

**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, 2016

ADMINISTERED IN CHUUK, KOSRAE, POHNPEI, AND YAP

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

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INSTRUCTIONS

YOU HAVE FIVE (5) HOURS TO FINISH THIS TEST. THIS SHOULD PROVIDE AMPLE TIME TO CONSIDER THE QUESTIONS AND ISSUES PRESENTED AND TO ALLOW AN OPPORTUNITY TO FRAME YOUR ANALYSIS. BEFORE YOU START WRITING, READ EACH QUESTION CAREFULLY SO THAT YOU UNDERSTAND EXACTLY WHAT IS BEING ASKED. THEN CONSIDER YOUR ANSWER'S ORGANIZATION. ANSWERING QUESTIONS NOT ACTUALLY ASKED WILL BE REGARDED AS INDICATING INADEQUATE UNDERSTANDING AND MAY RESULT IN 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. | 8 |
| III. | 12 |
| IV. | 11 |
| V. | 11 |
| VI. | 9 |
| VII. | 8 |
| VIII. | 8 |
| IX. | 14 |
| X. | 9 |
| TOTAL | 100 |

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

GOOD LUCK.

Ethics

I. (10 points)

Clem Client was involved in an automobile accident in which Dora Driver drove into the side of Clem Client's parked car. Following the accident, Dora Driver said to Clem Client, in the presence of witnesses, "It was all my fault." Clem Client turned the matter over to his insurance company, which paid \$800 to fix his car and which turned its subrogation claim against Dora Driver over to Alvin Attorney, an attorney licensed and practicing in the FSM. Clem Client paid an additional \$400 to fix his car because his insurance policy had a \$400 deductible.

Clem Client received a letter from his insurance company stating that Alvin Attorney would be representing him in recouping his deductible for a contingency fee of one-third of the deductible unless Clem Client objected in writing. Clem Client did not object, and he sent Alvin Attorney a diary entry, made immediately after the accident.

Dora Driver hired Linda Lawyer, also an FSM lawyer, who filed an answer and a counterclaim against Clem Client based on Dora Driver's sworn representation to Linda Lawyer that the accident was completely Clem Client's fault. The next information that Clem Client received, a year later, was a letter from Alvin Attorney informing him that the matter had been resolved by a mutual dismissal and he was to sign the enclosed release form and return it to Alvin Attorney. Clem Client refused to sign the release until he was paid his deductible. Alvin Attorney then wrote Clem Client the following letter:

Dear Mr. Clem Client:

You are not my client, the insurance company is. This is a small case and not worth their time to pursue since Dora Driver says the accident was your fault. I am dismissing this case as to the insurance company and withdrawing as your attorney.

Sincerely,

Alvin Attorney

Alvin Attorney e-mailed Linda Lawyer that he was no longer Clem Client's attorney. Linda Lawyer immediately submitted a notice to the court asking for a trial within 30 days or a dismissal for the plaintiffs' failure to prosecute the case.

Discuss all violations of the FSM Model Rules of Professional Conduct.

Evidence

II. (8 points)

Defendant is charged with sexual abuse of a child in connection with an incident involving Defendant's 9 year old child, Terry. Terry has alleged that the abuse occurred one evening while the two were home alone. The next day, Terry talked to a teacher at school and detailed the incident of the night before. The teacher also elicited from Terry at least 4 prior incidents of sexual abuse that had occurred within a year of their discussion.

Terry told the teacher that during each incident, the Defendant initiated the sexual contact by "spanking" Terry with Defendant's hands. The teacher took several photographs of Terry's body showing bruising and soreness on the buttocks and back.

Before trial, Defendant filed a motion in limine to exclude the photographs of Terry's body. Defendant also filed a motion to exclude any testimony about the 4 prior incidents.

A. (4 points) Assuming that the court in which the case is to be tried uses rules identical to the FSM Rules of Evidence, how would you expect these motions to be decided?

At trial, Terry testifies that Defendant spanked Terry with a belt during the incident in question. Defendant then calls the teacher to the stand to relate Terry's earlier statement that the spanking was done by hand only.

B. (4 points) Will this testimony be allowed over the prosecution's objection?

Evidence

III. (12 points)

Alpha Company entered into contract negotiations with Beta Company regarding the purchase of widgets made by Beta. Beta sent a letter to Alpha stating the terms of their offer to sell widgets to Alpha. Alpha's President dictated a letter to Beta stating that Alpha accepted Beta's terms and contract offer. Alpha's president signed the letter and gave it to his secretary to mail to Beta. Beta now claims it never received Alpha's letter and has since signed a contract with Gamma Company for the sale of the same widgets.

Alpha has sued Beta for breach of contract claiming that its acceptance letter created a contract. At trial, the secretary to Alpha's president testifies that she remembers typing the letter but she cannot specifically recall mailing the acceptance letter. Alpha's attorney attempts to introduce the letter.

A. (4 points) Is it admissible evidence? Discuss.

During pretrial discovery, Beta's attorney took the deposition of Alpha's Vice-President, who testifies that Alpha's President told him that Beta's widgets were no good and he was not going to accept Beta's offer. Two weeks before trial, the Vice-President has a heart attack and dies. At trial, Beta's attorney tries to introduce that portion of the Vice-President's deposition testimony.

B. (4 points) Is it admissible? Discuss.

At trial, Alpha's attorney tries to introduce a chart purportedly showing the thousands of dollars in damages that Alpha suffered because of the alleged breach of contract. The chart summarizes numerous documents from Alpha's accountants and documents generated by its expert witnesses about damages.

C. (4 points) Is the chart admissible? Discuss.

IV.
(11 points)

Marcus is 17 years old and owns a motorcycle his parents gave him on his 16th birthday. This past September, Marcus dressed up as a clown and rode his motorcycle in the Liberation Day parade, without obtaining authorization from or registering with the Parade Committee. Neither Marcus nor his motorcycle had a visible number designating him as an official parade participant.

During the parade, Marcus passed slowly by the official parade reviewing stand doing "wheelies" with one hand, while tossing candies to the crowd. In the midst of one of his stunts, Marcus lost control of his motorcycle and plowed into Officer Jonas, a state police officer who had stopped to watch Marcus perform for several minutes. One of Officer Jonas's assigned duties on that day was to patrol the parade route to ensure it was free of unauthorized vehicles, etc. Officer Jonas suffered serious leg and head injuries, lost a significant amount of blood, and was rushed immediately to a nearby private for-profit hospital.

When Officer Jonas arrived at the hospital he was conscious and alert but exhibiting signs of severe shock. Four hours later his condition worsened and he was rushed into surgery to relieve pressure on his brain caused by internal bleeding. During surgery, the physician, Dr. Cutter, severed a major nerve.

As a result of the day's events, Officer Jonas remained in the hospital for approximately four weeks, suffered permanent paralysis on his right side, and was rendered disabled for further police duties.

Officer Jonas has asked you to represent him in a civil action to recover for his injuries. Advise him as to the possible defendants, legal theories and defenses available, and advise him as to which defendants, if any, he should proceed against.

V.
(11 points)

Dixie was sitting in the living room of her home, watching television with the curtains pulled shut. Dixie answered a knock on the door. A gentleman identified himself as Rob Lee and stated that he was a Christian missionary. He looked around Dixie's living room and nodded his head approvingly. Dixie invited him in "for two minutes, to make your pitch."

Rob Lee had just begun his presentation when there was another knock at the door, quickly followed by loud and repeated knocking and shouts of "Police, open up!"

Dixie then fled out the back door and into a back alley, pursued by a man in plainclothes. As she passed some trash cans, Dixie tossed a cellophane packet inside one of them and closed the can's lid. The packet contained a substance that later proved to be crystal meth. The plainclothesman saw Dixie throw it and retrieved the meth. He then gave further chase and arrested Dixie for possession of a controlled substance. Dixie denied that the meth was hers.

Meanwhile, Rob Lee opened the door to Dixie's home. A uniformed officer stated that he was with the Intergovernmental Substance Abuse Task Force, and said he had reason to believe that there was marijuana in Dixie's home. He asked Rob Lee for permission to search.

"Okay by me," said Rob Lee. "I don't got nothing to hide."

The uniformed officer searched the home. In one of Dixie's drawers he found a packet of a green leafy substance which later proved to be marijuana. Nothing else unlawful was found in Dixie's home or on her person.

Dixie was charged in the FSM Supreme Court with possession of meth and of marijuana. Rob Lee turned out to be a confidential informant who was cooperating with the police in order to get his own drug charges reduced.

You are Dixie's lawyer and are now preparing a memorandum to check the strengths and weaknesses of motion arguments on suppression of the marijuana and of the meth.

Discuss the arguments — pro and con — which you will make and defend against at the suppression hearing with regard to (1) the crystal meth and (2) the marijuana.

VI.
(9 points)

Discuss the constitutionality under the FSM Constitution of:

A. (3 points) an FSM national statute that adds a \$1,200 surcharge on the importation of any motor vehicle with the steering wheel on the right-hand side and a further \$400 tax on any later resale of any such vehicle.

B. (6 points) a municipal ordinance that levies an annual \$500 business license fee on all businesses with an office in the municipality except for

- (1) \$6,000 for a bank;**
- (2) \$1,200 for a travel agency;**
- (3) \$2,500 for a law office;**
- (4) \$200 for fast food take out;**
- (5) \$600 for a restaurant; and**
- (6) 12¹/₂% of all hotel room rentals.**

VII.
(8 points)

Engels sued Marx in the FSM Supreme Court. You represent Marx. At the end of trial yesterday afternoon, the judge ruled from the bench, and awarded Engels \$9,000. You expect that the court clerk will issue the written judgment sometime today.

Marx has about \$11,000 on deposit in the local bank. He has told you that to keep his business running smoothly he needs to maintain a balance in his bank accounts of at least \$4,000, and that he is afraid that if he has to pay the \$9,000 all at once it will disrupt his business and may have a long-range effect on his business reputation.

Marx has indicated to you that he does not want to appeal the money judgment, primarily because of the time and expense and because he also realizes that he is not likely to succeed on appeal. Engels's attorney has informed you that Engels has instructed him to seek a writ of execution for the judgment as soon as possible.

Are there any legal steps you might take to accommodate Marx's desire to avoid disruption of his business? If so, describe.

**VIII.
(8 points)**

Phobos, whose employment with Deimos Inc. was terminated, threatened to sue for wrongful termination. There was a legitimate dispute over whether Deimos had the right to fire Phobos under the circumstances.

Deimos mailed a letter to Pat offering a severance payment of \$5,000 on the condition that Phobos sign a release of all claims against Deimos. A form of release that clearly recited a waiver of claims, including claims for wrongful termination, was enclosed.

Without otherwise responding to the Deimos letter, Phobos signed the claims release form, placed it in an envelope, put a 49¢ stamp on the envelope, and took it to the post office and put it in the mail slot.

When Phobos returned home, he found that a check payable to him for \$5,000 had been left at his house. Phobos rushed back to the post office and somehow persuaded a postal worker to retrieve and return to him the envelope containing the release he had signed and mailed. Phobos cashed the \$5,000 check and has said he will not return the money.

Phobos has now sued Deimos for wrongful termination. Having learned that Phobos had actually mailed the signed release, Deimos pleads as a defense the release of claims by Phobos.

What legal and equitable theories should Deimos assert in support of its defense that the suit is barred by Phobos's release of claims? Explain.

IX.
(14 points)

The Salamander Dive Club executed a twenty-five year lease of shoreline property called Hermitage from DeWitt Clinton, who holds a Certificate of Title for that property. The Salamander Club then constructed a small eco-tourist hotel, restaurant, and dive shop operation there. It scheduled its grand opening for March 7, 2016. Its first customers, who have already paid for their accommodations and dives, are scheduled to arrive that day.

You represent the Salamander Club. This morning [March 3] the police served the following document on Elbridge Gerry, the Salamander Club's owner. He brought it to you immediately. He was not served with any other documents, but says he understands that at one time Aaron Burr had some claim to Hermitage. What immediate steps do you take? Why? What steps will you take thereafter?

**IN THE SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA
TRIAL DIVISION**

| | | |
|--------------------------|---|-----------------------------|
| AARON BURR, |) | CIVIL ACTION NO. 2016-4011 |
| |) | |
| Plaintiff, |) | |
| |) | ORDER GRANTING MOTION FOR |
| v. |) | TEMPORARY RESTRAINING ORDER |
| |) | |
| ELBRIDGE GERRY d/b/a THE |) | |
| SALAMANDER CLUB, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

This case came before the Court on Plaintiff's Verified Complaint, Motion for Preliminary Injunction, Ex Parte Motion for Temporary Restraining Order, and Affidavit in support thereof, and it appearing therefrom that there is a substantial risk that, unless restrained forthwith, Defendant will willfully and unlawfully enter upon the land known as Hermitage in violation of the Plaintiff's rights and open for business and such acts will alter the status quo before a hearing on the preliminary injunction can be held, NOW THEREFORE,

IT IS HEREBY ORDERED that Defendant Elbridge Gerry d/b/a the Salamander Club, his officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with him or at his direction , are temporarily ENJOINED and RESTRAINED pursuant to Rule 65, from entering on to Hermitage and from conducting any business thereon whatsoever.

General

IT IS FURTHER ORDERED that the Plaintiff shall provide security in the amount of \$1,000 pursuant to Rule 65(c).

AND IT IS FURTHER ORDERED that the Defendant shall appear at a hearing on the Plaintiff's motion for a preliminary injunction on March 30, 2016, at 9:30 a.m.

SO ORDERED the 3rd day of March, 2016.

/s/

Associate Justice

Entered this 3rd day of March, 2016.

/s/

Clerk of Court

General

X. (9 points)

In each of the following cases, the defendants removed the case to the FSM Supreme Court trial division from the state court in which it was originally filed. In each case, the plaintiff has filed an opposition to the removal petition which the FSM Supreme Court treats as a motion asking that the case be remanded to the state court in which it was originally filed on the ground that it had been improvidently removed — that is, that the case should not have been removed in the first place because the FSM Supreme Court does not have subject-matter jurisdiction over it. How should the FSM Supreme Court rule on each motion to remand and why?

A. (3 points) a suit filed in the State Court of Yap by a Yapese citizen for breach of contract against a business incorporated in Yap that has its only place of business on Yap but wholly owned by a United States citizen from Saipan.

B. (3 points) a suit filed in the Kosrae State Court by a Kosrae citizen against two business partners, one a Kosrae citizen and the other a Philippines citizen, alleging negligence.

C. (3 points) a suit filed in the Pohnpei Supreme Court by the Pohnpei state government against the Chuuk state government's Department of Transportation over the ownership of a sea-going vessel.