

CIVIL CODE I
LOUISIANA STATE BAR EXAMINATION
July 20, 2009

Question I.
(25 Points)

Jessica is a successful real estate broker living in Baton Rouge, Louisiana. On May 1, 1996, she purchased a house on Highland Road (the "Highland Property"). She financed the purchase with a \$100,000 loan from a local bank, which was secured by a first mortgage encumbering the property.

Shortly after purchasing the Highland Property, Jessica met Art and they began a relationship. On June 1, 1998, Jessica and Art were married and established the matrimonial domicile at the house on Highland Road.

In September 1998, Art began a course of study in veterinary medicine at Louisiana State University. At that same time, he borrowed \$50,000 from another local bank to pay for tuition and other educational expenses (the "Tuition Loan"). He signed a promissory note which was secured by Jessica's guaranty. During the four years that Art was in school, Jessica made all the monthly payments on the Tuition Loan and she also paid all the couple's basic living expenses.

In May 2002, Art graduated from veterinary school and obtained his professional license from the appropriate state licensing board. Following graduation, Art and Jessica purchased a piece of property in the Denham Springs area (the "Denham Springs Property") to construct and establish a veterinary clinic for Art's practice (the "Clinic"). The act of sale was signed on August 1, 2002 in favor of Art and Jessica as purchasers.

On that same date, Art and Jessica took out a \$300,000 mortgage loan to finance the property acquisition together with the cost of constructing and equipping the Clinic. Both Art and Jessica signed the mortgage note and mortgage for the Denham Springs Property.

To help with the purchase, Jessica also contributed \$30,000 as a down payment on the purchase price, which she withdrew from a savings account she opened in her own name in 1996. The savings account was initially funded with a \$50,000 donation Jessica received from her grandfather. Other than the initial deposit and accrued interest, no other funds have been deposited into this account.

When the clinic building was completed in November 2003, Jessica and Art granted a lease in favor of Denham Veterinary Service, A Professional Veterinary Medicine Corporation (the "Veterinary Company") for a term of thirty (30) years. The organizational documents of the Veterinary Company provide that Art is the sole shareholder and director. However, Jessica serves as the company bookkeeper and manages the payroll.

In 2005, Art bought a Louisiana Lottery ticket and won (after taxes) \$20,000. After a heated argument with Jessica, Art turned over the \$20,000 check to Jessica, who deposited it into a separate banking account in her name and used it to make a \$20,000 principal reduction on the loan on the Highland Property. The transfer was evidenced by an endorsement of the check by Art to the order of Jessica and no other supporting documents or instruments were signed by Art.

Since opening the clinic, Art has become a skilled veterinarian and the Clinic's business has expanded rapidly. The Veterinary Company's books show reflect that net revenue over the last three (3) years has averaged \$200,000 per year. The Veterinary Company pays Art a base salary of \$150,000 per year. Art and Jessica's lifestyle has been significantly improved by profits from the Clinic's operations.

For the last four years, Art has been taking money from the Veterinary Company's operating account and depositing it into a savings account he opened in his own name at another bank in the area. The total amount that Art has deposited into this savings account is \$30,000, exclusive of accrued interest earned and paid by the bank on the account.

In late 2007, Art and Jessica began experiencing marital difficulties which ultimately resulted in their separation when Art moved out of the Highland Property on April 1, 2008. A Judgment of Divorce was rendered on June 1, 2009.

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You are serving as Jessica's counsel in this matter and she has asked for advice concerning the partition of the community property regime. Advise Jessica by answering the following questions. **You must give full reasons for your answers in order to receive credit.**

1. Will the Highland Property be classified as separate or community property? Explain your answer. Answers without explanation will receive no credit. (**4 points**).

2. Will the Tuition Loan be classified as a community obligation? Explain your answer. Answers without explanation will receive no credit. (**4 points**).

3. Will the Denham Springs Property be classified as separate or community property? Explain your answer. Answers without explanation will receive no credit. (**4 points**).

4. Discuss the classification of Jessica's savings account and the earnings thereon under the applicable provisions of the Civil Code. Explain your answer. Answers without explanation will receive no credit. (**4 points**).

5. Can Art recover all or any part of the \$20,000 lottery winnings check that he endorsed over to Jessica? Explain your answer. Answers without explanation will receive no credit. (**4 points**).

6. Discuss Jessica's rights, if any, to Art's veterinary license and to the corporate stock of the Veterinary Company issued to Art. Explain your answer. Answers without explanation will receive no credit. (**5 points**).

[End of Question I]

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Question II.
(25 Points)

Alex and Betsy were married on November 1, 2000 and established their matrimonial domicile in Shreveport, Louisiana. Two children were born during the marriage, Dan and Cindy. Certain problems developed with the couple's relationship which ultimately resulted in their separation on April 1, 2007.

On May 1, 2007, Betsy filed a petition for divorce and, thereafter, the parties entered into a stipulated judgment which was signed on July 1, 2007 as to spousal and child support and custody (the "Initial Decree"). You have been representing Alex in this proceeding. The stipulated judgment awarded the parties joint custody of Dan and Cindy and designated Betsy as the domiciliary parent. Alex was granted visitation with the children for a full week during each month. The record of the proceedings when the judgment was rendered indicates that the court did not receive any evidence of either party's parental fitness.

On June 1, 2008, Betsy moved for and obtained a judgment granting her a divorce from Alex. This judgment did not alter or change anything contained in the Initial Decree signed on July 1, 2007. Betsy found a much better position in Monroe with a pharmaceutical sales company and she intends to move the 70 miles there with the children. She has just informed Alex of her plan to relocate and he has become concerned with the current custody arrangement.

Alex has observed some significant changes in Betsy's lifestyle and believes that these changes are having a negative impact on the children. One problem is that Betsy will be working much longer hours in her new position and will have less time to devote to the children. The problem has been magnified by the fact that Betsy previously relied on her mother for help with the children while she was at work. However, this help is no longer available because of the move to Monroe.

Additionally, Betsy has begun a relationship with Fred, a friend from work. The children do not like Fred, and Dan, who is now fourteen, discussed his concerns with Alex. Dan has observed that Fred frequently spends the night with Betsy, particularly on weekends, and that he consumes a great deal of alcohol. Fred has a violent temper which becomes worse after he has been drinking. On a number of occasions, he has threatened to physically discipline the children. Fred also plans to move to Monroe and find a new job. He and Betsy plan to live together with Cindy and Dan.

Alex believes that the move and the difficulties with Fred are beginning to affect the children. He has noticed that Dan is having difficulty with his schoolwork and that his grades have declined. Cindy, who is about to start school, has become somewhat depressed and withdrawn and is resisting starting school.

In light of the foregoing circumstances, Alex has met with you to consider action to modify the present custody arrangement and be designated as domiciliary parent for the children. He does not have a problem with granting Betsy visitation rights, but he is concerned about her relationship with Fred and negative effects on the children.

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

1. How would the Initial Decree as to custody and other matters be classified under Louisiana law? Explain your answer. Answers without explanation will receive no credit. **(4 points)**
2. What proof is required to change the Initial Decree? Explain your answer. Answers without explanation will receive no credit. **(5 points)**.
3. Assuming that the Initial Decree was rendered after receiving and considering evidence of parental fitness, what would Alex need to prove in order to prevail? Explain your answer. Answers without explanation will receive no credit. **(5 points)**.

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4. Explain to Alex the factors that the court will consider in determining whether the custody arrangements should be modified. Factors of particular relevance should be identified and discussed. Explain your answer. Answers without explanation will receive no credit. **(6 points)**.

5. Discuss Betsy's rights to visitation under the Civil Code in the event that the court designates Alex as domiciliary parent. Explain your answer. Answers without explanation will receive no credit. **(5 points)**.

[End of Question II]

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Question III.
(25 Points)

Part A.

Petrobucks Producing Company, Inc. (“Petrobucks”) owns and operates a fixed offshore drilling platform located in state waters adjacent to the coast of Louisiana. The drilling platform is operated pursuant to a mineral lease (the “Mineral Lease”) granted by the State Mineral Board to Petrobucks and its support structures are fixed on the seabed within the area covered by the Mineral Lease.

Petrobucks contracted with Gulf Contractors (“Gulf”) for construction of a three story steel structure for use as a living quarters unit (the “Living Quarters Unit”) for the crew working on the rig. The Living Quarters Unit was built on blocks at a construction site in St. Mary Parish and then transported out to the platform and lifted, installed and attached to the platform. The Living Quarters Unit is permanently attached to the platform. The contract with Gulf provides that the title to the Living Quarters Unit is vested in Gulf and will not transfer over to Petrobucks until the purchase price is paid in full. The contract is recorded in the conveyance records of St. Mary Parish, which is the parish where the Mineral Lease is filed.

Petrobucks has also entered into a lease agreement with St. Mary Compressors (“St. Mary”) for a two ton air compressor unit for use in drilling and extraction operations. The compressor was delivered and installed on the platform. The lease agreement was duly recorded in the St. Mary Parish conveyance records and provides that the compressor is and will at all times be St. Mary’s property.

Petrobucks is experiencing cash flow problems and is unable to make the required payments due to Gulf and St. Mary. Petrobucks has engaged you to represent it in negotiations with Gulf and St. Mary. In preparing your initial letter to Petrobucks, answer the following questions. **You must give full reasons for your answers in order to receive credit.**

1. How will the drilling platform be classified under the applicable provisions of the Civil Code. Provide reasons for your answer. Answers without explanation will receive no credit. (3 points).
2. Explain whether the Living Quarters Unit will be classified as an immovable or a movable. Provide reasons for your answer. Answers without explanation will receive no credit. (5 points).
3. How will the compressors be classified under the applicable provisions of the Civil Code? Provide reasons for your answer. Answers without explanation will receive no credit. (5 points).

Part B.

Aucoin owns a two acre tract of land (“Tract A”) located in Ascension Parish that he purchased from Borel in June, 2000. The act of sale in favor of Aucoin contained the following provision:

“Seller hereby grants Purchaser a non-exclusive servitude of use of the tennis court situated on Tract B adjacent to Tract A herein conveyed, as shown on the survey attached to this sale.”

Aucoin made regular use of the tennis court on Tract B, without any problem or objection from Borel, the owner of said property. However, Borel recently sold Tract B to Chauvin who has refused to permit Aucoin to use the tennis court, claiming the right of use was extinguished when Chauvin purchased Tract B from Borel.

The act of sale by Borel to Chauvin did not contain any reference to the right of use of the tennis court (the “Right of Use”) originally granted by Borel to Aucoin.

For purposes of your response, assume that all documents were properly recorded.

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Aucoin has consulted you concerning this matter. Advise Aucoin giving full reasons for answers. You must give full reasons for each answer in order to receive proper credit.

1. How would the Right of Use be classified under the provisions of the Civil Code? Explain your answer. Answers without explanation will receive no credit. **(4 points)**

2. Discuss whether the Right of Use was terminated when Borel sold Tract B to Chauvin. Explain your answer. Answers without explanation will receive no credit. **(4 points)**

3. Assume that the Right of Use is otherwise enforceable except for the fact that Aucoin has never used the tennis court. Discuss whether the Right of Use would still be enforceable. Explain your answer. Answers without explanation will receive no credit. **(4 points)**

[End of Question III]

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Question IV.
(25 Points)

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

1. Upon his death, Ben Cartwright left the naked ownership of his house to his two oldest sons, Adam and Hoss, and left a usufruct over the house to his youngest son, Joe. After Joe began living in the house, the air conditioning system, which was over twenty years old, failed and had to be replaced. Additionally, an unusually violent hail storm caused significant damage to the home's roof, requiring its complete reconstruction. Shortly after the storm, a shed in the backyard, which had been weakened as the result of an untreated termite infestation, collapsed. Joe has consulted you and asked if he is entitled to have his brothers pay for the repairs to the air conditioning system, roof and shed. Advise him of his rights. **(3 points)**

2. Mike and Carol were engaged to be married. On the day before their wedding, Mike asked Carol to sign a document waiving Carol's right to interim and final periodic spousal support. Carol became upset and told Mike she would never waive her right to support. Mike replied that if Carol would not sign the document, he would not go through with the wedding. Carol reluctantly signed the document, and the couple married. Unfortunately, the marriage has not gone well, and Carol is now contemplating a divorce. She has consulted you and asked whether the agreement precludes her from seeking interim or final periodic spousal support if the parties divorce. Please advise her of her rights. **(3 points)**

3. Oliver Douglas and Fred Ziffel own adjoining farmland in a rural area of the state. In 1997, Fred had a survey of his land's boundaries performed. Although Fred did not know it, the surveyor misread Fred's title and fixed the boundary incorrectly, encroaching fifty feet onto Oliver's land. Fred built a chicken coop on the fifty-foot strip and has used it continually. In 2008, Oliver had a survey performed and learned the boundary had been incorrectly fixed. Oliver then demanded that Fred demolish the chicken coop and remove it. Fred has now retained you as his attorney. He asks if he has any ownership rights to the fifty foot strip, and if not, whether he has to pay for the demolition and removal of the chicken coop. **(4 points)**

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

1. How does a person change his or her domicile? **(2 points)**
2. Define incorporeals and give an example of an incorporeal. **(2 points)**
3. What are the requirements for the contract of marriage? **(2 points)**
4. List the different kinds of tutorship established in the Civil Code. **(2 points)**
5. What are movables by anticipation? **(2 points)**

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

1. Standing timber is considered to be a movable when it belongs to a person other than the owner of the land. **(.50 points)**
2. Because an unborn child who is born dead is not considered to have existed as a person, any action resulting from its wrongful death is automatically extinguished. **(.50 points)**

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3. The naked owner may alienate or encumber property subject to a usufruct, but cannot thereby affect the usufruct. **(.50 points)**
4. During the community property regime, a separate obligation may only be satisfied from the separate property of the spouse who incurred the obligation **(.50 points)**
5. A person who possesses a movable for ten years but lacks good faith and just title acquires ownership of the movable. **(.50 points)**
6. An issue in a case involving contacts with other states is governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue. **(.50 points)**
7. If an estate becomes enclosed as a result of a voluntary act or omission of its owner, the neighbors are required under the law to furnish a passage to the owner of the enclosed estate. **(.50 points)**
8. Occupancy is a recognized mode of ownership under the Civil Code whereby a person takes ownership of a corporeal movable that does not belong to anyone. **(.50 points)**
9. A predial servitude may never be established on property of the state. **(.50 points)**
10. An award of interim spousal support must terminate no later than one hundred and eighty days from the date of divorce. **(.50 points)**

CIVIL CODE II
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JULY 2009

QUESTION 1
(25 POINTS)

Mary Jo was married to Henry. Two children, Barbara and Nancy, were born of their marriage. Henry died intestate. After his death, all matters related to his succession were completely and fully resolved.

After Henry's death, Mary Jo lived with Quinton for several years. Mary Jo and Quinton never married, but they had one child together, Charles.

After Mary Jo and Quinton split up, Mary Jo married John. John was a widower with one child, Doris, when he married Mary Jo. Mary Jo and John had three children who were born of their marriage, Owen, Patricia and Ronald. During Mary Jo's marriage to John, Mary Jo's parents gave her a piece of property in St. Charles Parish, and they also gave her \$100,000.00 in cash. Mary Jo deposited the \$100,000.00 into the joint checking account she maintained with John.

Charles married Anna. Discovering that they were totally incompatible, Charles and Anna parted shortly after they were married, and they always lived separate and apart after that. Although they were never formally divorced, six months after Charles and Anna separated, Anna gave birth to a son, David.

Doris grew up to be a beautiful young woman. She was a successful model and became very wealthy. Due to the hectic nature of her work, Doris never married and she never had any children. Doris died unexpectedly and intestate while scuba diving off the coast of Mexico. Doris was survived by everyone outlined above except Henry.

Shortly after Doris' death, Mary Jo was diagnosed with cancer. Mary Jo was very ill for a two year period prior to her death. She was on some very heavy medications, including strong pain medications for several months prior to her death. During her illness, Mary Jo came more and more to rely on her primary nurse, Nurse Jane. Just prior to her death, Mary Jo secretly executed a donation *inter vivos*, valid in form in all respects, and gave Nurse Jane property in St. Charles Parish which her parents had given to her. Nurse Jane promptly filed an acceptance, valid in form. After her death, Mary Jo's family found out about the donation and one of the other nurses told Mary Jo's family that she had overheard Nurse Jane tell Mary Jo that she would not give her pain medication unless Mary Jo was nice to her.

Mary Jo died intestate, leaving separate and community property. She was survived by everyone outlined above, including her parents, except that, in addition to Henry and Doris, Barbara also predeceased Mary Jo. Barbara, who also died intestate, never married, but she was survived by her two children, Alice and Bruce.

QUESTION 1(A)
(8 points)

Charles learned about David's birth within several days after the child was born, and he comes to see you about four months after he learned about David's birth. He tells you that he does not believe that David is his child, as he and Anna are both blue-eyed, and he has been told that David has brown eyes. He tells you that he has not attempted to gather any proof or evidence yet as to paternity, nor has any action of any type been instituted. He asks you what he can do, if anything, to determine or dispute the paternity of David, when any suit to dispute paternity would have to be filed, and what will or could be the consequences if he does not dispute paternity. Please answer Charles' questions and include a discussion of the type of evidence which would be needed and the burden of proof necessary.

QUESTION 1(B)

(5 points)

After Doris' death, Mary Jo and John consult you about Doris' estate. They want to know who is entitled to inherit Doris' estate and in what proportions. What advice do you give Mary Jo and John?

QUESTION 1(C)

(7 points)

After Mary Jo's death, John and Patricia consult you for advice. First of all, they want to know if the donation to Nurse Jane can be challenged. Please discuss in your answer possible ways to challenge the donation Mary Jo made to Nurse Jane prior to her death, and the burden of proof which would be involved.

QUESTION 1(D)

(5 points)

John and Patricia also want to know who is entitled to inherit Mary Jo's estate and in what proportions. Please include in your answer what the disposition should be of the property in St. Charles Parish and the \$100,000.00 which Mary Jo received from her parents.

END OF QUESTION 1

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QUESTION 2
(50 POINTS)

Foster was married twice --- first to Cheryl, who died in 2002, and second to Elizabeth in 2005. Foster and Cheryl had four children: Donald, born in 1980; Margaret, born in 1982; Jennifer, born in 1986; and Melanie, born in 1987. No children were born of the marriage between Foster and Elizabeth, but they adopted Angela in 2007. Angela was one year old at the time of that adoption.

In 2003, Foster downloaded a form entitled "Universal Will" from the internet and printed out the form. The form indicated that it was "valid in all 50 states." Foster filled in the blanks on the form in his own handwriting to leave his entire estate in trust with his daughters as the beneficiaries for a period of 10 years after his death. Upon the expiration of the period of 10 years after Foster's death, all of the property held in the trust at that time, including all accrued income, would be distributed equally to Foster's daughters. Near the bottom of the form, Foster wrote the following all in his own handwriting, "I am not leaving anything to Donald, because he would never follow my advice. Under no circumstances, do I ever want any of my property to go to Donald." Below that, Foster filled in the date in his own handwriting, "March 16, 2003," and signed the instrument.

On January 7, 2005, Foster wrote the following entirely in his own handwriting on a sheet of notebook paper: "I hereby bequeath my condominium on St. Charles Avenue in New Orleans to the Tulane University Medical School." Foster dated that instrument at the top of the sheet of paper in his own handwriting and signed it at the end. Below his signature, Foster had written in his own handwriting, "I am presently a resident of St. Tammany Parish."

On November 23, 2007, Foster executed a notarial testament, valid in form, before a Notary Public and two competent witnesses. This will, which did not expressly revoke any prior wills, contained only the following dispositive provisions:

- “(A) I bequeath to Elizabeth my residence in St. Tammany Parish, and the usufruct of all of my bank accounts.
- (B) I bequeath my condominium on St. Charles Avenue in New Orleans to my son, Donald.
- (C) I bequeath all of my marketable securities, to my daughters, Margaret, Jennifer, and Melanie, in equal portions, share and share alike.
- (D) I bequeath my high definition television set to my friend, Richard; and
- (E) I bequeath to any forced heir that I may have an amount equal to his or her forced portion of my estate.”

On July 1, 2008, Foster executed an Act of Donation of his residence in St. Tammany Parish, to his friend, Parker. Foster signed the Act of Donation before a Notary Public and two competent witnesses and then recorded the Act of Donation in St. Tammany Parish. Parker, who died in August 2008, was aware that Foster had donated the property to him, and thanked him for it on many occasions. Parker, however, was not a party to the Act of Donation and never executed any written acceptance of the donation.

In January 2008, Foster told his friend, Jeremy, in the presence of two witnesses that Jeremy could have his high definition television set. Foster delivered the television set to Jeremy's house, and Foster never reacquired the television set.

Jennifer died in May 2008. She was survived by two children: Alice, age 3; and Jonathan, age 1.

In July 2008, Margaret was involved in a boating accident and sustained a very serious brain injury. Margaret's doctors indicated that she could no longer handle her financial matters and take care of her person. As a result of the accident, Margaret would have to be institutionalized for the rest of her life. Melanie was appointed as Margaret's curatrix.

Foster died on March 11, 2009. A diligent search was made for the original copy of the instrument dated November 23, 2007. The original copy of that instrument could not be found, but a copy of the instrument was found in Foster's office in New Orleans. The following notation was written in Foster's handwriting at the bottom of the copy: "I was keeping the original signed copy of this will dated November 23, 2007 in my desk at my residence in St. Tammany Parish. That residence and all of its contents, including the original copy of this will, was destroyed in Hurricane Gustav. But this is still the will I want to apply in the event of my death." Foster signed, but did not date, that notation on the copy of the will.

At the time of his death, Foster had sufficient assets to satisfy the legitime of any forced heirs. Foster and Elizabeth had entered into a valid premarital agreement in which they agreed that they would not have any community property.

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

QUESTION 2(A)
(5 points)

Was the March 16, 2003 instrument valid in form as a Louisiana will?

QUESTION 2(B)
(5 points)

Was the January 7, 2005 instrument valid in form as a Louisiana will?

QUESTION 2(C)
(5 points)

Assuming that the November 23, 2007 will is valid, could the copy of that will found in Foster's office be admitted to probate?

QUESTION 2(D)
(5 points)

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

For all of the remaining questions in Question 2, please assume that the November 23, 2007 notarial testament was the only valid and enforceable will in effect at the time of Foster's death, and that the copy of that notarial testament was admitted to probate.

QUESTION 2(E)
(5 points)

What is the duration of Elizabeth's usufruct?

QUESTION 2(F)
(5 points)

Who is entitled to Foster's residence in St. Tammany Parish?

QUESTION 2(G)

(5 points)

Who is entitled to the condominium on St. Charles Avenue in New Orleans?

QUESTION 2(H)

(5 points)

Who is entitled to the marketable securities?

QUESTION 2(I)

(5 points)

Who is entitled to the high definition television set?

QUESTION 2(J)

(5 points)

Who is entitled to the residue of Foster's estate.

END OF QUESTION 2

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QUESTION 3
(25 POINTS)

Jack and Kim were married and had two children together in the 1960s, Mary and Nancy. Jack abandoned the family in 1981 and Kim divorced him. All community property issues were resolved. Kim met and married Larry in 1984. Kim and Larry had three children. Oliver and Peter, twins, were born in 1986. Rita was born in 1989.

Mary married, and had a daughter, Abigail, in 1985. Nancy had two children of her own, Barrett, in 1989, and Carley, in 1990. Barrett contracted bacterial meningitis while a child and sustained a permanent cognitive impairment preventing her from caring for herself for the rest of her life.

In 2006, Kim suffered a massive heart attack. She recovered but remained in poor health. Fearing that her time was short, and fearing the reinstatement of the inheritance tax, Kim did the following in 2007 and 2008:

1. Kim gave Larry \$6,000 to pay off an old credit card debt which he had incurred before they were married.
2. Kim paid \$10,000 directly to Prudhomme Cooking Academy as tuition for Oliver to attend culinary school in Fall 2008. Oliver attended school for two weeks and then dropped out and returned home. The tuition was not refunded.
3. Kim gave \$12,000 to Abigail for a humanitarian trip to China.
4. Kim sold Peter 10 acres in St. Helena Parish for \$15,000.00 although it was worth \$50,000.00 at the time of the transaction.
5. Kim donated a condominium in Baton Rouge to Mary worth \$75,000. Mary moved into the condominium and lived there until it was completely destroyed during Hurricane Gustav in September 2008.

Nancy died in 2007 and her children went to live with Mary. Kim died intestate in December 2008. Assume all gifts, donations, acceptances and payments were valid in form in all respects.

QUESTION 3(A)
(3 points)

Of those who survived Kim, who is entitled to demand collation and why?

QUESTION 3(B)
(3 points)

Is the gift to Larry subject to collation? Please explain your answer.

QUESTION 3(C)
(3 points)

Is the amount paid to Prudhomme Cooking Academy on behalf of Oliver subject to collation? Please explain your answer.

QUESTION 3(D)
(3 points)

Is the gift to Abigail subject to collation? Please explain your answer.

QUESTION 3(E)
(3 points)

Is the property sold to Peter subject to collation? Please explain your answer.

QUESTION 3(F)
(3 points)

Is the condominium donated to Mary subject to collation? Please explain your answer.

QUESTION 3(G)
(7 points)

In 2008, Mary reconnected with Jack. She learned that in 1986, after his divorce from Kim, Jack bought a camp in Shell Beach and began operating fishing charters. Jack never remarried, but he began living with Sarah in 1988 and they had a son together, Thomas, in 1989. Sarah had a child from a previous relationship, Victor.

Thomas grew up working in the charter business and became a co-owner with his father. Thomas died intestate in a storm in the Gulf of Mexico in early 2009. He never married and had no children. How will Thomas' estate be distributed?

END OF QUESTION 3

LOUISIANA BAR EXAMINATION

CIVIL CODE III

JULY, 2009

Question One: TOTAL OF TWENTY POINTS

Answer any TEN or more of the following subparts of this questions by writing in your examination booklet the letter that corresponds to the correct answer. You will be awarded **TWO POINTS** for each correct answer given; however, the maximum score on Question One is a total of **TWENTY POINTS**, regardless of the number of correct answers given. Though you will not be awarded points for an incorrect answer to a subpart, an incorrect answer will not cause you to lose points awarded to you for correct answers given on other subparts of the question.

If you believe that more than one answer to a subpart 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.

- 1. When the law requires a contract to be in a written form, the contract may not be proved by testimony or by presumption unless:**
 - A. the consent of one of the parties to the contract was vitiated by a vice of consent.
 - B. the written instrument has been destroyed, lost or stolen.
 - C. proof of the contract is established by at least one witness and other corroborating circumstances.
 - D. both parties to the contract admit its existence when interrogated on oath.
 - E. the proponent of the contract has made a valid tender of performance under the contract.

- 2. The Louisiana Civil Code lists the following vices of consent:**
 - A. Error, fraud and duress.
 - B. Error, fraud and unlawful cause.
 - C. Error, fraud and ambiguity.
 - D. Error, fraud and lack of good faith.
 - E. Error, fraud, duress, unlawful cause, ambiguity and lack of good faith.

- 3. In the case of a contract of mandate that is silent on the issue of termination, which of the following events does *not* terminate the mandate?**
 - A. Death of the mandatary.
 - B. Interdiction of the mandatary.
 - C. Death of the principal.
 - D. Incapacity or disability of the principal.
 - E. Qualification of the curator after the interdiction of the principal.

4. Which of the following is an *incorrect* statement of Louisiana law?

- A. A contract is formed by the consent of the parties established through offer and acceptance.
- B. Unless otherwise specified in the offer, there must be conformity between the manner in which the offer is made and the manner in which the acceptance is made.
- C. Unless the law prescribes a certain formality for the intended contract, offer and acceptance may be made orally, in writing, or by action or inaction that under the circumstances is clearly indicative of consent.
- D. An offer expires by the death or incapacity of the offeror or the offeree before it has been accepted.
- E. A revocable offer expires if not accepted within a reasonable time.

5. A contract made by a person without legal capacity is:

- A. relatively null and may be rescinded only at the request of that person or his legal representative.
- B. relatively null and may be rescinded at the request of any person or by the court on its own initiative.
- C. absolutely null and may be rescinded only at the request of that person or his legal representative.
- D. insusceptible of confirmation or ratification.
- E. is an example of a contract that violates a rule of public order.

6. A stipulation for the benefit of a third party beneficiary:

- A. may still be dissolved by the parties to the contract by mutual consent without the beneficiary's agreement, even if the beneficiary has manifested his intention to avail himself of the benefit.
- B. deprives the promisor of the ability to raise against the beneficiary such defenses based on the contract as he may have raised against the stipulator.
- C. precludes the stipulator from demanding performance from the promisor for the benefit of the beneficiary.
- D. gives the beneficiary the right to demand performance from the promisor.
- E. excuses the promisor from the obligation to render performance to the stipulator in cases where the stipulation is revoked or refused.

7. According to the Louisiana Civil Code, a contract of unspecified duration:

- A. is unenforceable in all cases.
- B. is unenforceable, unless the contract has been ratified or confirmed by both parties.
- C. is relatively null.
- D. is presumed to have a duration from month to month.
- E. may be terminated at the will of either party by giving notice, reasonable in time and form, to the other party.

8. An obligor in good faith who fails to perform a conventional obligation is liable:

- A. only for the damages that were foreseeable at the time the contract was made.
- B. only for moratory damages.
- C. for all damages, foreseeable or not, that are a direct consequence of his failure to perform.
- D. for all damages caused by his failure to perform, including damages for nonpecuniary loss, regardless of the nature of the contract.
- E. for damages that might have been avoided if the obligee had taken reasonable efforts to mitigate the damage caused by the obligor's failure to perform.

9. A legal suretyship is a suretyship:

- A. that does not violate a rule of public order.
- B. that is given pursuant to legislation, administrative act or regulation, or a court order.
- C. in which the principal obligor is a business corporation, partnership, or other business entity.
- D. in which the surety ostensibly binds himself as a principal obligor to satisfy the present and future obligations of another.
- E. in which the surety has encumbered his property as security for the obligation of another but has not personally bound himself.

10. The recordation of an instrument transferring an immovable:

- A. causes the instrument to constitute full proof of the agreement it contains as against the parties, their heirs and successors by universal or particular title.
- B. charges third persons with knowledge of the instrument and the recitations contained therein.
- C. is necessary in order for the instrument to have effect against third persons.
- D. creates a presumption that the instrument is valid and genuine.
- E. creates a presumption as to the capacity of the parties.

11. Which of the following is a correct statement of the law?

- A. The action in redhibition against a bad faith seller prescribes in four years from the day delivery of the thing sold was made to the buyer or one year from the day the defect was discovered by the buyer, whichever occurs first.
- B. The seller is presumed to have known of a redhibitory defect if it appears within three days from the time of delivery of the thing sold.
- C. In an action for rescission because of a redhibitory defect, the court may limit the remedy of the buyer to reduction of the purchase price.
- D. An exclusion or limitation of the warranty against redhibitory vices is not permitted in consumer transactions.
- E. All of the above.

12. Which of the following is an example of circumstances under which a natural obligation arises?
- A. A contract to sell immovable property is unenforceable because it is not in writing.
 - B. A borrower enters into an unenforceable agreement to pay interest at a usurious rate.
 - C. A civil obligation has been extinguished by prescription.
 - D. A contract is unenforceable because it is predicated upon unlawful cause.
 - E. All of the above.

END OF QUESTION ONE

LOUISIANA BAR EXAMINATION

CIVIL CODE III

JULY, 2009

Question Two: 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) Ferriswheel Fabricators, Inc. ("FF") which sold the ferris wheel to NOE on August 1, 2006, and which is still owed an unpaid balance of \$450,000 on the purchase price. The sale was completely oral, except that, at the time FF delivered the ferris wheel to NOE in New Orleans, it presented NOE with an invoice which described the ferris wheel, recited its purchase price, and contained the following language on the reverse side of the invoice: "Payment of the full unpaid purchase price is due 90 days after this invoice. As security for the unpaid purchase price, the buyer grants the seller a security interest in the goods sold." The invoice was not signed or otherwise authenticated by either party. When full payment for the ferris wheel was not forthcoming within the 90 day period mentioned on the invoice, FF caused a financing statement to be filed in the UCC records of Orleans Parish on April 1, 2007. 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.

(2) 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 signed by both LL and NOE. The lease, which is dated September 1, 2006, contains the following provision: "Lessee agrees to pay Lessor monthly rent in the amount of \$5,000 and, in order to secure its obligation to make rental payments provided for herein and all other obligations arising under this lease, Lessee hereby grants Lessor a security interest in all movable property of Lessee which may be at any time located upon the leased premises." The lease was recorded in the conveyance records of Orleans Parish on September 1, 2006. The ferris wheel is still physically located upon the tract of land leased by LL to NOE. LL is owed accrued rent in the amount of \$75,000.

(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 15, 2006, 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." The day after these documents were signed, BK filed in the UCC records of Jefferson Parish a financing statement which named NOE as debtor and BK as secured party, specified the addresses of each and described the collateral as "ALL ASSETS."

(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, 2007, 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. 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 FF and BK.

Discuss the validity of the claims of each creditor to the ferris wheel. DO NOT DISCUSS THE RANKING OF THEIR RESPECTIVE CLAIMS IN THIS PART A, SINCE THAT TOPIC IS COVERED IN PART B BELOW.

In giving 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; (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: FIVE POINTS

For those creditors who, under the fact pattern set forth in Part A above, have valid claims against the ferris wheel (as opposed to a mere personal claim against NOE), rank their claims against each other under applicable law, giving the reasoning for the ranking you specify in your answer.

PART C: FIVE POINTS

Hal holds a \$50,000 promissory note, dated June 1, 2009, signed by Mary payable to his order in 119 consecutive monthly installments commencing July 1, 2009 and continuing on the same day of each month until June 1, 2019, when a final balloon payment of the entire remaining balance of the note will be due and payable. The note is secured by the following two mortgages executed by Mary as mortgagor:

- (1) A mortgage, dated June 1, 2009, which recites that it has been executed as security for Mary's \$50,000 note and which describes the note with particularity, including its entire payment schedule and final maturity date of June 1, 2019. This mortgage was recorded in the mortgage records on June 2, 2009.
- (2) A mortgage, dated June 7, 2009, which states that it is given to secure "all present and future obligations of Mary to Hal, up to the maximum amount of \$100,000 at any one time outstanding." This mortgage, which does not make any express mention of or give any description of Mary's \$50,000 promissory note or its payment terms, was recorded in the mortgage records on June 18, 2009.

For each mortgage, state the EXACT DATE by which reinscription must be achieved in order for the mortgage to continue to have effectiveness against third persons after that date. Also, if the law does not permit reinscription to be made until a future date, state the earliest date on which reinscription of each mortgage can be achieved. In giving your answer, be sure to state, and to apply, the governing rules regarding the time delays applicable to the reinscription of mortgages.

LOUISIANA BAR EXAMINATION

CIVIL CODE III

JULY, 2009

Question Three: TOTAL OF TWENTY-FIVE POINTS

Paula and her husband, Bob, have been looking for a residential lot on which to build a new house. Responding to an advertisement she saw in the newspaper, Paula and Bob met a local subdivision developer, Sam, at the site of a lot he and his brother, Val, were offering for sale in a subdivision that they had recently developed. During their conversation that day, Paula explained to Sam that it was very important for her and Bob to build a one-story house since her elderly mother, who would be living with them, has difficulty climbing stairs. After Paula and Bob concluded that the lot Sam showed them would be ideal for their purposes, the three of them went to Sam's office, where they signed a contract by which Paula and Bob agreed to purchase the lot from Sam and Val for its fair market value as determined by a local appraiser, Arnie, but in no event more than \$100,000. The agreement provided that Paula and Bob would pay \$500 at the time of signing the contract, to be applied toward the purchase price at the time of closing of the sale, which the contract specified would occur on or before August 1, 2009. Immediately upon signing the contract, Paula gave Sam her personal check for \$500. Bob noticed that Sam signed the contract both for himself and as agent for Val. Bob inquired whether Val needed to sign as well. Sam responded that there was no need to worry since Val had given Sam "power of attorney" to sign everything on his behalf.

The contract contained the following provision: "The sale of the lot to purchaser is contingent upon purchaser's obtaining financing of the purchase price at market rates from a financial institution. Purchaser covenants to make immediate and diligent efforts to obtain such financing and, if despite such efforts, purchaser is unable to obtain financing for the purchase price, purchaser may at his option terminate this agreement and receive of refund of the money paid at the time of signing this contract."

The day after signing the contract, Paula and Bob made application to a local mortgage company for a loan. A few days later, they were told that, on the basis of their combined income, the loan had been approved up to \$100,000.

In the meantime, Paula and Bob were provided a copy of the building restrictions applicable to the subdivision in which the lot was situated. As they expected, those restrictions required every house in the subdivision to have a minimum area of 2,500 square feet. This presented no problem for Paula and Bob, since they planned to build a house that was larger than that. Once the survey was performed, however, they discovered that, because of building setback lines and utility servitudes that burdened the property, the buildable area of the lot was only 2,300 square feet. Thus, in order to build a house of sufficient size to comply with the minimum area requirements of the building restrictions, it would be necessary to build a two-story house.

Two other unfortunate events have recently occurred. First, Arnie died before he could complete the appraisal of the lot. Secondly, for reasons wholly unrelated to the purchase of the lot, Paula and Bob have decided to divorce and no longer want to buy the lot.

Paula has contacted Sam and Val, advising them that, in view of the uncertainty over the price, the fact that a two-story house would have to be built upon the lot and her supposition (not based on anything the mortgage company told her) that the mortgage company would no longer make the loan to her and Bob in view of their impending divorce, she wanted to cancel the contract and receive a return of her \$500. She also mentioned her feeling that the contract was not valid anyway since Val had never signed it. In Val's presence, Sam responded that Paula and Bob are both legally bound to proceed with the purchase and that under no circumstances would Sam or Val agree to a termination of the contract.

Paula has now contacted you for advice as to whether she can terminate the contract and compel Sam to return her \$500. Discuss whether she has the right to do so, analyzing the legal issues that are relevant to each potential defense available to her against Sam's demand that she perform under the contract.

LOUISIANA BAR EXAMINATION

CIVIL CODE III

JULY, 2009

Question Four: TOTAL OF TWENTY-FIVE POINTS

Abe, an architect, leases from Bill an office suite in a building under a written lease agreement recorded in the conveyance records of the parish in which the building is located. The lease contains the following provisions:

1. Rent is \$1,500 per month for the lease of the suite, which was identified with specificity in the lease.
2. The term is one year, commencing August 1, 2007, with Abe having the right to renew the lease for successive one year periods at a rental to be negotiated by Abe and Bill prior to the commencement of each renewal period.
3. If Abe defaults, Bill may, in addition to all other remedies provided by law, accelerate the rental obligations of Abe.
4. Abe assumes responsibility for the condition of the office suite.
5. For a period of fifteen years, Abe is granted the right to purchase the office building for the price of \$800,000.
6. All obligations of Abe as lessee are guaranteed by Abe's father, Carl, who also signed the lease.

In July 2008, Abe decides that he wants to exercise a one year renewal. Abe and Bill agree that the monthly rental for the one year renewal period will be \$1,800 per month. Abe and Bill then sign a written declaration that "the lease" is renewed for one year at rental of \$1,800 per month.

On February 1, 2009, a portion of the office suite is damaged by fire. After investigation, Bill and Abe learn the fire was caused by faulty wiring in the office building. When Bill fails to repair the damage, Abe does so at a cost of \$15,000.

Later that same month, Abe tells Bill that he wants to purchase the office building for \$800,000. Abe is eager to consummate the sale because the local municipality has announced that it will construct a new road near the office building. The planned placement of the new road near the office building has doubled the value of the office building. Bill tells Abe that his option to purchase is no longer valid on account of the increase in the value of the building. The next day Abe vacates the office suite and mails the office key to Bill.

Respond to the following, giving full reasons for your answers.

- A. Is the lease valid (as between Abe and Bill) and effective against third parties? **(5 points)**
- B. Can Abe recover from Bill the \$15,000 he spent to repair the fire damage that was caused by the faulty wiring in the building? **(5 points)**
- C. Is the option to purchase the office building for \$800,000 valid and enforceable by Abe? **(5 points)**
- D. Discuss Bill's recourse, if any, against Abe for Abe's vacating the office suite. **(5 points)**
- E. Discuss Bill's recourse, if any, against Carl for Abe's vacating the office suite. **(5 points)**

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

QUESTION I (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, taking various equipment and furnishings with them. What steps, if any, can the building owner take to secure repayment 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 II (25%)

- 4% A. Father and his 16 year old son visit you and ask what steps they need to take in order to have 16 year old son judicially emancipated. They report that 16 year old son's mother was killed four years earlier in a kiln explosion. Please identify the proper court where such an action must be brought and succinctly explain the specific pleading requirements, consent requirements and evidentiary requirements that must be met on behalf of father and 16 year old son to achieve their objectives?
- 3% B. During the course of a jury trial, the judge has sustained your opponent's objections to a specific line of questioning you intended to cover with your expert witness that you believe is crucial to the outcome of the case. What, if anything, can you do to ensure that the excluded area of testimony can be reviewed and considered by an appellate court?
- 3% C. You represent the defendant driver in a personal injury lawsuit arising from a motor vehicle accident. At the beginning of the litigation, Plaintiff's counsel propounded interrogatories asking your client to identify all witnesses to the accident, which you timely and accurately answered. Two weeks before trial, you learn of a new, previously unidentified witness who observed the accident. You do not plan to call this witness at trial, since her testimony will be adverse to your client's interests. What responsibility, if any, do you have to divulge the identity of this new witness to opposing counsel?
- 3% D. 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.
- 5% E. As part of your pro-bono work, you have agreed to represent Plaintiff in a redhibition action relating to a used truck that Plaintiff purchased to drive to work. Plaintiff is very poor and lacks the means to pay court costs to prosecute this law suit. What, if anything (other than paying court costs on Plaintiff's behalf) can you do to allow Plaintiff to proceed with his lawsuit? Please describe what, if anything, you must file and establish to accomplish this.
- 4% F. When a lawyer signs a pleading filed for a client, what does the lawyer signify personally, if anything?
- 3% G. 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?

Question III (25%)

- 4% A. Client comes to you concerning immovable property in Lake Charles that she owns with three siblings. Because the siblings cannot agree upon how to use the property or how to divide the property, Client seeks to partition the property. Client also tells you that one of the Lake Charles City Court judges is a long-time family friend and she believes that if litigation must occur, her siblings would prefer to have it occur in front of this judge. She has even discussed the matter with her siblings, all of whom have indicated that they would consent to an action in front of that particular city court judge. She asks you if it is possible to file the partition action before that judge. What do you tell her? Explain your answer.
- 4% B. You are defending a personal injury case in which you believe the evidence plainly demonstrates that, despite the clear liability of your client, the damages are very minor. You have made what you consider to be a reasonable settlement offer to the plaintiff's counsel, which has been rejected without counter offer. Your client, confident that a trial verdict will not exceed his settlement offer and frustrated with the ongoing costs of defending the claim, asks you if anything can be done to recover those costs from Plaintiff who has refused to respond to your offer. Explain in detail what, if anything, can be done in this situation.
- 3% C. You are deposing a key employee of the defendant in a contract dispute. As you proceed with your questioning, you notice that defense counsel continues to make lengthy objections which you believe are providing guidance and instruction to the deponent as to how to answer the questions. Are such objections appropriate under the Louisiana Code of Civil Procedure? Explain why or why not.
- 3% D. You are seeking to probate the last will and testament of your client's father. Your client's sister is opposing the probate of that testament. Your client indicates that he has a videotape of his late father executing the will in question. You review the video and determine that it shows approximately the last half of the meeting between your client's father and the father's lawyer at which the will was signed. While your client's father appears to be mentally sound in the video, the video does not depict the testator's oath being given to your client's father. Is the videotape admissible as evidence at the trial to probate the testament?
- 8% E. Client comes to you with a litany of problems relating to his neighbor. Both your client and his neighbor live on adjacent 40-acre tracts of land just outside of Alexandria, Louisiana. The neighbor's property originally was only 20 acres in size until your client sold him an additional 20 acres adjacent to the back half of the neighbor's property. Your client accepted a \$50,000 promissory note payable in monthly installments for that 20-acre tract. The \$50,000 promissory note was secured by a valid mortgage on the acreage sold, which Client properly recorded. When the neighbor missed two note payments, your client then inquired about the missing payments. This inquiry angered the neighbor, prompting him to build a fence between the respective property lines, which fence encroaches approximately five feet onto your client's property. When your client approached his neighbor to discuss the fence encroachment issue, the neighbor assaulted your client and beat him with a garden hoe. Your client would like to bring an executory process action against his neighbor to seize and sell the rear 20-acre tract of land (assume that all documents required for an executory process action are in place), would like to bring an action to force his neighbor to remove

the encroaching fence and would like to bring a tort action against the neighbor for the assault and battery.

- 3% 1. Please succinctly describe the pleadings required to bring an executory process action against Neighbor.
 - 3% 2. Please succinctly describe the type of action and pleadings required to force Neighbor to remove the fence constructed on your client's property (including the elements that must be proved for this action).
 - 2% 3. May your client bring all of the three referenced actions in a single lawsuit?
- 3% F. Client has been sued by Brother who has been interdicted and is confined in a psychiatric hospital based upon a commitment for schizophrenia. Brother has brought the suit in his own name. Is there any action that you can take for Client to obtain the dismissal of this suit? Please explain.

Question IV (%)

- 3% A. You are a judge in Calcasieu Parish, Louisiana. Before you is a Petitory Action brought by plaintiff, a resident of Calcasieu Parish, against defendant, also a resident of Calcasieu Parish, concerning two adjoining tracts of property owned by the plaintiff and the defendant. Both pieces of property at issue lie on the western side of the Sabine River (the river that forms the western boundary of the state of Louisiana) in Newton County, Texas. Do you have jurisdiction to hear this claim? Explain why or why not.
- 10% B. Client comes to you seeking a divorce based upon Louisiana Civil Code article 102, which allows married couples with no minor children to obtain a divorce after having lived separate and apart for 180 days.
- 5% 1. Please specifically explain all pleadings you must file on behalf of your client (including all specific components of those pleadings) to obtain the article 102 divorce that she desires.
- 5% 2. Please describe the evidence that you can use to establish the facts entitling your client to a divorce in accordance with Louisiana Civil Code article 102.
- 4% C. Client brings you a partition lawsuit in which she has been named a defendant, along with approximately ten other defendants. In discussing the underlying facts, Client explains to you that she also believes that she has a claim against the plaintiff for a timber trespass occurring on a different but adjacent parcel of land that she solely owns. She asks you whether she can assert that timber trespass claim against the plaintiff in this lawsuit. What do you tell her? Explain your answer in detail.
- 8% D. 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.

LOUISIANA BAR EXAMINATION

TORTS

JULY 2009

Question One: THIRTY-FOUR POINTS

Suzy Flyer was so excited to finally have her helicopter pilot's license and be able to fly solo for the first time. After logging over 100 hours with a co-pilot and 10 hours solo she felt she was ready for anything. She signed up for a Twitter account so she could keep her proud family in Lagniappe parish advised of her every move.

On July 1, 2008 at 6:30 a.m. sharp she arrived by personal automobile at her place of employment, Fly By Night Helicopter Services, Inc., a Louisiana Corporation, in Beau Lac, Louisiana, to pick up her first group of passengers to take them to their destination in Monroe, Louisiana, about 200 miles away. She tweeted her excited family at 6:45 a.m. that she was soon leaving for her first solo flight as a pilot and, although she was a little nervous, she was ready for the flight.

The five passengers were Tom and Geri Smith, clients on their first helicopter ride and their soon to be adopted son Bobby, age 13, who was actually Geri's sister's biological son; Adam Lambert, President and CEO of Fly By Night Helicopter Services, Inc., and one of his twin daughters, Melanie, age 15. Adam wasn't so sure Suzy was ready for a solo flight so he wanted to go along to make sure she knew what she was doing. He hadn't had time to fly with her before, but trusted another employee, his personal helicopter pilot of 15 years, Eddy Lebleux, who said he thought Suzy could handle it.

Fly By Night Services, Inc., had a policy against talking on cell phones while flying or driving. Suzy had been given a copy of that policy when hired.

The flight was uneventful for the first 30 minutes. Suzy was so relaxed that things were going well that she decided to tweet her family via her iphone (holding it so that Adam couldn't see what she was doing) to let them know things were going well. "Hey Mom and Dad – flying the blue skies. All is well!"

Just then she looked up and noticed the flock of brown pelicans directly in her path. She had never seen so many pelicans at one time. Suzy had no experience with birds of this number in her direct path. She swung the copter sharply and suddenly to the left and the pelicans followed. She swung quickly back to the right and attempted to rise above the pelicans, with no luck. The copter's blades began to slow down and she knew she was in trouble. Adam, who had never flown a helicopter, started yelling "Put her down! Put her down!" Suzy saw an open field and began maneuvering the copter toward it. The copter crash landed in the open field and tipped over to one side. Smoke began to rise from the engine. Adam shoved his daughter out of the helicopter. She had bumps, bruises and a large gash on her forehead. He yelled at Suzy but she didn't respond.

He reached back to get Tom and Geri but noticed they weren't moving. Bobby was thrashing around so Adam pulled him out of his seat and up to the opening. He had to climb out of the helicopter to get Bobby safely to the ground and away from the helicopter. By this time bright red flames were shooting from the helicopter. Adam tried to go back in for Suzy and the Smiths but the fire was too hot. Suddenly he saw Suzy climbing out of the helicopter with a dazed look on her face. She was muttering that there was "something wrong with the throttle". Her left arm was obviously broken and her right foot appeared to have sustained a crush injury.

If the Smiths had survived the crash, they did not survive the ensuing fire which engulfed the helicopter. The last thing Suzy remembered was Bobby screaming for his parents.

Do not discuss manufacturer liability in your answer to Question 1.

1. Bobby comes to you to help him with his claims. He and Ciara, age 17, the only biological child of the Smiths, -want to know if they can pursue legal action for Bobby's injuries and the Smiths' deaths.
2. Adam comes to you (assume you haven't seen Bobby so no conflict issue) and wants to know whether he and Melanie have any claims against anyone.
3. Suzy (again no conflict) comes to you and asks if she has any recourse against anyone for the accident and her continuing psychological and physical injuries. She is too frightened to ever fly again.

Question Two: THIRTY-THREE POINTS

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Using the facts from Question One:

Assume that the helicopter is manufactured by Lastchance Helicopter, Inc., a Louisiana Corporation, whose CEO has known for the last 5 years that this particular helicopter, the Z-100, has a problem with the throttle. The CEO ~~has hidden~~ internal reports relating to the faulty throttle and continued to manufacture the helicopter with no modifications. Two other near crashes were reported in the last 3 years. In those cases, the pilots regained control and landed without incident.

After this accident and due to pressure from his engineers the CEO decides to (finally) adopt the modifications recommended to the Z-100 even though it costs him \$250.00 per helicopter and he has 100 helicopters for lease or sale.

He sends a postcard to the current owners of the Z-100s that he will retrofit their helicopters for \$500 per helicopter to assist with "potential problems with the throttle."

Bobby, Ciara, Adam and his daughter Melanie, and Suzy want to know if they have a claim against Lastchance Helicopter, Inc.

Question Three: THIRTY-THREE POINTS

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The New Orleans Saints were headed to the Superbowl on January 29, 2010. The whole village of Devereaux was so excited. The Mayor had set up a large screen and a projector so that the entire town of 358 could watch the game together at the community center.

Admission was free. The attendees were to each bring a dish to share with others so that the village could keep the cost down, having only a budget of \$100,000 per year to pay the Mayor, the Sheriff, the Sheriff's only deputy and Charlie, the guy in charge of keeping the streets free of potholes and debris.

On the morning of the game, the whole town was abuzz. Marcy Stewart had been up all night making her secret recipe potato salad. An hour before the game Marcy was driving down Main Street to the community center in her 1989 Buick. Marcy was very familiar with the area having lived in Devereaux her whole life and having driven this same path every day for 15 years to work at the sandwich shop next door to the community center.

Fearing that one of the bowls of potato salad had tipped over, she took off her seatbelt and reached into the back seat just when her right front tire fell into the ~~2-foot-feet~~ deep, ~~3 3-footfeet~~ wide pothole located on the far right side of the road, partially on the shoulder of -Main Street. She was only 100 feet from the community center. Dazed from the impact which had caused her to hit her chest on the steering wheel, Marcy stopped her car and walked to the community center. Upon arriving at the community center, Marcy collapsed dropping the 3 large bowls of potato salad and sending the gooey potato salad all over the floor.

Comment [e1]: You say two FOOT deep and three FEET wide. Frankly, I don't know if that is correct, or if both should be feet or foot. Just calling it to your attention.

Rushing to her aid, 78 year old Ermille Lagrasse slipped in the potato salad and broke his hip.

Charlie saw the whole thing and wondered why Marcy seemed loopy when she walked in to the community center. He looked out the door and saw Marcy's car, stopped but still running, on Main Street with one wheel in the pot hole. He tried to remember if anyone had ever complained about that pothole before but he couldn't recall any specific complaints. He had so many streets to check for debris and potholes that he couldn't keep up with the work. He had told the Mayor several times that he needed more help and more supplies because he often didn't have enough time to find and repair the potholes and he didn't have enough money to buy the supplies needed to fix all of the potholes.

Marcy woke up in the hospital with 4 broken ribs asking "Did they like the potato salad?" She can no longer peel potatoes due to complications from the injury. She is devastated.

Ermille Lagrasse wants to know if Marcy or the city of Devereaux is responsible for his injuries. He had to resign from the square dancing competition which he and his girlfriend, Lolita, win every year. Marcy is wondering if anyone is responsible for her injuries. Her husband is also very upset that Marcy can't cook, clean, work and take care of their four children. He has had to hire Velma to help out around the house. Marcy is lethargic and depressed and complains of constant chest, neck and back pain.

Sally Snoop tells Ermille that she lives right by that pot hole and has told the city several times over the last two years that the pothole needed to be repaired.

Discuss any claims anyone may have.

THE END

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Louisiana Bar Examination

Business Entities and Negotiable Instruments

July, 2009

Question 1 – 25% (5 points each subpart):

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

Adam contacts TB that same day and demands that the Bank refund him the \$4,000 representing the money withdrawn from his account based on the signature that Bruce forged. TB advises Adam that it followed proper procedure in honoring the checks and paid them in good faith. Answer the following questions:

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

Question No. 2 - 25% (5 points each subpart):

New clients of yours, Anne and Betty Green, are in the process of forming a new company to own apartment buildings and residential rental properties. They were being represented by another attorney who has moved out of state. They have asked you to review the documents and filings prepared by their prior attorney. They provide you with the articles of incorporation for their company, Dixieland Apartments, Inc. The articles state as follows:

ARTICLES OF INCORPORATION
OF
DIXIELAND APARTMENTS, INC.

ARTICLE I

The name of the Company is:

DIXIELAND APARTMENTS, INC.

ARTICLE II.

The objects and purposes for which this company is organized is to own real estate and apartment buildings in the Parish of East Baton Rouge, Louisiana.

ARTICLE III.
DURATION

The duration of this company shall be until January 1, 2020.

ARTICLE IV.

The incorporators of the company are Anne Green and Betty Green.

ARTICLE V.

The corporation has the authority to issue 1000 shares of common stock.

ARTICLE VI.

A quorum of shareholders necessary to conduct a shareholder meeting shall be 20% of the total voting power.

/s/ Anne Green

ANNE GREEN

/s/ Betty Green

BETTY GREEN

Dated: April 20, 2009.

An initial report was also prepared, signed and filed. The Articles of Incorporation and Initial Report were filed only with the Secretary of State. Attached to the Articles is a Certificate of Incorporation from the State of Louisiana, Secretary of State, which states that the corporation's existence began on April 30, 2009. The corporation has no by-laws. Anne and Betty are equal shareholders (50/50).

They ask you to answer the following questions:

- A. Do the Articles comply with Louisiana law and were they properly filed? Please identify any deficiencies in the articles.
- B. Is the corporation required to adopt by-laws? By whom can by-laws be adopted, and after adoption, how can they be modified or changed?
- C. May a director of this corporation vote by proxy? Explain why or

why not? May a shareholder of this corporation vote by proxy?
Explain why or why not?

- D. Do the shareholders of Dixieland have preemptive rights? Explain why or why not. What are preemptive rights?
- E. May the directors of Dixieland take action by written agreement signed by a majority of the directors? Why or why not? May the shareholders of Dixieland take action by written agreement signed by less than all shareholders? Why or why not?

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

Longtime childhood friends, Al, Ben and Charlie are equal (1/3) shareholders in a waste hauling and removal business, ABC Trucking, Inc. They started the business in 2005 following Hurricanes Katrina and Rita, and it has been financially successful, turning a net profit in each year of its operations. ABC has been approached by DEF Takeover, Inc. and DEF has offered to purchase all of the assets of ABC for \$3,000,000. DEF Takeover, Inc. is a Louisiana corporation owned by Charlie and his three brothers in equal shares. Neither Al nor Ben is one of Charlie's brothers. DEF's offer expires in 30 days. The fair market value of ABC's assets at the time of the offer is \$500,000.

ABC has no by-laws, and its articles of incorporation contain only the minimum requirements necessary for incorporating in Louisiana. ABC has three officers and directors: Al, Ben and Charlie who are also its three shareholders. The ABC board has noticed a meeting to consider DEF's offer and mid-year distributions to shareholders of \$50,000 each. The shareholders of ABC also have a shareholder meeting noticed and scheduled for a week after the board meeting. Charlie attended the board meeting but abstained from voting on the DEF purchase offer and the issuing of dividends to shareholders in the amount of \$50,000 each. Because Charlie abstained, Al and Ben decided not to put the DEF offer to a vote at the meeting. During the board meeting, they (Al and Ben) both voted in favor of and approved dividends to shareholders of \$50,000 each. They decided to wait until next week's shareholder meeting to vote on the DEF offer. Al and Ben cashed their dividend checks after the board meeting. Charlie has not yet cashed his dividend check waiting on the results of the shareholder meeting and vote.

It is not certain whether Al and Ben will vote in favor of accepting DEF's offer. Al and Ben apparently dislike Charlie's brothers since they had Al and Ben kicked out of a hunting club in North Louisiana where they were all members. Because of this, even though DEF's purchase offer is five times more than the value of the assets, Al and Ben have indicated they would not be in favor of DEF's offer purely out of spite. Charlie, however, would like to maximize the value of his interest in ABC and have the assets sold to DEF.

Charlie comes to you for advice before the shareholder meeting, and he wants you to answer the following questions:

- A. Should Charlie have abstained or should he have voted at the board meeting on the offer from DEF? Explain your answer fully.
- B. Charlie thinks he may be able to convince either Al or Ben to vote in favor of DEF's offer, but not both. How many shareholders of ABC must attend the shareholder meeting for it to be properly called and how many must vote in favor of accepting the offer from DEF for it to be approved?
- C. For subsections C. and D. assume at the time of the board meeting, ABC had cash on hand of \$175,000 and it had current bills to pay of \$40,000. Would the shareholder dividends be lawful? Please explain.
- D. If the dividends paid to the ABC shareholders were unlawful, who could be potentially liable for those unlawful dividends? Please explain the basis for any such liability.

Question No. 4 – 30% (3 points each subpart):

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

- A. What are the two options for dissolving a Louisiana corporation and must these proceedings be filed in a court of law?
- B. Please explain what the term "bearer paper" means and how that differs from an instrument payable "to the order of" a named person.
- C. What must a foreign corporation (*i.e.*, non-Louisiana) do in order to transact business in the State of Louisiana? Are there any exceptions to this rule? If so, please identify at least one of the exceptions.
- D. What is a shareholder derivative action?
- E. Is a member in a limited liability company automatically entitled to reimbursement from the company for the reasonable attorney's fees he/she incurs in successfully defending a lawsuit brought against him/her? Explain. Would your answer be different if the person seeking reimbursement was a director or officer of a corporation? Explain.

- F. Can a member of a limited liability company withdraw? If so, under what circumstances? Can a partner in a partnership withdraw? If so, under what circumstances?
- G. What business records is a corporation required to maintain at its offices for shareholders to be able to inspect and review?
- H. What are the requirements for a shareholder or shareholders to be able to inspect the books and records of the company?
- I. Can partners be expelled from a partnership, and, if so, under what circumstances and by what vote?
- J. What is a voting trust?

**LOUISIANA BAR EXAMINATION
CONSTITUTIONAL LAW
JULY, 2009**

WARNING

The following are not issues on the Constitutional Law Examination: mootness, ripeness, political question, case or controversy, standing, or justiciability. NO CREDIT WILL BE GIVEN FOR DISCUSSION OF THESE ISSUES 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)

The Ouachita School Board learned that during a graduation in another Louisiana school district several seniors simultaneously turned their backs to the audience, pulled down their pants, and mooned the audience. In another graduation, several graduates raised their middle fingers to the faculty as they crossed the stage. Trying to avoid undignified and obscene behaviors as well as the potential disruption during their graduation ceremonies, the Board adopted a policy concerning all graduations within its school district. The policy was mailed and emailed to all parents and guardians. The policy reads as follows:

Graduates of Ouachita schools shall refrain from any speech or behavior that detracts in any way from the dignity of the graduation ceremony. All graduates will receive an empty diploma cover during the ceremony and will receive their diplomas after the ceremony. However, any student making any inappropriate statement or gesture during the graduation ceremony shall not be allowed to receive the diploma of the school and shall immediately be expelled. The student may apply for a GED.

Abe and Betty are seniors at a high school within the Ouachita School District. During the graduation ceremony in the school auditorium, Abe blew a silent kiss to his family after he received his diploma.

Betty, a very devout member of the New Wave religion who barely passed her senior classes, quietly made the sign of the cross in thanksgiving to God as she was receiving her diploma. New Wave is a ritualistic, Christian faith begun in central Louisiana in 2007 that reflects tenets and practices of the Catholic and Muslim faiths. Its congregation consists of 25 people. Within her faith, praise must be given to God immediately when He answers prayers, as she believed He had done in her case. Not to do so would offend God and require that she engage in a fasting and praying regiment to mend her relationship with God.

The first gesture generated brief clapping from one or two people in the audience, and the second inspired clearly audible shouts of “Amen” and “Alleluia.” The principal expelled both students and refused to give them their diplomas. Both students filed expedited appeals to the Ouachita School Board, which upheld the decisions of the principal.

To protest the expulsions, Abe and Betty's friends who were graduating later in the week from a different school within the Ouachita School system, distributed to fellow students a cut-out of puckered lips and a cross to be placed on the top of their graduation caps. The message written on the underside of the cut-outs provided: "Students have rights, too. We can thank our families and God. We will not be silenced. We stand in solidarity with our fellow graduates across the parish." Forty graduates placed the cut-outs on their graduation caps during the graduation right before they walked across the stage to receive their diplomas. Besides displaying the symbols, they did not say or do anything else during the graduation ceremony, which occurred in the school auditorium. At four random times during the graduation, a member of the audience loudly shouted: "Don't be silenced!" No other incidents occurred. The 40 graduates, too, were expelled and denied their diplomas. Their appeals to the Ouachita School Board were denied.

The graduates of both schools planned a protest about the school board's decisions, obtained the required permits, and publicized the protest. When the school board learned of the protest, it sent an email to and telephoned all of the graduates and the expelled students warning that it would withhold final transcripts of any participant of the protest. No one attended the protest.

The parents of the expelled students and the parents of the graduates who planned the protest have come to you for advice on whether they have any claims against the Ouachita School Board. Assume that the parents have standing to bring claims.

- 1. What constitutional arguments can the parents raise about the kiss and the symbols placed on the graduation caps? (15 points)**
- 2. Without duplicating the arguments articulated concerning the kiss and symbols in No. 1 above, what other constitutional arguments can the parents raise regarding the sign of the cross? (10 points)**
- 3. What constitutional arguments can the parents raise regarding the protest? (10 points)**

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

QUESTION TWO – (35 points)

Jane and Jill, long-term residents of the state of California, are a homosexual couple and have been in a loving and monogamous relationship for the past five years. They married in California in 2007 shortly after the Supreme Court of California ruled that same-sex couples could marry under California's marriage statute.

Californians Against Same Sex Marriage (CASSM) is a grass roots organization whose members believe marriage should only be between a man and a woman. Shortly after the court's ruling, CASSM began a ballot initiative, Proposition 77, which was passed in 2008 by the California electorate. Proposition 77 changed the California Constitution to add a new section, which narrowed the definition of marriage to opposite-sex couples and eliminated same-sex couples' right to marry. It also indicated that same-sex marriages that had been consummated before the effective date would no longer be recognized by California.

According to leaflets distributed by CASSM during its campaign for Proposition 77, the purpose of the measure is to prevent an increase in the already high national divorce rate. According to CASSM's materials, homosexual couples are more likely to divorce because of two factors. First, because homosexual couples do not reproduce, they do not form the same bond as that which is formed between opposite-sex couples. Second, unlike heterosexual couples, homosexual couples are less likely to maintain a monogamous relationship before they marry, thus increasing the risk of adultery during the life of the marriage. CASSM's materials do not offer any proof for its assertions.

Jane and Jill are raising two children, Ben and Bob, both of whom were conceived by Jane *via* in vitro fertilization and use of a sperm donor. In 2009, Jill received a job promotion and the family moved to Louisiana. Louisiana's marriage statute defines marriage as that between a man and a woman. An amendment to the Louisiana constitution, which the Louisiana Supreme Court upheld, bans same sex marriages; provides that the legal incidents of marriage shall be conferred only upon marital unions; prohibits the validation or recognition of the legal status of any union of unmarried individuals; and prohibits the recognition of a marriage contracted in another jurisdiction which is not the union of one man and one woman.

Both of Jane and Jill's children suffer from severe allergies. Jane and Jill are concerned that only Jane will have the ability to make medical decisions on behalf of the children in the event of an emergency.

Jane and Jill have come to your law firm seeking advice on the legality of their marriage. You have been assigned the task of analyzing Jane and Jill's rights under the federal constitution.

- (1) Please draft a memo analyzing whether Proposition 77 violates the Equal Protection and Substantive Due Process Clauses of the U.S. Constitution. (26 points)**
- (2) For purposes of this subpart only, assume that the marriage is deemed valid under California law. Please draft a memo analyzing whether Louisiana must give full faith and credit to Jane and Jill's marriage. (9 points)**

QUESTION THREE – (30 points)

Larry and Moe Early own and operate several active oil wells in New Roads, Louisiana on their family property. They also have a lease to drill oil from an active well on one property owned by the State of Louisiana. The Early brothers hoped, when they began production, that the oil they produced would help bring gas prices down in the gulf coast area.

Gulf Coast Oil, Inc, a Florida company, conducts operations that produce oil in several parishes in Louisiana. Most of the oil Gulf Coast Oil produces stays in Louisiana.

The Louisiana legislature decided to help its citizens weather the struggling economy, which hinged on its citizens' ability to buy affordable gas. The legislature passed a law, called the Louisiana Oil Protection Act (LOPA), which required oil producers who produced oil in Louisiana to apply for a permit to export the oil to another state. Producers allowed to export would be required to pay an inspection fee, which covered administrative costs for the State to certify the amount and quality of the oil exported from the state. It further provided that Louisiana companies that increased oil production by 10% of the prior year's level would receive various tax credit incentives proportionate to the oil production increase. The LOPA established a LOPA department to establish criteria and a process for evaluating the permit applications as well as tax credit requests. The LOPA provided further that if an application was disapproved, the applicant had to send a letter of appeal to the speaker of the house of the legislature within ten (10) days.

The Early brothers' production exceeded their prior year's production by 30%; they received the full extent of the property, sales, and employee tax credits allowed under the LOPA. Gulf Coast Oil, Inc. exceeded its prior year's production by 43%. It applied for tax credits under LOPA, but its application was denied. Its timely appeal to the speaker of the house, as provided in the LOPA, also was denied.

Gulf Coast Oil, Inc. has come to you for advice.

What constitutional arguments can it raise to challenge the LOPA? Include an explanation of any potential weaknesses in the arguments. DO NOT DISCUSS ANY SUBSTANTIVE OR PROCEDURAL DUE PROCESS OR EQUAL PROTECTION ARGUMENTS IN THIS ANSWER. (30 points)

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

EXAMINATION ON CRIMINAL LAW, PROCEDURE AND EVIDENCE

I.

(40 points may be earned)

Mary grew up in the small, rural town of Samsville. At a young age, she met Izel, a local biker and occasional drug dealer who introduced her to methamphetamine. Mary quickly became addicted and was in and out of rehabilitation centers for three years. Eventually, she pulled her life together, got a job house sitting and moved to live with her grandmother, Ms. Semonia, on her grandmother's farm. Izel had a prior conviction for drug distribution and served two years in the penitentiary. Despite the fact that he had a steady job driving a van for Tin City Recycling Company, he stayed in touch with his old drug sources in the country of Money.

After the down turn in the economy, Mary's house sitting hours were reduced, and she turned to Izel for small loans to make ends meet. She repaid the loans by occasionally accompanying him on trips to Money. One morning, Izel contacted Mary and asked if she was available to make a quick trip to Money to pick up a load of methamphetamine. Izel told Mary that he would pay her \$2500. Mary, half asleep, agreed, but insisted that it would be her last trip. She told Izel that she would be available to leave as soon as Ms. Semonia left on a senior's cruise. Unbeknownst to Mary, Izel had been fired from Tin City and wanted to raise funds to start his own recycling business.

Two days after their conversation, armed with a Stelly and Smitt handgun, Izel headed to Tin City. Once there, he entered the restricted truck area marked "Key Personnel Only." Izel broke into the main storage building and began looking for keys to the company's 18 wheelers. Eventually, he found keys for one of the trucks, but before he could get to it, Izel spotted John, the morning watchman who had reported him for napping on the job. Not wanting to be detected, Izel grabbed John from behind at gunpoint and forced him into the back of the truck. Prior to closing the door, Izel took John's wallet, wedding band and designer sunglasses. He then called Mary and instructed her to meet him at the farm house. Izel hitched his car to the 18 wheeler and drove straight to the farm with John still in the back. While waiting for Mary to arrive, Izel saw an open kitchen window and remembered that Ms. Semonia kept her valuables in the house. As he was climbing through the window, he knocked over a cookie canister. Startled by the noise, Ms. Semonia stopped her packing, ran to the kitchen just as the canister was hitting the floor and began screaming. Irritated that she wouldn't stop, Izel became enraged and kicked Ms. Semonia in the chest, causing her to fall and hit her head on a sharp edge of the counter. She died immediately. Izel stepped over Ms. Semonia's body and proceeded to the bedroom to look for cash but heard Mary arriving before he could find any. He met Mary in the yard, told her that Ms. Semonia had already left for her trip and that there was no need to go inside the house. Shortly thereafter, Clinton, the farm hand, arrived and helped Izel unhitch his car from the 18 wheeler.

Five hours later, Izel and Mary arrived in the country of Money. Izel checked into a hotel using John's driver's license, picked up the 20 kilograms of methamphetamine and then headed back. As they were driving, Izel told Mary what happened at the farm house. Mary became very upset and realized that things were out of control. Sensing her anxiety, Izel stopped at an outlet mall and gave Mary John's credit card to go shopping. Mary was a little puzzled because she knew that Izel had been denied credit, but decided to purchase a three karat diamond ring from Karat's R Us with John's card anyway. Excited about her new bauble, but unable to shake thoughts of her grandmother, at their next gas stop, Mary contacted the Samsville Police Department and told them about the drug run. Izel, however, was so busy thinking about all of the cash that he was going to make he did not notice the police sirens blaring as he pulled out of the gas station. Panicked, he led the Samsville police officers on a high speed chase for

two miles, hitting a motorcyclist who later died as a result of the injuries. Mary, at some point during the chase, had a change of heart and decided to stand by her man. She picked up the Stelly and Smitt handgun and pointed it at the officers in hopes that they would stop the pursuit. Eventually Izel pulled over, where both he and Mary were placed under arrest.

Discuss all crimes that Mary and Izel could be charged with under Louisiana law and the elements of each offense.

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

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

After Mary and Izel were arrested, officers drove to the farm with the intent to conduct a search for evidence. Upon arrival, they were met by Clinton, the farm hand, who advised the officers that he lived in the barn. The officers identified themselves and asked Clinton for consent to search the residence, but he declined. Despite his refusal, officers forced their way into the house and discovered the open window, Ms. Semonia's body and a muddy footprint next to an application for a recycling license with Izel's name on it.

Investigators then noticed a car parked in a field. Without a warrant or consent, officers searched the car and discovered Izel's registration and John's wedding ring and sunglasses under the driver's seat.

Unable to locate any evidence of Izel's drug trade in the house, detectives visited Tin City Recycling Company. They met with Izel's former shift manager and requested access to Izel's work locker which still contained items belonging to Izel. The manager agreed to cooperate and walked the detectives to the locker room. There the manager identified Izel's locker and, using a master key, opened the padlock that secured the locker. The detectives did not locate any drug ledgers, but they did find methamphetamine and the watchmen's work schedules hidden in a box in the locker.

Investigators then noticed a car parked in a field. Without a warrant or consent, officers searched the car and discovered Izel's registration and John's wedding ring and sunglasses under the driver's seat.

While being booked, officers attempted to interrogate both Mary and Izel, but they refused to answer any questions. The next day, officers tried again to interview them, but they both refused. However, two days later, officers called Mary out of the holding cell and questioned her for two hours, during which time she was not allowed to leave. Mary also consented to making a written statement. The officers then approached Izel and told him that Mary was cooperating. He agreed to be interviewed, was read his *Miranda* rights, waived them, and confessed. Prosecutors offered both statements into evidence at trial.

Several weeks after the incident, detectives found two employees from the gas station who witnessed the chase. Both agreed to accompany detectives to the jail where Izel, dressed in an orange jumpsuit, was brought from his cell and placed before the witnesses. The witnesses were then asked to identify the person who hit the motorcyclist. Both witnesses immediately identified Izel as the driver.

Discuss all state and federal constitutional bases for challenging the following: (1) the search of Mary's home; (2) the admissibility of the items found in Izel's car; (3) the admissibility of the methamphetamine and work schedules found in the locker; (4) the admissibility of Mary's statements to the police at the jail; (5) the introduction into evidence of Izel's statement to officers; and (6) the identification procedure that implicated Izel.

III.

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

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

- (1) Shortly after their arrests, Mary and Izel agreed to hire one lawyer to jointly represent them. Should the court permit the joint representation?
- (2) Izel later retained another lawyer to represent him individually. There has been a lot of local media coverage because of the death of the motorcyclist. What, if anything, should Izel's lawyer do and what will the likely outcome be?
- (3) During Izel's trial, prosecutors offer a certified record from the Louisiana Department of Motor Vehicles reflecting that he is the owner of the car in which John's wedding ring and sunglasses were found. His lawyer objected to the evidence. How should the court rule?
- (4) At Izel's trial, may the prosecutor introduce evidence of his prior conviction for drug distribution? Fully explain your answer.
- (5) At Mary's trial, her attorney seeks to introduce evidence that her client was house sitting and not present at the recycling company on the day that John's wallet, credit card and sunglasses were allegedly taken. Should the court permit the evidence to be introduced into the record?
- (6) At her trial, Mary's lawyer intends to introduce character evidence through the testimony of Mary's friends and co-workers who will testify that, among her co-workers, Mary enjoys a favorable reputation for peacefulness and non-violence. Should the judge admit the testimony?
- (7) At his trial, Izel's former co-worker Rosina is called to testify on his behalf. The prosecutor is aware that 15 years ago Rosina was convicted of a misdemeanor charge of disturbing the peace. Can the conviction be raised during Rosina's cross-examination testimony?
- (8) During the voir dire examination at Mary's trial, a prospective juror revealed that he was a frequent visitor at Tin City Recycling Company. Is Mary's lawyer entitled to strike the prospective juror?
- (9) At the start of Izel's trial, what should his lawyer do to try to preserve the integrity of each witness's testimony?
- (10) If the facts reveal that Mary and Izel were legally married prior to returning to Samsville, what, if any, impact would that have on their ability to testify at trial? Fully explain your answer.

END OF EXAMINATION

LOUISIANA BAR EXAMINATION
Federal Jurisdiction and Procedure
July 2009

Question One (25 Points)

Jan lives with her family on a farm near Yazoo City, Mississippi (MS). The farm keeps the family close to home most of the time, but Jan leads them once each year west on Interstate 20 across Louisiana (LA) to Texas Motor Speedway, where the family takes in a weekend of racing. The family usually stops for the night in Shreveport, LA, where Jan and her husband enjoy a visit to the riverboat casinos. Jan and her husband also make a trip every two or three years to the French Quarter in New Orleans, LA for a weekend of fun. The only other time the family ventures from the farm is the annual Thanksgiving dinner at Jan's brother's home in Monroe, LA.

While returning from a race weekend, Jan saw a sign advertising farm equipment for sale in Monroe, LA. She stopped in Monroe and inspected three tractors. She tried to negotiate price and terms with Tom, who represented Farmco, LLC, the owner of the equipment. Jan and Tom did not reach an agreement, but after Jan got home she continued to communicate with Tom by text message and email until Farmco agreed to sell Jan the three tractors for \$100,000, payable in monthly installments of \$10,000. Jan drove to Monroe, signed the final papers, had the tractors shipped to her MS farm, and began sending installment payments to Farmco's office in Monroe.

Tom, both a member and manager of Farmco, was happy to make the sale of the tractors as part of the liquidation of Farmco's Louisiana farming operations. The Farmco business had started three years earlier when Tom, until then a lifelong resident of MS, decided that he needed a fresh start after his divorce. Tom had believed that he could use his farming talents to successfully operate a farm that was for sale in Louisiana. He convinced Grin, Inc. to join him as the second member of Farmco and provide the startup capital for the LLC, which they organized under MS law. Farmco bought the LA farm, and Tom had moved to LA to run its farming operation.

Grin, Inc., a Delaware (DE) corporation, manufactures dentures. All of its shareholders are dentists in MS. Amy, a resident of Natchez, MS, is Grin's business manager and handles all the payroll, billing, and administrative tasks out of Grin's office in Natchez. She frequently travels across the Mississippi River bridge to nearby Vidalia, LA, where Grin's denture manufacturing facility is located.

The Farmco operation in LA, after three years of effort, did not prove to be profitable, so Tom and Grin, Inc. had chosen to liquidate the farming business. Tom is not sure what he will do after Farmco ceases business altogether, but he has his eye on Amy's job, and he has quietly lined up the support of about 30% of Grin's shareholders.

Jan soon learned that one of the tractors she purchased had arrived in need of serious repairs, which cost \$18,000. That expense and other financial difficulties caused Jan to default after making only two payments on the installment agreement. After Jan was three months in arrears, Farmco decided to file suit.

- 15 pts.** **1.A** Farmco hired an LA attorney to sue Jan for her past due installments and, under an acceleration provision, all remaining amounts due on the loan. The attorney advised Farmco that suit be filed in the federal court in Monroe, LA. Discuss in detail whether and how that court would have subject matter jurisdiction over the case if Farmco chose to file suit there.
- 6 pts.** **1.B** Assume that Farmco filed suit in a Louisiana federal court and the court determined that it has subject matter jurisdiction over the case.
- Jan filed a motion to dismiss for lack of personal jurisdiction. Discuss whether the Louisiana federal court could properly exercise either general or specific personal jurisdiction over Jan in the case. Your ability to demonstrate knowledge of how to properly analyze the issues is more important than your conclusion, so conclusory answers will receive little credit.
- 4 pts.** **1.C** Assume that the federal court in Louisiana decides that it can exercise personal jurisdiction over Jan, a MS citizen. After the suit is filed, and with motions for summary judgment pending, Tom decides to sell his membership interest in Farmco. The buyer is Ken, a MS farmer who believes he can make Farmco succeed on a MS tract of land where Tom failed in LA. Ken is accepted as a member of the company.
- Discuss the effect that Ken becoming a member of Farmco would have on subject-matter jurisdiction over the federal suit.
- Discuss the effect that Ken becoming a member of Farmco would have if the membership transaction had been completed before Farmco filed suit.

EXAMINATION CONTINUES ON NEXT PAGE

Question Two (25 points)

A Louisiana statute makes it a crime to wilfully violate a health or safety regulation established by the Commissioner of Agriculture. Kia operates a crop dusting company, and she has supplemented her income by having her planes pull advertising banners during the course of their crop dusting. The low-flying, brightly-colored planes always draw attention from passing motorists, and advertising sales for the banners have been significant, especially during election season.

Commissioner of Agriculture Roy Smith passed a regulation that banned crop dusters and other agricultural planes from pulling banners, for the stated reason that the banners were a safety hazard to both the pilot and distracted motorists. Kia believes the regulation is unconstitutional as an undue restriction on her First Amendment rights. She continued to pull the banners, and she was arrested by Bossier Parish Sheriff Deputy Hal Law.

Kia gave Deputy Law an earful about her opinion of the constitutionality of the regulation, and she refused his request to get in his car. Deputy Law, small in stature, was intimidated by the irate crop duster and elected to draw his Taser to help ensure that he had the upper hand in the arrest. Kia's husband, Todd, witnessed Deputy Law's arrest of his wife and suffered his own form of shock. A felony bill of information was filed against Kia in the Bossier Parish state court.

Kia and Todd hired an attorney to file suit in federal court and assert claims in connection with the arrest. The attorney advised Kia that she has a viable excessive force claim against Deputy Law under both 42 U.S.C. § 1983 and Louisiana tort law, with an estimated settlement value of \$50,000. Todd required only two therapy sessions to overcome his shock. The lawyer advised that Todd has state law tort and loss of consortium claims that have a combined fair value of no more than \$30,000. Kia, Todd, and Deputy Law are all Louisiana citizens.

- 5 pts.** **2.A** Kia and Todd file a complaint in federal court against Deputy Law and assert the federal and state law claims described above.

Explain why the federal court does or does not have the authority to hear Kia's federal and state law claims.

Explain why the federal court does or does not have the authority to hear Todd's state law claims.

- 3 pts.** **2.B** Kia's lawyer would also like the federal court to declare Commissioner Smith's regulation unconstitutional. He begins drafting an amended complaint that would add the Louisiana Department of Agriculture as a defendant, but he becomes concerned that the Department might have an Eleventh Amendment immunity defense.

Write a one-paragraph memorandum to Kia's attorney and explain how he could set forth a claim against either the Department or the Commissioner that would ask the federal court to decide the constitutionality of the regulation, yet not run afoul of the Eleventh Amendment.

3 pts. **2.C** Kia’s criminal trial date in the state court is fast approaching. She asks her lawyer to seek an injunction from the federal court that would stay the state-court criminal matter until the federal civil rights litigation has been resolved. Discuss whether the federal judge should issue such an injunction against the state court prosecution.

5 pts. **2.D** Deputy Law is deposed and testifies that he drew his Taser but never triggered or activated it, and Kia’s injuries were caused by her hysterical overreaction to the mere sight of the Taser. A technician reviewed the stored memory in the Taser device, and he testified at his deposition that Deputy Law was correct that the device had not been activated on the day of the arrest.

Deputy Law’s attorney believes that he can use the testimony from the two depositions to defeat Kia’s excessive force claims. He begins to draft a motion to achieve that goal but cannot decide whether he should file (A) a motion to dismiss for failure to state a claim under Fed. R. Civ. Proc. 12(b)(6) or (B) a motion for summary judgment under Fed. R. Civ. Proc. 56.

Write a short memo that explains the differences between the two motions, including (A) the documents or materials (if any) that may be used to support each motion and (B) the general standards the court will apply in deciding each motion. Finally, explain which motion Deputy Law’s attorney should file.

3 pts. **2.E** Deputy Law filed the proper motion. A federal judge entered an order on March 1, 2009 that granted Law’s motion in part by dismissing Kia’s § 1983 claim. Kia and Todd’s state law claims proceeded to trial.

A jury addressed all of the remaining claims and returned a verdict in favor of Kia and Todd for \$25,000 in damages. The judge entered a final judgment on June 1, 2009.

Kia believes the judge was wrong to grant Law’s motion and dismiss her § 1983 claim before trial. She wants the appellate court to reverse that decision and reinstate the § 1983 claim (which has the potential for punitive damages and attorney fees that the state law claim lacks).

What is the latest date for Kia to file a timely notice of appeal to contest the March 1, 2009 order that dismissed her federal claim against Deputy Law?

- A. 30 days after March 1, 2009.
- B. 10 days after June 1, 2009.
- C. 30 days after June 1, 2009.
- D. 30 days from the return date that is set by the judge.

- 3 pts.** **2.F** Write down the letter of the one of the following that is *not* true with regard to Eleventh Amendment immunity.
- A. Municipalities are entitled to Eleventh Amendment immunity.
 - B. A state may waive its Eleventh Amendment immunity from certain claims by removing a case from state court to federal court.
 - C. A state agency may file an immediate, interlocutory appeal if a federal judge denies a motion to dismiss or motion for summary judgment that asserts an Eleventh Amendment immunity defense.
 - D. Dismissal of a defendant based on Eleventh Amendment immunity should be without prejudice because the plaintiff may be able to lawfully assert the claim in a state court.

- 3 pts.** **2.G** Deputy Law's attorney, when he first reviewed the complaint against his client, considered filing a motion for Rule 11 sanctions on the grounds that some of the claims were wholly unfounded. He recalled that Rule 11 includes what is commonly known as the "21-day safe harbor" provision.

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

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

EXAMINATION CONTINUES ON NEXT PAGE

Question Three (25 points)

Ava, a California citizen and resident, purchased a new set of tires for her car from Beaumont Tire, Inc. (BTI) in Beaumont, Texas during the course of a trip to New Orleans, Louisiana. She left BTI and made it only as far as Lake Charles, Louisiana before one of her new tires went flat and left her stranded on the shoulder of Interstate 10.

Ava called a Lake Charles towing company, North Star Towing, Inc. (NST), after she spotted its billboard along the Interstate. "Locally Owned and Operated since 1986" was the business' slogan. NST sent its driver, Sam. As Sam towed the car, with Ava riding as a passenger, he failed to negotiate a curve, and the tow truck overturned. Ava sustained personal injuries and damages to her car in excess of \$100,000.

Ava filed suit against both BTI and NST on April 1, 2009 in the Calcasieu Parish, LA state court and prayed for recovery of all of her personal injury and property damages. The sheriff served NST's agent on April 15, 2009, and BTI received long arm service on April 25, 2009.

BTI's attorney would like to have the case heard in federal court, so he called NST's counsel to discuss the issue. NST's attorney was not sure it was the best strategy for his client, which had a positive reputation in the Calcasieu Parish community. On May 22, 2009, BTI's counsel filed papers to state BTI's desire to remove the case to federal court. He then sent NST's attorney a letter and informed him of the filing.

- 5 pts.** **3.A** Describe in detail the procedure and requirements counsel for BTI must follow to remove the case to federal court. To which federal court must the case be transferred?
- 6 pts.** **3.B** Ava's lawyer wants to return the case to state court. Explain the legal and factual basis for three grounds disclosed by the facts that Ava may use to argue for a return to state court.
- 4 pts.** **3.C** What must Ava's lawyer file to seek a return of the case to state court? What time limits, if any, does she face? Describe the effect, if any, on the grounds you identified in Question 3.B, if Ava's lawyer does not so act until June 1, 2009.
- 4 pts.** **3.D** BTI discovers that Ava's tire went flat because of a defective valve stem manufactured by West Coast Valves, Inc. (WCV), located near Los Angeles, California. BTI believes that WCV should be responsible for any damages it might have to pay Ava in connection with the tire failure. What pleading should BTI file if it wishes to bring WCV into the suit?

BTI is able to bring WCV into the suit and convince the judge that the Louisiana federal court has personal jurisdiction over WCV under the stream of commerce theory. Ava becomes worried that BTI and NST may lack the cash to satisfy any judgment against them, so she

contemplates amending her complaint to add her own claim directly against WCV. Discuss whether or not the Louisiana federal court would have subject matter jurisdiction to hear that claim.

3 pts. **3.E** The litigation of Ava’s case involved a number of depositions taken in Texas, Louisiana, and California. There were also several witnesses who had to be subpoenaed for trial. Write down the letter of the one of the following that is *not* a correct statement of law regarding the issuance and service of subpoenas in federal court.

- A. A subpoena for attendance at a deposition must issue from the court for the district where the deposition is to be taken, even if the case is pending in another district.
- B. A subpoena may be served outside the district but within 100 miles of the place specified for the deposition or trial.
- C. If a subpoena requires a person’s attendance at a deposition or a court proceeding, service must also include the tender of one day’s attendance fee plus mileage at the rate allowed by law.
- D. Service need not necessarily be made by an adult so long as the person who makes service is not a party and is of “suitable age and discretion.”

3 pts. **3.F** Ava’s case involved a great deal of discovery, and some of the attorneys filed motions for leave of court to take discovery beyond the ordinary limits of the rules. Write down the letter of the one item below that would *not* require leave of court or agreement of the parties before the attorney could take that step.

- A. Taking a deposition that would result in more than 10 depositions being taken by Ava.
- B. Service of request for production of documents by BTI before counsel for the parties confer to develop a discovery plan.
- C. Service by NST of more than 25 written interrogatories on WCV.
- D. Taking more than three depositions in one day.

EXAMINATION CONTINUES ON NEXT PAGE

Question Four (25 points)

- 3 pts.** **4.A** Ray, a Louisiana citizen, is a general contractor. The Town of Bunkie, Louisiana awarded Ray a contract to build a new tourist information building. Ray finished the project, but the town refused to pay him the final \$92,000 due on the contract because it believed the entrance and bathroom areas were not compliant with the federal Americans with Disabilities Act (ADA) and would require expensive renovations. Ray believed that he built the project in full compliance with the ADA.

The parties attempted a mediation, and they even hired an independent expert to opine on whether there was ADA compliance, but they could not reach an agreement. Ray hired an attorney to sue the Town for the \$92,000 balance of the contract. Discuss whether a federal district court in Louisiana would have subject-matter jurisdiction over Ray's suit against the Town.

- 3 pts.** **4.B** Assume the facts set forth in the above question. The Town hears rumors that Ray is about to file suit, and decides that it would like to beat Ray to the punch. Under what federal law might the Town ask a federal court to decide whether the construction was in compliance with the ADA?

Discuss whether a federal court would have subject-matter jurisdiction to hear that suit if the dispute were over compliance with the Louisiana Handicapped Assistance Act rather than the federal ADA?

- 3 pts.** **4.C** Ray and the Town eventually resolved their differences and entered into a settlement agreement, by which the Town was to pay Ray \$62,000 within 10 days. Unfortunately, Ray died before the town made payment. Ray's daughter, who lives in Bunkie, asked the Town to make payment to her in her capacity as Ray's succession representative. The next day, the town received a letter from Big Tex Construction Supply, Inc., a Houston, Texas company, to which Ray owed a significant debt. Big Tex alleged that it was entitled to payment under the terms of an agreement that Ray signed prior to his death that assigned all proceeds of his claim against the Town to Big Tex.

Discuss whether there is a procedure by which the Town could have a Louisiana federal court determine which of the claimants is entitled to the funds. Explain whether or not a federal court would have subject matter jurisdiction over such a proceeding under the facts presented.

5 pts.

4.D Tidy Time, Inc. (TTI) is a Mobile, Alabama company that provides commercial janitorial services to businesses throughout the Gulf South Region. A five-person staff operates the main office in Mobile. Ron, a TTI employee who is a citizen of Louisiana, is the manager of a three-employee branch in Shreveport, Louisiana. Among Ron's duties is payment of suppliers and contracting with laborers. He then turns in his expense reports and related documentation to the Mobile office, where they are verified and filed.

TTI discovered that Ron had written about a dozen checks to alleged suppliers and laborers in the Shreveport area that TTI now believes were fictitious. All of the checks were written on TTI's account at a Mobile bank and deposited in a number of accounts set up by Ron at Shreveport banks. The two other employees in the Shreveport office were interviewed by management, and they said they had been suspicious of Ron for a while, so they were watching him carefully and copying key documents "just in case." They had refrained from saying anything because Ron was their boss.

TTI filed a diversity jurisdiction complaint against Ron in a Mobile federal court seeking recovery of \$85,000 in losses. Discuss whether the Mobile federal court is a proper venue for the dispute.

Assume the Mobile federal court ruled that it is a proper venue. Discuss what Ron might file in an attempt to move the case from the Mobile federal court to the federal court in Shreveport. Discuss the key factors the court would consider relevant to the issue and, based on the facts provided, analyze whether a move would be appropriate.

2 pts.

4.E Assume the facts in the above question. Ron, upon being served with the complaint, elected not to fight the Mobile venue. Instead, he immediately confessed that he did "borrow" \$30,000 from TTI, and he delivered TTI a cashier's check in that amount. Ron next filed an answer that admitted taking \$30,000 of the claimed \$85,000 in losses, attached a copy of his cashier's check to prove repayment of the \$30,000, and denied the remaining allegations. Ron then filed a motion to dismiss for lack of subject-matter jurisdiction on the grounds that there was not an adequate amount in controversy to exercise diversity jurisdiction. Explain whether the district court should grant or deny Ron's motion.

3 pts.

4.F The fraudulent joinder doctrine, also known as the improper joinder doctrine, is routinely litigated in the federal courts. A common scenario is a Louisiana plaintiff files suit against a diverse defendant (e.g., a foreign corporation that owns a store in which a slip and fall accident happened) and a Louisiana defendant (e.g., the store manager). There is no diversity of citizenship on the face of the state-court petition, but the out-of-state defendant may nonetheless remove the case based on diversity jurisdiction if it can establish that the Louisiana defendant was improperly joined.

Write down the letter of the one of the following that is *not* a correct statement of law regarding an improper joinder contest.

- A. The district court, in deciding whether a defendant was improperly joined, must determine whether the removing defendant has demonstrated that there is no reasonable basis for the court to predict the plaintiff might be able to recover against the in-state defendant.
- B. The judge must accept as true each allegation in the plaintiff's petition, even if the removing defendant files affidavit testimony that contradicts the allegations.
- C. If state law governing the claim against the in-state defendant is not clear, the federal court must resolve any ambiguities in the state law in favor of the plaintiff.
- D. The removing defendant may submit affidavits or other summary judgment type evidence to contest allegations in the petition and help satisfy its burden.

EXAM CONTINUES ON NEXT PAGE

3 pts.

4.G Pat, a Louisiana (LA) citizen, filed a Title VII sexual harassment suit against her former employer Jobco., Inc. (a LA corporation) and her former supervisor, Tom, who is also a LA citizen.

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 private process server delivers a summons and a copy of the complaint (for service on Tom) to Tom's office in the Jobco building. Tom is in a meeting across town, but the process server leaves the papers with Tom's 21 year-old secretary, who says she will get the papers to Tom.
- B. A retired sheriff's deputy, hired by Pat, delivers a summons and a copy of the complaint (for service on Jobco) into the hands of Jobco's agent for service of process, at the agent's office in New Orleans, LA.
- C. A 22 year old student, hired by Pat's lawyer, delivers a summons and a copy of the complaint (for service on Tom) to Tom's house. Tom is not home, but the process server leaves the papers with Tom's 17-year-old daughter, who says she will get the papers to Tom.
- D. Pat's lawyer sends, by first-class mail, a request for waiver of service (by Tom), accompanied by a copy of the complaint and other waiver documentation, to Tom at his work address. Tom promptly signs the waiver and returns it to Pat's lawyer.

EXAM CONTINUES ON NEXT PAGE

3 pts.

4.H Bill holds an interest in a valuable mineral lease. A dispute arose between landowners and the operator of the lease regarding the deduction of certain expenses from royalty payments. The operator served Bill with a copy of a federal complaint, based on diversity jurisdiction, that seeks a judicial resolution of the expense issue.

Bill's cousin is a lawyer. The cousin filed a general denial answer for Bill to avoid a default, but he told Bill he should hire an attorney who practices regularly in federal court. Bill hired Kim, who reviewed the file and spotted a number of potential defenses. Unfortunately, the filing of the answer waived one of the defenses. Write down the letter of the one of the following defenses that was waived by the filing of the answer. Do not be concerned with whether a defense would have merit.

- A. Res judicata based on a judgment in a prior state court litigation between prior holders of the mineral interests.
- B. Failure to join an indispensable party, because not all persons with interests in the lease were named as defendants.
- C. Lack of subject-matter jurisdiction because Bill is a citizen of the state in which the operating company has its principal place of business.
- D. Lack of personal jurisdiction over Bill, because his relatively minor interest in the mineral lease is his only contact with Louisiana.

END OF EXAM