

**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 5, 2021

ADMINISTERED IN CHUUK, KOSRAE, 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 FOR YOU TO FRAME YOUR ANALYSIS. BEFORE YOU START WRITING, PLEASE 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. 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.	20
II.	10
III.	12
IV.	11
V.	15
VI.	12
VII.	7
VIII.	4
IX.	9
TOTAL	<u>100</u>

65 IS THE MINIMUM OVERALL PASSING GRADE. TO OBTAIN PARTIAL CREDIT UNDER GENERAL COURT ORDER 1986-2, THE ETHICS QUESTION IS II AND THE EVIDENCE QUESTION IS I. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. HOPE YOU DO WELL.

Evidence

I. (20 points)

Bob finished his usual 8-hour work shift at 5:00 p.m. At 8:30 p.m., while he was driving his sports car, it struck a vehicle that was backing out of a driveway, killing the driver, Fred. Bob claimed he was going 30 miles an hour in a 35 miles an hour zone. There were no skid marks. Fred's estate sued Bob, making the following allegations of negligence.

1. Bob was driving faster than was reasonable under the circumstances.
2. Bob was intoxicated and unable to control his vehicle.
3. Bob failed to install new brake pads which he knew were needed.

During trial the plaintiff offers the following testimony and evidence. Discuss what objections, if any, you would make on Bob's behalf to these offers, the court's probable ruling, and the analysis used by the court to rule.

A. (5 points) Bob's 9-year old daughter would say: "Dad always tells me that he can't just drive only 35."

B. (4 points) A former police officer who has investigated numerous accidents would say:

- 1) "Bob was traveling 55 mph at the time of impact."
- 2) "The road was constructed and engineered for speeds of 25 to 35 mph."

C. (4 points) Bob's neighbor Joe would say: "I am often at Bob's house while he watches television at 5:30 p.m. after work. Bob will usually drink an entire six-pack of beer in the next half hour."

Evidence

I. (cont.)

D. (3 points) Dorothy, a trained alcohol treatment counselor, would say: "Bob has twice tried to complete our alcohol treatment program and has failed to do so on each attempt."

E. (4 points) The plaintiff would offer, and Wally, a car repair shop owner, would describe, a copy of a repair work order sheet from Wally's repair shop given to Bob two days before the collision. The work order recommends that new brake pads be installed on Bob's car.

II.
(10 points)

The following questions involve Jones & Smith, who are partners in a law firm.

A. (3 points) Jones represents OXZ Corp. Couch and Slouch are majority shareholders, directors, and president and vice-president, respectively, of OXZ Corp. Couch believes that Slouch has improperly obtained proxies from other minority shareholders so as to be able to have Couch removed as president and have himself elected corporate president. Couch asks Smith to represent him in the matter.

What should Smith do in light of the ethical considerations involved?

B. (7 points) March and Hare have each been arrested and charged with three felony counts of fraud. March has told the prosecutor that he will testify against Hare if he can get a "deal" and the prosecutor has agreed to let March plead to a lesser offense and dismiss the three felony charges if he so testifies. March asks Jones to represent him.

Hare has asked Smith to represent him in the criminal matter. Hare's father-in-law is Slouch, who has also contacted Smith and offered Smith an \$8,000 bonus if he successfully defends Hare.

Please discuss what each attorney could ethically do and discuss the ethical considerations involved.

III.
(12 points)

Semis is a teacher in an elementary school. During the summer (student vacation) months all teachers are required to report for work and occupy themselves by preparing their classrooms and class lessons. The small village in which Semis's school is located is also the residence of Semis, the school principal, and most of the teachers.

The fall semester was scheduled to begin on August 26. On August 5, Semis left the village to accompany his son to college in Hawaii. He did not tell his principal or request leave of absence. It was, however, general knowledge in the village that Semis was going to Hawaii and why, and that he intended to return before August 26, and the principal was aware of this.

On August 21, the principal notified the state Director of Education in writing that Semis had been absent from work without permission from him, or having spoken to him before he left. The Director then noted that Semis had abandoned his job.

When Semis came to work on August 26, the principal gave him the written statement that he had been terminated.

State law provides that "[i]f an employee is absent from work without explanation for two weeks, his immediate management official files with the Director a statement showing termination of employment by abandonment." State law does not provide for notice before termination when the reason is abandonment, nor does it provide for a hearing.

Semis likes to teach and wants to keep his job. Discuss what possible relief Semis may seek.

IV.
(11 points)

One recent rainy evening, the state police received a phone call from Joe Citizen who stated that he had seen a male erratically driving a green Subaru truck with license plate APC 123 and that he saw the Subaru nearly collide with another vehicle and that he had followed the Subaru to Winsome Heights Apartments. Police dispatch contacted Officer Abe who was already in the vicinity.

Abe pulled up on the road in front of the Winsome Heights Apartments. Citizen was waiting for him there and repeated his account to Abe and then left. Officer Abe walked up the driveway and approached the attached garage. Peering through the garage window with a flashlight, Officer Abe saw a rain-spattered black Subaru truck with license plate ABC123. Abe radioed the station asking for a plate check and was informed that that vehicle was registered to Doris Driver.

Abe walked to the front door of the apartment to which the garage was attached and knocked. No one answered. As Abe turned to leave, the automatic garage door opened. Abe approached the garage to find a woman sitting in the vehicle, with the driver's side window open. From the driveway, Abe identified himself and stated that he was responding to a report of erratic driving in the vicinity. The woman identified herself as Doris Driver. Abe asked Driver if she had been operating the vehicle that evening. She responded that she had driven home "about 30 minutes ago" and was headed out to visit one of her neighbors. Abe detected an odor of alcohol and observed that Driver's speech was slurred. In response to Abe's further questions, Driver stated that she had had two glasses of wine at dinner around 6 p.m. that evening but hadn't consumed any alcohol in the last 30 minutes.

Abe ordered Driver to step out of the vehicle and into the driveway

IV.
(cont.)

to conduct a field sobriety test. Driver failed the field sobriety test. Abe then advised her that he was placing her under arrest. to be charged with the crime of driving under the influence. Abe advised her of her rights and took her to the state police station. At the station, having declined legal representation, Driver provided a breath sample (the state police had recently been provided breathalyzers and training to use them from an Australian foreign law enforcement assistance program) that indicated her blood alcohol content was, at .13, well above the legal limit.

A. (5 points) did Officer Abe act lawfully when he entered the Winsome Heights Apartments property and shine his flashlight into the garage? Discuss.

B. (3 points) Are Doris Driver's statements in response to Officer Abe's questions that she made from her vehicle in her garage admissible against her? Discuss.

C. (3 points) Did Officer Abe act lawfully when he when he ordered Doris Driver to step outside of the garage to perform the field sobriety test? Discuss.

V.
(15 points)

Keske, a citizen of Chuuk, and Palmer, a citizen of Kosrae, met at a development conference on Majuro in the Republic of the Marshall Islands. One evening after the day's proceedings were over, Keske and Palmer and several other Micronesians met for dinner at one of the finest hotels on Majuro. During dinner, Palmer told the gathering about his latest business enterprise. He said he had bought a small, 50-ton ship and was using it to ship fresh citrus fruit, particularly tangerines, from Kosrae to Pohnpei where it sold at a good profit. He said the ship, the *M/V Sirius*, an FSM-flagged vessel, also carried a small number of passengers and general cargo, especially on its return trips to Kosrae. The *Sirius* also stopped at Mwoakilloa and Pingelap when there was paying freight or passengers for those atolls. Palmer said that the business had been quite profitable and that the loan he had taken out to buy the ship was almost paid off – he had only one payment left.

Keske listened very intently to Palmer's account. After dinner, many stayed at the table drinking. Eventually, only Keske and Palmer were left. Keske said he thought a similar shipping business would be very successful in the Chuuk area. As they were leaving, Keske said that he had recently sold his business on Chuuk and had also inherited a substantial sum and told Palmer that he would really like to buy the *Sirius* and offered Palmer \$375,000 for the ship. Palmer replied, "Sure, sure, whatever you want." Keske responded, "Great! Thanks."

The next morning, Keske offers Palmer his check for \$375,000. Palmer said, "What's this for?" Keske replied, "For the *Sirius*. You sold it to me last night." Palmer then said, "I don't want to sell you my ship." Keske replied, "You already have." "No, I have not!" Palmer retorted.

Palmer refused to accept the check and refused to convey the *Sirius*. Three weeks later, Palmer received a complaint with a summons issued by the Chuuk State Supreme Court trial division,

V.
(cont.)

naming Keske as the plaintiff and Palmer as the defendant, and seeking specific performance of Palmer's alleged promise to sell the *Sirius*.

You are Palmer's attorney. He tells you that neither he nor the *Sirius* has ever been to Chuuk. He also says that he is fearful of litigating the case in the Chuuk State Supreme Court because he understands that Keske is very popular in Chuuk and is good friends with most of the powerful and important people in that state. Palmer also says that it is the custom in the part of Kosrae he comes from that no important agreement, such as the transfer of land or the sale of something large and important like an ocean-going ship, is considered completed until the parties have drunk sakau together or feasted on turtle meat together. He states that since he did neither of these with Keske, there was no agreement. You expect Keske to deny that sakau or turtle meat is necessary to make a binding agreement, and you know from experience that there is no sakau in Chuuk.

Advise Palmer on any pertinent issue, procedural, jurisdictional, or substantive, that you see. Explain what steps you may take to assert Palmer's rights, what arguments you will make, what you expect the outcome to be and why.

VI.
(12 points)

Able Inc. is a company that has prepared the soil and foundations at a couple dozen residential sites for Safe Homes Co., a company that builds typhoon-proof homes on Pohnpei. Because of the amount of remedial work it has had to do in the last two years for the homes it built, Safe Homes Co. has concluded that Able Inc. did not properly prepare the building sites for a place with such a wet climate as Pohnpei. Able Inc. did not respond to Safe Homes Co.'s demand for reimbursement. Safe Homes Co. timely filed suit against Able Inc.

After Able Inc. answers the complaint, Safe Homes Co. serves interrogatories, document requests and requests for admission on Able Inc., including a request that Able Inc. admit that it had failed to install adequate drainage when it prepared the building sites. Able Inc. did not respond to these discovery requests. In a subsequent deposition Able Inc.'s general manager denies that the drainage was improper, and claims that based on his 5 years of construction site preparation experience, mostly in Arizona, the sites were adequately prepared.

A. (4 points) What relief could Safe Homes Co. seek from the court relating to Able Inc.'s failure to respond to the requests for admission and other information requests? Explain.

B. (4 points) if Able Inc. persists in not responding, discuss the factors the court would consider in awarding further relief to Safe Homes Co. and the form of relief the court could award.

C. (4 points) If Safe Homes Co. brings a summary judgment motion against Able Inc., is Safe Homes Co. likely to prevail? For the purpose of this question only, assume that Able Inc. has fully responded to all of Safe Homes Co.'s discovery requests, and that Able Inc. has denied that it improperly prepared the drainage at any building site. Discuss and explain your answer.

VII.
(7 points)

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

- A. (2 points) pendent jurisdiction
- B. (3 points) ex post facto law
- C. (2 points) custom and tradition

VIII.
(4 points)

Discuss the constitutionality of the following under the FSM Constitution:

A. (2 points) A state statute imposing a tax of 1% on all interest earned on bank deposits within the state, and

B. (2 points) A state constitutional provision prohibiting any person, not a native-born citizen of the state, from acquiring title to land in that state.

IX.
(9 points)

In the three following cases, the defendants removed the case to the FSM Supreme Court trial division from the state court in which it was originally filed. In each case, the plaintiff has filed a motion in the FSM Supreme Court, asking that the case be remanded to the state court in which it was filed because 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) Case removed from Kosrae State Court in which Kosrae citizen plaintiff sued for breach of contract a company incorporated in Kosrae but owned by a U.S. citizen from Hawaii and a Kosraean.

B. (3 points) A negligence suit arising from a traffic accident filed in the State Court of Yap by a Japanese citizen plaintiff against a Philippine citizen defendant.

C. (3 points) An action based alternatively in breach of contract or negligence filed in the Chuuk State Supreme Court alleging that the defendant is liable for losing the plaintiff's goods overboard from the defendant's vessel that the plaintiff had contracted to transport his goods from Weno, the state center of Chuuk, to Nama Island in the Mortlocks, an outer island in the State of Chuuk.