

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 7, 2002

Administered in Kosrae, Pohnpei, and Chuuk

**Supreme Court of the
Federated States of Micronesia**

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NOTE

YOU WILL BE 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 WRITING, REVIEW EACH QUESTION CAREFULLY SO THAT YOU UNDERSTAND PRECISELY 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.	17
III.	15
IV.	14
V.	12
VI.	20
VII.	5
VIII.	<u>5</u>
TOTAL	100

THE MINIMUM OVERALL PASSING GRADE WILL BE 65. THE EVIDENCE PORTION OF THE EXAM IS QUESTION VI. THE ETHICS PART IS QUESTIONS VII-VIII. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. A PERSON WITH A PASSING GRADE ON ANY OF THE THREE PARTS, BUT WHO DOES NOT HAVE AN OVERALL PASSING GRADE, WILL NOT NEED TO RETAKE THE PART(S) PASSED. GOOD LUCK.

I.
(12 points)

Deimos, a convicted felon, stopped by his friends' house to say hello. They were not home, but Deimos saw their ten-year child playing with a loaded handgun. Afraid that the child might hurt herself, Deimos took the gun away, put it in the glove compartment of his car, and drove away. Deimos then forgot about the handgun.

The next day, Officer Phobos (who had testified at Deimos's earlier trial) noticed that Deimos's license plate was expired. She pulled Deimos over and asked to see his license and registration. As Deimos opened the glove compartment, Phobos saw the handgun and said, "I've got you now. I know there's more evidence in the car, and I'm going to look for it, OK?" Deimos shrugged and handed her the car keys. She then searched the entire car and found a small amount of marijuana in the trunk.

Phobos told Deimos, "You've been through this before, haven't you? You have the right to remain silent. Anything you say may be used against you in court. You have the right to an attorney. You remember all those rights?" Deimos said, "You can't touch me on this. I was saving a child's life." Phobos placed Deimos under arrest.

Deimos was later convicted of the charges of illegal possession of a firearm, 11 F.S.M.C. 1223(5), and possession of a controlled substance, 11 F.S.M.C. 1142(1).

A. Identify and discuss what issues should have been raised in a motion to suppress and the prosecution's opposition to it:

- (1) (4 points) the physical evidence from the traffic stop;
- (2) (4 points) statements made at the time of the stop.

B. (4 points) Identify and discuss what challenges to the conviction Deimos could raise on appeal.

II.
(17 points)

Discuss the constitutionality of the following under the FSM Constitution:

- A. (4 points) a state law requiring all police officers to be citizens of the state;
- B. (3 points) a state law requiring all private security guards to be citizens of the state;
- C. (3 points) a state law banning the importation of alcoholic beverages from another FSM state;
- D. (4 points) a municipal ordinance that imposes a \$50 annual tax on all motel rooms and a 10% tax on all hotel rooms. Motel and hotel are not defined in the ordinance;
- E. (3 points) a state law imposing a 1% tax on the wholesale value of all goods a retail business has in inventory during the last week of January of each year.

III.
(15 points)

San Miguel sells cable service for Cable, Inc. On April 1, 2001, San Miguel told the Tsingtao family about a special cable package. The Tsingtaos were interested in the package because it included Filipino language programs. The Tsingtaos signed a subscription agreement on April 1, 2001, providing:

- (1) for two years of special cable service for \$80 per month; and
- (2) a "Guaranty" stating, "Subscribers who are not satisfied with Cable, Inc.'s service may cancel the service within three days of the date of this Agreement."

On April 3, 2001, before San Miguel installed the cable service, the Tsingtaos told San Miguel that they did not want the service installed unless they still had the right to cancel if they did not like the service. San Miguel said, "I promise you that I will personally cancel your service if you tell me you are dissatisfied within three days of today." After San Miguel left, they discovered that they could not receive any Filipino language channels, although they did receive additional English language channels.

On April 5, 2001, the Tsingtaos called Cable, Inc. and asked for San Miguel. Cable, Inc.'s manager told them that San Miguel no longer worked there. The Tsingtaos demanded that their cable subscription be canceled. The manager told them it was too late.

On April 6, 2001, Cable, Inc. assigned the Tsingtaos' subscription agreement and some other customers' subscription agreements to the FSM Development Bank as part payment on Cable, Inc.'s loan. The Tsingtaos continued to receive the cable service and to watch the English language channels, but refused to make any payments.

A. (7 points) Discuss whether the Tsingtaos had the right to cancel the agreement on April 5, 2001.

B. (8 points) After unsuccessfully trying to collect for almost one year, the FSM Development Bank sued the Tsingtaos and Cable, Inc. for the entire contract price. Discuss the remedies and damages available to the FSM Development Bank.

IV.
(14 points)

The State Fishery Permit Board controls the harvest of sea cucumbers in the state's waters by issuing a limited number of permits, renewable annually. Under the Board's rules, permit holders must harvest a minimum of 5,000 pounds annually during the harvest season, which only runs for six months of the year. A smaller harvest will result in the denial of a renewal application. The Board may waive the rule when a permit holder's lack of performance is due to illness, injury, or circumstances beyond his or her control.

Quito holds a sea cucumber permit. In the years 1999 and 2000, he harvested more than 9,000 pounds annually and successfully renewed his permit. In 2001, he took out a bank loan to buy new equipment for the sea cucumber business. But Quito was ill with recurring dengue fever and malaria for much of 2001 and harvested only 4,000 pounds of sea cucumber. In December 2001, Quito's application to renew his permit for 2002 was rejected because he had not harvested enough sea cucumbers in 2001.

Quito timely petitioned for a hearing to reinstate his sea cucumber permit. The Board scheduled the hearing for May 15, 2002. Quito telephoned the Board's office and said that he really needed a hearing earlier than that because he was falling behind in his loan payments and risked losing his new equipment and because by May 15th a good part of the sea cucumber season would be over. The board sent him a notice that because of the board members' travel plans and other business Quito's hearing would go forward in May as scheduled.

Assume that the state in question has an Administrative Procedures Act essentially identical to the FSM Administrative Procedures Act.

You are Quito's attorney. Was the Board's action in continuing to schedule the hearing in May proper? Discuss fully what the Board is required to do. What relief may be available in a forum other than the Board?

V.
(12 points)

The *S.S. Pride of Walvis Bay* was steaming through the FSM EEZ on its way from Honolulu to Singapore. It did not intend to make any port calls in the FSM. On a dark and stormy night, the *S.S. Pride of Walvis Bay* collided with the *F/V Marie Celeste*, a vessel with a current, valid FSM foreign fishing permit posted in its wheelhouse. Because of the collision, both vessels ran aground on the reef around Pulowat Atoll, an outer island in the State of Chuuk. The *Pride of Walvis Bay* had minor damage and worked its way off the reef and continued its voyage to Singapore, where it arrived two weeks later. The *Marie Celeste* sustained greater damage, and one week later was towed off the reef and into Chuuk Lagoon, where it was to be repaired.

The *Pride of Walvis Bay* is owned by the McDuck Corporation and William Beagle, is the vessel's captain, George Beagle, the first mate and navigator, and the vessel is insured by Pacific National Insurance Company.

The *Marie Celeste* is owned by Peripatetic Pelagic Piscatorial Co. and its captain Noah Ahab. It is insured by the Nantucket Marine Insurance Company.

The People of Pulowat hire an attorney to file suit for the damage caused to their reef and its resources by the negligent navigation of both vessels. They name as defendants, the *S.S. Pride of Walvis Bay*, the McDuck Corporation, William Beagle, George Beagle, the Pacific National Insurance Company, the *F/V Marie Celeste*, the Peripatetic Pelagic Piscatorial Co., Noah Ahab, and the Nantucket Marine Insurance Company.

The *S.S. Pride of Walvis Bay* and William Beagle are served the complaint and summons while in port in Singapore. George Beagle is served by leaving a copy for him with William Beagle. The McDuck Corporation is served by mail at its main office in New York City. The Pacific National Insurance Company is served by mail at its home office in San Francisco. Noah Ahab is served while drinking at a bar in Weno, Chuuk. The *F/V Marie Celeste* is served by leaving a copy of the complaint and summons in the vessel's wheelhouse, and the vessel is seized by court order, in Chuuk Lagoon. The Peripatetic Pelagic Piscatorial Co. is served through its registered agent on Pohnpei, and the Nantucket Marine Insurance Company is served by registered mail at its main office in Hartford, Connecticut.

V.
(cont.)

- A. (3 points) In what court or courts might the plaintiffs file their suit?
- B. (9 points) Assume that the case proceeds in the FSM Supreme Court. Each defendant is represented by an attorney who appears for the sole purpose of filing a motion to dismiss the case against his or her client. You are the judge. Which defendants, if any, should be dismissed, and why or why not?

VI.
(20 points)

Pluto and Charon, FSM citizens from another state, are on their honeymoon in Pohnpei. While driving there, they were passed by a vehicle driven by Triton. Pluto, suddenly enraged, accelerates and pulls even with Triton's car, removes a .22 rifle from beneath the seat and fires across Charon and into Triton's car. Charon screams: "You aimed right at him, you fool!" Pluto looks ashamed but mutters: "He had it coming to him!" Fortunately, the bullet narrowly misses Triton who decides not to report the incident to the police. However, Triton hires you to sue Pluto for assault and intentional infliction of emotional distress.

Discuss the admissibility of each of the following items of evidence under the FSM Rules of Evidence.

- A. (4 points) Charon is so frightened by this incident that she obtains an immediate divorce from Pluto. After the divorce is final, she contacts you with the news that she is willing to testify against Pluto about what happened and their statements at the time of the incident.
- B. (3 points) After she calls you, Charon disappears and cannot be found. Her grandmother, who has heard the details many times over, volunteers to testify to the facts.
- C. (4 points) Pluto's probation officer, Uranus, will testify that Pluto has a felony conviction for burglary three years ago, for which he is still on probation. Uranus will also testify that his other probationers say that Pluto is well known to be violent.
- D. (3 points) Neptune, the local police chief, will testify that Pluto did not have an FSM firearm permit for the .22 rifle, as required by FSM law, and also that Pluto was prohibited under the terms of his probation from owning or carrying a gun.
- E. (3 points) Pluto's attorney calls Neptune to testify that Pluto is generally a peaceable person.
- F. (3 points) Your process server will testify that, when handed the Summons and Complaint, Pluto said, "I should have killed that little creep when I had the chance. Then he wouldn't be around to sue anyone!"

VII.
(5 points)

Legolas, a lawyer, is negotiating the sale of his client's business, Rivendell Enterprises, to another businessman, Gimli, who is represented by a trial counselor. Balance sheets and profit and loss statements prepared one month ago and last year's gross revenue tax return have all been supplied at Gimli's request. In the past month, Rivendell Enterprises's sales have fallen dramatically. Gimli's counsel has made no inquiry about current sales. Does Legolas have a duty to disclose the change in sales volume? Explain.

VIII.
(5 points)

Gideon, a member of the bar of the State of Florida, is not licensed to practice law in the FSM. In 1997, he started working part-time in the law office of Miranda, a member of the FSM bar. Miranda left the FSM in 1999. Gideon continued to work out of Miranda's office.

Terry, a Congressman, hired Gideon to help draft a supplemental appropriations bill. Gideon charged \$75 an hour. Terry paid \$281.25 for Gideon's services.

Later, Terry's chief of staff, Brady, filed suit against the Public Auditor, complaining that the Auditor did not have the legal authority to take some of the actions he had taken. Gideon drafted the complaint. Brady signed the complaint and filed it pro se in the FSM Supreme Court.

The above facts have recently come to light and the matter has been assigned to you as Disciplinary Counsel. What recommendations do you make to the reviewing justice and why?