

**CIVIL CODE I**  
**LOUISIANA STATE BAR EXAMINATION**  
**February 16, 2009**

**Question I.**  
**(25 Points)**

Al was a single man who never married and had no children. In January of 1999, Al purchased a 200-acre tract of immovable property located in Livingston Parish (the “Property”), which had five hundred feet (500') fronting on a heavily traveled public highway. Al developed the front portion (“Parcel A”) of the Property and built a successful shopping center, which extended eight hundred feet (800') back from the highway. Commencing at a distance of one thousand feet (1,000') back from the public highway, the topography of the Property changes significantly from flat to extremely hilly, which made it very difficult to develop the back portion of the Property (“Parcel B”) for residential or commercial purposes.

On February 1, 2006, Al died leaving a last will and testament that bequeathed the Property to his nephews, Bob and Carl, who were duly placed in possession of the Property pursuant to a recorded Judgment of Possession. After Al’s succession was closed, Bob and Carl entered into an agreement in which Bob agreed that he would never seek to partition the Property. In return, Carl paid Bob the sum of \$200,000 cash. This agreement was called a “No Partition Agreement” and was not recorded in the records of Livingston Parish.

Shortly after the execution of the agreement, Bob moved to New Orleans and invested the \$200,000 he received from Carl to start a new seafood restaurant in the French Quarter, which was unsuccessful.

Meanwhile, Carl assumed the management of the shopping center, collecting all rents and paying all operating expenses, including insurance and property taxes. After assuming management of the shopping center, Carl granted a mineral lease covering the Property in favor of Petrobucks Oil Company. Petrobucks drilled an oil well on Parcel B of the Property, which is currently producing oil. Petrobucks pays Carl \$20,000 each year in lease and royalty payments.

Carl also built a \$200,000 house on the two-hundred foot strip of property that lies between Parcel A, the shopping center site, and Parcel B of the Property, the parcel with different topography. Carl also drilled a water well on the Property and he plans to use the water produced to supply fresh water for a Zesty/Clear artesian water bottling plant, which is located on an adjacent tract of land.

Bob’s financial situation has become increasingly serious and he needs to raise cash as soon as possible to keep the bank from foreclosing on his restaurant. Bob has now come to you seeking legal advice concerning his rights and to help him obtain money to pay his restaurant loan to the bank. In discussing this matter with Bob, advise him on the following questions, giving full reasons for your answers:

1. Is the No Partition Agreement enforceable? Explain your answer. Answers without explanation will receive no credit. **(6 points)**.
2. Assuming that the No Partition Agreement is unenforceable and that Bob is entitled to partition the Property, what procedure would you recommend to accomplish the partition? Explain your answer. Answers without explanation will receive no credit. **(7 points)**.
3. Advise Bob of Carl’s right to use and manage the Property. Explain your answer. Answers without explanation will receive no credit. **(6 points)**.
4. Evaluate Bob’s rights as a co-owner to the revenues being derived from the Property. Explain your answer. Answers without explanation will receive no credit. **(6 points)**.

[End of Question I]

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**Question II.**  
**(25 Points)**

Andy was a successful businessman in Alexandria, Louisiana. He met Belle, and they fell in love. In May of 2002, Andy and Belle were married. However, Andy decided that it would be prudent to protect himself in the event of a divorce and prepared an agreement providing that, in event of a divorce or separation, Belle fully and irrevocably waived any rights that she had to claim either interim or final periodic support from Andy. Andy presented this agreement to Belle the night before their wedding and insisted that it be signed immediately. Belle reluctantly signed the agreement that night before the wedding. The agreement was executed before Chris, Andy's brother, who served as Notary, together with two of Andy's friends, Dan and Ed.

Prior to her marriage to Andy, Belle inherited a piece of rental property located in Gretna (the "Gretna Property"). The Gretna Property was donated to Belle by her father and the donation was properly documented and recorded. Shortly after Belle married Andy, she transferred the Gretna Property to Anbel, LLC ("Anbel"), a Louisiana limited liability company. The conveyance was made in consideration of Belle's acquisition of a one hundred percent (100%) interest in Anbel. The initial report listed Andy and Belle as the initial managers and members of Anbel, but no operating agreement was executed. Also, Andy has handled all Anbel's daily management functions since its formation. He also planned and supervised a major renovation of the Gretna Property which increased its appraised value by \$100,000.

In January 2003, Andy purchased a \$300,000 residence on Main Street in Alexandria (the "Main Street Property") and paid the purchase price with a check drawn on a separate account that Andy had opened in 1995. The act of sale also contained a declaration that Andy was purchasing the Main Street Property with his separate funds.

In 2005, Belle had an affair with Chris and committed adultery. Andy learned of the affair and immediately filed a petition for divorce based on Belle's adultery. Two days after Belle was served with the divorce petition, she regretted her infidelity, broke off her affair with Chris and reconciled with Andy. Andy and Belle resumed marital relations and lived together for two months. Then, Andy dismissed his divorce petition.

Last week Belle discovered that Andy is having an affair with his secretary, and she has decided to terminate the marriage. Belle is seeking legal representation and has contacted you. In preparation for your meeting with Belle, please answer the following questions, giving full reasons for your answers.

1. Is the agreement that Belle signed the night before the wedding enforceable? Explain your answer. Answers without explanation will receive no credit. **(6 points)**

2. Will Belle's adultery in 2005 preclude her from recovering interim and final periodic spousal support? Explain your answer. Answers without explanation will receive no credit. **(6 points)**.

3. Will the Main Street Property that Andy purchased in 2003 be classified as separate or community property? Explain your answer. Answers without explanation will receive no credit. **(6 points)**.

4. Will the limited liability company interest in Anbel be classified as separate or community property? Explain your answer. Answers without explanation will receive no credit **(7 points)**.

[End of Question II]

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**Question III.**  
**(25 Points)**

Alpha Corporation (“Alpha”) was the owner of a 100 acre tract of land located in St. Charles Parish (the “Property”). In 1970, Alpha granted Bravo Pipeline Company (“Bravo”) a pipeline right-of-way and servitude over a designated portion of the Property pursuant to a pipeline right-of-way agreement (the “Pipeline Agreement”) by Alpha in favor of Bravo and its heirs and assigns. The Pipeline Agreement was duly recorded in the conveyance records of St. Charles Parish. This agreement granted Bravo the right to lay, construct, operate, maintain, inspect, repair, replace and remove a pipeline for the transportation of oil, gas, petroleum or other substances for a stated consideration of \$50,000 cash. The agreement further stipulated that the parties intended that the rights granted would inure to the benefit of Bravo and its successors and assigns. The rights and obligations imposed under the agreement were made binding on the successors and assigns of the parties, together with any subsequent owner(s) of the Property. No termination date was specified. However, the Pipeline Agreement did contain a provision which stated that Bravo’s rights under the agreement were subject to the condition that the pipeline and all other related equipment and appurtenances must be maintained by Bravo or its successors or assigns.

Bravo constructed a pipeline ten inches in diameter running north to south across the entire length of the Property, which was buried three feet below ground in low, marshy terrain. The total width of the right-of-way acquired was fifty feet (50') measuring twenty-five feet (25') on either side of the pipeline as located on the Property (the “Pipeline Area”). On February 1, 1994, Alpha sold the Property to Cajun Land, Inc. (“Cajun”). The act of sale to Cajun expressly stated that the sale was made subject to the Pipeline Agreement.

Around June of 2004, Bravo discontinued using the portion of the pipeline affecting the Property. When Cajun discovered that the portion of the pipeline on the Property was no longer in use, it sent Bravo a letter terminating the Pipeline Agreement due to nonuse and asking that Bravo remove the pipeline. Bravo responded to the purported termination of its rights under the Pipeline Agreement and refused to remove the pipeline from the Property. Bravo also stated that the Pipeline Area was overrun and inaccessible and, therefore, it demanded that Cajun, at its sole expense, clear the Pipeline Area to facilitate access to the pipeline.

Cajun has asked for your advice in this matter. In advising Cajun, answer the following questions, giving full reasons for your answers. **You must give full reasons for your answers in order to receive credit.**

1. How would the Pipeline Agreement be classified under the provisions of the Civil Code? Explain your answer. Answers without explanation will receive no credit. **(4 Points)**
2. How would the pipeline itself be classified under the provisions of the Civil Code? Explain your answer. Answers without explanation will receive no credit. **(4 Points)**
3. Discuss whether the Pipeline Agreement and the rights thereunder can be terminated by Cajun. Explain your answer. Answers without explanation will receive no credit. **(6 Points)**
4. Evaluate Cajun’s right to compel removal of the portion of the pipeline situated on the Property. Explain your answer. Answers without explanation will receive no credit. **(6 Points)**
5. Does Cajun have any obligation, to clear the Pipeline Area and, if so, who should pay the cost of such work. Explain your answer. Answers without explanation will receive no credit. **(5 Points)**

[End of Question III]

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**Question IV.**  
**(25 Points)**

**PART A.**     **Answer the following questions and provide supporting legal reasoning. Your answers should not exceed four sentences. (Maximum Score – 10 points)**

1.     Able has been crossing Baker's property in order to hunt on the banks of Cajun River, a navigable river which flows through Baker's land. Does Baker have the legal right to bar Able from crossing his property to reach the river bank in order to hunt? **(4 points)**

2.     Chavin sold his house to Dautat. After the act of sale was finalized, Chavin advised Dautat that he planned to remove a 60-inch plasma TV which was contained in a custom-designed frame mounted on the wall above the living room fireplace, as he considered the TV to be his personal property. Does Chavin have the right to remove the TV? **(3 points)**

3.     Ed and Frank are neighbors. In 1978, Ed built a driveway. A survey later revealed this driveway encroached two feet onto Frank's property. Rather than ordering Ed to remove the driveway, Frank agreed to allow Ed to lease the two feet in exchange for a rental payment of \$1 per year. Ed paid the rent each year until 1998, when Frank died. Ed has continued to use and maintain the driveway since that time. In 2009, Frank's heirs consulted with you and asked whether they had a legal right to order Ed to remove the driveway from their property. Please advise the heirs of their legal rights. **(3 points)**

**PART B.**     **The following questions should be answered in no more than two sentences. (Maximum Score – 10 points)**

1.     List the four methods by which a private thing may be dedicated to public use. **(2 points)**

2.     Explain the difference between a natural and legal servitude. **(2 points)**

3.     Discuss the differences between a consent judgment and a considered decree in the context of child custody judgments **(2 points)**

4.     What are the requirements for a no-fault divorce in Louisiana? **(2 points)**

5.     Name the different methods of interdiction provided in the Civil Code **(2 points)**

**PART C.**     **Indicate whether the following statements are true or false. (Maximum Score – 5 points)**

1.     The state owns the beds of navigable rivers from the mean high ordinary water mark on one side to the mean high ordinary water mark on the other side **(.50 points)**

2.     A usufructuary is responsible for ordinary repairs on the property subject to the usufruct. **(.50 points)**

3.     The most important factor in determining child custody is the preference of the child in cases where the child is old enough to express a preference. **(.50 points)**

4.     Interim spousal support is based on the needs of the party, the lack of fault of the party, the ability of the other party to pay, and the standard of living of the parties during the marriage. **(.50 points)**

5.     A person who possesses a movable for ten years but lacks good faith and just title acquires ownership of the movable. **(.50 points)**

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6. The usufruct granted to the surviving spouse terminates when the spouse dies or remarries. **(.50 points)**

7. Upon termination of the community, a spouse who has used separate property to improve community property is entitled to one-half of the value of the property at the time it was used. **(.50 points)**

8. If an estate becomes enclosed as a result of a voluntary act or omission of its owner, the neighbors are required under the law to furnish a passage to the owner of the enclosed estate. **(.50 points)**

9. Civil fruits are revenues derived from a thing by operation of law or by reason of a juridical act, such as rentals, interest, and certain corporate distributions. **(.50 points)**

10. There are three (3) kinds of emancipation under Louisiana law: judicial emancipation, emancipation by marriage and limited emancipation by mutual agreement. **(.50 points)**

[End of Question IV]

**CIVIL CODE II  
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FEBRUARY 2009**

**QUESTION 1  
(25 POINTS)**

Alex and Beth married in 1980. Both had been married previously and divorced. All community property issues from the previous marriages were resolved. Alex had two children from his previous marriage, Charles and Diane. Beth had no children prior to her marriage to Alex. Three children were born of the marriage of Alex and Beth: Evan in 1981, Frank in 1984, and Ginger in 1989. In February 2003, Alex and Beth bought their dream home with money they had been saving together over the years for that purpose.

While a teenager, Evan and his father had never seen “eye to eye” and, three years prior to Alex’s death, Evan wrote his father a letter in which he expressly stated:

“I’m sick of you meddling in my life. You can keep your money. I don’t want my inheritance.”

Alex and Evan never spoke or saw each other again after that letter was sent.

Frank never married and had no children but he cared for a disabled foster child named Ritchie. Charles was married and had twin daughters, Sarah and Theresa, in 1995. Evan married in 2001 and had one child, Veronica, in 2003. Despite the hard feelings between Alex and Evan, Alex adored his granddaughter, Veronica, and set up a savings account in her name. In June 2005, Alex deposited \$10,000 directly into Veronica’s account.

Alex died intestate in July 2007 leaving a sizeable estate consisting of community and separate property.

Charles had become independently wealthy and at Alex’s funeral, in front of several witnesses, he told his family:

“I publicly renounce my portion of my father’s estate. I don’t need it.”

Also at the funeral, Evan’s wife disclosed to Evan and the entire family that Alex had made a generous gift to Veronica.

After Alex died, Beth began dating almost immediately, much to the dismay of Diane. Ultimately, Beth met Victor. They never married, but Beth allowed Victor to move in to the family home where they lived together as a couple.

In October 2008, Frank was killed in a car accident. Ritchie survived the accident but was sent to live with other foster parents.

**QUESTION 1(A):  
(5 points)**

Like many, Evan fell on hard times when his investments severely depreciated in late 2007. Even though his feeling toward Alex had not changed, by the time that Alex’s succession was opened in mid-2008, Evan regretted his letter from three years earlier. Charles’ fortune

remained intact thanks to wise investments. The court-appointed administrator of Alex's succession comes to you and asks if Charles and Evan should inherit from Alex's estate. How do you advise her? **You must give full reasons for your answer in order to receive credit.**

**QUESTION 1(B):**

**(5 points)**

Ginger also comes to you for advice. After learning that Alex had secretly given Veronica \$10,000, and considering how Evan had behaved toward their father, Ginger wants to know if she can demand that the money be returned. How do you advise her? **You must give full reasons for your answer in order to receive credit.**

**QUESTION 1(C):**

**(3 points)**

Who inherits Alex's estate and in what proportions? **You must give full reasons for your answer in order to receive credit.**

**QUESTION 1(D):**

**(5 points)**

Diane comes to you for advice. She would like to evict Beth and Victor from the family home. How do you advise her? **You must give full reasons for your answer in order to receive credit.**

**QUESTION 1(E):**

**(7 points)**

Who inherits Frank's estate and in what proportions? **You must give full reasons for your answer in order to receive credit.**

**QUESTION 2**

**(25 POINTS)**

Bill and Debbie were married. During their marriage, daughters Sally and Arlene were born. Bill and Debbie were subsequently divorced. All issues with respect to their community were resolved shortly after their divorce.

Debbie subsequently married Paul. During their marriage, two sons were born, Matt and Dan. Bill remarried also. Bill married Kathy, and they had a son Charlie and a daughter Becky. Kathy was a widow with two small daughters, Maggie and Millie, when she married Bill, and Bill legally adopted Maggie and Millie after he and Kathy were married.

During Debbie's marriage to Paul, her grandparents executed a valid, legally binding Act of Donation, donating to Debbie a valuable piece of property located in East Baton Rouge Parish. Paul and Debbie later started a chain of restaurants and became very wealthy.

After graduating from LSU, Dan worked for a while as an engineer for an oil company in the Gulf of Mexico. Dan was generally good-natured except when he had been drinking. One

weekend, after Debbie and Paul had invited all of their children over for a barbeque, Dan drank too much and became verbally abusive to Arlene, whom he had never liked. Arlene, who had a hair trigger temper, became enraged and stabbed Dan several times with a barbeque knife before anyone could intervene and stop her. Arlene was subsequently tried and convicted of attempted murder and was sentenced to five years in jail. Dan almost died from his wounds. He was hospitalized for a long time, and his health thereafter was never good. Based on his doctor's recommendation, Dan quit his job and moved to Florida for his health. Dan became a permanent resident of Florida and never returned to Louisiana.

Debbie was unexpectedly killed in a boating accident. Debbie died intestate, leaving community property and the piece of property her grandparents had donated to her.

Shortly after Debbie's death, Dan, who had never fully recovered from the stab wounds inflicted by Arlene, also died. Dan, who was a resident of Florida, died intestate. Dan had never married and had no descendants. Also shortly after Debbie's death, Maggie, who was married to Shelby at the time of her death, died. Maggie died intestate without descendants, leaving community property, but no separate property.

Debbie was survived by everyone else described above, including her parents and grandparents. With the exception of Dan, everyone else is or was a resident of the State of Louisiana.

**QUESTION 2(A)**

**(5 points)**

Paul and Matt consult you for advice about who is entitled to inherit from Debbie. Explain who is entitled to inherit the community property from Debbie's estate and in what proportions. **You must give full reasons for your answer in order to receive credit.**

**QUESTION 2(B)**

**(5 points)**

Who is entitled to inherit the property donated to Debbie by her grandparents? **You must give full reasons for your answer in order to receive credit.**

**QUESTION 2(C)**

**(5 points)**

Who is entitled to inherit Maggie's estate and in what proportions? **You must give full reasons for your answer in order to receive credit.**

**QUESTION 2(D)**

**(3 points)**

Matt asks you for advice about whether his half-sister, Arlene, can be declared to be unworthy to inherit from Dan. What law will apply under these factual circumstances? **You must give full reasons for your answer in order to receive credit.**

**QUESTION 2(E)**

**(7 points)**

Dan died leaving bank accounts, furniture, a car, personal effects, and five acres and a house in Florida. He also owned a piece of rental property in the State of Louisiana at the time of his death. Matt wants to know how these items will be distributed. To answer Matt's question, you first have to determine what law will apply. What advice do you give to Matt about what law will be applicable with regard to the items of property Dan left at his death. **You must give full reasons for your answer in order to receive credit.**

**QUESTION 3**

**(50 POINTS)**

Jeff and Marilyn got married in 1972. On January 6, 1973, Jeff executed a statutory testament, valid in form, in which he bequeathed all of his property to Marilyn. Jeff and Marilyn were divorced in December 1974.

Jeff married Betty in 1976. Of Jeff's marriage to Betty, five children were born: Mike in 1977; Steve in 1979; Paul in 1981; Raymond in 1983; and Peter in 1986. Jeff had no other children. Betty had another child, Emily, by a prior marriage. Jeff did not ever adopt Emily, who was permanently incapable of taking care of her person and administering her estate.

On March 12, 2007, Jeff executed a notarial testament, valid in form, in the presence of his attorney, Smith, as Notary Public, and two competent witnesses. In that testament, Jeff named his sister, Cathy, as the independent executrix of his estate, with seizin and without bond, and made the following specific bequests:

1. To Smith, my longtime friend and attorney, I bequeath my laptop computer.
2. To Preacher Williams, the minister at my church, who is a good friend of mine, I bequeath the sum of \$10,000 cash. I wish that he would consider using at least a portion of those funds to furnish one of the rooms in the church's education building.
3. I bequeath our family home, which is my separate property, to my wife, Betty. On Betty's death, this property is to go to my sister, Cathy, in full ownership.
4. I bequeath to my wife, Betty, the usufruct of my one-half (1/2) interest in the community property.
5. I bequeath the sum of \$5,000 to my brother, Matthew.
6. I bequeath my land in Richland Parish, Louisiana, to the National Bank of Louisiana, to hold in trust for all of my children, as income and principal beneficiaries. The Trustee shall distribute to each beneficiary his or her share of the principal of that trust when he or she reaches age 40.

7. Subject to Betty's usufruct, I bequeath to any forced heir that I may have at the time of my death, his or her forced portion, to be satisfied from my one-half (1/2) interest in our community bank accounts.
8. I bequeath all of the rest of my estate to my children, Mike, Steve, Paul, and Raymond and my wife's daughter, Emily, in equal portions, share and share, alike."

The March 12, 2007 testament did not contain any other dispositive provisions and did not mention or otherwise refer to the January 6, 1973 testament.

Jeff subsequently copied the March 12, 2007 will on a sheet of paper entirely in his own handwriting, but added a Paragraph 9 bequeathing to his friend, Jane, his stock in ExxonMobil Corporation and his Rolex watch. Jeff went to a notary in the department store near his residence, where he stated that the document was his will, dated it April 2, 2007 in his own handwriting, and signed it in the presence of the notary, and two persons shopping at the store, who served as notary and two witnesses, respectively. Both of the witnesses were over the age of 16, but one of the witnesses was blind.

In July 2007, Jeff executed an Act of Donation before a Notary Public and two competent witnesses, valid in form, of his tract of land in Richland Parish to Betty. Betty executed an acceptance of the donation before a Notary Public and two competent witnesses, valid in form. Betty recorded the Act of Donation, with the acceptance attached, in the conveyance records of the Richland Parish Clerk of Court. Jeff never reacquired this land from Betty.

In February 2008, Jeff handed his laptop computer to Dr. Jones and told him in the presence of two witnesses, "I have deleted all of my personal information from this computer and want to you have it as a gift from me. If you cannot use it, please give it to a local school." Jeff died on June 7, 2008.

None of the documents had been destroyed. All persons mentioned in any of the documents were still living, except Paul. Paul died in 2007 and was survived by a son, Jeremy, born in 2005; and a daughter, Margaret, born in 2006. All of Jeff's surviving children were fully competent, both mentally and physically.

**You must give full reasons for your answers in order to receive credit.**

**QUESTION 3(A)**

**(5 points)**

Is Marilyn entitled to any portion of Jeff's estate?

**QUESTION 3(B)**

**(5 points)**

Was the April 2, 2007 instrument a valid and enforceable Louisiana will?

**QUESTION 3(C)**

**(5 points)**

Does Jeff have any forced heirs? If so, please identify each forced heir, state the reason why each is a forced heir, and indicate the fraction of Jeff's estate to which each forced heir is entitled.

**For all of the remaining questions, please assume that the April 2, 2007 instrument was the only valid and enforceable will in effect at the time of Jeff's death, and that the legitime of any forced heir of Jeff was satisfied.**

**QUESTION 3(D)**

**(5 points)**

Betty remarried in 2008. Did her usufruct terminate at that time?

**QUESTION 3(E)**

**(5 points)**

Preacher Williams received the \$10,000 bequest and opened a savings account in his own name. Is the church entitled to any portion of those funds?

**QUESTION 3(F)**

**(5 points)**

Who is entitled to the laptop computer?

**QUESTION 3(G)**

**(5 points)**

At the time of his death, Jeff owed \$10,000 to Matthew. Should the \$5,000 bequest from Jeff to Matthew be applied toward the satisfaction of that debt?

**QUESTION 3(H)**

**(5 points)**

Who is entitled to the land in Richland Parish?

**QUESTION 3(I)**

**(5 points)**

On Betty's death, is Cathy entitled to the family home?

**QUESTION 3(J)**

**(5 points)**

Who is entitled to receive Paul's share of Jeff's estate?

END OF EXAM

# LOUISIANA BAR EXAMINATION

## CODE III

FEBRUARY, 2009

**Question One: TOTAL OF TWENTY-FIVE POINTS**

EBR, LLC ("EBR"), which is a Louisiana limited liability company, operates a restaurant in Baton Rouge. EBR's registered office is listed on the records of the Louisiana Secretary of State as being located at the address of a law office in the central business district of New Orleans, Orleans Parish, Louisiana. Acting through its manager, Ross, EBR entered into a written loan agreement with ABC Bank pursuant to which ABC Bank established a line of credit in EBR's favor. At the same time, EBR, again acting through Ross, executed and delivered to ABC Bank a security agreement granting ABC Bank a security interest in collateral described as follows:

All equipment, accounts, general intangibles, deposit accounts, investment property and fixtures, now owned or hereafter acquired.

The security agreement states that it secures all of EBR's present and future obligations to ABC Bank. On the same day the security agreement was executed, ABC Bank filed with the Jefferson Parish clerk of court a UCC-1 financing statement, reflecting EBR, LLC as debtor and ABC Bank as secured party, stating the address of each party, and containing the identical collateral description set forth above. The financing statement was signed by neither the debtor nor the secured party. At the time of execution of these loan documents, Ross supplied ABC Bank with a unanimous consent by which all members of EBR had previously authorized Ross to borrow funds from any willing lender or lenders in such amounts as he might deem appropriate and to encumber in favor of the lenders all of EBR's present and future accounts, inventory, equipment, general intangibles and other movable property.

In November, 2008, Ross approached the president of ABC Bank, explaining that a \$50,000 loan EBR had obtained from XYZ Bank in March of 1998 was scheduled to mature on June 30, 2009. He further explained that, although all scheduled installments of the loan had been made as agreed, XYZ Bank told Ross a few days earlier that it would not renew the loan when it matures. The note evidencing the \$50,000 loan is secured by a mortgage upon the building in which EBR's restaurant is located as well as the land on which the building is situated. The mortgage contains original signatures of Ross, as manager of EBR, and of Jane, the notary public before whom he signed the mortgage. Shirley signed as a witness, but since no other witness was available, the signature line provided for a second witness was simply left blank. No one signed the mortgage on behalf of XYZ Bank. Attached to the mortgage was a copy of the identical unanimous consent of the members of EBR referred to above. The mortgage, with the attached unanimous consent, was recorded in the mortgage records of East Baton Rouge Parish on March 16, 1998.

In view of the impending maturity of the \$50,000 loan, EBR planned to obtain an advance under its line of credit at ABC Bank in order to repay the balance owed to XYZ Bank. However, ABC Bank's president suggested to Ross that ABC Bank would prefer to purchase from XYZ Bank the note evidencing the \$50,000 loan so that ABC Bank would thereby obtain a mortgage on the land and building without having to incur the expense and delay of hiring an attorney to prepare a mortgage and examine title. By doing so, ABC Bank hoped to be able to use the excess value of the building, which far exceeded the balance owed to XYZ Bank, in order to provide additional collateral for the existing line of credit with ABC Bank. XYZ Bank readily agreed to this arrangement and, on December 30, 2008, ABC Bank purchased the note from XYZ Bank, whose officer endorsed the note to the order of ABC Bank without recourse or warranty and executed an authentic act of assignment by which XYZ Bank assigned all of its rights under the note and mortgage to ABC Bank.

EBR has now defaulted upon payment of both the \$50,000 note (which has an outstanding balance of \$32,000) and the line of credit.

The mortgage upon the land and building reads, in its entirety, as set forth below. **[Note: First names only have been used in this question for the sake of simplicity and for the purpose of relieving you of the need to write full names in your answer. The fact that first names only appear in the mortgage below should *not* be cited as a potential defect in the mortgage.]**

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BE IT KNOWN that on this day before me, the undersigned Notary Public, and in the presence of the undersigned competent witnesses, came and appeared EBR, LLC, a Louisiana limited liability company ("Mortgagor"), through its undersigned manager, Ross, which declared and acknowledged that, in order to secure the prompt and full payment when due of the indebtedness owing to XYZ Bank ("Mortgagee"), under that certain promissory note dated March 15, 1998, executed by Mortgagor payable to the order of Mortgagee in the original principal sum of \$50,000.00, Mortgagor does by these presents mortgage unto Mortgagee all of its right, title and interest in and to that certain building and lot located at 29999 North Street, Baton Rouge, East Baton Rouge Parish, Louisiana.

DONE AND PASSED at my office in the presence of the undersigned competent witnesses and me, Notary, on this 15th day of March, 1998.

WITNESSES: EBR, LLC

signed/Shirley

By: signed/Ross  
Ross, Manager

\_\_\_\_\_

signed/Jane

Notary Public, East Baton Rouge Parish, Louisiana

**PART A. TOTAL OF TEN POINTS.**

Assuming that the only actions taken to create and perfect security interests in the items of collateral described in subparts (1) through (5) below are the actions mentioned above, state whether perfection of ABC Bank's security interest in each of the items of collateral has been achieved. Your answer in each case should begin with the words "Perfected" or "Unperfected", followed by a brief (one or two sentence) explanation of why perfection has or has not been achieved in the item of collateral in question. [Note: To the extent that the law of any other jurisdiction may be relevant, you should assume that its law is identical to the law of Louisiana.] **TWO POINTS EACH:**

1. The grand piano that sits on the floor of the restaurant and is played by a pianist for the entertainment of patrons of the restaurant.
2. Supplies of food and liquor which EBR keeps in stock at the restaurant.
3. A limousine that EBR uses to transport patrons from the restaurant to and from hotels and other destinations in Baton Rouge.
4. Monthly payments which EBR receives from an unrelated corporation that leases space in a separate room of EBR's building for the purpose of operating a cocktail lounge.
5. A set of twenty tables, eighty chairs, a commercial oven and miscellaneous cookware that belong to EBR and that EBR is allowing a restaurant in Natchez, Mississippi to use in exchange for monthly payments of \$500.

**PART B. FIFTEEN POINTS.**

The president of ABC Bank has solicited your advice concerning the validity of the mortgage upon the building and lot, as well as the effectiveness of the mortgage against third persons. He also wants to make sure that the mortgage will secure the line of credit debt in addition to the \$50,000 note acquired by assignment from XYZ Bank. Advise him on these issues, discussing the law applicable to any potential problems you discern with respect to the enforceability of the mortgage against EBR and/or its effectiveness against third persons.

# LOUISIANA BAR EXAMINATION

## CODE III

FEBRUARY, 2009

### Question Two: TOTAL OF TWENTY-FIVE POINTS

Bob, who owns a large tract of farmland fronting on a major highway, wanted to lease the land to a tenant who would farm it. Bob learned that Jim, a retired trucker who had just purchased a farmhouse adjacent to the tract, had been making inquiries about the availability of farmland for lease. The two men met each other on the tract in January of 2007 to discuss a possible lease. Jim observed that the property would be suitable for growing corn. Jim was also pleased that the tract had a large irrigation well on it. After an amiable discussion, the two men entered into a "handshake deal" that Jim would lease the property at a stipulated rental to be paid in cash at the time the crop was harvested. When Bob mentioned that he was particularly concerned that the irrigation well be repaired regularly since its use was important to the well-being of the farm, Jim agreed that he would maintain it in good repair. In their discussions, neither of the men mentioned how long the lease would endure, nor did they discuss any other terms beyond what is specifically stated above.

Jim went into possession of the property the next day and, as soon as the danger of frost had passed, planted the entire property in corn. Jim also determined that a small, dilapidated structure located on the property was not large enough to house his farm equipment. Without consulting Bob, Jim erected a sturdier, more spacious barn on the property. Although the barn cost \$50,000 to build, its presence on the tract caused only a negligible increase in the value of the property.

In early summer of 2007, it occurred to Bob that five acres of the land would make an ideal location for a truck stop. When he approached Jim about the possibility of using this portion of the farm for that purpose, offering to compensate him for the value of his growing crops on the five acres in question, Jim expressed an interest in the proposal, but replied that he felt he should have the first opportunity to develop the property as a truck stop. After further discussions on the subject and consultations with their attorneys, Bob and Jim signed a written agreement by which Jim was granted the right to purchase the five-acre tract for \$100,000 in the event that Bob desired to sell it at any time during the following fifteen years. This agreement, which did not mention the fact that Jim was leasing the property as part of the larger tract, was recorded in the conveyance records of the parish in which the property is situated. The barn that Jim had erected was not located on the five-acre tract.

Shortly afterward, and quite by happenstance, Bob was contacted by a prospective buyer who wanted to purchase the five-acre tract for use as a site for a truck stop. Bob gave Jim notice of the offer made by the prospective buyer in early August, 2007. Within a week, Jim responded that he could not buy the property at the present time because he did not have the necessary funds. Bob then told the buyer that he was ready to proceed. However, the buyer responded that, after performing a market study, he had determined that the location was not be suitable for his purposes and withdrew his offer to purchase.

The 2007 crop was a good one, and Jim paid Bob the full amount of the cash rent that was due upon harvesting and selling the crop.

In the spring of 2008, Jim, who was still in possession of the farm, again planted the entire farm in corn. Shortly afterward, however, Jim decided that he wanted to return to his former occupation as a trucker and arranged for a friend to take over his farming operations on the land under an oral agreement that they would split the profits from the corn crop at the end of the year.

In May, 2008, Bob sold the five-acre tract for \$150,000 to Kay, who planned to use the property as a site for a convenience store. This time, Bob did not give Jim notice of the proposed sale. Though Bob told Kay that Jim was farming the tract, neither the act of cash sale by which she purchased the property nor any other written agreement made any mention of Jim's lease.

As soon as he heard of this sale, Jim contacted Bob to inquire why Bob had not given him the opportunity to purchase the five-acre tract before selling it to Kay, contending that the sale was in derogation of both his lease and his right under the written agreement to purchase the tract. Bob responded that Jim had already had a chance to purchase the tract and had "blown it." Bob also pointed out that he had recently discovered that the irrigation well had not been maintained properly

and was no longer operable. Finally, Bob mentioned that he was upset that Jim was no longer farming the land, but instead was allowing it to be farmed by Jim's friend.

Shortly afterward, Bob's attorney wrote to Jim asserting that Jim had no enforceable lease because nothing was in writing. The letter also asserted that, even if there had been an enforceable lease, it expired when the 2007 corn crop was harvested and was therefore no longer in effect. The letter also alleged that Jim had breached the lease by subleasing the property to his friend without Bob's consent, by failing to pay property taxes that became due on December 31, 2007 and by failing to maintain the irrigation well in good repair. The letter, which was sent by certified mail, demanded that Jim surrender possession of the farm to Bob within five days. Finally, the letter advised Jim that Bob would allow him thirty days within which to remove the barn Jim had erected upon the property and that, if he not do so, it would belong to Bob.

When Jim failed to vacate the property even though two months had elapsed since he had received the demand letter from Bob's attorney, Bob filed an ordinary suit to evict Jim based upon the same contentions that had been made in the letter. Jim responded with a reconventional demand against Bob and Kay, asserting that the sale to Kay was in violation of his rights under the recorded agreement and that, in any event, he is entitled to continued possession of the entire tract as lessee. Jim's reconventional demand also claimed reimbursement from Bob of the cost of the barn that he had erected upon the property, asserting that it would be impractical for Jim to remove it. The suit and reconventional demand are both still pending.

**PART A. TEN POINTS.**

Discuss the merits of Bob's contentions with respect to the unenforceability of the lease, its expiration at the end of the 2007 crop year, Jim's alleged breaches of the lease, and Bob's ability to terminate the lease on account of these alleged breaches.

**PART B. TEN POINTS.**

Discuss the merits of Jim's claims that the sale to Kay was in violation of his rights under the recorded agreement and that he is entitled to continued possession of the entire tract as lessee [NOTE: For purposes of this Part B, you should assume that the lease was enforceable at the moment of the sale and that Jim has not breached it].

**PART C. FIVE POINTS.**

Discuss the merits of Bob's claim to the barn and Jim's claim for reimbursement of the cost of the barn. [NOTE: For purposes of this Part C, you should assume that the lease has expired].

**LOUISIANA BAR EXAMINATION**

**CODE III**

**FEBRUARY, 2009**

**Question Three: TWENTY-FIVE POINTS**

On February 1, 2008, Jan purchased a residential condominium unit for a purchase price of \$300,000 in accordance with an act of cash sale containing the following provisions:

THE CONDOMINIUM UNIT IS SOLD "AS IS, WHERE IS", WITHOUT ANY WARRANTY OR REPRESENTATION WHATSOEVER WITH RESPECT TO THE CONDITION OF THE CONDOMINIUM UNIT OR WITH RESPECT TO ANY OF THE COMMON ELEMENTS OF THE CONDOMINIUM PROPERTY, OR ANY OF THE COMPONENT PARTS OF EITHER THE CONDOMINIUM UNIT OR THE COMMON ELEMENTS, AND WITHOUT WARRANTY WHATSOEVER WITH RESPECT TO THE FITNESS OF THE CONDOMINIUM UNIT OR THE COMMON ELEMENTS FOR ANY PURPOSE. NO REPRESENTATION OR WARRANTIES WITH RESPECT TO ANY OF THE FOREGOING ARE MADE, ALL OF THEM BEING EXPRESSLY WAIVED AND DISCLAIMED.

PURCHASER HEREBY WAIVES ANY RIGHT TO SUE FOR RETURN OR REDUCTION OF THE PURCHASE PRICE AS A RESULT OF THE CONDITION OF THE UNIT DESCRIBED HEREIN OR THE CONDOMINIUM PROPERTY OR AS A RESULT OF THEIR UNFITNESS FOR ANY PURPOSE.

Prior to the sale, Jan inspected the condominium unit, accompanied by Carla, the seller's exclusive sales agent. At the inspection, Jan learned that the pool and hot tub on the roof of the building were available for use by all unit owners of the building. Jan asked Carla if there had been any problems with the structural soundness of the unit. Carla responded by telling Jan that the unit was structurally sound and that there had been no previous problems with the roof or leaks from the roof. At the time of this inspection and throughout the sale negotiations, Jan's only contact with the seller was through Carla, who had begun representing the seller on December 1, 2007.

Three months after Jan's purchase of the unit, water began to leak through the ceiling of Jan's unit, causing extensive damage to the interior of the unit and Jan's furnishings. Jan promptly contacted the seller and told him about the leaks and the damage. This was the first time Jan had ever spoken with the seller, who assured Jan that he would repair the problem. After numerous failed attempts to repair the problem, the seller informed Jan on June 1, 2008 that the problem had been repaired.

On February 1, 2009, Jan was awakened by the sound of moving water. Unfortunately, Jan discovered that the roof was leaking badly and there was standing water in her unit. The seller, upon learning about the water damage, told Jan that he would not do her any more favors, reminding her that she had purchased the unit "as is, where is".

Jan is now convinced that the leaks are caused by the pool and hot tub on the roof of the building. Also, she has learned that, in October 2007, the seller had spent \$250,000 to repair the roof of the building and water damage to all top floor units of the building.

Discuss potential remedies that Jan may have against the seller, including in your discussion the requirements under the Civil Code for such remedies and any defenses available to the seller.

**LOUISIANA BAR EXAMINATION**

**CODE III**

**FEBRUARY, 2009**

**Question Four: TOTAL OF TWENTY-FIVE POINTS**

**PART A: TEN POINTS**

Sue purchased a vacant lot from Ken a year ago for a purchase price of \$100,000. During the last nine months, Sue has constructed a home on the lot at a total construction cost (not including the cost of the lot) of \$250,000. As she was preparing to move into her new home, Sue received a letter from a pipeline company claiming that a part of her house is built on its pipeline servitude and must be removed. Extremely upset by this claim, Sue contacts you, providing you with a copy of the act of sale by which she purchased the lot. She explains that there is no visible sign of a pipeline crossing her lot and that, because she trusted Ken, she did not have the title to the lot examined when she bought it. You review the act of sale and find that it does not mention any warranty obligations, nor does it mention the possibility that a pipeline may cross the lot. During your investigation, you discover that, in 2000, the pipeline company obtained a servitude from Ken's predecessor-in-title upon a large tract that includes what is now Sue's lot. The servitude instrument, which was recorded in 2000, designates the location of the pipeline and specifically provides that no improvements can be constructed over the pipeline. Applying the law of sales (*but excluding the law of redhibition*), advise Sue of her rights against Ken. [Note: In giving your answer, assume the validity of the pipeline servitude].

**PART B: FIVE POINTS**

Distinguish between a vendor's privilege on movable property and a purchase money security interest, discussing particularly the differences in the manner of their creation, the different legal effects they produce and differences in their ranking and effectiveness against third persons. In giving your answer, it is not necessary to discuss any special rules that might be applicable to collateral consisting of inventory.

**PART C: FIVE POINTS**

Distinguish between relative nullity of a contract and absolute nullity of a contract, discussing particularly the differences in legal effects that each type of nullity produces, the persons entitled to assert nullity of a contract suffering from each type of nullity, and the period of time within which they are permitted to do so.

**PART D: FIVE POINTS**

Explain the concept of novation, distinguishing between subjective and objection novation. Give an example of an action that constitutes a novation, as well as examples of actions that the Civil Code indicates do not constitute a novation.

**END OF EXAMINATION**

**LOUISIANA BAR EXAMINATION  
LOUISIANA CODE OF CIVIL PROCEDURE  
FEBRUARY, 2009**

**QUESTION I (25%)**

Succinctly answer the following questions:

- 3% A. You represent a plaintiff who has just prevailed in a suit for monetary damages. Although you reviewed the judgment (which was prepared by the defendant's counsel) prior to submitting that judgment to the court, upon receiving a copy of the judgment signed by the Judge you suddenly realize that it contains a mathematical addition error which inadvertently reduces the value of the judgment by several thousand dollars. What, if anything, can you do about this situation?
- 3% B. On behalf of Buyer, you have secured a judgment specifically enforcing a contract to sell immovable property and directing Seller to execute the instruments necessary to complete the sale. Seller refuses to execute the instruments. What action, if any, can you take in order to force the sale of the property? If there is a procedure which can be instituted, please specify the remedies that may be obtained.
- 3% C. You are contacted by the heir of a wealthy resident of your city who died several months ago. The heir explains that he is in dire financial circumstances and is due to receive an inheritance of over \$200,000 from the wealthy resident's succession. Due to his dire financial circumstances, the heir asks you if there is any method by which he could receive a portion of his inheritance in advance of the completion of the succession. What, if anything, can be done to fulfill the heir's request? Please explain any requirements and procedures related thereto.
- 7% D. Company has approached you to take over the defense of a tort lawsuit that has been pending for six months. Company, the sole defendant, is a Louisiana corporation with its registered office located in Calcasieu Parish. Plaintiff is a resident of Ouachita Parish. The accident forming the basis of the lawsuit occurred in Calcasieu Parish and all fact and expert witnesses reside there except Plaintiff. The suit was filed in Ouachita Parish and Company's answer was filed five months ago, asserting no exceptions. Upon reviewing the file, you determine that suit is pending in the wrong venue.
- 3% 1. What steps, if any, can you take to contest the venue in which the suit is now pending? Explain.
- 4% 2. What steps, if any, can you take to change the venue in which the suit is now pending? Explain.
- 9% E. On May 15, 2008, Health Club entered into a written contract with Pool Contractor, for the construction of a swimming pool on its property in Calcasieu Parish. Surety Corporation, located in the City of Lafayette, Lafayette Parish, as surety for the contractor, furnished a bond (\$150,000), dated May 13, 2008, to the Health Club. Pool Contractor began construction of the swimming pool, and during the course of this construction Equipment Company of Beauregard Parish rented to Pool Contractor certain pieces of construction machinery, including

pumps, hoses, an air compressor, pneumatic breakers and hammers, a cement mixer, a motor mixer, and a backfill tamper - the charges amounted to \$18,500. At a stage of partial completion, the pool was damaged by heavy rains. Thereafter, Pool Contractor abandoned the project, and the Health Club finished the construction of the pool using a different contractor, recording formal notice of default in the Mortgage Records of Calcasieu Parish, Louisiana, on December 30, 2008. After failing to receive payment for the rental of its equipment, Equipment Company filed an affidavit evidencing its claim in the Mortgage Records of Calcasieu Parish on November 6, 2008.

Health Club and Equipment Company have both made demand upon Surety Corporation for payment of their claims. Since Equipment Company never performed any work on the swimming pool, Health Club alleges that Equipment is not entitled to any portion of the bond proceeds. Since it had not been fully paid prior to his default, Pool Contractor has made claim for the balance of the bond funds after payment of all legitimate claims.

Surety Corporation comes to you and wants to know how it can have the competing and conflicting claims of Health Club, Equipment Company and Pool Contractor to the bond funds resolved in one proceeding. It also wants to know if there is any way that it can avoid the risk of paying the wrong claimant during the court proceeding.

- 3% 1. What proceeding, if any, can be filed in order to resolve all competing and conflicting claims?
- 3% 2. If it is possible to file such a proceeding, what, if anything, can Surety Corporation do to relieve itself of all liability upon the filing of the proceeding? Please explain.
- 3% 3. If you decide that there is one proceeding that can be filed to resolve all claims, what is the proper venue for that proceeding? Please explain.

**EXAM CONTINUES ON NEXT PAGE**

**Question II (25%)**

- 3% A. Identify the three different kinds of exceptions and explain the general purpose or function of each kind.
- 3% B. Client asks you to defend him in an ongoing lawsuit following the untimely death of his prior counsel. Client explains to you that the lawsuit, which was brought against him four years ago, involves claims of patent infringement relating to his invention of a fire ant pesticide. In reviewing the file, you determine that discovery was propounded to Client at the same time the lawsuit was filed, which discovery has never been answered. The suit record and the files of Client's prior counsel reflect no other action or activity in the case. What course of action do you recommend to your Client?
- 4% C. Client brings you a partition lawsuit in which she has been named a defendant, along with approximately ten other defendants. In discussing the underlying facts, Client explains to you that she also believes that she has a claim against one of her ten co-defendants for a timber trespass occurring on a different but adjacent parcel of land that she solely owns. She asks you whether she can assert that timber trespass claim against her co-defendant in this lawsuit. What do you tell her? Explain your answer in detail.
- 6% D. Your client, a resident of Shreveport, Caddo Parish, Louisiana, brings you a lawsuit in which he has been sued in a breach of contract case filed in Terrebonne Parish, Louisiana. Your client explains that he signed a contract to purchase a new prototype mud boat motor from a traveling salesman who made the sales call at your client's home in Shreveport, Louisiana. All negotiations occurred in Shreveport, the contract was signed by both parties in Shreveport, and the motor was delivered to your client in Shreveport. Upon receiving the motor, your client was very dissatisfied with the product, refused to pay the balance owed under the contract, and sent the motor back to the seller. Your client has never been to Terrebonne Parish and is concerned about having to defend himself in a lawsuit pending there.
- 3% 1. Is Terrebonne Parish a proper venue for this breach of contract action? Why or why not?
- 3% 2. In reviewing the contract that was attached to the breach of contract petition against your client, you discover that the contract signed by your client contains a clause that waives any objections that the buyer may have to the venue for a lawsuit brought by seller to recover payment under the contract. Does the discovery of that provision affect your opinion concerning the appropriate venue for this lawsuit? Why or why not?
- 9% E. Senior partner hands you a set of interrogatories and production requests, together with a box of potentially responsive documents and asks you to review all of the materials and prepare responses to the interrogatories and production requests. You encounter the following questions:
- 3% 1. Are you required to organize and label the responsive documents to correspond to the specific categories of the requests for production of documents?

- 3% 2. In reviewing the box of documents and discovery requests, you determine that the answers to the bulk of the interrogatories are set forth in the specific documents that are responsive to the requests for production of documents. Does your determination provide you with any additional option in responding to the interrogatories? Please explain.
- 3% 3. During the course of your review of the documents you discover numerous pre-lawsuit emails between non-lawyer upper level management employees of your client in which they discuss possible strategies and other issues that may arise in the event of litigation. Are these pre-lawsuit emails by non-lawyer employees of your client subject to production? Please explain the basis for your answer.

**EXAM CONTINUES ON NEXT PAGE**

**Question III (25%)**

- 5% A. Client seeks your assistance regarding a Partnership Agreement that he has entered with a long time acquaintance. Although his Partner has not yet breached the Partnership Agreement, Client believes that his Partner is about to violate the terms of the agreement. His Partner has justified his threatened actions by interpreting certain provisions of the Partnership Agreement in a manner that Client believes is fundamentally incorrect. Although the action threatened by Partner would cause Client only monetary harm, Client asks you if there is any legal action he can bring in advance of a contemplated breach of the Agreement that might confirm that Partner's interpretation of the Agreement is incorrect.
- 2.5% 1. What is the appropriate legal action, if any, that you would recommend and what kind of relief can the Court provide in conjunction therewith.
- 2.5% 2. The Partnership at issue has a Third Partner who agrees with Client's interpretation of the Partnership Agreement but does not want to join in any action related thereto. In light of your answer to No. 1 above, what, if anything, must be done with respect to this Third Partner? If something must be done please explain why.
- 3% B. Please succinctly describe the requirements for a detailed descriptive list of succession property.
- 3% C. You are representing defendant insurance company in an action brought against it by its insured. After three days of a bench trial, the plaintiff insured has rested her case. You believe that the plaintiff insured has failed to offer evidence needed to establish her cause of action. What, if anything, can you now do to try to secure an immediate ruling in favor of your client?
- 5% D. Plaintiff filed suit against defendant for breach of contract. In its answer, defendant filed a general denial to the petition allegations, but asserted no affirmative defenses. Defendant later asserted a reconventional demand against plaintiff in which defendant alleged that the contract that forms the basis for the lawsuit lacked consideration and was the result of error or mistake. At the trial of the matter, defense counsel seeks to introduce evidence relating to the issues of failure of consideration and error or mistake when she is met by the objection of plaintiff's counsel, who correctly states that failure of consideration and error or mistake are affirmative defenses that were not specifically pled in the answer of the defendant. Should the defendant be allowed to introduce evidence of failure of consideration and error or mistake? Why or why not? Please explain your answer.
- 3% E. You have just completed your first jury trial in which you represented the defendant insurer in a lawsuit arising from a motor vehicle accident. The jury rendered a seven figure verdict against your client, and the news of that verdict has made all of the local papers. Four days after the verdict, you receive a call from Unknown Witness, who tells you that she read the newspaper account and was shocked by the verdict since she had witnessed the accident and saw the plaintiff run a red light and cause the accident in question. You meet with Unknown Witness later that same day and learn that both she and her 22-year-old son witnessed the accident but were not referenced on the accident report and were never contacted by anyone about the matter. What, if anything, can you do

with this information at this point and, if anything can be done, what burden or standard must be met?

3% F. Defendant answers Plaintiff's petition, requesting a trial by jury. Nine months after the answer was filed, Defendant files a motion to withdraw its request for trial by jury, which is granted. May Plaintiff now file a request for trial by jury despite the fact that she had not requested a jury trial in her original petition and, if so, what deadlines, if any, exist? Explain briefly.

3% G. You are defending a commercial contract dispute that has been set for trial in two weeks. Plaintiff's counsel has filed a motion for continuance, contending that a material witness who previously has not been deposed has disappeared and cannot be located. Plaintiff seeks a continuation of the trial so that further efforts may be made to locate this witness. Your client does not believe that the testimony of the missing witness will affect the trial outcome and would like to keep the current trial date in place. What, if anything, can you do to maintain the current trial date for your client?

**EXAM CONTINUES ON NEXT PAGE**

**Question IV (25%)**

2% A. Which of the following is NOT an appropriate venue for an action seeking to modify a child support obligation:

1. The parish where the person paying the support is domiciled;
2. The parish where the person awarded support is domiciled;
3. The parish where the support award was rendered if it has not been registered and confirmed in another Louisiana state court; or
4. The parish where the support award was last registered if registered in multiple Louisiana state courts.

2% B. Which of the following is NOT a prerequisite for a class action:

1. The class is so numerous that joinder of all members is impracticable.
2. There are questions of law or fact common to the class.
3. Allowing the class action would provide the most judicially economical resolution of the claims.
4. The claims or defenses of the representative parties are typical of the claims or defenses of the class.

2% C. Which of the following is NOT a basis for which a juror must be excused pursuant to a challenge for cause:

1. When the juror is closely related to one of the parties such that it must be reasonably believed that the relationship would influence the juror in coming to a verdict;
2. When the juror has formed an opinion in the case or is not otherwise impartial;
3. When the juror refuses to answer a question on the ground that his answer might tend to incriminate him; or
4. When the juror served on a previous jury which tried a case containing issues similar to the case you are presenting.

2% D. Which of the following is NOT a reason that a court would be required to deny the consolidation of two separate actions for trial:

1. It would cause jury confusion.
2. It would give one party an undue advantage.
3. It would prevent a fair and impartial trial.
4. It would lengthen the time required for trial.

6% E. Today Client brings you two default judgments that were obtained against Client and Client's wholly-owned corporation, XYZ Corp. Client explains that the lawsuit in which the judgments were issued relates to a contract that XYZ Corp. entered and was performing and that he had no personal connection or responsibility for the claims asserted in the lawsuit (apart from his ownership interest in the corporation).

You review the relevant suit record and determine that service upon both the Client and his corporation (for which Client serves as the designated agent for service of process) were made via domiciliary service on Client's wife on March 5, 2008. On July 20, 2008, the plaintiff moved for and obtained a preliminary default against Client and Client's corporation. Thereafter, on October 15, 2008, a default judgment was rendered in open court. Client was personally served with those judgments on October 25, 2008.

3% 1. Does Client have a legal basis for challenging the default judgments that were taken against Client and Client's wholly-owned corporation?

3% 2. If one or both judgments can be challenged, please state the specific procedural method (or methods) for contesting same.

2% F. Deceased died in Beauregard Parish. At the time of his death, he was domiciled in Catahoula Parish and owned immovable property in Bienville Parish. In which parish must a proceeding to open his succession be brought?

4% G. When a lawyer signs a pleading filed for a client, what does the lawyer signify personally, if anything?

5% H. Client has delivered a written notice to Tenant demanding that he vacate the leased premises within ten days for nonpayment of rent. The ten day period has elapsed and Tenant is still there. What steps must you take to place Client in possession of the leased premises? Explain fully.

**END OF EXAM**

# LOUISIANA BAR EXAMINATION

## TORTS

FEBRUARY 2009

**Question One: SIXTY POINTS**

Sissy Simmons needed to buy her great grandchild, Bailey, a birthday gift. She had never been in the gigantic TOYS TOYS TOYS before but decided, despite feeling weak and dizzy, that she wanted to drive there and purchase the latest remote control car that little Bailey had requested.

Sissy's husband, Bart, felt she wasn't well enough, having just had gall bladder surgery, to drive the 10 miles from their home to the store, so he offered to drive her to purchase the gift. Sissy agreed, took one of the pills the doctor had given her for pain, and rested her eyes while Bart drove to the store.

When they arrived, Sissy went in alone, while Bart sat in the car. Inside Sissy was befuddled by the noise, the flashing lights and the bright lights. She asked one of the employees for assistance but the young lady, who had earphones in her ears and was bopping to the ipod, pretended not to hear her. Sissy finally found the remote control car aisle and began looking on the shelves for the perfect gift. As she walked down the aisle looking at the numerous types of cars she didn't see the rack in the middle of the aisle which contained sale items. She bumped into the rack causing a remote control car, manufactured by CRAZY CARS, Inc., to fall off the rack onto the floor and begin zooming down the aisle, flashing its lights and blowing its horn. The sound and movement startled her. She lost her balance, slipped on some candy spilled on the floor and fell, breaking her arm in two places.

No one came to Sissy's aid for over ten (10) very long minutes while she lay there in excruciating pain. Finally, the headphone-wearing employee saw her and called the manager. While Sissy lay on the cold floor in pain, they discussed what should be done. After a few minutes they finally heard her mumbling that her husband was outside in the car. The manager went outside and got Bart who rushed in saying "I knew I shouldn't have let her go in there by herself." Bart helped Sissy to her feet and got her into the car. No one from the store assisted them. No report was ever filed.

Bart drove Sissy to Last Chance Hospital. She had surgery to repair the broken bones. Due to her weak medical condition she remained in the hospital for two (2) weeks. The toy store's insurance company sent an investigator to the hospital to take a recording of Sissy's statement regarding the accident a few days after her surgery. She told the investigator what happened in amazing detail.

While in intensive care, Sissy developed a staph infection due to unsanitary cleaning of her wound by Nurse Rachet. The staph infection could not be controlled and Sissy died at age 65, according to the autopsy report, from complications of gall bladder surgery and complications due to an uncontrolled staph infection. Nurse Rachet was reassigned to another unit at Last Chance Hospital after undergoing extensive patient hygiene care training.

Sally's husband, Bart, and their three children (Bart and Sally's adopted son Charlie who is 17, and their divorced daughter Sally, age 34, who lived with them along with her 3 minor children; and Bart's daughter, Susan, age 40) consulted an attorney regarding their rights. Since Sissy's job as a server at the local high school cafeteria was their only source of income, Bart is worried about how he is going to support the family. He fears he might actually have to get a job.

As their attorney, what would your advice be?

**Question Two:      TWENTY POINTS**

On June 2, 2005, Janice Smith received a prescription for Xanta syrup for her 10 month son, Thomas, from City Corner Pharmacy. The prescription from Thomas' physician stated that he was to receive 1.5 milliliters twice daily. When the prescription was filled by the druggist, it was mislabeled and read that Thomas was to be given 1.5 teaspoons (7.5 milliliters) twice daily.

Janice gave Thomas the medicine according to the label. As a result, Thomas had stomach irritation, cramps, and vomiting. Janice accidentally knocked over the bottle of Xanta syrup, spilling much of the contents, and called for a refill. The dosage mistake was discovered on June 23, 2005 and Thomas fully recovered.

Janice suffered deep depression and guilt for giving her child the overdose of medicine. Before, she had been emotionally stable. She began suffering severe panic attacks and was admitted to Behavioral Medical Center on July 16, and discharged on July 22, 2005.

She has come to you to be advised of her rights. DO NOT DISCUSS ANY CLAIMS OF THOMAS.

**Question Three:      TWENTY POINTS**

Samantha was walking to her rental apartment on Gateway Drive in Fat City, La., when she tripped on a three inch vertical elevation in the concrete public sidewalk. She fell to the ground and sustained injuries to her right shoulder.

One section of the sidewalk had subsided and pulled away from the adjacent section causing the elevation. The condition had existed since 2005 when the adjacent landowner complained to the Fat City Dept. of Public Works about the appearance of the sidewalk. There were no reports of other injuries on the sidewalk.

Discuss from a torts standpoint.

**END OF EXAM**

**LOUISIANA BAR EXAMINATION**

**CONSTITUTIONAL LAW**

**February 2009**

**WARNING**

**The following are not issues on the Constitutional Law Examination: mootness, ripeness, political question, case or controversy, standing, or justiciability.**

**NO CREDIT WILL BE GIVEN FOR DISCUSSION OF THESE ISSUES ON ANY OF THE THREE QUESTIONS.**

**Question Number One is worth 40 points; Question Number Two is worth 40 points; Question Three is worth 20 points.**

**QUESTION ONE – (40 points)**

Abram Just, the pastor of a devout Christian church, on behalf of his church, executed a purchase agreement for a large tract of land in Just, Texas. Pastor Just intended for the members of his church to build homes, a school for the children of the church, and a few essential neighborhood businesses to reduce the need for church members to go outside of the community. The proposed name of the community would be the Just Jesus Church (JJC) Community. Church members would be allowed to build houses within the community only if they agreed to sign the community covenant, which required residents to make their lifestyles parallel the literal teachings of the New Testament of the Bible. The covenant also required guests of church members to following the teachings while in the JJC community. Pastor Just wanted the church members to fully live the Bible teachings without being poisoned by the influences of the secular world.

The governor, fearing that the proposed JJC community might evolve into a cult, decided that the state needed the land to convert it into a bird sanctuary for an potentially extinct bird indigenous to Texas. The governor signed an executive order that declared that no construction of any kind could occur on the property, that no structures could be erected, and that no trees could be cut in order to provide a safe haven for the nearly extinct bird. The legislature of the State of Texas conducted no legislative findings on whether the bird was, in fact, in danger of extinction, nor were there any studies on whether (1) the potentially extinct birds could successfully migrate to Just, Texas or (2) the restricted lands could serve as a habitat for the potentially extinct bird.

Pastor Just does not believe that his church can fully serve the teachings of the New Testament of the Bible or the community covenant if the church members cannot live and work together as a separate community. Moreover, according to community covenant and Pastor Just's reading of the New Testament of the Bible, the land purchased by the church is the most sacred land to be found in Just, Texas.

You are an associate within the law firm that Pastor Just has hired to investigate the church's rights concerning the executive order. You and several other associates are asked to research issues for Pastor Just. Please draft a memo analyzing the constitutional issues assigned to you: First Amendment religion (20 points), procedural due process (10 points), and taking (10 points).

## **QUESTION TWO – (40 points)**

Congress conducted extensive audits to identify fiscal changes that could reduce the national deficit and the dangers of over population. The audit revealed a large, disproportionate amount of money allocated for various programs to provide aid to families headed by unwed mothers. The audit also revealed that unwed mothers had more children than mothers in two parent households and that the majority of the unwed mothers lived in poverty.

Congress agreed to use its commerce powers to pass legislation that provided an incentive to poor, unwed mothers to encourage them not to have children. The bill, referred to as the Mommy Machine Reduction Act (MMRA) provided that if an unwed woman making less than \$20,000 per year voluntarily underwent a procedure to be sterilized, the government (1) would pay all of the medical expenses for the procedure, (2) would pay for the procedure to freeze some eggs of the woman, and (3) would pay the woman a \$3,500 stipend. The bill contained an exclusion for women who had children through in vitro or other alternative forms of reproduction.

The bill also provided that males who failed to financially support their children in the amount and manner as required by state law for more than a two year period without justification, and those who fathered two or more children receiving government aid, would undergo mandatory sterilization. Unemployment, unless due to a medical condition, did not qualify as justification. The government would pay for the procedure but would not provide any stipend for males. The law did not restrict the number of times a male could donate his

sperm to a sperm bank.

Many community activists were outraged by the proposed bill. A survey of a random sample of unwed mothers receiving government aid indicated that 75% of the women interested in participating in the MMRA program were African American, Hispanic, Asian, and Native American women living below the national poverty level. A survey of the public records revealed the deadbeat dads that would be subjected to mandatory sterilization reflected the same demographics. Several community activists began an advertising campaign to encourage citizens to contact their congressmen and the president to express outrage and opposition to the bill, which they alleged was equivalent to modern day genocide.

Allie is a Native American, unwed, pregnant college student who is appalled by the MMRA because several of her unwed female peers have already begun making plans to have the MMRA procedure in order to get the \$3,500 stipend. She wants the legislation abolished before her friends sterilize themselves and lose the opportunity to experience motherhood without resorting to expensive alternative methods.

Bernardo has fathered three children with three different women who are receiving government assistance. He is a 26 year old Hispanic, unemployed, high school dropout who has not had consistent employment since he entered the workforce. Bernardo occasionally sends a few dollars to the mothers of his children, however, he spends a lot of time with his children.

1. What constitutional arguments does Allie have to challenge the Mommy Machine Reduction Act? (20 points)
2. What constitutional arguments does Bernardo have to challenge the Mommy Machine Reduction Act? (20 points)

**DO NOT DISCUSS ANY PROCEDURAL DUE PROCESS ISSUES FOR EITHER ANSWER.**

### **QUESTION THREE – (20 points)**

Please list the grounds upon which a state regulation, practice or law may be in violation of the Dormant Commerce Clause. Please include in your discussion the appropriate standard of review a court uses to examine each ground. Finally, please discuss any exceptions a state might raise in defense of its regulation, law or practice.

**SUPREME COURT OF LOUISIANA**  
**Committee on Bar Admissions**  
**New Orleans, Louisiana**  
**February 2009 Bar Examination**

**EXAMINATION ON CRIMINAL LAW, PROCEDURE AND EVIDENCE**

**I.**

**(40 points may be earned)**

Six years after his release from a juvenile detention facility following a conviction for burglary, Chris finally managed to turn his life around. At the age of 23, he was now a pump system operator at a local refinery and was earning more money than he ever thought possible.

One morning, Chris learned that Tyson, a process engineer, had won a large sum of money the previous night at the local riverboat casino. Chris knew that Tyson always carried several hundred dollars in his jacket, which he secured in his locker. Sensing an opportunity for quick cash, Chris discretely entered the locker room where he and the other workers kept their personal belongings in individual locked cabinets. Alone in the locker room, Chris quietly pried open the padlock on Tyson's locker using a small crowbar he took from the refinery's tool room. The padlock was badly damaged. To avoid leaving evidence, Chris placed the remnants of the padlock, along with the crowbar, in his jacket pocket. After opening the locker, Chris quickly rummaged through the pockets of Tyson's jacket and located the stash of cash. Chris also discovered a small .380 semi-automatic pistol and a wallet in Tyson's locker. Within seconds, he managed to stash the cash, the gun and the wallet into his pockets. He then quietly returned to his work station without drawing attention to himself.

After leaving work at the end of his shift, Chris drove to his apartment, which he shared with his girlfriend, Dana. He proudly bragged to her about his exploits and emptied out his pockets, revealing cash, a wallet and a crowbar. He offered her \$200 from among the sum that he had removed from Tyson's jacket. He also urged Dana to take one of the credit cards found in Tyson's wallet. Concerned that the credit cards could be more trouble than they were worth, Dana declined Chris's offer of the cards but she eagerly accepted the \$200. Believing that Chris would carelessly fail to safely hide the wallet, Dana insisted that it be handed over to her for safekeeping. Chris reluctantly acceded, but before doing so, he removed Tyson's social security card and a credit card that he later used to purchase a Rolex Yachtmaster watch.

The next day, Chris wrote Tyson's social security number on an application for an American Express credit card. After Chris carefully completed the application, he placed it in a mail box at a nearby post office.

Immediately after discovering the damage to his locker and the looting of his belongings, Tyson notified the refinery's security staff, who caused a police report to be filed with the sheriff's office. After an extensive investigation, Chris became the main suspect in the incident. Detectives visited his apartment to question him about his involvement in the offense. Upon arrival, officers knocked on the apartment door, identified themselves as police officers and requested to speak with Chris. Dana opened the door and asserted that Chris no longer lived at the apartment. She further claimed that, weeks earlier, Chris moved to an out-of-state location to pursue better employment.

Not satisfied with Dana's explanation, officers established a visual surveillance of Chris's home. After a few hours, officers spotted Chris as he returned to the apartment. They approached him and identified themselves as police officers, and they requested to speak with him. However, Chris abruptly fled. During the ensuing chase, Chris dashed into the employee entrance of The Hard Wood Tavern, a neighborhood sports bar. Once inside, Chris pulled the .380 semi-automatic pistol from the waistband of his slacks and pointed it directly at Peja, a patron of the bar. Chris then grabbed Peja and ordered him to comply with his demands. Stricken with fear, Peja suffered cardiac arrest and died.

Distraught by the unanticipated turn of events, Chris immediately surrendered to officers, who placed him under arrest.

Discuss all crimes with which Chris and Dana could be charged under Louisiana and federal law, the elements of each offense, and the weaknesses in the government's case with respect to any element, and all available defenses that may apply to each crime.

**II.**  
**(30 points may be earned)**

Assume all of the facts as stated in Question I, in addition to the following.

After Chris was arrested, officers drove to his home intent on conducting a search for evidence. Upon arrival, they identified themselves to Dana and requested her consent to search the residence. However, she declined. Despite her refusal, officers forced their way into the apartment and discovered Tyson's credit cards and the crowbar.

Before leaving the apartment, officers attempted to question Dana about her possible involvement in the incident. Detectives warned her that her continued refusal to cooperate could land her in jail. After a three hour interrogation, during which time she was not allowed to leave the apartment, Dana finally admitted that Chris gave her money taken from Tyson. Officers then arrested Dana, read her the Miranda rights and drove her away to be booked.

Unable to locate the wallet while searching the apartment, detectives visited the refinery where Chris worked, met with the operations manager and requested access to Chris's work locker. The manager agreed to cooperate. He walked the detectives to the locker room, identified the locker and, using a master key, opened the padlock that secured the locker. Detectives did not locate Tyson's wallet; however, they found a small amount of marijuana hidden in a tool belt in the locker.

Investigators returned to the apartment and located Dana's car in the parking lot. Without a warrant or consent, officers searched the car and discovered Tyson's wallet under the driver's seat.

After placing Chris under arrest and transporting him to the booking station, officers attempted to interrogate him. Having been advised of his Miranda rights, Chris refused to answer any questions put to him by the officers. The next day, officers again tried to interview Chris, and again he refused. However, two days later, officers entered the holding cell and again tried to interview Chris. On this occasion, Chris finally consented, waiving his right to counsel while doing so. Prosecutors at his trial offered his statement into evidence.

Several weeks after the incident, detectives found three patrons of The Hard Wood Tavern who witnessed the incident. All three witnesses agreed to accompany detectives to the jail, where Chris was brought in from his cell and placed before all three witnesses. The patrons were then asked to identify the person who grabbed Peja at gunpoint. All three witnesses immediately identified Chris as the assailant.

Discuss all state and federal constitutional bases for challenging the following: (1) the search of Chris's apartment; (2) the admissibility of Dana's statement; (3) the admissibility of the wallet found in Dana's car; (4) the admissibility of the marijuana; (5) the introduction into evidence of Chris's statement to officers; and (6) the identification procedure that implicated Chris.

### III.

(a maximum of three points may be earned for each question,  
for a total of 30 points)

At the trials of Chris and Dana, the following events or testimony occurred. Address the following issues that arose either before or during the trials. Explain your answers fully.

- (1) Shortly after their arrests, Chris and Dana agreed to hire one lawyer to represent them jointly. Should the court permit the joint representation?
- (2) At Chris's trial, his attorney seeks to introduce evidence that his client was not present at the refinery on the day Tyson's wallet was allegedly taken. He also attempts to introduce evidence that Chris was on an out-of-state vacation at that time. Should the court permit the evidence into the record?
- (3) During its case-in-chief against Chris, the state seeks to introduce evidence that he and Dana were the occupants of the apartment searched by detectives. Prosecutors offer a lease signed by Chris into evidence. Should his lawyer object to this evidence?
- (4) During Dana's trial, prosecutors offer a certified record from the Louisiana Department of Motor Vehicles reflecting that she is the owner of the car in which Tyson's wallet was found. Her lawyer objected to the evidence. How should the court rule?
- (5) At Chris's trial, may the prosecutor introduce evidence of his prior conviction for burglary? Fully explain your answer.
- (6) Dana later retains another lawyer to represent her individually. Her lawyer intends to introduce character evidence through the testimony of Dana's co-worker who will testify that, among her co-workers, Dana enjoys a favorable reputation for peacefulness and non-violence. Should the judge admit the testimony?
- (7) Dana's co-worker, Jason, is called to testify on Dana's behalf. The prosecutor is aware that 14 years ago, Jason was convicted of a misdemeanor charge of disturbing the peace. Can the conviction be raised during Jason's cross-examination testimony?
- (8) During the voir dire examination at Chris's trial, a prospective juror revealed that he was a frequent visitor to The Hard Wood Tavern. Is Chris's lawyer entitled to strike the prospective juror?
- (9) At the start of Dana's trial, what should her lawyer do to try to preserve the integrity of each witness's testimony?
- (10) At Chris's trial, prosecutors intend to call the arresting officer to the stand to testify that he seized a pistol from Chris at the time of the arrest. What questions should the prosecutor ask the witness to introduce the weapon into evidence?

END OF EXAMINATION

**LOUISIANA BAR EXAMINATION**  
**Federal Jurisdiction and Procedure**  
**February 2009**

**Question One (25 Points)**

Jill, a Louisiana citizen, borrowed \$50,000 from NY Bank Co., a New York citizen, to help start her new business in Louisiana. Ron is a Louisiana citizen who works as a loan officer at the Ruston, Louisiana branch of NY Bank Co. Ron was instrumental in convincing Jill to use NY Bank Co. for her loan, and he prepared all of the loan closing documents.

Jill began to fall behind on her loan payments, and NY Bank Co. began making demands for payment of the past due amounts, plus a significant amount in penalties and late charges.

Jill filed suit in a Louisiana federal court against NY Bank Co. and Ron. She asserted a claim against NY Bank Co. under both the federal Truth-in-Lending Act (TILA) and a similar Louisiana consumer-protection statute on the grounds that the penalties and late fees were not properly disclosed in the loan documents. She prayed for the return of \$2,000 in fees that she had paid thus far and \$25,000 in statutory damages. Jill asserted against Ron a claim of fraud under Louisiana law, for which she sought \$25,000 in damages.

**3 pts. 1.A** Explain, with respect to each of Jill's claims against NY Bank Co., why the federal court does or does not have subject-matter jurisdiction over each claim.

**3 pts. 1.B** Explain, with respect to Jill's claim against Ron why the federal court does or does not have subject-matter jurisdiction to hear the claim.

**6 pts. 1.C** Jill, filed the complaint on March 1, 2008, but she held off on serving the complaint because settlement negotiations looked promising. When negotiations broke down on June 15, 2008, Jill's lawyer obtained a copy of the complaint and a properly signed and sealed summons for service on each of the two defendants. She promptly mailed long-arm service to NY Bank Co., and she gave the service papers for Ron to her file clerk, Sam, a high school student who worked part time at the law office to make money to help pay for attending his junior prom in the fall.

Sam was preoccupied with thoughts of the prom and forgot to serve the papers on Ron until September 20, 2008. Sam promptly went to Ron's house, where Ron's wife told Sam that Ron could be found doing maintenance work on his deer camp. Sam went to the camp, where he encountered Joe, Ron's fellow loan officer with whom he shared the camp. Joe said that Sam was in the woods working on a deer stand, but Joe was willing to take the papers and promised that he would deliver them to Ron, which he did later that day. Discuss three deficiencies that Ron might raise with respect to service of process.

**3 pts. 1.D** NY Bank Co. wishes to respond to Jill's complaint by asserting a claim against Jill for the \$32,000 that remains due on her loan. What pleading should NY Bank Co. file to assert its demand? Discuss whether or not the federal court would have subject-matter jurisdiction over the claim.

**3 pts. 1.E** NY Bank Co. learns that the loan disclosure forms it originally drafted were in compliance with the TILA, but there was a mistake during the printing process that omitted mention of the fees and penalties about which Jill complains. The printer of the forms was Yankee Printing Co., a New York corporation. NY Bank Co. believes that Yankee Printing should be responsible to it for any damages the bank is ordered to pay Jill.

What pleading should NY Bank Co. file to assert its claim against Yankee Printing Co.? Discuss whether or not the federal court would have subject-matter jurisdiction to hear the bank's claim against the printer.

**3 pts. 1.F** The case goes forward in the Louisiana federal court despite concerns about service or jurisdiction. The bank and the printer disagree over whether the terms of the contract between them should be interpreted under New York or Louisiana law. The choice of law rules for the two states lead to opposite conclusions regarding the validity of a limitation of damages clause found in the contract. Which state's choice of law rules should the Louisiana federal judge apply? Why?

**2 pts. 1.G** Write down the letter of the *one* of the following that *is* a correct statement of law.

- A. Parties may obtain discovery of privileged information if it is highly relevant to their claim or defense.
- B. To be relevant for discovery purposes, information need not be admissible at trial if the information appears reasonably calculated to lead to the discovery of admissible evidence.
- C. The court does not have authority to alter the limit on the number of interrogatories (25) found in the Federal Rules of Civil Procedure.
- D. Electronically stored information is not subject to discovery unless it is the only reasonably available source of the information.

**2 pts. 1.H** Write down the letter of the *one* of the following that *is* a correct statement of law:

- A. Waiver of service of the summons and complaint waives any objection to venue but not personal jurisdiction.
- B. A motion to dismiss for lack of personal jurisdiction may be filed at any time, even if the defense was not asserted in the answer.
- C. Service of a motion to dismiss under Rule 12 has no effect on the deadline to file a responsive pleading.
- D. A party may amend its complaint once, without leave of court, before being served with a responsive pleading.

**EXAMINATION CONTINUES ON  
NEXT PAGE**

## Question Two (25 points)

Jim, a life-long resident of Nebraska (NE) developed a website Oldschooltees.com, for the purpose of selling vintage or “throw-back” tee shirts and sports jerseys for popular universities. The business is marketed by ads in college newspapers and alumni magazines across the country. Customers may place an order directly on the website through an online store.

Jim needed capital to finance his growing business, so he formed a limited partnership, OST, LP, to own and operate the online business. Jim contributed the online business in exchange for his position as general partner in OST. The two limited partners were Pam, a wealthy friend and fellow Nebraska citizen, and Tee-Maker, Inc. (TMI), the manufacturer of several of the items that are sold on the site. TMI is incorporated under Delaware law, its three shareholders are all citizens of New York, and it manufactures clothing in three plants located in Texas, Iowa, and Ohio. All TMI business decisions are made at its central business office in Alabama.

Roy grew up in Delaware and attended the University of Delaware, home of the Fighting Blue Hens. Roy wanted to work in his home state, but jobs in the financial sector were scarce. Roy managed to get a job as an accountant at a company in Pensacola, Florida. Its business was shaky, so Roy decided to just rent an apartment in Pensacola, with the thought that he would keep his options open to return to Delaware if he could find a job there. After a year, however, Roy sensed that his job in Pensacola was fairly secure. He remained homesick, but that was tempered somewhat when he inherited from his uncle a condominium in nearby Gulf Shores, Alabama, where Roy’s family had often vacationed. Roy spent every weekend and holiday at the condo. Roy registered to vote in Florida, but he registered his car using the Alabama condo address (because of lower fees in that state).

Roy purchased a Delaware Blue Hens jersey from the OST site, but he immediately broke out into a rash when he put on the shirt. Testing determined that a chemical used to artificially age the appearance of the shirt causes a severe reaction in about one percent of the population. Roy’s physician says that the rash can be treated with a cream, which he estimates would cost Roy about \$65,000 over his lifetime, but the cream will not totally alleviate the symptoms, so that Roy will have serious itching and a visible rash on his skin for the rest of his life. He will have to limit his exposure to sunlight, greatly diminishing his ability to enjoy his beach condo or other outdoor activities.

**10 pts. 2.A** Roy wants to sue OST for general pain and suffering, loss of enjoyment of life, future medical expenses, and any other damages caused by what he believes was an unreasonably dangerous product. Discuss whether and how a federal court would have subject-matter jurisdiction over the case if Roy chose to file suit in federal court.

**5 pts. 2.B** Assume that Roy files suit in a Florida federal court and that the court determines it has subject-matter jurisdiction over the case. OST checks its records and finds that only about two percent of its sales are to Florida customers. Due to strong competition in the Florida market, OST has not advertised in any publications in that state.

Florida law permits the exercise of personal jurisdiction to the limits of due process. Discuss whether a Florida federal court could properly exercise personal jurisdiction over OST in Roy’s case. Your ability to demonstrate knowledge of how to properly analyze the issue is more important than your conclusion, so conclusory answers will receive little credit.

**4 pts. 2.C** Assume that the federal court in Florida decides that it can exercise personal jurisdiction over OST, and that Roy is a Florida citizen. After the suit is filed, and as discovery is about to get underway, Pam decides to sell her interest in OST. The buyer is Lucy, a Florida-based resort owner, who is accepted into the OST partnership. Discuss the effect that Lucy's becoming a partner in OST would have on subject-matter jurisdiction over the federal suit. Discuss the effect that Lucy's becoming a partner in OST would have if the transaction had been completed before Roy filed suit.

**2 pts. 2.D** Assume that Roy filed suit in a Florida federal court and delivered a properly worded request that OST waive service pursuant to F.R.C.P. 4(d). If OST timely returns the waiver, it need not serve an answer to the complaint until:

- A. 10 days after the court enters an order to answer;
- B. 60 days after Roy sent the request for waiver to OST;
- C. 20 days after OST returned the signed waiver to Roy; or
- D. Within 120 days of the filing of the complaint.

Write the letter of the *one* correct answer.

**4 pts. 2.E** Roy's case makes it to trial. Roy presents all but one of his witnesses, and he announces that the final witness will testify only with respect to the price of skin cream. Counsel for OST believes that Roy cannot establish liability because his evidence did not meet the demanding standard of Florida products liability law.

What motion could defense counsel properly raise during the trial in an effort to dismiss the products liability claim? Discuss whether defense counsel could make the motion now or whether she must wait until Roy has presented all of his witnesses and rested his case. Finally, discuss the standard that the trial judge should apply in ruling on the motion.

**EXAMINATION CONTINUES ON  
NEXT PAGE**

### Question Three (25 points)

Bill, a Utah citizen, visited relatives in North Louisiana. The family attended a carnival in Smackover, Arkansas. Bill was injured by a piece of a carnival ride that came loose and struck him in the shoulder. The carnival ride was owned and operated by Fun Time, Inc. (FTI), a Louisiana corporation with its principal place of business in Arkansas. Bill's injury required the surgical insertion of a pin in his shoulder. The surgery was performed in Ruston, Louisiana, and the pin was provided by Med Pins, Inc. (MPI), a New Jersey company.

These facts, together with additional facts set forth below, will apply to questions 3.A through 3.F.

**3 pts. 3.A** Bill hires an Arkansas attorney to sue FTI and MPI. The attorney determines that all of the parties are diverse in citizenship. He considers filing suit in the federal court in the Western District of Arkansas, which encompasses Smackover. Discuss whether venue would be proper in that court.

**5 pts. 3.B** Bill's attorney decides that a better forum is the Lincoln Parish (Ruston), Louisiana state court, and he files a petition in that state court on January 10, 2009. Service of process is made on FTI on February 1, 2009, and MPI is served on February 20, 2009.

FTI's lawyer would like to have the case heard in federal court, and an Arkansas federal court if possible. He made several calls to MPI to discuss defense strategies, but he was not able to get a response from the company. On March 15, 2009, FTI's lawyer filed papers to state FTI's desire to remove the case to federal court.

Describe in detail the procedure and requirements FTI must follow to remove the case to federal court.

Discuss whether FTI could remove the case directly from the Louisiana state court to the federal court in the Western District of Arkansas.

**6 pts. 3.C** Assume the case is removed to a Louisiana federal court. Bill wants to return the case to state court. Discuss three grounds disclosed by the facts that Bill may use to argue for a return to state court.

**3 pts. 3.D** What must Bill's lawyer file to seek a return of the case to state court?

What time limits, if any, does Bill face with regard to the grounds you identified in Question 3.C?

**2 pts. 3.E** Assume the case remains in federal court. All defendants file general denial answers. Bill's attorney gets information in August 2009 that MPI, though incorporated in New Jersey, has its main office in Salt Lake City, Utah, the state in which Bill is a citizen. Bill would like to use this information in an effort to return the case to state court. Discuss whether it is too late for Bill to pursue that issue.

- 4 pts. 3.F** Assume the case remains in federal court. Bill encounters a witness, Jan, who was attending the carnival on the evening Bill was injured. Jan tells Bill that she saw some young men “working” on the carnival ride shortly before the accident. She saw the same men later, and she has reason to believe that they were simply vandals. This information could be beneficial to an FTI argument that FTI was not negligent.

Discuss whether Bill’s attorney must disclose Jan’s name and address to the other parties as part of Bill’s Rule 26 initial disclosures.

Discuss whether Bill’s attorney must disclose Jan’s name and address if, later in the discovery process, he receives this interrogatory: “Please list the name and address of each person known to you who either witnessed the accident or has any relevant information about the cause of the accident.”

- 2 pts. 3.G** Tom owns a small farm on which he grows vegetables for sale at a Farmer’s Market. At the height of growing season, a construction crew appeared and told Tom that they were about to begin building a road across his fields to reach a gas well drilling site. The crew claimed that they had authority to do so under the terms of a mineral lease that Tom granted several years earlier.

Tom believes the lease has expired, and he immediately filed suit in federal court to seek a preliminary injunction against the building of the road. Write down the letter of the one answer that is *not* a factor the federal judge must consider in determining whether to grant a preliminary injunction.

- A. Whether irreparable injury will occur if the preliminary injunction is not issued;
- B. Whether a balance of factors shows that ordinary proceedings would be unduly expensive;
- C. Whether there is a probability of success on the merits for the Plaintiff’s claim.
- D. Whether the balance of equities between the parties is in favor of the applicant.

**EXAMINATION CONTINUES ON  
NEXT PAGE**

#### Question Four (25 points)

- 3 pts. 4.A** Plaintiff, a Louisiana citizen, was driving his car when he was struck and injured by a truck owned by Georgia Trucking, Inc., a Georgia citizen. Plaintiff filed suit in a Louisiana state court for personal injuries reasonably estimated as valued over \$125,000. The petition named as defendants Georgia Trucking, Inc. and Joe Jones, the alleged truck driver. Jones, like Plaintiff, is a citizen of Louisiana.

Georgia Trucking's lawyer conducts an investigation and is able to gather documents and affidavits that demonstrate clearly that Jones was resting in the sleeper compartment of the truck at the time of the accident. His co-driver, Al Smith, was actually driving the truck at the time of the accident. Thus, Georgia Trucking's lawyer is convinced that Plaintiff cannot establish a valid claim against Jones.

Discuss any jurisprudential doctrine that might be available to Georgia Trucking, Inc. to remove the case to federal court despite the lack of complete diversity on the face of the state court petition. What standard should the federal court apply when assessing the claim against Jones, to determine whether such a removal is proper?

- 3 pts. 4.B** Ann, a Louisiana citizen, entered into a contract with Labor Co., also a Louisiana citizen, by which Labor Co. would provide Ann workers for a construction project at an agreed hourly rate. Labor costs in the area began to increase, so that the contract was no longer profitable for Labor Co., and it began to send fewer workers than required under the contract. Ann demanded that Labor Co. live up to its agreement, but Labor Co. responded that it now viewed the contract as void because several of its provisions ran afoul of federal labor laws.

Attorneys for Ann and Labor Co. engaged in heated negotiations over whether the contract was void under and in violation of federal law. Ann finally had enough, and she directed her lawyers to file suit against Labor Co. for breach of contract and related damages. Discuss whether a federal district court in Louisiana would have subject-matter jurisdiction over Ann's suit against Labor Co.

- 5 pts. 4.C** Tom, a Louisiana citizen, filed suit in federal court against his former employer, Build Co., also a Louisiana citizen, for sexual harassment in violation of Federal Title VII and for the tort of intentional infliction of emotional distress under Louisiana law. Tom alleged in his complaint that he had filed suit within 90 days of receiving a notice of right to sue from the EEOC, as is required by Title VII. Build Co. obtained a certified copy of the EEOC record and deposed Tom. It believes that the evidence it gathered will prove that Tom actually did not file his complaint until 95 days after he received the notice.

Build Co. would like to use the deposition testimony and certified documents to support a motion aimed at dismissing the Title VII claim on the grounds that it is untimely. What pretrial procedure is available to Build Co. to obtain a dismissal of that claim? Describe the burdens that Build Co. and Tom will face if such a procedure is used.

**2 pts. 4.D** Assume the facts set forth in the previous question. After the district judge reviews Build Co.'s submission and Tom's opposition, she issues a ruling that dismisses Tom's Title VII claim, leaving Tom with his Louisiana tort claim. Discuss any procedural grounds the district judge might have to decline to hear Tom's tort claim.

**2 pts. 4.E** Assume the facts in the previous two questions and that the judge decides to keep the case in federal court. Build Co. believes it will win at trial because it has security camera recordings of the workplace that depict Tom as the aggressor in the encounters at issue. Build Co. wants to maintain an element of surprise at trial, so it elected not to disclose the existence of the tapes in its initial disclosures, and Tom never thought to ask for any such tapes during the discovery process. Discuss the likelihood that Build Co. will be able to use the tapes as evidence at trial.

**2 pts. 4.F** Kay grew unhappy with her landlord, Jim, because he did not repair to her satisfaction her air conditioner, a leaky roof, and other problems. Kay filed suit against Jim in a state court for breach of lease and violation of the Civil Code articles regarding the obligations of a landlord. After 18 months of litigation, Kay served Jim with an amended complaint that added a claim for damages for violation of federal housing laws that prohibit racial discrimination. Jim, based on the addition of this new claim, immediately removed the case to federal court. Discuss whether Jim's removal was timely.

**4 pts. 4.G** Pat, from Louisiana, invested in an East Texas mineral lease. The operator of the wells on the lease was Jon. Pat filed suit against Jon in a Louisiana federal court and alleged that Jon should be removed as operator because of gross mismanagement and overcharging of expenses. Jon filed an answer that denied the allegations of the complaint.

Jon later decided that he had solid defenses based on a lack of personal jurisdiction over him in Louisiana and that the complaint failed to join the other investors in the mineral lease, whom Jon believed to be indispensable parties. Discuss whether it is now procedurally proper for Jon to present either of those two defenses.

**2 pts. 4.H** Write down the letter of the *one* of the following orders that may be appealed immediately.

- A. An order that dismisses a Plaintiff's main claim, but leaves two lesser claims pending.
- B. An order that denies a state agency's motion to dismiss based on Eleventh Amendment immunity.
- C. An order that denies a motion to remand for lack of subject-matter jurisdiction.
- D. An order that dismisses all claims against one of the three defendants in a case.

- 2 pts. 4.I** Kim represents a client who was recently served with a complaint that contains what Kim and her client believe to be wholly unfounded allegations. Kim wants to file a motion for Rule 11 sanctions as soon as possible, but she recalls reading something about a “21-day safe harbor” provision in Rule 11.

Write down the letter of the *one* of the following that most correctly describes the 21-day safe harbor provision found in Rule 11.

- A. The motion for sanctions must be served on the opposing party, but it must not be filed with the court if the challenged complaint is withdrawn or corrected within 21 days after service of the motion.
- B. The movant must write a letter to the filer of the offending pleading party and allow them 21 days to withdraw or correct the complaint.
- C. After the motion for sanctions is filed, it may not be ruled on by the court for at least 21 days, so that the offending party will have an opportunity to correct or withdraw the complaint.
- D. A party who is served with a complaint that she believes violates Rule 11 must wait at least 21 days before moving for sanctions.

**END OF EXAM**

**Louisiana Bar Examination**

**Business Entities and Negotiable Instruments**

**February, 2009**

**Question No. 1 – 30% (3 points each subpart):**

*Please answer the following questions fully. One word answers will receive zero credit.*

- A. Explain the legal duty owed by directors and officers to a corporation and its shareholders.
- B. What are preemptive rights? Under what circumstances, will one have preemptive rights?
- C. Does a partner in a partnership, acting alone, have the authority to sign contracts on behalf of the partnership and thereby bind the partnership? If so, what type(s) of transactions does this apply to?
- D. What is a shareholder derivative action?
- E. Is a member in a limited liability company automatically entitled to reimbursement from the company for the reasonable attorney's fees he/she incurs in successfully defending a lawsuit brought against him/her? Would your answer be different if the person seeking reimbursement was a director or officer of a corporation?
- F. Can a member of a limited liability company withdraw? If so, under what circumstances? Can a partner in a partnership withdraw? If so, under what circumstances?
- G. Who may be held liable for unlawful dividends issued by a corporation?
- H. What type of vote is required by members of a limited liability company to transfer or sell substantially all property owned by an L.L.C.? Explain any assumptions pertinent to your answer.
- I. Can partners be expelled from a partnership, and, if so, under what circumstances and by what vote?
- J. What is cumulative voting? When do shareholders have cumulative voting rights?

**Question 2 – 25% (5 points each subpart):**

Adam is an entrepreneur and owns several assisted care living facilities for the elderly. He maintains a checking account with Tigerland Bank ("TB") and pays the business expenses from that account. Adam's best friend from childhood, Bruce, has

been recently released from an addiction treatment center and has asked Adam if he can live with him until he can afford to live on his own. Bruce's addiction has caused him to spend his life savings and he is now destitute and has no money. Adam agrees and also puts Bruce to work by having him handle certain administrative tasks for the business. One of these tasks is having Bruce pay the expenses of the business by filling out checks for Adam to sign, which are made payable to various trade creditors of the business. Bruce, being an opportunist and feeling like Adam is not compensating him adequately for his services, decides to fill out a check drawn on the account at TB and made payable to himself for \$1,000 which Bruce will discuss with Adam and hope that Adam will agree to sign as additional compensation for Bruce. Bruce, being familiar with Adam's signature, decides to omit discussing the compensation check with Adam and instead forges Adam's signature. Bruce then forges three more checks over the ensuing three months. All of these checks are for \$1,000, payable to Bruce and are dated the fourth of each month for four consecutive months, *i.e.*, March 4, 2009, April 4, 2009, May 4, 2009 and June 4, 2009. Bruce deposits each of these checks into his personal bank account on the fifth day of each month, respectively. On July 1, 2009, Adam receives and opens his bank statement for the month of June 2009 and discovers the check for \$1,000 which Bruce forged and dated June 4, 2009. Adam then checks his bank statements for the months of January, February, March, April and May, and discovers the other three checks, which were also forged by Bruce.

Adam contacts TB that same day and demands that the Bank refund him the \$4,000 representing the money withdrawn from his account based on the signature that Bruce forged. TB advises Adam that it followed proper procedure in honoring the checks and paid them in good faith. Adam comes to your law office and seeks your advice on recovering these monies from TB. Adam asks you the following questions:

- A. Does the bank or the account holder suffer the risk of loss for payment of a check bearing a forged signature of the account holder?

- B. Adam is concerned that he permitted Bruce access to his checkbook and that he allowed Bruce to become familiar with Adam's signature. Discuss fully whether these facts have any bearing on whether the Bank or Adam should be liable for the forged checks.
- C. Does the Bank have any defenses, other than that discussed in subpart (b) above, to avoid reimbursing Adam for any of the forged checks? Explain fully.
- D. Assume the Bank had an internal policy to contact the account holder to verify checks of \$1,000 or more. Would this help Adam's case? Explain why or why not.
- E. Assume for this subpart question only that Bruce had discussed his compensation with Adam and Adam agreed that Bruce could pay himself the money by filling out the checks and signing them for Adam, would Bruce's signing of Adam's name on the checks constitute a forgery or unauthorized signature? Explain fully why or why not.

**Question No. 3 - 20% (5 points each subpart):**

Acme Trucking, Inc. is a local distributor of commercial trucks and has agreed to sell a new eighteen wheeler tractor trailer to its customer, Charlie. Acme will finance 90% of the purchase price for Charlie if Charlie pays 10% of the purchase price to Acme at the time of the sale. Charlie maintains his bank accounts with First Bank of New Orleans (hereafter "First Bank") and has asked First Bank to issue a cashier's check payable to Charlie as payee for the down payment of \$8,000. As consideration for the cashier's check, Charlie writes a personal check to First Bank for \$8,000 plus the fees and costs for issuing the cashier's check. The same day that Charlie writes a personal check from his account payable to First Bank and obtains the cashier's check, Acme and Charlie sign the Bill of Sale for the eighteen wheeler, Charlie endorses the \$8,000 cashier's check payable to Acme and Charlie takes possession of the truck. The next day, Charlie's personal check for \$8,000 is not honored when presented for payment by First Bank because Charlie has insufficient funds in his account. Assume the cashier's check bears a current month, day and year, is signed by a properly-authorized person of First Bank and is made payable to Charlie in the amount of \$8,000 U.S. dollars. When Charlie's check is dishonored, First Bank

places a stop-payment order on the cashier's check (\$8,000). Acme learns that the cashier's check has been dishonored by First Bank and comes to you for advice on the following questions:

- A. Is the cashier's check a negotiable instrument? Please discuss why or why not and explain any assumptions or additional facts necessary to answer this question.
- B. Is Acme a holder-in-due course of the cashier's check? Please discuss why or why not and explain any assumptions or additional facts necessary to answer this question.
- C. What defenses could a bank successfully argue against paying a negotiable instrument to a holder-in-due-course? Are any of these available under the facts presented?
- D. Assume as additional facts for purposes of this question only that First Bank's cashier's check was payable to Acme instead of Charlie. Can Acme be holder-in-due-course of the cashier's check under these circumstances? Explain fully.

**Question No. 4 – 25% (5 points each subpart):**

Anne, Betty and Cathy are interested in going into business together. They want to start a business to sell new hand-held 3G phones that Cathy has invented and designed. Betty owns a building that will house a retail floor space for prospective customers of the new business. Betty and Cathy have other jobs, and they are not interested in being involved in the daily operations of the business. Anne will contribute her time to the business and will be solely responsible for running the operations of the business. Betty and Cathy also do not want to be liable for the expenses of the business, beyond their respective contributions of the building and the technology.

They have scheduled a meeting with a senior partner in your law firm who asks you to assist her with this project and specifically wants your advice on the following:

- A. If Anne, Betty and Cathy want to form a limited liability company for their business, discuss the document(s) required to form the company, and the necessary contents of those documents in order to form an LLC to accomplish their goals.
- B. If Anne, Betty and Cathy want to form a partnership *in commendam* for their business entity, please discuss the document(s) necessary to

form a partnership *in commendam*, their minimum contents and whether a partnership *in commendam* is a suitable entity for their business venture.

- C. When does a partner in a commendam become personally liable for the debts of the limited partnership?
- D. If Anne, Betty and Cathy want to prohibit the transfer or sale of their respective interests in the LLC to third-parties, can they do so and what would they need to do to make this prohibition binding on third-parties?
- E. If Anne, Betty and Cathy decided to form a limited liability company, please discuss the difference between a member-managed or manager-managed limited liability company and which form of management would you recommend for their business?