

July 2015 Louisiana Bar Exam

Louisiana Supreme Court Committee on Bar Admissions

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LOUISIANA STATE BAR EXAMINATION

JULY 2015

TABLE OF CONTENTS

BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS	1
CIVIL CODE I.....	7
CIVIL CODE II	12
CIVIL CODE III.....	20
CONSTITUTIONAL LAW.....	27
CRIMINAL LAW, PROCEDURE, AND EVIDENCE	30
FEDERAL JURISDICTION AND PROCEDURE	34
LOUISIANA CODE OF CIVIL PROCEDURE	39
TORTS.....	43

LOUISIANA BAR EXAMINATION
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS
JULY 2015

INSTRUCTION: Answer questions applicable to corporations based on either the law in effect prior to January 1, 2015 or based on the new Louisiana Business Corporation Act that became effective on that date.

QUESTION 1
(25 Points)

Brothers Al and Ben Broussard desire to form a closely-held corporation to which they intend to contribute their personal savings for purposes of investment by the corporation. The proposed articles of incorporation read in their entirety as follows:

ARTICLES OF INCORPORATION
OF
BROUSSARD SAVINGS TRUST

ARTICLE I

The name of this corporation is Broussard Savings Trust and its taxpayer identification number is 55-55555555.

ARTICLE II.

The object and purpose for which this corporation is formed is to invest in real estate, stock, bonds and other forms of investment.

ARTICLE III.

The duration of the corporation shall be perpetual.

ARTICLE IV.

The incorporators of the corporation are Al Broussard and Ben Broussard, who are also its initial directors.

ARTICLE V.

The registered agent of the corporation is Professional Registered Agents, Inc., P. O. Box B17, New Orleans, Louisiana.

ARTICLE VI.

The corporation's initial principal place of business is located at 225 Baronne Street, Suite 2121, New Orleans, Louisiana.

ARTICLE VII.

The corporation accepts the protection against liability of directors and officers that is provided by La. R.S. 12:1-832.

/s/ Al Broussard

AL BROUSSARD

/s/ Ben Broussard

BEN BROUSSARD

Dated: June 30, 2015.

Al and Ben have a letter from Professional Registered Agents, Inc. indicating that it has accepted appointment as the registered agent of the corporation. They propose to file this letter with the Secretary of State along with the articles of incorporation and an initial report that contains the identical information set forth in the articles of incorporation and nothing more.

Please address the following (5 points each).

- 1.1 Do the documents Al and Ben propose to file with the Secretary of State comply with provisions of Louisiana law concerning the formation of corporations? Why or why not?
- 1.2 Is this corporation required to adopt by-laws.? Why or why not? By whom can by-laws for this corporation be adopted, and after adoption, how can they be modified or changed?
- 1.3 Will a director of this corporation be able to vote by proxy? Why or why not? Will a shareholder of this corporation be able to vote by proxy? Why or why not?
- 1.4 Will the shareholders of this corporation have preemptive rights? Why or why not? What are preemptive rights?
- 1.5 Will the directors of this corporation be able to take action by written agreement signed by a majority of the directors? Why or why not? Will the shareholders of this corporation be able to take action by written agreement signed by fewer than all shareholders? Why or why not?

TEST CONTINUES ON FOLLOWING PAGE

QUESTION 2
(30 POINTS)

Part A.

The articles of organization of Trucking LLC provide for the issuance of a total of 100 membership units. Travis owns 50 of these membership units, and Ken and his spouse own the other 50 membership units as community property. Trucking LLC has no operating agreement.

When Ken revealed that he and his spouse were having marital problems and that a divorce was imminent, Travis became concerned that Ken's spouse might acquire Ken's membership interest in Trucking LLC through the divorce. Travis wanted to prevent this by lending money to Ken for the purpose of enabling Ken to acquire his spouse's community property interest in Ken's membership interest in the company. On January 23, 2015, Travis lent Ken \$25,000, indicating that he might lend an additional \$25,000 if necessary for Ken to acquire his spouse's interest. Travis also indicated that he would not charge Ken interest if he repaid the loan by December 31, 2015. At the time of the \$25,000 loan, Ken signed the following agreement:

NEGOTIABLE INSTRUMENT

January 23, 2015

I promise to pay to the order of Travis, immediately upon my spouse's filing for divorce, the principal sum of \$50,000, with interest at the rate of 6% per annum from the date of this note until paid, all subject to our understanding with respect to the purpose of this loan and its repayment.

/s/ Ken
Ken

Ken's spouse refused to relinquish rights in Ken's membership interest at any price and filed for divorce. Ultimately, the divorce court awarded one-half of Ken's membership interest to his spouse. In the meantime, Ken has made no payments under the agreement quoted above, and Travis has assigned his rights under this agreement to Bob, endorsing the back of the agreement in Bob's favor. Bob, who has no knowledge of the arrangement between Ken and Travis beyond what is specified in the written agreement, is now demanding that Ken pay him \$50,000 plus interest.

Please address the following (5 points each).

- 2.1 Does the agreement Ken signed meet the requirements for a negotiable instrument? Discuss. Should Bob be able to recover from Ken the \$50,000 and interest specified in the agreement? Discuss.
- 2.2 Will Ken's spouse automatically become a member of Trucking LLC? Discuss. Will his spouse have any voting rights in the LLC? Discuss

Part B.

After losing his job, Paul asked his mother, Mary, to allow him to move back into her home. Mary welcomed her son home and told him to help himself to whatever he needed. One day shortly afterward, she asked Paul to purchase some groceries and authorized him to sign one of her checks to get cash for the groceries. Mary is the only authorized signatory on her checking account. Paul located his mother's checkbook and signed her name on a check payable to "cash" in the amount of \$150. After cashing this check at Mary's bank, Paul met his girlfriend on the way to the grocery store. He changed his mind about grocery shopping and decided to take his girlfriend out to lunch, spending all of the money on this lunch date.

The next month, Paul went shopping at Dillard's to buy himself new clothes. To pay for these clothes, he wrote another check drawn on Mary's checking account payable to Dillard's for \$750. A few weeks afterward, Paul went shopping at Macy's to buy himself some more clothes. He wrote another check drawn on Mary's checking account payable to Macy's for \$1,000. When

Mary reviewed her last two bank statements the next month, she discovered the checks written on the account to Dillard's and Macy's. She then looked back at her earlier bank statement from three months ago when Paul started living at home and recalled she authorized the check for \$150 for the cash to buy groceries, but not the other two checks. When Mary confronted Paul about these checks, Paul admitted that he used the checks payable to Dillard's and Macy's to buy clothes and he admitted he used the cash from the \$150 check to take his girlfriend out to lunch rather than to buy groceries. Mary immediately notified her bank that she did not authorize any of the checks signed by Paul and asked the bank to credit her account for the amount of all three checks.

Please address the following (5 points each).

- 2.3 Is the bank liable to refund to Mary's account the amount of the \$150 check written by Paul? Discuss fully why or why not.
- 2.4 Is the bank liable to refund to Mary's account the amount of the checks Paul issued to Dillard's and Macy's? Discuss. What defenses, if any, might the bank assert against Mary's claim that it is liable for the amount of these checks? Discuss.

Part C.

To finance his purchase of an automobile in 2011, Charles borrowed \$30,000 from a bank and executed a promissory note in that amount payable to the order of the bank in equal monthly installments over five years. Charles has made intermittent payments on the promissory note since the loan was made but has failed to pay any of the monthly installments that became due in 2015. On May 6, 2015, the bank assigned the note to a finance company for an amount equal to 50% of its outstanding principal balance.

In early June 2015, a clerk in the finance company's office confused Charles's account with another obligor's account and inadvertently stamped Charles's promissory note as "PAID". The finance company only recently discovered this error, and is now pursuing legal action against Charles to collect on the promissory note. Charles believes that he has a defense to payment on the note since the finance company marked it "PAID".

Please address the following (5 points each).

- 2.5 Is the finance company considered a holder in due course of the note? Discuss.
- 2.6 Is Charles relieved of his obligation to repay the note because of the clerk's action in marking it as "PAID"? Discuss

TEST CONTINUES ON FOLLOWING PAGE

QUESTION 3
(25 POINTS)

Several years ago, Abe, Bill and Cal formed a Louisiana limited liability company named ABC, LLC, with a total of 100 membership units, to develop a residential subdivision. At the time the company was formed, Abe contributed a tract of land that he owned to the limited liability company for the location of the subdivision. For this contribution, Abe received 70 membership units in the limited liability company. Bill holds a general contractor's license in Louisiana for residential construction. Bill agreed to build houses in the subdivision at no charge to the LLC, and for the contribution of these services, Bill received 20 membership units in the LLC. Cal, a Louisiana real estate agent, agreed to market and sell houses in the subdivision at no charge to the LLC. In exchange for contributing these services to the LLC, Cal received 10 membership units in ABC, LLC.

The tract of land is the only asset owned by ABC, LLC. Bill and Cal agreed to be responsible for managing the company. Abe has no day-to-day responsibilities for operating the company since he is a physician with a busy medical practice.

For the first few years, business was good, and the company was successful in constructing houses and selling them to homeowners. Recently, however, the demand for houses has diminished significantly, and the company has not built or sold any houses during the last six months. Another developer has approached ABC, LLC about buying the remaining undeveloped land so that it can complete the subdivision.

Please address the following (5 points each).

- 3.1 Did each of the members make a valid contribution to the company for his membership interest in ABC, LLC? Explain fully.
- 3.2. In order to properly authorize the sale of the LLC's remaining land to the other developer, which members (at a minimum) must vote in favor of doing so? Explain fully.
- 3.3 Assume for this subpart only that the prospective developer that wants to purchase ABC, LLC's land is a company owned by Cal and his spouse. Should Cal, as a member of ABC, LLC, vote on the question of whether to authorize the sale of the land to the developer and if so, under what circumstances?
- 3.4 Assume for this subpart only that ABC, LLC has failed to file annual reports with the Secretary of State for the last three consecutive years, despite a notice of this failure from the Secretary of State given to ABC, LLC's registered agent six weeks ago. What action is the Secretary of State empowered to take against ABC, LLC on account of this failure? What will be the effect, if any, of this action on the ability of ABC, LLC to sell the land to the developer? Explain.
- 3.5 Assume for this subpart only that, after selling the land to the developer pursuant to proper authorization, ABC, LLC used the sales proceeds to repay a loan it owed to a bank, leaving it with no remaining assets. However, ABC, LLC owes other debts totaling \$500,000. Because ABC, LLC is no longer doing business and has no assets with which to pay its remaining debts, Abe, Bill and Cal propose to dissolve it by filing an affidavit of dissolution with the Louisiana Secretary of State, thereby avoiding the expense of a formal liquidation proceeding. What will be the effect upon Abe, Bill and Cal of this proposed course of action? Explain fully.

TEST CONTINUES ON FOLLOWING PAGE

QUESTION 4
(20 POINTS)

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

- 4.1 LLC – dissolution
- 4.2 LLC – division of profits
- 4.3 LLC – acts outside ordinary course
- 4.4 Partnership – formation
- 4.5 Partnership – voting
- 4.6 Partnership – member withdrawal
- 4.7 Partnership – member contributions
- 4.8 Corporation – meeting and quorum requirements
- 4.9 Corporation – election of directors
- 4.10 Corporation – quorum

END OF TEST

**LOUISIANA STATE BAR EXAM
CIVIL CODE I
JULY 2015**

**QUESTION 1
(40 points)**

Part A

Harry and Wilma married more than ten years ago and never executed a marriage agreement. They have no children.

Two years after they married, Harry purchased a family home in Lafayette, Louisiana; 60% of the purchase price was paid with money Harry had earned and saved before they married, 30% was paid with money he had earned after they married, and the remaining 10% was paid with proceeds from an unsecured loan from a local bank. Wilma did not sign the act of sale, which did not otherwise indicate that Harry was married.

A month after the wedding, Harry inherited from an uncle a home valued at \$150,000. Although Harry had initially planned to sell the home so that he could buy himself a luxury sports car, Wilma convinced him instead to fix up the house and then rent it out; she promised she would use money from her own post-marriage earnings to pay for the renovations. Wilma paid \$75,000 from her earnings for the renovations; Harry contributed nothing further for the renovations. Wilma then found a person to rent the home; the lessee has been paying \$1,000 per month for rent. Harry set up a separate checking account in his name just for the rent. The only money deposited into this account is the rental income from the lessee; Wilma has never been named on this checking account.

Before they married, Wilma had inherited some undeveloped land in Lafourche Parish. The land has been under mineral lease to an oil company for decades. Wilma receives mineral royalty payments from the oil company each month and deposits those royalty payments into a checking account that she had opened years before she and Harry married. Harry has never been named on this checking account.

Two years ago, Harry hired a contractor for major renovations to the family home; Harry handled all the dealings with the contractor. But Harry did not pay the contractor in full for his work. The contractor sued Harry and Wilma and obtained a judgment against them for the unpaid balance. To raise cash to satisfy this judgment, and without Wilma's prior knowledge, Harry (i) sold at his office a car that he had bought in his own name using money from a large bonus that Wilma had received from her employer three years ago, (ii) sold from the living room of their family home various antique furnishings that he and Wilma had bought for their family home and (iii) sold at a notary's office a small, empty lot that he and Wilma had bought in St. Tammany Parish for a possible vacation cottage they were considering building sometime in the future. But this money was not enough to satisfy the contractor's judgment.

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

1.1 How, as separate property or community property, is the Lafayette family home now classified? Discuss.

1.2 How, as separate property or community property, is the rental property now classified? Discuss.

1.3 What further information, if any, is needed in order to determine whether the mineral royalty income constitutes Wilma's separate property? Discuss.

1.4 Is the contractor entitled to have the Lafourche Parish property seized to satisfy its judgment? Discuss.

1.5 Were the sales of the car, the furnishings and the St. Tammany lot valid? Discuss separately as to each item.

Part B

About five months ago, Wilma's physician diagnosed her as having a particular sexually transmitted disease (STD). When Wilma told him that she had not had sexual relations with anyone other than Harry at any time during their marriage and that both she and Harry had tested negative for the same STD shortly after they were married, the physician indicated that Harry must then have engaged in sexual intercourse with someone else. This distressed Wilma. When she confided all this to a close friend the next day, the friend confessed to Wilma that rumors were circulating that Harry was having a sexual affair with someone from his office.

Wilma then confronted Harry with this information. Harry denied that he was having an affair. But Wilma hired a private investigator, who obtained photos of Harry going into and out of a hotel room with this co-worker a week after Wilma's friend spoke to her. Four months ago, Wilma moved in with her sister in Baton Rouge. Since then, her only communications with Harry have been very unpleasant. She is now considering filing for divorce from Harry.

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

1.6 Why might it be in Wilma's best interests not to rely on Harry's adultery as a basis for her divorce from Harry? Discuss.

1.7 Why might it be in Wilma's best interest to rely on Harry's adultery as a basis for her divorce from Harry? Discuss.

1.8 If Wilma files for divorce from Harry, will Harry be entitled to receive interim or final periodic spousal support from Wilma? Discuss.

[End of Question 1]

[EXAMINATION CONTINUES ON NEXT PAGE]

**LOUISIANA STATE BAR EXAM
CIVIL CODE I
JULY 2015**

**QUESTION 2
(40 points)**

Part A

Two sisters—Amanda and Betty—inherited two pieces of property in Shreveport, Louisiana from their mother, Martha: (i) an empty lot in a residential neighborhood and (ii) a commercial building. After Betty died, her nephew Sam inherited a naked interest in Betty's undivided one-half interest in the two properties, burdened by a lifetime usufruct in favor of her cousin Frank.

Just after Betty died, Frank decided to build a home on the empty lot. Frank never spoke to Amanda about the home until after the home was built; Amanda vehemently objected to Frank's having built the home without her prior approval. Frank paid \$200,000 to have the home built. But Frank's real estate appraiser determined that the addition of the home increased the market value of the lot by only \$150,000. The home is not subject to any homestead exemption.

For the following five questions, assume that only a short period of time has passed since the home was built. Please answer the following five questions (5 points each). Explain each answer; an answer without an explanation will receive no credit.

- 2.1 Does Sam have the right to force Frank to tear down the home? Discuss.
- 2.2 Does Amanda have the right to force Frank to tear down the home? Discuss.
- 2.3 If the house is not torn down, what amount, if any, is Frank entitled to have Sam pay for the home? Discuss.
- 2.4 If the house is not torn down, what amount, if any, is Frank entitled to have Amanda pay for the home? Discuss.
- 2.5 Who is required to pay what portion of the annual property taxes for the home? Discuss.

Part B

Assume that many years have passed since the home was built and that neither Sam nor Amanda sought to have Frank tear down the home. Two months ago, a storm substantially damaged the home rendering it uninhabitable. Amanda and Frank refused to restore/rebuild the home. When Sam offered to restore/rebuild the home, both Amanda and Frank strenuously objected to Sam's doing so. But Sam nonetheless hired a contractor to restore/rebuild the home over their continuing objections.

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

- 2.6 Does Frank have the right to prevent Sam from having the home restored/rebuild? Discuss.
- 2.7 What amount, if any, is Sam entitled to collect at this time from each of Frank and Amanda for restoring/rebuilding the home? Discuss.

Part C

Before Martha (the mother of Amanda and Betty) died, she had validly leased the commercial property for a lease term through 2050. Last month, the lessee offered to pay \$100,000 to terminate the lease. Amanda, Frank and Sam all accepted the offer, but could not agree on who among them was entitled to what portion of the \$100,000.

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

2.8 To what portion of the \$100,000 is each of Amanda, Frank and Sam entitled? Discuss.

[End of Question 2]

[EXAMINATION CONTINUES ON NEXT PAGE]

**LOUISIANA STATE BAR EXAM
CIVIL CODE I
JULY 2015**

**QUESTION 3
(20 points)**

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

- 3.1 usufruct; repairs
- 3.2 usufruct; repairs
- 3.3 classification of property: movable versus immovable
- 3.4 classification of servitudes: predial servitude versus personal servitude of use
- 3.5 building restrictions
- 3.6 acquisitive prescription; servitudes
- 3.7 child custody; burdens of proof
- 3.8 child custody; burdens of proof
- 3.9 spousal support: final versus interim
- 3.10 rights against good faith possessor of land

[End of 7/2015 Code I exam]

**LOUISIANA BAR EXAMINATION
CIVIL CODE II
JULY 2015**

**QUESTION 1
(40 POINTS)**

**PART A
(11 POINTS)**

Dennis died intestate on January 10, 2013; he was 55 years old. He was a domiciliary of the State of Louisiana. At the time of his death he was married to Alice. They never executed a matrimonial agreement.

Of Dennis' marriage to Alice, the following two children were born, Charlotte and Charles, both majors at the time of Dennis' death. Dennis is also survived by his sister, Susan, and his mother Mom. Dennis had another sister, Sylvia, but she predeceased Dennis, leaving the following two minor children: Nancy and Nathan.

At the time of his death, Dennis owned the following property:

- ◆ A home (the "Family Home") he and Alice purchased during their marriage with community funds.
- ◆ Naked ownership of one-sixth of Blackacre, the farm and residence where Dennis was raised and where Mom still lives. Dennis inherited this interest from his father while married to Alice.
- ◆ Naked ownership of one-sixth of Whiteacre, an industrial parcel. Dennis inherited this interest from his father while married to Alice. Whiteacre, a former creosoting plant, is abandoned and heavily polluted.
- ◆ A gold watch (the "Watch") given to him by his father.
- ◆ An original George Rodrigue painting (the "Rodrigue") given to Dennis by Mom as a birthday present.

1.1 Who inherits Blackacre? Discuss. (3 Points)

1.2 What rights, if any, does Charles have in the Family Home? Discuss. (4 Points)

[TEST CONTINUES ON NEXT PAGE]

FOR QUESTION 1.3 ONLY, ASSUME THE FOLLOWING:

On March 2, 2013, Alice married Stan. On October 14, 2013, Alice gave birth to Jennifer.

1.3 Who succeeds to Dennis' interest in the Family Home? Discuss. (4 Points)

**PART B
(10 POINTS)**

For Part B, assume the same facts as Part A, except assume Dennis never fathered any children and Sylvia did not predecease Dennis and is still alive.

Further assume Sylvia and Dennis were not on good terms, inasmuch as she had attempted to poison him. She was convicted of attempted murder and jailed until shortly before Dennis' death, when the Governor of the State of Louisiana pardoned her for her crime. Dennis never forgave her.

1.4 Who succeeds to Dennis' interest in Whiteacre and in what proportions? Discuss. (4 Points)

1.5 Can any of the successors to Dennis' interest in Whiteacre avoid being in the chain of title to the polluted property? If so, what procedural steps, if any, are necessary to accomplish this goal? Discuss. (3 Points)

1.6 If any of the successors to Whiteacre take the steps necessary to avoid being in the chain of title to Whiteacre, are those successors precluded from inheriting Blackacre? Discuss. (3 Points)

**PART C
(8 POINTS)**

For Part C, assume the same facts as Part A, except Dennis' intestacy is not an established fact and turns on the following:

Among Dennis' papers, the family found a document, entirely written in Dennis' hand, signed by him at the end, and reading as follows:

On this, my fiftieth birthday, I make this last will and testament.

1. I leave my interest in our family home to Alice.
2. I leave my gold watch to Charles. He is to take good care of it for his lifetime and then leave it to his son.
3. Because it is our old family homestead, I ask that Mom decide who should inherit my interest in Blackacre.
4. I leave my Rodrigue to Charlotte.
5. I leave the residue of my estate to Charlotte and Charles, subject to Alice's usufruct for life.

Dennis

1.7 Is this document a valid testament? Discuss. (4 Points)

FOR THE REMAINING QUESTIONS, ASSUME THE DOCUMENT IS A VALID TESTAMENT

1.8 If any disposition of the testament is invalid, explain why. (4 Points)

**PART D
(11 POINTS)**

For Part D, assume the same facts as Part C, assume the document written by Dennis is a valid testament, and supplement the facts with the following:

On Christmas Day, 2012, Dennis was visited by Nancy, an aspiring artist. She admired the Rodrigue, and Dennis, telling her that it should be owned by someone who would appreciate it, took the painting off the wall and gave it to her.

1.9 Can Charlotte successfully require Nancy to return the Rodrigue to Dennis' succession, so that ownership of the painting can pass via his testament? Discuss. (4 Points)

FOR QUESTIONS 1.10 AND 1.11 ONLY, ASSUME THE FOLLOWING:

On January 5, 2013, Dennis learned that Nancy had sold the Rodrigue to Acme Art Gallery. When Dennis confronted Nancy that same day regarding the sale of the painting, she grabbed a baseball bat, swung hard at Dennis, and hit him a glancing blow. She told him that if he ever mentioned the Rodrigue again, she would "do more than wing him [she would] beat his brains in."

1.10 If Alice qualified as Dennis' succession representative on January 30, 2013, could she have revoked the donation of the Rodrigue to Nancy? If so, what prescriptive period applies to such action? (4 Points)

1.11 If Alice is successful in revoking the donation of the Rodrigue, what must Nancy return to Dennis' succession? (3 Points)

END OF QUESTION 1

[TEST CONTINUES ON THE NEXT PAGE]

**LOUISIANA BAR EXAMINATION
CIVIL CODE II
JULY 2015**

**QUESTION 2
(40 POINTS)**

**PART A
(23 POINTS)**

Elizabeth died August 10, 2014. She was a domiciliary of the State of Louisiana. She divorced Robert in 2012, and they never reconciled. Robert survived Elizabeth.

Of her marriage to Robert, five children were born: Terri, who was born July 5, 1984; Kevin, who was born June 3, 1986, George, who was born January 18, 1988; Will, who was born June 1, 1990; and Betty, who was born March 3, 1993.

The only grandchildren Elizabeth had were Ann and Albert, born to Betty.

Elizabeth left a putative notarial testament, dated 2010, the dispositive provisions of which read in the following order:

1. I appoint Robert the independent executor of my last will and testament. If Robert cannot so serve, I appoint Terri as the independent executrix of my last will and testament. If Terri cannot so serve, I appoint George as independent executor of my last will and testament.
2. I leave Robert all of my interest in the family home (the "Family Home").
3. I leave George my vintage 1968 Corvette (the "Corvette"); if George does not survive me, I leave such vehicle to the National Corvette Museum of Bowling Green, Kentucky.
4. I leave my 2009 Toyota Avalon (the "Avalon") to Will.
5. I leave my interest in ACME Brick, L.L.C. to George and my good friend Tom.
6. I leave a cash sum equal to 10% of my gross estate to charity. I direct my executor to select the charities and determine how much each should receive.
7. I leave my 2009 Toyota Avalon (the "Avalon") to Kevin.
8. I leave the residue of my estate to my children, in equal shares, provided, however, the legacy to Betty shall be made to First Bank & Trust, but in trust and as trustee for the benefit of Betty. This trust shall be known as the "Betty Trust". Betty shall be both income and principal beneficiary of this trust, and the trustee shall distribute such of the income and the principal of the trust to or for the benefit of Betty as it deems appropriate. This trust shall terminate on Betty's thirtieth birthday. In the event Betty dies during the term of the trust, the trust shall terminate, and its assets shall go to Will, George, Kevin, and Terri, in equal shares.

This document was in writing, dated, signed on each page and at the end, bore the attestation clause appearing in Civil Code Article 1577, was executed in the presence of a notary public, and witnessed by the notary's secretary and by Terri's husband, Harry, who had driven Elizabeth to the notary's office.

2.1 Who inherits the Family Home? Discuss. (4 Points)

FOR THE REMAINING QUESTIONS, ASSUME THE DOCUMENT IS A VALID TESTAMENT.

2.2 Who should petition the court to be appointed Elizabeth's independent executor or executrix? Discuss. (3 Points)

2.3 With respect to the Corvette, is the substitution of the National Corvette Museum for George a permitted substitution under the Louisiana Civil Code? Discuss. (3 Points)

2.4 Who inherits the Avalon? (3 Points)

2.5 As drafted, is the charitable bequest of 10% of the gross estate a valid bequest? Discuss. (3 Points)

FOR QUESTION 2.6 ONLY, ASSUME THE FOLLOWING:

Tom predeceases Elizabeth. He died intestate as a Louisiana domiciliary, leaving as his sole heir his daughter, Brenda.

2.6 Who inherits the ACME Brick, L.L.C. membership interests? Discuss. (3 Points)

FOR QUESTION 2.7 ONLY, ASSUME THE FOLLOWING:

Elizabeth's will is given the effect of probate, and a Judgment of Possession is entered, ordering, *inter alia*, that the trustee of the Betty Trust be placed in possession of one-fifth of the residue of Elizabeth's estate. Betty dies intestate at age 27.

2.7 At Betty's death, who is entitled to the assets standing in the Betty Trust? (4 Points)

[TEST CONTINUES ON NEXT PAGE]

**PART B
(6 POINTS)**

For Part B, assume the facts of Part A and add the following: Elizabeth's father, Daniel, was a Texas domiciliary and died in Texas in 2013. He left a valid, typewritten Texas will in which he left all of his property, "wherever situated, real or personal" to Elizabeth. Inasmuch as Daniel's will was a Texas instrument, it did not contain the attestation clause required under Civil Code Article 1577.

The family was under the impression that Daniel died without assets, having depleted everything to remain in a nursing home. Therefore, no succession proceedings were instituted following his death.

After Elizabeth's death, her succession representative was contacted by a landman who informed her that Daniel still owned mineral rights (the "Mineral Rights") in Caddo Parish, Louisiana and he would like to lease them from Elizabeth's succession.

The landman offered the following scenarios to Elizabeth's succession representative, each designed to permit such succession representative to grant a valid mineral lease of the Mineral Rights:

Scenario No. 1:

Since there are no assets other than the Mineral Rights, simply record Daniel's last will and testament in the conveyance records of Caddo Parish. Since Elizabeth is his only legatee, her succession representative can then grant the mineral lease.

Scenario No. 2:

Because Daniel's will lacks the attestation clause required under Civil Code Article 1577, take the position that the testament is not a valid will in Louisiana, and the only way to proceed is to consider Daniel to have died intestate.

2.8 Is Scenario No. 1 likely to succeed? Why or why not? (3 Points)

2.9 Is Scenario No. 2 likely to succeed? Why or why not? (3 Points)

[TEST CONTINUES ON NEXT PAGE]

PART C
(11 POINTS)

For Part C, assume the facts of Part A, except replace provisions 1- 8 of Elizabeth's testament with the following:

I leave my entire estate to Will, George, Kevin, and Terri, in equal shares. For reasons well known to her, I disinherit Betty. In the event the laws of Louisiana require me to leave some legacy to Betty, I direct that such legacy for her benefit be made to First Bank & Trust, but in trust and as trustee for the benefit of Betty. This trust shall be known as the "Betty Trust". Betty shall be the income beneficiary of this trust and shall be entitled to whatever trust income applicable law requires she receive. The trust shall exist for Betty's lifetime, and at her death, its assets shall go to Will, George, Kevin, and Terri, in equal shares.

- 2.10 Is George entitled to one-fourth of Elizabeth's estate? Discuss. (4 Points)**
- 2.11 Is the Betty Trust, as drafted, entitled to receive a percentage of Elizabeth's estate? Discuss. (4 Points)**
- 2.12 What is the maximum share of Elizabeth's estate to which Kevin is entitled? Discuss. (3 Points)**

END OF QUESTION 2

[TEST CONTINUES ON THE NEXT PAGE]

**LOUISIANA BAR EXAMINATION
CIVIL CODE II
JULY 2015**

**QUESTION 3
(20 POINTS)**

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

- 3.1 Form of trusts**
- 3.2 Collation**
- 3.3 Filiation**
- 3.4 Form of testaments**
- 3.5 Form of testaments**
- 3.6 Devolution of separate property**
- 3.7 Donations: Conditions**
- 3.8 Form of trusts**
- 3.9 Devolution of separate property**
- 3.10 Trusts: Alienation**

[END OF CODE II TEST]

LOUISIANA BAR EXAMINATION

CIVIL CODE III

JULY 2015

QUESTION 1
(30 POINTS)

Marcel owned a property in horse country in rural St. Tammany Parish, Louisiana. The property contained a home and a horse barn. A portion of the property was subject to a recorded servitude executed by Marcel granting a right of way for an underground pipeline. A substantial portion of the property was subject to use limitations imposed by authorities under the Endangered Species Act to protect the habitat of a rare crane.

In a written purchase agreement dated March 9, 2015, Marcel agreed to sell his property to Paul for \$500,000 cash, with a security deposit of \$50,000. Paul had a period of sixty days within which to purchase the property. The purchase agreement was subject to a financing contingency in favor of Paul, under which he had a right to terminate if he was unable to obtain a mortgage loan commitment of at least \$250,000 having an interest rate of less than five percent no later than April 9, 2015. Paul never applied for a loan, since he had funds sufficient to purchase the property at all times, and decided to use his own funds to purchase the property. The written purchase agreement was not recorded.

Paul incurred various costs in connection with the potential purchase, including the cost of obtaining a survey of the property, a title insurance commitment for the property, as well as several items of equipment to be used on the horse farm located on the property and three new Arabian horses.

On April 9, 2015, Marcel received an unsolicited offer to purchase the property from Tim for a price of \$750,000. Tim was a wealthy oilman who wanted to purchase the property and convert it from a horse farm to a retirement community with streets and cottages. Marcel expressed an interest in Tim's offer, and promised to get back to Tim the next day. He immediately called Paul to discuss the status of the mortgage loan application. When Paul told him that he had never applied for one, Marcel told Paul that Paul was in bad faith, and that the purchase agreement was terminated and the deposit was forfeited to Marcel as "earnest money." The next day, Marcel called Tim and told him that there was a prior unrecorded written purchase agreement for the property, but that Marcel "made them go away." Marcel and Tim immediately executed a written purchase agreement for the property, and the property was sold to Tim for a cash price of \$750,000, "with all legal warranties, but no additional warranties or representations". Tim never discussed his plans for the property with Marcel prior to the sale. Marcel never mentioned to Tim that a large portion of the property was subject to limitations under the Endangered Species Act, since the limitations had no effect on the operation of the property in its existing use. The sale, dated April 12, 2015, was duly recorded that day in the conveyance records of St. Tammany Parish. The purchase agreement contained no provisions that would alter the warranty and waiver provisions of the act of sale.

Paul, after tendering written notice that he was prepared at noon on April 14, 2015 to purchase the property at the place indicated for closing in the purchase agreement, filed suit against Marcel on April 15, 2015 seeking specific performance of his written purchase agreement with Marcel. In his petition, he demanded, if his petition for specific performance was not granted, a return of his deposit, together with damages in the amount of all of Paul's costs in connection with the purchase of the property, including the survey, title insurance, equipment and the loss he incurred in the resale of the horses, as well as attorney's fees.

Tim, after moving into the property, soon discovered that the limitations on the property under the Endangered Species Act limited the use of that portion of the property to the pasturing of horses and other livestock without removal of trees and underbrush. Removal of the trees and underbrush would have been needed to construct the retirement cottages. To make matters worse, within a month of the purchase, Tim was forced to remove the horse barn, which was

located in the pipeline right of way. This was especially unfortunate, since Tim had just paid to repaint it and repair some visible potholes on the floor, and add an addition on it to store his motorcycle. The pipeline did not have any above ground markings indicating its location. When he called Marcel about the pipeline issue, Marcel apologized and told him that there was nothing he could do to prevent removal, since the servitude had been properly granted by Marcel and Marcel must have made a mistake in where he built the barn. Finally, the roof of the main house, which had several missing shingles at the time of the sale to Tim and was showing visible signs of age, began to leak for the first time. Tim, unhappy with his purchase, filed suit against Marcel on July 1, 2015 for damages arising out of the defects to the house, the impairment of value of the property due to the limitations under the Endangered Species Act preventing its use in the manner intended by Tim, and the breach of the warranty of peaceable possession and damages, including attorney's fees, in connection with the right of way and removal and loss of the barn.

- 10 pts 1.1 Will Paul be successful in his suit for specific performance against Marcel? If Paul is not successful in his suit for specific performance, does he have a claim for damages against Marcel, what is the general scope of damages available to Paul, and which of his damages should be included in his award against Marcel? Discuss.
- 5 pts 1.2 Does Tim have a basis to potentially seek rescission of his purchase of the property on the basis of error? Discuss.
- 4 pts 1.3 Does Tim have a basis to potentially seek rescission of his purchase of the property on the basis of fraud? Discuss.
- 4 pts 1.4 Does Tim have a claim in redhibition for damages against Marcel due to the condition of the roof? Discuss.
- 7 pts 1.5 Does Tim have a claim in damages for wrongful eviction against Marcel in connection with the removal and loss of the barn? What damages may he recover, and does Marcel have any potential defenses? Discuss.

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

QUESTION 2
(20 POINTS)

Pat owned a shopping center in Jefferson Parish with two separate free-standing buildings. The first building was leased to Large Lots, LLC (“Large Lots”), a limited liability company owned by Mike, the sole member. The lease with Large Lots was for an initial term of ten years, commencing January 1, 2000 at a monthly rent of \$10,000, with an option to the lessee for a renewal term of ten years at a monthly rent of \$12,500 per month. A full copy of the lease, which contained complete legal descriptions of Pat’s property and the Large Lots leased property, was duly recorded in the conveyance records of Jefferson Parish on January 2, 2000. Though Large Lots gave timely and proper notice to Pat of its election to exercise its renewal option, notice of the exercise of the renewal option by Large Lots was not recorded in the conveyance records of Jefferson Parish.

Following the exercise of the Large Lots renewal option, Mike approached Pat in 2010 to obtain an option to purchase the shopping center. Pat and Mike both signed the following written agreement:

I, Pat, hereby grant to Mike an option to purchase the Beech Street Shopping Center, which is more fully described on attached Exhibit A, for the option price of \$1,500,000. Dated October 15, 2010. Signed: Pat and Mike.

Exhibit A to the agreement contained a full and correct legal description of the shopping center property. An original of the agreement including Exhibit A was duly recorded in the conveyance records of Jefferson Parish on October 20, 2010. The fair market value of the property was \$1,500,000 in 2010.

The second building in the shopping center was leased to a national drug store chain, B&K, under a written lease agreement with Pat dated January 1, 2001. The lease was for a forty year term for a fixed rent of \$20,000 per month, and was a commercial lease under which the lessee waived all legal warranties of condition with respect to the leased property, and under which the lessee agreed to make all repairs required to maintain the leased building in good order and repair, including all required repairs to the roof and structural components of the building. The waivers, which were duly explained to each party at the lease closing by their counsel, effectively waived all legal warranties of condition that can be legally waived under Louisiana law. The B&K lease was duly recorded in the conveyance records of Jefferson Parish, and contained a full and complete legal description of B&K leased property and Pat’s shopping center property.

B&K, which in 2012 no longer needed the store due to a corporate merger, entered into a written sublease agreement with Sally’s Draperies, LLC (“Sally’s”). The sublease with Sally’s read in its entirety as follows:

B&K, as sublessor, hereby leases to Sally’s, as sublessee, for a ten year term ending June 30, 2022, and a monthly rent of \$10,000 per month, the leased property described on Schedule 1. Dated July 1, 2012 Signed: B&K and Sally’s.

Schedule 1 contained a full and legally valid description of the property leased to B&K and of the overall shopping center property. The sublease, which was duly signed by B&K and Sally’s, was duly recorded in the conveyance records of Jefferson Parish on July 1, 2012.

Pat sold the shopping center to Jefferson Properties, Inc. (“JPI”) on March 1, 2015 for a purchase price of \$3,500,000 (the fair market value of the shopping center in 2015) pursuant to an act of sale which made no reference to any leases, and which did not contain any agreement by JPI to assume the obligations of Pat under the leases, or to not disturb the possession of any tenants of the purchased property. JPI, which was owned by a competitor of Large Lots, immediately filed eviction proceedings against Large Lots on March 2, 2015, based on the failure of Large Lots to record notice of the exercise of its renewal option, and its failure to fix some small window leaks, which were the responsibility of Large Lots under its lease.

In late March 2015, Mike, upon learning of the sale to JPI in connection with the eviction, notified Pat and JPI in writing of his election to purchase the shopping center for \$1,500,000, and a few days later filed suit for specific performance against Pat and JPI.

In early April, a tornado damaged the roof of the building subleased to Sally's. Sally's notified B&K of the damage. B&K declined to repair the damage, based on the provisions of its lease with Pat that required the lessee to perform all repairs. After obtaining bids from several contractors, Sally's contracted with the lowest cost contractor to make the repairs, which cost \$50,000, a reasonable cost. After paying the contractor following completion of the work, Sally's demanded reimbursement of the cost from B&K, which refused to pay any of the cost. Sally's has not paid the rent for May, June or July of 2015. B&K notified Sally's on June 15, 2015 that its lease with B&K was terminated due to Sally's failure to pay rent, and on July 2 filed an eviction proceeding against Sally's based on the failure of Sally's to pay rent. B&K has also filed suit against Sally's for payment of the rent for May, June and July of 2015.

- 5 pts 2.1 Should JPI be successful in its eviction proceedings against Large Lots? Discuss.
- 8 pts 2.2 Does Mike hold an option to purchase the property that is enforceable against JPI? Is lesion beyond moiety an available defense to the current owner of the property, assuming that the option would otherwise be enforceable? Discuss each of these questions.
- 7 pts 2.3 Was B&K obligated to repair the roof damage to the building subleased to Sally's, and does B&K have a valid basis to terminate Sally's lease for non-payment of rent? Discuss.

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

QUESTION 3
(30 POINTS)

John owned a commercial property (the “Center Property”) in Tangipahoa Parish. John approached his friend Chris to see if Chris would be interested in one day loaning some funds to John in connection with the renovation of the Center Property. Chris readily agreed. In January of 2007, John signed and delivered to Chris a mortgage that included the following granting clause:

“In order to secure my present and future indebtedness to Chris, up to a maximum secured limit of \$50,000,000, including all principal, interest, fees, costs and other amounts that I may owe to Chris, I hereby grant a mortgage on all of my present and future interest in the immovable property in Tangipahoa Parish, Louisiana described below”.

The mortgage agreement contained a full and correct property description of the Center Property. The mortgage, which was dated January 10, 2007 and recorded on January 12, 2007 in the mortgage records of Tangipahoa Parish was not witnessed and was not notarized. A predial servitude runs in favor of the Center Property, but was not referenced in the mortgage.

In August of 2007, one of John’s creditors, Big Bank, obtained a money judgment against him and recorded it in the mortgage records of Tangipahoa Parish. At the time that the judgment was recorded, John owed no money to Chris.

On May 11, 2008, John finally obtained two loans from Chris; the first, a term loan evidenced by John’s promissory note (Note A) dated May 11, 2008 in the amount of \$50,000 payable in monthly installments of interest only on the eleventh day of each month over a term of ten years maturing on May 11, 2018, with a final balloon payment of all outstanding principal and accrued but unpaid interest due on May 11, 2018, and the second, a demand loan evidenced by John’s promissory note (Note B) dated May 11, 2008 in the amount of \$40,000 payable immediately upon demand. Note B was separately secured by a properly created security interest in a golden ring owned by John, who physically delivered the ring to Chris under a written security agreement securing Note B only. Chris continues to hold the ring as security for this Note. No payments have been made on either Note A or Note B.

In January of 2015, John executed and delivered to Chris a pledge of leases and rents of the Center Property, in which John pledged all present and future leases of the Center Property to Chris, up to a secured limit of \$10,000,000, to secure all present and future indebtedness of John to Chris. This pledge agreement, which was signed by John but not by Chris, was recorded in the mortgage records of Tangipahoa Parish on January 15, 2015, and all tenants of the Center Property were given written notice of the pledge in late January 2015. The notice did not provide any instructions with respect to the payment of rent. The pledge granted Chris the right to receive rents from all tenants both before and after any default on the secured obligations.

John has two tenants in the Center Property: Tenant A and Tenant B. Tenant A's lease contains a provision that prohibits any pledge or assignment by John of the lease or the rents payable under it. Tenant B, due to a decline in long term business prospects, negotiated a rent reduction with John in February of 2015 for the remaining term of its lease. The rent reduction was negotiated following Tenant B’s receipt of notice of the pledge to Chris. Chris was not consulted regarding the rent reduction and did not grant his consent to the reduction.

John owned a company, Scots Imports, Inc. (“Scots”). In February of 2015, Scots borrowed \$20,000 from Chris. The loan was evidenced by a demand promissory note in the amount of \$20,000 (the “Scots Note”) duly executed on behalf of Scots by John as its sole member and manager. John also signed and delivered a written personal guaranty in favor of Chris with respect to the Scots Note. No mention of the mortgage by John was made in connection with the guaranty by John. The Scots Note was additionally secured by a personal guaranty signed by John’s friend, Keith. In April of 2015, Chris released Keith from his

personal guaranty without notifying John or asking for John's consent to the release. No payments have been made on the Scots Note, which remains fully due and payable.

- 4 pts 3.1 Has any portion of the Note A or Note B prescribed, and if so, what portion? Discuss.
- 8 pts 3.2 Is the mortgage by John valid as between John and Chris, and is it currently effective against third persons? Does the property subject to the mortgage include the predial servitude? Is John's guaranty of the debt of Scots secured by the mortgage? Discuss each of these questions.
- 6 pts 3.3 Does Big Bank have a claim to the Center Property that outranks the mortgage of Chris with respect to obligations that are secured by Chris's mortgage and that arose following the date that Big Bank's judgment was recorded? Discuss.
- 7pts 3.4 Has the pledge of leases and rents in favor of Chris been made effective against third persons? Is the prohibition of pledge contained in the Tenant A lease enforceable against Chris with respect to the rent payments under that lease? Is the rent reduction granted to Tenant B enforceable with respect to Chris? Discuss each of these questions.
- 5 pts 3.5 Have the actions of Chris created any potential defenses in favor of John with respect to John's guaranty of the Scots Note loan? Discuss.

[End of Question 3]

TEST CONTINUES ON NEXT PAGE

QUESTION 4
(20 POINTS)

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

- 4.1 Liberative prescription and tolling agreements
- 4.2 Risk of loss in sale of movables
- 4.3 Management of the affairs of another
- 4.4 Privileges
- 4.5 Obligations, offer and acceptance
- 4.6 Loan for use, obligations of the borrower in connection with repair, return and loss
- 4.7 Loan for consumption, obligation of return and amounts due
- 4.8 Permissible term of lease
- 4.9 Rights of surety that is not notified of defense
- 4.10 Sales of a certain and limited body of land

END OF CIVIL CODE III EXAM

LOUISIANA BAR EXAMINATION
CONSTITUTIONAL LAW
JULY 2015

QUESTION 1
(40 points)

Recent crime statistics have revealed a growing number of violent crimes in Orleans Parish. As a result, the New Orleans City Council convened a committee to provide proposals to reverse this trend. One of the proposals received great support from the City Council, and as a result the following Act was passed by the Council:

ACT 101

Having formed a special committee to address the growing number of violent crimes in Orleans Parish, and having determined that a significant reason for this trend is a lack of recreational options for the citizens of Orleans Parish,

This ACT is hereby enacted creating a free indoor water park for Orleans Parish residents only. Orleans Parish residents are free to enjoy the water park during its operating hours. Anyone in the water park who is not an Orleans Parish resident will incur a \$150 fine that must be paid within two business days.

Dylan was visiting his cousin, who is an Orleans Parish resident, over the 4th of July holiday. His cousin took him to the water park. Dylan was approached by the park security and when his proof of residency revealed that he was not a resident of Orleans Parish, he was ticketed and ordered to pay a \$150 fine within two days.

What constitutional arguments, if any, can Dylan raise under the 14th Amendment and is he likely to succeed? PLEASE DO NOT DISCUSS THE ISSUES OF VAGUENESS, AMBIGUITY, OVERBREADTH, OR COMMERCE CLAUSE OR DORMANT COMMERCE CLAUSE.

[TEST CONTINUES ON NEXT PAGE]

QUESTION 2
(40 points)

The Louisiana State Legislature has decided to sell unoccupied and under-utilized State properties to local community organizations. Thus, the Legislature enacted legislation authorizing State funded grants to entities for purposes of acquiring and renovating State property for use in a manner that would serve the community. The Legislation is known as Legislation A, (the “Legislation”).

Church A, (the “Church”), has applied for a grant pursuant to the Legislation. The Church’s application states that it intends to acquire vacant State land and turn the land into a community center, (“the “Center”). The Center will be open to the public, and will offer non-sectarian programs targeted to serve the low income and elderly families in the area. The programs will include child and adult care, job training classes, and youth basketball and volleyball leagues.

In addition, the Church’s application states that a portion of the grant proceeds will be used to construct a small chapel in the Center. The Church’s application further states that large signs will be posted at each entrance to the Center, on the door to the chapel, and on the Center’s bulletin board, that say the following:

Christian devotional services are held at the Chapel daily at 6:00 A.M. and 7:00 P.M. ATTENDANCE IS VOLUNTARY. You are welcome to use the Center regardless of whether or not you attend.

Kierstin lives in the neighborhood where the Church intends to acquire the land in question and build the Center. Kierstin is against the building of the Center because she believes that it will attract in her words, “a bad element,” to her neighborhood.

What First Amendment challenges, if any, might Kierstin assert in connection with the Church’s application, and is she likely to succeed? PLEASE DO NOT DISCUSS THE ISSUES OF VAGUENESS, AMBIGUITY, OVERBREATH, AND PROCEDURAL OR SUBSTANTIVE DUE PROCESS.

[TEST CONTINUES ON NEXT PAGE]

QUESTION 3
(20 points)

The blight problem in Louisiana cities is of great concern to the Louisiana Legislature. Studies show that areas rampant with blight are breeding grounds for violent crime and drug use. In an effort to force property owners to eliminate the blight to their property, the Legislature enacted Proposition B, (“Prop B”). Prop B establishes that once a particular property has been designated as blighted by the State’s Health Department, notice is given to the property owner and a hearing is scheduled to determine whether the blight designation is warranted. If a hearing results in an affirmance of the blight designation, the property owner is given 30 days to rectify the blight. The property owner can be granted continuous 30 day extensions, not to exceed 180 days, as long as he or she can show that actions are being taken to rectify the blight. If, after the initial 30 days have run, or after all 30 day extensions have expired, the blight has not been rectified, the State may purchase the property for \$1.00.

Bill is the owner of a particular piece of property. Bill received notice of the State’s designation of his property as blighted and of the hearing date to challenge the designation. At the hearing, the designation was upheld. Bill then took no action to rectify the blight on his property, and after the initial 30 days expired, the State demanded that Bill sell it the property for \$1.00.

What constitutional issues, if any, can Bill raise under the 5th Amendment to challenge the State’s demand against him under Proposition B, and what is the likelihood of his success? PLEASE DO NOT DISCUSS THE ISSUES OF VAGUENESS, AMBIGUITY, OVERBREATH, AND PROCEDURAL OR SUBSTANTIVE DUE PROCESS.

[END OF TEST]

LOUISIANA BAR EXAMINATION
CRIMINAL LAW, PROCEDURE AND EVIDENCE
JULY 2015

QUESTION 1
(40 POINTS)

One afternoon, Nelson, who had recently moved to Lake Charles, received a telephone call from Devin. Nelson and Devin had grown up together in Franklin and had dealt marijuana there. Devin asked Nelson to help him locate some marijuana in Lake Charles that he could sell back in Franklin. In response to Devin's request, Nelson texted Adrien who replied that he had at least 2 or 3 lbs. of marijuana available for sale. After receiving Adrien's text, Nelson called Devin back and let him know he had lined up a deal for that afternoon. Devin and his friend Larry, who had agreed to introduce Devin to some potential customers in return for a few joints, drove to Lake Charles in Larry's truck, and picked up Nelson at his house. The three then went over to Adrien's apartment to purchase the marijuana.

Larry stayed in the truck while Nelson and Devin went up to purchase the marijuana from Adrien. Adrien let Nelson and Devin into the apartment and told them they could sit on the sofa in the living room. Adrien said he would be right back after he got the marijuana from his bedroom. While they waited, Nelson pulled a baggie of marijuana out of his pocket and began to roll a joint which he smoked. Adrien went into his bedroom and started to separate the pounds of marijuana he had in his closet when he figured out a way to keep his marijuana and make some cash. A few minutes later, Adrien emerged from the bedroom wielding a pistol, pointed it at Devin, and yelled for Devin to give up the money. Devin stood up ready to leave when Adrien shoved him, knocking Devin to the ground. Adrien again yelled at Devin to give up the money. When Devin refused, Adrien bent over and slapped Devin across the face with the pistol. Devin, in a stupor, tried to stand up. Adrien then shot Devin in the side. Devin slumped over and holding his side removed the money from his shoe and handed it to Adrien. Adrien took the money and fled. Nelson pocketed his joint and fled the scene on foot, running back to his house. Devin then climbed out the bedroom window and stumbled back to the truck where Larry was waiting. Larry proceeded to take Devin to the emergency room at Lake Charles Memorial Hospital.

Identify all crimes committed by Nelson, Devin, Larry and Adrien and discuss the elements of each offense.

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

QUESTION 2
(40 POINTS)

Assume all facts in Question 1, in addition to the following:

After Devin and Larry arrived at the hospital, the hospital staff quickly called the police and reported a shooting victim. When police officers arrived, Devin told the officers that he and Larry had driven to Lake Charles to hang out with Nelson. Then, the three of them decided to visit Nelson's friend, Adrien, at Adrien's apartment. Devin then explained the robbery to police officers, but claimed that it was not drug related. Larry told the police the same story.

Officers immediately went to Adrien's apartment and forced their way inside. The officers did not wait to obtain a warrant because they believed that Nelson could have also been shot and could still be inside the apartment. The officers did not find Nelson at the apartment but did find marijuana in Adrien's room. The officers also found a mop/bucket along with a bloody towel in the kitchen pantry. An arrest warrant was issued for Adrien following the search of his apartment. The police spent several weeks looking for Adrien before he was finally taken into custody and booked into the local jail.

After searching the apartment, the officers returned to the hospital to question Devin and Larry. When the officers arrived, the doctor had just finished up with Devin's bandaging and was releasing Devin to go home. The officers told Devin and Larry that they had a few more questions for them and requested that Devin and Larry come to the police station to provide formal video statements. Devin and Larry were then transported via separate police units back to the station.

Upon arrival at the police station, the officers placed Larry into a holding cell and told him they would return once they finished with Devin's statement. The officers then escorted Devin down the hallway into an interrogation room. After being properly advised as to his rights under *Miranda*, Devin waived his rights and agreed to speak to the officers. The officers then questioned Devin for 3 hours during which time Larry remained in the holding cell. While waiting for the officers to finish their questioning of Devin, Larry requested permission to use the restroom from one of the officers at the station, who told Larry that he did not have authority to let him out of the holding cell and that he would have to wait for the other officers to return from interviewing Devin. During his statement, Devin refused to admit to any wrongdoing and stuck to the same story he had previously given to the officers at the hospital.

Following Devin's interview, the officers returned to the holding cell to get Larry. After allowing him to finally use the restroom, the officers escorted Larry to the interrogation room. The officers advised Larry of his rights per *Miranda* and he agreed to waive his rights and speak with the officers. The officers then told Larry that Devin had told them everything and that they now knew the truth. In response, Larry quickly confessed and told the officers he and Devin had indeed gone to Adrien's apartment to buy marijuana. Larry also told the officers of Nelson's involvement in arranging the deal and of Nelson being present at the time of the shooting. Devin and Larry were both arrested following Larry's interview.

Once the officers finished booking Devin and Larry into the jail, they obtained an arrest warrant for Nelson from the local Judge. Nelson was subsequently arrested without incident at his house. He was taken to the jail and booked on several charges. While booking Nelson into the jail, officers recovered Nelson's cell phone, searched the phone, and located text messages between Nelson and Adrien discussing the drug deal. The prosecutors intend to use Larry's confession, as well as the text messages obtained from Nelson's cell phone, against Larry, Devin, Nelson and Adrien at their respective trials.

Please address the following questions (10 points each).

- 2.1 Assuming the statements could be viewed as inculpatory, what state and/or federal constitutional bases, if any, for challenging the admissibility of Devin's initial statements to the officers while at the hospital might be asserted by the defendants? Discuss.
- 2.2 What state and/or federal constitutional bases, if any, for challenging the admissibility of the seizure of the marijuana and bloody towel might be asserted by the defendants? Discuss.
- 2.3 What state and/or federal constitutional bases, if any, for challenging the admissibility of Larry's statement to the officers at the police station might be asserted by the defendants? Discuss.
- 2.4 What state and/or federal constitutional bases, if any, for challenging the admissibility of the text messages seized from Nelson's cell phone might be asserted by the defendants? Discuss.

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

QUESTION 3
(20 POINTS)

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

- 3.1 Instituting prosecution**
- 3.2 Right to counsel**
- 3.3 Testimonial privilege**
- 3.4 Change of venue**
- 3.5 Severance**
- 3.6 Search and seizure**
- 3.7 Exclusion of witnesses**
- 3.8 Sufficiency of evidence**
- 3.9 Credibility of witnesses**
- 3.10 Appeal**

[End of Criminal Law, Procedure and Evidence test]

LOUISIANA BAR EXAMINATION

FEDERAL JURISDICTION AND PROCEDURE

JULY 2015

QUESTION 1
(30 Points)

Dale and Roy, both citizens of Texas, owned several restaurants in Texas, which offered dishes containing only organic, non-genetically modified ingredients. They decided to open a restaurant in Baton Rouge, Louisiana and properly formed a Louisiana Limited Liability Company, Healthy Foods, LLC, to own the restaurant. Dale and Roy managed the business affairs of the LLC from their office in Austin, Texas.

Healthy Foods entered into a contract with Opelousas Wholesale of Louisiana, Inc. (OWL), to supply organic fruits and vegetables to the restaurant in Baton Rouge. OWL is a corporation organized in Delaware and owned by three shareholders who all live in Texas. OWL has warehouses in Arkansas and Louisiana and has a dispatcher in its Arkansas warehouse, which directs all shipments from all warehouses. More than two-thirds of its sales are made in Louisiana and the majority of its employees work in the Louisiana warehouses. The business office and management staff are located in the Arkansas facility, which is where the contract was signed.

Summer, who grew up and spent all her life around Austin, Texas, recently moved to Arkansas to become the marketing manager for OWL. She has only been in Arkansas for six weeks but plans to stay as long as the job remains interesting.

Extreme weather conditions have caused OWL to begin losing money on its deliveries to Healthy Foods under the prices agreed to in its contract with Healthy Foods. The deliveries started to be late or not be made at all. Healthy Foods eventually had to turn to another supplier and calculated that it suffered \$100,000 in damages to offset its additional costs of obtaining food products and loss of business at the Baton Rouge restaurant. Healthy Foods filed a breach of contract claim against OWL in Louisiana federal court. A Baton Rouge television reporter asked Summer to comment on the suit from her Arkansas office. Summer said that the public should be more interested in whether Healthy Foods was serving organic foods in its restaurant or some cheap and unhealthy substitutes. Healthy Foods immediately filed an amended complaint asserting a \$50,000 defamation claim against Summer.

15 pts. **1.1** Does the federal court have subject matter jurisdiction over Healthy Foods' claims against OWL and Summer? Explain fully.

Assume for each of the following three subparts that the case remains pending in Louisiana federal court.

5 pts. **1.2** More than a year after the suit was filed, and after an answer had been filed and much discovery had been conducted, Roy, one of the members of Healthy Foods, LLC, moved to Delaware. OWL then filed a motion to dismiss for lack of subject matter jurisdiction arguing that Roy and OWL are now non-diverse. Should the court grant OWL's motion to dismiss? Explain.

- 5 pts.** **1.3** As Healthy Foods prepared for trial, its accountant determined he had made a mistake in his damage calculation so that the total breach of contract loss was \$64,000. Healthy Foods communicated this to OWL and offered to settle for that amount, but OWL declined, thinking that it had good defenses to all claims and would prevail at trial. OWL pointed out that the amount was now less than the required amount in controversy and the parties agreed that, because it was so close to the trial date, neither would raise any objection on this issue. What effect, if any, do these developments have on the authority of the federal court to resolve the case? Discuss.
- 5 pts.** **1.4** The parties disagree over whether the contract should be interpreted under the laws of Louisiana or Arkansas. The Arkansas conflict of law provision says that the contract should be interpreted under the laws of the state where the performance is delivered, which in this case is Louisiana. The Louisiana conflict of law provision says that a contract should be interpreted under the laws of the state where it is executed, which in this case was Arkansas. Does the Louisiana, or the Arkansas conflict of laws provision govern the dispute? Discuss.

QUESTION 2
(25 points)

Tex, a citizen of Texas, was fulfilling his lifelong dream to visit the French Quarter. Unfortunately, while there he slipped and fell in the bathroom of a restaurant owned by Louis, a Louisiana citizen. Tex filed suit against Louis in Louisiana state court in New Orleans on March 6, 2014. His petition alleges “plaintiff was a customer in defendant’s restaurant when he visited the restroom and unexpectedly stepped in a pool of water, which caused plaintiff to slip and fall. The source of the water was a nearby leaking pipe. The rust and mildew indicated that the pipe had been leaking for some time so the defendant knew, or should have known, of the dangerous condition of his premises, making him negligent and liable for damages.” Louis was served with the petition and filed an answer. Louis served Tex with an interrogatory that asked for the amount of damages that he claimed. Tex responded that his damages did not exceed \$50,000. Later, on March 15, 2015 (more than a year from the date of the original petition), Tex served Louis with an amended petition. The amended petition added a claim under the Public Accommodations provisions of the Federal Americans with Disabilities Act, alleging that the bathroom did not have proper safety railings. On March 30, 2015, Louis took action to remove the case to federal court based on the assertion in the new claim.

- 5 pts.** **2.1** Describe in detail the procedure and requirements counsel for Louis must follow to properly remove the case to federal court. To which federal court may the case be removed?
- 5 pts.** **2.2** Tex’s attorney believes there are procedural defects in the removal. What must Tex’s attorney file to seek the return of the case to state court? What time limits, if any, does Tex face?
- 5 pts.** **2.3** Tex’s attorney makes a timely submission of the proper filing to raise objections to the removal. She objected to the removal because she alleges that 1) it was untimely, and 2) Louis is a citizen of the forum state. Are each of these objections valid? Explain.
- 5 pts.** **2.4** Assume for this question that the case proceeds in federal court. Louis next filed a motion to dismiss the slip and fall claim under Federal Rule 12(b)(6) for failure to state a claim on which relief could be granted. His attorney argues in his memorandum that Louis employed a handy man who monitored the entire restaurant premises for leaks and spills and his inspection records did not indicate any leaks in the bathroom on the day of the alleged incident. What legal standards should the court apply when assessing the motion to dismiss? Should the court grant or deny the motion? Discuss.

- 5 pts.** **2.5** Assume for the purposes of this question that the court denied the motion to dismiss. Louis later filed a motion for summary judgment that was supported by an affidavit from a waiter at the restaurant who testified in the affidavit that he was in the bathroom with Tex that evening and did not see him fall. Louis also submitted an affidavit from Tex's parole officer who testified that Tex was convicted three years earlier for perjury after he offered a false alibi at a friend's burglary trial. Tex opposed the motion and offered his own affidavit in which he testified that he did slip and fall in the water just as alleged in his complaint. Tex also stated in his affidavit that the waiter must have left the room before Tex fell.

How the court should rule on the motion? Discuss.

QUESTION 3
(25 points)

Dude, a citizen of California, was interested in opening a chain of bowling pro shops in Louisiana. Dude found two investors, Donnie from Delaware and Walter from Florida. The three met in Florida for three days at a bowling tournament in Miami to finalize the terms of their agreement, which called for Donnie and Walter to make monthly capital contributions over the course of the next three years. Dude was to use the money to open and stock the Louisiana stores. The contract contemplated six stores opening across south Louisiana during the first three years with more to be funded by profits if the business was successful. Walter is a lifelong resident of Florida but has owned a condominium in New Orleans for more than ten years and occupies the condo for six to eight weeks each year. Donnie was born in Louisiana but moved to Delaware twenty years ago. He does not have any business connections in Louisiana other than the bowling stores but does come to Louisiana every year for a bowling tournament in the Superdome. Both Donnie and Walter have extensive business investments in California and visit that state often to tend those businesses. They play no role in the management of the Louisiana shops other than investment of their capital.

The stores were not doing well after two years into the contract. Donnie and Walter accused Dude of breaching the agreement by not producing timely financial reports and they stopped making their monthly capital contributions. Dude would like to sue Donnie and Walter for \$100,000 each representing the remaining payment due under the agreement.

- 5 pts.** **3.1** Dude would like to file the suit against Walter and Donnie in his home state of California. Is California a proper venue for the civil action? Discuss. Would Louisiana or Florida be proper venues? Discuss.

- 8 pts.** **3.2** Dude decides to file the complaint against Walter and Donnie in Louisiana federal court.

May the Louisiana federal court exercise: a) general personal jurisdiction, or b) specific personal jurisdiction, over Walter? Discuss.

May the Louisiana federal court exercise: a) general personal jurisdiction, or b) specific personal jurisdiction, over Donnie? Discuss.

5 pts. **3.3** Assume that any venue and jurisdictional obstacles are overcome and the case proceeds in federal court in Louisiana. Donnie, six months before he stopped making payments under the agreement, secretly entered into a contract with a competing bowling retailer to make a substantial investment in it should the stores built by Dude go out of business. Donnie also has letters written by Dude in which Dude states that bookkeeping problems might result in his required financial statements being late.

Should Donnie produce a) the contract, or b) the letters, in his initial disclosures? Discuss.

Should Donnie produce a) the contract, or b) the letters, if he were responding to a request for production of documents that asked for copies of all correspondence related to the business venture and any agreements between Donnie and competing businesses? Discuss.

7 pts. **3.4** The case proceeds to a trial before a jury. At the close of evidence, Dude is convinced that neither Donnie nor Walter proved their defense that Dude breached the contract. What motion should Dude make to seek judgment in his favor before the case is submitted to the jury? What standard should the court apply in deciding that motion? Discuss.

TEST CONTINUES ON NEXT PAGE

QUESTION 4
(20 points)

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

- 4.1 Timeliness of appeal
- 4.2 Joinder of claims
- 4.3 Rule 11
- 4.4 Third party complaint
- 4.5 Amended complaint
- 4.6 Judgment as a matter of law
- 4.7 Amount in controversy
- 4.8 Waiver of defenses
- 4.9 Discovery
- 4.10 Removal

END OF TEST

LOUISIANA BAR EXAMINATION
LOUISIANA CODE OF CIVIL PROCEDURE
JULY 2015

QUESTION 1
(25 POINTS)

- 8 pts 1.1 When a lawyer signs a pleading filed for a client, what does the lawyer certify personally, if anything?
- 8 pts 1.2 What are the pleadings to which this lawyer's certification applies?
- 5 pts 1.3 What sanctions may a judge impose, and against whom, for violations of this certification?
- 4pts 1.4 Plaintiff has just prevailed in a suit for monetary damages. Although the judgment, which was prepared by Defendant, was reviewed by Plaintiff prior to its submission to the court, upon receiving a copy of the judgment signed by the judge, Plaintiff suddenly realizes that it contains a mathematical error which inadvertently reduces the value of the judgment by several thousand dollars. What, if anything, should Plaintiff do about this situation, and when can it be done? Explain.

QUESTION 2
(25 POINTS)

Answer the following subparts related to a pending tort suit.

- 7pts 2.1 Company has approached an attorney to take over the defense of a tort suit that has been pending for six months. Company, the sole defendant, is a Louisiana corporation with its registered office located in Allen Parish. Plaintiff is a resident of Sabine Parish. The tort forming the basis of the lawsuit occurred in Calcasieu Parish, and all fact and expert witnesses reside there except Plaintiff. The suit was filed in Sabine Parish, and Company's answer was filed five months ago, asserting no exceptions. Upon reviewing the file, the attorney determines that suit is pending in the wrong venue.
- 3pts A. What steps, if any, can Company take to contest the venue in which the suit is now pending? Explain.
- 4pts B. What steps, if any, can Company take to change the venue in which the suit is now pending? Explain.
- 3pts 2.2 Plaintiff did not request trial by jury in the original petition. Company requested a trial by jury, but filed a motion nine months later to withdraw its request, which was granted. One week later Plaintiff requested trial by jury. How should the court rule on Plaintiff's request? Explain.
- 4pts 2.3 Plaintiff believes Company has relevant and admissible information on several matters that are necessary to support Plaintiff's claims. However, Plaintiff doesn't know which of Company's officials would be most likely to have knowledge of these subjects. A.) What action should Plaintiff take to obtain the deposition of these officials without knowing their identities? B.) What must Company do to comply with this action?
- 3pts 2.4 During discovery, Plaintiff learned that an important witness lives in another parish, over 100 miles 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.

- 2pts 2.5 Plaintiff is deposing a fact witness to the tort. During the deposition, Company's attorney makes and continues to make lengthy objections that appear to be giving guidance and instruction to the witness as to how to answer the questions. Are such objections appropriate under the Code of Civil Procedure? Explain.
- 2pts 2.6 Following the initial round of selection of a twelve-person jury, eight potential jurors remain in the jury box without having been challenged by either party. Four more potential jurors have been called and have been examined by the judge and the attorneys. It's the Company's turn to challenge for cause or to exercise a peremptory challenge. The Company likes the four new potential jurors but would like to exercise a peremptory challenge to one of the first eight jurors. May Company do so? Explain.
- 4pts 2.7 The entire jury has been sworn and accepted. However, before the Plaintiff begins the presentation of evidence, a juror suddenly remembers he lacks a qualification required by law and so advises the judge. A.) What, if anything, can be done to challenge this juror or to have the juror excused? B.) If excused, how should his replacement be selected?

QUESTION 3
(25 POINTS)

Answer the following subparts based upon the facts set forth in each.

- 6pts 3.1 Two default judgments were obtained against Client and ABC Corp., a corporation whose sole shareholder is Client. The lawsuit in which the judgments were issued relates to a contract that ABC Corp. entered and was performing. Client had no personal connection or responsibility for the claims asserted in the lawsuit (apart from his ownership interest in ABC Corp.).
- Service upon both the Client and ABC Corp. (for which Client serves as the registered agent for service of process) were made by domiciliary service on Client's wife on March 5, 2014. On July 20, 2014, the plaintiff moved for and obtained a preliminary default against Client and ABC Corp. Thereafter, on October 15, 2014, a default judgment was rendered against both defendants in open court. Client was personally served with those judgments on October 25, 2014.
- 3pts A. Do Client and ABC Corp. have a legal basis for challenging the default judgment that was rendered against them?
- 3pts B. If one or both of the defendants can challenge the default judgment, please state the specific procedural method (or methods) for contesting it.
- 3pts 3.2 Dan asks you to defend him in an ongoing lawsuit following the retirement of his prior counsel. Dan explains to you that the lawsuit was brought against him four years ago. In reviewing the file, you determine that discovery was propounded to Dan at the same time the lawsuit was filed, and this discovery has never been answered. The suit record and the files of Dan's prior counsel reflect no other action or activity in the case. What course of action should you recommend to Dan?
- 5pts 3.3 Defendant decided to make an offer of judgment to Plaintiff. A.) What is the deadline to serve an offer of judgment and what does the Code of Civil Procedure require to be included in the offer of judgment? B.) What is the deadline for Plaintiff to serve written notice that the offer is accepted? C.) If Plaintiff serves notice of acceptance of the offer, what can Plaintiff do to enforce the accepted offer? Explain.

- 3pts 3.4 During jury selection, a potential juror advised that she is the spouse of the investigator employed by the Plaintiff's counsel. Defendant asked the judge to excuse this potential juror for cause. A.) What grounds should Defendant urge in support of this request? B.) If the judge denies the request, what action does Defendant have the right to take in order to have the juror excused anyway, regardless of the correctness of the judge's ruling?
- 2pts 3.5 Plaintiff completed the presentation of his case in an action tried to a jury. Defendant believes that, upon the facts adduced during Plaintiff's case and applicable law, Plaintiff has shown no right to relief against Defendant. Defendant desires to have Plaintiff's case dismissed without Defendant's putting on any evidence. A.) What, if anything, can be done to bring the trial to a conclusion at this point? B.) If the attempt in subpart (A) fails, what impact, if any, does this failure have on Defendant's right to offer evidence?
- 6pts 3.6 Believing that a \$1 million jury verdict in favor of Plaintiff was contrary to the law and the evidence, Defendant timely filed a motion for a new trial and/or judgment notwithstanding the verdict (JNOV). What are the standards that the judge should use in analyzing the jury's verdict in order to determine the availability of a new trial or a JNOV?

QUESTION 4
(25 POINTS)

Part A.

John died a few weeks ago in a boating accident that occurred in Cameron Parish, Louisiana. At the time of his death, John was domiciled in Calcasieu Parish. John is survived by his long-time spouse, Carroll, and their three children, who are each competent and over the age of majority. Prior to his death, John executed a valid olographic testament (entirely written, dated and signed in his own handwriting) appointing Carroll as his independent executrix. The testament leaves all of John's property to his three children. John and Carroll had community property which included their residence in Calcasieu Parish, some rental properties in Vernon Parish and various banking accounts. At the time of his death, John also owned a tract of timberland in Grant Parish that he had inherited from his parents.

- 3 pts 4.1 Which parish or parishes would be a proper venue for succession proceedings for John? Is venue waivable in a succession proceeding? Explain.
- 2 pts 4.2 What pleading should be prepared and filed with the court to give effect to the will? What documents should be attached?
- 2 pts 4.3 After qualifying as independent executrix, Carroll decides to sell the Vernon Parish rental properties. Does she have the authority to do so without further court approval? Explain.
- 2 pts 4.4 Assume that, instead of appointing Carroll as independent executrix, John's will designates her as his executrix. After qualifying as executrix, Carroll receives an offer for the purchase of the Vernon Parish rental properties on terms that are very favorable to the estate. What steps, if any, must Carroll take before Carroll can sell the properties to the offeror?
- 3 pts 4.5 A person who was injured in the boating accident that resulted in John's death believes that John's negligence was the cause of the accident and wishes to recover damages. Assume that John's succession is still under administration, with Carroll as his executrix, and that John carried no liability insurance that would cover the accident. What steps, if any, must this injured person take relative to the succession proceedings before bringing suit on his claim, and who should be named as the party defendant in the suit?

- 3 pts 4.6 Assume that the court has accepted the will as valid and has signed an order to that effect. Also assume that all debts of the succession have been discharged. What are the remaining steps necessary to conclude the succession proceedings?

Part B.

A bank located in Rapides Parish is the mortgagee under a mortgage encumbering a commercial building and the lot upon which it is situated in Evangeline Parish. The mortgage, which has been properly recorded in the mortgage records of Evangeline Parish, was granted three years ago by an individual who is the sole owner of the property and who is domiciled in Jefferson Parish. The mortgage contains a waiver of appraisal. There are no other encumbrances bearing upon the property. The bank has in its files a certified copy of the recorded mortgage, along with an original promissory note executed by the mortgagor.

The promissory note secured by the mortgage is in default because the mortgagor has made no payment in several months. Even though the loan documents do not require any notice of default, the bank has given a notice of default to the mortgagor, who has failed to cure the default and refuses to respond to the bank's attempts to discuss the delinquent loan.

The bank now wishes to enforce its mortgage and to expose the property to sale as soon as it legally can.

- 4 pts 4.7 What are the alternative methods of foreclosure that are available to the bank? What requirements must the mortgage documentation satisfy as a condition to the use of each method? Discuss.

- 2 pts 4.8 What are the permissible venues in which judicial proceedings can be properly instituted to enforce the mortgage? Discuss.

- 4 pts 4.9 What are the appraisal and minimum bidding requirements that will apply in the foreclosure proceedings, and the possible consequences of an election by the bank to take advantage of the waiver of appraisal contained in the mortgage? Discuss.

END OF TEST

LOUISIANA BAR EXAMINATION

TORTS

JULY 2015

QUESTION 1 **(40 POINTS)**

Uptown, Inc., (Uptown) an urban development company, recently purchased a strip of old, abandoned warehouse-type structures in downtown Shreveport to renovate and lease to new tenants. One of the first new tenants was Sevy's, a bistro. Upon moving in, one of Sevy's employees noticed a water leak from the ceiling in the cleaning supply closet and Sevy's notified Uptown. The leak was apparently coming from a water line, and Sevy's used a large bucket to catch the steady drip until repairs could be made, because it did not want to delay opening the restaurant. However, months passed and Uptown still had not fixed the leak, despite Sevy's several reminders.

One early morning, Sevy's new restaurant manager, Manny, who had not yet completed his food safety training, opened the supply closet and found the steady drip of water had turned into a deluge. He hurriedly pulled out the cleaning supplies from the closet, and in his haste, set a container of lye (a toxic cleaning substance) on a shelf above the iced tea dispenser. Shortly thereafter, Manny began preparations for the lunch shift, and, unknowingly, reached for the container of lye, which looked much like the container for sugar, and poured it into the tea dispenser.

Customer Carly arrived at Sevy's just before noon and ordered an iced tea. As she took her first sip of the tainted batch of tea, she realized something was terribly wrong, and screamed, "I think I just drank acid! Someone is trying to kill me! I'm going to die!" Carly's husband, Franco, immediately called 911 and tried to comfort Carly as she was screaming in panic and pain. Emergency personnel arrived quickly on the scene and immediately began life-saving care while transporting Carly to the nearest hospital.

Carly spent the next two weeks in intensive care with deep, ulcerated burns to her esophagus. After enduring two weeks of significant pain and suffering and severe mental anguish over the thought of someone trying to kill her, Carly succumbed to her injuries and died. She is survived by her husband Franco, who was severely traumatized by the incident and has had to undergo treatment for the resultant anxiety and depression.

What cause(s) of action, and under what theory or theories of liability, might Franco reasonably bring claims against each of the listed defendants; what arguments could reasonably be made in support thereof; what defense(s) can reasonably be raised; what damages are recoverable; and who is likely to prevail in a claim(s) filed against:

- 1.1. Manny?
- 1.2. Sevy's?
- 1.3. Uptown?

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

QUESTION 2
(30 Points)

Located in the heart of downtown City, Louisiana, (City) is City-owned Central Park (Park). The Park is full of beautiful oak and pine trees. Over the years, vines had begun to overtake a stand of pines, creating an area obscured from view that had been the scene of several instances of criminal activity, particularly drug crimes targeting children. The City received numerous complaints from the public that the overgrowth was enabling criminals to victimize children, but nothing was ever done, so it became common practice for families with young children to simply avoid the Park after dark.

One day, 10-year old Timmy and his family were enjoying an early-evening cookout at the Park when Timmy decided to explore the thick overgrowth of vines. As soon as Timmy was out of sight of his parents, a stranger offered him a bag of “candy.” Timmy took the bag because the substance inside smelled so good and ingested what he thought to be strawberry flavored candy. The substance was actually a sweet-tasting illicit drug often used by drug dealers to trick children into trying highly addictive methamphetamine. The stranger was actually Dealer Dan (Dan), a drug dealer looking to create another customer. Timmy ingested all of the sweet-tasting substance. After he returned to his family, he began to get sick and to vomit violently. He became extremely disoriented and lost consciousness.

Timmy’s parents rushed him to Parish Hospital, a qualified healthcare provider, where he was immediately admitted to the emergency room (ER). The ER staff worked quickly to assess Timmy’s condition, but failed to properly restrain him on the gurney. Timmy began to violently convulse and fell off the gurney, causing traumatic injuries that would require numerous future medical interventions. The ER staff was able to determine that he had overdosed on the highly addictive methamphetamine.

After Timmy’s condition was somewhat improved, he told his parents that he had eaten “candy” given to him by Dan in the Park. Eventually, Timmy’s parents learned of the Park’s reputation as being unsafe, complaints by others regarding the overgrown vegetation and drug crimes, and the City’s failure to take action to address safety concerns.

A subsequent police investigation into the matter resulted in an arrest of an individual that Timmy was able to identify as Dan, the stranger that gave him the illicit drug. Timmy’s parents determined that Dan had access to a sizeable estate and want to file suit against Dan, on behalf of Timmy, seeking punitive damages to punish Dan and to deter others from engaging in the same conduct.

- 2.1 What cause of action can Timmy’s parents, on behalf of Timmy, reasonably bring against City for damages caused by this incident? Discuss. (10 points)**
- 2.2 What reasonable defense(s) might City raise, if any, and is it likely to succeed? Discuss. (5 points)**
- 2.3 Timmy’s parents, on behalf of Timmy, want to bring an action against Parish Hospital for medical malpractice for failure to properly restrain Timmy on the gurney. What process must they first complete before suing; what is their burden of proof if they file suit; and what is the maximum amount, exclusive of future medical care costs, that can be recovered for Timmy’s injuries? Discuss. (10 points)**
- 2.4 Are Timmy’s parents likely to succeed in obtaining punitive damages on behalf of Timmy? Discuss. (5 points)**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

QUESTION 3
(20 Points)

Fred, a seasoned driver and the owner of an older model vehicle, was driving within the lawful speed limit on a rural two-lane highway near Alexandria, Louisiana, when a vehicle driven by Sonya approached from the rear and passed Fred on the left just as his vehicle entered a light-controlled intersection. Fred swerved to avoid an imminent collision between Sonya and oncoming traffic and struck a roadside guardrail, causing considerable damage to the side panel of his vehicle. A Louisiana traffic statute provides as follows:

No vehicle shall at any time be driven to the left side of the highway when approaching within one hundred feet of or traversing any intersection.

La. R.S. art. 32:76(A)(2)

The next day, Fred took his vehicle to a dealership, Car Automotive, (Car) for a repair estimate. The service agent told Fred he would need to keep the vehicle for a day or two to make the estimate and gave Fred a service receipt in exchange for the keys to Fred's vehicle. A few days later, the service agent called Fred and quoted \$8,000 for repairs. Fred informed the agent that he believed his vehicle's worth was only about \$10,000 before the wreck and did not want to invest any more money in the vehicle. The agent put Fred in touch with the general manager (GM), who offered to see what he could get for Fred's vehicle at auction and promised to call Fred in a week or so to let him know. Two weeks went by with no word from GM, and Fred's calls to the dealership were not returned. Finally, GM called Fred and informed him that he sold the vehicle at auction, but was only able to get \$1,000 for it. Fred was angry because he did not authorize GM to sell the car for \$1,000.

- 3.1 What cause of action can Fred reasonably bring against Sonya for the damages to his vehicle caused by Sonya passing him in the intersection? Is he likely to succeed? Explain. (10 points)**
- 3.2 What action, if any, might Fred reasonably bring against Car for damages caused by the selling of his vehicle? Is he likely to succeed? Explain. (10 points)**

[End of Question 3]

TEST CONTINUES ON NEXT PAGE

QUESTION 4
(10 Points)

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

- 4.1 Battery**
- 4.2 Duty-risk**
- 4.3 Merchant liability**
- 4.4 Invasion of privacy**
- 4.5 Self-defense**

END OF TEST