

**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**

OCTOBER 1, 2020

ADMINISTERED IN CHUUK, KOSRAE, POHNPEI, AND YAP

**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.	8
III.	2
IV.	10
V.	15
VI.	4
VII.	9
VIII.	14
IX.	12
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 II & III, AND THE EVIDENCE QUESTION IS I. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

Evidence

I. (20 points)

After a night out, Ricky was driving home with his wife, Lucy, and their friends Fred and Ethel. On the way, Ricky was stopped by a police officer and charged with reckless driving.

Before the criminal trial, a hearing was held to resolve anticipated evidentiary problems. The following issues arise. In each instance, under the FSM Rules of Evidence state:

- (1) any objection(s) that could be plausibly raised; and
- (2) how the court should rule and why.

A. (3 points). The prosecution wants to call Lucy, who is now divorced from Ricky, Lucy is willing to testify that at the time of the stop, when the policeman wasn't listening but they were all still in the car, she said to Ricky, "How fast were you going?" and he replied, "Sixty."

B. (3 points). The prosecution wishes to call Desi, who will testify that Ricky had passed him immediately before the stop and in his opinion Ricky was going over 50 at that time.

C. (3 points). The prosecution wants to call the police officer, who will testify that at the time of the stop, he said to Ricky, "Friend, you were really going fast," to which Ricky just nodded his head up and down.

D. (3 points) The prosecution wants to introduce the cover sheet of a report, written by the police officer at the time of the stop, stating the location of the offense, a fact which the officer no longer remembers.

Evidence

I. (cont.)

E. (3 points) The prosecution wants to call the police officer to testify that the day after the stop, Fred called him and said, "Thanks so much for stopping Ricky. I was terrified by the way he was driving."

F. (2 points) Ricky wants to call his pastor as the first defense witness to testify that Ricky is a truthful individual.

G. (3 points) To impeach the police officer, Ricky wants to introduce evidence that the officer was convicted two years ago for taking trochus out of season.

II.
(8 points)

Boron is arrested and charged with assaulting Radon. Boron wants to hire Astatine as his lawyer. She tells Boron that she requires a retainer of \$5,000 and will bill her time at \$120 per hour. Boron agrees and pays the retainer. Astatine, low on finances, decides to immediately use \$3,650 of the retainer to pay her office rent and other bills.

Astatine hires an outside investigator to work on Boron's case and pays him the \$1,350 remaining from Boron's retainer. The investigator learns that Radon was drunk the night of the assault. He also learns, and reminds Astatine, that she had represented Radon three years earlier when Radon was charged with driving under the influence.

Discuss:

- A. Astatine's handling of the \$5,000 retainer.
- B. Whether Astatine can continue to represent Boron after learning that she had previously represented Radon.

III.
(2 points)

In a civil action between commercial companies, the court ordered that one party provide certain documents to opposing counsel for review, but that opposing counsel cannot reveal the documents' contents to anyone without further court order.

Opposing counsel's client then tells his counsel that the counsel must tell him what was in the documents because an attorney is ethically required to keep his client informed.

Comment.

IV.
(10 points)

Discuss the constitutionality under the FSM Constitution of the following:

A. (3 points) A state statute levying an 5% "amusement tax" on all subscription fees received by any enterprise providing cable television services to the public. The tax is to be paid only by the cable company.

B. (3 points) A state statute imposing an "inventory tax" to be levied annually on all merchants within the state on all inventory in stock on February 1st of each year. The tax is 1 $\frac{1}{8}$ % of all goods in inventory, assessed on their wholesale or purchase or invoice price, including the cost, if any, of shipping the goods to the merchant.

C. (4 points) An FSM statute making it a national crime to steal, rob, extort, or embezzle money or negotiable instruments from any bank, insurance agency, or agency that makes money transfers by wire.

General

V. (15 points)

Karl is employed by JK Construction Co. JK Construction Co. has filed a police report that six sticks of dynamite and dynamite caps and fuse had been stolen from its construction camp by person(s) unknown.

One payday weekend, Karl 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 Karl a ticket for failure to stop at a stop sign, the police notice a strong odor of alcohol on Karl's breath and that he is not steady on his feet. Karl is then arrested for driving while intoxicated and taken to the police station.

A police officer then enters Karl'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.

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

Karl 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 Karl's attorney. What steps will you take on Karl's behalf before trial? What result is likely? And why?

B. (3 points) Assume that either the charges are dropped or that Karl is acquitted. Karl then goes to the court and asks for his property back – the car, the marijuana, and the dynamite. What result? And why?

VI.
(4 points)

Able, Baker, and Charlie are accused by information of assault and battery of William. Each defendant is represented by his own counsel. Before trial, Baker enters into a plea agreement with the government. One part of the agreement obligates Baker to testify fully and truthfully at the trial of the two remaining defendants.

After his arrest, Baker gave a statement to the police about his involvement and the involvement of Able and Charlie in the assault. Baker did not knowingly and intelligently waive his right to remain silent before he made his confession.

As Baker begins his testimony as a witness at the trial, both defense counsel (for Able and Charlie) object on the ground that Baker's constitutional rights had been violated.

Discuss.

VII.
(9 points)

Applicant Albertino applied to the FSM Secretary of Resources and Development for a foreign investment permit to engage in business in Pohnpei and Kosrae. The purpose of the business was to arrange accommodations for tourists in local houses in village settings.

The Secretary submitted the application to the two states for comments and both recommended that the application be granted.

The Secretary also submitted the application to each hotel and tour company in the two states. A majority responded with one hotel and one tour company in Pohnpei and one hotel in Kosrae opposing the application and the rest recommending approval.

The Secretary denied the application on the ground that no sufficient economic, social, or environmental need had been shown that would justify granting the permit to a non-citizen. Twenty-five days ago the Secretary's decision was submitted to the President of the FSM who took no action on the matter.

Albertino seeks your advice. He wishes to take any legal steps he can to get the permit. What advice do you give him as to the avenues open to him?

VIII.
(14 points)

Buyer, a local businessman, owns a complex that included a tourist hotel, supermarket, restaurant, hardware store, offices rented to other local businesses, a laundromat, and ten rental houses used for residences. Buyer has been very worried about the effect of Island Power's unreliable service on his businesses. Buyer vows to have his own turbine generator installed so that his complex will have a reliable 24-hour electrical supply. Buyer asks Seller, one of his regular suppliers, to submit a proposal for a turbine generator, suited to local conditions, that will supply all of Buyer's needs. The turbine must be able to switch on automatically, with a twenty-second delay, when Island Power goes off, and switch back off when Island Power comes back on so long as the Island Power was steady and does not come on with surges. The turbine also has to be able to generate supplemental electricity through a windmill during the months that the trade winds blow steadily and through solar panels on the roof, year-round.

Seller telephoned Buyer and agreed to produce and install a generator matching Buyer's specifications, at a price to be agreed upon at a later time when all of Seller's costs were known. During this phone conversation, Buyer accepted this offer "so long as the price does not exceed \$400,000," and emphasized that delivery by July 15, 2019 was essential, since the generator's installation was vital to Buyer's planned expansion of his business and hotel complex.

The next day, Buyer sent Seller a written confirmation that referred to the specifications that Buyer had given Seller, and stated that the price was "not to exceed \$400,000," required delivery by July 15, 2019, and provided for damages of \$500 per day for any delay in delivery, specified "the usual warranties," and stated that "any changes in this agreement must be in writing." Shortly after receiving this confirmation, Seller began producing the turbine.

VIII.
(cont.)

On June 15, 2019, Buyer received an e-mail from Seller asking for a one-month delay in the delivery date. Buyer phoned Seller and, after hearing seller's reasons for the request, said that a one-month delivery delay would be acceptable.

On July 20, 2019, Buyer learned from a reliable source that Seller had completed the generator and was about to deliver it to Trader, another FSM businessman in a different state, for \$430,000.

What are Buyer's rights and to what relief and remedies, if any, is he entitled? Discuss.

IX.
(12 points)

Xebec employed Jack as the skipper of a racing sailboat. Xebec and other sailboat owners held sailboat races in various parts of the world in order to raise the profile of and to popularize the sport of yachting and also so that the boat owners and crew could visit places that they had always wanted to see. To increase local interest the races, the boats would often take on one or two local crew members.

Xebec and several other racing sailboats scheduled sailboat races in Truk Lagoon. Sally volunteered to serve as part of Jack's crew in a sailboat race. She told Jack she could swim, although she could not. Sally signed a waiver of responsibility form printed by Xebec that read: "In recognition of the risks of sailing, I relieve Xebec of liability for any injuries I might receive in the course of this sailboat racing event." The vessel did not have any life jackets on board, violating the regulations of both the FSM and the country where Xebec's vessel was registered, which both required one life jacket for each person on board.

During the race around Truk Lagoon, Jack was joking with the crew and failed to notice that another boat approaching too closely. Without any warning, Jack suddenly swerved his boat, and Sally fell overboard, hurting her back. Sally's husband, Ivan, who was on shore watching through binoculars, became hysterical when he saw Sally struggling in the water. Although Sally was quickly rescued, her fall and her struggle in the water caused her to become partially paralyzed below the waist.

Discuss fully the common law tort claims that might be brought arising from this incident and all potential defenses:

- A. (7 points) Sally v. Jack;
- B. (2 points) Sally v. Xebec; and
- C. (3 points) Ivan v. Jack.

X.
(6 points)

In the two following cases, the defendants removed the case to the FSM Supreme Court trial division from the state or municipal 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?

A. (3 points) A suit filed in the Sokehs Municipal Court (on Pohnpei) by International Supply Co., an Oregon corporation, against a local small store on an "account stated" cause of action.

B. (3 points) A suit filed in the Pohnpei Supreme Court by a Hong Kong corporation against a Kiribati corporation over the ownership of a sea-going vessel that had been arrested by the Pohnpei state police for violating Pohnpei environmental regulations inside the Pohnpei fringing reef because it discharged waste oil into Pohnpei waters while in port.