

**MISSISSIPPI BOARD OF BAR ADMISSIONS  
JULY 2019 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 at trial. The MRE 700 series governs admissibility of experts. You consult the rules to ensure your expert's 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 Does 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)**

Hearsay is a fundamental evidentiary concept. While the application of the hearsay rules, M.R.E. 801/802/803, are sometimes subject to a detailed analysis based on specific facts, this question seeks to test your understanding of the core concepts. Therefore, please answer the following questions and explain your answers fully.

**1.2.1 What is hearsay, and is it admissible? (10 Points)**

**1.2.2 Please state the types of “statements” that are governed by the hearsay definitions. (15 Points)**

**1.2.3 Some 25 Hearsay exceptions exist. Please list five such exceptions and define them. (Listing of more than five hearsay exceptions will not result in increased points.) (25 points)**

**MISSISSIPPI BOARD OF BAR ADMISSIONS  
JULY 2019 BAR EXAMINATION  
EVIDENCE  
100 Points Total  
**ANALYSIS****

**Question 1.1 (50 Points Total)**

**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 Does 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 1.2 (50 Points Total)**

**1.2.1 What is hearsay, and is it admissible? (10 Points)**

Answer: Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. MRE 801 (c). **(7.5 Points)**. Hearsay is not admissible except as provided by statute or rules. MRE 802 **(2.5 Points)**.

**1.2.2 Please state the types of "statements" that are governed by the hearsay definitions. (15 Points)**

Answer: A "statement" subject to the hearsay analysis may consist of:

- (1) Oral assertion **(5 Points)**
- (2) Written assertion **(5 Points)**
- (3) Non-verbal conduct of a person, if it is intended by the person as an assertion **(5 Points)**. MRE 801(a)

**1.2.3 Some 25 Hearsay exceptions exist. Please list five such exceptions and define them. (25 points)**

Answer: Please see MRE 803. The Grader should award 5 points for each correct definition.

**MISSISSIPPI BOARD OF BAR ADMISSIONS  
JULY 2019 BAR EXAMINATION  
CONTRACTS  
100 Points Total**

**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.

Arthur advertised for sale a parcel of land he owned in Any County, Mississippi. The land was not located near any major traffic artery and, therefore, didn't appear to be desirable for development. Arthur negotiated with Brian, and mailed Brian the following signed memorandum: "To Brian: I am willing to sell you my land in Any County consisting of about 20 acres for \$50,000. Dated June 10, 2019." Brian wanted assurance that Arthur would not sell to someone else while Brian inspected the land. On June 10, Arthur told Brian: "I promise not to revoke the offer, sell the land to anyone else, or raise the price for 10 days to give you the opportunity to examine the land." Brian replied, "I will go to Any County to inspect the land and get back with you within 10 days."

Brian traveled to Any County and examined the land. He returned home on June 13 and took \$50,000 to Carl, an attorney. He instructed Carl to hold the funds for him as he expected to purchase a parcel of land from Arthur and wanted Carl to represent him in the purchase. Carl deposited Brian's check into his bank account entitled "Carl Smith, Attorney-at-Law, P.A."

Also on June 13, Arthur learned that the county planned to build an interstate highway extension next to the parcel, which would drastically increase its value. Arthur immediately dispatched a signed letter to Brian stating, "The Any County deal is off." Brian did not receive the letter until June 16.

On June 14, Brian signed and mailed a letter to Arthur stating, "I have examined the land and I accept your offer." The next day, June 15, Brian stopped by Carl's office and said, "I've changed my mind about purchasing Arthur's land, but if you are interested, I'm willing to assign my contract in the land for \$500." Carl had no knowledge of the interstate development announcement but did think Brian was getting a good deal and orally agreed to accept assignment.

Two weeks later, Brian learned about the highway extension and immediately sought your advice about any rights he may have regarding the Any County land. Please advise Brian on any relevant legal issues and include the reasoning for your advice regarding the following questions:

**Question 2.1 (65 points total)**

**2.1.1** Did Arthur and Brian have a valid, binding contract for the purchase of the land? **(20 points)**

**2.1.2** Explain all facts and legal reasoning that support your answer. **(45 points)**

**Question 2.2 (35 points total)**

**2.2.1** Assume for purposes of this question that Arthur and Brian had a valid contract for the purchase of the land. Is Brian and Carl's oral agreement for the assignment of the contract to Carl enforceable so that Arthur, Brian and Carl all must honor the assignment? **(15 Points)**.

**2.2.2** Explain all facts and legal reasoning that support your answer. **(20 Points)**

**MISSISSIPPI BOARD OF BAR ADMISSIONS  
July 2019 Bar Examination  
CONTRACTS  
100 Points Total**

**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.

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Brian traveled to Any County and examined the land. He returned home on June 13 and took \$50,000 to Carl, an attorney. He instructed Carl to hold the funds for him as he expected to purchase a parcel of land from Arthur and wanted Carl to represent him in the purchase. Carl deposited Brian's check into his bank account entitled "Carl Smith, Attorney-at-Law, P.A."

Also on June 13, Arthur learned that the county planned to build an interstate highway extension next to the parcel, which would drastically increase its value. Arthur immediately dispatched a signed letter to Brian stating, "The Any County deal is off." Brian did not receive the letter until June 16.

On June 14, Brian signed and mailed a letter to Arthur stating, "I have examined the land and I accept your offer." The next day, June 15, Brian stopped by Carl's office and said, "I've changed my mind about purchasing Arthur's land, but if you are interested, I'm willing to assign my contract in the land for \$500." Carl had no knowledge of the interstate development announcement but did think Brian was getting a good deal and orally agreed to accept assignment.

Two weeks later, Brian learned about the highway extension and immediately sought your advice about any rights he may have regarding the Any County land. Please advise Brian on any relevant legal issues and include the reasoning for your advice regarding the following questions:

**Question 2.1 (65 points total)**

- 2.1.1 Did Arthur and Brian have a valid, binding contract for the purchase of the land? **(20 points)**
- 2.1.2 Explain all facts and legal reasoning that support your answer. **(45 points)**

**Answer to Question 2.1:**

- 2.1.1 YES. **(20 points)**.
- 2.1.2 In order for a valid contract to exist, there must be an objectively discernable offer, acceptance of that offer and consideration to support the bargain. In a land sale contract, the agreement must be in writing to satisfy the Statute of Frauds. Miss. CODE ANN. §15-3-1(c) (1972). **(10 Points)**. Here, Arthur's letter of June 10 appears to be a valid offer. Arthur may argue that the land is not adequately described ("My land in Any County consisting of about 20 acres"), but the fact that Brian inspected the land weighs in favor of a clearly discernable piece of property to both parties. *Taylor v. Sayle*, 163 Miss. 822, 142 So. 3 (1932). **(5 Points)**.

Assuming an offer does exist, it remains open for a reasonable time unless revoked by Arthur prior to acceptance. **(5 Points)**. Here, the 10-day option was not supported by consideration, nor is it in writing, and since common law applies, the offer is revocable. **(5 Points)**. Brian, however, accepted the offer upon mailing the letter of June 14, because absent an express method of acceptance by Arthur, Brian can accept his offer with a writing. **(5 Points)**. Here, it appears a contract for the sale of land was formed because Arthur's letter is signed by him and acceptance was complete when Brian placed his letter of acceptance in the mail. *Couret v. Conner*, 118 Miss. 374, 79 So. 230, 232 (1918) (citing *Burton v. United States*, 202 U. S. 344, 26 Sup. Ct. 688, 50 L. Ed. 1057, 6 Ann. Cas. 392 (1906)). **(10 Points)**. Arthur's revocation is only effective upon Brian's receipt of it, and by the time Brian received Arthur's attempted revocation on July 16, Brian had already accepted the offer. *Heritage Bldg. Prop., LLC, v. Prime Income Asset Mgmt., Inc.*, 43 So. 3d 1138, 1143 (Miss. Ct. App. 2009); *Bancroft v. Martin*, 144 Miss. 384, 109 So. 859, 860 (1926). **(5 Points)**. In conclusion, a contract appears to be established.

**Question 2.2 (35 points total)**

- 2.2.1** Assume for purposes of this question that Arthur and Brian had a valid contract for the purchase of the land. Is Brian and Carl's oral agreement for the assignment of the contract to Carl enforceable so that Arthur, Brian and Carl all must honor the assignment? **(15 Points)**.
- 2.2.2** Explain all facts and legal reasoning that support your answer. **(20 Points)**

**Answer to Question 2.2:**

- 2.2.1** NO. **(15 points)**.
- 2.2.2** Generally, contracts are assignable absent express language to the contrary. **(5 Points)**. For the assignment to be enforceable, however, the Statute of Frauds requires that all agreements for the sale or purchase of land be in writing, and that there be a valid offer and consideration. Miss. CODE ANN. §15-3-1(c) (1972). **(5 Points)**.

Brian and Carl orally agreed to the assignment which does not constitute a mutually agreed upon writing for acceptance of assignment. **(5 Points)**. Therefore, the assignment should not be considered enforceable. **(5 Points)**.

**MISSISSIPPI BOARD OF BAR ADMISSIONS  
JULY 2019 BAR EXAMINATION  
CONSTITUTIONAL & CRIMINAL LAW & CRIMINAL PROCEDURE  
100 Points Total**

**IMPORTANT Notice to Bar Examinees:** 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 (50 points total)**

George, who is a convicted felon, was visiting his girlfriend, Shelia, in Rural County, Mississippi. After a while, the couple engaged in a heated argument. Shelia became concerned about her safety and decided to call the police.

George decided to leave the premises and absconded to the nearby woods. When officers arrived, Shelia informed them that George ran into the woods. A lengthy search ensued. George was subsequently found lying facing down on a grassy knoll. When George stood up, a small caliber handgun was found on the ground where George had been lying face down.

- 3.1 List the misdemeanor and/or felony crimes with which George may be charged and analyze the likelihood of conviction on the facts presented?**

**Question #3.2 (50 points total)**

Michael loves marijuana. He smokes marijuana cigarettes several times day. After a hard day at work, Michael decides to relax and have a smoke of marijuana. Soon after lighting up and driving away from his work site, a police officer stops Michael for an expired tag.

As the officer approaches the car, it is undisputed that he saw and smelled a burning marijuana joint on the center console. The officer asked Michael to step out of the car and began to search the vehicle where he found a felony amount of marijuana in the glove compartment. Michael is arrested and charged with possession of marijuana in a motor vehicle.

Michael contends that the search of his vehicle was illegal. He has hired you, and asked you to file a motion to suppress.

- 3.2 Please explain why a motion to suppress may not be successful.**

**MISSISSIPPI BOARD OF BAR ADMISSIONS  
JULY 2019 BAR EXAMINATION  
CONSTITUTIONAL & CRIMINAL LAW & CRIMINAL PROCEDURE  
100 Points Total**

**ANALYSIS AND MODEL ANSWERS**

**Question #3.1 (50 points total)**

George could be charged with a misdemeanor offense of resisting arrest **(10 points)** and felony possession of a firearm by a felon. **(10 points)**.

According to the factual scenario, George ran into the wooded area after his girlfriend, Shelia, called the police. There is nothing in the facts to suggest that George sought to avoid an arrest. But, if he ran into the woods to avoid a lawful arrest then he could be guilty of resisting arrest.

Pursuant to Section 97-9-73 MCA, annotated (1972), "[i]t shall be unlawful for any person to obstruct or resist by force, or violence, or threats, or in any other manner, his lawful arrest." **(10 points)**.

It is undisputed that George is a convicted felon. But, when George stood up, a small caliber hand gun was found on the ground where George had been lying face down. In Mississippi, pursuant to Section, 97-37-5, MCA, annotate (1972), "[i]t shall be unlawful for any person who has been convicted of a felony under the laws of this state, any other state, or of the United States, to possess any firearm...." **(10 points)**.

But first, the state would have to prove that George was in fact in possession the firearm.

In Mississippi, there are two types of possession, constructive and actual. "Constructive possession is established by evidence showing that the contraband was under the dominion and control of the defendant." *Roberson v. State*, 595 So.2d 1310, 1319 (Miss. 1992). *Adams v. State*, 228 So.3d 832 (Miss. App., 2017). **(5 points)**.

If the State fails to prove that George was in possession and control over the handgun, then George would not be guilty of the crime. *Brent v. State of Mississippi*, 247 So.3d 367 (Miss. Ct. App., 2018) **(5 points)**.

**Question #3.2 (50 points total)**

In order to determine if the stop was illegal, the first step is to determine if the officer had the necessary probable cause to stop Michael. According to the facts presented, the officer stopped Michael because of an expired tag. This could constitute probable cause. "As a general rule, the decision to stop an automobile is reasonable where the police have probable cause to believe that the traffic violation has occurred. *Thomas Earl Austin Jr. v. State*, 72 So.3d 565 (Miss. Ct. App. 2011). **(20 points)**.

Regarding the discovery of the marijuana in the glove compartment, when the officer approached Michael's car, he saw a burning marijuana cigarette. In *Fultz v. State*, 822 So.2d 994 (Miss.Ct.App. 2002), the Court held that "due to officer Luckey's testimony that he smelled burnt marijuana emanating from the vehicle, we find that his search of the vehicle was also permissible under the plain-smell corollary of the plain-view doctrine." See also, *Wolf v. State*, 260 So.2d 425 (Miss.1972) (holding that warrantless search is permitted "if there be probable cause to believe that the automobile is mobile and contains contraband or other items which offend against the law."). **(30 points)**.

**MISSISSIPPI BOARD OF BAR ADMISSIONS  
JULY 2019 BAR EXAMINATION  
PRACTICE AND PROCEDURE OF MISSISSIPPI COURTS  
100 Points Total**

Ms. H is injured in a bar when another regular patron, Mr. A, became intoxicated and assaulted her. She files a civil complaint against Mr. A. She seeks punitive damages against him.

**Question 4.1**      What type(s) of conduct must the plaintiff allege in her complaint in order to state a claim for punitive damages against Mr. A under Mississippi law? **(20 points)**

**Question 4.2**      What degree of specificity must be pled pursuant to the Mississippi Rules of Procedure? **(20 points)**

**Question 4.3**      What is the plaintiff's burden of proof at trial with respect to her claim for punitive damages? **(25 points)**

**Question 4.4**      Explain how punitive damage awards are handled from a procedural perspective in a trial in Mississippi. Your response should include an explanation of when and to whom the necessary proof is offered and what role(s) the judge and/or jury play in the award of punitive damages. Include in your explanation whether punitive damages may be awarded in Mississippi in the absence of an award of compensatory damages. **(35 points total)**

**MISSISSIPPI BOARD OF BAR ADMISSIONS  
JULY 2019 BAR EXAMINATION  
PRACTICE AND PROCEDURE OF MISSISSIPPI COURTS  
100 Points Total**

**ANALYSIS AND MODEL ANSWER**

**Question 4.1**      *What type(s) of conduct must a plaintiff allege in her complaint in order to state a claim for punitive damages against Mr. A under Mississippi law?*

In her complaint, in order to adequately assert a claim for punitive damages, a plaintiff must allege that the defendant "acted with actual malice, gross negligence which evidences a willful, wanton, or reckless disregard for the safety of others, or committed actual fraud." Miss Code Ann § 65-1-11(1)(a). **(20 points)**.

**Question 4.2**      *What degree of specificity must be pled pursuant to the Mississippi Rules of Procedure? (20 total points)*

Mississippi is a "notice pleading" state. **(5 points)**. According to Miss Rule Civ P 8, "[a] pleading which sets forth a claim for relief, whether an original claim, counter-claim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, **(10 points)**. Miss Rule Civ P 8(e) provides: "Pleading to Be Concise and Direct: Consistency. (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required." **(5 points)**.

However, if the plaintiff does allege fraud, its nine elements must be pled with specificity and particularity pursuant to Miss Rule Civ. P. 9(b). **(5 points)**.

**Question 4.3**      *What is the plaintiff's burden of proof at trial with respect to her claim for punitive damages? (25 points)*

Clear and convincing evidence. "Punitive damages may not be awarded if the claimant does not prove by clear and convincing evidence that the defendant against whom punitive damages are sought."

**Question 4.4**

*Explain how punitive damage awards are handled from a procedural perspective in a trial in Mississippi. Your response should include an explanation of when and to whom the necessary proof is offered and what role(s) the judge and/or jury play in the award of punitive damages. Include in your explanation whether punitive damages may be awarded in Mississippi in the absence of an award of compensatory damages. (35 points total)*

A punitive damages award is handled in a bifurcated manner at trial. Mississippi Code Section 11-1-65(b) requires that the trier of fact (the jury in a jury trial, the judge in a bench trial) first find that compensatory damages are to be awarded and in what amount. **(15 points)**

If there is no award of compensatory damages, there can be no punitive damage award. **(5 points)**

If the trier of fact awards compensatory damages, an evidentiary hearing is then had before the judge. Miss. Code Ann § 11-1-65(c). Subsequent to this hearing, the judge determines whether the matter warrants being turned back over to the trier of fact for consideration of a punitive damage award. If the judge does turn the matter back over to the trier of fact, it shall determine whether to award punitive damages and in what amount. 11-1-65(d) **(10 points)**.

If a punitive damage award is made, but before judgment is entered, the judge shall ascertain that the award is reasonable in its amount and rationally related to the purpose to punish what occurred giving rise to the award and deter repetition by defendant and others. Miss. Code Ann. § 11-1-65 (f)(1) **(5 points)**.

**MISSISSIPPI BOARD OF BAR ADMISSIONS  
JULY 2019 BAR EXAMINATION  
DOMESTIC RELATIONS  
100 Points Total**

Geno comes to your law office enraged, holding a letter in one hand and his two-year-old twin toddlers with the other hand. He explains that his wife, Sue, left him six months earlier without giving any reason. They had been married for eleven years. The letter simply stated: I want a divorce and you can keep the children as long as I get to visit with them.

Sue works as a personal trainer at the local gym and makes \$40,000 annually. Geno, a self-employed photographer, had similar earnings until the children were born. His earnings and client base declined when he put his work aside and dedicated most of his time to caring for the twins. It has been difficult maintaining the household without help from Sue and Geno has become delinquent on his car note. He informs you that he may have to file bankruptcy. They live in a house that Geno inherited from his parents and his photography office is based there.

Geno wants to know whether he is entitled to alimony, whether Sue has any rights to the house and how his bankruptcy filing would affect the divorce proceedings.

**QUESTIONS**

**5.1. What factors should the court consider in determining whether to award alimony? (30 points total)**

**5.2. Discuss and distinguish three different types of alimony recognized in Mississippi? (30 points total)**

**5.3. Discuss whether Geno would be entitled to alimony. (10 points total)**

**5.4. Discuss whether Sue would have any rights to the home? (20 points total)**

**5.5. What impact would Geno's bankruptcy filing have on the divorce proceedings? (10 points total)**

**MISSISSIPPI BOARD OF BAR ADMISSIONS  
JULY 2019 BAR EXAMINATION  
DOMESTIC RELATIONS  
100 Points Total  
**ANALYSIS****

**5.1** The Chancellor has discretion as to whether alimony should be awarded and the amount thereof. **(30 points total)**

Factors to be considered in determining alimony are:

- The income and expenses of the parties;
- The health and earning capacities of the parties;
- The needs of each party;
- Obligations and assets of each party;
- Length of the marriage;
- The presence or absence of minor children in the home, which may require that one or both of the parties either pay, or personally provide, child care;
- Age of the parties;
- The standard of living of the parties, both during the marriage and at the time of the support determination;
- Tax consequences of the spousal support order;
- Fault or misconduct;
- Wasteful dissipation of assets by either party; and,
- Any other factor deemed by the court to be just and equitable” in connection with the setting of spousal support.

Armstrong v. Armstrong, 618 So.2d 1278, 1280 (Miss 1993)

M.C.A. Section 93-5-23

**(2.5 Points for each of the 12 factors)**

**5.2** Alimony may be Permanent/Periodic, Rehabilitative, Lump Sum/Gross or Reimbursement **(10 Points for any 3 types of alimony for a total of 30 Points):**

- Permanent or periodic alimony is a monthly payment to the recipient spouse that continues until the death of either spouse or remarriage of the recipient spouse. It is modifiable based on a change in circumstances. Armstrong v. Armstrong, 618 So.2d 1278 (Miss. 1993); Hubbard v. Hubbard, 656 So.2d 124 (Miss. 1995); Sides v. Pittman, 150 So.2d 211 (Miss. 1993).
- Rehabilitative alimony is temporary. It is awarded for a period of time to allow the recipient spouse to become self sufficient. Rehabilitative alimony does not automatically terminate upon remarriage of the recipient spouse, but does terminate upon death of either spouse. It may be modified based on change in circumstances. Hubbard v. Hubbard, 656 So.2d 124 (Miss. 1995); Waldron v. Waldron, 743 So.2d 1064 (Miss. App. 1999).

- Lump Sum Alimony is a vested sum certain payable at one time or in a series of payments. It is not modifiable and does not terminate upon death of either spouse. It carries over to the estates of the parties. It does not terminate upon remarriage. It is intended as an equity equalizer between the parties. *Wray v. Wray*, 394 So.2d 1341 (Miss. 1981); *Bowe v. Bowe*, 557 So.2d 793 (Miss. 1990); *Holleman v. Holleman*, 527 So.2d 90 (Miss. 1988).
- Reimbursement Alimony has also been recognized in Mississippi. It is the supporting spouse's compensation for financial contributions to the professional education of the student spouse. *Guy v. Guy*, 736 So.2d 1042 (Miss. 1999).

**5.3** *Credit should be given for a reasonable application of alimony to Geno similar to the following:* Based on the disparity of income, the length of the marriage, the presence of children in the home and misconduct of Sue, alimony should be awarded to Geno on a permanent or a temporary basis. If Geno is expected to increase his business, alimony may be awarded for a period of time and be rehabilitative in nature. Because the children are two years old, he may need alimony until they are school age, at a minimum. The only assets that the couple have are a house and car that will likely be awarded to Geno, therefore, lump sum alimony would not likely be awarded to Geno. **(10 Points)**

**5.4** Property received by inheritance by a spouse is separate property. However, it may be converted to marital property based on the family use doctrine. **(10 Points)** This doctrine almost always converts a family residence to marital property. Geno's wife and children lived in the home and it is very likely marital property. As marital property the Chancellor would consider the property division factors of *Ferguson v. Ferguson*, 639 So.2d 921 (Miss. 1994) in determining whether Sue is entitled to a share of equity of the home. The Ferguson factors **(10 Points)** are:

1. Substantial contribution to the accumulation of property . . . ;
2. The degree to which each spouse has expended, withdrawn or otherwise disposed of marital assets . . . ;
3. The market value and the emotional value of the assets subject to distribution;
4. The value of assets not ordinarily, absent equitable factors to the contrary, subject to such distribution, such as property brought to the marriage by the parties and property acquired by inheritance or inter vivos gift by or to an individual spouse;
5. Tax and other economic consequences, and contractual or legal consequences to third parties, of the proposed distribution;
6. The extent to which property division may, with equity to both parties, be utilized to eliminate periodic payments and other potential sources of future friction between the parties;

7. The needs of the parties for financial security with due regard to the combination of assets, income and earning capacity; and
8. Any other factor which in equity should be considered.

*All Ferguson factors are not required to be listed. Credit should be given for a reasonable response to Geno's concern over Sue's rights to the house. The Answer should include the following:* The inherited home will likely be determined to be marital property due to the family use doctrine, giving Sue rights to it. However, factors considered by a chancellor in determining property division may allow Geno to keep the house. The majority of relevant factors favor Geno. A house inherited from his parents would have emotional value for him. Due to his diminished income, home based business and custody of the children, the home would provide needed financial security. The need for alimony may also be reduced.

- 5.5** If Geno files bankruptcy during the proceedings the automatic stay pursuant to 11 United States Code, Section 362 would operate to stay the determination of property division. The domestic relations exception from the stay in section 362(b)(2) excepts domestic support obligations, it does not extend to property division. A motion to lift the stay would need to be filed in bankruptcy court to proceed with property division. **(10 Points)**

*It is not necessary for the applicant to cite bankruptcy code sections to get full credit. It is important for the applicant to know that bankruptcy will stay property division requiring a motion in bankruptcy court to lift the stay.*

**MISSISSIPPI BOARD OF BAR ADMISSIONS**  
**JULY 2019 EXAMINATION**  
**LEGAL ETHICS AND PROFESSIONAL CONDUCT**  
**100 POINTS TOTAL**

**FACTS**

Angela Smith has a solo general practice in Jefferson, Mississippi. After several years of growth, she hires John Jones as a new associate attorney to work for her. John has been out of law school for two years and while he had passed the bar, has only worked at non-legal jobs since getting out of law school. Before John starts, Angela explains to John her computerized office management system which includes conflicts checking and calendaring, as well as walking him through how trust transactions are handled in the office. She tells him to come ask questions anytime he has concerns or is unclear how to handle any situation, including any that might involve potential ethical issues. Angela also offers to pay for some cost-effective CLE opportunities for John and encourages him to attend the “ethics lunch hour” hosted regularly by the county bar association. Finally, she tells him that they will meet regularly, and at least once weekly, to discuss his work and the plan of action for addressing issues in his cases.

Once John starts work, he hits the ground running. Angela and John stay very busy over the next several months and Angela consistently gives John more freedom and independence to work on cases within the office. In fact, with the volume of business in the office, she rarely has time to meet with John or review his work as originally intended.

John often works remotely and even though they operated out of the same office, might not see each other (beyond passing in the hallway and saying “good morning”) for substantial periods of time.

One morning, while reviewing a stack of assorted papers looking for an unrelated document, Angela finds a copy of witness subpoena recently issued and served in a case that John is handling and was coming up for trial the following week. The subpoena appears to have been issued on the prior Friday and the return of service indicated it was served the following day on Saturday evening. The subpoena was signed by the Circuit Clerk herself (as opposed to one of the Deputy Clerks). Angela personally knew the Circuit Clerk and also knew she was out of the office caring for a sick family member and had been out of state for several days.

Angela asks John about the subpoena. John admits that the Clerk had not actually signed the subpoena and that he had digitally duplicated and altered the date on the Clerk's signature and stamp from a prior subpoena. He did so because he had discovered on Saturday that the witness was moving to Florida and leaving that weekend. "You know how important this witness is. Opposing counsel is already well aware we were going to subpoena them for trial. I just didn't have time to wait until Monday to get this issued" John said, adding "besides, it's not like the Clerk would have refused to issue the subpoena - it's pretty standard stuff."

After thinking about it, Angela calls the witness and tells them they no longer have to follow the subpoena, to not to show up at trial and that they will not need to testify. Angela then takes the case to trial without that witness. Afterwards, John agrees to quit his job with Angela and then takes a new job in another town.

For purposes of these questions, it is established that John violated the Mississippi Rules of Professional Conduct and you are not required to analyze professional breaches by John.

When answering questions, a mere citation to the applicable rule number(s) will not be sufficient. While citation to correct rule numbers will be considered as part of an answer as a whole, an explanation of the substance and requirements of the applicable rule(s) is required.

## **QUESTIONS**

- 6.1** What is the relevant Rule or Rules of the Mississippi Rules of Professional Conduct governing the responsibility of a partner or supervising lawyer with respect to a subordinate attorney? **(20 points)**
  
- 6.2** What provisions of the relevant Mississippi Rule or Rules of Professional Conduct on supervision of subordinate lawyers are implicated by the facts above? Explain what the rule(s) permit and require of Angela under these facts. **(30 points)**
  
- 6.3** What is the relevant Rule or Rules of the Mississippi Rules of Professional Conduct governing the reporting of professional misconduct? **(20 points)**
  
- 6.4** What provisions of the relevant Mississippi Rule of Professional Conduct on the reporting of professional misconduct are implicated under the facts above? Explain what the Rule(s) permit and require of Angela under these facts. **(30 points)**

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JULY 2019 EXAMINATION  
LEGAL ETHICS AND PROFESSIONAL CONDUCT  
100 POINTS TOTAL**

**ANALYSIS AND MODEL ANSWER**

- 6.1 What is the relevant Rule or Rules of the Mississippi Rules of Professional Conduct governing the responsibility of a partner or supervising lawyer with respect to a subordinate attorney? (20 points)**

**RULE 5.1  
RESPONSIBILITIES OF A PARTNER  
OR SUPERVISORY LAWYER**

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the rules of professional conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the rules of professional conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm or has comparable managerial authority in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

- 6.2 What provisions of the relevant Mississippi Rule or Rules of Professional Conduct on supervision of subordinate lawyers are implicated by these facts? Explain what the rule(s) permit and require of Angela under these facts. (30 points total)**

Rule 5.1(a) provides that a law firm partner such as Angela must make “reasonable efforts” to ensure that the firm has measures that will reasonably assure all lawyers in the firm conform to the rules of professional conduct. Here, with respect to office policies and procedures, Angela: 1) adopted use of practice management software to assist with common ethical issues related to conflicts checking, calendaring and trust account issues; 2) maintained an “open door” policy to address questions of ethics; and 3) encouraged and facilitated ongoing ethics education for John. Whether this is sufficient to be “reasonable” on Angela’s behalf is arguable but likely sufficient, considering she has a very small practice and presumably, would be in a better position than a partner at a much larger law firm to detect and address ethical issues involving a single associate. An appropriate answer will address and discuss the “reasonableness” of Angela’s actions with respect to setting office policies and “measures” to ensure ethical compliance. **(10 points)**

Separate from her obligation to ensure that the firm itself measures in place, Rule 5.1(b) provides that “a lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the rules of professional conduct.” While Angela did at least put in place some firm wide measures as discussed above, she allowed a busy work schedule to prevent her from regularly meeting with or appropriately supervising an associate who had just two years prior graduated law school and who had no work experience as an attorney. An appropriate answer will address and discuss the “reasonableness” of Angela’s actions with respect to supervising John as an associate on ethical issues. **(10 points)**

Finally, Rule 5.1(c) provides that a supervisory lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if: 1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved or 2) knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action. Here, there is no evidence that Angela ordered John to forge the Clerk’s signature on a subpoena. Moreover, she took action to prevent any benefit coming from the use of a forged subpoena by contacting the witness and telling them not to comply with the subpoena. Had she permitted the witness to appear and testify, she could have been said to “ratify” John’s actions under Rule 5(c)(1). By the same token, Angela can be said to have avoided and mitigated John’s conduct by taking remedial action, thus avoiding the imposition of responsibility under Rule 5(c)(2). Regardless of whether Angela is responsible for an independent professional breach on her own part, she may not be liable for John’s breaches of professional conduct. **(10 points)**

**6.3 What is the relevant Rule or Rules of the Mississippi Rules of Professional Conduct governing the reporting of professional misconduct by another lawyer? (20 points)**

### **RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT**

- (a) A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- (b) A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

**6.4 What provisions of the relevant Mississippi Rule of Professional Conduct on the reporting of professional misconduct are implicated under the facts above? Explain what the Rule(s) permit and require of Angela under these facts. (30 points total)**

Rule 8.3 provides that an attorney having knowledge that "another lawyer" has committed a violation of the rules "that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer" must report to the appropriate professional authority. It is notable that the rule does not require the reporting of each and every rule violation, but only those that raise a "substantial" question of honesty, trustworthiness or fitness. "Substantial" refers to the seriousness of the violation itself and not the measure of proof available to support that a violation has occurred. **(15 points)**

Here, however, the act of forging a Clerk's signature and faking the issuance of legal process clearly raises a substantial question as contemplated by Rule 8.3(a). The facts do not indicate that Angela ever reported John's conduct to the Mississippi Bar Association or anyone else. Therefore, she has herself violated the Rules of Professional Conduct. **(15 points)**