

**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 1, 1996**

**Administered in Kosrae, Pohnpei, Chuuk, and Yap**

**Supreme Court of the  
Federated States of Micronesia**

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## NOTE

YOU WILL BE PERMITTED FIVE (5) HOURS TO COMPLETE THIS EXAMINATION. THIS IS DESIGNED TO PROVIDE AMPLE TIME FOR CONSIDERATION OF THE QUESTIONS AND ISSUES PRESENTED, AND TO PERMIT AN OPPORTUNITY TO FRAME YOUR ANALYSIS. TAKE YOUR TIME. BEFORE BEGINNING TO WRITE, REVIEW EACH QUESTION CAREFULLY SO THAT YOU UNDERSTAND PRECISELY WHAT IS BEING ASKED, THEN CONSIDER THE ORGANIZATION OF YOUR ANSWER. ANSWERING QUESTIONS NOT ACTUALLY ASKED WILL BE REGARDED AS INDICATING INADEQUATE UNDERSTANDING AND MAY RESULT IN LOSS OF POINTS. PLEASE TRY TO 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.	13
III.	11
IV.	20
V.	12
VI.	2
VII.	4
VIII.	4
IX.	10
X.	4
XI.	<u>6</u>
TOTAL	100

THE MINIMUM OVERALL PASSING GRADE WILL BE 65. FOR PURPOSES OF OBTAINING PARTIAL CREDIT UNDER GENERAL COURT ORDER 1986-2 THE EVIDENCE QUESTIONS ARE VI-IX. THE ETHICS QUESTIONS ARE X-XI. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

I.  
(14 points)

Semis is a teacher in an elementary school. During the summer (student vacation) months all teachers are required to report for work and occupy themselves by preparing their classrooms and class lessons.

The small village in which Semis's school is located is also the residence of Semis, the school principal, and most of the teachers.

The fall semester is scheduled to begin on August 26. On August 5, Semis left the village to accompany his son to college in Hawaii. He did not tell his principal or request leave of absence. It was, however, general knowledge in the village that Semis was going to Hawaii and why, and that he intended to return before August 26, and the principal was aware of this.

On August 21, the principal notified the state Director of Education in writing that Semis had been absent from work without permission from him, or having spoken to him before he left. The Director then noted that Semis had abandoned his job.

When Semis came to work on August 26, the principal gave him the written statement that he had been terminated.

State law provides that "[i]f an employee is absent from work without explanation for two weeks, his immediate management official files with the Director a statement showing termination of employment by abandonment." State law does not provide for notice before termination when the reason is abandonment, nor does it provide for a hearing.

Semis likes to teach and wants to keep his job. Discuss what possible relief Semis may seek.

II.  
(13 points)

Congress enacted a statute making it a criminal offense to intentionally write a check knowing that there are 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 \$1,000.00, imprisonment for not more than two years, or both.

Horatio, a resident of Pohnpei, wrote a check for \$220 to the hotel he stayed at while visiting Kosrae. At the time he wrote the check there was only \$35.00 in the account. The check bounced.

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

If the case isn't dismissed, what other defenses might Horatio raise?

III.  
(11 points)

The state legislature decided that the state needed new revenue sources and passed a bill providing for an "Entertainment Tax." The governor signed it into law. One of its provisions levies an 8% tax on all subscription fees received by enterprises providing cable television services to the public.

Cable, Inc. provides cable television service to subscribers within the state. It has had a hard enough time making a profit and does not want to be burdened by another tax. Cable, Inc. comes to you, a local attorney, and seeks your advice and help.

What advice would you give? Include in your advice a description of any relief Cable, Inc. might seek and its likelihood of success.

IV.  
(20 points)

Kerso, a Chuukese citizen, and George a British citizen, were co-owners of Truk Trucking Co., business primarily engaged in hauling containers and heavy equipment around Chuuk. George also worked as Truk Trucking Co.'s general manager. In this capacity, George hired Phred, a Vietnamese citizen, to be Truk Trucking Co.'s electrician.

On April 15, 1994, Phred was working at Truk Trucking Co.'s central maintenance facility on Weno, Chuuk. Phred's leg was injured when some machinery fell on it. He was treated properly at Chuuk State Hospital, but thereafter walked with a limp.

Sometime later Phred decided he was entitled to compensation for his injury. He did not hire a lawyer, but drafted a complaint and summons himself. On April 10, 1996, he filed suit in the FSM Supreme Court in Chuuk for his injury. He named George as the only defendant. George was properly served with the complaint and summons on April 16, 1996. A return of service was filed to that effect. On April 18, 1996, George informed Phred that his services were no longer required.

- A. (3 points) No answer was ever filed. On May 1, 1996, George's lawyer filed a motion to dismiss. On what ground or grounds? And what result?
- B. (3 points) Assume that the case was dismissed. You are a lawyer. Phred comes to you for help on June 3, 1996. You agree to take the case. You file suit on June 14, 1996, and name both George and Truk Trucking Co. as defendants. What court or courts might you file suit in?
- C. (4 points) What cause or causes of action might you allege in the complaint? Against which defendant?
- D. (4 points) What defenses might the defendants raise? What outcome is likely?

Bernard, a citizen of Kosrae, was also employed by Truk Trucking Co. He was injured while at work on April 1, 1996. He decides to sue for compensation after hearing about Phred's suit. He files suit against Truk Trucking Co. for negligence.

- E. (3 points) Discovery revealed that Bernard's injury may have been partly his fault. Truk Trucking Co. then raised contributory negligence as an affirmative defense. Comment.
- F. (3 points) Bernard moved for summary judgment on his claim, but did not include any points and authorities with the motion. Comment.

V.  
(12 points)

The Hard Wreck Hotel Corporation executed a twenty-five year lease of shoreline property from Awassio. Awassio held a Certificate of Title to the property that the Hard Wreck Hotel Corporation leased. The Hard Wreck Hotel Corporation then constructed a small eco-tourist hotel, restaurant and dive shop operation on the property.

The Hard Wreck Hotel Corporation scheduled the grand opening of its hotel for Sunday, August 4, 1996. Its first customers, who have already paid for their accommodations and dives, are scheduled to arrive that day. The management and staff were all in place and working on July 28, 1996, making sure that everything would be ready for the scheduled opening.

On Friday, August 2, 1996, Sylvester filed suit claiming ownership of the land leased by Hard Wreck Hotel Corporation. Sylvester's suit seeks as relief that all future rental payments for the land be made only to him. Filed with the suit is a request for a TRO (temporary restraining order) that would bar the hotel from opening until the court ordered the payments made to Sylvester.

As soon as all the documents were filed the request for a TRO was brought to the judge in chambers. You are the judge. Do you grant the TRO under these circumstances? Why or why not?

Assume the TRO was granted. You represent Hard Wreck Hotel Corporation. Your client is served with the TRO late Friday afternoon. What steps do you take?

VI.  
(2 points)

In a contract case, the plaintiff calls Deacon Jones to testify as to certain facts at issue in the case. Preliminary to his testimony on these issues the plaintiff questions Deacon Jones concerning how long he has been a deacon of the church and how faithful he has been. The church is not a party to, or a beneficiary of the contract in question. The defendant objects. On what grounds? How should the judge rule?

VII.  
(4 points)

The plaintiff in a civil case with three defendants requests at the start of trial that the court order all the witnesses be excluded so that they cannot hear the testimony of the other witnesses. One of the witnesses on the plaintiff's witness list is one of the defendants. Another witness is a person designated by defense counsel as the trial representative of a defendant who is a corporation. A third witness is an expert called by the defense. Defense objects to the exclusion of these witnesses. How should the judge rule and why?

VIII.  
(4 points)

In a civil suit for battery the plaintiff, Kimoul, testified that the incident took place offshore at low tide next to his boat. Kimoul testified that on the day in question shortly after he left work and before it got dark (he estimates that it was about 5:20 p.m.) he waded out to his boat. When he got there he exchanged words with the defendant who was sitting in a small boat anchored next to his. According to Kimoul the defendant then started hitting Kimoul with a pole while Kimoul was still standing in the water. Kimoul testified that he is certain that it was low tide because he was able to wade out to his boat which was moored 50 yards (46 meters) offshore.

On cross-examination Kimoul repeated that he was certain that it was low tide because where his boat was moored the water is too deep for a person to walk at high tide. Defense counsel then offers in evidence a copy of Al's Calendar and Tidal Chart, which shows that on the day in question the highest tide of the day was at 5:30 p.m. Al, a science teacher at the island's high school, has produced Al's Calendar and Tidal Chart for the island every year for the last eight years. Each year the shipping businesses, the dive operators, the hotels, and fishermen of the island eagerly await Al's production of his calendars because they have found them useful. Practically everyone on the island who wants to know in advance when the tides (and the phases of the moon) occur uses Al's Calendar and Tidal Chart.

The plaintiff objects to the admission of Al's Calendar and Tidal Chart as evidence. You are defense counsel. What arguments do you make for its admission at that time, and how is the judge likely to rule?

IX.  
(10 points)

Dwayne and Erwin broke into a warehouse and stole several cases of beer. They were assisted by Falstaff, who drove and helped load the pickup truck which was used to carry the beer away.

A. (3 points) Some days after the burglary, Falstaff was apprehended when he tried to sell some of the beer. Falstaff, after being properly warned concerning his constitutional rights, nevertheless admitted his guilt to Octo, one of the arresting officers. Falstaff also stated that both Dwayne and Erwin had been involved with him. Dwayne denied his participation in the burglary. At the trial of Dwayne, Falstaff refused to testify. The prosecutor then called Octo to the stand to testify as to what Falstaff told him. Dwayne objects. How should the judge rule and why?

B. (3 points) As Dwayne, Erwin and Falstaff drove away from the warehouse after the burglary, Worthy, a security guard, ran from the building, and was struck in the head by a sharp rock thrown by one of the three. Worthy lived for several hours, during which time he told the physician that he saw the driver of the pickup (who was Falstaff) throw the rock. After investigation, the prosecutor tried Erwin for Worthy's death, and obtained a murder conviction. At the sentencing hearing, Erwin's counsel called the physician to testify about Worthy's statement. The prosecution objected. Should the judge allow the physician to testify, and why or why not?

C. (4 points) When Dwayne was arrested he consulted Portia, an attorney to whom he disclosed all of his actions since he had originally planned the burglary with Erwin and Falstaff, and admitted his guilt. Dwayne also gave Portia the names of two alibi witnesses, who he said would testify that he was on the other side of the island at the time that the burglary took place. Portia, with Dwayne's knowledge, recorded the conversation with Dwayne, and had it transcribed by her secretary. At Dwayne's trial Portia presented evidence on Dwayne's behalf, but did not call either of the alibi witnesses. Dwayne was convicted of burglary.

At a post-conviction hearing Dwayne testified that he was innocent and that he would not have been convicted if Portia had called his alibi witnesses. The prosecutor then called Portia to the stand to testify about Dwayne's statements to her. What objections might Dwayne raise to Portia's testimony? How should the judge rule and why?

X.  
(4 points)

FSM Marine Surveillance arrested the longliner, F/V *Pride of Walvis Bay*, in the FSM EEZ. The vessel had a current, valid foreign fishing permit posted in its wheelhouse. It was arrested for chasing and harpooning small whales. Its permit only allowed long line fishing for tuna and similar species. The *Pride of Walvis Bay* was owned by Peripatetic Pelagic Piscatorial Co. and was permitted in the FSM EEZ under a foreign fishing agreement signed by Ding Dong, Inc.

The FSM Attorney General filed a criminal information against Ding Dong, Inc., Peripatetic Pelagic Piscatorial Co., William Beagle, the vessel's captain, George Beagle, the first mate and alleged harpooner, and Hubert Beagle, the vessel's chief engineer. All five, as well as the F/V *Pride of Walvis Bay*, were also named as defendants in a civil suit brought by the government seeking forfeiture of the vessel and substantial monetary penalties from each of the other defendants. The criminal case and the civil suit were both based on the same allegations.

Attorney Rayleen represented all the defendants at their initial appearance on the criminal charges. She also entered an appearance as an attorney for all defendants in the civil case.

Discuss any ethical considerations that Rayleen should address.

XI.  
(6 points)

On January 2, 1991, attorney Bailey met Claude and Leo for the first time. They came to his office to request his assistance in drawing up a joint venture corporation in the FSM. Bailey assisted them in incorporating Point, Inc., a corporation to which Claude provided \$500,000.00 in operating capital and Leo provided 20 acres of land. Bailey drafted the Articles of Incorporation and Corporate Bylaws, and completed all the necessary paperwork to obtain the required corporate charter and necessary operating permits for Point, Inc. All of this legal work is completed by February 15, 1991. Point, Inc. paid Bailey's legal fees promptly on February 28, 1991. Bailey never again did any legal work for either Claude, Leo, or Point, Inc.

A. (3 points) On July 31, 1996, the Bank of Hawaii asks Bailey to represent it in an action against Point, Inc. to recover money damages. Can Bailey do so? Why or why not?

Also on July 31, 1996, the Bank of Hawaii asks Bailey to represent it in an action against Leo to obtain a money judgment. Can Bailey do so? Why or why not?

B. (3 points) Later the same day, Leo walks into Bailey's office. He asks Bailey to represent him in trying to collect on a promissory note executed in his favor on August 31, 1995, by Jack. This promissory note has no relationship whatsoever to Point, Inc. or its creation. Can Bailey represent Leo in this action? Why or why not?

Leo also asks Bailey to represent in a suit against Claude to collect on a promissory executed on January 2, 1991, that was a secret bonus to given by Claude to Leo as a further incentive to enter the joint venture, Point, Inc., all of which was unknown to Bailey at the time (Jan. 2, 1991). Can Bailey represent Leo in this action? Why or why not?