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LOUISIANA STATE BAR EXAMINATION

FEBRUARY 2012

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**LOUISIANA BAR EXAM
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS**

February 2012

Question No. 1 - 20% (5 points each subpart)

Your new clients, Tim, Billy and Pat, want to form a business to sell BCS championship apparel in the French Quarter. They will name their business "BCS, Inc" ("the Company"). They will respectively own 150 shares (Tim), 100 shares (Billy), and 100 shares (Pat), without par value. The Company will be authorized to issue an additional 150 shares. Billy and Pat will run the day-to-day business and Tim will be a silent investor with no managerial responsibilities. The owners want the right to maintain their respective ownership percentages in the event the Company decides to sell the unissued 150 shares. They also want a right of first refusal to purchase each other's shares in the event an owner decides to sell his interest. Finally, they will require that any new prospective owner be approved by a majority vote of the current owners.

A partner in your firm has asked you to represent them. The partner asks you to answer the following questions for the clients:

- A. Advise your clients of the organizational papers necessary to form a Louisiana corporation for their business venture and discuss the minimum information that must be included in these papers to validly form the Company along with any additional provisions in order to achieve your client's objectives as stated above.
- B. Is the Company required to issue certificates of stock representing the shares to be issued? If the Company issues certificates of stock, what information should be shown on each share certificate? If the Company does not issue stock certificates, will this change the rights and obligations of Tim, Billy and Pat as owners?
- C. Does the law require that Tim, Billy or Pat be officers or directors? What officer positions (if any) must they elect? How many persons may hold these positions? Does the law require that the officers also be directors? Explain the difference between straight voting and cumulative voting for director positions. When will shareholders have cumulative voting rights?
- D. If your clients form a limited liability company, advise them of the differences between a member-managed or manager-managed company and which form you would recommend to them based on the facts presented.

Question 2: 20% (5 points for each, subpart)

Brenda, Steve and Tom are co-owners in an engineering firm, BST Engineers, Inc. ("the Company"). Brenda owns 50%, Steve owns 25% and Tom owns 25%. After being in business for 20 years, Brenda and Steve are nearing retirement, and want to begin an orderly dissolution of the Company. The Company has mainly worked for the big oil companies, and much of their work has fallen off in the last 1-2 years as a result of the BP oil spill and negative publicity from a lawsuit in which the Company has been sued. The Company has five years remaining on its office lease. The monthly lease rate is \$10,000. The Company has no on-going projects and no outstanding debts. The office lease has been paid through the month of February, 2012. Their plan is to wind down the operations in the next several months and distribute the retained earnings of the business-\$300,000-to the three owners. If they close the business, Brenda and Steve also want to make sure they have no personal liability for the unexpired lease term or the pending lawsuit.

Tom is much younger than Brenda and Steve and is not interested in retiring. He has been working to find new business and believes the current downturn is temporary. Tom has found a new engineering contract for the Company, which he believes can produce enough revenue to pay in full all of the rent due for the remaining unexpired term of the office lease plus additional profits to the owners. The prospective contract is with a company owned by Tom's brother, Bernie. In support of the profitability of new contract, Tom has provided Brenda and Steve with projections of expected revenue prepared by Bernie who failed out of his accounting major at LSU and has recently been convicted of fraud in a Ponzi scheme. Brenda and Steve are not persuaded by the new contract to change their views on closing down the business. Tom feels differently and wants to go forward with the contract. They have called a shareholder's meeting with proper notice to all to vote on (i) dissolving the business and/or (ii) undertaking the new contract.

You are asked to address the following questions:

- A. What vote is required to approve dissolution? Which owners would need to vote in favor of dissolution? If the shareholders vote in favor of dissolving the Company, what type of dissolution would you recommend and why? What type of dissolution would you not recommend and why?
- B. If the owners approve at the meeting distributing the money in the checking account to themselves, will they have any personal liability for receiving the money? Discuss to whom they might be liable and why.
- C. Should Tom vote at the meeting regarding the new contract with Bernie's company? Why or why not? What would you recommend that he do at the meeting relative to voting on the contract?
- D. Can Brenda and Steve simply ignore this potentially profitable work without breaching the business judgment rule? Should they rely on the information provided by Bernie in satisfying their duty? Is there anything else you would advise them to do in evaluating the prospective new contract?

Question 3: 30% (3 points each subpart) -Short Answers. Please explain your answer fully in order to show you know the applicable rule(s) of Law. One word answers will receive minimal credit.

- A. Does each partner in a real estate investment general partnership, have the authority to bind the partnership in borrowing money from banks for purchasing partnership property? Discuss why or why not.
- B. Is a member of a limited liability company entitled to reimbursement from the company for the reasonable attorney's fees he incurs in successfully defending a lawsuit brought against him for stealing corporate secrets of a former employer? Why or why not?
- C. How can a member in a liability company withdraw and what does the member receive for his interest in the company?
- D. If a stockholder who is also a director votes against authorizing dividends rendering the company insolvent, will she have any exposure upon accepting her share of the dividend distribution? Explain why or why not.
- E. In a four-member limited liability company engaged in landscape and yard maintenance for residential customers, what percentage of the members must vote in favor of selling the lawn equipment, vehicles and other physical assets. How is the voting calculated-by ownership percentage or by the number of members?
- F. Can partners be expelled from a partnership, and, if so, under what circumstances and by what vote?
- G. Who can file a shareholder derivative action and under what circumstances?

- H. What is a voting trust? When would it be used by shareholders?
- I. Discuss the legal duty owed by members of a limited liability company to the company and its members.
- J. When is a shareholder allowed to inspect the company's books and records?

Question 4: 30% (5 points for each, subpart)

Question 4.1

Travis and Ken have owned a trucking company for the past 5 years. They had formed the business as a limited liability company with the name "Trucking, LLC" (the Company). Ken's brand new malTiage is on the rocks because he has a gambling problem. His wife is threatening to divorce him. Travis is concerned that Ken's wife might acquire Ken's interest in the business through their soon to be filed divorce proceedings and he wants to prevent this by paying Ken's debt. For this reason, Travis loans Ken the money to pay off his gambling debt as long as Ken signs an agreement to repay Travis which states: "I promise to pay to Travis the sum of \$50,000 or 50 shares of stock in Trucking, LLC immediately upon my wife's filing for divorce." The agreement is signed by Ken and dated January 23, 2012. Travis and Ken have agreed that Ken's shares are worth \$100,000 in total, so half of them will repay Travis. The Company has issued Ken two certificates (Nos. 3 and 4) showing 50 shares each in Trucking, LLC. The certificates have no restrictive endorsements and the Company has no written operating agreement.

- A. Discuss the legal elements for a negotiable instrument and which elements the January 23, 2012 agreement signed by Ken in favor of Travis meets.
- B. If Ken's wife is successful through the divorce in acquiring some or all of Ken's shares in Trucking, LLC, will she automatically become a member of the LLC? Will she have any voting rights? Discuss why or why not.

Question 4.2

Mary's son, Paul, is in financial trouble and recently filed for bankruptcy. He is now living back at home. Mary welcomes her son home and tells him to help himself to

whatever he needs. She also asks Paul to purchase some groceries and authorizes him to sign one of her checks to get himself some cash for the groceries. Mary is the only authorized signatory on her checking account. Paul locates his mother's checkbook and signs/dates a check payable to bearer in the amount of \$150. After cashing the check at the Bank, Paul meets his girlfriend on the way to the grocery store. He changes his mind about grocery shopping and decides to take his girlfriend out to lunch. He spends all of the money (\$150) on a lunch date at Commander's Palace. The next month, Paul goes shopping at Dillard's to buy himself new clothes. He writes another check drawn on Mary's checking account payable at Dillard's for \$1,000 to pay for his clothes shopping spree. One month later, Paul goes shopping to Macy's to buy himself some more clothes. He writes another check drawn on Mary's checking account payable to Macy's for \$1,000. When Mary reviews her preceding two bank statements the next month, she discovers the checks written on the account to Dillard's and Macy's. She then looks back at her earlier bank statement from three months prior when Paul started living at home and recalls she authorized the check for \$150 for the cash to buy groceries, but not the other two checks. Mary confronts Paul. Paul admits that he used the \$1,000 checks to buy clothes and he admits he used the cash from the \$150 check to take his girlfriend out to lunch and not to buy groceries. Mary immediately calls the Bank and advises the Bank of the checks misappropriated by Paul and asks that the Bank credit her account.

- C. Will the Bank be liable to refund to Mary's account the check written by Paul for \$150? Discuss fully why or why not.
- D. Will the Bank be liable to refund to Mary's account the \$1,000 checks to Dillard's and Macy's? Discuss all the Bank may argue in favor of not being fully liable for these checks.

Question 4.3

Northland Trucking is a commercial trucking dealership that buys and sells new and used equipment. The Bank finances the sales to Northland's customers with promissory notes. Charles is one of Northland's customers. He bought one (1) eighteen wheeler and a trailer in order to haul heavy loads and make a living as a truck driver.

Charles signs a promissory note in favor of the Bank dated today's date in the principal amount of \$400,000 payable in equal monthly installments over five years. After leaving Northland, Charles unfortunately is involved in a motor vehicle accident and is injured. He will be undergoing surgery and rehabilitation for several months such that he cannot drive and pay for the truck.

A clerk in the Bank confuses Charles' account with the account of another customer who recently paid off a similar note for a truck and trailer bought from Northland. Because of the confusion, the Bank's clerk inadvertently stamps the promissory note signed by Charles as "PAID" instead of the note signed by the other customer. Bank does not discover the discrepancy until after Charles has defaulted on his payments. The Bank is considering legal action against Charles to collect on the promissory note. Charles believes he can take advantage of the Bank's mistake and tells Northland that he paid the note in full.

- E. Is Charles relieved of his obligation to repay the Bank for the note because the Clerk marked the note as "PAID?" Discuss fully why or why not.
- F. In order to help Charles, Northland is considering paying the Bank for full value of the note. If so, will Northland be considered a holder-in-due course? Please discuss the necessary legal elements of a holder-in-due course.

Question I
(25 points)

In 1956, Harry married Wendy and soon thereafter had a child, Carl. In 1960, Harry and Wendy purchased a cotton farm in Franklin Parish. On the farm, Harry and Wendy built a large home, where they have lived ever since, as well as a small guesthouse.

In 2010, Harry died. He left a very short, valid will: "I leave all my property to my son, Carl, subject to a lifetime usufruct in favor of my wife, Wendy. I grant my wife, Wendy, a lifetime usufruct over all my property. Wendy can dispose of any property as she sees fit." Carl was particularly upset with this bequest, as he and his mother had been on very bad terms for many years. He knew that the farm had generally produced over \$100,000 in profit every year. He also believed he could sell the farm for a much higher price than could his mother.

Since Harry died, Wendy's health has deteriorated. She is now 83 years old, and her doctors do not expect her to live through the end of 2012. To make matters worse, a tornado completely destroyed the guesthouse (where Carl had been living) and tore off a portion of the roof to the main family home. Although Carl does not blame Wendy for the destruction of the guesthouse, he claims that the roof damage to the main family home was Wendy's fault because she had let tree branches grow close to the main family home. Each wants the other to rebuild the guesthouse and to repair the roof to the main family home. Further, until the guesthouse is rebuilt, Carl wants to move into the main family home.

Neal, a neighboring farmer, has proposed to Wendy that she grant him a thirty-year lease for the farm. He proposed a very low rental rate of \$5,000 per year for the first ten years, increasing to \$7,000 per year for the remaining twenty years.

Wendy has told Carl that she won't let him move into the main family home, that she is strongly considering accepting Neal's offer and otherwise plans on donating the farm to her brother Bob.

Carl has just come to you for advice. Advise Carl and answer the questions below, giving full reasons for your answer. **To receive credit, you must give full reasons for your answers.**

1. Explain whether Wendy has the right to lease the farm to Neal under the terms Neal has proposed; and if so, what rights, if any, does Carl have. **(5 points)**
2. Explain with reasons whether or not Wendy has the right to donate the farm to her brother Bob; and if so, what rights, if any, does Carl have? **(5 points)**.
3. Explain with reasons whether or not Wendy has the right to exclude Carl from the main family home. **(5 points)**
4. Explain with reasons what rights and obligations Wendy and Carl have to each other with respect to rebuilding the guesthouse. **(5 points)**
5. Explain with reasons what rights and obligations Wendy and Carl have to each other with respect to repairing the roof to the main house. **(5 points)**

[End of Question I]

Question II
(25 points)

Herb and Wilma married on June 1, 1995 and established their matrimonial domicile in New Orleans. They were both successful commercial real estate agents, with licenses both in Louisiana and Florida.

Herb had a son from a prior marriage, Allen. On December 1, 1995, Wilma bore a daughter, Betty. In 1997, Wilma and Herb adopted a baby, Christopher.

On July 15, 2009, Herb came home from a week trip in Florida. Unbeknownst to Wilma, he overheard Wilma talking on the phone telling a friend that she (Wilma) had sex with a co-worker, George, while Herb was in Florida. Herb initially did not confront Wilma about what he overheard, but over time he became more and more jealous. On February 1, 2010, he filed for divorce. Wilma had apparently been waiting for him to do so; the next day, she filed an answer also praying for a divorce. Shortly thereafter, the court awarded joint custody to both Herb and Wilma for both Betty and Christopher, designated Herb as the domiciliary parent for Christopher, who was very close to his half-brother Allen, and designated Wilma as the domiciliary parent for Betty.

On November 3, 2010, Wilma had another child, Daniel. The baby looks like George, and Wilma taunted Herb by saying that Daniel is good looking "because he's got George's genes, not yours."

Herb has become increasingly angry at Wilma. He contends that Wilma has been completely ignoring the children by going out drinking with George and other men several nights a week since Daniel was born and by failing to tell Herb about the multiple suspensions that Betty has had from school for the past two years.

On January 3, 2012, Herb filed a motion for the court to award him sole custody (or alternatively to be the domiciliary parent for) for both Betty and Christopher. In response, Wilma filed a motion for Herb to provide child support for Betty and Daniel. In further response, Herb filed a separate action to disavow the paternity of Daniel.

Please address the five questions below, giving full reasons for each answer. **To receive credit, you must give full reasons for your answers.**

1. What was the earliest date that Herb could have obtained a judgment of divorce from Wilma. Explain. **(5 points)**
2. What proof is required to change the original custody arrangement for Betty and Christopher. **(5 points)**
3. Explain what factors the court is to consider in determining whether the custody arrangements for Betty and Christopher should be modified. Facts that are specifically pertinent should be identified and discussed. **(5 points)**
4. Explain what factors the court is to consider for determining the amount of child support, if any, that Herb is to pay Wilma. **(5 points)**
5. Explain the reasons why Herb's action to disavow the paternity of Daniel is or is not timely and permissible. **(5 points)**

[End of Question II]

Question III
(25 points)

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John owned two, adjacent tracts near Lafayette: the West Tract and the East Tract. The south side of both tracts fronts the service road along the north side of Interstate Highway IO (1-10); both tracts extend about 600 feet to the north and on their north side front another tract that extends about 2000 more feet to the north (that is, away from 1-10). The eastern side of the East Tract fronts a bayou, and the western side of the West Tract fronts Abe Smith Road, which is a small public road that intersects this same [-IO service road.

This tract to the north is owned by Ned and likewise extends from Abe Smith Road on the west to the same bayou on the east. On Ned's property there has long been a continuous strip mall that runs the full length along Abe Smith Road, except for (i) a two-foot gap between the southern edge of this strip-mall building and the boundary of Ned's property and (ii) a thirty-foot gap between the northern edge of this strip-mall building and the northern boundary of Ned's property. There is a narrow paved road that runs along the rear (eastern side) of the strip mall. However, the road is frequently inaccessible when trucks are making deliveries to one of these strip-mall establishments.

In 1975, John sold the West Tract to Wesley, who promptly developed a gas station. The adjacent East Tract has remained undeveloped and indeed has six 100+-year old oak trees on it.

In 1990, Wesley expanded the footprint of the gas station. With over twenty individual pumps, the gas station now extends over almost the entirety of the West Tract. Wesley also installed a car-wash building. He hired a registered surveyor to plot out the location of this car-wash building so that its back wall would run within inches of the boundary between his tract and John's East Tract. However, the surveyor misread earlier survey notes, and thus about ten feet of this building actually extended over onto the East Tract.

In 2000, John died and the East Tract was inherited in equal portions by his brother's seven children and his sister's only child, Frank. John's will stressed the majestic beauty of these oak trees and thus stipulated that these legatees were not to partition the East Tract for twenty years.

The seven siblings now want to develop the East Tract, but have encountered two problems.

First, for traffic-flow and safety reasons, the state's Highway Department has for about twenty years now prohibited vehicles from turning on or off of the I-IO service road except in certain designated locations. The East Tract is not one of these designated locations; thus, the only access to and from the 1-10 service road for the East Tract is either through Wesley's gas station to the west or through Ned's property to the north. Neither Wesley nor Ned wants to have any sizable flow of traffic crossing their property to reach the East Tract.

Second, their cousin Frank thinks that the area is already too developed and wants to keep the entire East Tract around these oak trees undisturbed. Furthermore, he refused an offer by his cousins for them to buy him out-unless they pay him over double the appraised value.

In connection with obtaining the appraisal, the seven siblings also learned about the encroachment of the car-wash building onto the East Tract.

The seven siblings have just come to you for advice. Advise them and answer the questions below, giving full reasons for your answers. **To receive credit, you must give full reasons for your answers.**

Part A.

1. When is the earliest time that the seven siblings may file an action for partition by litigation to have the East Tract partitioned. Explain. **(5 points)**

2. Explain whether the seven siblings do or do not have the right to compel Frank to sell his co-owned interest in the East Tract to them in a private sale. **(5 points)**

3. Explain whether Frank's seven cousins may develop a gas station or strip-mall on the East Tract at their sole expense. **(5 points)**

Part B. Assume that Frank has died and that his executor duly sold Frank's undivided interest in the East Tract to Frank's seven co-owners (his seven cousins).

4. Explain whether the seven siblings do or do not have the right at this time to compel Wesley to remove the portion of his car-wash building extending onto the East Tract. **(5 points)**

5. Explain what rights the seven siblings and their invitees have to drive across Wesley's West Tract and Ned's tract to the north in order to access the East Tract. Also, explain what obligations the seven siblings owe to Wesley and Ned with respect to such access. **(5 points)**

[End of Question III]

Question IV
(25 points)

Each of the ten multiple-choice questions below counts for 2.5 points. Write the letter which corresponds to the correct answer. If you believe that more than one answer is correct, write the letter corresponding to the best answer. Any explanation will be disregarded. If you supply more than one answer, the entire answer will be counted as incorrect even if one of the answers you supply is the correct answer.

- I. An award of periodic spousal support
 - (a) shall be extinguished and terminated upon the subsequent remarriage of the obliger spouse.
 - (b) may be extinguished and terminated upon the subsequent remarriage of the obliger spouse.
 - (c) shall be extinguished and terminated upon the subsequent remarriage of the obligee spouse.
 - (d) may be extinguished and terminated upon the subsequent remarriage of the obligee spouse.

2. In a divorce action, a claim for contributions made to the education or training of a spouse
 - (a) prescribes in two years from the date of the filing for divorce or for annulment of the marriage.
 - (b) prescribes in three years from the date of the signing of the judgment of divorce or declaration of nullity of the marriage.
 - (c) prescribes in four years from the date of the signing of the judgment of divorce or declaration of nullity of the marriage.
 - (d) shall terminate upon the remarriage or death of either spouse.

3. A parent not granted custody or joint custody of a child is entitled to reasonable visitation rights
 - (a) if the court finds, after a hearing, that visitation would be in the best interest of the child.
 - (b) if the custodial parent dies or is incarcerated.
 - (c) unless the court finds, after a hearing, that visitation would result in substantial harm to the child.
 - (d) unless the court finds, after a hearing, that visitation would not be in the best interest of the child.

4. An action for disavowal of paternity prescribes one year
 - (a) after the husband learns or should have learned of the birth of the child if the husband lived separate and apart from the mother continuously during the 300 days immediately preceding the birth of the child.
 - (b) after the birth of the child unless the husband lived separate and apart from the mother continuously during the 300 days immediately preceding the birth of the child.
 - (c) after the husband is notified in writing that a party in interest has asserted that the husband is the father of the child.
 - (d) after the husband dies if the husband dies within one year after he learns or should have learned of the birth of the child.

5. If the child at issue is still alive when an action to establish paternity is filed, the action may be instituted
 - (a) by the child within one year after the death of the alleged father.
 - (b) by the child within nineteen years from the day of the child's birth, or within one year after the death of the alleged father, whichever first occurs.
 - (c) by the mother within one year from the day of the birth of the child.
 - (d) by a man within one year from the date he knew or should have know of his paternity, or within ten years from the day of the birth of the child, whichever first occurs.

6. Under the Civil Code, the state owns
 - (a) the banks of any river that is naturally navigable.
 - (b) the portion of the seashore over which the tide waters of the sea spread during the winter season.
 - (c) common things such as the high seas.
 - (d) public things such as street and public squares.

This paragraph applies to Nos. 7-10 below. An oil company made a huge discovery on an oil and gas lease. As permitted under the lease, the company installed a large fixed platform from which it has been producing several wells under the lease for over twenty years. The oil company also installed on the platform an air conditioned bunkhouse, which sleeps ten workers and has its own mess hall/kitchen as well as a bathroom with a built-in shower, toilet and sink. The lease is silent on the oil company's rights and obligations after the lease expires.

7. Under the Civil Code, the platform is classified as
 - (a) an immovable because it is permanently attached to the ground.
 - (b) an immovable because it has a building located on the platform.
 - (c) a movable because it is not owned by the owner of the ground and is not a considered to be building.
 - (d) a movable because it is considered an other construction permanently attached to the ground.

8. Under the Civil Code, the bunkhouse/mess hall is classified as
- (a) an immovable because it is permanently attached to the ground.
 - (b) an immovable because it is considered to be a building.
 - (c) a movable because it is not owned by the owner of the ground.
 - (d) a movable because it constitutes a component part of the platform.
9. Under the Civil Code, the shower is classified as
- (a) an immovable because it is permanently attached to the ground.
 - (b) an immovable because it constitutes a component part of a building.
 - (c) a movable because it is not owned by the owner of the ground.
 - (d) a movable because it constitutes a component part of the platform.
10. Immediately upon the expiration of the oil and gas lease,
- (a) the oil company may remove the platform at the oil company's expense, with or without the landowner's consent.
 - (b) the landowner may remove the platform at the oil company's expense, with or without the oil company's consent.
 - (c) the landowner may remove the platform at the landowner's expense, with or without the oil company's consent.
 - (d) the landowner becomes the owner of the platform.

[End of Question **TV**]
[End of Civil Code I exam]

QUESTION 1
(35 POINTS)

John and Karen married and moved to Louisiana. John had twin sons, Kevin and Lucas, both born in 1985, from a prior relationship. Karen had taken some paralegal courses in another state and decided she had sufficient expertise to prepare a testament for John and her to sign. The document contained the following provision:

I, John, and I, Karen, hereby make our last will and testament. Each of us hereby bequeaths to the other all of our separate and community property in the event of our death. If we ever have children, each of us hereby bequeaths to our children all of our separate and community property in the event of our death.

The document was typed, signed by both John and Karen on each page who verbally declared it to be their last will and testament, and notarized at the supermarket in their small town and attested by two competent witnesses. This document, executed in 1986, was placed in a safety deposit box.

John and Karen had one daughter, Mary, in 1987.

John separated from Karen several years later. John moved out of the family home and into a condominium in New Orleans that he and Karen bought together after they were married. He began a relationship with Laura and she moved in with him. In 2005, John downloaded a form entitled "Universal Will" from the internet, filled in the blanks on his computer, and printed out the completed form. He verbally declared it to be his last will and testament, signed it and dated it on the bottom of each page before a notary and two witnesses, one of whom was Laura. The 2005 testament contained the following provisions:

"I make the following bequests:

- (1) To my daughter, Mary, I give the diamond earrings that I inherited from my grandmother;
- (2) To my son, Lucas, I give my hunting camp in St. Landry Parish that I inherited from my uncle;
- (3) To my brother, Herb, I give my stock in DrillCo that I inherited from our grandmother;
- (4) To my sister, Gina, I give my fishing camp in Cameron Parish that I inherited from our father;
- (5) To my son Kevin, I give the coin collection that I inherited from my parents, and after that I give the coin collection to the Lafayette Museum;
- (6) To Laura, I give my condominium in New Orleans.

I hereby renounce my right to revoke this testament or any part of it in the future."

Once fully executed, John placed the instrument in his safe. He did not file a copy with the clerk of court.

In 2008, John executed an Act of Donation donating his fishing camp in Cameron Parish to his best friend, Peter. John signed the Act of Donation before a notary and two competent witnesses and then recorded the Act of Donation in Cameron Parish. Peter, who died in 2010, was aware that John had donated the property to him, and thanked him for it on many occasions. Peter, however, was not a party to the Act of Donation and never executed any written acceptance of the donation. Russell, Peter's son, was Peter's only heir. One month after Peter's

death but while John was still living, Russell executed a written acceptance of John's 2008 donation as successor to Peter's interest and recorded it in Cameron Parish.

Lucas was killed in an offshore accident in 2008. He died intestate and unmarried but was survived by a daughter, Penny.

In 2009, John sold all of his shares of DrillCo. The proceeds of the sale were deposited into his brokerage account and remained there until his death.

In August 2011, the hunting camp in St. Landry Parish was expropriated by the U.S. Government for flood control. Shortly before his death, John and the Government had agreed upon a purchase price of \$100,000 for the property but no payment had been issued. After learning of John's death, the Government held the settlement proceeds and waited for the succession to be opened.

John died in September 2011. He was predeceased by Lucas, his parents, his uncle and his grandparents. He and Karen never reconciled and never divorced. The 1986 and 2005 original testaments were located. On the 2005 testament, John had drawn a line through the bequest to Mary and wrote "REVOKED" in the margin next to the line. He signed the notation but did not date it.

QUESTION HA)

(4 points)

Is the 1986 instrument a valid testament under Louisiana law? Explain your answer.

QUESTION 1(B)

(5 points)

Is the 2005 instrument a valid testament under Louisiana will? Explain your answer.

FOR ALL OF THE REMAINING QUESTIONS, ASSUME THAT THE 2005 TESTAMENT WAS THE ONLY VALID AND ENFORCEABLE WILL IN EFFECT AT THE TIME OF JOHN'S DEATH AND THAT THE 2005 WILL WAS ADMITTED TO PROBATE

QUESTION 1(C)

(4 points)

Who is entitled to the \$100,000 proceeds from the expropriation and why?

QUESTION HD)

(5 points)

Who is entitled to the condominium and why?

QUESTION HE)

(4 points)

Who is entitled to the diamond earrings and why?

QUESTION HF)

(5 points)

Who is entitled to the fishing camp in Cameron Parish?

QUESTION 1G)
(4 points)

What happens to the bequest to Herb?

QUESTION 1H)
(4 points)

Who is entitled to the coin collection and why?

QUESTION2
(30 POINTS)

Aaron and Brittany married in 1980. Both had been married previously and divorced. All community property issues from the previous marriages were resolved. Aaron had two children from his previous marriage, Cindy and Derek. Derek was born with a permanent neurological disorder preventing him from caring for himself and never has children of his own. Brittany had no children prior to her marriage to Aaron.

Three children were born of the marriage of Aaron and Brittany: Emma in 1981, Faith in 1984, and Grace in 1989. Faith married Wes. They had no children but they cared for a foster child named Jacob. Cindy was married and had twin daughters, Sarah and Theresa, in 1995. Emma never married and had no children.

For the five years prior to his death, and unbeknownst to his family, Aaron had engaged in an intimate relationship with Liz. In 2009, Liz gave birth to Victoria. Aaron did not sign Victoria's birth certificate or execute an acknowledgement, but he was present at the birth and well aware that Liz believed Victoria to be his child. He kept the child secret from his other family.

Aaron and Emma had never seen "eye to eye." Two years prior to Aaron's death, after a particularly heated argument, Emma wrote her father a letter in which she expressly stated:

"I'm sick of you meddling in my life. You can keep your money. I don't want my inheritance and I don't want to ever see you again."

Aaron and Emma never spoke or saw each other again after that letter was sent.

Aaron died intestate in March 2011 leaving both community and separate property.

Cindy had become independently wealthy. A few days after Aaron's death, at a meeting with the attorney administering Aaron's estate, she wrote out the following on a legal pad and signed it but did not date it:

"I publicly renounce my portion of my father's estate. I don't need it.

Is/ Cindy"

The document was not notarized. The attorney retained the signed document.

In reviewing Aaron's records, Grace learned that Aaron had deposited \$25,000 into a bank account in Victoria's name. With a little detective work, Grace discovered Liz and Victoria.

In October 2011, Faith was killed in a car accident. She had initiated proceedings to adopt Jacob but they had not been finalized. Faith died intestate leaving both community and

separate property. She was predeceased by Cindy and Derek who both passed suddenly in September 2011.

QUESTION 2(A):

(5 points)

Considering the statements made by Cindy and Emma, how should the court-appointed administrator of Aaron's succession treat each of them for the purposes of the estate?

QUESTION 2(B):

(5 points)

Liz is certain that Victoria is Aaron's child. What steps should Liz take to establish Aaron's paternity for succession purposes? Include in your response any applicable time limits and evidentiary burdens which apply to this situation, and what inheritance rights, if any, Victoria would have if successful.

FOR THE REMAINING QUESTIONS, ASSUME THAT VICTORIA IS ESTABLISHED TO BE AARON'S DAUGHTER IN ALL RESPECTS AND THAT NO RENUNCIATIONS WERE MADE OR GIVEN EFFECT.

QUESTION 2(C):

(5 points)

Grace learned that Aaron secretly gave Victoria \$25,000. What are Grace's rights, if any, with respect to this money?

QUESTION 2(D):

(5 points)

Who should inherit Aaron's estate and in what proportions?

QUESTION 2(E):

(10 points)

Who should inherit Faith's estate and in what proportions?

QUESTION 3

(15 POINTS)

Larry and Mary, a married couple who live in Turkey Creek, LA, went shopping at the local BigBoxCo. While they were in the checkout line, a robber with a gun entered the BigBoxCo and a shootout between the robber and the security guard ensued. Larry tried to assist the guard but was caught in the crossfire, and as a result was left paralyzed from the waist down.

BigBoxCo, in an effort to avoid litigation and in order to provide funds for Larry's medical care would like to create an *inter vivos* Louisiana trust to hold the funds to be used to pay his medical bills.

FOR ALL MULTIPLE CHOICE QUESTIONS, SIMPLY WRITE THE LETTER WHICH CORRESPONDS TO THE CORRECT ANSWER. IF YOU BELIEVE THAT MORE THAN ONE ANSWER IS CORRECT, WRITE THE LETTER CORRESPONDING TO THE BEST ANSWER. ANY EXPLANATION WILL BE

DISREGARDED. IF YOU SUPPLY MORE THAN ONE ANSWER, THE ENTIRE ANSWER WILL BE COUNTED AS INCORRECT EVEN IF ONE OF THE ANSWERS YOU SUPPLY IS THE CORRECT ANSWER.

QUESTION 3(A)

(3 points)

BigBoxCo wants one of the following persons to serve as trustee of the trust. Which of them is not qualified to serve as the trustee of this trust under the Louisiana Trust Code?

- (A) BigBoxCo, the settler of the trust, a Louisiana corporation.
- (B) First National Bank of Texas, a federally insured bank organized under the laws of the State of Texas with which BigBoxCo holds deposit accounts.
- (C) Ms. Lotta Money, the CEO of BigBoxCo, a resident and domiciliary of the State of Florida.
- (D) You, the lawyer responsible for drafting the trust document.

QUESTION 3(B)

(3 points)

BigBoxCo does not want Larry, the sole beneficiary of the trust, to voluntarily or involuntarily alienate his interest in the trust. The trust includes a "spendthrift" provision. To protect other of his assets, Larry has transferred a cash settlement of \$100,000 received from the security company into the trust created by BigBoxCo. Which of the following does not have a valid claim for seizure of Larry's interest in the trust?

- (A) Mary, who has divorced Larry and obtained a judgment for spousal support.
- (B) First Bank Credit Card Co., to which Larry owes \$15,000 on his credit card.
- (C) Sally Somebody, who just obtained a judgment of \$1 million against Larry for personal injuries related to an auto accident he caused.
- (D) Wacky Wheelchair Co., which was never paid for the wheelchair with special hand controls that Larry uses.

QUESTION 3(C)**(3 points)**

Larry's brother Darryl has agreed to serve as trustee. The trust contains no special provisions regarding actions of the trustee. Which of the following actions is Darryl, as trustee, allowed to take?

- (A) Loan money to LDC, Inc., a corporation owned and operated by Larry, Darryl and their cousin Charlie.
- (B) Deposit trust funds into a bank account into which Darryl deposits his own paycheck.
- (C) Serve as Managing Member of D&C, LLC, a company formed by Darryl and Charlie after the creation of the trust and into which trust funds were invested in exchange for membership interest of the trust (in lieu of Larry investing personally).
- (D) Execute a power of attorney permitting Charlie to pay doctor bills submitted to the trust while Darryl is in Bora Bora for three months.

QUESTION 3(D)**(3 points)**

The trust document provides that the trust shall terminate in 60 years. Despite this provision, when does the Louisiana Trust Code require the trust to terminate?

- (A) 50 years from the date of the creation of the trust.
- (B) Upon the death of the last surviving income beneficiary or the expiration of 20 years from the creation of the trust, whichever is later.
- (C) Upon the death of the last income beneficiary or 50 years from the creation of the trust, whichever is later.
- (D) 20 years from the date of the creation of the trust.

QUESTION 3(E)**(3 points)**

When it is time for BigBoxCo to execute the trust instrument, which of the following is not a permissible form for creation of the trust?

- (A) Executed in contract form by the BigBoxCo President and with an attached corporate resolution executed in the presence of two witnesses.
- (B) Executed as an act under private signature in the presence of two witnesses and duly acknowledged by the signatory for BigBoxCo.
- (C) Executed as an act under private signature in the presence of two witnesses and duly acknowledged by one of the witnesses.
- (D) Executed as an Authentic Act in the presence of a notary public and two witnesses.

QUESTION 4
(20 POINTS)

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FOR ALL MULTIPLE CHOICE QUESTIONS, SIMPLY WRITE THE LETTER WHICH CORRESPONDS TO THE CORRECT ANSWER. IF YOU BELIEVE THAT MORE THAN ONE ANSWER IS CORRECT, WRITE THE LETTER CORRESPONDING TO THE BEST ANSWER. ANY EXPLANATION WILL BE DISREGARDED. IF YOU SUPPLY MORE THAN ONE ANSWER, THE ENTIRE ANSWER WILL BE COUNTED AS INCORRECT EVEN IF ONE OF THE ANSWERS YOU SUPPLY IS THE CORRECT ANSWER.

Artie was a well-known collector of art and artifacts who lived in New Orleans. He was diagnosed with inoperable lung cancer. Upon learning that his treatments were not going to prevent his imminent death, Artie executed a will, in proper notarial form before a notary and two witnesses, in which he designated who would receive certain of his prize possessions and otherwise provided for distribution of his estate. One section of his will read as follows:

·I give and bequeath:

To Loyola University, the cash sum of \$250,000;

To the New Orleans Museum of Art, my original Rembrandt painting;

To the Louisiana State University Geology Department, my collection of rare geodes and crystals;

To my personal assistant, Jeeves, cash in the amount of \$5,000 for each year of his loyal service to me, as additional recompense for his services; and

To my cousin, Sam, all other property of which I die possessed."

Artie died three weeks after executing his will, and his Executor submitted the will for probate and opened the succession. The executor determined that at the time of Artie's death, Jeeves had worked for Artie for 20 years.

Artie's illness was costly, since he pursued a number of expensive alternative medicine treatments in his quest to beat the cancer. The detailed descriptive list filed in his succession contained the following:

ASSETS

Original Rembrandt painting	\$11,250,000
Collection of Rare Geodes and Crystals	\$ 1,000,000
Cash	<u>\$ 750,000</u>
TOTAL ASSETS	\$ 13,000,000

LIABILITIES

Funeral and Mausoleum	\$ 50,000
Expenses of Last Illness	<u>\$ 450,000</u>
TOTAL LIABILITIES	\$ 500,000

Artie made no donations in the five years prior to his death.

FOR QUESTIONS 4(A) AND 4(B), ASSUME THAT ARTIE WAS NOT MARRIED AND HAD NO CHILDREN.

QUESTION 4(A)

(3 points)

In what order must the Executor of Artie's estate distribute the succession assets?

- (A) 1st \$100,000 cash to Jeeves
2nd \$250,000 cash to Loyola
3rd Painting to NOMA
4th Rocks to LSU
- (B) 1st Painting to NOMA
2nd Rocks to LSU
3rd \$250,000 cash to Loyola
4th \$0 cash to Jeeves
- (C) 1st Painting to NOMA
2nd Rocks to LSU
3rd \$100,000 cash to Jeeves
4th \$150,000 cash to Loyola
- (D) 1st \$75,000 cash to Jeeves
2nd \$75,000 cash to Loyola
3rd Painting to NOMA
4th Rocks to LSU

QUESTION 4(B)

(3 points)

Artie's illness and the experimental treatments left him unable to hear and unable to grip a pen due to frozen joints in his hands and fingers. Under which of the following scenarios is Artie's will invalid? You should assume in each case that the form of attestation clause signed by the notary and witnesses is correct.

- (A) Artie's friend, Ben, who holds a valid Power of Attorney, declares the will to be Artie's last will and testament and signs the document as Artie's agent. The Power of Attorney gives Ben the power to enter into contracts for Artie, including the power to donate.
- (B) Artie declares that he can see and read and that the document is his will, but that he cannot sign it due to his frozen joints. He then places the pen between his teeth and makes a mark in each place where his signature would have been.
- (C) Artie declares that he can see and read and that the document is his will, but that he cannot sign it due to his frozen joints. He then asks his lawyer's secretary to sign his name on the document and she does so.
- (D) Artie declares that the document is his last will and testament, and he signs his name at the end and on the bottom of each page by gripping the pen between his teeth and printing his name.

QUESTION 4(C)**(3 points)**

Assume that Artie had a 21 year old daughter named Erin. Erin never got along with Artie after her parents divorced when she was nine years old. Erin eloped with her "no good" husband two-and-a-half years ago. When Artie went to see his lawyer about his will, he indicated that he would like to disinherit Erin. Which of the following is a valid reason for Artie to disinherit Erin?

- (A) Artie was upset that the husband did not formally ask for her hand in marriage and that Erin did not tell him they were getting married prior to the elopement.
- (B) When Erin returned from her two week honeymoon, she and Artie got into a huge fight during which Erin threatened to hit Artie. She did not actually hit him.
- (C) Ever since the post-honeymoon fight, Erin had refused to speak with or visit Artie. She hasn't called, written or even texted him.
- (D) Artie heard that Erin was telling her friends that he had punched her husband in the face during the post-honeymoon fight. He did not do so and is extremely upset that this rumor is circulating in their social circle.

QUESTION 4(D)**(3 points)**

Assume that Artie had a valid reason to disinherit Erin at the time his will was written. The disinherison may be overcome if Erin files a pleading in the succession proceeding claiming that:

- (A) Two weeks prior to Artie's death, Erin rushed to his bedside and sat with him around the clock until he died. Friends of the family commented at the time on how happy they seemed, looking at old photos and talking about good times.
- (B) On his deathbed, Artie apparently scrawled "I still love my daughter Erin" on the back of a napkin. The nurse found the napkin on his tray but no one saw him write it.
- (C) Even though she has never been diagnosed, she thinks she suffers from a mental disorder and did not understand that her behavior toward her father was hurtful and that it was unintentional.
- (D) She had never threatened her father, that she tried to contact him several times the week after the fight and that she never told her friends anything about the fight.

QUESTION 4(E)

(3 points)

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Assume that any forced heirship issues have been resolved and the legitime has been satisfied. Which of the following testamentary provisions would be invalid if Artie included it in his will?

- (A) I give and bequeath to the New Orleans Museum of Art, one painting from my French Impressionist painting collection, which painting shall be chosen by my Executor.
- (B) I give and bequeath my French Impressionist painting collection to either Sam or Erin, to be determined by my Executor.
- (C) I give and bequeath my French Impressionist painting collection to Sam and Erin, and my Executor is given authority to allocate the paintings between them equally.
- (D) I give and bequeath my French Impressionist painting collection to the public museums of my Executor's choosing.

QUESTION 4(F)

(5 points)

Assume that the testament is valid in form and that Artie has three children, Glen, born in 1987, Farrah, born in 1989, and Erin, born in 1991. In the testament, Artie made no provisions for his three children. The assets and liabilities listed above comprise Artie's entire estate. Calculate the legitime, identify what amounts, if any, each of Artie's children is entitled to receive from his estate and explain the basis for your answers.

END OF EXAMINATION

FEBRUARY, 2012

Question One: TOTAL OF TWENTY-FIVE POINTS.

PART A: TWENTY POINTS.

In January 2010, Lee and Tom entered into a "handshake deal" by which Lee leased a tract of farmland to Tom at a stipulated rental to be paid in cash after harvest. At the time this deal was entered into, Lee mentioned that he was particularly concerned that an irrigation well on the property needed regular repairs since its use was important to the well-being of the farm, and Tom agreed that he would maintain it in good repair. In their discussions, neither of them mentioned how long they expected that the lease would endure, nor did they discuss any other terms beyond what is specifically stated above. Tom went into possession of the property the next day and a few months later planted the entire property in corn. The 2010 crop was a good one, and Tom paid Lee the full amount of the cash rent that was due upon harvesting and selling the crop in late 2010.

In the spring of 2011, Tom, who was still in possession of the farm, again planted the entire farm in corn. Shortly afterward, however, Tom decided that he wanted to leave the farming business and arranged for his friend Ron to take over his farming operations under an oral agreement that they would split the profits from the corn crop at the end of the year.

In early summer of 2011, Lee was approached by Strip Centers, Inc. ("SCI"), which wanted to purchase fifty acres of the property for use as a retail outlet mall. After a few weeks of negotiations, Lee sold the fifty-acre tract to SCI. Though Lee told SCI's representative that the land was still being farmed, neither the act of cash sale by which SCI purchased the property nor any other recorded document made any mention of Tom's lease.

A week after the sale, SCI wrote to Tom and Ron demanding that they surrender possession of the fifty-acre tract immediately so that SCI could begin construction work on the outlet mall. Upon receiving this letter, Tom contacted Lee to inquire why he had sold the tract to SCI, asserting that the sale was a violation of Tom's lease and would cause Tom and Ron to lose the crops on fifty acres of the property. Lee responded that the deal was "just too good to pass up" and that, since Tom himself was no longer even farming the land, he certainly had no ground to complain. Lee also observed that he had recently discovered that the irrigation well had not been maintained properly and was no longer operable. Finally, Lee complained that the title attorney who closed the sale to SCI had discovered that 2010 property taxes assessed against the farm had not been paid and that the delinquent taxes were therefore deducted out of the sales proceeds, with the result that Lee received less from the sale. Lee expressed his feelings that the taxes were Tom's responsibility since he was farming the land during 2010.

Lee has now filed suit against Tom asserting that Tom had no enforceable lease because nothing was in writing. The suit also contends that, even if there had been an enforceable lease, it expired when the 2010 corn crop was harvested and was therefore no longer in effect. In addition, the suit claims that Tom breached the lease by subleasing the property to Ron without Lee's consent, by failing to pay 2010 property taxes and by failing to maintain the irrigation well in good repair. SCI has intervened in the suit, contending that its title to the fifty-acre tract is not burdened by any lease in favor of Tom and seeking an order forcing Tom to surrender possession of that tract to SCI. Discuss the merits of the claims of Lee and SCI and possible defenses available to Tom.

PART B: FIVE POINTS

Distinguish between a vendor's privilege on movable property and a purchase money security interest, discussing particularly the differences in the manner of their creation, the different legal effects they produce and differences in their ranking and effectiveness against third persons. *In giving your answer, it is not necessary to discuss any special rules that might be applicable to collateral consisting of inventory.*

END OF QUESTION ONE

FEBRUARY, 2012

Question Two: TOTAL OF TWENTY-FIVE POINTS.

Abe Hardware Store, [nc. ("Abe") is a Louisiana corporation having its registered office in Orleans Parish. Its principal place of business is a retail hardware store and small engine repairshop located in Metairie, Jefferson Parish, Louisiana. Abe also operates a store in Covington, St. Tammany Parish, Louisiana. Within the Metairie store, Abe leases space to Cal's Landscaping, Inc. ("Cal's"), which is a Mississippi corporation engaged in the residential landscaping business.

For the last decade, Abe has obtained working capital financing from First National Bank ("FNB") and is presently indebted to FNB for line of credit indebtedness in the approximate amount of \$100,000. When this banking relationship began in August, 2001, Abe, acting through its properly authorized president, executed in favor of FNB a security agreement by which it granted FNB a security interest, as security for all of its present and future obligations to FNB, in collateral described as all of Abe's "accounts, chattel paper, instruments and inventory, whether now owned or hereafter acquired." On August 30, 2001, FNB filed in the UCC records of the St. Tammany Parish Clerk of Court a financing statement setting forth this identical collateral description and properly identifying Abe, as debtor, and FNB, as secured party. On April 15, 2006, FNB filed with the St. Tammany Parish Clerk of Court a UCC-3 continuation statement with respect to the 2001 financing statement.

Several years later, in January 2008, Abe, again acting through its duly authorized president, executed an additional security agreement granting FNB a security interest, securing all of Abe's present and future indebtedness, in collateral described as all of Abe's "equipment, deposit accounts, fixtures and investment property, whether now owned or hereafter acquired." On January 23, 2008, FNB filed in the UCC records of the Jefferson Parish Clerk of Court a financing statement setting forth this identical collateral description and properly identifying Abe, as debtor, and FNB, as secured party. The financing statement was marked to indicate that it covered fixtures and contained a legal description of the land in Jefferson Parish upon which Abe's Metairie store was located.

FNB has made no filing in any public filing office with respect to Abe other than those filings specifically identified above.

With respect to each of the items or types of collateral listed below, state whether FNB holds a perfected security interest, giving in each case a short explanation for your answer. *In your answer to Part 1 below, discuss generally the concepts of attachment and perfection and /to what the requirements of perfection are or are not satisfied with respect to the collateral described in Part 1. It is not necessary to repeat the same general discussion in the remaining parts of the question, except to the extent necessary to demonstrate why the security interest in the items or types of collateral listed in each part is or is not perfected.*

- I. Tools that Abe uses at its store in Covington to repair customers' lawn equipment. **SEVEN POINTS.**
2. Amounts owed by a customer for engine repair services the customer obtained on open account at Abe's store in Covington. **TWO POINTS.**
3. Lawn equipment that Abe offers for sale in its store in Covington. **TWO POINTS.**
4. A delivery truck used for making deliveries to Abe's customers. **TWO POINTS.**
5. The current month's rent owed by Cal's for the space it leases in Abe's store in Metairie. **TWO POINTS.**
6. A \$2,500 unsecured negotiable promissory note that Cal's executed and delivered to Abe in January 2012 to evidence debt for unpaid rent that had accrued during the last three months of 2011 for the space Cal's leases in Abe's Metairie store. Abe has

endorsed and physically delivered this promissory note to FNB. **TWO POINTS.**

7. A central heating and air-conditioning system that Abe purchased with a \$25,000 loan advance from FNB and installed in its Metairie store in June 2007. Assume that this system constitutes a component part of the building, which is owned by Abe. **TWO POINTS.**
8. Funds on deposit in Abe's bank account at Jefferson Parish Bank, which has executed no agreement of any sort with FNB. **TWO POINTS.**
9. A forthcoming income tax refund that is owed to Abe. **TWO POINTS.**
10. The stock certificate representing 100 shares of common stock issued by Abe to its sole shareholder. **TWO POINTS.**

END OF QUESTION TWO

LOUISIANA BAR EXAMINATION
CIVIL CODE III

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FEBRUARY, 2012

Question Three: TOTAL OF TWENTY-FIVE POINTS.

In early 2010, Sam decided to sell the house in which he had lived for the last ten years. Sam had been the only owner of the house and lived there since it was built. The house is of brick veneer construction: its structural components consist of a concrete slab and wood framing covered by an exterior veneer of non-structural brick. A few weeks after listing the house for sale, Sam received an inquiry from a prospective buyer, Bob. During their ensuing discussions, Bob asked Sam if he had ever had any problems with the house. Sam responded that "it had been a great house" and he had had no problems, but invited Bob to make whatever inspections he wished to perform. After a few rounds of negotiations over the price, Sam and Bob entered into a contract by which the parties agreed that Sam would sell the house to Bob for \$285,000. The contract allowed Bob a period of 30 days to make whatever inspections of the house he deemed appropriate and contained the following clause: "THE PROPERTY IS SOLD 'AS IS, WHERE IS' IN ITS PRESENT CONDITION."

Shortly after the contract was signed, Bob hired a residential inspection company to inspect the house. This inspection company issued to Bob a written report pointing out that the electrical, plumbing and air conditioning systems of the house were all functioning and in good order. The report also mentioned that, while hairline fractures could be found in the mortar between the bricks on the exterior of the house, the hairline fractures were insignificant because the brick was not structural. The report concluded that there was no reason to suspect that the house was not structurally sound. On April 5, 2010, Sam and Bob appeared at a title company and executed an act of sale by which Sam sold the house to Bob. The act of sale contained the same "AS IS, WHERE IS" clause quoted above.

In September 2010, Bob noticed that one of the bathroom doors inside the house had begun "sticking", that is, the door was contacting the wooden door jam and therefore became hard to open and close. Bob thought nothing of this, because the summer had been exceptionally dry and he had heard his neighbors complaining of similar problems, which they attributed to the contraction of the dry soil in the neighborhood.

On February 1, 2011, Bob had some friends over for a party at his house. One of his guests pointed out to Bob that there appeared to be a crack in an interior wall radiating in a diagonal direction from the upper corner of one of the living room windows. Concerned about this, Bob inspected the interior walls around all the windows and the doors of the house the next day and was concerned to see that there were similar cracks around five other windows. There were also cracks running vertically above several of the interior doors. Bob immediately called a structural engineer, who performed an inspection of the house on February 25, 2011. While at the house that day, the engineer indicated that he would render a written report but that he wanted to warn Bob that the report would indicate that the house suffers from severe foundational defects that would probably cost more than \$50,000 to correct. The engineer also pointed out to Bob that the problem had obviously been discovered by someone in the past, for a number of the diagonal cracks in the drywall had been cosmetically patched with drywall tape and joint compound. Because Bob had never had any work of this nature done since buying the house, he told the engineer that this work must have been done by the prior owner. The engineer's report, which was consistent with what the engineer had told Bob during the inspection, was delivered to Bob on March 1, 2011.

Discuss Bob's possible rights against Sam, explaining relevant rules of law as well of potential defenses that Sam might be expected to raise.

END OF QUESTION THREE

FEBRUARY, 2012

Question Four: TOTAL OF TWENTY-FIVE POINTS

Briefly describe each of the concepts listed below, differentiating the items that are listed in each group:

1. Obligations that are several for the obligors, obligations that are joint for the obligors and obligations that are solidary for the obligors. **THREE POINTS**
2. Absolute simulation and relative simulation. **THREE POINTS**
3. A contract that is an absolute nullity and one that is a relative nullity. **THREE POINTS**
4. Conventional mortgage, judicial mortgage and legal mortgage. **THREE POINTS**
5. Authentic acts, acts under private signature, and acts under private signature duly acknowledged. **THREE POINTS**
6. Compensation and confusion. **THREE POINTS**
7. Objective novation, subjective novation and subrogation. **THREE POINTS**
8. Contract of sale, contract to sell, right of first refusal and option to buy. **FOUR POINTS**

END OF EXAMINATION

**LOUISIANA BAR EXAMINATION
CONSTITUTIONAL LAW
FEBRUARY, 2012**

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WARNING

The following are not issues on the Constitutional Law Examination: mootness, ripeness, political question, case or controversy, standing, or justiciability. NO CREDIT WILL BE GIVEN FOR DISCUSSION OF THESE ISSUES IN ANY OF THE THREE QUESTIONS.

Question Number One is worth 34 points; Question Number Two is worth 34 points; Question Three is worth 32 points.

QUESTION ONE - (34 points)

Last year, the Caddo Parish School Board learned that over the past several years, an increasing number of students in Louisiana school districts have had incidents involving same-sex dates to the senior prom. That same year, in another parish, several students, along with their families and friends, staged a boycott of a senior prom in protest of a ban on same-sex senior prom dates. Trying to avoid such behaviors, as well as the potential disruption of senior proms within the Parish, the Board adopted the following policy concerning all senior proms:

SAME-SEX POLICY

No student may invite a same-sex guest to the senior prom.

Students of Caddo Parish schools who wish to attend any senior prom within the Parish are prohibited from exhibiting any behavior that detracts in any way from the dignity of the senior prom. Such behavior includes making any inappropriate statements or gestures at or during the senior prom in relation to this policy. The principals of the Parish schools shall have the discretion to determine whether a student's behavior is in violation of this policy.

Any student found to be in violation of this policy shall not be allowed to attend or receive the diploma of the school at the graduation ceremony, but shall receive his or her diploma immediately thereafter via first-class U.S. mail.

Abe is a senior at North Caddo High School. Several months before the senior prom, Abe requested permission, via letter addressed to the Caddo Parish School Board, to invite his boyfriend and classmate (Ben) as a guest to the senior prom. Abe never received a response to his request.

Abe brought Ben to the prom. They were both dressed appropriately and entered the prom without incident. However, the principal sent the security guard to escort them out of the dance shortly thereafter. Abe and Ben told the security guard that they had requested permission to attend the prom together. Abe and Ben did not attempt to re-enter the prom, and none of their friends or family did anything to protest the removal.

Twenty other same-sex couples were removed from proms throughout Caddo Parish during that prom season. Several of the couples sent letters to the Caddo Parish School Board challenging their removals from proms; the board responded by sending a copy of the "Same-Sex Policy." Abe and Ben did not send letters about their removal. Abe and Ben did not receive

any communication about their prom request or removal from their school principal or from the Caddo Parish School Board. 0

When Abe and Ben arrived at the graduation ceremony with their families, neither was allowed to enter to participate in the graduation. They received their diplomas the day after graduation via first-class U.S. mail.

- (1) What constitutional arguments, if any, can Abe and Ben raise regarding their removal from the prom and are they likely to succeed? Discuss.**
- (2) What constitutional arguments, if any, can Abe and Ben raise regarding their exclusion from the graduation ceremonies and are they likely to succeed? Discuss.**

QUESTION TWO-(34 points)

DO NOT DISCUSS ANY PROCEDURAL DUE PROCESS ARGUMENTS IN THESE ANSWERS.

Post-Hurricane Katrina the tourism industry in Louisiana experienced exponential growth. With this growth came the increased need for garbage and recycling facilities. The State decided to take advantage of this increased need and secured a loan to construct, and did in fact construct, a recycling facility in 2008. The increased demand, however, also resulted in an increase in the emergence of a number of private recycling facilities. As a result, the use of the State's publicly owned recycling facility has steadily declined since its inception in 2008.

The State is concerned that if this trend continues, its revenues will decrease and it will have to close its facility and default on the large loan used to construct the facility. In fact, the State Legislature appointed a Commission to analyze this issue, and the Commission's results showed that at the current rate, the State's recycling facility would no longer be viable by 2014, resulting in the closing of the facility, the lay-off of hundreds of Louisiana workers, and the possible default on the loan. The Legislature, therefore, enacted the following law to ensure that the State's facility would be used:

All recyclable materials generated within the territorial limits of the State of Louisiana are to be transported and delivered to the Louisiana Recycling Facility. It shall be unlawful for any person to remove, transport and/or dispose of recyclable materials generated within the territorial limits of the State of Louisiana to any other recycling facility. Any recyclable removed, transported and/or disposed of in violation of the law shall be seized and become the property of the State.

Dylan Ditchdigger, is the owner of a company operating a private recycling facility in the State of Louisiana, and KAN Recyclables, Inc., is a Mississippi-based private recycling facility that generates 50% of its revenue from Louisiana recyclables. Both companies are opposed to the law.

What constitutional arguments, if any, can Dylan and KAN raise and are they likely to succeed? DO NOT DISCUSS PROCEDURAL DUE PROCESS ARGUMENTS IN THIS ANSWER.

DO NOT DISCUSS ANY PROCEDURAL DUE PROCESS OR ANY SEARCH AND SEIZURE ARGUMENTS IN THESE ANSWERS.

Al Ates, a principal of a private school in Louisiana that receives 50% of its funding from state and federal government funding sources, learned that a group of seniors established a closed Facebook page in order to coordinate, plan, organize, and outline senior class pranks throughout the school year. (Facebook is an online social network that allows for public and private forums with various individuals. A closed Facebook page is a group page on Facebook that requires invitation and acceptance by the account administrator before a person can have access to the information on the page.)

The principal assumed that the class president, Barney, initiated the closed-group Facebook account. Ates summoned Barney to his office and required Barney to use the computer in Ates' office to log into Barney's Facebook account. Ates asked Barney if Ates could view the contents of the closed-group account. Barney, believing he had to allow the access, consented to allowing Ates to view the contents of the closed-group account. Barney is a minor.

Throughout the investigation of the account, the principal did not find any information that would suggest that the closed-group account was being used to organize any class pranks. Instead, the closed-group discussions involved plans for prayer services and faith-based activities for its members -- all of whom are seniors attending the school -- during lunch periods and after school on school property.

Ates assumed that the faith-based activities page was a sham and that the group was really organizing the senior class pranks. Ates later issued a memorandum to the entire senior class prohibiting any faith-based student activities on school property and also prohibiting any student from creating or accessing any social media page or website while on school property if the primary purpose of the page or website was to organize any activities that would occur on school property, unless the student obtained pre-approval from him to create or access the social media page or website.

Barney and his classmates believe that the new rule will inhibit their planning abilities and activities.

What constitutional arguments, if any, can Barney raise and is he likely to succeed? DO NOT DISCUSS PROCEDURAL DUE PROCESS OR SEARCH AND SEIZURE ARGUMENTS IN THIS ANSWER.

EXAMINATION ON CRIMINAL LAW, PROCEDURE AND EVIDENCE

I.

(40 points may be earned)

Like everyone in his small north Louisiana town, Mark was hit hard by the general economic downturn. No longer could he afford the comfortable lifestyle to which he and his family had grown accustomed over the years. The global financial crisis was especially devastating to local independent financial institutions, such as the state-chartered bank that had employed Mark for past 22 years. Frustrated by the precipitous decline in his income, and given his many years of loyal service to the bank as its chief loan officer, he reasoned that it was entirely reasonable for him to get more from the bank than he had received in salary over the past year. So Mark devised a plan to supplement his substantially reduced salary.

Late one afternoon, after all other employees had left the bank for the day, Mark entered the teller cage and retrieved a key to the bank manager's office. Mark was aware that the bank's policy prohibited employees from entering the manager's office when the manager was not present. Nonetheless, he used the key to unlock and enter the manager's office. Once inside, he opened a file cabinet that contained the combination to the bank's massive vault. Mark then walked over to the vault and used the combination to open its heavy doors. Mark immediately seized upon the neatly bundled stacks of cash. Without delay, he stuffed handfuls of one-hundred-dollar bills into a backpack that he had found under a desk used by another of the bank's loan officers.

After leaving the vault, Mark walked over to the teller cage to return the key. While there, he pulled a blank temporary check from one of the teller stations. Using a special apparatus that prints names and account numbers on such checks, Mark then caused the checking account number of Mr. Brady, one of his long-term customers, to be affixed to the check along with Mr. Brady's driver's license number and social security number. Mark then made the check payable to Randy, his older brother, in the sum of \$15,000 and signed the check using Mr. Brady's full name. Mark believed that Mr. Brady, a very wealthy retired attorney, who was also an elderly Korean War veteran, would not notice any discrepancies in his checking account.

For the past several months, Randy was down on his luck. He found it tough to find a job since his release from the parish jail six months ago after serving a sentence for felony drug possession, and he was all too eager to help Mark find ways to get more money, especially if he could participate in the profits. Mark had previously discussed the plan with Randy, who had agreed to cash the check the next day and split the proceeds with his brother.

Mark knew that the entire bank was under 24-hour recorded surveillance. In an effort to conceal any video recordings of his after-hours activities, he located the server that ran the bank's security cameras. He then managed to disable the hard drive by inserting into it a disk that downloaded a virus that rendered the computer permanently unusable.

Mark then grabbed the backpack filled with the cash and exited the bank by the back door. Randy awaited him at the rear of the bank, having driven there in his 1985 Jeep Renegade. Mark hopped into the Jeep and the two sped away. Minutes later, Mark realized that he had inadvertently left the newly created \$15,000 check on his desk at the bank. The two returned to the bank, which Mark and Randy both entered through the back entrance. While inside, Randy noticed the presence of a tall stack of newly embossed and activated credit cards on the desk of one of the bank's loan officers. The credit cards were recently approved and authorized for use by several of the bank's individual account customers. Randy grabbed the entire stack of cards and shoved them into his jacket pocket. Simultaneously, Mark grabbed the \$15,000 check. Both men then made their way back out of the bank's rear entrance.

Randy's run of bad luck, however, continued. Two officers on routine patrol happened to notice the two men run from the rear of the bank and jump into the Jeep. Suspecting that something was amiss, the officers immediately pulled into the parking lot to investigate. With emergency lights flashing, one of the officers ordered the occupants to get out of the Jeep. Desperate to get away, Randy ignored the officer's commands and rammed the front passenger side of the police unit and tried to drive off. One of the officers, who had exited the patrol unit and was standing near the front of the police car, was struck by the Jeep and pinned beneath the patrol car. The officer later died from his injuries. Randy and Mark then sped away.

While attempting to make his getaway, Randy reached under the driver's seat of his Jeep, retrieved a .40 caliber handgun and fired towards the officers. Neither officer was stuck. However, while attempting to aim and shoot at the officers, Randy lost control of the Jeep. The vehicle jumped the curb and struck a pedestrian, who was severely injured.

Within moments, additional police officers arrived at the scene and took the brothers into custody. During the arrest, officers located and confiscated Randy's pistol. A subsequent investigation revealed that Mark had purchased it for him earlier in the week.

Discuss all crimes with which Mark and Randy could be charged under Louisiana law and the elements of each offense.

II.

(30 points may be earned)

Assume all the facts as stated in Question I, in addition to the following. After driving away following the incident with the pedestrian, Randy and Mark were stopped by police officers after a high-speed chase. As the brothers were exiting the Jeep but before being arrested, Mark blurted, "I should never have gotten you that gun." Several police officers heard Mark utter the statement. Prosecutors later attempted to offer the statement into evidence.

After advising Randy and Mark of their rights and taking the brothers into custody, officers searched the driver's area of the Jeep and discovered the .40 caliber handgun. It was introduced into evidence at their trial.

Having informed the officers that he understood his *Miranda* rights, Randy initially agreed to be interviewed by detectives. However, shortly after the interrogation started, Randy changed his mind and refused to answer any additional questions. Detectives then pressed him, telling him, "If you don't answer our questions, we'll ask the D.A. to seek the death penalty against both you and your brother." Out of concern for his brother, Randy agreed to resume the interrogation and prosecutors used his statements at his trial.

During the investigation, officers learned that a motorist witnessed the Jeep jump the curb and strike the pedestrian. One month after the incident, detectives visited the motorist and produced a photograph of Randy. The motorist immediately identified Randy as the driver of the Jeep. Prosecutors introduced this evidence at Randy's trial.

Criminal investigators learned that Mark had purchased additional weapons for Randy. They also learned that the weapons were stored at the home Mark shared with Mary, his wife. Police requested Mark's consent to search his home but he refused. Nonetheless, police then drove to Mark's home with the intention of conducting a search for the weapons. Upon arrival, they identified themselves to Mary and requested her consent to search the residence. She readily consented to the search. Relying on the consent given by Mary, officers proceeded to search Mark's bedroom. They eventually discovered a shotgun in the closet of Mark's bedroom, along with evidence that it had been purchased for Randy.

Investigators also decided to search Randy's apartment. However, they decided to obtain a court-issued warrant to enable them to do so. The warrant permitted officers to search for weapons only. However, during the search, one of the officers located a small jewelry box that appeared to be capable of holding a ring. When the officer opened the box, he discovered that it contained a small amount of marijuana. Prosecutors charged Randy with possession of a Schedule I drug.

Discuss all state and federal constitutional bases for challenging the following: (1) Mark's statement that was overheard by the officers; (2) the seizure of the handgun; (3) Randy's statements to the detectives; (4) the admissibility of the photo identification procedure; (5) the legality of the search of Mark's home; (6) the admissibility of the marijuana discovered in Randy's home.

III.

**(a maximum of three points may be earned for each question,
for a total of 30 points)**

At the trials of Mark and Randy, the following events or testimony occurred. Address the following issues that arose either before or during the trials. Explain your answers fully.

(1) May prosecutors offer evidence that Randy was convicted of a prior felony drug possession charge?

(2) At Mark's trial, prosecutors seek to call the lead criminal investigator to testify that Mark's fingerprints were found on various surfaces at the bank. Should Mark's lawyer object to the introduction of the evidence?

(3) Prior to Randy's trial, the lead investigator who interviewed him died tragically in an automobile accident. However, several weeks earlier, the investigator testified under oath at a suppression hearing in the case and was cross-examined by Randy's lawyer. Prosecutors seek to introduce a transcript of the investigator's testimony during their case-in-chief at Randy's trial. Randy's lawyer objects. How should the court rule?

(4) Also at Mark's trial, prosecutors attempt to admit a statement made to investigators by Mary, Mark's wife. In the statement, Mary claimed that Mark told her that he purchased the .40 caliber handgun for Randy. Mark's lawyers object to the admission of Mary's statement. Assuming that the statement is otherwise admissible under the rules of evidence as a non-hearsay statement, how should the court rule?

(5) Also during Randy's trial, prosecutors offer a certified record from the Louisiana Department of Motor Vehicles reflecting that Randy is the owner of the Jeep involved in the police chase. Randy's lawyer objected to the evidence. How should the court rule?

(6) At Randy's trial, prosecutors called the pedestrian who was struck by Randy's Jeep to testify. However, upon being seated in the witness stand and seeing Randy for the first time since the incident, she becomes extremely emotionally distressed and displays difficulty in responding to the prosecutor's questions during direct examination. What, if anything, can the prosecutor do to elicit her testimony?

(7) In its case-in-chief, prosecutors call Simon, who is prepared to testify that he witnessed Randy's Jeep strike the pedestrian. Randy's lawyers are aware that Simon was convicted ten years ago of simple possession of marijuana, a misdemeanor, in the State of Texas. May defense counsel raise the conviction during their cross-examination?

(8) As part of Mark's defense strategy, his attorney calls Mark's pastor to testify as a character witness. The witness is prepared to testify that, in the community of church members, Mike has a favorable reputation for truthfulness and honesty. Prosecutors object to the testimony. How should the judge rule?

(9) Shortly after his arrest, Randy offered a statement to investigators, claiming that Mark devised the plan carried out earlier in the day. However, he later recanted the statement and proceeded to trial. Prior to trial, the state offered notice of its intention to introduce the statement at both Mark's and Randy's trials. The lawyers for both defendants objected. Should the statement be admitted into evidence at **Randy's** trial?

(10) See above. Should the court permit the statement to be introduced into evidence at **Mark's** trial?

**LOUISIANA BAR EXAMINATION
Federal Jurisdiction and Procedure
February 2012**

Question One (25 Points)

Members of the Sims family are partners in Sims Operations, Ltd. (SOL), a Louisiana (LA) limited partnership that owns and operates a farm in Iberia Parish, LA. Father Sims, a lifelong resident of LA, is the general partner and owner of a 91% interest in the partnership. He lives on the farm and attends to its business. The remaining interest in the partnership is owned, 3% each, by three adult Sims children, each of whom is a limited partner. Peaches is domiciled in Georgia (GA), and Tyler in Texas (TX). Son Rob was convicted of financial crimes in 2007 and sentenced to serve 10 years in a federal prison in Illinois (IL). Before his conviction, Rob lived and worked alongside his father, and he hopes that he can do the same again in 2017 when his sentence ends. None of the limited partners has any knowledge about the events described below.

SOL contracted to purchase seed, chemicals, and other farm supplies from Good Agricultural Services, Inc. (GAS). GAS is incorporated in Delaware (DE) and maintains warehouses in GA and TX, from which it ships all of its products for the 15 states it serves. Each warehouse employs over 100 workers. GAS rents space in a Chicago, IL high-rise to house its three executive officers and a team of six employees that handle a call center and attend to personnel matters. GAS does business in 15 states, so it is licensed to do business in each of them, including GA, TX, and LA.

SOL suspected that GAS was passing off generic or inferior products as name-brand items, and it began to refuse to pay some of its bills until the total amount due was \$74,000. The written contract provides that in the event GAS has to file suit to collect any amounts due under the contract, GAS is entitled to collect an additional 10% of that amount as an attorney fee. GAS's attorneys estimate that the court costs, ranging from the filing fee to witness attendance fees, would be approximately \$1,500.

- 15 pts.** **I.A** GAS has filed a complaint against SOL in an LA federal court. The complaint prays for an award of "\$74,000 in amounts past due under the contract, plus a 10% attorney fee as provided by the terms of the contract, and all court costs associated with this civil action." Does the federal court have diversity subject-matter jurisdiction over the case under 28 U.S.C. § 1332? Explain fully.

Your ability to demonstrate knowledge of how to properly analyze the issues may be more important than your conclusion with respect to some issues, so conclusory answers will receive little credit.

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

Assume for the purposes of the remaining questions in Question One that the case remains pending in the LA federal court.

3 pts. **1.8** SOL wants to assert a claim against GAS for damages caused by GAS supplying inferior products. SOL wants to include as a defendant on the claim Acme, Inc., which has only Utah citizenship. Acme is one of GAS's suppliers that SOL believes conspired with GAS to substitute inferior products in brand-name labeled packaging.

To assert its claims against GAS and Acme, SOL should file a ...

- A. Crossclaim against GAS and a third-party demand against Acme.
- B. Reconventional demand against GAS and a third-party demand against Acme.
- C. Crossclaim that names as defendants both GAS and Acme.
- D. Counterclaim that names as defendants both GAS and Acme.

3 pts **1.C** The parties to the suit will be required to exchange the initial disclosures described in Federal Rule of Civil Procedure 26. Which one of the following is *not* an item that must be disclosed as part of that process?

- A. The name and address of each partner in SOL.
- B. An estimate of damages prepared by GAS's bookkeeper.
- C. SOL's com crop records that show increased com production during the time GAS products were used.
- D. Photographs of cotton plants that SOL believes will demonstrate that GAS products were stunting the plants' growth.

2 pts. **1.D** Louisiana courts have held that state law requires a claim for lost profits be proven with reasonable certainty; it cannot be supported by a mere estimate of loss. GAS asked the judge to instruct the jury on that jurisprudence in connection with SOL's lost profits claim. SOL responded that the federal court was not bound to apply the jurisprudential holding in a diversity case because it had not been enacted by the Louisiana legislature. Discuss whether the federal court must instruct the jury as requested by GAS.

2 pts. **1.E** Federal Rule of Civil Procedure 48 states that a federal civil jury must begin with between six and twelve members, and the verdict must be unanimous unless the parties stipulate otherwise. The federal judge announced plans to select an eight-member jury. GAS objected and argued that, because all claims before the court were based on Louisiana law, the court was bound to follow La. Code of Civil Procedure Art. 1797, which requires a 12-member jury, nine of whom must concur to render a verdict. Discuss how the federal court should resolve the issue.

Question Two (25 Points)

Pat, a citizen of Louisiana (LA), owns a plant located in Texas (TX). Pat contracted with her high school classmate, Eve, a TX electrician, to rewire some equipment at the plant. The area near the rewired equipment later caught fire and caused \$100,000 in damages.

Pat filed suit against Eve in an LA federal court based on diversity jurisdiction. The complaint alleged that Eve performed the work in a negligent manner, which caused the fire and resulting damage. The process server could not find Eve, so he delivered the service papers to Eve's 10-year-old son, who he found at a local daycare.

Eve filed a motion to dismiss for failure to state a claim on which relief could be granted. The motion was based on an attached affidavit from an independent, expert electrician who testified that he had examined the damaged area and determined that the fire was caused by a short in a piece of equipment not worked on by Eve. The judge denied the motion. Eve then filed an answer that generally denied Pat's allegations and included two counterclaims against Pat. The first sought \$50,000 based on alleged defamation by Pat when she posted statements on Facebook that Eve performed shoddy work. The second sought to collect \$500 that Pat owed Eve as Pat's share of the expenses from the class reunion, which was held a few weeks before the electrical work. Eve then filed a motion to dismiss for insufficiency of service of process, which the judge denied.

Eve filed a motion for summary judgment. She based it on the same affidavit used in connection with her earlier motion, in which an independent electrician testified that the damage did not begin in the area rewired by Eve. Pat filed a memorandum in opposition, to which she attached an affidavit from one of the electricians on her staff, who testified that he had examined the area and believed the fire did start in the area repaired by Eve. Eve filed a reply memorandum, to which she attached deposition testimony from Pat's in-house electrician, in which he admitted that he has two children in college and would do almost anything to keep his job. Eve argues the in-house electrician's testimony must be discounted for that reason.

- 4 pts.** **2.A** Did the judge properly deny Eve's motion to dismiss for failure to state a claim upon which relief can be granted? Explain.
- 3pts.** **2.B** Did the judge properly deny Eve's motion to dismiss for insufficiency of service of process? Explain.
- 6pts.** **2.C** Assume the court has subject-matter jurisdiction over Pat's complaint based on diversity of citizenship. Explain whether the court would have jurisdiction over each of the two counterclaims filed by Eve.
- 6 pts.** **2.D** Set forth the applicable standard for assessing Eve's motion for summary judgment, analyze the submissions of the parties under the applicable standard, and state how a court should rule on the motion for summary judgment.

- 3 pts.** **2.E** Assume the judge decides to deny the motion and sets a trial date nine months away. Eve would like to immediately appeal the denial of her motion. Explain whether or not Eve may do so.
- 3 pts.** **2.F** While the case is pending on appeal, Eve hires a new lawyer who points out that Eve has a strong argument that the LA court does not have personal jurisdiction over her because she has never visited the state, and all the work was performed in TX. The appellate court rejects the argument. Discuss whether the appellate court's action was correct.

Question Three (25 Points)

Will, a citizen of Louisiana (LA), owns a widget factory in LA. He contracts with Tim, a Texas (TX) citizen who owns a trucking company, to transport the widgets by truck to the marketplace.

Pam, a citizen of LA, owns land adjacent to the widget factory. She contends that emissions from the factory and excessive exhaust fumes from Tim's trucks have polluted her land.

Pam filed suit in a Louisiana state court on March 1, 2009 against Will and Tim. She alleged that both defendants were negligent under Louisiana law, which was evidenced in part by Tim's failure to equip his trucks with exhaust systems recommended by federal transportation regulations.

Later, during settlement negotiations, Pam stated that she could amend her petition and also assert a claim under La. Civil Code Arts. 667 and 668 for nuisance based on the noise levels produced by the factory. Will responded that he could easily defeat such a claim with certificates he obtained from federal regulators stating that the noise emitted by the factory was within federal guidelines. Pam nonetheless filed a first amended petition on December 1, 2009 and added her nuisance claim against Will.

Further testing of the land indicated that Pam's pond was polluted. When Pam confronted Will with this issue, he responded that all discharges from the factory were in full compliance with the guidelines set forth by the Louisiana Department of Environmental Quality. Pam filed a second amended petition on March 20, 2010 and alleged that Will violated the federal Clean Water Act.

- 3 pts.** **3.A** Discuss whether the original state court petition was subject to removal to federal court.
- 3 pts.** **3.B** Discuss whether the first amended petition was subject to removal to federal court.
- 3 pts.** **3.C** Discuss whether the second amended petition was subject to removal to federal court. Would such a removal be subject to a timeliness challenge?
- 5 pts.** **3.D** Describe in detail the procedural requirements that must be followed to remove the case to federal court.

Art, an Arkansas (AR) citizen, bought a hydraulic press from Louisiana Press, Inc. (LPI), a Delaware (DE) corporation with its principal place of business in LA. The press was manufactured by Hydro, Inc., a California (CA) citizen. The press malfunctioned during use and injured Art. Art filed a suit in an LA state court, alleging liability under state law, against LPI, Hydro, and Sal, an AR citizen who is CEO of and majority shareholder in LPI. The suit was filed on February 10. Art served LPI and Hydro on March 1, and served Sal on March 10.

Answer the next two questions based on these facts.

- 3 pts.** **3.E** The attorneys for the defendants believe that Art's petition does not state a valid cause of action against Sal, because Sal is a mere corporate officer and shareholder of an alleged tortfeasor. Discuss how the defendants might remove the case to federal court despite the apparent lack of complete diversity of citizenship. What standards should the federal court apply in determining whether to permit such a removal?
- 2 pts.** **3.F** Assume the defendants did remove the case on March 25. Explain the legal and factual basis for a procedural defect disclosed by the facts that Art may use to argue that the removal was improper.

Question Three Continues on Next Page

- 3 pts.** **3.G** Which of the following scenarios should satisfy the amount in controversy requirement of diversity jurisdiction?
- A. A complaint that prays for \$60,000 in lost wages, of which the plaintiff will be obligated to pay his attorney \$20,000 in contingency fees if he wins.
 - B. A complaint that prays for \$74,900 in property damages, plus court costs as permitted by law.
 - C. A complaint that prays for recovery of \$65,000 in medical expenses, plus reasonable compensatory damages for two broken legs.
 - D. A complaint that prays for \$74,900 in property damages, plus legal interest as provided by law.

- 3 pts.** **3.H** Plaintiff named three defendants in a state court petition. He alleged that employer (D 1) was liable for violating federal employment discrimination laws, his supervisor (D2) was liable under state tort law, and an insurance company (D3) was liable as the insurer of D 1.

Plaintiff served D2 on the day the suit was filed and D1 the next day. Two weeks have since passed, but D3 has not been served. D1 wants to remove the case to federal court. Which of the following is a correct statement regarding the removal?

- A. All three defendants must join in the removal.
- B. D1, as the only party against whom a federal claim has been asserted, may remove the case without need of consent of the other defendants.
- C. D2, as the first-served defendant, may remove the case without need of consent of the other defendants.
- D. Only D 1 and D2, as the only defendants who have been served, must join in the removal.

Question Four (25 Points)

- 3 pts.** **4.A** Plaintiff, a Louisiana (LA) citizen, granted Defendant, a Texas citizen, a mineral lease on 1 00 acres in LA. Defendant formed a drilling unit of 640 acres and completed a well. Plaintiff, alone, filed suit in federal court for a declaration that the well is no longer producing in paying quantities that would maintain the mineral lease.

Defendant notes that if it loses the suit, the leases it has with the dozen owners (some of whom are citizens of TX, and others are citizens of LA) of the other 540 acres in the unit will also be called into question and could impact Defendant's obligation to make royalty payments to the non-party landowners and others to whom they have made assignments. What motion could Defendant file in an attempt to resolve that concern? How is the court likely to rule on the motion? Discuss.

- 6 pts.** **4.B** Plaintiff, a Louisiana (LA) citizen, bought electrical switches from Defendant, a Colorado (CO) individual who sells the switches on a website. The two never talked; the transaction was done entirely online. Defendant sells his switches to customers in all 50 states, with no particular focus on any state. He advertises his switches in national trade publications.

Plaintiff used the switches to make lamps, which it sold at retail. A homeowner who purchased a lamp asserted that it was defective and caused his house in LA to burn down. Plaintiff settled the homeowner's claim for \$100,000 in an arrangement that allowed Plaintiff to pursue the homeowner's claims against Defendant in an effort to obtain reimbursement. Plaintiff filed a diversity-jurisdiction complaint against Defendant in an LA federal court and alleged that Defendant was responsible for the fire due to a defect in the switches he sold.

Defendant lived in LA from 1975 to 1985, before he moved to CO. He still visits relatives in LA about once per year for holidays. He has attended a two-day arts festival in LA twice in the last five years, and he is considering retiring to New Orleans in a few years.

Discuss whether the LA federal court would be able to exercise general personal jurisdiction over Defendant.

Discuss whether the LA federal court would be able to exercise specific personal jurisdiction over Defendant.

- 6 pts.** **4.C** Plaintiff (a Texas citizen) worked in the accounting department at Defendant Corporation (Louisiana citizen), where his supervisor was Ms. Boss (Louisiana citizen). Boss often told Plaintiff about the great sermons that were preached at her church and frequently invited Plaintiff to attend services with her. Plaintiff eventually told Boss that he did not share her beliefs and would never attend her church. Boss fired Plaintiff on the spot.

Plaintiff took a month to work up the nerve to tell his girlfriend, Gail

(a Louisiana citizen) what happened. As he told the story, Plaintiff grew angry and punched several holes in the walls of Gail's house. Plaintiff was, fortunately, soon able to get a new job earning the same pay, so his lost wages were only about \$3,000.

Plaintiff and Gail filed suit in federal court. The complaint set forth on behalf of Plaintiff a claim against Defendant Corporation under the federal Title VII statutes regarding employment discrimination. Plaintiff also asserted a Louisiana law claim against Boss for intentional infliction of emotional distress, which was valued at no more than \$30,000. The complaint set forth a state-law claim by Gail against Defendant Corporation for \$10,000 in damages to her house.

Explain why the federal court does or does not have subject-matter jurisdiction to hear Plaintiffs (a) federal law claim and (b) state law claim. (4 pts.)

Explain why the federal court does or does not have subject-matter jurisdiction to hear Gail's state law claim. (2 pts.)

4 pts.

4.D Plaintiff, who lives in Big Town, Louisiana (LA) wants to keep hens in her backyard to produce eggs. A city inspector wrote Plaintiff a citation for violation of a city ordinance against keeping poultry, which was passed pursuant to a state law that allows towns with more than 2,000 residents to ban poultry and livestock.

Plaintiff believes the government's concerns about noise and health are unfounded, so that the laws lack a rational basis. Plaintiff filed suit in federal court and asserted claims pursuant to 42 U.S.C. § 1983 against the city of Big Town and State of LA. She asked the federal court to issue an injunction against enforcement of the state and city laws. Both defendants asserted an Eleventh Amendment defense. Discuss the likelihood that, assuming Plaintiffs claims have merit, Plaintiff can overcome the Eleventh Amendment defenses and obtain the relief she seeks from (a) Big Town and (b) the State of LA.

3 pts.

4.E Plaintiff, a Louisiana (LA) citizen, wants to file a diversity jurisdiction action in federal court against three defendants based on an accident that happened in Kentucky (KY). Two of the defendants are citizens of Texas (TX), and the third is a citizen of Utah (UT).

In the proposed civil action, venue is proper ...

- A. Only in KY, where the accident happened.
- B. In either TX or UT, because at least one defendant resides in each of those states.
- C. In LA, because Plaintiff resides there, and not all defendants reside in the same state.
- D. Only in TX, because a majority of the defendants reside there.

3 pts.

4.F Plaintiff in a securities fraud case served requests for production of documents on Defendant that asked for all of its corporate minutes. Defendant delivered hundreds of pages of documents. Several weeks later, an employee of Defendant found another file of minutes that had been overlooked earlier. Defendant's lawyer viewed the minutes but saw nothing in them that would be of much help to either party.

Which of the following best describes how Defendant should address the recently found minutes?

- A. Defendant does not have to produce the minutes because it does not intend to use them to support its defense.
- B. Defendant must produce the minutes if it wishes to trigger a reciprocal obligation of disclosure on Plaintiff.
- C. Defendant does not have to produce the minutes unless Plaintiff timely challenged the original production.
- D. Defendant must produce the minutes in a timely manner based on a duty to supplement discovery responses.

**LOUISIANA BAR EXAMINATION
LOUISIANA CODE OF CIVIL PROCEDURE
February, 2012**

Question I (25%)

- 3% (a) Identify the three different kinds of exceptions and explain the general purpose or function of each kind.
- 4% (b) Amanda is a twenty-five year old who suffers from Down's syndrome and autism. She is completely incapable of managing her own affairs and has always lived with her parents. Her parents died recently in a kiln explosion and Amanda is the beneficiary of their life insurance policies. Betty, Amanda's older sister and only relative, wants to take the legal steps necessary for her to gain control over and manage Amanda's financial affairs. What must you do in order to assist Betty to obtain her objective? Explain briefly.
- 10% (c) You represent Plaintiff in a lawsuit against multiple defendants. One defendant files a *res judicata* exception, which is granted by the court, dismissing that defendant from the lawsuit. On January 25, 2012, you receive by mail a notice of judgment dated and mailed on January 19, 2012, enclosing a copy of the formal judgment signed on January 16, 2012 granting the exception and dismissing the defendant with prejudice from the lawsuit. The formal judgment bears no designation of any kind by the Court. Plaintiff asks you whether this dismissal may be appealed now and, if so, what deadlines exist for filing an appeal. Explain your answer in detail and use the accompanying calendar if necessary.

January 2012						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

February 2012						
Sun	Mon	Tues	Wed	Thurs	Fri	Sat
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29			

March 2012						
Sun	Mon	Tues	Wed	Thur	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

- 2% (d) Witness lives in Houma, Louisiana, which is approximately 300 miles from Bossier Parish where the lawsuit is pending. Plaintiff wants to present Witness's testimony live at trial. Can Witness be compelled to testify at trial in Bossier Parish? Explain briefly.
- 3% (e) You wish to depose Counsel of Record for Defendant in order to uncover evidence concerning the intent of the parties to the contract that was drafted by Counsel of Record and that forms the basis for the lawsuit. Can you depose Counsel of Record? [if so, what must you do in order to obtain his deposition?]
- 3% (f) Client asks you to defend him in an ongoing lawsuit following the untimely death of his prior counsel. Client explains to you that the lawsuit, which was brought against him four years ago, involves claims of patent infringement relating to his invention of a fire ant pesticide. In reviewing the file, you determine that discovery was propounded to Client at the same time the lawsuit was filed, which discovery has never been answered. The suit record and the files of Client's prior counsel reflect no other action or activity in the case. What course of action do you recommend to your Client?

Question II {25%}

Succinctly answer the following questions:

17% Plaintiff is a guest passenger who was injured when the vehicle in which she was riding collided with another vehicle at an intersection. The case was tried to a jury, which returned a verdict in favor of Plaintiff in the amount of \$250,000 and against Driver of the other vehicle.

- 4% (a) You represent Plaintiff and your only objection to the verdict is that it is woefully inadequate given the serious injuries suffered by Plaintiff. What action, if any, can you take to obtain, in the trial court, an increase in the jury award? Please explain your answer.
- 3% (b) If Judge decided to increase the jury award, what are the procedures that Judge must utilize in order to grant the increase? What is the legal name given to such an increase?
- 4% (c) You represent Driver and are of the opinion that the evidence was completely insufficient to support the jury's verdict on liability and was contrary to the law. You are, however, happy with the jury's damage award. What are your options for post-judgment relief in the trial court? Please explain how your options are asserted.
- 2% (d) What are the time delays for filing the post-judgment relief options available to Driver's counsel?

- 4% (e) What are the standards that Judge should use in analyzing the jury's verdict in order to determine the availability of the post-judgment relief options asserted by Driver's counsel?
- 3% (f) Client owns a convenience store; he hands you a petition with which he has just been served. The petition combines separate actions by three different Plaintiffs. The first action is brought by Former Employee for wrongful discharge. The second is a claim by Customer who slipped and fell on Client's business premises. The third is an action for false imprisonment by Patron who was detained for shoplifting. The venue for the actions is proper. What, if anything, can you do to challenge the combination of these three actions in one petition? Briefly explain why you can or cannot challenge the combination.
- 5% (g) Plaintiff filed suit against defendant for breach of contract. In its answer, defendant filed a general denial to the petition allegations, but asserted no affirmative defenses. Defendant later asserted a reconventional demand against plaintiff in which defendant alleged that the contract that forms the basis for the lawsuit lacked consideration and was the result of error or mistake. At the trial of the matter, defense counsel seeks to introduce evidence relating to the issues of failure of consideration and error or mistake when she is met by the objection of plaintiffs counsel, who correctly states that failure of consideration and error or mistake are affirmative defenses that were not specifically pled in the answer of the defendant. Should the defendant be allowed to introduce evidence of failure of consideration and error or mistake? Why or why not? Please explain your answer.

Question III (25%)

Succinctly answer the following questions:

- 3% (a) You represent the tutor of two minor children. The tutor advises that the two minor children are co-owners of 100 acres of immovable timber property in Claiborne Parish, Louisiana. The two minor children have a combined ownership interest of 40% in the immovable property (20% each), while the remaining 60% of the property is owned by others. The other property owners have secured an offer from a third party to purchase the entire 100 acre tract. Although the minor children are not in need of money, the tutor believes that the amount offered for the 100 acre tract is fair and above the market value of the property. What steps, if any, must the tutor take in order to allow the minor children to sell their interest in the property?
- 5% (b) You represent Building Corp., which has just been sued for breach of a construction contract. You believe the lawsuit is improper because the construction contract at issue contains a mandatory arbitration clause which requires any disputes arising therefrom to be resolved by arbitration.
- 2.5% (1) Please succinctly explain what pleadings you would file in response to the lawsuit, the allegations that you would assert therein and the goal you seek to achieve by doing so.
- 2.5% (2) Assume the trial court rejects your argument and allows the breach of construction contract lawsuit to proceed. Please succinctly explain what actions, if any, you can take to try to reverse the trial court's ruling and obtain your original desired goal.

- 8% (c) Plaintiff has filed a lawsuit against Manufacturer, contending that Plaintiff was injured due to a defect in Manufacturer's product. Manufacturer has filed a third party demand against, California Importer, contending that Manufacturer's product is not defective but alternatively arguing that any defect that may be found in the product is the result of a defective component part of the product that Manufacturer bought from California Importer.

You represent California Importer. California Importer imported the component part at issue from a foreign manufacturer. Under the Louisiana Products Liability Act (LPLA), the non-manufacturer seller of a product imported from a foreign manufacturer cannot be liable under the LPLA unless the importer is also the alter ego of the foreign manufacturer.

Your client's general manager advises you that California Importer is not the alter ego of the foreign manufacturer and has no affiliation, control or ownership interest in the foreign manufacturer from which it imported the component part at issue. You also have taken the article 1442 deposition of Manufacturer, and its corporate representative has no knowledge of any affiliation, control or ownership interests by California Importer in the foreign manufacturer. Discovery has not been completed, but the case is scheduled for trial in six months.

- 4% (I) What, if anything, can you file on behalf of California Importer to attempt to terminate the litigation prior to trial? Explain fully, including an explanation of what such a motion, if any, will have to show to be granted.
- 4% (2) If there is such a motion, explain specifically what California Importer must file to support its motion.
- 3% (d) You are representing defendant insurance company in an action brought against it by its insured. After three days of a bench trial, the plaintiff insured has rested her case. You believe that the plaintiff insured has failed to offer evidence needed to establish her cause of action. What, if anything, can you now do to try to secure an immediate ruling in favor of your client and what is the legal standard that you must establish to prevail?
- 6% (e) You represent a plaintiff and have had difficulty scheduling the deposition of one of the plaintiff's treating physicians. You ultimately decided to issue a subpoena to compel the physician's attendance at the deposition. Please explain 3 methods by which service of the subpoena may be made on the physician, describing any requirements associated with each method?

Question IV (25%)

- 4% (a) When a lawyer signs a pleading filed for a client, what does the lawyer certify personally, if anything?
- 8% (b) You are preparing for a trial scheduled to begin on November 1, 2010 in which you represent the plaintiff. Defendant plans to utilize two expert witnesses, who you have deposed, and who you believe are not employing the proper methodology that is customarily used by experts in that field.
- 3% (I) What, if anything, can you file to challenge the qualifications of the defendant's experts and what deadline, if any, exists for such a filing.

- 3% (2) You are the Judge presiding over this matter and have received the Plaintiff's filing from question A(1). What deadline, if any, do you have to rule on such filing, and what, if anything, must your ruling include.
- 2% (3) You represent the defendant and after consulting with plaintiff's counsel, you both agree that it would be best to have this issue heard during the week prior to trial. What, if anything, can you do to accomplish this goal and what additional approvals, if any, are required?
- 8% (c) Client comes to see you on March 8, 2012, and shows you a money judgment rendered in her favor and against Judgment Debtor for \$150,000. The judgment was rendered on March 15, 2002 and was recorded in your parish mortgage records on March 18, 2002. Client advises you that the judgment has never been collected due to Judgment Debtor's limited means, but she recently learned that Judgment Debtor inherited "millions of dollars" from a deceased uncle.
- 3% (1) You are concerned that the judgment may soon prescribe due to the passage of 10 years unless you take steps to revive it. Please explain the steps you must take to revive the judgment. Your answer must identify what, if anything, you must file to revive the judgment and where it must be filed.
- 2% (2) You have satisfied your judgment revival concerns and now wish to ascertain whether Judgment Debtor actually has any assets that might be used to satisfy Client's judgment. What, if anything, can you do to learn from Judgment Debtor whether he has any assets to satisfy Client's judgment. If something can be done please briefly explain what you must file and where it must be filed.
- 3% (3) You have learned that Judgment Debtor has substantial funds in a local Bank more than sufficient to pay all money owed to Client. Please briefly explain what you must file so that Client can satisfy her judgment from Judgment Debtor's Bank funds.
- 5% (d) Client meets with you to complain that a new Business operating near his home has begun conducting noisy operations around the clock that disturb him and other neighbors on a daily basis, frequently interrupting their sleep. He states (and you confirm) that the applicable parish noise ordinance prohibits businesses in that location from emitting continuous sounds exceeding 60 decibels between 10:00 p.m. and 7:00 a.m. He and several of his neighbors would like to retain you to take steps to quiet the offending Business as quickly as possible.

What action, if any, can you bring to try to stop the noise immediately? Your answer must state what you must assert in your pleadings and what you must establish to obtain the relief sought.

TORTS

FEBRUARY, 2012

ANSWER EACH QUESTION COMPLETELY. DO NOT REFER TO THE ANSWER YOU PROVIDE FOR ONE QUESTION IN YOUR ANSWER TO ANOTHER QUESTION. EACH EXAMINER READS ONLY ONE ANSWER AND WILL NOT SEE WHAT YOU WROTE IN OTHER ANSWERS.

QUESTION NUMBER 1 - 40 POINTS

Sue owned the local beauty shop for many years. She was very proud of CLIPS, LLC, which she owned with her husband, John, who kept the books for the company.

A new customer, Candy, arrived at her shop one afternoon and asked that her dark brunette hair be changed to platinum blonde. Candy's husband Hank, the local pharmacist, loved blondes and badly wanted his new wife to look like a famous actress with platinum blonde hair. Candy said that Hank was concerned about her transformation from brunette tresses to platinum blonde so he recommended a product he had seen in his retail pharmacy called "Dark Away." Sue had used the product many years ago so she accepted the box of "Dark Away" Candy handed her. She had turned many a brunette into a blonde using "Dark Away" but she had never turned a dark haired brunette into a platinum blonde with this particular product.

Sue began work on Candy's hair. Sue knew what the product instructions required from her prior experience with the product and did not feel the need to read them again. She did not realize the instructions had changed due to the change of the chemical composition of the product which shortened the time required to dye hair.

The old instructions did not require a patch test. The new instructions on the side of the Box required a patch test on a 2 inch portion of hair and advised that the person applying the product should wait for 30 minutes before continuing the process. If there were no side effects, such as redness, rash, hair breakage, etc., the application process could continue. The patch test warning was on the side of the box in bold red print and read as follows:

CAUTION. BEFORE BEGINNING APPLICATION OF THIS PRODUCT PERFORM A PATCH TEST ON A TWO INCH STRAND OF HAIR. WAIT THIRTY MINUTES AFTER THE APPLICATION TO THE AREA. IF NO REDNESS, RASH, HAIR BREAKAGE OR OTHER UNUSUAL SYMPTOMS APPEAR, PROCEED WITH THE APPLICATION INSTRUCTIONS ON THE BACK OF THE BOX.

The instructions on the back of the box did not mention the patch test and did not refer the user to the side of the box. Several complaints had been made to "Dark Away" over the last two months and the company was in the process of changing the wording on the back of the box to include the patch test recommendation. No notice had been sent to retailers or purchasers of the impending change.

Twenty-five minutes into the process Candy started to complain that her scalp was itchy and hot. Sue told her that was common. Ten minutes later Sue noticed that Candy's scalp was fire engine red and welts as large as quarters were popping up all over her scalp. However, the brunette hair was turning a nice shade of platinum blonde.

Hank arrived and was horrified to see Candy slumping over in the chair. Candy, a diabetic, had apparently gone into diabetic shock without Sue realizing it. Sue had been too busy worrying about the red scalp and the welts. Hank immediately called 911 and began to attempt to revive his wife.

Hank rode in the ambulance on the way to the hospital and was very upset and distraught to see Candy in this condition. During the 20 minute ride to the hospital, Candy regained consciousness only once. She looked up at Hank and said "It hurts so bad." She was pronounced dead on arrival at the hospital. Medical personnel had to physically remove Hank from her side. He was weeping uncontrollably and refused to let go of Candy's hand.

The autopsy showed that Candy died from diabetic shock most likely brought on by her failure to take her insulin that morning and possibly from the shock of the injuries she sustained due to the application of the "Dark Away."

Candy left behind three children. Danny, age 19, was a child of a previous marriage. Eva, age 5, and Frank, age 7, were children with Hank. Hank is inconsolable and has had to seek psychiatric treatment due to his feelings of guilt and due to his presence at the salon, in the ambulance and at the hospital. He was present when Candy drew her last breath. He has missed months of work and has been unable to care for the two minor children, resulting in significant medical and childcare expenses.

READ ALL QUESTIONS BEFORE BEGINNING YOUR ANSWER.

In light of Candy's injuries and death, please respond to the following- please read all questions before responding:

1. Who can make a claim for Candy's injuries and death and what damages may they recover? **[20 POINTS]**
2. Discuss all causes of action which may be brought, against whom they may be brought and any defenses which may be asserted by those parties. **[20 POINTS]**

QUESTION NUMBER 2 -30 POINTS

Elaine's company provides actors' wardrobe for a new movie being filmed in Shreveport, Louisiana. Filming was running about two weeks ahead of schedule, and Elaine got a frantic phone call from the movie set advising her that additional wardrobe was needed immediately. She rushed to MAX, a retail clothing store, which was packed full of people, because it was having a huge sale. Other customers had to dodge Elaine as she hurriedly walked down the aisle while texting her assistant who was on the movie set. Although she did glance up from time to time while walking and texting, she failed to see the empty clothes rack that was rolling across the aisle directly in front of her. She walked straight into it, tripped over the frame and fell hard on the concrete floor after slashing her face on a sharp corner of a jewelry display case near the aisle. The unattended clothes rack, which was on wheels, had been bumped and pushed out of the way by harried shoppers all day during the crowded sale. It is unclear whether anyone intentionally pushed the clothes rack into the aisle at the time Elaine tripped over it. Luckily, a MAX employee saw what happened and immediately raced to Elaine's aid and called an ambulance. Elaine was transported to General Hospital where she was triaged and admitted for a severe laceration to her face and other bumps and bruises.

Elaine's laceration would require plastic surgery, and she agreed to have the procedure. Dr. Drake, a General Hospital employee and reputable plastic surgeon, had just returned from a 90-day extreme sports vacation and was exhausted. However, he still felt as though he could handle this delicate procedure and obtained the necessary consent forms from Elaine, which clearly listed the possible complications of surgery, including staph infection. Elaine's procedure took much longer than Dr. Drake had anticipated, and in a rush to finish, he made surgical errors that caused Elaine to develop a deadly staph infection.

Following her surgery, Elaine complained of intense and somewhat unusual pain for the type of procedure she had. In addition, her entire face was very red and unusually swollen for this type of procedure. She was already taking the usual post-surgical antibiotics, but more aggressive antibiotics were not prescribed for almost 48 hours after the surgery. By that time, Elaine was in severe pain and barely conscious. She died three days later.

Dr. Drake informed Paul, Elaine's husband, that Elaine died from known complications from the surgery. Paul read the consent form and it did in fact state that staph infection was a known complication of the surgery.

Paul is devastated and angry and has come to you for help.

1) Discuss in detail who may be at fault and why and any possible damages and apportionment thereof under Louisiana's "slip and fall" statute and Louisiana's Medical Malpractice Act. A lengthy duty/risk and causation analysis is not necessary. **(25 POINTS)**

2) Also, as Paul's attorney, discuss any additional information you should have in making your assessment of the case. **[5 POINTS]**

QUESTION NUMBER 3 -30 POINTS

QUESTION A: 5 points

What is the total amount recoverable by a plaintiff in Louisiana under the Medical Malpractice Act if two doctors, who are both qualified healthcare providers, are found liable for malpractice?

- A. \$200,000
- B. \$500,000 plus unlimited future medicals
- C. \$600,000 plus unlimited future medicals
- D. \$200,000 plus all special damages

QUESTION B: SHORT ANSWER- 5 points

Mike knew that his 50 year old oak tree had extensive termites, but failed to take any measures to treat the tree to stem the tide of the termites' destructive nature. Limbs of the tree hung over his neighbor's home. After a tropical storm the tree limbs fell causing damage to the neighbor's home and property. Can the neighbor prevail in a cause of action for damages against Mike? What defenses does Mike have, if any?

QUESTION C: SHORT ANSWER- 5 points

Against a public entity, such as a city, what must a plaintiff prove to recover damages when she falls on an uneven portion of a sidewalk within city limits?

QUESTION D: SHORT ANSWER- 5 POINTS

Wally was working as an employee for Conner Construction. During their 10-minute lunch period (they were not allowed to leave the job site), Wally and another employee were playing a game of basketball on the basketball court of the homeowner where the renovations were being done. The co-worker playfully pushed Wally aside to make a basket. Wally fell to the ground writhing in pain with a twisted knee. He was rushed to the hospital and had surgery to repair torn ligaments. He missed 6 weeks of work and suffered a great deal of pain.

Wally has not received any compensation for his medicals, his pain or his loss of income.

Explain in detail any claims Wally may make against his employer and the defenses his employer may assert.

QUESTION E: SHORT ANSWER- 10 points

Benny is 17 years old. He was riding his skateboard on the walking path at the local playground when he saw an elderly lady walking slowly in front of him. He yelled "Out of the way!" before

colliding into the lady, breaking her hip. His parents are divorced. His parents had joint custody of him but Benny had been living with his father, with his mother's consent, until a few days before the incident. He left home because his father would not allow him to play his guitar at all hours of the night. His father has been looking for him for days to bring him home. Benny has been staying in a shed on the back of his mother's property, without her knowledge, for the last few days. Both his father and mother had warned him not to ride his skateboard on the walking path which had signs prohibiting bicycles, scooters, skateboards and dogs from walking on the path.

Are Benny's parents responsible for his negligence? Explain.

[END OF EXAMINATION]