

**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 7, 2008

ADMINISTERED IN CHUUK

**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.	12
II.	14
III.	4
IV.	2
V.	9
VI.	10
VII.	12
VIII.	12
IX.	13
X.	9
XI.	<u>3</u>
TOTAL	100

THE MINIMUM OVERALL PASSING GRADE IS 65. FOR PURPOSES OF OBTAINING PARTIAL CREDIT UNDER GENERAL COURT ORDER 1986-2, THE ETHIC QUESTION IS VI. THE EVIDENCE QUESTIONS ARE II-IV. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

GOOD LUCK.

**I.
(12 points)**

On April 1, 2006, Paul, a citizen of State X, was involved in a two-car accident in State Y with Dave, a citizen of State Y. Wilma, Paul's wife, was a passenger in the car. Immediately after the accident, Wilma obtained signed statements from two witnesses. Later, Paul hired Lex, a lawyer, to study the statements and advise him. Lex made some handwritten notes on the statements and placed them in his files.

On May 1, 2007, Paul filed a complaint against Dave in the FSM Supreme Court in State Y. All allegations of the complaint and the prayer for relief are set out below:

1. Plaintiff Paul is a citizen of State X. Defendant Dave is a citizen of State Y.
2. On April 1, 2006, Defendant negligently operated his automobile and collided with Plaintiff's automobile.
3. As a result, Plaintiff suffered personal injuries, pain of body and mind, and incurred medical expenses in the sum of \$2,150.

Wherefore, Plaintiff prays for judgment against Defendant in the sum of \$20,000.

Dave timely answered Paul's complaint as follows:

Defendant neither admits nor denies the allegations of Plaintiff's complaint but demands strict proof of each and every allegation.

Paul did not amend his complaint but moved for judgment on the pleadings. Dave countered with his own motion for judgment on the pleadings. The FSM Supreme Court denied both motions.

A. (7 points) Did the court correctly rule on the motions for judgment on the pleadings? Discuss.

Thereafter, Dave served an interrogatory on Paul asking whether Paul took "the statement of any eyewitness to the accident" and requested the submission of "copies of any such witness statements." Paul asserted that the interrogatory was "objectionable on grounds of work product" and refused to provide any answer or produce any documents. Dave moved for an order compelling, 1) an answer to the interrogatory, and 2) the production of the requested documents. The motion was granted.

B. (5 points) Did the FSM Supreme Court rule correctly on Dave's motion to compel an answer to his interrogatory and for the production of documents?

Discuss.

Evidence

II. (14 points)

At trial in the FSM Supreme Court on the lawsuit described in the previous question, the following occurred.

A. (3 points) Paul calls his wife, Wilma, who testifies to the events leading up to the accident and how she obtained statements from eyewitnesses, and identifies the statements that she obtained. Paul then offers one of the statements in evidence. Dave objects.

B. (3 points) Wilma further testifies that the eyewitness who made the second statement has gone off-island for a funeral of a close relative and is not available to testify, but that before she left she had been deposed by the parties, and testified to the accuracy of the statement obtained by Wilma, and that the statement was attached to the deposition as an exhibit. Paul offers the deposition and attached statement into evidence. Dave objects.

C. (3 points) A hospital records custodian authenticated a medical report from the hospital where Paul was treated after the accident. The report noted that Paul said that he was injured while sitting in his car at a stop sign waiting for an opening in the traffic on the main road so that he could make a left turn when Dave's car slammed into the rear end of his car. Paul moves to admit the report in to evidence. Dave objects.

D. (3 points) After Paul rests his case-in-chief, Dave calls Malus to testify. Malus was not on Dave's witness list. Dave makes an offer of proof that Malus will testify that it is well-known that Dave intensely dislikes the color red and has never been seen wearing a red shirt. Dave intends to use this testimony to cast doubt on Paul's account of the accident when Paul was on the witness stand because Paul testified, on cross-examination, that at the time of the accident Dave was wearing a red shirt. Paul objects to Malus's testimony.

E. (2 points) Dave seeks to offer into evidence Paul's statement at a ceremony where Dave's family offered an apology to Paul and Wilma and Paul replied that it wasn't really Dave's fault that the road was wet and that fallen breadfruit leaves on the wet road caused Dave's car to skid and slide into Paul's car. Paul objects.

How should the court rule on each of the above objections and why?

**III.
(4 points)**

A defendant in a criminal case, testified extensively during a pretrial hearing on the defendant's motion to suppress evidence seized during a search of the defendant's home. During cross-examination, the prosecution asked, over the defendant's objection, several questions about how and when the defendant acquired various items that had been seized in the search.

The motion was denied. At trial, the prosecution, over the defendant's objection, called the defendant as a witness. The prosecution asserted that the defendant had waived his right not to testify against himself when he testified at the suppression hearing.

A. Should the judge have overruled the defendant's objections at the suppression hearing? Discuss.

B. Should the judge permit the prosecution to call the defendant as a witness? Explain.

**IV.
(2 points)**

At a criminal defendant's initial appearance on the charges against him, one of the government's witnesses testifies that he overheard a friend of the defendant's say that when the court lets the defendant out on pre-trial release he was going to help the defendant get to Guam. The defense attorney objected on the ground of hearsay.

How should the judge rule and why?

**V.
(9 points)**

Nix, a public defender, has been assigned to defend Art and Bill, two nineteen-year-old defendants who have been charged with assault with a deadly weapon and attempted murder. Art and Bill admitted that they had approached Carl, that they had started a conversation with him, and that Bill had pulled a handgun from his pocket and fired at Carl, wounding him in the arm.

Nix spoke with each defendant separately. Art told him that he had not recognized Carl, that he had not known Bill was armed, and that they had approached Carl to ask for some betel nut. Art said that from his point of view, Bill's attack on Carl was sudden and completely unexpected.

Bill told Nix that he believed that Carl was a member of a rival clan and that he just wanted to "shake him up a little." He said that he now knew he was mistaken and that Carl was a stranger. Bill also maintained that he thought the gun was empty when he fired it. Bill offered to give the gun, which he had hidden, to Nix to do with as Nix thought best. Nix took the gun and gave it to the prosecutor without giving any explanation of how it had come into Nix's possession.

A. (5 points) If the statements of Art and Bill are truthful, is Bill guilty of the charged offenses?

B. (4 points) If the statements of Art and Bill are truthful, is Art guilty of the charged offenses?

**VI.
(10 points)**

Based on the facts in the previous question:

A. (5 points) Discuss all ethical considerations raised by Nix's giving the gun to the prosecutor.

B. (5 points) Will Nix violate any ethical rules if he defends both Art or Bill or either one of them? Discuss.

**VII.
(12 points)**

Loki owned a fine sport-fishing, passenger vessel named the *Pride of Walvis Bay*. The vessel was the only one like it in the FSM. Pixie much admired the vessel. She asked Loki if he would sell the vessel to her.

On April 1, 2008, Loki, secretly thinking it was a good joke, drafted and executed a written agreement selling the *Pride of Walvis Bay* to Pixie for \$650,000 if she paid him in full by June 13, 2008. Loki thought that there was no way Pixie could possibly come up with that amount of money. Pixie accepted the offer and tried to give Loki \$20 right then as earnest money to consummate the deal. Loki refused the \$20 and walked away, thinking that it was a good April Fools' joke. Pixie put the paper in her pocket, thinking she had a deal for \$650,000.

On June 12, 2008, Pixie showed up at Loki's office and handed him a cashier's check for \$650,000, and asked, "How soon can I take possession of the *Pride of Walvis Bay*? I'm going to rename it *Pixie's Pride*. I can have my painter there to repaint the name tomorrow." After getting over his surprise, Loki replied, "Don't you get it? It's a joke. April Fool! You're never getting the *Pride of Walvis Bay*. She's mine!"

Pixie filed suit in the FSM Supreme Court against Loki to get possession of the *Pride of Walvis Bay*, and deposited the \$650,000 with court. Assuming that all of the facts above are proven to the court's satisfaction, what judgment should the court issue and why?

**VIII.
(12 points)**

While the *M/V Micro Soft* was docked at the main seaport in an FSM state, her officers discovered one of its sailors dead in his bunk, cause unknown. The police were immediately called, arrived shortly thereafter, and sealed off the dock so that no one could leave or enter the ship. At the time there were twelve seamen aboard. The seamen were assembled and the police told them, "We don't know whether the death was the result of foul play, an accident, or natural causes. Nobody leaves this ship until you've answered our questions." Each seaman was then taken privately to a cabin and questioned about what, if anything, he knew about the death. No seaman was informed of any rights he might have under either the FSM or state constitutions.

One of the seaman, Falan, when asked, "Did you have anything to do with the sailor's death?" blurted out, "He was being mean to me all the time so, while he was asleep, I put a pillow over his face until he stopped breathing."

The prosecution seeks to introduce this statement at Falan's pending homicide trial. Falan has moved to suppress the statement.

Should Falan's confession be excluded? Please explain.

**IX.
(13 points)**

Jak, aged 22, and his friend, Dax, aged 16, were riding their motorcycles around Jak's land. They decided to race each other down Jak's access road and across a seldom-used public road and into neighboring land.

Dax was ahead of Jak by about 60 feet when, without slowing down, he entered the public road. Dax failed to see Pax's car approaching. Pax, an adult, was driving carefully, but he was not a licensed driver. Pax was not wearing a seat belt.

Pax avoided hitting Dax by slamming on the brakes. This caused Pax's head to strike his windshield and to suffer severe injuries.

Pax sued Dax and Jak in the FSM Supreme Court, alleging negligence. The parties stipulated to the facts given above.

Jak moved for summary judgment, claiming that as a matter of law he was not liable for Pax's injuries. The court granted Jak's motion.

Dax moved for summary judgment on the ground that Pax was not wearing a seat belt and that he was not a licensed driver. The motion was denied.

At trial, over Pax's objection, the judge announced that he would apply the standard of care applicable to children when assessing Dax's conduct.

Did the court err in:

- A. (6 points) Granting Jak's motion for summary judgment? Discuss.
- B. (4 points) Denying Dax's motion for summary judgment? Discuss.
- C. (3 points) Applying the child standard of care to Dax? Discuss.

**X.
(9 points)**

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

- A. (2 points) pendent jurisdiction**
- B. (2 points) temporary restraining order**
- C. (3 points) ex post facto law**
- D. (2 points) custom and tradition**

**XI.
(3 points)**

Discuss the constitutionality under the FSM Constitution of the following:

A. (2 points) a national statute requiring that any campaign speech made by a congressional candidate for broadcast had to be first recorded and submitted to national election commissioner for his review at least 24 hours before the intended broadcast time and providing that violators are subject to a \$500 fine or one year imprisonment, or both

B. (1 point) a state constitution provision granting the governor of the state the power to pardon anyone convicted of an offense when that offense was committed within the state's territorial boundaries