

**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 5, 2020**

**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 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. 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.	14
II.	6
III.	6
IV.	4
V.	20
VI.	9
VII.	5
VIII.	10
IX.	20
X.	6
TOTAL	<u>100</u>

65 IS THE MINIMUM OVERALL PASSING GRADE. TO OBTAIN PARTIAL CREDIT UNDER GENERAL COURT ORDER 1986-2, THE ETHICS QUESTIONS ARE III & IV, AND THE EVIDENCE QUESTIONS ARE I & II. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

## **Evidence**

### **I.** **(14 points)**

Two corporations are in litigation. You represent the plaintiff corporation. You expect the following evidentiary issues to be raised during trial.

A. (4 points) The defendant will call its bookkeeper to introduce financial records prepared by the bookkeeper and to testify to the accuracy of these records. The bookkeeper has a misdemeanor conviction for issuing a false personal financial statement. Will you be able to admit at trial properly authenticated evidence of the bookkeeper's conviction?

B. (3 points) In preparing for trial, you hired an accountant to prepare a letter substantiating the unreliability of the defendant's internal accounting controls. The letter turned out to be contrary to the plaintiff's (your) position at trial. If the defendant subpoenas for trial the accountant you hired and his records, what objections can you make about the letter's admissibility and the accountant's testimony about his opinion?

C. (4 points) Your client's bookkeeper has a College of Micronesia degree and five years experience as a bookkeeper, but is neither a certified public accountant (CPA) nor a public accountant. Assuming that the bookkeeper is familiar with generally accepted accounting practices, will her testimony be admissible on whether, in her opinion, the defendant used such practices in computing profits from the business transaction between the plaintiff and the defendant?

D. (3 points) Your investigator has found three other companies that successfully sued the defendant for breach of contract with circumstances similar to your case. Will the judge allow you to have officials of those companies testify about the facts in each of their respective cases?

## **Evidence**

### **II.** **(6 points)**

On March 17, 2019, Lois was driving her new Rav4 when she stopped at stop sign at the main intersection in town. Fred, who was behind her in his pickup truck, failed to see the stop sign and did not stop. He crashed into Lois's Rav4 and pushed her up onto the sidewalk and into a telephone poll.

Immediately after the accident, a pedestrian ran up to Fred and shouted, "You careless driver, you! Didn't you ever learn that you must stop for stop signs??"

When Lois got out of her Rav4, she felt physically okay, but was emotionally upset when she saw that both the front end and the rear trunk were badly damaged. The next day, her mechanic gave her a \$1,250 estimate to repair the damage. She consulted an attorney that afternoon, and that evening she developed shooting back pains.

Lois filed suit against Fred on June 14, 2019, based on a negligence theory. The case was scheduled for trial on March 4, 2020. One day before the trial, Lois and her husband went to the intersection where the crash occurred and Lois had her husband, Clark, take a photograph of the accident scene.

A. (3 points) At trial, Lois's attorney offers the photograph as evidence. Is the photograph admissible? Discuss.

B. (3 points) At trial, is the pedestrian's statement admissible or inadmissible? Discuss.

III.  
(6 points)

A. (2 points)

Pette E. Fogger is an attorney new to private practice. He is motivated by a burning desire to correct the wrongs and injustices she believes have occurred in the state's legal system over the years. Fogger wants the name of his new law firm to reflect this high ideal and goal. He names his firm "The Governmental Justice Center" and has cards and letterheads printed reading:

**THE GOVERNMENTAL JUSTICE CENTER**

Pette E. Fogger, Esq.

Comment.

B. (4 points)

Clint asks Pette E. Fogger to represent him in a land dispute. Client tells you that he received a small house lot and three adjoining taro patches from his father, now deceased. Clint returned to his island after living for several years with his sister's family on Guam, and found members of his extended family occupying his land. When he discussed this with them, they claimed ownership derived from Clint's aunt.

Clint has no money to pay Fogger's fee. Fogger makes a preliminary search at the Land Court and finds that, in 1972, Clint's father was issued a certificate of title to the property as his separate property. Fogger then tells Clint he will represent him, and that his fee will be two of the taro patches. Feeling that he has no other choice, Clint accepts.

Discuss any ethical issues.

IV.  
(4 points)

Bailey defended Dumpf in a criminal matter in the FSM Supreme Court. After the prosecution presented its case-in-chief and the defense had presented a number of witnesses, the trial was continued to a date one month later at the defense's request and with the government's acquiescence. This accommodated not only the judge's travel plans but also the defense's ability to call witnesses in its favor.

One week before the trial's scheduled resumption, Bailey notified his client, Dumpf, and the court that he had been offered, and was going to accept a job as an Assistant Attorney General in Palau and was scheduled to start at the end of the week that Dumpf's trial was scheduled to resume.

Dumpf then discharged Bailey as counsel on the ground that he did not think that Bailey would adequately prepare for his trial if Bailey was busy packing to leave. Dumpf moved the court to continue his trial indefinitely while he sought substitute counsel. The government opposed. The motion was denied.

Discuss Bailey's ethical obligations.

V.  
(20 points)

In December 2017, Ned LeGence enrolled in a scuba diving instruction course at Diving Instruction & Professional Supply (DIPS). The dive instructor was Max Imum, a DIPS employee. Ned rented his dive equipment from DIPS. Included in the equipment was a Sea Quest 2000 air tank manufactured in 2012 by Sea Quest Corporation, and a depth gauge made locally by DIPS.

After finishing the three-week course, Ned went on a final certification open-water dive, with Max as the group leader. On the dive, Ned, after awhile, decided to separate himself from the group and swim deeper, looking for interesting shells. Max saw Ned move away from the group, but decided to stay with the group and not follow Ned.

Ned knew from his classwork that below 180 feet there was a danger of becoming disoriented and "light-headed" because of nitrogen narcosis, or "rapture of the deep." When Ned started to feel light-headed, he looked at his depth gauge, which registered his depth at only 160 feet. He therefore continued to stay on the bottom, becoming more light-headed and disoriented until he lost consciousness. Max later found Ned and got him to the surface. As a result of his ordeal, Ned was seriously injured.

An independent diving expert's later examination of the incident revealed that:

(1) the Sea Quest 2000 air tank had been lined on the inside with a material that, when subjected to air and moisture over time, gave off toxic fumes, causing a condition similar to nitrogen narcosis, and, although this was well known to Sea Quest Corp., no recall notice had been sent or buyers notified;

(2) the depth gauge used by Ned had become inaccurate, and Ned was actually at 190 feet when he thought he was at 160, and this

V.  
(cont.)

inaccuracy was known to DIPS, but DIPS employees thought that the depth reading was "close enough"; and

(3) DIPS's company policy required that there be two DIPS dive instructors present during final certification open-water dives, but recently, because of declining business, DIPS had been using only one instructor instead of two, even for large classes such as Ned's.

In February 2020, Ned asked you to advise him about the causes of action, if any, which he may have for his injuries, to consider the potential defendants in the case, and to consider the potential cross-claims, counterclaims, and defenses that might be raised.



VI.  
(9 points)

The following cases were removed by the defendants in each case from the state court in which they were filed to the FSM Supreme Court trial division. In each case, the plaintiff has filed a motion in the FSM Supreme Court to remand the case to state court on the ground that it should not have been removed. How should the FSM Supreme Court rule on each motion and why?

A. (3 points) Hal, a citizen of Chuuk, sued the *Chuuk Chronicle*, a newspaper published on Chuuk by a Chuuk citizen, who was the paper's sole owner. Hal claimed that a *Chuuk Chronicle* article about Hal's alleged fraudulent business practices had defamed him and had resulted in him 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 its publication of the article was protected by Section 1 of the FSM Constitution's Declaration of Rights.

B. (3 points) A lawsuit removed from the Yap State Court brought by a Philippines citizen against a corporation wholly owned by United States citizens alleging wrongful termination based on sex discrimination.

C. (3 points) A case originally filed in Kosrae State Court in which the plaintiffs, who were seamen on the state's field trip ship, sued the state government for hazardous duty differential pay that they believe should have been included in their seamen's wages when they crewed the field trip ship during a typhoon.

VII.  
(5 points)

You are a justice of the FSM Supreme Court, sitting in the court's appellate division. You are considering Wasabi's appeal of his murder conviction.

The appeal is based upon a claim of insufficient evidence. After reviewing the record carefully, you can see how some judges could feel certain that Wasabi is guilty, and it does seem to you more likely than not that Wasabi is guilty. Yet, based upon inconsistencies in the testimony, you retain serious doubts about his guilt.

What should your ruling be? Explain.

VIII.  
(10 points)

The Bank of Rota is a non-citizen banking corporation with offices and business operations in the FSM. Prince, a resident of Pohnpei, goes to the bank to borrow \$500. The loan was granted June 15, 2019. The interest rate was 15% per annum. The promissory note which Prince signed contains the following statement: "I agree to pay the attorney's fees incurred by the bank in enforcing this promissory note."

The note calls for the repayment of the entire amount due on December 15, 2019. Prince failed to pay on December 15. On December 17, 2019, the bank filed a complaint against Prince in the FSM Supreme Court. Prince fails to respond to the complaint within 20 days after service upon him. On the twenty-first day, the clerk's office issues a default judgment in the principal amount of \$500; \$37.50 in interest; plus \$375 in attorney's fees computed at 3 hours at \$125 an hour, for a total judgment amount of \$912.50, plus another \$25 for cost of service.

Today, Prince has come to your office for legal advice. Discuss any rights Prince might have and any steps that may now be taken on his behalf.

IX.  
(20 points)

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

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

In the event of Neon's death, resignation, retirement, or removal, Argon shall have the right to succeed to Neon's position as minister.

After receiving Argon's letter, the trustees, including one who was a member of the state police force, met on a day when they knew Argon 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 Argon with possession of a controlled substance.

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

IX.  
(cont.)

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

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

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

How should the appellate court rule in each appeal?

## **General**

### **X. (6 points)**

Discuss the constitutionality under the FSM Constitution of the following:

A. (2 points) 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. (2 points) An act of Congress finding that a certain named foreign person living and working in the FSM had committed a certain offense and requiring that the President deport that person as an undesirable alien.

C. (2 points) A state governor's pardon of a person lawfully convicted in the FSM Supreme Court in 1989 of what was then a national crime, but which is now punishable only under state law.