

CIVIL CODE I
LOUISIANA STATE BAR EXAMINATION
July 26, 2010

Question I
(25 Points)

Andy and Beth were divorced in 2004. In 2006, Andy and Beth's 24 year old son Chris was severely injured in an automobile accident which rendered him essentially helpless and bedridden. Medical records stated that Chris sustained a closed head injury with brain stem damage which left him severely debilitated. He is unable to swallow and is fed through a tube in his abdomen. Unable to speak, his ability to communicate is minimal and he is completely dependent on family and other caregivers to sustain him.

Following a trial in 2008, Chris was interdicted and Beth was appointed as curator over Chris's person and finances. At the same time, the parties settled a damage claim for the automobile accident that caused Chris's injuries. In addition to a lump sum payment, an annuity was purchased to provide monthly income for Chris's living expenses. The annuity apportioned 54% of the funds to the party with physical custody, 21% for Chris's daily expenses and 25% in an interest bearing account for Chris's benefit.

During a recent visit to see Chris, Andy noticed a significant difference in Beth's lifestyle. In the past year she took three vacations and purchased a BMW convertible. However, a new wheelchair recommended by Chris's physical therapist has still not been purchased, even though it would allow Chris to navigate more easily throughout Beth's home. Even more disturbing, Andy has also noticed a persistent skin rash and bruises on Chris's arms and legs on several occasions.

Andy has hired you to advise him. In preparing for a meeting with Andy, answer the questions below. **You must give full reasons for your answers in order to receive credit.**

1. What is the procedure for appointment of a curator in Louisiana? Answers without explanation will receive no credit. **(4 points)**.
2. What are the specific duties and responsibilities of a curator under Louisiana law? Answers without explanation will receive no credit. **(4 points)**.
3. Discuss the procedure and requirements for removing a curator. Answers without explanation will receive no credit. **(6 points)**.
4. Does Andy have sufficient grounds to have Beth removed as Chris's curator? Answers without explanation will receive no credit. **(6 points)**.
5. Will Beth be personally responsible for payment of attorney fees relating to any proceeding to have her removed as curator? Answers without explanation will receive no credit. **(5 points)**.

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Question II
(25 Points)

Bob and Carol were married in New Orleans in 2002. One year later they bought a house and moved in together immediately. The act of sale listed Bob and Carol as purchasers and stated that they had been married but once and then to each other. That same year, Bob secured a job managing a hotel in the French Quarter. Carol teaches English at a local high school.

Bob did very well in his position and in 2006, he received a promotion appointing him as manager of a resort hotel in Lake Charles. However, Bob and Carol did not want to sell their house and move to Lake Charles. Consequently, Bob rented an apartment in Lake Charles and stayed there during the week, and would return to New Orleans on Friday evenings, spending the weekends with Carol. While not ideal, Carol tolerated this arrangement so that Bob could advance his career.

Two months after Bob began working in Lake Charles, he met Dana, who managed a local restaurant. In derogation of his marriage to Carol, Bob began dating Dana, but never told her that he was already married. He also told Dana that both his parents were dead and that he had no brothers or sisters. He also explained to Dana that he had a weekend job selling real estate in New Orleans. The couple's relationship continued and they were married on September 1, 2007, in a very small ceremony attended only by their friends in Lake Charles and members of Dana's family.

After the wedding, Dana moved into Bob's apartment. Bob continued to spend his weekends in New Orleans with Carol, but Carol was growing increasingly dissatisfied with Bob's absence during the week. Dana was very happy to be with Bob and never suspected anything about his life in New Orleans. Bob kept all his business records in a locked file cabinet in his office at the hotel. He also suggested that they file separate tax returns.

In January, 2009, Bob and Dana purchased a piece of rental property in Denham Springs for the price of \$200,000. The act of sale indicates that the property was acquired by Bob and Dana jointly. Dana contributed \$50,000 in cash, which they used as a down payment for the purchase. Dana's contribution came from her separate bank account, with funds provided by way of a donation from her father.

In July 2009, Dana became pregnant. Unfortunately, in February, 2010, Dana was injured in an automobile accident and her doctor has told her that her unborn child was also injured and would be born deaf. Meanwhile, Carol decided to pay Bob a surprise visit during the week, went to the apartment and learned about Dana. Likewise, Dana learned about Bob's marriage to Carol.

Dana was shocked to learn of Bob's prior marriage to Carol and she wants to terminate the marriage immediately. She is very concerned about the welfare of her unborn son and also wants to go back to using her maiden name. Dana has engaged you to represent her. In evaluating this case, respond to the following questions, giving full reasons for your answers. **You must give full reasons for your answers in order to receive credit.**

1. Is Dana's marriage to Bob valid? Answers without explanation will receive no credit. **(4 points)**.
2. What are Dana's rights, if any, as a result of her marriage to Bob? Answers without explanation will receive no credit. **(5 points)**.

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3. Can Dana sue Bob for divorce based on the fact that he was already married to Carol when he married Dana? Answers without explanation will receive no credit. **(5 points)**.
4. What action should Dana take to protect the rights of her unborn child for its injury? Answers without explanation will receive no credit. **(4 points)**.
5. Evaluate Dana's rights to the rental property in Denham Springs. Answers without explanation will receive no credit. **(5 points)**.
6. What action, if any, is required, in order for Dana to change her surname back to her maiden name? Answers without explanation will receive no credit. **(2 points)**.

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Question III
(25 Points)

Aucoin owned two contiguous tracts of land in Lafayette Parish which are designated as "*Tract A*" and "*Tract B*," respectively. In June, 1992, Aucoin built a 5,000 square foot house on Tract A which he uses as his personal residence. In connection with the construction of the house, Aucoin also constructed a gravel road which is thirty (30) feet in width and extends in an easterly direction along the entire southern boundary line of each tract. The gravel road terminates at the southeastern corner of Tract B and connects with Greenacres Road, which is a publicly dedicated road. Tract A has no other means of public access.

In May, 1995, Aucoin sold Tract B to Baker pursuant to an act of sale which was in proper form and duly recorded in the parish conveyance records (the "*Baker Sale*"). The Baker Sale made no mention of the gravel road and did not grant or reserve to Aucoin any access rights over Tract B. However, the survey attached to the act of sale showed the gravel road and also contained a notation stating that "a thirty foot right of passage (the "*Right of Passage*") is granted to Aucoin for access over Tract B." Prior to the sale, Aucoin and Baker walked the property together and Aucoin pointed out the gravel road and explained its purpose.

In May, 2000, Baker sold Tract B to Chauvin pursuant to an act of sale which was in proper form and was duly recorded in the parish conveyance records (the "*Chauvin Sale*"). The Chauvin Sale made no mention of the existence of the gravel road but the gravel road was shown on the attached survey. That survey did not, however, contain the notation that appeared on the survey attached to the Baker Sale or any other such provision. Baker and Chauvin had no discussions concerning the gravel road or any related rights of passage.

Chauvin now wants to use the property to develop a 24 hour drugstore and has determined that the gravel road and the Right of Passage need to be eliminated to facilitate the development. Aucoin recently learned that Chauvin is planning to file suit against him to enjoin the use of the gravel road and the Right of Passage thereon and have the Right of Passage declared null and void.

Aucoin has engaged you to represent him in this matter. In evaluating this case, answer the following questions, giving full reasons for your answers. **You must give full reasons for your answers in order to receive credit.**

1. How would the Right of Passage granted in the Baker Sale be classified under the provisions of the Civil Code? Give full reasons for your answer. Answers without explanation will receive no credit. **(6 points)**.
2. Is the Right of Passage effective and enforceable against Chauvin? Give full reasons for your answer. Answers without explanation will receive no credit. **(7 points)**.
3. Assuming that the Right of Passage purportedly granted by the Baker Sale is found to be valid and enforceable, can Chauvin compel Aucoin to relocate the Right of Passage? Give full reasons for your answer. Answers without explanation will receive no credit. **(5 points)**.
4. Assuming that the Right of Passage purportedly granted by the Baker sale is invalid, are there any other rights that Aucoin can assert to obtain access to Greenacres Road? Give full reasons for your answer. Answers without explanation will receive no credit. **(7 points)**.

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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. Arceneaux recently died. In his will, he left his fishing camp to his sons, Boudreaux and Chauvin. Boudreaux was given the naked ownership of the camp and Chauvin was given a usufruct. Chauvin hosted a crawfish boil at the camp in memory of his late father. During the crawfish boil, the propane burner overheated, causing the entire camp to burn down. A subsequent investigation revealed the propane burner was defective. Boudreaux filed suit against the manufacturer. The court found the manufacturer at fault and awarded Boudreaux damages in the amount of the camp's value. Chauvin demanded Boudreaux use the damage award to rebuild the camp, but Boudreaux has refused to do so. Chauvin has now retained you and asked whether he can force Boudreaux to rebuild the camp. Alternatively, Chauvin asks whether he has any legal right to the money received by Boudreaux. Advise him of his rights, providing supporting legal reasoning for your answer. **(3 points)**.

2. Devereaux was interested in purchasing a front-end loader for his construction company. He went to Kajun Konstruction Supply, a dealer in construction equipment. The salesman showed Devereaux a loader with a sale price of \$23,000. Devereaux told the salesman this price seemed low, as he had seen similar loaders sell for \$35,000. The salesman replied the loader was priced lower because it had some minor damage to the ignition switch, which had been repaired. During his inspection, Devereaux noticed the loader's stamped serial number had been gouged out of the metal and a second serial number on the front of the vehicle was glued on. However, the salesman assured him this was a normal practice. Devereaux purchased the loader and began using it in his business. Subsequently, the owners of Kajun Konstruction Supply were arrested as part of an investigation into stolen equipment. The police then came to Devereaux's yard, advising him their investigation revealed the loader had been stolen from Ernie. Thereafter, Ernie filed suit against Devereaux, seeking to be recognized as owner of the loader without the need to pay Devereaux the purchase price. Devereaux has now retained you as counsel and asked you to advise him as to whether he has any right to recover the purchase price from Ernie. Advise him of his rights and provide supporting legal reasoning for your answer. **(4 points)**.

3. Homer and Marge are the parents of two children and live in Springfield, Louisiana. At the time they divorced, Homer and Marge advised the court they wished to enter into an agreement for joint custody of the children. Pursuant to the agreement, Marge was designated the domiciliary parent and Homer was allowed custody of the children one week per month during the school year and alternating weeks during the summer. The court entered judgment in accordance with the parties' agreement. At the beginning of June, Homer moved to Picayune, Mississippi, which is approximately a one and a half hour drive from Springfield, to accept a high-paying job managing a doughnut shop. Pursuant to the custody agreement, Homer takes the children to his lavish home in Picayune during alternating weeks. However, Marge is concerned this arrangement will not work during the school year. Homer refuses to agree to a change, asserting he will be able to drive the children to school during his week of custody. Marge has now retained you as her counsel and asked you whether she would be entitled to seek sole custody of the children in light of Homer's move. Advise her of her rights and provide supporting legal reasoning for your answer. **(3 points)**.

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

1. What is a negative servitude? Give an example of a negative servitude. **(2 points)**.
2. List the four kinds of tutorships established in the Civil Code. **(2 points)**.
3. Under what circumstances may a court order a thing held in indivision to be partitioned in kind? **(2 points)**.
4. What is precarious possession? **(2 points)**.
5. What factors does a court consider in awarding interim spousal support? **(2 points)**.

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

1. A marriage which is contracted without a marriage ceremony is a relative nullity. **(.50 points)**.
2. Under the law, a person may have multiple domiciles, but only one residence. **(.50 points)**.
3. Predial servitudes may be established on public things, including property of the state. **(.50 points)**.
4. The right to compel the fixing of the boundary between contiguous lands is subject to the ten-year prescriptive period. **(.50 points)**.
5. Building restrictions are classified as incorporeal immovables. **(.50 points)**.
6. A usufructuary may establish predial servitudes on property over which he has a usufruct, but the servitudes terminate when the usufruct ends. **(.50 points)**.
7. Partitions may be excluded by agreement for no more than thirty years. **(.50 points)**.
8. There is no right to alluvion or dereliction on the shore of the sea or of lakes. **(.50 points)**.
9. A spouse may alienate a movable registered in his name, but only with the express concurrence of the other spouse. **(.50 points)**.
10. Unless the contract provides otherwise, a right of use established in favor of a natural person is extinguished at the death of that person. **(.50 points)**.

END OF EXAMINATION

CIVIL CODE II
QUESTION 1
(25 POINTS)

Marie married Donald on June 17, 1980. Three children were born of their marriage: Kevin, in 1981; Lisa, in 1984; and James, in 1987.

On June 17, 1990, Marie broke her ankle working out at the local fitness center and was taken to the nearest urgent care clinic. While waiting for the doctor to examine her ankle, Marie wrote the following on the back of an envelope:

“I bequeath to my husband, Donald, my community interest in our house, furniture, and automobiles. I broke my ankle this morning! Today is my Tenth Wedding Anniversary! What a way to celebrate!”

This was written by Marie entirely in her own handwriting, and she signed it at the end.

Donald died in 1994 in a boating accident. Marie never remarried.

In July 2001, Marie executed a notarial testament, valid in form, which contained only the following dispositive provisions:

“I make the following bequests of my separate property:

- (1) To my daughter, Lisa, all of the jewelry (including the pearl necklace), which I inherited from my mother;
- (2) To my son, James, my farmland in Vermilion Parish, which I inherited from my father; and
- (3) To my son, Kevin, my stock in ExxonMobil Corporation, which I inherited from my father.”
- (4) To my brother, Gene, my fishing camp in Terrebonne Parish.

In December 2001, Marie told Jennifer, her best friend, in the presence of two witnesses: “If something happens to me, I want you to have the pearl necklace, which I inherited from my mother. I am going to keep the necklace at my house for now, but you may wear it any time you want. Just call me whenever you want to wear it.” Jennifer wore the pearl necklace many times in public after that, but always returned the necklace to Marie’s house. Marie and Jennifer never reduced anything to writing concerning the necklace.

In December 2002, Marie gave 1,000 shares of stock in ExxonMobil Corporation to Nicholls State University. This was part of the stock that Marie inherited from her father. There was no written act of donation, but Marie complied with all of the requirements applicable to the transfer of that stock. As part of the process, Nicholls State University received a new stock certificate for 1,000 shares in ExxonMobil Corporation issued in the name of the university. Marie received a letter from the President of Nicholls State University acknowledging receipt and acceptance of the stock and expressing his gratitude for her donation to the university.

In March 2007, Marie executed an Act of Donation, valid in form, in which she donated to her cousin, Roger, the farmland in Vermilion Parish which she had inherited from her father. Roger recorded the Act of Donation in Vermilion Parish in April 2007. Marie never reacquired the farmland.

Marie’s son, Kevin, was seriously injured in an automobile accident in February 2008. As a result of the accident, Kevin was never again able to take care of himself or his property and was permanently institutionalized.

Marie died in September 2009, survived by her three children, Kevin, Lisa, and James. Marie's brother, Gene, died intestate in January 2010.

At the time of Marie's death, the pearl necklace was in the jewelry box at her house.

The original copy of Marie's July 2001 will was found in the desk in her home. Marie had written the following in her own handwriting next to the bequest of the fishing camp in Terrebonne Parish to her brother, Gene. "I am hereby revoking this bequest to Gene." Marie signed the notation in her own handwriting, but did not date it.

The week after Marie died, Roger realized that he had never executed an acceptance of Marie's 2007 donation to him of the Vermilion Parish farmland. Roger promptly executed an acceptance of that donation in writing and recorded the acceptance in Vermilion Parish.

Please give reasons for all of your answers. You may assume that the legitime of any forced heir was satisfied.

QUESTION 1(A)
(4 points)

Was the June 1990 instrument valid in form as a Louisiana will at the time it was executed?

QUESTION 1(B)
(4 points)

Jennifer contends that she is entitled to the pearl necklace. Is Jennifer correct in her contention?

QUESTION 1(C)
(4 points)

Who is entitled to the farmland in Vermilion Parish?

QUESTION 1(D)
(4 points)

An attorney appointed to represent Kevin claims that Kevin is entitled to the 1,000 shares of stock in ExxonMobil Corporation, rather than Nicholls State University, because no act of donation and no acceptance were ever executed. Is Kevin's attorney correct?

QUESTION 1(E)
(4 points)

Is Gene entitled to the fishing camp in Terrebonne Parish?

QUESTION 1(F)
(5 points)

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

QUESTION 2
(25 POINTS)

In the 1960s, Andrew and Bryn were married, had two children, Carrie and Daniel, and were subsequently divorced. All of the property issues between them were resolved.

After her divorce from Andrew was final, Bryn married Ethan. They had two children, Phil and Rebecca. Phil later married and had twins, Sean and Thomas, in 1992.

Carrie had a son, Harold, in 1989. She also cared for Daniel, her brother, who was diagnosed with muscular dystrophy at a young age and has been unable to care for himself. In 2007, Bryn gave Harold \$15,000 to buy a car. Carrie died intestate in 2008.

Rebecca started a catering business in the early 1990s. In 1995, to help her get started, Ethan agreed to donate a tract of undeveloped land in south Baton Rouge to Rebecca, which was his separate property. The donation was valid, in proper form and was formally accepted and filed in the mortgage records of East Baton Rouge Parish. Rebecca built a facility on the land and developed a successful business. In 2005, before a notary and two witnesses, Rebecca prepared and signed an act of donation of the Baton Rouge property to her business partner and live-in girlfriend, Susan. Though she and Susan had discussed the matter, Susan was not aware that an act of donation had been prepared and signed. Rebecca placed the act of donation in her safe deposit box.

Andrew took up with Robert in the late 1990s. In 2009, they traveled to New Hampshire, where same-sex marriage is legal, and were legally married in an official ceremony. Andrew and Robert returned to Louisiana, bought a house together with cash, and lived together as a married couple. Six months after the marriage ceremony with Robert, Andrew died intestate.

Bryn and Phil also died intestate in 2009.

Rebecca died intestate in June 2010. After Rebecca's death, Susan opened Rebecca's safe deposit box and found the Act of Donation. She quickly prepared, signed and filed an acceptance of the Act of Donation one week after Rebecca's death.

QUESTION 2(A)
(5 points)

Upon his death, Andrew's sole assets were his interest in the house he bought with Robert and his Dodge truck. Identify Andrew's estate and explain how Andrew's estate will be distributed, to whom and in what percentages?

QUESTION 2(B)
(4 points)

Of those who survived Bryn, who, if anyone, is eligible to demand collation?

QUESTION 2(C)
(4 points)

Is the \$15,000 gift to Harold subject to collation?

QUESTION 2(D)
(5 points)

Who is entitled to the Baton Rouge property?

QUESTION 2(E)
(7 points)

Other than the Baton Rouge property, how will Rebecca's estate be distributed?

QUESTION 3
(25 POINTS)

Nancy was a widow with two adult children: Olivia, with whom she was close, and Peter, from whom she was estranged. In 2002, Nancy executed a valid statutory will containing the following provisions:

- (1) I leave my Microsoft stock to my best friend, Rita.
- (2) I leave the rest of my estate to Olivia.

During the next few years, Nancy and Peter reconciled. In 2005, Nancy, as the Settlor, established an irrevocable inter vivos trust, which contained the following provisions:

- “(1) This trust is a spendthrift trust and shall be held subject to the maximum restraints on voluntary and involuntary alienation permitted by Louisiana law.
- (2) The Trustee shall distribute on January 1 of each year, the income from this trust earned during the prior year to my two children, equally. This trust shall terminate on January 1, 2031, and at that time the Trustee shall distribute the principal and any accumulated income held in this trust to my two children, equally.
- (3) The Trustee shall hold the proceeds from my Individual Retirement Account with Metro Bank in trust as part of the principal of this trust.
- (4) The Settlor's brother, Jerome, who lives in Quebec, Canada, shall be the sole Trustee of this trust. If Jerome is not able to serve, then I appoint XYZ Bank as the Trustee of this trust.”

On the day Nancy established the trust, she contributed her Microsoft stock to the trust.

In 2007, Nancy prepared a one page typewritten will using a form she found on the Internet. It contained the following provisions:

- (1) I leave my Microsoft stock to Peter.
- (2) I leave the rest of my estate to the March of Dimes.

Nancy walked her will over to the house of her adult neighbor, Susan, and told Susan it was her last will and testament. Nancy signed and dated at the end of the will in Susan's presence and Susan signed the will as a witness. Nancy then walked the will across the street to another neighbor, Thomas, and asked him to “witness something” for her. Thomas signed it but did not know what it was. Finally, Nancy drove to the supermarket and found a notary to sign her will. She then placed the will in her safe deposit box, along with her other important papers.

After Nancy's death, the executor of her estate found in her safe deposit box a copy of Nancy's beneficiary designation for her Individual Retirement Account at Metro Bank. Nancy had designated Rita as the beneficiary, signed and dated the beneficiary designation in March 2006 and mailed it by certified mail to Metro Bank. A letter from Metro Bank acknowledging that it had received the beneficiary designation was also in the safe deposit box.

The 2002 and 2007 wills were found in the safe deposit box. There was also a letter in the safe deposit box, written and signed by Nancy but not dated, in which she stated:

“My intention is to include Peter in my estate. My will which excludes Peter is wrong and is canceled.”

Nancy’s brother, Jerome, has been a Canadian citizen and has lived continuously in Canada since 1975.

QUESTION 3(A)
(5 points)

Has the 2002 will been revoked?

QUESTION 3(B)
(5 points)

Is the 2007 will valid?

QUESTION 3(C)
(4 points)

Who is entitled to Nancy’s Individual Retirement Account at Metro Bank?

QUESTION 3(D)
(4 points)

Would Jerome be eligible to serve as the Trustee of the inter vivos trust established by Nancy in 2005?

QUESTION 3(E)
(4 points)

Peter applied for a home equity loan 2007. Would it be legally permissible for Peter to pledge his beneficial interest in the trust as collateral for the loan?

QUESTION 3(F)
(3 points)

May the Trustee sell the Microsoft stock before the termination of the trust?

QUESTION 4
(25 POINTS TOTAL)

Ron and Sarah were married. Initially they had trouble conceiving a child, and they adopted Wes through an adoption agency in New Orleans. The adoption of Wes was legal and valid in all respects. Subsequently, Ron and Sarah had two children born during their marriage: Tricia and Valerie. Ron and Sarah were divorced. All issues with respect to their community were resolved shortly after their divorce.

After his divorce from Sarah, Ron started living with Mabel, who had a child, Nina, from a prior relationship. Ron grew very fond of Nina, and with Mabel's consent, Ron adopted Nina. Nina's adoption by Ron was legal and valid in all respects. Also, while they were living together, Mabel gave birth to a child, Olivia. Ron signed Olivia's birth certificate acknowledging that he was her father.

After her divorce from Ron, Sarah married Ben. Ben had a child, Pete, from a prior marriage, who lived with them and who was raised by Sarah like her own child. During their marriage, Sarah and Ben had two children, Dan and Esther.

Tricia married Parker, who was in the military. Two months after their marriage, Parker was sent overseas. As a result of his military service, Parker was separated from, and did not see or live with, Tricia for over a year. Eleven months after Parker was sent overseas, Tricia gave birth to Charlotte. Tricia did not tell Parker about Charlotte's birth at the time the child was born. Instead, after Charlotte was born, Tricia divorced Parker and married Aaron. All issues with respect to the community which had existed between Tricia and Parker were resolved after their divorce. A year later Tricia wrote Parker a letter in which she told him for the first time about Charlotte's birth during their marriage, and she told him that she had listed him as the father on Charlotte's birth certificate. Parker received the letter from Tricia in March 2009, and in turn Parker wrote to his parents, telling them about Tricia's letter and complaining about the fact that Tricia had listed him as Charlotte's father on her birth certificate. In June 2009, Parker was killed in action before he had an opportunity to institute any type of legal proceedings. In addition to Charlotte, Parker, who died intestate leaving separate property, was survived by his parents and a brother.

Valerie, though married to Bill, had a brief fling with Adam. As a result of her relationship with Adam, Valerie gave birth to Lydia. To avoid conflict in her marriage, Valerie initially kept her pregnancy and the birth of Lydia from Adam. Instead, she allowed Bill to believe that Lydia was his child and identified Bill as the father on Lydia's birth certificate. When Lydia was three years old, and after Valerie's marriage to Bill had ended, Valerie wrote Adam a letter and revealed Lydia to be his daughter.

When Nina was 15, Ron gave her a very valuable ring which had belonged to Ron's mother. A year later, Nina, who by then was 16 years old, gave the ring to her 15 year old boyfriend Chuck. Ron was very upset about Nina giving the ring to Chuck. Ron and Nina went to see Chuck and his mother and asked for the ring back, but they refused to return the ring.

Several years after the birth of Olivia, Ron and Mabel got married. They acquired property together, and Ron also had separate property of his own. Ron died intestate in an automobile accident. All of Ron's children were of majority when he died, except Olivia, who was ten years old.

QUESTION 4(A)
(2 points)

What was Parker's legal relationship, if any, to Charlotte and why?

QUESTION 4(B)

(5 points)

Parker confided in his family that he was unhappy about his name on Charlotte's birth certificate. Now that Parker is dead, can Parker's paternity of Charlotte be challenged, and if so, under what circumstances, and by whom? Include in your response any applicable time limits and evidentiary burdens which apply to this situation.

QUESTION 4(C)

(4 points)

Wes, age 22, spent years researching his genealogy and became convinced that he was the illegitimate child of Al, a wealthy New Orleans restaurateur. When he went to visit Al last week, he learned that Al had died in October 2009. What steps may Wes take to attempt to establish the paternity of Al for succession purposes, if any? Include in your response any applicable time limits and evidentiary burdens which apply to his situation, and what inheritance rights, if any, Wes would have if successful.

QUESTION 4(D)

(3 points)

Before Ron's death, Ron and Nina consulted you about Nina's gift of the ring to Chuck. Are Ron and Nina entitled to have the ring returned? Why or why not?

QUESTION 4(E)

(5 points)

Now that Adam knows about Lydia, what steps may Adam take to attempt to establish his parental rights as to Lydia, if any? Include in your response any applicable time limits and evidentiary burdens which apply to his situation.

QUESTION 4(F)

(2 points)

What was Ron's legal relationship, if any, to Olivia and why?

QUESTION 4(G)

(4 points)

Now that Ron is deceased, who is entitled to the community and separate property and in what percentages?

LOUISIANA BAR EXAMINATION

CIVIL CODE III

JULY, 2010

Question One: TOTAL OF THIRTY POINTS.

Bob and his sister, Sally, recently inherited a five-acre tract located at a busy highway intersection. For many years, a gasoline service station had been operated upon the tract until it closed several years ago. Paul, who is in the business of operating truck stops and video poker casinos, approached Bob, indicating an interest in purchasing the tract and ultimately offering to purchase it for \$250,000. Both surprised and pleased that Paul would offer such a high price, which was more than twice the value the tract was shown to have in a recent appraisal, Bob could not restrain himself from verbalizing his astonishment. Paul responded that Bob should not be concerned, for the tract's value as a site for a truck stop and casino more than justified the price. However, Paul indicated that Bob and his sister would need to demolish the old service station building and remove all underground fuel storage tanks from the tract. Later that day, Paul presented Bob with a written purchase agreement, which Paul had already signed, embodying the terms of his offer. The purchase agreement said nothing about Paul's intended use of the property and contained no conditions to Paul's obligation to purchase other than the removal of the building and tanks. Bob indicated that he would be back in touch with Paul as soon as Bob had spoken to his sister about the offer.

That night, Bob telephoned Sally, who lived in another state, to relay the news of Paul's offer. Sally agreed that it was an offer they simply could not refuse. However, since neither of them had sufficient funds at his disposal to fund the estimated \$40,000 cost of removing the building and underground storage tanks, they agreed that Bob would approach a local bank to apply for the necessary loan. The next day, Bob signed the purchase agreement, printing beneath his signature words to the effect that he had signed both individually and as agent and attorney-in-fact for Sally. He felt comfortable signing on his sister's behalf not only because of their conversation the preceding night but also because she had some time ago given him a written and notarized document which contained the following provision: "I hereby grant my brother Bob full and complete power and authority to act on my behalf in managing my affairs in the State of Louisiana." (There was no other grant of authority in the document.) After signing the purchase agreement, Bob dropped it off at Paul's office and immediately went to see his loan officer at the bank.

The loan officer indicated that the bank would be willing to make a \$40,000 loan to Bob and Sally only if their uncle George guaranteed the loan. When the bank officer mentioned that George's guaranty would be required, Bob responded that he could reach George by telephone at that moment so that the bank officer could discuss the guaranty directly with him. During their ensuing telephone conversation, George assured the bank officer that he would pay the \$40,000 loan if for any reason Bob and Sally failed to do so. Satisfied with this response, the bank officer told George that the bank would make the loan based on his verbal assurances, but "for the file" he would need for George to sign and return a guaranty agreement that the bank's loan closing department would mail to him. When the guaranty arrived in the mail, George placed it on his desk, intending to sign it. However, he forgot to do so, and it was never signed or returned to the bank.

After the loan officer's telephone conversation with George concluded, he had his assistant prepare a \$40,000 promissory note and mortgage that encumbered the property as security for the loan. Bob signed both documents on behalf of himself and his sister, and the bank recorded the mortgage in the mortgage records of the parish in which the tract is located. Bob then used the loan proceeds to perform the removal of the dilapidated buildings and underground storage tanks from the tract. Upon inspection and approval of this work, Paul mentioned that he was ready to proceed with the purchase but was "a little short on funds." He asked Bob whether, instead of paying the full purchase price in cash, he could simply assume the \$40,000 balance of the loan the bank had made to Bob and Sally. Bob responded that this would be acceptable as long as the bank consented. When approached with this request, the bank officer issued to Bob and Paul a letter indicating that the bank consented to Paul's assumption of the loan and the transfer of the mortgaged property to him. Bob and Paul then appeared before a notary public and executed an act of cash sale, which Bob signed individually and as agent and attorney-in-fact for Sally. The act of sale recited that the price of the property was \$250,000, of which \$210,000 had been paid in cash and the balance of \$40,000

consisted of Paul's assumption of the unpaid balance of the loan owing to the bank. At the time the act of sale was signed, Paul paid to Bob the cash portion of the price. Bob kept half of these funds and remitted the other half to his sister. Five days after the act of sale was passed, the closing attorney recorded it in the conveyance and mortgage records of the parish in which the tract is situated.

Shortly after the sale, Paul discovered for the first time that a high voltage overhead electrical line traversed the property inside its rear property line. The wires crossing the property, and the towers from which the wires were strung, were readily visible at the rear of the property, but Paul was not aware of the existence of the electrical line at the time of the sale, because Bob never mentioned it and because Paul had not walked along the rear boundary of the tract. Also, the title examination that had been performed for Paul before the sale overlooked the recorded servitude agreement for the electrical line. Though the electrical line did not preclude the use of the property as a truck stop or video poker casino, it did require Paul to modify his site plan, causing the cost of the construction project to increase by \$50,000.

A few months after the sale, Paul commenced construction of the truck stop. However, within a few days after beginning construction, he received a notice from the U.S. Army Corps of Engineers informing him that several years ago it had designated large portions of the property as wetlands and therefore there could be no commercial development of those portions of the tract lying outside the area where the old service station building had stood. The notice ordered Paul to refrain from any further commercial development of those areas. Unfortunately, this prohibition (which you should assume was properly given by the U.S. Army Corps of Engineers and is legally enforceable and non-appealable) made it impossible to use the tract as a site for a truck stop and casino.

PART A: FIFTEEN POINTS. Though the \$40,000 loan has now matured, Paul has failed to repay it. Instead, he has filed suit against Bob and Sally to rescind the sale of the tract, asserting that it is useless to him as a site for a truck stop and casino and, in any event, rescission is warranted because the value of the tract is less than half the price he paid. He also contends that the existence of the electrical line, as well as Bob's lack of authority to execute the act of sale on Sally's behalf, warrant rescission. Discuss the merits of each of Paul's claims and whether he will succeed in obtaining rescission of the sale.

PART B: FIVE POINTS. Thirteen months after the date that Bob signed the \$40,000 promissory note, the bank filed suit against Bob, Sally and George to collect the balance owing under the note. Bob and Sally have answered the suit, admitting that they were initially liable for the loan but contending that they are no longer liable on account of Paul's assumption of the loan. George has also answered the suit denying liability for the loan. Discuss the defense raised by Bob and Sally, as well as possible defenses available to George against the bank's claims.

PART C: TEN POINTS. In this Part, assume that Paul was unsuccessful in his rescission action and that the bank's suit resulted in a judgment in its favor and against Bob, Sally and George in solido for the full amount of the \$40,000 loan, with recognition of the bank's mortgage. Bob and Sally have paid the bank the full amount of the judgment and wish to recover this amount from Paul. Two years have now passed since the date of the sale. Unfortunately, Bob and Sally have learned that Paul owns no assets other than the tract they sold him. They have also discovered that, nine years and six months ago, Jill obtained a money judgment against Paul and recorded it in the mortgage records of the parish in which the property is situated. Bob and Sally wish to have recourse against the property to satisfy their claims, but are concerned about the effect of Jill's judgment. Discuss any rights Bob and Sally (collectively) and Jill might have against the property, as well as the priority of any conflicting claims.

END OF QUESTION ONE

LOUISIANA BAR EXAMINATION

CIVIL CODE III

JULY, 2010

Question Two: TOTAL OF TWENTY-FIVE POINTS.

ABC Corporation ("ABC") is a Louisiana corporation engaged in the business of selling heavy construction equipment, including bulldozers, track hoes and cranes. It conducts business from two stores: one in Alexandria (Rapides Parish), Louisiana and the other in Natchez, Mississippi. Over the past several years, ABC has used First National Bank ("FNB") to satisfy its financing needs, entering into the following borrowing transactions with FNB:

- In 2004, ABC obtained from FNB a 90-day working capital loan evidenced by a promissory note executed on ABC's behalf by its president. As security for this note, ABC, through its president, executed a security agreement describing as collateral all of ABC's present and future inventory. On the day the security agreement was signed, FNB filed with the clerk of court of Rapides Parish a financing statement which listed ABC and FNB respectively as debtor and secured party, provided mailing addresses for each of them and contained a collateral description identical to that found in the security agreement. When this loan was repaid in full at its maturity, FNB returned to ABC both the original promissory note and the security agreement, each of which was marked "paid and cancelled."

- In 2006, ABC obtained another working capital loan from FNB, and, to secure this loan, ABC, through its president, executed a security agreement describing as collateral all of its present and future equipment. On the same day the security agreement was executed, FNB filed with the Rapides Parish clerk of court a new financing statement, which was identical in form to that filed in 2004, except that the collateral description was all present and future equipment. This loan, too, was paid off at its maturity, and FNB returned to ABC both the security agreement and the promissory note that had evidenced the loan. Both were marked "paid and cancelled."

- In 2007, ABC contracted a \$1,000,000 five-year term loan from FNB. In addition to executing a promissory note to evidence the loan, ABC's president, on behalf of ABC, executed a security agreement in favor of FNB encumbering collateral described as all of ABC's present and future inventory, equipment, accounts and chattel paper. The loan closing occurred at FNB's main office in Baton Rouge, and immediately after the note and security agreement were executed, FNB filed a financing statement with the East Baton Rouge Parish clerk of court. This new financing statement, which gave the names of both the debtor and secured party and the addresses of each, listed as collateral only ABC's present and future accounts and chattel paper. This loan is still outstanding.

ABC has recently had a sizable money judgment rendered against it in favor of a personal injury plaintiff. After the judgment became executory, the judgment creditor seized through proper judicial proceedings the following assets of ABC and has now attacked FNB's claims to these assets:

1. A welding rig that ABC uses to make repairs for its customers. Until six months ago, the rig was always located at ABC's place of business in Alexandria; however, it was moved six months ago to the Natchez, Mississippi location, where it has since remained.

2. The bulldozers, track hoes and cranes which are physically located at ABC's business premises in Alexandria, Louisiana and are available for sale to its customers.

3. \$500,000 that ABC has just received from one of its customers in payment of the purchase price of a bulldozer sold to the customer on credit a month ago. Immediately upon receipt, ABC deposited the money into a deposit account that ABC maintains with Community National Bank ("CNB") in Alexandria. No checks have been written on, or other withdrawals made from, this deposit account since the date of the deposit, and ABC owes no debt of any nature to CNB.

4. A semi-truck and low-boy trailer that ABC uses to make deliveries of items sold to its customers. When not in use, the truck and trailer are garaged at the Alexandria location. Both

are represented by certificates of title issued by the Louisiana Office of Motor Vehicles.

5. Rental payments due to ABC from a tenant for the use and occupancy of a building belonging to ABC adjacent to its store in Alexandria. There is no written agreement for the tenant's use of the property, and its occupancy is on a month-to-month basis.

Discuss, successively AND IN THE ORDER GIVEN ABOVE, FNB's claim to each of these assets and whether FNB will be successful in asserting its claims to these assets against the seizing creditor. Be sure to give supporting reasons for your conclusions.

In writing your answer, you should assume (i) that ABC's president at all times acted with proper authorization of ABC's board of directors in all dealings with FNB; (ii) that the loan balance owed to FNB exceeds the total value of all of the assets mentioned above; (iii) that the judgment held by the judgment creditor is valid and presently executory, and that the judgment creditor has followed all proper procedures in effecting seizure of the assets in question; (iv) that the clerks of court filed the financing statements mentioned above in the proper records and otherwise complied with all statutory duties imposed upon them with respect to the filings; (v) that the only UCC filings made by any person with respect to ABC or its assets are those filings that were made by FNB and are specifically described above; (vi) except as specifically stated to the contrary in the problem, none of the assets in question is subject to a certificate of title statute of any jurisdiction; and (vii) to the extent that the law of any other state may be applicable, its law is identical to the law of Louisiana.

END OF QUESTION TWO

LOUISIANA BAR EXAMINATION

CIVIL CODE III

JULY, 2010

Question Three: TOTAL OF TWENTY-FIVE POINTS.

Lester owns a single-family residence that he has rented out to tenants for a number of years. On October 30, 2009, Lester and Tom reached a verbal agreement under which Lester leased the house to Tom for a term of one year commencing November 1, 2009, at monthly rental of \$1,500. There were no other discussions whatever about the terms of the lease, except that, when Tom indicated he might be willing to buy the house one day, Lester assured him verbally that, before accepting an offer of purchase from any other prospective buyer, he would allow Tom the chance to buy it at the same price that the other buyer might offer. Though Tom paid the rent for the month of November, 2009 precisely when it fell due on November 1, 2009, he has been late on all subsequent rental payments; every such rental payment has been at least two weeks late, and a few of the rental payments have been as much as 25 days late. This chronic lateness annoyed Lester immensely, but he never mentioned his displeasure to Tom.

In May, 2010, Lester received in the mail a notice from the sheriff to the effect that property taxes on the house had not been paid when they fell due on December 31, 2009 and that the house would therefore be sold at tax sale in late July, 2010. Lester was dismayed at this news, for he had assumed that Tom had paid the taxes when they fell due. Lester immediately paid the delinquent taxes and drove to the property to discuss the matter with Tom in person. While there, Lester became disturbed not only by Tom's assertion that he was not responsible for the taxes but also by the conditions he observed at the house. Because of its age, the kitchen sink faucet was no longer working, and rather than having the faucet replaced, Tom was simply using a water hose that he had run from the water heater as his source of hot water at the sink. Lester also discovered that the glass in a rear window was broken. When Lester asked Tom how that had happened, Tom responded that he and a neighbor had been playing basketball on the driveway a few weeks earlier, and the ball accidentally went through the window, breaking the glass. During the visit, Lester also learned that Tom was allowing his friend, Missy, to live in one of the bedrooms of the house in exchange for her agreement to pay Tom half the monthly rent owed to Lester. Angry at what he had learned during his visit to the property, and wanting to avoid a confrontation, Lester simply got in his car and left.

Quite by coincidence, Lester was approached the following week by Ron, who offered to buy the property for \$175,000. Lester readily accepted, and he and Ron signed a written purchase agreement containing those terms that afternoon. The purchase agreement required Lester to remove all tenants from the property before the closing of the sale. The next day, June 2, 2010, Lester visited Tom to collect the June rent that had fallen due the day before. Tom responded that he did not presently have enough money to pay the rent because Missy had not yet given him her share of the rent. However, Tom assured Lester that he would see that the rent was paid in full, albeit late, just as he had every month in the past. Lester responded that that was not good enough, that he was terminating the lease and that Tom should vacate the property within five days. He handed Tom a written notice to that effect. On June 10, 2010, Lester filed suit against Tom, claiming that Tom had violated the lease by failing to have proper repairs made to the kitchen sink, failing to replace the broken window glass, failing to pay 2009 property taxes when due, subleasing the property without Lester's consent and failing to pay June rent. The suit seeks termination of the lease, as well as a money judgment for the cost of repairs to the faucet and window and reimbursement of the amount Lester paid for 2009 taxes. Three days after the suit was filed, Tom brought payment for the full amount of the June rent to Lester, but Lester refused to accept it. Tom has now answered the suit, denying that Lester is entitled to any of the relief he seeks. Tom has also filed a reconventional demand, claiming that he is entitled to purchase the property for the amount offered by Ron. Discuss the merits of the claims made by Lester and Tom, giving supporting reasons.

END OF QUESTION THREE

**LOUISIANA BAR EXAMINATION
CIVIL CODE III**

JULY, 2010

Question Four: TOTAL OF TWENTY POINTS; TWO POINTS EACH.

Please read the following instructions carefully before proceeding to answer:

For each of the following ten subparts of this question, write in your examination booklet the letter that corresponds to the correct answer. You should choose your answers based on what the Louisiana Civil Code and other applicable Louisiana law presently provide. If you believe that more than one answer to a subpart is correct, write the letter corresponding to the best answer. Thus, if one of the answers is always correct and another is arguably correct in narrow, or highly theoretical, circumstances, you should choose the former.

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. The three types of suretyship listed in the Louisiana Civil Code are:

- A. real suretyship, strictly personal suretyship and heritable suretyship.
- B. onerous suretyship, remunerative suretyship and gratuitous suretyship.
- C. commercial suretyship, legal suretyship and ordinary suretyship.
- D. conventional suretyship, legal suretyship and judicial suretyship.
- E. civil suretyship, natural suretyship and moral suretyship.

2. The term “collateral mortgage” is:

- A. a name given to a mortgage securing an obligation evidenced by a writing that is issued, pledged or otherwise used as security for another obligation.
- B. a name given to any mortgage that is issued or otherwise used as security for an obligation of the mortgagor or a third person.
- C. a name given to any mortgage that is issued or otherwise used as security for an obligation of a third person.
- D. a name given to any mortgage that is established by contract.
- E. a name given to any mortgage that bears upon movables.

3. Which of the following is *not* a correct statement of Louisiana law?

- A. A term for the performance of an obligation may be express or may be implied by the nature of the contract.
- B. Performance of an obligation not subject to a term is due immediately.
- C. A term for the performance of an obligation is a period of time that can be either certain or fixed.
- D. A term is presumed to benefit the obligee unless the agreement or the circumstances show that it was intended to benefit the obligor or both parties.
- E. A party for whose exclusive benefit a term has been established may renounce it.

4. An obligation is solidary for the obligors:

- A. when different obligors owe together just one performance to the obligee, but neither is bound for the whole.
- B. only when the obligation derives from the same source for each obligor.
- C. when each obligor is liable for the whole performance.
- D. when an obligor is bound to render only one of two or more items of performance.
- E. when each of different obligors owes a separate performance to one obligee.

5. Subrogation occurs when:

- A. one person is substituted to the legal rights of another.
- B. an obligor and a third person agree to an assumption by the latter of an obligation of the former.
- C. two persons owe to each other sums of money or quantities of fungible things identical in kind, and these sums or quantities are liquidated and presently due.
- D. by agreement of the parties, a new performance is substituted for that previously owed.
- E. a new obligor is substituted for a prior obligor who is discharged by the obligee.

6. The warranty against redhibitory defects:

- A. is implied in every sale and may always be invoked by the buyer even if he has agreed to an exclusion or limitation of the warranty.
- B. obligates a good faith seller, upon breach of the warranty, to return the purchase price with interest, reasonable expenses occasioned by the sale, damages and reasonable attorney's fees.
- C. exists only in sales of corporeal immovables.
- D. applies only to defects that exist at the time of delivery.
- E. applies only to defects that appear within three days after delivery.

7. A remission of debt:

- A. may be express or tacit.
- B. is presumed to exist when the obligee voluntarily surrenders to the obligor the instrument evidencing the obligation.
- C. that is granted to the principal obligor releases the surety.
- D. is effective when the obligor receives communication of remission from the obligee.
- E. has all of the attributes and effects mentioned above.

EXAMINATION CONTINUES ON FOLLOWING PAGE

8. A deposit is:

- A. a contract by which a person delivers consumable things to another, who is given permission to consume the things and who binds himself to return an equal amount of things of the same kind and quality.
- B. a contract by which a person delivers a movable thing to another for safekeeping under the obligation of returning it upon demand.
- C. a gratuitous contract by which a person delivers a nonconsumable thing to another for him to use and return.
- D. a contract by which one of the parties conveys and cedes a thing to another, stipulating that the latter shall hold it as owner but reserving to the former an annual rent of a certain sum of money.
- E. a contract by which a creditor acquires the right of reaping the fruits or other revenues of a thing given to him in pledge, on condition of deducting the fruits and revenues from the debt due to him.

9. A donation inter vivos that concerns an immovable and that lacks proper form:

- A. may be confirmed by the donor, but the confirmation must be made in the form required for a donation.
- B. may be confirmed by the donor, but the confirmation must be made by authentic act or act under private signature duly acknowledged.
- C. is not susceptible of confirmation.
- D. is nonetheless valid if the property has been actually delivered and the donee recognizes the transfer when interrogated under oath.
- E. is nonetheless valid if the donee proves the donation by the testimony of at least one witness and other corroborating circumstances.

10. According to the Louisiana Civil Code, liberative prescription is:

- A. one of the modes of extinguishment of obligations.
- B. a period of time fixed by law for the existence of a right.
- C. a mode of extinction of a real right other than ownership as a result of failure to exercise the right for a period of time.
- D. a mode of barring actions as a result of inaction for a period of time.
- E. all of the above.

END OF EXAMINATION

LOUISIANA BAR EXAMINATION
LOUISIANA CODE OF CIVIL PROCEDURE
July, 2010

Question I (25%)

Succinctly answer the following questions:

- 10% A. Client meets with you to complain that a new Business operating near his home has begun conducting noisy operations around the clock that disturb him and other neighbors on a daily basis, frequently interrupting their sleep. He states (and you confirm) that the applicable parish noise ordinance prohibits businesses in that location from emitting continuous sounds exceeding 60 decibels between 10:00 p.m. and 7:00 a.m. He and several of his neighbors would like to retain you to take steps to quiet the offending Business as quickly as possible.
- 5% 1. What action, if any, can you bring to try to stop the noise immediately? Your answer must state what you must assert in your pleadings and what you must establish to obtain the relief sought.
- 2% 2. Now assume you are the Judge, you have received the pleading filed in answer to Question A(1), and you believe that the relief requested by Client is warranted. What, if anything, must you require from Client in order to protect Business and why is it required?
- 3% 3. Now assume you represent the Business which has been served with the pleading filed in answer to Question A(1) and a corresponding order issued by the Judge and you see that a hearing has been set for one week from today. Business indicates that it has fence line noise monitors that can demonstrate continuous noise levels are well below 60 decibels between 10:00 p.m. and 7:00 a.m. and it does not want to wait a week to have this issue resolved. What, if anything, can you file to try to obtain resolution without waiting an entire week. Please explain any time requirements associated therewith.
- 10% B. You represent Petrochemical Corporation against which multiple lawsuits have been filed following a short term chemical release caused in part by a lightning strike. Nine separate lawsuits alleging chemical exposure and resulting damages have been filed in the parish where the incident occurred by a total of 16 plaintiffs, all of whom claim similar injuries and damages. Those nine separate lawsuits have been filed by different lawyers who represent the 16 various plaintiffs and are pending in Divisions A, C, D, E and F of the parish court. The first filed lawsuit is pending in Division C. The last filed lawsuit is pending in Division A. Petrochemical Corporation believes it would be most cost efficient (and strategically beneficial) to defend these actions at a single trial.
- 4% 1. What, if anything, can you do on behalf of Petrochemical Corporation to accomplish that goal? Your answer must state what you must file, what you must establish to obtain the relief sought, and in which Division you must file.
- 2% 2. Upon preparing the filing required by Question B(1), you learn that a trial date already has been fixed in the one lawsuit pending in Division F. What, if anything, does that discovery require you to do in conjunction with your efforts?
- 4% 3. Now assume you represent two of the plaintiffs in one of the nine lawsuits, that you vigorously oppose Petrochemical Corporation's efforts as taken in response to Questions B1 and B2, and that the Judge has granted the relief sought by Petrochemical Corporation. What, if anything, can you do to try to have that ruling overturned by a higher court? Your answer should include a description of what you must file in the appropriate court (or courts) and a brief explanation of your reasons for doing so.
- 5% C. Plaintiff filed suit against defendant for breach of contract. In its answer, defendant filed a general denial to the petition allegations, but asserted no affirmative defenses. At the trial of the matter, defense counsel seeks to introduce evidence relating to the issues of failure of consideration and error or mistake. Plaintiff objects to the introduction of such evidence as immaterial and irrelevant. You are the Judge. In whose favor do you rule and why?

QUESTION II (25%)

Succinctly answer the following questions:

- 4% A. When a lawyer signs a pleading filed for a client, what does the lawyer signify personally, if anything?
- 8% B. You are preparing for a trial scheduled to begin on November 1, 2010 in which you represent the plaintiff. Defendant plans to utilize two expert witnesses, who you have deposed, and who you believe are not employing the proper methodology that is customarily used by experts in that field.
- 3% 1. What, if anything, can you file to challenge the qualifications of the defendant's experts and what deadline, if any, exists for such a filing.
- 3% 2. You are the Judge presiding over this matter and have received the Plaintiff's filing from question B(1). What deadline, if any, do you have to rule on such filing, and what, if anything, must your ruling include.
- 2% 3. You represent the defendant and after consulting with plaintiff's counsel, you both agree that it would be best to have this issue heard during the week prior to trial. What, if anything, can you do to accomplish this goal and what additional approvals, if any, are required?
- 3% C. You are representing defendant insurance company in an action brought against it by its insured. After three days of a bench trial, the plaintiff insured has rested her case. You believe that the plaintiff insured has failed to offer evidence needed to establish her cause of action. What, if anything, can you now do to try to secure an immediate ruling in favor of your client and what is the legal standard that you must establish to prevail?
- 8% D. Plaintiff sues Employer seeking damages for sexual harassment and battery she alleges were inflicted by her supervisor. Employer notifies its Insurer of the claim and Insurer denies both coverage and a defense to the Employer. Employer then asserts a cross claim against Insurer seeking both coverage and a defense from the Insurer to the underlying claim, which Insurer has answered. The case is scheduled for trial on December 13, 2010.
- 4% 1. You represent Insurer and, after deposing Plaintiff and her supervisor, you are confident that your insurance policy unambiguously excludes coverage for Plaintiff's allegations and that no defense obligation is owed. What, if anything, can you file on behalf of Insurer to attempt to extract Insurer from the litigation prior to trial? Explain fully, including an explanation of what such filing must establish to obtain the relief sought.
- 4% 2. If such a filing is available, explain specifically what Insurer must file in support thereof to establish its right to the relief sought?
- 2% E. You are defending a products liability claim. 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 alternative designs for the product at issue. These emails are responsive to a discovery request issued by the plaintiff. Are these pre-lawsuit emails by non-lawyer employees of your client subject to production? Please explain the basis for your answer.

Question III (25%)

Succinctly answer the following questions:

- 3% A. Please succinctly describe the requirements for a detailed descriptive list of succession property.
- 8% B. Plaintiff, who resides in Orleans Parish, sustained personal injury on July 6, 2009 in Jefferson Parish for which she was hospitalized for one week in Jefferson Parish. She files suit in Orleans Parish against Corporation (a domestic corporation with its registered office located in Jefferson Parish), LLC (a domestic LLC with its registered office located in St. Bernard Parish) and Partnership (a domestic partnership which has its principal business establishment De Soto Parish). You represent Partnership, which was served with Plaintiff's petition on July 6, 2010.
- 4% 1. Your client would prefer not to litigate in Orleans Parish. What pleading, if any, can you file in an attempt to obtain the result sought by your client? Your answer must include a discussion of the basis for your filing and your likelihood of prevailing.
- 4% 2. Assume that your client was served on July 9, 2010. You thereafter determine that your client is the first defendant to be served. Would you recommend any different or additional filing on behalf of your client? If so, please explain what you would recommend and why you would recommend it.
- 4% C. 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 and the basis for each option?
- 4% D. Client seeks your assistance regarding a long term supply contract that it has entered with International Corporation. The contract in question has a complicated pricing provision that requires the monthly price to be calculated based on the weighted average price as listed in three different recognized industry publications. Although International Corporation has been correctly calculating the price thus far, it has advised Client that it now believes its calculations were in error and that a slightly different weighted calculation should be used. Client disagrees with International Corporation's suggested changes and asks you if there is any legal action it can bring in advance of a breach of the Contract that might confirm the validity of the price calculation method that has been used by both parties to date. What is the appropriate legal action, if any, that you would recommend and what kind of relief can the Court provide in conjunction therewith.
- 4% E. Your law firm represents Plaintiff in an expropriation action that is scheduled for trial in 6 months. The partner handling the case asks you to prepare the appropriate documents that will elicit as much information as possible about the opposing party's expert witnesses and the opinions they hold. Please describe 3 options that are available to secure the information sought by the partner?
- 2% F. You represent a 76 year old widower who is a defendant in a partition action adverse to the children of his deceased sister. The judge recently granted a continuance of the trial over your client's objection, and has scheduled a status conference to address a new trial date. The judge has suggested that the next trial date on her regular calendar may be approximately 15 months away. Your client wants the trial as soon as possible. What, if anything, can you do to try to obtain an earlier trial date for your client? Please explain the basis for your action.

Question IV (25%)

Succinctly answer the following questions:

7% A. You represented plaintiff in a two week long personal injury trial in which the jury rendered a verdict in favor of the defendant. You have properly perfected a suspensive appeal on behalf of plaintiff, and posted the required bond.

2% 1. After the trial court record is lodged with the appellate court, defendant files a motion in the trial court to tax expert witness fees and other costs of trial to plaintiff. Please explain whether the trial court may or may not hear that motion.

2% 2. Assume you now represent the defendant. You read in the Wall Street Journal that the surety used by plaintiff for her suspensive appeal has filed for bankruptcy and you plan to file a motion to test the solvency of that surety. Do you file your motion with the appellate court or with the trial court? Please provide the reason for your decision.

3% 3. Assume you now represent the plaintiff. The court has heard defendant's motion to test the solvency of the surety and has determined that your surety is insufficient. Is your suspensive appeal still valid? Please explain what, if anything, you may do to maintain your suspensive appeal, and any time limits associated therewith.

3% B. You have just completed your first jury trial in which you represented the defendant insurer in a lawsuit arising from a motor vehicle accident. The jury rendered a seven figure verdict against your client, and the news of that verdict has made all of the local papers. Four days after the verdict, you receive a call from Unknown Witness, who tells you that she read the newspaper account and was shocked by the verdict since she had witnessed the accident and saw the plaintiff run a red light and cause the accident in question. You meet with Unknown Witness later that same day and learn that both she and her 22-year-old son witnessed the accident but were not referenced on the accident report and were never contacted by anyone about the matter. What, if anything, can you do with this information at this point and, if anything can be done, what deadlines, if any, exist for taking action?

6% C. You represent a plaintiff and have had difficulty scheduling the deposition of one of the plaintiff's treating physicians. You ultimately decided to issue a subpoena to compel the physician's attendance at the deposition. Please explain 3 methods by which service of the subpoena may be made on the physician, describing any requirements associated with each method?

9% D. Client comes to see you on July 8, 2010, and shows you a money judgment rendered in her favor and against Judgment Debtor for \$150,000. The judgment was rendered on July 10, 2000 and was recorded in your parish mortgage records on July 12, 2000. Client advises you that the judgment has never been collected due to Judgment Debtor's limited means, but she recently learned that Judgment Debtor inherited "millions of dollars" from a deceased uncle.

4% 1. You are concerned that the judgment may soon prescribe due to the passage of 10 years unless you take steps to revive it. Please explain the steps you must take to revive the judgment. Your answer must identify what, if anything, you must file to revive the judgment and where it must be filed.

2% 2. You have satisfied your judgment revival concerns and now wish to ascertain whether Judgment Debtor actually has any assets that might be used to satisfy Client's judgment. What, if anything, can you do to learn from Judgment Debtor whether he has any assets to satisfy Client's judgment. If something can be done please briefly explain what you must file and where it must be filed.

3% 3. You have learned that Judgment Debtor has substantial funds in a local Bank more than sufficient to pay all money owed to Client. Please briefly explain what you must file so that Client can satisfy her judgment from Judgment Debtor's Bank funds.

END OF EXAMINATION

LOUISIANA BAR EXAMINATION

Torts

July 28, 2010

QUESTION NUMBER 1 - 40 Points

(DIFFERENT EXAMINERS GRADE EACH QUESTION AND ONLY REVIEW ONE QUESTION. THEY DO NOT HAVE THE OPPORTUNITY TO REVIEW ANSWER TO OTHER QUESTIONS. YOU MUST ANSWER EACH QUESTION FULLY.)

Andy Barrett, age 34, went into the hospital for what his doctor told him was a simple surgical procedure. He woke the next morning not feeling well. The hospital nursing staff, particularly, Nurse Reece, ignored his complaints of pain and redness around the site of his incision. Around noon, Andy's wife called Nurse Reece to the room where Nurse Reece found that Andy had developed a very high fever and increased redness and swelling around the incision site. Advising that she would call the doctor regarding this condition, she left the room. She visited other patients before calling Andy's doctor, Dr. Sims, around 3 p.m. She found out via his voice mail message that he had left the country for a well needed vacation the day after Andy's surgery. The message suggested that his partner, Dr. Jones, be called in his absence. Dr. Jones, laboring under the load of his own patients and Dr. Sims' patients, did not return Nurse Reece's call regarding whether to administer more antibiotics to Andy until 6 p.m., when nurses were changing shifts. Nurse Reece did not get the call which came in just as she was walking out the door exactly at 6. She had forgotten to note Andy's complaints on his chart. Nurse Leblanc came on at 6 p.m. and didn't make it to Andy's room until around 8 p.m. By this time his wife was frantic and Andy was delirious with fever. Nurse Leblanc called Dr. Sims, got the voice mail message, then called Dr. Jones and got no answer.

Nurse Leblanc then, according to hospital protocol, called the Chief of Staff and, with her permission, administered medication to Andy. By then it was too late. Andy died the next morning from the infection that had rapidly spread through his body.

His young wife, Betty, comes to your senior partner advising that she and their two young children are now left with no one to provide for them. She wants to know if she has any legal rights against Dr. Sims, Dr. Jones and the hospital, which employs Nurse Reece and Nurse Leblanc, and what those rights are. She advises that Andy had a child (she's not sure if he's really Andy's child) with another woman to whom he was not married, a few years ago, before they were married. That child, a boy named Mark, is 5 years old, but has never been supported financially by Andy. Andy hasn't seen Mark in 3 years and she has no idea where Mark and his mother live.

Your senior partner asks that you write a memo to him outlining the following.

PLEASE READ ALL QUESTIONS BEFORE BEGINNING YOUR ANSWER!

1. Discuss the law applicable to the rights of Betty and her children to assert a claim for Andy's death. Discuss Mark's rights to make a claim, if any. Assume that the medical personnel and the hospital are qualified health care providers. Discuss the law applicable to the liability claims against each possible defendant and how their fault may be apportioned. (15 points)
2. What defenses may each of the possible defendants raise? Discuss. (10 points)
3. Discuss the law applicable to damages Betty and Andy's children may recover as a result of his death. (15 points)

LOUISIANA BAR EXAMINATION

Torts

July 28, 2010

QUESTION NUMBER 2 - 30 POINTS

Georgette, a frequent patron of Best Bank, entered the building at one morning to discuss a loan with one of her favorite banking officers. She had frequented this bank for over 7 years. After completing her discussion with the officer, she left the bank via the same ramp she had used to enter, which was the only entrance and exit to the building for the last 7 years. It was a clear, sunny day. While walking down the ramp, Georgette was putting on her sunglasses when she tripped because her left shoe, a 5 inch spike-heeled sandal, became ensnarled in a gap in the concrete. She fell to the ground, much to her embarrassment. She jumped right up with no assistance and walked to her car. The bank manager and one of the tellers, who were both entering the building at the time, witnessed Georgette's fall. The bank manager approached her and convinced Georgette to go to the hospital. He drove her there himself. She had some bumps and bruises, but no broken bones. After missing a couple of days work, she returned to her job as a dental assistant. Several months later she was diagnosed with fibromyalgia by Dr. Apple, a doctor recommended and paid for by her attorney. Assume that medical literature indicates and the bank's attorneys contend that Fibromyalgia has been determined to be a condition unrelated to a traumatic event. However, Dr. Apple testified at deposition that the accident at the bank caused this condition to develop and Georgette will suffer from it for the rest of her life. The bank's doctor, who performed an Independent Medical Examination (IME) of Georgette, disagrees and believes that this condition is unrelated to the fall. Georgette remains under the care of Dr. Apple and, according to his last report, will require medication for the condition for the rest of her life for fibromyalgia.

The bank officer and the bank manager were well aware of this gap in the ramp, but neither had ever gotten around to asking the maintenance department to make repairs. They have advised you that the bank has over 5000 people enter and exit the bank every month. No one has ever fallen in this area before. The bank's safety expert, Mr. Stanley, has determined that the gap is less than $\frac{1}{4}$ inch wide, $\frac{1}{4}$ inch in depth and 5 inches in length. It is easily visible to anyone. The lease requires that the owner of the building, Real Property, Inc., maintain the outside area of the building. The lease also provides an indemnity agreement in favor of the bank requiring that the owner of the building, Real Property, Inc., indemnify the bank for any injuries occurring outside the bank.

The bank president requests that you advise the bank's board of directors of any potential claims Georgette may make and any law supporting her claims. He also wants to know what defenses the bank may use to defeat or lessen Georgette's claim. Prescription is not an issue.

Georgette's attorney has filed suit under the Louisiana Merchant Liability Statute and general negligence against the bank only. The bank president insists that the bank is not a "merchant."

You are not expected to analyze the lease in depth other than to discuss potentially liable parties and their responsibility for plaintiff's injuries.

PLEASE READ ALL QUESTIONS BEFORE BEGINNING YOUR ANSWER!

1. Discuss the law applicable to Georgette's claim regarding liability and damages and advise the board regarding whether Georgette might prevail. (15 points)
2. Discuss any defenses which may be raised by the bank against her claims. (5 points)
3. Discuss the law applicable to fault and how it might apply under the facts. (10 points)

LOUISIANA BAR EXAMINATION

Torts

July 28, 2010

QUESTION NUMBER 3 – 30 points

Sally's sister, Susie, age 16, has a medical condition which frequently requires a trip to the Emergency Room if she experiences trouble breathing. On July 4th, 2010, Susie experienced symptoms which caused her parents to call 911. Sally, age 17, saw her sister experiencing her usual difficulty breathing. This was nothing new. Once Susie was in the ambulance, Sally and her friends left to attend a party at a friend's house near the hospital. Susie usually went to the ER for a few hours and returned home. Sally and her friends saw the ambulance stopped on the side of the road as they drove by. Looking in the rearview mirror, Sally noticed the ambulance had not started moving as she approached the red light. She became a little nervous, but breathed a sigh of relief once the ambulance started moving again. It headed toward the hospital with lights flashing but no siren. Sally and her friends continued on to the party. The music was so loud she didn't hear her cell phone ring several times while she was at the party. Around 11 p.m., three hours after she saw the ambulance at the light, Sally looked at her phone and saw that her mother had called her numerous times. She tried to call her back with no success. Since she was passing the hospital on the way home, she decided to pull into the ER and check to see if Susie was still there.

Her mother saw her car approaching and ran, crying to her car. She said that Susie had died. She cried "If they hadn't stopped the ambulance, she would have gotten here in time!" Sally is devastated. She wants to sue the ambulance company but isn't sure if she has a claim for her own personal injuries resulting from her grief over Susie's death. Sally has dropped out of school, started drinking heavily and has been unable to keep a job. She is very depressed. She suffers from insomnia and has to see a therapist three times a week. Her medical bills are piling up and her parents can't afford to pay them.

Her mother and father also want to know what claims they might bring for their personal pain and suffering.

PLEASE READ ALL QUESTIONS BEFORE STARTING YOUR ANSWER!

1. Discuss whether Sally may make a claim for her own personal injuries suffered as a result of Susie's death? (10 points)
2. Susie's mother, Anna, was in the ambulance when her daughter died. She wants to sue the ambulance company. She told the driver not to stop, but this particular paramedic had never picked up Susie before and did not understand that this event was not unusual for her. They stopped the ambulance in order to stabilize her, but the time delay of five (5) minutes may have resulted in Susie's death. What claims can she make for her own personal injuries for the depression she has suffered since Susie's death? She is also very distraught that Sally is having such a difficult time and she wants the ambulance company to pay her for her grief over Sally's suffering. Discuss whether Anna can make a claim for her own personal injuries as a result of (a) Susie's death and (b) Sally's suffering. (15 points)
3. Susie's father drove straight to the hospital. He did not see the ambulance stopped by the side of the road because he took a shortcut to the hospital. He did not know that Sally had died until he arrived at the emergency room. He wants to know what claims he can make for his own personal suffering. He has not had any medical treatment and he hasn't missed any time from work at his job. He is very sad and thinks the ambulance company should pay for his own personal sadness. Discuss whether he has a claim for his own mental anguish. (5 points)

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

WARNING

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

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

QUESTION ONE – (35 points)

Last year, the Ascension Parish School Board learned that over the past several years, an increasing number of students in Louisiana school districts have requested permission to invite same-sex dates to the senior prom. That same year, in another parish, several graduates, along with their families and friends, staged a boycott of a senior prom in protest of a ban on same-sex senior prom dates. Trying to avoid such behaviors, as well as the potential disruption of senior proms within the Parish, the Board adopted the following policy concerning all senior proms:

No student may invite a same-sex guest to the senior prom.

Students of Ascension Parish schools who wish to attend any senior prom within the Parish are prohibited from exhibiting any behavior that detracts in any way from the dignity of the senior prom. Such behavior includes making any inappropriate statements or gestures at or during the senior prom in relation to this policy. The principals of the Parish schools shall have the discretion to determine whether a student's behavior is in violation of this policy.

Any student found to be in violation of this policy shall not be allowed to attend or receive the diploma of the school at the graduation, but shall receive his or her diploma immediately thereafter via first-class U.S. mail.

LeRoy is a senior at North Ascension High School. Several months before the senior prom, LeRoy requested permission, via letter addressed to the Ascension Parish School Board, to invite his boyfriend Phillip as a guest to the senior prom. LeRoy's request was denied after a hearing to which he received proper notice.

Gretchen, LeRoy's best friend, refused to attend the senior prom and urged LeRoy to protest the Board's decision. During the senior prom in the school auditorium, Gretchen and LeRoy, along with their families, friends, and six members of their senior class staged a silent, non-violent sit-in at the school parking lot located across the street from the high school. While the prom attendees and their guests could see the protesters, none of the demonstrators directly engaged with those attending the prom. However, there were several signs denouncing the Board as homophobic and the denial of a same-sex prom date unfair. These signs were in plain view of the prom attendees.

The next day, the principal issued letters to Gretchen, LeRoy, their six classmates, and their parents, informing them that none of the protesters would be allowed to attend the graduation. The students and their parents requested the Board reconsider the principal's decision. The Board affirmed the decision after a hearing to which all parties received proper notice. LeRoy and Gretchen have come to you for advice on claims they may have against the Board.

(1) What constitutional arguments can the students make under the First Amendment?

(2) What other constitutional arguments can LeRoy raise?

NO POINTS WILL BE AWARDED FOR A DISCUSSION OF PROCEDURAL DUE PROCESS ISSUES.

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

QUESTION TWO – (35 points)

A fatal accident occurred in Alabama when coffins heading toward Louisiana fell from a truck. In response to the accident, during the next legislative session, Louisiana legislators passed laws, nicknamed the “DOA laws.” Because tourists are captivated by the unique cemeteries and funeral traditions within Louisiana, legislators reformed several other aspects of the funeral industry to preserve this culture. Louisiana owns several public cemeteries.

The statutes provided, *inter alia*, that “the body of a deceased person cannot be displayed or buried in Louisiana unless the body is placed within a certified coffin purchased from a licensed manufacturer.” The statute detailed the required specifications for coffins to qualify for certification: (1) The coffin must be produced from more than just plain wood; (2) must contain at least minimal metal decoration/ornamentation on the exterior; and (3) must have 90% of the materials for the coffin originating from Louisiana suppliers. The DOA also detailed the requirements for licensing coffin manufacturers, which included being physically located within Louisiana or, alternatively, owning a plane to transport coffins. The statute placed a tax on coffins transported by unlicensed manufacturers within the state. The statute authorized an agency to issue licenses, to collect the tax, and to oversee the industry.

Albert and Bart Cane own a full-service funeral business, called Canes Final Affairs, Inc., (CFA) in Waveland, Mississippi. CFA manufactures and sells coffins, provides burial plots, and provides other funeral products and services. Its coffins are produced in Mississippi. Because coffin manufacturers did not return in Slidell and New Orleans East after Hurricane Katrina, CFA sells coffins to many funeral homes in those areas. Between 2005 and 2009, Louisiana sales comprised most of CFA’s business. CFA typically can transport coffins by truck within an hour or less to reach the majority of the funeral sites it services in New Orleans and Slidell. Business was so good that it executed a contract with the Best Wishes Funeral Home in Slidell to serve as the exclusive coffin supplier until 2014.

CFA’s coffins do not meet the DOA specifications for certification because only 50% of its materials are from Louisiana suppliers. CFA’s application for a DOA license is denied after proper notice, hearing, and appeal. CFA is not physically located in Louisiana, and it does not own a plane to transport its coffins.

After the DOA laws were effective for a few months, the Canes realized that the laws had significantly reduced its profits. Funeral homes that previously ordered from CFA now ordered from the Labats, a Louisiana family who owns a full-service funeral business in Shreveport, even though the delivery time was much longer. Further, the DOA laws prohibit the Best Wishes Funeral Home from purchasing coffins from CFA although the contract required it to do so.

The Canes have come to you for advice on how to challenge the DOA laws. They have waived any potential conflicts.

What constitutional arguments can the Canes raise to challenge the DOA laws? (35 points) 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.

QUESTION THREE – (30 points)

Concerned about the impact of the oil spill on the Gulf Coast region, Congress considered legislation to protect the coast and wildlife from the oil. When several proposed bills stalled in committee, President Barrack Obama issued an executive order called the Clean Oil Order (COO). The COO provided, in part, that the United States Army Corps of Engineers (“The Corps”) immediately begin removing sand and rocks from all properties -- public and private -- within Grand Isle and Venice, Louisiana to be used to construct a ten (10) foot high barrier off the entire Louisiana coast and around all Louisiana marsh area.

In order to send collective positive energy to resolve the crisis, the COO also required every household to have a representative meditate or pray about the oil spill every Saturday or Sunday at 6:00 p.m., unless the household requested exemption because of a hardship. It detailed the procedure for reporting household participation and requesting a hardship waiver. There was no penalty provided for failing to abide by the mediation portion of the COO, and it did not provide a definition of “hardship.”

Bob, an atheist who lives in Grand Isle, is outraged when the Corps removed three large truckloads of rocks and sand from his property pursuant to the order. The rocks and sand had served as a natural barrier that prevented his property from eroding. The removed sand and rocks, which measured 8 feet x 100 feet, has reduced the size of Bob’s property and also created instability on the remaining land near the water that prevents Bob from fishing from his property shoreline as he had done for many years.

Bob also is appalled by the mandatory communal prayer and meditation. He feels that his religious status qualifies as a “hardship;” however, he does not believe that he should have to go through the trouble of navigating the hardship procedure.

You have been approached by Bob for advice regarding his constitutional rights. What constitutional arguments can Bob raise to challenge the executive order?

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

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

SUPREME COURT OF LOUISIANA
Committee on Bar Admissions
July 2010 Examination

EXAMINATION ON CRIMINAL LAW, PROCEDURE AND EVIDENCE

I.

(40 points may be earned)

Christopher recently returned to his home town of Skype, Louisiana after being incarcerated in the state penitentiary for armed robbery where he served a sentence of six years, four months and two days. His father offered him a job as the Junior Vice President of the family's chain of health food stores. Christopher, eager to get back into the swing of things and put his management degree to use, jumped at the chance. In his first year with the company, he broke all sales records and was promoted to Vice President of Franchising and Staffing. Desiring to prove to his dad that he could pull his weight, Christopher began working around the clock, but soon realized that he was in over his head. Unable to keep up with the workload, he contacted Cameron, a college classmate who had majored in business financing and occasionally dabbled in the body building business. Cameron agreed to help out his old friend.

After four years of working side by side, Christopher and Cameron became the dynamic duo of the health food business and were poised to take the family chain nationwide. The schedule was brutal, often requiring 20 hour days, seven days a week. In order to keep up with the pace, Cameron turned back to his old ways and started using methamphetamine to boost his energy. After one week, he was able to work nonstop. With his creative juices flowing, Cameron presented Christopher with a plan to open several stores overseas. Christopher was so impressed with the plan that he invited Cameron to pitch the idea to the board. The presentation was a home run, and the two began the pre-opening design phase of the plan. Within a matter of weeks, the extended hours again proved to be too much for Christopher. Noticing how sluggish he was, Cameron gave Christopher a small amount of methamphetamine to get him over the hump. Christopher managed to open a new store every month and caught the attention of the industry. Many of the major health shows were booking him as a guest, and there were even rumors of a reality show. Around the same time, Christopher hit the million dollar sales mark at the company and was named Vice President of International Sales. The promotion enabled him to fund Cameron's drug purchases in exchange for a steady supply of methamphetamine cocktails.

As the months flew by, Cameron realized that he was doing all the work while Christopher was getting all of the glory. He abruptly quit the company but not before taking one of Christopher's executive credit cards. Two weeks after quitting, Cameron began plotting his revenge. In an attempt to scare Christopher out of the business, Cameron started repeatedly calling him and leaving messages that he was going to "get" him. He purchased two knives, night vision goggles and survival equipment with the credit cards. Meanwhile, for protection, Christopher acquired the latest 325 Dagger handgun.

The following Friday, Cameron received a warning to stay away from all employees. Convinced that this was the moment to put his plan into action, Cameron hailed a cab to the health food headquarters building, broke the lock on the back gate, and entered the building. He then made his way to the vault and took \$10,000, but not before noticing that Christopher was working late. Cameron snuck up behind Christopher and knocked him unconscious with an umbrella stand. Next, he made his way to the motor pool where he found a company car with keys on the seat. He placed Christopher in the trunk of the car and drove towards his townhouse. Three blocks from the townhouse, Cameron parked the car and walked the rest of the way. Once at the townhouse, Cameron grabbed his passport and a packed bag, but after returning to the vehicle, he noticed that the trunk was open. He could see Christopher rummaging through the vehicle. The two men began to wrestle and Cameron grabbed the Dagger from Christopher's holster, shooting him twice at point blank range. Realizing that it was only a matter of time before someone discovered Christopher, Cameron flagged down a red corvette, stuck the Dagger in the driver's face and pushed the woman out of the car.

EXAMINATION CONTINUES ON NEXT PAGE

Cameron then drove back to his townhouse and jumped in his N-190 truck. His plan was to make it to South America and open his own chain of health food stores, but four blocks away, two officers, who were directing traffic in a school zone, noticed that his truck did not have a head light. The officers pulled Cameron over and arrested him for driving without a license and with a broken head light.

Later that afternoon, Christopher was found in a pool of blood. He spent three weeks in intensive care after undergoing four emergency surgeries. The doctors were able to remove the bullets from Christopher's chest, but advised that they had caused permanent damage.

Identify and fully discuss all crimes that Christopher and Cameron could be charged with under Louisiana law. Discuss the elements of the offense, apply the law to the facts and explain any possible defenses.

EXAMINATION CONTINUES ON NEXT PAGE

II.

(A maximum of five points may be earned per scenario, for a total of 30 points)

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

After stopping and arresting Cameron for driving without a license and a broken headlight, the officers handcuffed and locked him in the back of their police car. They searched Cameron's truck and in the glove compartment, found Christopher's Dagger and credit cards, along with a diagram of the health food headquarters. The officer's bagged the items and eventually submitted them into evidence.

The officers transported Cameron to the police station where they were met by five news crews and the owner of the corvette. Knowing that the incident would be fresh in her mind, the officers asked the owner if she would identify the person who stopped her vehicle. The officers asked one of the janitors and a summer clerk to line up next to Cameron. Despite being shackled, Cameron was able to turn sideways, and the owner identified him as the man that she had encountered earlier.

Cameron was escorted into the building, booked and waited for his initial appearance. The police decided to send James, an inmate who was a regular at the jail, to befriend Cameron and find out what happened. Prior to entering the cell, James was instructed as to what questions he should ask. He reported that Cameron hated Christopher and had been plotting to "get even," but that Cameron stopped short of admitting that he shot Christopher.

At his initial hearing, Cameron was declared indigent, and counsel was appointed to represent him. Cameron was silent at the hearing. Afterwards, but before he had an opportunity to meet with his counsel, Cameron was approached by the officers to make a statement. He advised the officers that he was waiting to meet with his lawyer, but when he was asked a second time to make a statement, Cameron consented to an uncounseled police-initiated interview and confessed.

The officers then visited Christopher in the hospital, read him his rights and asked would he agree to be interviewed. Conscious, but heavily sedated, Christopher agreed and provided the officers with Cameron's address and a key to the townhouse. He told them that he was the owner of the townhouse and that Cameron rented it from him. Christopher also told the officers that under the bed they should find an arsenal of weapons to include a sawed off shotgun, cash from drug sales and a methamphetamine stash. The officers immediately proceeded to the townhouse and seized three weapons and two kilograms of methamphetamine. As they left the townhouse, one of the officers noticed a stack of documents in a box at the edge of the driveway. They seized the documents and discovered that they were rough notes in Cameron's handwriting of what appeared to be a book outlining how to commit the perfect crime.

Identify and fully discuss all constitutional grounds for challenging the following: (1) the search of Cameron's truck and the admissibility of the evidence seized; (2) the admissibility of the identification evidence implicating Cameron; (3) the admissibility of any statements made by Cameron to James; (4) the admissibility of the confession made by Cameron to police after his initial appearance; (5) the admissibility of the evidence found in Cameron's townhouse; and (6) the admissibility of the documents found at the edge of the driveway.

EXAMINATION CONTINUES ON NEXT PAGE

III.

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

Before and during Christopher and Cameron's trial, the following events occur. Identify the issues, and what action, if any, should be taken. Fully explain your answer.

- (1) The media has been playing clips of Cameron's arrival and identification at the police station nonstop on the local news. The press has labeled Cameron the health food felon. What, if anything, should Cameron's attorney do to address the media issue, and what will the likely outcome be?
- (2) Two weeks before the trial, Cameron's defense counsel has not received a copy of his client's statement. On the morning of trial, the prosecutor discloses Cameron's written and recorded statements. The defense counsel objects to their admissibility. Fully explain how the judge will likely rule on the objection and why.
- (3) The news media in the case has focused on Cameron's activity. Although they have been charged together, is it possible for Christopher's attorney to get his client tried without Cameron? Fully explain why or why not.
- (4) The indictment includes the language "aggravated circumstances," but does not identify any "aggravating" factors nor does it set forth the dates and locations of the acts that Cameron is alleged to have committed. What, if anything, should Cameron's defense counsel do?
- (5) Five years after his arrest, Cameron is still incarcerated, and his case has not been set for trial. The prosecutor has filed, and been granted, four continuances based on his ongoing dental procedures. Cameron's counsel has objected to all of the continuances. Now, there appears to be a fifth continuance in the making. How should Cameron's attorney address the latest continuance? Will he be successful?
- (6) During jury selection, the prosecutor exercised three peremptory challenges striking every juror of the Boramic race. The defense counsel objects to the strikes. How will the judge rule and why?
- (7) After the jury is selected and sworn, the first witness takes the stand, but she refuses to answer any questions on cross examination. What if anything should Cameron's attorney do, and what will the likely outcome be?
- (8) One of the state's witnesses to the shooting has a four year old conviction for perjury. A junior prosecutor objects to the defense counsel cross examining the witness about the conviction. How will the judge rule and why?
- (9) The prosecutor wants to introduce evidence to show that there were hostilities and ill feelings between Christopher and Cameron and that Cameron told others that he was "going to get" Christopher. Cameron's attorney objects to the evidence being admitted. How will the judge rule on the admissibility of the evidence?
- (10) The trial lasts six and a half days. After one hour of deliberation, the foreman of the jury advises the judge that the jury is deadlocked. The judge is planning to dismiss the jury, but Christopher's attorney objects because his client has advised him that he wants the matter resolved one way or the other so that he can move on with his life. How will the judge rule on the objection and why?

END OF EXAMINATION

LOUISIANA BAR EXAMINATION
Federal Jurisdiction and Procedure
July 2010

Question One (25 Points)

River Riches Restaurants, LP (RRR) operates a successful chain of catfish restaurants in Louisiana (LA) and Mississippi (MS). Among the reasons for the business's success is that it owns its own catfish ponds, which allows it to keep costs low and ensure that fresh, local fish are served.

Agricultural Services, Inc. (ASI) provides farmers with pesticide and herbicide advice and application services. ASI is a New York corporation, but its top management officials work in an office in Tampa, Florida (FL). From that Florida office, the management officials direct the operations in LA, MS, and other states. ASI owns airplanes for crop dusting and warehouses for the storage of chemicals. Those assets are scattered across several states, but about 50% of the assets are based in MS.

RRR experienced a catastrophic loss of catfish in its LA farm ponds. An investigation suggested that the fish were killed by a chemical insecticide that ASI had applied to a neighboring cotton farm. RRR believes that ASI was negligent by applying the chemical on a windy day, which caused it to drift over RRR's ponds. RRR estimates its related losses will total more than \$150,000.

RRR is a Louisiana partnership in commendam. Its general partner is GP, Inc., a Louisiana corporation with its only place of business in Jackson, MS. The two limited partners are Capital Investors, LLC (CI) and Bob Adams.

CI is a limited liability company that is organized under Florida law. Its only two members are Tim, domiciled in Tennessee (TN), and Ann, domiciled in Arizona (AZ). Ned, domiciled in New York (NY), is the business manager for CI. He oversees all of the company's investments and tends to its operations from an office in NY.

Bob, the third member of RRR, lived and worked in NY for 20 years until, about three years ago, he sold his NY home and invested some of the proceeds of his successful career in homes in other states. He now owns homes in California (CA), New Mexico (NM), and FL. He spends an equal amount of time at the different homes. He plans to eventually sell all but the home in CA, where his children live.

- 15 pts.** **1.A** RRR wants to file a complaint against ASI in a Louisiana federal court to assert a state-law tort claim for its damages. Discuss in detail whether and how the Louisiana federal court would have diversity subject-matter jurisdiction over the case under 28 U.S.C. § 1332. You must discuss all aspects of the citizenship of each party and any other elements of diversity jurisdiction to receive full credit.

Your ability to demonstrate knowledge of how to properly analyze the issues may be more important than your conclusion with respect to some issues, so conclusory answers will receive little credit. Please use paragraph breaks to separate the major components of your answer.

3 pts. **1.B** Assume the Louisiana federal court finds that it may exercise subject-matter jurisdiction over the case. The litigation will involve a number of depositions that must be taken in MS, FL, and other states. There will also be several out-of-state witnesses who might 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. 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.
- C. A subpoena may be served outside the district but within 100 miles of the place specified for the deposition or trial.
- D. 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.

3 pts. **1.C** The parties to this suit will be required to exchange the initial disclosures described in Federal Rule of Civil Procedure 26. Write down the letter of the one of the following that is *not* an item that must be disclosed as part of that process.

- A. A computation of each category of damages that RRR claims.
- B. A copy of ASI's general liability insurance policy that was in effect at the time of the fish kill.
- C. A computation of the reasonable attorney fees that RRR estimates it will incur if the case proceeds to trial.
- D. The name and address of the ASI pilot who flew the plane that applied insecticide to the neighboring farm.

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

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

Question Two (25 points)

Sam was born in Canada but became a U.S. citizen 10 years ago and has lived and worked in Louisiana ever since. Sam is employed as an account manager at ABC, Inc., an Iowa corporation. Sam wore his maple leaf jersey to work on the Friday before the Olympic gold medal hockey match between Canada and the U.S. Rod, Sam's supervisor and a Louisiana citizen, did not say anything but glared at Sam all day.

The Canadian team won the gold medal over the weekend. Rod called Sam into his office on Monday for a performance review and told him that he was fired because his "numbers were down." Sam accused Rod of being prejudiced against Sam because of his national origin. Rod responded by punching Sam in the face and breaking his nose.

Sam got a new job a few months later that paid about the same as his job at ABC. His lost wages in the interim totaled \$10,000.

Sam hired an attorney who filed a suit for him in federal court. The complaint set forth a claim against ABC under the federal Title VII statute regarding employment discrimination. The complaint also set forth a Louisiana law battery tort claim against both Rod and ABC. Sam's attorney estimates that the total damages recoverable on the tort claim against Rod are no more than \$25,000. Finally, the complaint set forth a claim that ABC was liable to Sam for \$5,000 in damages caused when an ABC delivery truck backed into Sam's car in the company parking lot about a month before Sam was fired.

- 6 pts.** **2.A** Explain, with respect to each of the three claims presented in Sam's complaint, why the federal court does or does not have the subject-matter jurisdiction to hear the claim.

- 3 pts.** **2.B** Assume that the federal court elects to exercise jurisdiction over Sam's complaint. Both ABC and Rod are named defendants.

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

- A. Sam's lawyer sends, by first class mail, a request that Rod waive service, accompanied by a copy of the complaint and other waiver documentation, to Rod at his work address. Rod waits a week but eventually signs the waiver and returns it to Sam's lawyer.
- B. Sam's lawyer hires a retired U.S. Marshal, who delivers a summons and a copy of the complaint (for service on ABC) into the hands of ABC's agent for service of process, just as the agent walks out of church services.
- C. Sam's 20-year-old neighbor delivers a summons and a copy of the complaint (for service on Rod) to Rod's house. The server saw Rod race out the back door and hide behind a tree when the server got out of his car carrying papers. The server handed the papers to Rod's 50-year-old mother-in-law who lives in Rod's house.
- D. Sam's lawyer obtains a certified copy of the complaint and mails it and a completed summons, by certified mail, to Rod at Rod's home address. Rod signs the green card that evidences his receipt of the certified mail.

- 4 pts.** **2.C** Employees at ABC came to work on the day after Sam was fired and discovered several broken windows. A review of security camera footage showed two persons caused the damage, and ABC believes that those persons are Sam and his wife Bea. ABC wants to recover from Sam and Bea the \$15,000 in property damages that they allegedly caused.

What pleading should ABC file in the existing suit to properly assert its property damage claim against Sam? Explain whether or not ABC could also assert a claim against Bea in that same pleading?

- 2 pts.** **2.D** ABC's attorney sent a letter to Sam's attorney and asked to schedule a Rule 26(f) conference to develop a proposed discovery plan. Sam's lawyer responded that he would be available for the conference in about six weeks and that the conference would be more productive after ABC responded to the 35 basic interrogatories that Sam's lawyer simultaneously served on ABC. What two procedural grounds could ABC raise to object to the interrogatories?

4 pts. **2.E** Rod filed a motion and convinced the judge to enter an order that dismissed all claims against Rod. The claims against ABC remain pending and are set for trial.

Explain whether or not Sam may immediately appeal the order that dismissed all claims against Rod.

What procedure might Sam ask the district judge to employ that would ensure that the dismissal of the claims against Rod are subject to immediate appellate review?

3 pts. **2.F** Sam's claims against ABC proceeded to a jury trial. During the jury selection, Sam used all three of the peremptory challenges afforded to him by federal law. Sam argued that the trial judge should grant him three more challenges because Louisiana Code of Civil Procedure Article 1764 provides that he is entitled to six peremptory challenges, and Sam is asserting both federal and Louisiana law claims. Discuss how the trial judge should respond to Sam's request and the legal basis for his decision.

3 pts. **2.G** Sam was able to prevail before the jury, and the court entered a final judgment in his favor for \$30,000. ABC wants to appeal the judgment and prevent Sam from attempting to collect or enforce the judgment until the appeal is over.

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

- A. Stay by supersedeas bond.
- B. Preliminary injunction.
- C. Interlocutory appeal.
- D. Supervisory stay writ.

Question Three (25 points)

Pat, a Mississippi citizen, volunteered to come to Louisiana and, under the direction of Coastal Restoration, Inc. (CRI), work to preserve Louisiana's Gulf Coast. CRI contracted with Moss & Mud, Inc. (MMI), a Louisiana corporation with its principal business office in New Orleans, LA, to transport Pat and other volunteers by swamp boat to the work sites.

One of the MMI boats accelerated out of control and struck a mud embankment. Pat was seriously injured, and her damages are estimated to exceed \$100,000. Pat filed suit against CRI and MMI on May 1, 2010 in the Plaquemines Parish, LA state court and prayed for recovery of all of her personal injury damages.

CRI, an Alabama corporation with its principal place of business in Mobile, Alabama, received long arm service on May 15, 2010, and the lawyer for the out-of-state company immediately began to prepare papers to remove the case to federal court. A deputy served MMI's agent on May 25, 2010.

CRI's attorney discussed the potential benefits of federal court with counsel for MMI, but the local company believed that it would fare better in the state court. On June 21, 2010, CRI's counsel filed papers to state CRI's desire to remove the case to federal court. He then sent MMI's attorney a copy of the filings to alert him to the filing.

5 pts. **3.A** Describe in detail the procedure and requirements counsel for CRI must follow to remove the case to federal court. To which federal court must the case be removed?

6 pts. **3.B** Pat's lawyer wants to return the case to state court. Explain the legal and factual basis for three grounds disclosed by the facts that Pat may use to argue for a return to state court.

4 pts. **3.C** What must Pat'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 Pat's lawyer does not so act until July 30, 2010.

4 pts. **3.D** MMI investigates and determines that its boat went out of control because the throttle linkage was not properly installed during a repair by Gulfport Boats, Inc. (GBI), a Mississippi company that recently overhauled the boat's engine. MMI believes that GBI should be responsible for any damages it might have to pay Pat in connection with the accident. What pleading should MMI file if it wishes to bring GBI into the suit?

MMI is able to bring GBI into the suit and convince the federal judge that the Louisiana federal court has personal jurisdiction over GBI. Pat is persuaded by MMI's investigation that GBI is ultimately the responsible party, so she wishes to amend her complaint to add her

own claim directly against GBI. Discuss whether or not the Louisiana federal court would have subject-matter jurisdiction to hear that claim.

- 3 pts.** **3.E.** Three plaintiffs filed a complaint against the two corporations that manufacture widgets. The plaintiffs asserted claims that the corporations fixed their prices in violation of federal antitrust laws. The plaintiffs filed a motion to certify a class action on behalf of all consumers who purchased widgets during the relevant time. Write down the letter of the one of the following that is *not* a factor that must be present for the court to certify the class.
- A. The class is so numerous that joinder of all members is impractical.
 - B. At least one of the class members must present a claim that has an amount in controversy in excess of \$75,000.
 - C. The representative parties will fairly and adequately protect the interests of the class.
 - D. There are questions of law or fact common to the class.

- 3 pts.** **3.F** The statutory interpleader procedure set forth in 28 U.S.C. § 1335 is often invoked to resolve competing claims to insurance policy benefits, mineral royalties, or other funds. Write down the letter of the one answer below that is *not* a correct statement of law regarding statutory interpleader.
- A. The money or property at issue must have a value of \$500 or more.
 - B. The party who commences the interpleader will ordinarily deposit the contested funds in the registry of the court.
 - C. At least one of the claimants must be a citizen of the forum state.
 - D. Two or more of the claimants may be citizens of the same state so long as there is at least one claimant who has diverse citizenship.

Question Four (25 points)

5 pts.

4.A Jim is a law clerk for a federal district judge. The judge's first assignment for Jim is to complete a draft of a ruling on a motion for summary judgment. The judge does not give Jim any hints on the proper outcome. She does provide this three-paragraph draft of the facts:

"Sue, the plaintiff, alleges in her complaint that DEF, Inc., the defendant, is liable to Sue for breach of a contract in which DEF agreed to purchase from Sue 1,000 units of a product for \$100 each. Sue alleges that a DEF corporate officer, who she talked to at a trade show, told her that DEF would not complete the purchase at the agreed price because the market price for the product had since fallen substantially, making the terms of the contract no longer a good bargain for DEF. Louisiana law does not allow a party to a contract to refuse to comply with its contractual obligation for such a reason."

"Before the court is DEF's motion for summary judgment. The motion is supported by (a) the affidavit of the DEF corporate officer who was referred to in the complaint and (b) affidavits from five disinterested persons who overheard the conversation between Sue and the corporate officer. The officer and the other five persons each testify in the affidavits that the officer did not make the remarks attributed to him in the complaint. They testify that, instead, the corporate officer actually told Sue that there were manufacturing defects in Sue's product that took it out of compliance with the terms of the contract, so that DEF was not obligated to purchase the product. The affiants add that they heard Sue say that she would sue DEF and do whatever it took to win because the fate of her entire company was riding on the contract."

"Sue has filed a memorandum in opposition to the motion. Her only supporting evidence is a single affidavit from herself, in which she testifies that DEF's representative did say that DEF's decision was based on the fall in the market price of the product. Sue further testifies that the representative said nothing about manufacturing defects in her product."

Pretend that you are Jim and complete the draft of a short ruling (perhaps two or three more paragraphs) for the judge to consider. You do not need to set the facts out again or include case citations or references. Your draft should (a) set forth the applicable standard for assessing a motion for summary judgment, (b) analyze the submissions of the parties under the applicable rules, and (c) reach the proper resolution of the motion for summary judgment.

- 3 pts.** **4.B** The operator of a drilling rig spilled a chemical that polluted a nearby stream that meanders through several separately-owned cattle pastures. Three ranchers had cattle die after the cattle drank from the stream, causing losses to each rancher ranging from \$40,000 to \$60,000 each. The three Louisiana ranchers would like to file one suit against the Texas drilling company in a Louisiana federal court. Discuss whether the amount in controversy requirement is met so that the court would have diversity subject-matter jurisdiction to hear the complaint.
- 2 pts.** **4.C** Flo filed suit in state court against her former employer for \$12,000 in past due wages and vacation pay. After engaging in discovery for more than a year, Flo filed an amended complaint that asserted a claim that the employer did not pay overtime as required by the federal Fair Labor Standards Act. The employer, based on the assertion of this new federal claim, filed a notice of removal the next day. Was it nonetheless too late for the employer to remove the case? Explain.
- 3 pts.** **4.D** Ava, a Louisiana citizen, borrowed \$85,000 from Bayou Bank, a Louisiana banking corporation, secured by a mortgage on her new home. Ava's monthly statement showed the amount of principal and interest due for the month, plus a \$5 per month documentation fee. Ava dutifully paid the principal and interest, but she refused to pay the \$5 fee. The bank sent a demand letter to Ava, and her lawyer responded that the fee was not collectible because it was not disclosed in the closing documents as required by the federal Real Estate Settlement Practices Act (RESPA). Ava wrote the bank to assert her RESPA protest and demand that it stop attempting to collect the fee. The bank's lawyers conducted research and found a federal court decision that they believe will defeat the RESPA argument, so the bank declared the \$80,000 balance of Ava's loan was accelerated and due and also demanded the \$120 in unpaid fees that had caused the dispute. Discuss whether a federal district court in Louisiana would have subject matter jurisdiction over the bank's suit against Ava.
- 3 pts.** **4.E** Jan, a Louisiana citizen, was injured in a car accident caused by an Illinois driver. Jan filed suit against the Illinois defendant in Louisiana state court, and the Illinois defendant removed it to federal court based on an assertion of diversity jurisdiction. In her initial disclosures, Jan computed her categories of damages as \$15,000 for damage to her car, \$20,000 in medical expenses, and \$100,000 in general pain and suffering related to her injuries. The defendant later obtained a ruling from the court pursuant to a new Louisiana "pay to play" statute that Jan could not recover more than \$30,000 (the amount of liability insurance carried by Jan) for her general pain and suffering. Discuss whether, as a result of that ruling, the federal court would continue to have subject-matter jurisdiction or would have to remand the case to state court.

3 pts. **4.F** Bill, a Louisiana citizen, slipped and fell in a store owned by XYZ, Inc., a New York citizen. Bill filed suit in a Louisiana state court for personal injuries reasonably estimated as valued over \$100,000. The petition named as defendants XYZ, Inc. and Jane Smith, the store manager. The petition alleged that Smith, who was not on duty at the time of the accident, is nonetheless liable because she did not adequately enforce the store's cleaning policy. Smith, like Bill, is a citizen of Louisiana.

XYZ, Inc.'s lawyer researches Louisiana law and becomes convinced that Bill does not have a valid cause of action against Smith. Discuss any jurisprudential doctrine that might be available to XYZ, Inc. to remove the case to federal court despite the apparent lack of complete diversity. What standard should the federal court apply in determining whether to permit the removal?

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

- A. It is a crime in the State of Louisiana to carry a concealed handgun without a proper permit. A citizen sues the Louisiana Attorney General under 42 U.S.C. § 1983 to enjoin enforcement of the permit laws on the grounds that requiring a permit violates the Second Amendment.
- B. Dr. Jones, a physician employed at a state prison, insisted that all inmates housed at her facility be annually tested for tuberculosis. An inmate sues Jones under 42 U.S.C. § 1983 for damages as a result of a negligently conducted test and an injunction that would prohibit Jones from testing the inmate in the future.
- C. Officer Smith, a city policeman who patrols a local park, continually runs off young people with long hair or who look like part of the skateboarding crowd. The youths join together to sue Officer Smith under 42 U.S.C. § 1983 for an injunction against Smith's harassment, on the grounds that it violates their First Amendment rights to speech and assembly.
- D. An on-duty, uniformed Louisiana state trooper uses excessive force during an arrest. The arrestee sues the trooper under 42 U.S.C. § 1983 for money damages and attorney fees.

3 pts.

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

- A. The plaintiff was the only witness who could offer evidence that he was using the product in the manner for which it was intended. The plaintiff made inconsistent statements about other aspects of his case, which caused the judge to not believe a word he said.
- B. The plaintiff offered expert evidence that the product was defective, but none of his witnesses testified that the product at issue was manufactured by the named defendant.
- C. An expert witness testified for the plaintiff that the product had an unreasonably dangerous defect, but three experts testified for the defense that the product was not defective, and the judge believed that the defense evidence was of much greater weight than the evidence offered by the plaintiff.
- D. The plaintiff's attorney promised in his opening statement to establish certain facts, but he did not deliver all that he promised.

END OF EXAM

LOUISIANA BAR EXAM

July, 2010

Business Entities and Negotiable Instruments

Question No. 1 - 25 points (5 points each subpart):

New clients of yours, brothers Al and Ben Green, are forming a new company to provide clean-up services in the Gulf in connection with the BP oil spill. They were being represented by another attorney, but they fired him since he also does considerable work for BP. 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, Oil Spill Remediation, Inc. The articles state as follows:

ARTICLES OF INCORPORATION
OF
OIL SPILL REMEDIATION, INC.

ARTICLE I

The name of the Company is:

OIL SPILL REMEDIATION, INC.

ARTICLE II.

The object and purpose for which this company is organized is to provide environmental remediation in connection with the oil spill in the Gulf of Mexico.

ARTICLE III.
DURATION

The duration of the company shall be until the well is capped and the oil sludge is remediated from the Louisiana coast.

ARTICLE IV.

The incorporators of the company are Al Green and Ben Green.

ARTICLE V.

The corporation has the authority to issue 100 shares of common stock.

ARTICLE VI.

A quorum of shareholders necessary to conduct a shareholder meeting shall be 30% of the total voting power.

/s/ Al Green
AL GREEN

/s/ Ben Green
BEN GREEN

Dated: April 30, 2010.

EXAMINATION CONTINUES ON NEXT PAGE

An initial report was also prepared, signed and filed. The Articles of Incorporation and Initial Report were filed 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, 2010. The corporation has no by-laws. Al and Ben 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 all 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 Oil Spill Remediation, Inc. have preemptive rights? Explain why or why not. What are preemptive rights?
- E. May the directors of Oil Spill Remediation, Inc. take action by written agreement signed by a majority of the directors? Explain why or why not. May the shareholders of Oil Spill Remediation, Inc. take action by written agreement signed by less than all shareholders? Explain why or why not.

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

Several years ago, Don, Ed and Frank formed a Louisiana limited liability company to develop a residential subdivision in St. Tammany Parish. The name of the company is DEF, LLC. At the time it was formed, Don contributed a 50-acre tract of land that he owned to the limited liability company for the location of the subdivision. For this contribution, Don received 70 membership units in the limited liability company. Ed holds a general contractor's license in Louisiana for residential construction. Ed has agreed to build homes at no charge to the LLC, and for the contribution of these services, Ed received 20 membership units in the LLC. Frank is a Louisiana real estate agent, and he agreed to market and sell the houses at no charge to the LLC. In exchange for contributing these services to the LLC, Frank received 10 membership units in DEF, LLC. There are only 100 membership units in the LLC, and Don, Ed and Frank are therefore its only members.

The tract of land is the only asset owned by DEF. DEF is responsible for providing materials and supplies to Ed to construct the homes. Don has no day-to-day responsibilities for operating the LLC since he is a physician and spends most of his work days seeing patients. Ed and Frank therefore agreed to be responsible for managing the LLC.

For the first few years, business was good. Frank marketed several different floor-plan options to prospective buyers, which generated productive sales. Within those first few years, Ed built enough houses to complete one half of the subdivision. The houses were built to order for each home owner, and when complete, the house and lot were sold by DEF, LLC to each home owner. With the downturn in the economy the past few years, and more restrictive lending practices in the home mortgage market, the demand for the houses has diminished significantly. Business is very slow and DEF, LLC has not built or sold any houses in the last year. Another developer has approached DEF, LLC about buying the remaining undeveloped land so that it can complete the subdivision.

EXAMINATION CONTINUES ON NEXT PAGE

You are asked to address the following questions:

- A. Did all of the members make valid contributions to the LLC for their membership interest in DEF, LLC? Would your answer change if Don, Ed and Frank formed a Louisiana corporation instead? Please explain your answer fully as one word answers will not receive full credit.
- B. Based on the facts presented, would you recommend to Don, Ed and Frank that the LLC be member-managed or manager-managed? Please explain the difference between the two and why you would recommend one over the other for DEF, LLC.
- C. Which members (at a minimum) must vote in favor of selling the land in order to approve the sale for the LLC? Would your answer change if DEF, LLC were instead formed as a Louisiana C-Corporation and if so, how? For this subpart to question C., you can assume that Don, Ed and Frank would be the corporation's only three shareholders owning 70 shares (Don), 20 shares (Ed) and 10 shares (Frank) of the same class of stock with the same voting rights and assume that the contributions for their respective shares of stock in the corporation were all valid.
- D. Assume for this subpart question D. that the prospective developer that wants to purchase DEF's land is a company owned by Frank and his wife, Ginger. Should Frank, as a member of DEF, LLC, vote on the sale of the land and if so, under what circumstances?

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

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

- A. Does a director of a corporation, acting alone, have the authority to sign contracts on behalf of a corporation and thereby bind the corporation? Please explain any assumptions pertinent to your answer.
- B. Can a shareholder of a corporation withdraw from the corporation and require the corporation to purchase his or her stock in the company? If so, under what circumstances?
- C. Explain the term "cumulative voting" and under what circumstances it is available to the shareholders of a corporation.
- D. Who may be held liable for unlawful dividends issued by a corporation and when must such an action be brought? Please explain any assumptions pertinent to your answer.
- E. Discuss the "bank statement rule" and how it impacts who bears the risk of loss on forged negotiable instruments.
- F. Explain the difference between personal defenses and real defenses to the enforcement of a negotiable instrument.
- G. What business records is a corporation required to maintain at its offices for inspection by shareholders?
- H. What are the requirements for shareholders to be able to inspect the books and records of the company?

EXAMINATION CONTINUES ON NEXT PAGE

- I. What are the requirements for forming (i) a Louisiana general partnership and (ii) a Louisiana limited liability partnership?
- J. Explain the differences between a general partner's and a limited partner's liability for partnership debts?

Question No. 4 - 25 points (5 points each subpart):

Stephen owns a camp in Delacroix that Tom, the president of British Petroleum ("BP"), has approached Stephen about renting so that Tom and his girl friend, Susie, can live close to the site of the oil spill while efforts to cap the well and remediate the spill are underway. Stephen despises BP for causing the spill, but Stephen will be paid a nightly rate that exceeds what he usually charges for a week's rental, so Stephen reluctantly agrees. Tom is a little strapped for cash since he has not received his usual quarterly bonus given the cost of the clean-up efforts, so Tom decides to pay Stephen partially by way of a check for \$10,000 and partially by way of a Promissory Note for \$20,000. Unbeknownst to Susie, Tom signs a check from Susie's personal checking account at Texas Bank made payable to Stephen in the amount of \$10,000. The check is a standard U.S. bank check bearing a date of July 1, 2010. Tom also signs a Promissory Note in his capacity as president of BP payable to the holder in the amount of \$20,000, which bears a maturity date of August 1, 2010. The Promissory Note contains no other terms and/or conditions.

On July 15, 2010, Stephen takes the Promissory Note to his bank--Bank of Louisiana--and asks that the Bank purchase the Note at face value. Stephen is a good customer, and Bank of Louisiana agrees and pays him \$20,000 for the Promissory Note. Contemporaneously, Stephen delivers the Promissory Note to Bank of Louisiana. A little over two weeks later, Bank of Louisiana makes demand on BP on August 2, 2010 to pay the Promissory Note consistent with its terms. BP denies that it is obligated to Bank of Louisiana on the Promissory Note since Tom did not have the company's authority to issue the Promissory Note on BP's behalf. On this same date, Tom and Susie have a falling out and Susie decides not to move to Louisiana. Susie immediately contacts Texas Bank and instructs Texas Bank to stop payment on the check. Stephen had already cashed the check at Bank of Louisiana two weeks earlier.

You are asked to answer the following questions:

- A. What are the legal requirements for a negotiable instrument and does the Promissory Note satisfy these requirements? Explain your answer fully and any assumptions necessary to your answer.
- B. Is Bank of Louisiana a holder-in-due course of the Promissory Note? Explain your answer fully and any assumptions necessary to your answer.
- C. Is Bank of Louisiana a holder-in-due course of the \$10,000 check? Explain your answer fully and any assumptions necessary to your answer.
- D. Discuss whether Susie or Texas Bank bears the risk of loss on the check if it is honored when presented for payment by Bank of Louisiana. Please explain fully and discuss any assumptions pertinent to your answer.
- E. For this subpart E. only, assume that Tom signed Susie's name to the check with Susie's permission. Would Tom's signing of Susie's name on the check constitute a forgery or unauthorized signature? Explain why or why not.

END OF EXAMINATION