

**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 6, 2025

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	20
II	7
III	3
IV	10
V	5
VI	20
VII	14
VIII	9
IX	12
TOTAL	100

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

GOOD LUCK.

Evidence

I. **(20 points)**

Phoebe was driving her car. Dan, acting within the course and scope of his employment as a delivery driver for his employer, Ceres, was driving a Ceres truck. Phoebe and Dan collided at an intersection. Phoebe was injured and sued Ceres in the FSM Supreme Court. At trial, timely objections were made to the following relevant evidence.

Under the FSM Rules of Evidence, state whether this evidence should be admitted, and fully explain the reasons for your answers.

A. (4 points) officer Jane arrived at the scene shortly after the accident, and interviewed Dan. Phoebe calls Jane to testify that, during this interview, Dan said that he probably wasn't paying close enough attention to his driving. Ceres objects.

B. (4 points) after the accident, Phoebe retained Victor to examine the skid marks caused by the truck driven by Dan. Victor examined the skid marks. Phoebe calls Victor to testify that, in his opinion, Dan might have been driving faster than the posted speed limit.

C. (4 points) Phoebe calls Major to testify that he saw Dan's state driver's license shortly after the accident and that it stated that Dan must wear corrective lenses. It is undisputed that Dan was not wearing corrective lenses at the time of the accident. Dan, who has since moved to Guam, can no longer find his state driver's license.

D. (3 points) At the time of the accident, Amanda was standing nearby. During Phoebe's case, Amanda testifies that she saw Dan fail to stop at the stop sign at the intersection where the accident occurred. Later in the trial, Ceres calls Henry to testify that he heard Amanda say months before trial that it was Phoebe who failed to stop at the stop sign. Phoebe objects to Henry's testimony.

Evidence

I. (cont.)

E. (3 points) Ceres calls Thebe to testify that she often rides to work with Phoebe and that Phoebe often doesn't stop at stop signs while driving. Phoebe objects.

F. (2 points) Before trial, Ceres's representative attended a settlement conference with Phoebe and their counsel. Ceres's representative is called to testify that during this conference Phoebe said: "So what if I might have driven through the stop sign? I was the one who got hurt, not Dan!" Phoebe objects.

II.
(7 points)

You are a solo practitioner and one of only three lawyers in private practice in the state, who is admitted to appear before the FSM Supreme Court. You are currently defending a client in a criminal case in state court on an assault and battery charge.

This morning, one of your regular clients, a gas and grocery store, asks you to sue the same client to recover past due amounts on the assault-and-battery client's charge account. Because there is diversity of citizenship, the civil case would be filed in the FSM Supreme Court.

A. (5 points) Would it be proper for you to represent the gas and grocery store in the charge account case? When or when not? Why or why not?

B. (2 points) Would your answer be different if both cases were in state court? Why or why not?

III.
(3 points)

An attorney placed an advertisement in the local social media that contained the attorney's name, office location, telephone number, and e-mail address, and stated the following additional, truthful information:

- a) attorney is a graduate of the University of Hawaii law school;
- b) attorney has an M.B.A. from the University of Nevada business school; and
- c) attorney is the only lawyer in town who speaks fluent Woleian.

Is the advertisement proper?

IV.
(10 points)

Define and discuss the requirements of the following terms:

- a. mandamus
- b. writ of prohibition
- c. clearly erroneous
- d. pendent jurisdiction
- e. exclusionary rule
- f. personal jurisdiction

V.
(5 points)

Three FSM-citizen drivers were involved in a three-car collision in Honolulu. After all three have returned home, Driver A, a citizen and resident of Yap, intends to file a tort action in the FSM Supreme Court against the other two drivers, Driver B, a citizen and resident of Chuuk, and Driver C, a citizen and resident of Pohnpei.

A. (3 points) In which FSM Supreme Court venue would it be proper for Driver A to file his lawsuit against Drivers B and C?

B. (2 points) Which jurisdiction's law will the FSM Supreme Court apply to determine whether Drivers B and C are liable to Driver A? (In other words, to determine who was negligent?)

VI.
(20 points)

When the Redemption Church's board of trustees met to name a successor to Andrew, the congregation's retiring minister, they considered two candidates: Karl and Xen, the congregation's two assistant ministers, neither of whom were present for the discussion. During this meeting, Andrew described Karl as "very bright, with impressive academic credentials, but not very spiritual." Andrew strongly recommended Xen, although noting, "in terms of academic and administrative abilities, he is far behind Karl, but he is a good man for the job and will catch up." The trustees selected Xen.

Angry at not being selected, Karl sent letter to the entire congregation, asserting that he was entitled to be minister because (1) he was the better candidate, and (2) because his employment contract with the Redemption Church promised that

In the event of Andrew's death, resignation, retirement, or removal, Karl shall have the right of succession to Andrew's position as minister.

After receiving Karl's letter, the trustees, including one who was a member of the local police force, met on a day when they knew Karl was off-island, and voted to fire him, and then visited his office where, while searching through his desk, they found a small quantity of marijuana. The trustees called the police who later charged Karl with possession of a controlled substance.

While the criminal case was pending, Karl sued the Redemption Church for an injunction requiring his appointment as minister.

In the criminal case, the trial judge admitted the marijuana into evidence over Karl's objection and he was convicted.

VI.
(cont.)

In the civil case, the court entered an injunction ordering the trustees to hire Karl as minister.

Karl has appealed his conviction. The trustees have appealed the entry of the injunction.

How should the appellate court rule in each appeal?

VII.
(14 points)

Tos is an employee of Filigre Construction Co. Filigre has filed a police report that six sticks of dynamite and dynamite caps and fuse had been stolen from its construction camp by person or persons unknown.

One payday weekend, Tos is driving his new sedan around town. As luck would have it, he collides with a police car at an intersection. It is only a minor accident. But while giving Tos a ticket for failure to stop at a stop sign, the police notice a strong odor of alcohol on Tos's breath and that he is not steady on his feet. Tos is then arrested for driving while intoxicated and taken to the police station.

A police officer then enters Tos's sedan and makes a cursory search of the passenger area. He finds a small plastic bag filled with a green leafy substance that appears to be marijuana. The officer then drives the car to the police station where the entire car is searched and four sticks of dynamite with fuses and caps are found in the car trunk.

Tos is known to police. They also know that he has a reputation of liking to fish using dynamite.

Tos is charged with Driving While Intoxicated, Possession of a Controlled Substance – Marijuana, Possession of a Dangerous Device – the Dynamite, and Possession of Stolen Property.

A. (12 points) You are Tos's attorney. What steps will you take on Tos's behalf before trial? What result is likely? And why?

B. (2 points) Assume that the either the charges are dropped or that Tos is acquitted. Tos then goes to the court and asks for the return of his property – the car, the marijuana, and the dynamite. What result and why?

VIII.
(9 points)

In each of the following three cases, the defendants removed the case from the state court in which it was originally 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 because the FSM Supreme Court does not have subject-matter jurisdiction over it. How should the FSM Supreme Court rule on each motion to remand and why?

A. (3 points) A case removed from the Pohnpei Supreme Court in which a Pohnpeian citizen plaintiff is suing for breach of contract a corporation chartered under Pohnpei state law and owned by four shareholders – two of whom are Pohnpei citizens and the other two citizens of the United States who have been living on Pohnpei for a number of years.

B. (3 points) A case originally filed in the State Court of Yap in which Yammed, a Yap citizen, sued Yap Ship, Inc., a company incorporated in Yap and wholly owned by two Yapese citizens, for breaching their contract to transport his betelnut crop from Yap to Pohnpei on the company's vessel. Yammed's betelnut crop was lost overboard during a storm on the trip from Yap to Pohnpei.

C. (3 points) A case originally filed in the Chuuk State Supreme Court in which a Philippine citizen engineer sued for wrongful discharge a Marshall Islands construction company that had no FSM citizen shareholders.

IX.
(12 points)

Pat and Dow were friends and neighbors. One day, while Pat was visiting, Dow announced that he was going to spend the day building a tree house in his backyard. Dow showed Pat the materials and the ladder he had recently bought to build the tree house. He also showed Pat where he wanted to build the tree house – in a large, tall tree at the far side of his yard.

Pat volunteered to help Dow. Pat left, promising to return in an half hour or so. Before leaving, Pat specifically warned Dow not to use his ladder to climb up into the tree without first securing it to the tree or having someone hold it in place.

A half hour later, Pat returned and noticed to her alarm that, without anyone or anything holding the ladder in place, Dow had climbed nearly to the top of his ladder to inspect the tree at the far side of his yard. Afraid that the ladder was not stable and that Dow would fall, Pat began to run across the yard so that she could hold the ladder in place. As she was crossing the yard, Pat fell and broke her ankle.

A short time later, Pat brought suit against Dow, specifically alleging that Dow's decision to climb the ladder without properly securing it was negligent and led her to break her ankle.

A. (9 points) Discuss which elements of negligence Dow should address, and how he should address them, in opposing Pat's specific claim.

B. (3 points) Now assume that Pat's fall resulted from her tripping over a drainage pipe that was hidden in the grass in Dow's backyard. Does that fact impact the claim(s) that Pat may assert against Dow, and if so, how?