

Louisiana State University Law Center
LSU Law Digital Commons

Louisiana Bar Exams

8-2020

August 2020 Louisiana Bar Exam

Louisiana Supreme Court Committee on Bar Admissions

Follow this and additional works at: https://digitalcommons.law.lsu.edu/bar_exams

 Part of the Law Commons

LOUISIANA STATE BAR EXAMINATION

AUGUST 2020

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	12
LOUISIANA CODE OF CIVIL PROCEDURE	15
TORTS.....	19

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

QUESTION 1 (100 POINTS)

Hugh and Winter have always lived in Louisiana and were properly married 15 years ago. Before their wedding, Hugh and Winter signed an agreement providing that, in the event of a divorce, each spouse waived rights to both interim and final periodic support. At the same time, they also signed an agreement providing that they elected to opt out of Louisiana's community property regime. There were no witnesses at that time, but the agreements were properly acknowledged before a notary and two witnesses after their marriage.

Shortly after their marriage, Hugh and Winter had a child, Caroline. A few months after Caroline was born, Winter discovered that Hugh had been having an affair with his co-worker. Winter was devastated. Winter filed for divorce. She and Hugh could not agree on custody. After an evidentiary hearing considering all relevant factors, the court awarded joint custody naming Winter as domiciliary parent. Several years later, Hugh married a woman with a teenage son, who sexually abused Caroline. Winter discovered the abuse and now wants sole custody.

Winter's father Frank recently died, leaving her ownership of a shopping center property (which he had owned separately), subject to a lifetime usufruct in favor of her mother, Melanie. The shopping center property was accessed from the public highway via a roadway across a neighbor's property established pursuant to a written agreement signed by Frank and the neighboring property owner 20 years ago. The agreement was granted to "Frank as owner of the neighboring property, his heirs and assigns," but does not otherwise state whether it benefits any particular estate or person. The agreement requires the roadway be no wider than 20 feet, be constructed in a certain location, and be removed 50 years after the date of the agreement. The agreement was duly recorded in the parish conveyance records.

When leases of space in the shopping center expired shortly after Frank's death, Melanie entered into new leases with the tenants, without discussing the issue with Winter. The new leases expire "at Melanie's death." Winter does not want to be involved in ownership or operation of a shopping center, so she has entered into a contract to sell the shopping center property to a national real estate developer, who plans to tear it down and build a large warehouse store on the site.

TEST CONTINUES ON NEXT PAGE

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

- 1.1 Have Winter and Hugh properly opted out of:
 - (a) the community property regime?
 - (b) the obligation to pay interim spousal support?
 - (c) the obligation to pay final periodic spousal support?Discuss. (25 points)
- 1.2 What are the governing standards for modifying an award of custody, and which standard governs here? Discuss. (20 points)
- 1.3 What are the nature and classification of the rights Frank acquired over the neighboring property under his agreement with his neighbor? Discuss. (25 points)
- 1.4 What rights, if any, does Melanie have to enter into the new leases? Discuss. (15 points)
- 1.5 Does Winter have the right to sell her interests in the shopping center property; and if so, what rights will the real estate developer acquire? Discuss. (15 points)

[End of Civil Code I Test]

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

QUESTION 1 (100 POINTS)

Aaron and his wife, Barbara, were married in Louisiana and domiciled in Louisiana for their entire marriage. They never executed a matrimonial agreement. Aaron and Barbara had three children together: Carol, who was born in 1991; Doug, who was born in 1994, both of whom are physically and mentally competent; and Ed, who was born in 1997 and died in 2018, leaving his children, Hilda, Ivan, and Jack. Aaron fathered no other children.

Aaron died in Louisiana in 2019, survived by Barbara, Carol, Doug, Hilda, Ivan, and Jack. Aaron is also survived by his mother, Mom, and his only sibling, Lisa.

In 2017, Aaron executed a Louisiana testament, valid in form, the dispositive provisions of which read in the following order:

1. I leave Carol my 2016 Blue Tesla Model S Performance (my “Tesla”).
2. I leave Doug my *circa* 1850 Trephination Drill (the “Drill”). If Doug does not survive me, I leave the Drill to the New Orleans Pharmacy Museum on Chartres Street.
3. I leave Doug my gold watch (the “Watch”).
4. Because it is our old family homestead, I ask that Mom decide who should inherit my interest in the family farm (the “Farm”).
5. I leave Lisa my Clementine Hunter painting *Hog Killing* (the “Clementine Hunter”).
6. I leave Doug my Blue 2016 Tesla Model S Performance (my “Tesla”).
7. I leave the residue of my estate, which I estimate to have a value in excess of \$10 million, to my surviving children, Carol and Doug, in equal shares.

TEST CONTINUES ON NEXT PAGE

At the time of his death, Aaron owned the articles of movable property listed in the testament, except for the Watch, which he had hand delivered to Carol prior to his death, as well as the following immovable property located in Louisiana:

- Community Property: an undivided one-half interest in a family home (the “Family Home”) that he and Barbara purchased during their marriage with community funds.
- Separate Property: naked ownership of an undivided one-half interest in the Farm, inherited from his father and subject to the usufruct of Mom.
- Separate Property: certain timberland (the “Timberland”) purchased by Aaron prior to his marriage to Barbara.

PART A
(50 POINTS)

- 1.1 **Who inherits the Tesla? Discuss. (10 Points)**
- 1.2 **With respect to the Drill, is the substitution of the New Orleans Pharmacy Museum on Chartres Street a permitted substitution under the Louisiana Civil Code? Discuss. (10 Points)**
- 1.3 **Assume that Mom filed an affidavit in Aaron’s succession proceeding awarding Aaron’s interest in the Farm to Lisa. Is this a valid disposition of Aaron’s interest in the Farm? Discuss. (10 Points)**
- 1.4 **Can Doug successfully require Carol to return the Watch to Aaron’s succession, so that ownership of the Watch can pass via his testament? Discuss. (10 Points)**
- 1.5 **Hilda, Ivan, and Jack were omitted from Aaron’s will. What rights (if any) do they have with respect to Aaron’s succession? Discuss. (10 Points)**

PART B
(50 POINTS)

ASSUME FOR PART B OF THE EXAM THAT AARON DID NOT LEAVE A TESTAMENT AND DIED INTESTATE.

- 1.6 **Who succeeds to Aaron’s interest in the Family Home? Discuss. (15 Points)**
- 1.7 ***For Question 1.7 only, assume Barbara married Mark in January 2020. What effect, if any, does that marriage have on ownership of the Family Home? Discuss. (5 Points)***

TEST CONTINUES ON NEXT PAGE

1.8 *For Question 1.8 only*, assume that Doug does not wish to be in the chain of title to the Family Home. What action must he take to effectuate his wish, and what are the legal requirements for such action? May Doug nonetheless inherit a portion of the Timberland? Discuss. (10 Points)

FOR QUESTION 1.9 AND 1.10 ONLY, ASSUME THAT AARON NEVER HAD ANY CHILDREN.

1.9 Who succeeds to Aaron's interest in the Family Home? Discuss. (10 Points)

1.10 Who succeeds to Aaron's interest in the Timberland? Discuss. (10 Points)

[End of Civil Code II Test]

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

QUESTION 1 (100 POINTS)

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

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

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

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

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

TEST CONTINUES ON NEXT PAGE

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

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

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

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

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

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

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

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

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

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

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

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

TEST CONTINUES ON NEXT PAGE

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

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

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

[End of Civil Code III Test]

**LOUISIANA STATE BAR EXAMINATION
CRIMINAL LAW, PROCEDURE AND EVIDENCE
AUGUST 2020**

QUESTION 1 (100 POINTS)

Last month, Laura and Katelyn turned 19. Laura and her family live in a golf course community, with their home sitting on the golf course. Laura hosted a birthday party at her home for herself and Katelyn. Laura purchased alcohol to serve at their party. During the party which began early in the day, both Laura and Katelyn drank heavily. In the late afternoon, after the party cleared out, Laura and Katelyn smoked marijuana and drank a bottle of wine. They discussed wanting to do something wild to celebrate the end of their teen years.

Laura and Katelyn decided to break into the garage of Laura's neighbor Jerry to take his golf cart joyriding on the golf course. Katelyn and Laura snuck over to Jerry's garage and found the door open. They entered the garage. As they were about to get into the golf cart, they noticed Jerry in the garage. Laura grabbed one of the golf clubs on the cart and hit Jerry on the head with it. Jerry fell to the floor, and began bleeding profusely and had to be taken to the hospital for stitches. Laura and Katelyn then jumped into the golf cart, and Laura drove toward the 16th hole where she proceeded to cut donuts on the green, which resulted in the green being torn up and unplayable. Afterwards, they drove toward the woods on the other side of the neighborhood to hide the golf cart. Upon exiting the golf course, Laura accidentally hit and severely injured Eileen, a woman who lived in the neighborhood. After hitting Eileen, Katelyn and Laura panicked and ran back to Laura's house on foot. Eileen, unable to get up, lay there with severe injuries. An evening jogger, Dan, who also lives in the neighborhood, happened to witness the entire incident and called 911. Eileen was then rushed to the hospital but succumbed to her injuries on the way and was pronounced dead upon arrival at the hospital. When the police arrived, Dan explained that he saw Laura and another girl in the golf cart that hit Eileen, that he recognized Laura as someone who lives in the neighborhood, and that he saw the girls run away from the scene towards Laura's house.

After speaking with Dan, the officers went to Laura's house and knocked on the door. Upon answering the door, Katelyn was startled to see the police and began to cry. The officers then placed Katelyn and Laura under arrest. Officers noticed that both Laura and Katelyn appeared to be intoxicated. Officers also noticed a distinct smell of marijuana on Katelyn. Neither was mirandized at that time.

TEST CONTINUES ON NEXT PAGE

While on the way to the police station, one of the arresting officers stated to Katelyn, “You are too young to be drinking, let alone smoking marijuana.” This caused Katelyn to begin crying again and admit to the arresting officer that she and Laura had been drinking all day. Once they arrived at the police station, they were each put in separate interview rooms. Prior to being interviewed, they were both read their Miranda rights. Each stated that she understood these rights and wished to move forward with speaking to the investigating detective without the presence of an attorney. One detective asked Laura how much she and Katelyn had been drinking prior to driving the golf cart. Laura, despite agreeing to speak with the detective, refused to answer the question. The detective replied to Laura’s refusal to cooperate by telling Laura that there was no point in lying because, in her interview in the station, Katelyn had already told them everything they needed to know. But the detective was being untruthful, as Katelyn had, in fact, not told the detective anything during her interview. Once Laura was told this, she admitted that she and Katelyn had been drinking since around 11 a.m. that morning, had smoked marijuana and drove the golf cart that had struck Eileen. When police asked if Laura would consent to a search of her home, Laura refused.

The next day police showed up at Laura’s house, while Laura was still in custody at the police station. The officers knocked on the door, and it was answered by Laura’s older sister with whom she shared a bedroom. The officers explained they had arrested Laura the previous day and told Laura’s sister they needed to come into the home to search for evidence. Laura’s sister consented to the search. During the search, officers entered the bedroom that the sister shared with Laura. They found a marijuana cigarette and a bloody golf club in the bedroom.

- 1.1 With what crimes might Laura be reasonably charged under Louisiana law? Explain the elements of each crime. (50 points)**
- 1.2 What are the state and federal constitutional bases, if any, for challenging the admissibility of the incriminating statements Katelyn gave while being escorted to the police station? Explain fully. (12 points)**
- 1.3 What are the state and federal constitutional bases, if any, for challenging the admissibility of Laura’s incriminating statements to the investigating detective at the police station? Explain fully. (12 points)**
- 1.4 What are the state and federal constitutional bases, if any, for challenging the admissibility of the marijuana and bloody golf club obtained during the search of Laura’s home? Explain fully. (10 points)**
- 1.5 Assume that during the State’s case-in-chief against Laura, prosecutors called Dan who testified that he witnessed Laura driving the golf cart that hit Eileen. Laura’s attorney is aware that Dan was convicted ten years ago on ten counts of check fraud. May Laura’s attorney raise the conviction during cross-examination of Dan? Explain fully. (8 points)**

TEST CONTINUES ON NEXT PAGE

- 1.6 Assume that as part of Laura’s defense strategy, her attorney called Father John to testify as a character witness. Father John was prepared to testify that Laura has been volunteering at the church’s foster home for the past two years and that Laura is known among the staff, foster children and other members of the community to be someone who is kind, with a calm demeanor and trustworthy. Prosecutors object to the testimony. How should the judge rule on the objection? Explain fully. (8 points)**

[End of Criminal Law, Procedure and Evidence Test]

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
AUGUST 2020**

QUESTION 1 (100 POINTS)

Sturdy Sheds, LLC (Sturdy Sheds) is a Louisiana limited liability company that specializes in the design, manufacturing and sales of packages for assemble-yourself, unconstructed sheds for residential use. A Sturdy Sheds shed package contains all the parts for the shed and detailed instructions for assembling and erecting the shed, but the purchaser is responsible for assembling and erecting the shed.

Fifty percent (50%) of Sturdy Sheds is owned by Barn Doors, Inc. (Barn Doors), which is incorporated in Delaware (DE). All shares of Barn Doors are owned by Joseph, an individual who lives in New York (NY). Barn Doors' executive office is located in NY, but Barn Doors' vice presidents who oversee all daily operations are in Barn Doors' Florida (FL) office. Barn Doors has manufacturing facilities in FL, Alabama (AL) and Mississippi (MS).

The other 50% of Sturdy Sheds is owned by Bucks, L.P., a limited partnership organized under Louisiana law. Its sole general partner is Tex, who has always lived in Houston, Texas (TX); its sole limited partner is Cal, who has always lived in San Diego, California (CA).

Plaintiff, a long-time resident of Lafayette, Louisiana (LA), recently decided to purchase and construct a Sturdy Sheds shed in his back yard to protect his five-year old tractor, which he had personally customized over the past several years with various improvements. Plaintiff ordered a shed package from Sturdy Sheds over the internet for \$10,000, and Sturdy Sheds then had a common carrier deliver the shed package to Plaintiff's home. Plaintiff promptly assembled and erected the shed. Shortly thereafter, while Plaintiff was sitting on his tractor in his new shed, heavy winds caused the roof to cave in and severely injure Plaintiff. The shed was completely destroyed. The damage to Plaintiff's tractor is estimated at \$45,000. His medical bills will total \$15,000. Plaintiff has also suffered several months of serious pain during his recovery, and his doctors say he will have lifelong knee pain because of the accident.

Following the accident, Plaintiff moved in with his son in FL so that his son could look after him during his recovery. Plaintiff let a friend look after his home in LA. Plaintiff was able to work from his son's home, so he did not suffer any lost wages. Plaintiff found prospects for a great job in FL and has enjoyed having his son care for him during the first six months of recovery. Doctors state that Plaintiff will be recovered enough to care for himself soon, but Plaintiff is undecided where he will live after that.

TEST CONTINUES ON NEXT PAGE

Plaintiff has filed a complaint against Sturdy Sheds in a Louisiana federal district court. The complaint identifies the cost of the shed, the estimated dollar amount of the damage to Plaintiff's tractor and the amount of his medical bills, but it does not describe the nature or extent of his personal injuries. The complaint prays for an award of all damages to which Plaintiff is entitled.

Answer the following questions; a correct answer without an explanation or discussion will not be awarded any points.

- 1.1 Does the federal district court in Louisiana have subject matter jurisdiction over Plaintiff's complaint? Explain fully. (25 points)**
- 1.2 Does the federal court in Louisiana have personal jurisdiction over Sturdy Sheds? Would your answer change if Plaintiff, rather than accepting delivery of the shed package at his home in LA, drove to Sturdy Sheds' facility in MS to select and purchase the shed package and then personally drove it back to his home? Explain fully. (15 points)**

FOR ALL OF THE REMAINING QUESTIONS, ASSUME THAT THE LOUISIANA FEDERAL DISTRICT COURT HAS SUBJECT MATTER JURISDICTION OVER PLAINTIFF'S COMPLAINT AND PERSONAL JURISDICTION OVER STURDY SHEDS.

- 1.3 *For question 1.3 only*, assume that a Louisiana statute provides that a plaintiff may not recover more than the "Agricultural Blue Book" value of a destroyed tractor even if the plaintiff can prove that the tractor was more valuable; that federal law does not include any such damage limitations; and that Plaintiff believes that modifications to his tractor made it much more valuable than the Agricultural Blue Book listing. Should the federal court apply the Louisiana statute in Plaintiff's case? Explain fully. (10 points)**
- 1.4 *For question 1.4 only*, assume that more than a year after the suit was filed and after an answer has been filed and much discovery has been conducted, Barn Doors moved both its executive office and its vice presidents to LA and that Sturdy Sheds promptly then filed a motion to dismiss for lack of subject matter jurisdiction. Should the court grant Sturdy Sheds' motion to dismiss? Explain fully. (10 points)**
- 1.5 *For questions 1.5 and 1.6 only*, assume that the suit was originally filed by Plaintiff in Louisiana state court. What procedure and requirements must Sturdy Sheds follow to remove the case to federal court; and to which federal court may the case be removed? Explain fully. (25 points)**

TEST CONTINUES ON NEXT PAGE

1.6 *For question 1.6 only*, assume that the case is removed as described in question 1.5 above, but that the removal occurred within thirty days after Plaintiff answered discovery which first disclosed that his damages would exceed \$75,000, but these discovery answers were provided after much delay by Plaintiff, more than a year after the suit was filed.

- a) What steps must Plaintiff take to seek a return of the case to state court?
- b) What effect, if any, would the delay of Plaintiff in answering discovery have on the removability of the case?
- c) What is the effect, if any, on Plaintiff's action if he takes steps to return the case to state court 40 days after the removal?

Explain fully. (15 points)

[End of Federal Jurisdiction and Procedure Test]

**LOUISIANA STATE BAR EXAMINATION
LOUISIANA CODE OF CIVIL PROCEDURE
AUGUST 2020**

QUESTION 1 (100 POINTS)

Pearl, who is a resident of Lafayette Parish, was driving eastbound along Interstate 10 while on her way to visit family in West Baton Rouge Parish. Tucker, who is a resident of Bossier Parish, was driving an 18-wheeler, also going eastbound on Interstate 10 to make a delivery in Orleans Parish for his employer, Delta, Inc., which is a Louisiana corporation with a registered office in Caddo Parish and another office in Rapides Parish. Upon leaving a weigh station in St. Martin Parish and re-entering the interstate highway, Tucker's truck collided with Pearl's vehicle. Pearl suffered major injuries from the accident and has hired a lawyer to file a lawsuit on her behalf against Tucker and Delta, Inc.

Using the above facts, answer the following questions and explain each answer briefly.

- 1.1 (a) During the lawsuit, when the attorneys in the above described case file pleadings on behalf of their clients, what do the attorneys certify personally? (6 points)
- (b) What are the pleadings to which the attorneys' certifications apply? (6 points)
- (c) What obligations, if any, do the attorneys have as officers of the court? (3 points)
- 1.2 (a) What parish or parishes are a proper venue for Pearl's lawsuit against Tucker and Delta, Inc.? (12 points)
- (b) If Delta, Inc. believes the lawsuit has been filed in the wrong venue, what must Delta, Inc. file to challenge the venue and when must it be filed? (6 points)
- 1.3 Assume that the lawsuit has been filed in the proper venue, and a judge has been assigned to the case. Pearl has been told the judge that has been assigned to the case is very pro-company and often makes rulings in favor of defendant companies in personal injury cases. Pearl has chosen to seek recusal of the judge. Is she likely to succeed? Explain fully. (6 points)
- 1.4 What is the time delay for requesting service of citation on defendants Delta Inc. and Tucker? If the request for service of citation is not timely made, what action, if any, can be taken by the defendant(s) to obtain dismissal of the action? (6 points)

TEST CONTINUES ON NEXT PAGE

- 1.5 During the discovery process, Pearl noticed the deposition of Tucker. Unfortunately, Tucker has been caring for his mother, who is recovering from a recent surgery. She lives two hours away and is in need of constant supervision and care. As a result, Tucker is unable to leave his mother's home in order to attend an in-person deposition. Given these circumstances, how might Pearl seek to take Tucker's deposition and what are the requirements to do so? (3 points)
- 1.6 Assume that Tucker's deposition has been scheduled. During Tucker's deposition, Pearl's attorney noted he had recently looked over Tucker's social media accounts and noticed Tucker did not list having any children. Pearl's attorney began asking questions about why Tucker was not married and did not have any children. Tucker's attorney instructed Tucker not to answer any of the questions. Was it proper for Tucker's attorney to instruct Tucker not to answer the questions regarding marriage and children? Why or why not? (4 points)
- 1.7 Through discovery, the parties learned that the weigh station, which is owned and run by Interstate Weight, Inc., may have video recordings of the trucks exiting the weigh station back onto the interstate highway and of the weigh station's flashing light on the exit ramp to signal to the truck drivers when it is safe to re-enter the highway. Pearl would like to obtain any video recording of Tucker's truck. What must Pearl do to obtain any video recording that Interstate Weight, Inc. may have of Tucker's truck? (3 points)
- 1.8 After adequate discovery, the court fixed a trial date. Pearl has now decided to file a motion for summary judgment seeking a determination by the judge that Delta, Inc. and Tucker are liable for the damages Pearl sustained in the accident.
- (a) When is the last day that Pearl can file and serve the motion? (2 points)
 - (b) Assume that Pearl has timely filed and served the motion and that the court has set a hearing date on the motion. When is the latest day before the hearing when Delta, Inc. and Tucker can timely file and serve oppositions to the motion? (2 points)
 - (c) What is the standard by which the court may grant the motion? (6 points)
 - (d) When is the last day for the court to render a judgment on the motion? (2 points)

TEST CONTINUES ON NEXT PAGE

- 1.9 Assume that Pearl's motion for summary judgment was denied and that the case has been set for trial by jury.
- (a) If Pearl's trial is by a jury of six, how many of the jurors must concur to render a verdict unless the parties stipulate otherwise? (2 points)
 - (b) If Pearl's trial is by a jury of twelve, how many of the jurors must concur to render a verdict unless the parties stipulate otherwise? (2 points)
- 1.10 Assume that early in the discovery process, Pearl propounded interrogatories asking Tucker to identify all witnesses to the accident and that Tucker timely and accurately answered those interrogatories. Two weeks before trial, Tucker learned that a person who was doing road work on the interstate highway observed the accident in its entirety and further observed Tucker looking at his cell phone as he was going through the flashing light. Tucker does not plan to call this witness at trial, since his testimony will be adverse to Tucker's interests. What responsibility, if any, does Tucker have to divulge the identity of this new witness to Pearl? (6 points)
- 1.11 Assume that Pearl has recently learned that the operator of the weigh station has moved across the state and is a six-hour drive from the courthouse in which the trial is to be held. Pearl wants to present the operator as a witness for testimony during the trial. Can the operator be compelled to testify at trial and, if so, what steps should Pearl take to compel the operator's testimony? (4 points)
- 1.12 Assume that trial is underway and that Pearl did not join the owner of the weigh station, Interstate Weight, Inc. in the lawsuit. Delta, Inc. believes that not joining Interstate Weight, Inc. will prejudice Delta, Inc. What, if anything, can Delta, Inc. do now? (6 points)

TEST CONTINUES ON NEXT PAGE

1.13 Assume that the trial is over and that the jury returned a verdict in favor of Pearl and against Delta, Inc. on Monday, December 4. The judge instructed Pearl to prepare and furnish to Delta, Inc. a proposed judgment based upon the jury's verdict. Pearl complied, but Delta, Inc. had an objection to the proposed judgment. Thereafter, the judge held a conference in chambers on Monday, December 11, and presented a judgment of her own, to which all parties had objections. The judge then entered the courtroom and, on the record and in the presence of the lawyers for all parties, announced her judgment, signed the judgment she had prepared, and handed it to the deputy clerk of court for filing. The judge acknowledged that all parties had objections to the judgment, and counsel for all parties reiterated and stated those objections on the record. The sheriff served notice of the judgment on Tuesday, December 12.

- (a) What is the last date on which Delta, Inc. can move for a new trial or judgment notwithstanding the verdict? (3 points)
- (b) No party filed post-judgment motions, but Delta, Inc. wants to take a suspensive appeal from the adverse money judgment. How many days, and from what date, does Delta, Inc. have to file for the suspensive appeal? (4 points)
- (c) Delta, Inc. has perfected its suspensive appeal, and the record has been lodged with the court of appeal. Pearl filed no post-judgment motions but wants to preserve her right to have the court of appeal consider her objections to the judgment and modify it. What must Pearl file, where should it be filed, and when should it be filed? (6 points)

[End of Louisiana Code of Civil Procedure Test]

**LOUISIANA STATE BAR EXAMINATION
TORTS
AUGUST 2020**

QUESTION 1 (100 POINTS)

One evening shortly after sunset, David was driving on Main Street and was approaching the intersection with First Street. David's wife, Susan, was a passenger in the vehicle, and they were talking to each other the whole time. The intersection of Main Street and First Street had a stop sign for the vehicles, such as David's, approaching from Main Street.

To minimize glare, David recently had a plastic windshield visor installed at the top of his truck windshield. The visor was manufactured and installed by Glare, Inc. The visor was darker than a legal window tint and had a low profile. The shade and location of the visor made vision of some objects difficult, particularly after the sun went down. The visor came with a pamphlet that stated: "The contrast of objects seen through the visor is lessened in lower light."

Patty was driving north on First Street approaching the intersection with Main Street. There is a flashing yellow light on First Street at the intersection with Main Street.

David did not see the stop sign and ran through the stop sign. Patty did not slow down for the flashing yellow light at the intersection of First Street and Main Street.

The two vehicles collided. David was thrown from the truck and initially survived the impact but suffered major pain and injuries and died from the crash a week later. Susan walked away from the crash without any physical injuries but continues to be mentally affected by the accident and David's death. Patty suffered a broken back and arm, and her van was totaled.

- 1.1 What theory or theories of liability might reasonably be asserted in each of the following actions, what defenses can reasonably be raised, and which party is likely to prevail? Fully explain. (80 points)**
- (a) Patty v. David (25 points)**
 - (b) Susan (for her own damages) vs. Patty (19 points)**
 - (c) Susan vs. Glare, Inc. (36 points)**
- 1.2 What claims might be asserted, and what damages might be recovered, against Patty by Susan in her capacity as David's heir? Fully explain. (20 points)**

[End of Torts Test]