

**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 3, 2005

ADMINISTERED IN CHUUK, KOSRAE, POHNPEI, AND YAP

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

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NOTE

YOU ARE PERMITTED FIVE (5) HOURS TO COMPLETE THIS EXAMINATION. THIS IS DESIGNED TO PROVIDE AMPLE TIME FOR CONSIDERATION OF THE QUESTIONS AND ISSUES PRESENTED, AND TO PERMIT AN OPPORTUNITY TO FRAME YOUR ANALYSIS. TAKE YOUR TIME. BEFORE STARTING TO WRITE, REVIEW EACH QUESTION CAREFULLY SO THAT YOU UNDERSTAND PRECISELY WHAT IS BEING ASKED, THEN CONSIDER THE ORGANIZATION OF YOUR ANSWER. ATTACHED IS A STATUTORY SUPPLEMENT THAT MAY BE HELPFUL. 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.	10
III.	13
IV.	14
V.	12
VI.	13
VII.	13
VIII.	<u>5</u>
TOTAL	100

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

I.
(20 points)

Draco was charged with murder of Virgo, a national government official while Virgo was performing his official duties. He was tried for this offense in the FSM Supreme Court and the trial judge made the following rulings. In each instance, were the rulings correct and why?

A. (5 points) Orion, a police officer, was called as a prosecution witness. On direct examination, the prosecution offered Orion's police report, which was admitted into evidence over Draco's objection. The report contained the following statement:

on the afternoon in question, Libra flagged down my vehicle while on patrol and yelled to me, "Officer, officer, I just saw Draco stab Virgo with an ice pick and run away into the forest!"

B. (3 points) Ursa, an emergency room physician who treated Virgo minutes before he died from his wounds, was called as a prosecution witness. On direct examination, she testified over Draco's objection, that Virgo stated to her at that time, "I don't want to die. Draco did this to me."

C. (3 points) Draco called Taurus, a friend of his, as an alibi witness. Taurus testified that at the time Virgo was killed, he and Draco were at the local movie theater watching Spiderman 2. Thereafter, at Draco's request and over the prosecution's objection, the trial judge took judicial notice that at the time of Virgo's death Spiderman 2 was playing at the local movie theater.

D. (6 points) On cross-examination of Taurus, the prosecution offered certified copies of the following documents, which were admitted into evidence over Draco's objection:

1. The record of Taurus's conviction for armed robbery, for which he had served a sentence in state jail in 1993;
2. The record of his conviction for idle and disorderly conduct in March, 2002.
3. Taurus's pending criminal information charging him with embezzling money from the state department of public works, his current employer.

E. (3 points) On further cross-examination of Taurus, Taurus was asked whether Draco had persuaded him to lie about going to the movies with Draco. Taurus denied lying. Thereafter, on redirect examination, Draco offered Taurus's written statement given to the police the day after Virgo's death, which substantiated Taurus's testimony at trial. The statement was admitted over the prosecution's objection.

II.
(10 points)

Hercules hired lawyer Serpens to represent him in a divorce complaint to be filed against his wife, Vela. The written fee agreement provided for "fair compensation, which shall include an hourly rate of \$55 [half his usual hourly rate], plus fair extra compensation, which may depend in part on how much less than \$1 million you have to give your wife as an asset division."

Before the complaint was filed, Hercules said to Serpens, "I don't want to appear too rich. I'll sell your sister, Lyra, my interest in my Hawaii real estate, which my wife doesn't know I own, for \$10,000. That's a tremendous bargain. It's assessed at \$450,000." Serpens arranged for the purchase and sale to be carried through before the divorce complaint was filed.

While the case was pending, Serpens arranged to interview two witnesses who he believed could be very favorable to Vela. His manner of confronting them was so aggressive and overpowering that they both became frightened and decided to leave the FSM to avoid being involved in the case.

At trial, in order to satisfy Hercules's request that Vela, in Hercules's words be "punished" for her past behavior, Serpens repeatedly asked Vela about her relations with other men that had allegedly occurred many years before Vela married Hercules. Serpens knew that the court would sustain objections to these questions (as it did), but he wanted to please Hercules.

Vela became distraught over the questioning, and required medical care for several weeks after the trial ended.

In order to keep Vela's legal fees down, lawyer Perseus, who represented Vela in the divorce, conducted no pretrial discovery. He did not find out about anything about Serpens's fee agreement with Hercules, or the Hawaii land sale, or that Serpens had interviewed the two potential witnesses before they disappeared. There was no testimony covering these matters.

The court's judgment awarded Vela only \$500,000 in division of the marital assets (which totaled over \$2½ million) and was unfavorable to Vela in the amount of support payments. Hercules then paid Serpens's bill at the rate of \$55 for each billed hour, plus \$165,000, which Serpens billed as "fair extra compensation."

Vela then hired a new lawyer, Leo, who conducted an investigation and filed a motion for a new trial based on the sale of the Hawaii real estate, Serpens's fee agreement, and the two witnesses' disappearance.

The motion was granted and a new trial ordered.

You have been appointed disciplinary counsel. What charges, if any, do you bring against which of these lawyers?

III.
(13 points)

A plaintiff's pro se complaint alleged: "About seven (7) years ago, the defendant tricked me into buying a worthless fishing boat from him for \$50,000."

A. (3 points) Instead of filing an answer, the defendant filed a motion to dismiss. How should the court rule and why?

B. (4 points) The defendant then filed an answer denying the allegations and asserting the defense of statute of limitations. The plaintiff answered the defendant's interrogatories as follows:

Q. Did you sue the boat broker who helped arrange the sale for the same alleged damages?

A. Yes.

Q. If so, attach copies of all pleadings in that suit.

A. You can get them yourself.

Q. Do you have a signed statement from the boat broker?

A. Yes.

Q. If so, please attach a copy.

A. No, it's work product.

The defendant filed a motion to compel further answers to the interrogatories. How should the court rule and why?

C. (3 points) The defendant duly notified the plaintiff to appear for his deposition. The plaintiff appeared but refused to answer any questions on the ground that he did not have a lawyer. The defendant filed a motion to dismiss the suit. How should the court rule and why?

D. (3 points) The defendant duly filed a motion for summary judgment based on his affidavit that he never had any conversation or other communication with the plaintiff concerning the boat he bought, that he had given a power of attorney to the boat broker to sell the boat, and that all he knew was that the broker delivered him the net proceeds of \$10,000 from the sale. The plaintiff opposed the motion by oral argument only. How should the court rule and why?

**IV.
(14 points)**

Detective Trance received a phone call from an informant who had given reliable information to Trance on several prior occasions. The informant truthfully told Trance that "Don is planning to sell stolen global positioning system units to Vic and will probably deliver the global positioning system units to Vic within the next ten days. Don usually rents a room at the Paradise Hotel to use when he makes his sales." Trance immediately prepared an affidavit detailing the informant's past reliability and reciting the quoted statement of the informant. On the basis of the affidavit, a judge issued a warrant authorizing a search for global positioning system units in any Paradise Hotel room rented by Don within the ten days following the affidavit's date.

One week later, Trance learned from the hotel manager that Don had rented a room at the Paradise Hotel. Armed with the warrant, Trance went to the hotel intending to search the room in Don's absence. However, as Trance listened at the door to determine if the room was occupied, he overheard Don offering to sell global positioning system units to Vic. He then heard the two men arguing, the sounds of a struggle, a crash, and silence.

Trance then kicked on the door, and announced, "police with a search warrant – open the door!" and entered when Don opened the door. Seeing Vic unconscious on the floor, Trance drew his gun and asked Don what he had done. Don replied: "I pushed him and he hit his head against a table." Trance summoned an ambulance, but Vic died of his head injuries before it arrived.

Don has been charged with murder and offering to sell stolen property, both of which are felonies. Don moved to exclude Trance's testimony regarding his observations in the hotel room, all evidence found in the hotel room, and the statement made by Don to Trance, on the ground that the evidence had been obtained in violation of Don's rights under sections five and seven of the FSM Constitution's Declaration of Rights (article IV). The trial court denied the motion.

Was the trial court correct in denying the motion? Discuss.

V.
(12 points)

Bilder operated a construction company specializing in custom-built, typhoon-proof houses. In order to maintain his high standards of construction, Bilder kept his company small and never had more than two projects going at one time.

Homer owned some land on which he wanted to build a house. After hearing of Bilder's reputation for doing superior work, Homer decided that he would have his house built by Bilder. On April 15, Homer and Bilder entered into a valid written contract for the construction of Homer's house. According to the contract, construction was to be completed no later than November 30 and the contract price, \$300,000, was to be paid upon completion.

Bilder started construction on Homer's house as scheduled, and by the end of August, the work was one-half finished at a cost to Bilder of \$120,000.

On September 1, Plato obtained a temporary injunction against both Homer and Bilder restraining further construction of Homer's house on the ground that Plato was the true owner of Homer's land. Upon receiving notice of the injunction, Bilder stopped work.

Six months later, the injunction was dissolved and the lawsuit dismissed as without merit. By that time, Bilder, already at work on other projects, refused to resume performance for Homer, and demanded payment of one-half the contract price.

Because of increased construction costs, it appeared certain that it would cost Homer \$200,000 to have another contractor finish the house.

Homer sued Bilder for breach of contract and specific performance. Bilder cross-complained, seeking to recover \$150,000.

What are the respective rights and liabilities of Homer and Bilder against each other, and what remedies can each obtain against the other? Discuss.

VI.
(13 points)

Discuss the constitutionality under the FSM Constitution of the following:

- A. (3 points) a state constitutional provision mandating that the state legislature establish a system for protecting, and compensating the owners of, intellectual property – copyrights, patents and trademarks – within the state;**
- B. (2 points) a state constitutional provision barring the execution of any search warrant in private homes within the state;**
- C. (2 points) a state tax of 10% on the sale of all betelnut not grown within the state (the general state sales tax on retail sales of other items is 5%);**
- D. (2 points) a municipal law barring foreigners from residing within the municipality; and**
- E. (4 points) a state statute that bars any state employee, whether supervisory or nonsupervisory, from discussing any aspect of the state's fiscal administration, including the budget and related matters, with any member of the press unless the employee has received prior written approval of the governor or the director of finance and that violation of this personnel rule will result in disciplinary actions that may, in appropriate cases, include termination of employment.**

VII.
(13 points)

Willie owns a one-acre vegetable garden, where he grows produce for sale to local hotels and also to the general public. Ricky owns land that borders Willie's garden. Ricky has a number of fruit-bearing trees on his property.

While on vacation in Hawaii, Willie telephoned his employee, Ed, and instructed Ed to spray his vegetable garden with "Weed Killer." Weed Killer is manufactured, distributed, and sold by Chemco, Inc. Knowing that Ed had never used Weed Killer before, Willie told Ed to apply only the amount indicated on the Weed Killer instructions.

The Weed Killer instructions stated, "Safe for all agricultural purposes." The instructions further stated: "Spray one bottle of Weed Killer per acre. Do not spray if wind is present." There were no other warnings contained within the instructions for Weed Killer.

Seeing that Weed Killer was "safe," Ed did not bother to read the remaining instructions. Ed applied two bottles of Weed Killer to Willie's garden. In the course of spraying the garden with Weed Killer, a big gust of wind carried a cloud of Weed Killer into Ricky's property. Within two weeks, all of the fruit trees on Ricky's land had died. Also Willie's garden crops had some spots which looked like it may have suffered some damage.

Fully discuss the claims that might be brought arising out of the application of Weed Killer and all potential defenses for:

- A. (9 points) Ricky v. Willie and Ed.
- B. (4 points) Ricky v. Chemco, Inc.

**VIII.
(5 points)**

Paris sued Denver in state court for trespass, alleging that Denver's company, Coloradco, was trespassing on her land. Denver promptly removed the case to the FSM Supreme Court, completing all the proper procedural steps to effect removal.

Denver claims that the FSM Supreme Court has jurisdiction over the case because his defense will be based, in part, on national law. Paris and Denver are both citizens of the same state. Denver also asserts that diversity of citizenship jurisdiction is present because Denver was not alleged to have trespassed but Coloradco was and Coloradco is a partnership of Denver and Juarez, a citizen of a foreign nation, who is therefore an indispensable party who the FSM Supreme Court must add as a party (or in the alternative, the partnership Coloradco, also a foreign citizen because of its ownership, must be added as a party).

Paris files a motion in the FSM Supreme Court asking that the case be remanded to the state court on the ground that it had been improvidently removed. How should the FSM Supreme Court trial judge rule and why?