

**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 2, 2023**

**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 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	20
III	15
IV	12
V	9
VI	12
VII	9
VIII	13
TOTAL	100

THE MINIMUM OVERALL PASSING GRADE IS 65. FOR 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.



I.  
(10 points)

Tom has been a solo practitioner ever since he passed the FSM bar exam in 1996. His practice is mostly civil litigation involving personal injury, civil rights claims, contract disputes, or land disputes. Tom sometimes takes a divorce case if he already knows the client.

Tom agreed to represent one of his friends, Kate Shepard, in a divorce. She believes that her husband, Dr. Shepard is cheating on her with one of his young office assistants. Since Dr. Shepard is well-paid, Kate has not worked in years and has no access to funds other than her husband's. She cannot pay Tom's standard retainer for divorce cases. She tells Tom that she'll gladly pay Tom a percentage of anything she recovers in alimony or property settlement from Dr. Shepard once they're divorced. Since it is well-known that Dr. Shepard has very substantial assets, Tom agrees to this fee arrangement, and since he and Kate are friends, he does not bother to put the agreement in writing.

Tom files Kate's divorce complaint against Dr. Shepard. Shortly thereafter, Kate informs Tom that she believes that there are pictures on the internet of Dr. Shepard with his "sweet young thing" on her Facebook page and asks how they can get them. Tom's secretary, who is about the same age as Dr. Shepard's girlfriend, knows that the girlfriend lives on social media and posts practically everything on her Facebook page. Tom's secretary, with Tom's reluctant approval, set up a phony Facebook account using a mutual friend's identity and sends the girlfriend a friend request, which the girlfriend accepted.

Tom was thus able to view and download multiple pictures of Dr. Shepard in amorous poses with his girlfriend and postings that showed that Dr. Shepard had been in Bali romancing his girlfriend when he told Kate that he was attending a medical convention in Manila. Tom was thrilled that he now "had the goods" on Dr. Shepard and told Kate that she should be able to get at least half of Dr. Shepard's net worth in a property settlement as well as alimony. (cont.)

## **Ethics**

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

Tom was pleased because his percentage of the recovery would amount to a handsome fee. But it later came out that Tom's evidence was obtained through the phony Facebook account set up by his secretary.

A. (3 points) Was Tom's fee arrangement proper?

B. (7 points) Was the way Tom's secretary gathered information about the case acceptable? And does her conduct implicate any of Tom's ethical responsibilities?



## Evidence

### II.

(20 points)

Fornax was charged with murder of Lynx, a national government official while Lynx was performing his official duties. During the trial for this crime in the FSM Supreme Court, the trial judge made the following rulings. In each instance, were the rulings correct and why?

A. (5 points) Leo, a police officer, was called as a prosecution witness. On direct examination, the prosecution offered Orion's police report, which was admitted into evidence over Fornax's objection. The report contained the following statement:

on the afternoon in question, Hydra flagged down my vehicle while on patrol and yelled to me, "Officer, officer, I just saw Fornax stab Lynx with an ice pick and run away into the forest!"

B. (3 points) Auriga, an emergency room physician who treated Lynx minutes before he died from his wounds, was called as a prosecution witness. On direct examination, she testified over Fornax's objection, that Lynx stated to her at that time, "I don't want to die. Fornax did this to me."

C. (3 points) Fornax called Cetus, a friend of his, as an alibi witness. Cetus testified that at the time Lynx was killed, he and Fornax were at the local movie theater watching *Avatar 2*. Thereafter, at Fornax's request and over the prosecution's objection, the trial judge took judicial notice that at the time of Lynx's death *Avatar 2* was playing at the local movie theater.

D. (6 points) On cross-examination of Cetus, the prosecution offered certified copies of the following documents, which were admitted into evidence over Fornax's objection:

1. The record of Cetus's conviction for armed robbery, for which he had served a sentence in state jail in 2005;

(cont.)

## **Evidence**

### **II. (cont.)**

2. The record of his conviction for idle and disorderly conduct in March, 2020.

3. Cetus's pending criminal information charging him with embezzling money from the state department of public works, his current employer.

E. (3 points) On further cross-examination of Cetus, Cetus was asked whether Fornax had persuaded him to lie about going to the movies with Fornax. Cetus denied lying. Thereafter, on redirect examination, Fornax offered Cetus's written statement given to the police the day after Lynx's death, which substantiated Cetus's testimony at trial. The statement was admitted over the prosecution's objection.



III.  
(15 points)

On January 16, 2022, Reg agreed orally with Ben, a clothing manufacturer's supplier, to supply Ben with 50 dozen premium mother-of-pearl (trochus) buttons a month for ten months, starting March 1, 2022. The stated price was \$10 a dozen buttons. In typing the written agreement, which was signed by Reg and Ben on January 20, 2022, Reg's secretary mistakenly typed the agreed price as "\$13 per dozen buttons" rather than the agreed price of "\$10 per dozen buttons." Ben failed to notice the discrepancy.

On February 1, 2022, Reg notified Ben as follows: "I do not intend to deliver any buttons because I do not believe our earlier discussions constitute a contract. Besides, I have just contracted to sell my entire output to Ming at \$15 per dozen buttons." Reg thereafter tendered no buttons to Ben. Despite diligent efforts, Ben was unable to buy mother-of-pearl buttons from a new supplier until May 1, 2022. The price charged by the new supplier was \$14 per dozen.

Because of the two-month delay in obtaining a new source of supply, Ben was delayed in delivering buttons to Maker, a Vietnamese textile mill owner with whom Ben had a contract that contained a valid liquidated damages clause providing for damages of \$10 a day for delay in delivery of buttons. Although at the time Reg and Ben entered into the agreement, Reg knew that Ben supplied buttons to textile manufacturers, he did not know specifically, nor did he have reason to know, that Ben had a contract with Maker that or that Ben might incur liability for liquidated damages to a third party.

On October 2, 2022, (before the end of the ten-month period), Ben sued Reg for breach of contract, praying for the following damages:

Prayer 1: \$2,000, being the difference between the price paid by Ben (\$14 per dozen) and the originally agreed price (\$10 per dozen) for 500 dozen buttons; (cont.)

III. (cont.)

Prayer 2: \$610, being the amount Ben had to pay Maker in liquidated damages; and

Prayer 3: punitive damages, in an amount yet to be determined, alleging that Reg's breach was in bad faith.

In his answer to the complaint, Reg denies liability for damages, and asserts in defense that if he should be found liable under Prayer 1, his liability should be limited to \$500, the difference between the price paid by Ben (\$14) and the price stated in the written confirmation (\$13).

What should be the result on each prayer, and what damages, if any, should be awarded? Explain.



IV.  
(12 points)

A witness to a burglary named Seth as a participant. The police asked Seth to come to the police station. When Seth arrived, the detective informed him 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 to you free of charge."

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

Seth 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.

V.  
(9 points)

Discuss the constitutionality under the FSM Constitution of the following:

A. (2 points) A state governor's pardon of person convicted in the FSM Supreme Court in 1989 of what was then a major crime under national law but which is now a crime punishable only under state law.

B. (4 points) A state statute entitled "Keeping Outer Island Youth Safe and Sound," which establishes a statewide curfew between 10 p.m. and 5 a.m. for females under the age of 18 who come from or live in the state's outer islands. The Legislature enacted the statute because a study showed that underage outer island females were most likely to be assaulted, injured in an accident, or become pregnant between the hours of 10 p.m. and 5 a.m.

C. (3 points) An FSM statute levying a \$5 fee on all airplane tickets sold in the FSM for interstate or foreign travel.



VI.  
(12 points)

You are an FSM bar member, admitted to practice before the FSM Supreme Court. Your client is a Guam corporation. It was recently served with a Summons and Complaint in an action filed in the FSM Supreme Court on Pohnpei. Your client is named as the sole defendant. The court jurisdiction and venue is proper.

Service of the Summons and Complaint was on your client's registered agent on Guam on January 11, 2023. The Complaint had actually been filed months ago, but your client and the plaintiff had been trying to negotiate a resolution during this time. When the negotiations broke down about a month ago, the Complaint and Summons were served on your client as indicated above.

Simultaneous to the service of the Summons and Complaint, your client was served with Interrogatories and Requests for Admission from the plaintiff. Both include discovery requests that are not relevant to the action between the plaintiff and your client.

Due to a mix-up in your client's legal department, an answer was not filed within the 20 days recited in the Summons. A default judgment was entered in the FSM Supreme Court, on February 8, 2023, without notice to your client.

A. (6 points) Today is February 20, 2023. Your client has just discovered the entry of the default judgment and wants to obtain immediate relief from it. What is your advice on the default judgment? Explain your analysis completely.

B. (6 points) Assume you obtain relief, and the plaintiff remedies any problems by filing and serving a new, revised complaint and summons. The same discovery requests are served with the new complaint and summons. What is your advice on the discovery requests? Explain your analysis completely.



VII.  
(9 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) A case originally filed in the Kosrae State Court in which a Philippine citizen engineer sued a Marshall Islands construction company for wrongful discharge. The construction company has no FSM citizen shareholders.

B. (3 points) A case originally filed in the State Court of Yap in which Cyrus, a citizen of Yap, sued Stone Money Tours, Inc. for unpaid wages. Stone Money Tours, Inc. is a closely-held corporation that has only two shareholders, one is a Yap citizen, and the second is a United States citizen resident on Guam. Stone Money Tours, Inc. was incorporated under Yap state law and its only place of business is on Yap.

C. (3 points) A case originally filed in the Chuuk State Supreme Court in which the plaintiff local credit union made a loan to a Chuukese citizen and secured the loan with a mortgage on his tourist live-aboard dive boat and is now seeking to foreclose on the ship mortgage because the loan has not been repaid.

VIII.  
(13 points)

Mike is 17 years old and owns a motorcycle his parents gave him on his 16th birthday. This past September, Mike dressed up as a clown and rode his motorcycle in the Liberation Day parade, without obtaining authorization from or registering with the Parade Committee. Neither Mike nor his motorcycle had a visible number designating him as an official parade participant.

During the parade, Mike passed slowly by the official parade reviewing stand doing "wheelies" with one hand, while tossing candies to the crowd. In the midst of one of his stunts, Mike lost control of his motorcycle and plowed into Officer Jonah, a state police officer who had stopped to watch Mike perform for several minutes. One of Officer Jonah's assigned duties on that day was to patrol the parade route to ensure it was free of unauthorized vehicles, etc. Officer Jonah suffered serious leg and head injuries, lost a significant amount of blood, and was rushed immediately to a nearby private for-profit hospital.

When Officer Jonah arrived at the hospital he was conscious and alert but exhibiting signs of severe shock. Four hours later his condition worsened and he was rushed into surgery to relieve pressure on his brain caused by internal bleeding. During surgery, the physician, Dr. Cutter, severed a major nerve.

As a result of the day's events, Officer Jonah remained in the hospital for approximately four weeks, suffered permanent paralysis on his right side, and was rendered disabled for further police duties.

Officer Jonah has asked you to represent him in a civil action to recover for his injuries. Advise him about the possible defendants, legal theories and defenses available, and advise him about which defendants, if any, he should proceed against.