

**CIVIL CODE I**  
**LOUISIANA STATE BAR EXAMINATION**  
**February 11, 2008**

**Question I**  
**(25 Points)**

Robert died testate in 2000, leaving a usufruct over a 200 acre tract of land (the “Goldenacre Tract”) in Rapides Parish to his wife, Kitty, and the naked ownership of the tract to his only child, Art. Robert inherited the property from his parents in 1990. Robert’s father acquired the property in 1965. The property is covered with valuable loblolly pine trees as well as several species of less valuable hardwood trees. The pine trees predominate but they are aging and the hardwoods are beginning to expand.

After Robert’s death, Kitty was approached by several timber companies about a contract to sell the timber situated on the property. Kitty became interested in selling the timber on the property and hired a forestry consultant to advise her. The consultant inspected the property and conducted some research concerning the history of the property, including prior agricultural activities and timber sales. The consultant determined that 100 acres of the property were at one time farmed for cotton, but the Goldenacre Tract has not been cultivated and farmed since the mid-1950’s. The information on the property also indicates that there has not been a major cut of timber on the Goldenacre Tract since 1956, and that no comprehensive management plan concerning the property presently exists. Kitty recalls that Robert was opposed to subjecting the property to timber harvesting.

Based on an inspection of the property and the background information obtained, the consultant recommended that Kitty implement a management plan which would clear cut and harvest the merchantable timber on approximately 170 acres of the property and replant on the cleared property using genetically superior seedlings. This recommendation is based upon the fact that the pine trees on the property are reaching the end of their life span and that less valuable hardwood species are beginning to push out the pines.

Art has learned of Kitty’s plan concerning the timber on the Goldenacre Tract. He also hired a forestry consultant who found Kitty’s plan to be undesirable. Instead, Art’s consultant recommended a plan that would selectively cut only the largest and oldest trees, together with the diseased and deformed trees. This would leave some healthy trees for reproduction and further growth. The cleared areas would also be replaced with genetically superior seedlings. Art’s consultant indicated that further growth would occur once the existing trees are thinned. Other advantages cited were aesthetic value, wildlife protection and prevention of erosion. It was also suggested that there are certain benefits to properties with uneven-aged, mixed timber, as opposed to an even-aged stand of pine.

Kitty has contacted you to obtain court approval of her plan to clear-cut the entire property. Advise Kitty and answer the questions set forth below, giving full reasons for your answers. **You must give full reasons for your answers in order to receive credit.**

1. Do Kitty’s rights as usufructuary extend to the trees on the Goldenacre Tract? Give full reasons for your answer. Answers without explanation will receive no credit. **(8 points)**
2. Do the trees on the Goldenacre Tract constitute “timberland” under the applicable provisions of the Civil Code? Give full reasons for your answer. Answers without explanation will receive no credit. **(10 points)**
3. Does Kitty’s plan to cut the timber on the Goldenacre Tract constitute proper management of the property under the provisions of the Civil Code? Give full reasons for your answer. Answers without explanation will receive no credit. **(7 points)**

[End of Question I]

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**Question II**  
**(25 Points)**

**Part A.**

Ross and Rachel were married on November 1, 1988 and lived together until they separated on April 1, 2005. Two children were born during the marriage, Nick and Nancy, who were ten and twelve at the time of the separation. Certain problems developed with the couple's relationship, which ultimately resulted in a trial separation and then a divorce. Ross and Rachel obtained a stipulated judgment from the Civil District Court for the Parish of Orleans that awarded the parties joint custody of Nick and Nancy and designated Rachel as the domiciliary parent. Ross was granted visitation with the children for a full week during each month, along with certain holidays throughout the year. This arrangement worked out well because Ross and Rachel lived on the same street in New Orleans. Ross and Rachel remained close friends and showed no hostility toward one another. The record of the proceedings when the judgment was rendered indicates that the court did not receive any evidence of either party's parental fitness.

On August 29, 2005, Hurricane Katrina struck New Orleans, resulting in nearly ten feet of water flooding the homes of both Ross and Rachel. The day before the storm, Rachel evacuated with Nick and Nancy, and their family pets, to the home of Rachel's relatives in Shreveport, Louisiana. Ross also evacuated the day before the storm to a hotel room in Shreveport, Louisiana. However, a month after the hurricane, Ross moved back to New Orleans to live in a FEMA trailer and begin repairs to his house. At that same time, Rachel moved to Honolulu, Hawaii with Nick, Nancy, the family pets, and a new gentleman caller.

Ross has met with you to discuss the status of the case and the need to change the custody arrangement. Rachel and the children relocated to Hawaii without even consulting with him beforehand, and given the distance between Honolulu and New Orleans, Ross is unable to see the children regularly. Ross wants to be named the domiciliary parent or force Rachel to move back to New Orleans with the children.

In advising Ross, answer the following questions. **You must give full reasons for your answers in order to receive credit.**

1. How would the present custody arrangement be classified under Louisiana law? Explain your answer. Answers without explanation will receive no credit. **(3 points)**
2. What is the proper venue for bringing an action to modify the custody arrangement? Explain your answer. Answers without explanation will receive no credit. **(4 points)**
3. What must Ross prove in order to change the existing custody decree? Would there be any difference if there was no domiciliary parent designated in the custody arrangement? Explain your answer. Answers without explanation will receive no credit. **(6 points)**.
4. Explain to Ross the factors that the court will consider in determining whether the custody arrangements should be modified. Factors of particular relevance should be identified and discussed. Explain your answer. Answers without explanation will receive no credit. **(6 points)**.

**Part B.**

Assume the same facts above, except that Ross has also heard of significant changes in Rachel's lifestyle and believes that these changes are having a negative impact on the children. Rachel has begun a relationship with Rudy, who convinced Rachel to leave Louisiana and who now lives with Rachel, Nick and Nancy in Hawaii. The children do not like Rudy, and Nick, who is now fifteen, discussed his concerns with Ross. Nick has observed that Rudy frequently spends the night with Rachel, particularly on weekends, and that he consumes a great deal of alcohol. Rudy has a violent temper which becomes worse after he has been drinking. On a number of occasions, he has threatened to physically discipline the children.

Ross is also concerned about Rachel's mental health after the Hurricane. Rachel told Ross while they were both in Shreveport that she could not sleep, that she felt depressed, and that she was taking pills to help her through this difficult time. One of the relatives that Rachel was

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staying with in Shreveport also told Ross that she thought Rachel might have been “on something” and that she was not her normal self.

Ross believes that these problems are beginning to affect the children. He has noticed that Nick is having difficulty with his schoolwork and that his grades have declined. Nancy, who is about to start school, has become somewhat depressed and withdrawn and is resisting starting school.

In light of the foregoing circumstances, Ross wants to force Rachel to go through a mental evaluation to ensure that she is capable of caring for the children and for herself. In advising Ross, answer the following questions. **You must give full reasons for your answers in order to receive credit.**

5. How may Ross obtain a court order that would require Rachel to undergo a mental evaluation? Explain your answer. Answers without explanation will receive no credit. **(3 points)**

6. How may Ross obtain a temporary custody arrangement in light of Rachel’s condition, and how long may this temporary order last? Explain your answer. Answers without explanation will receive no credit. **(3 points)**.

[End of Question II]

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**Question III**  
**(25 Points)**

Aucoin owned as his separate property a 200-acre tract of land located in Lincoln Parish (“Silveracres”). Aucoin died in 1967, leaving his wife Anna and three adult children – Billy, Bob and Cindy. Aucoin’s succession was opened and a valid judgment of possession was rendered in accordance with his will on July 1, 1970 declaring Billy and Bob as co-owners of Silveracres, each vested with a one-half (1/2) ownership interest in the property. This judgment was recorded in the conveyance records of Lincoln Parish. Assume for purposes of this question that Cindy does not have any forced heirship rights.

It should be noted that Bob sustained a brain injury during birth and has been mentally incompetent all his life. Consequently, he cannot sign his own name and is totally incapable of handling his own affairs. The devotion and willingness of his mother and sister Cindy in caring for Bob have enabled him to live without being institutionalized. Bob lives with his sister Cindy in a house that was bequeathed to them by Aucoin. Despite Bob’s known mental incompetence, no legal action was taken until October 1, 1985 when Cindy filed a petition to have him interdicted. A judgment of interdiction was rendered on December 1, 1985 and Cindy was appointed as Bob’s curatrix. The interdiction proceeding included Bob’s interest in Silveracres.

After his father’s death, Billy became interested in Silveracres and began efforts to acquire Bob’s one-half (1/2) interest in the property. In 1974, Billy contacted Cindy and made an offer but it was refused. Billy then went to his mother, Anna, who was also involved with Bob’s care. On April 1, 1975, Billy obtained and duly recorded a Quitclaim Deed which identified the vendor as Bob and recited that Bob was “a single man over the age of twenty-one years, represented by Anna, as a duly authorized representative.” Anna signed the Quitclaim Deed on Bob’s behalf but no power of attorney, court order or other evidence of authorization was referred or attached to the Quitclaim Deed, as recorded in the Lincoln Parish conveyance records.

In 1976, Billy built a new house on Silveracres and he and his wife have lived there ever since. He also built a fence along the boundaries of the property, established a cattle operation, produced and cut hay, and paid one hundred percent of the annual property taxes.

Cindy now wants to sell Bob’s interest in Silveracres to generate some additional cash to pay for Bob’s living expense. She asked Billy if he is interested in purchasing Bob’s interest in Silveracres, but he has not given her a response. She had a friend who works at the courthouse check the title records and she has learned of the Quitclaim Deed signed by Anna on behalf of Bob. She wants to protect Bob’s interest in the property and has asked you to advise her.

Respond to the following questions, giving full reasons for your answer. **Full answers are required in order to receive credit.**

1. Did the Quitclaim Deed validly transfer Bob’s one-half interest in Silveracres to Billy? Explain your answer. Answers without explanation will receive no credit. **(6 points)**

2. Assume that, in 1974, when Billy contacted Cindy about purchasing Bob’s interest in the property that Billy and Cindy reached an agreement as to the terms of the proposed purchase and that Cindy was ready to proceed with the sale to Billy. At that time, what legal requirements and procedures would need to have been satisfied in order for Cindy to be able to validly convey title to Bob’s interest in Silveracres to Billy? Explain your answer. Answers without explanation will receive no credit. **(6 points)**

3. Can Billy assert any claim to ownership of Bob’s interest in Silveracres based on Billy’s possession of the property? Explain your answer. Answers without explanation will receive no credit. **(8 points)**

4. What legal action, if any, would you recommend that Cindy take to protect Bob’s interest in Silveracres? Explain your answer. Answers without explanation will receive no credit. **(5 points)**

[End of Question III]

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**Question IV**  
**(25 Points)**

Chauvin was the owner of a 100 acre tract of land located in Terrebonne Parish (the "Petrobucks Tract"). In 1970, Chauvin granted the Cajun Pipeline Company ("Cajun") a pipeline right-of-way and servitude over a designated portion of the Petrobucks Tract pursuant to a pipeline right-of-way agreement (the "Pipeline Agreement") and its heirs and assigns, which was duly recorded in the conveyance records of Terrebonne Parish. This agreement granted Cajun the right to lay, construct, operate, maintain, inspect, repair, replace and remove a pipeline for the transportation of oil, gas, petroleum or other substances for a stated consideration of \$50,000 cash. The agreement further stipulated that the parties intended that the rights granted would inure to the benefit of Cajun, the pipeline and Cajun's successors and assigns. The rights and obligations imposed under the agreement were made binding on the successors and assigns of the parties, together with any subsequent owner(s) of the Petrobucks Tract. No termination date was specified. However, the Pipeline Agreement did contain a provision which stated that Cajun's rights under the agreement were subject to the condition that the pipeline and all other related equipment and appurtenances must be maintained by Cajun or its successors or assigns.

Cajun constructed a pipeline ten inches in diameter running north to south across the entire Petrobucks Tract, which was buried three feet below ground in low, marshy terrain. The total width of the right-of-way acquired was fifty feet (50') measuring twenty-five feet (25') on either side of the pipeline as located on the property (the "Pipeline Area"). On February 1, 1990, Chauvin sold the Petrobucks Tract to Duhon. The act of sale to Duhon expressly stated that the sale was made subject to the Pipeline Agreement.

Around June of 2002, Cajun discontinued using the Petrobucks portion of the pipeline. When Duhon discovered that the Petrobucks portion of the pipeline was no longer in use, he sent Cajun a letter terminating the Pipeline Agreement because of nonuse of the servitude and asking that Cajun remove the pipeline. Cajun objected to the purported termination of its rights under the Pipeline Agreement and refused to remove the pipeline from the property. Cajun also stated that the Pipeline Area was overrun and inaccessible and, therefore, it demanded that Duhon, at his sole expense, clear the Pipeline Area to facilitate access to the pipeline.

Duhon has asked that you represent him in this matter. In advising Duhon, answer the following questions, giving full reasons for your answers. **You must give full reasons for your answers in order to receive credit.**

1. How would the Pipeline Agreement be classified under the provisions of the Civil Code? Explain your answer. Answers without explanation will receive no credit. **(4 Points)**
2. How would the pipeline itself be classified under the provisions of the Civil Code? Explain your answer. Answers without explanation will receive no credit. **(4 Points)**
3. Discuss whether the Pipeline Agreement and the rights thereunder can be terminated by Duhon. Explain your answer. Answers without explanation will receive no credit. **(6 Points)**
4. Assuming that the Pipeline Agreement can be terminated by Duhon, discuss Duhon's right to compel removal of the Petrobucks portion of the pipeline. Explain your answer. Answers without explanation will receive no credit. **(6 Points)**
5. Discuss Duhon's obligation, if any, to clear the Pipeline Area and who should pay the cost of such work. Explain your answer. Answers without explanation will receive no credit. **(5 Points)**

[End of Question IV]

**LOUISIANA BAR EXAMINATION  
CODE II - SUCCESSIONS  
FEBRUARY 2008**

**INTESTATE PORTION OF CODE II EXAMINATION  
(50 POINTS TOTAL)**

**QUESTION 1**  
**(25 POINTS TOTAL)**

**BASIC FACT SECTION FOR QUESTION 1**

Harry and Doris were married. Initially they had trouble conceiving a child, and they adopted Karl through an adoption agency in New Orleans. Karl's adoption was legal and valid in all respects. Subsequently, Harry and Doris had three (3) children, who were born during their marriage: Mary, Nancy and Paul, who died when he was six (6) years old. Harry and Doris were divorced. All issues with respect to their community were resolved shortly after their divorce.

After his divorce from Doris, Harry started living with Ann, who had a child, Charlie, from a prior relationship. Harry grew very fond of Charlie, and with Ann's consent, Harry adopted Charlie. Charlie's adoption by Harry was legal and valid in all respects. Also, while they were living together, Ann gave birth to a child, Patricia. Harry signed Patricia's birth certificate acknowledging that he was her father.

After her divorce from Harry, Doris married Tom. Tom had a child, Pamela, from a prior marriage, who lived with them and who was raised by Doris like her own child. During their marriage, Doris and Tom had two (2) children, Betty and Celia.

Harry's and Doris' daughter Mary married John, who was in the military. Two months after their marriage, John was sent overseas. As a result of his military service, John was separated from, and did not see or live with, Mary for over a year. 320 days after John was sent overseas, Mary gave birth to Sally. Mary did not tell John about Sally's birth at the time the child was born. After Sally was born, however, Mary divorced John and married Aaron. All issues with respect to the community which had existed between Mary and John were resolved after their divorce. A year later Mary wrote John a letter in which she told him for the first time about Sally's birth during their marriage, and she told him that she had listed him as the father on Sally's birth certificate. John received the letter from Mary in March 2007, and in turn John wrote to his parents, telling them about Mary's letter and complaining about the fact that Mary had listed him as Sally's father on her birth certificate. John never had an opportunity to institute any type of legal proceedings. In June 2007, John was killed in a roadside bomb explosion in Afghanistan. In addition to Sally, John, who died intestate leaving separate property, was survived by his parents and a brother.

Harry's and Doris' daughter Nancy married George. After several years of not being able to conceive a child, Nancy went to a fertility clinic and ultimately was able to conceive a child, Rose, using donor sperm. After Rose was born, George found himself unable to bond with her, as he resented the fact that she was not his biological child.

Karl, the child adopted by Harry and Doris, struggled in life. Every financial venture he tried failed. Using information pieced together about his adoption coupled with extensive Internet research he performed, Karl became convinced that he was the illegitimate child of the daughter of a wealthy New Orleans real estate developer. The daughter is dead, but the man he believes is his biological grandfather still lives in New Orleans. He is a very wealthy man, but he is in very poor health, and is not expected to live more than a few months.

Harry grew increasingly more fond of Charlie over the years. When Charlie was 14, Harry gave him a very valuable ring which had belonged to Harry's mother. A year later, Charlie, who by then was 15 years old, gave the ring to his 15 year old girlfriend Megan. Harry was very upset about

Charlie giving the ring to Megan. Harry and Charlie went to see Megan and her mother and asked for the ring back, but they refused to return the ring.

Several years after the birth of Patricia, Harry and Ann got married. They acquired property together, and Harry also had separate property of his own. Harry was killed in an automobile accident. Harry died intestate and was survived by everyone described above other than his son Paul, who predeceased him. All of Harry's children were minors when he died, except Patricia, who was ten (10) years old.

**QUESTION 1A:**

**(5 points)**

Under what circumstances could George disavow Rose?

**QUESTION 1B:**

**(2 points)**

What was the legal relationship, if any, between John and Sally?

**QUESTION 1C:**

**(5 points)**

Assume for the purposes of this question that John is the legal father of Sally. Now that John is dead, can John's paternity of Sally be challenged, and if so, under what circumstances, and by whom?

**QUESTION 1D:**

**(3 points)**

Does Karl have any rights of inheritance from the wealthy New Orleans real estate developer whom he believes is his grandfather?

**QUESTION 1E:**

**(5 points)**

Before Harry's death, Harry and Charlie consult you about Charlie's gift of the ring to Megan. Are Harry and Charlie entitled to have the ring returned? Why, or why not?

**QUESTION 1F:**

**(2 points)**

What was Harry's legal relationship, if any, to Patricia?

**QUESTION 1G:**

**(3 points)**

Now that Harry is deceased, who is entitled to the community and separate property and in what percentages?

**QUESTION 2**  
**(25 POINTS TOTAL)**

**BASIC FACT SECTION FOR QUESTION 2**

Hannah had five (5) children. While still in college, and unmarried, Hannah had Evan. The father was unknown, and Hannah put Evan up for adoption. Evan was successfully adopted and raised out of state. Hannah married Graham in 1965. Together they had Lisa. When Lisa was five years old, Hannah and Graham were divorced. All community property issues were resolved shortly after their divorce. Hannah married Jake in 1980. Of their marriage, Marianne was born in 1981, Nicole was born in 1982 and Preston was born in 1985. Lisa married and had twins of her own, Sarah and Trenton, born in 1987. Lisa died in 1990, however, and Sarah and Trenton were raised by Hannah. After an extensive search, Evan found Hannah in 1998, moved back to Louisiana, and developed a good relationship with her.

**QUESTION 2A:**  
**(5 points)**

Hannah died intestate in January 2007 leaving separate and community property. How will Hannah's estate be distributed?

**QUESTION 2B:**  
**(5 points)**

Assume the same facts as above. In 2005, Hannah gave Marianne ten acres of land in Tangipahoa Parish to build a house. The property was Hannah's separate property. The donation and acceptance of the Tangipahoa Parish property were in proper form. Evan had always struggled financially and told everyone, including Marianne, that he would challenge the donation the first chance he got. In February 2007, after Hannah's succession was opened, Evan demanded that Marianne return the property to the estate. May Evan require that Marianne collate the Tangipahoa Parish property?

**QUESTION 2C:**  
**(5 points)**

Assume the same facts as above. Also assume that the Court determines that the Tangipahoa Parish property is subject to collation. The property is appraised at \$100,000 when the succession is opened. The entirety of Hannah's estate is only valued at \$10,000. How will the collation be handled?

**QUESTION 2D:**  
**(10 points)**

Assume that the collation issue was fully resolved. In November 2007, after Hannah's estate was resolved, Marianne died intestate and leaving no children. How will Marianne's estate be distributed?

**LOUISIANA BAR EXAMINATION  
CODE II - SUCCESSIONS  
FEBRUARY 2008**

**TESTATE PORTION OF CODE II EXAMINATION  
(50 POINTS TOTAL)**

**BASIC FACT SECTION FOR QUESTION 3  
(SUBPARTS A THROUGH J)**

Glenn and Sylvia had three children, Matt, Craig, and Simone, born in 1976, 1985, and 1987, respectively. Glenn and Sylvia had entered into a pre-nuptial agreement in which they agreed that they would have no community property. The pre-nuptial agreement is valid and binding in all respects.

Glenn executed a valid Louisiana notarial testament on September 24, 2004, which contained only the following dispositive provisions:

“I bequeath all of my immovable property in Red River Parish, which comprises a portion of my separate property, to my three children, Matt, Craig, and Simone, in the proportion of an undivided one-third interest unto each.

“I bequeath all of my farm equipment to Nash, who owns property adjoining mine in Red River Parish. Nash shall preserve and maintain that equipment and upon Nash’s death, I give and bequeath that farm equipment to my cousin, Fred.

“I bequeath my 2005 Lexus automobile to my friend, Jimmy.

“I bequeath my antique gun collection to the Louisiana State Museum in Baton Rouge.

“I bequeath all of the rest of my separate property to my wife, Sylvia.”

\* \* \* \* \*

Glenn and Sylvia were divorced in 2005. Glenn never remarried.

In March 2006, Glenn wrote the following in his own handwriting on the September 24, 2004 testament, just below his bequest of his antique gun collection to the Louisiana State Museum: “I hereby revoke this bequest of my antique gun collection.” Glenn signed this notation, but he did not date it. Many persons recognized Glenn’s signature on the notation.

In June 2006 Glenn executed an Act of Donation, in proper form, of his immovable property in Red River Parish to Nash. Glenn recorded this Act of Donation in Red River Parish. Glenn delivered a copy of the Act of Donation to Nash, but Nash never executed an acceptance of the donation.

In September 2006, Glenn sold his 2005 Lexus for \$20,000 cash. Glenn placed that cash in his safe deposit box with a note which said it was the proceeds from the sale of the 2005 Lexus. Due to his medical condition, Glenn decided that it was unsafe for him to be driving and, therefore, he never purchased another automobile.

On October 7, 2006, Glenn typed the following using his laptop computer:

“This is my last will and testament, which revokes all of my prior wills. My children are all able to take care of themselves. Accordingly, I give and bequeath all of my property to The Salvation Army.”

Glenn printed out this document, and signed and dated it in his own handwriting in the presence of two of his friends. Those two friends signed the document as witnesses. Glenn told his children that “he had signed a new will” and placed the document in his safe deposit box.

On the morning of December 31, 2006, Glenn told his three children that he was going to make a gift for 2006 to each of them of \$12,000. That afternoon Glenn went to the bank and withdrew \$36,000 in cash from one of his savings accounts. Glenn placed \$12,000 cash in an envelope with Matt’s name on it, \$12,000 cash in an envelope with Craig’s name on it, and \$12,000 in an envelope with Simone’s name on it. Glenn intended to give each child his or her envelope that evening. Unfortunately, Glenn had severe chest pains and had to go to the emergency room. Glenn died of a heart attack at the hospital on January 1, 2007. He was never able to deliver the envelopes containing the cash to any of his children.

At the time of Glenn’s death, his three children were all capable of taking care of their persons and administering their estates.

Please answer the following questions, 3A-J, each of which is worth 5 points. Please give reasons for all of your answers.

**QUESTION 3A:**  
**(5 points)**

Was the October 7, 2006 instrument a valid and enforceable Louisiana will?

**QUESTION 3B:**  
**(5 points)**

Does Glenn 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 Glenn’s estate to which each forced heir is entitled.

**For all of the remaining questions, please assume that the September 24, 2004 instrument was the only valid and enforceable will in effect at the time of Glenn’s death, and that the legitime of Glenn’s forced heirs was satisfied.**

**QUESTION 3C:**  
**(5 points)**

Who is entitled to the immovable property in Red River Parish?

**QUESTION 3D:**  
**(5 points)**

Is the bequest to Sylvia valid?

**QUESTION 3E:**  
**(5 points)**

Is the bequest of the farm equipment to Nash valid?

**QUESTION 3F:**

**(5 points)**

Is the Louisiana State Museum entitled to the antique gun collection?

**QUESTION 3G:**

**(5 points)**

Jimmy maintains that he is entitled to the \$20,000 cash in the safe deposit box to compensate him for the value of the Lexus Glenn bequeathed to him, but later sold. Is Jimmy correct?

**QUESTION 3H:**

**(5 points)**

Were the inter vivos donations that Glenn intended to make to his three children on December 31, 2006 effective?

**QUESTION 3I:**

**(5 points)**

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

**QUESTION 3J:**

**(5 points)**

Assuming that Craig validly renounced his interest in Glenn's succession, how would that renunciation affect Glenn's legitime? How would that renunciation affect the legitime of any remaining forced heir?

**LOUISIANA BAR EXAMINATION**

**CODE III**

**February, 2008**

**Question One: TOTAL OF TWENTY POINTS**

For each of the following ten subparts of this question, write in your exam booklet the letter that corresponds to the correct answer. If you believe that more than one answer is correct, write the letter corresponding to the best answer. 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. **TWO POINTS EACH.**

- 1. Which of the following is a correct statement of Louisiana law?**
  - A. In the absence of contrary agreement, a mandatary is authorized to appoint a substitute.
  - B. If the mandatary exceeds his authority, he is answerable to the principal for resulting loss that the principal sustains.
  - C. A mandatary acts outside the limits of his authority when he fulfills his duties in a manner more advantageous to the principal than was authorized.
  - D. The principal is not bound to reimburse the mandatary for the expenses and charges he has incurred if the purpose of the mandate was not accomplished.
  - E. All of the above.
  
- 2. In a revocatory action seeking the annulment of a gratuitous contract made by an obligor, which of the following must the plaintiff prove?**
  - A. That the contract caused or increased the obligor's insolvency.
  - B. That the plaintiff has rights against the obligor upon a claim that was liquidated by a judgment prior to the execution of the contract;
  - C. That the other party to the contract knew that the contract would cause or increase the obligor's insolvency;
  - D. That the contract was made in fraud of the plaintiff's rights.
  - E. All of the above.
  
- 3. Subrogation is:**
  - A. an assumption by a third person of an obligation of an obligor.
  - B. the extinguishment of a new obligation by the substitution of a new one.
  - C. an agreement under which a new obligor is substituted for a prior obligor who is discharged by the obligee.
  - D. the substitution of one person to the rights of another.
  - E. the extinguishment of obligations arising by operation of law when two persons owe to each other sums of money that are liquidated and presently due.

**4. Which of the following is *not* a correct statement of Louisiana law?**

- A. Solidary suretyship exists when a person binds himself as a principal obligor by promising that a third person will incur an obligation or render a performance.
- B. Suretyship is an accessory contract by which a person binds himself to a creditor to fulfill the obligation of another upon the failure of the latter to do so.
- C. Suretyship must be express and in writing.
- D. A surety who pays the principal obligation is subrogated by operation of law to the rights of the creditor.
- E. The surety may assert against the creditor any defense to the principal obligation that the principal obligor could assert except lack of capacity or discharge in bankruptcy.

**5. A transfer of immovable property:**

- A. must be made by authentic act or by act under private signature duly acknowledged before a notary public.
- B. is never valid unless in writing.
- C. is valid between the parties, even though the agreement of transfer is oral, if the property has been actually delivered and the transferor recognizes the transfer when interrogated on oath.
- D. has effect against third persons only from the time the instrument of transfer is filed for registry in the parish of domicile of the transferor.
- E. is effective between the parties only if passed before a notary and two witnesses or entirely written, dated and signed in the handwriting of the transferor.

**6. In the case of an assumption agreed upon by an obligee and an assuming obligor:**

- A. the agreement effects a release of the original obligor.
- B. the assuming obligor may raise against the obligee any defense based on the relationship between the assuming obligor and the original obligor.
- C. the assuming obligor may invoke compensation based on an obligation owed by the obligee to the original obligor.
- D. the assuming obligor is subrogated by operation of law to the rights of the original obligor in any property of the latter given as security for the assumed obligation.
- E. the agreement between the assuming obligor and the obligee must be made in writing.

7. **A contract made by a person without legal capacity:**
- A. is absolutely null.
  - B. is relatively null.
  - C. may be rescinded at the request of any party to the contract.
  - D. is not susceptible of confirmation.
  - E. does not give rise to a natural obligation, regardless of whether the incapable person was endowed with discernment.
8. **Which of the following is a correct statement of Louisiana law?**
- A. A depositary is bound to return the precise thing that he received in deposit.
  - B. A deposit is a contract by which a person delivers an immovable to another for safekeeping under the obligation of returning it to the depositor upon demand.
  - C. The formation of a contract of deposit is complete upon agreement of the thing, price and consent of the parties, regardless of whether the thing has been delivered to the depositary.
  - D. The depositary may use the thing deposited unless this right has been interdicted in the contract of deposit.
  - E. If the deposit is onerous, the depositary is responsible for loss resulting from an irresistible force.
9. **When an obligation is alternative,**
- A. the obligor is bound to multiple items of performance that must be separately rendered or enforced, each item being regarded as the object of a separate obligation.
  - B. the choice of the item of performance belongs to the obligee unless it has been expressly or impliedly granted to the obligor.
  - C. the obligor is bound to render only one of two or more items of performance.
  - D. the obligor may perform the obligation by rendering as performance a part of one item and a part of another.
  - E. the obligation is wholly extinguished if one of several items of performance contemplated in the alternative obligation becomes impossible or unlawful without the obligor's fault.

**QUESTION ONE CONTINUES  
ON FOLLOWING PAGE**

**10. In a lease of immovable property to be occupied as a dwelling, the lessor warrants:**

- A. that the thing is suitable for the purpose for which it was leased.
- B. that the thing is free of vices and defects that prevent its use for the purpose for which it was leased.
- C. that the lessee will have peaceful possession of the leased thing against any person who asserts ownership, or right to possession of, or any other right in the thing.
- D. that the lessee will have peaceful possession of the leased thing against any person who, with the lessor's consent, has access to the thing or occupies adjacent property belonging to the lessor.
- E. All of the above.

**EXAMINATION CONTINUES  
ON FOLLOWING PAGE**

# LOUISIANA BAR EXAMINATION

## CODE III

February, 2008

### Question Two: TOTAL OF THIRTY POINTS

A. Discuss generally the concepts of attachment and perfection under Chapter 9 of the Louisiana Uniform Commercial Code, explaining specifically (i) the distinctions between the two concepts, (ii) the three basic prerequisites to attachment, and (iii) four methods of achieving perfection, with a short statement of the action required to perfect under each method and examples of collateral as to which each method is and is not appropriate. **FIVE POINTS.**

B. Computers & Moore, LLC ("CAM") is a Louisiana limited liability company which operates three stores - one in Beaumont, Texas, one in Lake Charles (Calcasieu Parish), Louisiana and one in Lafayette (Lafayette Parish), Louisiana - from which it sells computers and related accessories to retail customers. Its sole member, Steve Moore, lives in Beaumont, where the chief executive office of the company is also located. Your client, Warehouse Supply, Inc. ("WSI"), is a distributor of one particular brand of computer. Its sole office and warehouse are located in Orleans Parish, Louisiana. The local manager of CAM's Lake Charles store has approached WSI about the possibility of acquiring computers on credit from WSI for purposes of resale in CAM's Lake Charles and Lafayette stores. During a conversation with this local store manager, WSI's credit officer indicated that Steve would have to "stand good" for the price of all computers that WSI might sell to CAM. CAM's manager responded that that would not pose a problem, for Steve took great pride in his company and always made sure that its creditors were promptly paid. He also indicated that Steve had given him blanket permission to sign for him individually and for CAM any financing documents that might be required. In response to a question from WSI's credit officer concerning whether CAM had any other creditors, CAM's local manager responded that it was his understanding that a bank in Beaumont had a "blanket lien" on all of CAM's assets. At the conclusion of their conversation, CAM's local manager asked WSI's credit officer to prepare and send the necessary financing documents to him so that he could sign them.

WSI is willing to supply computers on credit to CAM, but wants to make sure its interests are properly protected by appropriate documentation. Specifically, its credit manager wants to make sure that WSI will have properly protected rights - in preference to other creditors - against the computers that it supplies to CAM. He also wants to make sure he has those rights against all computers WSI supplies to CAM, whether located in the Beaumont, Lake Charles or Lafayette stores. Finally, he wants to have rights of recourse against Steve personally, in the event that WSI is not paid amounts that become due by CAM on account of its purchase of the computers. He is not entirely sure that CAM's local manager has received approval from CAM's home office in Beaumont to enter into this proposed relationship with WSI.

Please advise WSI as to what specific documentation it should obtain, and what other steps it should take, to make sure that its interests are properly protected under these circumstances. If any sort of public filing is appropriate, state what the filing should contain and in what specific office it should be filed. WSI's credit officer desires to minimize any filing fees, and therefore wants to make only those filings in only those filing offices which are absolutely necessary. Your answer should be framed accordingly. **FIFTEEN POINTS.**

*Note: In giving your answer, it is not necessary to repeat general concepts that you may have discussed in your answer to Part A above. To the extent that the law of any other state might be relevant, you may assume that its law is identical to the law of Louisiana.*

C. After a few years of business dealings, CAM became delinquent in the payment of amounts owed to WSI to the extent of \$100,000. When called upon to pay this amount, Steve prevailed upon WSI's credit officer to accept, in lieu of immediate payment, a \$100,000 promissory note executed by CAM, dated January 2, 2008, payable with 6% per annum interest in monthly installments with a final maturity of March 1, 2017. As security for this note, Steve personally executed and delivered to WSI a mortgage on a building that he owns in Lafayette, Louisiana. By its terms, the mortgage provides that it was granted as security for all present and future obligations of either CAM or Steve Moore to WSI, up to the maximum amount of \$500,000. The mortgage further states that the secured indebtedness includes CAM's \$100,000 promissory note, which the mortgage recited will mature on March 1, 2017. The mortgage, which is dated January 15, 2008, was duly filed in the mortgage records of Lafayette Parish on February 14, 2008. Unfortunately, the notary forgot to affix his signature to the mortgage before it was recorded, though there is no question that Steve did sign it. WSI's credit officer wants to know (i) the consequences of the failure of the notary to affix his signature to the mortgage, (ii) when the amounts due under the promissory note will become unenforceable on account of the lapse of time if no payments are made on it, and (iii) what future action, if any, will be required to maintain the effectiveness of registry of the mortgage and the specific deadline by which that action will have to be accomplished. Advise him, giving supporting reasons. **TEN POINTS.**

**EXAMINATION CONTINUES  
ON FOLLOWING PAGE**

# LOUISIANA BAR EXAMINATION

## CODE III

February, 2008

### Question Three: TOTAL OF TWENTY-FIVE POINTS

Bob has asked you for advice concerning four adjacent one-acre lots situated on a major highway. Each of the lots, which are commonly known as Lots A through D, consists of raw land without improvements, except that there is a small building on Lot D from which Bob operates a used car dealership. Bob's interest in these lots is as follows:

*Lot A* - Bob purchased Lot A from Sam six months ago, for \$12,000 in cash. The act of cash sale in this instance did not mention any warranty of any nature being made by Sam. Bob has since learned that Sam did not own Lot A at the time he sold it to Bob. Lot A was actually owned at the time by Sam's mother, who died a few weeks after the purported sale. Sam was her sole heir and, upon her death, acquired all assets which she owned at her death. During her lifetime, she never purported to alienate or encumber Lot A, and she died intestate without any debts.

*Lot B* - Bob purchased Lot B from Sam 18 months ago for the cash price of \$1,000 pursuant to a written act of cash sale. Sam was in dire need of money at the time, and the price Bob paid for Lot B was substantially less than its value. The day after the sale was concluded, the act of cash sale was recorded in the conveyance records.

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

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

Two weeks ago, a major manufacturing company unveiled plans to build a billion dollar manufacturing facility on land located directly across the highway. These plans immediately caused the value of all surrounding acreage to rise to approximately \$100,000 per acre. Prior to the announcement of those plans, no land in the area had ever sold for more than \$20,000 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 Sam nor Bob knew about the plans of the manufacturing company prior to entering into the transactions with respect to the four lots mentioned above.

In view of the unexpected rise in property values, Sam has notified Bob that all of the transactions described above are "void" for the following reasons: (a) Sam did not own Lot A at the time he purported to sell it to Bob, and he obviously could not sell what he did not own; (b) the purchase price Bob paid for Lot B was "unconscionably low"; (c) Sam does not wish to proceed with the sale of Lot C and, in any event, the agreed upon purchase price for that lot now seems unfair; and (d) by the time Sam received Bob's notice that he desired to purchase Lot D, Sam had already sold that lot to the manufacturing company and is therefore no longer in a position to sell it to Bob. Sam is threatening a suit to undo the sale

of Lots A and B. The manufacturing company, which had no prior communication with Bob, has now told Bob that he must vacate Lot D within 30 days.

A. Discuss the merits of Sam's contention that his purported sale of Lot A to Bob was ineffective. **FIVE POINTS**

B. Discuss the merits of Sam's contention that he is entitled to rescind the sale of Lot B to Bob. **FIVE POINTS**

C. With respect to Lot C, discuss remedies available to Bob under the purchase agreement and specifically whether he has the ability to force Sam to proceed with the sale at the stipulated price. **FIVE POINTS**

D. Discuss possible claims which Bob has against Sam and the manufacturing company with respect to Lot D. **TEN POINTS**

**EXAMINATION CONTINUES  
ON FOLLOWING PAGE**

# LOUISIANA BAR EXAMINATION

## CODE III

February, 2008

### Question Four: TOTAL OF TWENTY-FIVE POINTS

Kelly, the president of the Faster Action Drilling Company ("FAD"), has just walked into your office with a handful of papers, explaining her company's predicament as follows:

A few months ago, FAD entered into a drilling contract with High Pressure Oil Company ("HP"), which was FAD's biggest customer and easily the largest petroleum exploration company in Louisiana. Under the contract, which is standard in the industry, FAD agrees to drill a well to a depth of 10,000 feet. Upon reaching that depth, FAD earns a lump sum price of \$1,000,000. The contract specifies that FAD earns the price only upon reaching the specified depth, and that it earns nothing if it does not complete the well to the specified depth.

FAD was willing to accept this risk that it might not drill the well to the specified depth and to agree that it would not earn a cent if it did not reach the specified depth. But because drilling is risky business, and because HP has a reputation for driving hard bargains, FAD wanted to make it clear that FAD could abandon the project if the well went badly. Thus, when Kelly received an initial draft of the proposed contract from HP, she typed in the following "walk away" clause on the first page:

If well conditions prevent FAD from drilling to the specified contract depth (10,000 feet), FAD may abandon the project. Moreover, FAD will not be obligated to continue drilling the well, or to provide a new well, if the cost of drilling exceeds \$1,000,000, the contract price.

FAD had never in its history signed a drilling contract without such a "walk away" clause.

At the time she sent the proposed (but yet unsigned) contract back to HP with this suggested revision, Kelly called John, HP's drilling manager, and explained why she needed her proposed language. Kelly made it clear to John that FAD would never agree to the contract without this language. John replied that HP really wanted FAD to drill the well and that he was sure things could be worked out fairly.

Over the next several months, neither Kelly nor FAD heard anything further from John or HP with respect to the proposed contract. Then, one morning, Kelly received an email communication from John to the effect that he was sending over the contract and wanted FAD to start drilling within three weeks' time. Kelly was ecstatic because FAD desperately needed the work, and she did not want to miss this opportunity. She tried to call John eight times that day for details but could not reach him. The contract arrived by courier that afternoon with the following cover letter from John:

I enclose the drilling contract for your signature. We trust that you will find the terms of this contract sufficient and fair. As you know, many other drillers have bid on this contract and are willing to drill the well for the generous price we are offering. If you are willing to accept the contract, please sign it in the place provided and return it to me within 10 days.

Kelly did not read the contract, but rather simply signed it and sent it back to HP immediately. The version she signed does not contain the language she had typed in on the revision she had proposed several months earlier. Rather, the signed version obligates FAD unconditionally to drill the well to 10,000 feet, no matter how much it costs, without any "walk away" provision.

Upon starting the well, FAD encountered trouble from the outset. Realizing that it would never make any money on the well, FAD told HP it was walking off the job without having reached the well depth specified in the contract. An hour later, Kelly received a call from HP's attorney, who pointed out that the contract expressly obligates FAD to drill the well, regardless of cost, and does not give FAD the right to walk away from the job. He also explained that HP would lose millions of dollars if FAD leaves the well unfinished.

Kelly tells you that FAD will go bankrupt if it has to continue drilling, and she wants to find a way to recede from this contract. She candidly admits that the version of the contract she signed gives FAD no right to walk away. She knows she should have read the contract before signing it, but says she was just "in too much of a hurry" to start work that FAD desperately needed.

Write an evaluation of FAD's position that it should not be bound by the contract as written, discussing both the strengths and weaknesses of possible arguments available to it.

**END OF EXAMINATION**

**LOUISIANA BAR EXAMINATION  
LOUISIANA CODE OF CIVIL PROCEDURE  
FEBRUARY, 2008**

**QUESTION I (25%)**

Succinctly answer the following questions:

- 2%    A.    Which of the following is NOT an appropriate venue for an action seeking to modify a child support obligation:
1.    The parish where the person awarded support is domiciled;
  2.    The parish where the person paying the support is domiciled;
  3.    The parish where the support award was rendered if it has not been registered and confirmed in another Louisiana state court; or
  4.    The parish where the support award was last registered if registered in multiple Louisiana state courts.
- 2%    B.    Which of the following is NOT a prerequisite for a class action:
1.    The class is so numerous that joinder of all members is impracticable.
  2.    There are questions of law or fact common to the class.
  3.    The claims or defenses of the representative parties are typical of the claims or defenses of the class.
  4.    Allowing the class action would provide the most judicially economical resolution of the claims.
- 2%    C.    Which of the following is NOT a basis for which a juror must be excused pursuant to a challenge for cause:
1.    When the juror is closely related to one of the parties such that it must be reasonably believed that the relationship would influence the juror in coming to a verdict;
  2.    When the juror served on a previous jury which tried a case containing issues similar to the case you are presenting;
  3.    When the juror refuses to answer a question on the ground that his answer might tend to incriminate him; or
  4.    When the juror has formed an opinion in the case or is not otherwise impartial
- 2%    D.    Which of the following is NOT a reason that a court would be required to deny the consolidation of two separate actions for trial:
1.    It would lengthen the time required for trial.

2. It would give one party an undue advantage.
3. It would prevent a fair and impartial trial.
4. It would cause jury confusion.

4% E. You receive a telephone call from in-house counsel for International Corporation advising that International Corporation has been sued for damages in state court in your parish, where International Corporation operates a manufacturing facility. You review the state court lawsuit forwarded to you by International Corporation's in-house counsel and determine that it involves the same parties, claims and subject matter as a lawsuit filed six months earlier in federal court against International Corporation, which federal court action remains pending. In-house counsel asks you whether International Corporation is required to defend both actions or whether any steps can be taken to limit the claims against International Corporation to a single lawsuit. What is your answer to in-house counsel and please specify what pleading, if any, you would file to implement your legal advice.

4% F. Following an adverse jury verdict, a juror approaches you to advise you of behavior occurring during the trial that she believed to be improper conduct by someone affiliated with the opposing party. You would like to file a motion for new trial based upon this reported behavior. What is the time delay for filing such a new trial motion and what if anything must you file with your motion?

6% G. Today Client brings you two default judgments that were obtained against Client and Client's wholly-owned corporation, XYZ Corp. Client explains that the lawsuit in which the judgments were issued relates to a contract that XYZ Corp. entered and was performing and that he had no personal connection or responsibility for the claims asserted in the lawsuit (apart from his ownership interest in the corporation).

You review the relevant suit record and determine that service upon both the Client and his corporation (for which Client serves as the designated agent for service of process) were made via domiciliary service on Client's wife on March 5, 2007. On July 20, 2007, the plaintiff moved for and obtained a preliminary default against Client and Client's corporation. Thereafter, on October 15, 2007, a default judgment was rendered in open court. Client was personally served with those judgments on October 25, 2007.

3% 1. Does Client have a legal basis for challenging the default judgments that were taken against Client and Client's wholly-owned corporation?

3% 2. If one or both judgments can be challenged, please state the specific procedural method (or methods) for contesting same.

3% H. Defendant answers Plaintiff's petition, requesting a trial by jury. Nine months after the answer was filed, Defendant files a motion to withdraw its request for trial by jury, which is granted. May Plaintiff now file a request for trial by jury despite the fact that she had not requested a jury trial in her original petition and, if so, what deadlines, if any, exist? Explain briefly.

**Question II (25%)**

- 4% A. Plaintiff files suit against Sam and Tom, seeking to recover an \$80,000 cash loan. You represent Sam and Tom who believe the transaction at issue is between Plaintiff and their wholly owned company, ST Corp., and that they have no individual responsibility or liability in the matter. You examine the loan documents attached to Plaintiff's petition, which confirm Sam and Tom's explanation. Sam and Tom further advise you that, contrary to the allegations in Plaintiff's petition, Plaintiff actually owes ST Corp. \$60,000. In addition to filing an answer on their behalf, Sam and Tom would like you to try to recover the amount owed to ST Corp. What can you file, if anything, to seek recovery of that amount from Plaintiff? Please explain in specific detail.
- 2% B. Your client tells you that his former accountant has documents which are very helpful to his case but she refuses to give the documents to him. The accountant is not someone from whom you want to obtain testimony. All you want are her records. What can you do to obtain the records of the accountant without taking her testimony?
- 2% C. Deceased died in Beauregard Parish. At the time of his death, he was domiciled in Catahoula Parish and owned immovable property in Bienville Parish. In which parish must a proceeding to open his succession be brought?
- 4% D. When a lawyer signs a pleading filed for a client, what does the lawyer signify personally, if anything?
- 9% E. Client has informed you that Brother has petitioned Court to probate the testament of Deceased Father. Client wants to oppose the probate on the grounds of the invalidity of the testament.
- 3% 1. What pleadings or documents must you prepare in order to accomplish Client's desires?
- 3% 2. What must you state or allege in your document(s) to comply with the appropriate pleading requirements?
- 3% 3. How is the will contest resolved and who bears the burden of proof?
- 4% F. Client consults with you regarding her concerns over the actions of her brother, who has been appointed as tutor of the three minor children of the late sister of your client who was killed last year in a motor vehicle accident. Your client is concerned because she believes her brother recently has been spending more money than he otherwise could afford and your client fears that he may not be managing the assets of the minor children under his tutorship in a proper fashion. Does your client have standing to take any action and, if so, please explain what action, if any, can be taken and the procedure for same.

**Question III (25%)**

- 3% A. Defendant has asserted a reconventional demand which is totally unrelated to any claim asserted, or any issue raised, in Plaintiff's main demand. Further, the amount sued for in reconvention is far higher than the recovery properly prayed for in the main demand. What, if anything, can Plaintiff do to obtain the dismissal of the reconventional demand? Please explain.
- 5% B. Client has delivered a written notice to Tenant demanding that he vacate the leased premises within ten days for nonpayment of rent. The ten day period has elapsed and Tenant is still there. What steps must you take to place Client in possession of the leased premises? Explain fully.
- 8% C. You represent Plaintiff in a lawsuit against multiple defendants. One defendant files a *res judicata* exception, which is granted by the court, dismissing that defendant from the lawsuit. On Wednesday, January 23, 2008, you receive by mail a notice of judgment dated and mailed on Friday, January 18, 2008, enclosing a copy of the formal judgment signed on Wednesday, January 16, 2008 granting the exception and dismissing the defendant with prejudice from the lawsuit. The formal judgment bears no designation of any kind by the Court. Plaintiff asks you whether this dismissal may be appealed now. Explain whether the dismissal can now be appealed, providing specific reasons as to why or why not. If the matter can be appealed, provide the specific deadlines that exist for filing an appeal.
- 9% D. 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. You encounter the following questions:
- 3% 1. 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 strategies and other issues that may arise in the event of litigation. Are these pre-lawsuit emails by non-lawyer employees of your client subject to production? Please explain the basis for your answer.

**Question IV (25%)**

- 8% A. Client comes to you with a litany of problems relating to his neighbor. Both your client and his neighbor live on adjacent 40-acre tracts of land just outside of Alexandria, Louisiana. The neighbor's property originally was only 20

acres in size until your client sold him an additional 20 acres adjacent to the back half of the neighbor's property. Your client accepted a \$50,000 promissory note payable in monthly installments for that 20-acre tract. The \$50,000 promissory note was secured by a valid mortgage on the acreage sold, which Client properly recorded. When the neighbor missed two note payments, your client then inquired about the missing payments. This inquiry angered the neighbor, prompting him to build a fence between the respective property lines, which fence encroaches approximately five feet onto your client's property. When your client approached his neighbor to discuss the fence encroachment issue, the neighbor assaulted your client and beat him with a garden hoe. Your client would like to bring an executory process action against his neighbor to seize and sell the rear 20-acre tract of land (assume that all documents required for an executory process action are in place), would like to bring an action to force his neighbor to remove the encroaching fence and would like to bring a tort action against neighbor for the assault and battery.

- 3% 1. Please succinctly describe the pleadings required to bring an executory process action against Neighbor.
- 3% 2. Please succinctly describe the type of action and pleadings required to force Neighbor to remove the fence constructed on your client's property (including the elements that must be proved for this action).
- 2% 3. May your client bring all of the three referenced actions in a single lawsuit?

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

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

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

- 4% 1. What, if anything, can you file on behalf of California Importer to attempt to terminate the litigation prior to trial? Explain fully, including an explanation of what such a motion, if any, will have to show to be granted.
- 4% 2. If there is such a motion, explain specifically what California Importer must file to support its motion.

- 7% C. Answer the following questions.
- 1% 1. What is the legal delay for answering a petition that is served pursuant to the Louisiana Code of Civil Procedure?
- 1% 2. What is the legal delay for answering a petition that is served pursuant to the Louisiana Long Arm Statute?
- 1% 3. What is the legal delay for answering a request for admission?
- 1% 4. What is the legal delay for applying for an appellate court rehearing after receiving an appellate court opinion?
- 1% 5. What is the legal delay for applying for a writ of certiorari to the Louisiana Supreme Court after receiving an appellate court opinion (assuming rehearing was not sought from the appellate court)?
- 1% 6. What is the legal delay for filing a suspensive appeal?
- 1% 7. What is the legal delay to appeal the issuance of a preliminary injunction?
- 2% D. Which of the following is NOT a ground for attachment under Louisiana Code of Civil Procedure article 3541:
1. The defendant has left the state permanently or is about to do so before a judgment can be obtained and executed against him.
  2. The defendant has concealed himself to avoid service of citation.
  3. The defendant has threatened to file a bankruptcy action.
  4. The defendant has converted or is about to convert his property with intent to place it beyond the reach of his creditors.

**LOUISIANA BAR EXAMINATION**

**TORTS**

**FEBRUARY 2008**

**Question One:      SIXTY POINTS**

On May 3, 2007 at approximately 3 p.m., Sarah Jones, 16 years old, was driving her parents' auto in a southerly direction on La. Highway 34 in St. Helena Parish. With her in the car was her 14 year old cousin, James Smith.

For some unknown reason she lost control of the vehicle which veered off the road to the left. Once off the roadway, Sarah encountered a ditch and because of its slope was unable to steer back onto the road. Her vehicle then struck a culvert that was directly within her path, 8 feet off the road, and not within view because of thick vegetation that had grown over the culvert. The Highway Dept. had given a permit for the installation of the culvert.

Please discuss all tort issues.

**Question Two:      TWENTY POINTS**

Discuss the Louisiana Products Liability Act.

**Question Three:      TWENTY POINTS**

Universal Car Rentals entered into a rental agreement at one of its Florida locations to Bob, a Florida resident. The car was in Louisiana being driven by Heather, also a Florida resident, but not an authorized driver of the car. While in Louisiana, Heather was involved in an auto accident in which she was at fault, injuring Louisiana residents who have filed a lawsuit in Louisiana.

The Louisiana Supreme Court has ruled that a self-insured rental car company, which Universal is, has the right to limit operation of its vehicles to only those individuals to whom it gives express permission, i.e., those individuals listed as authorized drivers in the rental agreement. Florida law does not distinguish between authorized and unauthorized users of rental cars because it simply holds owners vicariously liable.

Universal as the insurer has filed a summary judgment requesting Louisiana law apply, while the Louisiana injured plaintiffs have filed a summary judgment requesting that Florida law apply.

As the trial judge, render an opinion.

## LOUISIANA BAR EXAMINATION

### BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS

FEBRUARY, 2008

**QUESTION 1. (25% –5 points each subpart)**

Melchoir Ball maintains a checking account with Bayou Homestead Association (BHA). Melchoir lives in Meraux fixing flood damaged homes from sunrise to sunset. Melchoir's brother Spike has just been paroled from Angola State Penitentiary after serving time for theft. Spike having no place to live is taken in by Melchoir who is happy to have the company. Reverting to his old ways Spike rummages through Melchoir's desk and locates his check book and begins forging Melchoir's signature and cashing checks drawn on Melchoir's account at BHA. From December 2005 through February 2006, Spike forged and cashed three \$1,000.00 checks each month for each of the following months: December, January and February representing a total of 9 checks for \$9,000.00 over this three month period. The forged checks were all included in the respective monthly statements for January, February and March and provided to Melchoir by BHA, but Melchoir failed to review his statements during this period of time.

On April 16, 2006, Melchoir received his bank statement for March from BHA and discovered three recently forged checks, each in the amount of \$1,000.00, which bore obvious forgeries of his signature and were cashed by Spike in March. Melchoir contacts BHA that day and learned of the prior 9 checks that were also obviously forged by Spike during the prior months.

Melchoir demands that the bank remit payment to him for the \$12,000.00 representing the money withdrawn from his account based upon his forged signature. BHA believes that it followed standard banking procedures and practices and paid the checks in good faith. As a result, BHA contacts you to determine what money, if any, should be returned to Melchoir and asks you to answer the following questions:

- (a) As a general rule, does the bank or the depositor suffer the loss for payment of an instrument bearing a forged signature? Explain fully.
- (b) BHA feels that Melchoir was negligent in failing to restrict access to his checkbook and asks you whether or not such negligence is relevant to any defense the bank could assert against Melchoir. Explain fully whether this argument bears any legal merit and the likely findings of the court on this issue.
- (c) Does BHA have any defenses, other than the one discussed in part (b) above, that it can assert to justify its decision to not reimburse Melchoir for the 12 forged checks that were included in Melchoir's monthly bank statement? Explain fully any available defenses or why such defenses are not available to BHA.
- (d) If Melchoir could prove that BHA failed to follow its own internal policy of reviewing and comparing signature cards for any checks in excess of \$500.00, would this help his case? Why or why not?
- (e) If Melchoir had given Spike a blank check from Melchoir's checkbook, telling Spike to fill it in and sign Melchoir's name to purchase a few items for Melchoir at the grocery store would Spike's signing of Melchoir's name constitute forgery or an unauthorized signature? Why or why not?

**QUESTION 2. (25%)**

You are a young lawyer in Monroe and one day your secretary advises that Al Hebert, Bert Hoffman and Claude Bell have arrived for their appointment with you to get your advice regarding a proposed business venture. Al inherited a building from his grandfather. The building had previously been used as a retail store but has been vacant for over ten years and is in dilapidated condition. If renovated, the building would be worth a lot of money and sell for a high price. Al does not have the funds necessary to renovate the building. Bert has the funds required for the renovation. Claude is qualified to perform the renovation. Claude was previously a general contractor. The parties would like to operate a venture as follows:

Al will own a 55% interest in the venture. In return he will contribute the property.

Bert will own a 35% interest in the venture. In return he will contribute the funds required for the renovation work.

Claude will own a 10% interest in the venture. In return he will perform the renovation work on the property. Claude must get Al's approval of the exterior materials and the other aesthetic elements of the renovation. Otherwise, Claude will have complete decision-making authority regarding the renovation.

After the renovation is completed, the property will be sold. Bert must approve all terms of the sale. This right of approval will be his only participation in the management venture.

After the property is sold and the debts of the venture are paid, the first funds distributed will go to Bert, until the money he contributed is recovered, plus 10% interest. After that, the remaining funds will be distributed among the parties in the agreed upon percentages.

Al, Bert and Claude ask your advice regarding the following. In your answers, discuss the consequences that would result from structuring the entity as a corporation, a partnership, and a partnership in commendam, and explain the applicable provisions of the Louisiana laws governing those types of entities. (Do not discuss federal or state tax issues or securities issues.)

- (a) 10 points Discuss the management structure of a corporation, a partnership and a partnership in commendam. How can the management structure that the parties have agreed to be implemented in each context? Discuss specifically how the agreed upon voting requirements with respect to the property sale can be achieved.
- (b) 5 points The parties desire that none of them shall have the right to withdraw from the venture prior to the sale of the property. How can this desire be achieved in the corporation, partnership and partnership in commendam contexts?
- (c) 5 points Advise the parties as to how Louisiana law addresses the heritability of interests in corporations, partnerships and partnerships in commendam.
- (d) 5 points Advise the parties as to the methods through which Bert's reimbursement arrangement can be achieved in the corporation, partnership and partnership in commendam contexts.

**QUESTION 3. (25%- 5 points each subpart)**

Ashley Monroe, a new client, visits you seeking advice concerning her company, which was incorporated late last year and which produces official LSU merchandise at a facility in West Feliciana Parish. Ashley has with her the Articles of Incorporation of her company, which read in their entirety as follows:

**Articles of Incorporation  
of  
Tigerware, Inc.**

The undersigned, acting pursuant to the Louisiana Business Corporation law, adopts the following Articles of Incorporation.

I. ARTICLE

The name of the corporation is Tigerware, Inc.

II. ARTICLE

The corporation shall remain in existence for the life of Ashley Monroe.

III. ARTICLE

The purpose of the corporation is to make money.

IV. ARTICLE

The corporation has the authority to issue 100,000 shares of common stock.

/s/Ashley Monroe  
Ashley Monroe

\*\*\*\*\*

Attached to the Articles of Incorporation is a Certificate of Incorporation from the Louisiana Secretary of State, which states that corporate existence began on October 1, 2007. An Initial Report is also attached to the Articles of Incorporation. The Initial Report is in proper form. It lists Ashley and her brothers Dwayne and Richard, as the initial directors, and designates Ashley's home in West Feliciana Parish as the corporation's registered office. The Articles of Incorporation and Initial Report were filed only with the Secretary of State. The corporation has no by-laws. At all relevant times, Ashley and her brothers were equal shareholders.

Ashley asks you the following questions. Answer each separately and give reasons for your answer, including the applicable provisions of the Louisiana Business Corporation Law.

- (a) Were the Articles of Incorporation properly drafted and filed? If not, how can the errors be corrected?
- (b) Must the corporation adopt by-laws? How are by-laws adopted?
- (c) May a director of the corporation, absent from a board meeting, vote by proxy? May a shareholder of a corporation vote by proxy?
- (d) May the directors take action by written agreement signed by a majority of the members of the board? May the shareholders take action by written agreement signed by less than all the shareholders?
- (e) Do the shareholders of the corporation have preemptive rights? What are preemptive rights?

**QUESTION 4. (25%-5 points each subpart)**

Melissa has developed a formula for banking software which will revolutionize the industry. Melissa has two wealthy friends, Joe and Donald, who are interested in investing in this business with Melissa. Each would invest \$100,000.00, for a total of \$300,000.00. There may be risk of substantial loss in this new business, and the investors do not want to risk losing their family fortunes in it. In setting up the business there are four principal objectives the investors wish to accomplish (other than attaining vast wealth):

- (1) To limit the liability of each investor to the \$100,000.00 that each contributed;
- (2) To give each investor assurance of an equal voice in the management and operation of the business without exposing the investor to personal liability beyond the amount of the investment;
- (3) To ensure that the profit and loss resulting from the business can be reported as income or taken as a deduction directly on the individual federal income tax returns of the investors without being taxed first to the entity; and
- (4) Minimize the legal formalities necessary to create and operate the company.

The investors wish to consider the following two forms of business entities: (i) limited liability company; and (ii) partnership in commendam.

- (a) What steps must be taken to form a Louisiana limited liability company?
- (b) What steps must be taken to form a Louisiana partnership in commendam?
- (c) What are the relative advantages and disadvantages of each entity with respect to each investor's stated objectives?
- (d) How would you structure the partnership in commendam to best satisfy the parties' stated objectives?
- (e) Under the circumstances, which entity do you recommend and why?

END OF EXAM

**LOUISIANA BAR EXAMINATION  
CONSTITUTIONAL LAW  
FEBRUARY, 2008**

**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 ON ANY OF THE FOUR QUESTIONS.**

**Question Number One is worth 30 points; Question Number Two (A) is worth 12 points and Two (B) is worth 18 points; Question Three is worth 25 points; Question Four is worth 15 points.**

**QUESTION ONE – (30 points)**

After obtaining special permission from the Department of Homeland Security (DHS) so as not to violate immigration, federal preemption, or national security laws or concerns, the Louisiana legislature passed a law to accommodate but regulate its new temporary residents, who were playing a major role in rebuilding the state.

Evidence presented at a legislative hearing demonstrated that the number of accidents involving uninsured motorists had risen 40% since January of 2006, and illegal aliens comprised 30% of the uninsured motorists. There was a need to keep those illegal aliens performing construction work in the area until reconstruction was complete; however, there was also a need to make sure those operating motor vehicles were competent, regulated, and insured.

The legislation, called “The Fleur de Lis Welcome Mat,” provides that an alien over the age of majority could apply for and receive temporary Louisiana residency for himself and his immediate family if he (a) provided a birth certificate plus a valid driver’s license or passport from his country of origin, (b) provided documentation that he had obtained full-time work within the State to assist in hurricane recovery efforts, and (c) passed a criminal background check.

Once approved for Fleur de Lis residency, the temporary resident alien would receive a gold Fleur de Lis temporary residency card and could obtain a second-class Louisiana driver’s license after passing a test and providing proof of insurance; however, the second-class license could be used for driving only and could not be used for identification purposes. The Welcome Mat further provided that a temporary Louisiana resident was exempt from deportation until 2010 unless he lost his temporary Fleur de Lis

status by (1) being arrested, (2) having a break in full-time employment in a hurricane recovery-related industry for a period exceeding 20 days, or (3) obtaining temporary residency status in another state. The law imposed fines and/or prison penalties on employers and institutions for using the second-class driver's license for identification purposes. No definitions were included in the legislation.

Luis, a Mexican national, arrived in Louisiana with his wife (Maria) and his sister (Lupe) to assist the hurricane rebuilding efforts with his construction skills. They moved into a duplex owned by Anita and Pedro Gomez, friends from Mexico who had obtained permanent residency status. Luis obtained construction employment and then applied for and obtained a Fleur de Lis card and, when their Mexico licenses expired, a second-class driver's license for himself and Maria. Maria did not work outside the home; she cared for the couple's children.

Although Luis and Maria received temporary driver's licenses that allowed them to drive legally in Louisiana, they had no valid Louisiana identification to open a bank account or cash checks. They often had to get the Gomezes, who had Louisiana licenses with full privileges, to cash their checks or have employers pay them in cash. One pay day, Luis was involved in a fight with a man who was trying to rob him shortly after Pedro gave him the cash from his check. The police called to break up the fight could not speak or understand Spanish. They arrested both men not knowing that Luis was defending himself. Five days after Luis's arrest, the DHS sent a letter revoking Luis's and Maria's Fleur de Lis cards and driver's licenses.

Unlike Luis, the DHS denied Lupe's application for a card because she did not qualify as having employment characterized as "assisting in the hurricane recovery." She had a job in hotel housekeeping and had no construction skills. Lupe lives in constant fear that she will be deported.

Luis and Lupe wish to file suit and come to you for advice. They do NOT have concerns regarding federal preemption and have someone else handling their immigration issues. What constitutional arguments do they have to challenge the Welcome Mat Statute?

## **QUESTION TWO – (30 points)**

Andrea Whistle was an employee who worked in the City of Shreveport's accounting department and who was responsible for conducting audits of state and federal money received by the City and issuing reports to the governor and certain legislators. During an audit, she learned that one of her supervisors was manipulating the numbers in various reports to make it appear that the City was using more federal money than it actually was spending.

Andrea drafted and disseminated her audit report for the governor and legislators, which included information regarding her supervisor's manipulation. However, she also anonymously sent a copy to each major newspaper and television station in the state. The story made the headlines in major state and national newspapers and on news shows for several days while investigations were conducted by state and federal authorities.

Andrea's supervisor sent her a memorandum terminating her effective immediately. The letter provided for a post-termination hearing that would provide due process.

Also on the morning that the story hit the news, the governor issued an executive order that required any Louisiana newspaper or other media to delay publishing or disseminating any negative story or article about the State or any local municipality or its officers, agents or employees, for at least 24 hours in order to allow the State to verify that the story was factually accurate and to provide a response to the story or article. He was concerned that negative news stories airing after August of 2005 were harming Louisiana's ability to have the nation view it in a positive light and ultimately impairing the State's tourism, convention, and film industries.

The tourism bureau's records demonstrated that in 2003, 2004, and the first half of 2005, the state averaged six to eight film production projects and 10 to 12 conventions per month. Hotel and restaurants were generally at 95% to 100% occupancy for most conventions. In 2006 and 2007, the state averaged two to three film production projects and four to seven conventions per month. Hotel and restaurant occupancy during conventions in 2006 and 2007 hovered around 75%. So far, in 2008, approximately six film production projects and nine conventions are scheduled each month.

The Shreveport Times, a small local paper, applied for a permit to have a peaceful protest with its 20 employees regarding the executive order. However, it learned that the City required a bond of \$20,000 for all demonstrations or parades involving more than eight people. The city council raised the bond amount after the Jena, Louisiana march, which lured over 20,000 people to Jena. The Shreveport Times could not secure a bond from any company in the area and had to abandon its planned protest.

- (a) Andrea believes she has been wrongfully terminated because she has a constitutional right to disclose to the public wrongdoing concerning public funds. Please advise Andrea of her constitutional rights concerning her termination. (12 points) DO NOT DISCUSS ANY SUBSTANTIVE OR PROCEDURAL DUE PROCESS ISSUES.
- (b) The Shreveport Times wishes to publish a follow-up story on the scandal and believes it has a right to do so without delay and without obtaining the State's response. It also wishes to have its peaceful protest. Please advise the newspaper of its rights. (18 points) DO NOT DISCUSS ANY SUBSTANTIVE OR PROCEDURAL DUE PROCESS ISSUES.

EXAMINATION CONTINUES ON NEXT PAGE

### **QUESTION THREE – (25 points)**

The Louisiana Recovery Authority (LRA), a Board established by the Louisiana legislature to administer all aspects of the federal funds given to the State for hurricane recovery efforts, began selling hurricane-damaged properties purchased from citizens through the Road Home Program (hereinafter “recouped properties”). However, it decided that the Road Home goals would be furthered if the properties were purchased by non-profit organizations repairing homes for Louisiana citizens or by Louisiana citizens trying to come home or trying to remain in the state, rather than by out-of-towners looking to make a quick buck.

Consequently in 2008, the LRA promulgated the following policies concerning non-repaired residential properties: (1) current Louisiana citizens, defined as those who had been domiciled in the state for at least 12 months, could purchase recouped properties for \$25 per square foot; (2) non-profit organizations demonstrating that properties would be transferred to current Louisiana citizens could purchase properties for \$20 per square foot; (4) all other purchasers could purchase recouped properties for \$85 per square foot; and (5) the value of an empty lot was calculated based upon the square footage of the structure last situated on the lot. Another policy provided that purchasers of recouped properties must erect structures able to withstand 190 mile per hour winds.

Strong Homes, a company based in Florida, was the only company with a modular home design capable of meeting the 190 mph wind requirement. Modular homes constructed in the other states by other companies could withstand a maximum of 140 to 150 mph winds.

Vanessa is a native of Lake Charles who was forced to relocate to Houston in 2006 because her employer left Louisiana after Hurricane Rita. Her sister, Vena, moved to Houston with her. Changing her driver’s license, car license plate, and voter registration to Texas, Vanessa became a citizen of Texas because she did not believe she could find comparable work that would allow her to afford to return to Louisiana. Vena maintained her Louisiana citizenship because she did not like Texas and did not plan to remain there. News of the recouped properties sale gave the sisters hope that they could both return to their home town. Vanessa’s hopes were dashed, however, when she

received paperwork from the LRA showing that she would pay significantly more than Vena for a similar piece of property with 1550 square feet on the same street.

Vanessa had decided to tear down the structure on the property and to purchase a modular home from Goodrun Homes, a Georgia company. However, the Goodrun Homes house could withstand winds of only 150 mph. Vanessa would have to pay \$38,000 more for a similar home from Strong Homes. She was disturbed when she learned that she had to purchase the house from Strong Homes under the LRA policy.

What arguments can Vanessa make to challenge the LRA's policies?

EXAMINATION CONTINUES ON NEXT PAGE

## **QUESTION FOUR (15 points)**

Maakme Rich, a Hollywood tycoon, purchased several large tracks of commercial and residential land near the Amite River in order to build large, luxury condominiums and a huge outlet shopping mall. Rich successfully petitioned to have the properties rezoned to achieve his objectives.

Rich executed a multi-million dollar contract with Youngblood Construction, Inc. to begin leveling all structures on the land, to build several high-rise condominiums on a huge man-made beach by the river, and to construct an outlet mall larger than the Mall of Louisiana. Youngblood cleared the properties, imported white sand, and constructed a beach that rivaled some of the best beaches in Florida.

However, once city leaders saw the cleared land and extraordinary beach, they believed that the City would be better served by cultivating the green space and beach than cluttering the area with large obtrusive condominiums. Complying with all necessary notice and open meeting laws, the City Council called an emergency meeting, which Rich attended with his counsel, and immediately promulgated ordinances and zoning changes that prohibited the construction of any new structures within 4000 yards inland of the Amite River. The Council said that the measure would assist in creating more green space for parks and also create an additional buffer between the river and the citizens.

The City executed a settlement with Rich to pay for the land.

You have been approached by Youngblood Construction, Inc. for advice regarding its rights. What constitutional arguments can Youngblood Construction, Inc. raise to challenge the City Council's action? **DO NOT DISCUSS ANY SUBSTANTIVE OR PROCEDURAL DUE PROCESS ARGUMENTS IN THIS ANSWER.** (15 points)

**END OF EXAMINATION**

**LOUISIANA BAR EXAMINATION  
CRIMINAL LAW, PROCEDURE AND EVIDENCE  
FEBRUARY 2008**

**I.**

**(40 points may be earned)**

Mike and Rob have been best friends since the 7th grade. Even when Mike was jailed for two years following a conviction for felony drug possession the two remained in frequent contact with each other. There was nothing that Mike and Rob would not do for each other. Underemployed and down on their luck, Mike and Rob were desperate to get their hands on quick cash. They concluded that the most logical source from which to “borrow” money was a bank.

A few days later, the two kicked off their plan. First, Rob visited a nearby sporting goods store and purchased a .40 caliber semi-automatic pistol and bullets. Next, he drove to Mike’s apartment, picked up his best friend and the two headed over to the town bank. While en route, Rob handed the pistol to Mike.

After arriving at the bank, Mike placed the pistol in his jacket pocket, climbed out of the car and entered the bank lobby. Rob remained in the car. Once inside, Mike suddenly felt reluctant to follow through on the plan. He meandered around the bank lobby for a few minutes trying to work up the nerve to set the plan in motion. Eventually, he drew the attention of the bank’s uniformed armed security guard, a 66 year-old retired police officer named Frank. Thirty-two years as a cop had imbued Frank with an uncanny ability to sense impending danger and the sight of Mike malingering about the bank lobby raised his suspicion. Seeking to avert a potential problem, Frank ordered Mike to leave the bank at once. Mike refused. Frank again commanded Mike to leave but Mike continued to ignore him. As the encounter escalated, Mike pulled the pistol from his pocket, pointed it at Frank and demanded that Frank surrender his gun. Frank complied.

Mike then loudly commanded all customers and bank employees to not leave the bank and to “get on the floor.” He then singled out Katie, a bank teller, and pointed his pistol near her neck, telling her, “Give me all the money.” Katie responded by quickly dumping several stacks of greenbacks in a bag and handing it over to Mike. To her horror, Mike then grabbed her by the arm and forced her outside the bank and towards Rob’s car. Just before leaving the lobby, however, Mike pointed the .40 caliber pistol to the ceiling and fired a shot. The bullet ricocheted off a light fixture, shattering it to pieces. A wedge of glass from the fixture dropped from the ceiling and struck Frank’s head. He later died from the injury.

Once outside the bank, Mike forced Katie into Rob’s car and the three sped away. A police officer driving past the bank observed Rob drive off at a high rate of speed. The officer activated the siren and emergency lights on his police cruiser and gave chase. However, Rob ignored the commands and refused to stop. During the ensuing chase, Rob narrowly avoided striking several cars and pedestrians near his path. While attempting to negotiate a sharp curve in the highway, Rob lost control of the car, drove off the road and struck a tree. Mike and Rob were badly injured; Katie was killed.

Discuss all crimes with which Mike and Rob could be charged under Louisiana law, the elements of each offense, and the weaknesses in the State’s case with respect to any element, and all available defenses that may apply to each crime.

**II.**  
**(30 points may be earned)**

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

During the investigation at the collision scene, police officers searched the wreckage of Rob's car and discovered the money taken from the bank. It was hidden in the passenger compartment in a storage area on the driver's side door. Prosecutors provided notice of the State's intention to introduce the evidence at the trial of both defendants. Rob chose not to challenge the evidence; however, Mike instructed his lawyer to do so, given that the evidence was not located on his person or property.

Officers also decided to search the trunk of the car, which was locked. One of the officers removed the car keys from the ignition slot and used it to open the trunk, whereupon officers discovered two boxes of .40 caliber ammunition. Prosecutors intend to introduce the bullets into evidence at Rob's trial.

After being arrested, a police officer attempted to advise Mike of his *Miranda* rights. However, Mike abruptly interrupted the officer before the officer could complete the warnings and angrily proclaimed, "I already know all that. I've been arrested before." The officer did not complete the reading of the warnings. Minutes later, Mike offered a statement implicating himself and Rob. Mike's lawyer later attempted to suppress the statement.

Before police transported Mike and Rob to the parish jail, the bank manager and two customers were taken to the accident scene. Once there, investigators asked all three witnesses if they could identify Mike as the person who created the *mêlée* at the bank. Together, all three witnesses promptly indicated that Mike was, in fact, the person who demanded the money and fired a shot into the ceiling of the bank lobby. Prosecutors later attempted to introduce the identification evidence into the record at Mike's trial.

After sorting out the facts, criminal investigators learned that Rob may have purchased additional weapons. They also learned that the weapons were stored at the home he shared with his parents. Police then immediately drove to Rob's home with the intention of conducting a search for the weapons. Upon arrival, they identified themselves to Rob's mother and requested her consent to search the residence. Rob's mother readily consented to the search but his father vigorously opposed it. Relying on the consent given by Rob's mother, officers proceeded to search the bedroom. They eventually discovered two shotguns in the closet of Rob's bedroom.

Investigators also decided to search Mike's apartment. However, they decided to obtain a court-issued warrant to enable them to do so. When they arrived at the apartment, Mike's brother, Mark, was present. While searching the home, officers decided to search Mark's person. He was ordered to empty his pockets. During the search, a marijuana cigarette was discovered in his shirt pocket.

Discuss all state and federal constitutional bases for challenging the following: (1) the search of the passenger compartment of Rob's car; (2) the seizure of the bullets; (3) the admissibility of Mike's statements; (4) the admissibility of the results of the witness identification procedure; (5) the legality of the search of Rob's home; and (6) the legality of the search of Mark's person and the seizure of the marijuana.

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

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

- (1) If Mike is not charged with a gun crime (as a felon in possession of a firearm), may prosecutors introduce evidence to prove that he was previously convicted of a felony offense?
- (2) At Mike's trial, prosecutors seek to call the lead criminal investigator to testify that Mike's fingerprints were found on various surfaces at the bank. Should Mike's lawyer object to the introduction of the evidence?
- (3) During its case-in-chief at Mike's trial, prosecutors seek to present evidence that Mike had a reputation for violence and dangerousness. Should the court admit the evidence?
- (4) At Rob's trial, his lawyers called Blake, Rob's neighbor, to testify as a character witness. The prosecutor recalls that he prosecuted Blake on misdemeanor marijuana possession charges 12 years ago. Can the conviction be raised during Blake's cross-examination testimony?
- (5) Also during Rob's trial, prosecutors offer a certified record from the Louisiana Department of Motor Vehicles reflecting that Rob is the owner of the car involved in the police chase. Rob's lawyer objected to the evidence. How should the court rule?
- (6) As part of Mike's defense strategy, his attorney seeks to call Mike's pastor to testify as a character witness. The witness is prepared to testify that, in the community of church members, Mike has a favorable reputation for truthfulness and generosity. Prosecutors object to the testimony. How should the judge rule?
- (7) Shortly after his arrest, Rob offered a statement to investigators, claiming that Mike devised the plan carried out earlier in the day. However, he later recanted the statement and proceeded to trial. Prior to trial, the state offered notice of its intention to introduce the statement at both Mike and Rob's trials. The lawyers for both defendants objected. Should the statement be admitted into evidence at Rob's trial?
- (8) See above. Should the court permit the statement to be introduced into evidence at Mike's trial?
- (9) At Mike's trial, prosecutors called a bank customer to testify about her recollection of the incident. Several minutes into the direct examination, the witness became upset and refused to answer the prosecutor's questions, despite the admonition of the court. What should the prosecutor do to try to elicit the relevant information?
- (10) At Mike's trial, prosecutors intend to call the arresting officer to the stand to testify that he found a pistol in Rob's car. What questions should the prosecutor ask the witness to introduce the weapon into evidence?

**END OF EXAMINATION**

**LOUISIANA BAR EXAMINATION**  
**Federal Jurisdiction and Procedure**  
**February 2008**

**Question One (25 Points)**

BM International, Inc. (“BM”), a Louisiana corporation with its principal place of business in Mowata, Louisiana, is a retailer of baby products, including baby monitors, cribs, and bottle warmers. BM has a small retail outlet in Mowata, but the vast majority of its business comes from orders placed on its website, “www.BM4U.com.” BM advertises its website in small ads located in the back of leading parenting magazines. BM does not manufacture its products; instead, BM imports the products from various manufacturers in China for resale in its Mowata store and through its website.

In 2004, BM entered into a written contract with Gibson’s, Inc., a Delaware corporation, with its principal place of business and headquarters in California. Gibson’s operates a large chain of discount stores throughout the United States with stores in all 50 states. BM agreed to supply to Gibson’s unspecified quantities of baby cribs for a five-year term.

BM never took physical possession of the cribs that it sold to Gibson’s. Instead, as Gibson’s placed orders via the BM website, BM made arrangements for the cribs to be shipped directly from its suppliers in China to the Gibson’s central warehouse in Houston, Texas. Using its own fleet of trucks, Gibson’s then shipped the cribs to department store locations throughout the United States.

Every thirty days or so, BM emailed an invoice to Gibson’s for cribs ordered during the prior thirty day period. From 2004 to 2007, BM supplied 12,224 baby cribs to Gibson’s in connection with the agreement. BM invoiced Gibson’s \$95.00 per crib, plus the international shipping costs, import fees and taxes.

In 2007, the Federal Trade Commission issued a report stating that the paint on the cribs contained dangerous levels of lead. Gibson’s terminated its agreement with BM in response to the report.

John and Peggy Rice heard about the report and became convinced that their child’s illness was caused by the crib they bought from Gibson’s. The Rices filed suit in a California state court on June 1, 2007. The named defendants were Gibson’s and CNPC, Ltd., the Chinese manufacturer of the crib purchased by the Rices. The lawsuit alleged that unsafe levels of lead in the paint used on the crib caused life threatening injuries to the Rice’s child.

The Rices’ lawsuit alleges that they purchased their crib from the Gibson’s store in Sacramento, California. The Rices’ attorney sent a demand letter and a courtesy copy of the complaint by Federal Express to Gibson’s general counsel on June 2, 2007. A summer intern received and signed for the package the next day, but he misplaced it and failed to notify his supervisor of its receipt. Gibson’s agent for service of process was properly served with the complaint and summons on July 15, 2007. Service on CNPC, the Chinese manufacturer, took longer because of the requirements of the Hague Convention, but it was properly served on July 30, 2007.

Gibson’s removed the lawsuit to the proper federal court in California on August 1, 2007, then filed an Answer and Third-Party Demand, naming BM as third-party defendant. Gibson’s denied any knowledge that the paint on the cribs contained lead. The third-party demand claimed that if Gibson’s is found liable to the plaintiffs, then BM is liable to Gibson’s for the full amount of any judgment against Gibson’s.

**10 pts. 1.A** You are the junior associate in a law firm in Mowata. The firm has been retained by BM to defend BM in the California litigation. Your senior partner provides you with a copy of the Rices' complaint and Gibson's third-party demand and asks you to research and analyze the personal jurisdiction issues presented in the third-party demand.

Your preliminary research reveals the above facts, as well as the following information:

- (1) Mr. and Mrs. Rice are citizens of Florida, but Mr. Rice, an Air Force pilot, was stationed in Sacramento, California at the time he purchased the crib;
- (2) BM has no offices or employees in California;
- (3) representatives of BM have traveled a few times over the years to California to attend product trade shows;
- (4) BM's sales records show that, since BM has been in existence, its only direct sales to California customers have been fifteen baby monitors that were sold over its website;
- (5) California's long-arm statute is similar to Louisiana's long-arm statute in that local courts are permitted to exercise jurisdiction to the limits of the Due Process clause of the U.S. Constitution.

Draft a legal memorandum to your senior partner analyzing whether the federal court in California can properly exercise personal jurisdiction over BM on the third-party demand. Your answer should demonstrate knowledge of the applicable legal principles and include an application of those principles to the facts.

**3 pts. 1.B** What must BM do in the California proceedings to properly raise the issue of personal jurisdiction and avoid waiver of that defense?

**5 pts. 1.C** The Rices' lawyer believes that his chance of obtaining a large jury verdict is greater in California state court than in federal court, so he wants to challenge the removal of the case to federal court.

What motion should the Rices' lawyer file if he wishes to have the case returned to state court?

The Rices' lawyer suspects that the removal was not timely and he plans to base his motion on that ground. What time limit would apply to a motion filed on that ground?

The Rices' lawyer files a timely motion that challenges the timeliness of the removal. Explain whether the judge should or should not grant the motion.

**4 pts. 1.D** Other than timeliness, the facts discussed above reveal two arguable grounds for procedural defects in the removal of the case. What are they?

**3 pts 1.E** When Gibson's was served with the lawsuit, it stopped payment to BM for its most recent shipment of cribs. Assume the case remains in the California federal court. BM wants to assert claims against Gibson's for \$2,963.00 due on the shipment.

What type of pleading should BM file to assert those claims against Gibson's in the existing California federal litigation? Explain whether or not the California federal court would have subject matter jurisdiction to decide those claims?

**EXAMINATION CONTINUES ON  
NEXT PAGE**

## Question Two (25 Points)

**5 pts. 2.A** Bob White, who was injured during an arrest, hires Alexandria attorney Linda Jones to file an excessive force suit in federal court against the arresting officer, Sgt. Sam Evans of the Alexandria police department. The value of Bob's claims, asserted under 42 U.S.C. § 1983 and Louisiana tort law, is estimated at \$65,000. Bob's wife, Mary, believes their relationship has suffered because of Bob's injury. Research shows that Mary's state-law loss of consortium claim is valued at no more than \$20,000. Bob, Mary, and Sgt. Evans are all Louisiana citizens.

Linda files a complaint in federal court on behalf of Bob and Mary that asserts the federal and state-law claims described above.

Explain why the federal court does or does not have the authority to hear Bob's claims.

Explain why the federal court does or does not have the authority to hear Mary's claim.

**5 pts. 2.B** Linda filed the complaint on July 1, 2006, but she held off on serving the complaint because settlement negotiations looked promising. When negotiations broke down on October 10, 2006, Linda obtained a copy of the complaint and a properly signed and sealed summons for service on Sgt. Evans. She gave the papers to her office runner, Jim, who recently won the tenth grade spelling bee.

Jim got the service papers mixed up with his spelling bee certificate and did not discover them until November 22, 2006, whereupon he promptly went to Sgt. Evans' house. Evans was not home, but a babysitter told Jim that Evans could be found at his fishing camp. Jim went to the fishing camp and served the papers on Sgt. Evans when he answered the door. Discuss any deficiencies that Evans might raise with respect to service of process.

**3 pts. 2.C** The case proceeds in federal court despite the service issues. Linda begins to assemble the plaintiffs' initial disclosures. What categories of items should she gather?

**2 pts. 2.D** Bob White brings Linda his medical report from the emergency room physician. It included the doctor's notation: "Injuries sustained during an arrest. Patient advised that he attacked the arresting officer because the officer had a bad attitude."

Linda has no plans whatsoever to use the medical report, which she sees as harmful to Bob's case. Explain whether or not Linda must produce the report as part of her initial disclosures.

**5 pts. 2.E** Linda later amended the plaintiffs' complaint to add as defendants the City of Alexandria (Sgt. Evans' employer) and the Louisiana Department of Public Safety ("DPS"). The plaintiffs allege that the DPS is liable because it offered a training class for policemen and gave Evans improper instructions on the use of force.

Both new defendants pleaded Eleventh Amendment sovereign immunity. Discuss the merits of the defense as to the City and the DPS.

**5 pts. 2.F** Linda grows concerned that the Eleventh Amendment defenses may cause her a problem. She really wants to get at the DPS's deep pockets, and she recalls from law school that the Ex parte Young doctrine sometimes can get you around Eleventh Amendment issues.

You are working as Linda's associate. She asks you to write her a short memo that (1) explains the Ex parte Young doctrine and (2) discusses whether she could use the doctrine to recover damages from Jim Taylor, Secretary of the DPS, if she can prove that the DPS's training classes are operating under an unconstitutional policy. Write the short memo.

**EXAMINATION CONTINUES ON  
NEXT PAGE**

### Question Three (25 Points)

Luke Jones, an Oklahoma citizen, was driving through Shreveport (Western District of Louisiana) when his car stalled on Interstate 20. He pulled the car to the shoulder of the road. A truck driven by David Smith, an Arkansas citizen, nonetheless ran into the rear of Jones' car and caused both personal injuries and property damages. Jones' car, valued at \$10,000, was totaled. Jones' leg was injured. His doctor advised that expensive surgery was likely needed and that Jones would miss several weeks of work as he recuperated.

An investigation suggested that Jones' car stalled because a new alternator, just installed by State-Line Repair Shop in Waskom, Texas, had failed. State-Line asserted that it had installed the alternator correctly, but the alternator itself was defective. The manufacturer of the alternator was Talladega Electrical Supply, of Alabama.

Jones hired attorney William Lee to represent him. Lee, not taking any chances, issued a demand letter to Smith, State-Line, and Talladega Electrical that asked for \$250,000 in damages.

**3 pts. 3.A** Attorney Lee determines that all of the parties are diverse in citizenship, and he ponders filing suit in the federal court in the Eastern District of Texas, which encompasses Waskom. Discuss whether venue would be proper in that court.

**5 pts. 3.B** Attorney Lee decides that he would rather file suit in state court, and he files a petition in the state court in Shreveport, Louisiana. The defendants would like to attempt to transfer the case to federal court. (1) Describe in detail the procedure and requirements the defendants must follow to transfer the case to federal court. (2) Discuss whether the defendants could transfer the case directly from the Louisiana state court to the federal court in the Eastern District of Texas.

**5 pts. 3.C** Assume the case is in federal court in Louisiana. Mr. Jones' complaint alleges that he owned the damaged car and prays for recovery of damages for its loss. The attorney for Mr. Smith locates documents with the Oklahoma DMV, which show the car was actually registered to and owned by Mr. Jones' adult son, who is in prison. If Jones is not the owner of the car, he is not entitled to recover for damage to it.

What pretrial procedures or pleadings are available to Mr. Smith and the other defendants to obtain a dismissal of Mr. Jones' auto damage claim? Describe the burdens on the defendants and the plaintiff when such a procedure is used. What is the minimum time Mr. Jones must be allowed to oppose such a procedure?

**3 pts. 3.D** The defendants succeed in getting the federal judge to dismiss the auto damage claim. They then take the deposition of Mr. Jones' doctor, who says that about two months after the suit was transferred to federal court, an examination showed that the doctor's initial impression was wrong. Surgery will not be needed, and Mr. Jones will recover quickly with no missed work and only about \$15,000 in medical expenses.

William Lee, attorney for Mr. Jones, sees a big verdict slipping away, but he thinks he can use the new information to get the case back to state court because the amount of damages he might recover is certainly well under \$75,000. Discuss whether Attorney Lee would be successful with that strategy.

**3 pts. 3.E** State-Line Repair Shop files a cross-claim against Talladega Electrical Supply to seek indemnification for any damages that State-Line must pay Mr. Jones. The cross-claim rests in part on an indemnity clause in a parts-supply contract between the two companies. The parties disagree over whether the contract should be interpreted under Texas, Louisiana or Alabama law, which differ in some important respects. To make matters more complicated, the choice of law rules in the three states are not the same. Which choice of law rules should the Louisiana federal judge apply? Why?

**3 pts. 3.F** State-Line and Talladega Electrical later filed motions for summary judgment, and the federal judge entered an order on February 1, 2008 that granted both motions and dismissed all of the plaintiff's claims against those two defendants.

The case proceeded to a jury trial in federal court on the plaintiff's claim against Mr. Smith. The jury ruled in favor of the plaintiff and awarded \$45,000 in damages. The judge entered a final judgment on May 1, 2008.

Attorney Lee, who represents the plaintiff, believes that the judge was wrong to grant summary judgment on the claims against State-Line and Talladega Electrical, and he really wants to revive those claims because Mr. Smith had only \$10,000 of insurance coverage, and his finances do not suggest he is likely to pay the rest of the judgment.

What is the latest date for the plaintiff to file a timely notice of appeal to contest the order that dismissed the claims against State-Line and Talladega Electrical?

- A. 30 days after February 1, 2008.
- B. 60 days after February 1, 2008
- C. 10 days after May 1, 2008.
- D. 30 days after May 1, 2008.
- E. 30 days from the return date that is set by the judge

**3 pts. 3.G** Which *one* of the following *is* a correct statement of law:

- A. Supplemental jurisdiction is governed by 28 U.S.C. § 1332.
- B. The rules for service of a summons and complaint are provided in Fed. R. Civ. P. 26.
- C. If a defendant waives service of a summons, he does not waive any objection to personal jurisdiction or to venue.
- D. A motion to transfer venue for the convenience of the parties and witnesses should be made pursuant to 28 U.S.C. § 1406.
- E. None of the above.

#### **Question Four (25 Points)**

(The following facts pertain to questions A through D)

James Sims formed a Louisiana limited liability company called Keystar, LLC for the purpose of investing in mineral rights. Sims entered into negotiations with Nalco, Inc., a Louisiana corporation with its main office in Lake Charles, to purchase Nalco's interests in a gas field in southwest Louisiana. As a result of the negotiations, Nalco granted Keystar a 90-day option to purchase the properties for \$10,000,000. The terms provided that if the option is exercised, Nalco must transfer the properties to Keystar within six months. Mr. Sims then went about trying to raise the \$10,000,000 by granting membership interests in Keystar in exchange for capital contributions.

The first investor that became a member of Keystar was Petroluv, Inc., a Delaware corporation that invests in oil and gas properties throughout the country. It currently has direct or indirect ownership interests in mineral properties in 14 states, although about 40% of the properties are located in Louisiana. Petroluv's home office is in Dallas, Texas. Several accountants, geologists and attorneys work in the Dallas office and make decisions regarding the management of the various investments.

The second investor who became a member of Keystar was Mr. James Mapp, a retired businessman who is a lifelong resident of Lake Providence, Louisiana. Mr. Mapp suffered a serious stroke about a month after he became a member of Keystar. He lost his ability to communicate, and his mobility was severely limited. His wife, a native of Jackson, Mississippi, decided that she needed to be near her family as she cared for Mr. Mapp in his debilitated condition. She placed Mr. Mapp in a highly-regarded Jackson-area nursing home, and she moved in with her sister in Jackson. She did not sell the family home in Lake Providence, but she told her sister that she could never return to Lake Providence with Mr. Mapp in his condition, although she held out hope for a miraculous recovery that would let the couple return to their marital home. Mr. Mapp's doctors say that such a recovery is possible, but very unlikely.

Mr. Sims also retained an interest in Keystar. He grew up in Vermont, but he always wanted to be in the oil and gas game. He moved out of his parents' home in Vermont to attend college in Tulsa, Oklahoma and earn a petro-business degree, which he gained in 2006 after five years of study. Mr. Sims lived in the dormitories for two years of his schooling and then rented a small garage apartment from a widow. He kept the apartment after graduation, but his efforts to put together oil and gas investments (funded in large part by his father's money) keep him on the road six or eight months out of the year. About three months ago, he bought a two-bedroom condominium in Lafayette, Louisiana, so he would have a nicer place to stay during his frequent visits to Louisiana, where he expects to spend more time as mineral deals come together. Mr. Sims also travels frequently throughout the Gulf South region from Texas to Alabama, staying in motels when away from Lafayette. He maintains a month-to-month lease on his garage apartment in Tulsa, and he returns there as often as he can, especially for the holidays, because he enjoys the company of the widow who is his landlady. The widow looks after Mr. Sims' mail when he is away from Tulsa, and she makes sure his bills stay paid.

After Nalco granted Keystar the option to purchase the properties, the price of gas began to go up. Keystar exercised the option, but Nalco sent Keystar a letter saying that it did not intend to honor the option because Keystar had not satisfied some representations and warranties in the agreement. Keystar believes that it has complied with all aspects of the agreement, and it would like a court to rule that the option is enforceable.

**10 pts. 4.A** Discuss in detail whether a federal court would have subject matter jurisdiction over the case if Keystar chose to file a civil action in federal court.

**3 pts. 4.B** Keystar files a complaint against Nalco in federal court in Louisiana. Assume that the court determined that the parties named in the complaint were diverse in citizenship.

Prior to the deadline to amend pleadings, Mr. Mapp passed away. His will left his membership interest in Keystar and significant other assets to his son, Roger, who has been an itinerant street musician in New York for the last 12 years. Roger immediately moved back to Louisiana to better appreciate his new assets. He bought a home in New Orleans and said that he plans to stay there as long as the inheritance money lasts. He also announced intentions to take an active role in the management of Keystar's affairs. Discuss how Roger's membership in Keystar would affect the issue of subject matter jurisdiction in the lawsuit.

**3 pts. 4.C** Keystar exercised the option, which gave Nalco six months to transfer the properties. Nalco has indicated that it will almost certainly decline to do so.

Under what federal law might Keystar ask a federal court to decide, without waiting for the six month period to expire, to determine the parties' rights under the option?

Assume there is not diversity of citizenship between Keystar and Nalco. Would a federal court nonetheless have subject matter jurisdiction over Keystar's complaint?

**3 pts. 4.D** The owners of a nearby hunting club, whose members are all rich Texans, file suit in federal court against Nalco. The club wants a mandatory injunction that Nalco plug and abandon a well that is near the border with the club's property, because the well frequently discharges fluids that pollute the water on the club's property. Nalco contends that any obligation to plug and abandon the well lies with a prior owner. Under Louisiana law, the Louisiana Commissioner of Conservation has exclusive authority to make and enforce plug and abandon rules and regulations. The club had previously complained to the Commissioner, without success, but the Commissioner recently scheduled a hearing on the club's complaint against Nalco. Discuss any legal basis that Nalco might have to ask the federal court to decline to hear the case.

**3 pts. 4.E** Louisiana passes a new law that bans cursing in riverboat casinos. John has never been very political, until he hits snake-eyes one night in Bossier City and finds himself under arrest for his resulting profane outburst. He believes his prosecution is an infringement on his First Amendment rights. His lawyer files an action in federal court for an injunction that would stop the district attorney from moving forward with the state court prosecution.

You represent the prosecuting district attorney. Which of the following is an arguably valid defense or objection to raise in John's federal court injunction suit? [Only one is correct.]

- A. Ex Parte Young defense
- B. Pullman abstention doctrine
- C. No custom or policy under Monell
- D. Younger abstention doctrine
- E. The Pennhurst defense

**3 pts. 4.F** Three persons are injured in a car accident. They file a tort suit in a Louisiana state court against the driver of the other car, his employer, and his liability insurer. The suit is removed to federal court based on an assertion of diversity jurisdiction. The plaintiffs file a motion to remand, 45 days after the notice of removal was filed, based on several grounds.

You are the federal judge who must decide the motion to remand. Listed below are the grounds raised by the plaintiffs in their motion to remand.

Write down the letter of the *one* ground raised by plaintiffs on which a federal court could properly order a remand under the facts described.

- A. Two of the plaintiffs are both citizens of the same state, Louisiana.
- B. One of the defendants, who was served one week before the removal, did not join in the removal.
- C. The notice of removal was not filed within 30 days of service on the first defendant.
- D. One of the defendants is domiciled in Texas, but he has minimum contacts with Louisiana, the same state in which two plaintiffs are citizens.
- E. One of the plaintiffs is a citizen of Mississippi, and one of the corporate defendants has its principal place of business in Mississippi.

**END OF EXAM**