

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
JULY 2021**

QUESTION 1 (100 POINTS)

Please answer the following questions. These questions are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

**PART A
(70 Points)**

The following facts apply to Questions 1.1–1.7 only:

Dan owned a 50% undivided interest in Lot A of Commercial Oaks in Allen Parish. Jack owned the other 50% undivided interest in Lot A of Commercial Oaks. Lot A contains a small shopping center. In 2015, Dan obtained a \$200,000 loan from Big Bank. Dan executed a promissory note dated April 1, 2015 in favor of Big Bank in the amount of \$200,000, due in 59 equal monthly installments with the first payment due on May 1, 2015 and all subsequent payments due on the first day of each month after that and a final payment due on April 1, 2020 (the “Shopping Center Note”). On April 1, 2015, Dan also granted a mortgage to Big Bank. The mortgage includes the following granting clause:

“In order to secure my present and future indebtedness to Big Bank, including the obligations under my \$200,000 promissory note dated April 1, 2015 up to a maximum secured limit of \$50,000,000, including all principal, interest, fees, costs and other amounts that I may owe to Big Bank, I hereby grant a mortgage on all of my present and future interest in Lot A of Commercial Oaks in Allen Parish, Louisiana described below.”

The mortgage was dated April 1, 2015, recorded by Big Bank on April 2, 2015 in the mortgage records of Allen Parish and properly described Lot A as the property being mortgaged. The mortgage was not witnessed, signed by the mortgagee, or notarized. The Shopping Center Note was not paraphrased for identification with the mortgage.

Credit Loans had obtained a money judgment against Dan on September 9, 2011, and properly recorded a certified copy of the final judgment in the mortgage records of Allen Parish on September 15, 2011.

In January 2016, Dan received an inheritance and used it to pay off the \$200,000 Shopping Center Note in full. As a result, Dan no longer owed any debt to Big Bank secured by the mortgage. Thereafter, Dan wanted to buy out Jack’s interest in Lot A. To finance the purchase, Dan obtained another loan from Big Bank. The loan was evidenced by a \$100,000 promissory note dated August 1, 2016, payable on demand (the “Demand Note”). Dan purchased Jack’s undivided 50% interest in Lot A on August 1, 2016 pursuant to a valid Act of Cash Sale.

TEST CONTINUES ON NEXT PAGE

Dan never made any payments on the Demand Note. On June 10, 2021, Big Bank decided to foreclose on Lot A and made a demand for payment of the Demand Note. Big Bank had never previously asked Dan for payments on the Demand Note. Credit Loans also wants to be paid and filed a Notice of Reinscription of its judgment in the mortgage records of Allen Parish on February 1, 2021 but has done nothing further with regard to its judicial mortgage.

- 1.1 Was the mortgage executed by Dan valid at the time of execution? Explain fully why or why not; address the effect, if any, from the mortgage not being signed before any witnesses. (10 points)**
- 1.2 When Dan acquired Jack's 50% interest in Lot A, did the mortgage burden Dan's entire interest in Lot A, or only his initial 50% interest? Explain fully. (5 points)**
- 1.3 At the time Dan executed the Demand Note, did the mortgage secure that note? Explain fully. (10 points)**
- 1.4 By what precise date must the mortgage in favor of Big Bank be reinscribed in order to remain effective against third persons? Explain fully. (10 points).**
- 1.5 What actions must Credit Loans take to preserve its right to collect on its judgment against Dan, and when must those actions be taken? Explain fully. (20 points).**
- 1.6 *For purposes of this Question 1.6 only, assume that both Big Bank's mortgage and Credit Loans' judicial mortgage are presently enforceable against Jack and third persons and that both encumber the entirety of Lot A. As of the date of this exam, does Big Bank's mortgage outrank Credit Loans' judicial mortgage? Explain fully. (5 points)***
- 1.7 As of the date of this exam, does Big Bank still have the right to enforce the Demand Note executed by Dan, and, if so, when will the note prescribe? Explain fully. (10 points)**

TEST CONTINUES ON NEXT PAGE

PART B
(30 POINTS)

The following facts apply to Questions 1.8-1.10 only.

Jill had long been in the business of handmaking and selling large, unique and fully furnished wooden dollhouses. Kelly was interested in purchasing four dollhouses. Jill offered to sell Kelly four dollhouses for the purchase price of \$500 per dollhouse. Kelly agreed to the price, and Jill and Kelly executed a bill of sale which provided that the purchase price for each dollhouse was \$500, to be paid with a cash down payment of \$250 for each dollhouse, and with the credit balance payable within thirty days of sale. Kelly paid the cash down payment of \$1,000 (\$250 for each dollhouse) to Jill. Kelly wanted to take home all four dollhouses but was only able to safely fit two of the dollhouses in her SUV. Kelly made arrangements to pick up the other two dollhouses from Jill in a few days. Unfortunately, the next day, a lightning strike caused a fire that destroyed Jill's shop and the other two dollhouses still in the shop.

- 1.8 Was there a perfected sale between Jill and Kelly as to all the dollhouses? Explain fully. (10 points)**
- 1.9 Did ownership of all four dollhouses pass to Kelly? Explain fully. (10 points)**
- 1.10 Who bears the risk of loss with respect to the undelivered dollhouses that were destroyed in the fire? Explain fully. (10 points)**

[End of Civil Code III Test]

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
FEBRUARY 2021**

QUESTION 1 (100 POINTS)

Please answer the following questions. These questions are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

**PART A
(30 Points)**

The following facts apply to Questions 1.1 and 1.2 only:

Victor, as vendor, submitted an offer by email to Paul, as purchaser, offering to sell a pump for a set price on the terms set forth in the form of contract that was attached to the email. The offer specified that it would remain open and could be accepted within ten days, and that the offer must be accepted by returning a signed copy of the contract by either email or regular mail.

The next day, Paul telephoned Victor and accepted the offer. Although Victor did not say so during the telephone call, he had become hesitant about selling to Paul. So shortly after the telephone conversation with Paul, Victor sent Paul a letter by regular mail rescinding the offer. Paul received the letter from Victor on the fourth day after Victor had sent the initial offer by email. Because Paul really wanted to purchase the pump, he sent Victor, immediately after receiving Victor's letter, an email in which Paul accepted the offer to purchase. The email enclosed a signed copy of the contract in the form submitted by Victor, without any modifications by Paul. Paul promptly submitted payment in accordance with the terms in Victor's form of contract, but Victor did not accept this payment.

- 1.1 Did Paul successfully accept Victor's offer; and if so, how and when was there acceptance; and if not, why not? Explain fully. (15 points)**
- 1.2 Did Victor successfully revoke his offer to Paul? Discuss why or why not. (15 points)**

TEST CONTINUES ON NEXT PAGE

PART B
(40 Points)

The following facts apply to Questions 1.3–1.6 only:

Jack was interested in opening a car repair shop. He located a property with a lot and building in Vermilion Parish owned by Land Company. Jack approached Money Bank for a loan to buy the property from Land Company. Money Bank agreed to lend Jack the funds to purchase the property and, to secure the loan, Money Bank would receive a mortgage on the property. Jack purchased the property from Land Company by borrowing \$500,000 from Money Bank. The loan was evidenced by a promissory note dated February 1, 2010, payable in equal monthly installments due on the first day of each month over a repayment term of nine years and eleven months, with a maturity date of January 1, 2020. To secure the promissory note, Jack granted Money Bank a mortgage on the property. The mortgage accurately described the promissory note that Jack had signed, stated the maturity date of the promissory note, and contained a proper legal description of the building and the lot upon which it is located. The mortgage was signed by Jack before two witnesses and a notary public on February 1, 2010. Although the mortgage contained a space for the signature of the mortgagee, Money Bank's loan officer neglected to sign the mortgage. The mortgage was recorded in the mortgage records of Vermilion Parish on February 5, 2010. It has never been reinscribed.

After initial success, Jack's business began to experience financial difficulties in November 2010, and Jack was unable to pay his supplier, Auto Parts, Inc. Auto Parts, Inc. obtained a money judgment against Jack on January 10, 2011, and recorded the judgment in the mortgage records of Vermilion Parish on January 12, 2011. Jack never appealed that judgment. On December 23, 2020, Auto Parts, Inc. filed a notice of reinscription of its money judgment in the mortgage records of Vermilion Parish, but otherwise has taken no other action to execute upon its money judgment or to preserve its rights under its money judgment. No payments have ever been made on the money judgment.

Jack's last payment on the promissory note held by Money Bank was on January 2, 2016; he has made no further payments on the promissory note since then. Money Bank has taken no action to collect the balance owing on its promissory note.

- 1.3 Was the mortgage in favor of Money Bank valid at the time of its execution? Explain fully. (10 points)**
- 1.4 As of the day of this exam, does Money Bank have an enforceable mortgage burdening the property? Explain fully. (5 points)**
- 1.5. As of the day of this exam, does Money Bank still have the right to enforce the promissory note executed by Jack, and, if so, to what extent? (10 points)**
- 1.6 As of the day of this exam, does Auto Parts, Inc. have an enforceable judicial mortgage burdening the property? Explain fully. (15 points)**

TEST CONTINUES ON NEXT PAGE

PART C
(30 Points)

The following facts apply to Questions 1.7 and 1.8 only:

On December 1, 2020, Mark, who was in the business of leasing motorcycles to others, leased a motorcycle to Larry for a six-week period ending on January 11, 2021 at a rent of \$10 per day. One week after leasing the motorcycle, Larry noticed a steering problem that occurred only at high speeds, and promptly brought the motorcycle back to Mark for repair. The motorcycle was repaired in three hours and then returned to Larry at his home in the evening. Larry used the motorcycle for the next several weeks, but, on January 22, 2021, Larry returned the motorcycle to Mark. At the time of the return, he told Mark that he was very disappointed with the motorcycle, not only as a result of the steering work, but because it did not go faster than 100 miles per hour, even after the repairs, despite the fact that the speedometer could register speeds as high as 150 miles per hour. Mark responded that the legal speed limit was far less than 100 miles per hour and that the repairs were necessitated by Larry's operation of the motorcycle at speeds far in excess of its design capacities. When Larry refused to pay any rent for the motorcycle, Mark filed suit against Larry for the unpaid rent.

- 1.7 Was this a valid lease, and was Mark in breach of his warranties with respect to his lease and repair of the motorcycle to Larry? Explain fully. (15 points)**
- 1.8 Was Larry's lease reconducted? If so, for what additional term; and if not, why not? Explain fully. (15 points)**

[End of Civil Code III Test]

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
OCTOBER 2020**

QUESTION 1 (100 POINTS)

Please answer the following 7 questions. These questions are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

PART A (50 POINTS)

Bob wanted to purchase four adjacent one-acre lots. Each of the lots, which are commonly known as Lots A, B, C, and D, consists of raw land without improvements. The following occurred:

- Lot A: Bob purchased Lot A from Sid eleven months ago for \$1,000 in cash pursuant to a written act of sale. Sid was in dire need of money at the time, and the price Bob paid for Lot A was substantially less than its appraised value of \$5,000. The day after the sale was concluded, the act of cash sale was recorded in the conveyance records.
- Lot B: Bob purchased Lot B from Sid six months ago for \$12,000 in cash pursuant to a written act of sale. The act of sale did not mention any warranty of any nature being made by Sid. At the time of the sale, Sid did not actually own Lot B but was in possession of the lot under a lease with option to purchase that Sid had entered into with a former owner several years earlier. A week after Sid signed the act of sale in favor of Bob, the former owner conveyed Lot B to Sid.
- Lot C: A month ago, Bob and Sid signed a purchase agreement pursuant to which Sid agreed to sell Lot C to Bob for \$15,000, to be paid in cash at closing, which was to occur 90 days after the purchase agreement was signed. At the time the purchase agreement was signed, Bob delivered to Sid a \$1,000 cash payment, which the purchase agreement stipulated to be earnest money.
- Lot D: Pursuant to a written lease that Sid and Bob signed 15 years ago, Bob leased Lot D from Sid for a term of 20 years. This lease is still in effect, and Bob has always paid his monthly rental payments when due and has otherwise complied with his obligations under the lease. Under the terms of the lease, Bob has the right to purchase Lot D at any time during the lease term for its fair market value as of the time Bob notifies Sid of his desire to do so. The lease specifies that fair market value will be determined by a local appraiser, whose name is stated in the lease. Within the last week, Bob delivered written notice to Sid of his desire to purchase Lot D.

TEST CONTINUES ON NEXT PAGE

Yesterday, Sid notified Bob that Bob's purchase of Lot A is "void" because the price Bob paid for Lot A was "unconscionably low." Sid further contends that Bob's purchase of Lot B is also "void" because Sid did not own Lot B at the time of the purported purchase. Sid also indicated in his notice that he will not proceed with the sale of Lot C and will not sell Lot D to Bob.

Bob has brought an action against Sid regarding each of the lots.

- 1.1 Is Sid likely to prevail on his claim that Bob's purchase of Lot A is "void" because the price Bob paid was "unconscionably low"? Explain fully. (10 points)**
- 1.2 Was the sale of Lot B to Sid effective in conveying ownership of the lot to Sid? Explain fully. (10 points)**
- 1.3 If Bob brings an action against Sid for specific performance under the purchase agreement for Lot C, is he likely to be successful? Explain fully. (10 points)**
- 1.4 Does Bob have the right to force Sid to sell Lot D to Bob? Explain fully. (20 points)**

PART B (50 POINTS)

Big Bank has a valid money judgment in its favor against Thrifty Land Co. In an effort to execute the judgment, Big Bank has properly arranged for the sheriff to seize a tract of immovable property owned by Thrifty Land Co. The mortgage records of the parish where the immovable property is located contain only the following four filings mentioning Thrifty Land Co.:

1. A mortgage, dated February 1, 2010, but not recorded in the mortgage records until November 1, 2010, in favor of Credit Bank securing a promissory note in the amount of \$50,000, payable in 72 monthly installments with a final balloon payment due on February 1, 2016, and burdening this same tract of immovable property owned by Thrifty Land Co.
2. A money judgment, rendered on June 4, 2010 and recorded in the mortgage records on June 7, 2010, against Thrifty Land Co. in favor of Sugarhouse Suppliers for the principal sum of \$25,000, plus interest and costs.
3. A multiple indebtedness mortgage dated October 2, 2019 and recorded in the mortgage records that same day, securing all present and future indebtedness of Thrifty Land Co. to Alexandria Bank up to the maximum amount of \$50,000,000 and burdening the same immovable property.
4. A money judgment, rendered on January 9, 2020 and recorded in the mortgage records on January 10, 2020, against Thrifty Land Co. in favor of Big Bank for the principal sum of \$75,000, plus interest and costs.

TEST CONTINUES ON NEXT PAGE

All of these encumbrances were valid at the time recorded. Alexandria Bank made a single loan advance to Thrifty Land Co. in the amount of \$45,000 on January 13, 2020.

Thrifty Land Co. has made no payments to any of these creditors.

Although not reflected by any filing in the mortgage records, Sugarhouse Suppliers properly revived its judgment on January 17, 2020 and obtained a judgment of revival on January 31, 2020.

- 1.5 Does Sugarhouse Suppliers have an enforceable encumbrance on the immovable property? What steps, if any, should Sugarhouse Suppliers have taken in the past, or should it take in the future, to ensure that its money judgment remains an enforceable encumbrance? Explain fully. (20 points)**
- 1.6 Does Alexandria Bank's multiple indebtedness mortgage rank ahead or behind the money judgment in favor of Big Bank? Explain fully. (15 points)**
- 1.7 Is Credit Bank's mortgage on the immovable property presently effective against third persons? What steps should Credit Bank have taken in the past, or should it take in the future, to ensure that its mortgage remains effective against third persons. Explain fully. (15 points)**

[End of Civil Code III Test]

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
AUGUST 2020**

QUESTION 1 (100 POINTS)

John owns a commercial property (the “*Center Property*”) in Tangipahoa Parish. In January 2007, John approached his friend Max to ask if Max would be interested in lending John funds for renovating the Center Property. When Max agreed, John prepared an Act of Mortgage in favor of Max. John did not yet know the amount of the loan he would need so he drafted the granting clause in the mortgage to read as follows: “In order to secure my present and future indebtedness to Max, up to a maximum secured limit of \$50,000,000, including all principal, interest, fees, costs and other amounts that I may owe to Max, I hereby grant Max a mortgage on all of my present and future interest in the immovable property in Tangipahoa Parish, Louisiana described below.” The Act of Mortgage contains a full and correct legal property description of the Center Property. On January 10, 2007, John signed the Act of Mortgage before two witnesses. Max was not present at the time and did not sign the Act of Mortgage. The next day John went to a notary public with one of the witnesses to the Act of Mortgage. The notary public had this witness acknowledge his signature on the Act of Mortgage by recognizing the signature as his own before the notary public in the presence of two witnesses. John then recorded the Act of Mortgage in the mortgage records of Tangipahoa Parish on January 12, 2007. At the time the Act of Mortgage was executed and recorded, Max had not yet lent any money to John.

On August 1, 2007, one of John’s creditors, Big Bank, obtained a money judgment against John from a Louisiana district court and recorded the judgment in the mortgage records of Tangipahoa Parish on August 3, 2007. At the time that the judgment was recorded, John had borrowed no money from Max. Since recording the judgment, Big Bank has taken no other action to enforce or preserve its judgment.

On May 12, 2008, John obtained two loans from Max. One of these was a term loan evidenced by a promissory note (Note A) signed by John, dated May 12, 2008 in the amount of \$50,000 payable in monthly installments of interest only commencing on June 12, 2008 and continuing thereafter to be due on the twelfth day of each month over a term of ten years with a final balloon payment of all outstanding principal and accrued but unpaid interest due at maturity on May 12, 2018. The note contains an acceleration clause giving Max the right to make demand and accelerate the maturity of the note if any payment is not made when due.

The other loan that John obtained from Max on May 12, 2008 was a demand loan evidenced by a promissory note (Note B) signed by John, dated May 12, 2008 in the amount of \$40,000 payable immediately upon demand.

Neither Note A nor Note B contains any reference to the Act of Mortgage.

TEST CONTINUES ON NEXT PAGE

As of July 15, 2013, no payments have been made on either Note A or Note B. Max asked John to pay him the full amount of Note B. John did not have any money to pay Max. In order to stall Max from filing collection proceedings, John entered into a written agreement that expressly extended the liberative prescription period (tolling agreement) on Note B for two more years. Max agreed, and they both executed the agreement on July 15, 2013.

Please answer the following 10 questions. These questions are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

1.1 Was the Act of Mortgage executed by John in favor of Max valid at the time of its execution in January 2007? Discuss. (10 Points)

Assume for all the remaining questions that the Act of Mortgage was valid at the time of its execution.

1.2 At the time Note A and Note B were signed on May 12, 2008, did the Act of Mortgage secure Note A and Note B? Discuss. (5 Points).

1.3 Does the lack of a paraph on Note A and Note B impair the effectiveness of the Act of Mortgage to secure them? Discuss. (5 points)

1.4 Has any portion of Note A prescribed as of the date of this examination; and if so, why, and what portion and when? Discuss. (5 points)

1.5 Had any portion of Note B prescribed on July 15, 2013, and if so, why and what portion and when? Discuss. (5 points)

1.6 Did the tolling agreement extend prescription of Note B, and if so until when? (10 points)

1.7 When Note A and Note B were signed on May 12, 2008, did Big Bank have a claim to the Center Property that outranked the mortgage in favor of Max with respect to Note A and Note B? Discuss. (10 points)

1.8 Does Big Bank presently have an enforceable judicial mortgage on the Center Property? Discuss what steps it should have taken in the past, or should take in the future, to ensure that its judicial mortgage remains enforceable. (10 points)

1.9 By what precise date must the mortgage in favor of Max be reinscribed in order to remain effective against third persons? Discuss. (10 points)

TEST CONTINUES ON NEXT PAGE

For the below Question 1.10 only, assume the following additional facts:

John needed money so he offered to sell his all-terrain vehicle (ATV) to Bob for \$5,000. Bob asked John if it had any mechanical problems. John stated that it had never been in a wreck and that he did not know of any mechanical problems as it had always started and run fine for him. Although John thought the engine had been running hot the day before their conversation, he did not mention this to Bob. John started the engine to show Bob it ran fine. Bob then presented John with a \$5,000 check and John presented Bob with a handwritten bill of sale, dated July 2, 2018, which they each signed. Though Bob did not bother to read the bill of sale at the time, it contained language stating that "The herein described ATV is sold 'AS IS'." As soon as the check and bill of sale were executed, John delivered possession of the ATV to Bob. Bob used the ATV over the next three weeks, after which Bob experienced trouble and the ATV stopped operating. Bob took it to a repair shop and was told on August 1, 2018 that the engine block had cracked. Bob filed a lawsuit in redhibition against John on June 25, 2019.

1.10 What arguments should Bob make in support of his claim in redhibition, what relief may Bob recover for his claim, what defenses should John assert, and who is likely to prevail? (30 points)

[End of Civil Code III Test]

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
FEBRUARY 2020**

QUESTION 1 — 40 POINTS

Betsy inherited a motorcycle in early 2017. She had no information about the motorcycle, other than that it had been purchased new from the dealer just a year before and had an odometer reading of 800 miles and that its headlight and temperature gauge were not working. In July 2017, Betsy placed an online advertisement for the sale of the motorcycle. The advertisement listed a sale price of \$5,000 for the motorcycle and stated that the motorcycle was in excellent condition, hardly used and ready for long rides on the open road.

Jason just turned 17 years old in June 2017 and thought he was ready to own a motorcycle. Jason's parents disagreed and refused to let him buy one as he was only 17, had not been emancipated, and used the school bus to attend high school. But Jason was determined to buy a motorcycle, so he emailed Betsy about viewing the motorcycle. On July 5, 2017 Jason arrived at Betsy's house to see the motorcycle. Betsy thought Jason looked the same age as her nephew who was in his second year at college; she asked Jason if he was also attending college. Jason wanted the motorcycle and did not want Betsy to think he was too young, so he stated that he was 18, was registered to attend college in the fall, and wanted a motorcycle to enjoy on the weekends. Betsy was satisfied with his response.

She then turned the key and started the motor, which seemed to operate perfectly. Betsy pointed out that the headlight and temperature gauge did not work. Jason inquired whether the motorcycle had ever been involved in a collision. Betsy responded that to her knowledge it had not. Because Jason was so excited and did not want to wait and possibly lose the motorcycle to another buyer, he agreed to the price for the motorcycle and advised Betsy that he wanted to purchase it. But Jason did want to test drive the motorcycle first, so he then stated that he needed a trial period to test it. Betsy offered to allow him to try the motorcycle out over the following week, and to return it if he did not find it to be satisfactory. Jason readily agreed. He used the motorcycle over the next three days, finding it to have no discernable problems other than the headlight and temperature gauge.

On July 12, 2017, Jason telephoned Betsy and accepted Betsy's offer and verbally agreed to purchase the motorcycle for \$5,000. Two days later, on July 14, 2017, Jason presented Betsy with his \$5,000 check, and Betsy produced a handwritten bill of sale, which they each signed without any further discussion. Though Jason did not bother to read the bill of sale at the time, it contained language to the effect that "The herein described motorcycle is sold 'AS IS'."

Jason rode the motorcycle several times during the fall of 2017. On each of those occasions, the motorcycle performed well. In early January 2018, however, Jason noticed that one of the wheels was rubbing against its fender. Jason surmised that this condition was caused by underinflation of the motorcycle's tires, and he stopped by a gas station to make sure they were all properly inflated. The next time Jason used the motorcycle, the motorcycle operated without any problems, until Jason struck a pothole while riding it. Immediately afterward, he noticed that the motorcycle frame was sagging badly. He was puzzled, because he was certain that he had not been traveling fast enough to damage the motorcycle when he hit the pothole. The next day, Jason took the motorcycle to a local repair facility for a diagnosis of the problem and an estimate of the cost of repairs. After a detailed inspection, the repairman reported that the metal frame of the motorcycle had been badly fractured at some point in the past, most likely through a collision, and that someone had attempted to repair the damage through some weak, amateurish "tack" welds, which evidently had broken loose when Jason drove through the pothole. The repairman also told Jason that the motorcycle was worthless because it was not worth the cost of repair. The repairman assured Jason that he should not fault himself for failing to detect the damage to the frame of the motorcycle when he bought it, because the damage was hidden beneath its body, which itself must have been replaced at some point after the damage to the frame occurred.

After hearing this report, Jason contacted Betsy to ask for the return of his money. Betsy refused, pointing out that she had sold the motorcycle to Jason “AS IS.” Jason did not want his parents to know what he had done, so he took no action against Betsy until after his 18th birthday in June 2018 when he moved out on his own. Jason filed suit against Betsy for a refund of his money on August 1, 2018.

- 1.1 Was there a valid sale between Jason and Betsy and, if so, when did ownership transfer? Explain fully. (For purposes of this Question 1.1 only, assume that Jason had the capacity to enter into the sale). (5 points)**
- 1.2 Assuming there was a valid sale, may Jason rescind the sale based on his incapacity? Explain fully both the arguments to be made in favor of rescission of the sale for incapacity and the defenses against rescission. (10 points)**

FOR THE REMAINING QUESTIONS, ASSUME THE SALE IS VALID AND HAS NOT BEEN RESCINDED ON ACCOUNT OF JASON'S INCAPACITY.

- 1.3 Does Jason have a valid claim in redhibition against Betsy regarding the condition of the motorcycle? Explain fully. (10 points)**
- 1.4 How might the redhibitory rights of Jason be affected by the good or bad faith of Betsy in her sale of the motorcycle? Did Betsy act in good faith or in bad faith in this transaction? What additional claims might Jason have if Betsy acted in bad faith? What additional defenses might Betsy assert if she acted in good faith? Explain each fully. (10 points)**
- 1.5 What recourse, if any, might Jason have in light of the “AS IS” language contained in the bill of sale? Explain fully. (5 points)**

[End of Question 1]

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
FEBRUARY 2020**

QUESTION 2 — 40 POINTS

Owner owns Lot 1 of the Greenacre Subdivision. On June 1, 2008, Owner entered into a contract with Contractor to build a house for Owner on Lot 1. Neither the contract nor any notice of the contract was ever filed in any public records.

Contractor contracted with SupplyCo to provide \$20,000 of building materials for construction of the house. On June 3, 2008, SupplyCo delivered the building materials to Lot 1 and stacked them at the back corner of the lot. In that location, they were not visible from the street.

Owner approached Big Bank for a \$200,000 construction loan. Big Bank agreed to make the loan. Before the loan closing, Big Bank hired a licensed engineer to determine if any work had commenced on Lot 1. On Friday, June 6, 2008, the engineer drove by the lot and saw no work in progress. But the engineer did not walk the entire lot as it was hot, and he wanted to get back to his office. That same day, the engineer reported to Big Bank that no work had commenced on Lot 1.

On Wednesday, June 11, 2008, Big Bank held the loan closing with Owner. Big Bank had Owner sign a promissory note dated June 11, 2008, in the amount of \$200,000 bearing interest at 10% per year and payable to the order of Big Bank in 119 monthly payments of interest only, commencing July 1, 2008, and a final payment due on June 1, 2018 for the principal and all other sums remaining due. As security for the loan, Owner executed an act of mortgage that accurately described the promissory note and contained a proper legal description of Lot 1. Owner signed the mortgage at the bank in the presence of two witnesses. Although she was also present at the time, Big Bank's loan officer for the loan did not sign the mortgage. Later that day, Big Bank presented the mortgage to its attorney, who had one of the witnesses to the mortgage acknowledge his signature on the mortgage by recognizing the signature as his own before the notary public in the presence of two witnesses. That same day, the attorney for Big Bank recorded the mortgage in the mortgage records of the parish where the Greenacre Subdivision is situated.

The following day, June 12, 2008, at the request of Big Bank, the engineer drove by Lot 1 again and, discerning no change in the condition of the lot, executed and delivered to Big Bank an Affidavit of No Work attesting that he had inspected Lot 1 for Big Bank and found neither work in progress nor materials on site. That same day, Big Bank recorded the affidavit in the mortgage records of the parish where the Greenacre Subdivision is situated.

In late June 2008, Contractor poured the foundation during a rainstorm. Days later, the foundation dried but had cracks and was not level. Owner was furious and thus fired Contractor on June 30, 2008 and refused to pay Contractor for any work or supplies. Contractor had no money and failed to pay SupplyCo for the building materials it had delivered. On July 2, 2008, SupplyCo filed a statement of claim or privilege that accurately described Lot 1, the supplies that had been delivered, and balance due for those supplies.

Owner hired a new contractor to remove and replace the faulty foundation. The replacement of the foundation caused Owner to need more money to finish the house construction. On September 30, 2008, Owner borrowed \$100,000 from EZ Cash and granted EZ Cash a mortgage on Lot 1.

The mortgage granted to EZ Cash was executed by Owner before two witnesses and a notary public, contained a proper description of Lot 1, and was recorded in the mortgage records of the correct parish the same day it was signed. The mortgage did not contain a description of any specific indebtedness or any specific promissory note, but instead described the secured obligations simply as "any and all present and future obligations and indebtedness that we may now or hereafter owe to EZ Cash, up to the maximum sum of \$50,000,000 at any one time outstanding." EZ Cash also had Owner execute a \$100,000 promissory note, which was not paraphrased for identification with the mortgage and made no mention of the mortgage.

The original Contractor later sued Owner for Owner's failure to pay Contractor. Owner did not respond to the lawsuit, and on November 3, 2009, Contractor obtained a default money judgment, which Contractor recorded in the mortgage records that same day. He has taken no further action to enforce or preserve his judgment since then.

On June 1, 2018, Owner's final payment to Big Bank was due. Owner could not pay this final payment in full but continued to make a monthly payment to Big Bank in hopes of holding off legal proceedings by Big Bank.

In December 2019, Big Bank hired an attorney to file foreclosure proceedings on Lot 1. The attorney obtained an abstract of the title to Lot 1 and found the Act of Mortgage in favor of Big Bank recorded on June 11, 2008, the Affidavit of No Work recorded on June 12, 2008, the statement of claim or privilege filed by SupplyCo on July 2, 2008, the mortgage in favor of EZ Cash recorded on September 30, 2008, and the money judgment in favor of Contractor recorded on November 3, 2009. No other documents were recorded against Lot 1.

- 2.1 Was the Act of Mortgage in favor of Big Bank valid at the time of its execution? Discuss. (5 points)**
- 2.2 EZ Cash asserts that Big Bank's mortgage is no longer effective against third persons and that EZ Cash's rights in the mortgaged property outrank any rights Big Bank may have. Is EZ Cash correct? Why or why not? (5 points)**
- 2.3 Does Contractor currently have an enforceable judicial mortgage burdening Lot 1? Why or why not? (10 points)**
- 2.4 Is EZ Cash's mortgage valid and does it secure the \$100,000 promissory note that Owner executed in favor of EZ Cash? Why or why not? (10 points)**
- 2.5 On the day SupplyCo recorded its statement of claim or privilege (July 2, 2008), did its privilege have priority over Big Bank's mortgage? Why or why not? (10 points)**

[End of Question 2]

LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
FEBRUARY 2020

QUESTION 3 — 20 POINTS

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

Suretyship; solidary liability
Discrepancies in acts of sale; mutual error; sale by boundaries
Effect of modification of principal obligation; extension of liberative prescription
Eviction; modification or exclusion of warranty
Mortgage records; transfers, amendments and releases
Privileges
Recordation of lease
Rights of surety against principal obligor
Sale of litigious rights
Time within which to bring revocatory action

[End of Question 3]

END OF CIVIL CODE III TEST

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
JULY 2019**

QUESTION 1 -- 30 POINTS

In February 2018, Bill purchased a single-family residence from Sally for the cash price of \$250,000. Before the sale, Bill made four visual inspections of the house. On each occasion, Sally was present and controlled his access and viewing of the house. About a week before the sale, Bill reviewed a copy of a termite inspection report prepared by a local extermination company hired by Sally. The report noted three locations in the house where old termite damage or scars were discovered. Bill asked Sally for a further explanation of these notations. She took him to all three areas of the house listed on the termite inspection report and told him that the termites and damage had been taken care of in 2010 and thus were no longer a problem and that the spots were just “old scars.” The property disclosure statement that Sally signed and delivered to Bill in connection with the sale made similar statements that termite damage had been discovered and repaired in 2010. Although the purchase agreement by which Bill had contracted to purchase the property allowed him the right to have professional consultants make inspections of the property, he did not do so but instead chose to rely on his own common sense. The purchase agreement, which appeared on the real estate broker’s printed form, contained the following stipulation: “In the event that purchaser proceeds to the sale contemplated by this purchase agreement, the sale will be AS IS, WHERE IS.” The act of sale by which Bill purchased the property also provided: “The property herein conveyed is sold AS IS, WHERE IS.” Sally and Bill had no discussion concerning these provisions either at the time of the execution of the purchase agreement or at the time of closing of the sale. The closing attorney also made no mention of these provisions at closing. Bill went into possession of the property immediately after the closing.

In April 2018, the wooden deck outside the rear of the house collapsed. Because the deck was old, Bill assumed the collapse was attributable to natural decay. In August 2018, while he was moving boxes to a utility room, Bill’s hand inexplicably went through an exterior wall of the house located adjacent to the area where the deck had been. Shortly afterward, Bill hired a professional inspector to perform a structural inspection of the house, at which time some of the walls and flooring were removed, revealing extensive hidden, active termite infestation and damage. Bill also hired an architect, who has rendered a report to the effect that termite damage had been covered up and that, while some of the damage was initially observable, “that did not mean a lay person buying a home would recognize it as a problem like a home inspector or architect would.” The architect’s report estimated the cost of repairs at \$50,000. Without having any further communication with Sally, Bill filed a suit against Sally in June 2019 seeking to rescind the sale and to collect damages and attorney’s fees.

1.1. Upon what grounds(s) should Bill base his lawsuit, what defenses, if any, should Sally assert and who is likely to prevail? Explain fully. (30 points)

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
JULY 2019**

QUESTION 2 – 25 POINTS

In June immediately following his high school graduation, Ted visited an apartment complex in the vicinity of the college he planned to attend in the fall. Finding an apartment to his liking, Ted and the apartment manager agreed upon a monthly rental rate. When the manager asked to make a photocopy of Ted's driver's license to confirm his identity and to verify his age, Ted handed him a license that had been altered to make his age appear to be 19 years, even though Ted was actually only 17 years old and would not reach the age of 18 until August 31 of that year. The manager had no difficulty believing that Ted was 19, for Ted in fact looked several years older than his actual age. The manager was, however, somewhat concerned about Ted's creditworthiness and told Ted that he would need for someone to "co-sign" the lease with him. Ted indicated that would be no problem, for he had a well-to-do uncle who would be willing to co-sign the lease. Responding that he would contact Ted's uncle, the manager then handed Ted a written lease agreement that reflected Ted as the lessee and provided for rental at the agreed upon rate for a one-year term that was to commence on July 1. Ted told the manager that he would take the lease home, read it over and sign it, and then return the signed lease a few days later once he had decided for certain to attend school there in the fall.

As soon as Ted left, the manager placed a telephone call to Ted's uncle, who assured the manager that Ted was a dependable young man and that the manager should have no misgivings about leasing the apartment to him. During the telephone conversation, the uncle promised to make sure the rent was paid if Ted failed to do so. Satisfied with this, the manager made a note of this conversation in his file.

After Ted thought about the matter further, he realized that he did not need the apartment until August 1. He therefore used a pen to change the commencement date of the lease from July 1 to August 1. He then signed the lease and mailed it back to the apartment manager, with whom he had no further communication until he arrived on August 1 to begin occupancy of the apartment. At that time, the manager handed Ted the keys to the apartment, and Ted moved in. The lessor never signed the lease, and the lease was not recorded.

Unfortunately for Ted, he learned in early September that a scholarship that he had been counting on to pay his college tuition was no longer available to him. Having no means of paying his tuition, Ted made preparations to move out of the apartment and notified the apartment manager that he wanted to terminate the lease immediately because he could no longer afford the rent. The manager refused and, without seeking any court authority, padlocked the door to Ted's apartment to prevent him from removing his furniture. The lease contained no language granting the lessor a security interest in any of the lessee's effects.

The following subquestions are FIVE points each. Answer each of the following five subquestions. Explain each fully.

2.1. May Ted terminate the lease on the basis of incapacity? (Assume that the Civil Code provides that majority is attained upon reaching the age of eighteen years and that Ted was not emancipated before his 18th birthday).

For subquestions 2.2.–2.5. below, assume that Ted possessed the requisite capacity to enter into the lease.

2.2. Will Ted be able to escape from liability under the lease on the ground that there was no meeting of the minds over the terms of the lease?

TEST CONTINUES ON NEXT PAGE

For subquestions 2.3.–2.5. below, assume that a valid lease was entered into between the parties.

- 2.3. Does Ted's loss of his scholarship give him the right to rescind or terminate the lease?**
- 2.4. Does the landlord have recourse against Ted's uncle?**
- 2.5. Does the landlord have any rights in Ted's furniture? Does Ted have an action against the landlord for preventing removal of his furniture?**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
JULY 2019**

QUESTION 3 – 25 POINTS

In August 2000, Jane decided to open a shoe boutique, as she loved shoes and thought she had great taste and style. Jane already owned a building in East Baton Rouge Parish in which she planned to open her boutique. Needing funds to make improvements to this building and to acquire inventory, Jane approached Big Bank for a \$500,000 loan. Big Bank agreed to make the loan and, at the time it funded the loan, it required Jane to sign a promissory note dated September 1, 2000, in the original principal amount of \$500,000, payable in 300 monthly installments due on the first day of each month beginning October 1, 2000 and continuing until September 1, 2025. The promissory note contained an acceleration clause allowing Big Bank, at its option, to declare the entire unpaid balance due in the event that any installment was not timely paid as agreed.

As security for the repayment of the loan, Big Bank required Jane to sign an Act of Mortgage, dated September 1, 2000, which accurately described the promissory note that Jane had signed, stated the maturity date of the promissory note, and contained a proper legal description of the building and the lot upon which it is located. At the closing at Big Bank's office, Big Bank arranged for two persons to be present to witness Jane's signature. Big Bank's loan officer indicated that a notary public would soon arrive to see to the proper execution of the documents. However, Jane was so excited that she signed the promissory note and mortgage while in the room with only the two witnesses. The two witnesses signed the mortgage as well. Thinking she needed to get her business started, Jane left the office. The notary arrived after Jane left. Because Jane was no longer present, the notary arranged for one of the two witnesses to acknowledge the Act of Mortgage that Jane had signed, and then the notary signed the acknowledgment. Big Bank did not sign the Act of Mortgage. On September 2, 2000, Big Bank recorded the Act of Mortgage in the mortgage records of East Baton Rouge Parish.

Jane's business did not do as well as she had planned. Beginning in 2008, Jane could not pay Big Bank her installment payments as they came due. Jane made her last installment payment on Big Bank's promissory note on May 1, 2008. She was also unable to pay her shoe supplier, Fancy Shoes, and was sued by Fancy Shoes in a Louisiana state court for the delinquent balance that she owed. On January 15, 2009, Fancy Shoes obtained a money judgment against Jane and recorded the judgment that same day in the mortgage records of East Baton Rouge Parish. On January 5, 2019, Fancy Shoes filed a notice of reinscription of its money judgment in the mortgage records but has taken no other action to preserve its rights under its money judgment. No payments have ever been made on the money judgment.

Needing additional funds, Jane applied to borrow \$100,000 from XYZ Bank in March 2019 and granted XYZ Bank a mortgage on the same property she had previously mortgaged to Big Bank. This mortgage was executed by Jane before a notary public and two witnesses, contained a proper description of the mortgaged property, and was duly recorded in the mortgage records of East Baton Rouge Parish on the same day it was executed. The mortgage did not contain a description of any specific indebtedness or any specific promissory note, but instead described the secured obligations simply as "any and all present and future obligations and indebtedness that I may now or hereafter owe to XYZ Bank, up to the maximum sum of \$1,000,000 at any one time outstanding." Indeed, at the time Jane executed the mortgage in favor of XYZ Bank, she did not owe XYZ Bank anything. XYZ Bank did not fund the loan Jane had applied for until one week later, and at that time XYZ Bank arranged for Jane to execute a \$100,000 promissory note to evidence the loan. This promissory note was not paraphrased for identification with the mortgage and made no mention of the mortgage.

Even though Big Bank had not received any payment on its promissory note since May 1, 2008, it took no action to collect the balance Jane owed until early June, 2019, when it sent to Jane a notice that it was exercising its option to declare the entire unpaid balance of the promissory note to be immediately due. On June 25, 2019, Big Bank filed suit against Jane for the entire unpaid balance of the promissory note and for recognition of its mortgage.

The following subquestions are **FIVE POINTS** each. Answer each of the following five subquestions. Explain each fully.

- 3.1. Was the Act of Mortgage in favor of Big Bank valid at the time of its execution?**
- 3.2. Has prescription accrued on Big Bank's right to enforce Jane's obligation to pay the unpaid balance of the promissory note?**
- 3.3. XYZ Bank asserts that Big Bank's mortgage is no longer effective against third party persons and that XYZ Bank's rights in the mortgaged property outrank any rights Big Bank may have. Is XYZ Bank correct?**
- 3.4. Does Fancy Shoes presently have an enforceable judicial mortgage burdening the property?**
- 3.5. Is XYZ Bank's mortgage valid, and does it secure the \$100,000 promissory note that Jane executed in favor of XYZ Bank?**

[End of Question 3]

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
JULY 2019**

QUESTION 4 -- 20 POINTS

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

- 4.1. Law of registry for leases and options to purchase
- 4.2. Contractual capacity; rescission
- 4.3. Compromise agreements
- 4.4. Effect of expropriation on rights and obligations under a lease
- 4.5. Reconduction of a lease
- 4.6. Rights of surety against principal obligor
- 4.7. Sale of litigious rights
- 4.8. Risk of loss under contract of sale
- 4.9. Offer and acceptance
- 4.10. Cause for obligations; rescission of error

[End of Question 4]

END OF CIVIL CODE III TEST