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LOUISIANA STATE BAR EXAMINATION

OCTOBER 2020

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

QUESTION 1 (100 POINTS)

Harry and Wendy were properly married in 2010. In 2012, they had a son Sam, and began planning to move out of their apartment and into a home for their growing family. Wendy owned 10 acres of undeveloped land that she had inherited from her grandfather George before the wedding; the land was worth \$150,000 on her wedding day. For two years after Sam was born, Harry devoted every weekend to building a home on the land. Harry bought the building materials and supplies with checks from their joint bank account, spending \$100,000, and he personally did all the work on the home. After construction was completed in 2014, the improved property was valued at \$400,000.

Shortly after they moved into their new family home, Wendy had an affair with another man. When Harry discovered the affair, he promptly filed for and obtained a divorce. As part of their property settlement, the court awarded the home to Wendy. The court ordered joint custody of Sam based on an agreement between Harry and Wendy.

The property that Wendy inherited from her grandfather George was next to a property (the “Camp Property”) owned by Nathan and Oscar, who had a fishing camp on their property next to a lake that abuts both properties. Although the Camp Property abuts a public road, the portion closest to the public road is very boggy and has never had a road across it. George had been friendly with Nathan and Oscar. For 35 years, Nathan and Oscar have used a dirt roadway across George’s property to access their Camp Property and the lake. Although George saw Nathan and Oscar using the dirt roadway, he never discussed it with them.

Five years ago, Oscar moved out of town but still shares ownership of the Camp Property with Nathan. To capitalize on the lake’s popularity, Nathan spent \$50,000 to build two more fishing camps on the Camp Property, which he now leases to the public. Nathan did not tell Oscar anything about the two new camps. With the two new camps, the Camp Property’s value increased by \$150,000.

In preparing to develop a hair salon on a portion of the 10 acres, Wendy recently constructed a fence along the property line between her 10 acres and the Camp Property, precluding access to the Camp Property via the dirt road. Nathan demanded that Wendy remove the fence, but she refused.

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 Immediately before Harry filed for divorce, how, as separate or community property, should the home be classified? Explain fully. (15 points)**
- 1.2 What amounts, if any, is Harry entitled to for reimbursement relating to the home? Explain fully. (15 points)**
- 1.3 Harry recently accepted a new job in New York, so Wendy now wants sole custody of Sam. What are the governing standards for modifying custody, and which standard should the court apply here? Explain fully. (25 points)**
- 1.4 What rights, if any, does Wendy have to construct a fence on her property along the property boundary with Oscar and Nathan's Camp Property? Explain fully. (25 points)**
- 1.5 What rights or obligations, if any, does Oscar have with regard to the two new camps that Nathan built? Explain fully. (20 points)**

[End of Civil Code I Test]

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

QUESTION 1 (100 POINTS)

PART A (30 POINTS)

Henry and Irene were married in Louisiana and domiciled in Louisiana for their entire marriage. They never executed a matrimonial agreement. Henry and Irene had three children together:

- Jason, age 50;
- Karen, who died in 2015 with two children, Mary and Neil, who are in their late twenties; and
- Lyle, age 35.

Jason, Lyle, Mary and Neil have never been married, never had any children and have always been mentally and physically healthy. Henry neither fathered nor adopted any other children.

Henry died intestate in Louisiana in 2019. He is survived by Irene, Jason, Lyle, Mary, Neil and by his mother, Mom, and his only sibling, Samuel.

At the time of his death, Henry owned the following immovable property located in Louisiana:

- Community Property: his undivided one-half interest in a home (the “*Family Home*”) that he and Irene purchased during their marriage with community funds.
- Separate Property: naked ownership of an undivided one-half interest in the family fishing camp (the “*Camp*”), inherited from his father and subject to the usufruct of Mom.
- Separate Property: certain mineral interests (the “*Mineral Interests*”) purchased by Henry prior to his marriage to Irene.

1.1 Who succeeds to Henry’s interest in the Family Home; and in what proportions? Explain fully. (10 Points)

TEST CONTINUES ON NEXT PAGE

- 1.2 *Assume solely for Question 1.2 that Jason does not wish to inherit the Camp, but is interested in inheriting his share of the other assets. What steps, if any, are available to Jason to accomplish his goals? If he is successful, who should inherit his interest in the Camp? Explain fully. (10 Points)*
- 1.3 **At the time of his death, Henry’s interest in all of his assets had a value of \$1 million. At the time the succession administrator completed the estate administration and distributed the assets to the heirs pursuant to the judgment of possession, the value of those assets had increased to \$1.2 million, which is the total value of the assets received by Henry’s heirs. No other assets are under administration. After the judgment of possession and the distribution of assets, one of Harry’s creditors asserted and established a timely, valid claim in the amount of \$1.5 million. What is Mary’s liability for Henry’s \$1.5 million debt? Explain fully. (10 Points)**

PART B (20 POINTS)

Hector and Willow were married in Louisiana and domiciled in Louisiana for their entire marriage. They never executed a matrimonial agreement and never had any children. Hector died intestate in Louisiana in 2020 and is survived by Willow; his father, Dad; and his brother, Bob.

At the time of his death, Hector owned the following immovable property:

- As community property, an undivided one-half interest in the family home that he and Willow had purchased during their marriage with community property funds.
- As his separate property, an apartment building that he had purchased before his marriage to Willow.

- 1.4 **Who succeeds to Hector’s interest in the family home? Explain fully. (10 Points)**
- 1.5 **Who succeeds to Hector’s interest in the apartment building? Explain fully. (10 Points)**

TEST CONTINUES ON NEXT PAGE

PART C (50 POINTS)

Howard and Ester, after many years of marriage, were divorced in 2018, settling their community property affairs before his death so that all assets discussed below were owned by Howard at the time of his death. Howard died in 2019, survived by Ester, his sons Jake and Larry, and his granddaughter Gayle, whose mother, Howard's daughter, had predeceased Howard. Howard left a putative notarial testament, dated January 4, 2015, the dispositive provisions of which read as follows:

1. I leave my wife Ester all of my interest in the family home (the "***Family Home***").
2. I leave my interest in ACME Brick, L.L.C. to my son Jake and my good friend Tom.
3. I leave my son Larry my grandmother's sterling silver service ("***Granny's Silver***"). Larry is to take good care of Granny's Silver and at his death deliver it to my granddaughter Gayle.
4. I leave the residue of my estate to the Community Foundation of North Louisiana.

This document was in writing, dated, signed on each page and at the end, and bore the attestation clause appearing in Civil Code Article 1577. The document was executed in the presence of a notary public, and two witnesses consisting of the notary's secretary and the secretary's daughter, who was seventeen years old at the time of execution. Howard's friend Tom died in 2017 and is survived by his daughter Donna.

1.6 Is the form of Howard's putative testament valid? Explain fully. (10 Points)

ASSUME FOR THE REMAINDER OF PART C (QUESTIONS 1.7 – 1.10) THAT HOWARD'S TESTAMENT IS IN VALID FORM.

1.7 Who inherits the Family Home? Explain fully. (10 Points)

1.8 Is the bequest of Granny's Silver valid? Explain fully. (10 Points)

1.9 Who should inherit the ACME Brick, L.L.C. membership interests? Explain fully. (10 Points)

TEST CONTINUES ON NEXT PAGE

1.10 One month before he died in 2019, Howard purchased a 1940 Indian Chief Motorcycle (the “Chief”). Howard was storing the Chief in a commercial garage at the time of his death, and none of his family knew of the purchase. After the Chief was discovered during the succession administration, Howard’s granddaughter Gayle produced and delivered to the succession representative a typed, properly executed Act of Donation and Acceptance, in authentic form and dated August 29, 2015, which read in relevant part: “I hope one day to find a 1940 Indian Chief Motorcycle for sale and buy it. If I do, I hereby donate that motorcycle to my granddaughter Gayle.” Following this statement, Gayle formally accepted the donation, and the document then reads as follows: “THUS DONE AND PASSED in my office at Shreveport, Louisiana, on this 29th day of August, 2015, in the presence of the undersigned competent witnesses and notary after reading of the whole,” followed by the signatures of Howard, Gayle, two competent witnesses, and a notary public.

Did Howard make a valid *inter vivos* or testamentary donation of the Chief to Gayle? Explain fully. (10 Points)

[End of Civil Code II Test]

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

QUESTION 1 (100 POINTS)

Please answer the following 7 questions. These questions are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

PART A (50 POINTS)

Bob wanted to purchase four adjacent one-acre lots. Each of the lots, which are commonly known as Lots A, B, C, and D, consists of raw land without improvements. The following occurred:

Lot A: Bob purchased Lot A from Sid eleven months ago for \$1,000 in cash pursuant to a written act of sale. Sid was in dire need of money at the time, and the price Bob paid for Lot A was substantially less than its appraised value of \$5,000. The day after the sale was concluded, the act of cash sale was recorded in the conveyance records.

Lot B: Bob purchased Lot B from Sid six months ago for \$12,000 in cash pursuant to a written act of sale. The act of sale did not mention any warranty of any nature being made by Sid. At the time of the sale, Sid did not actually own Lot B but was in possession of the lot under a lease with option to purchase that Sid had entered into with a former owner several years earlier. A week after Sid signed the act of sale in favor of Bob, the former owner conveyed Lot B to Sid.

Lot C: A month ago, Bob and Sid signed a purchase agreement pursuant to which Sid agreed to sell Lot C to Bob for \$15,000, to be paid in cash at closing, which was to occur 90 days after the purchase agreement was signed. At the time the purchase agreement was signed, Bob delivered to Sid a \$1,000 cash payment, which the purchase agreement stipulated to be earnest money.

Lot D: Pursuant to a written lease that Sid and Bob signed 15 years ago, Bob leased Lot D from Sid for a term of 20 years. This lease is still in effect, and Bob has always paid his monthly rental payments when due and has otherwise complied with his obligations under the lease. Under the terms of the lease, Bob has the right to purchase Lot D at any time during the lease term for its fair market value as of the time Bob notifies Sid of his desire to do so. The lease specifies that fair market value will be determined by a local appraiser, whose name is stated in the lease. Within the last week, Bob delivered written notice to Sid of his desire to purchase Lot D.

TEST CONTINUES ON NEXT PAGE

Yesterday, Sid notified Bob that Bob's purchase of Lot A is "void" because the price Bob paid for Lot A was "unconscionably low." Sid further contends that Bob's purchase of Lot B is also "void" because Sid did not own Lot B at the time of the purported purchase. Sid also indicated in his notice that he will not proceed with the sale of Lot C and will not sell Lot D to Bob.

Bob has brought an action against Sid regarding each of the lots.

- 1.1 Is Sid likely to prevail on his claim that Bob's purchase of Lot A is "void" because the price Bob paid was "unconscionably low"? Explain fully. (10 points)**
- 1.2 Was the sale of Lot B to Sid effective in conveying ownership of the lot to Sid? Explain fully. (10 points)**
- 1.3 If Bob brings an action against Sid for specific performance under the purchase agreement for Lot C, is he likely to be successful? Explain fully. (10 points)**
- 1.4 Does Bob have the right to force Sid to sell Lot D to Bob? Explain fully. (20 points)**

PART B (50 POINTS)

Big Bank has a valid money judgment in its favor against Thrifty Land Co. In an effort to execute the judgment, Big Bank has properly arranged for the sheriff to seize a tract of immovable property owned by Thrifty Land Co. The mortgage records of the parish where the immovable property is located contain only the following four filings mentioning Thrifty Land Co.:

1. A mortgage, dated February 1, 2010, but not recorded in the mortgage records until November 1, 2010, in favor of Credit Bank securing a promissory note in the amount of \$50,000, payable in 72 monthly installments with a final balloon payment due on February 1, 2016, and burdening this same tract of immovable property owned by Thrifty Land Co.
2. A money judgment, rendered on June 4, 2010 and recorded in the mortgage records on June 7, 2010, against Thrifty Land Co. in favor of Sugarhouse Suppliers for the principal sum of \$25,000, plus interest and costs.
3. A multiple indebtedness mortgage dated October 2, 2019 and recorded in the mortgage records that same day, securing all present and future indebtedness of Thrifty Land Co. to Alexandria Bank up to the maximum amount of \$50,000,000 and burdening the same immovable property.
4. A money judgment, rendered on January 9, 2020 and recorded in the mortgage records on January 10, 2020, against Thrifty Land Co. in favor of Big Bank for the principal sum of \$75,000, plus interest and costs.

TEST CONTINUES ON NEXT PAGE

All of these encumbrances were valid at the time recorded. Alexandria Bank made a single loan advance to Thrifty Land Co. in the amount of \$45,000 on January 13, 2020.

Thrifty Land Co. has made no payments to any of these creditors.

Although not reflected by any filing in the mortgage records, Sugarhouse Suppliers properly revived its judgment on January 17, 2020 and obtained a judgment of revival on January 31, 2020.

- 1.5 Does Sugarhouse Suppliers have an enforceable encumbrance on the immovable property? What steps, if any, should Sugarhouse Suppliers have taken in the past, or should it take in the future, to ensure that its money judgment remains an enforceable encumbrance? Explain fully. (20 points)**
- 1.6 Does Alexandria Bank's multiple indebtedness mortgage rank ahead or behind the money judgment in favor of Big Bank? Explain fully. (15 points)**
- 1.7 Is Credit Bank's mortgage on the immovable property presently effective against third persons? What steps should Credit Bank have taken in the past, or should it take in the future, to ensure that its mortgage remains effective against third persons. Explain fully. (15 points)**

[End of Civil Code III Test]

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

QUESTION 1 (100 POINTS)

One evening of this year, Jack was planning to meet up at a friend's house to have a few drinks. Jack had already consumed two six packs of beer that afternoon before leaving for his friend's house. On the way to his friend's house, Jack stopped at a gas station to fill up his gas tank. At the gas station, Jack saw an old friend of his from high school, Terra, who walked over to the gas pump to say hello. While the two were talking, Terra asked Jack if he wanted to buy any marijuana or cocaine. Jack stated that he wanted to purchase some cocaine from Terra. They agreed to meet at Terra's apartment, which was near the gas station.

Jack followed Terra and arrived at Terra's apartment complex. Jack then went with Terra to her apartment to purchase the cocaine. He told her he wanted a small amount for himself, but wanted a good deal more so that he could sell most of it to some of his neighbors. After Terra weighed out 2.5 ounces of cocaine, she told Jack that it was \$500 for the product. [2.5 ounces of cocaine is much more than what an average cocaine user would consume in a day.] Jack didn't have that much cash with him so he pleaded with Terra to sell him the cocaine for \$150. However, Terra refused to do so.

The two engaged in a heated argument which led to Terra telling Jack to leave her apartment. Jack became enraged, pulled out his pocketknife and told Terra, "now, I'm getting the cocaine for free." Likewise, Jack then told Terra to turn over the cocaine, or he was going to cut her up. Terra, who was high on cocaine, was not afraid at all and began yelling at and pushing Jack. As a result, Jack panicked and stabbed Terra twice in her abdominal area. Jack then wiped off the knife, put it in his pocket, grabbed all of the cocaine which was being stored in a limited-edition designer purse, Terra's cell phone and \$400 cash and ran out of the apartment. Jack no longer wanted to go to his friend's house, so he went right home. Terra died of her injuries a few hours later.

The next day, two police officers were on patrol duty when they observed a vehicle with a broken taillight and illegal window tint. The driver of this vehicle was Jack, who was on his way to dispose of the cocaine and the knife. The officers followed Jack for a short period of time before activating their emergency lights. Jack complied with the officers and pulled over. The officers explained to Jack why they pulled him over. While speaking with Jack, one of the officers noticed that his vehicle and license plate matched a vehicle seen on camera leaving a crime scene the night before. The officers then asked Jack if they could search his vehicle. Jack refused, telling the officers they needed to obtain a search warrant to do so. The officers then threatened to arrest Jack, take him to jail and book him on a murder charge if he did not let the officers search his vehicle. Jack, frightened, quickly got back into his vehicle and drove away.

TEST CONTINUES ON NEXT PAGE

Once the police officers managed to get Jack to stop his vehicle again, they placed Jack in handcuffs and began searching his vehicle. Upon searching the trunk of the vehicle, the officers located and seized a pocket knife that had a small amount of dried blood on it, as well as the cocaine in the purse that Jack had taken from Terra's apartment the night before. The officers then advised Jack that he was under arrest. While searching Jack's person, they located and seized a small amount of synthetic marijuana as well. On the way to the police station, the officers asked Jack what happened. Jack, who had begun breaking down and crying, told the officers that he "wasn't thinking clearly" and that he "ruined" his life.

Once they arrived at the police station Jack was placed in an interview room and read his Miranda rights by a detective. Jack waived his Miranda rights and agreed to speak with the detective without an attorney. The detective asked Jack what happened. Despite agreeing to speak with the officers, Jack refused to answer the question. The detective then told Jack that they had everything on camera so there was no point in denying the homicide. The detective was actually lying because all the officers had on camera was Jack's vehicle leaving the scene. Jack proceeded to make a full confession to all of the crimes that he committed that night.

- 1.1 What crimes, if any, has Jack committed under Louisiana Law? Explain the elements of each crime. (52 points)**
- 1.2 On what state or federal constitutional basis, if any, may Jack reasonably challenge the search and seizure of the knife and cocaine from his vehicle? Explain fully. (12 points)**
- 1.3 On what state or federal constitutional basis, if any, may Jack reasonably challenge the admissibility of the incriminating statements he gave while being escorted to the police station? Explain fully. (12 points)**
- 1.4 On what state or federal constitutional basis, if any, may Jack reasonably challenge the admissibility of the incriminating statements he provided to the detective at the police station? Explain fully. (12 points)**
- 1.5 On what state or federal constitutional basis, if any, may Jack reasonably challenge the legality of the search of his person and the seizure of the marijuana? Explain fully. (12 points)**

[End of Criminal Law, Procedure and Evidence Test]

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

QUESTION 1 (100 POINTS)

PART A (40 POINTS)

Todd who lives in Austin, Texas (TX), and Luke, who lives in Houma, Louisiana (LA), are artists who jointly design and create paintings and sculptures with a Louisiana theme. They sell the items to stores and galleries.

When the two artists began their business relationship, they talked to Todd's sister, a Delaware (DE) lawyer, and she organized for them a DE limited partnership named ToLu, LP, with Todd and Luke as limited partners. Todd's sister is listed as the agent for service, and her DE law office address is listed as the partnership's registered office. The general partner is Everyday Art, Inc., a New York (NY) corporation, the shares of which are owned 50/50 by Todd and Luke. The corporation engaged in no activity except to hold the general partnership interest in ToLu, LP. Todd takes care of Everyday Art's few tax records and corporate records from his home office in Austin.

Todd and Luke, operating as ToLu, LP, were approached by Gabby, the owner of Bizart, Inc. (Bizart) about a large purchase of their artwork. Bizart is a DE corporation that operates a chain of stores in LA, Mississippi (MS), and Alabama (AL). Gabby, who lives in Lafayette, LA, owns 100% of the stock in Bizart, and she makes all the important decisions. She commutes three times a week to Bizart's office in Bay St. Louis, MS. The office has three employees who handle payroll, taxes, and the general business operations of the three-state chain of stores. Five of Bizart's nine stores are in LA, and the LA stores account for about 75% of sales.

ToLu, LP and Bizart, Inc. entered into a contract that calls for Bizart to purchase from ToLu a large quantity of artworks, for which Bizart is to pay \$2,000 per month for 60 months. During that five-year period, the contract prohibits ToLu from selling any similar artworks to another dealer.

Soon after the contract was signed, Luke had a stroke. He was hospitalized in Houma for a week, then transferred to a Jackson, MS rehabilitation facility, where he has been for the past several months. Luke's physicians say his recovery is uncertain, but Luke says he is determined to make a comeback, and he has continued to pay the mortgage on his Houma home so that it is ready for him when he is well.

TEST CONTINUES ON NEXT PAGE

Bizart made timely payments of \$2,000 a month for 12 months, but the payments stopped and Bizart became three months in arrears. When ToLu made demand for payment, Bizart responded through its attorney that similar pieces of art produced by ToLu had been seen in competing galleries and thus that Bizart considered ToLu to be in breach of the contract and thus did not intend to make any additional payments to ToLu.

ToLu has just filed a complaint against Bizart in a Louisiana federal district court for damages from a breach of contract by Bizart and for a declaration that the contract continues to be in effect.

Bizart has filed a proper objection to the court's diversity subject matter jurisdiction.

- 1.1 Is Bizart's objection to diversity subject matter jurisdiction likely to succeed? Explain fully. (40 points)**

PART B (30 POINTS)

Missy, a Mississippi (MS) citizen, purchased a prescription drug from Magnolia Pharmacy, Inc., a MS corporation. Missy soon suffered liver damage, which she blamed on the drug. Two weeks ago, she filed suit in a MS state court against both Magnolia Pharmacy and Pharma, Inc., the New Jersey (NJ) manufacturer of the drug. Missy's state court petition alleges a claim against Pharma under MS's products liability act on the grounds that the drug was unreasonably dangerous in composition. The petition alleges that the unreasonableness is demonstrated by the fact that the manufacturing tolerances allowed by Pharma did not comply with federal drug safety regulations.

Missy's petition was just served on Pharma. Pharma's attorney has reviewed MS law and finds that it provides that a retailer may not be liable unless it knew or should have known of the dangerous potential of a product. Missy's petition does not include any such allegations against Magnolia Pharmacy.

- 1.2 Does Pharma have a basis to remove the case to federal court under diversity jurisdiction? Explain fully. Set forth the applicable standard the federal court is to apply in determining whether to permit the removal. (18 points)**
- 1.3 Does Pharma have a basis to remove the case to federal court under federal question jurisdiction? Explain fully. (12 points)**

TEST CONTINUES ON NEXT PAGE

PART C (30 POINTS)

Pam has filed a complaint in federal court alleging that defendant, Dan, ran a red-light traffic signal, crashed into Pam's car, and caused more than \$200,000 in property and personal injury damages. Pam and Dan are citizens of different states.

Dan has filed a motion for summary judgment. The motion is supported by Dan's affidavit, in which Dan testifies that he was watching the traffic signal and saw that he had a green light when he entered the intersection. Dan asks for summary judgment on the grounds that the evidence shows he was not at fault in causing the accident.

Pam, in turn, filed a memorandum in opposition to Dan's motion for summary judgment. In support, Pam also filed her own affidavit testimony. Pam testified that she had no recollection of the accident, but that her passenger, Will, was by Pam's bedside when Pam awoke in the hospital, and that Will immediately told Pam that Will distinctly saw that Pam had a green light at the intersection.

1.4 Should the court grant the motion for summary judgment? Set forth the applicable standard for assessing a motion for summary judgment and analyze the submissions of both Pam and Dan under the applicable rules in coming to your conclusion. (30 points)

[End of Federal Jurisdiction and Procedure Exam]

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

QUESTION 1 (100 POINTS)

- 1.1 Employer has been sued by Victim after Employee was involved in a wreck with Victim while Employee was driving a vehicle owned by Employer. Through discovery, Employer learned that the accident happened at 10:00 p.m. and that, at the time, Employee was returning from a movie with Employee's mother. Employee's work hours are 7:00 a.m. until 3:00 p.m. Employee drives a company vehicle and takes the vehicle home at the end of each work day. Thus, Employer believes there is no basis for Victim's allegation that Employee was in the course and scope of employment at the time of the accident. Trial is scheduled to occur in six months.
- (a) What, if anything, should Employer file now to try to have this lawsuit against Employer dismissed before trial, and what legal standard, if any, must Employer satisfy to obtain the relief sought? (7 points)
- (b) Explain how Employer could properly offer factual evidence in support of Employer's effort. (3 points)
- 1.2 Susan, along with five other defendants, has been named a defendant in a partition lawsuit. Susan believes that she has a claim against the plaintiff for a timber trespass occurring on a different parcel of land that she solely owns. May Susan properly assert in this same lawsuit her timber trespass claim against the plaintiff? Explain fully. (5 points)
- 1.3 When a lawyer signs a pleading filed for a client, what, if anything, does the lawyer certify personally? (6 points)
- 1.4 Plaintiff filed an action for breach of a purchase agreement. In answer to Plaintiff's petition, Defendant denied Plaintiff's allegations and asserted the affirmative defenses of error and failure of consideration. During the course of trial, Defendant's counsel seeks to interrogate Plaintiff with a line of questioning that Plaintiff's counsel believes is an attempt to accuse Plaintiff of fraudulent conduct. What, if anything, should Plaintiff's counsel do to prevent that line of questioning? Your answer must explain Plaintiff's counsel's action and the basis for that action. (5 points)
- 1.5 During the course of gathering and reviewing documents to respond to an opponent's discovery requests to Client, Client's Lawyer discovered numerous pre-lawsuit emails between non-lawyer upper level management employees of Client in which they discuss possible strategies and other issues that may arise in the event of litigation. Are these pre-lawsuit emails by non-lawyer employees of Client subject to production? Explain fully. (5 points)

TEST CONTINUES ON NEXT PAGE

- 1.6 A husband filed his petition for divorce from his wife. A deputy sheriff served a copy of the citation and the petition on the wife's brother at his office. The plaintiff's wife works in the same office as her brother and is living with him after leaving her husband. Was the service of process proper? Explain fully. (4 points)
- 1.7 An insurance company is a defendant in an action brought against it by its insured. After three days of a bench trial, the plaintiff has rested her case. The insurance company believes that the plaintiff has failed to offer evidence needed to establish her cause of action. What, if anything, should the insurance company now do to try to secure an immediate ruling in its favor, and what is the legal standard that the insurance company must satisfy to prevail? (6 points)
- 1.8 In a lawsuit arising from a motor vehicle accident, the jury rendered a seven-figure verdict against Defendant. News of that verdict has made all of the local newspapers. Four days after the verdict, Defense Counsel received a call from Unknown Witness, who told Defense Counsel that she read the newspaper account and was shocked by the verdict since she had witnessed the accident and saw Plaintiff run a red light and cause the accident in question. Later that same day, Defense Counsel met with Unknown Witness, who advised that both she and her 22-year-old daughter witnessed the accident but were not referenced on the accident report and were never contacted by anyone about the matter. What, if anything, should Defense Counsel do with this information at this point and, if anything can be done, what legal standard must be met and what time deadlines, if any, exist for taking action? (6 points)
- 1.9 What is the delay for requesting service of citation on all named defendants in a civil action? If the request for service of citation is not timely made, what action, if any, should be taken to obtain dismissal of the action? (3 points)
- 1.10 Defense Counsel is defending a personal injury action in which Defense Counsel believes the evidence plainly demonstrates that, despite the clear liability of Defendant, Plaintiff's damages are very minor. Defendant has made a reasonable settlement offer to Plaintiff, who rejected that offer without making a counteroffer. Defendant is confident that a trial verdict will not exceed this settlement offer and is frustrated with the ongoing costs of defending the claim. The suit is fixed for trial in two months. What, if anything, should Defendant do to recover those costs from Plaintiff. Explain in detail what and when, if anything, Defendant can do in this situation. (10 points)

TEST CONTINUES ON NEXT PAGE

The following facts apply to Questions 1.11-1.16 below.

John's Plumbing is a Louisiana corporation having its registered office in Winn Parish. Owner lives in adjacent LaSalle Parish and owns a camp in adjacent Grant Parish. Owner called John's Plumbing to check a possible gas leak at his Grant Parish camp. John's Plumbing sent employee Ben, a resident of nearby Caldwell Parish who had one month experience as a plumber, to field the call. Ben discovered a gas leak inside Owner's Grant Parish camp. Ben replaced the leaking valve with a valve manufactured by Ohio Valve Company, an Ohio corporation that is not registered with the Louisiana Secretary of State and has no offices in Louisiana. One week later, Owner's Grant Parish camp was destroyed due to a gas explosion. Fortunately, Owner was away and is not injured. Owner hired a lawyer to sue Ben and John's Plumbing for the destruction of his camp.

- 1.11 What parish or parishes would be a proper venue for Owner's lawsuit against Ben and John's Plumbing? Explain fully. (12 points)
- 1.12 Owner sued Ben and John's Plumbing in LaSalle Parish. Ben and John's Plumbing want to object to that venue.
- (a) What pleading must be filed to object to venue in LaSalle Parish and when must it be filed? (3 points)
 - (b) If the court finds that the objection is well-founded and that the grounds for the objection cannot be removed, what are the two orders the court may issue in sustaining the objection? (3 points)

Assume for Questions 1.13-1.16 below that suit is filed in a proper venue.

- 1.13 John's Plumbing believes Ohio Valve Company's valve was defective and wants to add the company as a party to the lawsuit.
- (a) What pleading must John's Plumbing file to add Ohio Valve Company as a party to the case? (2 points)
 - (b) Since Ohio Valve Company has no offices in Louisiana and is not registered with the Louisiana Secretary of State, how must John's Plumbing effect service of process on Ohio Valve Company? Explain in detail how this is done. (4 points)

TEST CONTINUES ON NEXT PAGE

- 1.14 Because Ohio Valve Company sells no products to any Louisiana distributors, it wishes to contest personal jurisdiction of the Louisiana court. Its closest distributors to Louisiana are in Longview, Texas; El Dorado, Arkansas; and Vicksburg, Mississippi.
- (a) What pleading must Ohio Valve Company file to contest jurisdiction of the Louisiana court over it in this matter and when must the pleading be filed? (4 points)
 - (b) What is the basis for possible jurisdiction over Ohio Valve Company, and how should the judge rule? (6 points)
- 1.15 Owner's attorney wants to know if John's Plumbing has liability insurance that might provide coverage in this lawsuit and if John's Plumbing has any statements of witnesses relating to this case. How should Owner's attorney secure this information? (3 points)
- 1.16 The jury trial of this matter is scheduled to begin. During voir dire, a prospective juror says "John's Plumbing did a lousy job at my home last year, but I think I could be fair to them." What, if anything, should John's Plumbing do to have this potential juror excused? (3 points)

[End of the Louisiana Code of Civil Procedure Test]

**LOUISIANA STATE BAR EXAMINATION
TORTS
OCTOBER 2020**

QUESTION 1 (100 POINTS)

One morning, Darryl was driving eastbound on Market Street and was approaching the intersection with Second Street. The intersection of Market Street and Second Street had four stop signs, one for the vehicles approaching the intersection from each direction.

Pearl was driving north on Second Street approaching the intersection with Market Street. She slowed down as she approached the intersection. But seeing no cars at the other three stop signs, she did not come to a complete stop at her stop sign and instead drove through the intersection at a slow speed.

Darryl did not see his stop sign and ran through his stop sign at around 30 miles per hour. Pearl did not see Darryl's vehicle until it collided with her vehicle.

Both cars received substantial damage. Darryl was uninjured. By contrast, Pearl was taken to the hospital with severe injuries to the left side of her body, including a fractured wrist on her left arm. Pearl was treated by a surgeon, Dr. Smith, at the hospital. Dr. Smith operated on Pearl's right wrist instead of her left wrist.

While operating on Pearl's right wrist, Dr. Smith dropped the scalpel and the scalpel landed in the top of Nurse Jones' foot. Nurse Jones' foot injury caused Nurse Jones to miss months of work. Both Dr. Smith and Nurse Jones are employees of the hospital.

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?

- | | | |
|------------|--|--------------------|
| 1.1 | Pearl v. Darryl | (33 points) |
| 1.2 | Darryl v. Pearl | (16 points) |
| 1.3 | Pearl v. Dr. Smith | (33 points) |
| 1.4 | Nurse Jones v. the hospital for Dr. Smith's actions | (18 points) |

Explain each fully.

[End of Torts Exam]