

MISSISSIPPI BOARD OF BAR ADMISSIONS
February 2019 BAR Examination
EVIDENCE
100 Points Total

QUESTION 1.1. (50 points total)

You are retained in a personal injury action. Allegedly, the Plaintiff slipped and fell on a stair case at the Fallen Oaks Restaurant, sustaining severe and disabling injuries. Plaintiff states that she stepped on a step covered in water that leaked from a busted pipe inside the adjoining wall. Suit is filed against the owner of the building housing the restaurant, alleging negligent maintenance of the premises. The owner denies responsibility on the basis that the manager of the restaurant, who has leased the property from the owner under the same oral agreement for ten years, allegedly has control of the premises and responsibility for maintenance of the premises.

Discovery reveals that several other individuals have fallen on the same step within the past six months, and the building owner paid the medical expenses incurred by most. Now, the owner is refusing to pay expenses associated with the current incident. Further, the owner of the building finally hired a plumber to repair the busted pipe the day after the most recent incident. Nevertheless, the owner denies liability.

- 1.1.1. Discuss the relevancy and admissibility at trial of the previous slip-and-fall incidents and the owner's payment of medical expenses (25 points)**
- 1.1.2. Discuss the relevancy and admissibility at trial of the fact that Defendant repaired the busted pipe? (25 points)**

QUESTION 1.2. (50 Points)

The Rules of Evidence 500 Series addresses the concept of privilege as it may pertain to witnesses. These questions seek to test your minimal competency and understanding of invoking a privilege to preclude certain testimony.

1.2.1. Name three of the four types of privileges specified in the Rules of Evidence **(5 Points Each)**.

1.2.2. With respect to claiming privilege, it is important to understand who can claim the privilege. Names three groups who can claim any privilege **(5 Points Each)**.

1.2.3. There are five exceptions to the lawyer-client privilege. As this privilege applies to many of your actions, it is important to understand when the privilege is limited. Name and define two of the exceptions **(10 Points Each)**.

MISSISSIPPI BOARD OF BAR ADMISSIONS
February 2019 BAR Examination
EVIDENCE
100 Points Total

ANALYSIS AND MODEL ANSWER

QUESTION 1.1 (50 points total)

1.1.1. Both the Federal and State Rule of Evidence, 404(b), provide:

Evidence of other crimes, wrongs or acts is not admissible to show the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes such as proof of motive, opportunity, intent, preparation plan, *knowledge*, identity or absence of mistake or accident.

See also, *Carter v. State*, 450 So.2d 67 (Miss. 1984). While the prior accidents are not admissible to show that Defendant acted in conformity therewith (continuing to negligently maintain the premises), it is admissible to show both the restaurant manager and building owner had/should have had knowledge of the condition of the step and busted water pipe.

Rule 409, M.R.E. and F.R.E., provide that evidence of furnishing or offering or promising to pay medical expenses resulting from an injury is not admissible to prove liability for the injury. Here, the owner did not offer or promise to pay for Plaintiff's medical expenses and, therefore, the evidence is not being offered to prove liability for Plaintiff's injury. (5 Points). However, since the oral lease agreement between the owner and the manager has remained the same before and after the previous incidents, evidence that the owner paid the medical expenses of the others would be relevant to show *control*. (10 Points). Likewise, owner's previous payment of medical expenses

is relevant and admissible to show that owner had **knowledge** of the dangerous condition. **(10 Points)**.

1.1.2. M.R.E. and F.R.E. 407 prohibits the admission of evidence of *subsequent remedial measures*, or “measures which, if taken previously, would have made the event less likely to occur,” for the purpose of proving negligence or culpable conduct in connection with the subject event. **(10 Points)**. However, the evidence is admissible to show ownership and/or control of the premises, or feasibility of precautionary measures, if controverted, or for impeachment. **(10 Points)**. It is important for the answer to articulate that a court may exclude evidence for one purpose but admit the same evidence for a different purpose, and instruct the jury accordingly. MRE 105. **(5 Points)**.
[GRADER’S NOTE: this reference may occur in responding to subsection A or B].

QUESTION 1.2 (50 points total)

The Rules of Evidence 500 Series addresses the concept of privilege as it may pertain to witnesses. These questions seek to test your minimal competency and understanding of invoking a privilege to preclude certain testimony.

1.2.1. Name three of the four types of privileges specified in the Rules of Evidence **(5 Points Each)**:

Answer:

- MRE 502 Lawyer-Client Privilege
- MRE 503 Physician and Psychotherapist-Patient Privilege

- MRE 504 Husband-Wife Privilege
- MRE 505 Priest-Penitent Privilege

1.2.2. With respect to claiming privilege, it is important to understand who can claim the privilege. Names three groups who can claim any privilege
(5 Points Each).

ANSWER:

- The Professional (lawyer; physician/therapist; priest);
- The Individual in the relationship (client, patient; spouse; penitent);
- Someone on behalf of the individual (guardian; conservator; personal representative; successor; trustee; or similar corporate representative);

MRE 502(c); MRE 503 (c); MRE 504 (c); MRE 505 (c).

1.2.3. There are five exceptions to the lawyer-client privilege. As this privilege applies to many of your actions, it is important to understand when the privilege is limited. Name and define two of the exceptions
(10 Points Each).

ANSWER:

- (1) *Furtherance of the Crime or Fraud.* If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;
- (2) *Claimants Through Same Deceased Client.* As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

- (3) *Breach of Duty by a Lawyer or a Client.* As to a communication relevant to an issue of breach of duty by the lawyer to his client or by the client to his lawyer;
- (4) *Document Attested by a Lawyer.* As to a communication relevant to an issue concerning an attested document to which the lawyer is an attesting witness;
- (5) *Joint Clients.* As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between or among any of the clients.

**MISSISSIPPI BOARD OF BAR ADMISSIONS
February 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.

Anytown, Mississippi is governed by a three-member city council. Seller owns a parcel of land called Whiteacre, and wants to sell it to Anytown for \$25,000. Seller has spoken with all three council members, individually, and each council member told Seller that Anytown would purchase Whiteacre from him \$25,000. No written contract for the sale of Whiteacre is ever drafted. The next scheduled Council meeting is two weeks away. Before the next Council meeting, Seller receives an offer from a third party to purchase Whiteacre for \$50,000. 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.

Question 2.1 (50 points total)

2.1.1. Is there an enforceable contract between the Council and Seller? **(20 points)**

2.1.2. Explain fully. **(30 points)**

Question 2.2 (25 points total)

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

Question 2.3 (25 points total)

Assume the same facts for this question as in question 2.1, with the following modifications: Seller does not sell to the third party, the Council votes unanimously at its next meeting to purchase Whiteacre for \$25,000, the vote is spread upon the minutes which are signed by the appropriate authority for Anytown, and the Council subsequently decides the purchase would be a bad idea and refuses to follow through with the agreement announced at the Council meeting.

2.3.1. Is there an enforceable contract between the Council and Seller? **(10 points)**

2.3.2. Explain fully. **(15 points total)**

MISSISSIPPI BOARD OF BAR ADMISSIONS
February 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.

Anytown, Mississippi is governed by a three-member city council. Seller owns a parcel of land called Whiteacre, and wants to sell it to Anytown for \$25,000. Seller has spoken with all three council members, individually, and each council member told Seller that Anytown would purchase Whiteacre from him \$25,000. No written contract for the sale of Whiteacre is ever drafted. The next scheduled Council meeting is two weeks away. Before the next Council meeting, Seller receives an offer from a third party to purchase Whiteacre for \$50,000. 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.

Question 2.1 (50 points total)

2.1.1. Is there an enforceable contract between the Council and Seller? (20 points)

2.1.2. Explain fully. (30 points)

Answer to Question 2.1:

2.1.1. NO. (20 points)

2.1.2. 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. **(30 points)**

Question 2.2 (25 points total)

Assuming there is a valid contract between the Council 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 (25 points total)

Assume the same facts for this question as in question 2.1, with the following modifications: Seller does not sell to the third party, the Council votes unanimously at its next meeting to purchase Whiteacre for \$25,000, the vote is spread upon the minutes which are signed by the appropriate authority for Anytown, and the Council subsequently decides the purchase would be a bad idea and refuses to follow through with the agreement announced at the Council meeting.

2.3.1. Is there an enforceable contract between the Council and Seller? **(10 points)**

2.3.2. Explain fully. **(15 points total)**

Answer to Question 2.3:

2.3.1. YES. **(10 points)**

2.3.2. As noted above, under Mississippi's statute of frauds, a contract for the sale of land must be in writing. Miss. Code Ann. § 15-3-1(c). Under the modified fact patten, the only writing about the sale is the entry in the minutes of the Council meeting. Although not a formal contract, the minutes could constitute a memorandum sufficient to satisfy the statute of frauds. **(5 points)** The memorandum or note must be in writing and signed either by the party to be charged or someone the party lawfully authorizes in writing to sign on behalf of the party to be charged. **(5 points)** Here, the party to be charged is the Anytown City Council. The minute entry evidenced an intent to buy, identified the land, and set out the purchase price, and as long as the minutes were signed by the appropriately authorized person and approved at a subsequent meeting of the Council, the minutes constitute a memorandum or note sufficient to satisfy the statute of frauds. **(5 points)** See *Putt v. Corinth*, 579 So.2d 534, 538 (Miss. 1991).

MISSISSIPPI BOARD OF BAR ADMISSIONS
February 2018 Bar Examination
CONSTITUTIONAL & CRIMINAL LAW & CRIMINAL PROCEDURE
100 Points Total

QUESTION 3.1. (50 points total)

Kris is Caucasian and his girlfriend, Sonja, is African American. One night while enjoying dinner, several African American gentlemen walked past their table and made several racial slurs directed at Kris and Sonja. Kris stared at the men but did nothing more.

After dinner, Kris and Sonja were driving away when they noticed the gentlemen walking casually on down the street. Kris then drove his vehicle towards the men and his car struck one of them. Although he only grazed the man, it caused him severe and painful injuries.

When the car stopped, the injured man's friends pulled Kris from the car and beat Kris severely.

Kris claims that he lost control of his car and he accidentally struck the man.

3.1.1. Please identify the crime or crimes with which the African American men may be charged and explain fully the bases for such charge(s). **(25 points total)**

3.1.2. Please identify the crime or crimes with which Kris may be charged and any defenses Kris may have to the charge(s). Explain fully. **(25 points total)**

QUESTION 3.2. (50 points total)

Peter and Joseph have been friends for a very long time. In fact, Joseph at one time dated Peter's beautiful sister, Amanda. After their break-up, Amanda began to date Toby. Neither Peter nor Joseph liked Toby. So, on one particular occasion, Peter and Joseph lured Toby to Peter's home.

Once inside, Peter put his Glock 43 firearm on the table and he and Joseph began to beat Toby. After the beating, they opened Toby's car and took his new iPhone XS, valued at \$1,000.00 and his new Nike Air Jordan sneakers valued at \$250.00.

Two days later, Toby reported this incident to the police and they promptly arrested both Peter and Joseph.

3.2.1. Should the prosecutor charge Peter and Joseph with armed robbery? Explain fully.

(25 points)

3.2.2. Other than armed robbery, what crime or crimes, if any, may Peter and Joseph be charged with? Explain fully. **(25 points)**

MISSISSIPPI BOARD OF BAR ADMISSIONS
February 2018 Bar Examination
CONSTITUTIONAL & CRIMINAL LAW & CRIMINAL PROCEDURE
100 Points Total

ANALYSIS AND MODEL ANSWER

QUESTION 3.1. (50 points total)

Kris is Caucasian and his girlfriend, Sonja, is African American. One night while enjoying dinner, several African American gentlemen walked past their table and made several racial slurs directed at Kris and Sonja. Kris stared at the men but did nothing more.

After dinner, Kris and Sonja were driving away when they noticed the gentlemen walking casually on down the street. Kris then drove his vehicle towards the men and his car struck one of them. Although he only grazed the man, it caused him severe and painful injuries.

When the car stopped, the injured man's friends pulled Kris from the car and beat Kris severely.

Kris claims that he lost control of his car and he accidentally struck the man.

3.1.1. Please identify the crime or crimes with which the African American men may be charged and explain fully the bases for such charge(s). **(25 points total)**

3.1.2. Please identify the crime or crimes with which Kris may be charged and any defenses Kris may have to the charge(s). Explain fully. **(25 points total)**

ANSWER TO QUESTION #3.1:

3.1.1. The African American men may be charged with simple assault **(10 points)**

Pursuant to Miss. Code Ann. § 97-3-7(1)(a), “[a] person is guilty of simple assault if he (i) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another” **(15 points)**. According to the factual scenario, the African American men pulled Kris from his car and beat him severely.

3.1.2. Kris may be charged with aggravated assault. **(5 points)**.

Pursuant to Miss. Code Ann. § 97-3-7(2)(a), “[a] person is guilty of aggravated assault if he (i) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; . . . [or] (ii) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon or other means likely to produce death or serious bodily harm” **(10 points)**

According the facts, Kris used a deadly weapon, his car, to run into one of the men. Further, the man suffered severe injuries as a result. Kris could be found guilty of aggravated assault. **(5 points)** However, in his defense, Kris could argue that he lost control of the car and that this was an accident, not an intentional act. **(5 points)**

QUESTION 3.2. (50 points total)

Peter and Joseph have been friends for a very long time. In fact, Joseph at one time dated Peter's beautiful sister, Amanda. After their break-up, Amanda began to date Toby. Neither Peter nor Joseph liked Toby. So, on one particular occasion, Peter and Joseph lured Toby to Peter's home.

Once inside, Peter put his Glock 43 firearm on the table and he and Joseph began to beat Toby. After the beating, they opened Toby's car and took his new iPhone XS, valued at \$1,000.00 and his new Nike Air Jordan sneakers valued at \$250.00.

Two days later, Toby reported this incident to the police and they promptly arrested both Peter and Joseph.

3.2.1. Should the prosecutor charge Peter and Joseph with armed robbery? Explain fully.

(25 points)

3.2.2. Other than armed robbery, what crime or crimes, if any, may Peter and Joseph be charged with? Explain fully. **(25 points)**

ANSWER TO QUESTION #3.2:

3.2.1. In Mississippi, pursuant to Miss. Code Ann. § 97-3-79, "[e]very person who shall feloniously take or attempt to take from the person or from the presence the personal property of another and against his will by violence to his person or by putting a person in fear of immediate injury to his person by the exhibition of a deadly weapon shall be guilty of robbery." **(10 points)** According to the stated

facts, Peter had a Glock 43 firearm in his possession. However, according to the facts, Peter placed the firearm on the table prior to the beating and prior to taking the iPhone XS and Air Jordans. Nothing in the facts indicates that Toby knew the gun existed or that he was placed in fear by the exhibition of the firearm. The prosecutor should not charge the pair with armed robbery. **(15 points)**

3.2.2. Both Peter and Joseph may be charged with conspiracy to commit simple assault and grand larceny. **(5 points)** According to Miss. Code Ann. § 97-1-1, conspiracy is an agreement between two or more people to commit a crime.” According to the factual scenario, Peter and Joseph lured Toby into the home. One could argue that their efforts to lure Toby into the home constitutes an agreement. **(5 points)**. Further, their beating of Toby constitutes the crime of simple assault. **(5 points)** See Miss. Code Ann. § 97-3-7(1)(a) (“[a] person is guilty of simple assault if he (i) attempts to cause or purposely, knowingly or recklessly causes bodily injury to another”). **(5 points)**.

Further, the pair may be guilty of conspiracy to commit the crime of grand larceny. The total value of the items taken from Toby is \$1,000 - \$5,000, which constitutes the crime of grand larceny. See Miss Code Ann. § 97-17-41. **(5 points)**

MISSISSIPPI BOARD OF BAR ADMISSIONS
February 2019 BAR Examination
MISSISSIPPI PRACTICE AND PROCEDURE
100 Points Total

- 4.1.1. Where do the Circuit and Chancery Courts of Mississippi derive their jurisdictional parameters? **(5 points)**
- 4.1.2. Are either or both the Circuit and/or the Chancery Courts courts of general jurisdiction? Please explain your answer fully. **(15 points)**
- 4.2.1. What is the proper remedy for a defendant who successfully demonstrates that jurisdiction of the Circuit or Chancery Court is not proper in the Court where filed? For example, if a plaintiff wrongfully filed a matter in Chancery Court, which then determined it did not have jurisdiction, what should the Chancery Court do? Conversely, what should a Circuit Court do should a plaintiff file a matter before it that is properly reserved for the Chancery Courts? **(10 points)**
- 4.2.2. When is dismissal of an action proper for failure to file in the correct court (Chancery v. Circuit)? **(5 points)**
- 4.3. Assume that a plaintiff files suit for damages alleged to have occurred from medical malpractice in County A. Plaintiff lives in County A. Plaintiff's primary care physician resides in County B. Plaintiff contends that her primary physician committed negligence in her treatment of plaintiff in County A. After initial treatment by the primary physician, plaintiff was transferred to a large hospital in County B where plaintiff's primary care physician sent plaintiff for emergent care.
- Plaintiff's initial complaint included only her primary care physician as a defendant. After filing her complaint, plaintiff amended it prior to the filing of defendant's answer to add the hospital in County B.
- 4.3.1. Discuss whether venue under this factual scenario is proper in County A, County B or elsewhere. Your answer should include an analysis of which of the facts presented do and do not have bearing on a proper determination of venue. **(20 points)**

4.3.2. If venue is not proper in the original county in which a Complaint is filed, is dismissal of the suit warranted? **(10 points)**

4.4. Enumerate the proper venue or venues for injury allegedly suffered as a result of a defective product. **(15 points)**

4.5. Describe the analysis a Circuit Court should undertake when determining whether venue is proper in a matter claiming damages due to the negligence or intentional acts of a corporate defendant (outside of the medical malpractice/healthcare/products arenas).

4.5.1. Include in your answer all relevant factors the Court should consider in determining appropriate venue. **(10 points)**

4.5.2. When there is more than one proper and equally convenient venue, explain whether the court should defer to either party's preference in its analysis of proper venue. Include in your response how a court's analysis/prioritization of venue is affected, if at all, by several individual defendants residing in different venues. **(10 points)** (As the question specifically forecloses any argument of *forum non conveniens*, no points will be awarded for discussion of that doctrine).

MISSISSIPPI BOARD OF BAR ADMISSIONS
February 2019 BAR Examination
MISSISSIPPI PRACTICE AND PROCEDURE
100 Points Total

ANALYSIS AND MODEL ANSWER

4.1.1. The jurisdictional parameters of the Circuit and Chancery Courts in Mississippi are set forth in the Constitution of the State of Mississippi. **(5 points)**

4.1.2. The Circuit Courts are courts of general jurisdiction **(5.5 points)** while the Chancery Courts are courts of special or limited jurisdiction **(5.5 points)** and only have jurisdiction of matters specifically spelled out by the Constitution. **(2 points)** (Sections 159, 160 and 161 enumerate matters properly heard in Chancery Courts.) Section 156 of the Mississippi Constitution of 1890 provides that the Circuit Court has “original jurisdiction in all matters civil and criminal...not vested by this Constitution in some other court...” **(2 points)**

4.2.1. In either case, the matter should be transferred to the court having jurisdiction, not dismissed. **(6 points)**

Sections 157 (Circuit) **(2 points)** and 162 of the Mississippi Constitution (Chancery) **(2 points)** provide that where an action is wrongfully filed in Circuit or Chancery Court, the action should be transferred to the court with proper jurisdiction.

4.2.2. Dismissal is not appropriate under any of these circumstances. The cause should be transferred to the proper Circuit or Chancery Court. **(5 points)**

4.3.1. The healthcare industry has a venue provision of its own—the legislature limited proper venue in these cases exclusively to where the complained-of act occurred. “(3) Notwithstanding subsection (1) of this section, any action against a licensed physician, osteopath, dentist, nurse, nurse-practitioner, physician assistant, psychologist, pharmacist, podiatrist, optometrist, chiropractor, institution for the aged or infirm, hospital or licensed pharmacy, including any legal entity which may be liable for their acts or omissions, for malpractice, negligence, error, omission, mistake, breach of standard of care or the unauthorized rendering of professional services shall be brought only in the county in which the alleged act or omission occurred.” Miss. Code Ann. § 11-11-3 (3).

Under these facts, venue would only be appropriate in County A since it is where the injurious actions alleged in the initial complaint took place. **(10 points)** Where the parties live has no bearing on venue in a medical negligence matter. **(3 points)**

Here, since venue is determined at the time of filing of the initial complaint, plaintiff's addition of the defendant in County B would not provide for establishment of venue there, even though plaintiff alleges that part of the negligent acts occurred in County B. **(7 points)**

4.3.2. No. The proper remedy for filing a cause of action in a jurisdiction where venue is not appropriate is transfer of that action to a venue that is. Dismissal is not warranted or proper. **(10 points)**

4.4. Miss. Code Ann. §11-11-3 provides that the general test for proper venue applies to defective product cases and adds the provision that such cases may also be brought in the venue where the product was obtained. Miss. Code Ann. §11-11-3(i) provides "[c]ivil actions of which the circuit court has original jurisdiction shall be commenced in the county where the defendant resides, or, if a corporation, in the county of its principal place of business, or in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred.

(ii) Civil actions alleging a defective product may also be commenced in the county where the plaintiff obtained the product." Thus, the action may be properly filed where the defendant resides **(3.5 points)**, in a Company's principal place of business, **(3.5 points)** where a substantial act or omission occurred **(3.5 points)** or where the plaintiff obtained the product in question. **(4.5 points)**

4.5.1. The plaintiff's venue choice must comport with the general requirements of Miss. Code Ann. §11-11-3(a).

"(i) Civil actions of which the circuit court has original jurisdiction shall be commenced in the county where the defendant resides, or, if a corporation, in the county of its principal place of business, or in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred...." **(10 points)**

4.5.2. When there is more than one correct venue, plaintiffs have historically been afforded deference in their choice of venue. "Of right, the plaintiff selects among the permissible venues, and his choice must be sustained unless in the end there is no credible evidence supporting the factual basis for the claim of venue."

McMillan v. Puckett, 678 So. 2d 652, 656 (Miss. 1996). "It is the plaintiff's prerogative to decide where, among permissible venues, to sue the defendant" and, for that reason, "absent weighty reasons," the plaintiff's choice of venue should not be disturbed. Bayer Corp. v. Reed, 932 So. 2d 786, 788-89 (Miss. 2006). This Court has held that "the court at trial must give the plaintiff the benefit of the reasonable doubt, and we do so on appeal as well." McMillan, 678 So. 2d at 656 (citation omitted). **(5 points)**

Where there is more than one defendant, Mississippi rules allow for the filing of suit in any venue proper as to any one of the several defendants. Rule 82(c) of the Mississippi Rules of Civil Procedure provides that "[w]here several claims or parties have been properly joined, the suit may be brought in any county in which any one of the claims could properly have been brought." **(5 points)**

MISSISSIPPI BOARD OF BAR ADMISSIONS

February 2019 Bar Examination

DOMESTIC RELATIONS

100 Points Total

QUESTION

Frank and his wife, Sadie, have two children, Aries, born in 1998 and Barry, born in 1995. Due to complications stemming from Aries' premature birth, she was diagnosed with a permanent disability. Both children reside with their parents. In 2019, Frank decided that he no longer wanted to be married and asked Sadie for a divorce. Sadie was surprised at his request. She was perfectly happy with their marriage and told him she would never divorce him. Frank is seeking legal advice regarding the grounds for divorce in Mississippi. In addition, he wants to know whether he would have an obligation to continue supporting his children. His annual income after tax is \$100,000.

QUESTIONS

- 5.1. Discuss the grounds for divorce in Mississippi? (30 Points)**

- 5.2 Explain the child support guidelines for Mississippi? (20 Points)**

- 5.3 Discuss any obligation Frank may have for child support for Aries and Barry. (25 Points)**

After understanding the grounds for divorce, Frank decided to remain married for life. Sadie died shortly after Frank's demise. Because neither of them had prepared a last will and testament, their son, Barry, began administration of their intestate estates. Upon

publication for heirs-at-law, Barry learned that Frank had another child outside of the marriage whose name was Cindy. Cindy's mother married Stephen and Stephen adopted Cindy.

QUESTIONS

5.4. Discuss whether Cindy can inherit from Frank's estate. **(15 Points)**

5.5. Discuss whether Cindy can inherit from Sadie's estate. **(10 Points)**

MISSISSIPPI BOARD OF BAR ADMISSIONS
February 2019 BAR Examination
DOMESTIC RELATIONS
100 Points Total
ANSWER

5.1. "No longer wanting to be married" is not grounds for divorce. However, a divorce may be granted on the ground of irreconcilable differences. This is also referred to as a "no-fault" divorce. However, Mississippi is among a small minority of states that do not permit unilateral no-fault divorce based on one spouse's proof of irreconcilable differences. Unless both parties consent, the traditional fault based system applies. In Mississippi a divorce may be granted on any of the following fault-based grounds:

Natural impotency

Adultery

Bigamy, or marriage to someone else at the time of marriage

Imprisonment

Insanity at the time of the marriage

Institutionalization for insanity during the marriage

Desertion

Habitual drunkenness

Habitual drug use

Habitual cruel & inhuman treatment

Wife's pregnancy by another at the time of marriage without the husband's knowledge

Incestuous marriage

(3 Points for up to 10 of the correct grounds for a maximum of 30 Points)

5.2. Child support guidelines in Mississippi provide that a noncustodial parent should pay the following percentage of **adjusted gross income**: **14% for one child, 20% for two children, 22% for three children, 24% for four children and 26% for five or more children**. The guidelines are **presumptively correct for adjusted annual income between \$10,000 and \$100,000**. A court will deviate from the statutory percentages only upon **written findings** that application of the guidelines would be inappropriate. (Miss. Code Ann. § 43-19-101 (2013)) **(20 Points)**

5.3. Barry, born in 1995, would be 24 in 2019. Aries, born in 1998, would be 21 in 2019. The age of **majority in Mississippi is 21**. (Miss. Code Ann. § 93-11-65(8) (2013)). Because Barry is over the age of 21 there would be **no child support obligation for him**.

If the divorce occurs in 2019 and prior to Aries 21st birthday there would be an obligation for support for her. For this one child the rate would be **14% or \$14,000 annually**, unless another amount is appropriate. Due to her **disability, this would likely be the case. The court would have to show findings**. If the divorce occurs after Aries turns 21, there is likely no duty to support her. The Mississippi Supreme Court held that a parent has **no legal duty to support an adult child**, even if that child is disabled. At common law the duty to support a child ended when the child reached majority. The legislature has created an exception when

a punitive father of a nonmarital child is ordered to pay support through a DHS paternity action, he is required to continue support past majority if the child has a disability that continues into adulthood. The majority held that, even in the absence of a court order, emancipation occurs when the child reaches the age of 21. Only the legislature has the power to change the duty of support. *Hays v. Alexander*, 114 So.3d 704 (Miss. 2013) **(25 Points)**

5.4. Frank is Cindy's **natural father**. **Cindy can inherit from Frank's Estate**. Under Mississippi law of intestate succession, although adoption cuts off the natural parent's and right to inherit from the adopted child, adoption does not cut off the adopted child's right to inherit from the natural parent. (*In re Estate of Yount*, 845 So.2d 724 (Miss. Ct. App. 2003) Aries, Barry and Cindy would share in Frank's estate. **(15 Points)**

5.5. Cindy is not a **blood relative** of Sadie and **cannot inherit from Sadie's** estate under the laws of intestate succession in the state of Mississippi. Mississippi follows the rule of **consanguinity**, that is, only blood relatives can inherit, except for a living spouse or an adopted child. Sadie never adopted Cindy and her spouse predeceased her. Therefore, Cindy has no rights to Sadie's estate. Her estate would go to Aries and Barry equally. **(10 Points)**

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FACTS

Angela Smith has a general practice in Jefferson, Mississippi. Just a few weeks prior, a client named John Jones hired her to represent him in his divorce case which was already pending. In the process of representing John, Angela had obtained and reviewed the complete file from John's prior attorney and discovered evidence of a couple of investment accounts owned by John that had not been disclosed on prior Rule 8.05 financial disclosure forms required by the Mississippi Uniform Chancery Court Rules.

Later that week, Angela met with John to review the file and see what additional work may be needed. When Angela asked John about the investment accounts and why they had not been included in the prior financial disclosures, he told Angela that his prior attorney had never asked about those accounts and apparently had not noticed the information Angela did. John continued - "I don't think my wife even knows anything about these accounts. I opened them before we were married with money I inherited from my Father and haven't touched them in years. From what I read on the internet, these accounts are my 'separate' property so my wife can't get them in the divorce. Right?"

Angela then correctly explained to John that regardless of whether the accounts were his separate property, the existence of the accounts and their current value had to be disclosed to the Judge and to his Wife's attorney. She then told John to get her the most current account statements as soon as possible so she could prepare an updated

8.05 financial disclosure. Once that was prepared and submitted, she could then set a trial date.

A few days later, John had still not gotten Angela the account statements. Angela sent John an email in which she again went over the necessity to disclose the accounts and the need for him to get her the current account statements as soon as possible.

After a couple more weeks, Angela finally gets John on the phone, who tells her "those accounts are mine - they're none of my wife's business and I don't want her to know anything about them," John replied. "I don't see how it makes any difference anyway." Angela then tells him that if he refuses to get her that information so the financial disclosure can be amended, she cannot continue to represent him. "They're none of my wife's business," John replied. "Do not tell anyone about them."

Angela also happens to be a friend of yours since law school, and you have kept in touch since you both passed the bar. Immediately following her last meeting with John, she calls you for advice and discusses the situation with you.

QUESTIONS

- 6.1. What is the relevant Rule or Rules of the Mississippi Rules of Professional Conduct governing confidentiality of client information? **(20 points)**
- 6.2. What provisions of the relevant Rule or Rules of the Mississippi Rules of Professional Conduct on confidentiality are implicated by John's instruction to Angela to not disclose his investment accounts? 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 termination of representation of a client? **(20 points)**
- 6.4. What provisions of the relevant Rule or Rules of the Mississippi Rules of Professional Conduct on termination of representation of a client 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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ANALYSIS AND MODEL ANSWER

6.1. What is the relevant Rule or Rules of the Mississippi Rules of Professional Conduct governing confidentiality of client information? (20 points)

Mississippi Rules of Professional Conduct 1.6 provides:

RULE 1.6 CONFIDENTIALITY OF INFORMATION

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:
 - (1) to prevent reasonably certain death or substantial bodily harm;
 - (2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interest or property of another and in furtherance of which the client has used or is using the lawyer's services;
 - (3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;
 - (4) to secure legal advice about the lawyer's compliance with these rules;
 - (5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.
 - (6) to comply with other law or a court order.

- (c) A lawyer who participates in an intervention on a lawyer, judge or law student by the Lawyers and Judges Assistance Committee shall not reveal any information learned through the intervention from or relating to the lawyer, judge or law student on whom the intervention is conducted except as may be permitted by the Rules of Discipline of the Mississippi Bar or required by law or court order.
- (d) A lawyer shall reveal information to the Lawyers and Judges Assistance Committee in accordance with approved monitoring procedures of the Lawyers and Judges Assistance Committee relating to the status of compliance of a lawyer, judge or law student with the terms and conditions imposed upon the lawyer, judge or law student by the Lawyers and Judges Assistance Committee.
- (e) A lawyer may reveal such information to the extent required by law or court order.

6.2 What provisions of the relevant Rule or Rules of the Mississippi Rules of Professional Conduct on confidentiality are implicated by John's instruction to Angela to not disclose his investment accounts? Explain what the Rule(s) permit and require of Angela under these facts. (30 points)

Angela is permitted by the Rules of Professional Conduct to disclose John's financial information, despite the fact that he objects to doing so.

Under Rule 1.6(a), an attorney is prohibited from disclosing information related to the representation of a client unless the client consents, "disclosure is impliedly authorized in order to carry our representation" or disclosure is permitted under any the provisions of Rule 1.6(b).

Here, the client has not authorized disclosure and disclosure is not permitted on that ground. **(5 points)**

However, it does appear that disclosure is "impliedly authorized" insofar as the disclosure of accurate and current financial information of a party is required by governing court rules in a divorce matter. **(5 points)**

Regardless, in light of the obligation to disclose financial information under Court rules, disclosure of client information is permitted “to comply with other law or court order” as set forth in 1.6(b)(6) and similarly, 1.6(e). If she is not permitted to withdraw as his attorney, Angela will be required to submit John’s financial information as part of the case and will have separate ethical obligations of candor to the tribunal under Rule 3.3 and fairness to opposing party and counsel under Rule 3.4 to not present (or permit to be presented) false evidence. **(10 points)**

Disclosure might also prevent fraud and related financial injury, triggering permissible disclosure under Rule 1.6(b)(2) or (3). **(5 points)**

Finally, but importantly, Angela’s phone call to seek help on how to handle the situation is itself a permissible disclosure, pursuant to Rule 1.6(b)(4), to the extent the call constitutes an attempt “to secure legal advice” about compliance with the Rules of Professional Conduct. **(5 points)**

6.3 What is the relevant Rule or Rules of the Mississippi Rules of Professional Conduct governing the termination of representation of a client? (20 points)

Rule 1.16 of the Mississippi Rules of Professional Conduct provides:

RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
- (1) the representation will result in violation of the rules of professional conduct or other law;
 - (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
 - (3) the lawyer is discharged.

- (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if withdrawal can be accomplished without materially adverse effect on the interests of the client, or if:
- (1) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
 - (2) the client has used the lawyer's services to perpetrate a crime or fraud;
 - (3) a client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;
 - (4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
 - (5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
 - (6) other good cause for withdrawal exists.
- (c) When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

6.4 What provisions of the relevant Rule or Rules of the Mississippi Rules of Professional Conduct on termination of representation of a client are implicated under the facts above? Explain what the Rule(s) permit and require of Angela under these facts. (30 points).

Rule 1.16(a) provides that an attorney shall withdraw where representation results in violations of the rules of professional conduct or other law, the lawyer's physical or mental condition materially impairs representation or if the lawyer is discharged. Here, there is nothing to indicate that Angela has any physical or mental impairment to require

withdrawing. It can be argued that representation would result in a violation of the Rules of Professional Conduct in light of John's insistence to keep certain financial information secret, but as analyzed in the previous question, Angela can nevertheless permissibly disclose that financial information and comply with her ethical obligations. **(5 points)**

With no trial date set, there does appear to be sufficient time to withdraw from representation "without materially adverse effect on the interests of the client" as referenced in Rule 1.16(b). **(3 points)**

Under the facts presented, it does not appear that withdrawal is permissible under Rule 1.16(b)(2), when the client has used the lawyer's services to commit a crime or fraud, although he may have done so with his prior attorney when submitting an incomplete financial disclosure form. **(3 points)**

Angela has already told John that she would withdraw from representing him if he did not provide the updated financial information for disclosure. That notice may constitute "reasonable warning" of withdrawal under Rule 1.16(b)(4) insofar as a trial date has not been set and there do not appear to be any other facts affecting whether notice is reasonable. Regardless, it can be argued that he should be given another opportunity to agree for the information to be produced. **(3 points)**

Otherwise, it may be argued that withdrawing from representation is permissible under any of the remaining provisions under Rule 1.16 (b):

- Rule 1.16(b)(1). The client persists in a course of action that the lawyer believes is fraudulent (*i.e.*, concealing relevant financial information);
- Rule 1.16(b)(3). John insists on pursuing an objective (*i.e.*, concealing relevant financial information) that Angela finds repugnant or imprudent; and

- Rule 1.16(b)(5). The representation “has been rendered unreasonably difficult by the client” in light of his refusal to provide required information for use in the proceedings.;

An appropriate answer would discuss the fact that multiple provisions are available to Angela to seek withdrawal of representation. **(6 points)**

Regardless of the other provisions of Rule 1.16, the Judge may deny any motion to withdraw filed by Angela. If that were the case, Angela is then required to continue representation of John as she has been “ordered to do so by a tribunal.” Rule. 1.16(c). This would, as previously discussed, trigger Angela’s obligations of candor to the tribunal under Rule 3.3 and fairness to opposing party and counsel under Rule 3.4 to not present (or permit to be presented) false evidence. **(10 points)**