

**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 4, 2021

ADMINISTERED IN 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.	9
V.	8
VI.	14
VII.	3
VIII.	12
IX.	12
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. GOOD LUCK.

Evidence

I. **(20 points)**

Paul, an employee of Big D Corp., suffered a severe injury in a workplace accident which occurred at Big D's plant and warehouse. Paul sued Big D alleging, among other things, that Big D's equipment was old and its safety practices were inadequate. Big D denied Paul's allegations and alleges that Paul's carelessness was the accident's cause.

Were the following trial court actions in admitting or excluding evidence in each of the instances below correct? Your discussion should include an explanation of what procedure should be used in the interrogation of the witness if the witness is allowed to testify. Assume that proper objections were timely made at each instance.

At trial the following occurs:

A. (4 points) Dan was Big D's manager in charge of the plant and warehouse operations at the time of the accident. During his testimony, Dan could not remember the circumstances that led to the purchase of the equipment Paul was operating when the accident occurred. Another manager, who was in charge of purchases and who did not testify, prepared detailed written summaries of all purchases every month. Dan was allowed to review the summary for the month in question and then to testify.

B. (4 points) On direct examination, Dan stated that nothing more could have been done before the accident to make the work area safer. On cross-examination, Paul's attorney asked, "Isn't it true that just one month after the accident, Big D commissioned a safety analysis of the work area where the accident occurred and then corrected the problems raised by the analysis?" The trial court sustained the objection to this question and Dan did not have to answer.

Evidence

I. (cont.)

C. (4 points) Frank, Big D's foreman, did not see the accident. However, seconds before the accident, Frank saw Paul operating the forklift on which he was injured. Frank was allowed to give his opinion about the speed at which Paul was driving the forklift at the time Frank saw Paul.

D. (4 points) Big D called Wendy as a witness. Wendy did not work at the warehouse and did not see the accident. However, she received an e-mail from a friend who witnessed the accident. The e-mail was sent about a week after the accident and described the accident in detail. Friend was a worker at the warehouse and not a party to the lawsuit. Because of his relationship with Paul, the friend did not want to testify. Therefore Big D's attorney asked Wendy to describe the accident from the e-mail she had received. Wendy's testimony was permitted.

E. (4 points) At the end of the testimony, the trial judge believed that both sides had neglected to call a key witness, who was not a party to the case and who could, in the trial judge's opinion, offer significant evidence about the accident. The trial judge therefore called the witness to testify.

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)

Clyde fatally shot Bonnie in their home on Shady Road. Clyde hid Bonnie's body in the trunk of the family car. Unaware of the killing, Clyde's adult daughter Patsy drove the car that afternoon.

Police officer Wyatt lawfully stopped and cited Patsy for speeding. As Patsy prepared to drive away, Wyatt told her that he was thinking of buying a car like the one she was driving but was worried that the trunk was not big enough so he asked her if he could look in the trunk to see the trunk capacity. Patsy said, "Sure" and opened the trunk revealing Bonnie's body. Shortly thereafter Wyatt wrote a search warrant application for "Clyde's residence on Shandy Street to search for and seize the gun used to kill Clyde."

Wyatt arrived at Clyde's residence with the search warrant. He noticed the door unlocked and slightly open, so he pushed the door all the way open and stepped inside. Wyatt called out "Clyde – Officer Wyatt here, I have a warrant to search your house. Where are you?" Clyde answered, "How did you get in the house? I'm in the bedroom." When Wyatt entered the bedroom, Clyde handed him the gun saying, "I suppose you are looking for this." Wyatt continued the search and found a bullet hole in the living room wall and some bloody clothing.

Wyatt asked Clyde why he shot Bonnie. Clyde replied, "Do you think I should have a lawyer here like they say on TV?" Wyatt said, "It sounds like you know your rights from watching TV." Clyde said, "Yes, I know my rights. I love police shows." Wyatt again asked Clyde why he shot Bonnie. Clyde replied, "I was mad at her for hiding the TV remote control."

Clyde now seeks to suppress all statements and evidence against him. Analyze the constitutionality of the following three issues under the

General

III. (cont.)

FSM Constitution and what ruling the court should make on each issue.
Discuss each issue independently.

- A. (3 points) The discovery of Bonnie's body in the car trunk.
- B. (5 points) The search of Clyde's residence.
- C. (4 points) The statements made by Clyde to Wyatt.

General

IV. (9 points)

Discuss the constitutionality under the FSM Constitution of the following:

A. (3 points) a statute enacted by Congress prohibiting, after June 1, 2021, the importation of any motor vehicles with the steering wheel on the right-hand side because of the greater road safety hazard posed by right-hand drive vehicles.

B. (3 points) a state governor's pardon of person lawfully convicted in the FSM Supreme Court in 1989 of an offense that is now punishable only under state law.

C. (3 points) a state statute raising the drinking age from 18 to 25 and voiding any drinking permit already issued to anyone under 25, based on a legislative finding that drinkers under 25 were involved in 70% of the driving under the influence cases and 80% of the suicides in the state. The statute contained an exemption for visitors from out-of-state who purchased a temporary 30 day drinking permit.

General

V. (8 points)

Client hired Lawyer to provide legal advice about an FSM Department of Finance Division of Customs and Tax Administration audit of Client's tax returns for the last three years. These returns were prepared by Accountant. Lawyer instructs Client to prepare and compile several lists that would assist Lawyer in understanding Client's situation. Client compiled a list summarizing all income from Client's businesses other than income Client earned as an employee that had been submitted to Finance by Client's other employers. Client sent these with a cover letter to Lawyer and sent a photocopy to Accountant with a handwritten note saying that "I send you these copies so that you will be prepared to discuss my case with Lawyer."

During pretrial discovery, the FSM subpoenaed from Accountant all documents submitted to Accountant by Client, and Accountant, acting on Client's request, refused to turn over the photocopies of the material sent to Lawyer. Before the court could hold a hearing on an FSM motion to compel compliance, Accountant's office was destroyed by fire and the photocopies were lost.

After learning of the fire, the FSM subpoenaed the original letter and lists from Lawyer, who, on Client's instruction, declined to produce these items. The FSM then filed a motion in the FSM Supreme Court to enforce its subpoena to Lawyer.

Should the court grant the motion?

VI.
(14 points)

Comanche Line provides regular ship cargo service to Pohnpei, coming for four to five days about every two or three months. While docked in Pohnpei, the captain of Comanche Line's M/V *Quannah Parker* hired a local company, LC Welding, to repair a broken stanchion by welding. The captain agreed to pay as soon as the work was completed. The work was completed satisfactorily after two days. Payment was not made as agreed.

Upon the captain's request, a local store, the Ponape Provisions Co., supplied the ship's provisions for the coming three weeks of M/V *Quannah Parker's* voyage. Payment has not been made.

During the offloading operations the first day in port, one member of the crew, Abe, became exceedingly angry with another seaman working with him. Unprovoked, he struck his coworker, Ono, with a crowbar, intending to hit his shoulder, but instead hit his head, causing an injury to his eye.

Two days before the M/V *Quannah Parker* was to leave Pohnpei the welder, the store owner and Ono, the injured seaman, all come to you seeking relief for their losses.

Comanche Lines has an agent in Pohnpei. It is unknown when the *Quannah Parker* will return to Pohnpei once it leaves.

If your advice is to take court action, what cause of action against what defendants and in what court(s) would you be entitled to file as to each court case? What form of relief would you seek?

VII.
(3 points)

Anne, a citizen of Pohnpei sued the *Pohnpei Enterprise*, a newspaper published on Pohnpei by a Pohnpei citizen, who was the paper's sole owner. Anne claimed that an article in the *Pohnpei Enterprise* about Anne's alleged fraudulent business practices had resulted in Anne losing several lucrative business contracts. The *Pohnpei Enterprise* removed the case from the Pohnpei Supreme Court to the FSM Supreme Court on the ground (as stated in its affirmative defense contained in its answer filed in the FSM Supreme Court) that section 1 of the Declaration of Rights in the FSM Constitution protected its publication of the article.

Anne has filed a motion in the FSM Supreme Court, asking that the case be remanded to the Pohnpei Supreme Court because the case had been improvidently removed – that is, because the case should not have been removed in the first place since 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?

General

VIII. (12 points)

Laurel, a local boat builder, comes to your law office and shows you copies of the following e-mails:

Sent: Mon, 12 Oct 2020 1:43 pm

Dear Laurel,

I'd like you to build me a 16-foot boat of your usual style. It should be white, with blue trim. Please have it ready by the weekend of November 27-29 because I want to go fishing that weekend with my family. I understand that the price will be \$900. Hardy

* * * *

Sent: Wed, 14 Oct 2020 9:24 am

Hi Hardy,

You didn't give me much time, so I've already started work on the boat. I hope I can finish in time. Please send me \$120 right away to help me buy materials. Thank you for the business. :) Laurel

* * * *

Sent: Sat, 5 Dec 2020 8:37 am

Hardy,

Your boat's now ready. Sorry I didn't finish it by Nov. 26, but it usually takes me 2 months to finish a boat. Also, you never sent me the \$120 I asked for and there was no blue paint on island. Please come & get the boat & pay me my \$900 right away. Laurel

* * * *

Sent: Sun, 6 Dec 2020 2:48 pm

Laurel

I'm very disappointed! You didn't finish the boat I wanted in time for my family's visit. They live on an outer island & I had to rent another boat for the weekend. I see you've used red paint instead of the blue I wanted. I won't take the boat & won't pay you anything. Rent for the other boat was \$75. I demand that you pay that & another \$100 for ruining my weekend. :(:(Hardy

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Laurel comes to you seeking legal advice. Discuss.

General

IX. (12 points)

One elementary school in an FSM state had only a very small area for recreation adjoining the school. The school principal, Sam, decided that a trampoline would be a good way for the students to use the small space. Sam learned of the supplier, the cost and description of a suitable trampoline and asked the State Director of Education to buy one. The Director, Dan, agreed with Sam's reasoning and submitted the purchase order to the State Finance Officer, Fred. Dan so convinced Fred of the desirability of the purchase that Fred used for payment funds that had been appropriated for school maintenance.

When the trampoline arrived, Sam placed warning signs near it which gave warnings, in large letters in the local language, concerning the trampoline's use. The warnings included that the trampoline was for student use only. Sam assigned two teachers' aides to place the trampoline on its edge and chain it to the school wall at the end of each school day.

One Friday, the aides forgot their assignment. Saturday morning, a four-year old neighbor child entered the school grounds and climbed onto the trampoline and enjoyed it as best she could. She fell and broke her arm. A doctor at the state hospital set the arm defectively so that the child can no longer extend her arm straight.

The state has a sovereign immunity waiver statute identical to the FSM statute.

The child's parents ask you to bring suit against those responsible. Discuss the possible defendants, the basis for the alleged liability of each, the grounds for any damages, and the amounts possible.