

**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 4, 2022

ADMINISTERED IN CHUUK 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 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.	10
ii.	10
iii.	7
iv.	3
v.	14
vi.	10
vii.	9
viii.	7
ix.	11
x.	13
xi.	6
TOTAL	100

65 IS THE MINIMUM OVERALL PASSING GRADE. TO OBTAIN PARTIAL CREDIT UNDER GENERAL COURT ORDER 1986-2, THE ETHICS QUESTION IS I, AND THE EVIDENCE QUESTIONS ARE II, III, & IV. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY. GOOD LUCK.

Ethics

I. **(10 points)**

A. (6 points) Willard and Scott are partners in a four-member law firm by that name. Willard represents a client, John Mild, in a divorce action. On Friday, Mr. Mild comes to the office asking to see Willard. The staff informs Mr. Mild that Willard is out of the office. Mr. Mild then asks to discuss his file with Scott to determine the course of the litigation. Scott takes the file and reviews it, finding that Mrs. Mild has asked that she be awarded the parties' new BMW automobile. Upon being informed of this request in the file, Mr. Mild becomes extremely agitated and runs out of the office stating, "If she tries to take that car, she'll be dead before the weekend is over!" After Mr. Mild's departure, the firm receives a phone call from Mrs. Mild's attorney regarding the case. Because Willard is out, the call is referred to Scott.

Discuss Scott's ethical obligations.

B. (4 points) Trey and Whelm are neighbors. Trey is an attorney in private practice, and Whelm is a businessman. Slick, a criminal defendant, retained Trey to represent in a case wherein Slick is charged with theft in connection with certain financial transactions. Slick has done some investigating and has learned that Trey's neighbor, Whelm, is a fishing buddy of the judge before whom Slick's case will be tried. Upon learning this, Slick approaches Trey and asks Trey to discuss with his neighbor, Whelm, all of Slick's positive characteristics and his work with charitable organizations that support widows and orphans in the state. Trey is also aware that the judge and his neighbor, Whelm, are regular fishing buddies.

Discuss Trey's response to Slick's suggestion.

Evidence

II. **(10 points)**

Boston is being criminally prosecuted for arson after the "Coconut Grove Café" burned to the ground. Augusta, Boston's ex-wife, owned the Coconut Grove Café. Boston testifies in his own defense that he was just trying to clean the café.

The following events occur during Boston's trial. In each instance, under the FSM Rules of Evidence discuss:

- (1) the objection(s) that could be plausibly raised; and
- (2) how the court should rule on admissibility and why.

A. (3 points) Hartford, a cook at the Coconut Grove, testifies that before the café burst into flames, Montpelier ran into the kitchen shouting, "Boston is spilling gasoline all over the lobby and will kill us all!" Montpelier cannot be located by either party.

B. (4 points) The defense called, Mr. Concord, a high school math teacher. He testified that based on his careful pretrial review of the standard scientific treatises, as well as his own experimentation, it is his expert opinion that although the use of gasoline as a cleaning fluid cannot be recommended, its use for that purpose in normal circumstances is reasonably safe and effective.

C. (3 points) The prosecution offers Augusta's testimony. She testifies that during her marriage to Boston he frequently used "ice" and other drugs but had tried to conceal his drug use from her.

Evidence

III. (7 points)

Pandanus sues Detor for injuries he sustained when he fell on the floor in Detor's new, modern movie theater. Pandanus claims that he fell because he slipped on some liquid on the floor that he could not see due to the theater's poor lighting. Detor admits that Pandanus fell in his theater but denies that the lighting was poor or that there was any liquid on the floor when Pandanus fell. Detor claims that Pandanus fell because he was intoxicated.

A. (3 points) As part of his case in chief, Pandanus submits a copy of the hospital record made by the attending physician in the emergency room where Pandanus was treated. It reads: "Fracture of hip; apparently sustained in fall when Pandanus slipped on liquid on floor of Detor's theater." You are Detor's counsel.

Do you object to this evidence? On what grounds? Will the court sustain your objection?

B. (4 points) In his defense, Detor calls Walter, a neighbor of Pandanus, to the witness stand. Walter testifies that on the day of the fall, Pandanus had been drinking; that Pandanus drinks every day; and that Pandanus was a well-known drunk. Pandanus's attorney objects.

What parts, if any, of Walter's testimony are admissible, and under what circumstances?

Evidence

IV. (3 points)

Bismuth was charged with the robbery of, and assault and battery of, Radon and assault and battery of Astatine. The government alleged in the charging information that Bismuth punched Radon and grabbed his briefcase and that while fleeing the scene knocked Astatine to the ground. Astatine suffered a broken arm and other injuries.

As a result of a plea agreement, Bismuth entered a no contest plea on the assault and battery charges. The robbery charge was dropped.

Astatine sues Bismuth for damages for battery. At trial, Astatine calls Bismuth as a witness during her case in chief. Astatine then asks Bismuth if he had been convicted of assaulting Astatine and Radon.

Defense counsel objects. Why? What result is likely?

V.
(14 points)

Detective Tram received a phone call from an informant who had given him reliable information on several prior occasions. The informant truthfully told Tram that "Don is planning to sell stolen global positioning system (GPS) units to Vic and will probably deliver the GPS units to Vic within the next ten days. Don usually rents a room at the Palms Hotel to use when he makes his sales." Tram immediately prepared an affidavit detailing the informant's past reliability and reciting the quoted statement of the informant. Based on the affidavit, a judge issued a warrant authorizing a search for GPS units in any Palms Hotel room rented by Don within the ten days following the affidavit's date.

A week later, Tram learned from the hotel manager that Don had rented a room at the Palms Hotel. Armed with the warrant, Tram went to the hotel intending to search the room in Don's absence. However, as Tram listened at the door to determine if the room was occupied, he overheard Don offering to sell GPS units to Vic. He then heard the two men arguing, the sounds of a struggle, a crash, and silence.

Tram then kicked the door, and announced, "police with a search warrant – open the door!!" and entered when Don opened the door. Seeing Vic unconscious on the floor, Tram drew his gun and asked Don what he had done. Don replied: "I pushed him and he hit his head on the table." Tram called an ambulance, but Vic died before it arrived.

Don was charged with murder and with offering to sell stolen property, both of which are felonies. Don moved to exclude Tram's testimony regarding his observations in the hotel room, all evidence found in the hotel room, and the statement made by Don to Tram, on the ground that the evidence had been obtained in violation of Don's rights under sections five and seven of the FSM Constitution's Declaration of Rights (article IV). The trial court denied the motion.

Was the trial court correct in denying the motion? Discuss.

General

VI. (10 points)

You are counsel for Hospitality, Inc., a Pohnpei corporation. Your client has had difficulty in computing one of its payables, since two separate vendors claim that Hospitality owes each of them for the same goods purchased by Hospitality.

You start an interpleader action in the FSM Supreme Court, naming both vendors as defendants. You have your secretary mark on the summonses that the answer is due within 10 days after service, and you have both the summons and complaint served on the two vendors.

Both defendants respond within 10 days. They both file motions to dismiss, claiming that the goods sold to Hospitality were not the same goods and thus interpleader is not proper.

The court denies both motions and orders that answers be filed within 10 days. The answers are filed. Both include responses to the various paragraphs of Hospitality's complaint and generally allege various affirmative defenses for fraud, mistake, and estoppel.

Before trial, one of the vendors dies. The trial proceeds and the trial court renders judgment in favor of the still-living vendor. On the 20th day after the entry of judgment, the deceased vendor's heirs file a motion claiming that they had just found records establishing that the deceased vendor had actually shipped the goods to Hospitality, and thus should be entitled to a new trial.

Discuss the foregoing under the FSM Rules of Civil Procedure.

General

VII. **(9 points)**

Discuss the constitutionality under the FSM Constitution of the following:

- A. (3 points) a state tax of 10% on the sale of all betelnut not grown within the state (the general state sales tax on retail sales of other items, including betelnut grown within the state, is 5%).
- B. (3 points) A municipal ordinance imposing an annual \$10 tax on each resident of the municipality over the age of 18.
- C. (3 points) A state statute banning anyone other than a state citizen from fishing within fifty (50) miles of a certain named atoll within that state without permission of the state legislature.

General

VIII. (7 points)

Tony and Julio orally agreed that Tony would buy a used van from Julio; that the purchase price would be \$2,500; and that Tony would pay \$1,000 down and the rest in instalments. No agreement was made as to the amount and timing of the installments.

Tony paid the \$1,000 and took the van home. He replaced the tires (cost \$54) and the fuel pump (cost \$231), but made no more payments. After four months, Julio repossessed the van and sold it to someone else.

Tony files suit for \$3,000 in damages for breach of contract.

You are the judge. How do you decide this suit and why? Calculate any damages awarded.

General

IX. (11 points)

You are a justice of the FSM Supreme Court sitting in the trial division preparing for the sentencing hearing of Arsenic, a former FSM public official who has pled no contest to embezzlement charges.

Arsenic files a motion seeking your recusal from the case. The motion is accompanied by an affidavit which includes the following sworn statement: "During the sentencing hearing in FSM v. Mercury, where the defendant had also been convicted of embezzlement, the judge presently presiding over this case said, 'Public corruption is a major threat to the Federated States of Micronesia and anyone who embezzles from public funds must receive the maximum sentence.'"

Arsenic's motion relies upon the Judiciary Act of 1979 subsections 124(1) and (2)(a) which read:

§ 124. *Disqualification of Supreme Court Justice.*

(1) A Supreme Court justice shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(2) He shall also disqualify himself in the following circumstances:

(a) where he has a personal bias or prejudice concerning a party or his counsel, or personal knowledge of disputed evidentiary facts concerning the proceeding;

You recall the Mercury case but don't remember making that statement. You listen to Mercury sentencing recording. Your actual statement was, "A judge should not be sympathetic simply because only money was taken. A judge should consider embezzlement a serious threat to the government's proper functioning and well-being and should start the sentencing hearing with the presumption that the maximum sentence authorized by statute could be imposed."

Arsenic's motion also contends that, as a matter of due process,

General

IX. **(continued)**

you must ask another judge to rule on the recusal motion because you will obviously be biased against the motion.

A. (3 points) Must you transfer this motion to another judge? Why or why not?

B. (8 points) Should the motion to recuse be granted? Why or why not?

General

X. (13 points)

While trying to dock her motorboat in a slip alongside Peter's boat, which was properly docked, Dot maneuvered her boat into such a position that she knew there was a risk of bumping Peter's boat and damaging it. Peter was in his boat, but Dot did not see him. Dot asked Theo, a stranger who was standing on the dock, to help her by directing her maneuvers from his superior vantage point. Theo said no, and walked on. Dot nevertheless proceeded to dock her boat without assistance and bumped into Peter's boat. Peter fell into the water when Dot hit his boat. Peter was knocked unconscious as he fell and nearly drowned before he was pulled from the water. He was hospitalized for a couple of weeks as a result of his injuries.

Peter had been instructed in boating classes that he had attended, "For your own safety, ALWAYS wear your life jacket when you are in your boat." If Peter had been wearing a life jacket, he would not have been as severely injured.

What issues should be raised in an appropriate action by Peter against Dot and Theo, and what affirmative defenses might Dot and Theo reasonably raise? (Assume that neither admiralty nor maritime law applies.)

General

XI. (6 points)

In each of the following cases, the defendants removed the case from the state court in which it was 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. How should the FSM Supreme Court rule on each motion to remand and why?

A. (3 points) An action originally filed in the Pohnpei Supreme Court, in which the plaintiff, a company jointly owned by a Philippine citizen and a Pohnpei citizen and incorporated under Pohnpei state law with its place of business on Pohnpei, sued the defendant, a Chuukese citizen, for breach of contract.

B. (3 points) An action originally filed in the Yap State Court, in which a foreign citizen seaman (Kiribati citizen) sued a foreign-registered (Panama-flagged) vessel and its foreign (Denmark) corporation owner for back wages and “cure and maintenance” (medical bills and support) incurred when the vessel left him on Yap (at least until its next voyage there) because he had become ill.