

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
JULY 2022**

QUESTION 1 (40 POINTS)

Crazy Lanes, Inc. (“CLI”) owns and operates a popular bowling alley. CLI has three directors – Claire, Emily, and Rusty – and one officer, Margo, who serves as president and secretary. Claire and Rusty are married to each other.

Other than names and street addresses, CLI’s articles of incorporation provide only that CLI will have three directors, that CLI is authorized to issue 300 shares, and that no shareholder may inspect CLI’s records unless that shareholder is an employee of CLI.

Two years ago, CLI expanded the bowling alley to add a restaurant. The restaurant has been a big success, and its signature dish, the Two-Pound Burger, has become a local sensation. CLI subsequently opened several drive-through restaurants throughout the state serving the Two-Pound Burger.

One month ago, CLI received an offer from Beef House, Inc. (“BHI”), a local fast-food chain, to purchase CLI’s entire drive-through business for \$10 million. CLI’s directors convened a meeting to discuss the offer and invited Margo to attend. At the meeting, Margo expressed concern that BHI’s offering price was too low. She recommended that CLI hire an accounting firm to provide an estimate of the value of the drive-through business. Rusty, the board’s chairman, thanked Margo for her input and said that the directors would discuss the matter further.

After Margo left the meeting, Rusty said to the other directors: “I don’t know what Margo is thinking. Our drive-through business is not worth \$10 million – not even close. We need to accept BHI’s offer right now, before BHI realizes it has offered too much. We should vote on it right now.” Claire and Emily were never very interested in CLI’s business, and they had no idea what the drive-through business was worth. They did what Rusty suggested, and the three directors voted unanimously to accept BHI’s offer and to authorize the sale of the drive-through business to BHI. At the time the directors voted, Rusty knew that \$10 million was not a fair price for the drive-through business. He also owned 40 percent of BHI’s total stock shares, which he did not disclose to Claire or Emily before the directors voted.

One week after the directors voted, Margo hired an accounting firm on behalf of CLI to estimate the value of CLI’s drive-through business. She received the report just a few days ago. The report states that, on the day the directors voted to sell the drive-through business, the business was worth at least \$30 million. Margo resigned from CLI the following day, but before she left, she wrote a letter to CLI’s shareholders informing them of the board’s actions and the accounting firm’s report.

Once news of the pending sale broke to the public, the share price of BHI’s stock skyrocketed, just as Rusty expected it would.

Abigail owns six percent of CLI’s issued shares. She inherited the shares from her grandfather one year ago. She wants to bring an action to prevent CLI’s sale of the drive-through business to BHI, and she wants to review the accounting firm’s report. CLI and BHI are planning to execute the sale in one week.

Please answer the following four subquestions. The subquestions in Question 1 are not weighted equally. Explain each answer; an answer without explanation will receive no credit.

- 1.1 In light of the provision in CLI’s articles of incorporation that no shareholder may inspect the company’s records unless the shareholder is an employee of CLI, does Abigail have any right to review the accounting firm’s report; and, if so, what steps must she take to exercise that right? Explain fully. (5 points)**
- 1.2 What grounds, if any, does Abigail have to challenge the validity of the directors’ vote to accept BHI’s offer, and what steps, if any, can CLI’s directors take to prevent or defeat any challenge to that vote? Explain fully. (15 points)**

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1.3 What fiduciary duties do Rusty, Claire, and Emily owe as directors of CLI, and what, if any, duties did they breach by voting to accept BHI's offer? Explain fully. (6 points)

1.4 *Solely for purposes of this question 1.4, assume the following:*

- *The sale of CLI's drive-through business to BHI has already occurred.*
- *Abigail brought a derivative action for damages against Rusty, Claire, and Emily.*
- *As a result of the derivative action, the court found that \$10 million was not a fair price for CLI's drive-through business; that the three directors breached their fiduciary duties to CLI by voting to accept BHI's offer; and that CLI sustained damages from that breach.*

- a. Are the three directors personally liable to pay damages to CLI? Explain fully. (7 points)
- b. Would CLI be permitted, if it chooses, to indemnify the three directors for the legal expenses they incurred in connection with the derivative proceeding? Explain fully. (7 points)

[End of Question 1]

**LOUISIANA STATE BAR EXAMINATION
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QUESTION 2 (40 POINTS)

PART A (20 POINTS)

Andy, Bob, Carl, Daryl, and Earl are brothers and members in a member-managed Louisiana limited liability company (“LLC”) that owns several acres of land. The five brothers each own a one-fifth membership interest in the LLC. Bob maintains the financial records of the LLC in the safe at his home.

A few months ago, Earl was killed in a car accident. His surviving daughter, Matilda, inherited Earl’s membership interest in the LLC. One month later, Andy invited Bob, Carl, Daryl, and Matilda to attend the meeting to discuss the future of the LLC.

At the meeting, Andy called for a vote to approve the sale of LLC’s land. Andy, Bob, and Matilda voted to approve the sale of the land. Carl and Daryl voted against. The following day, Andy contacted a real estate broker to have the LLC’s land listed for sale.

During the same meeting, immediately following the vote, Carl told Bob that he would like to review the company’s financial records during a weekday morning within the next ten business days. Bob did not respond to the request at the meeting, nor did Bob respond to an email Carl sent two days after the meeting reiterating his request to review the records.

Please answer the following two subquestions. The subquestions in Question 2A are not weighted equally. Explain each answer; an answer without explanation will receive no credit.

- 2.1 What, if anything, can Carl and Daryl do to prevent the sale of the LLC’s land; and, if they can, on what grounds? Explain fully. (15 points)**
- 2.2 What right, if any, does Carl have to review the LLC’s financial records? Explain fully. (5 points)**

PART B (20 POINTS)

Five years ago, Sara and Eric opened a medical diagnostic imaging center, Accurate Imaging Center (“AIC”). They operated the business as a partnership and shared equally in the profits and expenses of the business.

Four months ago, while Sara and Eric were having lunch, Eric suggested that they begin upgrading some of their imaging equipment, starting with AIC’s MRI machine. Sara knew there was nothing wrong with the one machine they had, and she believed buying a new one would be a waste of money, but she did not express her concern to Eric.

The following month, Eric, without informing Sara, purchased a new MRI machine for \$3 million. When Sara learned of the purchase, she confronted Eric: “What were you thinking, Eric! There is nothing wrong with the MRI machine we have! How can you spend \$3 million of our money on a new MRI machine that we don’t need and not even think to speak with me about it first?”

Eric responded, “MRI service is a huge part of our business, and we need to have the best MRI machine available to remain competitive. Plus, if I had checked with you before I purchased it, you just would have said, no.” Sara replied, “I can’t be a partner with you in this business if that’s how you think! I quit!” To which Eric replied, “Fine! Leave! I can run this \$40 million business perfectly fine without you!” Sara packed up her office and left that day.

One month later, Eric signed an agreement with Parts Inc. to purchase repair parts for one of AIC’s X-ray machines. The parts cost \$20,000, with payment due ten days after delivery.

One week later, the X-ray repair parts were delivered to AIC. That night, AIC’s facility and all its contents, including the X-ray repair parts, were destroyed in a fire. The \$20,000 balance for the X-ray repairs remains unpaid.

Please answer the following four subquestions. Explain each answer; an answer without explanation will receive no credit.

- 2.3 Did Eric have authority to purchase the MRI machine without Sara’s consent? Explain fully. (5 points)**
- 2.4 Did Sara properly withdraw from the partnership? Explain fully. (5 points)**
- 2.5 Solely for purposes of this question 2.5, assume that Sara properly withdrew from the partnership. What amount, if any, is Sara entitled to receive for her share in the partnership? Explain fully. (5 points)**
- 2.6 Solely for purposes of this question 2.6, assume that Sara did not properly withdraw from the partnership. What amount, if any, can Parts Inc. recover from Sara for the \$20,000 balance owed for X-ray repair parts? Explain fully. (5 points)**

[End of Question 2]

**LOUISIANA STATE BAR EXAMINATION
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JULY 2022**

QUESTION 3 (20 POINTS)

Each of the following ten multiple-choice questions counts for two points. Select the letter that corresponds with the correct answer.

- 3.1 Partnership; formation
- 3.2 Limited Liability Company; persons authorized to bind
- 3.3 Corporation; meeting and quorum requirements
- 3.4 Corporation; election of directors
- 3.5 Limited Liability Company; allocation of profits
- 3.6 Corporation; officers
- 3.7 Partnership; immoveable property
- 3.8 Partnership; liability of partners to third persons
- 3.9 Corporation; authority under unanimous governance agreements
- 3.10 Corporation; provisions for protecting against shareholder dilution

[End of Question 3]

END OF BUSINESS ENTITIES TEST

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
FEBRUARY 2022**

QUESTION 1 (40 POINTS)

Ernest Smith was a successful sugar cane farmer. He had three children: Evan, William, and Molly. Ernest employed all of them in his business. In 2002, Ernest decided to retire and to hand over his farming business to his children. That year, Ernest formed Sugar Farm, Inc. The articles of incorporation provided only the following: (1) the corporation would have three directors; (2) the directors would be elected annually by a majority vote of the shareholders; (3) the articles named Evan, William, and Molly as the initial directors; (4) an authorization for Sugar Farm to issue 300 shares of stock; and (5) the election of preemptive rights.

At the first meeting of the board of directors, Evan, William, and Molly voted to appoint Evan as president, William as secretary, and Molly as treasurer. The directors also approved the issuance of Sugar Farm's 300 authorized shares to the directors, each receiving 100 shares.

Sugar Farm grew rapidly under the leadership of Ernest's children, and as the business grew, Ernest's children were able to employ their own children in the business. Evan, William, and Molly informally agreed that Sugar Farm would offer to each of their children, on his or her 18th birthday, full-time employment with Sugar Farm.

Ten years ago, Evan discovered that Molly had embezzled \$5,000 from Sugar Farm's accounts. Evan and William voted to remove Molly as a director, and Evan terminated Molly's employment with Sugar Farm. Evan and William did not appoint or elect a new director to replace Molly.

One year ago, Molly died. She left all her shares in Sugar Farm to her only child, Elaine. Before Molly died, she told Elaine about the agreement she and her brothers had to offer full-time employment to each child in the Smith family on the child's 18th birthday.

Elaine turned 18 one month after Molly died. She wrote a letter to her uncles Evan and William asking if they would allow her to work for Sugar Farm. Evan and William were not receptive. After receiving Elaine's letter, Evan emailed William: "Just received a letter from Molly's kid asking for a job. I have no intention of allowing that brat to join our family business! Hope you agree." William responded: "I agree completely! Let's discuss a more permanent solution to keep her out of our affairs. The brat currently owns one-third of our company!" Evan and William then sent a letter to Elaine, refusing her request for employment, providing no explanation for the refusal.

The following day, Evan and William convened a meeting of the board of directors and voted to approve the following resolutions: (1) to increase Sugar Farm's authorized shares from 300 to 1,000 shares; (2) to issue 150 shares each to Evan and William, as additional compensation for their employment with Sugar Farm; (3) to issue 100 shares each to four children of Evan and William who were currently employed by Sugar Farm, as additional compensation for their employment; (4) to amend the articles of incorporation to provide that no shareholder may inspect corporate records unless the shareholder is employed by the corporation; and (5) to discontinue annual dividend payments to shareholders and to apply the funds instead to increase the salaries of Evan, William, and the four children of Evan and William currently employed by Sugar Farm.

One month ago, Elaine signed and sent a letter to William requesting copies of, or access to, all written offers of employment sent by Sugar Farm to any member of the Smith family. Elaine stated in her letter that she seeks access to the requested documents in order to determine whether she was unfairly treated in being denied employment with the company. William sent a reply letter to Elaine denying her request, stating: "Although you are a shareholder of record holding more than five percent of Sugar Farm's issued shares, and you have held those shares for more than six months, you are not currently employed by Sugar Farm and, therefore, have no right to inspect any records of the corporation."

Yesterday, Sugar Farm held its annual shareholders' meeting at its principal office in Baton Rouge. Evan and William orally informed their children of the shareholders' meeting but did not provide written notice of the meeting to any shareholders.

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Although Elaine did not receive written notice of the meeting, one of her cousins told her about the meeting. Elaine attended the meeting along with every other shareholder.

At the start of the meeting, William announced that the board of directors would be proposing two amendments to the articles of incorporation for approval by the shareholders: (1) an amendment to reduce the number of directors from three to two, and (2) an amendment to add a provision that “no director or officer of Sugar Farm, Inc. shall be liable to the corporation or its shareholders for any action taken, or any failure to take action, as a director or officer.” Elaine shouted: “I was not provided written notice of this shareholders’ meeting or of the proposed amendments. I object to this meeting and any voting on the proposed amendments.” The meeting continued, and votes were taken on the proposed amendments. Elaine voted her 100 shares against the proposed amendments. The remaining shareholders voted their shares (900 shares) in favor of the proposed amendments. William then announced: “Both proposed amendments have been approved by a majority vote of the shareholders and are hereby adopted.”

This morning, Elaine discovered that during the past several months, Evan and William, as directors, voted to authorize the use of corporate funds to pay for improvements made to their private residences.

- 1.1. What potential grounds, if any, does Elaine have for an action to invalidate the issuance of the 700 new shares to Evan, William, and their children or, alternatively, to require Sugar Farm to issue additional shares to her? What defenses might reasonably be raised, and is Elaine likely to succeed? (10 points)**
- 1.2. What rights, if any, does Elaine have to inspect Sugar Farm’s corporate records? What steps, if any, must she take to obtain access to any written offers of employment sent by Sugar Farm to members of the Smith family? Explain fully. (5 points)**
- 1.3. Can Elaine bring an action to compel Evan and William to reimburse Sugar Farm for payments made for improvements to their private residences? Discuss fully what type of action(s); the requirements of any such action(s); and the likelihood of success of such action(s) that Elaine might bring and any defenses that Evan, William, or any other party might assert to any such action(s). (10 points)**
- 1.4. What action(s), if any, can Elaine bring to compel Sugar Farm to purchase her shares? What must Elaine establish to obtain that relief, and is she likely to succeed? Explain fully. (5 points)**
- 1.5. On what grounds may Elaine seek to invalidate the amendment approved by the shareholders reducing the number of directors from three to two, and is she likely to succeed? Explain fully. (10 points)**

[End of Question 1]

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**LOUISIANA STATE BAR EXAMINATION
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QUESTION 2 (40 POINTS)

Part A – 24 Points

Claire, Andrew, and Rusty are avid homebrewers. They decided to go into business together and open a brewery. They agreed that they would share equally in the profits and losses of the business and that they would conduct the business as a limited liability company. They agreed to call the company Swamp Juice.

Claire, Andrew, and Rusty prepared and signed articles of organization and an initial report. Andrew told the others he would file the documents with the Secretary of State's office that day, but it slipped his mind, and he never filed the documents.

The following day, Claire informed Andrew and Rusty that a local brewery, Bad Beer, Inc., was going out of business and was seeking a buyer for its brewery equipment. The three agreed that Swamp Juice needed brewery equipment and that Claire should purchase Bad Beer, Inc.'s brewery equipment.

Claire contacted Bad Beer, Inc. and agreed to purchase the brewery equipment for \$50,000. Claire did not inform Bad Beer, Inc. that she was purchasing the equipment for Swamp Juice, and she signed a purchase agreement as "Claire." The purchase agreement required payment in full within one month of delivery.

Later that same day, Rusty was driving through town looking for a suitable location for Swamp Juice's brewery. He spotted a vacant warehouse and contacted the owner. The owner offered to sell the warehouse for \$40,000. Rusty called Claire and Andrew and informed them of the warehouse and the offer. Claire and Andrew were pleased with the amount of the offer, but they told Rusty not to accept the offer until they had a chance to visit the warehouse with him.

The warehouse owner overheard Rusty's conversation with Claire and Andrew. After the call, the warehouse owner said to Rusty: "I know your buddies want to see the warehouse first, but if you accept my offer right now, I'll agree to finance the entire purchase price." Rusty accepted the offer. He and the owner proceeded to a nearby notary's office and executed an act of sale and a \$40,000 promissory note. Rusty signed each of the documents as "Swamp Juice, through Rusty, its representative."

One week later, the brewery equipment was delivered to the warehouse. Claire, Andrew, and Rusty began assembling the equipment in preparation for their first brew. The following day, a boiler tank collapsed, spilling hundreds of gallons of boiling fluid onto the warehouse floor. In the chaos of the accident, Rusty forgot to turn off the gas supply to the boiler. The warehouse caught fire that evening. The warehouse and all of its contents were destroyed in the fire. No payments have been made to date on either the purchase agreement with Bad Beer, Inc. or the \$40,000 promissory note.

- 2.1. Who is liable to Bad Beer, Inc. for the purchase price of the brewery equipment? Explain fully. (12 points)**
- 2.2. Who is liable on the \$40,000 promissory note for the purchase of the warehouse? Explain fully. (12 points)**

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Part B – 16 Points

Short Answer Questions. Please answer each question providing a brief explanation.

- 2.3. What are “emergency powers” for a Louisiana corporation, and how are such powers used? (5 points)
- 2.4. What is a “unanimous governance agreement” for a Louisiana corporation? (5 points)
- 2.5. Can shareholders of a Louisiana corporation unilaterally remove a director, and, if so, under what circumstances? (6 points)

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
FEBRUARY 2022**

QUESTION 3 (20 POINTS)

Each of the following multiple choice items counts for 2 points. Select the letter that corresponds to the correct answer.

- 3.1. Partnership; member contributions
- 3.2. Partnership; liability for partnership debts
- 3.3. Approval needed for transaction of corporate director
- 3.4. LLC; division of profits
- 3.5. Partnerships; formation
- 3.6. LLC; dissolution
- 3.7. Indemnity for corporate directors
- 3.8. Authority for LLC managers
- 3.9. Management of the affairs of another (negotiorum gestio)
- 3.10. LLC; authority of members for extraordinary transactions

[End of Question 3]

[END OF BUSINESS ENTITIES TEST]

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
FEBRUARY 2020**

QUESTION 1 – 40 POINTS

Part A – 20 POINTS (5 points each subpart)

Questions 1.1-1.4 are based on the following facts:

Allison, Billy and Clayton want to form a Louisiana corporation to sell college football championship apparel. They will name their business “ABC, Inc.” and initially issue 350 shares of stock. Allison will own 150 shares, Billy will own 100 shares, and Clayton will own 100 shares. ABC, Inc. will also be authorized to issue an additional 150 shares. All shares will be without par value. Billy and Clayton will run the day-to-day business, and Allison will be a silent investor with no managerial responsibilities. Allison, Billy and Clayton want the right to maintain their respective ownership percentages in the event ABC, Inc. decides to sell the authorized, but unissued 150 shares. They also want a right of first refusal to purchase each other’s shares in the event a shareholder decides to sell his or her shares. Finally, they want to require that any new prospective shareholder be approved by a majority vote of the current shareholders.

- 1.1 (a) What organizational papers are necessary to form ABC, Inc. as a Louisiana corporation? (b) What minimum information must be included in these papers to validly form ABC, Inc.? (c) What, if any, additional provisions are required to achieve the objectives as stated above?**
- 1.2 (a) Is ABC, Inc. required to issue certificates of stock representing the shares to be issued? Explain. (b) If ABC, Inc. issues certificates of stock, what information is to be shown on each share certificate? (c) If ABC, Inc. does not issue stock certificates, will this change the rights and obligations Allison, Billy or Clayton owe to ABC, Inc.? Explain.**
- 1.3 (a) Does the law require that any of Allison, Billy and Clayton be an officer or director of ABC, Inc.? Explain. (b) What officer positions (if any) must they elect? (c) May Billy hold more than one officer position at one time? Explain. (d) Does the law require that the officers also be directors? Explain. (e) What is the difference between straight voting and cumulative voting for director positions? (f) When will shareholders have cumulative voting rights?**
- 1.4 Assume that Allison, Billy and Clayton want to form a Louisiana limited liability company (LLC) instead of a corporation for their proposed venture. To achieve the objectives stated above, should the LLC be formed as a member-managed LLC or instead as a manager-managed LLC? Explain the difference between these two forms of LLC.**

Part B – 20 POINTS (5 points each subpart)

Questions 1.5-1.8 are based on the following facts:

Three radiologists—Amanda, Jack, and Matthew—opened a radiology practice together six years ago. They agreed to call their business “X-Ray Mart,” to divide the profits equally, and to run the practice together in a manner that would be competitive. Toward that end, they purchased state-of-the-art radiology imaging equipment comparable to that of other radiology offices in the community.

Shortly after opening the practice, Amanda, Jack, and Matthew retained an attorney to organize the practice as a limited liability company. The attorney prepared the appropriate articles of organization and the initial report and forwarded the documents to Amanda, Jack, and Matthew for signature. They each signed and dated the documents; however, they were so involved in their radiology practice that they did not send the documents to the attorney or anyone else.

A month ago, Amanda suggested to Jack and Matthew that the practice replace some of the imaging equipment. Jack was worried about overspending on imaging equipment, but he did not express his concern to Amanda and Matthew.

A week ago, Amanda, without discussing the matter further with either Jack or Matthew, purchased for the office a \$400,000 state-of-the-art digital x-ray machine like those recently acquired by other radiology offices in the community.

Yesterday, after the purchase but prior to delivery, Jack learned what Amanda had done and was furious. Jack did not believe the practice could afford such an expensive machine. When Jack confronted Amanda, Amanda said, “Too bad, it’s a done deal—get over it.” At that, Jack responded, “That’s it. I’ve had enough. This machine was purchased without my consent. It’s a terrible idea. I’m out of here and never coming back. Just give me my share of the value of the practice.” Worried that Jack’s withdrawal would jeopardize critical contract negotiations that the practice needed to finalize with certain insurance companies, Amanda asked Jack to reconsider. But Jack replied, “Nope. My mind is made up.”

- 1.5 What type of business entity is X-Ray Mart? Explain fully.**
- 1.6 Did Amanda have the authority to purchase the imaging machine; and if so, were there any actions that Jack and Matthew could have taken to revoke or limit her authority? Explain fully.**
- 1.7 Did Jack’s statements to Amanda constitute an effective withdrawal from X-Ray Mart? Explain fully.**
- 1.8 Assume for this question 1.8 that Jack’s withdrawal from X-Ray Mart was effective. What, if anything, should he be entitled to from X-Ray Mart, and who would be obligated to pay it? Explain fully.**

[End of Question 1]

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
FEBRUARY 2020**

QUESTION 2 – 40 POINTS

PART A – 30 POINTS (10 points each subpart)

Questions 2.1-2.3 are based on the following facts:

Helios, Inc. (Helios), a Louisiana corporation, was formed in 2018. Helios’s certificate of incorporation states that its purpose is “to manufacture or market solar cells and panels, and no other purpose.” Helios’s shares are publicly traded.

Donna purchased shares in Helios in January 2019. Two months later, Helios’s board of directors properly called a directors’ meeting to consider whether Helios would invest \$500,000 in a Utah lithium ion battery manufacturer. Although not a director of Helios, Donna appeared at the directors’ meeting to object to the proposed investment. Over Donna’s objections, Helios’s board of directors voted unanimously to invest in the lithium ion battery manufacturer. Two days after the approval, it became public knowledge that the chairman of Helios’s board of directors partially owned the battery manufacturer.

Two weeks after the board of directors’ approval, Helios wired \$500,000 to complete the investment in the lithium ion battery manufacturer. Since then, the value of Helios’s investment in the battery manufacturer has fallen to zero, which caused the value of Helios’s shares to drop by one-half of what it was when Donna acquired her shares in Helios.

- 2.1 At the time of the board meeting, what actions might Donna have taken to prevent Helios from investing in the battery manufacturer; and for each such action is she likely to succeed? Explain fully.**
- 2.2 What actions, if any, should Donna take to recover her losses in her Helios stock? Explain fully, including the basis for any action and any procedural requirements.**
- 2.3 Assume that Donna sold all of her shares of Helios, Inc. to Carol the day after the board approved Helios’s investment in the battery manufacturer. (a) What action, if any, might Carol have taken to block the battery manufacturer investment? (b) What action, if any, might Carol take to recover her losses in her Helios stock? Explain fully.**

Part B – 10 POINTS - Short Answer (2 points each)

- 2.4 What is a “qualified director”?**
- 2.5 What records of a corporation may a shareholder inspect? What are the requirements for a shareholder to inspect the records of a corporation?**
- 2.6 How are the officers and directors of a corporation elected, and by what vote?**
- 2.7 What is a unanimous governance agreement? Discuss.**
- 2.8 What is the difference between express and implied authority by an agent?**

[End of Question 2]

**LOUISIANA STATE BAR EXAMINATION
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QUESTION 3 – 20 POINTS

The following subject matters were tested in this multiple choice section:

Agency; express and apparent authority (2 questions)
Agency; form of mandate
Corporations; voting
LLC; dissolution
LLC; management and division of profits
Negotiorum gestio
Partnership; liability for partnership debts
Partnership; partnership buyouts
Unanimous governance agreements

[End of Question 3]

END OF BUSINESS ENTITIES TEST

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
JULY 2019**

QUESTION 1 – 40 POINTS

Part 1(A) (25 points)

Acme, Inc. is a Louisiana corporation with a three-member board of directors. Acme's bylaws provide that an annual meeting of the shareholders shall be held at Acme's principal office on the first Monday in June of each year, at which time the shareholders shall re-elect or replace a director for a three-year term by majority vote.

On May 1, 2018, a written notice was mailed out to the shareholders announcing the date, time and place of the annual meeting in June 2018. Prior to the annual meeting, Jack, Acme's president and also a director, solicited the written proxies of the shareholders holding 80% of Acme's shares. Each of those shareholders responded by e-mail appointing Jack as their proxy to vote their shares and included the date of the proxy and an electronic signature. The e-mails did not identify any conditions or limitations on the proxies and did not indicate whether the proxies were revocable or irrevocable. The e-mails were forwarded by Jack to Acme's secretary.

Ten shareholders, who cumulatively held 60% of Acme's outstanding shares, were among those who had given their e-mail proxies to Jack. After giving Jack their e-mail proxies, they learned that Jack intended to ask the board of directors to vote to sell substantially all of Acme's assets to an entity owned by Jack. The 10 shareholders opposed the sale and agreed to attend the annual meeting to vote as a block to elect a new director who agreed to fire Jack. Shortly before the scheduled June 2018 meeting, Jack and one of the other directors spoke by telephone and agreed to reschedule the annual meeting to the first Monday in August.

Although no notice of the rescheduled annual meeting was sent to the shareholders, all shareholders learned of the change in date and attended the rescheduled August meeting. The 10 dissenting shareholders announced that they revoked their proxies and were voting their own shares at the meeting to oppose the sale and elect the new director.

Answer each question in accordance with the Louisiana Business Corporation Act:

- 1.1. Was the calling of the originally scheduled shareholder meeting valid? Explain fully. (6 points)**
- 1.2. Was the shareholder meeting properly rescheduled? Explain fully. (6 points)**
- 1.3. Could the 10 dissenting shareholders have successfully objected to the rescheduled meeting they attended? Explain fully. (6 points)**
- 1.4. Were the proxies valid for the rescheduled shareholder meeting? Did the 10 dissenting shareholders have the legal right to revoke their proxies? Explain fully. (7 points)**

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Part 1(B) (15 points)

Joe owns 100 shares of Wildcat Drilling Company (WDC), a Louisiana corporation. He received the shares two years ago as a gift from his grandfather. WDC has 10,000 shares outstanding. Joe recently read in the newspaper that WDC intends to start drilling wells and injecting hazardous waste into the wells. The newspaper also reported that WDC may have bribed certain local officials in order to get the required permits. Concerned, Joe wrote a letter to WDC on April 30 demanding to see by May 7: a list of names and addresses of WDC's officers and directors, the injection well permit applications, and the accounting records related to the injection well. In the letter, he explained that he owns 100 shares of WDC stock and that he wants the documents to determine whether injection wells were an appropriate investment for WDC and whether the permits were validly issued.

On May 5, the corporate secretary for WDC responded to Joe as follows:

Dear Joe:

WDC will not give you access to any corporate documents or take any action regarding the matters raised in your letter. The board of directors will not investigate or take any other action regarding the matters raised in your letter because doing so would not be in the best interest of the corporation.

On June 5, Joe filed a lawsuit against WDC (1) seeking inspection of the documents previously requested and (2) asserting a derivative claim against all of the WDC directors alleging a breach of their fiduciary duties for failing to investigate and take action concerning the alleged injection wells and alleged bribes.

- 1.5. Which of the requested documents, if any, is Joe as a shareholder, entitled to inspect? Explain fully. (5 points)**
- 1.6. Is the board likely to obtain dismissal of the shareholder's derivative claim if the board concludes that it is not in the corporation's best interest to continue the lawsuit? Explain fully. (5 points)**
- 1.7. Is the board's decision not to investigate or take further action with respect to alleged illegal bribes consistent with the directors' duty to act in good faith, and are the directors protected from liability by Louisiana law? Explain fully. (5 points)**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

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BUSINESS ENTITIES
JULY 2019**

QUESTION 2 – 40 POINTS

Part 2(A) (30 points)

Amanda and Christopher decided to open a neighborhood natural-foods store together. The store had been at the same location for many years and had developed a loyal following. Under their informal arrangement, Amanda had managed the business and Christopher supplied capital to the business as needed. They divided the profits and losses equally.

They leased the building in which the store was located and had regularly tried to purchase the building for the partnership, but the landlord had always refused. Six months ago, however, the landlord called Amanda and said, "I thought you would want to know that I'm planning to sell the building." The next day, Amanda sent Christopher an e-mail: "I am leaving our partnership. I will wind up the business and send you a check for your half share." Without informing Christopher, Amanda then contacted the landlord and offered to buy the building. The landlord accepted, and the two entered into a binding purchase agreement. One month later, Amanda took title to the building.

Three months ago, Amanda sent Christopher a check for half of the store's inventory and other business assets. Instead of cashing the check, Christopher sent Amanda an e-mail stating that he regarded the partnership as still in existence and demanded that Amanda convey title to the building to the partnership. Amanda replied that their partnership was dissolved and that she had moved on. She then began to operate the store as a natural-foods store with a name different from that of the original store, but with the same product offerings and the same employees.

Christopher has sued Amanda for withdrawing from the partnership and for breaching her duties by buying the building from the landlord.

2.1. Was there a partnership between Amanda and Christopher? Explain fully. (5 points)

For Questions 2.2. – 2.4. below, assume that a partnership existed between Amanda and Christopher.

2.2. Did Amanda properly withdraw from the partnership? Explain fully. (5 points)

2.3. What duties, if any, did Amanda breach by purchasing the building? Explain fully. (10 points)

2.4. Solely for the purpose of Question 2.4., assume that Amanda's withdrawal from the partnership was not wrongful. What was the legal effect of Amanda's withdrawal from the partnership? Explain fully. (10 points)

Part 2(B) (10 points)

Each of the five questions below is worth 2 points and requires a short answer.

2.5. If the articles of incorporation do not provide otherwise, how are the officers and directors of a corporation elected and by what vote?

2.6. What is cumulative voting and why would a shareholder want cumulative voting?

2.7. What is the minimum information that must be included in a partnership agreement to establish a partnership in commendam?

2.8. Does each partner in a real estate investment general partnership have the authority to bind the partnership in borrowing money from banks for purchasing partnership property? Explain why or why not.

2.9. What is a voting trust, and what are the requirements for creating a voting trust?

[End of Question 2]
TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
JULY 2019**

QUESTION 3 – 20 POINTS

For each of the following ten multiple choice items, select the letter that corresponds to the correct answer.

- 3.1. Approval needed for sale by limited liability company
- 3.2. Scope of liability of principal and mandatary to third party
- 3.3. Partnership – member contributions
- 3.4. Approval needed for interested transaction of corporate director
- 3.5. Corporate approval for merger
- 3.6. Scope of authority under shareholder governance agreements
- 3.7. Responsibility of limited and general partners for partnership liability
- 3.8. Corporate approval without board or shareholder meeting
- 3.9. Allocation of profits for limited liability companies
- 3.10. Persons authorized to bind a limited liability company

[End of Question 3]

END OF BUSINESS ENTITIES TEST

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
FEBRUARY 2019**

QUESTION 1 – 40 POINTS

Barbara, Clayton and Jack were old friends from college and wanted to start a new boutique hotel in Baton Rouge. Jack had worked previously in the hotel industry. Unbeknownst to Clayton, Jack and Barbara were more than friends and had been conducting a secret affair for a year.

To own and operate the hotel, Barbara, Clayton and Jack agreed to form a corporation, called “Luxury Hotel Corporation” (“LHC”). They prepared appropriate articles of incorporation and filed them with the Secretary of State, but did not prepare bylaws. Barbara and Clayton each agreed to pay \$250,000 for 1,000 shares of LHC. Jack agreed to work full-time without salary for one year as president of LHC in return for his 1,000 shares. They also agreed that they would serve as the three members of the board of directors of LHC.

At the first meeting of the board of directors, Jack identified an old bank building as appropriate for the hotel. In response, the board voted to authorize Jack to negotiate the purchase of the old bank building. The board also discussed that LHC still needed additional funds, so Jack asked his good friend, Matthew, to buy shares of LHC. Jack told Matthew that he personally would provide monthly reports. In response to Jack’s solicitation, Matthew purchased 400 shares of LHC for \$100,000.

Two weeks later, the board met again. Jack reported to the board that the old bank building was owned by Robinson Corporation and that the price to purchase the building was \$400,000. Jack stated that he recommended the purchase of the old bank building because, in his opinion, it was a good location and a fair price. Jack did not provide any written documentation to support his recommendation, including information on the building, the seller, or the proposed sale. All three directors voted to approve the sale.

At the board meeting, Jack did not disclose his relationship with Barbara. Nor did he disclose the fact that he owned all of the outstanding shares of Robinson Corporation or that he had a recent appraisal valuing the old bank building at \$250,000.

Following the meeting, LHC bought the old bank building for \$400,000. LHC renovated the building and opened the Luxury Hotel, which was initially successful. Unfortunately, the hotel quickly went downhill. Jack was so busy seeing Barbara that he gave little time to supervising the operation of the hotel. Jack also took advantage of his position as president of LHC to rent rooms to himself free of charge for his liaisons with Barbara.

Matthew repeatedly asked Jack for the monthly reports, but was never provided any reports. Within six months, the Luxury Hotel was forced to close its doors. Angry about the loss of his investment, Matthew investigated and found out all the above facts.

- 1.1. Upon what theory or theories might Matthew seek to set aside the purchase of the old bank building by LHC? Discuss fully. (15 points)**
- 1.2. What type of action for damages may be brought in this case, and by whom? Discuss fully including any procedural requirements and any differences between the claims. (For purposes of this question, do not discuss fraud and securities fraud claims). (15 points)**
- 1.3. Does Matthew have a unilateral right to withdraw from LHC and receive fair value for his shares? Explain. (10 Points)**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
FEBRUARY 2019**

QUESTION 2 – 40 POINTS

Rachel, Sam and Tom wanted to start a new laser tattoo studio in New Orleans. Rachel and Sam were tattoo artists. Tom was Sam's friend and an experienced and wealthy businessman who attended one year of law school. To start the business, they needed a location, an expensive laser tattoo machine and various inks and supplies.

They agreed to form a new corporation, LaserTat Inc. ("LaserTat"). Tom agreed to write LaserTat's articles of incorporation. The articles provide for LaserTat to issue 100 shares: 50 shares to Tom for investing \$100,000 and 25 shares to each of Rachel and Sam in return for their services. The articles also specify that each of the shareholders will share in the profits and losses of LaserTat in accordance with his or her share ownership and that the corporation will dissolve after two years. The articles also identify Rachel, Sam and Tom as directors and Rachel as the agent for service of process for LaserTat. The articles also give Tom's address as the official address of the corporation. Rachel, Sam and Tom each signed and dated the articles of incorporation and Rachel accepted and signed as the official agent for service of process. Tom volunteered to file the articles of incorporation, but forgot and left the envelope in the bottom of his briefcase.

The next week, Rachel, Sam and Tom had their first board meeting. Sam described the laser tattoo machine, XLZ7, they needed and its price, \$20,000. The three then voted to authorize Sam to purchase the XLZ7 for \$20,000 on credit. Rachel presented a proposal to purchase \$10,000 worth of laser tattoo ink, chairs and other supplies, which the three also voted to approve. The three also decided that Rachel would be the manager of the business. Tom mentioned that he had found a great storefront, and the three agreed that Tom was authorized to start discussions with the building owner.

The next day, Tom contacted the building owner and advised that he worked for LaserTat. The building owner offered to sell the building to LaserTat for \$40,000, which was a reasonable price. The seller also offered to finance the entire purchase price. Tom immediately accepted the offer, and they walked across the street to the local notary where they executed the act of sale, a \$40,000 promissory note and a mortgage. Tom signed each of the documents as "Tom, Director, LaserTat Inc."

Meanwhile Sam went to the XLZ7 Company's showroom and looked over the tattoo machine. Sam was so excited that he immediately agreed to buy an XLZ7 for \$20,000 on credit. Sam signed the purchase order as "Sam" but did not mention that he was buying the machine on behalf of LaserTat.

Rachel went to the tattoo art supply store, Tats-R-US, and bought \$10,000 worth of ink and supplies also on credit. Rachel signed the purchase order as "Rachel, Manager." She did not tell Tats-R-US that she was purchasing the supplies on behalf of LaserTat. On the way home, Rachel stopped by Office Supply Co. and bought office supplies and coffee for a total invoice of \$500. She signed the invoice as "Rachel, Manager, LaserTat."

The next week, LaserTat moved into its new location. The XLZ7, the ink and the various supplies were all delivered. Everything was installed, and Rachel and Sam began tattooing customers. The business was going great, and LaserTat was making money and had already made two payments on the \$40,000 promissory note. One evening, Tom stopped by LaserTat to see how the business was doing. Sam was not in the studio at the time, but Rachel was busy with a customer and placed the laser wand on the side of the chair. Tom, not really paying attention, picked up the laser wand aiming it at the customer's arm. Concerned, Rachel stumbled as she went to grab the laser wand, and pushed the power pedal to the floor. With a flash of green light, the customer's arm was severely burned. Horrified, Tom fell into the XLZ7, which then lazed the alcohol and disinfectant, causing them to burst into flames. Tom then grabbed Rachel and the customer and dragged them out of the building. The LaserTat building burned to the ground.

All of LaserTat's assets burned in the fire with the exception of \$20,000 in its bank account. The customer sued LaserTat and obtained a \$500,000 judgment against it for his injuries. LaserTat then paid the \$20,000 to the customer, leaving a \$480,000 balance owed to the customer.

2.1. Is Sam personally liable to pay any or all of the \$480,000 still owed to the customer? Explain why or why not. (8 points)

Assume for purposes of questions 2.2.-2.5. that LaserTat was a validly formed corporation under Louisiana law.

2.2. 8 Points, total.

A. Who was initially liable on the \$40,000 promissory note payable to the seller of the building: LaserTat, Tom or both? Explain fully.

B. Did the liability change by the time of the accident? Explain fully.

2.3. 8 Points, total.

A. Who was initially liable to XLZ7 Company for the purchase price for the XLZ7: LaserTat, Sam or both? Explain fully.

B. Does either LaserTat or Sam have any rights against the other regarding this purchase? Explain fully.

2.4. 8 Points, total.

A. Who was initially liable for the payment of the invoice of \$10,000 worth of supplies from Tats-R-US: LaserTat, Rachel or both? Explain fully.

B. Does either LaserTat or Rachel have any rights against the other regarding this purchase? Explain fully.

2.5. 8 Points, total.

A. Who was initially liable for the payment of the \$500 invoice for supplies from Office Supply Co.: LaserTat, Rachel or both? Explain fully.

B. Does either LaserTat and Rachel have any rights against the other regarding this purchase? Explain fully.

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXMINATION
BUSINESS ENTITIES
FEBRUARY 2019**

QUESTION 3 – 20 POINTS

For each of the following ten multiple choice items, select the letter that corresponds to the correct answer.

- 3.1. L.L.C. – authority of members for extraordinary transactions
- 3.2. L.L.C. – division of profits
- 3.3. Indemnity for corporate directors
- 3.4. Partner liability for partnership obligations
- 3.5. Corporate shareholder voting; quorum requirements
- 3.6. Authority for L.L.C. managers
- 3.7. Corporation provisions for protecting against shareholder dilution
- 3.8. Corporate opportunities; conflict of interest
- 3.9. Corporate authority for extraordinary transactions
- 3.10. Withdrawal from partnerships

[End of Question 3]

END OF BUSINESS ENTITIES TEST