

**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 7, 2019

ADMINISTERED IN CHUUK, KOSRAE, AND POHNPEI

**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 BEGIN WRITING, READ THE QUESTION CAREFULLY SO THAT YOU UNDERSTAND EXACTLY WHAT IS BEING ASKED. NEXT, CONSIDER YOUR ANSWER'S ORGANIZATION.

ANSWERING QUESTIONS NOT ACTUALLY ASKED INDICATES 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.	20
III.	3
IV.	12
V.	12
VI.	12
VII.	6
VIII.	10
IX.	9
X.	6
TOTAL	100

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 QUESTION IS II. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

GOOD LUCK.

Ethics

I.
(10 points)

Gisele Jay, 26, was just admitted to the FSM bar. She and Thomas Bey, 32, an attorney who has had a solo private practice in the FSM for the last three years, formed a partnership to practice law. Not long after, Sam Day came into Jay's office in order to retain her to defend him against a charge of attempted murder of Ms. Fitt. From media reports, Jay knew that Day's friend, Ms. Fitt, had been injured by a complex electronic device that emitted an electromagnetic wave that apparently interfered with her heart pacemaker.

Intrigued by the case, Jay agreed to represent Day on two conditions: (1) Day would pay her \$2,000 at the start of the case and an additional \$1,500 if Day received a defense verdict; and (2) Day would assign her the rights to author a book about the true facts of the case once the case was over. (She thought that a publisher she had worked for while attending law school in the United States would be interested in such a book.)

Day readily agreed to these conditions and immediately paid her \$2,000 in cash. Shortly after Day left, Bey came into her office. She explained the charges against Day. When Jay finished, Bey said, "That's very interesting. When I was in solo practice I represented Ms. Fitt in a malpractice action because she was having problems with her pacemaker. Eventually, I had to refer her to an attorney in Hawaii. That was where her pacemaker operation took place. Don't know what happened after that." Bey then offered to let Jay review his complete file on that matter.

Discuss whether the attorneys' actions were proper under the FSM Model Rules of Professional Conduct.

Evidence

II. **(20 points)**

A Japanese business enterprise, Island Golf, Inc., finally succeeded in developing and opening a resort on Pohnpei. It included a nine-hole golf course. One day last June, Rex picked up a Quantum, a Yapese businessman, in one of Island Golf's golf carts to drive him to the practice tee. Rex accelerated and the golf cart went out of control and turned over. Quantum suffered broken ribs, a broken leg, and other injuries.

Two days later, Rex was interviewed by the resort's insurance investigator, who tape-recorded the interview. In his statement, Rex admitted that he was driving too fast, but claimed that the golf cart's brakes failed when he tried to stop the cart. The next day, Island Golf fired Rex for causing the accident. In August, Quantum sued Island Golf, alleging that he was injured due to its employee's negligence.

For each item of evidence below, identify what, if any, objection should be made and indicate how the court should rule.

A. (3 points) At the trial in the FSM Supreme Court, Quantum called as a witness, Andrea, who had lived with Rex, from 2014 through 2017. Andrea was prepared to testify that Rex was a "drug user" and that he "acted like a wild man."

B. (2 points) Quantum called Biff, who offered to testify that he had twice before ridden in a golf cart with Rex, and Rex was a "careless" driver, and that he didn't pay attention to where he was going.

C. (3 points) Quantum called Carla, the typist, as a witness, who testified that she transcribed the tape given her by the insurance investigator. Quantum then offered in evidence the authenticated transcript of Rex's interview by Island Golf's insurance investigator.

Evidence

II. (cont.)

D. (2 points) After establishing its authenticity, Quantum offered in evidence a letter written by Danny, Island Golf's lawyer, offering to pay Quantum's medical bills plus another \$2,000, if Quantum would agree not to sue Island Golf or Rex.

E. (2 points) Island Golf called the club bartender, Edgar, and offered to have him testify that he saw Quantum drunk at the club three times during the month of June, last year, and as recently as three days before the accident.

F. (3 points) Island Golf also called Fred, who testified that he had received his degree from the College of Micronesia-FSM in 2005 and that he knew a lot of people on Yap and they all said that Quantum "was a liar."

G. (2 points) During Quantum's cross-examination of Glen, the Island Golf manager, Glen was asked, and was about to testify, that Island Golf had fired Rex three days after the incident because he had been careless.

H. (3 points) During rebuttal, Quantum called Helen, a custodian of records from the College of Micronesia-FSM, and through her offered in evidence, the College of Micronesia-FSM graduating list for 2005, on which Fred's name did not appear. She also testified that she had searched through the records for the ten years before and the ten years after 2005, and could find no record that Fred had ever attended the College of Micronesia-FSM.

General

III.
(3 points)

Assume that in the question above (# 2), that after Quantum has filed suit against Island Golf, Island Golf's insurance investigator learns that the golf cart's brakes had been defective and that Better Than The Rest, Inc., the company on Pohnpei that Island Golf had bought its golf carts from, had tried to, but had failed to, properly repair the golf cart's brakes before it sold the golf cart to Island Golf, Inc.

You are Island Golf's attorney. What mechanism do you use to make sure that the court will consider and rule on whether Better Than The Rest, Inc. bears some or all of the liability for the accident.

General

IV. (12 points)

On February 14, 2019, the FSM Congress enacted a bill that, among other things, raised the customs duty on imported vehicles with a steering wheel on the right-hand side from 4% ad valorem to 75% ad valorem, and made the 75% duty retroactive to January 1, 2019. On February 28, 2019, the President signed the bill into law.

Acme Auto, an FSM corporation, imported 20 brand-new, right-hand drive automobiles on January 15, 2019, and 10 more on February, 22, 2019, and has already paid the 4% duty on both shipments. Acme Auto has removed the vehicles to its business premises, and it has already sold two of the vehicles.

On March 4, 2019, Acme Auto filed suit in the FSM Supreme Court to enjoin enforcement of the retroactive portion of the law and for a declaratory judgment. Acme Auto contends that the new statute's retroactive provision is an unconstitutional ex post facto law and that it also violates Acme Auto's constitutional right to substantive due process.

A hearing, with notice, is held on the morning of March 7, 2019, on Acme Auto's motion for a temporary restraining order or, in the alternative, for a preliminary injunction. The FSM attorney general appears and opposes the motion.

You are the judge at the hearing. Do you grant Acme Auto any injunctive relief? Analyze the reasons for and against.

General

V.
(12 points)

Clyde, who was wearing a blue face-mask and a black cape which covered his entire body, pointed a double-barreled shotgun at a bank teller and then demanded and escaped with a lot of cash. A week later, Clyde's girlfriend, Bonnie, registered in a hotel for a two-day Valentine's weekend special for locals and provided her credit card for payment. Bonnie did not check out on Monday and the manager didn't receive any response to his telephone calls on the next three days. During that time, Bonnie's room had a "do not disturb" sign on the door.

On Friday morning, the hotel manager processed Bonnie's credit card, charging her for six days of occupancy. He then gave police officers a pass key to her room. The officers knocked, heard no response, and then used the key to enter. They found Bonnie and Clyde in the room. The police searched the room and found a blue face-mask, a paper bag full of money, and a double-barreled shotgun under a pile of Bonnie's clothing in the chest drawers. They arrested Clyde and Bonnie. Clyde and Bonnie both obtained pretrial release. Clyde disappeared off-island.

Bonnie was charged with bank robbery. At her trial, Bonnie, who had one prior conviction for petty theft, did not testify. An arresting officer testified about the search and produced the gun, the mask, and the cash in evidence. He testified that he had questioned Clyde in the hotel room in Bonnie's presence, and that, when Clyde denied knowing anything about the gun or mask, Bonnie had said nothing. Bonnie's counsel vigorously cross-examined the officer and argued to the court that there was reasonable doubt of Bonnie's guilt. He did not present pretrial or trial motions or object to evidence at trial.

After sentencing, Bonnie hired new counsel who filed a motion for a new trial. The motion was denied. On Bonnie's appeal from the motion's denial, what issues should be raised on her behalf and how should the court rule on them?

General

VI.
(12 points)

Teri was anxious to develop her skills as a gourmet cook. She decided to remodel her kitchen. She saw an advertisement for "The Real McCoy Builders, Inc." She set up a meeting with the business and Dufus McCoy and Carl Hatfield came out to her home to discuss the project. During their conversation, Dufus stated that he had run the business alone for many years but was excited that Carl had just finished his Structural Design degree, returned to the island, and was now going into partnership with him. Carl mentioned that he now had his own design business called Hot Designs. Teri became confused and asked, "Who am I hiring to do the work? Real McCoy Builders, Inc.? or Hot Designs?" Dufus replied, "We'll both be doing the work, but you'll only get one bill from Real McCoy Builders, Inc. Carl and I will adjust the money between us later." Teri was satisfied.

The next day, they memorialized their agreement in writing. Teri, Dufus, and Carl all signed the contract with Dufus and Carl signing under a space labeled, "Real McCoy Builders, Inc."

Two weeks into the project, Teri's home burned down. Investigators determined that on the day of the fire, Dufus, who had been soldering pipes, had left for lunch, and forgot to turn off his blow torch. The torch eventually set fire to the kitchen. Carl had not been on the job that day, because he had gone to see his lawyer about a sizeable inheritance he had just received.

After the fire, Teri learned the following: (1) neither Real McCoy Builders, Inc. nor Hot Designs had liability insurance or substantial assets; (2) Hot Designs was a sole proprietorship owned by Carl; (3) Carl was being paid by Real McCoy Builders, Inc. on an hourly rate, and Hot Designs was to have received a 20% share of the profits from Real McCoy Builders, Inc.; and (4) there was no written agreement between Hot Designs and Real McCoy Builders, Inc.

General

VI.
(cont.)

A. (5 points) What legal theory or theories can Teri use to establish the partnership's liability to her?

Teri has come to you to determine if she can recover her losses out of Carl's new found wealth.

B. (4 points) Discuss Carl's liability for Teri's losses under partnership law. Assume there is no negligent conduct by Carl and that Carl does not own any interest in Real McCoy Builders, Inc. (And do not discuss any apparent or estoppel theories of liability).

C. (3 points) Assume that Carl was, in addition to being the owner of Hot Designs, also the manager and principal shareholder of Real McCoy Builders, Inc. What additional theory of law (for which you might seek additional factual support) might you pursue?

General

VII.
(6 points)

Discuss the constitutionality under the FSM Constitution of the following:

A. (3 points) A state law provision that in order to qualify under the local preference for state government procurement contracts, the contractor not only has to be a citizen of the state but also has to be a "pure" or "true" citizen of the state.

B. (3 points) A state law instituting an "inventory tax" that is levied annually on all merchants within the state on all inventory they have in stock on February 1st of each year. The tax was 2% of all goods in inventory, assessed on their wholesale or purchase or invoice price, including the cost of shipping the goods to the state.

General

VIII. (10 points)

In the following cases, the defendants, completing all the proper procedural steps to effect removal, removed the case to the FSM Supreme Court trial division from the state 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 first been filed because the case had been improvidently removed – that is, the case should not have been removed because the FSM Supreme Court did 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 originally filed in Pohnpei Supreme Court in which Ioanis, a citizen of Pohnpei, sued Sadaleur Co. on a breach of contract claim. Sadaleur Co. is a closely-held corporation that has only three shareholders, one is a Pohnpei citizen, the second is a citizen of Chuuk, and the third is a United States citizen resident on Guam. Sadaleur Co. was incorporated under Pohnpei state law and its only place of business is on Pohnpei.

B. (3 points) A case originally filed in Yap State Court in which the plaintiffs, who were seamen on the state's field trip ship, sued the state government for hazardous duty differential pay that they believe should have been included in their seamen's wages crewing the field trip ship during a typhoon.

C. (4 points) A case originally filed in Kosrae State Court, in which P, a Kosrae citizen, sued D, a Kosrae citizen, for trespass, alleging that D's company, C, was trespassing on her land. D claims that his defense will be based, in part, on national law, and that because "his company" was really a partnership with J, a foreign citizen, the FSM Supreme Court must add either J or the partnership as an indispensable party, establishing diversity.

General

IX. (9 points)

In April 2018, Elvis went to Dylan's retail store to look at a cement mixer. The parties discussed the Elvis's interest in the mixer. The cement mixer was about one year old. Dylan had bought it new for about \$4,000. It was used briefly, and then remained idle for almost a year. Dylan demonstrated the cement mixer's operation to Elvis. The cement mixer operated well, except that one of the tires was low. The next day, the Elvis went back to Dylan's place and, without Dylan's knowledge, removed the cement mixer.

Dylan later met Elvis at the airport and asked Elvis if he intended to buy the mixer and told him that the price for the cement mixer was \$3,000. Elvis promised that he would pay for the mixer, and continued using the cement mixer in his construction business. At that time, Elvis had construction contracts for five buildings. Elvis used the cement mixer in at least three of those projects. Elvis made some repairs and adjustments to the cement mixer, but did not report any problems to Dylan. Elvis still has the cement mixer.

Dylan approached Elvis several times to request payment for the cement mixer. Dylan also approached Elvis about four checks, which had been returned by the bank unpaid and which Elvis had written to Dylan's store for other purchases. The total amount of the returned checks, with bank penalty fees, was \$265.58.

Dylan sues Elvis for \$3,265.58 plus an award of attorney fees and costs. Elvis testified that he thought that Dylan gave him the cement mixer, free, as a gift. Elvis valued the cement mixer at \$500. Elvis stated that a similar cement mixer could be purchased new from Real Value Hardware in Pohnpei for about \$3,000, or from Guam for \$1,600, plus freight.

Analyze.

General

X
(6 points)

A contract case was tried in the FSM Supreme Court. The plaintiff alleged the existence of an oral contract. The trial judge found that certain words were spoken and certain acts performed that taken together constituted the formation of a legally enforceable contract and entered judgment against the defendant.

The defendant appealed. He contends:

(1) that there was insufficient evidence to prove beyond a reasonable doubt that those words were spoken and these acts had occurred;

(2) that even if they did, those words and acts were insufficient to form a legally-binding contract; and

(3) that, if there was a contract, the trial court interpreted it incorrectly.

What standards of review will the appellate court apply to the defendant's three assignments of error?