

July 2014 Louisiana Bar Exam

Louisiana Supreme Court Committee on Bar Admissions

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LOUISIANA STATE BAR EXAMINATION

JULY 2014

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LOUISIANA BAR EXAMINATION
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS SECTION
JULY 2014

QUESTION 1
(40 POINTS)

Please address the following (8 points each).

- 1.1** Alice and Betty started their new business in January of this year. Purporting to act on behalf of their Company, A&B, Inc. (the “Company”), they signed a purchase agreement in January with Office Supply Co. to buy office furniture. The purchase is on credit with monthly payments due over the next three years. The office equipment was delivered shortly after the purchase agreement was signed. None of the monthly payments due to Office Supply Co. has been made. Alice and Betty did not file the Company's articles of incorporation with the secretary of state until April of this year.
- A. Will Office Supply Co. be successful in an action against the Company for breaching the monthly payment agreement for the office equipment?
 - B. Will Office Supply Co. be successful in suing Alice and Betty personally for the debt instead of the Company?
- 1.2** Investor, Inc. is a company owned solely by Wilma. Investor, Inc. wants to buy a tract of land from a real estate development company, RST, Inc., owned by Wilma's husband, Ron, and his two friends, Steve and Tom. Investor, Inc. offered a substantial premium over fair market value for the land. Ron, Steve and Tom are equal one-third owners of RST, Inc., and they are the three board members. A board meeting is properly called amongst them to vote on the proposal by Investor, Inc. to purchase the tract of land. All three attend the meeting and vote in favor of accepting Investor, Inc.'s proposal.
- Did Ron violate any duties he owed as a board member of RST, Inc.? If so, what steps should Ron have taken?
- 1.3** Mary was recently hired as Nancy's personal assistant to help Nancy with paying bills and managing other household affairs given Nancy's busy travel schedule. Before Nancy left on an extended trip, Mary wrote by hand several checks to pay Nancy's regular monthly bills, such as credit cards, home mortgage and utilities, but forgot to have Nancy sign the checks prior to her departure. Mary signed Nancy's name to the checks in her absence and delivered the checks to the payees, who negotiated them. Because Nancy was gone longer than expected, Mary also signed Nancy's name to three checks Mary wrote out payable to herself in the amount of \$500, which was the amount Nancy had previously agreed to compensate Mary each month for her work. The checks payable to Mary were dated the 4th day of each month for three consecutive months, *i.e.*, April 4, 2014, May 4, 2014 and June 4, 2014. On all prior occasions, Nancy had paid Mary in cash. Mary deposited the checks into her personal account on the 5th day of each month respectively.

When Nancy returned on July 3rd, she opened her bank statement for the month of June and discovered the \$500 check that Mary had signed payable to herself dated June 4, 2014. Nancy then checked her previous bank statements and discovered the other checks signed by Mary and payable to herself, as well as the other checks Mary signed to pay Nancy's bills.

- A. For which of the checks payable to Mary would the bank would be liable to reimburse Nancy's account? Explain.
- B. Is the bank obligated to reimburse Nancy's account for the amount of the checks signed by Mary to pay Nancy's regular bills? Explain.

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

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

Under what circumstances can Ben create a new business entity for the purpose of taking over the subdivision work? Explain.

1.5 Larry and Joe decided to form a limited liability company to be known as New Age Software Company, LLC (the "Company"). They filled out the proper forms and filed them with the secretary of state in order to form the Company. After the Company had been in operation for several years, Larry died. His son, Junior, who has been placed into possession of all of Larry's assets by a proper judgment in Larry's succession proceedings, wants to become a member of the Company. The organizational documents of the Company contain only the minimum requirements for formation.

Is Junior entitled to be admitted as a member of the Company?

[Test continues on next page]

QUESTION 2
(20 POINTS)

Art, is a real estate manager for a commercial real estate development company. Art's friend, Belinda, is a leasing agent for a local mall and is in charge of leasing mall floor space to cart vendors. During a recent conversation, Art commented to Belinda that many large office buildings have numerous small areas that are impractical to lease due to their small sizes or irregular shapes. Belinda suggested that they go into the business of finding food vendors and cart retailers to set-up temporary booths or vending carts in these unleased areas. Art, with Belinda's permission, asked Carter if he would like to invest in the venture, and he agreed. The parties agreed that Carter would contribute the funds needed for the start-up of the venture in return for a 35% interest in the venture; Art would receive a 50% interest in the venture in return for his future services in operating the business and locating suitable unoccupied lease space; and Belinda would receive the remaining 15% interest in the venture in return for her future services in soliciting retailers and food vendors to fill the unoccupied building space.

Art, Belinda and Carter are considering options for forming a business entity for this venture. Briefly explain your answers to the following questions (*2 points each*):

- 2.1 Assume Art, Belinda, and Carter formed a corporation and that they were all directors as well as shareholders. Would any of them, acting alone, have the authority to sign contracts on behalf of the corporation and thereby bind the corporation? If so, is there any limitation on this authority?
- 2.2 Could any of the shareholders (Art, Belinda or Carter) be expelled from their corporation? If so, what are the possible grounds for expulsion, who votes on such expulsion and what percentage of vote is necessary to expel a shareholder?
- 2.3 How much time must pass without an annual shareholders' meeting before the shareholders have the right to call for an annual shareholders' meeting, and which of these shareholders would be required to call for such a meeting?
- 2.4 Assuming Art, Belinda and Carter decide to form a limited liability company, what factors bear on the decision of whether their limited liability company would be managed by members or managers? Who would be the managers under the facts presented?
- 2.5 By what vote do members of a member-managed limited liability company make decisions? Is their vote counted by heads or their respective percentage membership interests? Under what circumstances would this rule not apply?
- 2.6 Assuming that Art, Belinda and Carter form a manager-managed limited liability company, list two types of decisions that would require the vote of the membership.
- 2.7 Assuming that Art, Belinda and Carter form a partnership, would any of them, acting alone, have the authority as partners to sign contracts on behalf of the partnership, and thereby bind the partnership? Explain fully.
- 2.8 Assuming that Art, Belinda, and Carter form a partnership, if a lawsuit is brought by a third party against one of them by virtue of his/her status as a partner, and he/she successfully defends the suit, would he/she automatically be entitled to reimbursement from the partnership for the reasonable attorneys' fees incurred in defending the suit? Explain why or why not.

- 2.9 Assuming that Art, Belinda and Carter decide to form a partnership in commendam, who would be a partner in commendam under the facts presented? What duties/responsibilities would the partner in commendam be allowed to have? What activities (if any) must the partner in commendam avoid in order to preserve his/her limited liability protection?
- 2.10 What information is required in the organizational documents of a Louisiana partnership in commendam, and what are the filing requirements (if any)?

QUESTION 3
(25 POINTS)

Please address the following questions (5 points each).

Mason owns a hunting camp in North Louisiana. Andrew, the president of the local paper mill, Grand Paper, LLC ("GP"), approached Mason about renting the camp to Andrew for the next season for a total of \$30,000. Mason agreed to the offer. Though the lease was in favor of Andrew personally and was not expected to benefit GP in any way, Andrew paid Mason partially by way of a check and partially by way of a promissory note. Andrew signed a check dated June 1, 2014 drawn on GP's checking account at North Bank and made payable to Mason in the amount of \$10,000. On that same date, Andrew also signed a promissory note as president of GP payable to bearer in the amount of \$20,000, bearing a maturity date of July 1, 2014. The promissory note contained no other terms and/or conditions.

On June 15, 2014, Mason took the promissory note to his bank, Bank of Louisiana, and asked that the bank purchase the note at face value. Mason was a good customer, and Bank of Louisiana agreed and paid him \$20,000 for the promissory note. Contemporaneously, Mason delivered the promissory note to Bank of Louisiana. A little over two weeks later, Andrew was replaced as GP's president and no longer works for the Company. Bank of Louisiana made demand on GP on July 2, 2014 to pay the promissory note consistent with its terms. GP denied that it was obligated to Bank of Louisiana on the promissory note since Andrew did not have the company's authority to issue the promissory note on GP's behalf. On this same date, GP learned of the \$10,000 check. GP immediately contacted North Bank and instructed North Bank to stop payment on the check. Mason had already cashed the check at Bank of Louisiana a few days earlier, but Bank of Louisiana has not yet presented it to North Bank for payment.

The deposit account agreement applicable to the deposit account maintained by GP at North Bank requires the signatures of two of GP's officers on each item drawn against the account.

Please address the following questions (5 points each).

- 3.1 Did the promissory note satisfy the legal requirements for a negotiable instrument? Explain.
- 3.2 Was Bank of Louisiana a holder-in-due course of the promissory note? Explain.
- 3.3 On what grounds could North Bank refuse to honor the check when it is presented by Bank of Louisiana? Explain.
- 3.4 Assuming that North Bank honors the check before it had a reasonable opportunity to act on GP's stop payment order and charges the amount of the check against GP's account, should North Bank be obligated to reimburse GP's account when GP takes the position that the check was not properly signed? Explain.
- 3.5 Would GP be successful in an action to obtain reimbursement from Andrew if GP were held liable to pay the promissory note? Explain.

QUESTION 4

(15 POINTS)

Per policy of the Committee, multiple-choice items are not published. The following is a listing of the subject matter tested by the five multiple-choice items included in the Business Entities and Negotiable Instruments Law test:

- 1. Business Entity Formation**
- 2. LLC – Authority of Members**
- 3. Corporations – Shareholder Meetings**
- 4. LLC – Authority of Members for Extraordinary Transactions**
- 5. Partnerships**

End of Examination

LOUISIANA BAR EXAMINATION

CIVIL CODE I

JULY, 2014

QUESTION 1
(40 POINTS)

Part A

Henry and Rose married fifteen years ago; they never executed a marital property agreement. A year later, they had a son, Aaron, and bought a family home in New Orleans; the Act of Sale listed the purchasers as Henry and Rose Smith, husband and wife. With money that Henry had inherited from a relative, they made the \$20,000 down payment towards the purchase price; they granted a mortgage on the home to pay for the balance of the purchase price. The following year, Henry and Rose bought a rental property in Baton Rouge. With money that they had saved from Henry's earnings after they bought their New Orleans home, they made a down payment for the rental property; they granted a mortgage on the rental property to pay for the balance of the purchase price. Although Rose was not employed outside the home since she and Henry married, she took care of Aaron and undertook the household maintenance so that Henry could devote his time to work, where he routinely obtained promotions and raises. As a result, the family lived very comfortably.

The couple's relationship began deteriorating in 2005. Rose began heavily drinking, and on multiple occasions Henry or Aaron found Rose passed out at home in the middle of the day. Although Henry urged her to get help for her drinking, she refused. In 2010, Rose discovered Henry had been having sexual relations with another woman. A few weeks later, Rose admitted to Henry that she had been having sexual relations with Henry's cousin Benjamin. Rose and Henry then made up and remained faithful to each other for over a year.

However, with Rose still refusing to seek help for her alcoholism, Henry resumed having sexual affairs with other women and told Rose as much. Finally, on January 1, 2012, the couple physically separated and Henry moved into the rental property in Baton Rouge.

Henry returned to the family home in New Orleans one weekend in April 2012, spending one night there while Rose and Aaron were present.

Although Henry has otherwise not seen Rose since he moved out of the family home, Henry has been meeting with Aaron several times a week. Despite the commute to New Orleans, Henry has been picking up Aaron from school four days a week, so that Henry could play one-on-one basketball with Aaron and could also help Aaron with his homework.

In October 2012, Rose filed a petition for divorce against Henry. A week later, at Rose's invitation, Benjamin moved into the family home in New Orleans to live with Rose and Aaron.

Please address the following questions (5 points each).

1.1 Assume that Rose made no allegations of fault in her petition for divorce from Henry. Based on the above facts, what would she need to show to obtain a judgment of divorce, and is she likely to succeed? Discuss.

1.2 Assume Rose did make allegations of fault in her petition for divorce from Henry. Based on the above facts, what allegations of fault might she reasonably make to obtain a judgment of divorce, and is she likely to succeed? Discuss.

1.3 If Henry and Rose cannot agree regarding custody of Aaron, to whom should the court initially award custody? Discuss.

1.4 Before the divorce decree is rendered, is Rose entitled to interim spousal support from Henry? Discuss.

1.5 Is Rose entitled to obtain final spousal support from Henry upon obtaining a judgment of divorce from Henry? Discuss.

[Question 1 continues on next page]

Part B
(Assume all facts from Part A)

On December 1, 2012, Rose obtained a judgment of divorce against Henry, who did not contest the divorce. As part of the judgment of divorce, Rose was appointed the domiciliary parent of Aaron, and the court awarded the family home to Rose and the rental property to Henry. At that time, the family home was worth \$200,000 and had a mortgage balance of \$100,000, while the rental property was worth \$300,000 and had a mortgage balance of \$50,000. A week later, Rose married Benjamin.

Meanwhile, on January 1, 2013, Rose gave birth to a second child, Caleb. When Rose asked Henry a few weeks later for money to help with the baby's needs, Henry said that the baby was not his and thus was not his responsibility. But in March 2014, Henry nonetheless received a letter from an attorney for Rose asserting that Henry is the father of Caleb and thus owes support for Caleb.

Last week, Aaron told Henry that he wanted to move in with Henry rather than continuing to live with his mother, Benjamin and Caleb. But Aaron also told Henry that he (Aaron) did not want to move to a new school or be so far away from his girlfriend in New Orleans.

Please address the following questions (5 points each).

1.6 What would Henry need to prove (and by what burden of proof) in order to become Aaron's domiciliary parent, and is he likely to succeed? Discuss.

1.7 If Henry now files a petition to disavow paternity of Caleb, would the action be timely? Discuss.

1.8 To how much credit, if any, would either spouse be entitled from the other as a result of the court's award of the home in New Orleans to Rose and the rental property to Henry? Discuss.

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

QUESTION 2
(40 POINTS)

Two adult cousins—Joann and Bill—inherited a 200-acre farm in Louisiana in 1979; the judgment of possession was duly recorded in the local parish conveyance records.

In 1980, Bill was in a serious motorcycle accident that rendered him paraplegic, mentally incompetent and unable to care for himself. Bill's mother devoted herself to caring for Bill and had him live with her, although no formal curatorship was sought for Bill while his mother was still alive.

A few months after Bill's accident, Joann obtained and duly recorded a Quitclaim Deed purporting to sell Bill's one-half interest in the farm to herself. The Quitclaim Deed identified Bill as the seller and recited that Bill was "a single man over the age of twenty-one years, represented by the undersigned as his duly authorized representative." Bill's mother signed the Quitclaim Deed on Bill's behalf, but no power of attorney or other evidence of authorization was referenced or attached to the Quitclaim Deed or otherwise recorded in the local parish conveyance records.

In 1982, Joann moved into the house on the farm and has lived there since then. She built a fence along the boundaries of the farm property to keep neighboring cattle off the property, has maintained the farm, grown crops on the farm and has paid all of the annual property taxes.

Bill's mother died fifteen years ago. Shortly thereafter, Carol (who is another cousin of Bill) filed a petition to have Bill interdicted and obtained a judgment of interdiction appointing her as Bill's curator and specifically referencing Bill's one-half interest in the farm.

Joann has not paid any money to Bill (through his mother, Carol or otherwise) regarding the farm, nor has Bill (through his mother, Carol or otherwise) paid any money to Joann regarding the farm.

Doctors have recently advised Carol that, with surgery and intensive therapy, Bill may possibly be able to regain the use of one or more of his limbs. Carol now wants to sell Bill's interest in the farm to generate some additional cash to pay for this medical treatment. When Carol approached Joann to see if she (Joann) would be interested in buying Bill's one-half interest, Joann said that she (Joann) already owned all of the farm; Joann gave Carol a copy of the Quitclaim Deed, about which Carol was previously unaware.

Yet another cousin, Ella, has now filed a motion to have herself substituted in place of Carol as Bill's curator. In her motion, Ella alleges that Carol is not acting in Bill's best interests because she (1) is spending Bill's money on herself to live the high life and (2) has failed to seek any payment for Bill from Joann for Joann's time spent living on the farm.

2.1 Did the Quitclaim Deed validly transfer Bill's one-half interest in the farm to Joann? Discuss. **(6 points)**

2.2 May Joann properly assert any claim to ownership of Bill's initial interest in the farm based on Joann's possession of the farm, and is she likely to succeed? Discuss. **(8 points)**

2.3 What legal action, if any, may Carol take to protect Bill's interest in the farm, and is she likely to succeed? Discuss. **(6 points)**

2.4 Is Bill (through Carol or otherwise) entitled to any moneys from Joann with respect to the farm, and is Joann entitled to any moneys from Bill (through Carol or otherwise) with respect to the farm? Discuss. **(8 points)**

2.5 What are the grounds on which Ella could be substituted as Bill's curator in place of Carol, and is her motion likely to succeed? Discuss. **(6 points)**

2.6 If Ella is unsuccessful in being substituted as Bill's curator in place of Carol, what other judicial relief might Ella seek with respect to Bill's interdiction in order to protect Bill? Discuss. **(6 points)**

[End of Question 2]

QUESTION 3
(20 POINTS)

Per policy of the Committee, multiple-choice items are not published. The following is a listing of the subject matter tested by the ten multiple-choice items included in the Civil Code I test:

- 3.1. classification of property (movable versus immovable)**
- 3.2. classification of servitudes (personal versus predial)**
- 3.3. nullity of marriage (effect of absolute versus relative nullities)**
- 3.4. rights against good faith possessor of land**
- 3.5. building restrictions; defenses to enforcement**
- 3.6. division of property upon divorce; credits for improvements to separate property**
- 3.7. enclosed estates; acquisitive prescription for apparent servitudes**
- 3.8. payment for improvements by a usufructuary**
- 3.9. treatment of cash and stock dividends for stock subject to a usufruct**
- 3.10. rights of a co-owner in property owned in indivision**

[End of Question 3]
[End of Civil Code I exam]

LOUISIANA BAR EXAMINATION

CIVIL CODE II

JULY, 2014

QUESTION 1
(30 POINTS)

Derek was married to Elaine. Derek and Elaine had two children: Tom, born in 1991, and Val, born in 1992. Derek and Elaine had a separate property regime.

In 1986, Derek's parents, Alan and Brianna, gave Derek a house in Natchitoches. The donation was proper in form and valid in all respects.

In 2008, Derek typed a document with the following provisions:

1. This is my will and testament.
2. To my wife Elaine, I leave the house in Natchitoches that my parents gave me.
3. To my son Tom, I leave my Individual Retirement Account at Equitable Bank.
4. To daughter Val, I leave my TechCorp stock.
5. To my friend Chad, I leave my 2007 Ford truck.
6. To my friend Earl, I leave my gun collection.
7. To my brother John, I give all of the funds in my savings account at Bayou Bank at the time of my death (presently \$5,000).
8. Subject to the legacies above, I leave the balance of my estate to my children as follows: a one-half share to Tom and a one-half share to Val.

Derek printed the document and brought it to a supermarket notary, where he verbally declared it to be his last will and testament, signed and dated each page and at the end in the presence of the notary and two witnesses. At the end of the will, just below Derek's name, he had prepared blanks for the notary and two witnesses to sign, and each of them signed in the designated place. The witnesses were shoppers at the store and Derek did not know them. Once executed, Derek took the original instrument home and placed it in his safe.

In 2010, Derek sold his TechCorp stock and deposited the full amount of the sales proceeds into his Bayou Bank savings account.

In October 2011, Derek prepared an Act of Donation which provided:

"I hereby donate my 30 acres in Washington Parish to my brother Sam on the condition that he maintains it in its natural, undeveloped state for at least the next 10 years."

The donation was proper in form and was duly accepted by Sam and recorded.

Derek and Elaine divorced in 2012. Derek had a debilitating stroke in 2013. As a result of the stroke, Derek was not able to verbally communicate, and his doctors explained that Derek had suffered extensive irreparable brain damage, which "would prevent him from comprehending legal matters."

Derek died in January 2014. At the time of Derek's death, the Bayou Bank savings account had a balance of \$100,000, he had insurance of sufficient value to satisfy the legitime of any forced heirs, and his father, Alan, was still alive, though his mother predeceased him.

Derek's niece, Brenda, had become very close to Derek during the last year of his life. After Derek's death, Brenda presented for probate a one page handwritten document which stated as follows:

"I am 60 years old today and I am writing this as my will. I want my entire estate to go to Brenda because she helped me so much through my illness."

Derek's signature appeared at the end. Brenda claims to have witnessed Derek prepare and sign the document.

The original signed copy of Derek's 2008 will was located in his safe. On that will, the legacy to Earl had been struck through and signed by Derek but it was not dated. Derek's safe also contained a copy of Derek's beneficiary designation for his Individual Retirement Account at Equitable Bank. Derek had signed and dated the beneficiary designation in 2011 and mailed it by certified mail to Equitable Bank on that date. Derek had designated Val as the sole beneficiary of that Individual Retirement Account. Equitable Bank sent Derek a letter acknowledging that it had received the beneficiary designation.

Shortly after Derek's death, Sam leased the property in Washington Parish to DairyCo, which promptly built a farm on the property. The lease was not recorded.

In 2013, Tom was involved in a serious accident. After remaining on life support for several months, he died in March 2014, intestate, unmarried and without children.

Please address the following questions:

- 1.1 Is the 2008 instrument valid in form as a Louisiana will? Discuss. **(3 points)**
- 1.2 Is the instrument submitted by Brenda valid in form as a Louisiana will? Discuss. **(3 points)**
- 1.3 On what basis could Val challenge the instrument presented by Brenda? **(3 points)**

FOR THE REMAINING QUESTIONS, ASSUME THAT THE 2008 TESTAMENT IS THE ONLY VALID TESTAMENT AND THAT THE INSTRUMENT PRESENTED BY BRENDA IS NOT VALID.

- 1.4 Who is entitled to receive Derek's Individual Retirement Account at Equitable Bank? Discuss. **(3 points)**
- 1.5 Two years before his death, Derek traded in the 2007 Ford truck and purchased a 2012 Ford truck. What becomes of the legacy to Chad? Discuss. **(3 points)**
- 1.6 After Derek's death, Tom never regained consciousness and nothing was done with the house in Natchitoches. Considering Derek's 2008 testament and Tom's subsequent death, who will own the house in Natchitoches? Discuss. **(4 points)**
- 1.7 Who is entitled to the \$100,000 in Derek's checking account at Bayou Bank? Discuss. **(3 points)**
- 1.8 Val is upset that Sam allowed a farm to be built on the Washington Parish land. What rights, if any, does she have as to the land and the farm? Discuss. **(5 points)**
- 1.9 By the time Derek's succession was opened, Earl had died intestate in February 2014, leaving several heirs. Who is entitled to the gun collection? Discuss. **(3 points)**

QUESTION 2
(25 POINTS)

John and Karen separated in 1998 after many years of marriage but never resolved the community property issues between them. They had three children during the marriage, Landon (born in 1981), Michelle (born in 1985) and Nina (born in 1992). Karen had two children born of a marriage prior to her marriage to John: Olivia and Penny. John had no other children nor did he adopt anyone.

Michelle gave birth to twins in 2011, Rachel and Sidney, but died as a result of post-delivery difficulties. She was unmarried at the time and the father was unknown, so Rachel and Sidney went to live with Karen.

Nina was a troubled child. By the time she was 19 years old, she was serving a life sentence for second degree murder of her boyfriend, Chuck. She never married and had no children. Karen was ashamed of Nina and typed the following document and signed and dated it at the bottom:

“I am finished making excuses for Nina. Now that she has been convicted of murder, I am done with her. I do not want her to ever inherit anything from me.”

Karen placed the document in her safe deposit box.

In 2012, Karen died intestate after a brief illness, leaving both separate and community property.

In January 2013, after the death of Karen, Landon married Tina. They did not have any children together. In June 2013, Tina was contacted by Vicki, who claimed to have given birth to Landon’s child, Wendy, earlier that year. In response to that information, Tina initiated divorce proceedings against Landon but Landon died intestate in October 2013 before they were complete. Landon owned both community and separate property when he died.

Please address the following questions:

- 2.1** Does the document prepared by Karen present a valid disinheriton of Nina? Discuss. **(4 points)**
- 2.2** Last month, Vicki decided to seek a formal determination of Landon’s paternity in an attempt to preserve Wendy’s rights. What actions, if any, are available to Vicki to establish Landon’s paternity of Wendy for succession purposes and what does she need to show to succeed? **(3 points)**

FOR THE FOLLOWING QUESTIONS ASSUME THAT (1) VICKI WAS UNABLE TO ESTABLISH LANDON’S PATERNITY OF WENDY, AND (2) THE DISINHERISON OF NINA WAS VALID IN ALL RESPECTS.

- 2.3** Nina claims that she killed Chuck in self-defense. She has no evidence other than her testimony. Is Nina’s testimony sufficient to overcome disinheriton? Discuss. **(2 points)**
- 2.4** Who inherits Karen’s estate and in what proportions? Discuss. **(6 points)**
- 2.5** Who inherits Landon’s estate and in what proportions? Discuss. **(10 points)**

QUESTION 3
(25 POINTS)

Patrick was married to Robin. Together they had five children, Anna, Bobby, Caitlin, David, and Edward. A few years after he and Robin married, Patrick inherited a 25% interest in his family business, Broussard's Fine Foods. The balance of the property owned by Patrick and Robin was community property. Shortly before his death, Patrick prepared a testament, proper in form, which included the following provisions:

- Article 1. I leave all of my community property to Robin.
- Article 2. I hereby establish the Broussard Family Companies Trust with my five children as principal beneficiaries and Robin as income beneficiary.
- Article 3. I leave all of my separate property to the trustee on behalf of the trust.
- Article 4. The trustee is granted the power to invade principal for the benefit of Robin for her health, maintenance, support and well-being.
- Article 5. Upon Robin's death, the remaining trust assets are to be distributed in equal shares to my children who survive Robin and the descendants, *per stirpes*, of my children who do not survive Robin.

Patrick died in 2005. All five children survived Patrick, and only Anna had attained the age of 24 when he died.

In 2010, Caitlin died intestate, leaving a surviving husband, Howard, and two children, Owen and Theresa, aged 6 and 3 years old respectively. Theresa has cerebral palsy and has already outlived her life expectancy. Four months after Caitlin's death, Howard married Goldie. He prepared a will, valid in form, in which he left everything to Goldie. Six months later, Howard died in a single car accident. Owen and Theresa went to live with their grandmother, Robin.

Please address the following questions:

- 3.1** Identify each of Patrick's forced heirs, state the reason why each is a forced heir and indicate the fraction of Patrick's estate to which each forced heir is entitled. **(5 points)**
- 3.2** In reviewing Patrick's records after his death, Robin learned that Patrick had given his brother, Steve, a total of \$15,000 of their community property funds in the year before his death. It was well-known that Steve had a drug problem and had become estranged from the family, though he had also inherited part of the family business. Robin wants to bring an action for the return of the \$15,000 to the estate. Is she likely to succeed? Why or why not? **(4 points)**
- 3.3** Does the legacy of the business interest to the Broussard Family Companies Trust violate the rights of Patrick's heirs? Why or why not? **(3 points)**
- 3.4** Is Article 5 of the will, which directs that the remaining trust assets be distributed to the beneficiaries who survive Robin, valid and enforceable under Louisiana law? Why or why not? **(3 points)**

- 3.5** As of July 2014, who are the principal beneficiaries of the Broussard Family Companies Trust and in what percentages? **(4 points)**
- 3.6** What rights, if any, do Caitlin's children have to challenge Goldie's inheritance under Howard's will? Discuss. **(3 points)**
- 3.7** To answer this question, assume Goldie was driving the car in the accident in which Howard was killed. During the investigation of the accident, it was determined that the accident occurred because Goldie inadvertently veered off the road while checking her email. Goldie was charged and later convicted of vehicular homicide and was sentenced to time served. Based on Goldie's conviction, do Caitlin's children have a basis for challenging Goldie's inheritance under Howard's will? Discuss. **(3 points)**

QUESTION 4
(20 POINTS)

Per policy of the Committee, multiple-choice items are not published. The following is a listing of the subject matter tested by the seven multiple-choice items included in the Civil Code II test:

- 4.1. intestate succession**
- 4.2. will formation**
- 4.3. ingratitude**
- 4.4. joint legacy**
- 4.5. will formation**
- 4.6. adoption**
- 4.7. trust**

END OF CIVIL CODE II EXAM

LOUISIANA BAR EXAMINATION

CIVIL CODE III

JULY, 2014

QUESTION 1
(25 POINTS)

In 2002, Sally purchased a home located in New Orleans. The building was designed by a California architect, who was famous for developing roof structures that provided for large amounts of natural light as a result of the extensive use of skylights. This design was not well adapted to use in Louisiana's wet climate, and required frequent repairs to fix leaks, especially after exposure to high winds during tropical weather events. Sally discovered this soon after buying the home. She engaged the services of a roof engineering expert, who issued an engineering report which advised that the problem could be fixed, but only with an extensive reworking of the roof that eliminated most of the skylights and that would be very expensive.

Sally, elected not to make the expensive recommended repairs. In 2006, she sold the home to Ed. Prior to the sale, Sally fully disclosed to Ed the contents of the engineering report and that she was often required to hire workers to recaulk the skylights, since they frequently leaked. Ed, an electrical engineer, skimmed the report, and decided to use a much less expensive method to fix the problem through new flashing around the skylights. After buying the home, Ed installed the flashing, and due to the relatively dry conditions and absence of tropical weather, thereafter experienced no leaks from the roof.

In December of 2012 Ed sold the house to Lucy. He showed Lucy the work he had done to the skylights, but never disclosed that the home had suffered extensive roof leaks prior to his purchase, and did not provide a copy of the engineer's report. In connection with the purchase agreement for the home, Ed stipulated that he had no knowledge of any problems with the condition of the home. The act of sale contained a waiver of legal warranties concerning the condition of the home, and stipulated that the sale was "as-is, where-is".

Lucy moved in, and soon discovered a few minor leaks during April of 2013. She did not contact Ed, but attempted to have the leaks repaired with caulking, which was ineffective due to the original design. After a heavy rain storm in New Orleans in August of 2013, Lucy discovered that most of the skylights leaked. She contacted a roof engineering expert in September of 2013, who immediately remembered that he had provided the 2002 report. During his inspection, he provided Lucy with a copy of the report, and informed her that in his opinion Ed's flashing work had no effect on the problem, which he believed to be inherent in the design. Lucy immediately contacted Ed to discuss the report and the opinion of the roof engineer.

Ed, who denied responsibility for any problems, explained that his flashing design was probably compromised by her workers, and that it should have been perfectly adequate to prevent any leaks. Lucy soon left on a long-planned trip, and did not return until the spring of 2014. It is now July of 2014.

1.1 What rights, if any, does Lucy have in an action against Ed regarding the condition of the house? How are those rights affected by the good faith or bad faith of the seller? Discuss.

1.2 What defenses, if any, does Ed have in an action by Lucy based on the condition of the house? Discuss

QUESTION 2
(25 POINTS)

Hanson, LLC owns a shopping center in St. Mary Parish, Louisiana. It entered into a lease of a portion of the shopping center with C Store, Inc., which operates a grocery store on the leased premises. The lease, which was dated January 2000, had a term of twenty years, with a rent of \$10,000.00 per month. The lease contained no provisions regarding the maintenance of the leased property but required public parking areas to be kept “reasonably free of unreturned shopping baskets”. The lease was recorded in the mortgage records of St. Mary Parish, but not the conveyance records. The owner of Hanson, LLC, Harry, was a close personal friend of the owner of C Store, Inc., Charlie Cole. At a holiday party in 2003, Charlie expressed an interest in buying the shopping center, since the grocery store had been performing very well. Harry agreed to grant a right of first refusal to purchase the property, and on December 26, 2003, executed a document containing the following provisions:

HANSON, LLC (“HANSON”) HEREBY GRANTS TO CHARLIE COLE (“CHARLIE”) FOR A TERM ENDING ON DECEMBER 26, 2023 A RIGHT OF FIRST REFUSAL TO PURCHASE THE HANSON SHOPPING CENTER, LOCATED ON LOT A OF TIGER ACRES SUBDIVISION, ST. MARY PARISH. IN ORDER TO EXERCISE THIS RIGHT, CHARLIE MUST NOTIFY HANSON OF HIS ACCEPTANCE OF HANSON’S OFFER TO SELL WITHIN TEN DAYS OF CHARLIE’S RECEIPT OF WRITTEN NOTICE OF THE TERMS UNDER WHICH HANSON IS WILLING TO SELL THE PROPERTY TO A BONA FIDE PURCHASER. DATED DECEMBER 26, 2003. HANSON, LLC, by Harry, Manager.

Harry delivered the document to Charlie, who kept it in his office at the grocery store until December, 2010. Charlie, knowing that Harry was growing old, realized that he probably needed to record the document in order to protect his rights. By this time, the store was doing very well as a result of the growth in the area. Charlie recorded the document in the conveyance records of St. Mary Parish in December of 2010.

In May of 2014, Hanson, LLC sold the property to Tom. The act of sale stated that Tom was subrogated to all rights of Hanson, LLC against all prior owners and tenants. Tom reviewed all of the leases of the property before buying it, including the lease with C Store, Inc. Prior to the closing, Tom sent a letter to Harry, telling him that Tom “would take good care of everything and everyone, as we discussed.” When Charlie mailed C Store, Inc.’s rent check on June 1, 2014, Tom returned it to Charlie, with a letter notifying Charlie that he was evicting C Store, Inc. due to the failure of C Store, Inc. to maintain the roof, which had small leaks, and due to C Store, Inc.’s alleged failure to cause its shopping carts to be returned to the store during the Memorial Day weekend of 2014, resulting in a loss of parking spaces for other tenants. He also notified Charlie that the lease of C Store, Inc. was not recorded, and Tom had no intention of honoring it. The next day, Tom filed an eviction proceeding against C Store, Inc. Charlie filed his own suit against Hanson, LLC, demanding damages for its breach of the right of first refusal. C Store, Inc. filed a separate suit against Hanson, LLC for damages arising out of Tom’s eviction proceeding.

A national men’s clothing store, Duds, also leased property in the center for a ten year term ending in 2020. At the time of the sale to Tom, Duds had missed two rental payments, and had removed its merchandise from the shopping center to a new store across the street. The lease with Duds contained a right to accelerate rent following the lessee’s default. Tom, who also owned a clothing store, moved it into the Duds space, and filed suit against Duds for the past due rent as of the date of the suit, as well as the rent due for the remaining term of its lease.

2.1 What grounds does Tom have in his eviction action, what are the potential defenses of C Store, Inc. to the eviction action, and how is a court likely to rule? Discuss. TEN POINTS

2.2 What grounds should C Store, Inc. assert in its action against Hanson, LLC, and is C Store, Inc. likely to prevail in its suit against Hanson, LLC? Discuss. FIVE POINTS

2.3 What grounds should Charlie assert in his action against Hanson, LLC, what are the defenses of Hanson, LLC, and is Charlie likely to prevail in his suit against Hanson, LLC? Discuss. FIVE POINTS

2.4 What are the merits of Tom's suit against Duds, and how is a court likely to rule on his claim for damages? FIVE POINTS

QUESTION 3
(30 POINTS)

Dave was interested in opening a car repair shop in Calcasieu Parish. He found the perfect property on which to locate his business: a lot and building in Calcasieu Parish. He purchased this property, Property A, in September of 2000, and in connection with the purchase, borrowed \$1,000,000 from Hydro Bank. The loan was evidenced by a note payable in equal monthly installments due on the first day of each month over a twelve year repayment term. The note, which was dated September 1, 2000, did not contain a right to accelerate the payments. To secure the loan, Dave granted Hydro Bank a mortgage on Property A, to secure "my promissory note dated September 1, 2000 payable to the order of Hydro Bank". The mortgage further recited the maturity date of the note, September 1, 2012. The mortgage was signed by Dave but was neither witnessed nor notarized. The mortgage was recorded in the mortgage records of Calcasieu Parish in September of 2000. It has never been reinscribed.

After initial success, Dave's business began to experience financial difficulties in 2005, and Dave was unable to pay his supplier, Auto, Inc. Auto, Inc. obtained a money judgment against Dave in 2005 for past amounts due and recorded the judgment in the mortgage records of Calcasieu Parish in 2005. Auto, Inc. has taken no steps to execute upon its money judgment. A balance remains validly due to Auto, Inc.

In September of 2006, Dave stopped making payments on the Hydro Bank note and has made no further payments on that note since that time. Hydro Bank has taken no action to collect its note.

Dave had to make frequent trips out of town to manage another car repair shop, and entrusted day-to-day operations to his friend, Mike. Because suppliers were asking Mike about his authority to operate Dave's business, Dave executed in favor of Mike a mandate agreement, which was in proper authentic form, signed by Dave and accepted by Mike, and which provided:

I, Dave, hereby authorize Mike as my agent and attorney in fact, to do all acts that he may deem necessary in connection with the operation of my business. The authority of Mike includes the right to incur indebtedness on my behalf, to purchase and to sell immovable and movable property that I may own or acquire and to mortgage, pledge, grant security interests in or otherwise encumber any immovable or movable property that I may own or acquire to secure my indebtedness.

The mandate, which was never recorded, contained no description of any specific tract of immovable property. Mike became aware that a competing auto repair shop in Calcasieu Parish in a better location than Dave's existing shop was for sale by its owner, Susan. Mike called Dave, who encouraged Mike to purchase the business on Dave's behalf. On September 1, 2007, Susan entered into a credit sale agreement with Dave, acting through Mike as his agent, in which she sold the property, Property B, for \$250,000 cash, and a promissory note in the amount of \$600,000. Mike signed the credit sale and promissory note on Dave's behalf as his agent. The promissory note, which was dated the same day as the credit sale, September 1, 2007, was payable in three annual installments of \$200,000 each, plus interest, beginning on September 1, 2008, followed by a subsequent payment on September 1, 2009 and a final payment on September 1, 2010. The act of credit sale was recorded on September 30, 2007 in the mortgage and conveyance records of Calcasieu Parish.

To further secure the note, Mike delivered to Susan possession of a diagnostic machine owned by Dave, which Susan continues to hold as security for the promissory note. At the time he delivered possession of the diagnostic machine to Susan, Mike executed a written security agreement as Dave's agent in favor of Susan granting her a security interest in the machine.

Shortly afterward, Dave opened his second repair shop on Property B, but had very disappointing results, and has made no payments on the promissory note held by Susan. When Susan pressed him for payment, he stated that Mike was the person responsible for payment, since the purchase was "Mike's idea", and that Susan should look solely to Mike for payment.

Following this discussion, Mike elected on his own initiative to sell Property B to Fred on behalf of Dave, pursuant to an act of cash sale recorded in the conveyance records of Calcasieu Parish. Fred is in possession of Property B.

You may assume that each mortgage and sale contains a valid description of the property subject to such agreement.

3.1 What are the rights of Hydro Bank under its note as of the date of this exam, and is its mortgage on Property A currently valid? Discuss. TEN POINTS

3.2 Discuss Susan's rights: FIFTEEN POINTS

- a. Against Dave individually,
- b. Against Mike individually, and
- c. With respect to Property B, and the current validity of any of such rights.

In providing your answer to question 3.2, do not discuss the priority of any rights of Susan with respect to any other creditor; this topic will be addressed in question 3.3 below.

3.3 Answer the following: FIVE POINTS

- a. Does Auto, Inc.'s judicial mortgage have priority over the mortgage of Hydro Bank on Property A? Discuss.
- b. Does Auto, Inc.'s judicial mortgage have priority over any security of Susan in Property B? Discuss.

QUESTION 4
(20 POINTS; 2 POINTS EACH)

Per policy of the Committee, multiple-choice items are not published. The following is a listing of the subject matter tested by the ten multiple-choice items included in the Civil Code III test:

- 4.1. UCC9
- 4.2. UCC9
- 4.3. UCC9
- 4.4. UCC9
- 4.5. UCC9
- 4.6. Sales
- 4.7. Privileges
- 4.8. Obligations-Offer and Acceptance
- 4.9. Prescription-Instruments
- 4.10. Obligations-Capacity

[END OF CIVIL CODE III TEST]

LOUISIANA BAR EXAMINATION
CONSTITUTIONAL LAW
JULY, 2014

QUESTION 1
(40 POINTS)

In 2012, a new species of flower began growing in certain states in the United States, including Louisiana. The flower was named the PWR flower. It was discovered that the PWR flower could be processed to create a medicine that was an effective treatment, and in some instances a cure, for a person infected with the HIV virus. The processed PWR flower was approved by the Federal Drug Administration (FDA) and produced the very results it was purported to produce. A few companies in some of the states where the PWR flower was plentiful began processing it and making it available to consumers by direct shipping from the manufacturing plant via phone or internet orders.

To capitalize on this enormously expanding market, Dylan formed DJW, Inc., (DJW) a PWR flower processing corporation, in Louisiana. DJW purchased a tract of land in Louisiana where the PWR flower was found to be plentiful, and established a processing plant and a distribution company. Using essentially the same processing formula as the out of state companies, DJW packaged and sold its product as “HIV Cure.”

Dylan persuaded the Louisiana Legislature to enact a law prohibiting the import of the PWR flower in any form, into Louisiana. The Act is called the PWR Flower Reservation Act, (Act), and the stated purpose of the Act is, given the state of the economy in Louisiana, to encourage Louisiana consumers to buy Louisiana products.

Iris is a resident of a small town in Louisiana. She is infected with the HIV virus and is overjoyed about the possibility of a cure for her disease. She has very limited funds, and thus decided to purchase the processed PWR flower via the Internet because it was less expensive. She found DJW’s HIV Cure online, but it was too expensive for her budget. After perusing other websites that mentioned the PWR flower, she found one in Chicago with discounted prices. Iris placed her order online with the Chicago company, called “Cure For All, Inc.,” only to be told that Louisiana state law precluded direct shipment of out of state processed PWR flowers.

What constitutional arguments, if any, might Iris raise in a challenge to the Act and is she likely to succeed? Discuss fully.

What constitutional arguments, if any, might Cure For All, Inc. raise in a challenge to the Act and is it likely to succeed? Discuss fully.

QUESTION 2
(40 POINTS)

Amidst numerous complaints regarding the professionalism of state employees throughout the state, the Louisiana Legislature decided that it wanted to recruit and retain the most efficient and professional employees to work for its various agencies. As a result, the Legislature enacted DP802. DP802, among other things, established a dress code policy for all state employees. Specifically, the legislation prohibited state employees from wearing the following items of clothing: “tee-shirts, shorts, jeans, mini-skirts, clothes with lettering or wording, hats or headcoverings of any kind, or clothing determined to be offensive to others.” DP802 further provides that violations of the dress code will result in immediate termination.

Rose is employed as an accountant with the State. She is a Muslim and, per her faith, wears a headscarf when in public. Several of her fellow employees are offended by her headscarf and avoid working with Rose. Her supervisor informed her that her co-workers found her headscarf offensive and lodged several complaints, and further informed her that the headscarf was in violation of DP802. Rose continued to wear the headscarf and was immediately terminated.

Anna is a new fashion designer. She is not an employee of the State. However, she pays her friend, who is a state employee, to wear her designs which carry her signature logo of a cross visibly sewn into the garment with the words, “In God We Trust” emblazoned underneath the cross. Anna’s friend has a highly visible job with the State, and a reputation for being stylish. Anna’s designs were becoming the talk of workplace, but Alan, an atheist, said he found the logo offensive and Anna’s friend was terminated.

What constitutional arguments, if any, might Rose raise in a challenge to DP802’s dress code policy and is she likely to succeed? Discuss fully. [30 Points]

What constitutional arguments, if any, might Anna raise in a challenge to DP802’s dress code policy and is she likely to succeed? Discuss fully. [10 Points]

QUESTION 3
(20 POINTS)

Smalltown Law School (SLS) is a small, private law school located in Smalltown, Louisiana. It has recently received its accreditation and is eager to compete with the larger law schools throughout the State. In order to compete and attract students, it has extended a number of perks not offered by the other schools. One of those perks is free wireless internet access anywhere throughout the campus. The college campus is small, however, and most students reside in privately owned apartments right off or near campus. SLS desired to extend the wireless access to these apartment complexes so as to make itself more attractive to prospective students. However, most of the apartment complex owners refused to allow SLS to install the necessary equipment in the complexes to allow the wireless access.

Realizing that the success of SLS was vital to the growth of its city, which was suffering economically, the Smalltown City Council passed an Ordinance (City Ordinance) requiring all buildings within a two mile radius of SLS to allow SLS to install and maintain the required equipment or face a fine after hearing regarding their non-compliance.

Landlord, owns an apartment complex within a two mile radius of SLS. She refused to comply with the City Ordinance and her hearing is scheduled for next week. The City Ordinance would actually increase her occupancy rate if she allowed the wireless equipment, and the equipment does not interfere with any of her complex's operations. However, she is against any kind of government intrusion and wants to challenge the City Ordinance.

What constitutional arguments, if any, might Landlord raise in a challenge to the City Ordinance and is she likely to succeed? Discuss fully.

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

END OF CONSTITUTIONAL LAW TEST

LOUISIANA BAR EXAMINATION

CRIMINAL LAW

JULY, 2014

QUESTION 1

(50 Points)

Johnny and Billy went to the train yard in New Orleans to look for property to steal. On past occasions Johnny had brought tickets for the New Orleans Pelicans basketball games to give the security guard, in exchange for which the guard would not call the police. Unfortunately, for Johnny and Billy, this time the guard didn't want the tickets. After Johnny and Billy climbed over the 6 foot train yard fence, Johnny went to meet the guard and the guard told Johnny he had received a better offer from someone else. The guard then sounded the alarm and instructed Johnny to "get out of my train yard!" Johnny pulled his knife and told the guard to "turn that thing [alarm] off." The guard refused and reached for his gun. Johnny stabbed the guard, watched him die, and fled the train yard. In the meantime, Billy had already cracked open one of the railcars with a crowbar and was filling his backpack with valuables. Upon hearing the alarm, Billy grabbed his backpack and headed for the exit. On his way out, Billy confronted a police officer responding to the alarm. After a brief scuffle with the officer, Billy managed to get away by knocking the officer unconscious with the officer's nightstick.

Thereafter, Johnny and Billy met back at Billy's apartment. Billy rolled a marijuana joint to share with Johnny. Before Billy and Johnny could finish smoking the joint, however, they heard a bang on the door followed by a police officer's orders for them to exit the apartment. Johnny and Billy immediately armed themselves with 40 caliber pistols. They tucked the pistols into their jeans and crawled out of the apartment's bathroom window to escape. After that, they decided to steal the first vehicle they saw and quickly forced a woman out of her minivan at gun point at one of the intersections in town. Johnny and Billy were then apprehended by police after unsuccessfully attempting to avoid a police roadblock and crashing into the road's concrete median.

Discuss all crimes with which Johnny and/or Billy could be charged under Louisiana law and the elements of each crime. Be concise in your answers.

[Test continues on next page]

QUESTION 2
(30 Points)

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

After Johnny and Billy were arrested, police officers returned to Billy's apartment with the intent to conduct a search for evidence. Upon arrival, they were met by the landlord, Sam. The officers identified themselves and asked Sam for consent to search Billy's apartment. Sam consented and opened Billy's apartment for the officers to search. As part of their search, the officers discovered marijuana, a crowbar, several items believed to be stolen, and a bloody knife. All of these items were seized as evidence in the case.

Also, after placing Johnny and Billy under arrest and transporting them to the station, officers attempted to interrogate them. Having been advised of their Miranda rights, Johnny refused to answer any questions from the officers. The next day, officers again tried to interview Johnny, and again he refused. However, two days later, officers entered the holding cell and again tried to interview Johnny. This time, Johnny consented, waived his right to counsel, and gave a statement to the officers. Prosecutors at his trial offered his statement into evidence.

Finally, several weeks after the train yard incident, detectives learned of two train yard employees who had witnessed the alleged stabbing of the train yard security guard. Both of the employees agreed to accompany detectives to the jail, where Johnny was brought in from his cell and placed before the two employees. The employees were then asked to identify the person who stabbed the security guard with a knife. Both of the employees immediately identified Johnny as the culprit.

Discuss all state and federal constitutional bases for challenging the admissibility of evidence related to: [10 POINTS EACH]

- 2.1 the search of Billy's apartment;**
- 2.2 Johnny's statement to officers; and,**
- 2.3 the identification procedure that implicated Johnny.**

QUESTION 3
(20 POINTS)

Assume all facts given in Questions 1 and 2, in addition to the following.

Address the following issues that arose either before or during the joint trial of Johnny and Billy. Explain your answers fully. **[4 points each]**

- 3.1** Although they have been charged together, is it possible for Johnny's defense attorney to get his client tried without Billy? Discuss.

- 3.2** There has been a lot of pretrial publicity including media coverage of the arrests. The local press has run a story on the case every day for the past month, referring to Johnny and Billy as the "Pelican Duo." What should their defense attorneys do to obtain a fair trial for Johnny and Billy, and are they likely to succeed? Discuss.

- 3.3** At the start of the trial, what should the attorneys do to try to preserve the integrity of each witness' testimony? Discuss.

- 3.4** Johnny and Billy's friend, James, is called to testify on their behalf. The prosecutor is aware that 10 years ago James was convicted of a misdemeanor charge of driving while intoxicated. Can James' conviction be raised during his cross-examination testimony? Discuss.

- 3.5** At the end of the trial, Johnny and Billy are convicted on all counts. After the jury foreman announces the verdict, the judge asks the attorneys if there is any other matter that needs to be addressed. What, if anything, should the defense attorneys do? Discuss.

END OF CRIMINAL LAW TEST

**LOUISIANA BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
JULY 2014**

**QUESTION 1
(30 POINTS)**

Poultry Products LP (PP) is a limited partnership organized under Mississippi (MS) law that operates poultry feed and supply stores in Louisiana (LA) and Texas (TX). Its general partner is GP, Inc. (GP) which is incorporated in Arkansas (AR) and serves as a general or managing partner for a number of other entities that do business in MS, LA, and TX. Most of GP's efforts regard operations in LA, which contributes the bulk of its revenue. Most employees of GP work in LA, but the management team in a Houston, TX office makes the decisions about hiring, firing, and the direction of the business. The sole limited partner in PP is May, who is a life-long resident of AR.

Dot operates a sole proprietorship known as Dot's Louisiana Farms (DLF), the sole function of which is to raise poultry on its farm in LA. The business holds licenses and trademark registrations in LA. Dot was born and raised in MS, where she lives in a home she owns. She travels three times a week to a business office in LA, from which she makes all important decisions about the farm business.

DLF purchased feed and other supplies from PP on open account and, after years of a good relationship, stopped paying and left a balance of \$82,500. PP was unable to get DLF to pay, so PP filed suit in a LA federal court against its customer and prayed for recovery of the amount due on the account. Two weeks later, but before the complaint was served on Dot, May took advantage of a job opportunity and moved to MS where she plans to live and work.

Questions 1.1 - 1.5 are based on the above facts.

With respect to these and other questions on the exam, your ability to demonstrate knowledge of how to properly analyze the issues may be more important than your conclusion with respect to some issues, so conclusory answers will receive little credit.

15 pts. **1.1** Does the federal court have subject-matter jurisdiction over PP's complaint? Explain fully.

Please use paragraph breaks to separate the major components of your answers.

4 pts. **1.2** Assume for the rest of Question One that the case remains pending in the LA federal court.

DLF believes its poultry was undernourished and did not gain weight quickly enough because PP made unauthorized changes to its feed formula that were not reflected on the label of the products. DLF estimates resulting losses at \$55,000. DLF wants to assert a state-law claim against PP and attempt to recover that amount from PP without having to file a separate suit.

What procedural device could DLF use to assert her claim against PP in the federal suit? Discuss whether the court would have subject-matter jurisdiction over the claim.

- 4 pts.** **1.3** DLF also has an account with Cluck, Inc., an Oklahoma citizen. DLF believes Cluck has been billing its farm for more feed than was actually delivered, and an audit indicates DLF has been over-billed by \$10,000. DLF would like to assert its claim against Cluck in the same federal suit. Can DLF properly file a third-party complaint against Cluck? Explain fully.
- 4 pts.** **1.4** Assume DLF elected not to assert any claims against PP and Cluck in this suit. It instead filed a general denial answer that raised no defenses. The same day DLF filed its answer, it served two requests for production on PP. DLF asked for (1) a copy of all of PP's receipts, ledgers, and other documents related to the allegedly unpaid account and (2) copies of all correspondence between PP and its attorneys that make reference to the payment dispute.
- What two objections might PP properly assert in response to the requests for production? Explain.
- 3 pts.** **1.5** DLF later learns that the person who served PP's summons and complaint was a 16-year-old employee of PP. DLF's attorney filed a motion to dismiss for insufficient service of process. Should the court grant or deny the motion? Explain.

QUESTION 2
(25 POINTS)

Pat, a citizen of Texas, was visiting Louisiana when he slipped and fell in the bathroom of a restaurant owned by Dan, a Louisiana citizen. Pat filed suit in a Baton Rouge, Louisiana state court on January 10, 2013. The petition alleged: "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. Rust and mildew on the pipe indicated that it had been leaking for several weeks so that Defendant knew or should have known of the dangerous condition of his premises, making him negligent and liable for damages."

Dan was served with the petition and filed an answer. Dan served Pat with an interrogatory that asked for the amount of damages Pat claimed. Pat responded that his damages did not exceed \$50,000.

Later, on January 30, 2014, Pat served Dan with an amended petition. The amended petition added a claim under the public accommodations provisions of the federal Americans With Disabilities Act. Pat alleged that the bathroom in Dan's restaurant did not have proper safety railings. Dan took action on February 25, 2014 to remove the case to federal court based on the assertion of the new claim.

Questions 2.1 - 2.5 are based on the above facts.

- 5 pts.** **2.1** Describe in detail the procedure and requirements counsel for Dan must follow to remove the case to federal court. To which federal court may the case be removed?
- 3 pts.** **2.2** Pat's attorney believes there are procedural defects in the removal. What must Pat's attorney file to seek a return of the case to state court? What time limits, if any, does she face?

6 pts. **2.3** Pat’s attorney makes a timely submission of the proper filing to raise objections to the removal. She objected that the removal was defective because (1) it was untimely and (2) Dan is a citizen of the forum state. Explain whether or not each of these objections is valid.

5 pts. **2.4** Assume the case remains in federal court. Dan next filed a motion to dismiss the slip and fall claim pursuant to Rule 12(b)(6) for failure to state a claim on which relief could be granted. Dan’s attorney argued in his memorandum that Dan employed a handyman 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 accident.

What legal standards should the court apply when assessing the motion to dismiss? Should the court grant or deny the motion? Discuss. (This question is not asking for any information about converting a motion to dismiss to one for summary judgment.)

6 pts. **2.5** Assume the court denied the motion to dismiss. Dan later filed a motion for summary judgment that was supported by an affidavit from a waiter at the restaurant. The waiter testified that he was in the bathroom with Pat that evening and did not see him fall. Dan also submitted an affidavit from Pat’s parole officer. The officer testified that Pat was convicted three years earlier for perjury after he offered false alibi testimony at a friend’s burglary trial.

Pat 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. Pat offered that the waiter must have left the room before Pat fell.

Set forth the applicable standard for assessing Dan’s motion for summary judgment, analyze the submissions of the parties under the applicable standard, and state how the court should rule on the motion.

QUESTION 3
(25 POINTS)

Please address the following questions:

5 pts. **3.1** Several insurance companies employ in-house staff attorneys to represent their insureds in litigation. The State Bar Association (SBA) believes that the use of staff attorneys violates its rules and is the unauthorized practice of law. The SBA filed suit against ABC Insurance in state court to enjoin it from the practice. The SBA rules are not crystal clear on the issue, and the state court will have to decide whether the use of staff attorneys violates the rules.

XYZ Insurance heard about that suit. It then filed a complaint against the president of the SBA in federal court for a declaration that its rules, if they prohibit the use of staff attorneys, violate XYZ’s federal constitutional rights under the Due Process Clause and First Amendment.

XYZ framed its complaint so that there are no Eleventh Amendment or sovereign immunity issues. Discuss any arguments the SBA could raise in an effort to stop the federal suit.

5 pts. **3.2** Plaintiff, a citizen of Louisiana (LA) was injured when a portable heater exploded. He filed a \$100,000 suit in a LA state court against Manufacturer and Seller. Manufacturer is a citizen of California. Seller is, like Plaintiff, a citizen of LA.

Manufacturer's counsel believes that the petition does not state a claim against Seller because it does not allege Seller had actual or constructive knowledge of a defect in the heater. Seller has also signed an affidavit and denied any such knowledge.

Under what theory, if any, might Manufacturer remove the case to federal court despite the lack of complete diversity between the named parties? What standard should the federal court apply in determining whether to permit such a removal?

5 pts. **3.3** Bill, a state-employed restaurant inspector, issued citation notices to ABC Restaurant for violating a City ordinance that prohibits restaurants from hosting political gatherings of more than 20 attendees. ABC believes that Bill was motivated by the fact that he does not support the candidate for whom ABC hosted a gathering.

ABC filed a complaint in federal court against Bill and the City pursuant to 42 U.S.C. § 1983. It alleged the ordinance was unconstitutional and that Bill had violated ABC's First Amendment rights. The complaint sought (1) a declaration against the City that its ordinance is unconstitutional and (2) an order that Bill pay money damages.

The defendants filed a motion to dismiss on the grounds that the Eleventh Amendment barred ABC's claims. How should the court rule on the motion with respect to each of the two defendants? Discuss.

5 pts. **3.4** GENCO is a New York corporation with its principal place of business in New York. It owns manufacturing plants in California (CA) and Ohio (OH). The CA plant manufactures car tires and sells 100% of its production to retail stores located in CA. The OH plant produces lawn chemicals that are distributed to several states. The OH plant has dozens of employees and is located on a 20 acre tract owned by GENCO.

Plaintiff bought a set of GENCO tires from a CA retailer while he was living in CA. He later moved to OH where the tire failed and caused an accident. Plaintiff filed a complaint against GENCO in an OH federal court for personal injury damages caused by the allegedly defective tire.

Is general or specific personal jurisdiction more applicable to the claim against GENCO? Explain.

[Test continues on next page]

- 5 pts.** **3.5** Plaintiff and Defendant entered into a contract, after lengthy negotiations in Texas (TX), regarding trucking services that would be provided primarily in Louisiana (LA) but also in TX. TX law would allow punitive damages for breach of contract, but LA law would not. A dispute arose under the contract and Plaintiff, who believes TX law should apply due to its substantial connection to the contract, filed suit in a TX federal court based on diversity jurisdiction.

The federal judge announced plans to select an eight-member jury, citing Federal Rule of Civil Procedure 48, which states that a federal civil jury must begin with between 6 and 12 members, and the verdict must be unanimous unless the parties stipulate otherwise. Plaintiff objected and argued that a TX statute states that civil trials require a 12-member jury, 10 of whom must concur to render a verdict.

a. The TX federal court should apply which state's choice of law rules to resolve the issue? Discuss.

b. How should the federal court should resolve the jury issue? Discuss.

QUESTION 4
(20 POINTS)

Per policy of the Committee, multiple-choice items are not published. The following is a listing of the subject matter tested by the eight multiple-choice items included in the Federal Jurisdiction and Procedure test:

- 4.1. Timeliness of appeal
- 4.2. Joinder of claims
- 4.3. Rule 11
- 4.4. Rule 50 motion for judgment as a matter of law
- 4.5. Venue
- 4.6. Amount in controversy
- 4.7. Rule 12(h) waiver of defenses
- 4.8. Interpleader

END OF FEDERAL JURISDICTION AND PROCEDURE TEST

LOUISIANA BAR EXAMINATION
LOUISIANA CODE OF CIVIL PROCEDURE
JULY, 2014

QUESTION 1
(20 POINTS)

The following facts apply to Questions 1, 2 and 3:

Plaintiff (P) was injured when the vehicle which he was operating was rear-ended by an 18-wheeler operated by Driver (D) and owned by Owner (O). D was acting within the course of and scope of his employment with O at the time of the collision. The collision occurred in a construction zone on Interstate 210 in Calcasieu Parish. The construction was being undertaken by the Louisiana Department of Transportation and Development (DOTD). P is domiciled in Allen Parish. D is domiciled in Tensas Parish. O is a Delaware corporation, but it applied to do business in Louisiana through the Secretary of State, designating East Baton Rouge Parish as its principal business establishment in its application to do business. It has appointed a registered agent and has a Louisiana office, both located in East Baton Rouge Parish.

Succinctly answer the following questions:

- 1.1 What parish or parishes would be a proper venue for P's lawsuit against D and O? Explain fully. **(8 points)**
- 1.2 Suit has been filed by P naming D and O as defendants. The lawyer for D and O thinks P has filed suit in the wrong venue. What pleading must be filed to challenge the venue and when must it be filed? **(4 points)**
- 1.3 Suit has been filed. What is the delay to request service of citation on O and D? **(2 points)**
- 1.4 In addition to being served with the petition, and at the same time, O was served with a request for production of documents. How many days does O have to respond? **(2 points)**
- 1.5 Suit has been filed. O has been served, but D has not been served. The time delay for requesting service on D has expired. A.) What action can be taken to seek dismissal of D? B.) What must the judge determine in order to dismiss D? **(4 points)**

QUESTION 2
(30 POINTS)

Assume all facts from Question 1.

- 2.1 Suit has been filed and D was not dismissed. In the Petition, P did not ask for trial by jury. What two things must the defendants' lawyer do to ensure trial by jury in the case? **(4 points)**
- 2.2 Suit has been filed and an Answer has been filed by both D and O. P's attorney suspects that D has a history of rear-end collisions. What discovery could be served on D and on O to obtain that information? **(4 points)**
- 2.3 P's lawyer decides to serve interrogatories upon D. How many interrogatories may P propound without seeking leave of court? **(2 points)**

- 2.4 P has been served with the Answers of D and O. Defendants' lawyer decides to amend D's Answer. How many days does he have to amend D's Answer without leave of court? **(2 points)**
- 2.5 P's lawyer suspects that O's training program for its drivers, hiring requirements for newly employed drivers, and supervision policies for newly employed drivers is deficient. However, P's lawyer doesn't know which of O's officials would be most likely to have knowledge of these subjects. A.) What action, if any, can P's lawyer take to obtain the deposition of these officials without knowing their identities? B.) What must O do to comply with this action? **(4 points)**
- 2.6 Trial is by jury. Lawyer for D and O believes from information he obtained from his clients that the warnings and signage on Interstate 210 in the construction zone where the accident occurred were woefully inadequate and caused or contributed to the accident. Lawyer wants the jury to measure the fault of DOTD so as to reduce any award to P against D and O, without naming DOTD as a party to the suit. What must he do in pleadings and at trial to accomplish that? **(2 points)**
- 2.7 During discovery, P's lawyer learns that an eye witness to the accident lives in another Parish, over 100 miles from the courthouse in which the trial is to be held. P's lawyer wants to present that witness for testimony at trial. Can the witness be compelled to testify at trial? Why or why not? **(3 points)**
- 2.8 P's lawyer is deposing D. During the deposition, defense counsel makes and continues to make lengthy objections which appear to be giving guidance and instruction to D as to how to answer the questions. Are such objections appropriate under the CCP? Why or why not? **(3 points)**
- 2.9 Defendants have been served with P's discovery requests seeking potentially thousands of documents. Defendants' lawyer believes these documents are not relevant to the litigation and not reasonably calculated to lead to the discovery of admissible evidence. Defendant's lawyer also believes that the discovery was propounded by P to cause defendants to incur unnecessary effort and expense. What, if anything, can defense counsel file with the court to restrict this discovery, and what showings should be made in order for the court to restrict this discovery? **(2 points)**
- 2.10 After depositions of P and D, it appears that fault for the rear-end collision is not at issue. A.) What motion can P's lawyer bring to have the judge decide in advance of the trial that D and O are liable for the accident, B.) What should be submitted with that motion, and C.) What is the deadline by which the court should render its judgment on this motion? **(4 points)**

[Test continues on next page]

QUESTION 3
(25 POINTS)

Assume all facts from Question 1 and Question 2.

- 3.1 Expert witness reports have been exchanged and the discovery depositions of both experts have been taken. Lawyer for D and O believes that P's expert is completely unqualified to give expert testimony in the matter and that his methodology is "junk science". A.) What motion should be brought before the court to test the expert's qualifications and opinions, B.) What is the time deadline for bringing the motion, and C.) What is the deadline for the judge to rule on the motion? **(6 points)**
- 3.2 P, in defense counsel's opinion, has been unreasonably high in his settlement demands. Defense counsel decides to make an offer of judgment. A.) What is the deadline to serve an offer of judgment and what does the CCP require to be included in the offer of judgment? B.) What is the deadline for P to serve written notice that the offer is accepted? **(4 points)**
- 3.3 Jury selection has begun in the case. During jury selection, a potential juror advises that she is the legal secretary for P's lawyer. Defense counsel asks the judge to excuse this potential juror for cause. A.) What should be the basis for his request? B.) If the judge denies the request, what can D do to have the juror excused? **(3 points)**
- 3.4 The jury returned a verdict in favor of P and against D and O in the amount of \$1 million. The lawyer for D and O believes the evidence was insufficient to support this verdict of \$1 million in damages and was contrary to the law but is satisfied with the jury's liability finding. What are the options for relief from this verdict that can be filed in the trial court? **(2 points)**
- 3.5 What are the time delays for filing the options available to D and O? **(2 points)**
- 3.6 What are the standards that the judge should use in analyzing the jury's verdict in order to determine the availability of the options asserted by D and O? **(4 points)**
- 3.7 The judge denied D and O's post-trial motions. The judge's order was mailed July 5, 2014. How many days do D and O have to file for a suspensive appeal? How many for a devolutive appeal? **(2 points)**
- 3.8 D and O file an appeal. How many days, from the lodging of the record or return date, whichever is later, does P have to answer the appeal? **(2 points)**

[Test continues on next page]

QUESTION 4
(25 POINTS)

Part A

The following facts apply to 4.1-4.4.

For several years, Jones, a resident of Sabine Parish, has owned vast tracts of timberland located in Sabine Parish. While inspecting a remote area of this property fourteen months ago, he found that a few acres of it had been fenced off by Smith, a resident of Allen Parish, who is using the land he fenced off to grow Christmas trees for sale. Smith claims to have inherited the property from his father. Jones wants to be declared the owner of the property and seeks to obtain a court order recognizing him as such.

Succinctly answer the following questions:

- 4.1 What proceeding should Jones file and why? **(4 points)**
- 4.2 Which parish or parishes would be the proper venue for the proceeding to be filed and why? **(4 points)**
- 4.3 Suit has been filed by Jones against Smith and before an answer is due, a friend tells Jones that Smith is advertising the Christmas tree farm property for sale. What proceedings are available to stop Smith's attempts to sell the property? **(4 points)**
- 4.4 Suit has been filed. Jones learns that Smith is seeking to borrow money for his Christmas tree farm business, using the Christmas tree farm property as collateral for a mortgage. What should be filed to notify potential lenders of the pending litigation and where should it be filed? **(3 points)**

Part B

- 4.5 When a lawyer signs a pleading filed for a client, what does the lawyer certify personally, if anything, pursuant to CCP art. 863? **(4 points)**
- 4.6 What are the four pleadings to which CCP art. 863 applies? **(4 points)**
- 4.7 What sanctions may a judge impose, and against whom, for violations of CCP art. 863? **(2 points)**

[End of Louisiana Code of Civil Procedure Test]

LOUISIANA BAR EXAMINATION

TORTS

JULY, 2014

QUESTION I (50 POINTS)

Part A

Forbing Fitness (Forbing), a 24-hour fitness facility, had just purchased new weight machines from Zybex Machines, Inc. (Zybex). Zybex delivered the machines, set them up and installed them in Forbing's weight room. The machines had the usual warning labels about the inherent dangers of improper weight lifting and only using the machines in their intended manner.

Olivia, a member of Forbing, was excited about using the new machines and arrived at Forbing early in the morning of the first day the machines were available for use. Although she was an experienced user of weight machines, the Zybex machines were new to her and there were no Forbing weight lifting instructors present to demonstrate the new machines.

Olivia began her usual workout program by doing some shoulder lifts on one of the new machines. After several sets of lifts, she stood up and walked to the side of the machine and pulled on the side of it to stretch her arms and shoulders. Pulling on weight machines to stretch is a common practice. As she dipped down into a full shoulder stretch, the machine suddenly tipped over on top of her and pinned her down to the floor. There were no other members or employees in the weight room at the time, so no one saw the incident. Olivia could barely breathe under the weight of the machine and thought that she was surely going to slowly suffocate and die. However, after several minutes, the weights shifted and she was able to break free. She was in extreme pain, dazed, and confused, but slowly made her way to the women's locker room when she suddenly collapsed in the bathroom stall.

Another gym member in the locker room heard a strange sound coming from the stall and ran to the front desk and told Fitz, the only Forbing employee on duty, that she thought someone needed help in the women's locker room. Fitz was engaged in a personal cell phone conversation and informed the woman that he didn't really know what he should do, because he was a new employee, and that he probably shouldn't go into the women's locker room. The woman told Fitz that she thought he should call 911 or otherwise attempt to seek aid, but Fitz seemed reluctant to do anything and continued on with his personal cell phone conversation while folding towels.

Soon thereafter, another member ran to the front desk and frantically informed Fitz that someone was lying unconscious in the women's locker room. Fitz finally called 911 for emergency medical services (EMS). An EMS crew quickly arrived on the scene and provided emergency care to Olivia, but it was too late. Olivia died due to internal injuries sustained from the weight of the Zybex machine when it fell on her.

Olivia was married and earned a substantial income. She is survived by her husband Jake and her 12-year old son Sam from a previous marriage who lives with his father. She is also survived by her brother and her mother.

1.1 [10 POINTS]

Identify and discuss the proper party(ies) who could successfully bring a claim for Olivia's injuries and death and under what theory or theories, and the damages that could be recovered should tortious conduct on behalf of defendant(s) be proven.

Part B
(Assume all facts from Part A)

Discovery in the case revealed four important facts. First, it was determined that the Zybex machine was improperly installed by Zybex in that two of the four bolts necessary to secure it to the floor were missing. Second, it was revealed that Forbing had recently reduced employee staffing to only one employee during slower times in the early morning and late evenings and that Fitz had no formal education, training or experience in emergency aid and had not yet received any type of emergency aid training from Forbing. Third, according to Forbing Fitness' video surveillance, 20 minutes had passed from the time Fitz was first informed that there was a woman who had collapsed in the women's locker room and the time that he finally called 911 for help. Fourth, Olivia would have survived her injuries had she received emergency aid in a timely manner.

1.2 [40 POINTS]

- A. What cause(s) of action, if any, can reasonably be brought against:
 - i. Zybex? Discuss.**
 - ii. Forbing? Discuss.****
- B. What defense(s), if any, can reasonably be raised by each party? Discuss**
- C. How is the court likely to rule on each action? Discuss.**

QUESTION 2
(20 POINTS)

Jesse was shopping for outdoor wicker furniture at HomeStyle, a home goods retail store. Although in the retail business, HomeStyle also maintains a considerable inventory of boxed merchandise by stacking it on shelves 18 feet high above the merchandise on display for customer inspection. After considering several tables and chairs, Jesse made his selection.

There were prevalent signs advising customers to ask for assistance from a HomeStyle employee, but Jesse knew he was able-bodied enough to lift his own furniture and ignored the signs. There were also thin chains loosely draped in front of the shelved merchandise to discourage customer access, but Jesse decided to help himself anyway.

Jesse pulled the first piece of boxed furniture under the chain and down from the inventory shelf and was loading it onto a cart when two other boxed tables suddenly fell down from the shelf onto his back, causing severe damage to his spinal cord that left him permanently paralyzed from the neck down.

2.1 [10 POINTS]

Under what negligence theory of liability can Jesse reasonably bring a claim against HomeStyle? Discuss. [A lengthy duty/risk analysis is not necessary.]

2.2 [5 POINTS]

What defense(s), if any can HomeStyle reasonably raise, and how is the court likely to rule? Discuss.

2.3 [5 POINTS]

Jesse seeks punitive damages against HomeStyle due to the catastrophic nature of his injuries. Is he likely to be successful?

QUESTION 3
(20 POINTS)

Skylar owns and operates a 7-day, 24-hour, self-service car wash business in Sulphur, Louisiana, and the land on which it sits.

After several days of heavy rains, she noticed that a previously shallow sunken area in the center of the concrete driveway entrance to the car wash had suddenly gotten much larger, measuring about four feet wide by one foot deep. Skylar immediately called a concrete contractor for repairs. The contractor advised he would not be able to get to the job for several days, so Skylar placed two small hazard cones she happened to have on hand on either side of sink hole to warn of the dangerous condition, as it was not readily visible. Skylar checked to make sure the cones were in place when she left for the day around 7:00 p.m.

Later that evening, 16-year old Dadrien who resided with his mother and father and recently got his driver's license, pulled into the driveway in his large truck while texting and did not see the cones or sink hole and inadvertently knocked the cones across the driveway where they were no longer visible

Early the next morning, Walt pulled into the driveway before Skylar arrived and, not seeing the sink hole, drove into it with his compact car. The impact caused Walt to suffer severe bruising and major damage to his car.

3.1 [10 POINTS]

Discuss Skylar's liability to Walt for the condition of the land on which the car wash sits.

3.2 [5 POINTS]

What defense(s), if any, can Skylar reasonably raise, and how is the court likely to rule? Discuss.

3.3 [5 POINTS]

Who else may be responsible for damages caused to Walt? Discuss.

QUESTION 4
(10 POINTS TOTAL)

Per policy of the Committee, multiple-choice items are not published. The following is a listing of the subject matter tested by the five multiple-choice items included in the Torts test:

- 4.1 battery**
- 4.2 defective public roads**
- 4.3 defamation**
- 4.4 medical malpractice**
- 4.5 invasion of privacy**

END OF TORTS TEST