

CIVIL CODE I
LOUISIANA STATE BAR EXAMINATION
February 8, 2010

Question I.
(25 Points)

Al and Peggy met in Baton Rouge, Louisiana and lived together for three (3) years from 2005 to 2008. While Peggy and Al were living together, Peggy was also romantically involved with another friend named Bob. Peggy became pregnant and gave birth to a son named Carl on July 1, 2008. Peggy firmly believed that Bob was Carl's father but listed neither man on the birth certificate. A few days later on July 5, 2008, even though Peggy still believed that Bob was Carl's father, Al and Peggy signed an affidavit acknowledging Al's paternity. It should be noted that Peggy never told Al of her belief that Bob was Carl's biological father.

In November of 2008, Al and Peggy's relationship began to deteriorate. With their situation growing progressively worse, on December 1, 2008, Peggy left Al and moved with Carl and Bob to New Orleans. Peggy and Bob were married on March 1, 2009. On November 1, 2009, Bob adopted Carl pursuant to a validly executed notarial act of adoption.

Al has learned of Peggy's marriage and Bob's adoption of Carl and has consulted you concerning his parental rights. **In advising Al, answer the following questions giving full and complete reasons for your answers:**

1. What is the legal effect of the affidavit that Al and Peggy signed concerning Al's paternity? Explain your answer. Answers without explanation will receive no credit. (5 points).
2. Under the Civil Code, can Peggy take any action to establish that Al is not Carl's father? Explain your answer. Answers without explanation will receive no credit. (5 points).
3. What action, if any, can Al take to establish paternity with respect to Carl? Explain your answer. Answers without explanation will receive no credit. (5 points).
4. Is Bob entitled to a presumption of paternity by virtue of his adoption of Carl? Explain your answer. Answers without explanation will receive no credit. (5 points).

For purposes of question five assume that (1) Bob has not adopted Carl and (2) Carl is now twenty-five years old and married to Kelly. Bob has consulted you about adopting Carl. Advise Bob by answering the following question.

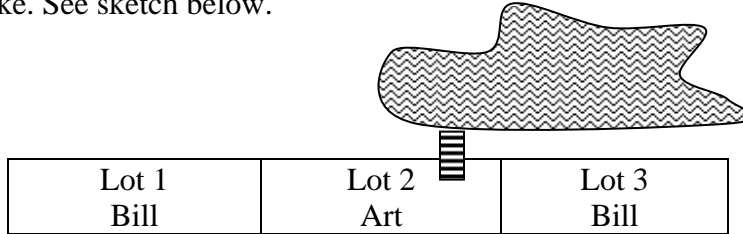
5. Under the Civil Code, can Bob adopt Carl? Explain your answer. Answers without explanation will receive no credit. (5 points).

[End of Question I]

CIVIL CODE I
LOUISIANA STATE BAR EXAMINATION
February 8, 2010

Question II
(25 Points)

Art owned Lot 2 situated in Blackacre Subdivision in St. Tammany Parish. Lots 1 and 3 in the same subdivision were owned by Bill. All three lots were adjacent to each other. Lot 3 and a portion of Lot 2 were bounded by a lake. Art constructed a pier on the portion of Lot 2 bounded by the lake. See sketch below.



On August 1, 1990, pursuant to an exchange deed (the “1990 Exchange Deed”), which was duly recorded in the conveyance records, Art transferred a portion of Lot 2 to Bill, retaining the balance of Lot 2. Bill, in turn, transferred all of Lot 1 to Art. The end result of the transaction was as follows: (1) Art obtained ownership of all of Lot 1 and retained the portion of Lot 2 that was immediately adjacent to Lot 1 and (2) Bill obtained ownership of the remaining portion of Lot 2 and retained all of adjacent Lot 3. The three lots were not formally resubdivided to reflect the changes in ownership concerning Lot 2.

The 1990 Exchange Deed included a metes and bounds legal description of the portion of Lot 2 conveyed to Bill. The last two paragraphs of this description contained the following language:

The above described portion of Lot 2 conveyed to Bill does not constitute a separate building site, but together with Lot 3 shall be a contiguous and single building site. Likewise, the remaining portion of Lot 2 which has been retained by Art does not constitute a separate building site, but together with Lot 1 shall be a contiguous and single building site.

The properties conveyed hereunder are subject to certain building restrictions set forth in an instrument dated April 1, 1975, recorded in COB 111, Folio 222, Entry No. 3333. The foregoing building restrictions provide that no lot shall be divided into a smaller lot and that any lot may be integrated with an adjacent lot to constitute the entire tract as a one-building site.

The 1990 Exchange Deed also included the following provision:

Art retains the right to use the pier constructed on that portion of Lot 2 transferred to Bill. Art, his successors and assigns shall have the right to enter that portion of Lot 2 transferred to Bill in order to access the pier and the lake. In exchange for the rights granted in this paragraph, Art agrees to maintain and repair the pier as is reasonably necessary from time to time.

In 1992, Art constructed his home on Lot 1. Art has continuously lived in the home on Lot 1 since that time. Every evening after work, Art brings his cooler and his fishing pole to the pier on Lot 2 where he drinks a few brewskis and catches his dinner.

On April 1, 1998, Bill sold the property (Lot 3 and the adjacent portion of Lot 2) to Chuck (the “1998 Sale”). No reference was made in this sale to the single building site limitation, the building restriction reference contained in the 1990 Exchange Deed or the provision regarding the pier. Thereafter, on May 1, 1999, Chuck resubdivided Lot 3 and the adjacent portion of Lot 2 (the “1999 Resubdivision”). As a result, two lots were created from the original parcel, said lots being called Lot 2-A and Lot 3-A. This resubdivision was evidenced by a properly recorded resubdivision plat, which was approved by all appropriate governmental authorities. Art had no knowledge of either the 1998 Sale or the 1999 Resubdivision.

Chuck is planning to build a residence on Lot 2-A and has also put Lot 3-A up for sale. Art recently learned of the proposed sale of Lot 3-A, as well as the 1998 Sale and the 1999 Resubdivision and he notified Chuck that the language in the 1990 Exchange Deed prohibited

CIVIL CODE I
LOUISIANA STATE BAR EXAMINATION
February 8, 2010

the building of a house on either Lot 2-A or Lot 3-A. Chuck has responded by filing a petition for declaratory judgment that the language in the 1990 Exchange Deed is ambiguous and unenforceable.

Respond to the following questions, giving full reasons for your answer. **You must give full reasons for your answers in order to receive credit.**

1. Discuss and classify the rights created by the 1990 Exchange Deed. Explain your answer. Answers without explanation will receive no credit. **(5 points)**
2. What rights, if any, are available to Art against Chuck under the provisions of the 1990 Exchange Deed? Explain your answer. Answers without explanation will receive no credit. **(8 points)**
3. Discuss whether any rights exist under the 1990 Exchange Deed by operation of law. Explain your answer. Answers without explanation will receive no credit. **(2 points)**
4. Assume that Bill did not sell his property to Chuck. Art sold his house, Lot 1 and his portion of Lot 2 to Don on May 1, 2000. No reference was made in this sale to the single building site limitation, the building restriction reference or the provision regarding the pier contained in the 1990 Exchange Deed. Discuss whether the provisions contained in the 1990 Exchange Deed are enforceable by Don. Explain your answer. Answers without explanation will receive no credit. **(5 points)**
5. Assume the alternate facts stated in Part 4 above. Discuss whether the provisions contained in the 1990 Exchange Deed are enforceable against Don. Explain your answer. Answers without explanation will receive no credit. **(5 points)**

[End of Question II]

CIVIL CODE I
LOUISIANA STATE BAR EXAMINATION
February 8, 2010

Question III.
(25 Points)

Harry and Sally were married in Houston, Texas on June 1, 1992. Shortly thereafter, Harry accepted a position with an engineering firm and then moved with Sally to England. In February of 2004, Harry received a promotion and was transferred to Houma, Louisiana. Because of marital difficulties, Sally did not move back with Harry. Instead, she moved to Texas and lived with her parents in Houston. Nevertheless, Harry and Sally did maintain their marital relationship and traveled back and forth between Texas and Louisiana to visit each other. On a number of occasions, Harry asked Sally to join him and move to Houma on a permanent basis but she never did so.

In 2006, Harry bought a 100-acre farm outside of Houma and began residing in a farmhouse situated on the property. The act of sale for the farm property stated that Harry was the sole purchaser of the property and did not contain any reference to his marriage to Sally. The farmhouse contains some valuable antique furniture purchased in London by Sally using money she inherited from her grandfather.

In 2007, Harry expanded the farm's operations and purchased some tractors and other farm equipment for the price of \$500,000. Of this amount, \$300,000 came from a joint savings account that Harry and Sally had established in 1996. The funds in the account consisted of \$200,000 in bonuses paid to Harry by his employer from 1996 – 2005 and a \$100,000 bequest Sally received upon the death of her grandfather. The remaining \$200,000 came from a separate savings account that Harry established with the Bank of Morgan City in 2006 from a cash bequest Harry received from his father's estate.

Harry now desires to terminate his marriage with Sally and is seeking legal advice concerning the partition of assets. In advising Harry, answer the following questions, giving full reasons for your answers:

1. Did a community property regime exist between Harry and Sally? If so, when did it arise? Explain your answer. Answers without explanation will receive no credit. (6 points)
2. Does Sally have an ownership interest in the farm and farmhouse outside of Houma? If so, what is the extent of her interest? Explain your answer. Answers without explanation will receive no credit. (8 points)
3. Does Sally have an ownership interest in the tractors and other farm equipment? If so, what is the extent of her interest? Explain your answer. Answers without explanation will receive no credit. (6 points)
4. Does Sally have an ownership interest in the antique furniture located in the farmhouse? If so, what is the extent of her interest? Explain your answer. Answers without explanation will receive no credit. (5 points)

[End of Question III]

CIVIL CODE I
LOUISIANA STATE BAR EXAMINATION
February 8, 2010

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. Edith and Archie were married in 2000. In 2005, Edith had an affair with a neighbor, George. After learning of the affair, Archie filed a petition for divorce. After being served with the divorce petition, Edith broke off her affair with George and reconciled with Archie. The couple resumed marital relations until 2008, when Edith learned Archie was having an affair with her cousin, Maude. Edith has now retained you for the purpose of instituting divorce proceedings against Archie. In connection with the representation, Edith has asked you whether her 2005 affair with George will preclude her from obtaining interim and final spousal support. Advise her of her rights, providing supporting legal reasoning for your answer. **(3 points)**

2. Andy owned a 100 acre tract of land. In 2004, Andy died. In his will, he left the naked ownership of the tract to his son, Opie, subject to a usufruct in favor of Andy's longtime friend, Barney. Since taking possession of the land, Barney has refused to pay the property taxes on it, arguing that Opie, as naked owner, was responsible for paying the property taxes. Opie paid the property taxes on the land between 2004-2007. However, in 2008, Opie did not have the money to pay the property taxes, and the land was later sold at a tax sale. Opie has now consulted you and asked you to advise him on whether he has any ground for filing an action against Barney. Specifically, Opie wants to know if he can recover the property taxes he paid between 2004-2007 and whether he can recover damages resulting from the tax sale. Advise him of his rights and provide supporting legal reasoning for your answer. **(4 points)**

3. Joe Friday sold his house to Bill Gannon. After the act of sale was finalized, Joe advised Bill that he intended to remove the home's security system, which consisted of several surveillance cameras, motion sensors and video monitors. Bill protested, arguing that the removal of the surveillance equipment will leave several holes in the walls. However, Joe explained the mounting holes are small and can be easily patched. Bill has now consulted you and asked if he can prevent Joe from removing the security system. **(3 points)**

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

1. What is a juridical person? **(2 points)**

2. Define incorporeal immovables, and give an example of an incorporeal immovable. **(2 points)**

3. What is an abandoned thing? How does one acquire ownership of an abandoned thing? **(2 points)**

4. Define the term "fruits" as used in the Civil Code. List the two kinds of fruits referred to in the Civil Code. **(2 points)**

5. What factors does a court consider in awarding interim spousal support? **(2 points)**

CIVIL CODE I
LOUISIANA STATE BAR EXAMINATION
February 8, 2010

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

1. A husband may disavow paternity of a child born to his wife by showing by a preponderance of the evidence that he is not the father of the child. **(.50 points)**
2. Louisiana law permits marriage by procuracy, in which one of the parties is not physically present at the ceremony, as long as the party's legal representative is present. **(.50 points)**
3. A person who finds a corporeal movable which is lost acquires ownership of that movable if he makes a diligent effort to locate the owner, and the owner is not found within three years. **(.50 points)**
4. The obligation to pay interim spousal support may extend beyond one hundred and eighty days from the rendition of the judgment of divorce if the party is able to show good cause. **(.50 points)**
5. A predial servitude may never be established on property of the state. **(.50 points)**
6. The right of habitation always terminates upon the death of the person holding the right, and any attempt by the parties to stipulate to a shorter term is invalid. **(.50 points)**
7. In order to acquire ownership of a movable by prescription, a person must have just title and possess it as owner in good faith for ten years. **(.50 points)**
8. Alluvion is defined as accretion which forms successively and imperceptibly on the bank of a navigable river or stream. **(.50 points)**
9. Standing timber is considered to be a separate immovable when it belongs to a person other than the owner of the land. **(.50 points)**
10. A predial servitude may continue in effect even though the dominant and the servient estates are acquired in their entirety by the same person. **(.50 points)**

**CIVIL CODE II
LOUISIANA STATE BAR EXAMINATION
FEBRUARY 2010**

**QUESTION 1
(25 POINTS)**

Mary Beth married Dan in 2005 and they built a house on 10 acres that Mary Beth previously owned in the country with hopes for a big family. Mary Beth already had a child from a previous relationship, Oliver. They initially had difficulty conceiving. Because his work schedule kept him away from home for weeks at a time, Dan stored his sperm with a clinic so that Mary Beth could participate in artificial insemination treatments when the time was right without regard for his schedule. As part of the arrangement with the clinic, Dan signed an agreement that expressly allowed Mary Beth to use his sperm for artificial insemination purposes. The agreement provided that Dan's sperm would be stored until five years after his death.

At Dan's request, Mary Beth donated five acres of her property to Dan's brother, Ethan, in October 2007. The donation was in proper form and was formally accepted. Ethan made his residence there along with his girlfriend, Emily.

Ultimately, the fertility treatments were successful and a child was conceived about six months before Dan died of unknown causes in December 2007. Ron was born three months after Dan's death. Dan's succession was not opened at that time.

About nine months after Ron was born, Mary Beth again participated in artificial insemination using the sperm stored by Dan at the clinic. The treatments were again successful and Susan was born in August 2009.

Ethan and Emily began having domestic difficulty after Dan's death. Once Susan was born, Emily moved out of Ethan's house and moved in with Mary Beth to assist her and help care for Ron and Susan. To thank her for her sacrifice, Mary Beth named Emily as a 50 percent beneficiary on her life insurance policy. For the other 50 percent, she just wrote "estate." Around the same time, Mary Beth executed a testament, valid in form, which included but one provision:

"I bequeath the entirety of my estate to my children."

Ethan blamed his separation on Mary Beth. He spread rumors in their small town that Mary Beth had been involved in Dan's death. He even called the police and claimed that Mary Beth had poisoned Dan. Ethan did this as a way of retaliating against Mary Beth for allowing Emily to move in with her. An investigation vindicated Mary Beth, but Ethan's allegations were well-known around town.

Two months after the rumors began, in November 2009, Mary Beth consulted with an attorney about Ethan's conduct. A few days later, before any action could be taken, Mary Beth died.

Oliver, Ron and Susan were ultimately taken in by Mary Beth's sister, Nancy. Nancy filed the necessary pleadings and was formally appointed as tutrix over all of Mary Beth's children. Nancy comes to you about opening the successions of both Dan and Mary Beth.

QUESTION 1(A) - (5 points)

What rights does Ron have to inherit from Dan's estate?

QUESTION 1(B) - (5 points)

What rights does Susan have to inherit from Dan's estate?

QUESTION 1(C) – (10 points)

Because of the way Mary Beth was treated, Nancy, on behalf of Mary Beth's children, and during her consultation with you, inquires as to whether there is any way for them to take back the five acres donated to Ethan. What advice do you give her?

QUESTION 1(D) - (5 points)

Who receives the proceeds from the life insurance policy?

QUESTION 2
(50 POINTS)

Richard was domiciled in Vernon Parish and lived there all of his life. He lived in a house he inherited from his parents in 1975. Richard was married thrice --- first to Penny in 1977 and who died in 1995; second to Rhonda in 1997 from whom he was divorced in 2002; and last to Sandra in 2009. Sandra survived Richard.

Richard and Penny had four children born of their marriage, Terry (1981), Uma (1983), Victoria (1987) and Wade (1988). Alan (1998) and Ben (1999) were born of the marriage of Richard and Rhonda. Richard and Rhonda also adopted a daughter, Zoe (born 2000).

In 1987, Richard wrote the following entirely in his own handwriting on a sheet of looseleaf paper:

“I bequeath all of my property to my beloved wife, Penny. I have written this as my last will and testament on February 1, 1987.”

Richard did not sign the document but his handwriting was distinct and well-recognized.

In September 2004, Richard asked his attorney to prepare an Act of Donation of a tract of farm land in Catahoula Parish to his brother, Peter. Richard signed the Act of Donation and trusted his attorney to take care of the rest. Peter never executed an acceptance before his death in 2005.

On December 1, 2007, Richard executed a statutory will in the presence of a Notary Public and two witnesses. One of the witnesses was a secretary in his attorney's office. The other witness was Victoria's husband. The December 1, 2007 will contained the following provisions:

“I bequeath my land in Gulfport, Mississippi to my sister, Darlene.

I would like my heirs to consider donating my collection of musical instruments to the Louisiana University School of Music.

I bequeath my home to my girlfriend, Sandra, and upon her death, to my sister, Darlene, in full ownership.

Subject to the above, I bequeath an undivided 1/4 interest in my estate to my daughter, Victoria.

I bequest the forced portion of my estate to my sister, Darlene, as Trustee, to hold in trust for the benefit of my forced heirs; provided, however, that the Trustee shall be prohibited from making any distributions of either income or principal from this Trust to any of my forced heirs or from terminating the Trust until the year 2035. On January 1, 2035, the Trust shall terminate, and at that time the Trustee shall distribute to each of my forced heirs then living his or her pro rata share of the accumulated income and principal of this Trust.”

In 2008, Wade died at age 20 and was survived by twin daughters, Mandy and Mindy, who were both one year old at the time of his death.

Richard died on December 1, 2009. Sandra and Zoe continue to live at the property in Vernon Parish.

QUESTION 2(A) - (5 points)

Was the instrument dated February 1, 1987 valid in form as a will at the time it was executed?

QUESTION 2(B) - (5 points)

Did Richard 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 Richard's estate to which each forced heir is entitled.

FOR THE FOLLOWING QUESTIONS, ASSUME THAT THE DECEMBER 1, 2007 WILL WAS EFFECTIVE UPON RICHARD'S DEATH

QUESTION 2(C) - (5 points)

Does the trust provision in the will prohibiting the Trustee from making any distributions until 2035 violate the legitime?

QUESTION 2(D) - (5 points)

Does the trust provision requiring termination of the trust in the year 2035 and distribution to the forced heirs then living violate the legitime?

QUESTION 2(E) - (5 points)

Does the bequest of the land in Gulfport, Mississippi to Darlene affect the computation of the forced portion of the estate?

QUESTION 2(F) - (5 points)

Is the bequest to Victoria valid? What, if anything, will Victoria receive under the testament?

QUESTION 2(G) - (5 points)

Who is entitled to the farm land in Catahoula Parish?

QUESTION 2(H) - (5 points)

Is Louisiana University entitled to Richard's musical instrument collection?

QUESTION 2(I) - (5 points)

Who is entitled to Richard's house?

QUESTION 2(J) - (5 points)

Who is entitled to receive the residue of Richard's estate?

QUESTION 3
(25 POINTS)

Jack and Jill married and had one child, Aaron. Aaron married Barrett in 1980. Of the marriage between Aaron and Barrett, three children were born: Clay in 1981, Dan in 1982 and Elliot in 1983. Aaron was killed in a boating accident in 1985. He died intestate. At the time of Aaron's death, he was the owner of Blackacre Plantation, which had been donated to him in 1979 by his parents, Jack and Jill. Aaron also had a non-interest bearing account prior to his

marriage to Barrett, and no transactions had taken place with that account since his marriage. At the time he died, he and Barrett and their children were living in a house and lot in Deridder, Louisiana. The house and lot had been given to Barrett in 1978 by her parents, Kyle and Karen, prior to Barrett's marriage to Aaron. At the time of Aaron's death, neither he nor Barrett had any other assets or property.

Barrett married Frank in 1990. Frank had been previously married to Georgia. Frank and Georgia had adopted a son, Harold, in 1983. During their marriage, Frank and Barrett had three children: Ralph in 1992, Susan in 1993 and Travis in 1994. Ralph died in 2001. During their marriage, Frank and Barrett lived in the house in Deridder and bought an unimproved tract of land in Dulac with the intention of starting an orchard. However, Frank died intestate in 2005. When Frank died, Frank and Barrett also had a truck and a car. The truck had been bought before Frank's marriage to Barrett but after his divorce from Georgia. The car was acquired during the marriage to Barrett.

Elliott married Janet in 2003. Elliott and Janet had two children: Louis in 2004 and Marion in 2006. Elliott and Janet were killed in a car accident in 2008. They died intestate and were survived by their children.

Clay never married and had no children. He died intestate in 2007.

Barrett died intestate in November 2009. Barrett's parents, Kyle and Karen, survived her as did Dan, Susan, Travis, Louis and Marion.

In 2010, Susan consults an attorney about opening the successions of Aaron, Barrett, Clay and Frank. Assume that each item of property discussed above still exists and has not been transferred, destroyed or sold.

QUESTION 3(A) - (5 points)

Identify Aaron's estate, who inherits from Aaron and in what proportions?

QUESTION 3(B) - (5 points)

Identify Frank's estate, who inherits from Frank and in what proportions?

QUESTION 3(C) - (5 points)

Identify Barrett's estate, who inherits from Barrett and in what proportions?

QUESTION 3(D) - (10 points)

Who inherits from Clay and in what proportions?

END OF EXAMINATION

LOUISIANA BAR EXAMINATION

CIVIL CODE III

FEBRUARY, 2010

Question One: TOTAL OF THIRTY POINTS

PART A: TWENTY POINTS

New Orleans Eye, Inc. ("NOE") is a Louisiana corporation which, for the last several years, has operated a large ferris wheel allowing tourists an elevated view of the French Quarter. NOE has recently ceased its business operations, having only one remaining asset - the ferris wheel itself - and having the following four creditors, each of whom claims a right of recourse against the ferris wheel in preference to all other creditors:

(1) Louisiana Landholdings, LLC ("LL"), which leased to NOE the tract of land on which the ferris wheel is located pursuant to a five-year written lease dated March 1, 2007 and signed by both LL and NOE. The lease was recorded in the conveyance records of Orleans Parish on March 15, 2007. The ferris wheel is still physically located upon the tract of land leased by LL to NOE but is in the possession of NOE. LL is owed accrued rent in the amount of \$75,000.

(2) Ferriswheel Fabricators, Inc. ("FF"), which sold the ferris wheel to NOE and which is still owed an unpaid balance of \$450,000 on the purchase price. The sale was evidenced by a written purchase order which was signed by NOE's president on April 1, 2007. The purchase order described the ferris wheel, recited its purchase price, and contained the following language: "Payment of the full unpaid purchase price is due 90 days after date of delivery of the goods sold. As security for the unpaid purchase price, the buyer grants the seller a security interest in the goods sold." On April 15, 2007, before the ferris wheel was delivered, FF caused a financing statement to be filed in the UCC records of St. Tammany Parish. This financing statement reflected NOE as debtor and FF as secured party, supplied the addresses of each, and listed the collateral as the ferris wheel, which it described by serial number and otherwise with specificity. FF gave no notice of its security interest in the ferris wheel to any other creditor.

(3) Bank of Kenner ("BK"), which is owed \$100,000 under a working capital line of credit it established in favor of NOE. At the time the line of credit was established on September 1, 2007, NOE, through its president, executed and delivered to BK a promissory note in the amount of \$100,000, along with a security agreement by which NOE granted BK a security interest in collateral described as "all inventory and equipment, whether now owned or hereafter acquired." BK did not file any financing statement in the public records at the time these documents were signed, but it had previously filed in the UCC records of Orleans Parish on August 1, 2005, a financing statement which named NOE as debtor and BK as secured party, specified the addresses of each and described the collateral as "ALL ACCOUNTS, INVENTORY AND EQUIPMENT, WHETHER NOW OWNED OR HEREAFTER ACQUIRED." This financing statement was filed in connection with an earlier loan that was paid off in 2006.

(4) Paula T. Fein ("PTF"), who suffered a personal injury while riding the ferris wheel the first week that NOE opened for business. PTF brought suit against NOE to recover damages for her injury and, on March 1, 2009, obtained a money judgment in the amount of \$250,000, which she caused to be recorded on that same day in the mortgage records of Orleans Parish. Also on that same day, she filed a financing statement in the UCC records of Orleans Parish naming NOE as debtor and PTF as secured party, specifying the addresses of each and describing the collateral as "ALL ASSETS." NOE has made no payments on the judgment.

A Louisiana UCC lien search has been obtained in the name of NOE, reflecting the only UCC filings to be the financing statements filed by BK, FF and PTF.

Discuss the validity of the claims of each creditor to the ferris wheel and, for those creditors who have valid claims against the ferris wheel, rank their claims against each other under applicable law, giving supporting reasons. In writing your answer, you should assume that: (i) the ferris wheel is not subject to a certificate of title statute of any jurisdiction and is not a component part of immovable property; (ii) the only written documents or agreements that exist with respect to the

debts owed to each creditor are those that are specifically described above; (iii) the only filings that exist are those that are specifically described above, and none of those filings has been terminated or continued; (iv) all agreements purportedly executed or entered into on behalf of NOE were done with proper corporate authority granted by its board of directors; (v) none of the creditors has entered into any agreement with any of the other creditors; (vi) none of the creditors has seized or otherwise caused execution to issue against the ferris wheel; and (vii) all debts claimed by the four creditors are valid and enforceable obligations of NOE.

SINCE THE PROBLEM ASKS YOU TO DISCUSS RIGHTS AGAINST THE FERRIS WHEEL AND ASSUMES THAT EACH CREDITOR HAS A VALID CLAIM AGAINST NOE FOR PAYMENT OF THE DEBT IT HOLDS, STATEMENTS IN YOUR ANSWER TO THE EFFECT THAT A CREDITOR HAS THE RIGHT TO PURSUE NOE FOR A MONEY JUDGMENT OR TO PURSUE OTHER ASSETS IT MAY OWN WILL EARN NO CREDIT.

PART B: TEN POINTS

Your client, First National Bank ("FNB") is concerned about a loan it made several years ago to Sam Jones, who has never been married. The loan is represented by a promissory note dated May 1, 1998 in the amount of \$200,000, providing for monthly installment payments over a fifteen year term, with a maturity of May 1, 2013. During the first few years after the note was signed, Sam paid the installments when they fell due, but five and one-half years ago he stopped making payments on the note and has made no payment since then. FNB holds a mortgage which reads, in its entirety, as follows:

KNOW ALL MEN BY THESE PRESENTS that I, Sam Jones, hereby mortgage and encumber the immovable property located at 235 North Main Street, Homer, Claiborne Parish, Louisiana, in favor of First National Bank, as security for all debts, past, present and future, which I may now or hereafter owe to First National Bank. This mortgage is, however, given upon the stipulation that I shall not have personal liability for the indebtedness secured by this mortgage and that the mortgagee's recourse shall be limited to the property hereinabove described.

IN WITNESS WHEREOF, I have executed this mortgage on this first day of May, 1998.

Sam Jones

The copy of the mortgage your client has shown to you bears upon its face an inscription from the Claiborne Parish Clerk of Court reflecting that it was recorded in the mortgage records on May 5, 1998. The mortgage does not appear to have been signed in the presence of a notary public, and no witness signatures appear anywhere on the mortgage. Your client indicates that he has no other documentation for the loan, other than a title opinion certifying that Sam owned the property when he mortgaged it and a mortgage certificate he just obtained from the Claiborne Parish Clerk of Court, reflecting the only encumbrances upon the property in question to be the 1998 mortgage in favor of FNB and a \$50,000 mortgage in favor of another creditor recorded November 1, 2000.

Your client has asked for your advice about the enforceability of its loan documents and the ranking of its mortgage. Advise your client of potential problems it can expect to encounter in its attempt to enforce the loan documents against Sam and the mortgaged property.

Issue spotting is an important part of this Part B.

LOUISIANA BAR EXAMINATION

CIVIL CODE III

FEBRUARY, 2010

Question Two: TOTAL OF TWENTY-FIVE POINTS

On April 26, 2008, Bob purchased a single family residence from Sally for the cash price of \$250,000. Prior the sale, Bob made at least four visual inspections of the home. On each occasion, Sally was present and controlled his access and viewing of the home. About a week before the sale, Bob reviewed a copy of a termite inspection report (prepared by a local extermination company hired by the seller) which noted that there were three locations in the house where old termite damage or scars were discovered. Bob asked Sally for a further explanation of these notations. She took him to all three areas of the house listed on the termite inspection report, telling him that the termites and damage had been taken care of in 1999 and that it was not a problem any longer, the spots being just "old scars." The property disclosure statement that was signed by Sally in connection with the sale made similar statements that termite damaged had been discovered and repaired in 1999. Though the purchase agreement by which Bob had contracted to purchase the property allowed him the right to have professional consultants make inspections of the property, he did not do so, choosing to rely instead on his own common sense. The purchase agreement, which appeared on the broker's printed form, also contained the following stipulation: "In the event that purchaser proceeds to the sale contemplated by this purchase agreement, the sale will be AS IS, WHERE IS." The act of cash sale also provided that "The property herein conveyed is sold AS IS, WHERE IS." There was no discussion between the parties concerning these provisions either at the time of the execution of the purchase agreement or at the time of closing of the sale. The closing attorney also made no mention of these provisions at closing, other than to state that he had drawn the act of cash sale precisely in accordance with the purchase agreement.

In November, 2008, the wooden deck outside the rear of the home collapsed. The following month, while Bob was moving boxes to a utility room, his hand inexplicably went through an exterior wall of the house. Shortly afterward, he hired a professional inspector to perform a structural inspection of the home, at which time some of the walls and flooring were removed, revealing hidden, active termite infestation and damage. Bob also hired an architect, who has rendered a report to the effect that termite damage had been covered up and that, while some of the damage was initially observable, "that did not mean a lay person buying a home would recognize it as a problem like a home inspector or architect would." The architect's report estimated the cost of repairs at \$25,000. Without having any further communication with Sally, Bob filed a suit seeking to rescind the sale in October, 2009.

Advise Sally of the merits of the claim she is facing and potential defenses available to her.

LOUISIANA BAR EXAMINATION

CIVIL CODE III

FEBRUARY, 2010

Question Three: TOTAL OF TWENTY-FIVE POINTS

On January 1, 1997, a landowner ("L") and an agricultural tenant ("T") entered into a written lease whereby L leased to T a tract of land for purposes of farming it. The lease did not specify a term, but did describe the land with a legally sufficient description and provided that the rental to be paid under the lease was a specified percentage of the crops to be produced by T from the land. The lease contained an addendum granting T the right to purchase the land at any time while the lease was in effect for \$1,000 per acre, which at the time the lease was signed was equivalent to the fair market value of the land. Though the lease itself was recorded shortly after it was executed, the addendum somehow became detached from the rest of the lease and has never been recorded.

Ever since the lease was signed, T has continuously remained in possession of the land, farming it each year and delivering to L his share of each year's crop.

In January 2010, L began speaking with a prospective purchaser ("P") about the purchase of the land. During the course of these discussions, L provided P with a full copy of T's lease, including the unrecorded addendum. L and P reached oral agreement upon a price for the land of \$5,000 per acre, which an appraisal showed to be its current market value. On January 30, 2010, L handed to P a written contract, which L had already signed, for P's purchase of the property (which was described in the contract with a legally sufficient description) at the agreed upon price. The contract did not specify a time for acceptance, nor did it say anything at all about T or his lease. P did not sign the contract immediately but indicated that he would need about ten days to get his financing in place. P stated that he would sign and mail the contract back to L as soon as he was able to get a loan commitment. L responded that that would be no problem and that he would wait to hear from P. P immediately made application for a loan at his bank.

Meanwhile, all during the month of January 2010, T began making preparations for farming the land during the 2010 crop year. On February 3, 2010, L approached T, advising him that a sale of the property to P was likely and that T should probably look for other land to farm that year. Shocked at this news, T responded that he had a valid lease of the property for the upcoming year and, in any event, had the right to purchase it in preference to P. Later that day, T went to L's residence and handed him a letter to the effect that he was exercising his right to purchase the property for \$1,000 per acre. L responded that this was absurd and that T could not possibly expect him to sell the property at so low a price.

Nonetheless, concerned about T's position and desiring to extricate himself from awkward circumstances, L mailed to P the next day (February 4, 2010) a letter stating that he was withdrawing all offers to sell the property to P and terminating all discussions with him about the sale. Before receiving this letter, P, who had just received a loan commitment from his bank, signed the contract on February 6, 2010 and immediately recorded it in the local conveyance records. On that same day, he mailed the fully executed contract to L. Upon receipt of the contract on February 7, 2010, L telephoned P and stated to him that the contract was null and void in light of L's earlier letter.

In the litigation which has ensued among all three parties, (1) T contends that he is entitled to purchase the property for \$1,000 per acre and, in any event, his lease remains in effect; (2) P contends that he is entitled to purchase the property for \$5,000 per acre free and clear of any lease in favor of T; and (3) L contends that he is obligated to sell the property to neither T nor P and that T's lease is no longer in effect. Discuss the claims made by the parties and the governing legal principles.

In writing your answer, please assume that the law presently in effect in Louisiana has been in effect at all material times.

LOUISIANA BAR EXAMINATION

CIVIL CODE III

FEBRUARY, 2010

Question Four: TOTAL OF TWENTY POINTS

For each of the following ten subparts of this question, write in your examination booklet the letter that corresponds to the correct answer. If you believe that more than one answer is correct, write the letter corresponding to the best answer. If you supply more than one answer to a subpart, the entire answer will be counted as incorrect even if one of the answers you supply is the correct answer. Only the letter designation that you indicate will be considered, and any discussion that you supply will be disregarded. **TWO POINTS EACH.**

1. **A synallagmatic contract is a contract**
 - A. that is entirely oral.
 - B. that is given no special designation, such as a designation as a sale, lease, loan or insurance.
 - C. under which the parties obligate themselves reciprocally.
 - D. that contains an obligation subject to a condition that depends solely on the whim of the obligor.
 - E. that is made by a party without contractual capacity.

2. **In a revocatory action seeking the annulment of a gratuitous contract made by an obligor, which of the following must the plaintiff prove?**
 - A. that the contract caused or increased the obligor's insolvency.
 - B. that the plaintiff has rights against the obligor upon a claim that was liquidated by a judgment prior to the execution of the contract;
 - C. that the other party to the contract knew that the contract would cause or increase the obligor's insolvency;
 - D. that the contract was made in fraud of the plaintiff's rights.
 - E. all of the above.

3. **A mandate necessarily terminates upon**
 - A. any condition that makes express revocation of the mandate impossible or impractical.
 - B. the filing of a revocatory action against the principal.
 - C. incapacity of the principal.
 - D. death of the principal.
 - E. the expiration of ten years from the date the mandate was granted.

4. **A natural obligation:**
- A. is not onerous cause for a promise to fulfill it.
 - B. arises from circumstances in which the law implies a particular moral duty to render a performance.
 - C. is enforceable by judicial action.
 - D. arises, for example, when a party agrees to a performance that is *contra bonos mores*.
 - E. has all of the characteristics and effects described above.
5. **Which of the following is a correct statement of the law?**
- A. Novation is the extinguishment of an existing obligation by the substitution of a new one.
 - B. Objective novation takes place when a new obligor is substituted for a prior obligor who is discharged by the obligee.
 - C. A novation made by the obligee and one of the obligors of a solidary obligation does not effect a release of the other solidary obligors.
 - D. Execution of a new writing and modification of an obligation, made without intention to extinguish it, are examples of novation.
 - E. All of the above.
6. **Which of the following is a correct statement of the law?**
- A. There is a management of affairs when a person, the principal, confers authority on another person, the manager, to manage the principal's affairs or otherwise act to protect the principal's interests.
 - B. Management of affairs is synonymous with unjust enrichment.
 - C. The owner whose affair has been managed is not bound to fulfill an obligation that the manager has undertaken as a prudent administrator if he repudiates the obligation upon the obligee's demand for performance of the obligation.
 - D. A management of affairs is subject to the rules of mandate to the extent that those rules are compatible with management of affairs.
 - E. One who assumes the management of the affairs of another must exercise the care of a prudent administrator, but is answerable for any loss that results from his failure to do so only upon a showing of self-dealing, breach of fiduciary duty or bad faith.
7. **Which of the following is not a ground for extinction of an obligation?**
- A. performance.
 - B. novation.
 - C. subrogation.
 - D. remission.
 - E. confusion.

8. **A sale of litigious rights:**
- A. is an absolute nullity.
 - B. is a relative nullity.
 - C. gives the debtor the right to extinguish his obligation by paying to the assignee twice the price the assignee paid for the assignment.
 - D. reduces the debtor's obligation by the amount paid by the assignee for the assignment.
 - E. has none of the attributes or effects described above.
9. **Which of the following is a correct statement of Louisiana law?**
- A. Interpretation of a contract is the determination of the common intent of the parties.
 - B. When the words of a contract are clear and explicit and lead to no absurd consequences, interpretation in search of the parties' intent is nonetheless appropriate when necessary to conform the parties' agreement to prevailing usages.
 - C. When the parties intend a contract of general scope but, to eliminate doubt, include a provision that describes a specific situation, the proper interpretation of the contract is to restrict its scope to that situation alone.
 - D. In case of doubt that cannot otherwise be resolved, a contract must be interpreted against the obligor and in favor of the obligee of a particular obligation.
 - E. All of the above.
10. **An aleatory contract is:**
- A. a contract that does not express the true intent of the parties.
 - B. a contract in which the quantity of a contractual object is determined by the output of one party or the requirements of another.
 - C. a contract having as its object a covenant that a third person will incur an obligation or render a performance.
 - D. a contract for which the law supplies no special designation.
 - E. a contract under which the performance of either party's obligation, or the extent of the performance, depends on an uncertain event.

END OF EXAMINATION

**LOUISIANA BAR EXAMINATION
LOUISIANA CODE OF CIVIL PROCEDURE
FEBRUARY, 2010**

QUESTION I (25%)

Succinctly answer the following questions:

- 2% A. Which of the following is NOT a mandatory ground for recusal of a judge from a particular case:
1. The judge's parent, child, or immediate family member is a party or attorney employed in the cause;
 2. At the time of the hearing of any contested issue in the cause, the judge has continued to employ, to represent him personally, the attorney actually handling the cause;
 3. The judge is a witness in the cause; or
 4. The judge is biased or prejudiced toward or against the parties or the parties' attorneys or any witness to such an extent that he would be unable to conduct fair and impartial proceedings.
- 2% B. 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 served on a previous jury which tried a case containing issues similar to the case you are presenting;
 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 has formed an opinion in the case or is not otherwise impartial.
- 2% C. 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 lengthen the time required for trial.
 4. It would prevent a fair and impartial trial.

2% D. 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 awarded support is domiciled;
2. The parish where the person paying the 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% E. You have been appointed by the Court to represent a defendant in an interdiction action. What responsibilities, if any, do you have in conjunction with this appointment?

6% F. 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 May 5, 2009. On October 20, 2009, the plaintiff moved for and obtained a preliminary default against Client and Client's corporation. Thereafter, on January 15, 2010, a default judgment was rendered in open court. Client was personally served with those judgments on January 25, 2010.

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.

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.

QUESTION II (25%)

Succinctly answer the following questions:

- 3% A. You represent the tutor of two minor children. The tutor advises that the two minor children are co-owners of 100 acres of immovable timber property in Claiborne Parish, Louisiana. The two minor children have a combined ownership interest of 40% in the immovable property (20% each), while the remaining 60% of the property is owned by others. The other property owners have secured an offer from a third party to purchase the entire 100 acre tract. Although the minor children are not in need of money, the tutor believes that the amount offered for the 100 acre tract is fair and above the market value of the property. What steps, if any, must the tutor take in order to allow the minor children to sell their interest in the property?
- 3% B. You represent the owner of a commercial building who contacts you regarding a problem tenant. The tenant is a large law firm that recently has split up, and the building owner is concerned that the various departing factions of the former firm will leave the building without paying the rent owed by the firm for the remainder of the year. Several attorneys from the tenant firm already have departed and moved to a different location, bringing various equipment and furnishings with them. What steps, if any, can the building owner take to secure payment of the rental obligation? If something can be done, explain what specific pleadings you must file on behalf of the building owner, and what security, if any, is required.
- 3% C. Client visits you after receiving an executory process seizure notice regarding a home that he recently purchased. Although Client is current on all of his home note payments, the executory process seizure was issued by his seller's lender, who alleges that the seller has not fulfilled his payment obligations. Client understands that the seller's outstanding loan balance was paid off with the sale proceeds that seller received from Client. What, if anything, can Client do to stop the executory process action from going forward? If something can be done, explain what specific pleadings you must file on behalf of Client, what relief is available, and what security, if any, is required.
- 3% D. You are conducting voir dire in a jury trial, and believe that a prospective juror will be biased against your client based upon the answers that the prospective juror has provided to your questions. Describe at least two options you can consider to prevent this prospective juror from being seated as a juror?
- 5% E. You represent Building Corp., which has just been sued for breach of a construction contract. You believe the lawsuit is improper because the construction contract at issue contains a mandatory arbitration clause which requires any disputes arising therefrom to be resolved by arbitration.
- 2.5% 1. Please succinctly explain what pleadings you would file in response to the lawsuit, the allegations that you would assert therein and the goal you seek to achieve by doing so.
- 2.5% 2. Assume the trial court rejects your argument and allows the breach of construction contract lawsuit to proceed. Please succinctly explain what actions, if any, you can take to try to reverse the trial court's ruling and obtain your original desired goal.

8% F. Plaintiff, a resident of Bossier Parish, entered a written construction contract with Building Corp., a Louisiana corporation whose registered office is located in Calcasieu Parish, for the construction of a camp in Sabine Parish. Plaintiff signed the contract in Bossier Parish while Building Corp. signed the contract in Calcasieu Parish. All work and services for the camp construction project were performed in Sabine Parish. The project was supervised by Building Corp.'s Natchitoches Parish office.

After construction is completed, Plaintiff has a variety of complaints concerning Building Corp.'s deficient contract performance and would like to sue Building Corp. for breach of contract. Please identify all parishes in which venue for a breach of contract action against Building Corp. would be proper. For each parish identified, you must explain the basis for venue in order to receive credit.

QUESTION III (25%)

Succinctly answer the following questions:

3% A. Please succinctly describe the requirements for a detailed descriptive list of succession property.

3% B. 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% C. 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% D. Appellee has not answered the appeal, but requests by brief that it should receive interest at the judicial rate from the date of judicial demand. The judgment of Trial Court did not make such an award. How should Appellate Court rule on this request? Briefly explain.

8% E. Plaintiff has filed a lawsuit against Manufacturer, contending that Plaintiff was injured due to a defect in Manufacturer's product. Manufacturer has filed a third party demand against your client, California Importer, contending that Manufacturer's product is not defective but alternatively arguing that any defect that may be found in the product is the result of a defective component part of the product that Manufacturer bought from California Importer.

You represent California Importer. California Importer imported the component part at issue from a foreign manufacturer. Under the Louisiana Products Liability Act (LPLA), the non-manufacturer seller of a product imported from a foreign manufacturer cannot be liable under the LPLA unless the importer is also the alter ego of the foreign manufacturer.

Your client's general manager advises you that California Importer is not the alter ego of the foreign manufacturer and has no affiliation, control or ownership interest in the foreign manufacturer from which it imported the component part at issue. You also have taken the article 1442 deposition of Manufacturer, and its corporate representative has no knowledge of any affiliation, control or ownership interests by California Importer in foreign manufacturer. Discovery has not been completed, but the case is scheduled for trial in six months.

- 4% 1. What, if anything, can you file on behalf of California Importer to attempt to terminate the litigation prior to trial? Explain fully, including an explanation of what such a motion, if any, will have to show to be granted.
- 4% 2. If there is such a motion, explain specifically what California Importer must file to support its motion.
- 3% F. During the course of gathering and reviewing documents to respond to your opponent's discovery requests, 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.

QUESTION IV (25%)

Succinctly answer the following questions:

- 3% A. At the conclusion of a three-day long bench trial, the trial judge rules from the bench and against your client (the plaintiff) in favor of the defendant, stating only that she finds in favor of the defendant and will sign a judgment to that effect upon presentation. Opposing counsel conveniently has such a judgment prepared and presents it to the trial court for signature in open court. You believe that the trial court's ruling is incorrect and would like to gain a better understanding of the trial court's reasons for decision beyond her simple statement that she has ruled in favor of the defendant. What, if anything, can you do to achieve that goal and what time limitations, if any, exist?
- 3% B. What is the delay for requesting service of citation on all named defendants in a civil action? If the request for service of citation is not timely made, what action, if any, can be taken to obtain dismissal of the action?
- 4% C. Plaintiff files suit against Andy and Bob, seeking to recover a \$75,000 cash loan. You represent Andy and Bob who believe the transaction at issue is between Plaintiff and their wholly owned company, AB Corp., and that they have no individual responsibility or liability in the matter. You examine the loan documents attached to Plaintiff's petition, which confirm Andy and Bob's explanation. Andy and Bob further advise you that, contrary to the allegations in Plaintiff's petition, Plaintiff actually owes AB Corp. \$55,000. In addition to filing an answer on their behalf, Andy and Bob would like you to try to recover the amount owed to AB Corp. What can you file, if anything, to seek recovery of that amount from Plaintiff? Please explain in specific detail.
- 10% D. Stock Purchaser, a resident of Natchitoches Parish, has recently come to you with a tale of deception. Purchaser, a member of Stock Buying Club, makes stock trades through Brokerage Firm, a national concern. Purchaser and other members of Stock Buying Club have a contractual relationship with Firm, having signed in Caddo Parish, standard-form contracts setting out the services provided by the Firm, the compensation paid by customers, and other particulars of the business relationship. Firm negotiates stock trades for its customers with stock wholesalers who buy stock from or sell stock to Firm's customers. Firm is paid a commission by its customers and receives and keeps

“payments for order flow” from the stock wholesalers. Purchaser believes that Firm should have disclosed to its customers these payments by the stock wholesalers and that by failing to do so, breached a contractual duty to its customers. Purchaser’s Stock Buying Club is composed of over fifty members who are residents of Natchitoches Parish. He is aware of fifteen other clubs of similar size throughout the state. He wants you to bring one action against Firm that will vindicate the rights of all the members of Stock Buying Club and of the other such clubs in the state.

5% (a) Is there one action that can be brought to vindicate the rights of all members of these clubs? If so, what is that action; what is its proper venue; and what are the requirements for its maintenance?

5% (b) Briefly explain the reason why you feel that the requirements for the maintenance of that action have been met in this case.

5% E. You are contacted by a client from Nebraska asking for your help to enforce a judgment that client obtained from a Nebraska court against a Louisiana resident who is domiciled in Lincoln Parish. Can a judgment from a Nebraska court against a Louisiana resident be enforced in Louisiana and, if so, please explain (1) what action, if any, is needed and the requirements for that action, (2) where the action must be filed, and (3) what documents, if any, must be included with the action?

END OF EXAMINATION

LOUISIANA BAR EXAMINATION

TORTS

FEBRUARY 2010

QUESTION 1: TWENTY-FIVE POINTS

On his way to the Superdome to see the NFC Championship game between the New Orleans Saints and the Minnesota Vikings, Bob Blake decided to stop at the local Superette in Metairie, Louisiana, to purchase a few more tailgating supplies. He had started his celebration earlier that morning with a few bloody marys and a couple of mimosas (both alcoholic beverages). Bob was certain he was not intoxicated when he climbed into his 2 year old sport utility vehicle (with over 60,000 miles on the odometer) manufactured by Acme Motors, a United States automaker.

As Bob drove up to the Superette, he accidentally dropped a sizable amount of ashes from his cigarette into his lap. He began frantically trying to put out the ashes which began burning his legs through his brand new Saints polyester shorts. The shorts were quite flammable and before he knew it his shorts burst into flames. The vehicle crashed through the glass windows of the Superette, coming to a stop at the cash register.

Bob would later say that he was sure he was applying the brake when his sport utility vehicle ran through the plate glass window of the Superette. Bob had trouble on occasion with his brakes stopping effectively but he hadn't had time, what with his Saints activities and all, to take the vehicle to the dealership. If he had, he would have learned that there was a recall campaign on the vehicle due to problems with the brakes. Bob never got the recall notice in the mail because he moved from his prior address and never had his mail forwarded.

Mable Marks, a 75 year old Saints Fan, was standing in the checkout line when Bob's vehicle plowed through the window knocking her to the floor and pinning her beneath a potato chip display which had been knocked over by the vehicle. Mable had hardly a scratch on her but she was moaning and moving in obvious pain during the 15 minutes before the EMS paramedics arrived. She died on the way to the hospital. The coroner said that her heart (which had been giving her trouble) couldn't take the stress of the accident. Mable was a widow with two grown children. Sally and Andy were her children from her marriage with Hank, her deceased husband. Mable had also raised Terri, one of her sister's children, since Terri was two. She had legal custody of Terri till she was 18 and treated her as her own child.

- A. Bob is very upset about Mable's death and his own minor injuries, as well as the damages to his vehicle and the claim for property damage filed against him by the Superette. He comes to you and asks what his potential liabilities are and what claims, if any, he may have.
- B. Assuming you have never spoken to Bob, Mable's two natural children come to you and want to know if they have the right to assert claims for their mother's death. They want to sue Bob only. What claims do they have against Bob? They also want to know if Terri, the black sheep of the family, can make a claim for Mable's death.

QUESTION 2: TWENTY-FIVE POINTS

While walking in the local Goodwill Store in Baratavia, Louisiana, Marcy Smith, holding the hands of her two young children, Anna, age 3, and Buzz, age 2, spotted a coat she knew she had seen in a magazine that she just had to have. She noticed another customer eyeing the coat so she grabbed the children and rushed over to the rack where the coat was located. The other customer, Susie Snoop, had seen Marcy looking eagerly at the coat and decided it must be something she might like also. She hurried to the rack also determined to beat Marcy to the find. They arrived at the same time, but before she could grab the coat, Marcy slipped in a clear puddle of liquid causing her and the two children to slide right into Susie's legs, knocking Susie to the ground and breaking her ankle.

Susie can no longer work at the local Winn Dixie as a cashier. She can't cook or clean or participate in the bowling league with her husband, Jed. Life just isn't the same. Susie and Jed can't pay their bills without Susie's income and their marriage is on the rocks. Jed can't take Susie's whining and complaining and he's tired of doing the laundry and taking care of Susie's two children from a previous marriage.

Susie comes to you for legal advice and wants to know if she and her family have any claims, against whom and for what.

QUESTION 3: TWENTY-FIVE POINTS

Robert Rider, a residential contractor, had always felt that his nose prevented him from getting the women and the jobs that he wanted. Unmarried at the age of 35 and with no marital prospects in sight, he decided, now that he had a little extra money, to get that situation fixed. He went to see Dr. Vain, a plastic surgeon of some renown, in the small town of Allons, Louisiana. Robert had high blood pressure, high cholesterol and pre-diabetes. He knew if he told the doctor this, he might not get his new nose. He convinced Dr. Money, his friend from high school whose house he had just built, to give him a clean bill of health for a small reduction in the price of the house.

Robert wanted that new nose and just knew that he was healthy enough to have that simple surgery. Dr. Vain told him it was an outpatient procedure that was, in fact, quite simple when he signed the medical authorization form for the rhinoplasty.

Dr. Money wrote a beautiful evaluation of Robert but purposefully failed to mention any of his health problems, including the fact that Robert smoked 2 packs of unfiltered cigarettes a day, a 20 year habit. Dr. Vain saw the report and told Robert that he might want to consider an eye lift also, since he was going under the knife anyway. Robert agreed. He also suggested a chin implant might perfect the look Robert was hoping to achieve. Robert agreed. No new medical authorization forms were signed.

Robert had the surgery on July 1, 2009. He was shocked when he awoke several hours later and saw the bandages covering his entire face. He was in terrible pain for a week; something that Dr. Vain said was unusual. Robert was even more shocked when the bandages were removed on July 7, 2009, and his face was red and swollen. He didn't even recognize himself in the mirror. Dr. Vain was shocked because Robert's incisions were infected and were not healing as quickly as they should. He questioned Robert again about his medical health and Robert assured him he was fine and healthy. Dr. Vain began to get suspicious when he noticed the smell of cigarettes on Robert but Robert denied, again, that he smoked.

Robert's condition deteriorated and he was hospitalized for infections of the incisions around his eyes, nose and chin. Dr. Vain said that the chin implant had to be removed surgically due to the seriousness of the infections. Robert signed the medical authorization for that procedure. It fully explained the risks of the procedure. That procedure caused more incisions and more infections. Robert is in constant pain and his

face looks worse than ever. Any repairs to his face would involve more surgery and Dr. Vain refuses to perform any more surgery on Robert as he can think of no other explanation for Robert's condition other than possible undisclosed health issues.

Robert can't sleep and he can't eat. He's lost 30 pounds and looks like a scarecrow. He has nightmares about the surgery and wakes up every few hours covered in sweat. His life has been turned upside down. He can't work or leave his home because of the condition of his unhealed face. He has to take medication for depression every day just to get through the day. His clients have fired him and he is on the verge of bankruptcy.

1. He comes to see you and wants to know if he has any recourse against Dr. Vain for his injuries and damages. Advise him.
2. Assuming you have never seen Robert, his friend, Dr. Money, comes to you, very worried about his friend Robert, and wants to know if he should be worried about a potential claim against him by Robert or Dr. Vain. Advise him.

QUESTION 4: TWENTY-FIVE POINTS

The town of Saints Corner had a budget of \$100,000 a year. With a population of 15,000 people, the city was constantly strapped for cash to provide the services the residents needed. Sometimes, there were difficult choices that Mayor Thomas had to make - repair the potholes or replace the ten (10) stop signs that the kids kept stealing. Some months the potholes were fixed and others months the signs were replaced. It was a constant battle. Only one city employee was put in charge of repairing the pot holes and replacing the stop signs (when the city had money to do so). That employee had been on vacation since July 26, 2009. The Mayor usually drove around town to check things out but he had been busy lately with his upcoming election.

On August 1, 2009, Joe Jenkins, a deputy sheriff for the town of Saints Corner, was off-duty while driving his 1950 pickup truck into town to visit his fiancée, Felicia Farnsworth. They were to be married on September 15, 2009. Joe was the deputy assigned to the area on the outskirts of town. The town area near City Hall was not his patrol area. Joe and Felicia had been dating for three months and he visited her in town usually twice a week.

Joe was thinking about the wedding and his new life with Felicia when he crossed the intersection of Main and First, the corner where City Hall was located, without noticing that the stop sign on Main Street was, once again, missing. Vicky Taylor was driving her truck through the same intersection and she also failed to notice that the stop sign on First Street was, once again, missing.

Their cars collided and Joe was seriously injured.

1. Joe comes to see you and wants to know if he has a claim for the accident.
2. Felicia accompanies Joe to see you and she wants to know if she, as Joe's fiancée, also has a claim since their personal relationship has been greatly affected and their marriage had to be postponed indefinitely.

THE END

**LOUISIANA BAR EXAMINATION
CONSTITUTIONAL LAW
FEBRUARY, 2010**

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 IN ANY OF THE THREE QUESTIONS.

Question Number One is worth 35 points; Question Number Two is worth 35 points; Question Three is worth 30 points.

QUESTION ONE – (35 points)

In response to the public's complaints that several recent scandals reflected a rise in corruption in Congress, the president issued Executive Order No. 566, which created a Task Force Against Congressional Corruption (TACC). Executive Order No. 566 provides that TACC is an independent body, consisting of the vice president and eight congressmen appointed by the president from a list of nominees created by members of both Houses, that will investigate alleged corruption by congressmen, bring charges, and conduct hearings on those charges. Executive Order No. 566 provides, in part, as follows:

The TACC shall expose and eliminate congressional corruption. The TACC shall have authority to issue its own subpoenas and warrants (equivalent in power and scope to court-ordered subpoenas and warrants) to investigate conduct in which a congressman engaged during his term of office in Congress as well as the three (3) years preceding his congressional installation regarding public matters as well as any and all personal matters that call into question his moral fitness to serve the public. The TACC shall recommend removal if it determines that the congressman engaged in corruption in any public or private matter, that is, conduct that would be illegal under the laws of the United States, immoral in the eyes of God, or raises an appearance of impropriety.

Executive Order No. 566 further provides that if the president agrees with TACC's determination that the congressman is guilty of corruption, a presidential executive order shall be issued removing the congressman from office, barring the congressman and any person related by blood or affinity from further federal elected service from a period of ten years, and appointing a replacement to fill the unexpired term of the removed congressman, unless the congressman voluntarily resigns prior to issuance of the executive order of removal. Executive Order No. 566 further provides that the removed congressman may appeal his removal to the congressional body from which he was removed and may have the removal overturned with a 3/4 vote of that body.

The FBI initiated an investigation of a married Illinois congressman named Alfred Bundy, who admitted to an affair with an Australian stripper, Cathy. Bundy allegedly used public funds to travel to Australia numerous times to visit Cathy. The FBI investigation stalled pending a federal court proceeding to determine whether the evidence allegedly supporting the charges was illegally gathered.

To carry out its charge to expose and eliminate congressional corruption, the TACC initiated its own investigation of the congressman. After a lengthy seventeen-month long investigation during which it issued warrants and subpoenas, the TACC publicly charged Bundy with corruption pursuant to Executive Order No. 566. The charging document, which was served on the congressman's housekeeper at his primary residence in Illinois, indicated that the TACC hearing would occur three weeks later. She was unable to send the document to Bundy for several days.

Bundy appeared at the TACC hearing and requested a continuance because he had been traveling abroad for two weeks on business when the notice was served and that he did not have sufficient time to prepare for the hearing. The request was denied and the TACC hearing proceeded. After a three-day hearing, the TACC found Bundy guilty of corruption and issued an opinion the same day. The opinion provided, in part, that the congressman's affair with the stripper was "immoral in the eyes of God" and that, even though Bundy had met with the U.S. Ambassador in Australia during some trips, the charges on Bundy's congressional credit card of late night dinners in questionable venues in Australia created "an appearance of impropriety."

Before issuance of the executive order of removal, Congressman Bundy comes to your office seeking advice regarding his right to have Executive Order No. 566 struck down as unconstitutional because his procedural due process rights were violated.

- (1) **What arguments would you recommend that Congressman Bundy advance in federal court regarding his procedural due process rights? (15 points)** This answer requires more than a statement that he deserves notice and an opportunity to be heard. Please analyze whether he is entitled to due process under the circumstances and analyze the factors for determining the amount of process that was due under the circumstances.
- (2) **What other constitutional argument(s) would you advise the congressman to advance regarding Executive Order No. 566? (20 points)**

Include an explanation of any potential weaknesses in any of the arguments.

QUESTION TWO – (35 points)

Judge Alvin Ban serves as a Justice of the Peace in Louisiana. He is a devout member of a religious group called the Pure Angelicals. The beliefs of that group mirror many of the tenets of Christianity but also borrow several practices and rituals from the Jewish and Muslim religions. All members of the staff and all appearing before Judge Ban are familiar with his religion and his practices because he asks all who are present with him every day at 9:00 a.m., 12 noon, and 3:00 p.m. to pray aloud with him daily. When he asked them to pray, he always asked the same way: "Do you want to join me to give thanks to God for all the good he has done for all of us? You don't have to, of course, and you're free to leave; but I know you don't want God to think you're ungrateful. God doesn't look too kindly on ungratefulness, and I don't either." Judge Ban always incorporated references to prayers from the religions of all those praying with him.

Judge Ban's religious beliefs included strong beliefs concerning protecting God's "little ones" -- children. He believed that children of interracial couples suffered more than children of parents who both shared the same race. Judge Ban also believed that interracial couples divorced at a higher rate than other couples. Judge Ban researched these issues and found one study that supported his theories indirectly. That study indicated that many biracial children are sometimes confused where they fit in and must learn to operate in both the white world and the black world. The studies did not provide statistical evidence regarding divorce rates or any other negative lifestyle consequences resulting from a biracial marriage. Nevertheless, Judge Ban held to his theory that biracial children suffered more than all others and that biracial unions offended God.

Darla and Sampson, an atheist, biracial couple who had dated for seven years, went to Judge Ban asking him to perform their wedding ceremony. They arrived simultaneously with two other couples: a Caucasian couple and an African American couple. The other couples had dated only one and two years, respectively. Because the couples arrived at Judge Ban's chambers shortly before noon, he strongly encouraged them to pray with him. Although Darla and Sampson were uncomfortable with the request, they did not know how to politely refuse. All of the couples prayed with the judge.

Judge Ban then denied Darla and Sampson's marriage request. He explained that it violated his religious beliefs to knowingly allow harm to one of God's little ones and that he could not encourage a union that would bring so much suffering upon the couple's future offspring. He instructed them that the Justice of the Peace in the next county, 30 miles away, would perform their ceremony. Darla and Sampson later learned that Judge Ban wed both of the other couples that day.

Darla and Sampson have come to your office for advice.

- (1) Please draft a memo analyzing whether Darla and Sampson have any constitutional claims regarding equal protection or substantive due process violations. (20 points)**
- (2) . Please draft a memo analyzing whether Darla and Sampson have any constitutional claim(s) under the establishment and/or free exercise clauses. (15 points)**

Include an explanation of any potential weaknesses in any of the arguments. DO NOT DISCUSS ANY PROCEDURAL DUE PROCESS ARGUMENTS IN THESE ANSWERS.

QUESTION THREE – (30 points)

Calvin Catt, a Hollywood tycoon, purchased several large tracks of commercial and residential land near the False River in order to build large, luxury condominiums and a huge outlet shopping mall. Catt successfully petitioned to have the properties rezoned to achieve his objectives.

Catt executed a multi-million dollar contract with ABC Construction, Inc. to begin leveling all structures on the land, to build several high-rise condominiums on a huge man-made beach by the river, and to construct an outlet mall larger than the Mall of Louisiana. ABC cleared the properties, imported white sand, and constructed a beach that rivaled some of the best beaches in Florida.

However, once city leaders saw the cleared land and extraordinary beach, they believed that the City would be better served by cultivating the green space and beach than cluttering the area with large obtrusive condominiums. Complying with all necessary notice and open meeting laws, the City Council called an emergency meeting, which Catt attended with his counsel, and immediately promulgated ordinances and zoning changes that prohibited the construction of any new structures within 4000 yards inland of the False River. The Council said that the measure would assist in creating more green space for parks and also create an additional buffer between the river and the citizens.

You have been approached by Calvin Catt for advice regarding his rights. What constitutional arguments can Calvin Catt raise to challenge the City Council's action?

DO NOT DISCUSS ANY SUBSTANTIVE OR PROCEDURAL DUE PROCESS ARGUMENTS IN THIS ANSWER. (30 points)

Include an explanation of any potential weaknesses in any of the arguments.

END OF EXAMINATION

SUPREME COURT OF LOUISIANA
Committee on Bar Admissions
February 2010 Examination

EXAMINATION ON CRIMINAL LAW, PROCEDURE AND EVIDENCE

I.

(40 points may be earned)

Lilton and Jordan recently graduated from a prestigious computer school on the West Coast, Computer Forensics Institute (CFI). Best friends, they decided to return to Lilton's hometown of New Bridge, Louisiana. The two were immediately hired by a local mom and pop computer company, M&P Computers. They attracted lots of local and regional business, and as a result, each bought new cars and rented luxury apartments in the newly renovated town square. However, after working at M&P for two years, Jordan and Lilton grew restless and yearned to be their own bosses. Convinced that they could create a company that would attract an international clientele, they began working on a business plan for their new venture.

During the initial meetings, Jordan encouraged Lilton to prepare all of the business documents in his name but assured him that she would be involved in the day to day operations of the company. Unbeknownst to Lilton, Jordan had been convicted of a felony involving the taking of identities in her home state of Orida. Upon release from prison, she assumed the identity of her grandmother, Jordan Marie Huffington; Jordan's birth name was Patricia.

Several months later, they completed their plan while still working at M&P in the afternoons. Jordan and Lilton were able to forward their mail and have the new equipment delivered to the M&P store. Everything was going smoothly until the owners became suspicious and discovered that their trusted employees had been using M&P as a staging ground for a new start up venture. The owners were furious and fired Lilton and Jordan on the spot, telling them to clean out their lockers and never return.

After two weeks of hard work, the budding entrepreneurs opened J&L Computers. Business in the first couple of months was great, but shortly after the summer drought, things took a turn for the worse. They lost 55% of their clients and prospects for new business looked bleak. To make matters worse, Jordan's BMW was vandalized, and the damage was not covered by her insurance. Around the same time, she noticed that there was someone lurking outside of her apartment. So, she decided to purchase a 726 Puger handgun, the latest ergonomic polymer framed weapon on the market. Jordan carried it daily tucked away in a leg band under her socks and pants.

One month after the car was vandalized, Jordan learned that it would cost \$10,000 to repair the BMW. She attempted to negotiate with the repair company but was told that the car would not be released until all fees were paid. Determined not to ride the bus anymore, Jordan approached Lilton about a loan from J&L. Lilton told Jordan that the company was broke and would have to file bankruptcy. Desperate, Jordan confided in Lilton and told him that she had assumed her grandmother's identity but had never used the name to obtain money. Lilton encouraged Jordan to apply for a few credit cards using her grandmother's information. Jordan received one new card, but the credit limit was not enough to pay for the car repairs and her rent. Jordan decided to take matters into her own hands. Armed with the Puger, she borrowed Lilton's car and drove to the repair shop. Once there, she clipped the lock on the gate and entered the property where she saw a night watchman. Jordan knocked him out with the Puger and began looking for the BMW, but was unable to locate the car keys. She did however find \$5,000 in the cash register, which she took. On her way home, Jordan called Lilton and told him that she had decided to move to Canada to start a new life. Lilton, distraught because his girlfriend had just dumped him for a rich ski instructor, told Jordan that he would accompany her. As she was packing, she heard Lilton making several phone calls. Lilton later mentioned to Jordan that he had left fifteen voice messages on his ex's phone advising her that "he would get her." He also admitted that he had set her car on fire earlier that week.

The two hit the road, but two hours into the trip, Lilton told Jordan that he needed to stop at the nearest bank. He instructed her to wait in the car, but oddly grabbed a scarf from his luggage. Minutes later, Lilton came running out of the bank with a large manila envelope yelling

“step on it.” Jordan opened the door; Lilton jumped in the car, and she sped off. Lilton told Jordan that he had wrapped his hand in the scarf so that it would look like a weapon and demanded that the clerk give him all of her money. Surprisingly, when he opened the envelope, there was only \$1,000 in the bag. At that point, Lilton became hysterical, and Jordan pulled over on the side of the road. She told Lilton to grab their bags and get out of the car. The two walked to the nearest gas station where Jordan saw an elderly woman in a 1952 yellow Chevy. Jordan approached the woman and asked her to roll down her window. The woman complied, and Jordan stuck the Puger in her face, yelling at her to get out of the car and give her the keys. The CFI graduates then drove off in the Chevy.

The woman called the police and gave them a detailed description of the Chevy and Lilton’s car. Officers spotted the Chevy two hours later, activated their sirens and attempted to pull the vehicle over. Panicked, Jordan led police on a high speed chase, but after three miles, the Chevy ran out of gas and stopped in the middle of the interstate. Officers arrested Jordan after a short scuffle. Lilton jumped out of the car and sprinted down the street. Officers eventually apprehended him at a local bar three blocks away.

Preston, the night watchman, died three days later from injuries sustained when he was hit with the Puger.

Identify and fully discuss all crimes that Jordan and Lilton could be charged with under Louisiana law, to include a discussion of the elements of the offense.

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

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

After Lilton and Jordan were arrested, officers went to Jordan’s apartment with the intent to conduct a search for evidence. Upon arrival, they were met by a student worker who had recently been hired at the apartment complex. The officers identified themselves and asked the student worker for consent to search Jordan’s apartment. The student worker stated that she thought it was okay and attempted to locate the keys. The officers proceeded to the apartment and while waiting for the student worker, a gust of wind blew Jordan’s apartment door open revealing that the apartment was only secured by a chain lock. Unfortunately, the officers could not see anything in the apartment. After thirty minutes of waiting, the officers decided to save the student worker some time and effort, unhooked the chain lock and entered the apartment. The officers found bank documents, credit cards and identification cards on the kitchen counter. None of the cards belonged to Jordan, and all had missing photographs. The officers bagged and labeled all of the evidence prior to turning it into the evidence custodian.

Later that afternoon, the officers interviewed the owners of M&P who advised that Lilton and Jordan worked for them for over two years, but were fired. They gave the officers access to their old lockers. The officers found a receipt for a Puger handgun and instructions on how to obtain identities in Jordan’s old locker.

After Lilton’s car was towed to the station, the officers proceeded to prepare an inventory of the contents of the car. On the passenger front seat of the vehicle, they found matches and a receipt for twenty gallons of gas. They seized, bagged and logged all of the items into evidence. While in the booking area, they saw both Lilton and Jordan being transferred to a holding cell. One of the officers asked Lilton if there was anyone that he would like notified, and Lilton responded, “I knew that she was going to get us in trouble.”

That afternoon, after his initial appearance, Lilton was released on bond. Jordan remained in detention awaiting appointment of counsel. The officers followed Lilton into the parking lot and asked to speak with him. Lilton advised the officers that he would prefer not to talk to them without his lawyer being present. The officers told Lilton that he was in a lot of trouble, and they recommended that he talk without his attorney. They also warned him that if he didn’t cooperate, he could be arrested again. Reluctantly, Lilton agreed to go with the officers. He was questioned for two hours and confessed. After completing a written statement, officers read Lilton his *Miranda* warnings and told him that he was free to go.

The next day, officers interviewed the owner of the Chevy. The elderly woman had recently undergone eye surgery, but told officers that she could identify the voice of the person who took her car. She further explained that she had perfect hearing. At the station, the officers placed Jordan in an interview room and instructed her to read four lines from the newspaper while the witness was in another room listening. Four other females also read the same lines during the session, but the elderly woman identified Jordan as the person who took the Chevy. The officers recorded all of the readings.

Identify and fully discuss all constitutional grounds for challenging the following: (1) the search of Jordan's apartment; (2) the admissibility of the items found in Jordan's locker; (3) the admissibility of the items found in Lilton's car; (4) the admissibility of the statement made by Lilton while being booked; (5) the admissibility of the statements made by Lilton after his initial appearance; and (6) the identification procedure that implicated Jordan.

III.

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

Before and during Jordan and Lilton's trial, the following events occurred. Identify and address what action, if any, should be taken to resolve the issues. Fully explain your answers.

- (1) There has been a lot of pretrial publicity including media coverage of the arrests and bookings. The local press has run a story on the case every day for two weeks, labeling Lilton and Jordan as a 21st century Bonnie and Clyde. What, if anything, should their attorneys do, and what will the likely outcome be?
- (2) Jordan was detained without bond. Two years have passed since her initial detention hearing, and the matter has not been set for trial. What, if anything, should her attorney do?
- (3) When the trial date is set, Lilton's attorney realizes that he needs additional time to prepare and interview witnesses. How should he proceed to get the trial date extended?
- (4) During a pretrial conference, Lilton's attorney and a clerk overhear the presiding judge commenting on how he hated arsonists because his grandmother's house was burned down when he was a child. Is it possible for Lilton's attorney to get another judge assigned to the case?
- (5) After visiting with Jordan at the jail, her attorney notices that she is acting strange and talking about aliens visiting her. What, if anything, should Jordan's attorney do?
- (6) The prosecutors want to introduce evidence which will show that Jordan was arrested twice by campus police while in college for having student identification cards in her dorm room. Will they be successful?
- (7) The majority of the evidence in the case and the news media has been focused on Jordan's life of crime. Although they have been charged together, is it possible for Lilton's attorney to get his client tried without Jordan?
- (8) At the start of the trial, what should the lawyers do to try to preserve the integrity of each witness's testimony?
- (9) On the second day of trial, Jordan advises her attorney that she has evidence placing her in another state at the time the arson was committed. Should the court permit the evidence to be introduced into the record?
- (10) At the end of the two week trial, Jordan and Lilton are convicted of all counts. After the jury foreman announces the verdict, the judge asks the attorneys if there is any other matter that needs to be addressed. What, if anything, would you recommend that they do?

END OF EXAMINATION

LOUISIANA BAR EXAMINATION
Federal Jurisdiction and Procedure
February 2010

Question One (25 Points)

Amy, a lifelong resident of Florida (FL), is involved in a number of business pursuits around the country, including investments in the natural gas industry in Louisiana. All of Amy's business pursuits in Louisiana are engaged in through AGP, Inc., a corporation formed under New York law and in which Amy owns 55% of the shares. The remaining shares are owned by eight other individuals, all of whom are, like Amy, citizens of Florida. AGP's business pursuits are not limited to Louisiana. It also owns property and mineral interests scattered throughout Texas, Alabama, and Arkansas. All of AGP's administrative and regulatory requirements are handled by a three-person staff in a business office in Oil City, Louisiana (LA).

AGP became interested in investing in a producing gas field in north Louisiana, and it solicited two investors to help raise the needed capital. The two investors were Bob, an Oklahoma (OK) citizen and Matt, who splits his time between Hot Springs, Arkansas (AR) and Dallas, Texas (TX). Matt lived in TX for 30 years during his career as a geologist. After he retired, he bought a home in Hot Springs, AR where he spends as much time as possible. He sold his home in Dallas, but he maintains a small apartment there, and he returns to Dallas about three days a month in connection with consulting contracts. He plans to consult for about two more years and retire completely.

Bob, AGP, and Matt formed BAM, a Louisiana Partnership in Commendam. Bob and Matt became limited partners in BAM. AGP became the general partner of the organization. BAM purchased the operating gas field.

BAM contracted with The Code Cracker (TCC) to provide accounting services. The TCC business is located in an office in Texarkana, AR. It is owned by Tim, who is domiciled in the neighboring cross-border city Texarkana, TX. All members of the eight-person staff Tim hired to work at TCC live in the AR city. Tim intended to incorporate his business but never got around to it. Instead, he just hung out a TCC sign and went to work.

A royalty owner made demand on BAM for underpayment of royalties. BAM negotiated a settlement agreement by which it agreed to pay the royalty owner \$100,000 in monthly installments of \$10,000. BAM signed the settlement agreement. BAM soon discovered that the underpayment was caused by a defect in the accounting software used by TCC so, after making three monthly installments toward payment of the settlement amount, BAM filed suit against TCC in a Louisiana federal court.

- 15 pts.** **1.A** Discuss in detail whether and how the Louisiana federal court would have diversity subject-matter jurisdiction over the case under 28 U.S.C. § 1332. You must discuss all aspects of the citizenship of each party and any other elements of diversity jurisdiction to receive full credit.

Your ability to demonstrate knowledge of how to properly analyze the issues may be more important than your conclusion with respect to some issues, so conclusory answers will receive little credit.

- 4 pts.** **1.B** Assume that the federal court in Louisiana decides that it can exercise subject-matter jurisdiction over the dispute. After the suit is filed, Tim strikes a deal with Rich to become an investor in TCC. The two men sign an agreement to operate TCC as a partnership. Rich is a citizen of Oklahoma.

Discuss the effect that Rich becoming a partner in TCC would have on subject-matter jurisdiction over the federal suit.

Discuss the effect that Rich becoming a partner in TCC would have if the partnership agreement had been completed before BAM filed suit.

- 6 pts.** **1.C** Federal courts may exercise personal jurisdiction over a defendant pursuant to (a) general jurisdiction or (b) specific jurisdiction.

Compare and contrast those two forms of personal jurisdiction, and generally discuss the factors that courts look to in determining whether such jurisdiction exists.

EXAMINATION CONTINUES ON NEXT PAGE

Question Two (25 points)

5 pts. **2.A** Kim is a law clerk for a federal district judge. The judge's first assignment for Kim is to complete a draft of a ruling on a motion for summary judgment. The judge wants to see how Kim thinks, so he does not give her any hints on the proper outcome. He does give her this two-paragraph draft of the facts:

“The complaint in the case was filed by a driver who was injured in a car accident that she alleged was caused by a speeding and intoxicated defendant driver. Before the court is the defendant's motion for summary judgment. The motion is supported by (a) the affidavit of an eyewitness who testifies that the defendant was driving under the speed limit and the cause of the accident was plaintiff pulling into the path of the oncoming defendant, and (b) an affidavit from a policeman that the defendant driver's blood alcohol content test showed a level of 0.0 at the time of the accident.

The plaintiff has filed a memorandum in opposition to the motion. She points to the direct allegations in her complaint that “the defendant driver was barreling down the highway at an extraordinarily high rate of speed after consuming numerous alcoholic beverages and becoming intoxicated, and it was that speed and intoxication that caused defendant to negligently smash into plaintiff's car and cause her great injury.” She also argues in her memorandum that the eyewitness is not credible because he is a friend of the defendant driver. The plaintiff did not submit an affidavit or other evidence.”

Pretend that you are Kim and complete the draft of a short ruling (perhaps two or three more paragraphs) for the judge to consider. (You do not need to set the facts out again or include case citations or references.) Your draft should reach the proper resolution of the motion for summary judgment and demonstrate your knowledge of the applicable rules for analyzing the submissions of the parties.

4 pts. **2.B** Federal law provides that each party in a civil case is entitled to three peremptory challenges during the jury selection. Ron, counsel for the plaintiff in a case filed in a Louisiana federal court based on diversity jurisdiction, used all three of his peremptory challenges. He then argued that the trial judge should afford him three more challenges because Louisiana Code of Civil Procedure Article 1764 provides that he is entitled to six peremptory challenges. Discuss how the trial judge should respond to the request and the legal basis for his decision.

- 4 pts.** **2.C** Tom is the lawyer for Zip Trucking Company, which was sued in federal court for damages related to an auto accident. Tom reviewed his file and saw that his initial disclosures are due soon, so he reviewed his file to assess what items he must disclose as part of that procedure. He found these items:
- (1) A computation by Zip’s own expert economist about the possible value of the lost wages the plaintiff driver may claim;
 - (2) A copy of Zips’s auto liability insurance policy with a \$50,000 deductible;
 - (3) The name and contact information for Jane, an eyewitness who saw the accident and said Zip’s driver was 100% at fault because he ran a red light; and
 - (4) A certified copy of a 2006 conviction of the plaintiff for felony burglary.

Explain briefly, with respect to each item, whether Tom must disclose it as part of his Rule 26 initial disclosures. Hint: Only one item must be disclosed.

- 3 pts.** **2.D** Ray, a Louisiana citizen, was not pleased to see a paper mill (owned by a Louisiana corporation) constructed near his rural home. Within months of the mill opening, Ray’s cars began to rust, and the paint began to peel from his home. Ray calculated the damages at \$84,000. He made demand on the paper company, which he argued was at fault because its chemical emissions had done the damage. The company argued that it was not at fault because its plant and emissions were in full compliance with the federal Paper Emissions Act (PEA). Ray disagreed, and his attorney assembled an impressive stack of lab reports that indicated the emissions exceeded that allowed by the federal PEA.

Ray decides to file a tort suit against the paper mill for the \$84,000 in damages. Discuss whether a federal district court in Louisiana would have subject-matter jurisdiction over Ray’s suit.

- 3 pts.** **2.E** Assume the facts set forth in the above question except that Ray has not yet filed suit. The mill believes that its chances would be better in federal court and would like to file suit there before Ray files suit in his hometown state court. Under what federal law might the mill ask a federal court to decide whether its emissions were in compliance with the federal PEA?

Discuss whether a federal court would have subject-matter jurisdiction to hear the mill’s suit if the dispute were over compliance with the Louisiana Industrial Emissions Act rather than the federal PEA.

- 3 pts.** **2.F** 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 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 available source of the information.

- 3 pts.** **2.G** Write down the letter of the *one* of the following orders that may be appealed immediately.
- A. An order that dismisses a plaintiff's federal claim, but leaves two state-law claims pending.
 - B. An order, in a suit filed under 42 U.S.C. § 1983, that denies a defendant police officer's motion to dismiss that raised a defense of qualified immunity.
 - C. An order that denies a motion for summary judgment in a breach of contract case because there are disputed issues of fact.
 - D. An order that dismisses all claims against two of the three defendants in an employment discrimination case.

EXAMINATION CONTINUES ON NEXT PAGE

Question Three (25 points)

Pam, a Louisiana citizen, worked at Dunder Paper Company, Inc. (DPC), a Louisiana corporation, for several years. After Pam became pregnant, her boss Mike began to make snide comments about Pam being focused more on shopping for baby clothes than selling paper.

A month after Pam announced that she was pregnant, Mike announced that two employees had to be laid off. Pam and Erin, who was also pregnant, were the two employees let go. On Pam's final day at work, Mike organized a going away party at which he told several off-color and offensive jokes about pregnant women. Pam became hysterical and left the office. Three weeks later, Pam was still distraught and, in a fit of tears, wrecked her husband Jim's car. The car was Jim's separate property.

Pam and Jim hired an attorney to file suit for them in federal court. The complaint set forth on behalf of Pam a claim against DPC under the federal Title VII statutes regarding employment discrimination. Pam also asserted a state law claim against DPC and Mike for intentional infliction of emotional distress, which the attorney valued at no more than \$60,000. The complaint set forth a claim by Jim against DPC for \$25,000 in damages to his car.

- 6 pts.** **3.A** Pam and Jim file a complaint in federal court against DPC and assert the federal and state law claims described above.

Explain why the federal court does or does not have subject matter jurisdiction to hear Pam's (a) federal law claim and (b) state law claim. (4 pts.)

Explain why the federal court does or does not have subject matter jurisdiction to hear Jim's state law claim. (2 pts.)

3 pts. **3.B** Assume that the federal court elects to exercise jurisdiction over the entire complaint. Both Mike and DPC are named defendants.

Write down the letter of the one of the following that is *not* a valid means of satisfying the service requirements of Rule 4 of the Federal Rules of Civil Procedure.

- A. A retired barber, hired by Pam and Jim, delivers a summons and a copy of the complaint (for service on DPC) into the hands of DPC's agent for service of process, at the agent's office in Bunkie, LA.
- B. Pam's 35-year-old friend delivers a summons and a copy of the complaint (for service on Mike) to Mike's house. Mike is in Australia on business, but the cousin leaves the papers with Mike's 17 year-old daughter.
- C. A deputy sheriff delivers a summons and copy of the complaint (for service on Mike) to Mike's office in the DPC building. Mike is attending a seminar two blocks away, so the deputy leaves the papers with Mike's 30-year-old secretary, who says she will hand the papers to Mike as soon as he returns.
- D. Pam and Jim's lawyer sends, by first-class mail, a request for waiver of service (by Mike), accompanied by a copy of the complaint and other waiver documentation, to Mike at his work address. Mike waits 10 days but then reluctantly signs the waiver and returns it to the plaintiffs' lawyer.

3 pts. **3.C** DPC's lawyer later began reviewing the file and discovered what he believed to be a defect in service of process. What must DPC do to properly raise the service issue and avoid waiver of the defense?

3 pts. **3.D** DPC's attorney sent a letter to the plaintiffs' lawyer and suggested that counsel hold a Rule 26(f) conference to develop a proposed discovery plan. The plaintiffs' lawyer instead served notices of 15 depositions of DPC employees who are believed to have been witnesses to the alleged employment discrimination. What two procedural grounds could DPC raise to object to the depositions?

4 pts. **3.E** Mike filed a motion and persuaded the judge that the claim against him lacked merit, so the judge entered an order that dismissed all claims against Mike. The claims against DPC remain set for trial.

Explain whether or not Jim and Pam may immediately appeal the order that dismissed all claims against Mike.

What procedure might Jim and Pam ask the district judge to employ that would ensure that the dismissal of the claims against Mike are subject to immediate appellate review?

3 pts. **3.F** The claims against Mike remain dismissed. DPC filed a motion for summary judgment and, just one week before the trial was to begin, the judge granted the motion in part by dismissing all federal law claims but leaving pending the state law claims against DPC.

Discuss whether the federal court still has a basis to continue to exercise jurisdiction over the state law claims. Discuss whether the court could exercise its discretion to dismiss the remaining state law claims and, if so, whether it should do so under the circumstances.

3 pts. **3.G** The state law claims against DPC proceed to trial, and Pam and Jim procure a final judgment in their favor for \$100,000. DPC wants to appeal the judgment and put a halt to any efforts to collect or enforce the judgment pending the appeal.

Write down the letter of the *one* of the following procedural devices that is the most appropriate for DPC to achieve that goal:

- A. Interpleader
- B. Interlocutory appeal order
- C. Stay by supersedeas bond
- D. Notice of Execution

EXAMINATION CONTINUES ON NEXT PAGE

Question Four (25 points)

Dan, a Wyoming (WY) businessman, contracted with Louisiana Beef, Inc. (LBI) to purchase several calves that LBI would feed and care for until they reached the age of six months. LBI would receive a bonus payment if the average weight of the calves exceeded a target weight.

LBI, a Louisiana corporation with an office in Lake Charles, LA, raised the calves on land it owned near Beaumont, Texas (TX). Dan agreed to LBI's suggestion that Beaumont veterinarian Dr. Tex be retained to provide veterinary services for the calves.

Dan discovered evidence that caused him to believe that LBI and Dr. Tex were in cahoots, injecting the calves with drugs that caused them to bulk up but that were not lawful in animals to be used for human consumption. Dan estimated that his losses, if the calves could not be sold, would exceed \$100,000.

3 pts. **4.A** Dan hired an attorney to sue LBI and Dr. Tex for fraud and breach of contract. The attorney determined that all of the parties are diverse in citizenship. He considered filing suit in the federal court in the Western District of Louisiana, which encompasses Lake Charles, the location of LBI's office. Discuss whether venue would be proper in that court.

4 pts. **4.B** Dan's attorney decided that Dan's chances would be better in the Calcasieu Parish (Lake Charles), Louisiana state court, and he filed a petition in that court on June 1, 2009. Service of process was made on LBI on July 1, 2009, and Dr. Tex received his Long Arm service on July 10, 2009.

LBI's lawyer wanted to have the case heard in federal court. He called Dr. Tex to discuss this strategy, but Tex said that he was not going to discuss the matter or sign any papers until he could hire a lawyer, which he expected would take a few weeks. On July 28, 2009, LBI's lawyer filed papers to state LBI's desire to remove the case to federal court.

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

2 pts. **4.C** Before removing the case, LBI's attorney became convinced that the federal court in Beaumont, TX would be a proper venue for the case. He also believed that LBI would find the Texas federal court a friendlier forum and that it would be less expensive to try the case in Texas because most of the witnesses and veterinarian records were in Beaumont. Describe what step(s) LBI would have to take to get the case from the Louisiana state court to the Texas federal court. Note: There is a lawful way to do this.

4 pts. **4.D** Keep in mind the facts in the introduction as well as those in question 4.B. Assume the case is removed to a Louisiana federal court. Dan wants to return the case to state court. Discuss two grounds disclosed by the facts that Dan may use to argue for a return to state court.

4 pts. **4.E** Assume the case is still in a Louisiana federal court. Dan learned that, shortly before he filed suit, LBI merged into a limited liability company, and one of the members is, like Dan, a Wyoming citizen.

Dan, on October 10, 2009, filed a motion to remand that asserted the two removal defects you identified in response to question 4.D and the absence of diversity of citizenship . Explain whether and why Dan timely raised (a) the grounds identified in question 4.D and (b) the citizenship issue.

2 pts. **4.F** A truck driver lost control and damaged six cars before he came to a stop. Each of the six different owners of the cars, all of whom are Louisiana citizens, estimates the damage to his car at about \$20,000. The six owners would like to file one suit against the California trucking company in a Louisiana federal court. Discuss whether the court would have subject-matter jurisdiction to hear the complaint.

3 pts. **4.G** A civil rights case is tried before a jury in federal court. After the plaintiff has been fully heard, the defense attorney makes a motion for a Rule 50 judgment as a matter of law. Write down the letter of the *one* scenario below in which the federal judge could properly grant the motion for judgment as a matter of law.

- A. The plaintiff was the only witness that supported his claim of excessive force, and the plaintiff had multiple felony convictions that caused the judge to not believe a word he said.
- B. The plaintiff's attorney promised in his opening statement to establish certain facts, but he did not deliver all that he promised.
- C. Some witnesses testified for the plaintiff, and others testified for the defense, but the judge believed that the defense evidence substantially outweighed that offered by the plaintiff.
- D. The plaintiff's evidence showed that all of the relevant events happened outside the prescriptive (limitations) period.

3 pts.

4.H Write down the letter of the *one* answer below that is a description of a claim that should be asserted against the defendant in his official capacity:

A. An on-duty, uniformed Louisiana state trooper uses excessive force during an arrest. The arrestee sues the trooper under 42 U.S.C. § 1983 for money damages and attorney fees.

B. A city policeman engages in a pattern of racial harassment against a minority resident of the town. The resident sues the officer under 42 U.S.C. § 1983 for an injunction against his harassing behavior.

C. Corrections Officer Jenkins, who is in charge of the dining hall at a Louisiana state prison, refuses to provide a Kosher diet for two Jewish inmates. The inmates sue Jenkins under 42 U.S.C. § 1983 for damages and an injunction that would require the officer to provide a Kosher diet.

D. The State of Louisiana passes a statute that makes it a crime to display a campaign sign on a Mardi Gras float. A citizen sues the Louisiana attorney general under 42 U.S.C. § 1983 to enjoin enforcement of the law on the grounds that it violates the First Amendment.

END OF EXAM

Louisiana Bar Examination

February 2010

Business Entities and Negotiable Instruments

Question No. 1 - 30% (6 points each subpart):

Your new clients, Charley, Sally and Pat, want to form a new business to sell Saints Superbowl gear in the French Quarter. They want to name their business "Saints Superbowl Gear, Inc." They will be equal shareholders of 100 shares each, without par value. Sally and Pat will run the day-to-day business and Charley wants to be a silent investor with no managerial responsibilities. A partner in your firm has asked you to represent them and to serve as their incorporator in forming their new business.

- A. The partner asks that you advise him of the papers necessary to form a Louisiana corporation and to discuss the minimum information that must be included in these papers.
- B. Identify for your clients three rights for shareholders which must be included in the articles of incorporation in order for the shareholders to have these rights. Please explain how each of these rights may be important to a shareholder.
- C. Is Saints Superbowl Gear, Inc. required to issue certificates of stock representing the shares of ownership in the business? If the company issues certificates of stock, what information must be shown on each share certificate? If the company does not issue stock certificates, will this affect the rights and obligations of Charley, Sally and Pat as shareholders?
- D. What officer positions (if any) must your clients elect? How many persons may hold these positions? It is required that the officers must also be directors? Is it required that Charley, Sally or Pat be officers or directors?
- E. If your clients want to form a limited liability company, please discuss any changes you would make to the information you set forth in response to subpart A above. Would the company be member-managed or manager-managed based on your client's objectives?

Question No. 2 - 20 points total (5 points each subpart):

Jack is an alligator farmer who raises alligators for trade in Ville Platte, Louisiana. While the alligator business had made Jack a wealthy man in the 1990s, the business ran into trouble in the early 2000s, causing him to bring in a partner, Jill. Jack and Jill are 50/50 owners in the alligator business called Pelts & Skins, Inc. Pelts &

Skins is a properly formed and licensed Louisiana corporation. Before Jack had taken on Jill as a partner, Jack was the sole shareholder, the president and a board member. His two children were also on the board and held officer positions. Because of this, Jack was very liberal with paying certain expenses out of the company's operating account. For instance, Jack had the company pay for his summer vacation rental in Destin, Florida and his season tickets for the Saints. Jack entertains clients of the alligator business by taking them to the Saints home games. He continued this practice even after Jill became his partner, although Jill is unaware of this.

The Pelts & Skins business had recently taken a drastic downturn when the food supply for the alligators was contaminated and caused the alligators to become sick. As a result, the crop would not be ready for harvest this year, and the company would have very little revenue. The tainted food supply was purchased from a business owned by Jack's wife, Ville Platte Feed & Supply. Jack and Jill are aware that the potential cause of the problem with the alligator crop was the tainted food supply. Jack, Jill and Joe are now the current board members of Pelts & Skins, and they are meeting to discuss whether to renew or terminate the contract with Ville Platt Feed & Supply because of the tainted alligator food. Joe is childhood friend of Jack's who has been an employee of the Pelts and Skins business since Jack started the business. Joe is not a shareholder. You are asked to address the following questions:

- A. Should Jack participate in the board's vote relative to renewing or terminating the contract with Ville Platte Feed & Supply? Explain fully why or why not?
- B. Jill is angered and wants to bring legal action against Ville Platte Feed & Supply. Jill knows, however, that Jack and Joe have been close friends for many years before Jill became an owner in the business. If Jack and Joe will not authorize legal action against Ville Platte Feed & Supply, explain whether there are any rights available to Jill to accomplish this.
- C. What duties does Jack owe to Pelts & Skins and has Jack breached these duties by having the company pay for his Destin summer vacation rental and the Saints season tickets? Would your answer be different if Jack sought the advice of an accountant who advised Jack that the company should pay for these expenses? Explain why or why not.
- D. If Jack is sued by the corporation over his participation in the decision to

award the contract to Ville Platte Feed & Supply and he successfully defends himself, would Jack be entitled to be reimbursed by the company for his legal fees? Would your answer be different if Pelts & Skins was formed as an LLC and Jack was a managing member?

Question No. 3 - 30 points (3 points each subpart):

Please answer the following questions in complete sentences in order to give a full explanation of your answer. One word answers will not receive full credit.

- A. Does a director of a corporation, acting alone, have the authority to sign contracts on behalf of a corporation and thereby bind the corporation? Please explain any assumptions pertinent to your answer.
- B. Can a shareholder of a corporation withdraw from the corporation and require the corporation to purchase his or her stock in the company? If so, under what circumstances?
- C. Explain the term "cumulative voting" and under what circumstances it is available to the shareholders of a corporation.
- D. Who may be held liable for unlawful dividends issued by a corporation and when must such an action be brought? Please explain any assumptions pertinent to your answer.
- E. What vote is required by the members of a liability company to sell or lease immovable property, *i.e.*, real estate, owned by the company? Would your answer change if the limited liability company was manager-managed?
- F. Please describe a voting trust and the purpose for which they are used.
- G. What business records is a corporation required to maintain at its offices for inspection by shareholders?
- H. What are the requirements for shareholders to be able to inspect the books and records of the company?
- I. What are the requirements for forming (i) a Louisiana general partnership and (ii) a Louisiana limited liability partnership?
- J. Explain the differences between a general partner's and a limited partner's liability for partnership debts?

Question No. 4 - 20 points (5 points each subpart):

Equity Properties is a local realtor in the business of owning and selling real estate in the New Orleans area. Equity is selling one of its properties, a house in Metairie, to Al for the purchase price of \$100,000. Al is paying the purchase price by way of a personal check for \$10,000 as a down payment to Equity, and Equity will owner-finance the balance of the purchase price (*i.e.*, \$90,000) with a promissory note and mortgage.

Equity does not usually offer owner-financing, but one of Al's neighbors and his close friend (Tom) works for Equity and they have agreed to the accommodation for Al since Al has had trouble obtaining financing from a bank because of a bad credit rating.

Al has drawn a check against his personal account with Tigerland Bank payable to Equity in the amount of \$10,000 representing the down payment. The next day, Al attends the closing at Equity and delivers the check to Equity, and Equity and Al execute the Act of Sale, Promissory Note and Mortgage for the house in Metairie. Two days before the closing, Al defaulted on his car loan with Tigerland Bank because he lost his job a month ago and could not find new employment. Al did not disclose his car loan default to Tom before the closing, but he did mention that he was looking for a new job. A day after the closing, Tigerland Bank places a stop-payment order on Al's check payable to Equity because the amount due on Al's defaulted car note is more than Al has in his account if the check of \$10,000 is honored. Equity learns from its bank that the check has been dishonored by Tigerland Bank and comes to you for advice on the following questions:

- A. Is Al's check a negotiable instrument? Please explain why or why not and discuss any assumptions or additional facts necessary to answer this question.
- B. Is Equity a holder-in-due course of Al's check? Please explain why or why not and discuss any assumptions or additional facts necessary to answer this question.
- C. What type of defenses might Tigerland 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 that Al had Tigerland Bank issue a personal check payable to "bearer" instead of a personal check payable to Equity. Can Equity be a holder-in-due course of a bearer's check under these facts? Explain fully.

END OF EXAMINATION