

**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 3, 2017

ADMINISTERED IN CHUUK, KOSRAE, POHNPEI, AND YAP

**SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA**

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INSTRUCTIONS

YOU HAVE FIVE HOURS TO FINISH THIS TEST.

THIS SHOULD PROVIDE ENOUGH TIME TO CONSIDER THE QUESTIONS AND ISSUES PRESENTED AND TO PERMIT YOU TO FRAME YOUR ANALYSIS. BEFORE YOU START WRITING, READ EACH QUESTION CAREFULLY SO THAT YOU UNDERSTAND EXACTLY WHAT IS BEING ASKED. NEXT, CONSIDER YOUR ANSWER'S ORGANIZATION.

ANSWERING QUESTIONS NOT ACTUALLY ASKED INDICATES AN INADEQUATE UNDERSTANDING AND MAY RESULT IN A LOSS OF POINTS. PLEASE 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.	15
IV.	9
V.	13
VI.	9
VII.	12
VIII.	8
IX.	<u>4</u>
TOTAL	100

THE MINIMUM OVERALL PASSING GRADE IS 65. FOR THE PURPOSE 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.

Ethics

I. (10 points)

Jared is an attorney at Trump & Sanders, an FSM law firm. One year ago, Jared drafted a will for his father Maurice, leaving half the estate to Jared and the other half to charity. Jared is also the beneficiary of Maurice's \$500,000 life insurance policy. The will names Craig, a family friend, as the estate's personal representative. The will directs Craig to pay from the residuary estate the taxes Maurice's sole proprietorship owes the government, but states that Craig should not seek reimbursement from the life insurance policy's beneficiary for any taxes.

After Maurice dies, the residuary estate, which does not include the life insurance policy proceeds, is valued at \$250,000, and taxes owed the national government (gross revenue and social security) and the state government (collected sales tax) total \$150,000. There are four creditors who file claims totaling \$200,000 against Maurice's estate. One creditor is the hospital where Maurice was treated before he died. It filed a claim for \$20,000 for his treatment. Attorneys from Trump & Sanders regularly represent the hospital in medical malpractice cases. A second creditor is Erine, who had purchased a construction company from Maurice two years earlier and who now claims that Maurice breached their agreement and owes Erine \$150,000 in damages. A Trump & Sanders attorney represented both Erine and Maurice in drafting the sale agreement. The other two creditors are banks that made Maurice unsecured loans totaling \$30,000.

If Erine succeeds in her claims then the residuary estate will not have enough assets to pay the taxes, and proceeds of the life insurance policy will have to be used for the taxes. Craig, as personal representative, decides to dispute Erine's breach of contract claim against the estate. Craig wants to retain Trump & Sanders to represent the estate.

Discuss any potential problems under the FSM Model Rules of Professional Conduct regarding Trump & Sanders representing Craig in his capacity as the personal representative of Maurice's estate, and what measures, if any, the firm would have to undertake before it could represent Craig.

Evidence

II. (20 points)

Plaintiff Parsnip is suing defendant Dale for property damages and personal injuries arising from an automobile collision. It is undisputed that the two vehicles collided at an intersection. Each, however, claims that the other failed to stop for a stop sign. There are no eyewitnesses to the accident, and there are no nearby surveillance cameras that would have recorded the events at the intersection. However, a nearby police officer heard both the squeal of brakes and the collision and was on the scene within seconds of the impact. The officer called in the crash, rendered first aid, and took photographs of the scene and measurements of the tire tracks. Unfortunately, blood-alcohol tests were not performed on either driver because the samples sent to the hospital lab were found to be contaminated.

Parsonip's criminal record contains two prior misdemeanor convictions for public drunkenness, three misdemeanor convictions for driving while impaired, and a felony conviction for driving under the influence. Parsonip, now on probation for the DUI, has tested negative for alcohol use at each of the last ten urinalysis tests performed over the last four months. His last negative test was four days before the accident. Dale doesn't have a record. He is a known teetotaler who has successfully lobbied for strict alcohol control laws, including stringent requirements for obtaining liquor licenses, laws limiting where and when liquor can be sold, and harsher penalties for alcohol-related offenses.

A. (11 points) Parsnip seeks to introduce as evidence at trial:

(1) Evidence of Dale's anti-alcohol lobbying; (2) an incident where Dale had to be physically restrained from assaulting a stranger who spoke at a legislative committee hearing in opposition to Dale's legislative proposals; (3) Parsnip's own negative urinalysis tests, and (4) the officer's testimony that, as the officer was observing the extent of the parties' injuries upon first arriving on the scene, Parsnip said, "If only that other driver had hit the brakes sooner, then the car would've stopped at the stop sign."

B. (9 points) Defendant Dale seeks to introduce:

(1) Parsnip's criminal record; (2) the officer's photographs showing that the only skid marks were behind Dale's car; and (3) the emergency room physician's testimony that Parsnip was "obviously pickled" at the time the crash victims were brought in.

Write a memorandum discussing the issues raised by the offer of this evidence, the admissibility of each item of evidence, and the probable rulings.

III.
(15 points)

Peggy Palmer worked as office manager for Pohnpei Treetop Trinkets, Inc. On November 15, 2016, she was summarily terminated by Dan Datum, the company's owner. Palmer was shocked and depressed, because she had worked for Treetop since its founding and had no idea that she was in any trouble. Each year she had signed an employment contract for a one-year term. The contract provided that she would be terminated only for good cause. She had thought she was on good terms with the boss. But recently Datum had begun to act oddly.

After her firing, Palmer began to hear alarming things from her former co-workers. Vera Verity, a receptionist, told Palmer that she had heard Datum talking on the phone, saying that he believed Palmer was in the service of a foreign power, or perhaps of the CIA. Todd True, a file clerk, told her that Datum had told him to watch her incoming messages because she might be transmitting information to CIA operatives. Both Verity and True still work at Treetop. Palmer decided to sue Datum.

On June 1, 2017, Palmer filed suit against Datum and Treetop. She claimed breach of contract, wrongful termination, defamation, and intentional and negligent infliction of emotional distress. Palmer alleged, among other things, that she was fired only because Datum harbored a baseless delusion that she communicated with foreign powers or the CIA, and that her firing's shock and injustice caused her emotional distress. Defendants filed a timely answer.

On June 30, 2017, Palmer sent the defendants a set of interrogatories. On July 7, 2017, before responding to the interrogatories, the defendants moved for summary judgment. The motion was supported by Datum's affidavit, stating that he had terminated Palmer for disloyalty to the company. He swore that he had reason to believe that Palmer was secretly transferring company information to outside entities, which he declined to name. He further averred that certain Treetop employees, whom he'd asked to watch Palmer carefully, had reported to him that Palmer had engaged in surreptitious phone conversations and suspicious correspondence.

Palmer filed an opposition, in which she claimed that she had been unable to obtain any affidavits in support of her claims because employees who still worked for Treetop were afraid to talk to her and because she had not yet had a chance to depose anyone. She supported her opposition with her own affidavit, in which she detailed her conversations with Verity and True. In her affidavit she also detailed Datum's strange behavior, including Datum asking her to keep a log of every phone call she made during her last month on the job, and asking her about her contacts with a long list of organizations that she had never heard of. She denied communicating with foreign powers or the CIA.

III.
(cont.)

Defendants filed a reply memorandum. In the reply, the defendants, for the first time, raise the issue that Datum believed that Palmer had been embezzling company funds, and that was another reason for her termination. The memorandum was supported by (1) an affidavit from the company's bookkeeper, alleging that some company funds were missing, and that the company had been unable to pinpoint where the funds had gone, and (2) a second affidavit from Datum, stating that he now believed Palmer had taken the missing funds because no thefts had occurred since she left.

The motion is set for argument before the FSM Supreme Court. As the judge's law clerk, you are asked to write, in advance of oral argument, a memorandum addressing the following questions. Assume, in your discussion, that Palmer has stated some claim on which relief could be granted, and that whether she was terminated for good cause is a fact material to her claim.

General

A. (5 points) Have the defendants, in their initial summary judgment motion, shown a prima facie entitlement to summary judgment?

B. (4 points) What effect should Palmer's opposition have on the outcome of the defendants' summary judgment motion?

C. (3 points) What effect should Datum's reply have on the motion's outcome?

D. (3 points) Assume that the judge has concluded that the defendants have established that Palmer was terminated for a good cause — disloyalty — and that Palmer has failed to controvert that fact. Should the court grant summary judgment on this issue or is there some other course the court should take?

General

IV. (9 points)

Tom leased a building from Lola for five years with the expectation of converting it into a drive-thru (fast food) restaurant. The building had formerly been a restaurant. The lease included the following clause:

Paragraph 7. The tenant's use of the premises is restricted to carrying on a restaurant business.

After Tom leased the property, he applied to the municipality for a business license to operate a fast-food, drive-thru restaurant. The application was denied. Although the municipal ordinance permitted "eating establishments" to operate in the municipality, the municipal council (and the municipal court) construed the ordinance to forbid drive-thru restaurants. Before Tom leased the property, neither he nor Lola was aware of the ordinance or its meaning.

Tom attempted to obtain an amendment to or a variance from the ordinance, but failed. Because he could not operate a drive-thru as planned, Tom claimed the lease had an illegal purpose and therefore was invalid. He then abandoned the premises and paid no more rent.

Lola advised Tom that she intended to hold Tom to the lease's terms. Lola immediately found a new tenant who agreed to rent the property for the duration of Tom's lease term, but at a much lower rate.

Lola sued Tom for the difference between (a) the rent that the new tenant is paying for the balance of Tom's term and (b) the rent Tom would have paid. Tom's lease did not contain an acceleration clause making the balance of the rent due and payable upon the default of a payment.

Discuss Tom's liability to Lola under the lease agreement.

General

V. (13 points)

Deep-Water Vacuum, Inc. ("Deep-Water"), based in Houston, Texas, is a manufacturer of specialized equipment used in ore recovery in deep-sea bed mining. Deep-Water sells its equipment, through its sales representatives, to every ocean mining company worldwide. Premier Equipment Co. sells maritime mining equipment. In 2014, Deep-Water and Premier signed a five-year sales representative agreement making Premier Deep-Water's exclusive sales representative in the western Pacific. The parties' representation agreement provided that Premier had the exclusive and sole right to sell Deep-Water's equipment in the area west of the International Dateline, north of the Equator, east of the Philippines, and south of Japan. Premier's compensation would be 15% commission on its sales of Deep-Water equipment.

Big Suction Company ("BSC"), based in Houston, Texas, is one of the largest users of Deep-Water's equipment. It does business with Deep-Water all over the world, including Micronesia. On July 1, 2016, BSC announced an extensive new deep-sea mining project in the FSM's Exclusive Economic Zone that would require the purchase of multi-million dollars worth of deep-sea mining equipment manufactured only by Deep-Water and one other company, Lodestone, Ltd. ("Lodestone").

BSC's FSM office and Premier had begun negotiations for BSC to purchase deep-sea mining equipment for the new project on June 10, 2016. BSC made clear during the negotiations that it preferred Deep-Water's equipment over Lodestone's because of Deep-Water's reputation for quality and service, but that it was not happy with the price or delivery time being offered by Premier.

While Premier was working on the deal, Al Albert, BSC's head purchasing agent, and Vick Victor, Deep-Water's vice-president, met by chance on a golf course in Texas. While playing, the subject of equipment purchase for BSC's FSM project came up and Al complained to Vick about the price and delivery date. Al told Vick that unless both were improved, BSC might buy from Lodestone. On learning this, Vick informed Al that he would personally handle the BSC purchase, which he guaranteed would meet BSC's delivery date (bypassing Premier) for which Deep-Water would offer a 5% discount. Pleased by Vick's response, Al informed Vick that he would buy directly from Deep-Water.

The next day, Al informed Premier that he was dealing directly with Vick Victor for the equipment purchase. BSC and Premier had no further dealings regarding the purchase. BSC instead bought \$25 million worth of deep-sea mining equipment directly from Deep-Water in Houston. On July 12, 2016, Premier received a commission check from Deep-Water for 5% of BSC's purchase. Premier's president, Pat Paulson, was livid, believing that Premier was entitled to the full 15% commission.

V. (cont.)

In reviewing the representation agreement, Paulson found the following provision near the end of the lengthy contract:

Deep-Water and REPRESENTATIVE understand and agree that it can be to their mutual benefit that Deep-Water sell directly into REPRESENTATIVE's territory. For such direct sales, REPRESENTATIVE shall receive a five (5) percent commission.

Shortly after receiving the direct sale commission check for the BSC sale, Premier received an order from Mid-Sized Mining Co. ("MSM") for \$10 million worth of Deep-Water equipment. Paulson, still livid that Premier did not have a breach of contract claim against Deep-Water because of what he believed was sneaky lawyer language in the

General

representation agreement, saw what he thought was an opportunity to get even. Paulson contacted MSM and told its president that he'd be happy to sell him the necessary deep-sea mining equipment, but that based on his ten years' experience in the industry, MSM should buy Lodestone's equipment rather than Deep-Water's because Deep-Water's was substandard and its service department ill-trained and unprofessional. Paulson had absolutely no factual basis for any of these statements. Based on these statements, MSM canceled its order for Deep-Water equipment and instead bought Lodestone's equipment from Premier.

Premier is an FSM-owned corporation and is incorporated in the FSM. It has come to you for legal advice. Please advise it on the following questions.

A. (5 points) Does Premier have a tort claim against Deep-Water for intentional interference with a contractual relationship? Explain your answer.

B. (5 points) Does Premier have a tort claim against Deep-Water for intentional interference with prospective business opportunity? Explain your answer.

C. (3 points) What potential tort claims, if any, does Deep-Water have against Premier? Explain your answer.

General

VI. (9 points)

On July 24, 2017, an anonymous individual called the police department to report a drunk driver. He told the police dispatcher that the driver was named Ann Smith and that she was driving a white Toyota pick-up with license plate number P9678. The caller stated what road she was on and the direction she was headed and said that he knew her personally and that she had just left his residence.

The police dispatcher radioed the cars out on patrol that there was a possible drunk driver in a white Toyota pickup, license P9678, and the pickup's probable location and direction. The dispatcher did not mention the caller's additional information, including the source of the caller's knowledge. Officer Ott was near the reported location.

As soon as Ott saw the white Toyota, he activated his lights and siren and stopped the pickup. Ann submitted to a series of field sobriety tests, which she failed. Ott noticed that Ann seemed agitated and distracted. Then, as Ott was informing Ann that she was under arrest for driving while intoxicated, a small pipe fell from Ann's sleeve and landed on the ground. Ott recognized the pipe as the kind used for smoking illegal drugs. Ott searched Ann before placing her in the patrol car. In her jacket, he found a black, plastic box that measured two inches by two inches. He opened the box, and inside he found drugs.

Ann has been charged in the FSM Supreme Court with possession of a controlled substance. Ann has moved to suppress the drugs that Officer Ott found, arguing that Officer Ott violated the FSM Constitution (1) by stopping her pickup, and (2) by searching the plastic box.

If you were the judge, how would you rule on her motion to suppress? Explain.

General

VII. (12 points)

Discuss the constitutionality under the FSM Constitution of the following:

- A. (3 points) A state statute requiring all state residents boarding planes at the airport owned and operated by the state, to pay a departure fee of \$10, and for all other persons boarding planes there to pay a departure fee of \$20;
- B. (2 points) An FSM statute levying a \$10 fee on all airplane tickets sold in the FSM;
- C. (2 points) a state constitutional provision mandating that the state legislature, in order to protect its citizens' intellectual property rights, establish a system for protecting, and compensating the owners of, intellectual property — copyrights, patents and trademarks — within the state;
- D. (3 points) a municipal law barring foreigners from residing within the municipality and prohibiting foreigners from marrying female citizens of the municipality;
- E. (2 points) An act of Congress finding that a certain named foreign person living and working in the FSM had engaged in wrongdoing and mandating that the President deport that person as an undesirable; and
- F. (2 points) A state governor's pardon of person lawfully convicted in the FSM Supreme Court in 1989 of an offense that is now punishable only under state law.

**VIII.
(8 points)**

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

- A. (3 points) writ of mandamus**
- B. (3 points) clearly erroneous**
- D. (2 points) nolo contendere**

General

IX. (4 points)

The following cases were removed from the state court in which they were filed to the FSM Supreme Court trial division by the defendants in each case.

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 to remand and why?

A. (2 points) A case originally filed in Pohnpei Supreme Court in which Chang, a Taiwan citizen and Pohnpei resident, sued Park, a Korean citizen and Guam resident, for breach of his employment contract. Park had hired Chang to do design work for a building it was going to construct in Kolonia.

B. (2 points) A case originally filed in the State Court of Yap in which Emiliana, a Yapese citizen, sued on a breach of contract claim, Divers' Delight, a business incorporated in Yap with its sole place of business in Yap, and which is owned by three shareholders, a married Yapese couple and a U.S. citizen, who is often resident in Colonia, Yap.