

**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 2, 2017

ADMINISTERED IN CHUUK, KOSRAE, AND POHNPEI

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

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INSTRUCTIONS

YOU HAVE FIVE HOURS TO COMPLETE THIS TEST.

THIS SHOULD PROVIDE AMPLE TIME TO CONSIDER THE QUESTIONS AND ISSUES PRESENTED AND TO PERMIT YOU TO FRAME YOUR ANALYSIS. BEFORE YOU START WRITING, READ EACH QUESTION CAREFULLY SO THAT YOU UNDERSTAND EXACTLY WHAT IS BEING ASKED. NEXT, CONSIDER YOUR ANSWER'S ORGANIZATION.

ANSWERING QUESTIONS NOT ACTUALLY ASKED INDICATES AN INADEQUATE UNDERSTANDING AND MAY 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.	10
II.	17
III.	3
IV.	10
V.	12
VI.	8
VII.	10
VIII.	9
IX.	15
X.	6
TOTAL	<u>100</u>

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

GOOD LUCK.

Ethics

I. (10 points)

Jim passed the FSM bar exam in 1999 and since that time has been a solo practitioner. Jim's practice is primarily civil litigation, usually involving personal injury, civil rights claims, contract disputes, or land disputes. Jim will occasionally accept a divorce case if he knew the client beforehand.

One of Jim's friends sought his representation for filing for a divorce from her husband. The client, Kate Shepard, believes that her husband, Dr. Shepard is cheating on her with one of his office assistants, who is twenty years younger. Because Dr. Shepard is well-compensated, Kate has not worked in years and has no access to funds other than her husband's. As such, she cannot pay Jim's standard retainer for divorce cases. She tells Jim that she'll gladly pay Jim a percentage of anything she recovers in alimony or property settlement from Dr. Shepard once they're divorced. Since it is well-known that Dr. Shepard has very substantial assets, Jim agrees to this fee arrangement, and since he and Kate are friends, he does not bother to put the agreement in writing.

Next week, Jim filed Kate's divorce complaint against Dr. Shepard. Shortly thereafter, Kate informs Jim that she believes that there are pictures on the internet of Dr. Shepard with his "sweet young thing" on her facebook page and asks how they can get them. Jim's secretary, who was about the same age as Dr. Shepard's girlfriend, knew that the girlfriend lived on social media and posted practically everything on her facebook page. Jim's secretary, with Jim's reluctant approval, set up a phony facebook account using the identity of a mutual friend and sent the girlfriend a friend request, which the girlfriend accepted.

Jim was thus able to view and download multiple pictures of Dr. Shepard in amorous poses with his girlfriend and postings that also showed that Dr. Shepard had been in Bali vacationing with his girlfriend when he told Kate that he was attending a medical convention in Manila. Jim was thrilled that he now "had the goods" on Dr. Shepard and told Kate that she should be able to get at least half of Dr. Shepard's net worth in a property settlement as well as alimony. Jim was pleased because his percentage would amount to a handsome fee.

It later came out that Jim's evidence was obtained through the phony facebook account set up by his secretary.

A. (3 points) Was Jim's fee arrangement proper?

B. (7 points) Was the way Jim's secretary gathered information about the case acceptable? And does his secretary's conduct implicate any of Jim's ethical responsibilities?

Evidence

II. (17 points)

Pete filed a lawsuit against David for the wrongful death of Pete's seventeen-year old son, Sal. Sal died on June 2, 2015, from injuries suffered on June 1, 2015, when he was hit by a person driving a late-model green pickup truck. David owns a 2014 green pickup but denies it was him or his pickup that struck and killed Sal.

In preparation for trial, Pete's attorney has obtained the following, which the attorney intends to introduce as evidence. Will the court allow the admission of this evidence?

A. (4 points) The records from the hospital where Sal was treated. These records contain an entry in Dr. Caldera's handwriting stating that he was on duty on June 1, 2015, when Sal was brought to the emergency room. Replying to Dr. Caldera's question about what happened, Sal said, "I'm fading fast; the last thing I saw was a man coming at me in a brand new green pickup" A week later Dr. Caldera himself was killed by a hit-and-run driver.

B. (3 points) Certified records from the state court that show that twice during the last four years, David had been involved in automobile accidents and each time had been convicted after trial of reckless driving, a misdemeanor offense.

C. (3 points) A letter purportedly written and signed by David with an attached money order for \$50 sent to the hospital. The letter's text in full states: "To whom it may concern: please accept this money as payment toward any medical bills incurred by Sal while at your emergency room facility. Signed David." The letter is dated June 2, 2015.

D. (4 points) A police incident report containing an interview with Emiliana, David's wife, who said that on June 1 she saw David washing the front bumper of his pickup, and that when she asked him what he was doing washing his pickup so late at night, he replied, "I've made a bloody mess of my truck, my life, and someone else's."

E. (3 points) Pete's attorney also intends to call Emiliana as a witness to testify about David's June 1 statements.

Evidence

III. (3 points)

Donald has been charged with the crime of aggravated assault with a dangerous weapon. According to the information, the dangerous weapon used was a David Ortiz model baseball bat, which the police found at the scene. The bat had blood stains on it. Donald denies the charge. There is only one David Ortiz baseball bat on island.

You are the prosecutor. You seek to introduce testimony that Donald had used the exact same David Ortiz baseball bat to smash the windows in someone else's pickup truck two months before the assault he is now charged with. The defense objects to its admission. On what grounds? What arguments do you make in favor of admission? How is the judge likely to rule?

IV.
(10 points)

Last week, Bigly Bob (also known as Big League Bob) was the victim of a fatal shooting. Officer Otto apprehended Karl Kraven, as Karl Kraven fled the scene of the shooting. Officer Otto lawfully arrested Karl Kraven, and then informed Karl Kraven of his rights under the FSM and state Constitutions.

At the state police station, Officer Otto again advised Karl Kraven of his constitutional rights and his rights under 12 F.S.M.C. 218. Karl Kraven validly waived his rights and agreed to speak to Officer Otto. Despite Officer Otto's vigorous questioning, Karl Kraven for several hours continued to insist that he had not shot Bigly Bob.

After about four hours, Officer Otto told Karl Kraven: "Hey, this Bigly Bob was a rapist and a drug dealer. You did us a favor. I'm not interested in prosecuting you for murder. Just tell me what happened." Karl Kraven then asked Officer Otto to turn off the tape recorder that, until then, had recorded the entire interrogation. After Officer Otto turned off the tape recorder, Karl Kraven admitted that he had shot Bigly Bob and described the incident that led to the murder.

The next day, the state attorney general's office, relying in part on Officer Otto's account of Karl Kraven's confession, filed an information charging Karl Kraven with first-degree murder.

In the following weeks, a story appeared in the newspaper under the headline "Karl Kraven Confesses to Murder" which contained a detailed account of Karl Kraven's confession. Karl Kraven's confession was a popular item of conversation for the next month.

You have been appointed to represent Karl Kraven. What motions might you make on Karl Kraven's behalf?

V.
(12 points)

Congress enacted a statute making it a crime to intentionally write a check knowing that there were insufficient funds in the account to honor the check when it is presented for payment. The maximum penalty for the offense was a fine of \$1,000, imprisonment for not more than two years, or both.

Hornblower, a resident of Pohnpei, wrote a check for \$547 to the hotel that he stayed in while visiting Kosrae. At the time he wrote the check there was only \$95.76 in his checking account. The check bounced.

A. (9 points) An FSM Assistant Attorney General filed a criminal information in the FSM Supreme Court in Pohnpei charging Hornblower with violating the statute. Hornblower promptly moved to dismiss the information for lack of jurisdiction and for improper venue. What result? And why?

B. (3 points) If the case isn't dismissed, what other defenses might Hornblower raise?

**VI.
(8 points)**

Draco was driving to the hardware store, excited about the new flat screen television he was going to buy. Lost in thought, he drove through an intersection without stopping although there was a stop sign there that required him to stop. Draco plowed into Phoebe. Phoebe suffered only minor injuries but her very expensive luxury sedan was totaled.

Phoebe was a busy woman. She did not get around to filing suit and lawfully serving Draco her complaint and summons until one year and 364 days later. After that the following events occurred:

A. (4 points) Phoebe found out that Draco had been driving to the hardware store on behalf of his employer, Buildco, a construction company. The truck Draco was driving was owned and insured by Buildco, and Buildco's insurer hired the attorney representing Draco. At the time of the accident, Phoebe didn't notice the Buildco logo on the truck's door. Three years after the accident, Phoebe moved to add Buildco as an additional defendant on theories of respondeat superior and negligently entrusting a company vehicle to an incompetent employee. How should the court rule on Phoebe's motion to amend the complaint and why?

B. (4 points) Assume that the court granted Phoebe leave to file her amended complaint, and that Buildco moved for summary judgment on the negligent entrustment theory. In support of its motion, Buildco submitted an affidavit from its personnel director, saying that he was unaware of Draco's previous three license suspensions for driving offenses. In opposition, Phoebe submitted deposition testimony by Draco, stating that he thinks he might have mentioned the license suspensions to Buildco's personnel director right after he interviewed for the Buildco job. How should the court rule on the summary judgment motion and why?

VII.
(10 points)

Alpha Corp., Beta Co., and Delta Ltd. are seabed mining companies. Each has leased from the FSM government seabed mining rights to adjacent sectors of the FSM Exclusive Economic Zone. In January 2014, Alpha, Beta, and Delta entered into a joint Exploration Agreement to conduct a mineral survey of all three leaseholds. Alpha insisted on taking a lead role in the exploration program, and was designated as the Operator of the program, responsible for all aspects of the exploration project.

The Agreement provided that the Operator would subcontract with an undersea exploration subcontractor of its choice, which would perform the technical survey field work, all under the Operator's supervision. The agreement further provided that "Operator shall be charged with the responsibility for the conduct of all operations by the Subcontractor." The Agreement required that the subcontractor would hold the mineral survey data it obtained until the survey was finished, at which time the data would be transmitted to Alpha. On receipt of the data, "the Operator shall immediately furnish simultaneously to the Participants, computer flash drives of all data, and survey location maps from all mineral leaseholds surveyed." The survey was to have been conducted during August and September 2014, to be done by October 1, 2014. The Agreement provided that once the survey was finished, Alpha would bill Beta and Delta \$5 million each as their share of the survey program's cost. The Agreement expressly disclaimed the creation of any partnership or joint venture (the examinee should take this disclaimer as valid for the purpose of this question).

Alpha subcontracted with Cousteau Corp. to perform the technical field work. Exploration started August 15, 2014. After two typhoons in early September 2014 caused delays, it became apparent to Alpha that Cousteau was not experienced enough to perform the deep-water exploration, and Alpha abandoned the survey. Large parts of two sectors were surveyed. On January 1, 2015, Alpha billed Beta and Delta \$5 million each for work that had been performed in 2014. Beta paid. Delta refused to pay because the survey had not been completed and Delta had not received any of the survey data. Delta later learned that Alpha had given Beta limited data on October 1, 2014 and that Alpha had processed the data for its own use in November 2014. The two leases that were partly surveyed in 2014 belonged to Alpha and Beta. Alpha later offered the data to Delta, but Delta refused to accept it.

A. (7 points) Alpha sued Delta in the FSM Supreme Court, seeking payment of the \$5 million under the Agreement. Discuss Delta's defenses.

B. (3 points) Assume the Agreement provided: "Any disputes between the parties regarding the formation, execution, or interpretation of this Agreement shall be submitted to binding arbitration." Alpha demanded arbitration, Delta refused, and Alpha filed an action in the FSM Supreme Court seeking an order to compel arbitration. Briefly evaluate and discuss how the court should rule.

VIII.
(9 points)

A. (3 points) Discuss the constitutionality under the FSM Constitution of a state tax of 10% on the sale of all betelnut not grown within the state (the general state sales tax on retail sales of other items is 5%)

B. (6 points) In the two 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 court in which it had originally been filed 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?

1. (3 points) a suit brought in the Pohnpei Supreme Court by a Pohnpei citizen against the State of Pohnpei for the breach of his employment contract — the shipping articles that he signed when he was hired as a deckhand on a vessel owned by the Pohnpei state government who used it for field trips to the outer islands.

2. (3 points) Anne, a citizen of Chuuk sued the *Chuuk Chronicle*, a newspaper published on Chuuk by a Chuuk citizen, who was the paper's sole owner. Anne claimed that an article in the *Chuuk Chronicle* about Anne's alleged fraudulent business practices had resulted in Anne losing several lucrative business contracts. The *Chuuk Chronicle* removed the case from the Chuuk State 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.

General

IX. (15 points)

Henson, a local citizen, works for Peary's Pizza, a local business. Henson was delivering pizzas for Peary when the car he was driving struck Cook, an FSM citizen visiting from another state. Cook had just started walking across the street in front of Ellsworth's truck and outside of the usual place where the locals crossed the street. Ellsworth had parked his truck where people usually crossed the street, totally blocking any crossing there. Henson did not see Cook until a second before his car hit Cook.

Henson was driving within the speed limit and applied the brakes as soon as he saw Cook. The brakes failed. Henson had noticed earlier that day that the brakes were not working properly. Henson had never obtained a driver's license. No one at Peary's Pizza knew this.

Cook had a rare bone disease, and suffered many more broken bones than a healthy person would have. Frances, Cook's wife, suffered a stroke when she saw Henson's car hit Cook.

A. (11 points) Discuss any tort claims the following individuals may have and any defenses to their claims:

1. Cook
2. Frances

B. (4 points) Discuss any claims that Peary's Pizza may have against Henson.

General

X. (6 points)

Flash successfully represented his client, Dale, in the FSM Supreme Court trial division. The opposing party, Ming, appealed.

The clerk certified the record, and set a briefing schedule. The appellant's counsel timely filed his brief. Flash did not file a brief, but 45 days after Ming's brief was filed and served, Flash filed a motion for enlargement of time to file the appellee's brief. Flash's ground for the motion was that no fee arrangements for the appeal had been made yet. The motion was granted because it was unopposed and because it would not require the postponement of oral argument.

Flash did not file a brief by the new due date either. Oral argument was held as scheduled, and Flash did not appear. Two weeks later, Flash filed a motion stating that satisfactory fee arrangements had now been concluded, and requesting a further two weeks within which to file the appellee's brief.

A. (2 points) How should the appellate court rule on Flash's motion? Give reasons for your answer.

B. (2 points) Should Ming the appellant prevail on his appeal because of Flash's failure to file a brief or appear at oral argument? — What effect does Flash's failure have on Ming's appeal?

C. (2 points) If Flash had appeared at oral argument and asked to argue Dale's case, must the appellate court have allowed this?