

**Alabama State Bar Examination**  
**Alabama Essay Section Subject Outline:**  
**Alabama Civil Litigation**

Set forth below is a detailed outline of the topics that may be included on the Alabama Essay Examination in accordance with Rule VI(b)A(1)(a) of the Rules Governing Admission to the Alabama State Bar. This essay subject outline was developed in the Spring of 2002 with the assistance of Alabama's five law schools. The Board of Bar Examiners owes a special thanks to these law schools for their help and support.

The questions on each test will be taken from the six main subject areas listed below. Some questions may require analysis of more than one subject area. The particular areas covered will vary from exam to exam. This will be a three hour examination.

**I. Preliminary Considerations and Litigation Planning**

- A. Statutory and Equitable Remedies
  - 1. Injunctive Relief
    - a. Permanent Injunctions
    - b. Preliminary Injunctions
    - c. Temporary Restraining Orders
  - 2. Declaratory Judgments
  - 3. Specific Performance
  - 4. Rescission and Reformation
  - 5. Trade Secrets and Covenants not to Compete
  - 6. Prejudgment Seizure
  - 7. Attachment
  - 8. Garnishment
  - 9. Detinue
  - 10. Equitable Defenses
  - 11. Miscellaneous
    - a. Constructive Trusts
    - b. Equitable Liens
    - c. Equitable Mortgages
    - d. Subrogation
- B. Disputes Subject to Arbitration
  - 1. Alabama Arbitration Law
  - 2. Federal Preemption of State Arbitration Law
- C. Abatement, Survival, and Revival of Actions
- D. Statutes of Limitation
- E. Choice of Forum
  - 1. Subject Matter Jurisdiction in Alabama Courts
    - a. Circuit Court
    - b. District Court
  - 2. Jurisdiction over Person or Res

3. Venue, Transfer, and Forum Non Conveniens

## **II. Pre-trial Practice**

- A. Pleadings & Pleading Stage Motions
  1. Complaint
  2. Pre-answer Motions & Rule-based Defenses
  3. Answer
  4. Amended and Supplemental Pleadings
  5. Counterclaims
  6. Cross-Claims
  7. Impleader
  8. Interpleader
  9. Class Actions
  10. Derivative Actions
  11. Service and Timing of Process, Pleadings, Motions, Notices, and Orders
- B. Parties and Joinder
  1. Capacity
  2. Real Parties in Interest
  3. Fictitious Parties
  4. Guardian ad litem
  5. Joinder of Claims
  6. Joinder of Parties
  7. Intervention
  8. Substitution
  9. Consolidation
  10. Severance
- C. Discovery
  1. Scope of Discovery
  2. Discovery Before Action
  3. Depositions Upon Oral Examination
  4. Depositions Upon Written Questions
  5. Interrogatories
  6. Production of Documents and Things
  7. Physical and Mental Examinations
  8. Requests for Admission
  9. Non-party Discovery
  10. Use of Discovery in Court Proceedings
  11. Judicial Supervision of Discovery
- D. Pre-trial Disposition
  1. Default Judgment
  2. Dismissal
  3. Summary Judgment

4. Mediation
5. Settlement

### **III. Trial**

- A. Jury Considerations
  1. Right to Jury Trial
  2. Jury Selection
  3. Jury Instructions
- B. Motions In Limine
- C. Sequence of Proceedings
- D. Preservation of Error
- E. Burden of Proof
- F. Judgment as a Matter of Law
- G. Verdicts
  1. General Verdict
  2. Special Verdict
  3. Interrogatories

### **IV. Post-judgment Proceedings**

- A. Post-trial Motions
  1. Relief from Judgment
    - a. Renewed Motion for Judgment as a Matter of Law
    - b. New Trial
    - c. Rule 60 Motion
  2. Remittitur and Additur
- B. Judgment Enforcement
  1. Recordation and Execution of Judgments
  2. Stay of Judgment
  3. Seizure

### **V. Alabama Appellate Practice**

- A. Appellate Jurisdiction
- B. Standard of Review
- C. Appellate Procedure
  1. Notice and Timing of Appeal
  2. Stays and Supersedeas
- D. Extraordinary Writs
  1. Certiorari
  2. Mandamus
  3. Prohibition

### **VI. Collateral Issues**

- A. Claim and Issue Preclusion
- B. Pre-judgment Seizure
- C. Accountability of Parties and Counsel
  - 1. Ala. R. Civ. P. 11
  - 2. Alabama Litigation Accountability Act
  - 3. Contempt

Set forth below is a suggested source guide to the Bar Examiners in drafting essay questions for the Alabama Essay Examination. Citations to legal authorities are not exclusive or exhaustive and are only for the convenience of the Bar Examiners. They are merely suggestions as to exam sources. The Bar Examiners are not restricted to the sources listed and, as law develops and changes, Bar Examiners may rely on more current authorities and issues in preparing their essay questions.

- I. Preliminary Considerations and Litigation Planning. Part A contains subject matter similar to that examined on the Equity portion of the Alabama Bar Examination prior to July 2003. These remedies are largely governed by Alabama case law. However, Injunctions, Declaratory Judgments, Specific Performance, Trade Secrets and Noncompete Agreements, Prejudgment Seizure, Attachment, Garnishment and Detinue are, in part, also governed by statutes and rules. Refer, for example, to Code of Alabama 1975, Title 6, Chapter 6, Articles 2, 5, 6, 9 and 10, §§8-1-1, 8-1-4 to 47 and 8-27-1 to 6 and Alabama Rule of Civil Procedure 64(b). Part B, Disputes Subject to Arbitration, is in recognition of the growing scope of arbitration in dispute resolution. Although this portion of the outline is relatively small now, the Board of Bar Examiners anticipates it expanding over time as the dominance of arbitration in resolving disputes continues to grow. Relevant Alabama arbitration law includes Code of Alabama 1975 Title 6, Chapter 6 Article 1 and Alabama case law. The question of Federal Preemption of State arbitration law largely deals with the Federal Arbitration Act. Part C, Abatement, Survival and Revival of Actions, is largely governed by statute. Code of Alabama 1975 §§6-5-460 to 466. Part D, Statutes of Limitation, likewise, is largely statutory. Code of Alabama 1975 §§6-2-1 to 41. The choice of forum section, Part E of this subject, deals with the factors considered when determining in what court and in what location the dispute is correctly resolved. Subject matter jurisdiction in Alabama's two primary Courts, Circuit and District, is largely statutory. Code of Alabama 1975 Section 12 Chapter 11 and 12. Jurisdiction over the person or res, and its two elements, the basis of jurisdiction and service of process, is governed by Alabama Rules of Civil Procedure 4 - 4.4 and case law. Venue, transfer and forum non conveniens are governed by statutes, procedural rules and case law. See, for example, Code of Alabama 1975 §§6-3-1 to 22, and Alabama Rule of Civil Procedure 82.
  
- II. Pre-Trial Practice. The first three sections of this subject are largely based upon the Alabama Rules of Civil Procedure, with Part A relying upon Rules 6 through 16, Part B being based upon Rules 17 through 25 and Part C being premised on Rules 26 through

37. Note, however, that Rules 23 and 23.1 are examined under Part A. Part D is a collection of the five means by which a dispute may be resolved short of trial, with Default being based upon Alabama Rule of Civil Procedure 55, Dismissal Rule 41, Summary Judgment Rule 56, and Mediation being governed largely by the Alabama Civil Court Mediation Rules. Settlement resulting in joint dismissal with or without prejudice is governed in part by case law, and in part by procedural rules, such as Alabama Rule of Civil Procedure 41(a)(1)(ii).

- III. Trial. This section is largely governed by Alabama Rules of Civil Procedure 38-40, 42-52, and Alabama case law.
- IV. Post-Judgment Proceedings. Part A, Post-Trial Motions, deals with attempts by a dissatisfied party to change or set aside a judgment. Relief from judgment is largely based upon the Alabama Rules of Civil Procedure. See Rules 50, 59, 59.1, 60 and 61. Remittitur and Additur are governed by case law. Part B, Judgment Enforcement, is based upon the Alabama Rules of Civil Procedure and statutory law. See Rules 62, 64-64B and 69. Also refer to Code of Alabama 1975 Title 6 Chapter 9 Articles 1 through 10.
- V. Alabama Appellate Practice. This section largely deals with appeals to the Alabama Supreme Court, which are governed by the Alabama Rules of Appellate Procedure. However, the three Extraordinary Writs that may be examined are governed by Code of Alabama 1975 §§6-640 to 642 and related case law.
- VI. Collateral Issues. Part A deals with the Former Adjudication of Claims or Issues and is based upon case law and Alabama Rule of Civil Procedure 13(a). Pre-judgment Seizure, in Part B, follows Alabama Rule of Civil Procedure 64(b), Code of Alabama 1975 §§6-6-250 to 254, and case law. The accountability portion of this section deals with the three possible consequences to parties and counsel engaging in bad conduct before an Alabama tribunal.