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LOUISIANA STATE BAR EXAMINATION

JULY 2021

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

QUESTION 1 (100 POINTS)

Herb and Wynonna were married fifteen years ago in Louisiana. On the day before the wedding, Wynonna asked Herb to sign a matrimonial agreement in which they agreed to opt out of a community property regime and both parties agreed to waive interim and final spousal support. Herb and Wynonna immediately signed the document, but not before any witnesses. After the wedding, they properly acknowledged the agreement before a notary and two witnesses. Herb and Wynonna never had any children.

A few months ago, Wynonna had a brief affair with an ex-boyfriend. Herb came home and found them together in bed. Herb confronted Wynonna, who admitted to the affair. Herb demanded that she move out of the house. After much pleading from Wynonna, Herb agreed to allow her to return home where they lived together for the next three months and had resumed occasional sexual relations. During that time, however, Herb was unable to forgive Wynonna and started drinking heavily. One night, while heavily intoxicated, he struck Wynonna and gave her a black eye. Wynonna did not call the police or otherwise press charges against Herb. But the next day, Wynonna told Herb to leave the home and never return. Herb did not return to the home. Herb and Wynonna have been living separate and apart for the last three months.

Wynonna's aunt Annie bought 30 acres of land in 1986, 35 years ago. The land is bounded by a river on the east, a highway on the west, and two large private estates to the north and south. Immediately after purchasing the land, Annie signed an agreement with Company Chemical to allow "Company Chemical, its successors, and assigns" to build and operate an underground pipeline near the northern boundary for the delivery of water from the river to Company Chemical's property on the other side of the highway. The agreement required the pipeline to be built at least five feet beneath the ground and removed after 50 years. This agreement was promptly recorded in the appropriate parish conveyance records.

In 1988, two years after purchasing the property, Annie donated the ten acres of land closest to the river to her brother, Ben, who is Wynonna's father. Company Chemical's pipeline passes under this parcel. Ben immediately created a 500 foot by 500 foot enclosed area for his horses on the eastern side of the property next to the river. However, unbeknownst to either Annie or Ben, the fence for the enclosed area encroached 5 feet past the boundary line onto Annie's property. Therefore, a 5 foot by 500 foot portion of the enclosed area was on Annie's property and not on the property that she donated to Ben.

In 2001, fifteen years after reaching its agreement with Annie, Company Chemical sold its facility to Energy Company, including its rights to the pipeline. This sale to Energy Company is also recorded in the appropriate parish conveyance records.

TEST CONTINUES ON NEXT PAGE

In 2016, 28 years after receiving the donated land from Annie, Ben died. Wynonna inherited all of Ben's assets, including title to the property donated by Annie and all rights of prescription.

Last week, Annie realized that the enclosed area is partially on property that she never donated to Ben and has now demanded that Wynonna remove the portions of the fence on that property.

Please answer the following four subquestions. Explain each answer; an answer without an explanation will receive no credit.

- 1.1 What are Wynonna's options for divorce? What are Herb's options for divorce? Explain any potential time delays and complications associated with each option. (30 points)**
- 1.2 Have Herb and Wynonna 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?**Explain fully. (30 points)**
- 1.3 What is the nature of Energy Company's pipeline rights over the thirty-acre property? Can Wynonna demand its removal from her 10 acres? Explain fully. (20 points)**
- 1.4 Is Annie likely to succeed in demanding that Wynonna remove the portions of the fence from the 5 foot by 500 foot portion of land that Ben fenced in but that was not part of the 10 acres that Annie donated to Ben? Explain fully. (20 points)**

[End of Civil Code I Test]

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

QUESTION 1 (100 POINTS)

**PART A
(50 Points)**

Xavier, a lifelong Louisiana domiciliary, died intestate. He never married and never had any children. His parents, Oscar and Nancy, both predeceased him. Oscar's parents, Paul and Queenie, both predeceased Xavier. Paul's mother, Tessie predeceased Xavier, and Paul's father, Steve, survived Xavier. Nancy's father, Uriah predeceased Xavier, and Nancy's mother, Roxanne, survived Xavier. Xavier had no other relations either by affinity, consanguinity or adoption.

Xavier owned just the following assets when he died: farm property in Lafourche Parish known as "Blackacre," a \$1 million cash account standing in his name, a condominium in New Orleans, and an antique car.

1.1 Who succeeds to Xavier's interest in Blackacre? Explain fully. (10 Points)

1.2 *For purposes of this Question 1.2 only* assume that both Steve and Roxanne also predeceased Xavier. How should Xavier's interest in Blackacre be distributed? Explain fully. (10 Points)

For Questions 1.3 through 1.5 only, assume the following:

Xavier died with a valid last will and testament, the dispositive provisions of which read as follows:

1. I devise my New Orleans condo to my friend, Trevon Truxillo.
2. I bequeath one-half of the cash standing in my name to the Orleans Parish Animal Rescue Society.
3. I bequeath one-half of the cash standing in my name to my confidant and pastor, the Reverend John Smith.
4. I bequeath my antique car to my friend, Susan Stamford. Susan is to take good care of this car and then leave it to her son.
5. I devise and bequeath the residue of my estate, including any lapsed or renounced legacies, to my friend, Bob Baker.

Trevon determined that he does not want to inherit the New Orleans condo. He timely filed in Xavier's succession proceeding an authentic act which states: "I renounce my interest in Xavier's New Orleans condo in favor of Xavier's friend, Bob Baker."

TEST CONTINUES ON NEXT PAGE

- 1.3 **Has Trevon made a proper renunciation under the Louisiana Civil Code such that he has escaped any possible obligation to pay Xavier's estate debts attributable to the New Orleans condo? Explain fully. (10 Points)**
- 1.4 **Who inherits the antique car? Explain fully. (10 Points)**
- 1.5 ***Assume for this question only* that Bob believes that both the Orleans Parish Animal Rescue Society and the Reverend John Smith exerted undue influence on Xavier to secure their respective legacies. What is the standard of proof Bob must establish if he wishes to successfully challenge these two legacies? Explain fully. (10 Points).**

**PART B
(50 Points)**

Belle died last month. She lived in Louisiana her entire life. She never married. She is survived by her four children. each of whom has always lived in Northwest Louisiana. Belle's children are:

- Davey, who was 40 at the time of Belle's death;
- Evan, who was 35 at the time of Belle's death;
- Felix, who was 30 at the time of Belle's death; and
- Gail, who was 19 at the time of Belle's death.

Three of Belle's children are healthy. However, Evan, who at the age of 18 suffered a significant brain and spine injury, requires around-the-clock medical care.

At the time of Belle's death, her only asset was her personal residence in Caddo Parish, Louisiana. Belle never made any donations before she died.

Belle left a valid notarial testament, signed in 2009, in which she left her entire estate to Irielle, her favorite neighbor.

- 1.6 **To what interest in the Caddo Parish property is each of Davey, Evan, Felix, Gail, and Irielle entitled? Explain fully. (20 Points)**
- 1.7 ***For purposes of this only*, assume that prior to Belle's death, Central Credit Union secured a final judgment against Gail, who had defaulted on a \$200,000 personal loan. Gail is unwilling to appear in Belle's succession, so Central Credit Union appears in her stead and asserts Gail's rights as a forced heir. Will Central Credit Union be entitled to receive any interest in Belle's estate? Explain fully. (10 Points)**

TEST CONTINUES ON NEXT PAGE

For Questions 1.8 and 1.9 only, assume that, in addition to the Caddo Parish property, which was worth \$200,000 at that time, Belle also owned the following assets at her death:

- A Chase Bank account, which had a balance of \$50,000 at that time; and
- A first edition, signed copy of W. Somerset Maugham's masterpiece "Of Human Bondage," which was worth \$100,000 at that time.

Belle's liabilities/debts at the time of her death totaled \$150,000.

One year before her death, Belle donated \$30,000 in cash to Felix to encourage him to return to college.

1.8 What is the value of the forced portion in Belle's succession? Explain fully. (10 Points)

1.9 Evan and Gail disapproved of their mother's attempts to coax their brother Felix back to school. In the succession, they would like to claw back the money their mother gave to Felix before her death. Are they likely to succeed? Explain fully. (10 Points)

[End of Civil Code II Test]

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
JULY 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
(70 Points)**

The following facts apply to Questions 1.1–1.7 only:

Dan owned a 50% undivided interest in Lot A of Commercial Oaks in Allen Parish. Jack owned the other 50% undivided interest in Lot A of Commercial Oaks. Lot A contains a small shopping center. In 2015, Dan obtained a \$200,000 loan from Big Bank. Dan executed a promissory note dated April 1, 2015 in favor of Big Bank in the amount of \$200,000, due in 59 equal monthly installments with the first payment due on May 1, 2015 and all subsequent payments due on the first day of each month after that and a final payment due on April 1, 2020 (the “Shopping Center Note”). On April 1, 2015, Dan also granted a mortgage to Big Bank. The mortgage includes the following granting clause:

“In order to secure my present and future indebtedness to Big Bank, including the obligations under my \$200,000 promissory note dated April 1, 2015 up to a maximum secured limit of \$50,000,000, including all principal, interest, fees, costs and other amounts that I may owe to Big Bank, I hereby grant a mortgage on all of my present and future interest in Lot A of Commercial Oaks in Allen Parish, Louisiana described below.”

The mortgage was dated April 1, 2015, recorded by Big Bank on April 2, 2015 in the mortgage records of Allen Parish and properly described Lot A as the property being mortgaged. The mortgage was not witnessed, signed by the mortgagee, or notarized. The Shopping Center Note was not paraphrased for identification with the mortgage.

Credit Loans had obtained a money judgment against Dan on September 9, 2011, and properly recorded a certified copy of the final judgment in the mortgage records of Allen Parish on September 15, 2011.

In January 2016, Dan received an inheritance and used it to pay off the \$200,000 Shopping Center Note in full. As a result, Dan no longer owed any debt to Big Bank secured by the mortgage. Thereafter, Dan wanted to buy out Jack’s interest in Lot A. To finance the purchase, Dan obtained another loan from Big Bank. The loan was evidenced by a \$100,000 promissory note dated August 1, 2016, payable on demand (the “Demand Note”). Dan purchased Jack’s undivided 50% interest in Lot A on August 1, 2016 pursuant to a valid Act of Cash Sale.

TEST CONTINUES ON NEXT PAGE

Dan never made any payments on the Demand Note. On June 10, 2021, Big Bank decided to foreclose on Lot A and made a demand for payment of the Demand Note. Big Bank had never previously asked Dan for payments on the Demand Note. Credit Loans also wants to be paid and filed a Notice of Reinscription of its judgment in the mortgage records of Allen Parish on February 1, 2021 but has done nothing further with regard to its judicial mortgage.

- 1.1 Was the mortgage executed by Dan valid at the time of execution? Explain fully why or why not; address the effect, if any, from the mortgage not being signed before any witnesses. (10 points)**
- 1.2 When Dan acquired Jack's 50% interest in Lot A, did the mortgage burden Dan's entire interest in Lot A, or only his initial 50% interest? Explain fully. (5 points)**
- 1.3 At the time Dan executed the Demand Note, did the mortgage secure that note? Explain fully. (10 points)**
- 1.4 By what precise date must the mortgage in favor of Big Bank be reinscribed in order to remain effective against third persons? Explain fully. (10 points).**
- 1.5 What actions must Credit Loans take to preserve its right to collect on its judgment against Dan, and when must those actions be taken? Explain fully. (20 points).**
- 1.6 *For purposes of this Question 1.6 only*, assume that both Big Bank's mortgage and Credit Loans' judicial mortgage are presently enforceable against Jack and third persons and that both encumber the entirety of Lot A. As of the date of this exam, does Big Bank's mortgage outrank Credit Loans' judicial mortgage? Explain fully. (5 points)**
- 1.7 As of the date of this exam, does Big Bank still have the right to enforce the Demand Note executed by Dan, and, if so, when will the note prescribe? Explain fully. (10 points)**

TEST CONTINUES ON NEXT PAGE

PART B
(30 POINTS)

The following facts apply to Questions 1.8-1.10 only.

Jill had long been in the business of handmaking and selling large, unique and fully furnished wooden dollhouses. Kelly was interested in purchasing four dollhouses. Jill offered to sell Kelly four dollhouses for the purchase price of \$500 per dollhouse. Kelly agreed to the price, and Jill and Kelly executed a bill of sale which provided that the purchase price for each dollhouse was \$500, to be paid with a cash down payment of \$250 for each dollhouse, and with the credit balance payable within thirty days of sale. Kelly paid the cash down payment of \$1,000 (\$250 for each dollhouse) to Jill. Kelly wanted to take home all four dollhouses but was only able to safely fit two of the dollhouses in her SUV. Kelly made arrangements to pick up the other two dollhouses from Jill in a few days. Unfortunately, the next day, a lightning strike caused a fire that destroyed Jill's shop and the other two dollhouses still in the shop.

- 1.8 Was there a perfected sale between Jill and Kelly as to all the dollhouses? Explain fully. (10 points)**
- 1.9 Did ownership of all four dollhouses pass to Kelly? Explain fully. (10 points)**
- 1.10 Who bears the risk of loss with respect to the undelivered dollhouses that were destroyed in the fire? Explain fully. (10 points)**

[End of Civil Code III Test]

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

QUESTION 1 (100 POINTS)

Adam and his live-in girlfriend Betty have a 5-year-old son, Charlie. Neither has a criminal record. One night, during an intense argument, Adam slapped Betty. When Betty started screaming at him, Adam covered her nose and mouth with his hand, which impeded Betty's ability to breathe, and she passed out. Adam thought he may have killed Betty, so he grabbed Charlie and left the apartment.

Betty woke up shortly after Adam left and she drove to Adam's flooring store, which shared a building with a popular 24-hour fitness center. When she arrived at the parking lot in front of the building, the fitness center was very busy and the parking lot had about a dozen cars in it for customers at the fitness center. Betty broke into Adam's store, poured glue solvent on the floor, and lit it on fire. The fire destroyed Adam's portion of the building and then spread to the fitness center next door where Danielle was working out. Danielle died of smoke inhalation. Betty sped away from the scene, which caused a police officer near the scene to activate his overhead lights and siren and pursue her. Upon seeing the officer, Betty sped up further, ran a red light and crashed into another car. The officer then arrested Betty.

After she was arrested and booked, and while being escorted to an interview room, Betty spat on and then bit one of the officers. Betty was read her Miranda rights. She signed a form agreeing to waive those rights and to speak to detectives without an attorney present. Betty admitted to being upset with Adam and breaking into his store that night. However, when Betty was questioned about the fire, she stopped answering questions and said she wanted to speak to a lawyer. Pointing to the form she had signed, the detective told her that she was no longer entitled to have a lawyer present at her questioning. Betty then answered all of the detective's questions and admitted to starting the fire.

Meanwhile, Adam was distraught over his argument with Betty. He drove to a nearby bar and left Charlie sleeping alone in the car while he went inside. As he sipped his beer, Adam saw on the news that his flooring store was on fire and assumed that Betty was to blame. Adam immediately decided to get revenge on Betty by creating a social media account and publicly sharing nude photographs that Betty had privately shared with him. Adam posted Betty's full name and tagged her family members and employer. After he finished his only beer, Adam asked another bar patron if he had any "party drugs." Adam purchased four MDMA/ecstasy tablets from him, swallowed two, and put the remaining two in his pocket. Adam left the bar an hour after taking the MDMA/ecstasy.

TEST CONTINUES ON NEXT PAGE

As he was driving home from the bar, Adam accidentally clipped a bicyclist, causing him to fall and break his leg. Adam panicked and immediately fled the scene. Adam drove straight home and put Charlie in bed. Despite his injury, the cyclist managed to call 9-1-1, and described Adam's car including the license plate number. The cyclist would require multiple surgeries to attempt to repair his broken leg. Within 20 minutes of the accident, law enforcement arrived at Adam's apartment where they found his damaged vehicle. Adam was then arrested and taken to the police station. A search of Adam's person incidental to the arrest recovered the two remaining MDMA/ecstasy tablets. As part of the investigation, Adam was drug and alcohol tested. Adam's blood alcohol content at that time was within legal limits, but MDMA/ecstasy was detected in his system.

Once at the police station, the detectives told Adam that they would conduct an informal interview and thus that he would not need an attorney present. Adam admitted to hitting the cyclist but denied involvement with the social media posts. Adam refused to unlock his phone but the detective guessed the password as it was Adam's birthdate. The detective then found evidence on the phone of the social media account and posts. Detectives also found a collection of photographs of what appeared to be pre-teen aged girls in compromising positions. Later, as Adam was being booked on additional charges related to the photographs, Adam told the booking officer: "I am guilty of everything else, but I swear I thought those girls were of age."

Please address the following three questions:

- 1.1 **What crimes did Betty commit under Louisiana law, what crimes did Adam commit under Louisiana law, and what are the elements of each such crime? Explain fully. First address the crimes committed by Betty, and then address the crimes committed by Adam. (60 points)**
- 1.2 **On what state and/or federal constitutional basis, if any, might a motion to suppress each of the following incriminating statements be made, and how is the court likely to rule?**
 - (a) **Betty's initial statement about breaking into Adam's store.**
 - (b) **Betty's later statement about starting the fire.**
 - (c) **Adam's initial statement about hitting the cyclist.**
 - (d) **Adam's later statements to the booking officer.**

Explain fully. (24 points)

- 1.3 **What state and/or federal constitutional basis, if any, does Adam have for challenging the legality of the search of his phone, and is the evidence seized by the search admissible in the prosecution's case in chief? Explain fully. (16 points)**

[End of Criminal Law, Procedure, and Evidence Test]

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

QUESTION 1 (100 POINTS)

Lonnie, a citizen of Louisiana, purchased a replacement roll-up door for his moving truck from Marty Movers (“Movers”), a Mississippi citizen doing business as a sole proprietor. The door was manufactured by Rollie Door Company (“Rollie”), a citizen of Texas, and installed by Movers in MS.

After Lonnie picked up his moving truck from Movers, Lonnie stopped to buy a large load of antique furniture with the intent to then deliver the furniture to his home in New Orleans. Lonnie was driving on the highway in Tangipahoa Parish, when one of the springs on the newly installed roll-up door suddenly popped, causing a loud sound. Lonnie pulled to the shoulder of the highway to make sure the roll-up door had not opened. Once Lonnie confirmed the roll-up door was closed, he got back into the cab of the truck. Before he drove off, his moving truck was struck by a large pickup truck driven by Albert, a citizen of Alabama. Lonnie suffered more than \$150,000 in property and personal injury damages.

Lonnie filed a suit in state court in Tangipahoa Parish on January 4, 2021, against Rollie, Movers, and Albert. Long arm service was made on Rollie on February 10, 2021 and on Movers on March 16, 2021. Lonnie’s initial attempts to serve Albert were unsuccessful, but Lonnie continued his efforts. Rollie and Movers discussed the matter and decided that they would prefer the case be heard in a federal court. Rollie and Movers were nervous that a deadline might be missed if they waited to hear from Albert, so Rollie and Movers took action on April 9, 2021 to remove the case to federal court.

- 1.1 What procedure and requirements should Movers and Rollie have followed to remove the case to federal court? To which federal court may the case be removed? Explain fully. (20 pts)**
- 1.2 Lonnie believes there are procedural defects in the removal. What must Lonnie file to seek a return of the case to state court? What time limits, if any, does Lonnie face? Explain fully. (7 pts)**
- 1.3 Lonnie timely submitted a proper filing to raise objections to the removal. Lonnie claims that the removal was defective because (1) Albert did not join in the removal, (2) the removal was untimely, and (3) the removal was improper because the plaintiff is a citizen of the forum state. Is each of these objections valid? Explain fully. (30 pts)**

TEST CONTINUES ON NEXT PAGE

For the remaining questions 1.4 – 1.7, assume the case remains in federal court.

- 1.4** Lonnie learned that Marty, the sole proprietor of Movers, purchased a new home in Louisiana shortly before Lonnie filed suit. Lonnie believes that this means there is a lack of complete diversity among the parties. On June 15, 2021, Lonnie filed a motion to challenge the removal for lack of complete diversity. The defendants contend that Lonnie’s arguments are untimely. How should the court rule on the defendants’ argument that Lonnie’s motion is untimely? Explain fully. (10 pts)
- 1.5** A Louisiana statute provides that a party in possession of audio or video recordings of another party, such as made by an investigator, must provide them to the recorded party before taking a deposition of the recorded party. A second Louisiana statute provides that a plaintiff seeking to recover damages for antique furniture damaged by another party may not recover more than the “Kovels’ Antiques and Collectibles Price Guide” value of the furniture, even if the plaintiff can prove that the furniture is more valuable. No federal law includes any such discovery requirements or damage limitations.
- Lonnie believes that the defendants have video surveillance of him and that his newly purchased furniture was much more valuable than the Kovels’ listing. Should the federal court apply either of the two state statutes in Lonnie’s case? Explain fully. (15 pts)
- 1.6** Albert believes that the only reason his truck struck Lonnie’s was that Albert was forced to the shoulder of the highway by an 18-wheeler owned and operated by Cajun Transportation, Inc. (CTI), a Louisiana corporation. What pleading should Albert file to assert a claim against CTI, and would the federal court have subject-matter jurisdiction over the claim? Explain fully. (10 pts)
- 1.7** Lonnie, on learning from Albert that CTI may have contributed to his damages, would like to assert his own claims against CTI. May Lonnie amend his complaint to add CTI as a defendant? Explain fully. (8 pts)

[End of Federal Jurisdiction and Procedure Test]

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

QUESTION 1 (100 POINTS)

(This fact pattern applies to all of Question 1.)

Happy Homes, Inc. (“Happy Homes”) is a licensed general contractor that constructs homes throughout southeast Louisiana. It is a Louisiana corporation with its registered office located in East Baton Rouge Parish.

Bob, who currently lives in Orleans Parish, hired Happy Homes to build a new home for him in St. Tammany Parish. Bob and a representative for Happy Homes met at Bob’s existing residence in Orleans Parish to finalize and sign the construction contract for Bob’s new home.

Happy Homes began construction of Bob’s St. Tammany Parish home in May 2020. Bob placed his Orleans Parish home on the market and entered into an agreement to sell his home with a February 1, 2021 closing date.

On January 8, 2021, days before construction was scheduled to be completed and two weeks before he was scheduled to move in, Bob’s new St. Tammany Parish house caught on fire and burned completely to the ground, making it impossible for him to move in. The Fire Marshal’s investigation concluded that the cause of the fire was electrical wiring that was faulty and/or improperly installed.

Bob proceeded with the sale of his Orleans Parish home because the buyer threatened to sue him if he backed out. Bob found a new house to buy in Jefferson Parish but felt he incurred significant expense and damages as a result of the fire and Happy Home’s failure to complete and timely deliver the St. Tammany Parish home.

On March 15, 2021, Bob initiated a lawsuit in St. Tammany Parish asserting breach of contract and negligence claims against Happy Homes.

- 1.1 Bob needs to request service of citation on Happy Homes. Mark is the sole shareholder of Happy Homes. Joe and Mary are each designated as a registered agent for Happy Homes. By when must Bob request service on Happy Homes, and how must service be attempted on Happy Homes? (4 pts)**
- 1.2 Happy Homes was properly served with Bob’s Petition for Damages on Monday, April 12, 2021. Happy Homes has decided to answer and not file exceptions in response. What is the delay for Happy Homes to file its answer? (2 pts)**
- 1.3 Bob did not ask for a trial by jury in his Petition for Damages. What steps must Happy Homes take to secure a trial by jury? (5 pts)**

TEST CONTINUES ON NEXT PAGE

- 1.4 Do Louisiana courts have personal jurisdiction over Happy Homes? Explain fully. (3 pts)
- 1.5 Is St. Tammany Parish a proper venue for the lawsuit? Explain fully. (6 pts)
- 1.6 Bob's attorney decided that it might be better to litigate the claims against Happy Homes in Orleans Parish. Therefore, on April 15, 2021, Bob's attorney initiated a second lawsuit on Bob's behalf in Orleans Parish ("Lawsuit 2"). Bob alleges the same breach of contract and negligence claims against Happy Homes in Lawsuit 2 that were alleged in the original lawsuit ("Lawsuit 1"). Is Orleans Parish a proper venue for Lawsuit 2? Explain fully. (3 pts)
- 1.7 Happy Homes already answered Lawsuit 1 when it was served with Lawsuit 2. What must Happy Homes file to challenge and seek dismissal of Lawsuit 2 so as to avoid litigating the merits of Lawsuit 2, what must it assert in that challenge, and by when must it raise its challenge? Explain fully. (10 pts)

For all remaining questions, assume that Happy Homes is successful in having Lawsuit 2 dismissed and the parties proceeded with the litigation of Lawsuit 1.

- 1.8 Is the dismissal of Lawsuit 2 with or without prejudice? Explain fully. (4 pts)
- 1.9 Bob wants to take the deposition of Happy Homes. What must Bob include in his notice of the deposition of Happy Homes, and what must Happy Homes do in response to the notice? Explain fully. (8 pts)
- 1.10 Prior to deposing Happy Homes, Bob would like for Happy Homes to authenticate a copy of the construction contract. Can Bob accomplish this through written discovery? Explain fully. (6 pts)
- 1.11 Happy Homes revealed during its deposition that it subcontracted out the electrical work on Bob's St. Tammany Parish home to Ernie's Electrical, Inc. Bob wants to add Ernie's as a defendant. What steps must Bob take to properly add Ernie's as a defendant and require it to participate in Lawsuit 1? Explain fully. (8 pts)

For all remaining questions, assume that Ernie's is now a defendant in the lawsuit.

- 1.12 Happy Homes did not make the final payment on the subcontract between it and Ernie's. May Ernie's assert a breach of contract claim against Happy Homes in Lawsuit 1? If so, what steps must Ernie's take to assert that claim and cause Happy Homes to respond to the claim? Explain fully. (5 pts)

TEST CONTINUES ON NEXT PAGE

- 1.13 Ernie's does not believe that the cause of the fire at Bob's St. Tammany Parish home was due to the wiring or its electrical work on the home. Ernie's would like for its fire expert to inspect the home and make its own determination regarding the cause of the fire. (10 pts)**
- a. What type of request must Ernie's make to permit it and its expert's entry onto Bob's property to perform the inspection, and what must be contained in the request? (4 pts)**
 - b. If Bob wants to prevent an inspection of his home, what must he do and when must he do it? (3 pts)**
 - c. Ernie's request has been granted, but Bob has nevertheless refused to make his home available for inspection. What, if anything, can Ernie's file with the court to obtain relief and allow it to enter Bob's property and inspect the home? (3 pts)**
- 1.14 Expert witness reports have been exchanged, and the discovery depositions of all experts have been taken. Bob believes that Ernie's expert is completely unqualified to give expert testimony in the suit and that his methodology is "junk science." (4 pts)**
- a. What motion should Bob bring before the court to test the expert's qualifications and opinions? (2 pts)**
 - b. What is the time deadline for bringing the motion? (2 pts)**
- 1.15 The case proceeded to trial by a jury of twelve (12). Absent a stipulation by the parties, how many jurors must concur to render a verdict? (2 pts)**
- 1.16 The jury returned a verdict in favor of Bob against Ernie's, but it returned a verdict in favor of Happy Homes as to the claims that Bob asserted against Happy Homes. Bob wants the jury verdict in favor of Happy Homes to be overturned. What steps in the trial court must Bob take to achieve that goal and when must Bob take those steps? Explain briefly. (4 pts)**
- 1.17 Ernie's has timely filed for suspensive appeal and has furnished a bond as security. Bob believes the bond is insufficient or invalid. What can Bob do to challenge the bond's sufficiency or validity? Explain briefly. (4 pts)**
- 1.18 A judgment has been rendered holding the bond insufficient or invalid. What, if anything, can Ernie's do to correct these defects and what consequence would result from its failure to correct these defects? Explain briefly. (4 pts)**

TEST CONTINUES ON NEXT PAGE

- 1.19 Ernie's has properly corrected the defects in its bond. After the trial court record was lodged with the appellate court, Bob filed a motion in the trial court to tax expert witness fees to Ernie's. May the trial court hear that motion? Explain briefly. (5 pts)**
- 1.20 During the course of litigation, 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
JULY 2021**

QUESTION 1 (100 POINTS)

David was driving his Trailmaker All-Terrain Vehicle (“Trailmaker”) on unpaved roads on hunting land, trying to get back to his camp before dark. David’s friend, Patrick, was in the passenger seat of the Trailmaker. Patrick’s son, Sam, was in the rear seat of the Trailmaker. It had rained the previous two days. As the sun was going down, the road was becoming slick, and it was becoming difficult to see where the Trailmaker was going. Patrick insisted on talking loudly and joking around by putting his hand in front of David’s face and grabbing David’s arm. David was trying to concentrate on the road and sternly asked Patrick to be quiet and to stop joking around.

Patrick then began arguing with David about the way David spoke to him; Patrick also continued to poke David, saying that David was being too serious. This argument distracted David, who then lost control of the Trailmaker. Although David stepped on the brakes, he was unable to slow down and smashed the Trailmaker into a tree.

David broke his leg in the crash. Patrick was thrown from the Trailmaker and was impaled on a nearby fencepost. Patrick initially survived the impact, but bled out and died from the crash before help could arrive. Sam walked away from the crash but continues to be severely affected by his father’s death.

The Trailmaker was manufactured by ABC ATV, Inc., which knew that the brakes of certain Trailmaker models tended to fail if the brakes got wet. All Trailmaker models were subject to a recall for faulty brakes. Recall notices were mailed to all Trailmaker owners, including David. The notice did not specify the exact problem and instructed owners to contact ABC ATV, Inc. for further information. David read the notice but threw it away and never contacted ABC ATV, Inc. for further information.

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 David vs. Patrick’s estate (25 pts)**
- 1.2 Sam (as Patrick’s heir) vs. David (20 pts)**
- 1.3 Sam (for his own damages) vs. David (19 pts)**
- 1.4 David/Sam vs. ABC ATV, Inc. (36 pts)**

[End of Torts Test]