

**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 5, 2004

ADMINISTERED IN CHUUK, KOSRAE, POHNPEI, AND YAP

**SUPREME COURT OF THE
FEDERATED STATES OF MICRONESIA**

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NOTE

YOU ARE 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 STARTING 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. | 17 |
| II. | 3 |
| III. | 5 |
| IV. | 5 |
| V. | 17 |
| VI. | 15 |
| VII. | 4 |
| VIII. | 14 |
| IX. | <u>20</u> |
| TOTAL | 100 |

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

I.
(17 points)

Pictor brought an action in the FSM Supreme Court against Dorado arising out of an automobile accident that occurred between vehicles operated by each of them at an intersection.

Pictor's lawyer called Dorado to the witness stand and asked the following questions to which Dorado's lawyer objected:

A. (3 points) Are you the same Dorado who was convicted of armed robbery last year, as shown by this certified copy of a criminal judgment that I am handing you?

B. (4 points) You had seven beers in the two hours before the accident, didn't you?

C. (3 points) Did you in any way indicate to your wife that evening at home after the accident that it was your fault?

Pictor's lawyer then called Pictor to the witness stand and asked the following questions, to which Dorado's lawyer objected:

D. (4 points) Please tell us the conversation between Dorado and the investigating police officer, which you overheard in the hospital the day after the accident as Dorado was being wheeled into the operating room.

E. (3 points) What did you say to the ambulance attendant who picked you up off the ground immediately after you regained consciousness following the accident? (Pictor's lawyer makes a proffer that if allowed to answer Pictor would state the he told the ambulance attendant, "All I could see was the other car going 50 miles an hour, so fast it was just a blur.")

How should the court rule on each objection?

II.
(3 points)

Laurel was a fisherman who often sold his fish to Hardy's Seaside Market and Gas Station. He usually ties his boat up at the landing next to the market. There is a set of concrete steps leading from the landing up to Hardy's Seaside Market. One day as Laurel was returning to his boat he tripped on the concrete steps and was injured.

Laurel sued Hardy for damages. He alleged that Hardy was negligent in failing to keep the steps in good repair and that that was the cause of his injuries. Hardy denies that the steps are on his property.

At trial, Laurel offers evidence that Hardy's employees were out repairing the steps two days after Laurel tripped on them. Hardy objects. How should the judge rule and why?

III.
(5 points)

In November, 1993, the state land commission issued a determination of ownership that Attorney Lear was the sole owner of a parcel of land called Wiseacre. On May 21, 1996, Lear transferred ownership of Wiseacre by deed to himself and his children. The deed further provided that for any ownership interest in Wiseacre to be sold or transferred the signatures of both Lear and his oldest daughter were required. The deed was filed in state court. Land Commission was not notified. In February, 1997, the land commission issued a certificate of title for Wiseacre showing Lear to be the sole owner in fee simple of Wiseacre.

On April 24, 1997, Lear asked that the land commission reissue the certificate of title for Wiseacre because his copy had been accidentally burned in a fire. The land commission reissued the certificate on May 13, 1997.

In February, 1999, Lear again submitted an affidavit to the land commission that his certificate of title had been lost or destroyed and asked that it be reissued again. On February 5, 1999, Lear submitted a loan application to the Bank of the Caroline Islands and listed Wiseacre as one of his assets and he submitted an affidavit to that effect. On March 24, 1999, as part of the loan documentation, Lear executed a warranty deed in the bank's favor when he obtained the loan. The deed made no mention of other owners and contained only Lear's signature. Lear eventually defaulted on the loan, was sued, judgment was entered against him, and as part of a judicial sale, the bank deeded Wiseacre to Minerva.

Only during the post-judgment proceedings did Lear's children challenge the validity of the bank's mortgage. They asserted that since Lear gave them Wiseacre by deed, Lear retained only a fractional interest and could not convey any interest in Wiseacre to the bank without his oldest daughter's signature. The children requested, and the land commission issued, a new certificate of title showing them as the owners of Wiseacre. The land commission also issued a certificate of title to Minerva for Wiseacre. Litigation continues over who has better title to Wiseacre.

Disciplinary complaints have been filed against Lear. You are the disciplinary counsel assigned to investigate and recommend whether Lear should be subjected to disciplinary action for the events surrounding Wiseacre. What do you recommend and why?

**IV.
(5 points)**

Attorney Faust, a resident of the FSM, represented the Bank of the Caroline Islands in a number of collection cases, and he maintained a local post office box as his address of record with the court. In April, 2002, Faust opened an office on Guam. On June 14, 2002, he filed and served three new cases in the FSM Supreme Court on the bank's behalf. No further activity took place with respect to these three cases. On August 26, 2002, Faust moved to Guam. Shortly thereafter, the FSM post office closed his box for nonpayment of rent. Faust discontinued his visits to the FSM.

On April 4, 2003, the court mailed notices to Faust that the cases filed on June 14, 2002 were subject to possible dismissal for want of prosecution to his address of record. The FSM post office returned the notices as undeliverable. Counsel for the bank in other matters became aware of the impending dismissals and moved to substitute himself as counsel and for an enlargement of time to prosecute the actions.

Comment.

V.
(17 points)

Charon, a computer engineer, was employed by the Hadean Computer Company for several years. Previously, she had been employed by the Styx Computer Company. At both companies, she executed a standard contract requiring her to yield to the respective companies all rights in any software invention or innovation which she might achieve during her employment.

Within a year after she left Hadean's employ, she developed and marketed a software package for finance department management that was very successful. Both Hadean and Styx believed that Charon had developed the essential features and structure of the software during her employment at their companies. Hadean has commenced an action in the FSM Supreme Court for relief against Charon.

A. (4 points) Charon carries business liability insurance which she believes covers Hadean's claim. The insurance company interprets the policy differently and refuses coverage. By what procedure can Charon assert her claim for coverage?

B. (4 points) By what procedure can Styx assert its claim against Charon in the existing lawsuit?

C. (5 points) By letter delivered one month before it filed its complaint, Hadean has begun to withhold deferred salary payments it still owed to Charon under her employment contract. What action should Charon take?

D. (4 points) In the course of pretrial discovery, Charon found a memo in Hadean's files that excuses her from any and all liability. How may Charon assert this claim?

VI.
(15 points)

A witness to a theft named Alaric as a participant. The police asked Alaric to come to the police station. Upon his arrival a detective informed Alaric 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."

After that, the detective asked, "Do you understand this?" Alaric said, "Yes." The detective then asked, "Are you willing to answer my questions?" Alaric said, "Oh, okay." The detective next took Alaric's statement in which Alaric implicated himself in the theft.

Alaric is now accused by information of theft. You represent him. You move to suppress Alaric's statement based on these facts alone. Discuss the arguments available to you and the government, what you expect the court's ruling to be, and the reasoning which supports it.

**VII.
(4 points)**

Horatio had a paid-up life insurance policy that provided that his "heirs" would be the policy beneficiaries in the event of his death. Horatio has recently died and his wife at the time of his death has filed a claim with the insurance company for the policy's benefits. Horatio's two children by a previous marriage have also filed a claim. Both the wife and the children claim they are the "heirs" in the insurance policy and both have asked to be paid all the policy's benefits.

The insurance company has asked you for advice in protecting its interests. What steps do you recommend?

VIII.
(14 points)

In May, Roxanne, eager to start law school in the fall, offers to buy John's law school textbooks for \$450. John tells Roxanne the books will not be available until July at the earliest. Overhearing the negotiations, Clyde reminds John that he still owes Clyde \$450 for bar review materials. John then tells Roxanne she can have the books in July if she promises to pay Clyde the \$450 when she picks them up. Roxanne agrees.

A. (7 points) Assume that Roxanne and John have entered into an enforceable contract. What is Clyde's status under the contract? Explain.

Immediately after the conversation described above, Clyde buys a television and a VCR on credit, planning to use the money from Roxanne for his final payment. A month later, Roxanne decides to go to medical school instead of law school. When Clyde asks Roxanne for the \$450, she tells him to go see John because she no longer has any need for the books.

B. (4 points) What are Clyde's rights against Roxanne?

C. (3 points) What are Clyde's rights against John?

**IX.
(20 points)**

Joe and Bill spent the day drinking together at a local bar. Suddenly, Bill screamed that he was going to kill Joe and lunged over the table to attack him. Joe was frightened because he knew that Bill was a martial arts expert. Joe ran out of the bar and got into his car.

Joe sped down the road. As he approached the first intersection, Joe looked over his shoulder and saw Bill in hot pursuit.

Tina was driving down the side road that intersected with the road that Joe and Bill were on. She did not stop at the intersection although there was a stop sign for vehicles approaching the intersection from the side road she was on. Tina's car ran into the car Joe was driving. At the time of the collision, Joe was still looking over his shoulder and never saw Tina coming. There is a statute requiring drivers to come to a full stop at stop signs before proceeding.

Joe and Tina exchanged information, and then went their separate ways. A week later, Tina called Joe's employer and told the employer that the accident occurred because "Joe was on drugs, as usual." Joe's employer, concerned because Joe frequently drove a company car, fired Joe.

Discuss potential claims and defenses in the following civil actions:

- A. (12 points) Joe versus Tina;
- B. (5 points) Joe versus Bill; and
- C. (3 points) Tina versus Bill.