

**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 1, 2024

ADMINISTERED IN CHUUK, KOSRAE, POHNPEI, AND YAP

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

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I N S T R U C T I O N S

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, AS FOLLOWS:

<u>QUESTION NO.</u>	<u>POINTS</u>
I	12
II	6
III	2
IV	10
V	5
VI	6
VII	10
VIII	14
IX	20
X	15
TOTAL	100

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

GOOD LUCK.

I.
(12 points)

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

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

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

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

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

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

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

II.
(6 points)

Amada brought a personal injury suit against Umwes Construction Co. one year, eleven months and twenty-nine days after the injury took place. Umwes Construction promptly answered the complaint and denied that it was liable and that it had been negligent. It raised as affirmative defenses laches and comparative negligence.

At trial, Amada testifies during her case-in-chief. Her attorney asks him if Umwes Construction had, at anytime before suit was filed, offered to compromise or settle Amada's claim against it.

Umwes's attorney objects.

Amada's attorney makes an offer that, if Amada is allowed to answer the question, Amada will testify that nine months after the injury Umwes Construction had made an offer to settle and that settlement negotiations had dragged on for over a year after that, but they ended without agreement and that Umwes had initially paid some of her medical bills and had promised to pay the rest should the settlement negotiations conclude successfully.

Umwes's attorney maintains his objection.

You are the judge. How do you rule and why?

III.
(2 points)

At a bail hearing for a criminal defendant, one of the government's witnesses testifies that he overheard a friend of the accused boast that once the court lets the accused out on bail he was going to help the accused get to Guam. The accused's attorney objects on the ground of hearsay.

How should the judge rule and why?

IV.
(10 points)

A. (5 points) A wife whose husband was hard-drinking and abusive went to see an attorney about getting a divorce. Because she did not work outside the home, she told the attorney she could not pay a big legal fee. The attorney was sure that the wife had adequate legal grounds for a divorce because her husband was adulterous, an alcoholic, and frequently beat her. Therefore, the attorney told the wife that if she could come up with the state court filing fee, he would do all the work for 10% of whatever he was able to obtain in alimony and child support on her behalf. The wife was thrilled and immediately agreed to the arrangement, thanking the attorney profusely. The attorney left his office that night with a warm feeling that he had helped a fellow human being, secure in the knowledge that at least one person on the island would have something nice to say about lawyers.

Personal satisfaction aside, was the attorney's conduct proper?

B. (5 points) A man alleges that a very wealthy local businessman punched him in the face. He contacted an attorney about representing him in a civil suit against the businessman. After several lengthy discussions with the attorney about the case's merits, the man decided to employ another attorney instead. The businessman was later charged with criminal assault in connection with the incident. The attorney happened to be in court the day the case went to trial. As the attorney was watching the trial, she was astonished when the man testified to facts that she knew from her previous discussions with him to be false.

The attorney later sent a letter with a messenger to the court to notify the court that the man had perjured himself.

Were the attorney's actions proper?

V.
(5 points)

Dan was driving a Petrocorp gasoline truck down the road at night when Paul, a minivan driver struck the rear of Dan's truck causing a collision and an explosion. Paul was badly burned and Dan suffered a total memory loss from the accident. Based on the physical evidence at the accident scene, the accident's cause appeared to be excessive speed on Paul's part. The only witness was Wendy, who was driving a Rav4 behind Paul and Dan. She stopped after the accident and called the police on her cell phone.

Lex, a claims investigator for Petrocorp's insurance company, obtained a written statement from Wendy two days after the accident. In her statement, Wendy said that Dan caused the accident by sliding over into the passing lane where Paul was trying to pass and that Paul was too close to avoid the accident, although she couldn't estimate how fast Paul was driving. Lex wrote two comments on Wendy's statement: 1) Wendy is a very credible witness; and 2) her statement is very harmful to Dan's potential defense. Shortly after making her statement, Wendy left the island and cannot be found. Lex immediately sent Wendy's statement to Lawyer, Petrocorp's attorney on retainer.

Paul sued Dan and Petrocorp in the FSM Supreme Court for personal injury damages alleging that Dan negligently drove the truck. Defendants filed an answer specifically denying each of the Complaint's allegations of wrongful conduct. During discovery, Paul demanded production of Wendy's statement. Defendants claimed that the statement was privileged or otherwise protected from discovery. Paul moved for an order compelling production of the statement. Defendants filed a written response opposing production solely on the ground that the statement was not reliable because it was not under oath. The written response was prepared and signed by Lawyer.

Should the trial judge grant Paul's motion to compel production of Wendy's statement? Explain.

VI.
(6 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 had been improvidently removed – that is, that the case should not have been removed in the first place.

How should the FSM Supreme Court rule on each motion to remand and why?

A. (3 points) A case originally filed in the State Court of Yap in which the plaintiff local credit union made a loan to a Yapese citizen and secured the loan with a mortgage on his tourist dive boat and is now seeking to foreclose on the ship mortgage because the loan has not been repaid.

B. (3 points) A case originally filed in the Pohnpei Supreme Court in which a business, incorporated on Pohnpei but wholly owned by a Philippine citizen, sued a Guam business, wholly owned by a U.S. citizen, alleging breach of contract.

VII.
(10 points)

Wyoming is lineage leader of her family, and she and neighbors applied for the project money to build a seawall at the water's edge of the lineage's land. One Friday, Harris received a message for his wife, Wyoming, from Senator Scranton's office that the check for her family's project could be picked up at the senator's office. Harris went to Senator Scranton's office and picked up his wife's check, and went to the bank where the teller, knowing that Harris was Wyoming's husband, cashed the check.

In the past three years, Harris had picked up Wyoming's employment check twice, once when she was sick, and once when Wyoming went to another island for her mother's funeral. Each time Wyoming angrily objected, because the money was not given to her or used for the family. These were two examples of the problems between Harris and Wyoming.

Harris, using Wyoming's project money, spent the weekend drinking and playing poker with his friends. By Monday morning the money was all gone.

A week or so later Wyoming learned of the check and where it had gone. Harris sheepishly admitted his wrongdoing.

After negotiation failed, Wyoming filed a case in the FSM Supreme Court against the bank for the amount of the check. The alleged causes of action were conversion and negligence. The bank defended the action by relying on a passage in a state court trial division opinion which read in part, "In our society, tradition dictates that the husband, as the head of the household, customarily is responsible for taking care of the family's legal matters such as signing of documents, and overseeing of all financial affairs in which the family may be involved."

Discuss.

VIII.
(14 points)

In May, Roxanne, eager to start law school in the fall, offers to buy John's law school textbooks for \$450. John tells Roxanne the books will not be available until July at the earliest. Overhearing the negotiations, Clyde reminds John that he still owes Clyde \$450 for bar review materials. John then tells Roxanne she can have the books in July if she promises to pay Clyde the \$450 when she picks them up. Roxanne agrees.

A. (7 points) Assume that Roxanne and John have entered into an enforceable contract. What is Clyde's status under the contract? Explain.

Immediately after the conversation described above, Clyde buys a television and a VCR on credit, planning to use the money from Roxanne for his final payment. A month later, Roxanne decides to go to medical school instead of law school. When Clyde asks Roxanne for the \$450, she tells him to go see John because she no longer has any need for the books.

B. (4 points) What are Clyde's rights against Roxanne?

C. (3 points) What are Clyde's rights against John?

IX.
(20 points)

Jim and Will spent the day drinking together at a local bar. Suddenly, Will screamed that he was going to kill Jim and lunged over the table to attack him. Jim was frightened because he knew that Will was a martial arts expert. Jim ran out of the bar and got into his car.

Jim sped down the road. As he approached the first intersection, Jim looked over his shoulder and saw Will in hot pursuit.

Tina was driving down the side road that intersected with the road that Jim and Will were on. She did not stop at the intersection although there was a stop sign for vehicles approaching the intersection from the side road she was on. Tina's car ran into the car Jim was driving. At the time of the collision, Jim was still looking over his shoulder and never saw Tina coming. There is a statute requiring drivers to come to a full stop at stop signs before proceeding.

Jim and Tina exchanged information, and then went their separate ways. A week later, Tina called Jim's employer and told the employer that the accident occurred because "Jim was on drugs, as usual." Jim's employer, concerned because Jim frequently drove a company car, fired Jim.

Discuss potential claims and defenses in the following civil actions:

- A. (12 points) Jim versus Tina;
- B. (5 points) Jim versus Will; and
- C. (3 points) Tina versus Will.

X.
(15 points)

Joanna lives near the end of a road that leads to a small dock. One night at about 1 a.m., she called the police and told them she had just heard what sounded like gunshots and screaming coming from the direction of the dock.

The police went to investigate and found one unoccupied car and a small building that formerly had been used as a warehouse with a small office. There was no door on the building and the officers stepped inside. They heard voices coming from the office area, the only separate room in the building, so they walked to the door and knocked, saying, "Police officers! Let us in!"

One man, Laurel, opened the door for them. Another man, Hardy, was sitting behind a desk. The officers stepped inside and immediately smelled what they thought to be marijuana. One of the officers went to the desk and opened all the drawers, and found a lit marijuana joint, a handgun, and a large plastic bag. The police then arrested both men. Inside the plastic bag, they found what was later proven to be six pounds of marijuana and two ounces of "ice."

Both Laurel and Hardy are charged with unlawful possession of a handgun in violation of 11 F.S.M.C. 1023(5) and possession of marijuana and "ice" with intent to distribute in violation of 11 F.S.M.C. 1141(1)(a).

You are counsel for Laurel and learn that the prosecution has no evidence other than what has been described.

What issues would you expect to raise on Laurel's behalf?

How and when would you present each issue to the court?

Analyze each issue and how you would expect it to be resolved.