

**MISSISSIPPI BOARD OF BAR ADMISSIONS**  
**February 2017 BAR Examination**  
**EVIDENCE**  
**100 Points Total**

**QUESTION 1.1 (50 Points Total)**

You are trying a matter involving a parcel of property. The government seeks a portion of your client's parcel for a new public infrastructure project. Your client understands she will lose a portion of her property, but is adamant that the government's offer of fair and reasonable compensation is inadequate. In other words, this is a trial about the amount of monetary compensation due to your client.

As part of your proof, you retain an appraiser and intend to offer the appraiser as an expert a trial. The MRE 700 series governs admissibility of experts. You consult the rules to ensure your expert testimony (remember, experts are expensive) is indeed admissible.

- 1.1.1. When is expert testimony admissible? Include in your answer the foundation requirements of expert testimony **(20 points)**
- 1.1.2. Do the MRE require disclosure of the facts and data underlying the expert opinion? **(10 points)**
- 1.1.3. During trial your expert offers an opinion as to the fair market value of the condemned property, i.e., the ultimate issue, and the government's counsel objects. Is the government's objection valid? **(10 points)**
- 1.1.4. The Court seems skeptical of your expert as well as the government's expert. Can the Court appoint its own "neutral" expert? **(10 points)**

## **QUESTION 1.2 (50 Points Total)**

Evidence is the process by which facts are placed before a court. Evidence may be in the form of writings, oral statements, non-verbal actions or other means, yet all evidence is subject to some fundamental concepts. These questions seek to ensure your understanding of basic evidence concepts/rules.

- 1.2.1. What is "Relevant Evidence"? **(10 points)**
- 1.2.2. Is Relevant Evidence always admissible? Why? **(10 points)**
- 1.2.3. Who may impeach a witness? **(10 points)**
- 1.2.4. What is the scope of cross-examination under the MISSISSIPPI RULES OF EVIDENCE? **(10 points)**
- 1.2.5. How does the scope of cross-examination under the under the MISSISSIPPI RULES OF EVIDENCE compare with the scope under the FEDERAL RULES OF EVIDENCE? **(10 points)**

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**ANALYSIS AND MODEL ANSWER**

**QUESTION 1 (50 Points Total)**

You are trying a matter involving a parcel of property. The government seeks a portion of your client's parcel for a new public infrastructure project. Your client understands she will lose a portion of her property, but is adamant that the government's offer of fair and reasonable compensation is inadequate. In other words, this is a trial about the amount of monetary compensation due to your client.

As part of your proof, you retain an appraiser and intend to offer the appraiser as an expert a trial. The MRE 700 series governs admissibility of experts. You consult the rules to ensure your expert testimony (remember, experts are expensive) is indeed admissible.

**ANALYSIS**

**1.1.1.** When is expert testimony admissible? Include in your answer the foundation requirements of expert testimony **(20 points total)**

Answer: If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue, a witness qualified as an expert may testify thereto in the form of an opinion or otherwise. MRE 702 **(10 points)**

To testify as an expert, the witness must meet the following criteria under Rule 702:

- (1) the testimony is based upon sufficient facts or data;
- (2) the testimony is the product of reliable principles and method; and,

- (3) the witness has applied the principles and methods reliably to the facts of the case. **(10 points)**

*Alternatively, the applicant may receive 10 points credit if the applicant references the language found in Rule 703 which states that:*

- *the facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known at or before the hearing/trial. **(5 Points)***
- *If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. **(5 Points)***

- 1.1.2. Do the MRE require disclosure of the facts and data underlying the expert opinion? **(10 points total)**

Answer: No. **(4 Points)** MRE 705 allows an expert to testify in terms of opinion or inferences and give reasons therefor without prior disclosure of the underlying facts or data, unless the Court requires otherwise. **(6 points)**

- 1.1.3. During trial your expert offers an opinion as to the fair market value of the condemned property, i.e., the ultimate issue, and the government's counsel objects. Is the government's objection valid? **(10 points total)**

Answer: No. **(4 Points)** MRE 704 states that testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact. **(6 points)**

- 1.1.4. The Court seems skeptical of your expert as well as the government's expert. Can the Court appoint its own "neutral" expert? **(10 points total)**

Answer: Yes. **(4 Points)** MRE 706 permits the Court, on its own motion or on the motion of any party, to enter an order to show cause why an expert witness should not be appointed, and may request that the parties submit nominations. **(6 points)**

## **QUESTION 2 (50 Points Total)**

Evidence is the process by which facts are placed before a court. Evidence may be in the form of writings, oral statements, non-verbal actions or other means, yet all evidence is subject to some fundamental concepts. These questions seek to ensure your understanding of basic evidence concepts/rules.

### **ANALYSIS**

#### **1.2.1. What is "Relevant Evidence"? (10 points total)**

Answer: M.R.E. 401 states "Relevant Evidence" means evidence having any tendency to make the existence of any fact **(3 Points)** that is of consequence **(3 points)** more probable or less probable than it would be without the evidence. **(4 Points)**

#### **1.2.2. Is Relevant Evidence always admissible? Why? (10 points total)**

Answer: M.R.E. 403 states that "although relevant, evidence may be excluded **(3 Points)** if it's probative value is substantially outweighed **(3 Points)** by the danger of unfair prejudice, confusion of the issues, or misleading the jury or by a consideration of undue delay, waste of time, or needless presentation of cumulative evidence". **(4 Points)**

#### **1.2.3. Who may impeach a witness? (10 points total)**

Answer: M.R.E. 607 states that "the credibility of a witness may be attacked by any party **(5 Points)**, including the party calling [the witness]." **(5 Points)**

#### **1.2.4. What is the scope of cross-examination under the MISSISSIPPI RULES OF EVIDENCE? (10 points total)**

Answer: M.R.E. 611(b) permits cross-examination beyond the scope of direct examination **(5 Points)** ("shall not be limited to the subject matter of the direct examination") and matters affecting the credibility of the witness. **(5 Points)**.

This is commonly referenced to as "wide open cross". **(5 Points, alternatively)**.

**1.2.5.** How does the scope of cross-examination under the under the MISSISSIPPI RULES OF EVIDENCE compare with the scope under the FEDERAL RULES OF EVIDENCE? **(10 points total)**

Answer: FEDERAL RULES OF EVIDENCE 611(b) limits the scope of cross-examination to matters elicited on direct. **(5 Points)** (“should not go beyond the subject matter of the direct examination”) and matters affecting the witness’ credibility **(5 Points)**.

This is commonly referred to as “limited cross”. **(5 Points, alternatively)**

**MISSISSIPPI BOARD OF BAR ADMISSIONS**  
**February 2017 Bar Examination**  
**CONTRACTS**  
**100 Points Total**

**QUESTION 2.1 (75 Points Total)**

Seller attends the Board of Supervisors meeting in Blank County, Mississippi, where the Board discusses whether to purchase Blackacre from Seller. The Board votes to purchase the property, and an entry is made upon the minutes, which states that the Board "voted unanimously to purchase Blackacre from Seller for \$30,000". No written contract for the sale is ever prepared. Subsequently, the Board decides the purchase would be a bad idea and refuses to follow through with the agreement announced at the previous Board meeting. Assume for purposes of your answer that there is no dispute as to the legal description of Blackacre. Is there an enforceable contract between the Board and the Seller? Explain the basis of your answer.

**QUESTION 2.2 (25 Points Total)**

Write "yes" if the transaction described would result in a valid negotiation of the instrument. Write "no" if it would not. No further explanation is required.

- 2.2.1 Jim accidentally drops a negotiable check payable to his order. Mary Reeves finds it and endorses the back with "Pay to Sue Smith, [signed] Mary Reeves." **(5 Points)**
- 2.2.2 Jean gives to Renee a negotiable check payable to bearer without endorsing it. **(5 Points)**
- 2.2.3 A negotiable instrument is payable to the order of Jack Jones and Rita Jones. Jack endorses the instrument with "Pay to Rocky Rhodes, [signed] Jack Jones" and delivers it to Rocky. **(5 Points)**
- 2.2.4 Mack endorses a negotiable promissory note payable to his order with "Pay to the order of Ronald Williams and Henry Roberts, [signed] Mack McDonald." **(5 Points)**
- 2.2.5 Calvin endorses with his signature a negotiable promissory note payable to his order and delivers it to Larry. Above Calvin's endorsements, Larry writes, "Pay to Larry Brown." **(5 Points)**

MISSISSIPPI BOARD OF BAR ADMISSIONS  
February 2017 Bar Examination  
CONTRACTS  
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ANALYSIS AND MODEL ANSWER

QUESTION 2.1 (75 Points Total)

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ANALYSIS

MODEL ANSWER FOR 2.1:

The issue in this question is the **statute of frauds**. Under Mississippi’s statute of frauds, a contract for the sale of land must be in writing. Miss. CODE ANN. § 15-3-1(c) (1972). **(20 Points)** The only writing about the sale is the entry in the minutes of the Board meeting quoted in the question. Although not a formal contract, the minutes could constitute a memorandum sufficient to satisfy the statute of frauds. **(10 Points)**. The memorandum or note must be in writing and signed either by the party to be charged or someone the party lawfully authorizes in writing to sign on behalf of the party to be charged. **(10 Points)**. Here, the party to be charged is the Board of Supervisors. **(10 Points)**. The minute entry evidenced an intent to buy, identified the land, and set out the purchase price. **(10 Points)**. As long as the minutes were signed by the appropriately authorized person and approved at a subsequent meeting of the Board, the minutes constitute a memorandum or note sufficient to satisfy the statute of frauds. **(15 Points)**. *Putt v. Corinth*, 579 So.2d 534, 538 (1991); see *Yarbrough v. Camphor*, 645 So.2d 867, 869-70 (1994)(*statute of frauds satisfied as long as memorandum or note of the oral agreement*).



## **QUESTION 2.2 (25 Points Total)**

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### **ANALYSIS**

#### **MODEL ANSWER FOR 2.2:**

- 2.2.1. No. The check must be endorsed by Jim. **(5 Points)**
- 2.2.2. Yes. **(5 Points)**
- 2.2.3. No. Rita must negotiate as well. **(5 Points)**
- 2.2.4. Yes. (Also give full credit if the examinee wrote "No" on the basis that the facts do not indicate that the instrument was transferred). **(5 Points)**
- 2.2.5. Yes. **(5 Points)**

**MISSISSIPPI BOARD OF BAR ADMISSIONS  
February 2017 Bar Examination  
CONSTITUTIONAL & CRIMINAL LAW & CRIMINAL PROCEDURE  
(6) six questions for a total of (100) one hundred points**

**IMPORTANT Notice to BAR Examinees:** All questions are independent of one another and are not related with one another in any manner. They should each be analyzed separately and independently.

**Question 3.1 [10 points total]:**

- 3.1.1. Burglary of a Dwelling is a felony offense in Mississippi that carries a potential punishment of 3-25 years in the state penitentiary. DEFENDANT has never been convicted of a felony offense. During jury selection, how many peremptory challenges is DEFENDANT entitled? **[5 points]**
- 3.1.2. Explain fully. **[5 points]**

**Question 3.2 [10 points total]:**

- 3.2.1. First Degree Murder is a felony offense in Mississippi that carries a Life sentence if convicted. DEFENDANT has never been convicted of a felony offense. During jury selection, how many peremptory challenges is DEFENDANT entitled? **[5 points]**
- 3.2.2. Explain fully. **[5 points]**

**Question 3.3 [10 points]:**

How many regular jurors, not alternates, will be selected for a felony criminal trial in a Mississippi circuit court?

**Question 3.4 [10 points total]:**

- 3.4.1. How many regular jurors, not alternates, will be required to convict a defendant in a Mississippi circuit court felony criminal trial? **[5 points]**
- 3.4.2. Explain fully. **[5 points]**

**Question 3.5 [10 points total]:**

- 3.5.1. How many regular jurors, not alternates, will be required to acquit a defendant in a Mississippi circuit court felony criminal trial? **[5 points]**
- 3.5.2. Explain fully. **[5 points]**

**Question 3.6 [50 points total]:**

- 3.6.1. DEFENDANT is on trial for First Degree murder, a felony offense in Mississippi carrying a potential Life sentence. Out of the presence of the jury in chambers, the circuit judge has clearly and unambiguously advised Defendant of all his possible rights during the trial which Defendant understood. DEFENDANT subsequently refused appointed counsel and is representing himself, *pro se*. The State has presented it's evidence and rested its case in chief. In the defense case in chief, DEFENDANT presented an alibi witness, WITNESS, to the jury alleging he was elsewhere at the time of the murder and thus incapable of being guilty. DEFENDANT then decides that he will testify too. DEFENDANT takes the stand and testifies to the jury about his alibi and being with WITNESS elsewhere at the time of the murder. DEFENDANT concludes his direct testimony with, "and that's where I was, I am not guilty." The State then begins cross examination and asks DEFENDANT a question about his alibi by asking, "So, did I understand you to say just now that you were elsewhere at the time of the murder?" DEFENDANT, himself, objects and refuses to answer the State's question asserting to the judge his Fifth Amendment constitutional right that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself. . ." The State responds to DEFENDANT's objection asserting "it's a proper question your honor." How should the circuit judge rule on DEFENDANT's objection? **[25 points]**
- 3.6.2. Explain fully. **[25 points]**

**MISSISSIPPI BOARD OF BAR ADMISSIONS  
February 2017 Bar Examination  
CONSTITUTIONAL & CRIMINAL LAW & CRIMINAL PROCEDURE  
(6) six questions for a total of (100) one hundred points**

**ANALYSIS AND MODEL ANSWER**

**IMPORTANT Notice to BAR Examinees:** All questions are independent of one another and are not related with one another in any manner. They should each be analyzed separately and independently.

**Question 3.1 [10 points total]:**

**3.1.1.** Burglary of a Dwelling is a felony offense in Mississippi that carries a potential punishment of 3-25 years in the state penitentiary. DEFENDANT has never been convicted of a felony offense. During jury selection, how many peremptory challenges is DEFENDANT entitled? **[5 points]**

**3.1.2.** Explain fully. **[5 points]**

**MODEL ANSWER FOR 3.1:**

**3.1.1.** DEFENDANT is entitled to **(6) six** peremptory challenges **[5 points]**

**3.1.2.** during the jury selection process because the offense does not involve the possible sentence of death or life imprisonment. **[5 points]**

**AUTHORITY:** Uniform Circuit and County Court Rules 10.01

**Question 3.2 [10 points total]:**

**3.2.1.** First Degree Murder is a felony offense in Mississippi that carries a Life sentence if convicted. DEFENDANT has never been convicted of a felony offense. During jury selection, how many peremptory challenges is DEFENDANT entitled? **[5 points]**

**3.2.2.** Explain fully. **[5 points]**

**MODEL ANSWER FOR 3.2:**

**3.2.1.** DEFENDANT is entitled to **(12) twelve** peremptory challenges during the jury selection process. **[5 points]**

- 3.2.2. Because the offense carries the possible sentence of life imprisonment. **[5 points]**

**AUTHORITY:** Uniform Circuit and County Court Rules 10.01

**Question 3.3 [10 points]:**

How many regular jurors, not alternates, will be selected for a felony criminal trial in a Mississippi circuit court?

**MODEL ANSWER FOR 3.3:**

**(12) twelve regular jurors. [10 points]**

**AUTHORITY:** Uniform Circuit and County Court Rules 10.01

**Question 3.4 [10 points total]:**

3.4.1. How many regular jurors, not alternates, will be required to convict a defendant in a Mississippi circuit court felony criminal trial? **[5 points]**

3.4.2. Explain fully. **[5 points]**

**MODEL ANSWER FOR 3.4:**

3.4.1. **ALL (12) twelve [5 points]**

3.4.2. Jurors must agree unanimously to convict a defendant. **[5 points]**

**AUTHORITY:** Uniform Circuit and County Court Rules 10.01

**Question 3.5 [10 points total]:**

3.5.1. How many regular jurors, not alternates, will be required to acquit a defendant in a Mississippi circuit court felony criminal trial? **[5 points]**

3.5.2. Explain fully. **[5 points]**

**MODEL ANSWER FOR 3.5:**

3.5.1. **ALL (12) twelve [5 points]**

3.5.2. Jurors must agree unanimously to acquit a defendant. **[5 points]**

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**Question 3.6 [50 points total]:**

**3.6.1.** DEFENDANT is on trial for First Degree murder, a felony offense in Mississippi carrying a potential Life sentence. Out of the presence of the jury in chambers, the circuit judge has clearly and unambiguously advised Defendant of all his possible rights during the trial which Defendant understood. DEFENDANT subsequently refused appointed counsel and is representing himself, *pro se*. The State has presented its evidence and rested its case in chief. In the defense case in chief, DEFENDANT presented an alibi witness, WITNESS, to the jury alleging he was elsewhere at the time of the murder and thus incapable of being guilty. DEFENDANT then decides that he will testify too. DEFENDANT takes the stand and testifies to the jury about his alibi and being with WITNESS elsewhere at the time of the murder. DEFENDANT concludes his direct testimony with, "and that's where I was, I am not guilty." The State then begins cross examination and asks DEFENDANT a question about his alibi by asking, "So, did I understand you to say just now that you were elsewhere at the time of the murder?" DEFENDANT, himself, objects and refuses to answer the State's question asserting to the judge his Fifth Amendment constitutional right that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself. . ." The State responds to DEFENDANT's objection asserting "it's a proper question your honor." How should the circuit judge rule on DEFENDANT's objection? **[25 points]**

**3.6.2.** Explain fully. **[25 points]**

**MODEL ANSWER FOR 3.6:**

**3.6.1.** In the presence of the jury, the circuit judge will overrule DEFENDANT's objection by stating "overruled, answer the question." **[25 points]**

**3.6.2.** The basis of the circuit judge's ruling will be that DEFENDANT waived said Fifth Amendment right when he voluntarily chose to testify and must therefore answer the State's question about the alibi. The State's question is a relevant related question about those facts testified to on direct by DEFENDANT and thus DEFENDANT has opened the door on cross-examination to the State's question about his alibi. **[25 points]**

**AUTHORITY:** ". . . when a defendant chooses to testify in a criminal case, the Fifth Amendment does not allow him to refuse to answer related questions on cross-examination. A defendant 'has no right to set forth to the jury all the facts which tend in his favor without laying himself open to a cross-examination upon those facts.'" *Fitzpatrick v. United States*, 178 U.S. 304, 315, 20 S.Ct. 944, 44 L.Ed. 1078 (1900); *Harrison v. US*, 392 U.S. 219, 222 (1968); *Smith v State*, 907 So2d 389, 394 (COA 2005); *Kansas v. Cheever*, 134 S.Ct. 596, 601 (2013).

**MISSISSIPPI BOARD OF BAR ADMISSIONS  
February 2017 Bar Examination  
MISSISSIPPI PRACTICE AND PROCEDURE  
100 Points Total**

**FACTS**

Mr. A, a Mississippi resident, decides to sue Ms. B, a Tennessee resident and Mr. C, a Mississippi resident, in the state circuit courts of Mississippi for the tort of assault. Ms. B and Mr. C are competent adults.

Mr. A files his lawsuit in Hinds County, MS, late in the day one day before the one-year statute of limitations is to expire. While he is filing the Complaint, the clerk asks if he wants to have the summons issued. He says no, it is getting late and will come back next week to have it issued.

The next week, Mr. A returns and has the summons issued. He serves Ms. B in Tennessee and Mr. C in Mississippi the following week.

- 4.1 Will Mr. A's lawsuit be precluded by the statute of limitations because he did not have the summons issued until after the statute of limitations ran? **(35 points)**
  
- 4.2 Discuss the methods one may use in Mississippi to serve an in-state defendant. **(32 points)**
  
- 4.3 Discuss the methods one may use in Mississippi to serve an out-of-state defendant. **(33 points)**

**MISSISSIPPI BOARD OF BAR ADMISSIONS  
February 2017 Bar Examination  
MISSISSIPPI PRACTICE AND PROCEDURE  
100 Points Total**

**ANALYSIS AND MODEL ANSWER**

**Question 4.1 (35 points total)**

Will Mr. A's lawsuit be precluded by the statute of limitations because he did not have the summons issued until after the statute of limitations ran?

**MODEL ANSWER TO 4.1**

Mr. A's lawsuit will not be precluded by the statute of limitations.

The statute is tolled when the complaint is filed, regardless of whether the summons was issued. Civil actions are commenced by the filing of a complaint with the court pursuant to Miss Rule Civ Pro 3(a). **(20 points)**

As long as service is made within 120 days from the date of filing, the action will be deemed timely filed. **(10 points)**

Rule 4(h) allows 120 days to obtain service of process on a defendant after the filing of the lawsuit pursuant to Rule 3(a). Specifically, Rule 4(h) provides as follows:

If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion.

*Erby v. Cox*, 654 So. 2d 503, 504-05 (Miss. 1995) **(5 points)**

**Question 4.2 (32 points total)**

Discuss the methods one may use in Mississippi to serve an in-state defendant

**MODEL ANSWER TO 4.2**

Service of Process is governed by Miss. Rule Civ. P. 4.



Service on an in-state defendant such as Mr. C may be made as follows:

- (1) By process server or any person not a party not less than 18 years old. If it cannot be made to him personally or to a duly appointed agent, by leaving a copy of the summons and complaint at the defendant's usual place of abode with the defendant's spouse or some other person in the defendant's family over the age of sixteen who is willing to accept service. The summons and complaint must then be mailed by first class mail, postage prepaid, to the person to be served at the place where the summons and complaint were left. Service is deemed complete on the tenth day after such mailing. (Miss Rule Civ P 4(c) and 4(d)(1)(A) and (B). **(8 points)**)
  
- (2) By the Sheriff in the county in which the defendant resides or is found by delivering summons to defendant personally or to an agent authorized by appointment or by law to receive service; or  
If it cannot be made to him personally or to a duly appointed agent, by leaving a copy of the summons and complaint at the defendant's usual place of abode with the defendant's spouse or some other person in the defendant's family over the age of sixteen who is willing to accept service. The summons and complaint must then be mailed by first class mail, postage prepaid, to the person to be served at the place where the summons and complaint were left. Service is deemed complete on the tenth day after such mailing. (Miss Rule Civ P 4(c) and 4(d)(1)(A) and (B). **(8 points)**)
  
- (3) By Mail (first class, postage prepaid) to the person to be served, with two copies of a notice and acknowledgement, postage prepaid, addressed to the sender. If no acknowledgement is received within twenty days, another form of approved service can be used. If defendant does not send back the acknowledgment and cannot show good cause for not doing so, the defendant must then pay the costs of personal service. The notice and acknowledgement should be executed under oath or affirmation. **(8 points)**
  
- (4) By Publication. An in-state defendant can be served by publication if it is sworn that after diligent inquiry no address can be obtained. Miss Rule Civ P 4(c)(4)(A). Such publication shall be made once in each week during three consecutive weeks in a public newspaper of the county in which the complaint or petition is pending if there is one. Where there is no such newspaper, the notice shall be posted on the courthouse door and published in an adjoining county or at the seat of the government of the state. Upon completion of publication, proof of publication shall be filed in the papers with the clerk. The defendant has 30 days after the first publication to answer. Civ P 4(c)(4)(B). **(8 points)**

**Question 4.3 (33 points total)**

Discuss the methods one may use in Mississippi to serve an out-of-state defendant.

**MODEL ANSWER TO 4.3**

Service on an out-of-state defendant such as Ms. B may be made under Rule 4 as follows:

- (1) By personal service as indicated in Answer to 4.2 above **(11 points)**; or
- (2) By publication as noted in Answer to 4.2 part (4), above; or **(11 points)**
- (3) By Certified Mail, return receipt requested. **(11 points)**

Where the defendant is a natural person, the envelope containing the summons and complaint shall be marked "restricted delivery." Service by this method shall be deemed complete as of the date of delivery as evidenced by the return receipt or by the returned envelope marked "refused."

MISSISSIPPI BOARD OF BAR ADMISSIONS  
February 2017 BAR Examination  
**DOMESTIC RELATIONS**  
100 Points Total

Jackson and Ava, residents of Mississippi, married in 2011. They had been married for five years when Ava decided to file for divorce. Although she initially approved of Jackson's entertainment job in New York, she could no longer tolerate his absence from home. Jackson's popularity grew over the years and New York became his most lucrative venue. He usually performed at the Majestic New York Hotel and was given free room and board. Because his living expenses were negligible, Jackson always sent his paycheck to Ava.

Ava often called Jackson's room late at night and a woman answered, but hung up when Ava questioned her. During the first two years of their marriage, Jackson would only make week-end trips to New York. The week-end trips changed to extended-stay trips. Ava became furious when Jackson had been gone for fifteen consecutive months.

When Ava asked Jackson for a divorce, he advised her that it was not necessary because he never divorced his first wife, Bianca. Ava then checked the records at the local courthouse and learned that Jackson had actually married Bianca in 2010. Upon further inquiry of Jackson's family, she learned that Bianca was Jackson's first cousin and Bianca worked at the Majestic New York Hotel.

- 5.1 In light of Ava's research, is it necessary for her to proceed with the divorce? Explain your answer. **(15 Points)**
- 5.2 Name ten (10) of the available grounds for divorce in Mississippi? **(30 Points)**
- 5.3 Discuss three (3) relevant grounds that Ava may use in her effort to obtain a divorce. **(45 Points)**
- 5.4 In which Mississippi Court should Ava's petition file her petition? **(10 Points)**

MISSISSIPPI BOARD OF BAR ADMISSIONS  
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**DOMESTIC RELATIONS**  
100 Points Total

**ANALYSIS AND MODEL ANSWER**

**Question 5.1 (15 points total)**

In light of Ava's research, is it necessary for her to proceed with the divorce? Explain your answer.

**MODEL ANSWER FOR 5.1**

1. The Divorce proceeding would be necessary because the marriage between Jackson and Ava is valid **(5 points)**.
  
2. It is valid because the marriage to Bianca is incestuous and void. A marriage between persons related within the 1<sup>st</sup> degree is void under Mississippi Code Section 93-1-1. **(10 points)**.

**Question 5.2 (30 points total)**

Name ten (10) of the available grounds for divorce in Mississippi?

**MODEL ANSWER FOR 5.2**

Divorces in Mississippi may be granted on the following Grounds **(3 points each for any 10 of the 13 grounds)**:

- a. Desertion
- b. Natural inpotency
- c. Insanity or idiocy
- d. Wife's pregnancy by another person at the time of marriage
- e. Adultery
- f. Custody by the Mississippi Dept of Corrections
- g. Incurable insanity that develops after the marriage
- h. Habitual drunkenness
- i. Excessive drug use
- j. Habitual cruel and inhuman treatment
- k. Bigamy
- l. Incest
- m. Irreconcilable differences  
M.C.A. 93-5-1,2

**Question 5.3 (45 points total)**

Discuss three (3) relevant grounds that Ava may use in her effort to obtain a divorce.

**MODEL ANSWER FOR 5.3**

If both spouses agree to the terms, they may obtain a divorce on the ground of Irreconcilable differences. **(15 Points)**

Desertion is a spouse's abandonment of the marriage for more than one year without the consent of the other spouse, just cause, excuse or intent to return. Jackson has been away for 15 months. Initially, he had a good defense because his wife consented to the arrangement. He was working in New York and financially supporting her by sending his check home to her. However, when he failed to return home for fifteen months, just cause, excuse or intent to return became questionable. **(15 Points)**

Adultery requires clear and convincing evidence of an adulterous inclination and a reasonable opportunity to satisfy that inclination. *Larson v. Larson* 122 So.3d 1213,1215 (Miss Ct. App. 2013). An adulterous inclination may be proven by circumstantial evidence of infatuation with a particular person. Based on the facts presented, Jackson's marriage, although void, and continuous contact with Bianca may supply the circumstantial evidence for a claim on the ground of adultery. A woman answering a phone at a hotel at night, by itself, may not be enough. However, together with the other facts may provide enough circumstantial evidence of adultery. **(15 points)**

**Question 5.4 (10 points total)**

In which Mississippi Court should Ava's petition file her petition?

**MODEL ANSWER FOR 5.4**

The petition should be filed in Chancery Court in the county where the parties reside. **(10 Points)**

For irreconcilable differences divorces, venue is proper in the county of residence of either party where both are Mississippi residents. If one party is a non-resident, venue must be in the county where the resident resides.

For fault divorces, venue is proper where the defendant resides, if the defendant resides in Mississippi or where the plaintiff resides if the defendant does not reside in Mississippi. If the plaintiff still lives in the same county where the parties resided at the time of their separation, venue is also proper in the county in which the parties separated.

M.C.A. 93-5-11

**MISSISSIPPI BOARD OF BAR ADMISSIONS**  
**February 2017 Bar Examination**  
**LEGAL ETHICS AND PROFESSIONAL CONDUCT**  
**100 Points Total**

**FACTS**

John Roundtree ("Roundtree"), a solo practitioner, was admitted to the Mississippi Bar in 1997. In February 2014, Sam Jones ("Jones") hired Roundtree to represent him in a child-support modification matter. Roundtree requested a \$1,000 retainer, from which Roundtree would charge \$250 per hour. Jones gave Roundtree a \$400 check for partial payment of the retainer. While Roundtree maintained three (3) client trust accounts, Roundtree did not deposit Jones' \$400 check in any of them; rather Jones' check was deposited into Roundtree's general law firm operating account.

After several months of inquiring and without hearing anything from Roundtree, Jones informed Roundtree that he was firing him as his lawyer. Jones also requested, in writing, that any file Roundtree had prepared on his behalf, as well as the \$400 retainer, be returned. Roundtree wrote Jones a check for \$400 from one of his trust accounts to refund Jones' partial payment of the retainer, but Roundtree's check was returned for insufficient funds. Roundtree then delivered \$440 in cash to Jones (\$400 + \$40 to cover bank charges for Roundtree's check being returned for insufficient funds). Jones then expressed extreme dissatisfaction in Roundtree's handling of the matter, and threatened to file a bar complaint against Roundtree with the Mississippi Bar.

Out of concern that a bar complaint against him might be forthcoming, Roundtree has come to you for guidance. In advising you of the facts as set forth above, Roundtree also shares with you that he has not maintained any trust account ledgers, records of deposits, or records of the amounts owed to specific clients for at least the last three (3) years. Roundtree also shares with you that he did pay some personal expenses out of his trust accounts, but always "put the money back." As far as lack of record keeping, Roundtree claims that any errors were inadvertent and unintentional, but otherwise denies commingling or intentional misappropriation of client funds. Roundtree admits that he should have paid more attention, but is concerned that his ability to practice law may be in jeopardy if Jones follows through with filing a bar complaint. Roundtree now seeks your counsel as to what his obligations were / are pursuant to the Mississippi Rules of Professional Conduct ("MRPC").

## QUESTIONS

- 6.1.1 Was Roundtree's conduct violative of the MRPC? Yes or No? (5 points).
- 6.1.2 If so, which rule(s) of the Model Rules of Professional Conduct is/are implicated? (40 points).
- 6.2.1. Which rule, if any, in the MRPC addresses record keeping obligations as to client property? (10 points).
- 6.2.2. Assuming there is a rule, what does the rule state regarding how client property should be held / kept and how long are records to be preserved by the attorney after the representation has concluded? (30 points).
- 6.3. Roundtree maintains that there was no actual injury or harm to the client, and the client was eventually refunded in cash. Would Roundtree's lack of intent and his repayment of the funds alleviate or mitigate any violation of the MRPC? (10 points).
- 6.4. Assume Jones proceeds with filing a bar complaint with the Mississippi Bar, which is then assigned to a complaint tribunal of the Mississippi Bar. Which entity has exclusive jurisdiction over attorney discipline matters? (5 points).

**MISSISSIPPI BOARD OF BAR ADMISSIONS  
February 2017 Bar Examination  
LEGAL ETHICS AND PROFESSIONAL CONDUCT  
100 Points Total**

**ANALYSIS AND MODEL ANSWER**

6.1.1. Was Roundtree's conduct violative of the MRPC? Yes or No? **(5 points)**

**MODEL ANSWER TO 6.1.1.:** Yes.

6.1.2. If so, which rule(s) of the MRPC is/are implicated? **(40 points)**

**MODEL ANSWER TO 6.1.2.:**

**1. MRPC RULE 1.15 (a) – Safekeeping Property.**

**(a) A lawyer shall hold clients' and third persons' property separate from the lawyer's own property. Funds shall be kept in a separate trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such trust account funds or other property shall be kept and preserved by the lawyer for a period of seven years after termination of the representation.**

**2. MRPC RULE 8.4 (a) & (d) - Misconduct**

**It is professional misconduct for a lawyer to:**

**(a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;**

**(d) engage in conduct that is prejudicial to the administration of justice;**



**3. MRPC RULE 1.3 – Diligence**

**A lawyer shall act with reasonable diligence and promptness in representing a client.**

**4. MRPC RULE 1.4(a) – Communication**

**A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.**

6.2.1. Which rule, if any, in the MRPC addresses record keeping obligations as to client property? **(10 points)**

**MODEL ANSWER TO 6.2.1.:**

**MRPC RULE 1.15 (a) – Safekeeping Property.**

**A lawyer shall hold clients' and third persons' property separate from the lawyer's own property. Funds shall be kept in a separate trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such trust account funds or other property shall be kept and preserved by the lawyer for a period of seven years after termination of the representation.**

6.2.2. Assuming there is a rule, what does the rule state regarding how client property should be held / kept and how long are records to be preserved by the attorney after the representation has concluded? **(30 points)**

**MODEL ANSWER TO 6.2.2.:**

**A fully correct answer should reflect each of the standards referenced in Rule 1.15 in that property of the client should be: (1) kept separate from the lawyer's own property; (2) said property is to be kept appropriately safeguarded, identified and accounted for; and (3) complete records of any such trust account funds and other property shall be kept and preserved by the lawyer for a period of seven (7) years after termination of the representation.**

According to Section 23:2 – *Duty to keep client property and funds separate and safe; record keeping* from Jackson & Campbell’s *Professional Responsibility for Mississippi Lawyers* (MLI Press 2010):

“There is probably no easier path for a lawyer to be subjected to professional discipline than in comingling client and lawyer funds or in treating a client’s property as if it belongs to the lawyer. The Supreme Court has referred to comingling of lawyer and client funds as a “cardinal sin” for which a lawyer will be subject to suspension or disbarment regardless of the lawyer’s motive in comingling. (*quoting Haines v. Miss. Bar*, 601 So.2d 851, 854 (Miss. 1992)) In *Gex v. Mississippi Bar*, 656 So.2d 1124, 1129 (Miss. 1995), the Supreme Court noted that “[t]here may be worse sins, but the ultimate wrong of a lawyer to his profession is to divert clients’ and third parties’ funds entrusted to him to an unauthorized use. A lawyer guilty of such conduct exhibits a character trait totally at odds with the purposes, ideals and objectives of our profession.” *Id.* Such deviance suggests a lack of trustworthiness and inability to observe professional boundaries. Further, when it involves comingling of funds, professional deviance is easily detectable as there usually is a readily available banking paper trail demonstrating deposits, disbursements and withdrawals.”

A lawyer is obligated under Rule 1.15 to keep “[c]omplete records of such trust account funds and other property....” These records must be preserved for seven years after termination of the representation.<sup>19</sup>

Although it is a minor, side issue, Jones also requested his client file from Roundtree (even though the facts do not indicate exactly what comprised the client’s file, if any). To the extent this request is explored in an examinee’s response, client property includes the client’s file, which should also be maintained. A lawyer who loses client files, or fails to properly maintain client papers, is subject to discipline for violation of Rule 1.15.<sup>ii</sup> A client is entitled to retrieve original documents given to her lawyer, and is also entitled to copies at her own expense of other documents in the lawyer’s file.<sup>iii</sup> However, whether the attorney work product is part of a client’s file that must be turned over to a client has not been determined.<sup>iv</sup>

- 6.3. Roundtree maintains that there was no actual injury or harm to the client, and the client was eventually refunded in cash. Would Roundtree's lack of intent and his repayment of the funds alleviate or mitigate any violation of the MRPC? **(10 points)**

**MODEL ANSWER TO 6.3:**

No. The Supreme Court has opined that restitution of funds does not mitigate the offense. See Cotton v. Miss. Bar, 809 So.2d 582, 587, 589 (Miss. 2000). In McIntyre v. Miss. Bar, 38 So.3d 617, although the attorney replaced the funds after a short time and none of his clients actually lost money, the Court held that a client's loss of use of the funds for even a short time gives "rise to an actual injury," and "the potential for the clients' total loss of use of the funds made the potential injury great." McIntyre, 38 So.3d at 627.

Thus, although Jones did not lose money, actual injury still occurred, and the potential for injury certainly existed, as Roundtree's account was overdrawn. See Miss. Bar v. Ogletree, No. 2013-BA-01276-SCT, decided May 29, 2013, ¶15 at pp. 8-9.

- 6.4. Assume Jones proceeds with filing a bar complaint with the Mississippi Bar, which is then assigned to a complaint tribunal of the Mississippi Bar. Which entity has exclusive jurisdiction over attorney discipline matters? **(5 points)**

**MODEL ANSWER TO 6.4:**

Although filing a complaint with the Mississippi Bar may result in a complaint tribunal of the Mississippi Bar investigating the allegations and deciding to suspend an attorney from the practice of law, as to any violations of the MRPC, the Mississippi Supreme Court has exclusive jurisdiction over attorney discipline matters, which are reviewed *de novo*. See Miss. Bar v. Shelton, 855 So.2d 444, 445 (Miss. 2003). See also Miss. R. Disc. 1(a). While "no substantial evidence or manifest error rule shields the [Complaint] Tribunal from scrutiny," the Supreme Court may grant deference to the findings of the Tribunal "due to its exclusive opportunity to observe the demeanor and attitude of the witnesses, including the attorney, which is vital in weighing evidence." Foote v. Miss. Bar Ass'n, 517 So.2d 561, 564 (Miss. 1987); Parrish v. Miss. Bar, 691 So.2d 904, 906 (Miss. 1996). The purpose of this question is to demonstrate that although the Mississippi Bar may recommend punishment for attorney misconduct, the Mississippi Supreme Court is the final arbiter as to what penalties may be imposed.

### EXAMINER'S NOTE:

The factual pattern in this question is analogous, if not nearly identical, to the decision issued by the Mississippi Supreme Court in Mississippi Bar v. Robert Bryan Ogletree, No. 2013-BA-01276-SCT, decided May 29, 2013, which was also published in the Final Disciplinary Actions section of the Spring 2015 edition of *The Mississippi Lawyer* magazine at p. 35.

The Ogletree opinion not only exhibits that mishandling of client funds continues to be a recurring issue, but also demonstrates that complaint tribunals of the Mississippi Bar, the Mississippi Bar as a whole, as well as the Mississippi Supreme Court possess differing views as to what may be the appropriate sanctions for this type of attorney misconduct.

While gravely serious, surprisingly not all situations of mishandling of client property warrants automatic disbarment, as the actual sanctions imposed are dependent upon other factors, including but not limited to the lawyer's mental state, the existence of aggravating or mitigating factors, and sanctions imposed in similar cases. Thus, it would be incorrect for an examinee to conclude that an offending attorney would *automatically* be disbarred. That said, however, the Mississippi Supreme Court has exclusive jurisdiction to impose penalties, suspension or disbarment - and does so with utmost seriousness for the protection of the legal profession and how the public perceives the role of attorneys as exemplified in the Court's opinion in Mississippi Bar v. Coleman, 849 So.2d 867 (Miss. 2002), that commingling client funds is the "cardinal sin of the legal profession" and is "the ultimate breach of fiduciary trust." Id. at 874; Ogletree at p. 7, ¶13.

## END

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<sup>i</sup> Miss. Rules of Prof'l Conduct R.1.15. See Miss Bar v. Abioto, 987 So.2d 913 (Miss. 2007)(reciprocal discipline for violation of Tennessee's Rule 1.15 for failing to maintain adequate trust accounts, misplacing client property, failing to return two client video tapes).

<sup>ii</sup> See Miss. Bar v. Thompson, 5 So. 3d 330 (Miss. 2008). See also Stegall v. Miss. Bar, 618 So.2d 1291 (Miss. 1993)(noting lawyer received trial transcript from client's family and fee, did no work and then on demand did not return the transcript or fee); Carter v. Miss. Bar, 654 So.2d 505 (Miss. 1995)(noting following dismissal of action, lawyer could not produce papers concerning client lawsuit).

<sup>iii</sup> Edmonds v. Williamson, 13 So.3d 1283 (Miss. 2009).

<sup>iv</sup> Id., (noting issue of whether attorney work product belonged to the client not properly before the court).