

**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 1, 2018

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 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.	3
III.	13
IV.	4
V.	11
VI.	6
VII.	21
VIII.	12
IX.	16
X.	4
TOTAL	<u>100</u>

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

GOOD LUCK.

I.
(10 points)

Law Firm A has represented Soapco fairly often in litigation in both the state and FSM courts. Law Firm A has recently been hired to represent Newco in litigation in the FSM Supreme Court in which Soapco is an adverse party. Newco's litigation does not involve matters which are the same or substantially related to previous litigation Law Firm A had handled for Soapco.

Soapco has moved to disqualify Law Firm A from representing Newco. Law Firm A has recently mailed to Soapco a copy of the appellate decision and the decision on remand in the last state court litigation in which it had represented Soapco. The decision on remand was unfavorable to Soapco. Law Firm A retains Soapco's files from that case and refuses to give them to Soapco although Soapco has asked for them and although Law Firm A concedes that Soapco does not owe Law Firm A any fees.

Law Firm A contends that it should not be disqualified from representing Newco in litigation adverse to Soapco because Soapco is a former client and everyone agrees that the new litigation does not involve matters which are the same or substantially related to previous litigation Law Firm A handled for Soapco.

A. (5 points) Discuss the ethical implications of this situation and how the court should rule on Soapco's motion to disqualify Law Firm A from representing Newco.

In the same litigation, Newco moves to disqualify Soapco's counsel, Law Firm B, because Law Firm B represents not only Soapco but also Equator, Inc., an off-island wholesaler for which Law Firm B has often handled routine collection matters. Discovery has shown that, although Equator, Inc. isn't currently a party to the litigation, it might become so in the future, but even if it does not become a party, it is definitely apparent that Equator, Inc.'s interests are adverse to Soapco's interests in the litigation.

Law Firm B counters the disqualification motion with two arguments: (1) the firm's attorney that has regularly handled Equator, Inc.'s collection matters has done so as the principal of a related law firm, and not in his position as a partner in Law Firm B; and (2) Law Firm B asserts that if it must be eliminated from representing anyone, it would drop its representation of Equator, Inc. since the Soapco litigation promises to be an important, wide-ranging, and remunerative case.

B. (5 points) Discuss the ethical implications of this situation and how the court should rule on Newco's motion to disqualify Soapco's counsel, Law Firm B.

**III.
(13 points)**

Zeke sues Yeti for money damages, claiming that Yeti attacked him and injured him at Piers, a local tavern. At trial in the FSM Supreme Court, Zeke calls Wayne, who testifies that he saw the incident between Zeke and Yeti and that he is 97% positive that Yeti just came up to Zeke and started beating on him.

A. (5 points) Yeti proposes to call Sam, the Piers' bartender, who will testify that during the hour immediately before the fight between Zeke and Yeti, Sam had served Wayne five straight shots of whiskey. Zeke objects to this testimony. Zeke contends that Yeti is trying to present improper evidence of character.

How would Yeti respond to the objection? How should the trial judge rule? Discuss.

B. (5 points) Assume that Sam the bartender isn't called as a witness. Yeti proposes to call Javier, Wayne's ex-wife, who will testify that Wayne is a chronic alcohol abuser who, instead of coming home after work, went to the bar every night of their married life. She will also testify that, based on her own observations and experience during their ten-year marriage, she knew that Wayne never left Piers without first consuming his customary five shots of whiskey. Zeke objects to this testimony.

How should the trial judge rule? Discuss.

C. (3 points) Finally, Yeti proposes to call Doctor, who will testify that he had treated Wayne for chronic alcoholism, and that the medical tests that he conducted had conclusively shown that Wayne suffers irreversible brain damage from his alcohol abuse which has caused some impairment of his perceptive faculties and memory. Wayne objects to the use of this testimony.

How should the trial judge rule? Discuss.

Evidence

**IV.
(4 points)**

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

You are the prosecutor. You seek to introduce testimony that Damien had used the exact same Sammy Sosa baseball bat to smash the windows in someone else's pickup truck two months before the assault for which he is now charged. 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?

Case: 2012-13310

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Case: 2012-13310

Case: 2012-13310

Case: 2012-13310

Case: 2012-13310

4

JAN

FEB

MAR

APR

MAY

2012

Case: 2012-13310

2012-13310

Case: 2012-13310

2012-13310

Case: 2012-13310

ALBERTVILLE DIVISION

ALBERTVILLE DIVISION

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**V.
(11 points)**

Discuss the constitutionality under the FSM Constitution of the following:

A. (6 points) (1) A national statute imposing a tax of 0.25% of the sale price on any sale of land and imposing the tax on the seller and requiring that the seller pay it out of the sale proceeds, and (2) the same national statute imposing a tax of 0.25% of the sale price on any sale of land, but this time the tax is added to the sales price and imposed on and paid by the buyer.

B. (5 points) A municipal ordinance imposing annual business license fees ranging from \$100 to \$2,000 depending on the business on local businesses as follows:

1. Attorneys: \$1,000 plus 5% of any fees earned suing the municipal or state governments;

2. Travel agencies: \$2,000; and

3. Businesses that import and install solar power systems: \$500.

**VI.
(6 points)**

The following cases were removed from the state court in which they were filed to the FSM Supreme Court trial division by the defendants in each case.

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 to remand and why?

A. (3 points) A breach-of-contract case over non-payment of wages removed from the Pohnpei Supreme Court filed by a citizen of the Philippines against a Japanese construction company's subsidiary incorporated in Pohnpei.

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

VII.
(21 points)

Lt. Willie B. Ware is a lifelong resident of the state and has been on the state police for fifteen years. He knows practically everyone in the state, including Rick Davis, a/k/a "Danger Man." While at the office one day, Lt. Ware saw an outstanding felony arrest warrant for grand larceny had been issued for Rick Davis, a/k/a "Danger Man." Lt. Ware decided to drive by Danger Man's last known residence to see if he was at home and, although he had left the warrant back at the office, to pick him up on the warrant. As he drove by Danger Man's house, Lt. Ware saw Danger Man come out of his house, shut the front door, walk to his car with a rolled up carpet over his shoulder, put the carpet in his car trunk, shut the trunk, and then Lt. Ware saw Danger Man drive away.

Lt. Ware tried, but was unable to stop Danger Man as he drove away recklessly in the opposite direction. Lt. Ware therefore called on his radio for other officers to be on the look out for Danger Man, giving the car description, tag number, the direction Danger Man was headed, and information about the outstanding felony arrest warrant for grand larceny. While patrolling on the opposite side of the island, Officer Imonthejob, who knew Danger Man, spotted him driving his car and stopped him without incident. Officer Imonthejob ordered Danger Man out of his car, handcuffed him, and put him in his patrol car's back seat. The officer did not inform Danger Man of his rights. The patrol car had been equipped with an experimental audio/videotape recorder which was running, and this fact was not known to Danger Man.

Officer Imonthejob then went back to Danger Man's car and heard a bump-bump-bump and some mumbling noises coming from inside the car trunk. Uncertain about the noise, but believing it sounded human, Officer Imonthejob looked inside the car for a key to the trunk but only found a screwdriver in the ignition. He took the screwdriver and pried the trunk open. Much to his surprise, there was a man, known as "Insurance Guy," wrapped up in a carpet, with his mouth duct-taped, and semi-conscious with a hammer stuck in his head.

Officer Imonthejob then looked back at his patrol car and saw Danger Man talking to himself in disbelief as Danger Man had been watching Officer Imonthejob's discovery of Insurance Guy. Officer Imonthejob cut the duct tape from the victim's mouth. The victim told Officer Imonthejob that Danger Man had tortured him and struck him with a hammer before stuffing him in the car trunk. Officer Imonthejob returned to his patrol car, radioed for an ambulance, and only then informed Danger Man of his rights. Danger Man replied that he "knew the drill" and that he "ain't saying nothing till he gets a lawyer." Backup officers arrived and impounded Danger Man's car and its contents. The ambulance EMT pronounced Insurance Guy dead at the scene.

(VII. cont.)

As Officer Imonthejob drove Danger Man to the jail, Danger Man had a meltdown and blurted out that he acted in self-defense, that he did not mean to hurt anyone, and that he hoped Insurance Guy was okay. While Danger Man was being booked and asked routine booking questions such as his name, Danger Man, without solicitation, stated that he was glad Insurance Guy was dead because Insurance Guy had been cheating him for years. The booking officer also found Insurance Guy's wallet, with money still inside it, inside Danger Man's pocket.

When Officer Imonthejob reviewed the audio/videotape from inside his patrol car, he discovered that Danger Man had admitted to himself that he enticed Insurance Guy to his house for the purpose of robbing him and getting his money back. Danger Man also stated that if it hadn't been for that pesky Lt. Ware, he would have got away with what he did to Insurance Guy.

Answer the following questions by applying the FSM Constitution and by assuming that the state has a criminal procedure statute identical to the FSM statute.

A. (3 points) Was Lt. Ware's attempted apprehension of Danger Man after he left his house valid? Explain.

B. (3 points) Did Officer Imonthejob make a legal stop of Danger Man? Explain.

C. (3 points) Are the statements Insurance Guy made to Officer Imonthejob before he died, admissible at trial against Danger Man? Explain.

D. (3 points) Is the audio/videotape recording of Danger Man made while he was inside Officer Imonthejob's patrol car admissible at trial against Danger Man? Explain.

E. (3 points) Could Officer Imonthejob have continued questioning Danger Man after Officer Imonthejob informed Danger Man of his rights and Danger Man said he wasn't saying anything till he had a lawyer? Explain.

F. (3 points) Is Danger Man's statement made to the booking officer while at jail, that he was glad Insurance Guy was dead because Insurance Guy had cheated him, admissible at trial? Explain.

G. (3 points) Is Insurance Guy's wallet found, without a warrant, inside Danger Man's pocket admissible against Danger Man for any crime? Explain.

VIII.
(12 points)

Your client, Charlene, wishes to sue an individual, Darlene, who either negligently or intentionally rear-ended her at a stop sign in Kolonia, Pohnpei. Both Charlene and Darlene are competent adult FSM citizens, but Darlene is a citizen of a different state.

Charlene is concerned about filing the civil action in the FSM Supreme Court in a timely manner. Please answer the following questions about her potential claims.

A. (2 points) How long does Charlene have to file a negligence or an intentional tort cause of action against Darlene?

B. (2 points) What is the time period within which the complaint and summons must be served after the Clerk of Courts issues the summons?

C. (2 points) What is the effect of the failure to serve a summons and complaint within the prescribed time period?

D. (2 points) If you are unable to find Darlene, is there a way to extend the time in which you may serve her with the complaint and summons?

E. (4 points) If the case is filed and the clerk issues the summons 20 days before the expiration of the applicable statute of limitations, what is the effect upon the statute of limitations if the summons and complaint are not served on Darlene until 90 days after the clerk's issuance of the summons?

IX.
(16 points)

Cycad Airways, a company incorporated in the FSM, but with foreign shareholders and with its headquarters on Guam, is engaged in providing air freight service between all the states in the FSM and Guam and Saipan, Palau, and the Marshall Islands. It annually produces a calendar which it distributes widely throughout the geographic area it serves in order to promote goodwill for its business. Each month on the calendar is illustrated with a colorful photograph of people or places in the Micronesia area.

The photograph for January, 2017 is a picture of a young woman, Rose, from Kosrae holding a child. It is captioned "Yap – Mother and Child." Rose is a senior at Yap High School. One day, when her classmates and one of her teachers made fun of her appearance in the calendar she became upset and abruptly left the classroom in tears.

You file suit against Cycad Airways and the photographer that sold the picture to Cycad Airways specifically for use on its calendar in the FSM Supreme Court trial division, Yap venue. Defendants answer. After discovery you move for summary judgment on the issue of liability. The following facts are undisputed:

1. The photograph was of the plaintiff.
2. The plaintiff was unmarried.
3. The child was not hers.
4. Neither she nor anyone else ever signed a release permitting the photograph's publication.
5. The photographer was not an employee of Cycad Airways, but did sell Cycad Airways the specific right to use the photograph on its calendar which he had entitled "Yap – Mother and Child."
6. Cycad Airways distributed large numbers of its calendars for free to any business in its operating area which wanted some, and actively encouraged their use.
7. The plaintiff was on private property when the photograph was taken.

The defendants dispute the plaintiff's allegations that the photograph was taken without her knowledge or consent and oppose summary judgment.

A. (12 points) What cause(s) of action might the plaintiff be seeking summary judgment for, and what is the likely outcome of the motion?

B. (4 points) Assume the court grants summary judgment on the issue of liability. Defendants' attorney then files a notice of appeal in the trial division. What is the effect of this notice? What is your next step?

X.
(4 points)

Protagoras taught law to a poor student named Euarthlus. They agreed that Euarthlus would pay Protagoras's fee as soon as Euarthlus won his first case. Upon completing his studies, Euarthlus abandoned the law for a career in politics. After waiting some time to receive his fee, Protagoras finally sued Euarthlus for his fee. In defense, Euarthlus contended that Protagoras was not entitled to payment because the condition for payment had not been met.

Discuss whether Protagoras can sue for breach of contract and the likely result.