

LOUISIANA STATE BAR EXAMINATION

JULY 2012

## TABLE OF CONTENTS

BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS .....	1
CIVIL CODE I! .....	5
CIVIL CODE II.....	10
CIVIL CODE III.....	17
CONSTITUTIONAL LAW.....	23
CRIMINAL LAW, PROCEDURE, AND EVIDENCE .....	26
FEDERAL JURISDICTION AND PROCEDURE.....	29
LOUISIANA CODE OF CIVIL PROCEDURE.....	35
TORTS.....	39

**LOUISIANA BAR EXAM**  
**BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS**  
**July, 2012**

**Question 1: Essay Question (25% - 5 points each subpart)**

Alice and Bessie have decided to start a home design and decorator business. To formalize their agreement, they signed a document that has the following language:

**AGREEMENT**

This 1st day of January, 2012, we, the undersigned, agree to form and carry on as co-owners for profit a home design and decorator business in Louisiana named A&B Home Design Partners ("Home Design"), for a period of two years from the date hereof or such later date as we may mutually agree in writing. We each promise to contribute \$10,000 in cash to Home Design upon signing this agreement, to perform services exclusively for Home Design for the period of this agreement and to share profits from the business equally.

Bessie contributed \$10,000 on January 1, 2012, by depositing that amount in Home Design's bank account. Alice orally promised to Bessie that she would likewise deposit her \$10,000 contribution in Home Design's bank account within 30 days.

Without Bessie's knowledge, one week later, on January 8, 2012, Alice entered into an agreement with Upscale Properties, Inc. ("Upscale") to design and implement the interior designs for two homes. Alice set forth the terms of the agreement in a letter to Upscale on Home Design letterhead, which Alice signed as "Partner." The agreement provided that Upscale would advance all funds upon request to Home Design to pay for the costs of all building materials for Home #1 and Home #2 and, in addition, Upscale would pay Home Design \$20,000 upon completion of work on Home #1 and an additional \$20,000 upon completion of work on Home #2.

Alice did not inform Bessie of the agreement with Upscale. Alice intended to keep the agreement with Upscale secret from Bessie, complete the work herself and keep the \$40,000 profit for herself.

At Alice's request, on January 10, 2012, Upscale advanced \$10,000 to Alice to pay for materials for Home #1. Alice deposited the \$10,000 into her personal bank account and purchased the materials for Home #1 with a personal check in the amount of \$10,000. Alice completed the work on Home #1 on January 23, 2012, at which time Upscale paid Alice, as agreed, the additional \$20,000 for Home #1. Alice immediately deposited the \$20,000 into her personal bank account.

On January 30, 2012, at Alice's request, Upscale advanced to Alice another \$10,000 for materials for Home #2, which Alice deposited into her personal account. On February 1, 2012, before Alice purchased any materials for or began work on Home #2, Bessie received Home Design's bank statement and discovered that Alice had not made her initial \$10,000 contribution to the business as promised. Angry with Alice's failure to make her agreed contribution, Bessie sold her entire interest in Home Design to Candy on February 3, 2012 for \$10,000. By letter dated February 3, 2012, Bessie advised Alice: "I am hereby withdrawing from Home Design and Candy is now your new business partner."

Alice, Bessie and Candy have sued each other to determine their respective rights and responsibilities. Answer the following questions:

- I.I Were Alice and Bessie partners on January 8, 2012 when Alice signed the agreement with Upscale? Explain fully.

Assume for questions 1.2 through 1.5 below, that Alice and Bessie validly formed a Louisiana partnership on January 1, 2012.

- 1.2 What was the legal effect, if any, of Bessie's February 3, 2012 letter to Alice? Explain fully.
- 1.3 Were Alice and Candy partners in the Home Design partnership as of February 3, 2012 when Bessie withdrew? Explain fully.
- 1.4 If Alice refuses to do the work on Home #2 and Upscale is entitled to damages for breach of contract, discuss the respective liability, if any, of Alice, Bessie, Candy and Home Design to Upscale. Explain fully.
- 1.5 Can Home Design seek to recover from Alice (i) the \$10,000 contribution promised but not paid by Alice, and (ii) the \$20,000 profit paid to Alice by Upscale for the work on Home #1? Explain fully.

**Question 2: Essay Question (25% - 5 points each subpart)**

Aaron is a bookkeeper working in the accounting department at Photomax, Inc., which corporation owns a chain of photo processing stores. In his spare time, Aaron is a computer enthusiast who particularly enjoys writing computer programs that utilize internet technology. Aaron wrote a computer program for digitizing negative images and sending them over the internet to a location where they could be processed into completed photographs and then sent back to the original sender. Aaron showed his software to Byron, the president and a stockholder of Photomax, Inc., who thought it was terrific because it would allow Photomax to centralize its photo processing at one location and thereby cut the costs associated with having expensive processing equipment at each Photomax location. Byron used another company he owned, Licensing, Inc., to pay Aaron \$10,000 for the right to use Aaron's program for photograph processing, and Licensing, Inc. then entered into a license agreement with Photomax, Inc. As a result of using the software, Photomax was able to cut a tremendous amount of its operating expenses. A short while later, Byron came up with the idea of licensing Aaron's software to hospitals, especially those in rural areas, to enable the hospitals to transmit Xrays and other medical images over the internet for diagnosis by a specialist who could be located anywhere in the world. Byron approached Aaron and offered to buy the software rights for that use. Aaron however, feeling a bit shortchanged in his first transaction with Byron, countered with an offer that he and Byron would become partners in the venture. Byron agreed.

Aaron and Byron heard from a friend that a limited liability company is a very popular form of business entity. They wrote and signed a piece of paper that stated as follows:

"Photocom Software Company, L.L.C. is hereby formed. Aaron will contribute all rights to his image transmission software. Aaron will not be involved in management. Byron will contribute \$250,000 immediately, and agrees to contribute an additional \$750,000 over the next three years as funds are needed by the company. Byron will be responsible for all management and administrative matters."

- 2.1 Did Aaron and Byron effectively form a limited liability company? Why or why not? Discuss in your answer the necessary document(s) that are required for the formation of a limited liability company, the minimum information that is required to be included in these documents and the applicable filing requirements.

- 2.2 Assume that instead of writing out their own document, Aaron and Byron come to you, as their attorney, to prepare the organizational documents of Photocom Software Company L.L.C. Would you recommend that the company be "member managed" or "manager managed?" Explain why.
- 2.3 The parties are concerned about personal liability arising out of any claims that could result if a doctor makes an improper diagnosis because of a glitch in the software that could be legally characterized as a defect. Can creditors of the company force Byron to pay them the \$750,000 Byron agreed to contribute over the next three years? Explain fully.
- 2.4 Aaron and Byron agreed that the first distributions would go to Byron until he received all of his money back, and thereafter they would split all distributions evenly. Aaron and Byron shake hands and agree this is the way it will be done. Is this hand-shake agreement an enforceable operating agreement? Explain fully.
- 2.5 After the company had been in operation for several years, Byron died. His daughter, Betty, wants to join Photocom Software Company, L.L.C. If the organizational documents of the company contain only the minimum requirements for formation, explain the legal consequences of Byron's death with respect to whether Betty is entitled to become a member.

**Question 3: Short Answer Questions - (20% - 2 points each subpart)**

Your new client, Sam, is a real estate manager for a large commercial real estate development company called Pinckley Properties. Sam's friend, Tammy, is a leasing agent for a local mall and is in charge of leasing mall floor space to cart vendors. During a recent conversation, Sam commented to Tammy that many of the large office buildings that he leases have numerous small areas that he is unable to lease due to their small sizes or irregular shapes. Tammy suggested that they go into the business of finding food vendors and cart retailers to set-up temporary booths or vending carts in these unleased areas. Under this arrangement, the cart vendors would only pay a percentage of profits as rent and the building owners would receive income from otherwise dormant building space. Sam, with Tammy's permission, asked Willis, the wealthy owner of Pinckley Properties, if he would like to invest in the venture, and he agreed. The parties agreed that Willis would contribute the funds needed for the start-up of the venture in return for a 35% interest in the venture; Sam would receive a 50% interest in the venture in return for his future services in operating the business and locating suitable unoccupied lease space; and Tammy would receive the remaining 15% interest in the venture in return for her agreement to solicit retailers and food vendors to fill the unoccupied building space.

Sam is considering their options for forming a business entity for this venture. Briefly explain your answers to the following questions:

- 3.1 Assume Sam, Tammy, and Willis formed a corporation and that they were all directors as well as shareholders. Would any of them, acting alone, have the authority to sign contracts on behalf of the corporation and thereby bind the corporation? If so, is there any limitation on this authority?
- 3.2 Could any of the shareholders (Sam, Tammy or Willis) be expelled from their corporation? If so, what are the possible grounds for expulsion, who votes on such expulsion and what percentage of vote is necessary to expel a shareholder?
- 3.3 How much time must pass without an annual shareholders' meeting before the shareholders can call for an annual shareholders' meeting, and which shareholders of Sam, Tammy and Willis are required to call for such a meeting?

- 3.4 Assuming Sam, Tammy and Willis decide to form a limited liability company, what factors bear on whether their limited liability company would be managed by members or managers? Who would be the managers under the facts presented?
- 3.5 By what vote do members or managers of a limited liability company make decisions? Is their vote counted by heads or membership units/shares? Under what circumstances would this rule not apply?
- 3.6 List two types of decisions which would require the vote of the membership in a manager-managed limited liability company formed by Sam, Tammy and Willis for their business venture.
- 3.7 Assuming Sam, Tammy and Willis decide to form a partnership, would any of them, acting alone, have the authority as partners to sign contracts on behalf of the partnership, and thereby bind the partnership? Explain fully.
- 3.8 Assuming Sam, Tammy, and Willis formed a partnership, if a lawsuit was brought by a third party against one of them by virtue of his/her status as a partner, and he/she successfully defended against the suit, would he/she automatically be entitled to reimbursement from the partnership for the reasonable attorneys' fees incurred in defending the suit? Explain why or why not.
- 3.9 Assume Sam, Tammy and Willis decide to form a partnership in commendam. Who would be a limited partner under the facts presented and what duties/responsibilities would the limited partner *be* allowed to handle, what activities (if any) must the partner in commendam avoid in order to preserve his/her limited liability protection?
- 3.10 What information is required in the organizational documents to form a Louisiana partnership in commendam, and what are the filing requirements (if any)?

**Question 4: Multiple Choice Questions (30% - 3 points each subpart)**

***Please read the following instructions carefully before proceeding. For each of the following subparts of this question, select the letter that corresponds to the correct answer. You should choose your answers based on current Louisiana law. If you believe that more than one answer to a subpart is correct, select the letter corresponding to the best answer. Thus, if one of the answers *is* always correct and another is arguably correct in narrow, or highly theoretical, circumstances, you should choose the former. If you supply more than one answer to a subpart, the entire answer will be counted as incorrect even if one of the answers you supply is the correct answer. Only the letter designation that you indicate will be considered, and any discussion that you supply will be disregarded.***

***{Multiple Choice Questions unavailable for viewing.}***

END OF EXAMINATION

**Question I (2S points)**

Hank and Wendy were married on November 1, 1992 and lived in Lafayette. Over time they grew apart, and they obtained a judgment of divorce on April 1, 2008. They have one child, Sonny, who was thirteen at the time of their divorce. On their joint, one-page ex parte motion, the 15th Judicial District Court for the Parish of Lafayette awarded them joint custody of Sonny, designated Wendy as the domiciliary parent and granted Hank visitation with Sonny for various holidays and a nine-day period each month beginning the first Saturday of the month. Initially, this arrangement worked out well because Hank and Wendy lived close to each other after the divorce, remained friends and showed no hostility towards each other.

Wendy met Bill at a friend's wedding in Juneau, Alaska in January 2010. A few months later, Bill asked her to move to Juneau. Without consulting with Hank, she moved to Juneau with Sonny in August 2010. Given the distance to Juneau, Hank has been unable to see Sonny regularly since then. He now lives in Vermilion Parish just outside of Lafayette. Hank wants to be named the domiciliary parent or else to force Wendy to move back to the Lafayette area with Sonny.

Please advise Hank on the following items. You must give full reasons for your **answers in order to receive credit; answers with no explanation will be given no credit.**

1. Explain how the present custody arrangement is classified under Louisiana law. **(3 points)**

2. Explain what Hank must prove in order to change the present custody arrangement and whether there would be any difference if no domiciliary parent had been designated in the present custody arrangement. **(6 points).**

3. Explain in what venue or venues in Louisiana Hank may file an action to modify the present custody arrangement. **(4 points)**

Assume the same facts above, except that Hank has also heard of significant changes in Wendy's lifestyle and believes that these changes are adversely affecting Sonny. Sonny has confided to Hank that he (Sonny) does not like Bill. According to Sonny, Bill generally spends the night with Wendy and often drinks a lot. Sonny has indicated that Bill has a violent temper, particularly after he has been drinking. Although Bill has apparently never hit Sonny, Sonny has indicated that Bill has threatened to do so if Sonny does not do what Bill asks.

Hank is also concerned about Wendy's health. Wendy recently told Hank that, since their divorce, she has had difficulty sleeping, has felt depressed and has been taking sleeping pills to help her sleep. One of Wendy's sisters who visited Wendy in Juneau told Hank that she thought Wendy might have been "on something" and that Wendy was not her normal self. Hank believes that these problems are affecting Sonny. He has noticed that Sonny is having difficulty with his schoolwork and that his grades have declined.

Hank has come to you for further advice. Hank is worried that Wendy is no longer capable of adequately caring for Sonny and herself. Please advise Hank on the following issues. **Again, you must give full reasons for your answers in order to receive credit; answers without explanation will receive no credit.**

4. Explain the factors the court is to consider in determining whether to modify the initial custody arrangement, and discuss any factors of particular relevance. **(6 points).**

5. Explain how Hank may obtain a court order requiring Wendy to undergo a mental evaluation. **(3 points)**

6. Explain how Hank may obtain temporary custody of Sonny in light of Wendy's condition, and how long may this temporary order last. **(3 points)**

[End of Question I]

CIVIL CODE I  
LOUISIANA STATE BAR EXAM  
Monday, July 23, 2012

Question n  
(25 points)

Frank lawfully owned as his separate property a 200-acre tract of land in Avoyelles Parish known as Whiteacre. Frank died intestate in 1970 and was survived by his wife Martha and their three adult children-Aaron, Bob and Cindy. Frank's succession was opened and a valid judgment of possession declaring the three children as equal co-owners of Whiteacre was rendered and duly recorded in the Avoyelles Parish conveyance records.

Cindy then immediately sold her one-third share of Whiteacre to Aaron. Within two weeks after that sale, Aaron and Bob were in a serious car accident. Although Aaron just broke his wrist, Bob was rendered paraplegic, deaf and mentally incompetent for the rest of his life. Thus, for example, Bob could no longer sign his own name and has remained totally incapable of handling his own affairs. The time and devotion of Martha and Cindy in caring for Bob have enabled him to live with Cindy in New Orleans without being institutionalized. Despite Bob's known mental incompetence, no legal action was taken until 1984 when Cindy filed a petition to have Bob interdicted and obtained a judgment of interdiction appointing her as Bob's curatrix and specifically referencing Bob's interest in Whiteacre.

Meanwhile, in 1979, Aaron sought to acquire Bob's one-third share of Whiteacre. Aaron first contacted Cindy, but she refused his offer. Aaron then went to their mother, Martha. In 1980, Aaron obtained and duly recorded a Quitclaim Deed that identified Bob as the seller and recited that Bob was "a single man over the age of twenty-one years, represented by Martha, as his duly authorized representative." Martha signed the Quitclaim Deed on Bob's behalf, but no power of attorney or other evidence of authorization was referred or attached to the Quitclaim Deed or otherwise recorded in the Avoyelles Parish conveyance records.

In 1981, Aaron moved into the house Frank had built on Whiteacre. He and his wife have lived there ever since and have paid the upkeep expenses for the house. He also built a fence along the boundaries of the property to protect against neighboring cattle tromping over the property, has grown soybeans and hay on the property and has paid all of the annual property taxes. Aaron has not paid any money to Bob (through Cindy or otherwise) regarding Whiteacre, nor has Bob (through Cindy or otherwise) paid any money to Aaron regarding Whiteacre.

Cindy now wants to sell Bob's interest in Whiteacre to generate some additional cash to pay for Bob's living expenses. She asked Aaron if he is interested in purchasing Bob's one-third interest in Whiteacre, but Aaron informed her that he already owned all of Whiteacre; he gave her a copy of the Quitclaim Deed, about which she was previously unaware.

Cindy has asked you to advise her on the following issues. **Full answers are required in order to receive credit; answers without explanation will receive no credit.**

- I. Explain whether the Quitclaim Deed did or did not validly transfer Bob's one-third interest in Whiteacre to Aaron. **(6 points)**
2. Explain whether Aaron may properly assert any claim to ownership of Bob's initial interest in Whiteacre based on Aaron's possession of Whiteacre. **(8 points)**
3. Explain what legal action, if any, Cindy should take to protect Bob's interest in Whiteacre. **(6 points)**
4. Explain whether Bob (through Cindy) is entitled to any moneys from Aaron with respect to Whiteacre and whether Aaron is entitled to any moneys from Bob (through Cindy) with respect to Whiteacre. **(5 points)**

[End of Question II]

CIVIL CODE I  
LOUISIANA STATE BAR EXAM  
Monday, July 23, 2012

**Question III**  
**(25 points)**

Quality Farm has long owned a 20-acre parcel of farmland adjacent to a large industrial complex owned and operated by Louisiana Chemical & Pipe. Louisiana Chemical & Pipe's property in turn is adjacent to several other large, industrial facilities.

In 1987, Louisiana Chemical & Pipe sought to expand its facilities. But to do so, it first had to obtain additional electric power connections from the local electric utility company and to have a new electrical "substation" built to handle these connections. Louisiana Chemical & Pipe successfully negotiated with Substation Company to build, own and operate this substation and related facilities.

After obtaining all regulatory approvals for this arrangement, Substation Company negotiated an agreement with Quality Farm for the right to install an electric substation on Quality Farm's land, with in an incoming, overhead high-voltage electric transmission line from the local electric utility company's existing distribution tower on Quality Farm's property and with up to five outgoing, underground lower-voltage electric distribution lines for delivering electric power to any customer Substation Company might obtain. As compensation, Substation Company paid a one-time \$10,000 payment and also agreed to pay liquidated damages of \$300/acre for any crops that are disturbed in connection with installing any such distribution line under Quality Farm's land. The agreement further provides that, upon termination of the agreement, Substation Company must restore the land to its prior condition. This agreement was duly recorded in the local parish conveyance records in 1987.

Substation Company promptly built this electric substation on a cement slab within a specified 50'x50' area on Quality Farm's parcel and surrounded it with a locked chainlink fence. Several, multi-ton pieces of electrical equipment constituting the electric substation are permanently bolted to this slab. For protection against weather and passers-by, the various meters and other necessary equipment for this substation are enclosed by four walls and a roof, all made of corrugated metal. To comply with local zoning requirements, the outer walls are painted blue and shrubs are planted around three of the four walls.

Although Quality Farm's agreement with Substation Company allows for up to five outgoing distribution lines, Substation Company initially built only three such lines: one going directly to a plant on Louisiana Chemical & Pipe's adjacent property and two more extending across Louisiana Chemical & Pipe's property to two other plants. But only two of these three lines have been in continual use since 2000; the third line was last used in 2000. Substation Company has just announced that it has obtained an additional customer, who will need its own, new, separate electric distribution line running from Substation Company's substation. Substation Company intends to install a new, fourth electric distribution line to service this new customer.

Quality Farm has advised that Substation Company should use one or more of the existing distribution lines to service this new customer and that Quality Farm would seek to enjoin Substation Company's building a fourth distribution line and would also seek to compel Substation Company to remove the distribution line that has been out of service since 2000. Quality Farm gave two reasons. First, Quality Farm asserted that, since Substation Company had not built any additional distribution lines for over twelve years and has also stopped using one of the existing lines during that same period, it has abandoned and lost its right to do so now. Second, Quality Farm contends that a new distribution line is unnecessary and would disturb Quality Farm's crops.

Substation Company has now come to you for advice. In advising Substation Company, answer the following questions, giving full reasons for your answers. **You must give full reasons for your answers in order to receive credit; answers without explanation will receive no credit.**

I. How are the rights of Substation Company under its agreement with Quality Farm classified under the Civil Code? **(5 Points)**

2. How are Substation Company's initial outgoing electric distribution lines across Quality Farm's land classified under the Civil Code? **(5 Points)**
3. How is Substation Company's electric substation itself classified under the Civil Code? **(5 Points)**
4. Discuss whether Quality Farm has the right to prohibit Substation Company from building this proposed fourth electric distribution line. **(5Points)**
5. Discuss whether Quality Farm has the right to compel Substation Company to remove at this time the electric distribution line that has been out of service since 2000. **(5 Points)**

[End of Question HT]

CIVIL CODE I  
LOUISIANA STATE BAR EXAM  
Monday, July 23, 2012

Question IV  
(2S points)

Each of the ten multiple-choice questions below counts for 2.S points. Select the letter that corresponds to the correct answer.

*[Multiple choice questions u11availablefor viewing.]*

CIVIL CODE IT  
LOUISIANA STATE BAR EXAMINATION  
JULY2012

**QUESTION 1**  
**(20 POINTS)**

Susan married Ted in 2005. They built and moved into a house on 10 acres that Susan previously owned in Evangeline Parish with hopes for a big family. Susan already had a child from a previous relationship, Abel. Susan and Ted initially had difficulty conceiving. Because his work schedule kept him away from home for weeks at a time, Ted stored his sperm with a clinic so that Susan could participate in artificial insemination treatments when the time was right without regard for his schedule. As part of the arrangement with the clinic, Ted signed an agreement that expressly allowed Susan to use his sperm for artificial insemination purposes. The agreement provided that Ted's sperm would be stored until five years after his death.

At Ted's request, Susan typed an Act of Donation for five acres of her property to Ted's only brother, Jim, in October 2009. The Act of Donation stated, in pertinent part:

I, Susan, hereby donate my property (see attachment) to Ted's brother.

The full legal description of the subject property was attached to the Act of Donation. Susan signed and dated the Act of Donation and filed it in the public records of Evangeline Parish. Jim was incarcerated at the time, so he had his attorney to write a letter to Susan and accept the donation on his behalf. Upon his release, Jim made his residence on the donated property along with his girlfriend, Kathy.

Ultimately, the fertility treatments were successful and Susan conceived a child about six months before Ted died intestate and of unknown causes in December 2009. The child, Brad, was born three months after Ted's death. Ted's succession was not opened at that time.

About nine months after Brad was born, Susan again participated in artificial insemination using the sperm stored by Ted at the clinic. The treatments were again successful and a second son, Cameron, was born in August 2011.

Jim and Kathy began having domestic difficulty after Ted's death. Once Cameron was born, Kathy moved out of Jim's house and moved in with Susan to assist her with the children. To thank her for her sacrifice, Susan named Kathy as a 50 percent beneficiary on her life insurance policy. For the other 50 percent, she just wrote "estate." Around the same time, Susan executed a testament, valid in form, which included but one provision:

"I bequeath the entirety of my estate to my children."

Jim blamed his separation on Susan. He spread rumors in their small town that Susan had been involved in Ted's death. He even called the police and claimed that Susan had poisoned Ted. Jim did this as a way of retaliating against Susan for allowing Kathy to move in with her. An investigation vindicated Susan, but Jim's allegations were well-known throughout the parish.

In January 2012, Susan died suddenly of a heart attack. Abel, Brad and Cameron were ultimately taken in by Kathy. Kathy filed the necessary pleadings and was formally appointed as tutrix over all of Susan's children.

**QUESTION 1A)**  
**(3 points)**

*[Multiple choice questions unavailable for viewing.]*

**QUESTION 1(B)**

(3 points)

*[Multiple choice questions u11availablefor viewing.]*

**QUESTION 1(C)**

(3 points)

*[Multiple choice questions unavailable/or viewing.]*

**QUESTION 1(D)**

(3 points)

*[Multiple choice questions unavailable for viewing.]*

**QUESTION 1(E)**

(8 points)

Two months after the rumors began and prior to her death, Susan consulted with an attorney about recovering the property donated to Jim. She did not take any action against Jim prior to her death. What action may be taken, if any, and when with respect to the five acres donated to Jim, assuming the donation was valid in form and substance at the time made?

**QUESTION2**

(30 POINTS)

Mike was a lifetime resident of Louisiana. Mike had been married twice. His first marriage ended in 1991. Mike had five children from his first marriage: Peter born in 1979, Raymond born in 1982, Stan born in 1986, Theresa born in 1989, and Wendy born in 1990. He married his second wife Debra in 2005. Mike and Debra had no children born of their marriage, but they adopted an infant, Greg. Mike had no other children. Each of Mike's children was domiciled in Louisiana throughout his or her entire lifetime.

In January 2002, Mike instructed his attorney to prepare a will for him. His attorney prepared a notarial testament for Mike in which Mike bequeathed his entire estate outright to his children, equally. **Mike** executed the will at his attorney's office in the presence of two persons: his attorney's daughter, age 16, and his attorney's neighbor, age 76, who was legally blind but was able to hear **Mike's** declaration and was able to sign his name as directed.

In 2007, **Mike** downloaded a form entitled "Universal Will" from the internet, filled in the blanks on his computer, and printed out the completed form, which included an attestation clause. He signed it and dated it on the bottom of each page in the presence of a notary and two witnesses, one of whom was his best friend, Steve. The 2007 instrument, which contained only the following dispositive provisions and which did not expressly revoke any prior wills, contained the following provisions:

- (1) To my son, Peter, and my best friend, Steve, jointly, my 1,000 shares of stock in Home Depot.
- (2) To my son, Raymond, my 10 acres in Iberville Parish, which is my separate property. Upon Raymond's death, the property is to go to my sister, Meredith, in full ownership.
- (3) To Louisiana Bank, as trustee, an amount equal to the forced portion of my estate, to hold in trust for any forced heir(s) that I may have at the time of my death, as

income and principal beneficiaries, in equal shares. The trustee shall distribute all of the income of this trust annually to my forced heir(s), equally.

- (4) To my wife, Debra, the usufruct of all of the rest of my property, both separate and community; and
- (5) Subject to the usufruct bequeathed to Debra in the foregoing paragraph, I bequeath all of the rest of my property to my daughters, Theresa and Wendy, in equal portions."

In August 2010, **Mike** decided to make a charitable contribution of all of his shares of Home Depot stock to the University of Louisiana. Mike signed a pledge card to that effect, which he mailed back to the University by certified mail, along with the Home Depot stock certificate. **Mike** did not execute the assignment on the back of the stock certificate nor did he execute any other document. The University received the pledge card and stock certificate, and placed both of those documents in the University safe. The University's attorney requested the documents from the Home Depot stock transfer agent to have the stock reissued, but he never received those documents from the stock transfer agent. Mike continued to receive the dividend checks on that stock and deposited those checks into his checking account.

Mike's son, Peter, died in January 2008. Peter was survived by two children, Brady and Cindy. Cindy was born with a physical infirmity and she will require care for the rest of her life. Peter never adopted anyone. None of Mike's other children had any children of their own or adopted anyone.

Two years ago, Stan was diagnosed with bipolar disorder. Stan is socially active, is able to take care of himself most of the time, and does volunteer work. Although he has been able to work off and on, his physician has indicated that his condition will worsen over time and will affect his ability to care for himself in the future.

Mike died in January 2012. He was predeceased by Peter and Theresa. There was \$250,000 in Mike's account at Louisiana Bank at the time of his death.

**QUESTION 2(A)**  
(7 points)

Does Mike have any forced heirs? If so, please identify each forced heir, state the reason why each is a forced heir, and indicate the fraction of Mike's estate to which each forced heir is entitled.

**QUESTION 2(8)**  
(3 points)

*[Multiple choice questions unavailable for viewing.]*

**QUESTION 2(0)**  
(3 points)

*[Multiple choice questions unavailable for viewing.]*

**FOR THE REMAINING QUESTIONS, ASSUME THAT THE 2002 AND 2007 INSTRUMENTS ARE VALID TESTAMENTS UNDER LOUISIANA LAW AND THAT THE LEGITIME IS SATISFIED.**

**QUESTIONUD}**  
(3 points)

Upon Raymond's death, is Meredith entitled to the 10 acres in Iberville Parish?

**QUESTION 2(E)**  
**(5 points)**

Who is entitled to the 1,000 shares of Home Depot stock?

**QUESTION 2(F)**  
**(3 points)**

What is the duration of Debra's usufruct?

**QUESTION 2(G)**  
**(3 points)**

Who is entitled to the residue of Mike's estate?

**QUESTION 2(H)**  
**(3 points)**

*[Multiple choice questions unavailable/or viewing.]*

**QUESTION 3**  
**(20 POINTS)**

Emily had been married only once, and her husband predeceased her. Four children were born of that marriage: Kyle, Lily, Mitchell, and Justin. Emily had no other children. In February 2009 Emily executed a testament in Shreveport, Louisiana, where she had lived her entire life. The testament was valid in form as a Louisiana will and contained the following dispositive provisions:

- (1) I bequeath all of the assets of my estate to Arkansas State Bank, as trustee, to hold in trust for the benefit of my four children, pursuant to the terms and conditions set forth below. If Arkansas State Bank is not eligible to serve as the trustee of this trust, then I appoint First National Bank of Texarkana, Texas, as the trustee of this trust.
- (2) This trust is to be a spendthrift trust, subject to the maximum restraints on voluntary and involuntary alienation permitted by Louisiana law.
- (3) The trustee shall sell all of my paintings and distribute the sales proceeds from those sales to Caddo College.
- (4) The trustee shall sell my automobile and hold the proceeds as part of the principal of this trust for the benefit of my daughter, Lily. The trustee shall distribute the proceeds from that sale to Lily, or in the event of Lily's death, to her descendants, in 10 equal annual installments.
- (5) The trustee shall hold as part of the principal of this trust for the benefit of my son, Mitchell, all of the funds in my Savings Account No. 7186 at Shreveport Federal Credit Union at the time of my death. That account presently has a balance of \$50,000. The trustee shall have complete discretion as to whether and when to distribute to Mitchell (or in the event of Mitchell's death, his heirs or legatees) any part of the principal of this account or the interest earned thereon.
- (6) The trustee shall hold the proceeds from my Individual Retirement Account with Equitable National Bank and all of the rest of my assets (the residuum of my estate) for the benefit of my son, Justin, and his descendants. The trustee shall distribute the income from the residuum of my estate to my son, Justin, for the rest of his life. Upon Justin's death,

the trustee shall distribute the residuum of my estate outright to any living descendants that Justin may have at that time, *per stirpes*.

In 2010 Mitchell was involved in an accident in which the vehicle he was driving collided with a school bus. Mitchell was determined to be at fault in the subsequent lawsuit involving that accident, and a judgment was rendered against him. Mitchell became severely depressed as a result of the accident, and this led to marital problems with his wife, Caroline. He and Caroline divorced in January 2012.

In March 2010 Emily sold her Walmart stock and deposited the full amount of the sales proceeds into her Savings Account No. 7186 at Shreveport Federal Credit Union. At the time of Emily's death, that savings account had a balance of \$300,000.

Emily told Lily in December 2011, "I want to give you my Lexus automobile. Just come by my house, and I will give you the keys and the certificate of title, so that you can get the title transferred to your name."

Several days before her death, Emily told her friend, Lucy, in the presence of two witnesses, that Lucy could have her valuable painting by Georgia O'Keefe. Lucy took the painting home with her and mounted it on the wall in her dining room.

Emily died in February 2012. At the time of Emily's death, Lily had not picked up the keys to the Lexus from Emily's house. The Lexus was parked in Emily's garage. The Certificate of Title to the Lexus was still in Emily's safe deposit box. Emily had not signed over the Certificate of Title to Lily.

Emily's safe deposit box also contained a copy of Emily's beneficiary designation for her Individual Retirement Account at Equitable National Bank. Emily had signed and dated the beneficiary designation on July 25, 2004, and mailed it by certified mail to Equitable National Bank on that date. Emily had designated Kyle as the beneficiary of that Individual Retirement Account. Equitable National Bank sent Emily a letter acknowledging that it had received the beneficiary designation.

Arkansas State Bank is organized under the laws of Arkansas and is not a federally insured depository institution. First National Bank of Texarkana, Texas is a federally insured depository institution organized under the laws of the United States.

None of Emily's children are forced heirs. Emily had been mentally competent throughout her entire lifetime. You may assume that the trust created by Emily in her will was properly established after her death.

**PLEASE PROVIDE SHORT ANSWERS (THREE TO FOUR SENTENCES) TO THE FOLLOWING QUESTIONS.**

**QUESTION 3(A)**  
**(2 points)**

Would either or both of the banks designated by Emily be eligible to serve as the trustee of the trust?

**QUESTION 3(B)**  
**(2 points)**

Could the judgment creditors in the lawsuit involving Mitchell's automobile accident seize Mitchell's interest in the trust?

**QUESTION 3(O)**  
**(2 points)**

Mitchell would like to pledge his beneficial interest in the trust to a finance company as security for a loan to him from the finance company. Would Mitchell be legally able to make such a pledge?

**QUESTION 3(O)**

**(2 points)**

The judge in Mitchell's divorce awarded Caroline interim periodic support, but Mitchell did not make the payments, and at the time of Emily's death, he owed Caroline in excess of \$20,000. Can Caroline seize Mitchell's interest in the trust to recover the monies owed to her?

**QUESTION 3(E)**

**(3 points)**

The attorney for Caddo College maintains that Lucy should return the Georgia O'Keefe painting to Emily's estate so that it can be sold and the proceeds delivered to Caddo College. Is the attorney for Caddo College correct?

**QUESTION 3(O)**

**(3 points)**

Justin maintains that only \$50,000 in Savings Account No. 7186 should be held in trust for Mitchell, and that the balance of the funds in that savings account, \$250,000, should be held in trust for his (Justin's) benefit. Is Justin correct?

**QUESTION 3(G)**

**(3 points)**

Who is entitled to receive Emily's Individual Retirement Account at Equitable National Bank?

**QUESTION 3(H)**

**(3 points)**

In 2006, the trustee decided to resign. Justin contended that the trust had failed for lack of a trustee and should, therefore, be terminated at that time. Justin further contended that the assets held in trust for his benefit as income beneficiary (the residuum of Emily's estate) should be distributed outright to him at that time. Is Justin correct in his contention that the trust was terminated upon the trustee's resignation?

**QUESTION 4**

**(30 POINTS)**

**PART I**

Jeff and Kate were married and had three children, Reed, Sabrina and Thomas. After five years of marriage, Jeff and Kate divorced. All community property issues were resolved shortly after their divorce. Reed married and had three children of his own, Mary born in 1987, Ned born in 1990 and Opal born in 1992. Sabrina never married and never had any children. Thomas married Erin but had no children and did not adopt anyone.

Several years later, Jeff married Linda. They had two children together, Devon born in 1990 and Emma born in 1992. Devon never married but had a son, Gary. Devon was killed in an off-shore accident in 2009 and died intestate.

In late 2010, Reed shot and killed Thomas while they were boar hunting near St. Francisville. Reed claimed that Thomas had been drinking and attacked him and that he only shot Thomas out of self defense. Charges were never brought against Reed for Thomas' death.

Assuming these facts, answer the questions below.

**QUESTION 4(A)**

**(3 points)**

*[Multiple choice questions unavailable for viewing.]*

**FOR THE REMAINING QUESTIONS, ASSUME THAT REED DID NOT SHOOT THOMAS AND THAT THOMAS DIED OF NATURAL CAUSES.**

**QUESTION 4(B)**

**(8 points)**

Thomas died intestate leaving both community and separate property. Who should inherit Thomas' estate and in what proportions?

**QUESTION 4(C)**

**(5 points)**

Jeff died intestate in 2011, leaving separate and community property. Who should inherit Jeff's estate and in what proportions?

**QUESTION 4(D)**

**(5 points)**

Shortly after Jeff died, a ledger was found describing gifts he had given to his family members. The ledger revealed the following gifts:

- Four years before his death, Jeff gave Sabrina \$10,000 for a vacation.
- After Thomas was shot, Jeff gave Erin \$10,000 to help with the funeral expenses.
- After Thomas was shot, Jeff donated a Certificate of Deposit worth \$5,000 to Reed for an attorney during the investigation.
- Six months before his death, Jeff gave Mary \$5,000 for a down payment on a car.

Are any of these gifts subject to collation? If so, who, if anyone, may demand collation?

**PART 2**

**QUESTION 4(E)**

**(3 points)**

*[Multiple choice questions unavailable/or viewing.]*

**QUESTION 4(F)**

**(3 points)**

*[Multiple choice questions unavailable/or viewing.]*

**QUESTION 4(G)**

**(3 points)**

*[Multiple choice questions unavailable for viewing.]*

**END OF EXAM**

**LOUISIANA BAR EXAMINATION  
CIVIL CODE III**

**JULY, 2012**

**Question One: TOTAL OF THIRTY POINTS.**

Dottie's 32-year-old grandson was recently arrested on drug trafficking charges in a foreign country. He was allowed by his jailors to make one telephone call to her, during which he indicated that he needed \$10,000 in order to retain a local lawyer to defend him against the charges. He told her during the call that she was authorized to sell his car and any of his other assets to raise the necessary funds for the lawyer and also to raise money for bail. Just as he was about to give her details concerning his car that he had left in her garage, the time allotted to him for the call expired, and he was forced to end the call. Worried about her grandson's well-being, Dottie immediately set out to raise the needed money.

Upon inspecting her grandson's car in her garage, Dottie determined that it was a very old, rather eccentrically shaped two-door Chevrolet. Sensing that the car might have some value despite its age, but knowing nearly nothing about automobiles, Dottie asked a local used car dealer to come by her house and give her an idea what the car might be worth. After noting that the body was in good shape and that the motor seemed to run fine, the dealer observed that it was a 1963 model and nearly 50 years old. He indicated that the most he could "in good conscience" offer her for it was \$4,000. He claimed that at that price he was doing her a favor, something he was willing to do only because of her grandson's desperate circumstances. Since the price he offered was less than half what she needed to raise, Dottie politely declined the offer and decided instead to run an advertisement in the local newspaper.

Andrew, a 17-year-old high school senior with a passion for classic cars, saw the advertisement in an online edition of the newspaper and immediately responded. When he met Dottie at her house, he was astonished by the car in her garage. Dottie related to him the details of what the used car dealer had told her. Andrew understood immediately that the dealer had been trying to take advantage of her, but Andrew said very little other than to **make** a suggestion that she check the "Blue Book" value and let him know what she would take for it. Dottie made a note of his telephone number and address, indicating that she would call him very soon.

After discovering that "Blue Book" values were not available for cars as old as her grandson's Chevrolet, and feeling increasingly desperate to raise money for his legal defense, Dottie called Andrew the next day, offering to let him have the car for \$8,000, which she felt was a rather handsome price since it was double the amount the dealer had offered. Andrew thanked her, indicating that he was very happy with the offer but would need a few days before accepting to make sure that his parents would advance him the necessary funds. Dottie replied that this would be "no problem."

The next morning, Dottie's grandson finally succeeded in reaching her again by telephone. When she related what she felt was good news about the impending sale of the car, he quickly became agitated, screaming through the telephone that the car in her garage was a 1963 Corvette Stingray in original condition worth at least \$100,000. He told her to get out of selling the car any way she could, reminding her that he had never actually signed anything authorizing her to act on his behalf.

As soon as the call ended, Dottie tried to call Andrew to tell him that she was no longer willing to sell the car at the price she had previously mentioned. Unsuccessful in reaching him by telephone, she wrote a letter to him to that effect and immediately took it to the post office. When she returned home after mailing it, she noticed an envelope taped to her front door. Inside the envelope was a note from Andrew telling her that he had raised the necessary \$8,000, was pleased to accept her kind offer and would come by her house the following morning to get the car and pay the price she had quoted.

When Dottie mentioned these developments later that day to her friends at the Every-Other-Wednesday-Afternoon Discussion Club, the prevailing sentiment was that she would have no problem escaping from the deal. One of her friends pointed out that there certainly could be no binding agreement since the buyer was not even of legal age. Another mentioned that her lawyer

had gotten her out of a bad deal the year before by arguing something that he called "lesion."

Discuss possible avenues available to Dottie and her grandson to attack the validity of the transaction and to retreat from it, including the grounds raised by her grandson and her friends. Be sure to discuss all possible theories that might be fairly suggested by the factual pattern, even if you conclude that some or all of these theories will ultimately lack merit. *Note: In giving your answer, please ignore and refrain from discussing any rules peculiar to motor vehicles that might arise under the Louisiana Vehicle Certificate of Title Law.*

## END OF QUESTION ONE

**LOUISIANA BAR EXAMINATION  
CIVIL CODE ID  
JULY, 2012**

**Question Two: TOTAL OF TWENTY POINTS.**

In August 2011, Audrey sold to Betsy a tract of land fronting on Bayou John for \$500,000 by an act of sale that contained the following provision:

The property herein conveyed is sold without warranty of title but with full subrogation to all rights in warranty against all prior owners. Vendor also transfers to Vendee whatever rights and claims, if any, Vendor may have to the bed of Bayou John adjoining said property.

Betsy did not obtain a title examination prior to the sale, choosing instead to rely on her knowledge that Audrey had owned the property for over thirty years. After the sale, however, Betsy learned of a number of things that negatively affected her plans to develop the property as a residential subdivision. First, upon walking the entire perimeter of the property for the first time shortly after buying it, Betsy discovered that an overhead electrical line providing electrical service to a neighboring tract crossed her property. Secondly, after her plans for the property became publicly known, Betsy received a letter from a pipeline company asserting that an underground pipeline crosses the property. Enclosed with the letter was a copy of a pipeline servitude agreement, which had been executed by Audrey's predecessor-in-title, establishing a pipeline servitude along a designated route and specifically providing that no improvements could be constructed over the pipeline. Betsy was surprised by this news since she had recognized no visible sign of a pipeline crossing the property. Betsy has also learned that the State of Louisiana owns the bed of Bayou John and will not grant her permission to erect within the bed a dock and several other structures that she had planned to install as amenities to her residential subdivision.

Concerned by these developments, Betsy for the first time obtained a title examination, which reflected that agreements establishing servitudes for the overhead electrical line and the underground pipeline had been properly recorded several years before Audrey acquired the property. The title examination also revealed an agreement executed and properly recorded in 1999 by which Audrey granted Camille the right to purchase the property for \$250,000 in the event that Audrey ever decided to sell it.

Determined not to abandon the plans for her residential subdivision, Betsy paid the holder of the electrical servitude \$10,000 to re-route the electrical line along the perimeter of her property. She paid \$50,000 to Camille for a relinquishment of her claims to the property. Finally, after determining that it would be too expensive to re-route the underground pipeline, Betsy had her engineer re-configure her site plans so that the pipeline would run down the middle of a new boulevard rather than through any lot, thus resulting in a decrease of four in the number of lots she would be able to include in the subdivision. Unable to obtain any concession from the State concerning the dock she had planned to build over the bed of Bayou John, she abandoned those plans, though she believes that the overall value of her subdivision has decreased as a result.

Betsy has filed suit against Audrey seeking reimbursement of the amounts she paid to Camille and the holder of the electrical servitude, as well as damages from the loss of lots resulting from re-configuration of her subdivision around the underground pipeline and damages from her inability to construct the dock as she had planned. Before filing suit, Betsy did not notify Audrey of any of the title problems or the actions that Betsy had taken to address them.

- A. Discuss whether and to what extent Betsy has rights against Audrey on account of the existence of the overhead electrical line and the underground pipeline. **EIGHT POINTS.**
- B. Discuss the nature and enforceability of Camille's claim to the property, as well as whether and to what extent Betsy has rights against Audrey on account of the payment Betsy made to Camille for relinquishment of that claim. **EIGHT POINTS.**
- C. Discuss whether and to what extent Betsy has rights against Audrey on account of the State's ownership of the portion of the bed of Bayou John mentioned in the act of sale. **FOUR POINTS.**

**END OF QUESTION TWO**

**LOUISIANA BAR EXAMINATION  
CIVIL CODE III**

**JULY, 2012**

**Question Three: TOTAL OF TWENTY-FIVE POINTS.**

In the execution of a money judgment in its favor, Boyce Finance Company has arranged for the sheriff to seize an immovable owned by the judgment debtor, I-49 Land Corp. A mortgage certificate obtained by the sheriff in the name of I-49 Land Corp. reflects the following filings in the mortgage records of the parish in which the immovable is located:

- I. Money judgment against I-49 Land Corp. in favor of Sugarhouse Road Suppliers, Inc. ("Sugarhouse") for the principal amount of \$250,000, plus interest and costs, rendered on June 4, 2001 and recorded in the mortgage records the following day.
2. Money judgment against I-49 Land Corp. in favor of Woodworth Speed Check, Inc. ("Woodworth") for the principal amount of \$333,000, plus interest and costs, rendered on August 12, 2005 and recorded in the mortgage records on the same day.
3. Act of credit sale, dated and recorded November 1, 2008, by which I-49 Land Corp. purchased the immovable property in question from Parish Realtors, Inc. for \$500,000, of which \$100,000 was paid in cash with the balance payable in monthly installments through November 1, 2018.
4. Multiple indebtedness mortgage, dated and recorded October 2, 2011, securing all present and future indebtedness of I-49 Land Corp. to Alexandria Bank of Commerce ("ABC") up to the maximum amount of \$1,000,000. ABC made two loan advances in the amount of \$45,000 each to I-49 Land Corp. on October 2, 2011 and May 13, 2012, both of which remain outstanding and unpaid.
5. Statement of privilege filed by Cenla Roofing Supply, Inc. ("Cenla") on October 30, 2011, claiming entitlement to \$25,600 for roofing materials sold to a roofing contractor and used in re-roofing a commercial office building located upon the property. The roofing work (which was part of any other work on the property) began on September 15, 2011 and ended on October 1, 2011. All of the roofing materials supplied by Cenla were delivered to the site on September 18, 2011, and no other materials were delivered by anyone else to the property before that date. In addition to filing its statement of privilege, Cenla gave all notices to the owner and contractor required by law as a condition to the preservation of its privilege.
6. Money judgment against I-49 Land Corp. in favor of Boyce Finance Company for the principal amount of \$75,000, plus interest and costs, rendered on January 10, 2012 and recorded in the mortgage records on the same day.
7. A notice of seizure filed by the sheriff, giving notice of the seizure of the property at the instance of Boyce Finance Company, recorded June 16, 2012.

Though not reflected by the mortgage certificate or any filing in the mortgage records, Sugarhouse filed a proper suit to revive its judgment on December 17, 2010 and obtained a judgment of revival on January 31, 2011. Also, another creditor, LeCompte Investors, Inc. ("LeCompte"), obtained a \$72,000 money judgment against I-49 Land Corp. on February 18, 2009 and presented it on that day to the clerk of court for recordation. LeCompte did not give the clerk any specific instructions as to the records in which the judgment should be recorded, and it was recorded only in the conveyance records.

Rank the claims of all competing creditors against the property, giving supporting reasons and legal principles to support the ranking you assign. *In giving your answer, you should assume that (i) all of the documents mentioned above are in proper form and, in the case of contractual arrangements, were entered into by a duly authorized representative of I-49 Land Corp.; (ii) good and valid title to the immovable is vested in I-49 Land Corp.; (iii) each creditor's monetary claim*

*is valid, and each creditor is still owed the full amount of its original claim; (iv) the sheriff and Boyce Finance Company have followed all proper procedures in arranging/or the property to be seized; and (v) there are no filings in the mortgage records in the name of 1-49 Land Corp. except for those specifically mentioned above.*

## **END OF QUESTION THREE**

LOUISIANA BAR EXAMINATION  
CIVIL CODE In

JULY, 2012

Question Four: TOTAL OF TWENTY-FIVE POINTS;  
TWO AND ONE-HALF POINTS EACH.

*Please read the following instructions carefully before answering:*

For each of the following ten subparts of this question, write or type the letter that corresponds to the correct answer.

You should choose your answers based on what Chapter 9 of the Louisiana Uniform Commercial Code and other applicable Louisiana law presently provide. If you supply more than one answer to a subpart, the entire answer will be counted as incorrect even if one of the answers you supply is the correct answer. Only the letter designation that you indicate will be considered, and any discussion that you supply will be disregarded.

Throughout this Question Four, you should assume that all security documents and other transactions described below were properly authorized on the part of all parties.

*[Multiple choice questions are unavailable for viewing]*

**END OF EXAMINATION**

LOUISIANA BAR EXAMINATION  
CONSTITUTIONAL LAW  
JULY, 2012

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 35 points; Question Number Two is worth 35 points; Question Number Three is worth 30 points.

**QUESTION ONE - {35 points}**

In early 2010, Mineral SLM was discovered. It is a mineral that, when ingested, causes the average adult to lose 25% of their body fat. A few companies in the 5 states where SLM was plentiful began manufacturing processed SLM and making it available to consumers by direct shipping from the manufacturing plant via phone or internet orders. Processed SLM was approved by the Federal Drug Administration (FDA) and actually produced the very results it was purported to produce.

Mineral SLM is found in limited areas in Louisiana. To capitalize on this growing market, Kodi formed KAN, Inc., (KAN), an SLM processing corporation, in Louisiana. KAN purchased a tract of land in Louisiana where SLM was found to be plentiful, and established a processing plant and a distribution company. Using essentially the same processing formula as the other out of state companies, KAN packaged and sold its product as "Flubber Buster."

Kodi persuaded the Louisiana Legislature to enact a law prohibiting the import of SLM, in any form, into Louisiana. The Act is called the SLM Reservation Act, (Act), and the stated purpose of the Act is, given the state of the economy in Louisiana, to encourage Louisiana consumers to buy Louisiana products.

Rocky Rounder (Rocky) is a resident of a small town in Louisiana. He has been overweight his entire life and is ecstatic about the impact SLM could have on his life. He decided to purchase SLM via the Internet. He found KAN's Flubber Buster online, but after perusing other websites that mentioned SLM, he found one in Tuscaloosa, Alabama with discounted prices. Rocky placed his order online with the Alabama company, called Crimson Cleaner, Inc., only to be told that Louisiana state law precluded direct shipment of out of state SLM.

What constitutional arguments, if any, can Rocky and Crimson Cleaner, Inc. raise and are they likely to succeed? **Discuss.**

## **QUESTION TWO - {35 points}**

**DO NOT DISCUSS ANY PROCEDURAL DUE PROCESS ARGUMENTS IN THIS ANSWER.**

Since Hurricane Katrina, the State Legislature has been unhappy with the lack of revitalization of certain areas of Louisiana cities. In an effort to revitalize these areas, the Louisiana Legislature enacted legislation authorizing State funded grants to non-profit entities for purposes of acquiring and renovating vacant State property for use in a manner that would serve the community. The grant program is known as the Louisiana Revitalization Program ("LRP").

The Rock of Ages Church, a non-profit entity (the "Rock"), has applied for a one million dollar grant from the LRP. The Rock's application states that it intends to acquire vacant land located in the most destitute areas of Louisiana's largest city. The Rock plans to turn the land into a community center, (the "Center"), consisting of classrooms and a gymnasium. The Center will be open to the public, and will offer non-sectarian programs targeted to serve the low income and elderly families in the area. The programs will include child and adult care, job training classes, and youth basketball and volleyball leagues.

In addition, the Rock's application states that a portion of the grant proceeds will be used to construct a small chapel in the Center. The Rock's application further states that large signs will be posted at each entrance to the Center, on the door to the chapel, and on the Center's bulletin board, that say the following:

Christian devotional services are held at the Chapel daily at 6:00 A.M. and 7:00 P.M.  
ATTENDANCE IS VOLUNTARY. You are welcome to use the Center regardless of whether or not you attend.

Dylan Ditchdigger is a local contractor who is outraged that the LRP is limited to non-profit entities. Although already approved, he planned to protest the LRP at the state capital building and expects at least 200 supporters. He planned to speak to these supporters at the protest, advocating the repeal of the LRP. He was reminded, however, that one of the state's Acts, Act D, forbids "any gathering of more than 50 people anywhere in the capital building unless previously approved or related to an item on that day's agenda. The stated purpose of Act D "is to avoid congestion and to promote the smooth operation of state government." Violators of Act D are subject to a fine up to \$2000 and/or incarceration of up to 6 months. Dylan has been told that his gathering was not approved.

- (1) **What constitutional issues, if any, are raised by the Rock's application? Please explain your answer fully.**
- (2) **What constitutional arguments, if any, can Dylan raise with respect to Act D and is he likely to succeed?**

### **QUESTION THREE - (30 points)**

Smallville Medical School (SMS) is a small, private medical school located in Smallville, Louisiana. It has recently received its accreditation and is eager to compete with the larger medical schools throughout the State. In order to compete and attract students, it has extended a number of perks not offered by the other schools. One of those perks is free wireless internet access anywhere throughout the campus. The college campus is small, however, and most students reside in privately owned apartments right off or near campus. SMS desired to extend the wireless access to these apartment complexes so as to make itself more attractive to prospective students. However, most of the apartment complex owners refused to allow SMS to install the necessary equipment in the complexes to allow the wireless access.

Realizing that the success of SMS was vital to the growth of its city, which was suffering economically, the Smallville City Council passed an Ordinance (City Ordinance) requiring all buildings within a two mile radius of SMS to allow SMS to install and maintain the required equipment or face a \$1,000 a month fine until compliance.

Levora Landlord, who owns an apartment complex within a two mile radius of SMS, comes to you for assistance. She refused to comply with the City Ordinance and is facing a \$5,000 and counting fine. The City Ordinance would actually increase her occupancy rate if she allowed the wireless equipment, and the equipment does not interfere with any of her complex's operations. However, she is against any kind of government intrusion and wants to challenge the City Ordinance.

**What constitutional arguments, if any, might Levora raise in a challenge to the City Ordinance and is she likely to succeed? Discuss fully.**

SUPREME COURT OF LOUISIANA  
Committee on Bar Admissions  
July 2012 Examination

**EXAMINATION ON CRIMINAL LAW, PROCEDURE AND EVIDENCE**

I.

**(40 points may be earned)**

Cane was a senior at Hollywood High in Hollywood, Louisiana. He was very excited because he had just turned eighteen (18) years old and was more than ready to move out of his parents' house. He had big plans to move to California and be in his own reality TV show. However, his parents did not think that this was a real career choice and refused to pay for his frivolous endeavors. So Cane contacted his older cousin, Ray-Jay, for help. Ray-Jay knew exactly how to make quick money. In fact Ray-Jay had been convicted of armed robbery in the past, so he knew exactly what not to do. In his experience, churches were the best places to make quick money because the members always carried a lot of money and they were open to the public. So Ray-Jay and Cane devised a plan.

Before Cane and Ray-Jay could do anything they went to the mall for the proper gear. While walking in the mall Cane saw his high school crush, Kimmie. He loved Kimmie from the very first time he saw her. In an effort to show his love, he direct messaged her on TWTTIER every day, sometimes twice a day, just to make sure she knew he cared. However, when Kimmie did not respond he became angry and began to call her names on her TWITTER page and warned that if she did not respond soon, he would "Kidnap her and make her his." Because of this, when Kimmie saw Cane in the mall, she ran the other way and Cane ran hastily after her professing his love. When Cane finally caught up with Kimmie, she was hiding behind her boyfriend, Donald, and his gang the "Chiefs". Cane hated the "Chiefs". After all, Cane's gang the "Creeps" had been sworn enemies of the "Chiefs" since pre-school. Cane wanted to fight Donald at the very moment, but knew he was out numbered. Instead, Cane warned Donald stating: "I have something better for you later." As Cane said this, he lifted his shirt slightly to show Donald the gun that he had been carrying in his waistband.

Cane then ran off to find his cousin. He found Ray-Jay in his favorite store, Robbers- R · Us. Refusing to actually pay for his gear, Ray-Jay was stuffing the items inside his jacket and backpack. When Ray-Jay and Cane walked out of the store, the security alarm began to ring and the guys took off running to the parking lot. Police Officer Jim was the first to spot Ray-Jay and Cane. Jim was not just your normal security guard. The mall had employed off duty police officers to monitor the mall because of the frequent robberies at Robbers-R-Us. He took off after them on his brand new Segway. However, as they ran Cane turned around and shot at Officer Jim's Segway to slow him down. The bullets completely missed Officer Jim but did severely damage his Segway, allowing Cane and Ray-Jay to get away.

Once Cane and Ray-Jay got in Ray-Jay's car, Cane took some of the gear Ray-Jay picked up from the store and put it on. Cane then got into the driver's seat of Ray-Jay's car and pulled off. As they pulled off, they saw the "Chiefs" in the parking lot. In an effort to scare them, Ray-Jay pulled out one of the guns he had hidden under the seat and opened fire on the "Chiefs" car. Cane never fired a shot. He merely drove the car slowly in front of the Chiefs and waived his gun in the air shouting at Ray-Jay, "Shoot them!" Unbeknownst to Cane and Ray-Jay, one of Ray-Jay's bullets ricocheted off the mall wall and struck Kimmie, who was an innocent bystander. Kimmie was rushed to hospital, but she died hours later.

The guys then hit the highway on their way to rob their church, Full of the Holy Ghost Missionary Baptist Church. They got to the church right on time. The church's services had just ended and the church's vault was sure to be full of money from the offerings. Ray-Jay decided to go in alone because it would be quieter. Unbeknownst to Ray-Jay, Pastor All Mighty Dollar was in his study, which was a short distance down the hall from the office. Ray-Jay grabbed his gun and headed towards the backdoor of the church. As Ray-Jay approached the back door, he noticed it was unlocked. He walked right in. When he got to the office where the church safe was kept, he was happy to find that the safe was unlocked also. He thought to himself, "The Church must

want me to have the money." Ray-Jay quickly grabbed as much money as he could fit in his backpack and ran out to the car and told Cane to "step on it."

Unfortunately, Cane had gotten nervous while waiting for Ray-Jay and decided to smoke marijuana to take the edge off. When Cane drove off, he began to swerve, unable to control the car. Officers spotted Cane's car, activated their sirens and attempted to pull the vehicle over. Cane panicked and led police on a high speed chase. But after three miles the car ran out of gas and stopped in the middle of the interstate. Officers finally arrested Cane and Ray-Jay after a short scuffle.

Identify and fully discuss all crimes that Cane and Ray-Jay could be charged with under Louisiana law, to include a discussion of the elements of the offense.

II.

**(30 points may be earned)**

Assume all of the facts as stated in Question I, in addition to the following:

After Cane and Ray-Jay were arrested, officers went to the apartment where Cane lived with his parents with the intent to conduct a search for evidence. After arriving at the apartment, the officers knocked but no one answered. So the officers went to the apartment's main office where 19 year old student worker Taylor was working. Taylor was not a fan of Cane because he was always rude and interrupting her when she was speaking. She gladly gave the officers the key to his parent's apartment. In Cane's apartment the officers found a plastic bag containing marijuana sitting on the couch. The bag was seized and Cane was charged accordingly.

Later that afternoon, the officers interviewed the administrators at Hollywood High regarding Cane's history at the school. After the principal learned about Cane's arrest, he immediately instructed his assistant principal to search Cane's locker. The assistant principal found a receipt for a handgun and what appeared to be a pipe, scale and other "drug paraphernalia." The administrators turned this evidence over to the investigating officers.

After Ray-Jay's car was towed to the station, the officers proceeded to prepare an inventory of the contents of the car. Under the passenger's front seat of the vehicle they found a small plastic bag filled with a green leafy substance. They seized, bagged and logged all of the items into evidence. The substance was tested and later determined to be marijuana.

After taking Ray-Jay into custody, officers advised him of his Miranda rights and proceeded to interview him regarding the incident at the mall. Initially, Ray-Jay expressed a willingness to cooperate. He expressly waived his right against self-incrimination and he answered several questions posed by the officers. After several minutes, however, Ray-Jay told the officers "You know what I am tired of answering questions. In fact, I may need a lawyer or a representative or something like that. You think?" At that point the investigators stopped asking Ray-Jay about the mall incident and proceeded to ask him about the incident at the church. After a two hour interrogation, Ray-Jay finally confessed to all crimes.

Cane refused to speak and was placed in a holding cell with Bob. After being in jail for several days, Cane and Bob became friends. One day while playing cards Cane told Bob all the details of the day of his arrest. Bob, unbeknownst to Cane, was a confidential informant for Hollywood Parish Sheriff's Department. Bob was wearing a body wire and recorded the entire conversation. The State intends to introduce this recording at Cane's trial.

A couple weeks after Cane and Ray-Jay's arrest, investigating officers heard gossip on the streets that Ray-Jay owned a storage unit. After the incidents that took place, the officer had a feeling that Ray-Jay used the storage unit to stock pile ammunition. In an effort to "move things along quicker," the officer drafted an affidavit stating that he received information from a "reliable confidential informant" that he saw Ray-Jay put ammunition into the storage unit just a week before Ray-Jay's arrest. The officer then went to Kimmie's dad, who was also a judge in the parish, to review the affidavit and warrant. The judge, so distraught by his daughter's death and longing to find her killers, did not read the affidavit. He just signed the warrant and gave it

back to the officer. Later that day, the officer executed the warrant. In the storage unit, the officers found several cases of ammunition. Ray-Jay was charged accordingly.

Identify and fully discuss all constitutional grounds for challenging the following: (1) the search of Cane's apartment; (2) the admissibility of the items found in Cane's locker; (3) the admissibility of the items found in Ray-Jay's car; (4) the admissibility of the statement made by Ray-Jay; (5) the admissibility of the statements made by Cane to Bob; and (6) the admissibility of the ammunition found in the storage unit.

### III.

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

Before and during Cane and Ray-Jay's trial, the following events occurred. Identify and address what action, if any, should be taken to resolve the issues. Fully explain your answers.

- (1) Shortly after their arrests, Cane and Ray-Jay agreed to hire one lawyer to jointly represent them. Should the court permit the joint representation?
- (2) Ray-Jay was detained without bond. Two years have passed since his arrest, and the matter has not been set for trial. What, if anything, should his attorney do?
- (3) Following the seizure of the marijuana from Cane's apartment, prosecutors arranged for the marijuana to be photographed and destroyed. When prosecutors offered the photograph for admission at trial, Cane's lawyer objected, claiming that the State must present the original evidence. How should the judge rule?
- (4) To the dismay of the prosecutors, one of their main witnesses at the trial testifies during direct examination that Ray-Jay is "a good dude who would never hurt anyone and everybody in town knows that." To refute this testimony, may the prosecutors now introduce evidence that Ray-Jay is person of bad character?
- (5) On the second day of trial, a day after the State's key witness, Donald, testified, the State advises Cane's attorney that Donald gave four statements to detectives that are materially different from one another. What should Cane's attorney do?
- (6) The prosecutors realized, after the trial started, that the indictment misspelled Ray-Jay's last name and had the wrong date of offense. In open court, they requested leave of court to amend the indictment to accurately fix these deficiencies. How should the judge rule?
- (7) Cane's mom, Susan, takes the stand to testify on Cane's behalf. The prosecutor is aware that Susan was arrested 20 years ago in connection with a prostitution ring. However, she pled guilty to a misdemeanor and was never in trouble again. Can evidence of this conviction be introduced during Susan's testimony?
- (8) A week before the trial is set to commence, Ray-Jay's attorney realizes that he needs additional time to prepare and interview witnesses. How should he proceed to get the trial date extended?
- (9) At the start of the trial, what should the lawyers do to try to ensure the integrity of each witness's testimony?
- (10) At the end of the two week trial, Cane and Ray-Jay are convicted of all counts. After the jury foreman announces the verdict, the judge asks the attorneys if there is any other matter that needs to be addressed. What, if anything, would you recommend that they do?

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

**Question One (25 Points)**

Pat, a 30-year-old lifelong resident of Louisiana (LA), was injured when the exhaust system on his motorcycle broke and caused him to crash. Pat moved in with his mother in Texas (TX) so that she could look after him during his recovery. He let a friend stay in and look after the home he owns in LA. Pat misses his friends and home in LA, but he met a new girlfriend and has enjoyed having his mother care for him during the first six months of recovery. Doctors state that Pat will be fully recovered in one more month, and Pat is undecided where he will live after that.

The exhaust system on Pat's motorcycle was manufactured by Roaring Iron, LLC (Iron), a limited liability company organized under Louisiana law. The company has manufacturing facilities in three states, with its largest being in LA. Its executive officers operate the company from a Houston, TX office. The two members of Iron are Capital Corp. (CC) and Deb.

The first member of Iron, CC, is incorporated in Delaware and licensed to do business in LA, TX, and three other states. CC has a 20 percent membership interest in Iron. All shares in CC are owned by Rich, who lives in California (CA). CC also invests in commercial real estate around the country. CC's main executive office is in New York (NY), but the two vice-presidents who oversee all operations relevant to CC's interest in Iron are in an office in LA.

The second member of Iron is Deb, who is domiciled in Arkansas (AR). Deb is of advanced age and declining mental health. Members of her family recently filed an interdiction type proceeding in an AR state court. That court appointed Deb's niece, Ellen, an LA citizen, as Deb's legal representative.

The damage to Pat's motorcycle is estimated at \$20,000. His medical bills will total \$25,000, and he will have \$25,000 in lost wages. Pat has experienced several months of serious pain during his recovery, and his doctors say he will have a lifelong limp because of the accident.

Pat has filed a complaint against Iron in an LA federal court. The complaint prays for an award of the medical bills, property damage, and lost wages in the amounts mentioned above, plus reasonable compensatory damages of an unspecified amount.

Questions I.A - I.C are based on the above facts.

- 15 pts.      I.A    Does the federal court have diversity subject-matter jurisdiction over the case under 28 U.S.C. § 1332? Explain fully.

With respect to this and other questions on the exam, 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 answers.

Assume for the purposes of questions 1.B and 1.C that the case remains pending in the LA federal court.

3 pts            1.B    *[Multiple choice questions unavailable for viewing.]*

3 pts.            J .C    *[Multiple choice questions unavailable for viewing.]*

4pts.            1 .0    Jones Family Partnership (JFP) began with three members: Mom, Pop, and Son, all three of whom are citizens of Louisiana (LA). JFP entered into a contract to purchase pipe from Flo, a citizen of Florida. Flo breached the contract almost immediately, and JFP sent a written demand for \$100,000 in damages. Six months after the breach occurred, JFP admitted a new partner, Grandson, a Florida citizen.

The negotiations with Flo were unsuccessful, and JFP filed a \$100,000 breach of contract complaint against Flo in an LA federal court, invoking diversity jurisdiction. Flo responded by filing a motion to dismiss for lack of subject-matter jurisdiction, noting that Flo and Grandson shared Florida citizenship. JFP responded that there was complete diversity at the time the contract was perfected, when it was breached, and at all times in between.

Should the court grant Flo's motion to dismiss? Discuss.

Question Two (25 pts.)

Tex, a citizen of Texas (TX), was visiting Louisiana (LA) when he slipped, fell, and was injured in a store owned by Lou, an LA citizen. Tex filed a \$100,000 personal injury suit in an LA federal court based on diversity jurisdiction. The complaint alleged: "Plaintiff was shopping in Defendant's store when he unexpectedly stepped in a pool of liquid in the center of an aisle, causing Plaintiff to slip and fall, which caused serious injuries. Shopping cart tracks and other conditions of the liquid indicated that it had been on the floor for such a period of time that Defendant had active or constructive notice that the liquid was on his floor, making him negligent and liable for the damages."

Tex's attorney hired a process server who went to Lou's store and asked to speak with Lou. A 17-year-old clerk who was working at a cash register told the process server that Lou was out running an errand, but she was the shift manager and would be happy to help him. The process server handed her the service papers and asked that she get them to Lou. The shift manager handed the papers to Lou when he walked in the door about an hour later. Lou filed a motion to dismiss for insufficiency of service of process, which the judge denied.

Lou next filed a motion to dismiss for failure to state a claim on which relief could be granted. He represented in his memorandum that his employees constantly monitor the store for spills, and that Tina, an employee, had inspected the area where the fall occurred just a few minutes before the accident. Lou cited several Louisiana appellate court decisions that found no liability where such facts were established. The judge denied the motion.

Lou later filed a motion for summary judgment. Tina no longer worked for Lou and could not be found. Lou did offer, however, affidavits from three of his other employees who were working that day. They each testified that they overheard a customer say, after the accident, that he had seen a female employee inspecting the area a few minutes earlier. Tex had no witnesses other than himself, but he testified by affidavit that the pool of liquid had several shopping cart tracks through it, and there were a number of footprints in the area, all of which suggested the liquid had been on the floor for some time. The judge heard oral argument and commented at the hearing that it looked like Lou should prevail because Lou had presented the greater number of witnesses, all of whom were quite persuasive, and Tex would probably be motivated by financial self interest. The judge took the motion under advisement.

Questions 2.A - 2.D are based on the above facts. The other questions in Question 2 are not.

- 3 pts.      2.A. Did the judge properly deny Lou's motion to dismiss for insufficiency of service of process? Discuss.
- 4 pts.      2.B. Did the judge properly deny Lou's motion to dismiss for failure to state a claim?
- 6 pts.      2.C. How should the court rule on the motion for summary judgment? How should the judge's comments at the hearing affect the analysis? Discuss.

- 4 pts. 2.D. After word spread about the accident and lawsuit, a customer told Lou he had been in the shop on the day of the accident and seen another customer's child pour out the contents of a baby bottle in the area where the accident happened. The parent of the child is identified as Buck, who is a Texas citizen. Lou believes that Buck should be responsible for any damages Lou might have to pay Tex in connection with the accident. What pleading should Lou file if he wishes to bring Buck into the suit? (2 pts.)

Lou was able to bring Buck into the suit. Tex wants to ensure that he has made a claim against all potentially responsible parties, so he wants to amend his complaint to add a claim against Buck. Would the court have subject-matter jurisdiction to hear that claim? Discuss. (2 pts.)

•••••

- 3 pts. 2.E. *[Multiple choice questions unavailable for viewing.]*

- 3 pts. 2.F. *[Multiple choice questions unavailable for viewing.]*

- 2 pts. 2.G. Ellie, who lives in El Dorado, Arkansas, witnessed a police use of force that resulted in a civil rights suit being filed in the federal district court in Monroe, Louisiana, which is about 75 miles from El Dorado. A process server came to Ellie's home and handed her a subpoena (and a check for the mileage fee) to appear in Monroe and testify at the trial. Must Ellie comply with the subpoena? Why or why not?

### Question Three (25 points)

Max, a citizen of Mississippi, was visiting a nightclub in Louisiana (LA) on March 5, 2011 when he was physically attacked by Al, a citizen of Alabama. Max filed a \$100,000 suit in a Louisiana state court on March 1, 2012 against three defendants: Al; Night Club, Inc. (the owner of the nightclub and a citizen of New York); and the club's manager, Lou, a citizen of LA.

Service was made on Al on March 1, 2012, on Lou on March 10, 2012, and on Night Club on March 15, 2012. Night Club contacted its attorney several days later and told her that the company wanted the case to be heard in a federal court if at all possible. The attorney, uncertain about any deadlines that might be approaching, immediately removed the case on April 12, 2012 without consulting any of the other parties.

- 5 pts. 3.A. Describe in detail the procedure and requirements counsel for Night Club, Inc. should have followed to remove the case to federal court.
- 3 pts. 3.B. Was the removal timely? Discuss.
- 6 pts. 3.C. Explain the legal and factual basis for two grounds (other than any timeliness issue) disclosed by the facts that Max may use to argue that the removal was improper.
- 2 pts. 3.D. What must Max's lawyer file to seek a return of the case to the LA state court? What time limits, if any, does he face?

3pts. 3.E. Lara, a citizen of Louisiana (LA), went to her local pharmacy to fill a prescription for medication. The nameplate at the counter indicated that the pharmacist on duty was Frank, who was also a citizen of LA. The prescription was filled incorrectly, and Lara suffered a severe adverse reaction. Lara filed a \$150,000 suit in an LA state court against both Frank and Pills, Inc. (the owner of the pharmacy), which has Connecticut citizenship.

Pills, Inc. has video and time sheet evidence to show that the pharmacist who filled Lara's prescription was actually Abe, a citizen of Arkansas, whose shift had begun one hour earlier. It appears that Frank's nameplate was mistakenly left on the counter. Under what theory, if any, might Pills, Inc. remove the case to federal court? What standards should the federal court apply in determining whether to permit such a removal?

3pts. 3.F. *[Multiple choice questions unavailable for viewing.]*

3pts. 3.G. *[Multiple choice questions unavailable for viewing.]*

#### Question Four (25 points)

6 pts. 4.A. Pam, a Louisiana (LA) citizen, attended a parade in her hometown in LA. She parked her recreational vehicle (RV) on a friend's property along the route and invited her family to join her. Deputy Dona, local deputy sheriff and also an LA citizen, demanded to see Pam's permit for her parking space. Pam tried to explain that a permit was not necessary to park on private property, but Deputy Don insisted a permit was required. He arrested Pam and ordered her RV towed to an impound lot. Deputy Don connected the RV to the tow truck in an incorrect manner, which caused the RV to disconnect from the truck and suffer extensive damage. Misty, a Mississippi citizen who was attending the parade, was asked by a friend what was going on. Misty said that it looked like a drug arrest. This caused rumors to fly that Pam had been arrested on drug charges. The parade permit charge was eventually dismissed.

Pam hired an attorney to file suit for her in federal court. The complaint set forth on behalf of Pam a claim against Deputy Don under 42 U.S.C. § 1983 for false arrest, which her attorney estimated had a value of \$50,000. The complaint also asserted a state-law tort claim against Deputy Don to recover \$80,000 in property damage he caused to the RV. Finally, the complaint named Misty as a defendant in a state-law defamation claim that sought recovery of \$50,000.

Does the federal court have subject-matter jurisdiction to hear (a) Pam's federal law claim against Deputy Don, (b) Pam's state law claim against Deputy Don, and (c) Pam's state law claim against Misty? Discuss.

- 3 pts. 4.B. Pam filed her lawsuit and became active in the community speaking out against police misconduct. She attended a community event and rallied the crowd to her cause. A deputy approached Pam as she spoke and arrested her for disturbing the peace. Pam filed a new suit in federal court under 42 U.S.C. § 1983 and requested an injunction of the state-court disturbing the peace proceedings on the grounds that they violated her First Amendment rights to freedom of speech and access to the courts. Should the federal court exercise jurisdiction over Pam's suit? Discuss.
- 3 pts. 4.C. Pam's neighbor, Bill, supported her in her campaign against police misconduct. Bill was leaving a public event when he was pulled over on a traffic stop by two officers. He alleges that the officers threw him to the ground, handcuffed him, and used a laser device on him for no reason. Bill filed suit against the officers in state court and alleged that they were liable in tort for committing a battery. The attorney for the officers removed the case to federal court based on an assertion of federal question jurisdiction. He pointed out that the petition alleged all of the necessary facts to support a claim of excessive force actionable under 42 U.S.C. § 1983. Was the removal proper? Discuss.
- 3 pts. 4.D. Alice and Ben, both Louisiana citizens, entered into a contract governing the development of minerals on a large tract of privately owned land. Alice told Ben that she believes certain events have triggered a provision of the contract that requires Ben to drill additional wells, which would cost several million dollars. Ben disagreed with Alice's interpretation of the contract, and he filed a complaint in federal court pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, for a ruling on how the contract should be interpreted. Does the federal court have jurisdiction to hear Ben's complaint? Discuss.
- 2 pts. 4.E. Jim was injured in a car accident and incurred \$15,000 in medical expenses, which his health insurer paid. Jim filed a \$100,000 tort suit in federal court, based on diversity jurisdiction, against the driver of the other car. Jim's health insurer believes that the terms of the policy give it a right to reimbursement from any proceeds of the suit. What procedural step should the health insurer take to properly assert its claim?
- 2 pts. 4.F. Amy filed an employment discrimination suit against Zed in federal court. Zed filed an answer, and Amy immediately served him with a set of 10 basic interrogatories. Does Zed have any available procedural objections to the interrogatories?
- 3 pts. 4.G. *[Multiple choice questions unavailable for viewing.]*
- 3 pts. 4.H. *[Multiple choice questions unavailable for viewing.]*

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

**Question I (25%)**

- 4% A. When a lawyer signs a pleading filed for a client, what does the lawyer certify personally, if anything?
- 3% B. You are conducting voir dire in a jury trial, and believe that a prospective juror will be biased against your client based upon the answers that the prospective juror has provided to your questions. Describe at least two options you can consider to prevent this prospective juror from being seated as a juror?
- 9% C. Plaintiff, a resident of Caddo Parish, entered a written construction contract with Building Corp., a Louisiana corporation whose registered office is located in Lafayette Parish, for the construction of a camp in Sabine Parish. Plaintiff signed the contract in Caddo Parish while Building Corp. signed the contract in Lafayette Parish. All work and services for the camp construction project were performed in Sabine Parish. The project was supervised by Building Corp.'s Vernon Parish office.
- After construction is completed, Plaintiff has a variety of complaints concerning Building Corp.'s deficient contract performance and would like to sue Building Corp. for breach of contract. Please identify all parishes in which venue for a breach of contract action against Building Corp. would be proper. For each parish identified, you must explain the basis for venue in order to receive credit.
- 4% D. Client comes to you seeking a divorce based upon Louisiana Civil Code Article 102, which allows married couples with no minor children to obtain a divorce after having lived separate and apart for 180 days. Please specifically explain all pleadings you must file on behalf of your client (including all specific components of those pleadings) to obtain the Article 102 divorce that she desires.
- 2% E. You have been appointed by the Court to represent a defendant in an interdiction action. What responsibilities, if any, do you have in conjunction with this appointment?
- 3% F. Please succinctly describe the requirements for a detailed descriptive list of succession property.

**Question II (25%)**

- 5% A. You are contacted by a client from Idaho asking for your help to enforce a judgment that client obtained from an Idaho court against a Louisiana resident who is domiciled in Tangipahoa Parish. Can a judgment from an Idaho court against a Louisiana resident be enforced in Louisiana and, if so, please explain (1) what action, if any, is needed and the requirements for that action, (2) where the action must be filed, and (3) what documents, if any, must be included with the action?
- 9% B. Senior partner hands you a set of interrogatories and production requests, together with a box of potentially responsive documents and asks you to review all of the materials and prepare responses to the interrogatories and production requests that have been propounded in a product liability lawsuit. You encounter the following questions:
- 3% I. Are you required to organize and label the responsive documents to correspond to the specific categories of the requests for production of documents?

- 3% 2. In reviewing the box of documents and discovery requests, you determine that the answers to the bulk of the interrogatories are set forth in the specific documents that are responsive to the requests for production of documents. Does your determination provide you with any additional option in responding to the interrogatories? Please explain.
- 3% 3. During the course of your review of the documents you discover numerous pre-lawsuit emails between non-lawyer upper level management employees of your client in which they discuss possible alternative designs for the product at issue. Are these pre-lawsuit emails by non-lawyer employees of your client subject to production? Please explain the basis for your answer.
- 8% C. Plaintiff sues Employer seeking damages for sexual harassment and battery she alleges were inflicted by her supervisor. Employer notifies its Insurer of the claim and Insurer denies both coverage and a defense to the Employer. Employer then asserts a third party demand against Insurer seeking both coverage and a defense from the Insurer to the underlying claim, which Insurer has answered. The case is scheduled for trial on December 13, 2012.
- 4% I. You represent Insurer and, after deposing the Plaintiff and her supervisor, you are confident that your insurance policy unambiguously excludes coverage for the Plaintiff's allegations and that no defense obligation is owed. What, if anything, can you file on behalf of Insurer to attempt to extract Insurer from the litigation prior to trial? Explain fully, including an explanation of the legal standard such filing must establish to obtain the relief sought.
- 4% 2. If such a filing is available, explain specifically what Insurer must file in support thereof to establish its right to the relief sought.
- 3% D. You are contacted by the heir of a wealthy resident of your city who died several months ago. The heir explains that he is in dire financial circumstances and is due to receive an inheritance of over \$200,000 from the wealthy resident's succession. Due to his dire financial circumstances, the heir asks you if there is any method by which he could receive a portion of his inheritance in advance of the completion of the succession. What, if anything, can be done to fulfill the heir's request? Please explain any requirements and procedures related thereto.

**Question III (25%)**

- 4% A. Mother and her 16 year old daughter visit you and ask what steps they need to take in order to have 16 year old daughter judicially emancipated. They report that 16 year old daughter's father was killed three years earlier in a kiln explosion. Please identify the proper court where such an action must be brought and succinctly explain the specific pleading requirements to achieve their objectives?
- 8% B. Plaintiff, who resides in Orleans Parish, sustained personal injury in an accident on June 7, 2011 in Jefferson Parish for which she was hospitalized for one week in Jefferson Parish. She files suit on June 1, 2012 in Orleans Parish against Corporation (a domestic corporation with its registered office located in Jefferson Parish), LLC (a domestic LLC with its registered office located in St. Bernard Parish) and Partnership (a domestic partnership which has its principal business establishment in De Soto Parish). You represent Partnership, which was served with Plaintiff's petition on June 5, 2012.
- 4% I. Your client would prefer not to litigate in Orleans Parish. What pleading, if any, can you file in an attempt to obtain the result sought by your client? Your answer must include a discussion of the basis for your filing and your likelihood of prevailing.

- 4% 2. Assume that your client was served on June 10, 2012. You thereafter determine that your client is the first defendant to be served. Would you recommend any different or additional filing on behalf of your client? If so, please explain what you would recommend and why you would recommend it.
- 5% C. Today Client brings you two default judgments that were obtained against Client and Client's wholly-owned corporation, ABC Corp. Client explains that the lawsuit in which the judgments were issued relates to a contract that ABC Corp. entered and was performing and that she had no personal connection or responsibility for the claims asserted in the lawsuit (apart from her ownership interest in the corporation).
- You review the relevant suit record and determine that service upon both the Client and her corporation (for which Client serves as the designated agent for service of process) were made via domiciliary service on Client's husband on January 5, 2012. On February 15, 2012, the plaintiff moved for and obtained a preliminary default against Client and Client's corporation. Thereafter, on February 21, 2012, a default judgment was rendered in open court. Client was personally served with those judgments on March 20, 2012.
- 2.5% I. Does Client have a legal basis for challenging the default judgments that were taken against Client and Client's wholly-owned corporation?
- 2.5% 2. If one or both judgments can be challenged, please state the specific procedural method (or methods) for contesting same.
- 3% D. You represent Plaintiff in an action for breach of a purchase agreement. In answer to Plaintiff's petition, Defendant denied Plaintiff's allegations and asserted the affirmative defenses of error and failure of consideration. During the course of trial, Defendant's counsel seeks to interrogate Plaintiff with a line of questioning that you believe is an attempt to accuse Plaintiff of fraudulent conduct. What, if anything, can you do to prevent that line of questioning? Your answer must explain your action and the basis for your action.
- 5% E. Client seeks your assistance regarding a Partnership Agreement he has entered into with a long-time acquaintance. Although his Partner has not yet breached the Partnership Agreement, Client believes that his Partner is about to violate the terms of the agreement. His Partner has justified his threatened actions by interpreting certain provisions of the Partnership Agreement in a manner that Client believes is fundamentally incorrect. Although the action threatened by Partner would cause Client only monetary harm, Client asks you if there is any legal action he can bring in advance of a contemplated breach of the agreement that might confirm that Partner's interpretation of the Agreement is incorrect.
- 2.5% I. What is the appropriate legal action, if any, that you would recommend, and what kind of relief can the Court provide in conjunction therewith?
- 2.5% 2. The Partnership at issue has a Third Partner who agrees with Client's interpretation of the Partnership Agreement but does not want to join in any action related thereto. In light of your answer to No. I above, what, if anything, must be done with respect to this Third Partner in order to make the ruling of the Court applicable to that partner? If something must be done, please explain why.

**Question IV (25%)**

- 7% A. Company has approached you to take over the defense of a tort lawsuit that has been pending for six months. Company, the sole defendant, is a Louisiana corporation with its registered office located in Orleans Parish. The accident forming the basis of the lawsuit occurred in Jefferson Parish and all fact and expert witnesses reside there except Plaintiff. The suit was filed in Plaquemines Parish and Company's answer was filed five months ago, asserting no exceptions. Upon reviewing the file, you determine that suit is pending in the wrong venue.
- 3% I. What steps, if any, can you take to contest the venue in which the suit is now pending? Explain.
- 4% 2. What steps, if any, can you take to change the venue in which the suit is now pending? Explain.
- 7% B. You represented Defendant in a two week long personal injury trial in which the jury rendered a verdict in favor of Plaintiff. You have properly perfected a suspensive appeal on behalf of Defendant, and posted the required bond.
- 2% I. After the trial court record is lodged with the appellate court, Plaintiff files a motion in the trial court to tax expert witness fees and other costs of trial to Defendant. Please explain whether the trial court may or may not hear that motion.
- 2% 2. Assume you now represent Plaintiff. You read in the Wall Street Journal that the surety used by Defendant for its suspensive appeal has filed for bankruptcy and you plan to file a motion to test the solvency of that surety. Do you file your motion with the appellate court or with the trial court? Please provide the reason for your decision.
- 3% 3. Assume you now represent Defendant. The court has heard Plaintiff's motion to test the solvency of the surety and has determined that your surety is insufficient. Is your suspensive appeal still valid? Please explain what, if anything, you may do to maintain your suspensive appeal, and any time limits associated therewith.
- 3% C. You are representing a defendant insurance company in an action brought against it by its insured. After three days of a jury 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?
- 2% D. *[Multiple choice questions unavailable for viewing.]*
- 2% E. *[Multiple choice questions unavailable for viewing.]*
- 2% F. *[Multiple choice questions unavailable for viewing.]*
- 2% G. *[Multiple choice questions unavailable for viewing.]*

**END OF EXAMINATION**

# LOUISIANA BAR EXAMINATION

## TORTS

JULY 2012

### **QUESTION NUMBER ONE: 35 POINTS TOTAL**

Pro Printing, LLC, (PP) is a family-owned printing business where customers and employees alike love the relaxed atmosphere. Many customers were personal friends of Owner O (O) and would often enter and/or walk through "employee only" areas to visit with O while he was working.

Employee Ed (Ed) was a printing press operator for PP. O hired him through a "back-to-work" job placement program that helps convicted felons find jobs after they have served their jail sentences. O was fully aware of Ed's felony conviction for assault and battery, as well as his mild to moderate mental disabilities, but O was a strong believer in rehabilitation and second chances. O hired Ed to work in the "employee-only" press room where he would have no customer contact and would be responsible for keeping the press room orderly and clean, and O closely supervised him and participated in regular visits with Ed's parole officer.

One day, O discovered that Ed had been stealing customer files and secretly scheming to start his own printing business. O planned on confronting Ed at the end of the day after all employees had gone home and there were no customers in the building. However, at approximately 10:00 a.m. on a busy workday, Ed started screaming, "My wife is cheating on me! My wife is leaving me!" O ran into the "employee-only" press room and found Ed sweeping the floors while still screaming and sobbing, but rather than attempt to diffuse the situation and send him home for the day, O chose to confront him about the stolen customer files.

Meanwhile, Customer Kay (Kay), a regular at PP, stopped by to pick up her printing job. No one was at the front desk to greet her, so she decided to look for O, as she had done many times before. Kay noticed and considered the "Employee Only" sign on the door to the press room, but decided to ignore it and proceeded to enter just as O had begun to confront Ed about the stolen files. By now, Ed had become so overtaken with emotion that when Kay walked in, he mistakenly believed her to be his wife and flew into a rage. He swung the shop broom he had been using at Kay in a hysterical frenzy, striking her about her head and face. She sustained severe injuries as a result.

Analyze the theory or theories of recovery Kay might bring against Pro Printing for the injuries inflicted by Ed (26 pts); discuss what defenses are available to Pro Printing (S pts); and explain how the court is likely to rule. (4 pts)

**[EXAMINATION CONTINUES ON NEXT PAGE]**

**QUESTION NUMBER TWO: 30 POINTS TOTAL**

**A.** Fanner Brown was well-known around his small town of Minden, Louisiana, for growing the best watermelons. He would often drive into town and sell them from the back of his truck. He anticipated selling lots of watermelons on the 4<sup>th</sup> of July, so he loaded his truck, drove into town, and found a nice, shady spot to park near the town's waterpark where lots of families were picnicking or otherwise enjoying the holiday. Fanner Brown stacked all of the watermelons in a very high pyramid-shaped pile on the tailgate of his truck so they could easily be seen from a distance. Soon, a group of customers ventured over to Fanner Brown's watermelon truck. While Fanner Brown was tending to a customer, ten-year old Georgie spotted the perfect melon near the bottom of the pile. She attempted to unwedge it, but the whole pile of watermelons became unstable and tumbled down on top of her, causing her to fall backwards. Georgie suffered a broken arm and other bumps and bruises as a result. Her parents have brought an action against Fanner Brown on her behalf under Louisiana's "slip and fall" statute.

1. Explain a merchant's duty under the statute and a claimant's burden of proof in claims of injury against a merchant. **(10 pts)**
2. Should Georgie prevail in this case? Why or why not? **(5 pts)**

**B:** Louis, a resident of New Orleans, was driving his vehicle to Biloxi for a night of revelry on the Gulf Coast. While driving through Pass Christian, Mississippi, Louis' automobile was rear-ended by Anna, a resident of Baton Rouge. Louis brought suit in a Louisiana state court against Anna for his personal injuries resulting from the car accident.

Which state's law should the court apply? Discuss. **(15 pts)**

**QUESTION NUMBER THREE: 15 POINTS TOTAL**

Barney is CEO of Miss Pageants, Inc., a corporation organized for the purpose of planning and conducting beauty pageants. Barney decided he wanted supermodel Cindy for mistress of ceremonies for the upcoming pageants. After meeting Cindy, Barney instantly fell in love with her. He decided to make a play for her and showered her with flowers and gifts over the course of several days. However, Cindy was not interested in Barney and repeatedly declined his advances. Barney was not discouraged. In yet another effort to win her heart, Barney snuck up from behind Cindy and said, "Guess who?" Cindy turned around to find Barney lunging toward her in an attempt to kiss her on the lips. Disgusted and frightened by Barney's sudden advance, Cindy jerked her head to the side to avoid the kiss and hit one of her famous cheekbones against nearby camera equipment which left a nasty bruise around both eyes, causing her to lose three lucrative modeling assignments.

- A.** Briefly explain whether Cindy has a claim for battery against Barney. **(5 pts)**
  - 8.** Briefly explain whether Cindy may be able to recover damages for her black eyes under a cause of action against Barney other than battery. **(5 pts)**
- C.** *[Multiple choice questions unavailable for viewing.]* **(5 pts)**

**QUESTION NUMBER 4: 20 POINTS TOTAL**

**Question A: (5 pts)**

Polly Patient (Polly) was scheduled to have thyroid surgery at General Hospital in New Orleans, Louisiana. She chose and consented to have the less invasive robot-aided procedure as opposed to the traditional method of surgery, because she was concerned about carrying. However, the surgeon assigned to her case, Dr. Drake was not properly trained or experienced in the robot-aided procedure. and as a result, made an unnecessarily long surgical cut on Polly's neck that will require significant plastic surgery to repair. Consequently, Polly wants to file a negligence action against Dr. Drake and General Hospital in Civil District Court for the Parish of Orleans, State of Louisiana, seeking damages for physical pain and mental anguish.

Assume both General Hospital and Dr. Drake are qualified health care providers under the Louisiana Medical Malpractice Act.

1. What action must Polly take before she can file her petition in district court? (3pts)
2. What is the purpose of this action? (2 pts)

**Question B: (5 pts)**

*(Multiple choice questions unavailable for viewing.)*

**Question C: (5 pts)**

Name at least three (3) factors that Louisiana courts have considered when allocating fault for the purpose of determining damages.

**Question D: (5pts)**

What is the purpose of punitive damages and are they generally available in Louisiana?

**[END OF EXAMINATION]**