

**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 4, 2010

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.	4
II.	6
III.	17
IV.	3
V.	8
VI.	6
VII.	12
VIII.	12
IX.	11
X.	14
XI.	<u>7</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 AND II AND THE EVIDENCE QUESTIONS ARE III AND IV. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

GOOD LUCK.

**I.
(4 points)**

Client asks lawyer Radon to represent him in a land dispute. Client tells Radon that he received a small house lot and three adjoining taro patches from his father, now deceased. Client returned to his outer island after living for several years with his sister in the state center, and found members of his extended family occupying his property. When he discussed this with them, they claimed ownership derived from client's aunt.

Client has no funds to pay the lawyer's fee. Radon makes a preliminary search at the Land Commission and finds that client's father was given a certificate of title to the property as his separate property in 1982. Radon then tells client he will represent him and his fee will be two of the taro patches. Client, feeling that he has no other choice, accepts.

Discuss any ethical issues.

**II.
(6 points)**

You are an attorney in private practice as a sole practitioner. You have just returned from a business trip off-island. On your return, your long-time secretary informs you that while you were gone her favorite uncle died and she was in desperate need of money for the funeral and that, not knowing what else to do and having no other resources, she "borrowed" \$6,000 from your client trust account. She promises to pay it back as soon as she can.

Before you left on your trip, there had been \$8,500 in your client trust account, the property of three different clients.

One client has \$2,000 in your trust account, against which you charge him for work you do for him as completed and billed on a monthly basis. So far, you have done only \$500 of work you can charge to client one's account.

For client two you are holding \$4,500, the remaining net proceeds from the completed sale of part of his business, entrusted to you for safekeeping until the final details of the sale were settled. That settlement is now complete and you expect client two to appear in your office that afternoon, at which time you are to pay him his \$4,500.

You are also holding \$2,000 of client three's money. It is all that remains from a \$5,000 deposit by client three against which was charged fees and expenses for your work in defending her in a lawsuit. Judgment has been entered but there is a prospect that there may be some post-judgment proceedings for which your services will be required.

What are your ethical obligations to your three clients?

Evidence

III. (17 points)

Following an accident between an automobile and a bicycle, the following police report was filed:

STATE POLICE REPORT of Motor Vehicle Accident

Date of Accident:	10/10/09
Operator of Vehicle #1 (auto)	Dale Driver
Operator of Vehicle #2 (bicycle)	Pat Pedaler
Witness:	Bert Bystander
Place of Accident:	Intersection in front of Bank, Downtown
Injured Person:	Pat Pedaler
Severity:	Serious visible injury

Description of Accident:

On 10/10/09, the dispatcher radioed me in my police pickup and told me that a major accident had occurred in front of the bank, downtown. I proceeded there. Pat Pedaler was lying by the roadside with head injuries and face damages. Pedaler told me that Driver had turned through the intersection at high speed and knocked Pedaler's bike over. While I was taking Pedaler's statement, Driver said to Pedaler, "I'm really sorry about this. I should've paid more attention. I was trying to dial a number on my cell phone." Witness Bert Bystander reported seeing Driver come through the intersection's stop sign, without stopping, before turning and said that the accident was clearly Driver's fault. I agree with that assessment.

10/10/09 /s/ A.N. Officer

Pedaler sued Driver in the FSM Supreme Court. Before trial, Bystander gave a deposition in which the following occurred:

Q. Did you and Driver speak to each other at the accident scene?

A. Yes; Driver expressed sorrow at having run over Pedaler and blamed it on being distracted by the cell phone.

Bystander has since died.

At a pretrial conference, Pedaler's lawyer stated that Pedaler intended to offer the entire police report as an exhibit at trial and designated the Bystander deposition exchange to be read to the court. Driver's lawyer objected to both.

How should the court rule on the admissibility of

A. (3 points) the excerpt of Bert Bystander's deposition, and

Evidence

B. (14 points) of the police report?

Evidence

IV. (3 points)

Dale Driver, from the previous question, and Driver's family made a traditional apology to Pat Pedaler and Pedaler's family. During the apology ceremony Dale Driver apologized for being distracted by trying to make a cell phone call instead of paying attention to the road and said that cell phones definitely should not be used while driving.

Pedaler's lawyer intends to introduce this statement at trial as the admission of a party-opponent. Driver's attorney objects to its introduction.

How should the judge rule and why?

**V.
(8 points)**

The following cases were removed by the defendants in each case from the state court in which they were filed to the FSM Supreme Court trial division. In each case, the plaintiff has filed a motion in the FSM Supreme Court to remand the case to state court on the ground that it should not have been removed. How should the FSM Supreme Court rule on each motion and why?

A. (3 points) Anne, a citizen of Pohnpei sued the *Pohnpei Enterprise*, a newspaper published on Pohnpei by a Pohnpei citizen, who was the paper's sole owner. Anne claimed that an article in the *Pohnpei Enterprise* about Anne's alleged fraudulent business practices had resulted in Anne losing several lucrative business contracts. The *Pohnpei Enterprise* removed the case from the Pohnpei Supreme Court to the FSM Supreme Court on the ground (as stated in its affirmative defense contained in its answer filed in the FSM Supreme Court) that section 1 of the Declaration of Rights in the FSM Constitution protected its publication of the article.

B. (2 points) Ben, a citizen of Chuuk, sued Drummer, Inc., a corporation owned by a Pohnpei citizen, for \$6,000 in commissions for sales work Ben had done for Drummer, Inc. Drummer, Inc. removed the case from the Chuuk State Supreme Court to the FSM Supreme Court. Shortly thereafter, Ben moved from Chuuk to Pohnpei to take a job with a national government agency.

C. (3 points) Clara, a citizen of Chuuk, sued in the Chuuk State Supreme Court, seeking unspecified damages, her former employer, a Chuuk corporation, alleging employment discrimination violating state and national law.

**VI.
(6 points)**

Attorney Argon filed a complaint on his client's behalf against a police officer, alleging battery as a civil rights violation. The complaint was answered and, after the usual amount of pretrial discovery, trial was to start on March 1, 2010. Argon got up to make his opening statement. Among other things, he stated that his client was injured because the police officer was careless in applying handcuffs and in failing to observe that the plaintiff was injured.

Defense counsel immediately objected and pointed out to the court the plaintiff's complaint had only alleged battery, not negligence. Defense counsel further asked the court for a protective order forbidding Argon from introducing any evidence of negligence.

What should Argon do in response? How should the court ultimately rule?

**VII.
(12 points)**

One morning, Dennis checked into the Seaside Hotel. The hotel security guard, George, was an old friend of his. George showed Dennis to his room. Chatting sociably, George followed Dennis into the room and sat on the bed while Dennis unpacked.

George saw Dennis take two dozen watches from his suitcase. Dennis told George he would sell him a watch for only \$25 because the watches were stolen. George said, "No thanks."

A little later, George returned to his duties in his office. Around 2:00 p.m., Dennis left the hotel; he waved to George as he left and told George that he'd be back around dinnertime.

George immediately went to Dennis's hotel room; and, finding it locked, he let himself in with his passkey. George found Dennis's suitcase in an open closet. He opened the suitcase and located the watches in a rolled-up shirt. George removed the watches and put them on the bed. He returned the suitcase to the closet. George then left Dennis's room, shutting the door behind him.

George immediately called the state police and told Officer Oliver all the morning's events. In the past, George had reliably reported suspicious activity at the hotel to Officer Oliver, and Officer Oliver had encouraged George to continue that practice.

Officer Oliver arrived at the hotel within minutes. George let Officer Oliver into Dennis's room with his passkey. When Officer Oliver saw the watches on the bed, he seized them. Officer Oliver then obtained a warrant for Dennis's arrest. Dennis was arrested and charged with receiving stolen property.

Dennis's lawyer has moved to suppress the watches on the ground that they are the fruit of warrantless searches and seizures by George and Officer Oliver, in violation of the FSM Constitution.

You are the prosecutor. What responses should you make to the suppression motion?

**VIII.
(12 points)**

Phobos and Deimos were friends and neighbors residing in the state center. Early on in their friendship, Phobos and Deimos found that they shared a common love for the state's best pizza, served at Island Pizza Palace. Deimos loved the pizza at Island Pizza Palace so much that he took a job there as a pizza delivery person and general handyman. Deimos was well-known as one of Island Pizza Palace's hardest-working and best employees.

Deimos was on a break one night at the Island Pizza Palace, when Phobos walked in. Happy to see his friend, Deimos offered to treat Phobos to a gourmet pizza of his choice. The two ordered a pizza and slipped into a booth. As they waited for their pizza, Phobos began to tell Deimos about the wonderful pizza that he had tried at a new rival restaurant on the island. Phobos even went so far as to suggest that the new restaurant served better pizza than the Island Pizza Palace. Deimos, being the dedicated Island Pizza Palace employee that he was, scoffed at the suggestion. As Phobos and Deimos received their order and started eating, however, Phobos repeated that the pizza at the new restaurant was much better and that he now had a new favorite pizza place.

This was too much for Deimos to stomach. When Phobos would not take his words back, Deimos threw his half of the hot pepperoni Hawaiian de luxe pizza at Phobos's head. Phobos quickly ducked out of the way, and the pizza hit another customer, Juno, in the back of the head. The force of the thrown pizza caused Juno to slip to the floor and sprain her knee.

Having failed to hit Phobos with his pizza, Deimos lunged at Phobos and began punching him repeatedly in the head and chest. Phobos was left with a split lip and several bruises by the time bystanders were able to subdue Deimos. Another Island Pizza Palace employee remarked that Deimos had been in a bad mood all day and that the manager had had to reprimand him for fighting with a co-worker earlier that evening.

A. (8 points) Phobos and Juno decide to sue Deimos. Assuming that Phobos and Juno suffered no emotional distress as a result of Deimos's behavior, discuss the claims, if any, each of them can make against Deimos. Do not discuss damages.

B. (4 points) Phobos also decides to sue Deimos's employer, Island Pizza Palace. Discuss whether Phobos will prevail in his claim or claims against Island Pizza Palace, and explain why or why not.

IX.
(11 points)

Assume that a Federated States of Micronesia statute prohibits the discharge of untreated sewage from commercial passenger vessels into FSM waters. The statute makes any person who violates this prohibition strictly liable for a civil penalty in a fixed amount of \$12,000 plus reasonable attorney's fees. The statute gives any citizen of the Federated States of Micronesia standing to bring suit against the vessel's owner for this penalty.

A different statute creates an exemption to the above liability for any commercial passenger vessel that "operates in the maritime waters of the Federated States of Micronesia solely in innocent passage." For the purposes of this question, assume that "innocent passage" is a narrow doctrine of international law that applies to ships passing through in transit between ports outside of the Federated States of Micronesia.

The M/V *Miraculous* is a commercial passenger vessel owned by Exotic Excursions, Inc. The *Miraculous* suffered a malfunction that causes a sewage discharge while passing ten miles off of the uninhabited island of Fayu. At the time, passenger Harry, an FSM citizen, was out for a stroll on the *Miraculous's* promenade deck and noticed the discharge. Harry's attorney filed a complaint against Exotic Excursions, Inc. in the FSM Supreme Court, alleging a violation and seeking the mandated \$12,000 penalty.

Exotic Excursions, Inc. filed a timely answer denying that a violation occurred. The answer lists no affirmative defenses. During the ensuing discovery period, Harry served Exotic Excursions, Inc. with an interrogatory asking, "Did the *Miraculous* discharge untreated sewage into FSM territorial waters during Harry's cruise?" Exotic Excursions, Inc. responded, "Yes."

Harry moved for summary judgment, attaching a duly authenticated copy of the interrogatory and response. In response to Harry's motion, Exotic Excursions, Inc. filed an opposition without affidavits, arguing that the *Miraculous* was in "innocent passage" between Lae, Papua New Guinea and Guam (with no port call in the FSM) when the discharge occurred, and that therefore it is exempt under the statute. Exotic Excursions, Inc. points out that it had denied the violation in its answer and that summary judgment would deprive it of an opportunity to present its case at trial. Exotic Excursions, Inc. asserts that Harry's motion is not supported by appropriate, uncontroverted evidence.

A. (9 points) What arguments should Harry make in his reply to Exotic Excursions, Inc.'s opposition to summary judgment? How is the court likely to rule and why?

B. (2 points) If the court grants summary judgment, what monetary amounts can be added to the final judgment in addition to the \$12,000?

General

NOTE: in answering, do not discuss environmental or maritime law beyond the fictitious statutory provisions the question asks you to assume.

**X.
(14 points)**

Aisek, a citizen of Chuuk, and Webster, a citizen of Kosrae, met at a development conference in Koror, Palau. One evening after the day's proceedings were over, Aisek and Webster and several other Micronesians met for dinner at Koror's best hotel. During dinner, Webster told the group about his latest business venture. He said he had bought a small, 50-ton ship and was using it to ship fresh citrus fruit from Kosrae to Pohnpei where it sold at a good profit. He said the ship, the M/V *Caroline Pride*, also carried a small number of passengers and general cargo, especially on its return trips to Kosrae. *Caroline Pride* also stopped at Mwoakilloa and Pingelap if there was paying freight or passengers for those atolls. Webster also said that the business had been quite good and that the loan he had taken out to help buy the ship was almost paid off — he had only one payment left.

Aisek listened to Webster very intently. After dinner, many stayed at the table drinking. Eventually, only Aisek and Webster were left. Aisek said he thought a similar shipping business would do well in Chuuk. As they were leaving, Aisek said that he had recently sold his business on Chuuk and had also inherited a substantial sum and told Webster that he would really like to buy the *Caroline Pride* and offered Webster \$275,000 for the ship. Webster replied, "Sure, sure, whatever you want."

The next morning, Aisek offered Webster his check for \$275,000. Webster said, "What's this for?" Aisek replied, "For the *Caroline Pride*. You sold it to me last night." Webster then said, "I don't want to sell you my ship." Aisek replied, "You already did!" "No, I haven't!" Webster retorted.

Webster refused to accept the check and refused to convey the *Caroline Pride*. Three weeks later, Aisek had Webster served with a summons issued by the FSM Supreme Court and a complaint, seeking a court judgment requiring Webster to sell Aisek the *Caroline Pride*.

You are Webster's attorney. Webster says that the custom in the Kosrae municipality he comes from is that no important agreement, such as a land transfer or the sale of something large and important (like a sea-going ship), is considered concluded until the parties have drunk sakau together or feasted on turtle meat together. He states that he did neither of these with Aisek, so there is no contract. You expect Aisek to deny that sakau or turtle meat is necessary to make a binding agreement, and you know from experience that there is no sakau in Palau.

Advise Webster on any pertinent substantive issue that you see. Explain what steps you may take to assert Webster's rights, what arguments you will make, what you expect the outcome to be and why.

**XI.
(7 points)**

A contract case was tried in the FSM Supreme Court. The plaintiff alleged the existence of an oral contract. The trial judge found that certain words were spoken and acts performed that taken together constituted the formation of a legally enforceable contract and entered judgment against the defendant.

The defendant appealed. He contends: 1) that there was insufficient evidence to prove beyond a reasonable doubt that those words were spoken and acts had occurred; 2) that even if they did, those words and acts were insufficient to form a legally-binding contract; and 3) that, if there was a contract, the trial court interpreted it incorrectly.

What standard of review will the appellate court apply to the defendant's three assignments of error?