchandise from Plato on an open account and that on the date the complaint was filed Diogenes owed it \$12,345.67. The complaint sought that sum as damages and also asked for \$2,000 in punitive damages.

The complaint and summons were served on Diogenes by leaving it at his usual place of abode with Diogenes's 16-year old daughter, an honors high school student. She gave the complaint and summons to her father the next day , saying, "Some policeman left this for you yesterday. He said it was important for you to read it." Diogenes read it and then put it aside.

Forty-five days later, Plato filed a request for an entry of default, a request for a default judgment, and a supporting affidavit showing that Diogenes had not answered or otherwise defended. The clerk entered the default. The request for default judgment asked the clerk to enter a default judgment for \$12,345.67 for goods sold, \$2,000 for punitive damages, \$1,951 for prejudgment interest, \$500 for attorney's fees, and \$25 for the cost of service.

- A. (2 points) Can the clerk enter the requested judgment?
- B. (4 points) Assume that the judge orders that judgment be entered. Which amounts should the court order included in the judgment and why?
- C. (3 points) One month after a default judgment is entered, Diogenes moves for relief from judgment on the ground of insufficient service. How should the court rule and why?
- D. (3 points) Assume that instead of the ground of insufficient service, Diogenes's ground for relief from judgment is that shortly after Diogenes received the complaint and summons he suffered a mild heart attack and was sent to Manila, Philippines for medical treatment and that he did not return from there for a month and by then had forgotten about the case until he received the default judgment. Diogenes also asserts that because some of the goods were damaged before he received them and some were lost in transit, he owes less than the \$12,345.67 in the complaint. How should the court rule now?

VII.
(16 points)

John, a thirty-five year old waiter at a local hotel restaurant and Bill, a forty-six year old police officer, were on their eighth beer during their time off one Sunday afternoon when they began to argue in front of Bill's house. The argument between the two men escalated and John grabbed a machete and moved toward Bill. John swung the machete trying to cut Bill. Bill easily avoided the machete and told John to stop or he would arrest him. Bill picked up a large stick to defend himself, and when John again got too close with the machete, Bill hit John on the head with the stick.

John fell down and was unconscious, but still very much alive. Bill handcuffed John, told him he was under arrest, and called some on-duty police officers to come by and take him to the police station. Bill then dragged John's unconscious body down the dirt road (which is owned and maintained by the state) in front of his house and left John's body next to the road near some banana trees for pick up by the police officers he called. About an hour later still no police officers show up and Bill has gone back to his house and has fallen asleep.

At this time, a pick-up truck was being driven down the road. The truck hits a pothole, runs off the road and over John's body, breaking John's right leg in two places. The truck kept on going. The truck and driver remain unknown. A neighbor hears the noise and sees John. She calls an ambulance, which arrives forty-five minutes later and takes John to the Chuuk State Hospital.

At the hospital, Dr. Doom decides that he needs to do immediate surgery on John's broken right leg in order to put a metal rod into the leg so the leg bones will heal properly. The hospital staff tries to contact John's wife, to get consent for the operation, since John is still unconscious. The hospital staff is unable to contact John's wife, but Dr. Doom performs the surgery anyway.

While John is under anesthesia for the surgery on his leg, Dr. Doom finds a tumor on John's right foot, and also removes the tumor. Dr. Doom was assisted by nurse Painless. Nurse Painless forgets to remove a small surgical clamp inside of John's right foot. The surgeries on John's leg and foot are otherwise successful. John's broken leg and foot heal up after 4 months, but he found that, due to the surgeries on his right leg and foot, he now walks with a noticeable limp.

After that happened John's relationship with his wife deteriorates. Also, after 6 months John begins to suffer from pains in his right foot. An

x-ray of his right foot reveals that there is a small clamp in his foot causing his foot pains.

Prior to his surgeries John worked as a waiter at a local hotel restaurant. John could not work for 7 months after his surgery. After he returned to work he found that he could not move around well due to his limp and the foot pains he continuously suffers. Due to these physical problems his work performance suffers.

A month after he returned to work he was terminated by his employer because he could no longer satisfactorily perform his job as a waiter. John also found it difficult to carry out his traditional responsibilities of fishing and farming due to his physical problems.

Also about a month after the incident, the Chuuk Barracuda Newspaper printed an article about Bill the police officer who while on duty severely beat up John with a heavy metal pipe for no reason and left him handcuffed on the side of the road to die. The article was widely read in Chuuk and has caused Bill to receive numerous threatening phone calls from people angry at what he did. Rumors also have it that some people have talked to the Chief of Police to see if Bill can be terminated for what he allegedly did based on the newspaper article.

A. (6 points) John and his wife come to see you about suing someone for what happened to John. What do you advise them regarding who to sue, possible tort causes of action? Discuss the elements of each possible cause of action in relation to the facts.

B. (4 points) What defenses can each defendant sued by John and his wife raise? Be sure to discuss the causation of John's injuries.

C. (3 points) Discuss all of the various damages that John and his wife might sue for.

D. (3 points) Bill comes in to see you about what causes of action he might have against the Chuuk Barracuda Newspaper and what damages he might seek. What do you advise him to do?

**VIII.
(6 points)**

Discuss the constitutionality under the FSM Constitution of the following:

A. (3 points) a municipal constitution provision requiring that all development or assistance funds from the state, national, or from foreign governments must be given to the municipal government for appropriation before any such funds can be spent in the municipality and a municipal ordinance imposing criminal penalties upon the recipients of any funds received in violation of the above municipal constitution provision.

B. (3 points) a state statute imposing a \$1,000 per annum fee on any business selling life insurance in the state and a \$2,000 per annum fee on any business selling any other type of insurance.

**IX.
(8 points)**

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

- A. interpleader**
- B. pendent jurisdiction**
- C. admiralty and maritime**
- E. diversity jurisdiction**

X.
(4 points)

On January 28, 1998, Deimos, while driving his own car, hit Phobos's car. Phobos's car was significantly damaged. It is undisputed that Deimos did damage Phobos's car and is liable for damages to the car. After the accident, the parties then met on two occasions to discuss Deimos's payment to Phobos for the damaged car. At the first meeting, Deimos's brother, promised to pay for the damages to Phobos's car on Deimos's behalf. He promised to wire the money to the bank. The wire transfer was never made.

At the parties' second meeting, the parties executed a written agreement whereby Deimos agreed to pay Phobos \$2,400 for the damaged car. In return, Phobos agreed to give Deimos the damaged car. This document is now missing and was not presented at trial. But both parties agreed that there was an agreement by which Deimos promised to pay Phobos \$2,400 and Phobos was to give Deimos the damaged car.

Deimos did not make any payments to Phobos for the damaged car. Phobos later sold the damaged vehicle to one Remus, for the amount of \$800. A lawsuit followed.

What damages, if any, should the court award Phobos? Explain.