

**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, 2006**

**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 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.	12
II.	8
III.	10
IV.	5
V.	16
VI.	15
VII.	13
VIII.	13
IX.	<u>8</u>
TOTAL	100

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

GOOD LUCK.

I.  
(12 points)

Flambeau owned a building which had been destroyed by fire under suspicious circumstances. A criminal information was filed against him and he was tried for arson. Because the police had neglected to turn the witness statements over to the defense before trial, a mistrial was declared. Before the criminal case was retried, a civil suit filed by Flambeau in the FSM Supreme Court against Nopay Insurance Company, which had refused to pay for the loss, came to trial. The insurance company's defense was that Flambeau had set the fire.

A. (3 points) At the trial of the civil case, Nopay offered a certified transcript of the testimony of Chester, who had testified for the prosecution at the criminal trial that he saw Flambeau set the fire. Chester died before the civil trial started. Flambeau's public defender did not cross-examine Chester at the criminal trial. The judge upon objection refused to admit the transcript.

B. (3 points) Nopay offered the testimony of Braz that Flambeau offered him \$1,000 to testify that he, Braz, was out fishing with Flambeau off a reef 50 miles away when the fire took place. The judge excluded the testimony.

C. (3 points) During a chambers conference, Nopay's counsel stated that he would call Walker as a witness; that Walker worked as an independent investigator for Nopay; that Walker had made notes of his investigation of the fire; that the notes were given to Nopay; and that before the trial the notes were shown to Walker who had no memory of making the notes, had no recollection of what the notes contained, and his reading the notes did not refresh his recollection. The judge excluded the proffered testimony.

D. (3 points) Gloria, a witness called by Nopay, testified that she saw Flambeau set the fire. On cross-examination, she was asked if she had not told Keith that she knew nothing about the fire. On rebuttal Flambeau called Keith who testified that a week after the fire that Gloria told him she knew nothing of the fire. Over Flambeau's objection, the court permitted Nopay to call Semes who testified that a week after the fire Gloria had told him that she saw Flambeau set it.

Were the judge's rulings correct? And why?

**II.**  
**(8 points)**

**Mary sued Pohnpei Trucking Company for the wrongful death of her husband, Hal. Hal was killed when a truck driven by Boyd crossed the center of the road and struck Hal's car. Hal was hurt badly and died a week later from complications. Pohnpei Trucking Company asserts that Boyd was an independent contractor hauling construction materials for Pohnpei Trucking Company and was not one of their employees.**

**At trial in the FSM Supreme Court, the following occurred:**

**A. (2 points) Mary called Tom, Pohnpei Trucking Co.'s president, as a hostile witness. On direct, Tom was asked the following question: "Didn't you call Mary after Hal's death and say that Pohnpei Trucking Company would arrange a traditional apology?" Was this question objectionable? Discuss.**

**B. (3 points) On direct, Mary asked Tom: "Didn't Pohnpei Trucking Co. have a liability insurance policy that covered the truck that Boyd was driving at the time of the accident?" Was this question objectionable? Discuss.**

**C. (3 points) Mary called police officer Reno. Reno testified that Boyd had given him a statement after the crash. Reno then read the following from his report: "Boyd stated that he fell asleep at the wheel and crossed the center of the road." Should Reno have been permitted to read from his report? Discuss.**

**(Assume that in each instance the appropriate objections were made.)**

**III.**  
**(10 points)**

Doctor is a well-known physician and surgeon in the FSM who is also licensed to practice medicine in Guam and Hawaii. Doctor runs his own clinic but conducts surgery in the local state hospital. He operated on one patient who, after the surgery, developed an infection and died. Exec, the personal representative of the patient's estate, filed a malpractice action against Doctor, who referred the claim to Medicins, Doctor's malpractice insurance carrier.

Doctor's insurance policy provided that Medicins would retain an attorney to defend any claim against Doctor, and would pay up to \$300,000 in satisfaction of any claim against Doctor. The policy also provided that Medicins would "investigate and settle any claim as it deemed appropriate."

Medicins retained Lawyer to defend against Exec's claim. After reviewing the record, conducting discovery, and obtaining an opinion from a medical expert, Lawyer reasonably concluded that, while Doctor's liability was uncertain, Exec had a good chance of prevailing. In light of the possibility of substantial damages, Lawyer recommended that Medicins settle the case. Medicins authorized a settlement. Lawyer then negotiated with Exec's attorney and reached a tentative agreement to settle the case for \$70,000.

Lawyer's secretary notified Doctor of the proposed settlement. Doctor expressed anger with the proposed settlement, stating unequivocally that he was not responsible for the patient's death. He also said that settling would adversely affect his reputation, could increase his insurance premiums, and could result in disciplinary action against him in one or more places where he was licensed to practice medicine. Doctor therefore told the secretary that he would not authorize the settlement. There was no further communication between Lawyer and Doctor.

Lawyer contacted Medicins and informed it of Doctor's objections and sought further direction. Medicins directed Lawyer to complete the settlement in accordance with the tentative agreement.

- A. Who does Lawyer represent in this case? Discuss.
- B. Did Lawyer violate any ethical rules in her handling of the case before she followed Medicins's direction to complete the settlement agreement? Discuss.
- C. May Lawyer settle the dispute as Medicins directed without breaching any ethical rules? Discuss.

**IV.  
(5 points)**

**In the previous question, what rights, if any, might Doctor have against Lawyer? Explain.**

**V.**  
**(16 points)**

**Abel and Baker were working on a scaffold erected over a sidewalk. Abel, contrary to his employer's express rule, was not wearing a hard hat.**

**While trying to park her car near one of the scaffold's supports, Diana maneuvered into such a position that she knew there was a risk of knocking the scaffold down if she backed up without someone to guide her. She appealed to Sam, a stranger who was passing by. Sam just laughed. Angered, Diana proceeded to back her car without help and knocked a support out from under the scaffold, causing Abel and Baker to fall.**

**Abel severely fractured his skull and was taken to the hospital unconscious. If he had been wearing his hard hat he would have suffered only a slight concussion with minimal disability.**

**Baker sustained a fractured vertebra, but he was able to walk and felt only slight pain. The fracture could have been easily diagnosed by x-ray, and a medical doctor of average competence could have successfully treated it by immobilization. Instead of visiting the hospital, Baker worked the rest of the day. While driving his car home later that day, Baker stopped at an intersection and his car was struck from behind by a car driven by Ed. The collision caused only slight damage to Baker's car, but it was sufficiently severe to aggravate the fracture in Baker's neck, resulting in paralysis.**

**Diana and Sam settled Baker's claim against them and received general releases from him. Abel sued Diana and Sam. Baker sued Ed. Assume that Diana, Sam, and Ed raise all appropriate defenses.**

**A. (10 points) What rights, if any, does Abel have against Diana? Sam? Discuss.**

**B. (6 points) What rights, if any, does Baker have against Ed? Discuss.**

**VI.**  
**(15 points)**

Proff, a resident of Pohnpei, agreed to deliver a lecture and presentation at a seminar to be held on Rota on Monday, July 13, 2004, for which he was to receive a \$2,500 fee. On June 30, Proff went to Flyright Travel Agency to ask about flights to Rota. He told a Flyright employee that he had to be on Rota by 9:00 a.m., July 13. He was told that Isla Air Flight #1 from Guam, left at 7:15 a.m. would get him to Rota by 8:00 a.m. Proff then purchased a reserved seat, non-refundable super discount ticket on that flight and on the Continental flight from Pohnpei that arrived on Guam at about 4:00 a.m., July 13. The ticket, prepared by the Flyright employee, bore both the flight number and departure and arrival times stated by the Flyright employee.

Proff took the Guam flight as scheduled on July 13 and arrived on Guam at 4:15 a.m., ample time to check in and clear security there for the flight to Rota, but discovered that Isla Flight #1 did not depart to Rota until 1:00 p.m., in conformity with Isla's new schedule that had been sent to all travel agents in the Micronesia area authorized to sell Isla Air tickets on June 1, 2004. Flyright had received the schedule on June 8, 2004 but had not entered the change in its computer. Because no alternative transportation was available. Proff could not deliver his lecture and returned to Pohnpei on the next flight. In response to the seminar's demand, Proff returned the \$1,250 advance he had received from the seminar.

On July 4, 2006, Proff filed an action against Flyright in the FSM Supreme Court to recover damages. He alleged in his complaint that the damages were incurred because Flyright's negligence made it impossible for him to deliver the lecture and he therefore lost the lecture fee and the cost of the ticket. He also sought punitive damages.

Flyright seeks dismissal of Proff's complaint by a procedurally proper motion. It claims that:

A. (3 points) The two-year statute of limitations for tort actions bars the suit.

B. (4 points) The complaint fails to state a cause of action in tort.

C. (4points) The complaint fails to state a cause of action in any other legal theory.

D. (4 points) Even if the complaint states a cause of action, the damages sought cannot be recovered by any theory suggested by the facts alleged.



## **General**

**How should the court rule on each of the grounds urged in support of the motion to dismiss? Discuss.**

**VII.**  
**(13 points)**

The Federated States of Micronesia filed criminal charges against Xenon for willfully and knowingly underreporting the value of the goods he has been importing for resale in his wholesale and retail business. After the court-set deadline for discovery passed, but sixty days before any pretrial motions were due, one of Xenon's former employees informed the prosecutor that shortly before the charges were filed, Xenon filled a company pickup truck with his recent purchase records and moved them to an unused building owned by Krypton, Xenon's cousin. The former employee, said that Radon drove the pickup that day. The national police then questioned Radon, but do not inform Radon of any rights he might have. Radon confirmed that he drove the pickup that day and that he left four boxes containing business records at Krypton's building that day.

Based on the above information, the national police prepared affidavits, which an FSM assistant attorney presented to an FSM Supreme Court judge along with a search warrant application for Krypton's building. A search warrant was duly issued. It stated that the items sought were Xenon's business records.

The national police executed the search warrant on Krypton's building. They found five boxes. Only one box contained Xenon's import records. Three other boxes contained his employee payroll records. When the police opened the fifth box, they found three handguns and twelve rounds of .38 ammunition. They also found a bill of sale for the three handguns from a sporting goods store in Nevada, that named Krypton as the buyer. During the search, one of the police officers glanced out of the building's rear window and noticed what appeared to six large marijuana plants growing behind the building.

The police seized all five boxes and photographed, then uprooted and seized as evidence the marijuana plants. All these items were listed on the warrant's return which was filed with the court. The prosecution promptly returned all of the payroll records to Xenon. The prosecution copied the import records and promptly provided the copies to Xenon's defense counsel, stating that they intended to use some of the records as evidence at trial.

A. (7 points) Xenon objected and moved to suppress the records. He asserts that the search warrant was invalid and that even if it were valid that the evidence is inadmissible because the discovery deadline has passed. Discuss.

B. (6 points) The government filed charges against Krypton for possession of illegal firearms (the handguns), ammunition, and marijuana. Krypton moves to suppress the evidence and for the return of the items

**seized. How should the court rule and why?**

**VIII.**  
**(13 points)**

Rex, a resident of Yap, has filed a class action in the FSM Supreme Court on behalf of himself and the residents of his village and an adjoining village. The class action seeks damages from FSM Telecom on the ground that Telecom has overcharged every telephone subscriber in his village \$5 per month for the last two years. The class action further alleges that the residents of the adjoining village that have cell phones have been overcharged for their cell phone usage for the past year because Telecom had been charging all their local calls as if they were off-island calls.

Rex is a former Telecom employee. There are approximately fifty telephone subscribers in his village. There are about thirty cell phone users in the adjoining village.

Telecom filed an answer that the \$5 per month extra charge was proper because of the extra cost and difficulty in running telephone lines underwater to Rex's village which is separated by a narrow channel from the rest of the main island. Telecom also filed a motion to dismiss on the ground that the FSM Supreme Court does not have jurisdiction over contract cases – cases about telephone bills.

Shortly afterward, Rex filed a motion for class certification and an opposition to the motion to dismiss.

A. (3 points) Should the court grant the motion to dismiss? Why, or why not?

B. (10 points) Should the court grant the motion for class certification? Why, or why not?

**IX.  
(8 points)**

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

- A. indispensable party**
- B. removal of cases**
- C. exhaustion of administrative remedies**
- D. personal jurisdiction**