

**MISSISSIPPI BOARD OF BAR ADMISSIONS
FEBRUARY 2021 BAR EXAMINATION
EVIDENCE
100 POINTS**

QUESTION 1.1 (50 POINTS)

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.

1.1.1. What is “Relevant Evidence”? **(10 Points)**

1.1.2. Is Relevant Evidence always admissible? Why? **(10 Points)**

1.1.3. Who may impeach a witness? **(10 Points)**

1.1.4. How does the scope of cross-examination under the MISSISSIPPI RULES OF EVIDENCE compare with the scope under the FEDERAL RULES OF EVIDENCE? **(20 Points)**

QUESTION 1.2 (50 POINTS)

You are trying a matter involving a parcel of property. The government seeks a portion of your client’s parcel for a public redevelopment 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 a result of the government taking her property.

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

1.2.1. When is expert testimony admissible? Include in your answer the foundation requirements of expert testimony. **(20 Points)**

- 1.2.2.** Do the MRE require prior disclosure of the facts and data underlying the expert opinion? State the basis for your response. **(10 Points)**
- 1.2.3.** 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? Why? **(10 Points)**
- 1.2.4.** The Court seems skeptical of your expert as well as the government's expert. Can the Court appoint its own "neutral" expert? State the basis for your response. **(10 Points)**

MISSISSIPPI BOARD OF BAR ADMISSIONS
February 2021 BAR Examination
EVIDENCE
ANALYSIS
100 POINTS

QUESTION 1 (50 POINTS)

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.

Each question is worth a maximum of 10 Points.

1.1.1. What is “Relevant Evidence”?

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)**

1.1.2. Is Relevant Evidence always admissible? Why?

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)**

1.1.3. Who may impeach a witness?

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)**

1.1.4. How does the scope of cross-examination under the MISSISSIPPI RULES OF EVIDENCE compare with the scope under the FEDERAL RULES OF EVIDENCE?

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 referred to as “wide open cross”.
(5 Points, alternatively).

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)

QUESTION 2 (50 POINTS)

You are trying a matter involving a parcel of property. The government seeks a portion of your client’s parcel for a new redevelopment 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 a result of the government taking her property.

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

1.2.1. When is expert testimony admissible? Include in your answer the foundation requirements of expert testimony **(20 Points)**

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)*

1.2.2. Do the MRE require prior disclosure of the facts and data underlying the expert opinion? State the basis for your response. **(10 Points)**

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)**

1.2.3. 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? Why? **(10 Points)**

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)**

1.2.4. The Court seems skeptical of your expert as well as the government's expert. Can the Court appoint its own "neutral" expert? State the basis for your response. **(10 Points)**

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)**

**MISSISSIPPI BOARD OF BAR ADMISSIONS
FEBRUARY 2021 BAR EXAMINATION
CONTRACTS
100 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 2.1 (35 POINTS)

Seller owns a parcel of land called Whiteacre and wants to sell it to Buyer for \$100,000. During a recent conversation, Buyer promised Seller that he would purchase Whiteacre for \$100,000. Before the written contract is signed, Seller receives an offer from a third party to purchase Whiteacre for \$150,000. Seller immediately accepts that offer and sells Whiteacre to the third party. Assume for purposes of your answers that there is no dispute as to the legal description of Whiteacre.

2.1.1. Is there an enforceable contract between the Buyer and Seller? **(15 Points)**

2.1.2. Explain fully. **(20 Points)**

Question 2.2 (25 POINTS)

2.2.1. Assuming there is a valid contract between the Buyer and Seller, what is the statute of limitations related to this matter? Explain.

Question 2.3 (40 POINTS)

Assume the same facts for this question as in question 2.1, with the following modifications: Instead of selling Whiteacre to the third party, Seller leased Whiteacre to Buyer pursuant to a valid, written lease agreement which contained the following provision: "Seller hereby gives and grants unto Buyer the right and option to purchase Whiteacre within 30 days after the end of this Lease on terms that are suitable to Seller at that time." Ten days after the end of the Lease term, Buyer attempted to purchase Whiteacre by paying \$150,000 in cash to Seller. Seller refused to sell Whiteacre. Assume for purposes of your answers that Buyer gave adequate consideration for the option provision in the lease agreement.

2.3.1 Does Buyer have an enforceable option contract? **(15 Points)**

2.3.2 Explain fully. **(25 Points)**

**MISSISSIPPI BOARD OF BAR ADMISSIONS
FEBRUARY 2021 BAR EXAMINATION
CONTRACTS
100 POINTS**

ANALYSIS AND MODEL ANSWER

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Is there an enforceable contract between the Buyer and Seller? **(15 Points)**

Explain fully. **(20 Points)**

Answer to Question 2.1 (35 POINTS):

NO. (15 Points) The issue in this question deals with the statute of frauds. Since the verbal agreements were not reduced to writing, no contract exists. Pursuant to the Miss. Code Ann. § 15-3-1(c) states that

An action shall not be brought whereby to charge a defendant or other party: . . . upon any contract for the sale of lands, tenements or hereditaments, or the making of any lease thereof for longer than one year . . . unless, in each of said cases, the promise or agreement upon which such action may be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith or signed by some person by him or her thereunto lawfully authorized in writing. **(20 Points)**

Question 2.2. (25 POINTS)

Assuming there is a valid contract between the Buyer and Seller, what is the statute of limitations related to this matter? Explain.

Answer to Question 2.2.:

3 years. The Statute of Limitations on a written contract in Mississippi is 3 years. *See* Miss. Code Ann. § 15-1-49. The Statute of Limitations on an unwritten contract in Mississippi is also 3 years. *See* Miss. Code Ann. § 15-1-29. Credit will be given for either answer.

Question 2.3 (40 POINTS)

Assume the same facts for this question as in question 2.1, with the following modifications: Instead of selling Whiteacre to the third party, Seller leased Whiteacre to Buyer pursuant to a valid, written lease agreement which contained the following provision: "Seller hereby gives and grants unto Buyer the right and option to purchase Whiteacre within 30 days after the end of this Lease on terms that are suitable to Seller at that time." Ten days after the end of the Lease term, Buyer attempted to purchase Whiteacre by paying \$150,000 in cash to Seller. Seller refused to sell Whiteacre. Assume for purposes of your answers that Buyer gave adequate consideration for the option provision in the lease agreement.

Does Buyer have an enforceable option contract? **(15 Points)**

Explain fully. **(25 Points)**

Answer to Question 2.3:

NO. (15 Points) Because the parties left an essential term of the option contract—price—to future negotiations, without a definite method to determine that amount, the option was rendered unenforceable. "A valid and enforceable option contract requires: (1) an adequate description of the property, (2) consideration, and (3) a date when the option must be exercised." *Prestenbach v. Collins*, 159 So.2d 531, 533 (Miss. 2014). "[W]hile courts may supply reasonable terms which the parties omitted in the contracting process, such as a time for performance, essential terms such as price cannot be left as open-ended questions in contracts which anticipate some future agreement." *Duke v. Whatley*, 580 So.2d 1267, 1273–74 (Miss.1991). **(25 Points).**

**MISSISSIPPI BOARD OF BAR ADMISSIONS
FEBRUARY 2021 BAR EXAMINATION
CONSTITUTIONAL & CRIMINAL LAW & CRIMINAL PROCEDURE
100 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 (33 POINTS)

John and Stacy had been dating for one year before they broke up. Stacy claims that the break up was due in part to John's strange and unusual behavior that developed after they began dating.

After the break up, Stacy's friend encouraged her to look at John's Facebook page. Stacy still had John's username and password, so she visited the Facebook page and what she saw terrified her. Although John never used Stacy's name, the page had several quotes that Stacy assumed referred to her: "If I can't have you, no one can"; "I can't live without you"; and "this will be our last day together."

Later, while Stacy was at work, she received flowers from an unknown source. Stacy went to the florist and requested a description of the person that purchased the flowers. The clerk described John.

This was the last straw. Stacy went to the local municipal court and filed stalking charges against John. John has hired you, noted defense attorney to represent him.

3.1.1. Is John guilty of stalking? **(15 Points)**

3.1.2. Explain fully. **(18 Points)**

Question 3.2 (34 POINTS)

On a Saturday night in Small Town, America, the local party club had just closed its doors for the night and the crowd was dispersing. Several young African-American men piled into Dave's sedan and began to drive away.

Officer Tom had been dispatched to help with crowd control. As Dave's car drove past Officer Tom, someone shouted "F-12 the police." Officer Tom gave chase and stopped Dave's car. Dave, who was driving was ticketed for public profanity.

At the trial of this matter, Officer Tom testified that "F-12" is a derogatory and slanderous expression used to describe the police. The trial judge found Dave guilty of public profanity. Dave has hired you to appeal the trial court's decision.

3.2.1. Please explain fully why the judge's ruling was constitutionally incorrect. **(34 Points)**

Question 3.3 (33 POINTS)

Steve and Pamela were living together in Pamela's home. In fact, the home was deeded to Pamela and taxes were paid by her, but they shared typical home expenses. After several months of living together, Pamela began to suspect Steve of being unfaithful. While looking through Steve's cellular phone, Pamela saw the name "Susan." Pamela didn't recognize the name, but being extra cautious, she texted Susan and instructed her to leave Steve alone and never come to her house.

Steve saw the text message and became irate, accusing Pamela of not trusting him. The argument escalated to the point where Pamela decided to leave and let things cool off. The next morning she returned home and, using her key, she entered the home only to find Steve and a young lady (later identified as Susan) asleep in the bedroom.

Pamela exited the room and went to the front porch where she retrieved her son's Louisville Slugger baseball bat. She returned inside the home and began to pommel both Steve and Susan with the bat, causing severe and painful injuries, especially to Susan. When Susan recovered she decided to file charges against Pamela. In turn, Pamela decided to file charges against Susan.

3.3.1. Explain fully what charges Susan should file against Pamela?
(17 Points)

3.3.2. Explain fully what charges Pamela might bring against Susan?
(16 Points)

MISSISSIPPI BOARD OF BAR ADMISSIONS
February 2021 Bar Examination
CONSTITUTIONAL & CRIMINAL LAW & CRIMINAL PROCEDURE
ANALYSYS
100 Points Total

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Later, while Stacy was at work, she received flowers from an unknown source. Stacy went to the florist and requested a description of the person that purchased the flowers. The clerk described John.

This was the last straw. Stacy went to the local municipal court and filed stalking charges against John. John has hired you, noted defense attorney to represent him.

3.1.1. Is John guilty of stalking? **(15 points)**

3.1.2. Explain fully. **(18 points)**

Answer:

3.1.1. John should be found not guilty of stalking. **(15 Points)**

3.1.2. John's defense is simple. According to Mississippi Code Annotated, 97-3-107 (as amended 1972), stalking is defined as "willful, malicious and repeated following or harassing or threatening with intent to place in reasonable fear death or bodily injury." None of the required elements of stalking are present. **(18 Points)**

Question #3.2 (34 POINTS)

On a Saturday night in Small Town, America, the local party club had just closed its doors for the night and the crowd was dispersing. Several young African-American men piled into Dave's sedan and began to drive away.

Officer Tom had been dispatched to help with crowd control. As Dave's car drove past Officer Tom, someone shouted "F-12 the police." Officer Tom gave chase and stopped Dave's car. Dave, who was driving was ticketed for public profanity.

At the trial of this matter, Officer Tom testified that "F-12" is a derogatory and slanderous expression used to describe the police. The trial judge found Dave guilty of public profanity. Dave has hired you to appeal the trial court's decision.

3.2.1. Please explain fully why the judge's ruling was constitutionally incorrect.

Answer:

The First Amendment to the United States Constitution prevents Congress from, "making any law respecting . . . or abridging the freedom of speech." (10 Points) Even assuming that the Mississippi Supreme Court has determined that the "f" word is profane, the judge's ruling is still incorrect. In *Brendle v. City of Houston*, 759 So. 2d 1274 (Miss. Ct. App. 2000), the Mississippi Court of Appeals held that "Mississippi cannot, under the confines of the U.S. Constitution, regulate speech which does not fall into the categories of 'fighting words,' 'obscene words,' or some 'libelous words.'" (10 Points) As in *Brendle*, "in this case we are not, obviously, dealing with libelous words" and "we are not dealing with 'obscene words[,]'" which "are defined as those that appeal to prurient interests and are in some way erotic." *Id.* (6 Points) Neither is the language considered "fighting words." As in *Brendle*, "[e]ven assuming that [Dave] used the 'f' word in his speech, [Dave]'s language while vulgar, indecent, and arguably profane, did not rise to the level of 'fighting words.'" *Id.* (6 Points) As in *Brendle*, there is nothing in this factual scenario that suggest that Dave's language sought to incite others. (2 Points)

Question #3.3. (33 POINTS)

Steve and Pamela were living together in Pamela's home. In fact, the home was deeded to Pamela and taxes were paid by her, but they shared typical home expenses. After several months of living together, Pamela began to suspect Steve of being unfaithful. While looking through Steve's cellular phone, Pamela saw the name "Susan." Pamela didn't recognize the name, but being extra cautious, she texted Susan and instructed her to leave Steve alone and never come to her house.

Steve saw the text message and became irate, accusing Pamela of not trusting him. The argument escalated to the point where Pamela decided to leave and let things cool off. The next morning she returned home and, using her key, she entered the home only to find Steve and a young lady (later identified as Susan) asleep in the bedroom.

Pamela exited the room and went to the front porch where she retrieved her son's Louisville Slugger baseball bat. She returned inside the home and began to pommel both Steve and Susan with the bat, causing severe and painful injuries, especially to Susan. When Susan recovered she decided to file charges against Pamela. In turn, Pamela decided to file charges against Susan.

**3.3.1. Explain fully what charges Susan should file against Pamela?
(17 Points)**

**3.3.2. Explain fully what charges Pamela might bring against Susan?
(16 Points)**

Answer:

3.3.1. Susan should file charges against Pamela for aggravated assault. Mississippi Code Ann. § 97-3-7(2)(a)(i) states that “a person is guilty of aggravated assault if he . . . attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under the circumstances manifesting extreme indifference to the value of human life.”
(17 Points)

3.3.2. It is without any doubt that Pamela intentionally, purposely and knowingly caused bodily injury to Susan. But, in Pamela's defense, she had previously warned Susan against coming to her home and according to the factual scenario, she never invited Pamela to her home on this particular occasion. According to Mississippi Code Ann. § 97-17-93(1), “[a]ny person who knowingly enters the lands of another without the permission of or without being accompanied by the landowner or lessee of the land, shall be guilty of a misdemeanor.” (16 Points)

**MISSISSIPPI BOARD OF BAR ADMISSIONS
FEBRUARY 2021 BAR EXAMINATION
MISSISSIPPI PRACTICE AND PROCEDURE
100 POINTS**

QUESTION 4.1 (100 POINTS)

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.

- 4.1.1.** 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)**
- 4.1.2.** Discuss the methods one may use in Mississippi to serve an in-state defendant. **(32 Points)**
- 4.1.3.** Discuss the methods one may use in Mississippi to serve an out-of-state defendant. **(33 Points)**

**MISSISSIPPI BOARD OF BAR ADMISSIONS
FEBRUARY 2021 BAR EXAMINATION
MISSISSIPPI PRACTICE AND PROCEDURE**

ANALYSIS
100 POINTS

QUESTION 4.1

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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.

4.1.1. ANSWER (35 POINTS):

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)**

4.1.2. ANSWER (32 POINTS):

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)**

ANSWER 4.1.3. (33 POINTS)

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 the Answer to 4.2 above **(11 Points)**; or
- (2) Publication as noted in part 2 (4), above **(11 Points)**; or
- (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 2021 BAR EXAMINATION
DOMESTIC RELATIONS
100 POINTS**

QUESTION 5.1

Serena and Cannon began living together when they both enrolled at Career University. Both majored in hospitality management and were gainfully employed at the University Hotel. Serena informally used Cannon's last name and they represented to their friends that they were married, however, they never obtained a marriage license. After graduation, the couple moved into a spacious apartment in New City, Mississippi that Serena leased in her name and maintained at her sole expense. Serena was satisfied with this arrangement because she earned more than Cannon and Cannon promised to purchase a house for them when his earnings increased. They selected beautiful, expensive furnishings for the apartment and charged Cannon's credit card. He made minimum payments each month.

The relationship deteriorated when Serena heard that Cannon had sold a house that he inherited from his biological father, who died intestate. Cannon told Serena that he was adopted, which prevented any inheritance from his biological father. He further stated that his biological father had a wife who inherited everything.

Serena was aware of Cannon's adoption and she had met his adopting father. However, she did not believe Cannon could not inherit from his biological father. She was convinced that he had secretly sold the house and did not honor his promise. She changed the locks on the apartment doors and sent a tweet to Cannon that the relationship was over and she would keep the furniture.

Cannon immediately sued her, pro se, in Chancery Court for a divorce on the grounds of desertion and/or habitual cruel and inhuman treatment. In his petition he requested that the Court award the furniture to him.

5.1.1 Answer the following questions, assuming Cannon biological father died intestate and was married at the time of his death.

- A. Could Cannon inherit from his biological father? Explain. **(15 Points)**
- B. Could Cannon inherit sole ownership of the house? Explain. **(10 Points)**
- C. Would Cannon have the right to sell the house? Explain. **(15 Points)**

5.1.2 Explain how the Chancery Court should rule on Cannon's petition for:

A. divorce **(10 Points)**

B. the furniture **(20 Points)**

5.1.3 Assuming that Cannon and Serena were legally married, explain how the Chancery Court should rule on Cannon's petition for:

A. divorce on each of the two stated grounds **(15 Points)**

B. the furniture **(15 Points)**

MISSISSIPPI BOARD OF BAR ADMISSIONS
FEBRUARY 2021 BAR EXAMINATION
DOMESTIC RELATIONS
ANALYSIS
100 POINTS

QUESTION 5.1.1.

1. Answer the following questions assuming Cannon's biological father died intestate and was married at the time of his death.
 - A. Could Cannon inherit from his biological father? Explain. (15 Points)
 - B. Could Cannon inherit sole ownership of the house? Explain. (10 Points)
 - C. Would Cannon have the right to sell the house? Explain. (15 Points)

1.A. Mississippi laws of intestate succession allow an adopted child to **inherit** from his biological father. *Estate of Jones v. Howell*, 687 So.2d 1171 (Miss. 1996). The rule in *Jones* states: "In the absence of a statute to the contrary, although the child inherits from the adoptive parents, he still inherits from or through his blood relatives, or his natural parents. In view of the tendency of the courts to construe adoption statutes so as to benefit the child...a statute severing the relation between parent and child is in derogation of common law and should for that reason be strictly construed, it has been held that an adoption statute providing that the natural parents shall be divested of all legal rights and obligations with respect to such child should not be construed so as to deprive the child of its right to inherit from or through its natural parents..." Cannon could have inherited his biological father's house. **(15 points)**

1.B. A spouse and child would share equally pursuant to Mississippi laws of intestate succession. Cannon, assuming he was the only child, would have received the house as **tenant in common** with the surviving spouse. MCA 91-1-7. **(10 Points)**

1.C. A surviving **spouse is entitled to homestead rights** in the marital residence during his or her lifetime or until he or she remarries. Although Cannon may have inherited one half interest in his father's house, he would not have been allowed to sell it without the consent of his father's spouse. *Biggs v. Roberts*, 115 So.2d 151 (1950) and MCA 91-1-23. **(15 Points)**

QUESTION 5.1.2.

2. Explain how the Chancery Court should rule on Cannon's petition for:
- A. divorce (10 Points)
 - B. the furniture (20 Points)

2. A. The couple did not obtain a marriage license and the state of **Mississippi does not recognize common law marriage**. Common Law marriage was abolished in 1956. Miss. Code Ann. 93-1-15(1) (1972). The couple is not married and generally the law does not extend the **rights** enjoyed by married people to those who cohabit. The petition for divorce would likely be dismissed. **(10 Points)**

2. B. Cannon would not be entitled to a divorce nor property settlement /equitable division of assets pursuant to a marriage dissolution. *Davis v. Davis*, 643 So.2d 931 (Miss1994). In *Davis* one partner wanted a share of the other's great wealth based on her domestic contribution. The court refused to grant a property settlement. **(14 Points)**

In a few cases, *infra*, the Mississippi court has allowed property settlement/equitable division of property of unmarried persons who cohabitated as married persons In *Pickens v. Pickens*, 490 so.2d 872 court stated:

"Where parties such as these live together in what at least be ... acknowledged to be a partnership and where, through their joint efforts, real property or personal property, or both, are accumulated, an equitable division of such property will be ordered upon the permanent breakup and separation..."

In *Taylor v Taylor*, 317 So.2d 422 (1975), where the punitive wife lived with her partner for 18 years and was seriously ill at the time of the separation, the court departed from strict application of the law.

Cannon and Serena's situation would not likely rise to the level of a partnership or a severe hardship. The court would likely dismiss Cannon's complaint. **(2 Points)** Cannon could sue on the theory of **unjust enrichment** as explained in *Cates v. Swain*, 101So.3d 1171 (2012):

Unjust enrichment "applies to situations where there is **no legal contract** and 'the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another.'" *Miss. Dep't of Env'tl. Quality v. Pac. Chlorine, Inc.*, 100 So.3d 432, 442 (Miss. 2012) (quoting *Powell v. Campbell*, 912 So.2d 978, 982 (Miss. 2005)). In these circumstances, **equity** imposes "a duty to refund the money or the use value of the property to the **person to whom in good conscience it ought to belong**." *Estate of Johnson v. Adkins*, 513 So.2d 922, 926 (Miss. 1987). The amount of recovery for unjust enrichment is "that to which the claimant is equitably entitled." *Id.*

The facts state that Cannon **charged** the furniture on his credit card and made the payments, he would be entitled to it under the theory of unjust enrichment.

(Credit is given for recognizing that Cannon can make a contract claim, supra, or a tort claim such as: Trespass to Chattel or Conversion. Credit is also given for discussion of replevin action or for injunctive relief.) (4 Points)

QUESTION 5.1.3

- 3. Assuming that Cannon and Serena were legally married, explain how the Chancery Court should rule on Cannon's petition for:**
- A. Divorce on each of the two stated grounds (15 Points)**
 - B. the furniture (15 Points)**

3. A. The grounds of desertion requires a spouse's willful, continued and obstinate abandonment of the marriage without the other's consent for the space of one year. Desertion can be actual or constructive. Cannon immediately filed for divorce. Although locking a spouse out of the marital quarters could rise to the level of desertion, the time frame of one year has not been met. The petition for divorce on the grounds of desertion should be denied. **(7.5 Points)**

Habitual cruel and inhuman treatment requires "conduct only as endangers life, limb, or health, or creates a reasonable apprehension of danger thereto, thereby rendering the continuance of the marital relation unsafe for the unoffending spouse, or such unnatural and infamous conduct as would make the marital relation revolting to the unoffending spouse and render it impossible for him or her, as the case may be, to discharge the duties thereof." *Russell v. Russell*, 128 So.270,272 (Miss. 1930). Cannon would have to show that Serena's conduct meets this stringent test, then prove its impact on his mental or physical health. Based on the facts, it is unlikely that he could provide such proof. The petition on for divorce on grounds of habitual cruel and inhuman treatment should be denied. **(7.5 Points)**

(It is most important that the applicant define these two grounds for divorce. Additional credit should be given for a logical application to the facts.)

3. B. Marital property is defined as assets acquired or accumulated during the course of a marriage. *Hemsley v. Hemsley*, 639 So. 2d 909, 915 (Miss.1994) In a divorce proceeding marital property is divided between the parties based on factors outlined in *Ferguson v. Ferguson*, 639 So. 2d 921 Miss. 1994): 1) substantial contribution to property accumulation, including indirect economic contribution, contribution to family stability, and contribution to the education or training of the wage-earning spouse; 2) spousal use or disposition of assets and distribution by agreement 3) the market and emotional value of assets; 4) the value of each spouse's separate estate; 5) tax consequences and legal consequences to third parties; 6) the extent to which property division can eliminate the need for

alimony; 7) the needs of each spouse; and 8) other factors which should be considered in equity.

The furniture was accumulated during the marriage and apparently used by the couple. It constitutes the only assets owned by the couple. Although Cannon made the credit card payments, it remains marital property. Serena paid the rent and Cannon paid the furniture bill. The Chancellor would consider the above factors and likely divide the furniture equally between the two parties along with the debt securing it. **(15 Points)**

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LEGAL ETHICS AND PROFESSIONAL CONDUCT
100 POINTS**

QUESTION 6.1

Betty Johnson practices law as a solo practitioner in Jefferson, Mississippi, with a wide variety of clients. In one of her contested estate matters, she represented two brothers, John and Jack Smith. In that case, Betty charged the Smith brothers attorney's fees by the hour at \$200.00 per hour, which is a rate typical of that charged by other attorneys in the area with the same level of experience as Betty. Ultimately, the case was settled and the two brothers received "free and clear" joint title to one hundred and sixty (160) acres of family land in a neighboring Mississippi county and which had a large quantity of mature pine trees growing on it.

After the case is finally concluded, John and Jack drop by Betty's office. They first tell Betty how happy they've been with her representation, then ask if she would do something else for them.

The Smith brothers are college-educated and each of them has been in their own businesses for years, so they understand that they need to protect their new asset. They ask Betty to form a Mississippi Limited Liability Company (LLC) for them as equal partner that they will then transfer title of the timberland into. "Now, we know that our retainer ran out some time back and we're behind on paying your bill, but we don't have any money right now to get this done" John continued. "Even so, we plan on doing a select cut of timber after the new company is set up and before the end of the year. We also want to give you a lien against the timber. That way, when it's sold, you'll be the first to get paid."

Betty says she doesn't see any reason why she can't do as they propose as long as there are certain conditions. She quotes them a reasonable additional flat fee to draft a standard LLC Operating Agreement and undertake any other necessary work to form the LLC, and which also includes payment for work to transfer title to the property into the LLC and secure a lien for both that fee and her prior outstanding attorney's fees. She then proceeds to discuss with them how her role and this representation will be a different - that she's only willing to do this if they are both in agreement for

everything connected with the LLC, all communications and information about her work for the LLC will be shared with both of them and that she will not get in the middle of any disputes between them about the business. Finally, they have to agree that they have no disputes over the amount of her attorney's fees and that the full amount owed will be paid off through the lien and timber sale.

After their discussion, Betty tells them to think about it and to discuss with each other and anyone else they trust, and in the meantime she'll prepare a new client contract and agreement for them to sign if they want to go forward that way. Betty finishes drafting the new agreement and forwards copies of the new agreement to the Smith brothers the very next morning. The agreement spells out all the necessary details about the Smiths' agreement to give Betty a lien against the timber for her attorney's fees and that the Smiths will make reasonable efforts to have a sufficient amount of timber sold by the end of the year to satisfy the lien. Two weeks later, the Smith brothers return and sign the new written agreement with Betty.

- 6.1.1.** What do the Mississippi Rule of Professional Conduct provide with respect to engaging with business transactions with a client? **(20 points)**
- 6.1.2.** Does the agreement between Betty and the Smith Brothers to take a lien against the Smith's property to pay attorney's fees comply with the relevant rule of the Mississippi Rules of Professional Conduct related to business transactions with a client? **(30 points).**
- 6.1.3.** What do the Mississippi Rule of Professional Conduct provide with respect to engaging in joint representation of two existing clients who seek to establish a new legal relationship between themselves? **(20 points)**
- 6.1.4.** Does the agreement to jointly represent the Smith Brothers in forming an LLC comply with the relevant rule of the Mississippi Rules of Professional Conduct related to creating a new legal relationship between existing clients? **(30 points).**

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FEBRUARY 2021 BAR EXAMINATION
PROFESSIONAL CONDUCT AND LEGAL ETHICS
ANALYSIS
100 POINTS**

Model Answer:

6.1.1. What is the Mississippi Rule of Professional Conduct applicable to acquiring legal interests adverse to a client? (20 Points)

Rule 1.8 of the Mississippi Rules of Professional Conduct provides in relevant part:

**RULE 1.8 CONFLICT OF INTEREST:
PROHIBITED TRANSACTIONS**

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interests are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
- (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
- (3) the client consents in writing thereto.

(20 Points)

6.1.2. Does the agreement between Betty and the Smith Brothers to take a lien against the Smith's property to pay attorney's fees comply with the relevant rule of the Mississippi Rules of Professional Conduct related to business transactions with a client? (30 points).

In this case, the agreement does appear to satisfy the provisions of Rule 1.8:

- (1) The transaction and terms appear to be fair and reasonable in this instance, insofar as it was the Smiths' idea to offer her a lien and Betty's lien is limited to reasonable attorney's fees already earned by her. Betty's new written document also "spells out all the necessary details" about the agreement, so it would certainly appear that the terms are fully disclosed to the college-educated Smith brothers. **(10 Points);**

- (2) After first discussing the potential of such an agreement with Betty, the Smith brothers had two weeks within which to seek independent counsel to discuss the agreement. Betty did not specifically instruct the clients to seek independent legal advice, but it does appear that the Smith brothers had a reasonable opportunity to do so. It may be argued that Betty should affirmatively instruct the Smith brothers to seek independent counsel and that would certainly be the better practice, the Smith brothers having college educations and having prior business experience would favor finding that this element is also satisfied. **(10 Points)**
- (3) The Smith Brothers did consent in writing to the agreement, so this element is satisfied. **(10 Points)**

6.1.3. What is the Mississippi Rule of Professional Conduct applicable to providing joint representation to two clients who seek to establish a new legal relationship between themselves? (20 Points)

Rule 2.2 of the Mississippi Rules of Professional Conduct provides:

**RULE 2.2 LAWYER SERVING AS
AN INTERMEDIARY BETWEEN CLIENTS**

- (a) A lawyer represents clients as an intermediary when the lawyer provides impartial legal advice and assistance to two or more clients who are engaged in a candid and non-adversarial effort to accomplish a common objective with respect to the formation, conduct, modification, or termination of a consensual legal relation between them.
- (b) A lawyer shall not represent two or more clients as an intermediary in a matter unless:
 - (1) as between the clients, the lawyer reasonably believes that the matter can be resolved on terms compatible with the best interests of each of the clients, that each client will be able to make adequately informed decisions in the matter, that there is little risk of material prejudice to the interest of any of the clients if the contemplated resolution is unsuccessful, and that the intermediation can be undertaken impartially;
 - (2) the lawyer's representation of each of the clients, or the lawyer's relationship with each, will not be adversely affected by the lawyer's responsibilities to other clients or third persons, or by the lawyer's own interests;
 - (3) the lawyer consults with each client about:
 - (i) the lawyer's responsibilities as an intermediary;

- (ii) the implications of the intermediation (including the advantages and risks involved, the effect of the intermediation on the attorney-client privilege, and the effect of the intermediation on any other obligation of confidentiality the lawyer may have);
- (iii) any circumstances that will materially affect the lawyer's impartiality between the clients; and
- (iv) the lawyer's representation in another matter of a client whose interests are directly adverse to the interests of any one of the clients; and any interests of the lawyer, the lawyer's other clients, or third persons that will materially limit the lawyer's representation of one of the clients; and

(4) each client consents in writing to the lawyer's representation and each client authorizes the lawyer to disclose to each of the other clients being represented in the matter any information relating to the representation to the extent that the lawyer reasonably believes is required to comply with Rule 1.4.

C) While representing clients as an intermediary, the lawyer shall:

(1) act impartially to assist the clients in accomplishing their common objective;

(2) as between the clients, treat information relating to the intermediation as information protected by Rule 1.6 that the lawyer has been authorized by each client to disclose to the other clients to the extent the lawyer reasonably believes necessary for the lawyer to comply with Rule 1.4; and

(3) consult with each client concerning the decisions to be made with respect to the intermediation and the considerations relevant in making them, so that each client can make adequately informed decisions.

(d) A lawyer shall withdraw from service as an intermediary if:

(1) any of the clients so requests;

(2) any of the clients revokes the lawyer's authority to disclose to the other clients any information that the lawyer would be required by Rule 1.4 to reveal to them; or

(3) any of the other conditions stated in paragraph (b) are no longer satisfied.

(e) If the lawyer's withdrawal is required by paragraph (d)(2) the lawyer shall so advise each client of the withdrawal, but shall do so without any further disclosure of information protected by Rule 1.6.
(20 Points)

6.1.4. Does the agreement to jointly represent the Smith Brothers in forming an LLC comply with the Mississippi Rules of Professional Conduct? (30 Points)

The agreement to jointly represent the Smiths in the creation of an LLC implicates Rule 2.2, as Betty's requested service is as an intermediary between clients seeking in a non-adversarial manner to create a voluntary new legal relationship between them as Members of a Mississippi Limited Liability Company. **(10 Points)**

From the information given, it appears Betty would be justified in believing that the requirements of Rule 2.2(b)(1) are satisfied. The work is limited in scope and leaves the clients with essentially the same interests they have already (*i.e.*, equal equity ownership in a jointly held asset). Both brothers are educated and have business experience. Should the agreement to form the LLC be unsuccessful, they will remain joint owners of the land, so the risk of material prejudice is lessened. Betty makes a condition that she will be impartial and will not get "in the middle" of disputes between them, warning the brothers about limitations created by conflicts of interest. **(5 Points)**

As to the provisions of Rule 2.2(b)(3), there is no clear information about whether Betty has any interests that would materially limit her representation, but she does state that she "sees no reason" why she can't proceed with this joint representation. She also tells them that all information will have to be shared with both of them and that she will not "get in the middle" of disputes between the brothers. She does consult with them about her responsibilities, although it may be argued that the facts don't sufficiently identify that she had all the discussions required by Rule 2.2(b)(3). **(5 Points)**

Likewise, it appears that the provisions of Rule 2.2 (b)(4) are satisfied, because the clients have consented in writing and have also agreed that all information about the representation will be shared with both of them. **(5 Points)**

The provisions of Rule 2.2(c),(d) and (e) are not implicated as Betty has not yet completed the work. As such, the facts as provided do not indicate that she has failed in the requirements of actual service as intermediary (Rule 2.2 (c)) and no condition requiring her withdrawal from representation has occurred (Rules 2.2(d) and (e)). **(5 Points)**