

**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  
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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)**

TEST CONTINUES ON NEXT PAGE

**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]

**LOUISIANA STATE BAR EXAMINATION  
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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]  
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**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  
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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]

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**LOUISIANA STATE BAR EXAMINATION  
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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]

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**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

**LOUISIANA STATE BAR EXAMINATION  
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS  
JULY 2018**

**QUESTION 1 — 50 POINTS (FIVE POINTS EACH SUBPART)**

- 1.1. What is an “indorsement,” and what are the effects of an indorsement?**
- 1.2. What is a “holder in due course,” and what is the effect of this designation?**

*The following fact pattern applies to subquestions 1.3 to 1.4.*

In January of this year, Alice and Betty started a new business, A&B, Inc. Purporting to act on behalf of the company, they signed a purchase agreement in that same month with Office Supply Co. to buy office furniture. The purchase is on credit with monthly payments due over the next three years. The office equipment was delivered days after the purchase agreement was signed. None of the monthly payments due to Office Supply Co. has been made. Alice and Betty did not file the Company’s articles of incorporation with the Secretary of State until April of this year.

- 1.3. Does Office Supply Co. have the right to bring an action directly against A&B, Inc. for the failure to make the monthly payments, and is it likely to prevail? Explain.**
- 1.4. Does Office Supply Co. have the right to bring an action directly against Alice and Betty personally for the failure to make the monthly payments, and is it likely to prevail? Explain.**

*The following fact pattern applies to subquestions 1.5 to 1.6.*

RST, Inc. is a real estate development company formed in 2016 and is equally owned by Ron, Steve and Tom, who also serve as its three board members. Investor LLC is a company owned solely by Ron’s wife, Wilma. Investor LLC recently proposed to sell a tract of land to RST at a price that Ron, but not Steve or Tom, knew was substantially over its fair market value. At a properly called board meeting, Ron, Steve and Tom all attended the meeting and voted in favor of accepting Investor LLC’s proposal. Ron never disclosed his relationship to Wilma or the fact that the price proposed by Investor LLC was substantially above the fair market price.

- 1.5. Did Ron violate any duties he owed as a board member of RST, Inc.? Explain.**
- 1.6. Tom is now concerned that Ron has been diverting money from RST. Tom wants to see the corporate and financial records of RST. What records is Tom as a shareholder entitled to review, and what must he do to obtain access to those records? What difference, if any, would it make if Tom owned only three percent of the outstanding shares of RST? Explain.**

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*The following fact pattern applies to subquestions 1.7 to 1.8.*

Last year, Nancy hired Mary as a personal assistant to help Nancy with paying bills and managing other household affairs given Nancy's busy travel schedule. Before Nancy left on an extended but unexpected trip from March 20 through July 2, Mary wrote several checks to pay Nancy's regular monthly bills, such as credit cards, home mortgage and utilities, but forgot to have Nancy sign the checks before her departure. Mary signed Nancy's name to the checks in her absence and delivered the checks to the payees, who negotiated them. Nancy had been paying Mary \$500 in cash each month for her services. Because Nancy was gone longer than expected, Mary wrote out and signed Nancy's name to three checks payable to herself (Mary) each in the amount of \$500: one on April 4, one on May 4, and one on June 4. Mary deposited the checks into her personal account on the fifth day of each month respectively. A bank statement for Nancy's checking account was received at Nancy's home by the third day of each month.

When Nancy returned on July 3, she opened her bank statement for the month of June and discovered the \$500 check dated June 4 that Mary had signed payable to herself. Nancy then checked her previous bank statements and discovered the two other checks signed by Mary and payable to herself, as well as the other checks Mary signed to pay Nancy's bills.

**1.7. For which of the checks payable to Mary, if any, is the bank liable to reimburse Nancy's account? Explain.**

**1.8. Is the bank obligated to reimburse Nancy's account for the amount of the checks signed by Mary to pay Nancy's regular bills? Explain.**

*The following fact pattern applies to subquestion 1.9.*

Yvonne and Zelda formed a validly organized partnership (the "YZ Partnership") to construct modular homes. They agreed that Yvonne would contribute \$50,000 in cash to fund the purchase of materials and that Zelda would perform the construction services to build the homes. Yvonne's contribution would be made the earlier of within 30 days or as soon as needed. They further agreed to share the profits equally.

A subdivision developer and the YZ Partnership signed a construction contract under which the partnership agreed to build 10 homes for the developer. Before purchasing any materials for this work, Zelda received the partnership's bank statement and discovered that Yvonne's contribution had not been made. Zelda asked Yvonne to make the contribution, since they needed working capital to purchase the materials to build the homes for the subdivision developer. Citing monetary problems, Yvonne refused to put up her capital contribution and told Zelda that she would need at least three to four months before she will be able to raise the money. The lack of funds caused the partnership to breach the construction contract with the developer. Angry with Yvonne's failure to make her agreed contribution, Zelda is considering forming her own company to take over the project.

**1.9. What steps might Zelda take to create a new business entity for the purpose of taking over the construction contract? Explain.**

*The following fact pattern applies to subquestion 1.10.*

Larry and Joe decided to form a limited liability company. They filed the proper forms with the Secretary of State to form the LLC. After the company had been in operation for several years, Larry died. His son, Junior, who has been placed into possession of all of Larry's assets by a proper judgment of possession in Larry's succession proceedings, wants to become a member of the LLC. The organizational documents of the company contain only the minimum requirements for formation.

**1.10. Is Junior entitled to be admitted as a member of the LLC? Explain.**

[End of Question 1]  
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**LOUISIANA STATE BAR EXAMINATION  
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS  
JULY 2018**

**QUESTION 2 — 30 POINTS (THREE POINTS EACH SUBPART)**

- 2.1. **If three persons form a corporation and are all directors as well as shareholders of the corporation, does any of them, acting alone, have the authority to sign contracts on behalf of the corporation and thereby bind the corporation? Explain.**
- 2.2. **Under what circumstances, if any, may a person be expelled as a shareholder from their corporation? Explain.**
- 2.3. **How much time must pass without an annual shareholders' meeting for a corporation before the shareholders have the right to call for an annual shareholders' meeting, and, which of the shareholders would be required to call for such a meeting?**
- 2.4. **What are the differences between forming a member-managed LLC and a manager-managed LLC? Explain.**
- 2.5. **By what vote do members of a member-managed limited liability company make decisions? Is their vote counted by heads or their respective percentage membership interests? Explain.**
- 2.6. **For a manager-managed limited liability company, list three types of decisions that require the vote of the membership.**
- 2.7. **For a partnership, does any single partner, acting alone, have the authority to sign contracts on behalf of the partnership and thereby bind the partnership? Explain.**
- 2.8. **If a third party files a lawsuit against a person by virtue of his/her status as a partner of a partnership, and he/she successfully defends the suit, is he/she automatically entitled to reimbursement from the partnership for the reasonable attorneys' fees incurred in defending the suit? Explain.**
- 2.9. **For a Louisiana partnership in commendam, what duties/responsibilities is the partner in commendam allowed to have and what activities, if any, must the partner in commendam avoid in order to preserve his/her limited liability protection?**
- 2.10. **What information is required in the organizational documents of a Louisiana partnership in commendam, and what are the filing requirements, if any?**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION  
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS  
JULY 2018**

**QUESTION 3 — 20 POINTS**

*Each of the following ten multiple choice items counts for two points each. Select the letter that corresponds with the correct answer.*

- 3.1. corporations – meeting and quorum requirements**
  
- 3.2. corporations – election of directors**
  
- 3.3. corporations – authority under unanimous governance agreements**
  
- 3.4. corporations – shares subject to unanimous governance agreements, remedies**
  
- 3.5. negotiable instruments – holder in due course requirements**
  
- 3.6. negotiable instruments – conflicting writings**
  
- 3.7. partnerships – formation**
  
- 3.8. corporations – required officers**
  
- 3.9. partnerships – liability of partners to third persons**
  
- 3.10. limited liability companies – voting**

[End of Question 3]



**LOUISIANA STATE BAR EXAMINATION  
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FEBRUARY 2018**

**QUESTION 1 — 25 POINTS (FIVE POINTS EACH SUBPART)**

Allison maintains a checking account with Baton Rouge Bank (“BRB”). Allison is divorced and lives with her 25-year-old daughter, Ella. Without Allison’s knowledge, Ella obtained access to Allison’s checkbook, which Allison kept in a drawer at home. Ella began forging Allison’s signature on checks, and cashing the checks drawn on Allison’s account at BRB.

Every month during the period December 2016 through March 2017, Ella forged and cashed at BRB a \$1,000 check, for a total of \$4,000 over this four-month period. Each forged check was included in BRB’s monthly statement to Allison. Allison received the monthly statement for each of December, January and February by the seventh day of the following month, but she initially did not review those statements. On April 16, 2017, Allison received and reviewed her March 2017 bank statement from BRB and discovered a check in the amount of \$1,000 that bore an obvious forgery of her signature and had been cashed by Ella in March. Allison then immediately reviewed the three earlier bank statements and discovered the three earlier checks that had also been obviously forged by Ella.

On that same day, upon further investigation, Allison also discovered that Ella found a check payable to Allison in the amount of \$3,000 that Allison had received for the sale of an old car. The check had been sitting in a pile of mail on a table in the kitchen. Ella had forged Allison’s endorsement on the back of the check and cashed it at BRB on April 10, 2017. The check was drawn on an account at Federal Bank.

Allison immediately demanded that BRB remit payment to her for \$7,000: \$4,000 for the four \$1,000 checks and another \$3,000 for the check on which Ella had forged Allison’s endorsement. BRB maintains that it followed standard banking practices and paid all these checks in good faith. BRB also asserts that Allison was negligent in failing to restrict access to her checkbook.

- 1.1. As a general rule, does the bank or the depositor suffer the loss for payment of an instrument bearing a forged signature of the depositor? Explain fully.**
- 1.2. Is BRB’s defense that Allison was negligent in failing to restrict access to her checkbook likely to succeed? Explain fully.**
- 1.3. What other defenses, if any, does BRB have (beyond any possible defense addressed in Question 1.2. above) in order not to have to reimburse Allison for the four forged checks that were included in Allison’s monthly bank statements? Explain fully.**
- 1.4. Can Allison recover from either or both of BRB or Federal Bank the amount of the \$3,000 check that she had received from the sale of her old car? What defenses might be available to prevent her from recovering? If Allison is successful in obtaining recovery from the banks, which of them must bear the loss as between the banks? Explain fully.**
- 1.5. What impact, if any, would it make if Allison could prove that BRB failed to follow its own internal policy of reviewing and comparing signature cards for any checks in excess of \$500?**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION  
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**QUESTION 2 — 30 POINTS (THREE POINTS EACH SUBPART)**

*Short Answer Questions. Please answer each question and provide a brief explanation for your answer.*

- 2.1. What is a holder in due course? What advantages does a holder in due course have?
- 2.2. Under the Louisiana Business Corporation Act, how and when are the directors of a corporation elected and by what vote? How are the officers elected and by what vote?
- 2.3. Under the Louisiana Business Corporation Act, with respect to an action proposed to be taken by a corporation's board of directors, what in general are the qualifications that a director must have to be considered a "qualified director"?
- 2.4. Identify three matters that require the approval of the majority of the members of a limited liability company (absent a contrary provision in its articles of organization or written operating agreement).
- 2.5. What are the required votes and procedure for a corporation to dissolve?
- 2.6. What legal duties do directors and officers owe to a corporation?
- 2.7. What is the difference between a direct action and a derivative action by a shareholder against the directors of a corporation?
- 2.8. What is cumulative voting, and why might a shareholder want cumulative voting?
- 2.9. What minimum information must be included in a partnership agreement to establish a partnership in commendam?
- 2.10. What is piercing the corporate veil, and what are the elements necessary to establish entitlement to piercing of the veil in a suit?

[End of Question 2]

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**LOUISIANA STATE BAR EXAMINATION  
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**QUESTION 3 — 25 POINTS (FIVE POINTS EACH SUBPART)**

Alice and Bessie have decided to start a home design and decorator business. To formalize their agreement, they signed a document that has the following language:

**AGREEMENT**

This 1st day of January, 2016, we, Alice and Bessie, agree to form and carry on as co-owners for profit a home design and decorator business in Louisiana named A&B Home Design Partners (“Home Design”), for a period of two years from the date hereof or such later date as we may mutually agree in writing. We each promise to contribute \$10,000 in cash to Home Design upon signing this agreement, to perform services exclusively for Home Design for the period of this agreement and to share profits from the business equally.

Bessie contributed \$10,000 on January 1, 2016, by depositing that amount in Home Design’s bank account. Alice orally promised to Bessie that she would likewise deposit her \$10,000 contribution in Home Design’s bank account by January 28, 2016.

Without Bessie’s knowledge, one week later, on January 8, 2016, Alice entered into an agreement with Upscale Properties, Inc. (“Upscale”) to design and implement the interior designs for two homes. Alice set forth the terms of the agreement in a letter to Upscale on Home Design letterhead, which Alice signed as “Partner.” The agreement provided that Upscale would advance all funds upon request to Home Design for the costs of all building materials for Home #1 and Home #2 and that Upscale would pay Home Design \$20,000 upon completion of work on Home #1 and an additional \$20,000 upon completion of work on Home #2.

Alice did not inform Bessie of the agreement with Upscale. Alice intended to keep the agreement with Upscale secret from Bessie, complete the work herself, and keep the \$40,000 profit for herself.

At Alice’s request, on January 10, 2016, Upscale advanced \$10,000 to Alice to pay for materials for Home #1. Alice deposited the \$10,000 into her personal bank account and purchased the materials for Home #1 with a personal check in the amount of \$10,000. Alice completed the work on Home #1 on January 23, 2016, at which time Upscale paid Alice, as agreed, the additional \$20,000 for Home #1. Alice immediately deposited the \$20,000 into her personal bank account.

On January 30, 2016, at Alice’s request, Upscale advanced to Alice another \$10,000 for materials for Home #2, which Alice deposited into her personal account. On February 1, 2016, before Alice purchased any materials for or began work on Home #2, Bessie received Home Design’s bank statement and discovered that Alice had not made her initial \$10,000 contribution to the business as promised. Bessie confronted Alice about her failure to make her agreed contribution. During their ensuing discussions, Bessie learned for the first time about Alice’s dealings with Upscale. Angered by this information, Bessie sold her entire interest in Home Design to Candy on February 3, 2016 for \$10,000. By letter dated February 3, 2016, Bessie advised Alice: “I am hereby withdrawing from Home Design, and Candy is now your new business partner.”

TEST CONTINUES ON NEXT PAGE

- 3.1. Were Alice and Bessie partners on January 8, 2016 when Alice signed the agreement with Upscale? Explain fully.**

*For questions 3.2 through 3.5 below, assume that Alice and Bessie validly formed a Louisiana partnership on January 1, 2016.*

- 3.2. What was the legal effect, if any, of Bessie's February 3, 2016 letter to Alice? Explain fully.**
- 3.3. Did Candy become a partner of Home Design? Explain fully.**
- 3.4. If Alice refuses to do the work on Home #2 and Upscale is entitled to damages for breach of contract, explain the respective liability, if any, of Alice, Bessie and Home Design to Upscale.**
- 3.5. Can Home Design recover from Alice the \$10,000 contribution that Alice promised but did not pay? Can Home Design recover from Alice the \$20,000 profit paid to Alice by Upscale for the work on Home #1? Explain both fully.**

[End of Question 3]

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**QUESTION 4 — 20 POINTS**

*Ten multiple choice questions, each worth 2 points, tested the following areas of law:*

- 4.1. Shareholder appraisal rights
- 4.2. Commercial paper – endorsements
- 4.3. Partnership liabilities
- 4.4. Partnership liabilities
- 4.5. Limited Liability Companies – initial report
- 4.6. Limited Liability Companies – dissolution
- 4.7. Limited Liability Companies – division of profits
- 4.8. Limited Liability Companies – acts outside ordinary course
- 4.9. Holder in due course
- 4.10. Board of director and shareholder resolutions

[End of Question 4]

END OF BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS TEST