

**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**

APRIL 7, 2022

ADMINISTERED IN CHUUK AND POHNPEI

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

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INSTRUCTIONS

YOU HAVE FIVE HOURS TO FINISH THIS TEST.

THIS SHOULD BE AMPLE TIME TO CONSIDER THE QUESTIONS AND ISSUES PRESENTED AND TO ALLOW YOU TO FRAME YOUR ANALYSIS. BEFORE YOU START WRITING, READ THE QUESTION CAREFULLY SO THAT YOU UNDERSTAND EXACTLY WHAT IS BEING ASKED. NEXT, ORGANIZE YOUR ANSWER.

ANSWERING QUESTIONS NOT ACTUALLY ASKED MAY INDICATE INADEQUATE UNDERSTANDING AND RESULT IN A LOSS OF POINTS.

PLEASE WRITE OR PRINT YOUR ANSWER LEGIBLY. ILLEGIBLE ANSWERS 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.	20
III.	4
IV.	5
V.	16
VI.	9
VII.	9
VIII.	8
IX.	9
X.	10
TOTAL	100

65 IS THE MINIMUM OVERALL PASSING GRADE. TO OBTAIN PARTIAL CREDIT UNDER GENERAL COURT ORDER 1986-2, THE ETHICS QUESTIONS IS I, AND THE EVIDENCE QUESTIONS ARE I & II. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

Ethics

I. (10 points)

Wiley has just been admitted to the FSM bar. He focused his law school education on criminal law and has served as a prosecutor intern. He has now opened his own law office. The first client in his office is Trix, who is brought in by Wiley's brother-in-law, Cheetam. Cheetam has a Masters of Business Administration, and advertises himself as an investment advisor and venture capitalist. Trix has a small struggling business into which Cheetam proposes to invest a modest amount of capital, and a substantial amount of managerial expertise. Until now, Trix's business has been a sole proprietorship, and it is proposed to Wiley that the business be incorporated and that they each take equal shares of the issued stock – Trix for the ongoing value of his business, Cheetam for a \$200 investment and his management expertise, and Wiley for his legal services in incorporating the business. Wiley accepts the proffered employment, and prepares the Articles of Incorporation, Bylaws, and Stock Certificates. Wiley put the Articles of Incorporation and Bylaws in his lower left desk drawer where they were forgotten for the next six weeks. The Stock Certificates were signed and distributed to the respective shareholders.

The business continued to flounder and Cheetam retains Wiley, for a third of the recovery, to sue Trix for alleged misrepresentations made by Trix in the sale and transfer of the business to the corporation. Wiley prepares and files an action showing Wiley and Cheetam as plaintiffs and Trix and the corporation as defendants. Trix is served with a Summons and Complaint and visits Wiley to discuss the matter. Before the meeting ends, Wiley executes a settlement agreement and mutual release on behalf of himself and Cheetam whereby Trix promises to pay them each \$1,000 for their shares.

Discuss and resolve all potential ethical issues raised by Wiley's conduct.

Evidence

II. (20 points)

Phobos filed an intentional tort action against Deimos, seeking damages suffered from stab wounds allegedly inflicted by Deimos. At trial in the FSM Supreme Court, Phobos was called as the first witness and the following questions were asked and answers given. At each objection, indicate what objection or objections should have been made and how the court should have ruled:

DIRECT EXAMINATION OF PHOBOS

Q. What is your name?

A. Palindrome Phobos.

Q. Where do you live?

A. On Asuncion St., in Kolonia.

Q. And you've lived there for the past six years?

[OBJECTION A (2 points)]

A. That's right.

Q. What do you do for a living?

A. Last four years, I'm the Assistant Dean at the College of Micronesia.

Q. Directing your attention to January 11th of last year at about 8:30 a.m., where were you?

A. I was standing in the college's reception area.

Q. Please tell the court what happened when you were standing there.

A. Well, the first thing I remember is that a student, Bonnie Bell, said, "Dean Phobos, here comes Professor Deimos and he seems to be pointing at you."

[OBJECTION B (3 points)]

Q. Then what happened?

A. I noticed that defendant Deimos was rushing toward the office, screaming at me, and waving his arms.

Q. Okay. What happened after he rushed toward you screaming and waving a knife?

[OBJECTION C (2 points)]

II. (cont.)

Evidence

A. Well, I just turned and ran down the hall.

Q. I see. So you didn't say anything to him or provoke him in any way?

[OBJECTION D (2 points)]

A. Yes, definitely. I didn't know what had gotten into him.

[Phobos proceeded to testify about the chase, the attack, and its aftermath]

Q. Where were you interviewed by the police?

A. At the hospital.

Q. And did you tell them anything different from what you've told the court today?

A. No, I told the police exactly what I've said here. I have a clear recollection of what happened ever since that day.

[OBJECTION E (2 points)]

[Phobos was then examined about his damages]

Q. How much were your medical expenses?

A. I don't remember exactly.

Q. Would it refresh your recollection if I told you it was \$975?

[OBJECTION F (2 points)]

A. No, but it's on the bill from Genesis Hospital.

Q. Showing you the bill, do you now remember the specific amount?

A. (reading from the bill) It says here \$975.

[OBJECTION G (3 points)]

CROSS-EXAMINATION OF PLAINTIFF PHOBOS

Q. You testified that you didn't know what had provoked Deimos, but the day before the incident, didn't you expel three of his students for no reason and change the lock on his office? Isn't that correct?

[OBJECTION H (2 points)]

A. That's not right.

Q. You would agree that Deimos and you had your differences?

A. No, we always got along well, but when he came after me that morning he had a lethal weapon.

[OBJECTION I (2 points)]

III.
(4 points)

Henry had a paid-up life insurance policy that provided that his "heirs" would be the policy beneficiaries in the event of his death. Henry has recently died and his wife at the time of his death has filed a claim with the insurance company for the policy's benefits. Henry's two children by a previous marriage have also filed a claim. Both the wife and the children claim they are the "heirs" in the insurance policy and both have asked to be paid all the policy's benefits.

The insurance company has asked you for advice in protecting its interests. What steps do you recommend?

General

IV. (5 points)

Nexia, a citizen of another state, has paid a state license fee taxes for three years. She believes she has overpaid those taxes and files suit in the FSM Supreme Court to recover the overpayments.

The state moves to dismiss the case on the ground that a state statute provides that the state court has original and exclusive jurisdiction over any actions to recover state tax payments.

How will the FSM Supreme Court rule on the motion to dismiss?

V.
(16 points)

Police officers Jack and Semes were investigating drug trafficking among youths who were thought to be manufacturing methamphetamine and distributing it locally. They suspected that the drugs were being manufactured in the home where Vladimir lived with his parents, but they did not have enough evidence to obtain a search warrant. One day, while Officer Semes was attending to some paperwork at the station, Officer Jack observed a group of youths enter through the front door of Vladimir's home. One of them appeared to be carrying a small propane tank. After about 30 minutes, Officer Jack knocked on the front door of Vladimir's home to inquire about the tank's contents. Officer Jack had not noticed that the youths had left through the rear door shortly after their arrival.

When nobody answered the front door, Jack went to the rear of the house and knocked on the rear door. Nobody answered. Officer Jack looked through the window located next to the home's rear door. He noticed that it was small room and inside there was a Bunsen burner with a very high flame burning under a petri dish filled with liquid and solid substances. Based on what he had learned at a War on Drugs training on Guam, Jack believed this was a lab constructed for the manufacture of methamphetamine. Officer Jack knew that such labs often result in explosions that expose the public to hazardous chemicals. He feared that the unattended and excessively high flame burning under substances he suspected to be dangerous chemicals could result in an explosion. He again knocked loudly on the rear door, but no one responded. Believing that the residents in the nearby homes were in danger and recognizing that the evidence of a crime could be destroyed in an explosion, Jack forced his way into the home and extinguished the flame. Once in the small room, Officer Jack observed a large quantity of suspected methamphetamine located under the table where the Bunsen burner was.

V.
(cont.)

Officer Jack searched the entire home and found several guns and \$8,000 cash hidden in a closet. Officer Jack seized the lab paraphernalia, the drugs, the guns, and the cash and called Officer Semes at the station to inform him of his find.

Officer Semes indicated that he was talking to Vladimir's parents. The parents had appeared at the police station to express their concern over the gang of youths with whom their son was associating. They were afraid that Vladimir was engaged in illegal drug activity. After learning of Officer Jack's discoveries, Officer Semes informed Vladimir's parents that the officer he was talking to on the phone observed through a window of their home activity that was consistent with the illegal manufacture of methamphetamine. Officer Semes then asked the parents, "May the police have permission to search your home?" The parents freely and voluntarily consented to a search of their home.

Vladimir, aged 18, was charged in the FSM Supreme Court with the manufacture and distribution of methamphetamine and illegal firearms possession. His lawyer filed a motion to suppress the guns, the cash, the drugs, and the drug paraphernalia found in the home.

Discuss the legal arguments that may be advanced for and against Vladimir's motion and how the trial judge is likely to rule.

VI.
(9 points)

Your client, Brenda, is the 13-year old daughter of one of your best business clients. She was named as the defendant in a civil case. She was served with a Complaint and a Summons by a former police officer at her home on Chuuk 10 days ago while her parents were away on a trip to Pohnpei. Copies were also left with her aunt, who was staying with her at the time.

Without Brenda's knowledge and without her parents' knowledge, Brenda's grandparents, before their death, had vested Brenda with title to a valuable rock quarry property on Chuuk. The case was a quiet title action brought by an adjoining landowner who claimed title to a portion of the land vested in your client's name.

A. (4 points) What should you do for your client Brenda at this point in response to this action? Explain your analysis.

Assume that any defects above are remedied and a guardian ad litem is appointed for Brenda. Just after discovery is started, the plaintiff files a summary judgment motion, accompanied by copies of documents which seem to support the plaintiff's position. Several of the documents were never recorded, nor sworn to, nor certified.

B. (3 points) What procedural rules might be used to respond to this motion? Explain your analysis fully.

C. (2 points) Judgment is entered against Brenda, ordering her to convey a certain portion of her rock quarry property to the plaintiff. The time has come and gone under the court's order and Brenda has failed to comply within the time specified in the court order. What can the plaintiff's counsel do at this point to clear title to the property? Explain.

VII.
(9 points)

Sal had a small vessel, the *Auroch*, capable of carrying passengers and cargo to the state's outer islands and to the outer islands of neighboring states, if necessary. One of the outer islands, which has already been designated as an official FSM port of entry, is slated to have many of the coral heads in its lagoon removed so that cargo-carrying vessels larger than the *Auroch*, can enter the lagoon, anchor, and unload.

Blastco contracts with Sal to carry the explosives needed for the job to the outer island. Two days before departure, the cargo is loaded aboard the *Auroch* at the state's main port facility. Blastco, which had all the proper permits, provides Sal with special written instructions for the care and transportation of the explosives. Sal did not bother to read them. Unfortunately, the part of the cargo hold where Sal stowed Blastco's cargo, became, due to the unusual hot weather, warmer than was safe for the cargo. Also, that part of the hold was not well-ventilated or cooled and fumes from the engine room seeped in there.

The next day, it was very hot. Something caused the *Auroch's* cargo to detonate early that afternoon after the temperature in the *Auroch's* hold had reached dangerous levels.

The explosion destroyed the *Auroch*, which sank, and severely damaged, but did not sink, a nearby vessel, the *Bison*, and damaged the port facility. Luckily, no one was injured because everyone had gone to lunch and not yet returned.

What cause(s) of action might the state's port operator and the *Bison's* owner plead in a lawsuit against Sal? Explain.

VIII.
(8 points)

Ben owns a marina on Pohnpei. He hired Contractor to replace all the docks at his marina. Although the contract specified that the dock's top surface would be made of pressurized wood, Contractor used a composite which was usually indistinguishable from pressure-treated wood. The material was comparably-priced to pressure-treated wood, and had comparable properties, including strength, slip and rot-resistance, longevity, and maintenance requirements. When the work was finished, Ben refused to pay Contractor, claiming that Contractor had not performed in accordance with the contract. Contractor filed a civil action in the FSM Supreme Court to recover damages from Ben for breach of contract.

Discuss whether Contractor is entitled to recover on his contract with Ben.

General

IX. (9 points)

In each of the following cases, the defendants removed the case from the state court in which it was filed to the FSM Supreme Court trial division. In each case, the plaintiff has filed a motion in the FSM Supreme Court, asking that the case be remanded to state court in which it was filed on the ground that it was improvidently removed – that is, that the case should not have been removed to the FSM Supreme Court in the first place because the FSM Supreme Court lacked jurisdiction. How should the FSM Supreme Court rule on each motion to remand and why?

A. (3 points) A case originally filed in Pohnpei Supreme Court in which Ioanis, a citizen of Pohnpei, sued Sadaleur Co. on a breach of contract claim. Sadaleur Co. is a closely-held corporation that has only three shareholders, one is a Pohnpei citizen, the second is a citizen of Chuuk, and the third is a United States citizen resident on Guam. Sadaleur Co. was incorporated under Pohnpei state law and its only place of business is on Pohnpei.

B. (3 points) A case originally filed in Chuuk State Supreme Court in which the plaintiffs, who were seamen on the state's field trip ship, sued the state government for hazardous duty differential pay that they believe should have been included in their seamen's wages because they crewed the field trip ship during a typhoon.

C. (3 points) A case originally filed in the Kosrae State Court in which the plaintiff Kosrae citizen sued the Kosrae citizen director of the College of Micronesia, Kosrae campus, for wrongful termination from the College staff. The Director was sued in his official capacity.

General

X.
(10 points)

Discuss the constitutionality under the FSM Constitution of the following:

A. (3 points) A municipal ordinance that provides that anyone found intoxicated in public and disturbing the peace will be arrested by the municipal police and held in the municipal jail for 36 hours.

B. (3 points) A state statute requiring all state citizens boarding planes at the airport owned and operated by the state, to pay a departure fee of \$10, and for all other persons boarding planes there to pay a departure fee of \$20.

C. (2 points) An FSM statute levying a \$5 fee on all airplane tickets sold in the FSM.

D. (2 points) A state statute levying a 2½% tax on all agricultural produce exported from the state.