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LOUISIANA STATE BAR EXAMINATION

FEBRUARY 2021

TABLE OF CONTENTS

CIVIL CODE I.....	1
CIVIL CODE II	3
CIVIL CODE III.....	6
CRIMINAL LAW, PROCEDURE, AND EVIDENCE	9
FEDERAL JURISDICTION AND PROCEDURE	11
LOUISIANA CODE OF CIVIL PROCEDURE	14
TORTS.....	18

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

QUESTION 1 (100 POINTS)

Howard and Wanda were properly married in Louisiana twenty years ago. On the day before the wedding, Howard asked Wanda to sign an agreement providing that, in the event of a divorce, each spouse waived rights to both interim and final periodic support. Wanda and Howard immediately signed the document, but there were no witnesses at that time. After the wedding, they properly acknowledged the agreement before a notary and two witnesses.

Just before the birth of their only child, about a year after the wedding, they bought a new home for \$350,000. The home was purchased with Howard's \$50,000 pre-marriage earnings plus a \$300,000 bank loan. Wanda stopped working to take care of their child, and Howard continued to work. The sole source of payment for principal and interest on the bank loan was Howard's post-marriage earnings, and the loan has been fully satisfied.

Last year, Wanda inherited \$250,000 from a relative and promptly had an affair. About five months ago, Howard began to suspect Wanda's affair and was devastated. Howard confronted Wanda and she ended the affair, apologized profusely, and promised Howard she would never stray again. Howard stayed with Wanda for four months trying to continue their relationship, but he could not re-build his trust in her. Howard then demanded that Wanda move out of the house, which she did one month ago.

After Wanda moved out, she used her \$250,000 inheritance to buy a house that Bob had just built on three acres of land. Bob had acquired the three acres of land from Sam two years ago by Act of Sale containing a metes and bounds description of the property transferring all of Sam's interests within the fenced area. Sam had fenced in the three acres of land when he acquired it 35 years ago. When Sam sold the land to Bob, the sale specified a metes and bounds description transferring the three acres of land within the fenced area, "together with all rights of prescription, whether acquisitive or liberative, to which said vendor may be entitled." Unbeknownst to Bob, Sam's fence extended past his property line and enclosed 10 feet of the neighboring property owned by Nick. The property that Wanda now owns includes this same 10 feet of land and her garage is constructed on this same portion. Nick has now sued Wanda seeking damages and demanding that she tear down her garage.

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

- 1.1 What are Howard's options for divorce? Briefly explain each option, including potential issues Howard may face with each such option. (25 points)**

- 1.2 Have Howard and Wanda properly opted out of interim spousal support? Have they properly opted out of final periodic spousal support? Explain fully. (20 points)**

TEST CONTINUES ON NEXT PAGE

- 1.3 How, as separate or community property, should the home Howard and Wanda acquired be classified? Explain fully. (20 points)**
- 1.4 Does Nick own the 10-foot strip of land on which Wanda built her garage? Is Nick likely to succeed in compelling Wanda to tear down the garage and return the land to him? Would your answer differ if Sam had instead built the fence 15 years ago? Explain fully. (35 points)**

[End of Civil Code I Test]

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

QUESTION 1 (100 POINTS)

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

**PART A
(50 Points)**

Albert, a lifelong Louisiana domiciliary, died without a will. He was survived by his spouse, Bessie. Albert and Bessie never executed a matrimonial agreement. Albert and Bessie had five children: Carl, Debra, Ed, Jack, and Kendall, all of whom are over 25 years old and mentally and physically healthy. Carl has two children, Fred and Gertrude. Debra has one child, Harry. Ed has one child, Ivan. The only property Albert owned at the time of his death were a separate property account with \$1 million and his undivided one-half community interest in the Family Home. Albert had no debts at the time of his death.

A year before Albert's death, he and Carl had a falling out, and Carl wrote, dated, signed, and delivered a letter to Albert which read in relevant part: "I hate you. I never want anything to do with you again. I don't even want any inheritance from you and irrevocably renounce my inheritance." Albert's succession was opened and after Carl learned about the \$1 million in cash, he had a change of heart and decided he would like to inherit from Albert.

Six months before Albert died, Big National Bank obtained a valid, final judgment against Debra for \$100,000. A week after Albert died, Debra formally renounced her inheritance from Albert. Big National Bank has not taken any action in Albert's succession with respect to Debra's interest in the Family Home.

- 1.1 Who succeeds to Albert's interest in the Family Home? Explain fully. (25 Points)**
- 1.2 What legal action must Big National Bank take to obtain an interest in Albert's \$1 million separate property account? If Big National Bank is successful in such action, to what amounts of Albert's \$1 million separate property account does each of Big National Bank, Debra, and Harry succeed? Explain fully. (10 Points)**
- 1.3 *Assume for purposes of this Question 1.3 only, that Jack and Kendall were teenagers at the time of Albert's death and that Albert died with a valid last will and testament leaving his entire estate in equal shares to his five children, subject to a usufruct for life to Bessie. To what percentage of Albert's succession are Jack and Kendall each entitled and is the usufruct for life to Bessie valid? Explain fully. (15 Points)***

TEST CONTINUES ON NEXT PAGE

PART B
(50 POINTS)

Mary, a lifelong Louisiana domiciliary, died with a valid last will and testament. She is survived by her children, Ned, Oscar, Penny, and Quinton, all of whom are over thirty years old and in good mental and physical health. The relevant portions of Mary's will read as follows:

1. I leave the family farm, Blackacre, to Ned and Oscar in equal shares. The devise of Blackacre is made subject to the condition that no part of such land shall be sold, mortgaged, or in any way alienated unless the said land or part thereof proposed to be sold, conveyed, or alienated has first been offered to the other co-owner thereof on equal terms and such co-owner has refused to purchase such land. In the event any sale, conveyance, or alienation of said Blackacre is made in violation of this condition, the right, title, and interest of such purported sale, conveyance, or alienation shall become the property of the other devisee of Blackacre under this will.
2. I leave to Penny all of my interest in my mother's succession, currently under administration in Caddo Parish, Louisiana.
3. I leave to Quinton the 100 shares of the common stock of IBM Corporation in my brokerage account.
4. I also leave to Quinton the 100 shares of common stock I own in Intel, Inc.
5. I appoint Ned as independent executor of my succession.
6. I leave the residue of my estate to the Community Foundation of Northwest Louisiana.
7. I name the Xanadu Law Firm, APLC as attorney for my succession.

After Mary executed her will but before she died, the following events occurred:

- Mary executed an authentic act by which she donated all of her interest in her mother's succession to Ned. Ned did not sign the act of donation but did write, sign, date, and hand-deliver to Mary a letter thanking her for the donation of the succession rights and stating that he "accepted the gift with the greatest gratitude."
- Mary visited her broker and told him that she wished to donate her IBM Corporation stock to Oscar. The broker had her execute the forms the brokerage firm needed to transfer the stock. The forms recited that the transfer was a gift and directed the transfer to Oscar. The forms were signed by Mary. They did not recite that Oscar accepted the donation. The brokerage firm transferred the IBM stock to Oscar's brokerage account.
- The Intel, Inc. stock split; thus, Mary had 200 shares when she died (rather than just the 100 shares she had at the time she signed her will).

TEST CONTINUES ON NEXT PAGE

At the time Mary died, no judgment of possession had been entered in the succession for Mary's mother. One month after the judgment of possession was entered in Mary's succession, Oscar, without informing Ned, sold his interest in Blackacre to Jones Land Company, LLC.

- 1.4 Who inherits the Intel, Inc. stock? Explain fully. (10 Points)**
- 1.5 Penny brought an action in Mary's succession alleging that the acceptance by Ned of the succession rights in Mary's mother's succession was not valid. Is Penny correct? Explain fully. (10 Points)**
- 1.6 Quinton brought an action in Mary's succession alleging that Mary's donation of the IBM Corporation stock to Oscar was not valid. Is Quinton correct? Explain fully. (10 Points)**
- 1.7 Must Ned employ the Xanadu Law Firm, APLC as attorney for the succession? Explain fully. (10 Points)**
- 1.8 One week after Ned learned that Oscar sold Oscar's interest in Blackacre, Ned filed a petition to reopen Mary's succession for the purpose of securing a declaration that pursuant to Mary's will, he is entitled to be declared the owner of the entirety of Blackacre. Is Ned entitled to such a declaration? Explain fully. (10 Points).**

[End of Civil Code II Test]

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

QUESTION 1 (100 POINTS)

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

**PART A
(30 Points)**

The following facts apply to Questions 1.1 and 1.2 only:

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

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

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

TEST CONTINUES ON NEXT PAGE

PART B
(40 Points)

The following facts apply to Questions 1.3–1.6 only:

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

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

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

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

TEST CONTINUES ON NEXT PAGE

PART C
(30 Points)

The following facts apply to Questions 1.7 and 1.8 only:

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

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

[End of Civil Code III Test]

**LOUISIANA STATE BAR EXAMINATION
CRIMINAL LAW, PROCEDURE AND EVIDENCE
FEBRUARY 2021**

QUESTION 1 (100 POINTS)

Zak is a 28-year-old convicted felon and a mechanic who is employed at a local Auto Repair Shop. There are several street gangs in the area where Zak lives. Zak's best friend Jenny, who is also a convicted felon, is a member of one of the street gangs.

One afternoon, Jenny visited Zak and asked Zak to help her purchase some cocaine. Zak agreed to help Jenny and called his friend Trevor, who told Zak that he had cocaine for sale. Jenny had told Zak how much cocaine she wanted to purchase, and Zak decided to buy some for himself too. Zak and Trevor agreed on the amount, the price and to meet thirty minutes later in a parking lot near Zak's apartment.

Before leaving, Zak, who had just drunk half of a 750 ml bottle of tequila, rolled a marijuana blunt for the road. Both Jenny and Zak picked up their handguns and, with Zak driving, went to meet Trevor. They pulled into the designated parking lot next to Trevor's vehicle. Zak got into Trevor's vehicle, exchanged the cash for the cocaine and then got back into his own vehicle. He gave Jenny half of the cocaine, and the two then left to go back to Zak's apartment, smoking the marijuana on their way.

Jenny noticed a suspicious vehicle parked on the street behind Zak's apartment complex. She believed the vehicle belonged to someone from a rival gang. She and Zak decided to check the vehicle out and to shoot whoever was in the vehicle because they assumed that it was a rival gang member. As they walked up to the vehicle, Jenny fired her handgun five times striking the vehicle and the occupant. She and Zak then ran back to Zak's vehicle and sped out of the neighborhood. In fact, the person in the vehicle was not a rival gang member but was a 17-year-old named Vic. Vic was simply waiting in his vehicle for his girlfriend. A bullet struck Vic in the back of the head, killing him instantly.

Immediately after the shooting, Zak, who was speeding and driving erratically, collided with one vehicle and almost hit another one. Zak also almost hit a young woman and her two children. Two police officers who witnessed this activated their patrol car's emergency lights, signaling for Zak to stop his vehicle. Zak and Jenny saw the patrol car, but at Jenny's urging, Zak continued to speed away. Jenny told Zak to let her get out of the vehicle so that it would be harder for the police to catch both of them. Zak abruptly turned a corner and stopped. Jenny got out and ran away. Zak then sped away but was ultimately pulled over by the two officers.

Zak was then apprehended by the two officers, immediately placed under arrest, handcuffed and placed in the back of their patrol car. The police officers then searched Zak's vehicle and found and seized Zak's firearm and a clear plastic bag containing about two grams of cocaine. Prosecutors intend to introduce the gun and cocaine into evidence at trial.

TEST CONTINUES ON NEXT PAGE

The police soon learned that Zak was with another person named Jenny during the shooting. They suspected that Jenny may possess evidence that would be helpful for their investigation of Vic's death. The officers drove to Jenny's home intending to arrest Jenny and conduct a search for any relevant evidence. Upon arrival, they identified themselves to Jenny's boyfriend and requested his consent to search the residence. Jenny's boyfriend readily consented to the search, but Jenny was present and vigorously opposed the search and refused to give her consent. Relying on the consent given by Jenny's boyfriend, the officers proceeded to search the apartment but discovered nothing relevant to their case. However, they did locate and seize multiple firearms and roughly an ounce of marijuana. They then arrested Jenny.

Zak's attorney intends to introduce character evidence at his trial through the testimony of Zak's supervisor at the Auto Repair Shop. He intends for the supervisor to testify that, among his coworkers, Zak has a reputation for being peaceful and non-violent.

Please address the following four questions:

- 1.1 Identify the crimes Zak committed, and also the crimes Jenny committed, under Louisiana law and the elements of each crime. Explain fully. First address the crimes committed by Zak and then address the crimes committed by Jenny. (58 points)**
- 1.2 On what state and/or federal constitutional bases, if any, may Zak challenge the search and seizure of the evidence (firearm and cocaine) from his vehicle? Explain fully. (20 points)**
- 1.3 On what state and/or federal constitutional basis, if any, may Jenny challenge the legality of the search and seizure of the evidence (firearms and marijuana) from her residence? Explain fully. (8 points)**
- 1.4 Is the character evidence that Zak's attorney intends to introduce through the testimony of Zak's supervisor at the Auto Repair Shop admissible at trial? Explain fully. (14 points)**

[End of Criminal Law, Procedure and Evidence Test]

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
FEBRUARY 2021**

QUESTION 1 (100 POINTS)

**PART A
(70 Points)**

Fun Stuff, Inc. (FSI) develops and brings to market creative consumer products. FSI is incorporated in New York (NY) and registered to do business in Texas (TX), Louisiana (LA), and Mississippi (MS). Ann, who lives in LA, owns 75% of FSI stock. One minority shareholder owns the other 25%, and he lives in California (CA).

FSI's manufacturing facilities are in MS, and they generate about 80% of the company's revenues. The facilities employ more than 50 workers. An accountant and her assistant handle payroll, taxes, and personnel matters from an office in Bentonville, Arkansas (AR). They occasionally encounter a difficult issue and look to Ann for guidance to resolve it.

FSI's latest invention is a new process for coating silk neckties with a material that does not affect their appearance or feel but makes them repel food and water so that they will not stain. FSI's facility is not equipped to produce ties with the new process, so FSI contracted with Klutzy, LLC (Klutzy) to produce the ties, and distribute them to retailers.

All of Klutzy's management team and manufacturing facility are located in AR, and it is licensed to do business in TX, LA and MS, where it also distributes products. Klutzy is a limited liability company organized under Delaware (DE) law and has two members. Tim, who lives in TX, owns a 90% interest in Klutzy. Pete, who owns the remaining 10%, has lived in Georgia (GA) his entire life but moved to Florida (FL) eight months ago to care for his ailing father. Pete decided not to sell his home in GA but leased it to a friend for one year, subject to possible renewal. He returns every six weeks or so to check on things, but he has registered his automobile in FL and votes in FL. He is not sure whether he will return to GA, and he is undecided whether he will continue to live in FL after his father recovers or passes away. Physicians say it will be several more months before his father's health matter is resolved, and Pete is determined to stay at least until that resolution.

The contract between FSI and Klutzy requires that Klutzy keep the coating process confidential and not use it on any other line of neckties. FSI learned that Klutzy was nonetheless using the process on a line of ties that it marketed under the name Hipster Neckwear. FSI demanded that Klutzy cease production of the Hipster Neckwear, and Klutzy did so because it did not want to disrupt its otherwise profitable contractual arrangement with FSI.

TEST CONTINUES ON NEXT PAGE

FSI was not satisfied and filed suit in LA federal district court against Klutzy and prayed for recovery of the \$73,000 in profits Klutzy earned from sales of the Hipster Neckwear plus attorney fees under a Louisiana statute that allows an award of reasonable fees to the prevailing party in a case where a trade secret has been misappropriated.

Questions 1.1 – 1.3 are based on the facts set forth above.

1.1 Does the federal district court have subject-matter jurisdiction over FSI's claims against Klutzy? Explain fully. (40 points)

FOR QUESTIONS 1.2-1.3, ASSUME THAT THE FEDERAL COURT HAS SUBJECT-MATTER JURISDICTION OVER FSI'S CLAIMS AGAINST KLUTZY.

1.2 Klutzy, in the course of investigating its relationship with FSI, determined that Klutzy had inadvertently overpaid FSI \$25,000 in royalties on tie sales. Klutzy wants to attempt to recover that amount from FSI without having to file a separate suit.

What procedural device should Klutzy use to assert its claim against FSI in the federal suit? Explain fully. (12 points)

1.3 Tess, a citizen of Texas, is a former employee of FSI who was primarily responsible for inventing the silk coating process. As part of her severance package, FSI gave Tess a 10% interest in FSI's profits from the use of the silk coating process on neckties. Tess would like to assert a claim against Klutzy for her share of proceeds from the Hipster Neckwear sales.

What procedural device should Tess use to assert her claim against Klutzy in the federal suit? Explain fully. (18 points)

TEST CONTINUES ON NEXT PAGE

PART B
(30 points)

Tabitha, a citizen of Tennessee, opened a needlepoint supply store in a Louisiana (LA) town where there were three competing stores. The other stores began holding frequent sales, which caused Tabitha's store to struggle. She believed the other owners, all LA citizens, had conspired against her in violation of the Louisiana Unfair Trade Practices Act (LUTPA). She filed suit against the three competing owners in LA federal court based on diversity jurisdiction.

In addition to containing sufficient allegations as to subject-matter jurisdiction and venue, Tabitha's complaint alleged:

- (1) Plaintiff opened a needlepoint supply store and priced her goods at a fair markup.
- (2) Competing stores in town began holding sales, one after the other, so that one of them always offered the same goods for a lower price.
- (3) Plaintiff is of the belief that the three defendant owners conspired to structure their sales in the manner most harmful to Plaintiff's business, in violation of LUTPA.

The defendants' lawyers filed a motion to dismiss pursuant to Rule 12(b)(6) on the grounds that the complaint failed to state a claim on which relief may be granted. The defendants acknowledged that a person may state an actionable claim under the LUTPA based on an unfair conspiracy to restrain trade, but they argued that Tabitha's complaint was too conclusory to plead such a claim.

Question 1.4 is based on the facts set forth above.

1.4 What legal standards should the court apply when assessing defendants' motion? Should the court grant or deny defendants' motion? Discuss. (30 points)

[End of Federal Jurisdiction and Procedure Test]

**LOUISIANA STATE BAR EXAMINATION
LOUISIANA CODE OF CIVIL PROCEDURE
FEBRUARY 2021**

QUESTION 1 (100 POINTS)

(This fact pattern applies to all of Question 1)

Mary, a resident of St. Tammany Parish, was driving to work the morning of Friday, January 4, 2019, when, while stopped at a red light in Jefferson Parish, she was involved in a rear-end collision. James, a resident of Orleans Parish, was slowing down to stop at the red light but slammed into Mary's car after his car was hit by a metallic green Ford Mustang. The driver of the Mustang fled the scene of the accident before Mary or James could stop the driver or take down the car's license plate number.

An eyewitness, George, called 911 to report the accident. When the responding police officer arrived, he took statements from Mary, James and George. George told the police officer that he looked towards the accident when he heard the sound of the impact and saw the Mustang go into reverse and speed away. George did not see the driver or the license plate number of the Mustang but said the car was pretty noticeable because of its metallic green color.

James was transported by ambulance to the local emergency room for treatment. James' car was totaled. Mary's car was damaged but she was able to drive home. Mary did not mention to James or George or report to the responding police officer that she suffered any physical injuries.

Mary waited until Friday, January 3, 2020 to consult an attorney about filing suit. She waited because she had hoped that the police would find the driver and/or owner of the Mustang so that she could bring suit against them, but the police never located the driver or owner. On Monday, January 6, 2020, Mary's attorney filed suit in Orleans Parish on her behalf against James asserting claims for personal injury and property damage. However, Mary could not find a copy of the Police Report and Mary could not recall the name of James' insurer. Therefore, James' insurer was not named as a defendant in the lawsuit.

- 1.1 Mary had asked her attorney to file the lawsuit in St. Tammany Parish because that is where Mary lives and where it would be most convenient for her.
- (a) Would it have been proper to file Mary's lawsuit in St. Tammany Parish? Explain fully. (3 pts)
 - (b) Which parish or parishes other than St. Tammany would be a proper venue for Mary's lawsuit against James? Explain fully. (3 pts)

TEST CONTINUES ON NEXT PAGE

- 1.2 Mary wants a jury trial. What steps must Mary take to obtain a jury trial as early as possible in the litigation? (6 pts)
- 1.3 James was served with Mary's petition for damages on January 30, 2020. James has decided to file an answer and no exceptions. What is James' delay for filing his answer to the Petition for Damages? (3 pts)
- 1.4 James wants to argue at trial that the driver of the green metallic Ford Mustang was negligent and at fault for causing the accident. Therefore, in his answer to the Petition, he denied any liability whatsoever for the accident. What else must James include in his answer to allow him to argue at trial the fault of the unknown driver? (3 pts)
- 1.5 (a) James believes that the lawsuit against him is not timely. What pleading should James file, and has James waived his right to file that pleading since he already filed his answer? (4 pts)
- (b) Was Mary's lawsuit filed timely? Explain fully. (4 pts)
- 1.6 James did not file a jury demand in his answer. During the course of litigation but before the trial date was set, Mary withdrew, in writing, her jury demand. What can James do, if anything, to receive a trial by jury now that Mary has withdrawn her jury demand? Explain fully. (5 pts)
- 1.7 In preparing for trial, Mary wants to discover the name of the insurer who issued James' automotive insurance policy, the policy number and the limits of that policy. What are the means by which Mary can obtain this information from James? (4 pts)
- 1.8 Mary has discovered the name of James' automotive insurer and wants to add it as a defendant. What steps must Mary take to properly add the insurance company as a defendant? (8 pts)
- 1.9 Mary knows George saw how hard James hit her car and wants to take George's deposition before trial. What steps must Mary take to take George's deposition? Explain fully. (4 pts)
- 1.10 Mary coordinated with George the time and place for his deposition and gave him a copy of the final notice of deposition but did not serve a subpoena on him. James and his attorney attended the deposition in person but George did not appear. Afterward, James called George to ask why he did not appear. George said he did not appear because he really does not want to get involved and he did not think he was required to appear. James is upset because he had to take off work and pay for his attorney to appear for George's deposition. What should James do to recover these expenses? (5 pts)

TEST CONTINUES ON NEXT PAGE

- 1.11 Ultimately George agrees that he will participate in a deposition but, because of a pandemic, he prefers not to be in a room with other people. What is required for George's deposition to be taken via remote electronic means? (4 pts)
- 1.12 James learned during the deposition of George that Mary told George the day of the accident that she was not injured at all during the car accident at issue. Therefore, James does not believe Mary was injured during the accident and wants Mary to undergo an additional physical examination. James also wants an additional medical opinion of her condition. What should James do to require Mary to undergo further physical examination? Explain fully. (6 pts)
- 1.13 James has properly noticed Mary's deposition. While taking her deposition, James asked Mary whether she has been involved in any other accidents or has suffered any personal injuries since the car accident at issue. Mary's attorney objects to the question on the grounds that the information would not be admissible at trial and instructs Mary to not respond.
- (a) Was it proper for Mary's attorney to instruct Mary not to answer the questions regarding subsequent accidents? Explain fully. (4 pts)
 - (b) What, if anything, should James file with the court to force Mary to answer the questions regarding subsequent accidents? (2 pts)
 - (c) Does James waive his right to challenge Mary's refusal to answer questions regarding subsequent accidents if he completes her deposition before doing so? Explain fully. (2 pts)
 - (d) The Judge ordered Mary to answer questions regarding subsequent accidents. However, Mary still refuses to answer. What action should James take? (2 pts)
 - (e) Identify four (4) actions the Judge might take in response to Mary's continued refusal to answer the questions? (4 pts)
- 1.14 After adequate discovery, the court fixed a trial date. James then decided to file a motion for summary judgment seeking a determination by the judge that Mary did not sustain personal injuries from the car accident.
- (a) When is the latest date before the trial date for James to file and serve the motion and all supporting documents? (1 pt)
 - (b) What is the legal standard James must satisfy to obtain the determination that Mary did not sustain personal injuries from the car accident, and what evidence must James present in support of his motion for summary judgment? (9 pts)

TEST CONTINUES ON NEXT PAGE

- (c) James timely filed and served his motion for summary judgment. The court has set a hearing date on the motion. When is the latest day before the hearing date for Mary to file and serve her opposition to the motion, including all documents in support of her opposition? (1 pt)
 - (d) When is the last day for the court to render a judgment on the motion? (1 pt)
- 1.15 Each party retained an expert to reconstruct the accident. Expert witness reports have been exchanged, and the discovery depositions of all experts have been taken. Mary's expert opined that the accident was 100% the fault of James because he was speeding and that the accident would have occurred even if the metallic green Ford Mustang had not hit James' car. James believes that Mary's accident reconstruction expert is completely unqualified to give expert testimony in the lawsuit and that the methodology used by Mary's expert is "junk science."
- (a) What motion should James bring before the court to test the qualifications and opinions of Mary's expert? (3 pts)
 - (b) What is the time deadline for filing the motion? (2 pts)
- 1.16 At trial, James puts on evidence that Mary's damages from the accident were caused, at least in part, by the unidentified driver of the metallic green Ford Mustang. What steps, if any, should James take to have the jury allocate any amount of fault to the driver of the Ford Mustang? Explain fully. (4 pts)
- 1.17 During the course of representing their clients in this lawsuit, what obligations, if any, do the attorneys have as officers of the court? (3 pts)

[End of Louisiana Code of Civil Procedure Test]

**LOUISIANA STATE BAR EXAMINATION
TORTS
FEBRUARY 2021**

QUESTION 1 (100 POINTS)

Dorothy invited her next-door neighbor Patty to come over for a cup of tea. On the way to Dorothy's house, Patty did not use the sidewalks, but instead walked through a gap in the bushes along the side of Dorothy's yard and then through Dorothy's flower bed to cut across Dorothy's lawn. To step into the flower bed, Patty had to step over a rope that was hanging along the bushes about two feet off the ground. As she was crossing the flower bed, Patty stepped on a piece of metal that was sticking about two inches out of the ground; this piece of metal pierced through one of her toes.

For several years, Dorothy had an irrigation system that watered her grass and flowers and used the services of ABC Lawn Service to maintain her grass and flowers. A few months ago, ABC Lawn had noticed that flowers in the flower bed were being trampled by foot traffic; thus, with Dorothy's approval and to discourage persons from walking in the flower beds, it strung around the flower bed and bushes the rope that Patty later stepped over. Two weeks before Patty's visit and unbeknownst to Dorothy, ABC Lawn Service had damaged the irrigation system and left a piece of metal from the irrigation system sticking out of the ground in the flower bed next to the bushes. This is the same piece of metal that pierced Patty's toe.

Patty went to a hospital for treatment for her toe injury. Patty was in extreme pain and was traumatized at the thought that she may lose her toe. While at the hospital, Patty contracted a highly contagious and deadly infection that had been spreading in the hospital. The infection led to her being hospitalized for two weeks where she suffered a great deal of pain, and then led to her death. The hospital knew that Patty's infection was very contagious; indeed, four of Nurse Terry's co-workers had recently contracted the same infection, although it was still undetermined how those co-workers had contracted the infection. Nonetheless, the hospital forced Nurse Terry to treat Patty anyway. Nurse Terry also contracted the same infection while employed by the hospital and treating Patty. Although she did not die, Nurse Terry was bed-ridden for three months from the infection.

Patty is survived by her husband, Hank, and her son, Sam.

What theory or theories of liability might reasonably be asserted in each of the following actions, what defenses should reasonably be raised, and what party is likely to prevail?

- 1.1 Hank and Sam v. ABC Lawn Service (40 points)**
- 1.2 Hank and Sam v. Dorothy (20 points)**
- 1.3 Hank and Sam v. the hospital (20 points)**
- 1.4 Nurse Terry v. the hospital (20 points)**

[End of Torts Exam]