

**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**

**AUGUST 3, 2023**

**ADMINISTERED IN CHUUK, 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 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. ILLEGIBLE ANSWERS MAY RESULT IN A LOSS OF POINTS.

A TOTAL OF 100 POINTS IS POSSIBLE, AS FOLLOWS:

<u>QUESTION NO.</u>	<u>POINTS</u>
I	20
II	10
III	6
IV	16
V	9
VI	7
VII	9
VIII	9
IX	7
X	7
TOTAL	100

THE MINIMUM OVERALL PASSING GRADE IS 65. FOR 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)

During trial in the FSM Supreme Court, on the Wife's suit for divorce from Husband, the following evidence was offered. An objection was made to each offer. In each instance, what was the objection and how should the trial judge rule under the FSM Rules of Evidence?

A. (4 points) On direct examination of Wife, after Wife could not remember an event which occurred several years earlier, an entry, which was made by Wife in her diary shortly after the event occurred and which described the event in detail, was offered in evidence. Husband objects.

B. (3 points) On direct examination of Husband's best friend, his testimony about a statement Husband made to him admitting that Husband had secret bank accounts unknown to Wife. Husband objects.

C. (4 points) Wife offers the official police report prepared by an officer who investigated an incident of Husband's alleged physical abuse of Wife, a portion of which contained a statement made to the officer by Neighbor, a witness who had observed the incident. Husband objects.

D. (3 points) On cross-examination of Wife's expert, a business appraiser who had given his opinion of the fair market value of Husband's business, testified that he was familiar with *The Handbook of Business Appraisals*, a book published by the Pacific Institute of Business Appraisers. He further testified that the book was a reliable authority among appraisers in the North Pacific. Over Wife's objection, the expert was then directed to read into the record a passage from the book which directly contradicted certain principles that the expert had testified that he had relied upon in rendering his opinion and was asked whether he agreed or disagreed with the passage.

(cont.)



## **Evidence**

### **I. (cont.)**

E. (3 points) On direct examination of Husband, his testimony giving his opinion of the fair market value of a condominium that he and Wife jointly own on Guam. Wife objects.

F. (3 points) On direct examination of Wife's employer, Wife's biweekly wage records for the previous three years were offered into evidence. Wife objects.

## Ethics

### II. (10 points)

Physician is a well-known medical doctor and surgeon in the FSM who is also licensed to practice medicine in Guam and Hawaii. Physician runs his own clinic but conducts surgery in the local state hospital. He operated on one patient who, after the surgery, developed an infection and died. Admin, the personal representative of the patient's estate, filed a malpractice action against Physician, who referred the claim to Medico, Physician's malpractice insurance carrier.

Physician's insurance policy provided that Medico would retain an attorney to defend any claim against Physician, and would pay up to \$300,000 in satisfaction of any claim against Physician. The policy also provided that Medico would "investigate and settle any claim as it deemed appropriate."

Medico retained Attorney to defend against Admin's claim. After reviewing the record, conducting discovery, and obtaining an opinion from a medical expert, Attorney reasonably concluded that, while Physician's liability was uncertain, Admin had a good chance of prevailing. In light of the possibility of substantial damages, Attorney recommended that Medico settle the case. Medico authorized a settlement. Attorney then negotiated with Admin's attorney and reached a tentative agreement to settle the case for \$75,000.

Attorney's secretary notified Physician of the proposed settlement. Physician was angered by the proposed settlement, stating unequivocally that he was not responsible for the patient's death. He also said that settling would adversely affect his reputation, could increase his insurance premiums, and could result in disciplinary action against him in one or more places where he was licensed to practice medicine. Physician therefore told Attorney's secretary that he would not authorize the settlement. There was no further communication between Attorney and Physician.

(cont.)

II.  
(cont.)

Attorney contacted Medico and informed it of Physician's objections and sought further direction. Medico directed Attorney to complete the settlement in accordance with the tentative agreement.

- A. Who does Attorney represent in this case? Discuss.
- B. Did Attorney violate any ethical rules in her handling of the case before she followed Medico's direction to complete the settlement agreement? Discuss.
- C. May Attorney settle the dispute as Medico directed without breaching any ethical rules? Discuss.

**General**

III.  
(6 points)

In the previous question, what rights or claims, if any, might Physician have against Attorney? Explain.



**General**

IV.  
(16 points)

A. (12 points) Explain each of the following terms, and distinguish the terms within each pair:

1. (4 points) law and equity
2. (4 points) interpleader and intervention
3. (4 points) third party complaint and affirmative defense

B. (4 points) Under what circumstances may final decisions of the state courts in the Federated States of Micronesia be appealed to the Federated States of Micronesia Supreme Court?



## General

V.  
(9 points)

A witness to a burglary named Attila as a participant. The police asked Attila to come to the police station. Upon his arrival the detective informed Attila as follows:

"You have the right to remain silent. You are not required to say anything to us at any time or to answer any questions. Anything you say can and will be used against you in court.

"You have the right to talk to a lawyer for advice before we question you and to have him with you during questioning.

"If you cannot afford a lawyer and want one, a lawyer will be provided you free of charge."

The detective then asked, "Do you understand?" Attila said, "Yes." Next the detective asked, "Are you willing to answer my questions?" Attila said, "Yes." The detective then took Attila's statement in which Attila implicated himself in the burglary.

Attila is accused by information of burglary. You represent him. You make a motion to suppress the statement based on these facts alone. Discuss the arguments available to you and the government, what you expect the court's reasoning to be, and the reasoning which supports it.

## **General**

### **VI.** **(7 points)**

Romeo sued Juliet in the FSM Supreme Court. You represent Juliet. At the end of trial yesterday afternoon, the judge ruled from the bench, and awarded Romeo \$13,250. You expect that the clerk will issue the written judgment sometime today.

Juliet has about \$16,000 on deposit in the local bank. She has told you that to keep her business running smoothly he should maintain a minimum balance in her bank accounts of \$5,000, and that she is afraid that if she has to pay the \$13,250 all at once it will disrupt her business and may have a long-range effect on her business reputation.

Juliet has indicated to you that she is not interested in appealing the money judgment, primarily because of the time and expense and because he realizes that he is not likely to prevail on appeal. Romeo's attorney has informed you that his client has instructed him to seek a writ of execution as soon as possible.

Explain the situation to Juliet. Are there any legal steps you might take to accommodate Juliet's desire to avoid disruption of her business? If so, describe. Assume that Juliet's business is not a separate corporation which cannot be held liable for Juliet's debts, but is a sole proprietorship.



## **General**

### **VII.** **(9 points)**

In each of the following cases, the defendant removed the case from the state court in which it was originally filed to the FSM Supreme Court trial division. In each case, the plaintiff has filed a motion in the FSM Supreme Court, asking that the case be remanded to state court in which it was filed on the ground that it had been improvidently removed – that is, that the case should not have been removed in the first place because 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 case removed from the Chuuk State Supreme Court that alleged the breach of a contract in which the Pohnpei Transportation Authority, a Pohnpei state agency, sold heavy earth-moving equipment to the Chuuk State Public Works Department.

B. (3 points) A breach-of-contract case removed from the Kosrae State Court between a citizen of the Philippines and a Japanese construction company over the non-payment of the Filipino's wages.

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



## **General**

### VIII. (9 points)

A bill has been proposed for enactment by the State Legislature, and the chairman of the legislative committee it has been assigned to, who favors it in principle, asks for your legal opinion. The bill provides:

BE IT ENACTED THAT: the State may not employ persons or enter into contracts for government work with companies if the persons or principal executives of the companies:

(A) refuse to sign a waiver of the privilege against self-incrimination in the event of any legal proceedings arising out of the employment or the contract for work; or

(B) allow patently offensive or sex-related material to be present where they are in control; or

(C) are members of an organization that advocates secession from the state for any island group in the state.

What is your advice?

IX.  
(7 points)

One day, while Cassandra was at home, island power started fluctuating wildly. To protect her appliances from damage from the power surges, Cassandra rushed to the master switch for her house and when she pulled the handle she received a vicious electrical shock. She was rushed to the state hospital. On the way there, she noticed that a state utility crew was working on the transformer near her house.

Cassandra was treated at the hospital and eventually the tip of one finger had to be amputated. She sued the state utility corporation for damages, alleging that it had been negligent in working on the power system near her home.

The state utility corporation raised two defenses: assumption of the risk and contributory negligence. It asserted that it or its employees were not the proximate cause of Cassandra's injuries because Cassandra assumed the risk by handling the situation in a way that exposed herself to a greater danger and because this act made Cassandra contributorily negligent and that therefore Cassandra was barred from any recovery.

Discuss.

## General

### X. (7 points)

Gozo, a tourist from California, decided to take an extended three-month surfing, diving, and fishing vacation on Pohnpei. Rather than spend all that time (and money) staying in a hotel, Gozo decided to find an apartment to rent. Malta, a landlord with a small apartment building on her land, quoted a rental for three months at \$1,000 per month for a two-bedroom apartment, with the first and last months' rent to be paid when the lease was signed plus a \$500 security deposit. The lease started February 1, 2023.

Gozo agreed, and paid Malta \$2,500 cash when he and Malta signed the lease on January 31, 2023. Malta gave him a receipt. The lease, when typed up, erroneously read \$10,000 per month rent, instead of \$1,000. Neither Gozo nor Malta noticed this when they signed the lease. The lease also contained an integration clause that provided that the written lease contained the whole agreement of the parties.

Malta died during the month of February.

When Gozo went to pay his March rent, Malta's son, Comino, who was now running Malta's rental business, took Gozo's \$1,000, and stated, "According to the lease, you owe me another \$9,000. Pay it by next Monday or be out by Tuesday."

Comino filed suit in the FSM Supreme Court seeking judgment for unpaid rent. Gozo counterclaimed for the \$500 security deposit. How should the court decide the case? Explain.