

**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, 2024

ADMINISTERED IN CHUUK, KOSRAE, POHNPEI, AND YAP

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

* * * *

* * * *

I N S T R U C T I O N S

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	20
II	10
III	9
IV	12
V	9
VI	6
VII	4
VIII	16
IX	14
TOTAL	100

THE MINIMUM OVERALL PASSING GRADE IS 65. FOR PARTIAL CREDIT UNDER GENERAL COURT ORDER 1986-2, THE ETHICS QUESTION IS II, AND THE EVIDENCE QUESTION IS I. ALL OTHER QUESTIONS ARE IN THE GENERAL CATEGORY.

GOOD LUCK.

Evidence

I. (20 points)

In the FSM Supreme Court, BigShot is sued for sexual harassment by Caroll, a former employee. Under the FSM Rules of Evidence: Discuss all objections BigShot's attorney could raise, any argument in response, and the court's likely ruling, on the following:

A. (4 points) While BigShot is the witness, Caroll's offer of a letter from BigShot on his company's letterhead to Jean, another former employee, in which BigShot compliments Jean on her appearance.

B. (4 points) Caroll's offer of a copy of an audio tape recording containing an excerpt of a telephone conversation between Caroll and Jean discussing BigShot's sexual advances toward them.

C. (2 points) Caroll's offer of the testimony of five other former female employees of BigShot regarding BigShot's unwanted sexual advances toward them.

D. (2 points) Caroll's offer of the testimony of Dr. Marlyce, a psychiatrist, regarding Dr. Marlyce's opinion that BigShot is suffering from a newly discovered form of sexual addiction afflicting entrepreneurial businessmen.

Discuss all objections Caroll's attorney could raise, any argument in response, and the court's likely ruling, on the following:

E. (4 points) BigShot's offer of a copy of a police report of Caroll's arrest for shoplifting twelve years ago after Caroll testified that: "In my job application, I swore under oath that I had never been arrested."

F. (2 points) BigShot's offer of the testimony of Caroll's previous attorney regarding the advice he gave her about whether she could legally tape record telephone conversations.

[cont.]

Evidence

I.
(cont.)

G. (2 points) BigShot's offer of the testimony of Competitor who would testify that while BigShot is friendly, he would never sexually harass anyone and anyone who says he has is a big fat liar.

II.
(10 points)

A. (5 points) An airline passenger was involved in an aviation mishap. The airline has admitted liability and has settled with ten other persons involved in the mishap for amounts between \$110,000 and \$140,000. The passenger's injuries are very similar to those suffered by the persons with whom the airline has settled. The passenger has received a settlement offer from the airline of \$125,000. Upon receiving the offer, the passenger decided to employ counsel to determine if the offer was a fair amount and to generally read over the settlement papers and release the airline was asking the passenger to sign to get the \$125,000. The passenger went to a local attorney's office and brought the papers with her. She asked the attorney what his hourly rate would be for reading the papers. The attorney told her that she had a personal injury case and that his standard fee for personal injury cases was 30% of any settlement or judgment received.

Is the attorney subject to discipline? Why or why not?

B. (5 points) An attorney and her client endured a stormy attorney-client relationship until the attorney finally withdrew due to the client's repeated refusal to pay the attorney's fee bills. At the end of the relationship, the client owed the attorney over \$10,000. The client said he would not pay because the attorney's legal services were "defective." In a final effort to avoid having to sue the client for unpaid fees, the attorney proposed a settlement agreement. Under the proposed agreement, the attorney would accept \$4,000 as full payment, reserving the right to sue the client for the other \$6,000 if the client filed a disciplinary complaint against the attorney or filed a legal malpractice action against the attorney. The client signed the agreement without consulting outside counsel, and the attorney did not suggest that the client should consult outside counsel.

Is the attorney subject to discipline for entering into the settlement agreement with the client? Why or why not?

III.
(9 points)

You represent the plaintiff in an action for damages resulting from breach of contract. The case was filed in the FSM Supreme Court. During pretrial discovery, you issued interrogatories asking for a list of defense witnesses and a summary of the testimony expected from each witness. You also asked for the opportunity to depose each proposed defense witness. The defendant answered the interrogatories and allowed the depositions to be taken only after the court entered a discovery order directing that the requested discovery be allowed.

Following discovery, the court held a pretrial conference and entered a pretrial order listing all witnesses and exhibits each party would rely on at trial. At trial, you present sufficient evidence to establish the claims set out in your complaint. After the close of your evidence, defense counsel moves, without further elaboration, for dismissal under Civil Procedure Rule 41(b) because the plaintiff had "failed to state a claim on which relief can be granted." This defense had not previously been raised. The court asks for your response. You obviously oppose the motion.

A. (3 points) What procedural arguments can you make to oppose the Rule 41(b) motion to dismiss and how should the court rule?

The court states that it will take the motion under advisement and then directs the defense to proceed with the presentation of its case. Defense counsel's first witness is a previously-identified expert witness who you have already deposed. Defense counsel offers the expert's qualifications and says the witness would testify regarding a defense theory not previously presented in either the defendant's answer or in the pretrial order. The new defense theory is so novel that you had not explored it during discovery. You object to the proffered testimony.

B. (4 points) State the grounds for your objection. How would you expect the court to rule and why? [cont.]

III.
(cont.)

After the conclusion of evidence, the court orders a judgment in your client's favor. The clerk enters the judgment on Thursday, February 8, 2024, and promptly serves the parties. On February 21, 2024, the defendant files and serves a motion to alter or amend the judgment to \$0 in damages because of the trial court's for manifest error of law or fact, or, in the alternative, for a new trial because of newly discovered evidence.

C. (2 points) Was this defense motion timely?

IV.
(12 points)

Ralph Wrench owns a hardware store. His business has recently boomed, and he has decided to open a separate warehouse in which to store much of his merchandise. He therefore contacted William I. Slither, the owner of a local warehouse.

Wrench and Slither met and toured the warehouse. It was divided into three sections, each of which had its own loading dock. One section was leased to another tenant. Another section was vacant, but built in such a way that it was not useful for Wrench's needs. Wrench told Slither that he really liked the warehouse but that he was concerned about the loading dock in the third section, which Slither proposed to lease to Wrench. Wrench explained that many of the trucks that made deliveries were not as tall as that section's loading dock. Slither, anxious to please Wrench, told Wrench that he would build a special adjustable loading dock to accommodate Wrench's needs and that Wrench could also use the loading dock in the vacant section, if he needed it.

Wrench agreed to a four-year lease, Slither personally drafted the lease, which stated that it contained all of the agreements between the parties. The lease did not mention Slither's agreement to let Wrench use the other loading dock. Wrench reviewed the lease and, concerned with the promise to build a loading dock, added an "amendment" which stated that, if the new loading facilities did not prove to be safe or workable, Wrench could terminate the lease. Wrench and Slither signed both the lease and the amendment.

As promised, Slither built the adjustable loading dock. It never really worked well. The adjustable dock was unstable and a few of Wrench's employees nearly fell off the dock. Wrench finally stopped using it altogether and instead used the dock in the unoccupied section of the warehouse, which proved burdensome because his employees were required to make longer trips to and from the trucks.

[cont.]

IV.
(cont.)

Just four months after he moved in, Wrench became disgusted. He terminated the lease and moved out. For two months after Wrench moved out, Slither ran a small advertisement in the *Kaselehlie Press* to relet Wrench's section of the warehouse. Slither never received any serious inquires. He did not make any other efforts to relet the premises.

Slither has now sued Wrench for the rent due under the remainder of the lease as well as the costs he incurred in building the adjustable loading dock. He claims that Wrench could have continued to use the loading dock in the vacant section. Slither also claims that Wrench never gave him a chance to fix the loading dock if it did not work correctly, but this commitment by Wrench was not contained in the written lease or in the amendment.

Wrench has come to you and asked you to defend him. He has heard that your law firm, Accord & Satisfaction, P.C., is an expert in the area of contract disputes.

Discuss fully your analysis of this case and the recovery to which you think Slither might be entitled if Wrench is found liable.

V.
(9 points)

In each of the following cases, the defendant(s) 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 was 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 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 the Kosrae State Court in which the plaintiff Kosrae citizen sued the Kosrae citizen director of the College of Micronesia, Kosrae campus, for wrongful termination from the College staff. The Director was sued in his official capacity.

C. (3 points) A case originally filed in the State Court of Yap in which the plaintiff local credit union loaned money to a Yapese citizen and secured the loan with a mortgage on his tourist dive boat and is now seeking to foreclose on the ship mortgage because the loan has not been repaid.

VI.
(6 points)

Discuss the constitutionality of the following under the FSM Constitution:

A. A state law requiring all insurance agents to pay a tax of 5% on all premiums collected.

B. A state statute prohibiting the importation of radioactive substances including those used in medical procedures.

C. A statute enacted by Congress imposing a 1% surtax added to the current FSM income tax except in those states where the state has provided for its own state health insurance program for all employees.

VII.
(4 points)

Able, Baker, and Charlie are accused by information of assault and battery of William.

After his arrest, Baker gave a statement to the police concerning his involvement and the involvement of Able and Charlie in the assault. Baker did not knowingly and intelligently waive his right to remain silent before giving his confession.

Each defendant is now represented by his own counsel. Before trial, Baker enters into a plea agreement with the government. One part of the agreement obligates Baker to testify fully and truthfully at the trial of the two remaining defendants.

As Baker begins his testimony as a witness at the trial, both counsel for the defendants object on the ground that Baker's constitutional rights were violated.

Discuss.

VIII.
(16 points)

Victor, Inc., a retail office supply store, has both citizen and non-citizen shareholders and holds a foreign investment permit. George, the general manager of Victor, Inc. entered into the following agreements to build a second store on the property held by Victor, Inc. under a long-term lease from landowner Losap. Victor, Inc.'s Board of Directors did not know of the construction and George did not inform them.

George provided the plans and specifications for the new store. Nagumo, an individual in the construction business, according to the agreement, was to provide and supervise the labor to erect the new store. Under the agreement, Nagumo was to submit the weekly time-sheets of the workers to George, who then issued paychecks for them. George also was to pay Nagumo each week an amount equal to 15% of the total of the payroll for the laborers as Nagumo's compensation. SNX Corporation, owner of a general hardware and building supply store, will provide the construction supplies ordered by Nagumo, for which Victor, Inc. will pay. As construction began, Nagumo ordered the materials and specified the dates and times of delivery to the building site.

One day, SNX Corp. delivered ceramic floor tile to the site as directed by Nagumo. The pallets on which the tiles were carried were broken, and SNX Corp. stacked them higher than the height stated as safe on the side of the tile boxes. The forklift operator, an employee of SNX Corp., unloaded the pallets on ground which was not level.

Late that afternoon after working hours, Quincy, an inquisitive 12-year old who lived in the neighborhood, visited the site. He touched the boxes and they fell. Quincy was injured.

If an action were commenced on behalf of Quincy, what damages could be sought? From who and upon what grounds? What defenses might any of the defendants assert? Discuss.

IX.
(14 points)

Joanna lives near the end of a road that leads to a small dock. One night at about 1 a.m., she called the police and told them she had just heard what sounded like gunshots and screaming coming from the direction of the dock.

The police went to investigate and found one unoccupied car and a small building that formerly had been used as a warehouse with a small office. There was no door on the building and the officers stepped inside. They heard voices coming from the office area, the only separate room in the building, so they walked to the door and knocked, saying, "Police officers! Let us in!"

One man, Castor, opened the door for them. Another man, Pollux, was sitting behind a desk. The officers stepped inside and immediately smelled what they thought to be marijuana. One of the officers went to the desk and opened all the drawers, and found a lit marijuana joint, a handgun, and a large plastic bag. The police then arrested both men. Inside the plastic bag, they found what was later proven to be six pounds of marijuana and two ounces of "ice" [methamphetamine].

Both Castor and Pollux are charged with unlawful possession of a handgun in violation of 11 F.S.M.C. 1023(5) and possession of marijuana and "ice" with intent to distribute in violation of 11 F.S.M.C. 1141(1)(a).

You are counsel for Castor and learn that the prosecution has no evidence other than what has been described.

What issues would you expect to raise on Castor's behalf?

How and when would you present each issue to the court?

Analyze each issue and how you would expect it to be resolved.