

**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 5, 2015

ADMINISTERED IN POHNPEI

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

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INSTRUCTIONS

YOU HAVE FIVE (5) HOURS TO FINISH THIS TEST. THIS SHOULD PROVIDE AMPLE TIME TO CONSIDER THE QUESTIONS AND ISSUES PRESENTED AND TO ALLOW AN OPPORTUNITY TO FRAME YOUR ANALYSIS. BEFORE YOU START TO WRITE, READ EACH QUESTION CAREFULLY SO THAT YOU UNDERSTAND EXACTLY 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.	10
II.	11
III.	4
IV.	5
V.	13
VI.	12
VII.	11
VIII.	9
IX.	6
X.	10
XI.	9
TOTAL	100

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

GOOD LUCK.

Ethics

I. (10 points)

You are an attorney in private practice in the FSM. Your client wants you to handle the defense of a lawsuit and agrees to pay you monthly. You ask, and the client agrees, to pay a retainer of \$15,000 to be used for this purpose. Your client has asked you to keep the funds in an interest-bearing savings account located at a Megabank on Guam. You have a long-standing savings account at Megabank in which you keep enough personal funds so as not to incur monthly service charges.

A. (3 points) Explain your record-keeping obligations and analyze whether you can deposit the \$15,000 retainer into your Megabank savings account.

B. (3 points) You issue a bill for your first month's services within days after the end of the month, and you transfer client funds sufficient to pay the bill in full on the same day. Analyze this practice under the FSM Model Rules of Professional Responsibility.

C. (4 points) Your client's case comes to an end. You have billed him for, and he has okayed the bills, \$8,675 in attorney's fees and expenses. Your client will come to the office tomorrow. You discover today that the account in which you had put your client's money is empty. It seems that your law partner has "borrowed" the money in that account to finance his once-in-a-lifetime trip to Peru to watch the sun rise at Machu Pichu on the December solstice. What are you required to do?

Evidence

II. (11 points)

On April 1, 2014, Van went to the Low Tide bar in downtown State Center where he ordered beer and watched a basketball game on the bar's television. Thirty minutes later, Diggs entered, and he sat down two seats away from Van, ordered his usual beer from Charlie, the bartender, and lit a cigarette. Diggs had never seen or heard of Van before.

At this point, Van looked over and told Diggs to put the cigarette out. Diggs declined. Van got up and told Diggs to put the cigarette out or else. Diggs took a drag on the cigarette and exhaled in Van's face. Van stepped toward Diggs. Diggs responded by punching Van four times. Van's nose was bruised, his face was bloodied, and he was knocked unconscious. Diggs was not injured.

A bystander called the police. They arrived and arrested Diggs for assault. Diggs told the arresting officer, "I hit him because he was going to kill me."

Warren, another bystander, told the police that he did not see the incident, but he has heard that Van has a reputation for being a violent person. Warren also told the police that he saw Van pick a fight four nights earlier with another Low Tide patron. Charlie, told the police that he did not see the incident take place, but his opinion was that Diggs was a peaceful person.

You are Diggs's attorney. Assume that the court the trial is in uses rules of evidence identical to the FSM Rules of Evidence. Answer the following questions.

A. (4 points) assume that Diggs asserts self-defense at trial and claims Van was the initial aggressor. What testimony that would be admissible can you elicit from Warren that supports Diggs's self-defense claim?

B. (4 points) you also want to put on Charlie as a witness. Explain whether Charlie will be allowed to testify about his opinion regarding Diggs.

C. (3 points) assume Diggs does not testify at trial. You call the arresting officer and ask him what Diggs said at the scene. The prosecutor objects to this question. Discuss the admissibility of Diggs's statement to the officer.

Evidence

III.

(4 points)

Fred was a fisherman who often sold his fish to Kasio'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 Kasio's Seaside Market. One day as Fred is returning to his boat he trips on the concrete steps and is injured.

Fred sues Kasio for damages. He alleges that Kasio was negligent in failing to keep the steps in good repair and that that was the cause of his injuries. Kasio denies that the steps are on his property. At trial Fred offers evidence that, the day after Fred's accident, Kasio's employees repaired the broken step that Fred had tripped on. Kasio objects. How should the judge rule and why?

Evidence

IV. (5 points)

Two years ago, Boris used arsenic to kill his wife, Ann. After poisoning her he called his attorney, Frank, and asked him what to do. Frank advised Boris to dispose of both the poison and his wife's body. Frank's advice worked. The initial police investigation came to naught.

About two months ago, the police investigation was re-opened. When Boris learned about this, he mistakenly suspected that Frank had betrayed his confidence. Boris sent Frank a letter that said, "If you don't keep your mouth shut, you might end up dead."

Frank was at a New Year's Party when he noticed Boris among the revelers. Boris looked wild and he was glaring menacingly at Frank. A few minutes after he had spotted Boris, Frank began to feel very sick. He eventually collapsed and lost consciousness.

Frank had been poisoned with arsenic. He remained alive for several days, but he regained consciousness only once. During this interval, he told Doctor Tran about the telephone conversation that had occurred after Ann's death and about Boris's threatening letter. Frank died a few hours after making this statement.

You represent Innocenti, whose fingerprints were found on Frank's wineglass, and who, as a result, has been charged with Frank's murder. To shift the court's suspicion to Boris you want to call Dr. Tran to testify that Boris had confessed to Frank that he had killed Ann with arsenic.

Will this testimony be permitted? Discuss. You may assume that, if called to testify, Boris would invoke his privilege against self-incrimination.

General

V. (13 points)

Azor agreed to sell Borax his fishing boat named the *Umwes*. Azor and Borax negotiated the terms of the deal and shook hands on the deal. Azor wrote Borax the following note to memorialize their discussion:

I agree to sell the *Umwes* to Borax on January 1, 2015 for \$250,000. We agree that neither the fishing equipment currently on the *Umwes*, nor my fishing permit is included in the purchase price. I will deliver the *Umwes* to Borax at the public dock on January 1, 2015 in exchange for a cashier's check in the amount of \$250,000.

Sincerely,
/s/ Azor

Azor takes the *Umwes* on a fishing trip in December, 2014. The *Umwes* runs up on a reef and sinks. Azor survives. He salvages the *Umwes* but it is in poor condition.

Borax bought fishing equipment and a fishing permit in December, spending a total of \$150,000. When he met Azor on the public dock on January 1, 2015, he has the \$250,000 check and is very disappointed to hear that the *Umwes* has been severely damaged. Azor tells Borax that the *Umwes* is in dry dock being repaired and should be seaworthy again in three months. The repair estimate is \$75,000.

Borax brings you Azor's written note in February 2015 and tells you that if he had been able to use the *Umwes* to fish, he estimates he would have had \$50,000 in profits based on the price of fish in January 2015.

- A. (5 points) Does Borax have an enforceable contract? Explain.
- B. (4 points) Assume that a contract exists. What arguments would Borax make to support a claim that the contract was breached by Azor?
- C. (4 points) Assume that a contract exists. Discuss what damages Borax may recover.

General

VI. (12 points)

Seven years ago, Dee's husband Vern disappeared without a trace. At the time the state police believed that Dee had been involved in a secret love affair with Bob, and they suspected that she was somehow responsible for Vern's disappearance, but they were unable to uncover any evidence of foul play. Dee always maintained that Vern had gone out fishing but had not returned.

Last month Bob was arrested by the state police on an unrelated theft charge. Officer Joe was questioning Bob about the theft charge when, without any prompting, Bob mentioned that Dee had murdered Vern. Bob said he had helped transport Vern's body to a large wooded area owned by Dee.

Next, Officer Joe obtained a search warrant to search Dee's land. Officer Joe was the only witness at the warrant hearing. He testified that Vern had disappeared seven years before and that, according to Bob, Bob had helped Dee transport Vern's body to Dee's property. With the warrant, Joe went to Dee's land and began a systematic search.

Meanwhile another officer, Ed, telephoned Dee and told her that he had uncovered new information about Vern's disappearance. He asked her if she would come to the station to talk to him. When she arrived, he escorted her to an interview room, and asked her to sit. He told her she was not under arrest and she was free to leave at any time. He did not advise her about her rights to remain silent and to have an attorney present.

Officer Ed told Dee about Bob's disclosure. At first, Dee insisted Bob was lying. But after an hour of persistent but polite questioning, Dee began to yield. When she realized that she had begun to incriminate herself she asked, "Are you going to take me to jail now? Or arrest me?" Ed replied, "I don't know. I'd have to check with my supervisor and the state AG."

The questioning continued and Dee eventually admitted that Vern's body was hidden in an abandoned shack at the northeast corner of Dee's land. Ed immediately relayed this information to Officer Joe, who had begun his systematic search on the south side of Dee's land. After Ed's call, Joe went to the northeast corner of the land where he soon found the shack and, inside, Vern's body.

Dee has been charged with murder. You are her public defender. What pretrial motions do you bring? What arguments do you expect the prosecution to make and how do you expect the court to rule?

VII.
(11 points)

Jack went to Cheapco, a store offering goods at wholesale prices to the general public. Jack needed to buy a large bag of rice. The bags of rice were displayed in a pile on a high shelf. Jack reached over his head to pull one of the 40-lb. Bags from the shelf. However, when he pulled the bag of rice from the shelf, the tower of other bags started to fall.

Rufus, another Cheapco shopper, saw what was happening to Jack and ran to help. Rufus managed to push Jack away from the falling bags directly into a metal shelving unit. Jack hit his head on the shelving unit, and he was severely injured.

Another Cheapco shopper, Meg, saw the incident. Meg saw Jack tugging violently at the bag of rice at the bottom of the pile, trying to free it. When he finally succeeded in pulling the bag out from the bottom, the tower of bags started to fall. Meg told a Cheapco employee about what she saw.

Cheapco has video surveillance cameras that it uses to discover shoplifters. The cameras videotape every aisle. Cheapco keeps one year's worth of video before reusing the video discs. However, Cheapco claims it cannot locate the disc from the day of Jack's accident, even though the accident occurred last month.

Discuss and analyze the following:

- A. (5 points) Jack's claim(s), if any, against Cheapco.
- B. (3 points) Cheapco's defense(s), if any, to Jack's claims.
- C. (3 points) Jack's claim(s), if any, against Rufus.

VIII.
(9 points)

Define and discuss the requirements of the following terms in FSM law:

- A. (3 points) removal of cases
- B. (3 points) **ex post facto law**
- C. (3 points) burden of proof

IX.

(6 points)

A. (3 points) Discuss the constitutionality under the FSM Constitution of a state statute imposing a 75% sales tax on bars of soap not manufactured in the state. A sales of 5% is imposed on bars of soap made in the state.

B. (3 points) Anne, a citizen of Yap sued the *Yap Enterprise*, a newspaper published on Yap by a Yap citizen, who was the paper's sole owner. Anne claimed that an article in the *Yap Enterprise* about Anne's alleged fraudulent business practices had resulted in Anne losing several lucrative business contracts. The *Yap Enterprise* removed the case from the Yap State Court to the FSM Supreme Court on the ground (as stated in its affirmative defense contained in its answer filed in the FSM Supreme Court) that section 1 of the Declaration of Rights in the FSM Constitution protected its publication of the article. Anne has filed a motion in the FSM Supreme Court to remand the case to state court on the ground that it should not have been removed. How should the FSM Supreme Court rule on the motion and why?

General

X. (10 points)

Dara and Franco were neighbors on Yap. Dara agreed to walk Franco's dog, Fluffy, while Franco was off-island on an extended business trip. One day while Dara was walking Fluffy, Fluffy sank its teeth into Bensis's leg as Bensis jogged by. Bensis was visiting from Pohnpei. Franco had failed to advise Dara that Fluffy had a history of biting joggers.

Bensis filed a complaint against Dara in the FSM Supreme Court in Pohnpei. He alleged that Fluffy's bite had caused thousands of dollars in medical bills, including very painful rabies shots he got in Guam on his way back to Pohnpei. Dara received the complaint and summons by certified mail on January 7, 2015. Dara filed an answer, pro se, by mail on January 21, 2015. In her answer, she denied the complaint's allegations but did not raise any defenses relating to venue in Pohnpei.

Today, Dara is in your office asking for advice. She informs you that she has never been to Pohnpei and owns no property there. She also tells you that she has discussed the lawsuit with her neighbor, Franco, and asked him to become a party to the lawsuit. Franco declined.

A. (5 points) Can Dara have the lawsuit dismissed or moved to Yap? How would your answer differ if Dara's answer had included the defense of improper venue?

B. (5 points) Assume that the case is transferred to Yap. Explain Dara's options for bringing Franco into the lawsuit.

General

XI. (9 points)

Applicant Assad applied to the FSM Secretary of Resources and Development for a foreign investment permit to engage in business in Pohnpei and Kosrae. The purpose of the business was to provide tourists with accommodations in local houses in village settings.

The Secretary submitted the application to the two states and both recommended that the application be granted.

The Secretary also submitted the application to each hotel and tour company in the two states. A majority responded with one hotel and one tour company in Pohnpei and one hotel in Kosrae opposing the application and the rest recommending approval.

The Secretary denied the application on the ground that no sufficient economic, social, or environmental need had been shown which would justify granting the permit to a non-citizen. Twenty-five days ago the Secretary's decision was submitted to the FSM President who took no action on the matter.

Assad seeks your advice. He wishes to take any legal steps he can to get the permit. What advice do you give him about the avenues open to him?