

**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 5, 2009**

**ADMINISTERED IN CHUUK, POHNPEI, AND YAP**

**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.	10
II.	6
III.	14
IV.	8
V.	10
VI.	12
VII.	8
VIII.	7
IX.	15
X.	<u>10</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 I. THE EVIDENCE QUESTIONS ARE II-III. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

GOOD LUCK.

**I.  
(10 points)**

Auk, a local attorney, has come to you for legal advice about his interest in representing (on a contingent fee basis) Penguin, Inc. In a breach of contract and fraud case against Dinosaur, Inc., which will be filed in the FSM Supreme Court.

Auk asked you the following questions:

A. (2 points) Auk said that Raven, another local attorney referred this case to him, and wants Auk to agree in writing to pay her  $\frac{1}{2}$  of whatever legal fees Auk collects. Can Auk make such an agreement?

B. (2 points) Auk is a sole practitioner. He would like to hire Crane as a paralegal to help him on this case and agree to pay Crane (in addition to a minimum hourly wage) 10% of whatever legal fees are collected by way of settlement or judgment. Can he do so?

C. (3 points) Last year, Auk represented a subsidiary of Moa, Inc. in the lease of a small parcel of land in a neighboring state. Will that representation have any impact on Auk's ability to represent Penguin, Inc.?

D. (3 points) Penguin, Inc. Has insisted that Auk include in the verified complaint to be filed in the FSM Supreme Court a fraud allegation that Auk knows to be untrue (based only on his confidential attorney-client communications with Penguin Inc.'s president). The president has told Auk that he will sign the verified complaint under oath. Auk asks whether he may, or must, include this allegation.

Prepare a memorandum to Auk with your answers to these questions.

## **Evidence**

### **II. (6 points)**

You have just been hired as an associate at a law firm in the FSM. On your second day, you receive an e-mail from the law firm's principal, who is off-island and expects to return that Friday. It states:

I start trial on Monday in the FSM Supreme Court in Murre v. Gannet. We represent Murre who was sold defective software by Gannet. I want to get admitted in evidence the following documents and facts:

A. [3 points] In answers to our interrogatories, Gannet stated that it had (1) experienced problems with the design and manufacture of the software Murre had bought and that (2) after Murre sued it had taken steps to correct those problems. Can I get those answers in evidence? If so, how?

B. [3 points] I served requests for admission on Gannet, asking it to admit the authenticity of the design documents on which the software was manufactured. The design was not created in-house, but by a vendor on Guam. Gannet has denied the documents' authenticity. Can I get those documents in evidence? If so, how?

Please respond to your boss's questions.

**III.  
(14 points)**

**Discuss the accuracy or the advisability of each of the following statements:**

**a. (3 Points) A party may never address leading questions to a witness whom that party called to the witness stand.**

**B. (4 points) In both civil trials and criminal trials, evidence of a party's relevant similar misconduct is admissible.**

**C. (3 points) The concept of judicial notice should be replaced by a requirement that all elements of a cause of action must be established in evidence.**

**D. (4 points) Statements made out of court by a person to a witness are sometimes admissible in evidence.**

**IV.  
(8 points)**

Demarra, a tourist decided that he would like to take an extended three-month surfing, diving, and fishing vacation on Pohnpei. Rather than spend all that time (and money) staying in a hotel, Demarra decided to find an apartment to rent. Berbice, a landlord with a small apartment building on his land, quoted a rental for three months at \$1,000 per month for a two-bedroom apartment, with the first and last months' rent to be paid when the lease was signed plus a \$500 security deposit. The lease started June 1, 2008.

Demarra agreed, and paid Berbice \$2,500 cash when he and Berbice signed the lease on May 31, 2008. The lease, when typed up, erroneously read \$10,000 per month rent, instead of \$1,000. Neither Demarra nor Berbice noticed this when they signed the lease. The lease also contained an integration clause that provided that the written lease contained the whole agreement of the parties.

Berbice died during the month of June.

When Demarra went to pay his July rent, Berbice's son, Essequibo, who was now running Berbice's rental business, took Demarra's \$1,000, and stated, "According to the lease, you owe me another \$9,000. Pay it by next Monday or be out by Tuesday."

Essequibo filed suit in the FSM Supreme Court seeking judgment for unpaid rent. Demarra counterclaimed for the \$500 security deposit. How should the court decide the case? Explain.

**V.  
(10 points)**

A bill has been proposed for enactment by the State Legislature, and the chairman of the legislative committee it has been assigned to, who favors it in principle, asks for your opinion. The bill provides:

**BE IT ENACTED THAT:** the State may not employ persons or enter into contracts for government work with companies if the persons or principal executives of the companies:

(A) refuse to sign a waiver of the privilege against self-incrimination in the event of any legal proceedings arising out of the employment or the contract for work; or

(B) allow patently offensive or sex-related material to be present where they are in control; or

(C) are members of an organization that advocates separate statehood for any of the outer islands.

**What is your advice?**

**VI.  
(12 points)**

Boris, who was wearing a yellow face-mask and a black cape which covered his entire body, pointed a double-barreled shotgun at a bank teller and then demanded and escaped with cash.

A week later, Boris's girlfriend, Natasha, registered in a hotel for a two-day Valentine's weekend special for locals and provided her credit card for imprint for payment. Natasha did not check out on Monday and the manager didn't receive any response to his daily telephone calls on Tuesday, Wednesday, and Thursday. During that time the door to Natasha's room had a "do not disturb" sign on it.

On Friday morning, the hotel manager processed Natasha's credit card, charging her for six days of occupancy. He then gave a pass key to her room to police officers. The officers knocked, received no response, and then used the key to enter. They found Natasha and Boris in the room. The police searched the room and found a yellow face-mask, a paper bag full of money, and a double-barreled shotgun under a pile of Natasha's clothing in the chest drawers. They arrested Boris and Natasha. Boris and Natasha were both given pretrial release. Boris disappeared off-island.

Natasha was charged with bank robbery. At her trial, Natasha, who had one prior conviction for petty theft, did not testify. The arresting officer testified about the search and produced the gun, the mask, and the cash in evidence. He testified that he had questioned Boris in the hotel room in Natasha's presence and that when Boris denied knowing anything about the gun or mask Natasha had said nothing. Natasha's counsel vigorously cross-examined the officer and argued to the court that there was reasonable doubt of Natasha's guilt. He did not present pretrial or trial motions or object to evidence at trial.

After sentencing, Natasha hired new counsel who filed a motion for a new trial. The motion was denied. On Natasha's appeal from the motion's denial, what issues should be raised on her behalf and how should the court rule on them?



**VII.  
(8 points)**

**You are an attorney on Pohnpei. Pax and his wife Vobiscum, both citizens of Chuuk, have consulted you for advice during one of your visits to Chuuk to handle matters for your clients there. Six months ago, Pax, accompanied by Vobiscum was visiting Pohnpei when he was stopped by two police officers, Dred and Adze, who mistakenly believed Pax was a fugitive wanted for an assault and murder that had taken place years ago. Following a scuffle in which Vobiscum was hurt, Pax was arrested and brought to the police station, where he was held for over 36 hours and interrogated by Dred and Adze.**

**During the interrogation, Dred and Adze kept Pax in isolation, denied him any food, hit him, and refused to let him consult an attorney. After Pax's identity was confirmed, he was released, but he was hospitalized for several days and is still recovering from the physical and emotional trauma of the incident. Vobiscum also received treatment for injuries and has fully recovered. Following the incident, Dred and Adze were both suspended. Adze then moved to Guam.**

**You have determined that Pax may have claims against Dred and Adze for false imprisonment, assault and battery, intentional infliction of emotional distress as well as civil rights claims under 11 F.S.M.C. 701(3), a national statute, which may be brought in either national or state court. You also believe that Vobiscum may have a claim against both Dred and Adze for assault and battery.**

**Pax and Vobiscum have indicated to you that they prefer to proceed against Dred and Adze in the FSM Supreme Court in either Chuuk or Pohnpei rather than a state court. What will you tell them?**

**VIII.  
(7 points)**

One day, while Cassiopeia was at home, island power started fluctuating wildly. To protect her appliances from damage from the power surges, Cassiopeia rushed to the master switch for her house and when she pulled the handle she received a vicious electrical shock. She was rushed to the state hospital. On the way there, she noticed that a state utility crew was working on the transformer near her house.

Cassiopeia was treated at the hospital and eventually the tip of one finger had to be amputated. She sued the state utility corporation for damages, alleging that it had been negligent in working on the power system near her home.

The state utility corporation raised two defenses: assumption of the risk and contributory negligence. It asserted that it or its employees were not the proximate cause of Cassiopeia's injuries because Cassiopeia assumed the risk by handling the situation in a way that exposed herself to a greater danger and because this act made Cassiopeia contributorily negligent and that therefore Cassiopeia was barred from any recovery.

**Discuss.**

**IX.  
(15 points)**

Pursuant to a contract with the State Utility Corporation ("SUC"), Megatrex built several electrical transformers for SUC. After the transformers were delivered to SUC, but before SUC had paid for them, one of the transformers malfunctioned, causing damage to SUC's power distribution system and loss of revenues. SUC refused to pay Megatrex for any of the transformers, and Megatrex brought an action against SUC in the FSM Supreme Court seeking payment under the contract. SUC asserted counterclaims against Megatrex for breach of contract, including consequential damages arising out of the transformer malfunction.

A. (5 points) Megatrex believes that the transformer malfunction was caused by faulty transformer components supplied to Megatrex by Littletrex. Megatrex has not paid Littletrex for the transformer components or other work Littletrex did for Megatrex under a different unrelated contract. What procedural action may Megatrex take and how should Littletrex respond?

B. (4 points) Megatrex learns that SUC has retained several experts, some of whom it intends to call as expert witnesses at trial, and others who had been hired only to help in trial preparation. What information may Megatrex require of SUC about its experts and how may it be obtained?

C. (4 points) Megatrex believes that SUC has no valid claim or defense to justify not paying for the transformers Megatrex supplied to SUC other than the transformer that malfunctioned. What procedural action may Megatrex take prior to trial?

D. (2 points) After trial, the court finds for SUC and awards damages against Megatrex for SUC's loss of revenues which are more than three times the amount of damages which SUC established through the testimony of its expert witnesses. What procedural action may Megatrex take other than an appeal?

**X.  
(10 points)**

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

- A. indispensable party**
- B. exhaustion of administrative remedies**
- C. case or dispute**
- D. standing**
- E. class action**