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LOUISIANA STATE BAR EXAMINATION

JULY 2023

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**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
JULY 2023**

QUESTION 1 (40 POINTS)

Andrew, Bob, Claire, and Dan started a business together manufacturing and selling specialized computer keyboards for gamers. They signed the following agreement:

Partnership Agreement

1. We agree to form a partnership constituted without a term, and its name shall be The Keyboard Company (“TKC”).
2. Andrew will serve as the manager of the business.
3. Each of the partners will contribute \$10,000 to TKC.
4. The partners will share equally in the profits of the business.
5. Bob, Claire, and Dan will have no mandatory relationship with TKC and no authority to bind TKC in the performance of any contractual obligations.
6. Dan will not be involved in the daily operations of TKC, and he will not be liable to third persons for the obligations or liabilities incurred by TKC.

Andrew, Bob, Claire, and Dan each sent \$10,000 to TKC’s bank account. Andrew used the funds to purchase tools, equipment, and parts needed to build keyboards. He named the keyboards Blasterboards and offered them for sale at \$500 each.

Claire met with her friend Rusty, who owns an electronics store. Claire told Rusty about TKC and its Blasterboards. Rusty offered to purchase 20 Blasterboards if TKC would give him a volume discount. Without consulting with Andrew, Claire agreed to a 50% discount and signed the following agreement with Rusty: “TKC agrees to sell 20 Blasterboards to Rusty for \$5,000. The keyboards will be delivered to Rusty within 6 months, and payment is due at time of delivery.” Claire signed the agreement on behalf of TKC.

The following day, Claire told Andrew about the agreement she signed with Rusty. Andrew told Claire that she did not have authority to sign the agreement on behalf of TKC. Andrew instructed Claire to tell Rusty the agreement is off. But Claire was too embarrassed to tell Rusty anything.

A few days later, Claire visited her cousin Violet. Violet hosts a popular internet website known as “Gamer’s Guide,” which publishes reviews on gaming keyboards. Violet told Claire that she recently purchased a Blasterboard and that it was the best gaming keyboard she had ever used. Violet commented that TKC was going to make a fortune. Claire didn’t think so, and she offered to sell Violet her partnership interest in TKC for \$10,000. Violet accepted. Claire didn’t inform Andrew, Bob, or Dan about her sale of the partnership interest to Violet.

The following day, Violet published on the Gamer’s Guide website a glowing review of the Blasterboard, and orders for Blasterboards began flooding into TKC. To meet the sudden increased demand for Blasterboards, Andrew asked Bob, Claire, and Dan to each contribute \$50,000 to the partnership to fund the hiring of new employees to assist Andrew in manufacturing Blasterboards. Bob, Claire, and Dan declined to contribute funds to expand production. In response, Andrew notified Bob, Claire, and Dan that, effective immediately, he was resigning as manager and withdrawing from the partnership.

TEST CONTINUES ON NEXT PAGE

Earlier that same day, TKC's first customer, Michael, suffered severe burns to his face and hands when his Blasterboard caught fire and exploded. Michael brought a lawsuit against TKC for personal injury. The court awarded Michael a judgment against TKC for \$100,000. TKC has no cash or other assets and no insurance to pay the judgment.

Please answer the following four subquestions. The subquestions in Question 1 are not weighted equally. Explain each answer; an answer without explanation will receive no credit.

- 1.1 Is TKC bound to the agreement that Claire signed with Rusty? Explain. (5 points)**
- 1.2 Was Andrew's withdrawal from TKC effective? Explain. (5 points)**
- 1.3 For each of the following persons—Andrew, Bob, Claire, Dan, and Violet—determine whether he/she is liable for payment of any amount of the \$100,000 judgment awarded to Michael. Explain the basis for your conclusions on liability; and for each individual, state the dollar amount, if any, for which he/she is liable. (20 points)**
- 1.4 *Solely for purposes of this question 1.4, assume that (i) instead of executing the Partnership Agreement described above and forming a partnership, Andrew, Bob, Claire, and Dan validly formed a member-managed Louisiana limited liability company known as TKC LLC and (ii) Claire has assigned all of her rights in TKC LLC to Violet without informing the other members of TKC LLC that she had done so, and (iii) Michael has obtained a \$100,000 judgment against TKC LLC for his personal injuries.***
 - a. What right, if any, does Violet have to inspect TKC's business records? Explain. (5 points)**
 - b. As a member of TKC LLC, is Bob personally liable for any amount of the \$100,000 judgment the court awarded against TKC LLC? Explain. (5 points)**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
JULY 2023**

QUESTION 2 (40 POINTS)

The following eight subquestions are not related to each other. The subquestions in Question 2 are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

- 2.1 LDL Corp. is a validly-formed Louisiana corporation that owns and operates fast-food restaurants throughout the state. Tim, Stan, and Heather, who have no familial relationship to each other, are the sole shareholders of LDL Corp. Tim, Stan, and Heather are also the directors of LDL Corp.**

LDL’s directors convened a meeting to consider an offer received from LDL’s main competitor, Hot Wings, Inc., to sell several Hot Wings restaurants to LDL for \$10 million. Without obtaining an independent estimate of the value of the restaurants offered for sale, LDL’s directors unanimously voted to accept the offer. At the time of the vote, Tim was engaged to be married to Matilda. He knew that Matilda was Hot Wings, Inc.’s sole shareholder and that the restaurants offered for sale were worth no more than \$5 million. Tim did not disclose these facts to Stan and Heather prior to the vote by the directors. Neither the directors nor the shareholders took any further action to authorize or ratify the purchase.

Following the vote and LDL’s purchase of the Hot Wings restaurants, Stan saw a news story involving Hot Wings and began investigating. Stan discovered the worth of Hot Wings and that LDL had overpaid by \$5 million dollars for the stores that it had purchased from Hot Wings. Stan and Heather, on behalf of LDL, brought an action against Tim to recover the loss.

- a. Was the vote by the LDL directors a Director’s Conflicting Interest Transaction? Explain. (4 points)**
 - b. Can Tim be held personally liable for payment of monetary damages to LDL resulting from his vote to accept Hot Wings’ offer? Explain. (6 points)**
- 2.2 Kitchen Design, L.P. (“KD”) is a validly formed Louisiana partnership in commendam that offers residential kitchen design and construction services. KD’s written partnership agreement filed with the secretary of state identifies Ken as a general partner and Sue and Charles as partners in commendam. The partnership agreement also states that Sue and Charles each will contribute \$50,000 to the partnership. Sue made her contribution. Charles did not.**

Sue encouraged her best friend, Tina, to hire KD to design and build a kitchen for Tina’s new home. Sue met Tina at KD’s showroom several times to assist Tina in selecting appliances, cabinets, and countertops for her kitchen project and in taking Tina’s orders for her selections. Several months after KD completed work on the kitchen, Tina brought a lawsuit against KD alleging poor workmanship and breach of contract. Tina ultimately obtained a judgment for \$100,000 against KD. KD currently has no assets or cash to satisfy the judgment. KD also owes \$30,000 to Appliances, Inc. for payment of appliances KD purchased for various kitchen projects.

- a. Is Sue personally liable for any amount of either the judgment obtained by Tina or the debt owed to Appliances, Inc.? Explain. (4 points)**
- b. Is Charles personally liable for any amount of either the judgment obtained by Tina or the debt owed to Appliances, Inc.? Explain. (4 points)**

TEST CONTINUES ON NEXT PAGE

- 2.3 In a manager-managed limited liability company, what fiduciary duties, if any, are owed to the LLC by a member who is not a manager? Explain. (3 points)**
- 2.4 Under what circumstances, if any, may a partner be expelled from a partnership that is constituted for a term? Explain. (3 points)**
- 2.5 May a corporation unilaterally compel a shareholder to sell its shares to the corporation? Explain. (2 points)**
- 2.6 What is the statutory remedy provided for “shareholder oppression” under Louisiana law, and what conduct may constitute oppression? Explain. (5 points)**
- 2.7 What is a “unanimous governance agreement” (UGA) under Louisiana law; how is a UGA formed; and are there any limitations on what a UGA can do? Explain. (4 points)**
- 2.8 Sharon owns 10% of the outstanding common shares of a Louisiana corporation. She has owned the shares for more than a year. She wants to inspect the records of how a particular director voted at meetings of the corporation’s board of directors during the past year. Does Sharon have a right to inspect such records, and, if so, what, if any, requirement(s) must she satisfy in order to be permitted to inspect such records? Explain. (5 points)**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
JULY 2023**

QUESTION 3 (20 POINTS)

Each of the following multiple choice items counts for 2 points. Select the letter that corresponds to the correct answer.

- 3.1 Limited liability company; expulsion of member
- 3.2 Corporations; mergers
- 3.3 Agency; form of mandate
- 3.4 Corporations; authority under unanimous governance agreements
- 3.5 Corporations; quorum
- 3.6 Partnerships; liability of partners to third persons
- 3.7 Limited liability company; persons authorized to bind
- 3.8 Agency; express and apparent authority
- 3.9 Partnerships; formation
- 3.10 Partnerships; contribution

[End of Question 3]

END OF BUSINESS ENTITIES TEST

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE I
JULY 2023**

QUESTION 1 (40 POINTS)

After dating for several years, Alison and Billy decided to take a break from dating. In December 2016, during this break, Alison had sexual relations with her old boyfriend Chris, which led to her becoming pregnant with Chris's child. Almost immediately after having sex with Chris, Alison realized that she wanted to be with Billy, and they started dating again. Alison never told Billy about her relationship with Chris during the breakup.

In January 2017, one week after Alison and Billy got back together, on a night when Billy was heavily drinking, Alison and Billy decided to get married on the spur of the moment. They visited a friend who was a validly licensed minister, who performed the marriage ceremony with a few friends serving as witnesses. When he woke up the next day, Billy did not remember getting married even after Alison and their friends told him about it. Nonetheless, he was still happy with the decision, and Alison and Billy began living together as husband and wife.

Soon after the wedding ceremony, Billy presented Alison with two proposed agreements: one that provided that, in the event of a divorce, each spouse fully and irrevocably waived any and all rights to both interim and final periodic support; and one that provided that each spouse opted out of the community property regime. Billy and Alison then signed both agreements before a notary and two witnesses.

In September 2017, approximately eight months after the wedding ceremony, Alison gave birth to a son, Sam. She had still not told Billy about her relationship with Chris, and Billy raised Sam as his own child. However, Alison secretly conducted a paternity test using Billy's hair sample without his knowledge; the test confirmed that Billy was not Sam's father.

In 2018, Alison inherited \$100,000 from her aunt. Because Billy was unemployed at the time, she put this inheritance into a joint banking account with Billy. This account held all of their funds, including her paychecks, his unemployment checks, and then his paychecks when he later found a new job. They used the funds in this bank account for their general living expenses.

In 2019, Alison and Billy had a daughter, Darla. Billy is Darla's biological father.

In September 2022, five years after Sam was born, Billy was looking through paperwork on Alison's desk, where he found the paternity test results. Billy confronted Alison about it, and she confessed that she had had sex with Chris right before the marriage ceremony and that Sam was Chris's child.

Billy was upset and distraught by this news, but nonetheless stayed in the family home. One night in March 2023, he went out drinking and met Gretchen at a bar. Thinking that Alison was staying over with Sam and Darla at her mother's house, Billy brought Gretchen home. When Alison returned home unexpectedly, she saw Billy and Gretchen engaged in sexual relations.

Alison and Billy spent the next three weeks discussing their relationship and engaged in sexual relations on a couple of occasions. After those three weeks, Alison and Billy both decided that they could not remain married with such significant trust issues. In April 2023, Billy moved out of the house. He and Alison have been living separate and apart since then. As of today, there is \$50,000 in their joint checking account.

Please answer the following seven subquestions. The subquestions in Question 1 are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

1.1 Are Alison and Billy legally married? Explain. (5 points)

TEST CONTINUES ON NEXT PAGE

Assume for Questions 1.2-1.7 that Alison and Billy are legally married.

- 1.2** What are each spouse's options for divorce? What potential time delays, benefits and complications are associated with each option? Explain. (10 points)
- 1.3** Did Billy and Alison validly waive their right to interim and/or final spousal support through the agreements? Explain. (5 points)
- 1.4** *Assume solely for this Question 1.4* that neither Alison nor Billy signed any agreement relating to interim or final spousal support. If Billy seeks both types of support from Alison, is there any other basis for Alison to challenge an award of interim and/or final spousal support in favor of Billy other than lack of need? Explain. (4 points)
- 1.5** Have Alison and Billy validly opted out of Louisiana's community property regime? Explain. (5 points)
- 1.6** *Assume solely for this Question 1.6* that Alison and Billy did not opt out of the community property regime. Is any portion of the \$50,000 in the joint checking account Alison's separate property? Explain. (8 points)
- 1.7** *Assume solely for this Question 1.7* that earlier today (in July 2023) Billy filed an action to disavow paternity of Sam. Is that action timely? Explain. (3 points)

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE I
JULY 2023**

QUESTION 2 (40 POINTS)

By a valid act of sale 40 years ago, Alex acquired 40 acres of land in a square shape as his separate property. Alex's property was bounded by a non-navigable river to the north, a paved public highway road to the south, his neighbor Wendy to the west and his neighbor Eve to the east. In the middle of Alex's property, there was a paved road that ran from the public highway to the river; Alex used this paved road to access his property.

Five years after Alex acquired the property, he sold the 10-acre northeastern square portion of the property abutting the river and Eve's property to his friend Peter. A week later, Peter put up a fence around his portion of the property. Although this fence was placed along the boundary between Peter's 10 acres and Alex's remaining 30 acres, Peter inadvertently placed the eastern portion of the fence on Eve's property so that the ten feet of the westernmost portion of Eve's property that abutted Peter's property was enclosed within Peter's fence. Peter used the paved road (which was immediately west of his fence separating his and Alex's property) to access his property from the public highway. Peter never discussed this with Alex, although Alex knew that he was using the paved road.

Ten years after Alex acquired the property, he also leased one acre on the northwesternmost side of the property to his fishing buddy Fred for \$1,000 per year pursuant to a written lease, which expressly allowed Fred to build a fishing camp on the leased property and to use an old dirt road that ran from this leased property southerly to the public road and also expressly provided that the lease was freely assignable. On the leased property, Fred built a fishing camp on a concrete slab, with four walls, a roof, as well as plumbing and electricity (which were connected with Alex's permission).

Although the lease agreement allowed Fred to use this old dirt road, Fred wanted to have access to the paved road since it would place less wear and tear on his boat. The paved road was connected to the fishing camp by a gravel road that led west along the river. Through a duly acknowledged written agreement, Alex granted the right to access and use the paved and gravel roads for fifty (50) years "for the benefit of my friend and fishing buddy Fred for smoother access to the fishing camp." Both this access agreement and the lease agreement were properly recorded in the parish conveyance records promptly after they were signed, and Fred continually used the paved and gravel roads to access his fishing camp up to his death 15 years ago.

About 20 years ago, Peter sold his property to Donna "together with all rights of prescription, whether acquisitive or liberative, to which said vendor may be entitled," but it did not specifically reference the 10-foot strip of land enclosed by Peter's fence. Donna has remained the owner of this property ever since and also used the paved roadway. Recently, Alex and Donna had an argument after which Alex told her that she could no longer use the paved road to access her property.

As noted above, Fred died about 15 years ago. In his last will, he validly left everything in his estate (including all his rights and interests in the fishing camp, the lease and the access agreement) to his granddaughter Jenny. Although Jenny continued to pay the \$1,000 rent per year for the fishing camp lease in order to store her grandfather's belongings, she did not like to fish and did not like the outdoors in general. Thus, since Fred died, neither she nor anyone else has visited the fishing camp or the leased property, except for an initial visit upon Fred's death. Her only other use of the paved road since Fred's death was once to turn around on the public highway about 7 years ago when she got lost in the area (although she did not visit the fishing camp at that time).

When Jenny showed up at the property to remove her grandfather's belongings from the fishing camp last month, Alex told her that she could not use the paved and gravel roads to access the fishing camp and instead should use the old dirt road to access the fishing camp.

TEST CONTINUES ON NEXT PAGE

Please answer the following five subquestions. The subquestions in Question 2 are each worth eight (8) points. Explain each answer; an answer without an explanation will receive no credit.

- 2.1 Does Donna now own the ten (10) foot strip immediately to the west of the fence constructed by Peter? Explain. (8 points)**
- 2.2 Does Donna have the right to continue to use the paved road to access the public road? Explain fully how and whether Donna would be required to compensate Alex for her to use the paved road. (8 points)**
- 2.3 What is the nature, classification and ownership of the fishing camp? Explain. (8 points)**
- 2.4 What kind of servitude regarding the paved and gravel roads was granted to Fred? Explain. (8 points)**
- 2.5 What rights, if any, does Jenny currently have in the paved and gravel road servitude? Explain. (8 points)**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE I
JULY 2023**

QUESTION 3 (20 POINTS)

Each of the following multiple choice items counts for 2 points. Select the letter that corresponds to the correct answer.

- 3.1 Co-ownership
- 3.2 Building restrictions
- 3.3 Interdiction
- 3.4 Community property
- 3.5 Rights against a good faith possessor of land
- 3.6 Dividends of stock subject to usufruct
- 3.7 Parental authority
- 3.8 Child custody; burdens of proof
- 3.9 Usufructuary entitled to set-off for payments made for ordinary repairs
- 3.10 Management and disposition of community property

[End of Question 3]

END OF CIVIL CODE I TEST

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE II
JULY 2023**

QUESTION 1 (40 POINTS)

Mike married Nancy in 1995 in New Orleans. Mike and Nancy had two children: Owen, who is 28 years old, and Perry, who died last year when he was 22 years old. Owen has one daughter, Rosemary. Perry left behind one son, Saul; one daughter, Tina; and their mother who is also Perry's girlfriend, Quinn. At Mike and Nancy's 10th wedding anniversary party, Mike's mother handed them a lottery ticket, which turned out to be a winning ticket for which Mike and Nancy received over \$10 million. They kept these winnings in a joint account separate from anything else. Mike and Nancy lived in a home in Lafayette Parish that Mike inherited as his separate property from his grandfather (the "Family Home").

Mike died intestate last month at the age of 52. He is survived by Nancy, Owen, Quinn, Rosemary, Saul, Tina and Mike's sister Laura. Nancy waited until the next day to tell any of the family members that Mike had died.

At the time of Mike's death, Mike and Nancy had the following property as part of their community property: a 2017 Lexus sedan, a 2018 Ford sedan, a condominium in New Orleans (the "Condo") and the remaining proceeds in their account from their lottery winnings.

At the time of his death, Mike owned as his separate property not only the Family Home but also a Peugeot station wagon that Mike bought in high school and a 1/250th royalty interest in oil-producing property located in Vermilion Parish (the "Oil Tract"). For years, Mike's royalty interest in the Oil Tract has steadily produced around \$3,000 each month.

Mike had no debts at the time of his death, and no one entitled to any portion of Mike's estate renounced any interest in his estate.

Please answer the following seven subquestions. The subquestions in Question 1 are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

- 1.1 Upon Mike's death, who owned interests in the Family Home; and in what proportions? Explain. (10 points)**
- 1.2 Upon Mike's death, who owned an interest in each of the three vehicles (the Lexus, Ford and Peugeot); and in what proportions? Explain. (10 points)**
- 1.3 *Assume for this question 1.3 only that on Owen's birthday just weeks before Mike's death, Mike and Nancy handed to Owen an envelope containing the keys to the Condo and a signed note stating "Happy Birthday. The Condo is yours."* Upon Mike's death, who owned the Condo, and in what proportions? Explain. (4 points)**
- 1.4 *Assume for this question 1.4 only that on Owen's birthday just weeks before Mike's death, Mike and Nancy validly donated the Condo to Owen and that, on the day Mike died, Owen mailed to Mike and Nancy a card thanking them for the Condo and stating that he did not need and would not accept anything else from them ever again. At Mike's funeral the following week, Owen told his mother: "What I said in that card last week still stands."* Is Owen's renunciation valid? Explain. (6 points)**
- 1.5 Was the donation of the lottery ticket to Mike and Nancy valid? Explain. (3 points)**
- 1.6 Who is entitled to the royalty proceeds paid on production from the Oil Tract after Mike's death; and in what proportions? Explain. (3 points)**
- 1.7 *Assume solely for Question 1.7 that Owen validly renounced whatever interest he had in Mike's estate. Who succeeds to the interest that would have gone to Owen but for his valid renunciation; and in what proportion(s)? Explain. (4 points)***

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE II
JULY 2023**

QUESTION 2 (40 POINTS)

David died last week. He was originally from North Carolina, but met and married his wife, Hope, in Iberia Parish, Louisiana. The couple resided in Iberia Parish until David's death. David was survived by Hope, their daughter Sally (40 years old), their daughter Elizabeth (38 years old), their son Ike (35 years old), David's nephew Koel (20 years old), and two grandchildren, Elizabeth's son Taylor (4 years old, permanently incapacitated due to Down syndrome) and Ike's daughter Charlotte (1 year old); David was also survived by his friend Abe. Koel is the only child of David's brother Jesse, who died in 2015.

On June 15, 2008, David executed a testament, the dispositive provisions of which read as follows in the following order:

1. I appoint Ike the independent executor of my last will and testament. If Ike cannot so serve, I appoint Ike's wife as independent executrix.
2. I leave to my wife Hope all of my interest in the family home I inherited from my father (the "Family Home").
3. I leave my 2005 F-250 truck (the "Truck") to Ike.
4. I leave my pipeline business to Ike and my brother, Jesse.
5. I leave Elizabeth all of my great-grandmother's good china; this is family property, and Elizabeth is to take good care of it and leave it to Ike when she dies.
6. I leave my 2005 F-250 truck (the "Truck") to my friend Abe.
7. Sally never let me stay at her house, so she is out.
8. I leave \$10,000 to the charity of my executor's choice.
9. I leave the residue of my estate equally to Elizabeth and Ike, or the survivor between them.
10. I direct that anything bequeathed herein to Elizabeth be placed in trust with Hope as trustee, for the benefit of Elizabeth. This trust shall be known as the "Elizabeth Trust." Elizabeth shall be the income beneficiary of this trust and shall be entitled to whatever trust income the trustee feels is needed. The trust shall exist for Elizabeth's lifetime, and at her death, its assets shall go to Ike.

This testament was in writing and executed before an attorney during a business trip to Tennessee. Even though it was not executed in the presence of a notary and two witnesses, the testament was in valid form in conformance with the laws of Tennessee. David never executed any further testaments or codicils.

David and Hope divorced in January 2020; they still loved each other, they just could not live together, so neither changed any estate planning documents. In June 2020, Elizabeth was in an accident that left her incurably quadriplegic. Everyone else survived David and was healthy unless otherwise indicated.

Please answer the following ten subquestions. The subquestions in Question 2 are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

2.1 Is David's will valid in Louisiana? Explain. (2 points)

TEST CONTINUES ON NEXT PAGE

- 2.2 As executor, Ike chooses to give the \$10,000 bequest to charity to the ASPCA, an organization David vehemently opposed because he disagreed with its policies. Is the bequest valid? Explain. (3 points)
- 2.3 Is the bequest of the Family Home to Hope a valid legacy? Explain. (3 points)
- 2.4 Who inherits the Truck? Explain. (4 points)
- 2.5 Is the bequest of the china a valid legacy? Explain. (4 points)
- 2.6 Who inherits the pipeline business? Explain. (4 points)
- 2.7 *Assume solely for this Question 2.7* that, when Ike finished school, David gave him a note which read “As your dad, I am so proud of you for graduating today; when I die you can have my Rolex watch as your present.” and that the note was written by Hope, but David signed it. Has the note conferred ownership of the Rolex watch to Ike upon David’s death? Explain. (3 points)
- 2.8 Can the trust mentioned in paragraph 10 of David’s testament validly hold Elizabeth’s legacy? Does the trust satisfy any requirements applicable to rights Elizabeth may have in David’s estate? Explain. (8 points)
- 2.9 *Assume solely for this question 2.9* that Elizabeth did not survive the accident and died in June 2020. Does Taylor inherit anything from David? Explain. (5 points)
- 2.10 Sally was upset about her father’s will because she expected to receive some part of his estate when he died. Sally thinks David must not have been thinking clearly when he executed his will. What must Sally prove to challenge David’s will on the grounds of lack of testamentary capacity, and what is the burden of proof? Explain. (4 points)

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE II
JULY 2023**

QUESTION 3 (20 POINTS)

Each of the following multiple choice items counts for 2 points. Select the letter that corresponds to the correct answer.

- 3.1 Donation by ascendant
- 3.2 Dispensation from collation
- 3.3 Effect of child born after execution of testament
- 3.4 Trustee qualifications
- 3.5 Repeated legacy; intent
- 3.6 Olographic testament
- 3.7 Ingratitude
- 3.8 Joint legacy
- 3.9 Legatee/fiduciary as witness
- 3.10 Multiple testators

[End of Question 3]

END OF CIVIL CODE II TEST

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
JULY 2023**

QUESTION 1 (40 POINTS)

Lou owns a commercial property (the “Property”) in Jefferson Parish. On February 1, 2013, Lou signed a fifteen-year written lease with Tim for the Property. The lease agreement has a full, valid description of the Property, specifies a fixed rent to be paid each month and contains an option to purchase in favor of Tim. The option grants Tim the right to purchase the Property at any time during the lease term for a purchase price of \$200,000. The lease also states that Tim is not liable for the maintenance of the Property.

The next month, Lou approached Dan to ask if Dan would lend Lou funds for maintenance and repairs of the Property. When Dan agreed, Lou prepared an Act of Mortgage in favor of Dan. Lou did not yet know the amount of the loan he would need, so he drafted the granting clause in the mortgage to read as follows: “In order to secure my present and future indebtedness to Dan, up to a maximum secured limit of \$50,000,000, including all principal, interest, fees, costs and other amounts that I may owe to Dan, I hereby grant Dan a mortgage on all of my present and future interest in the immovable property in Jefferson Parish, Louisiana described below.” The Act of Mortgage contains a full and correct legal description of the Property. On March 11, 2013, Lou signed the Act of Mortgage but neglected to have it signed by witnesses or a notary public. The Act of Mortgage was also not signed by Dan. After signing it, Lou recorded the Act of Mortgage in the mortgage records of Jefferson Parish on March 13, 2013. At the time the Act of Mortgage was executed and recorded, Dan had not yet lent any money to Lou.

In early 2015, Tim complained to Lou that the roof of the building on the Property usually leaked in rain storms. On May 12, 2015, Lou obtained a loan from Dan evidenced by a promissory note signed by Lou, in favor of Dan, dated May 12, 2015, in the amount of \$20,000 payable in monthly installments commencing on June 12, 2015, and continuing thereafter to be due on the twelfth day of each month over a term of ten years with a maturity date of May 12, 2025. The note contains an acceleration clause giving Dan the right to accelerate the maturity of the note if any payment is not made when due. The note does not reference the Act of Mortgage Lou had granted to Dan. Lou received the money from Dan and decided that the roof could wait a while to be repaired and used most of the funds borrowed for a month-long vacation out of the country. Even though he is not a licensed roofer and has no construction skills, Lou repaired the roof himself in late 2015 and then, after it had further leaks, again in early January 2023.

Dan forgot about the loan until he was cleaning his office in January 2023, when he found the note for \$20,000 signed by Lou. Dan then remembered that he had not received any payments on the note. As the note was in default, Dan made demand on February 1, 2023, for Lou to bring the note current. When no payments were made by Lou, Dan accelerated the maturity of the note and demanded payment of the full balance on February 10, 2023.

In early March 2023, Tim hand-delivered to Lou a letter signed by Tim advising Lou that Tim was electing to exercise his option to purchase the Property as provided for in their lease agreement. At that same time, Tim asked Lou about the condition of the roof, and Lou stated it had been repaired in January 2023. Lou agreed to the sale and prepared a Cash Sale, which they both signed on March 10, 2023, and which provided that the sale of the Property was “effective immediately, on an ‘as-is, where-is basis’, with no warranties as to the condition of the Property, and that Tim’s right to sue for return or reduction of the purchase price is waived.” Tim signed the Cash Sale, placed his initials by each waiver contained in the Cash Sale and paid Lou \$200,000.

One month after the sale of the Property, Tim found the roof leaking and wanted to rescind the sale. Tim went to an attorney for advice, and the attorney ran a title search and found the Act of Mortgage in favor of Dan in the mortgage records of Jefferson Parish recorded on March 13, 2013. The attorney also found a money judgment rendered against Lou by the Twenty-Fourth Judicial District Court, Parish of Jefferson on April 1, 2013 in favor of Fast Loans, Inc. and recorded in the mortgage records of Jefferson Parish on August 1, 2013. Since recording the judgment, Fast Loans, Inc. has taken no other action to enforce or preserve its judgment.

TEST CONTINUES ON NEXT PAGE

Please answer the following seven subquestions. The subquestions in Question 1 are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

1.1 Was the Act of Mortgage executed by Lou in favor of Dan valid at the time of its execution in March 2013? Explain. (5 points)

Assume for Questions 1.2-1.7 that the Act of Mortgage was valid at the time of its execution.

1.2 At the time the note was signed on May 12, 2015, did the Act of Mortgage secure the promissory note? Explain. (5 points)

1.3 Had any portion of the note prescribed as of the date the maturity of the note was accelerated (February 10, 2023); and if so, why, and what portion and when? Explain. (5 points)

1.4 Was the mortgage granted by Lou in favor of Dan on the Property still effective against third persons as of the date of the sale of the Property to Tim (March 10, 2023); and is it effective against third persons as of the date of this examination (in July 2023)? Explain. (5 points)

1.5 As of the date of this exam (in July 2023), does Fast Loan, Inc. have an enforceable judicial mortgage on the Property? Explain what steps it should have taken in the past, or should take in the future, to ensure that its judicial mortgage remains enforceable. (5 points)

1.6 Did the lease from Lou to Tim grant a valid option to purchase the Property; and if so, was the option still valid in March 2023? Explain. (5 points)

1.7 What claims might Tim reasonably assert against Lou for the rescission of the sale of the Property, when must Tim assert those claims, and what damages may Tim properly demand against a good faith or bad faith seller? What potential defenses are available for Lou? Explain. (10 points)

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
JULY 2023**

QUESTION 2 (40 POINTS)

Please answer the following seven subquestions. The subquestions in Question 2 are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

PART A (24 Points)

Steve owned three, adjacent one-acre tracts of unimproved land, known as Lot 1, Lot 2 and Lot 3. Steve was approached by Tom to purchase Lot 1. Steve agreed and sold Lot 1 to Tom for a cash price of \$5,000 pursuant to a written Act of Sale on March 1, 2022. The day after the Act of Sale was signed by Steve and Tom, it was recorded in the conveyance records. In December 2022, Steve sold Lot 2 to Kim. Steve thought the value of the land had increased since the sale of Lot 1 and demanded that Kim pay \$10,000. As Steve thought the property might increase in value in the future, he added a provision to the Act of Sale providing that Kim may not sell Lot 2 without first offering it to Steve for \$10,000, or if less, the price that a third person would be willing to pay.

On January 20, 2023, Steve and Eric signed a purchase agreement under which Steve agreed to sell Lot 3 to Eric for \$10,000, to be paid in cash at closing, which was to occur 90 days after the purchase agreement was signed. At the time the purchase agreement was signed, Eric delivered to Steve a cash payment in the amount of \$1,000, which the purchase agreement stipulated to be earnest money.

On April 3, 2023, a subdivision developer announced plans to build a high-end subdivision on land adjoining Lots 1, 2, and 3. These plans immediately caused the value of all surrounding acreage to rise to approximately \$10,000 per acre as they might be able to be placed in the subdivision. Prior to the announcement of those plans, no land in the area had ever sold for more than \$10,000 per acre, and \$5,000 per acre seemed to be the “going price” for unimproved land in the area during the last five years. Neither Steve nor Tom nor Kim nor Eric knew about the plans of the subdivision before this announcement.

In view of the developer’s plans and a possible rise in property values, Steve notified Tom on April 10, 2023, that Tom’s purchase of Lot 1 is “void” because the price Tom paid for Lot 1 was “unconscionably low.” Steve also notified Kim that he (Steve) was exercising his option to repurchase Lot 2 and demanded that Kim sell Lot 2 back to him at the \$10,000 price for which Kim had purchased Lot 2. Kim advised Steve that she would not sell Lot 2 to him as she was keeping it and wanted to build her own house on it. Steve also notified Eric that he (Steve) does not wish to proceed with the sale of Lot 3 to Eric.

- 2.1 What action might Steve reasonably file to seek rescission of the sale of Lot 1 to Tom? If that action is filed as of the date of this examination (in July 2023), is it timely? (3 points) Assuming that the action is timely, is Steve likely to prevail? Explain. (3 points)**
- 2.2 What defense does Kim have to Steve’s action for exercising his right to buy back Lot 2? Explain. (6 points)**
- 2.3 If Eric sues Steve for specific performance under the purchase agreement to force the sale of Lot 3 and for damages, is Eric likely to succeed? Explain. (6 points)**
- 2.4 Does either Steve or Eric have the right to recede from the purchase agreement of Lot 3? For each party, explain why or why not and what amount, if any, such party must pay to recede. (6 points)**

TEST CONTINUES ON NEXT PAGE

PART B (16 Points)

Amahl owns a 1969 Corvette that he was storing and no longer wanted, so he placed an advertisement for the sale of the vehicle with the price at \$9,000. Bob, who is 18 years old, saw the advertisement and contacted Amahl to meet and view the vehicle. Bob met Amahl at the garage where the vehicle was stored. Bob viewed the vehicle, got in the vehicle, and started it. Bob wanted the car, so he offered to buy it for \$8,000 as that was all he had saved. Amahl refused and said \$9,000 was the price. Bob then agreed to the \$9,000 price thinking to himself that he would have his father lend him the extra \$1,000. Amahl and Bob orally agreed to the sale of the vehicle for \$9,000. Bob said he would return the next day with the cash. Bob returned the next day with his father and showed Amahl the \$8,000 cash he had brought. Amahl stated he must receive the full \$9,000 cash so Bob's father told Amahl that he guaranteed he would see that Amahl was paid the remaining \$1,000. Without paying anything to Amahl, Bob then got into the car, started it, put it in reverse and accidentally ran into the back wall of the garage. Bob then said he did not want to purchase the vehicle. Bob and his father refused to pay Amahl the purchase price. Amahl filed a lawsuit against Bob and Bob's father to enforce the sale.

- 2.5 Was there a valid sale between Amahl and Bob for the Corvette? If so, when did it occur? Explain. (6 points)**
- 2.6 When, if ever, did ownership transfer from Amahl to Bob? Explain. (5 points)**
- 2.7 Under what theory or theories of law, if any, might Amahl sue Bob's father for the \$1,000 he agreed to pay Amahl? Explain. (5 points)**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE III
JULY 2023**

QUESTION 3 (20 POINTS)

Each of the following multiple choice items counts for 2 points. Select the letter that corresponds to the correct answer.

- 3.1 Effect of expropriation on rights and obligations under a lease
- 3.2 Mortgages; place of recordation
- 3.3 Conflicts of laws
- 3.4 Warranty of title
- 3.5 Rights of surety against principal obligor
- 3.6 Lesion
- 3.7 Offer and acceptance
- 3.8 Liberative prescription on open account
- 3.9 Mortgage records; transfers, amendments and releases
- 3.10 Reconduction of a lease

[End of Question 3]

END OF CIVIL CODE III TEST

**LOUISIANA STATE BAR EXAMINATION
CONSTITUTIONAL LAW
JULY 2023**

QUESTION 1 (40 POINTS)

Carla Grant was a school security officer and crossing guard at Littleton Public Elementary School in Littleton, Louisiana. When directing traffic every morning, Ms. Grant noticed that several of the children who biked to school were not wearing helmets. Ms. Grant decided to send an editorial to the Littleton Ledger newspaper with the following message, which was published in April 2023.

Parents of Littleton, I am doing my best to keep your children safe on the way to school. But if you don't even make sure they wear a bicycle helmet, why should I bother stopping cars? The Lord has entrusted these children to you, and we must protect our little miracles. From now on, I refuse to act as a crossing guard for any child on a bicycle not wearing a helmet! I'll pray that the parents of Littleton get the message and that all children wear helmets when bicycling to school.

Carla Grant,

Littleton Elementary

While serving as a crossing guard on the morning her editorial was published in the newspaper, Ms. Grant also handed out to passing parents flyers with this same message.

The Littleton School Board members were very upset to see this message in the newspaper and the flyers. Although the School Board agreed that children should wear bicycle helmets, all school board members also agreed that Ms. Grant should act as a crossing guard for all children regardless of whether they wore helmets or not. The School Board terminated Ms. Grant's contract as a security officer and crossing guard, effective immediately. Ms. Grant thought the School Board was unfair to terminate her for expressing her opinion on an important issue and suspected that the real reason for her termination was her open display of her faith in stating that she would pray for the parents of Littleton.

The Littleton City Council also was outraged that a school security officer would refuse to protect a child. At its May 2023 meeting, the City Council passed a new ordinance that made it unlawful and a criminal misdemeanor, punishable by a fine of \$1,000, for any public school security officer to knowingly fail to protect or threaten to fail to protect a child. At the next City Council meeting in June 2023, the City Council unanimously passed a resolution that Ms. Grant be fined \$1,000 for violating this ordinance based on her admission that she would refuse to protect children who were not wearing bicycle helmets.

Please answer the following three subquestions. The subquestions in Question 1 are not weighted equally. Explain your answers; answers without explanation will receive no credit.

- 1.1 Does Ms. Grant have a basis to challenge her termination under the Free Speech Clause in the First Amendment of the U.S. Constitution, and is she likely to succeed? Explain. (20 points)**
- 1.2 Does Ms. Grant have a basis to challenge her termination under the Free Exercise Clause in the First Amendment of the U.S. Constitution, and is she likely to succeed? Explain. (10 points)**
- 1.3 Does Ms. Grant have a basis to challenge the City Council's resolution fining her \$1,000 under the Ex Post Facto clause in Article 1 of the U.S. Constitution, and is she likely to succeed? Explain. (10 points)**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CONSTITUTIONAL LAW
JULY 2023**

QUESTION 2 (40 POINTS)

A recent trend on social media has people across the country releasing live butterflies with the opening of their wedding, baby shower, and birthday party invitations. The most popular species of butterfly for such a release is the Painted Lady. There is no federal permit requirement for shipping Painted Lady butterflies interstate within the continental United States.

Professor Paul Peterson, who teaches and conducts research at a prominent Louisiana university, presented evidence to the Louisiana legislature that the sudden increase in Painted Lady butterflies in Louisiana was damaging Louisiana's largest crop, the soybean crop. Soybean production in Louisiana generates over one billion dollars each year, and the crops already had been badly damaged in recent years from torrential rain. Citing the need to protect the soybean crop, the Louisiana legislature took immediate action to pass a law prohibiting the importation of all live butterflies into Louisiana without a state-issued permit establishing that such importation is necessary for research or educational purposes.

Christopher owns a company in Baton Rouge, Louisiana that supplies wedding invitations. Christopher's butterfly invitation option releases Cabbage White butterflies, which he imports from Utah. Unlike Painted Lady butterflies, Cabbage White butterflies do not damage soybeans, and Christopher stands to lose about \$10,000 a year from the new law if he is prohibited from importing the Cabbage White butterflies. Christopher thinks the law is unfair because it prohibits importing all kinds of butterflies from other states.

When the law went into effect, one of Professor Paul Peterson's graduate students, Greta, applied for and was granted a permit to import butterflies for research purposes under the new law. At the end of one winter season, after she completed one phase of her research of Painted Lady butterfly cold tolerance, she sold the remaining live butterflies to party planners in New Orleans—who paid a premium because they were so hard to get. Professor Peterson found out about the resale and reported Greta to the State permitting authorities. Her permit was promptly and permanently revoked without any opportunity for her to challenge the revocation. Because she believes her research is important to stopping the further spread of Painted Lady butterflies, Greta wants to challenge her permit revocation; she emphasizes that she sold the butterflies only in New Orleans—far from any soybean crops that could be damaged—and that the resale of butterflies within the state is not prohibited under the law.

Please answer the following three subquestions. The subquestions in Question 2 are not weighted equally. Explain your answers; answers without explanation will receive no credit.

- 2.1 What arguments might Christopher reasonably raise to challenge the law under the commerce clause of the U.S. Constitution, and is he likely to be successful? Explain. (10 points)**
- 2.2 What arguments might Christopher reasonably raise that the law violates his due process rights under the U.S. Constitution, and is he likely to be successful? Explain. (10 points)**
- 2.3 What arguments might Greta raise that her procedural due process rights under the U.S. Constitution were violated when her permit was revoked? Explain. (20 points)**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CONSTITUTIONAL LAW
JULY 2023**

QUESTION 3 (20 POINTS)

Each of the following multiple choice items counts for 2 points. Select the letter that corresponds to the correct answer.

- 3.1 Free speech in schools
- 3.2 Takings Clause
- 3.3 Time, place and manner restrictions
- 3.4 Commerce Clause
- 3.5 Adequate and independent state grounds; justiciability
- 3.6 Contracts Clause; legislative authority
- 3.7 First Amendment; campaign contributions
- 3.8 Privileges and immunities
- 3.9 Standing; equal protection
- 3.10 Executive power; treaty power

[End of Question 3]

END OF CONSTITUTIONAL LAW TEST

**LOUISIANA STATE BAR EXAMINATION
CRIMINAL LAW, PROCEDURE AND EVIDENCE
JULY 2023**

QUESTION 1 (40 POINTS)

Jack, a coach for a local middle school basketball team in Baton Rouge, Louisiana, was known for his competitive nature and short fuse. During the district championship game, one of Jack's players was called for a foul. Jack disagreed with the call and yelled at the referee to make his objection known. In response, the referee ejected Jack from the game and ordered him off the school property. Jack left the gym but decided to wait outside in the parking lot for the referee to leave after the game was over to confront him. Pamela, the team mom, followed Jack out to the parking lot. Jack told Pamela, "I want to beat that referee up so bad." In response, Pamela told Jack that she would text him when the referee was leaving the gym. Jack told Pamela, "Yeah, text me when he is leaving. I'm going to beat the crap out of that referee."

As the referee was leaving the gym, Pamela sent Jack a text as planned. Jack then confronted the referee as he was walking to his car. Jack pushed the referee from behind as hard as he could, and the referee fell to the ground. At this point, Pamela arrived, and both Jack and Pamela began yelling at the referee telling him how bad a job he had done. As they became angrier, Jack and Pamela then began repeatedly kicking the referee while he was on the ground. Midway through their beating of the referee, Jack paused and said, "And if you ever tell anyone about what happened here, we will kill you." Jack and Pamela then continued kicking the referee. The referee suffered three broken ribs and was eventually knocked unconscious.

Afterward, Jack and Pamela looked at each other, and Jack said, "That will teach him." Pamela then took out her cell phone and took pictures of the referee's bloody face and body lying on the ground. Just as Pamela was taking her last picture, a parent from the other school came upon the scene and saw what Jack and Pamela had done. The parent immediately called for help, and a local law enforcement officer ran over. The officer then ordered Jack and Pamela to sit on the ground and told them they were being detained.

Jack and Pamela took off running, and Pamela directed Jack to her car nearby. Pamela got in the passenger seat, and Jack got in the driver's seat, started the car, and sped off. The officer ran to his patrol car and took off after them with his lights and siren engaged. The chase reached speeds of over 100 miles per hour. As Jack was speeding from the police, he was briefly able to separate from the police and let Pamela out of the vehicle at a friend's house. But the car chase quickly resumed and went for several more miles. During the car chase, Jack rammed a second police officer's patrol car, resulting in several flips and a fiery crash. The officer was killed as a result of the crash. Jack was ultimately arrested after he too later lost control of the vehicle, ran it into a ditch, and totaled Pamela's vehicle. Jack sustained injuries from his crash as well.

Please answer the following question. Explain your answer; an answer without explanation will receive no credit.

- 1.1 What crimes did Jack commit under Louisiana law, and what are the elements of each crime? What crimes did Pamela commit under Louisiana law, and what are the elements of each crime? Explain. First, address the crimes committed by Jack; second, address the crimes committed by Pamela.**

In your response for Jack, do NOT include crimes he may have committed as a principal to Pamela; similarly, in your response for Pamela, do NOT include crimes she may have committed as a principal to Jack. (40 points total)

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CRIMINAL LAW, PROCEDURE AND EVIDENCE
JULY 2023**

QUESTION 2 (40 POINTS)

The facts for this Question 2 include the same facts as for Question 1 above plus the following additional facts.

At the scene of Jack's wreck, officers removed Jack from his vehicle, immediately read him his Miranda rights, and placed him under arrest. However, it was clear Jack had suffered significant injuries, including a possible concussion in the wreck as he was incoherent. As a result, as opposed to being taken to the jail, Jack was taken to a local hospital where he received treatment over the next several days. Once he recovered, Jack was subsequently released back into the custody of law enforcement. Prior to booking Jack into the jail, officers placed Jack in a holding cell. Two detectives then entered the holding cell and began questioning Jack. During that time Jack made several incriminating statements. Jack also provided detectives with all relevant information related to Pamela's involvement, including her contact information and likely whereabouts. After approximately an hour, though, one of the detectives remembered that they hadn't read Jack his Miranda warnings at the outset of the interview. The other detective responded and pointed out that Jack had been read his Miranda rights days earlier immediately after the wreck. Jack had no memory of being read his Miranda rights after the wreck. In any event, out of an abundance of caution, since Jack was incoherent following the wreck and suffered a concussion, the detectives decided to re-Mirandize Jack (read him Miranda rights again) at that point and just re-question Jack about everything he had already said to the detectives during the first hour of the interview. Accordingly, the detectives read Jack his rights, and he agreed to voluntarily waive same and continue speaking to them. Jack then repeated everything he had already stated to the detectives during the first part of the interview. He was subsequently booked into the jail.

After booking Jack into the jail, detectives put out a press release indicating they had an arrest warrant for Pamela. As a result, Pamela turned herself into the jail, and her cell phone was seized and placed in a property locker. Detectives subsequently came to the jail, retrieved her phone, and searched it. Detectives did not get a search warrant to search the phone as the phone did not have a password protecting it. Detectives then located pictures on her cellphone of the referee's bloody body from the night in question.

During Jack's subsequent criminal trial, the prosecution attempted to admit Jack's incriminating statements made during both hours of questioning by the detectives in the holding cell.

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

- 2.1 On what state and/or federal constitutional basis may Jack reasonably challenge the admissibility of his incriminating statements made during the first hour of his questioning by detectives in the holding cell; and is he likely to succeed? Explain. (10 points)**
- 2.2 On what state and/or federal constitutional basis may Jack reasonably challenge the admissibility of his incriminating statements made after detectives read him his Miranda rights mid-way through the interview; and is he likely to succeed? Explain. (10 points)**
- 2.3 Assume for purposes of this Question 2.3 only that Jack and Pamela are tried separately. During Pamela's trial, the prosecution attempted to introduce Jack's confession and his statements to the detectives related to Pamela's involvement in the crimes. Pamela challenges the admission of Jack's statements on Fifth Amendment grounds. Is Pamela likely to succeed? Explain. (10 points)**

TEST CONTINUES ON NEXT PAGE

2.4 On what state and/or federal constitutional basis may Pamela reasonably challenge the admissibility of the pictures discovered as a result of the detectives' search of her cell phone; and is she likely to succeed? Explain. (10 points)

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
CRIMINAL LAW, PROCEDURE AND EVIDENCE
JULY 2023**

QUESTION 3 (20 POINTS)

Each of the following ten multiple choice items counts for 2 points. Select the letter that corresponds with the correct answer.

The multiple choice items below are NOT based on the facts in Questions 1 and 2.

- 3.1 Authentication of evidence
- 3.2 Post-conviction relief
- 3.3 Impeachment evidence; admissibility of prior recordings
- 3.4 Preliminary examination
- 3.5 Suppressing evidence
- 3.6 Hearsay rule; exceptions to same
- 3.7 Review of pretrial order
- 3.8 Procedures relating to objectionable evidence
- 3.9 Evidence of other crimes; admissibility of evidence of prior acts
- 3.10 Restrictions on trial witnesses

[End of Question 3]

END OF CRIMINAL LAW, PROCEDURE AND EVIDENCE TEST

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
JULY 2023**

QUESTION 1 (40 POINTS)

Lou Bryan and his two sons Greg and Adam are the members of Bryan Operations, LLC (“BOL”), a Louisiana (LA) limited liability company that owns and operates a farm in Morehouse Parish, Louisiana. Lou is a lifelong resident of LA and owns 51% of the membership interest in BOL. The remaining 49% is split equally between Greg and Adam. Greg lives in Georgia (GA) but has recently been spending considerable time in Louisiana, working on the farm, and is considering moving back permanently. Greg still owns his home in GA. Adam lives in Arkansas (AR).

BOL has a contract to purchase seed and chemicals from Farm Supply Services, Inc. (FSS) through 2025. FSS is incorporated in Delaware (DE) and maintains warehouses in Texas (TX) and AR, from which it ships all of its products for the states it serves. Each warehouse employs approximately 100 workers. FSS rents space in Jackson, Mississippi (MS) for its executive officers and staff to handle the day-to-day operation of the company. FSS does business in ten states, including GA, TX, and LA.

Over the past several months, FSS’s deliveries to BOL began arriving late or were not made at all. BOL was forced to turn to a different supplier in order to get seed and chemicals before planting time. BOL determined that it suffered \$100,000 in damages from FSS’s failure to deliver the products it had ordered.

BOL filed suit for breach of contract against FSS in LA federal court. Before answering the complaint, FSS files a motion to dismiss asserting that the federal court lacks jurisdiction to hear the case.

Please answer the following four subquestions. The subquestions in Question 1 are not weighted equally. Explain each answer; an answer without explanation will receive no credit.

1.1 Does the federal court in Louisiana have subject matter jurisdiction over BOL’s complaint? Explain. (25 points)

Assume for the rest of Question 1 that the case remains pending in the federal court in Louisiana.

1.2 BOL and FSS disagree on whether their contract should be interpreted under the laws of LA or instead under the laws of MS. Assume solely for this question 1.2 that the MS conflict of laws provisions provide that the contract should be interpreted under the laws of the state where performance is to be made (which here is LA) but that the LA conflict of laws provisions provide that a contract should be interpreted under the law of the state where the contract was executed (which here is MS). Which state’s substantive law should apply to interpret the parties’ contract? Explain. (5 points)

1.3 Assume the following facts solely for this question 1.3. At his deposition, FSS’s CEO stated that FSS’s primary supplier is Midwestern Agriculture Inc. (“Midwestern”), which is a Nebraska (NE) corporation based solely in NE, and that Midwestern has been “encouraging” FSS to sell more seed and chemicals to “new customers” instead of to existing customers. BOL wants to include Midwestern in this lawsuit. BOL believes FSS and Midwestern conspired together to divert FSS’s sales from BOL to go instead to new customers.

What must BOL do in order to assert these new claims against Midwestern and FSS? Explain. (5 points)

TEST CONTINUES ON NEXT PAGE

- 1.4 *Assume the following facts solely for this question 1.4.* As BOL prepared for trial, its accountant determined that there was a mistake in its original damage calculation and that the total damages sustained by BOL was never more than \$70,000. BOL communicated this to FSS and offered to settle for that amount. FSS declined, thinking it had a good chance to prevail on the merits at trial. The parties agreed that neither would raise an objection on the issue so that all the time and money in the litigation would not be wasted.

What effect, if any, do these developments have on the authority of the federal court to resolve the case? Explain. (5 points)

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
JULY 2023**

QUESTION 2 (40 POINTS)

Tim, a citizen of Texas (TX), was interested in purchasing several lumber mills in Louisiana (LA). He looked for investors and found Alan from Alabama (AL) and Kyle from Kansas (KS). The three investors met in Alabama for three days to finalize the terms of their agreement, which called for Alan and Kyle to make monthly capital contributions over the course of three years. Tim was to use the funds to run the lumber mills. The agreement contemplated purchasing three lumber mills across LA, with additional mill purchases to be funded by the profits if the business is successful.

Alan is a lifelong citizen of AL, but has owned a condominium in Shreveport, LA for more than 10 years and stays in it less than 10 weeks a year. Kyle was born in LA but permanently relocated to KS several years ago. He does not have any business connections in LA other than the mills, but spends the holidays with his family in Lafayette, LA every year. Both Alan and Kyle have extensive investments in TX and visit TX often to tend to those businesses. They are not involved in the day-to-day operations of the mills.

Two years into the arrangement, the mills were not doing well. Alan and Kyle accused Tim of breaching their agreement by not producing timely financial reports, and they stopped making monthly payments. Tim would like to sue Alan and Kyle in federal court for \$100,000 each, representing the remaining payments due under the agreement.

Please answer the following four subquestions. The subquestions in Question 2 are not weighted equally. Explain each answer; an answer without explanation will receive no credit.

2.1 Would venue for Tim’s proposed federal civil action against Alan and Kyle be proper in the appropriate district in each of AL, KS, LA, and TX? Explain. (10 points)

Assume for questions 2.2-2.4 below that venue is proper in a LA federal court.

2.2 Tim filed the complaint against Alan and Kyle in a federal court in LA. May the LA federal court exercise either (a) general personal jurisdiction or (b) specific personal jurisdiction over Alan and Kyle? Explain. (10 points)

2.3 Assume solely for this question 2.3 that the process server could not find Alan, so he delivered the papers to Alan’s 12-year-old son at Alan’s home. Prior to filing his answer, Alan timely filed a motion to dismiss for insufficiency of service of process. Should Alan’s motion for insufficiency of service be granted? Explain. (5 points)

TEST CONTINUES ON NEXT PAGE

2.4 Kyle admitted during his deposition that he did not pay the \$100,000 called for by the agreement, but he raised the defense that he was not obligated to make the payments because Tim had first breached the agreement by not providing timely financial reports. Tim filed a motion for summary judgment against Kyle. Tim supported it with Kyle's answer and Kyle's deposition testimony in which he and a competing business had a financial arrangement that was contingent on the failure of the mills. Tim asserted that this conflict of interest was Kyle's actual motivation for stopping payments. Tim also argued that all financial reports had been timely provided. Tim supported that argument with an affidavit from his office manager in which the manager testified that all financial statements had been timely prepared and mailed to investors by certified mail within two days of issuance.

Kyle filed a memorandum in opposition to Tim's motion. Kyle supported it with his own affidavit in which he testified that he never received the last three monthly financial reports that were due before his default. He added that he did stand to make a great deal of money through his arrangement with the competing company, but he swore that those facts did not affect his decision not to pay Tim.

Set forth the applicable standard for assessing Tim's motion for summary judgment, assess the submissions by the parties under the applicable standard, and explain how the court should rule on the motion. (15 points)

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
FEDERAL JURISDICTION AND PROCEDURE
JULY 2023**

QUESTION 3 (20 POINTS)

Each of the following ten multiple choice items counts for 2 points. Select the letter that corresponds with the correct answer.

- 3.1 Rule 26 Initial Disclosures
- 3.2 Rule 11
- 3.3 Service of process; waiver of service; time for answering
- 3.4 Amended claims and third-party claims; diversity jurisdiction
- 3.5 Removal
- 3.6 Interpleader
- 3.7 Full faith and credit; state court judgments
- 3.8 Subject matter jurisdiction; multiple plaintiffs; aggregation of claims
- 3.9 Class actions
- 3.10 Subject matter jurisdiction; defects

[End of Question 3]

END OF FEDERAL JURISDICTION AND PROCEDURE TEST

**LOUISIANA STATE BAR EXAMINATION
LOUISIANA CODE OF CIVIL PROCEDURE
JULY 2023**

QUESTION 1 (40 POINTS)

Demi applied for an engineering position with Pipes Solutions, Inc. (“Pipes”). Demi went for an interview at Pipes’ administrative office, which was located in Livingston Parish. At the end of the interview, Pipes offered Demi an engineering position working on the development of a self-cleaning pipe that was an original Pipes design and that Pipes hoped would revolutionize the plumbing market.

Demi’s job offer was contingent upon her signing an employment agreement containing confidentiality obligations. At the time Pipes’ hiring officer made the job offer to Demi, he signed the employment agreement on behalf of Pipes and handed it to her. She signed it as well.

Pursuant to the terms of the employment agreement, Demi performed her work for Pipes at its St. James Parish office. Before the project was complete, Demi and her husband, Harry, moved to East Baton Rouge Parish. The commute became too much for Demi, so, after providing requisite notice, she resigned from Pipes and accepted employment in East Baton Rouge Parish with a Pipes competitor, Trident Plumbing, LLC (“Trident”).

Over one year later, Pipes learned that Demi was working for Trident and that Trident was developing a self-cleaning pipe very similar to the one Pipes had designed. Pipes now wants to file a lawsuit against Demi for breach of the confidentiality provisions in the employment agreement.

Please answer the following eight subquestions. The subquestions in Question 1 are not weighted equally. Where indicated, explain your answers; answers without explanation will receive no credit.

- 1.1 6 pts In which parish(es) may Pipes file its lawsuit? For each parish identified, explain why the parish is a proper venue.**
- 1.2 7 pts Pipes filed its lawsuit in a proper venue and now must serve Demi with the citation.**
 - a. 1 pt By when must Pipes request service of citation on Demi?**
 - b. 2 pts What types of service should be utilized to serve Demi with the citation?**
 - c. 4 pts For each type of service identified in response to question 1.2(b), where and on whom may service be made? Explain.**
- 1.3 2 pts Demi timely answered the lawsuit. She does not have a copy of the fully executed employment agreement. She wants to obtain a copy from Pipes. What steps must Demi take to obtain a copy of the fully executed employment agreement from Pipes? Explain.**
- 1.4 4 pts Pipes has provided a copy of the employment agreement to Demi and now wants Demi to agree to the authenticity of the employment agreement. What steps may Pipes take in written discovery to have Demi admit to the authenticity of the employment agreement? Explain.**
- 1.5 4 pts Pipes wants to take Demi’s deposition. What steps must Pipes take in order to take her deposition? Explain.**

TEST CONTINUES ON NEXT PAGE

- 1.6 6 pts At her deposition, Demi testified that Trident was working on developing a self-cleaning pipe before she began working there, that the drawings Trident was using were almost identical to the drawing and specs she worked with when she was employed by Pipes, and that her Trident colleague told her the owner of Trident had asked him to obtain a copy of Pipes' drawings nefariously. Pipes now wants to add Trident as a defendant to the lawsuit. What steps must Pipes take to properly add Trident as a defendant to the lawsuit? What further steps must Pipes take to require Trident to respond? Explain.

Trident is now a defendant in the lawsuit, and the district court has fixed a trial date.

- 1.7 7 pts Believing that Pipes failed to develop specific facts during discovery to establish that Demi shared Pipes' confidential information with Trident, Demi filed a motion for summary judgment seeking a determination by the judge that she did not violate the confidentiality obligations in her employment agreement.
- a. 2 pts What showing must Demi make to prevail on her motion?
 - b. 3 pts What type of evidence may Demi submit to support her motion?
 - c. 1 pt When is the latest date prior to the trial date for Demi to file and serve her motion and all supporting documents?
 - d. 1 pt When is the latest date for Trident to file its opposition to Demi's motion and all supporting documents?

The district court granted summary judgment in favor of Demi, but Pipes' claims against Trident proceeded to trial before a jury.

- 1.8 4 pts The jury returned a verdict in favor of Pipes. What steps might Trident take to seek to have the district court set aside the jury verdict in favor of Pipes, and when must it take those steps? Explain.

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
LOUISIANA CODE OF CIVIL PROCEDURE
JULY 2023**

QUESTION 2 (40 POINTS)

Dante Chemicals, Inc. (“Dante Chemicals”) is a Delaware corporation licensed to do business in Louisiana. Dante Chemicals has several locations throughout the state but its principal business establishment in Louisiana, as designated in its application to do business in Louisiana, is in East Feliciana Parish. Andrea is identified as Dante Chemicals’ agent for service of process in Louisiana.

Phil lives in St. Bernard Parish and works at night as a security guard near the Dante Chemicals’ chemical plant in Plaquemines Parish. In late 2021, Phil began experiencing trouble breathing. On December 3, 2021, Phil was having coffee with his brother Wayne, who was a health and safety worker at Dante Chemicals in Plaquemines Parish. Phil told Wayne about his breathing problems. Wayne told Phil that a chemical release occurred at Dante Chemicals one night a few months earlier but that the release was not reported to the public. Wayne also told Phil the chemical that was released has been associated with respiratory issues.

Phil sought medical treatment, and his doctor confirmed that exposure to chemicals can cause respiratory issues. Phil’s respiratory issues got worse during the year and he had to quit work. In August 2022, Phil told an attorney about his conversation with Wayne on December 3, 2021 and asked if he had a claim against Dante Chemicals arising out of the chemical release. The attorney told Phil she thought he had a claim, but advised Phil that he should file the lawsuit by December 3, 2022 or it might be considered time barred.

Please answer the following nine subquestions. The subquestions in Question 2 are not weighted equally. Where indicated, explain your answers; answers without explanation will receive no credit.

- 2.1 4 pts In which parish(es) may Phil file his lawsuit against Dante Chemicals? For each parish identified, explain why the parish is a proper venue.**
- 2.2 6 pts Phil filed his lawsuit in the proper venue. The Sheriff’s office served the citation on Erica, an adult employee of Dante Chemicals at the Plaquemines Parish chemical plant. Dante Chemicals does not think service on Erica was proper.**
- a. 2 pts What pleading must Dante Chemicals file in order to challenge service?**
- b. 2 pts If Dante Chemicals wants to challenge service, by when must Dante Chemicals do so? Explain.**
- c. 2 pts Is Dante Chemicals likely to be successful if it challenges service through Erica? Explain.**
- 2.3 6 pts Dante Chemicals decides not to challenge service but instead files an answer and proceeds with discovery. Phil wants to take the deposition of Dante Chemicals. What must Phil include in his notice of the deposition of Dante Chemicals, and what must Dante Chemicals do in response to the notice? Explain.**

TEST CONTINUES ON NEXT PAGE

- 2.4 7 pts Dante Chemicals took the deposition of Phil. Phil testified he did not know about the chemical release until his conversation with Wayne regarding his respiratory problems on December 3, 2021. Dante Chemicals believes that Phil's tort claims prescribed one year from the date of Phil's conversation with Wayne but notes that Phil filed his lawsuit against it on Monday, December 5, 2022.
- a. 2 pts What pleading must Dante Chemicals file in order to challenge the timeliness of Phil's lawsuit?
 - b. 2 pts May Dante Chemicals still challenge the timeliness of Phil's lawsuit although it already answered the lawsuit and participated in discovery? Explain.
 - c. 3 pts Is Dante Chemicals likely to be successful if it challenges the timeliness of Phil's lawsuit? Explain.
- 2.5 6 pts Expert witness reports have been exchanged, and the discovery depositions of all experts have been taken. Dante Chemicals believes that Phil's expert is completely unqualified to give expert testimony in the lawsuit and that her methodology is "junk science."
- a. 2pts What motion should Dante Chemicals bring before the court to test the expert's qualifications and opinions?
 - b. 2 pts What is the time deadline for bringing the motion?
 - c. 2 pts By when is the court to hold a contradictory hearing and rule on the motion?
- 2.6 2 pts Phil requested a trial by jury in his petition but wants to withdraw his jury demand. What steps must Phil take to withdraw his jury demand?
- 2.7 4 pts Phil successfully withdrew his jury demand. Dante Chemicals wants a trial by jury but did not request a trial by jury in its answer. What steps should Dante Chemicals take to obtain a trial by jury and by when must it take such steps?
- 2.8 2 pts Dante Chemicals obtained a trial by jury and the case proceeded to trial by a 12-person jury. Absent a stipulation by the parties, how many jurors must concur to render a verdict?
- 2.9 3 pts The jury returned a verdict in favor of Phil. Dante Chemicals has timely filed for a suspensive appeal and has furnished a bond as security. Phil believes the bond is insufficient or invalid. What action might Phil take to challenge the bond's sufficiency or validity? Explain.

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
LOUISIANA CODE OF CIVIL PROCEDURE
JULY 2023**

QUESTION 3 (20 POINTS)

Each of the following multiple choice items counts for 2 points. Select the letter that corresponds to the correct answer.

- 3.1 Service by private person
- 3.2 Methods for taking discovery
- 3.3 Jury trial; challenge for cause
- 3.4 Petitory action
- 3.5 Abandonment
- 3.6 Deadline for responding to initial pleadings
- 3.7 Reasons for denial of trial consolidation
- 3.8 Succession; venue
- 3.9 Appeal bonds
- 3.10 Finality of supreme court judgments

[End of Question 3]

END OF LOUISIANA CODE OF CIVIL PROCEDURE TEST

**LOUISIANA STATE BAR EXAMINATION
TORTS
JULY 2023**

QUESTION 1 (40 POINTS)

ABC Refinery (“ABC”) decided to expand operations at its location in Baton Rouge, Louisiana. ABC contracted with a construction team, Conner Construction (“CC”), to build a new warehouse. In an effort to cut down on some of the construction costs, ABC offered to allow CC to use ABC scaffold equipment that was already at the refinery. ABC instructed CC that CC’s employees would be required to wear a safety lanyard and harness, which would also be provided by ABC, at all times while on the scaffold. The scaffold was taken from the old refinery area and rebuilt at the new warehouse construction site by ABC employees. At the start of construction, CC provided all of its employees with instructions on when and how to wear and use the safety equipment on the scaffold.

One morning, CC’s Foreman Fred provided job assignments for the day and told Paul, an employee of CC, to assist with the installation of plumbing on the upper floor of the new warehouse building. As directed, Paul began climbing the scaffold to assist with the installation of plumbing. But before Paul reached the landing, a rung of the scaffold gave way, causing him to fall 50 feet to the ground below. Paul was not wearing the ABC-required safety lanyard and harness, but he used extreme caution in climbing the scaffold, ensuring he always maintained three points of contact with the ladder.

On the day prior to Paul’s fall, CC safety inspectors had been on site for several hours conducting their biweekly safety inspections of the premises and equipment. During the construction project, ABC inspectors continued to inspect the older areas of the refinery but did not conduct regular inspections of the construction site or its equipment on the construction site. After Paul’s fall, ABC performed an investigation to determine the cause of the fall and discovered that the scaffold rung that broke was rusted and decayed. The ABC investigator also discovered that a CC inspector had actually seen the rust during her inspection the day before but did not believe it was a structural problem and therefore did not report it to ABC.

Paul was severely injured as a result of the fall. He fractured his leg and suffered cognitive delays from the impact to his head. He was never able to return to work again. He also incurred over \$100,000 in medical bills. Most disheartening, he was no longer able to participate in his favorite hobby, tap dancing.

Please answer the following two subquestions. The subquestions in Question 1 are not weighted equally. Explain each answer; an answer without explanation will receive no credit.

- 1.1 What theory or theories of liability may Paul reasonably assert against CC; what defense(s) may CC reasonably raise; what damages are recoverable; and is Paul likely to prevail? Explain. (15 points)**
- 1.2 What theory or theories of liability may Paul reasonably assert against ABC; what defense(s) may ABC reasonably raise; what damages are recoverable; and is Paul likely to prevail? Explain. (25 points)**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
TORTS
JULY 2023**

QUESTION 2 (40 POINTS)

Tammy and her adult daughter, Ann, were going shopping. Tammy was driving them in her brand new 2023 Tierra Truck down Main Street, which has a speed limit of 35 mph. Tammy slowed down to avoid hitting a cat when Dan, who was traveling slightly above the speed limit, behind Tammy, rear-ended her vehicle. Upon impact, Tammy's bucket seat broke away from the truck's frame, launching her through the windshield. Tammy suffered severe lacerations to her face and arms. Ann watched in horror as her mother screamed in agony and bled profusely. Ann eventually composed herself long enough to call an ambulance. But Ann was extremely disturbed by the whole experience and had nightmares about the accident for months. Ann sought treatment with a mental health counselor for the increased anxiety she was experiencing.

Tammy was rushed by ambulance to a nearby hospital, and it was determined her injuries required immediate surgery. After being fully informed of the risks and possible complications of the surgery, she signed the necessary consent forms. The surgery schedule at the hospital was unusually busy, and Tammy was moved to three different operating rooms before her surgery was performed. In the shuffle, a doctor employed by the hospital accidentally administered a double dose of anesthesia causing Tammy to fall into a coma. A month later, Tammy woke from her coma. Tammy eventually returned to full duty at work; however, she suffers from intermittent headaches, for which she takes over-the-counter medicine, and also from a fear of hospitals.

Perplexed by the severity of her accident, Tammy started to research the 2023 Tierra Truck. Her research revealed that Tierra made and assembled all of the components of its trucks. Tierra had received numerous complaints in the last twelve months about defective welding that caused their seats to easily break when hit at a speed of over 30 mph. Since the complaints, Tierra has changed the design of its seats but, afraid of the bad publicity, has never issued a recall for the 2023 model Tammy had purchased.

Please answer the following three subquestions. The subquestions in Question 2 are not weighted equally. Explain each answer; an answer without explanation will receive no credit.

- 2.1 What theory or theories of liability may Tammy reasonably assert against Tierra; what defense(s) may Tierra reasonably raise; and is Tammy likely to prevail? Explain. (22 points)**
- 2.2 What theory or theories of liability may Ann reasonably assert against Tierra; what defense(s) may Tierra reasonably raise; what damages are recoverable; and is Ann likely to prevail? Explain. (8 points)**
- 2.3 What theory or theories of liability may Tammy reasonably assert against the hospital; what defense(s) may the hospital reasonably raise; what damages are recoverable; and is Tammy likely to prevail? Explain. (10 points)**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
TORTS
JULY 2023**

QUESTION 3 (20 POINTS)

Each of the following multiple choice items counts for 2 points. Select the letter that corresponds to the correct answer.

- 3.1 Self-defense
- 3.2 Acts of others and things in custody
- 3.3 Merchant liability
- 3.4 Absolute liability
- 3.5 Defamation
- 3.6 Survival action; rank of designated beneficiaries
- 3.7 Strict liability for animals
- 3.8 Liability and defenses for providers of alcohol
- 3.9 Conflict of laws; product liability
- 3.10 Government immunity

[End of Question 3]

END OF TORTS TEST