

July 2016 Louisiana Bar Exam

Louisiana Supreme Court Committee on Bar Admissions

Repository Citation

Louisiana Supreme Court Committee on Bar Admissions, "July 2016 Louisiana Bar Exam" (2016). *Louisiana Bar Exams*. 2.
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LOUISIANA STATE BAR EXAMINATION

JULY 2016

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LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS

July 2016

QUESTION 1
(25 POINTS TOTAL)

Mason owns a hunting camp in rural Louisiana. Andrew is the manager of Grand Paper, LLC (“GP”), which operates a local paper mill. Andrew approached Mason about renting the camp to Andrew for the next season for a total of \$30,000. Mason agreed to the offer. Though the lease was in favor of Andrew personally and was not expected to benefit GP in any way, Andrew paid Mason a part of the rent by way of a check dated June 1, 2016, made payable to Mason in the amount of \$10,000 drawn on GP’s checking account at City Bank. Andrew signed this check on behalf of GP. For the remainder of the rent, Andrew signed a promissory note on behalf of GP, in his capacity as its manager, payable to bearer in the amount of \$20,000, bearing a maturity date of July 1, 2016. The promissory note contained no other terms and/or conditions. This note was dated June 1, 2016 and delivered to Mason that same day.

On June 15, 2016, Mason took the promissory note to his bank, Bank of Louisiana, and asked that the bank purchase the note at face value. Bank of Louisiana agreed to do so and paid Mason \$20,000 for the promissory note. Contemporaneously, Mason delivered the promissory note to Bank of Louisiana. Two weeks later, Andrew was replaced as GP’s manager, and he no longer works for GP. Bank of Louisiana made demand on GP on July 2, 2016 to pay the promissory note consistent with its terms. GP denied that it was obligated to Bank of Louisiana on the promissory note since Andrew did not have GP’s authority to issue the promissory note on its behalf. On this same date, GP learned of the \$10,000 check. GP immediately contacted City Bank and instructed City Bank to stop payment on the check. Mason had already cashed the check at Bank of Louisiana a few days earlier, but Bank of Louisiana has not yet presented it to City Bank for payment.

The deposit account agreement applicable to the deposit account maintained by GP at City Bank requires the signatures of any two of GP’s authorized signers on each item drawn against the account. Andrew is one of the persons named in the agreement as an authorized signer.

Please address the following questions (5 points each).

- 1.1 Does the promissory note satisfy the legal requirements for a negotiable instrument? Explain.
- 1.2 Is Bank of Louisiana a holder in due course of the promissory note? Explain.
- 1.3 On what grounds, if any, might City Bank refuse to honor the check when it is presented by Bank of Louisiana? Explain.
- 1.4 Assume that City Bank honored the check before it had a reasonable opportunity to act on GP’s stop payment order and charged the amount of the check against GP’s account. GP takes the position that the check was not properly signed. Should City Bank be obligated to reimburse GP’s account? Explain.
- 1.5 Is GP likely to be successful in an action to obtain reimbursement from Andrew if GP is held liable to pay the promissory note? Explain.

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

LOUISIANA STATE BAR EXAMINATION

BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS

July 2016

QUESTION 2
(30 POINTS TOTAL)

Short Answer Questions (3 points each). Please answer each question providing a brief explanation.

- 2.1 What are presentment warranties with respect to a draft?
- 2.2
 - a) By what vote do members of a member-managed limited liability company make decisions?
 - b) Are their votes counted by heads or by their respective percentage membership interests?
 - c) Under what circumstances may the voting approval requirements and/or method of calculating votes be changed?
- 2.3 What are transfer warranties with respect to an item?
- 2.4 List two types of decisions that require the vote of the membership of a manager-managed limited liability company.
- 2.5 What is the minimum information that must be included in articles of partnership in order to establish a partnership in commendam?
- 2.6 If a lawsuit is brought by a third party against a partner of a general partnership on account of his/her status as a partner, and the partner successfully defends the suit, is the partner automatically entitled to reimbursement from the partnership for the reasonable attorneys' fees incurred in defending the suit? Explain.
- 2.7
 - a) What is the minimum information that must be contained on a stock certificate?
 - b) Which types of Louisiana business entities are required to issue such certificates?
- 2.8
 - a) What are preemptive rights?
 - b) Under what circumstances does a person have preemptive rights?
- 2.9 What percentage vote of the shareholders is necessary to amend the articles of incorporation?
- 2.10 A corporation has failed to file its annual report, which was due 150 days ago. What effect, if any, does this have on the corporation's existence, and what steps must be taken to remedy the situation?

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

LOUISIANA STATE BAR EXAMINATION

BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS

July 2016

QUESTION 3
(25 POINTS TOTAL)

Please address the following questions (5 points each).

Part A

Questions 3.1 and 3.2 are based on the following facts.

Allison owns an insurance agency, Insurance Inc. Insurance Inc. has a checking account at National Bank. Allison is the authorized signer for the account. Allison has one employee, her receptionist Barbara. Barbara stole a blank check from Allison's unlocked top desk drawer, made the check payable to Barbara, forged Allison's signature on the check and deposited it in Barbara's own bank account at State Bank. State Bank presented the check to National Bank and obtained payment of the check from National Bank. Upon receiving Insurance Inc.'s monthly bank statement from National Bank at the end of the month, Allison immediately reviewed it, discovered that the account of Insurance Inc. had been charged for the amount of the check payable to Barbara, and notified National Bank that she had not signed or authorized that check.

- 3.1 a) Does Insurance Inc. have recourse against either National Bank or State Bank for repayment of the amount of the check? If so, which of the two banks will bear the loss?
- b) What defenses, if any, does the responsible bank have to Insurance Inc.'s demand for repayment?
- 3.2 Barbara found in the offices of Insurance Inc. a check drawn on its account at National Bank. This check was already made payable to Clayton Office Supplies, Inc. and signed by Allison, as the authorized signer for Insurance Inc. Barbara stole this check, endorsed it in the name of Clayton Office Supplies, Inc. and cashed the check at State Bank.
- a) Does Insurance Inc. have recourse against either National Bank or State Bank for repayment of the amount of the check? If so, which of the two banks will bear the loss?
- b) What defenses, if any, does the responsible bank have to Insurance Inc.'s demand for repayment?

TEST CONTINUES ON NEXT PAGE

PART B

Questions 3.3-3.5 are based on the following facts:

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

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

For the first few years, business was good. Frank marketed several different floor-plan options to prospective buyers, generating productive sales. Within those first few years, Ed built enough houses to complete one half of the subdivision. The houses were built to order for each homeowner, and when complete, the house and lot were sold by DEF, to each homeowner. Recently the demand for the houses diminished significantly. Business became very slow, and DEF has not built or sold any houses in the last year. Another developer has approached DEF about buying the remaining undeveloped land so that that developer can complete the subdivision.

- 3.3 Did Don, Ed and Frank each make a valid contribution in exchange for his membership interest in DEF, LLC? Explain.
- 3.4 Based on the facts presented, should DEF, LLC be member-managed or manager-managed? Explain the difference between the two forms of management and why one would be preferable to the other in this case.
- 3.5 Which member or members (at a minimum) must vote in favor of selling the land to the developer in order to approve the sale for DEF?

[End of Question 3]

TEST CONTINUES ON NEXT PAGE

LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS

July 2016

QUESTION 4
(20 points total)

Multiple choice questions, each worth 2 points, tested the following areas of the law:

- 4.1 Corporations – future services as consideration for shares
- 4.2 Corporations – unanimous governance agreements
- 4.3 Corporations – unanimous governance agreements
- 4.4 Holder in due course – rights
- 4.5 Promissory note – negotiability
- 4.6 Partnerships – formation
- 4.7 L.L.C. – dissolution
- 4.8 L.L.C. – division of profits
- 4.9 L.L.C. – acts outside ordinary course
- 4.10 Corporations – meeting and quorum requirements

[End of Question 4]

END OF BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS EXAM

**LOUISIANA STATE BAR EXAM
CIVIL CODE I
JULY 2016**

**QUESTION 1
(40 points)**

Henry and Wendy were married in Shreveport several years ago in a ceremony performed by a judge authorized to perform marriages where they announced their desire to take one another as husband and wife. That was not Henry's first marriage, however. When Henry was 18 years old, he and his high school girlfriend married during a night of heavy drinking. The next morning, they regretted it and immediately met with an attorney to obtain an annulment or divorce. Henry signed the documents presented by the attorney, but has never seen a final judgment of annulment or divorce.

Well before his marriage to Wendy, Henry's parents died and he inherited a large tract of land, which he leased to an exploration company that discovered substantial oil and gas reserves on the property. When Henry inherited the land, he opened a bank account for his substantial rents and royalties, and he continued to deposit rents and royalties into that account after his marriage. Since marriage, Henry has not used any funds from that bank account except for \$250,000 that he used the day after his wedding to fund part of the purchase price for a new home for him and Wendy to live in. He borrowed \$250,000 to fund the remaining 50% of the home's \$500,000 purchase price.

Fifteen months ago, Wendy gave birth to a daughter, Diana. Henry was present for her birth and was delighted with the baby. Wendy stopped working to remain home to care for the child after the birth. Ten months ago, Henry discovered that Wendy had been having an affair and that Diana may not be his daughter. He confronted Wendy, and she admitted the affair but assured Henry that it was over and that he (Henry) is Diana's father. Henry had a DNA paternity test performed and received the test results within two weeks after learning about Wendy's affair; DNA establishes that Henry is not Diana's biological father. Henry moved out of the family home a few weeks later. A few months after he left, following a party, Henry and Wendy went home together and had sexual relations. Henry did not move back into the house and they have not been together again.

Henry has contacted you to discuss whether he may obtain a divorce from Wendy, whether Wendy may obtain a divorce from him, the issues and ramifications of divorce, and whether he may disavow Diana.

TEST CONTINUES ON NEXT PAGE

Please answer the following eight subquestions (5 points each). Explain each answer; an answer without an explanation will receive no credit.

- 1.1 For purposes of this Question 1.1 only, assume that Henry's first marriage was **not** properly terminated. Are Henry and Wendy legally married? If not, is either of them entitled to the civil effects of marriage? Discuss.

* * * *

For the remaining subquestions below, assume that Henry's first marriage was properly terminated.

- 1.2 Describe Wendy's options to obtain a divorce from Henry based on living separate and apart. [For purposes of this Question 1.2 only, assume that Diana is the biological child of Henry.]
- 1.3 Is Henry entitled to obtain an immediate divorce based on fault? Discuss.
- 1.4 If Wendy files for divorce from Henry, will she be entitled to receive interim or final periodic spousal support? Discuss.
- 1.5 How should the funds comprised of the oil and gas royalties and rents in the bank account be classified: are they separate property, community property or a combination of both? Discuss.
- 1.6 How should the family home be classified: is it separate property, community property or a combination of both? Discuss.
- 1.7 Is Henry entitled to disavow Diana at this time? Discuss.
- 1.8 If Henry and Wendy cannot agree on custody of Diana and Henry has not disavowed her, to whom should the court initially award custody? Discuss.

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAM
CIVIL CODE I
JULY 2016**

**QUESTION 2
(40 points)**

In the early 1970s, Amanda acquired a 10-acre tract of land in Louisiana by a valid act of sale. A few years later, her good friend Bob (then a single man) acquired a 20-acre tract of land immediately to the north of Amanda's land and built his home on the land. In the early 1980s, Bob began to drive across Amanda's property because it was a more convenient route to town rather than going around the other side of his property. Bob and his family and guests regularly used this route across Amanda's property, eventually creating a dirt road. Being a good neighbor and friend, Amanda did not object.

Thirty-three years ago, Amanda constructed a fence between her land and Bob's land. The fence had an automated gate that allowed Bob to continue to use the dirt road across Amanda's property. Amanda did not obtain a survey before building the fence, and unbeknownst to both of them, the fence was not built on the property line but instead entirely on Bob's land. A total of two acres of Bob's land that was south of the fence was cut off from the rest of his land.

Two years ago, Amanda sold her property to Carol by an Act of Sale transferring Amanda's 10 acres (using the valid property description from the act of sale by which Amanda had acquired those same 10 acres) "together with all rights of prescription, whether acquisitive or liberative, to which said vendor may be entitled." Shortly thereafter, Bob died leaving all his property to his daughter Debra subject to a usufruct in favor of his new wife, Wanda.

Wanda was out of the country when Bob died; she did not return until several months later. During Wanda's absence after Bob's death, a plumbing issue arose and Debra incurred \$15,000 in necessary repairs to address plumbing leaks in Bob's home. When Wanda returned, Debra initially refused to allow Wanda to move into the home until Wanda paid the \$15,000 spent for the repairs. After fighting about that for several months, Debra finally allowed Wanda to move into the home even though Wanda refused to pay the money. Just a few weeks later, a tornado destroyed the home and the insurer (under a homeowners' insurance policy Bob had obtained before his death) tendered the full \$250,000 policy limits.

Wanda asked Debra to rebuild the home; Debra refused to rebuild the home, but told Wanda that she (Wanda) could do so. Wanda decided to re-build a home on the southern portion of the property near the fence. Wanda engaged a surveyor to mark the boundaries for construction, and the surveyor discovered that the fence enclosed two acres of Bob's property. After discussing the matter with Debra, Wanda built a new home and instructed her contractor to take down the fence and erect a new fence on the proper boundary line.

Carol objected to Wanda's efforts to remove and relocate the fence, claiming ownership of the two acres enclosed by the fence. Carol was so angry that she constructed barricades at the roadway and refused to allow Wanda (or anyone else) to use the dirt road to get from Wanda's property to town.

TEST CONTINUES ON NEXT PAGE

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

- 2.1 What are the nature and classification of the rights, if any, that Bob could have acquired in the dirt road; and does Carol have the right to prevent Wanda from using the dirt road? Explain. (10 points)
- 2.2 Who owns the two acres of land south of the fence constructed by Amanda? Explain. (10 points)
- 2.3 Did Debra have the legal right to refuse to give Wanda access to the home until Wanda reimbursed Debra for the repair costs that she incurred? Explain. (7 points)
- 2.4 Who is entitled to the \$250,000 insurance proceeds? Explain. (4 points)
- 2.5 Is Wanda entitled to require Debra to rebuild the home? Explain. (3 points)
- 2.6 What rights, if any, does Wanda have against Debra to recover any of the costs she incurred in rebuilding the home? Explain. (6 points)

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAM
CIVIL CODE I
JULY 2016**

**QUESTION 3
(20 points)**

**LOUISIANA STATE BAR EXAM
CIVIL CODE I
JULY 2016**

**QUESTION 3
(20 points)**

Multiple choice questions, each worth 2 points, testing the following areas of the law:

- 3.1 Allocation of assets from divorce; one spouse's separate property used for the other spouse's separate property.
- 3.2 Building restrictions.
- 3.3 Possessor versus encroacher.
- 3.4 Usufruct and fruits of property.
- 3.5 Usufruct and management or leasing.
- 3.6 Co-ownership; substantial alterations and improvements.
- 3.7 Co-ownership; substantial alterations and improvements.
- 3.8 Co-ownership, use and management of co-owned property; expense of maintenance and management.
- 3.9 Child custody; changes in custody.
- 3.10 Grandparent visitation rights.

[End of Question 3]

End of Civil Code I Exam

**LOUISIANA BAR EXAMINATION
CIVIL CODE II
JULY 2016**

**QUESTION 1
(30 POINTS)**

Noah and his wife, Sandra, were married in Louisiana and domiciled in Caddo Parish for their entire marriage. They never executed a matrimonial agreement. Many years ago, long before he met Sandra, Noah fathered a child with his high school girlfriend. Noah never saw the child, who was given up for adoption at birth. The child's adoptive parents named him Pete.

Noah had the following three children with Sandra:

- Alice, age 45, who is married to Bob and with whom she has one child, Trudy, who is fifteen years old and has no descendants. Alice is mentally and physically healthy.
- Zoe, who died several years ago, leaving three children, Carmen, Joe, and Lily, all of whom are in their late twenties and are mentally and physically healthy.
- Kevin, age 40. Kevin is currently in a state penitentiary long-term care facility. He is imprisoned for the attempted murder of Noah, having shot Noah during an argument. While imprisoned, Kevin was seriously injured in a prison fight, and his physicians have determined that he will have the mental function of a very young child for the rest of his life. Kevin never married and has one child, Quincy, who is sixteen years old and lives with Noah's elderly mother, called Gram.

Noah died intestate this year. At the time of his death, Noah owned the following property located in Caddo Parish, Louisiana:

- Community Property: an undivided one-half interest in a home (the "Family Home") that he and Sandra purchased during their marriage with community funds.
- Separate Property: an industrial parcel (the "Smelting Plant"), which is contaminated by heavy metals and thus which Alice believes has no value.

Noah is also survived by his mother (Gram) and his sister, Ruth. Noah and Ruth never had any other siblings. Ruth died intestate as a result of an accident a week after Noah's death. She was sixty years old and otherwise healthy. She was married to David at the time of her death and never had any children.

TEST CONTINUES ON NEXT PAGE

- 1.1 2 pts. Can Pete inherit from Noah?
- 1.2 8 pts. Gram does not believe Kevin should inherit anything from Noah. What procedural avenues, if any, are open to her to accomplish this goal; and what effect, if any, does Kevin's physical condition have on Gram's procedural avenues?
- 1.3 8 pts. For the purposes of this subquestion 1.3 only, assume that Pete is Noah's heir and Kevin has been declared an unworthy heir of Noah. Who inherits Noah's interest in the family home? Please identify and discuss the interest inherited by each heir.
- 1.4 6 pts. Alice does not wish for her or her daughter (Trudy) to inherit the Smelting Plant, but she is interested in inheriting her share of the other assets. Noah's other heirs would like to own Alice's share of the Smelting Plant. What procedural avenues, if any, are available to Alice to accomplish both her and the other heirs' goals? Discuss.
- 1.5 6 pts. For the purpose of this subquestion 1.5 only, assume that Noah had no descendants. Who inherits the Smelting Plant?

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA BAR EXAMINATION
CIVIL CODE II
JULY 2016**

**QUESTION 2
(30 POINTS)**

Franco and his wife, Marilyn, were married in Louisiana and domiciled in Saint Helena Parish, Louisiana. They never executed a matrimonial agreement.

At the time of his death Franco had fathered the following four children with Marilyn, all of whom are over the age of twenty-three and in good physical and mental health: Amy, Beth, Charles, and Donna. Franco's only grandchild is Charles's son, Gregory, who is two years old. Franco is also survived by six brothers and sisters.

Franco executed a valid notarial testament that contained the following dispositive provisions:

1. I leave my Vintage Model A automobile (the "Model A") to Amy. If Amy predeceases me or renounces this bequest, the Model A shall go to the Gilmore Car Museum of Hickory Corners, Michigan.
2. I leave Charles my 1st Edition, signed copy of Ernest Hemingway's famous novel The Sun Also Rises.
3. I leave Charles the pocket watch I received from my father (the "Pocket Watch"); it has always been owned by the family's oldest son. Charles is to take good care of the Pocket Watch for the remainder of his life and leave the Pocket Watch at his death to Gregory.
4. I leave Donna my A. J. Drysdale painting known as "Smoke on the Bayou."
5. I leave each of Amy, Beth, Charles, and Donna the cash sum of \$10,000.
6. I leave Donna all my books, records, and collectable coins and stamps.
7. I direct that the residue of my estate be divided into two equal shares: the first share shall go to such of my brothers and sisters as my executrix, in her sole discretion, shall determine; the second share shall go to such public charities as my executrix, in her sole discretion, shall determine.

After he executed his will, Franco orally told Beth that he wanted her to have the Drysdale painting. She thanked him, took the painting off Franco's wall, and hung it in her own home.

Shortly before his death, Franco had a short-term liquidity problem and borrowed \$10,000 from Amy. He executed a valid promissory note for the debt, but it was unpaid at the time of Franco's death.

TEST CONTINUES ON NEXT PAGE

- 2.1 4 pts. If Amy had predeceased Franco, would the bequest of the Model A to the Gilmore Car Museum of Hickory Corners, Michigan be valid? Discuss.
- 2.2 4 pts. Is the bequest of the Pocket Watch valid? Discuss.
- 2.3 6 pts. Can Donna require Beth to return the Drysdale painting to Franco's succession, so that ownership of the painting can pass via his testament? Discuss.
- 2.4 4 pts. Who between Charles and Donna inherits Franco's 1st Edition, signed copy of Ernest Hemingway's famous novel The Sun Also Rises? Discuss.
- 2.5 4 pts. For purposes of this subquestion 2.5 only, assume that Amy made a claim on the succession, demanding that the \$10,000 loan she made to her father be paid and that the executrix informed Amy that the particular legacy of \$10,000 she received in Franco's will satisfies the debt and she is not entitled to "more than her siblings."
Is the legal position taken by the executrix correct? Discuss.
- 2.6 8 pts. Does Franco's will validly dispose of the residue of his estate? Discuss.

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA BAR EXAMINATION
CIVIL CODE II
JULY 2016**

**QUESTION 3
(30 POINTS)**

Martha died in 2015. She was a domiciliary of Louisiana. Martha's husband died many years ago. Martha and her husband had three children, Allen, who is over the age of twenty-three and in good physical and mental health; Betsy, who predeceased Martha in May, 2014, leaving one child, George; and Diane, who is over the age of twenty-three and in good physical and mental health. Martha had no other marriages or children.

Martha is also survived by her sister, Sarah.

Martha left a last will and testament in notarial form, dated January 15, 2011, executed by her, notarized by her attorney, and witnessed by Sarah and the attorney's secretary. The provisions of the will read as follows:

- I name Giant National Bank (the "Bank") as my independent executor.
- I leave Sarah the cash sum of \$100,000.
- I leave Diane nothing, for reasons she well knows.
- I leave the residue of my estate, including any renounced or lapsed legacies, to Sarah, but in trust and as trustee for the benefit of Allen and Betsy. The name of this trust shall be the "Trust." If Sarah does not qualify as trustee of the Trust, or having qualified, no longer serves as trustee of the Trust, I appoint the Bank as Trustee of the Trust.
- I wish the Trust to benefit my family for generations; therefore, it shall have a term of 200 years.
- The Trust shall be a spendthrift trust.

Among Martha's papers, her family found a document, entirely written in her hand, signed by her at the end, and reading in its entirety as follows:

Sarah would be a terrible trustee for Allen and Betsy. Giant National Bank will be their trustee.
s/Martha

Following Martha's death, the Bank qualified as Martha's independent executor and informed Sarah of the following: (1) it will not honor the \$100,000 particular legacy to her and will seek a Judgment of Possession in which the \$100,000 passes to the Trust; and (2) pursuant to Martha's instructions in the written document found among her papers, it will seek a Judgment of Possession naming the Bank as trustee of the Trust.

TEST CONTINUES ON NEXT PAGE

- 3.1 8 pts. Is the Bank's position regarding the succession of the \$100,000 correct? Discuss.
- 3.2 6 pts. Is the Bank's position regarding the proper trustee of the Trust correct? Discuss.
- 3.3 4 pts. Who are the proper beneficiaries of the Trust? Discuss.
- 3.4 4 pts. After the Judgment of Possession and the funding of the Trust, Allen concluded that Diane was treated unfairly by Martha and, in order to right this wrong, he donated to Diane, via authentic act, one-half of his interest in the Trust. Is this a valid donation? Discuss.
- 3.5 8 pts. What is the maximum term of the Trust?

[End of Question 3]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA BAR EXAMINATION
CIVIL CODE II
JULY 2016**

**QUESTION 4
(10 POINTS)**

Multiple choice questions, each worth 2 points, testing the following areas of the law:

- 4.1 Form of testament.
- 4.2 Filiation.
- 4.3 Devolution of separate property.
- 4.4 Spendthrift trust.
- 4.5 Inheritance of installment obligation.

[End of Question 4]

END OF CIVIL CODE II EXAM

LOUISIANA BAR EXAMINATION

CIVIL CODE III

JULY 2016

QUESTION 1
(30 POINTS TOTAL)

On March 10, 2006, Roy sold to Taylor a large tract of land in Concordia Parish, including a large shed and a small hunting camphouse situated on the land. The act of sale contained Taylor's agreement that he would not sell the property to any third person without first offering it to Roy on the same terms as may be offered by the third person. The act of sale stipulates that this agreement is binding on Taylor and his successors for a period of 20 years, but does not contain any specific provisions as to how Roy is to exercise this right. The act of sale contains a proper description of the property, and was duly recorded in the conveyance records of Concordia Parish on the same day it was executed by Roy and Taylor.

In January of 2014, Taylor and a prospective purchaser entered into a contract by which Taylor agreed to sell the property to the prospective purchaser, provided that Roy did not exercise his right to purchase the property. Taylor immediately notified Roy of the contract including the price and other terms of the proposed sale. Shortly afterward, Roy notified Taylor that he declined to purchase the property on the offered terms. Nevertheless, the prospective purchaser ultimately decided that he did not wish to go forward with the purchase, and he and Taylor terminated the contract by mutual consent a few months later.

On February 1, 2016, Taylor entered into a written contract to sell the property to Frank for a cash purchase price of \$2,000,000, with closing of the sale to occur within 90 days. The contract provided for a deposit of \$100,000, which the parties agreed would constitute earnest money. The contract, which was signed by both Taylor and Frank, was recorded in the conveyance records of Concordia Parish on February 1, 2016. That same day, Taylor hand-delivered a copy of the contract to Roy, and notified him of the potential sale. Roy told Taylor that he needed to think about whether he wanted to exercise his right to purchase the property at that price.

Six weeks later, Taylor was approached by Brandon about a potential purchase of the property for the cash price of \$2,500,000. Though Brandon did not mention this to Taylor, Brandon planned to clear most of the acreage to plant soybeans. When he asked Taylor about the property's prior uses, Taylor related to Brandon that the property had mostly been farmland until the 1940s, but had now grown up into woodlands. Brandon observed that "the bottomland soil must be rich, especially since it has been out of cultivation for decades." Taylor, who was a retired farmer, agreed. During their discussion, Taylor mentioned to Brandon that the property was still "under contract" to Frank, but that he "would take care of that problem."

The next day, on March 19, 2016, Taylor sent a letter to Frank, notifying Frank that Taylor was terminating their contract. Taylor attached to the letter a cashier's check in the amount of \$200,000, which he indicated was submitted in payment of "the amount due in connection with the termination of the contract." That same afternoon, Roy arrived unexpectedly at Taylor's house and informed Taylor that, after giving the matter some thought, Roy had decided to purchase the property for the \$2,000,000 price that Frank had offered. Roy handed Taylor a letter confirming his election to purchase the property. Taylor responded simply that Roy was "too late."

Frank received the termination letter and the \$200,000 check on March 20, 2016. Frank immediately returned the check to Taylor, informing Taylor that he considered their contract still to be in force and demanding that Taylor close the sale of the property to Frank by the closing deadline set in the contract.

TEST CONTINUES ON NEXT PAGE

A few days later, Taylor and Brandon entered into a written contract under which Taylor agreed to sell the tract to Brandon for \$2,500,000 cash, with all legal warranties, other than with respect to title, eviction or peaceable possession. Taylor did not notify Roy of Brandon's agreement to purchase the property for \$2,500,000, and the contract between Taylor and Brandon was never recorded.

Taylor sold the property to Brandon on May 1, 2016 under a written act of sale that contained the following provision: "This sale is made with full legal warranties, but with no warranties with respect to seller's title to the property, or with respect to peaceable possession, this sale being made entirely at purchaser's sole peril and risk".

At no time prior to the sale had there been any discussion between Brandon and Taylor of Brandon's intent to use the tract as a soybean farm. Ever since purchasing it from Roy, Taylor has always used the property as a hunting camp.

Upon learning of the sale to Brandon, Roy sent Taylor and Brandon a letter on May 15, 2016, stating that he had previously notified Taylor of his exercise of his right to purchase the property for the \$2,000,000 price stipulated in Frank's contract and enclosing his deposit of \$100,000. Roy's letter also asserted that, if for any reason he was not entitled to purchase the property for that amount, he was exercising his right to purchase the property for the amount paid by Brandon.

On June 20, 2016, Frank filed suit against Taylor and Brandon to compel specific performance of Taylor's obligations under the contract between Frank and Taylor.

Question 1.1 10 points.

- a) Are Roy's claims that he had a right to purchase the property at the time he was notified of the contract between Taylor and Frank and that he had properly exercised that right likely to succeed? Discuss.*
- b) Are Roy's claims that he had a right to purchase the property at the time of the sale from Taylor to Brandon and that he was exercising that right likely to succeed? Discuss.*

Question 1.2 5 points. Does Frank have a right to specific performance of the contract by which Taylor agreed to sell him the property? Discuss.

TEST CONTINUES ON NEXT PAGE

Assume for purposes of this Question 1.3 that Taylor settled the claims of Roy and Frank, both of whom who relinquished any claim to the property.

Shortly after purchasing the property, Brandon spent \$5,000 to repair the roof of the shed and an additional \$150,000 to convert it into a guest residence. Within days after completing this work, he discovered two very troubling facts. First, the shed is located upon a portion of the property subject to a pipeline servitude that Taylor had granted before the shed was constructed. This instrument establishing the servitude had been properly recorded several years before Brandon purchased the property, and the pipeline company was now demanding that Brandon remove the shed because its presence posed a safety hazard. There were no indications of the existence of the pipeline or the servitude that were perceivable from an inspection of the property. The second troubling development was that, while investigating the existence of the pipeline servitude, Brandon discovered that the entire property was subject to a conservation servitude that had been granted by a prior owner and recorded long before Taylor acquired the property. Under the terms of this servitude, the property could not be used as farmland or for any industrial use. When Brandon brought the demands of the pipeline company and the existence of the conservation servitude to Taylor's attention, Taylor declined to take any action, citing the terms and waivers of the act of sale.

On July 1, 2016, Brandon filed suit against Taylor to rescind the sale of the property on the basis of error, fraud, and breach of the warranty against eviction. In addition to the return of the purchase price, Brandon seeks compensation for the amounts he incurred in repairing and improving the shed, as well as attorney's fees.

Question 1.3 15 points.

- a) Does Brandon have a basis to rescind the sale of the property on the grounds of error, fraud, or breach of the warranty against eviction? Discuss.*
- b) Is the waiver in the act of sale by which Brandon purchased the property effective to defeat or limit any recovery? Discuss.*

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

LOUISIANA BAR EXAMINATION

CIVIL CODE III

JULY 2016

QUESTION 2
(20 POINTS TOTAL)

Question 2, Part 1- (15 points total)

Debra operates a general supply business in Baton Rouge. One morning, Lucy, who ran a local pastry shop, borrowed four sacks of grade A hand ground durum wheat at Debra's business, and agreed to return the wheat in five days. Due to a sudden accident at the sole source of supply, the price of the wheat doubled during the five-day period, and Lucy was unable to return the wheat on the scheduled date. She offered to pay Debra the value of the wheat on the date it was borrowed. Debra declined the offer and demanded that four sacks of grade A hand ground durum wheat be delivered to Debra's business. It has now been a month since the date of the original loan.

Question 2.1 2 points. What is Debra entitled to demand from Lucy, and does the law prescribe a place where performance is to be rendered? Discuss

Susie owed Mei the sum of \$1,000, payable without interest on demand. Mei purchased from Susie on open account items having a total price of \$1,000. When contacted for payment by Susie, Mei declined, and noted that the amounts she owed under the open account now satisfied Susie's and Mei's respective obligations to each other. Susie has demanded that Mei make payment to her now in cash.

Question 2.2 2 points. Are the obligations of Susie and Mei extinguished, or can Susie demand payment of the open account in cash? Discuss.

Tim was owed \$5,000 on open account by BR, Inc., but this debt became barred by the accrual of liberative prescription. However, due to a sudden inflow of cash, the treasurer of BR, Inc. sent checks to all of its creditors to whom it owed money, including Tim. After discovering that the debt owed to Tim had prescribed, BR, Inc. asked Tim to return the \$5,000 payment.

Question 2.3 2 points. What was the nature under the law of BR, Inc.'s obligations to Tim following the accrual of prescription? Can BR, Inc. recover the payment made to Tim? Discuss.

Cindy owned a large stock of copper tubing that was stored behind a friend's warehouse, as well as a separate stack of steel pipe of various lengths in the same location. The aggregate length of this steel pipe was not known. Cindy agreed to sell Barbara the entire stock of copper tubing for \$1,000.00, and the entire stack of steel pipe for \$1.50 per foot of pipe. Both the copper tubing and the steel pipe were stolen the evening before they were scheduled to be delivered to Barbara. Before they were stolen, neither the copper tubing nor the steel pipe had been weighed or measured.

Question 2.4 3 points.

- a) Did a valid sale with transfer of ownership of the copper tubing arise between Cindy and Barbara? Discuss.*
- b) Did a valid sale with transfer of ownership of the steel pipe arise between Cindy and Barbara? Discuss.*
- c) Which of the parties bears the loss of the theft of the copper tubing and of the steel pipe? Discuss.*

TEST CONTINUES ON NEXT PAGE

Joan and Maggie were involved in a dispute over amounts owed by Maggie in connection with the termination of a contract between them. They made an oral agreement to settle the dispute, but never reduced this agreement to writing. Maggie, now displeased with the terms of the oral agreement, notified Joan that the terms were now unacceptable, and that negotiations over the dispute remain open and that litigation may ensue.

Question 2.5 2 points. Was the oral compromise agreement between Joan and Maggie enforceable between the parties? Discuss.

A ground lease of an immovable provides for a ninety-year term at rent of \$10,000 per year, with the lessee having the option to renew the lease for an additional ninety years at rent of \$20,000 per year. The lease was entered on the morning of this exam.

Question 2.6 2 points. As of the date of execution of the lease, what is the maximum permissible term of the lease with renewal options? Discuss.

A lessor leased office space in a building to a lessee for a one-year period, for a fixed annual rent payable on the final date of the lease term. The final date of the lease term was August 1, 2013. The lessee has never paid the rent.

Question 2.7 2 points. Has the lessor's claim against the lessee for the past due rent prescribed? Discuss. On what date did, or will, the landlord's claim prescribe, assuming such day is not a legal holiday? Discuss.

Question 2, Part 2- (5 points total)

On January 1, 2015, Laura, the owner of a small tract of farmland, leased the tract to Fanny under an oral lease for rent of twenty percent of the total value of the crops raised by Fanny during the 2015 crop year. There was no discussion of a term of the lease. Fanny raised a crop of exotic Japanese vegetables during 2015, and she remitted to Laura her twenty percent share of the crop prior to the end of the year. In October of 2015, Fanny constructed a pagoda on the property at a cost of \$20,000 and planned in the future to give tours of her authentic Japanese farming operations. On January 6, 2016, even though Fanny was not in breach of the lease, Laura notified Fanny both orally and in writing of her termination of their lease and demanded that Fanny vacate the premises and remove the pagoda by April 14, 2016. Laura further notified Fanny that if she did not remove the pagoda prior to that date, Laura would appropriate ownership of the pagoda for \$1,000, which was the enhanced value of the tract with the pagoda. Fanny did not remove the pagoda, and on April 16, 2016, received a check from Laura in the amount of \$1,000 by certified mail along with a notice from Laura that she had appropriated ownership of the pagoda and that the check was submitted in compensation for it. Fanny notified Laura that she was placing the funds in the registry of the court, and intended to legally dispute Laura's termination as well as the amount due in connection with her attempted appropriation of the pagoda. On April 20, 2016, Fanny filed suit against Laura to have the termination declared null or in the alternative for a money judgment against Laura for the full \$20,000 cost of construction of the pagoda.

Question 2.8 5 points.

- a) Was Laura entitled to terminate the lease with Fanny on January 6, 2016? Discuss.*
- b) Assume that the court holds that Laura did properly terminate the lease. What amount would Laura owe to Fanny in connection with the pagoda? Discuss.*

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

LOUISIANA BAR EXAMINATION

CIVIL CODE III

JULY 2016

QUESTION 3

(30 POINTS TOTAL)

PART A. Total of 5 points.

Claire owns a tract of land in Grant Parish, Louisiana. In 2005, she borrowed \$50,000 from a local bank. The loan is evidenced by a promissory note dated August 1, 2005, with interest-only payments due monthly over a seven-year term, and with a final balloon payment of all outstanding principal and unpaid interest due on August 1, 2012. To secure this promissory note, Claire executed a written mortgage in authentic form, which stated that it secured “all present and future indebtedness of the mortgagor to the mortgagee, up to a secured limit of \$100,000”. This mortgage was accepted by the mortgagee, contained a full property description of the property, and was recorded in the mortgage records of Grant Parish on August 1, 2005. The mortgage recited the August 1, 2012 maturity date of the promissory note. No payments or legal demands have ever been made on the promissory note, and the mortgage has never been reinscribed.

Question 3.1 5 points.

- a) Is the mortgage effective against third persons as of today? Discuss.*
- b) Has any portion of the balance of the promissory note legally prescribed and, if so, what portion? Discuss.*

PART B. Total of 25 points.

The following facts apply to all questions within this Part B:

Meg operates a real estate investment business in her individual name, and, given her frequent travel schedule, found it necessary in 2012 to grant to her friend Bob a written mandate in authentic form, duly accepted by Bob, in which Meg, as principal, authorized Bob, as mandatary, to borrow money on Meg’s behalf, at such rates of interest as Bob may approve; to execute promissory notes on Meg’s behalf; to acquire movable or immovable property on Meg’s behalf; and to grant mortgages to secure indebtedness of Meg or any other person on any property so acquired and on any other property owned by Meg anywhere in the State of Louisiana, on such terms as Bob may approve. The mandate, which was recorded in the conveyance records of St. Landry Parish in 2012, did not include any property descriptions of any tract of immovable property.

Thereafter, the following events occurred:

Tract A, the KSB Note, Tract A Mortgage

By an act of cash sale dated March 1, 2013, Bob, acting on Meg’s behalf, acquired in Meg’s name a tract of land located in St. Landry Parish, Louisiana (“Tract A”). The act of sale was in authentic form, signed by the seller only, was duly recorded in the conveyance records of St. Landry Parish, recited that the seller had received a cash purchase price of \$150,000, and contained a proper property description of Tract A. To fund the acquisition, Bob borrowed \$150,000 from Krotz Springs Bank in Meg’s name and executed on Meg’s behalf a \$150,000 promissory note dated March 1, 2013 in favor of Krotz Springs Bank in order to evidence this loan (the “KSB Note”). On the same day, Bob also executed a mortgage in Meg’s name as mortgagor encumbering Tract A in favor of Krotz Springs Bank as security for “all present and future indebtedness of Meg to Krotz Springs Bank and any future holders, whether directly funded by mortgagee or acquired by mortgagee through assignment, and whether owed by mortgagor as principal or as surety, up to a maximum secured limit of \$50,000,000”. The mortgage contained a full property description of Tract A, was duly executed by Bob in written, authentic form on Meg’s behalf, and was properly recorded in the mortgage records of St. Landry Parish on March 1, 2013. The mortgage was not signed by anyone on behalf of Krotz Springs Bank.

TEST CONTINUES ON NEXT PAGE

Judicial Mortgage

On April 20, 2015, Insurance, Inc. obtained a money judgment against Meg in the amount of \$10,000, which it duly recorded in the mortgage records of St. Landry Parish that same day.

Tract B Credit Sale

On May 10, 2015, Meg, acting on her own behalf, acquired Tract B, which is also located in St. Landry Parish, from Denise for the price of \$200,000, by a written act of credit sale signed by Meg and Denise, providing for payment on December 31, 2015 of the entire purchase payment with six percent interest. The act of credit sale (the "Tract B Credit Sale"), which was dated May 10, 2015, contained a full property description of Tract B, and was duly recorded in the conveyance and mortgage records of St. Landry Parish on May 15, 2015. No payments have ever been made to Denise in connection with the Tract B Credit Sale.

Tractor Purchase, the Tractor Note, Seizure of Tractor

In June of 2015, Meg purchased a tractor from Liz for the price of \$100,000. Meg paid Liz \$50,000 in cash, and executed a \$50,000 promissory note payable on demand to the order of Liz (the "Tractor Note") in order to evidence her obligation to pay the balance of the purchase price. A month later, Meg sold the tractor to Kyle for a cash payment equal to the fair market value of the tractor and delivered the tractor to him the same day as the sale. No payments have ever been made on the Tractor Note. In January of 2016, Liz assigned the Tractor Note to Krotz Springs Bank. In February of 2016, Insurance Inc. seized the tractor in connection with its efforts to collect the amounts owed under its recorded money judgment. The tractor has at all times been located in St. Landry Parish.

Question 3.2 9 points.

- a) Was Bob's execution of the KSB Note and the mortgage in favor of Krotz Springs Bank duly authorized, and do the KSB Note and this mortgage constitute obligations binding on Meg? Discuss.*
- b) If Meg does not pay the KSB Note, is Bob personally obligated to pay Krotz Springs Bank the amounts due under the KSB Note? Discuss.*
- c) Did the failure of Bob to sign the act of sale in which Tract A was acquired give rise to a relative nullity? Discuss.*

Question 3.3 4 points.

- a) Did the judicial mortgage of Insurance, Inc. create a secured interest in the tractor once it was acquired by Meg? Discuss.*
- b) What property of Meg described in the fact pattern, if any, does the judicial mortgage affect? Discuss.*

Question 3.4 6 points.

- a) Is the vendor's privilege of Denise under the Tract B Credit Sale primed by the Insurance, Inc. judicial mortgage? Discuss.*
- b) What right does the Civil Code grant to Denise under the Tract B Credit Sale, in addition to her vendor's privilege? Discuss.*

Question 3.5 3 points. Does the vendor's privilege arising in favor of Liz in connection with Meg's purchase of the tractor continue to burden the tractor following its sale and delivery to Kyle? Discuss.

Question 3.6 3 points. Does the mortgage in favor of Krotz Springs Bank on Tract A secure the amounts due under the Tractor Note? Discuss. For purpose of answering this question, assume that the mortgage was duly authorized and executed and that the debts secured thereunder do not exceed the stated secured limit.

[End of Question 3]

TEST CONTINUES ON NEXT PAGE

LOUISIANA BAR EXAMINATION

CIVIL CODE III

JULY 2016

QUESTION 4

(20 POINTS TOTAL)

Multiple choice questions, each worth 2 points, tested the following areas of the law:

- 4.1 offers of sale; revocation and acceptance of same
- 4.2 management of affairs (negotiorum gestio)
- 4.3 guarantees; rights and defenses of guarantor
- 4.4 sale of litigious rights
- 4.5 discrepancies in act of sale; mutual error; sale by boundaries
- 4.6 tolling agreements; prescription on promissory notes
- 4.7 effect of unrecorded release of mortgage on transferee of secured note
- 4.8 risk of loss from lessee's improvements after lease termination
- 4.9 lessor's privilege against movable property of lessee or sublessee
- 4.10 quitclaims; after-acquired property

[End of Question 4]

END OF CIVIL CODE III EXAM

**LOUISIANA BAR EXAMINATION
CONSTITUTIONAL LAW
JULY, 2016**

WARNING

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

Question Number One is worth 33 points; Question Number Two is worth 33 points; Question Three is worth 34 points.

QUESTION ONE – (33 points)

DO NOT DISCUSS ANY SUBSTANTIVE OR PROCEDURAL DUE PROCESS ARGUMENTS IN THIS ANSWER.

Judge Dylan, a devout Christian, became chief judge of a parish court in Louisiana. From his experience, Judge Dylan believed that allowing moments of thanksgiving and appreciation prior to the commencement of court proceedings resulted in efficient and less tension filled court hearings. Judge Dylan thought this was very important as that particular parish court had experienced several loud and sometimes violent outbreaks between parties and attorneys recently. Thus, he implemented a new court policy by instructing all judges to begin all court proceedings with a statement of thanksgiving and acknowledgement.

He drafted a statement for the judges to use that reverently acknowledged the Deities of the major religions from around the world. The acknowledgment ended with the following line: "...and as stated on our country's currency: In God we trust." The judges were instructed to ask, before reading the acknowledgement, all those present whether they wished to participate or not. He further instructed the judges to explain that anyone could opt not to participate and could exit the court for the two minute time period during which the acknowledgement was read if they so choose.

April is a stenographer for the court and an atheist. She heard Judge Dylan's acknowledgement and was deeply offended. The next time she had to appear in court she elected not to participate in the acknowledgment, and decided to walk out during the period. Once the acknowledgement was read, a deputy came out and invited her back into the courtroom and the court proceedings began without incident. However, even though no one ever said or did anything, April felt that she received several looks of disapproval from the judge and the other people present in the courtroom, which made her very uncomfortable.

What, if any, constitutional arguments can April raise in a challenge to Judge Dylan's policy; and is she likely to succeed? Discuss.

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA BAR EXAMINATION
CONSTITUTIONAL LAW
JULY, 2016**

QUESTION TWO – (33 points)

DO NOT DISCUSS PROCEDURAL DUE PROCESS.

Deysiah is a resident of Small Town, Louisiana. Deysiah purchased 6 acres of land in Small Town, approximately 3 miles from the Mississippi River. She had plans to subdivide the acres to construct 3 homes on 2 acres each. However, before she could develop the property the Louisiana Legislature enacted a subdivision law, called “Law A”, which requires each parcel in excess of 2 acres and located within 5 miles of the Mississippi River to dedicate to the State of Louisiana for recreational open space a ½ acre of land for every acre in excess of 2 acres in the parcel. Law A expressly provides that its purpose is to reduce the possibility of adverse impact of development to the river.

Law A provides that the dedication is a required condition of any subdivision approval.

Deysiah went to Small Town’s Parish office to begin the subdivision process for her 6 acres to construct the 3 homes on 2 acres each. She was then informed that Law A requires her to dedicate 2 acres to the State. Deysiah is outraged, and she would like to challenge the law.

What, if any, constitutional arguments can Deysiah raise in a challenge to Law A; and is she likely to succeed? Discuss.

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA BAR EXAMINATION
CONSTITUTIONAL LAW
JULY, 2016**

QUESTION THREE – (34 points)

Devin, a State Legislator, sponsored a bill which, when it narrowly passed the state legislature became “The Seafood Surcharge Statute.” This new statute was specifically designed to discourage what he saw as the wholesale slaughter of defenseless animals of the sea. It provided as follows:

All Louisiana Seafood Companies shall pay a surcharge equal to 2% of the gross sales for all seafood commercially sold in the state.

All non-Louisiana Seafood Companies shall pay a surcharge equal to 5% of gross sales for all seafood commercially sold in the state.

. . .

The Louisiana Seafood Surcharge Police is hereby established to collect and monitor payment of the fishing company surcharge.

Mike’s Fishing Company, a Mississippi company headquartered in Gulfport, Mississippi, engages in commercial fishing in Louisiana and sells seafood commercially in Louisiana. Mike’s Fishing Company has prospered over the years, distributing its catch throughout Louisiana.

Louisiana’s Seafood Surcharge Police recently sent the following notice to all seafood companies that, based on its records, were selling seafood commercially in Louisiana—including not only many Louisiana Seafood Companies, but also many non-Louisiana Seafood Companies, including Mike’s Seafood Company:

Dear Commercial Fisherman:

Pursuant to the newly enacted Seafood Surcharge Statute, you are hereby notified that your fishing company is now subject to a surcharge for all seafood which it sells in Louisiana. Please forward quarterly statements of earnings for any such sales so that the surcharge can be correctly calculated.

Sincerely,

The Louisiana Seafood Surcharge Police

Mike’s Fishing Company is concerned about how the statute will affect its earnings. It is considering a legal challenge to the statute.

What, if any, constitutional challenges does Mike’s Fishing Company have to the implementation of the statute and is it likely to succeed? Discuss.

[End of Question 3]

END OF CONSTITUTIONAL LAW EXAM

**CRIMINAL LAW, PROCEDURE AND EVIDENCE
LOUISIANA STATE BAR EXAMINATION
JULY 2016**

**QUESTION 1
(40 POINTS)**

After mowing grass all day, Sam decided to go to a drive-in to get some cheese burgers in his truck. On his way home, Sam noticed blue lights in his rear view mirror. Sam pulled over to the shoulder of the road, and a State Trooper ordered him to exit his vehicle. As Sam went to exit his truck, however, his truck suddenly slipped out of park and into reverse causing the truck to start rolling backwards for a brief couple of seconds. Acting quickly, Sam climbed back into his truck and shifted it back into park. Sam's transmission had been giving him problems ever since he had installed bigger tires and lifted the truck's suspension a few inches. His truck was legal in all respects.

The Trooper, now clearly anxious, instructed Sam to walk to the back of his truck and place his hands out against the tailgate. After frisking Sam for weapons, and without containing Sam's consent, the Trooper opened the door up and climbed into the truck. Using his flashlight, the Trooper checked underneath the driver and passenger seats, checked the glove compartment and checked the center console. Next, the Trooper crawled into the back of the vehicle and after searching for a few minutes located two empty beer bottles behind the backseat. The bottles were still cool to the touch.

The Trooper climbed out of Sam's vehicle and returned to meet him at the tailgate. The Trooper questioned Sam about the beer bottles and Sam quickly admitted to having consumed the beers. Still, Sam told the Trooper that he had only drank two beers and was not impaired. He further explained that his house was just up the road—less than a mile away. In response, the Trooper told Sam that he was going to have to call another police officer to the scene to do some tests to make sure Sam was "good to drive." The Trooper also explained that he needed the other officer to come do the tests because he was not yet certified to perform the tests.

After 20 minutes of waiting for the second police officer, Sam began begging the Trooper to let him go. The Trooper refused and told Sam that if he could pass the tests when the second officer got there, he could go home. Further, the Trooper informed that if all Sam had was two beers, he should have no problem passing the tests. Still, the Trooper said that he believed Sam had drunk more than two beers and had not been honest with him earlier. In response, Sam told the Trooper that he had in fact drank more than two beers and probably shouldn't have driven. He then apologized to the Trooper and begged the Trooper to give him a break. He told the Trooper that he would probably lose his job if he got arrested. The Trooper again refused to let him go.

The second officer arrived on scene approximately 10 minutes later. After Sam failed the field sobriety tests, he then informed Sam that he was being placed under arrest. The second officer placed Sam into the back of his car and advised him of his Miranda rights. Sam was then transported back to the police station where, after being properly advised of his rights with respect to the Breathalyzer test, he refused the breathalyzer and was booked into the jail.

According to his report, the Trooper decided to stop Sam after observing Sam fail to use his blinker signal as required by law. Thus, Sam was ultimately booked at the jail on the following charges: 1) Failure to signal; and 2) Operating a vehicle while intoxicated.

TEST CONTINUES ON NEXT PAGE

Please address the following four questions (10 points each).

- 1.1 For purposes of this Question 1.1 only, assume that the video from the Trooper's in-car dash camera contradicts his report and actually shows Sam signaling properly before being stopped by the Trooper. What state and/or federal constitutional bases, if any, exist for Sam to challenge the stop and the subsequent evidence obtained as a result? Discuss.
- 1.2 For purposes of Questions 1.2 and 1.3 only, assume that the Trooper's initial stop was lawful. What state and/or federal constitutional bases, if any, exist for challenging the admissibility of the beer bottles? Discuss.
- 1.3 Again, assuming the Trooper's initial stop was lawful, what state and/or federal constitutional bases, if any, exist for challenging the admissibility of Sam's statements to the first Trooper while waiting for the second trooper to arrive that he had more than two beers to drink and probably shouldn't have driven? Discuss.
- 1.4 For purposes of Question 1.4 only, assume that Sam was lawfully arrested; that, in accordance with the jail's protocol for every new inmate, Sam's cell phone was seized while he was being booked at the jail and that the Trooper then searched Sam's phone without a warrant and discovered text messages wherein it appeared Sam was bragging to his girlfriend about already having consumed a case of beer earlier during the day.

What state and/or federal constitutional bases, if any, exist for challenging the admissibility of the text messages? Discuss.

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**CRIMINAL LAW, PROCEDURE AND EVIDENCE
LOUISIANA STATE BAR EXAMINATION
JULY 2016**

**QUESTION 2
(40 POINTS TOTAL)**

One afternoon, Matt telephoned Rick to ask Rick to help him locate some marijuana. In response to Matt's request, Rick text messaged Bob who told him he had at least 2 or 3 pounds of marijuana available for sale. After texting with Bob, Rick called Matt back and let him know he had lined up a deal for that afternoon. Matt then went and picked up Rick at his house. The two then went over to Bob's apartment to purchase the marijuana.

Once they arrived, Bob let Rick and Matt into the apartment and told them they could sit on the sofa in the living room. Bob said he would be right back after he got the marijuana from his bedroom. A few minutes later Bob emerged from the bedroom with some marijuana and wielding a pistol, which he pointed at Matt while yelling for Matt to give up the money. When Matt refused, Bob slapped him with the pistol and then shot him in the stomach. Matt then handed the money to Bob. Bob took the money and fled. Matt and Rick then ran back to their vehicle where Rick proceeded to take Matt to the emergency room.

**QUESTION 2.1
(40 points)**

What crimes, if any, have been committed by:

1. Rick and Matt? Discuss.
2. Bob? Discuss.

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**CRIMINAL LAW, PROCEDURE AND EVIDENCE
LOUISIANA STATE BAR EXAMINATION
JULY 2016**

**QUESTION 3
(20 POINTS)**

Multiple choice questions, each worth 2 points, tested the following areas of the law:

- 3.1 Right to Counsel
- 3.2 Preliminary Examination
- 3.3 Testimonial Privilege
- 3.4 Instituting Prosecution
- 3.5 Suppressing Evidence
- 3.6 Bill of Particulars
- 3.7 Change of Venue
- 3.8 Subject of Witness Testimony
- 3.9 Judgment of Acquittal
- 3.10 Post-Judgment of Acquittal

[End of Question 3]

[End of Criminal Law Exam]

**LOUISIANA BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
July 2016**

**QUESTION 1
(25 Points)**

Lou, a long-time resident of Lake Charles, Louisiana decided to build a small covered parking garage to protect his newly purchased sports car. Lou hired Covered Cars, LLC to build the garage. Covered Cars is a Louisiana limited liability company, which specializes in the design, manufacturing and sales of stand-alone residential parking garages.

Reliable Roofing, Inc. is a corporation organized in Delaware, but licensed to do business in all 50 states and owns 50% of Covered Cars. All shares of Reliable Roofing are owned by Bill, who lives in New York. Reliable Roofing's main executive office is located in New York, but Reliable Roofing's two vice presidents who oversee all daily operations are in Reliable Roofing's Oklahoma office. Reliable Roofing also has manufacturing facilities in ten states, with its two largest being in Oklahoma and Louisiana.

The other 50% of Covered Cars is owned by Good Garages, L.P., a partnership in commendam organized under Louisiana law. Its general partner is Sturdy Steel, LLC, a LA limited liability company. Tex, who lives in Houston, Texas, is Sturdy Steel's sole member. The sole limited partner in Good Garages is Mitzi, Tex's sister. Mitzi also lives in Houston, Texas.

Unfortunately, while Lou was sitting in his car waiting out a storm in his new garage six months ago, heavy winds caused the roof to cave in, severely injuring Lou and damaging his car. The damage to Lou's car is estimated at \$20,000, his medical bills will total \$25,000, and he will have \$25,000 in lost wages. Lou has also experienced several months of serious pain during his recovery, and his doctors say he will have lifelong knee pain because of the accident.

Following the accident, Lou moved in with his son in Oklahoma so that his son could look after him during his recovery. Lou let a friend look after the home he owns in Louisiana. Doctors now state that Lou will be fully recovered in one more month, but Lou is undecided where he will live after that.

Lou has just filed a complaint against Covered Cars in a Louisiana federal court. The complaint prays for an award of the property damage, medical bills, and lost wages.

- | | | |
|---------|-----|---|
| 15 pts. | 1.1 | Does the federal court have subject matter jurisdiction over Lou's complaint? Discuss. |
| 5 pts. | 1.2 | More than a year after the suit was filed, and after an answer was filed and much discovery conducted, Reliable Roofing moved its two vice presidents to Louisiana. Reliable Roofing then filed a motion to dismiss for lack of subject matter jurisdiction arguing that Lou and Reliable Roofing are now non-diverse. Should the court grant Reliable Roofing's motion to dismiss? Discuss. |
| 5 pts. | 1.3 | Solely for purposes of this question 1.3, assume (i) that Covered Cars' answer includes a defense that Lou's property damage claim is limited by a Louisiana statute that provides that a plaintiff may not recover more than the "Blue Book" value of a destroyed car even if the plaintiff can prove that his car was more valuable. Lou believes that modifications to his car made it much more valuable than the Blue Book listing. Thus, he has filed a motion under Federal Rule of Civil Procedure 12(f) to strike this defense on grounds that this Louisiana statute does not apply to his claim. |

Should the federal court grant Lou's motion to strike? Discuss.

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
July 2016**

**QUESTION 2
(30 Points)**

Paul, a Texas citizen, was shopping at Food Mart in Shreveport, Louisiana, when he slipped on a puddle of water near the restroom and fell. Paul filed a petition against Food Mart, a Louisiana corporation, on May 1, 2015 in Louisiana state court in Shreveport. His petition, consistent with Louisiana law, did not demand a particular amount of damages, and the petition offered no greater description of Paul's injuries than to state that he had "suffered physical injuries as a result of the fall."

Paul delayed requesting service on Food Mart as long as possible, until July 31, 2015. Food Mart attempted to conduct discovery to learn the details about Paul's injuries, but he requested several extensions of time and, in answers to interrogatories, stated only that he had suffered back injuries for which he continued to receive treatment. After additional delay, Paul eventually produced his medical records to Food Mart on June 1, 2016. The records showed that Paul suffered two ruptured discs and that his treating physician told him soon after the accident that he would need expensive surgery and lengthy rehabilitation. The production of the medical records was accompanied by Paul's first settlement demand, which was for \$450,000. Food Mart removed the case to federal court 27 days later on June 28, 2016.

- | | | |
|---------|-----|---|
| 5 pts. | 2.1 | a) Describe in detail the procedure and requirements counsel for Food Mart have followed to remove the case to federal court.
b) To which federal court may the case be removed? |
| 5 pts. | 2.2 | a) What must Paul's lawyer file to seek a return of the case to state court?
b) What time limits, if any, does he face?
c) Describe the effect, if any, on the grounds you identified in question 2.1, if Paul's lawyer takes that action on August 5, 2016? |
| 10 pts. | 2.3 | a) What objections, if any, might Paul raise to the removal? Discuss.
b) As to each such objection, what, if anything, should Food Mart argue to overcome such objection? |
| 5 pts. | 2.4 | For purposes of this question 2.4 only, assume that the case remains in federal court.
Food Mart then filed a summary judgment motion that was supported by an affidavit from a Food Mart employee, who states that he saw Paul near the restroom but did not see him fall. Food Mart also submitted an affidavit from Paul's former parole officer, who states that Paul was convicted three years earlier for perjury after he offered false alibi testimony at a friend's burglary trial. |

Paul opposed the motion and offered his own affidavit in which he states that he did slip and fall in the puddle of water, just as alleged in his complaint, and in which suggests that the employee must have looked away before he fell.

What standard should the court use for assessing Food Mart's motion for summary judgment? How should the court rule on this motion? Discuss.

TEST CONTINUES ON NEXT PAGE

- 5 pts. 2.5 Assume for purposes of this question that the case is pending in Louisiana federal court.
- The owner of Food Mart met with an attorney to discuss a defense to the lawsuit. The attorney asked the owner to gather up all paperwork and records Food Mart had related to the store's maintenance and clean-up procedures and send them to the attorney. Food Mart's owner later delivered the business records to the attorney along with a letter in which the owner of Food Mart explained why he believed Food Mart did not follow proper procedures the day of the accident and explained what was included in the business records. The attorney reviewed the records and determined that they would not be useful to a defense of the lawsuit.
- Paul served Food Mart with a request for production of documents that asked for "all correspondence, emails, or business records of any kind that reference or are related to maintenance and clean-up procedures implemented by Food Mart."
- In response to the request, must Food Mart, produce either (1) the letter from Food Mart's owner or (2) the business records Food Mart delivered to its attorney? Discuss.

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
July 2016**

**QUESTION 3
(25 Points)**

5 pts. 3.1 Plaintiff filed a complaint against Defendant in federal court. Defendant's attorney believes that the complaint has no basis in fact and wants to file a motion for sanctions under Rule 11 of the Federal Rules of Civil Procedure. Explain what steps Defendant must take before filing any such motion for sanctions.

5 pts. 3.2 Rachel filed a federal civil rights claim against a deputy sheriff based on claims of excessive force and unlawful arrest. The parties settled the case for \$25,000. The next year, Rachel's property assessment was significantly higher, which resulted in her owing several thousand dollars in additional property taxes. Rachel did not believe that this was a coincidence, and she filed a new federal action pursuant to 42 U.S.C. § 1983 alleging a civil rights conspiracy against her.

Rachel's complaint alleged that she filed and successfully settled a civil rights claim against a deputy sheriff. Her sole allegations of a civil conspiracy were as follows: (1) "The sheriff and tax assessor entered into a conspiracy to falsely and grossly inflate the assessed value of plaintiff's property, which resulted in plaintiff Rachel being obligated to pay significant amounts of additional taxes"; and (2) "The conspiracy was entered into in retaliation for plaintiff having earlier exercised her First and Fourteenth Amendment rights to access the courts."

The sheriff's lawyer researched the applicable law and determined that a person may state an actionable Section 1983 claim based on retaliation by a government official for a person's exercising her right to access the courts. The sheriff's lawyer nonetheless filed a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure on the grounds that the complaint fails to state a claim on which relief may be granted.

- a) What legal standards should the court should apply when assessing the motion?
- b) Should the court grant or deny the motion? Discuss.

5 pts. 3.3 Plaintiff, a custom-home builder and Louisiana citizen, has routinely bought gas lanterns from Defendant, a Utah citizen who sells the gas lanterns on a website. The two never spoke to one another and the transactions were done entirely online. Defendant sells his gas lanterns to customers in all 50 states, with no particular focus on any state. He advertises his gas lanterns in national home-builders publications.

Plaintiff purchased two gas lanterns to build a 7,000 square foot custom home for a homeowner in Louisiana. Shortly after the homeowner moved in, the homeowner's home burned down. The homeowner asserted that one of the gas lanterns was defective and caused the fire that burned down his home. The homeowner settled his claim against Plaintiff for \$100,000 in an arrangement that allowed Plaintiff to pursue the homeowner's claims against Defendant in an effort to obtain reimbursement. Plaintiff filed a diversity-jurisdiction complaint against Defendant in a Louisiana federal court and alleged that Defendant was responsible for the fire due to a defect in one of the gas lanterns he sold.

TEST CONTINUES ON NEXT PAGE

Defendant lived in Louisiana from 1995-2005, before he moved to Utah. He still visits relatives in Louisiana about once per year for holidays. He has attended a two-day home-builders expo in Louisiana twice in the last three years, and he has stated on multiple occasions that he plans to retire in Baton Rouge, Louisiana in a few years.

- a) May the Louisiana federal court exercise general personal jurisdiction over Defendant? Discuss.
- b) May the Louisiana federal court exercise specific personal jurisdiction over Defendant? Discuss.

5 pts. 3.4 Petroleum, Inc., which is a citizen of Pennsylvania only, is obligated to pay royalties to David under a mineral lease of land in Louisiana. David died intestate, and his three heirs disagreed as to which of them inherited what percentage of the royalty under the lease. At the time of his death, David was a citizen of Texas. Two of the heirs are citizens of Mississippi, and the third is a citizen of Texas. Petroleum, Inc. wants to file an interpleader action in Louisiana federal court, deposit the \$50,000 in royalty funds in the court registry, and require the three heirs to resolve their claims in that action.

Which type of interpleader action may Petroleum, Inc. file? Discuss.

5 pts. 3.5 Cal, a California citizen, was interested in opening a chain of mattress stores in Louisiana. He looked for fellow investors and found Flo from Florida and Vera from Vermont. The three investors met in Florida for three days to finalize the terms of their agreement, which called for Flo and Vera to make monthly capital contributions over the course of the next three years. Cal was to use the funds to open and stock the Louisiana stores. The contract contemplated six stores opening across Louisiana during the first three years, with more to be funded by profits if the business was successful.

Flo is a lifelong citizen of Florida, but she has owned a condominium in New Orleans, Louisiana for more than 10 years and stays in it six to eight weeks each year. Vera was born in Louisiana but moved to Vermont 20 years ago. She does not have any business connections in Louisiana other than the mattress stores, but she spends Thanksgiving with her aunt in Alexandria, Louisiana every year. Both Flo and Vera have extensive business investments in California and visit the state often to tend to those businesses. They play no role in the management of the Louisiana mattress stores.

The stores were not doing well two years into the arrangement. Flo and Vera accused Cal of breaching their agreement by not producing timely financial reports, and they stopped making monthly payments.

Cal would like to sue Flo and Vera in a federal court for \$100,000 each, representing the remaining payments due under the agreement.

- a) Is California a proper venue for this civil action? Discuss.
- b) Is Louisiana a proper venue for this civil action? Discuss.
- c) Is Florida a proper venue for this civil action? Discuss.

[End of Question 3]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
July 2016**

**QUESTION 4
(20 Points)**

Multiple choice questions, each worth 2 points, tested the following areas of the law:

- 4.1 Joinder of claims
- 4.2 Waiver of defenses
- 4.3 Timing of appeals; interlocutory dismissals
- 4.4 Amendments to pleadings; supplemental jurisdiction
- 4.5 Substitution of parties; amending pleadings
- 4.6 Venue
- 4.7 Removal
- 4.8 Grounds for judgment as a matter of law
- 4.9 Personal jurisdiction; waiver on appeal
- 4.10 Joinder of non-diverse party

[End of Question 4]

END OF FEDERAL JURISDICTION AND PROCEDURE EXAM

LOUISIANA BAR EXAMINATION

LOUISIANA CODE OF CIVIL PROCEDURE

JULY 2016

For all questions in this exam, you should assume that, unless specifically indicated otherwise, all lawsuits referenced in a question are civil actions filed or to be filed in a Louisiana state court.

QUESTION 1
(25 POINTS)

- 1.1 4 pts A lawyer's signature on a pleading filed for a client constitutes the lawyer's certification of what statements?
- 1.2 4 pts What are the pleadings to which the lawyer's certification applies?
- 1.3 4 pts During a discovery deposition, under what circumstances may a party instruct a deponent not to answer a question?
- 1.4 4 pts Plaintiff sued Manufacturer, the manufacturer of a product alleged to be the cause of Plaintiff's injuries from an accident in Louisiana. Manufacturer filed a declinatory exception asserting that the court lacks personal jurisdiction over Manufacturer. The exception contained affidavits of Manufacturer's officers and attached verified business records that show Manufacturer is a corporation organized under the laws of India, has offices and manufacturing facilities only in India, has no offices or employees in Louisiana or elsewhere in the United States, and has not sold any of its products in Louisiana. Manufacturer's supporting affidavits and business records show that some of its products that are exported from India are sold to an importer in New Jersey, who is permitted in a written agreement with Manufacturer to sell and distribute the products throughout the United States, Canada, and Mexico. Manufacturer's records also show that the importer has sold the products in 22 U.S. states through several regional distributors, one of which is located in Texas and another of which is located in Arkansas. Manufacturer's product alleged to have caused Plaintiff's injuries came from the Texas distributor who ordered it from the importer who had it shipped to Texas from India through the Port of Houston. Briefly summarize the rules that the court should follow in deciding the declinatory exception, and apply those rules to the fact of the problem.
- 1.5 2 pts When may a deposition be taken by telephone or other remote electronic means?
- 1.6 3 pts During discovery, Plaintiff learned that an important witness resides in another parish, a drive of several hours from the courthouse in which the trial is to be held. Plaintiff wants to present that witness for testimony at trial. Can the witness be compelled to testify at trial? Explain.
- 1.7 1 pt (a) If a civil trial is by a jury of six, how many of the jurors must concur to render a verdict unless the parties stipulate otherwise?
- 1 pt (b) If a civil trial is by a jury of twelve, how many of the jurors must concur to render a verdict unless the parties stipulate otherwise?
- 1.8 2 pts What obligations, if any, does an attorney have as an officer of the court?

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

LOUISIANA BAR EXAMINATION

LOUISIANA CODE OF CIVIL PROCEDURE

JULY 2016

QUESTION 2
(25 POINTS)

Plaintiff was injured when the vehicle which he was operating was rear-ended by an 18-wheeler operated by Driver and owned by Owner. Driver was acting within the course and scope of his employment with Owner at the time of the collision. The collision occurred in Calcasieu Parish. Plaintiff is domiciled in Allen Parish. Driver is domiciled in Tensas Parish. Owner is a Utah corporation, but is qualified to do business in Louisiana through the Secretary of State; its application to do business in Louisiana designates its principal business establishment in Louisiana as being in Lincoln Parish. It has appointed a registered agent and has a Louisiana office, both located in Lincoln Parish.

- 2.1 4 pts What parish or parishes would be a proper venue for Plaintiff's lawsuit against both Driver and Owner? Explain.
- 2.2 4 pts A lawsuit has been filed by Plaintiff naming Driver and Owner as defendants. Driver and Owner believe that Plaintiff has filed suit in the wrong venue. What must be filed to challenge the venue and when must it be filed?
- 2.3 2 pts Plaintiff served discovery (interrogatories and requests for admissions of fact) on Driver and Owner with the citation and petition. Within what period of time must Driver and Owner respond to this discovery?
- 2.4 2 pts After a trial, the jury returned its verdict in favor of Plaintiff and against Driver and Owner on Thursday, December 4. The judge instructed Plaintiff to prepare and furnish to Driver and Owner a proposed judgment based upon the jury's verdict. Plaintiff complied, but Driver and Owner had an objection to the proposed judgment. Thereafter, the judge held a conference in chambers on Monday, December 21, and presented a judgment of his own, to which all parties had objections. The judge then entered the courtroom and, on the record and in the presence of the lawyers for all parties, announced his judgment, signed the judgment he had prepared, and handed it to the deputy clerk of court for filing. The judge acknowledged that all parties had objections to the judgment, and counsel for all parties reiterated and stated those objections on the record. The sheriff served notice of the judgment on Wednesday, January 2. What is last date on which Driver and Owner can move for a new trial or judgment notwithstanding the verdict?
- 2.5 Following the jury's verdict in favor of Plaintiff, Driver and Owner timely filed motions for a new trial and for judgment notwithstanding the verdict.
- 4 pts (a) What are the possible grounds upon which the judge should grant a new trial?
- 4 pts (b) What are the standards that the judge should use in analyzing the jury's verdict in order to determine whether to grant a judgment notwithstanding the verdict?

TEST CONTINUES ON NEXT PAGE

- 2.6 2 pts On January 28, the court denied the motions for a new trial and for judgment notwithstanding the verdict filed by the Driver and Owner. The court's denial of these motions was mailed on January 31. Driver and Owner now want to take a suspensive appeal. How many days, and from what date, do Driver and Owner have to file the suspensive appeal bond?
- 2.7 3 pts Plaintiff filed no post-judgment motions but wants to preserve his rights to have the court of appeal consider his objections to the judgment and modify it. Driver and Owner have perfected their suspensive appeal, and the record has been lodged with the court of appeal. What must Plaintiff file in order to have the court of appeal consider his objections, and where and when must this filing be made?

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

LOUISIANA BAR EXAMINATION

LOUISIANA CODE OF CIVIL PROCEDURE

JULY 2016

QUESTION 3
(25 POINTS)

- 3.1 4 pts A tort suit has been pending in Sabine Parish for six months against Defendant, which is a Louisiana corporation with its registered office located in Vernon Parish. Plaintiff is domiciled in Sabine Parish. The tort forming the basis of the lawsuit occurred in DeSoto Parish, and all fact and expert witnesses reside there except Plaintiff. Five months ago, Defendant filed an answer, but asserted no exceptions. Defendant now believes that the suit should be heard in DeSoto Parish. What steps, if any, can Defendant take to change the venue in which the suit is now pending? Does the fact that Plaintiff is domiciled in Sabine Parish preclude a change in venue? Explain.
- 3.2 2 pts At the conclusion of a bench trial, the trial judge ruled from the bench in favor of the defendant and against Plaintiff, stating only that she found in favor of the defendant and would sign a judgment to that effect upon presentation. Defense counsel conveniently had such a judgment prepared and presented it to the judge, who immediately signed it in open court. The clerk mailed the notice of signing the judgment the next day. Plaintiff believes that the trial court's ruling is incorrect and would like to gain a better understanding of the trial court's reasons for decision beyond her simple statement that she had ruled in favor of the defendant. What, if anything, can Plaintiff do to achieve that goal and what time limitations, if any, exist?
- 3.3 4 pts a) What is the delay for requesting service of citation on all named defendants in a civil action?
b) If the request for service of citation is not timely made, what action, if any, can be taken by the defendant to obtain dismissal of the action?
- 3.4 3 pts Plaintiff filed a lawsuit against multiple defendants. Defendant A filed a res judicata exception, which was granted by the court. On Wednesday, January 16, the court signed a formal judgment dismissing Defendant A from the lawsuit with prejudice. The formal judgment bears no designation of any kind by the court. On Wednesday, January 23, Plaintiff received by mail a notice of judgment that was mailed on Friday, January 18, to which was attached a copy of this formal judgment. Plaintiff wishes to appeal this dismissal immediately rather than awaiting disposition of Plaintiff's claims against the other defendants. Can Plaintiff do so? Explain.

TEST CONTINUES ON NEXT PAGE

- 3.5 5 pts Defendant failed to respond to discovery propounded by Plaintiff. Plaintiff filed a motion to compel discovery, and, after a hearing on the motion, the judge ordered Defendant to respond to the discovery within 15 days. Defendant has still failed to respond to the discovery.
- (a) What action should Plaintiff take?
- (b) What actions may the judge order in response? Describe any correct four actions for full credit.
- 3.6 2 pts Plaintiff sued Defendant for personal injuries arising from a motor vehicle accident. At the beginning of the litigation, Plaintiff's counsel propounded interrogatories asking Defendant to identify all witnesses to the accident, and Defendant timely and accurately answered these interrogatories. Two weeks before trial, Defendant learned of a new, previously unidentified witness who observed the accident. Defendant does not plan to call this witness at trial, since her testimony will be adverse to Defendant's interests.
What responsibility, if any, does Defendant have to divulge the identity of this new witness to Plaintiff's counsel?
- 3.7 2 pts Plaintiff sued Defendant in a redhibition claim. During cross examination during Plaintiff's presentation of his case at the trial, Plaintiff admitted for the first time in the case that he was aware of the alleged defect about which he complains over two years prior to filing the lawsuit. Defendant believes this admission establishes that the lawsuit is prescribed. However, Defendant did not previously urge a prescription exception.
What procedural steps, if any, can Defendant take with respect to this admission?
- 3.8 3 pts A lawsuit for a money judgment has been pending against Defendant for four years. Defendant recently retained new counsel to defend him in the lawsuit following the untimely death of his prior counsel. In reviewing the file, new counsel determined that discovery was propounded to Defendant at the same time the lawsuit was filed and that this discovery has never been answered. The suit record and the files of Defendant's prior counsel reflect no other action or activity in the case.
What course, or courses, of action should Defendant take?

[End of Question 3]

TEST CONTINUES ON NEXT PAGE

LOUISIANA BAR EXAMINATION

LOUISIANA CODE OF CIVIL PROCEDURE

JULY 2016

QUESTION 4
(25 POINTS)

- 4.1 Client from Texas wants to enforce a judgment for money that Client obtained in Texas against a Louisiana resident who is domiciled in Grant Parish, Louisiana. The judgment arises out of a cattle grazing lease of land located in Cameron Parish owned by the Louisiana resident.
- 2 pts (a) What action should Client file in Louisiana and what are the requirements for that action?
- 2 pts (b) In what parish must this action be filed?
- 1 pt (c) What documents, if any, must be included in the action?
- 4.2 Client and his brother are co-owners of a tract of pastureland that is located on a public road. Client no longer wants to own the property in co-ownership with his brother.
- 2 pts (a) What type of civil action is available to Client to accomplish this?
- 5 pts (b) What may the court order in response to Client's demands? Explain.
- 4.3 1 pt Decedent died in Jefferson Davis Parish. At the time of death, Decedent was domiciled in Calcasieu Parish. Decedent also owned immovable property in Rapides Parish at the time of his death. In what parish must a proceeding to open Decedent's succession be brought?
- 4.4 1 pt Decedent died in Jefferson Davis Parish. At the time of death, Decedent was domiciled in Houston, Texas. Decedent owned immovable property in Rapides Parish at the time of his death. In what parish must a proceeding to open Decedent's succession be brought?
- 4.5 6 pts Client advises that his brother has petitioned the proper court to probate the testament of their deceased father. The court has scheduled a probate hearing to take place in two weeks. Client wants to oppose the probate on the grounds that the testament is invalid. What procedural steps must Client take to accomplish what Client desires? Explain.

TEST CONTINUES ON NEXT PAGE

4.6

Client is domiciled in Cameron Parish, and his elderly mother, who is no longer capable of caring for herself, is domiciled in Calcasieu Parish. She maintains a checking account at a bank located in Cameron Parish. After a review of his mother's checking accounts with her, Client has found 10 checks made out to persons unknown to him. Upon Client's questioning, she has told him she does not remember writing those checks and has no idea what they were for.

Client wants to prevent his mother from writing checks in the future and would like to be placed in charge of her care and her affairs.

- 2 pts (a) What proceeding should Client file to accomplish these goals and in what parish should this proceeding be filed?
- 1 pt (b) Client's petition has been served on his mother and, after legal delays for answering have elapsed, there have been no pleadings filed on her behalf. What is the next step Client should take in order to proceed with this action?
- 2 pts (c) The court has set a date for a hearing on Client's proceeding. Who has the burden of proof at such a hearing and what is the standard of proof?

[End of Question 4]

End of Louisiana Code of Civil Procedure Exam

LOUISIANA BAR EXAMINATION

TORTS

JULY 2016

Question 1 **(40 Points)**

The City of Pawnee, Louisiana (City) commissioned Meadows Gallery, a well-respected outdoor art gallery and installer, to install a valuable sculpture, per City's specifications, in the center median of Boulevard, a four lane street in a quiet residential neighborhood. The specifications called for "natural" collision protection around the sculpture that would not interfere with its aesthetic appeal. Meadows Gallery installed the sculpture near a stand of trees several weeks ago and has been contemplating additional protective barriers, but has yet to install them.

Ron was driving in the right-hand lane down Boulevard when suddenly, Sebastian, a 9-year old child, ran into the street chasing a soccer ball. To avoid hitting Sebastian, Ron swerved into the left lane without looking and hit another car driven by Leslie that was speeding past him, far in excess of the posted speed limit.

Leslie lost control of her car and hit the sculpture. Upon impact, a metal piece of the sculpture broke loose and jettisoned through the air, striking Sebastian in the head and causing serious injury and permanent brain damage. Leslie suffered substantial damage to her car, but only minor physical injury. Prior to this incident, the City had neither inspected the installation nor received any complaints regarding the sculpture.

What theory or theories of liability might reasonably be asserted in each of the following actions; what defense(s) can reasonably be raised; what damages are potentially recoverable; and which party is likely to prevail?

- 1.1 Leslie v. Ron. Discuss.
- 1.2 Sebastian v. Ron. Discuss.
- 1.3 Sebastian v. Leslie. Discuss.
- 1.4 Sebastian v. City. Discuss.
- 1.5 City v. Meadows Gallery. Discuss.

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

LOUISIANA BAR EXAMINATION

TORTS

JULY 2016

QUESTION 2

30 PTS

Hayley applied the popular Smooth Evolution (SE) lip balm to her lips and was alarmed when her lips quickly became dry and coarse. In an attempt to relieve the symptoms, she applied more of the SE lip balm, but to her dismay, the symptoms worsened. Her lips began to burn and crack around the edges, and blisters soon appeared, which prompted her to share her story and a close-up image of her irritated lips on Facebook. The post set off a frenzy of responses from other individuals who claimed to have recently had the same experience when using SE lip balm.

In response to the Facebook fury, SE issued a widely-disseminated public statement that stated its products are made with the highest quality ingredients and meet or exceed all industry safety and quality standards, but noted that allergies to personal care products are extremely common and those who experience any irritation from its products – or any product – should not continue to use them. SE did not conduct any additional testing of its lip balm to determine product safety and quality in response to the Facebook claims.

A few days later, Hayley sought medical attention as her symptoms had not improved. She was seen at Parish Hospital, a qualified healthcare provider, where routine bloodwork was completed. Hayley's blood test results revealed a severe allergic reaction to salicylic acid, a common ingredient in lip balm products. However, Hayley's test results were inadvertently switched with those of another patient, which subjected Hayley to additional and painful diagnostic tests in vain. Unfortunately, the delay in treatment that would have otherwise prevented her demise proved fatal for Hayley. She passed away after much physical and emotional suffering, which was particularly intense while the hospital was at a loss for a diagnosis, and all of which was witnessed by her husband Hub.

Later independent testing of the SE lip balm Hayley had used revealed that it had a concentration of salicylic acid that could be lethal to those who are allergic to the substance.

- 14 pts 2.1 Under what theory or theories of liability might Hub reasonably bring an action against SE for Hayley's death? Discuss.
- 6 pts 2.2 What defense(s) might SE reasonably raise and what is its likelihood of success? Discuss.
- 10 pts 2.3 Hub wants to bring an action against Parish Hospital for medical malpractice. What process must he first complete before bringing suit; what is his burden of proof; and what is the maximum amount that can he recover against Parish Hospital for Hayley's damages? Discuss.

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

LOUISIANA BAR EXAMINATION

TORTS

JULY 2016

QUESTION 3 **(20 Points)**

Pam was employed by Dunder Mosquito Control (Dunder) as an office assistant to Michael, the general manager. When Pam interviewed for the job, Michael assured her that her job duties as an office assistant did not include any driving on behalf of Dunder while on company time.

One day, Michael was visiting a customer's particularly mosquito-infested jobsite to demonstrate Dunder's proprietary mosquito control formula when he realized he had left the formula back at the office. Not wanting to inconvenience the customer further, Michael called Pam just as she was clocking out for the day and requested she bring the formula to him at the jobsite.

Michael advised Pam to don a Dunder mosquito-proof suit before coming out to the site, but Pam, who was not accustomed to using the protective gear, neglected to do so. Upon arriving to the customer site, Pam jumped out of her car with the canister of formula in hand, ran it over to Michael and back to her car while attempting to swat away the biting mosquitoes. Inevitably, Pam was bitten many times where her skin was exposed. Within hours, Pam developed a mild fever, skin rash, and muscle and joint pain. After examining her and running some tests, Pam's physician informed her that she had contracted a mosquito borne virus as a result of the bites she received while at the Dunder customer location (Pam had no other exposure to mosquito bites before this event). Pam thereafter suffered severe medical issues preventing her from working for several weeks and incurred significant medical expense for the anti-viral medications necessary to treat her illness.

After several weeks, Pam was released to return to work and she was very excited for her first day back. Unfortunately, as she pulled into Dunder's parking lot, she inadvertently hit Customer's vehicle. The collision caused injuries to Customer and damages to the Customer's vehicle. Customer then sued Pam for personal injuries and damage to her vehicle.

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| 10 pts | 3.1 | Under what theory or theories of liability could Pam recover damages from Dunder? Is she likely to succeed? Discuss. |
| 10 pts | 3.2 | Under what theory or theories of liability might Customer also name Pam's employer, Dunder, as a defendant in Customer's lawsuit? Is Customer likely to succeed in her claim against Dunder? Discuss. |

[End of Question 3]

TEST CONTINUES ON NEXT PAGE

LOUISIANA BAR EXAMINATION

TORTS

JULY 2016

QUESTION 4
(10 Points)

Multiple choice questions, each worth 2 points, tested the following areas of the law:

- 4.1 Elements of, and defenses to, a claim for battery
- 4.2 Elements of a claim for battery
- 4.3 Louisiana's merchant liability statute
- 4.4 Punitive damages for tort claims
- 4.5 Tortious interference with contract

[End of Question 4]

END OF TORTS EXAMINATION