

CIVIL CODE I
LOUISIANA STATE BAR EXAMINATION
July 21, 2008

Question I.
(25 Points)

In 2000, Tom died, survived by his widow, Katie, and a child by a prior marriage, Susie, who was age thirty-three (33) at the time of Tom's death. Under the terms of Tom's will, Tom left all his property to Susie, subject to a usufruct in favor of Katie until Susie reached age 40. One of the assets of Tom's estate was the former family home located in Donaldsonville, Louisiana, and which was Tom's separate property by way of inheritance from his father.

In 2003, Katie decided to build a swimming pool in the back yard of the property and she requested Susie's consent to do so. The swimming pool cost \$15,000 to build. Katie's property appraiser advised her at the time that the addition of the pool increased the market value of the property by \$20,000.

In 2004, a portion of the roof of the house was damaged as the result of a severe thunderstorm during the hurricane season. Katie asked Susie, as the property owner, to repair or replace the damaged portion of the roof. Susie refused to undertake any work on the roof, despite Katie's repeated requests. Eventually, Katie replaced the damaged part of the roof at her own expense. The replacement cost was \$5,000.

Shortly before Tom died, he had installed premium wall-to-wall carpet in the den and the master bedroom. Katie had two dogs that lived with her in the house and they have seriously damaged the carpeting. Katie's appraiser estimates that it will cost \$8,000 to replace the carpeting. Also, through normal use during the last eight years, some of the oak flooring in the foyer and the living room has become worn and the estimated refinishing cost is \$2,000.

Tom also owned a piece of property on Canal Street in New Orleans, which he had leased to Burger-King Corporation. This property was also Tom's separate property. Katie was also granted a usufruct over this property and she has been collecting the rental payments from the Lessee since Tom's death. In 2005, Burger King offered to terminate its lease prior to the expiration date in return for a termination payment of \$100,000 cash. Katie and Susie are willing to terminate the lease with Burger King, but they cannot agree on who is entitled to the termination payment. However, the offer still remains open.

Susie is now over 40 years old and Katie's usufruct has terminated. Katie has contacted you for advice. Advise her concerning 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. Is Katie entitled to reimbursement from Susie for the cost of the swimming pool that she constructed? Give full reasons for your answer. Answers without explanation will receive no credit. **(6 points)**
2. Is Katie entitled to reimbursement from Susie for the cost of replacing the portion of the roof? Give full reasons for your answer. Answers without explanation will receive no credit. **(8 points)**
3. Is Susie entitled to reimbursement for the costs of replacing carpet and refinishing floors? Give full reasons for your answer. Answers without explanation will receive no credit. **(6 points)**
4. Is Katie entitled to the \$100,000 lease termination payment? Give full reasons for your answer. Answers without explanation will receive no credit. **(5 points)**

[End of Question I]

CIVIL CODE I
LOUISIANA STATE BAR EXAMINATION
July 21, 2008

Question II.
(25 Points)

Aucoin owns Lot 20 in the Gatorhaven Subdivision in St. Bernard Parish (the "Subdivision"). The Subdivision is composed of one hundred (100) lots. On June 1, 2006, Billiot purchased Lot 22 in the Subdivision. Lot 22 is adjacent to Lot 20; Lot 22 is to the east of Lot 20. Property in the Subdivision is subject to certain Property Restrictions which were implemented and properly recorded in the conveyance records when the Subdivision was originally developed. The Property Restrictions state that no building (including appurtenant buildings) shall be located nearer than fifteen (15) feet from either side lot line, or nearer than twenty (20) feet from the rear lot line. The lot line between Lot 20 and Lot 22 is a side lot line.

Billiot decided to build a large house that would be situated on Lot 22 in accordance with the setback requirements of the Property Restrictions. However, the plans also called for a carport which would be situated inside the setback area adjacent to the boundary line dividing Lot 20 and Lot 22.

Billiot has secured a zoning variance from the local zoning board over Aucoin's objections. Based on the zoning board approval, Billiot has informed Aucoin that he intends to proceed with construction. Billiot has also noted that there are five (5) other houses in the Subdivision which have similar carports which are situated within the sideline setback area of the lots. Billiot contends that it would be unfair to impose a limitation on him when five (5) other property owners have been able to somehow avoid the requirements.

Billiot began construction on the house and carport last week. Of course, Aucoin is very unhappy and has engaged you to protect his interests. In advising Aucoin, answer the following questions. **You must give full reasons for your answers in order to receive credit.**

PART A

1. Does Aucoin have a cause of action against Billiot and, if so, are his rights affected by the favorable ruling that Billiot obtained from the local zoning board? Explain your answer. Answers without explanation will receive no credit. **(8 points)**.
2. Are there any procedural remedies available to Aucoin under the Civil Code? Explain your answer. Answers without explanation will receive no credit. **(6 points)**.
3. What defenses, if any, can be asserted by Billiot in the event that Aucoin files suit against him? Explain your answer. Answers without explanation will receive no credit. **(6 points)**.

PART B

Chauvin also owns a lot in the Subdivision. He has become concerned by crime in the area and has installed large floodlights on four (4) 22-foot poles in his backyard. These floodlights illuminate the property from dusk until dawn. The Property Restrictions do not specifically prohibit the floodlights but they do contain the following provision:

Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to the neighborhood.

The Homeowner's Association for the Subdivision recently adopted a resolution authorizing an action to compel Chauvin to remove the floodlights because they violate the Property Restrictions. In response, the President of the Homeowner's Association has contacted you for advice. In evaluating this case, answer the following question.

1. Do Chauvin's floodlights constitute a violation of the Property Restrictions? Explain your answer. Answers without explanation will receive no credit. **(5 points)**

[End of Question II]

CIVIL CODE I
LOUISIANA STATE BAR EXAMINATION
July 21, 2008

Question III.
(25 Points)

Tiffany Shields is a pop singer from a small Louisiana town who achieved international fame. Unfortunately, Tiffany's personal life has not been as successful as her career.

On May 31, 2006, Tiffany married her childhood sweetheart, Alexander Jason, at a Las Vegas wedding chapel. The wedding was widely reported in the press. In response to questions from reporters, Tiffany claimed she married Alexander as a "joke."

The next day, June 1, 2006, Tiffany embarked on a worldwide tour. During the tour, Tiffany began a romantic relationship with Kevin Undermine, a back-up dancer and aspiring rapper.

Subsequently, Tiffany discovered she was pregnant. On February 4, 2006, she gave birth to a son, Preston. Kevin immediately suspected that Preston was his child. However, Tiffany told him that Preston's father was Alexander. No father is listed on the child's birth certificate.

Tiffany and Kevin continued their romantic relationship, and Kevin helped take care of Preston. Tiffany told Kevin she wanted to get married. Kevin indicated that he wanted to marry her, but he was concerned about tabloid reports which indicated she was still married to Alexander. Tiffany dismissed those reports, telling Kevin the marriage was merely a publicity stunt and was never valid. Kevin believed Tiffany's statements, and the couple was married in Louisiana. Approximately one week after the couple married, Kevin read a story in a tabloid newspaper describing the marriage as "scandalous" because Tiffany was already married to Alexander. The article contained a copy of the Nevada marriage certificate listing the names of Tiffany and Alexander, as well as statements from Alexander indicating he believed he was still married to Tiffany. When Kevin confronted Tiffany about the article, she responded that it was "just tabloid trash." Kevin did not investigate the matter further.

Shortly after the marriage, Tiffany signed a multi-million dollar record deal. She used the proceeds of that deal to buy a lavish mansion in New Orleans, which she titled in her name only. Kevin's rap career has been less than stellar, causing him to rely on Tiffany's money as his sole support.

Because of Tiffany's heavy touring schedule, she spends little time at home with Preston; however, she provides Preston with expensive toys and clothes, and has a full staff to care for him, including a nanny and a chef. While Tiffany was on tour, Kevin assumed a greater role in Preston's care, and Preston has become attached to him.

In January 2008, Tiffany told Kevin that he was in fact Preston's father, and that she had lied when she told him Alexander was the father. That same month, Tiffany learned that Kevin was having a sexual affair with a female rapper, and that he had been arrested on drug charges. As a result, she threw him out of her house and told him she would allow him to have no contact with Preston.

Over the last year, Tiffany's behavior has become increasingly strange and erratic. She shaved her head and had a personal melt-down during an interview. She has become depressed and has lost thirty pounds. She also began excessive use of prescription drugs to help her deal with her depression. Unfortunately, she also began to drink heavily and was recently hospitalized as a result of an alcohol and drug overdose. She recently fired her management team and retained a new manager, who has begun investing Tiffany's money in a series of risky real estate deals. Her mother, Martha, has become very concerned about Tiffany's physical and mental health. As a result, Martha has become increasingly responsible for Preston's care. Additionally, Martha has attempted to assume responsibility over Tiffany's financial affairs, but Tiffany's new manager has refused to allow Martha access to any information concerning the new investments.

CIVIL CODE I
LOUISIANA STATE BAR EXAMINATION
July 21, 2008

Kevin just retained you as his attorney, and has indicated he wants to institute divorce and support proceedings against Tiffany. Additionally, he wishes to obtain custody of Preston. In evaluating his case, respond to the following questions, giving full reasons for your answers. **You must give full reasons for your answers in order to receive credit.**

1. Is Kevin's marriage to Tiffany valid? Explain your answer. Answers without explanation will receive no credit. **(4 points)**

2. What are Kevin's rights, if any, as a result of his marriage to Tiffany? In particular, Kevin asks you if he will be entitled to spousal support and whether he has an interest in the New Orleans house. Explain your answer. Answers without explanation will receive no credit. **(5 points)**

3. Will Kevin be able to seek custody of Preston? If so, what type of action should he file? Explain your answer. Answers without explanation will receive no credit. **(6 points)**

4. Assume for purposes of this questions that Kevin's marriage to Tiffany has been terminated and it has been established that Kevin is entitled to seek custody of Preston. What factors will the court consider in awarding custody? Explain your answer. Answers without explanation will receive no credit. **(5 points)**

5. Assume for purposes of this question, that you represent Martha rather than Kevin. What action can Martha take, if any, to protect Tiffany in light of her recent actions? Explain your answer. Answers without explanation will receive no credit. **(5 points)**

[End of Question III]

CIVIL CODE I
LOUISIANA STATE BAR EXAMINATION
July 21, 2008

Question IV.
(25 Points)

Tom and Mary were married in New Orleans, Louisiana in 1995. Tom is a successful and dynamic stockbroker. Mary is a gourmet cook and wine connoisseur. Like Tom, Mary is a dynamic and talented person. The couple has no children.

The couple lives in an historic mansion located in an affluent section of New Orleans. Prior to their marriage, Tom purchased the mansion for \$2 million dollars cash with money that he had inherited from his mother. The home was in poor condition when the couple married in 1995, but Tom and Mary moved into the house and have occupied the home throughout the course of their marriage.

During the last ten years, Tom and Mary have spent \$4 million dollars cash restoring and decorating the historic home and it is currently worth \$9 million dollars and has been featured in architectural publications. Its main dining room features an expensive crystal chandelier. The chandelier is mounted on specially made brackets that are bolted into the home's main support beams located in the attic. The chandelier is permanently connected to the home's electrical wiring system and is controlled by a wall switch. In order to remove the chandelier, an electrician and construction crew would be required. The chandelier was purchased by Mary for \$500,000 with money she inherited from her grandmother.

Approximately one year ago, Mary went to a cooking school in Paris, France operated by a renowned chef, Chef Suzette. After completing an eight week course of advanced studies, Mary was invited to stay on and work in France with Chef Suzette as a special intern.

Tom supported Mary's decision to study abroad and to work with this renowned chef. Tom paid all of Mary's tuition and living expenses during her studies abroad, which totaled \$75,000.00. During this time abroad, Mary purchased a laptop computer and wrote a diary of her experience and she also catalogued all of her recipes.

After completing her studies with Chef Suzette, Mary returned to New Orleans and Tom. Mary began to cook at her brother's restaurant, and became an instant success. She also published her diary and recipe book "Cuisine by Mary" and it is now a nationally best selling book. Mary copyrighted the book in her own name. All of Mary's earnings from her book and other work have been deposited into the couple's joint saving accounts. Mary has also spent a significant amount of time in New York promoting her book and appearing as a chef on a major television network.

Time apart and different career paths have had a serious effect on Tom and Mary's relationship and they have grown apart. Eight months ago, Mary moved out of the family home and relocated to New York. She told Tom she wanted to end the marriage and she has not returned to New Orleans or seen Tom since the day she left town.

Tom is also ready to end the marriage and divide up the property he and Mary own. If possible, he would like to work out an amicable termination of the marriage. Tom has come to you with the following questions. In evaluating his case, respond to the following questions, giving full reasons for your answers. **You must give full reasons for your answers in order to receive credit.**

1. What type of divorce action would you recommend that Tom file? Explain your answer. Answers without explanation will receive no credit. **(4 points)**
2. Would the historic mansion be considered community property and would Tom have any claim against Mary for the \$2 million cash that he used to purchase the mansion prior to his marriage to Mary? Explain your answer. Answers without explanation will receive no credit. **(5 points)**
3. Under Louisiana law, is the chandelier considered part of the mansion and would Mary have any claim against Tom to re-coup the cost of purchasing the chandelier? Explain your answer. Answers without explanation will receive no credit. **(6 points)**

CIVIL CODE I
LOUISIANA STATE BAR EXAMINATION
July 21, 2008

4. Would Mary's earnings from "Cuisine by Mary" be considered community property or separate property? Explain your answer. Answers without explanation will receive no credit. **(5 points)**

5. Would Tom have a claim against Mary for the \$75,000 he paid for her tuition and living expenses during her year abroad? Explain your answer. Answers without explanation will receive no credit. **(5 points)**

[End of Question IV]

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

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

(Consists of 2 questions with subparts)

**I. QUESTION 1: BASIC FACT SECTION FOR QUESTIONS 1A, 1B, 1C, 1D 1E
and 1F OUTLINED BELOW (25 POINTS TOTAL)**

Eli and Edwina married right out of high school. There were two children born of their marriage: Lane and Laura. Eli and Edwina were subsequently divorced. All issues with respect to their community were resolved shortly after their divorce.

After his divorce from Edwina, Eli became a very wealthy man due to several inventions which he successfully patented and marketed. For a while, Eli lived with Fiona. Eli and Fiona had one child, a son, Peter. Eli and Fiona never married, but Eli was listed on Peter's birth certificate, and Eli always recognized Peter as his son, supported him, paid for his education, etc.

After Eli and Fiona decided to go their separate ways, Eli married Ruth. Eli and Ruth had three (3) children: Kali, Julia and Anthony. Eli and Ruth also adopted Charles, Ruth's nephew, after Ruth's only sibling, her brother Ned and his wife, were killed in a car accident. Ruth's parents, Frank and Wanda Beth, remained very close to Charles even after his adoption, and were very close to Ruth who was their only surviving child.

Peter married Marie. They never had any children and never adopted anyone. Prior to their marriage, Marie's maternal grandparents had given Marie a 400 acre tract in Iberia Parish. The donation to Marie was valid and legal in all respects. After many years of marriage, Marie died intestate. She was survived by her husband Peter, a brother and sister, her parents, and her maternal grandparents.

Eli and Lane remained very close even after Eli married Ruth. One evening when Lane was driving Eli home after attending an awards banquet, Lane, who, unbeknownst to Eli, had been drinking heavily, was involved in a serious one car accident when the car left the roadway and hit a tree. Eli was killed in the accident, and died intestate. Lane was tried in connection with Eli's death. He was found to have been intoxicated at the time of the accident, and was convicted of negligent homicide. Lane was sentenced to time served and was released. He subsequently applied for an automatic pardon under La. R.S. 15:572(B). Because this was his first conviction, Lane was pardoned.

Eli's daughter, Julia, had two children, Joyce and Jolene. Jolene was always Eli's favorite grandchild, and one (1) year before he died he gave Jolene \$50,000.00 which she used as a down payment on a house and for a trip to Hawaii.

QUESTION 1A

(3 points)

After Marie died intestate, her husband Peter comes to you for advice. He wants to know who is entitled to the 400 acre tract in Iberia Parish. What do you tell Peter?

QUESTION 1B

(2 points)

What would happen if, before Marie died intestate, she had sold the 400 acre tract, but had not yet received the proceeds of the sale when she died?

QUESTION 1C

(5 points)

After Ruth's mother, Wanda Beth, died intestate, Ruth asks you for advice concerning Wanda Beth's succession. Wanda Beth died leaving separate and community property. Assuming Wanda Beth is survived by everyone outlined in the fact section, who is entitled to the separate and community property?

QUESTION 1D

(5 points)

Eli's family was devastated by his death. Eli died intestate, leaving a considerable estate. Due to their grief at his untimely death, Eli's family did not get around to opening his succession until after Lane had been released from prison and pardoned. Lane's sister, Laura, consults you about Eli's estate. Specifically she wants to know if she has a right to challenge Lane's right to inherit from Eli's estate, and if so, what are her chances of success in having him declared unworthy to inherit from Eli's succession. What is your advice to Laura?

QUESTION 1E:

(5 points total)

After Eli's death, Julia and Joyce consult you about whether Jolene has to return the \$50,000.00 gift from Eli to Eli's estate. What do you tell them?

QUESTION 1F:

(5 points total)

Eli died intestate, leaving separate and community property. Who is entitled to the separate and community property as a result of Eli's death?

II. QUESTION 2: BASIC FACT SECTION FOR QUESTIONS 2A, 2B, 2C AND 2D OUTLINED BELOW (25 POINTS TOTAL)

Adam and Patricia were married and had two children, Russell and Sabrina. After five years of marriage, Adam and Patricia divorced. All community property issues were resolved shortly after their divorce. Russell got married and started a family of his own. Russell had two children, Trina and Violet. Sabrina never married and never had any children. Instead, she entered the business world and became a successful investor.

Several years later, Adam married Brandy. They had three children together: Carter in 1982, Dennis in 1985 and Evelyn in 1987. Carter married and had two sons, Jack and Jacob. Carter was killed in an off-shore accident in 2004 and died intestate. Dennis never married but had one child, Gwen. Evelyn never married nor had any children. Dennis had serious credit problems. After years of compulsive gambling, the Flamingo Casino filed suit against him for his unpaid markers and was awarded a judgment for \$20,000. That judgment is now final.

In mid-2005, Russell was accidentally shot and killed by Adam while they were boar hunting near St. Francisville. Russell died intestate.

Assuming these facts, please answer the questions below.

QUESTION 2(A):

(4 points)

Adam died intestate in December 2007. He left separate and community property. How will his estate be distributed?

QUESTION 2(B):

(6 points)

When she was 18, Evelyn went off to college at Louisiana State University. During her first year of college, Evelyn signed up for a credit card with Bank of the South and quickly found herself burdened with significant credit card debt. Shortly after Adam's death, Evelyn found out that Adam had given Trina and Violet each \$50,000 to help them after Russell's death. Bank of the South learned of the gifts to Trina and Violet from Evelyn. Bank of the South convinced Evelyn to sign a formal assignment of all of her rights under the succession and released her from the debt. Assume that the assignment is legal and valid in all respects. Bank of the South is now demanding collation of the gifts to Trina and Violet back to Adam's estate. Trina and Violet come to you and ask you for advice as to whether the gifts have to be returned. What do you tell them?

QUESTION 2(C):

(7 points)

After Adam's death, and once he learned that he was entitled to inherit from Adam, Dennis wrote a letter to his mother, Brandy, and asked her to tell everyone that he was renouncing any inheritance rights he may have to Adam's estate. Through a judgment debtor rule, the Flamingo Casino learned about Dennis' potential inheritance as well as his subsequent renunciation. Through further investigation, it was learned that Dennis would have been entitled to inherit \$30,000. The Flamingo Casino sees this as its opportunity to collect, and hires you to give it an opinion of the following:

- (1) Whether Dennis' renunciation has effect.
- (2) Whether the Flamingo Casino has any rights to Dennis' inheritance from Adam and, if so, what can be done to preserve those rights?
- (3) What rights Gwen has to Dennis' inheritance.

What advice do you give your client?

QUESTION 2(D):

(8 points)

Sabrina dies intestate in March 2008. How will her estate be distributed?

LOUISIANA BAR EXAMINATION
CODE II - SUCCESSIONS

TESTATE PORTION OF CODE II EXAMINATION
(50 POINTS TOTAL)
(Consists of 10 questions)

III. QUESTION 1 (TESTATE): BASIC FACT SECTION FOR QUESTIONS 1 THROUGH 10 OUTLINED BELOW (50 POINTS TOTAL)

Genevieve married Arthur in 1971. Genevieve and Arthur had six children born of their marriage: George, Eugene, Mildred, Mary, John, and Susan. On April 16, 2003, Genevieve executed a valid notarial will, which contained only the following substantive provisions:

- (1) I presently own three diamond rings. I give and bequeath all of my diamond rings to my niece, Betty.
- (2) I give and bequeath my land in Ascension Parish, Louisiana, to my best friend, Olivia.
- (3) I give and bequeath my land in Mississippi to my Uncle Leon.
- (4) I give and bequeath all of my shares of stock in Exxon Mobil Corporation to National Bank, as Trustee, to hold in trust for the benefit of my children, as the income and principal beneficiaries. The Trustee shall distribute all of the income to the income beneficiaries annually. On December 31, 2035, the Trustee shall terminate the trust and shall distribute any accumulated income and the principal then held in the trust to the principal beneficiaries. If one of my children dies on or before December 31, 2035, that predeceased child's share of any accumulated income and the principal of the trust shall be distributed on December 31, 2035, but only to my other children who are living at that time.
- (5) I give and bequeath all of the rest of my land and all of the rest of my stock to my children, in equal portions.

Arthur died in March 2004.

Genevieve married Mark (her second husband) in February 2005. Mark had also been married once before. Later in 2004, Genevieve adopted Elizabeth, who was Mark's child by his first marriage.

In October 2005, Genevieve executed an Act of Donation in authentic form. That Act of Donation recited that Genevieve was donating her land in Ascension Parish to her cousin, Deborah. Genevieve recorded the Act of Donation in the conveyance records of Ascension Parish. Deborah did not become aware of the donation, until after Genevieve's death. As soon as she became aware of the donation, Deborah promptly executed an Act of Acceptance of the donation and recorded that Act of Acceptance in the conveyance records of Ascension Parish.

Genevieve owned a necklace with a cluster of emeralds, which had been appraised at \$50,000. Genevieve decided that she wanted her daughter, Mildred, to have the emerald cluster necklace. On January 23, 2006, Genevieve told Mildred in the presence of two competent witnesses, "I want you to have my emerald cluster necklace. I haven't had time to get anything prepared in writing. But here it is." Genevieve handed the necklace to Mildred. Mildred immediately took the necklace home and placed the necklace in the safe in her residence.

Genevieve died on March 26, 2006.

The April 16, 2003 will was found in Genevieve's safe deposit box, along with a sheet of notebook paper on which the following was written, dated, and signed by Genevieve entirely in her own handwriting:

"I leave all of my property to my Uncle Leon."
s/ Genevieve
March 15, 2006"

Under that statement, on the same sheet of notebook paper, Genevieve had written the following in her own handwriting: "I have changed my mind about this will. I do not want this will to apply. I am hereby revoking this will." Genevieve signed this notation in her own handwriting, but she did not date the notation. Many persons recognized that the notation was in Genevieve's handwriting.

At the time of Genevieve's death, six of her children were still living. Their ages at the time of Genevieve's death were as follows: George - age 31; Eugene - age 26; Mildred - age 24; John - age 21; Susan - age 18; and Elizabeth - age 4.

Mary would have been age 23 at the time of Genevieve's death, but Mary died of cancer in 2004. Mary is survived by two children, Melanie - age 4; and Sandra - age 3.

Genevieve owned five diamond rings at the time of her death. The rings were all located in her safe deposit box at that time.

Eugene had been born with a severe form of mental retardation and had spent his entire life in a state mental institution. Two physicians have given their opinion that Eugene will have to remain institutionalized for the rest of his life and that at the time of Genevieve's death Eugene was permanently incapable of taking care of his person or managing his property, because of his mental incapacity.

John died in October 2007, survived by one son, Lawrence. John left a will in which he bequeathed all of his property to his son, Lawrence. (Lawrence would live until the year 2041.)

At the time of her death, Genevieve and all of her descendants were domiciled in Louisiana.

Please give reasons for each of your answers.

QUESTION 1

(5 points)

Does Genevieve have any forced heirs? If so, please identify each forced heir and provide the fraction used to compute the legitime of each such forced heir.

QUESTION 2

(5 points)

Was the March 15, 2006 instrument found in Genevieve's safe deposit box valid in form as a will at the time it was executed?

QUESTION 3

(5 points)

Was the March 15, 2006 instrument effective upon Genevieve's death?

For all of the remaining questions, please assume that the April 16, 2003 will was the only valid and enforceable will in effect at the time of Genevieve's death, and that the legitime of her forced heirs was satisfied.

QUESTION 4

(5 points)

Who is entitled to receive the five diamond rings?

QUESTION 5

(5 points)

Who is entitled to receive the land in Ascension Parish?

QUESTION 6

(5 points)

Who is entitled to receive the emerald cluster necklace?

QUESTION 7

(5 points)

Does the bequest of the land in Mississippi to Uncle Leon affect the computation of the forced portion?

QUESTION 8

(5 points)

When the trust at National Bank is terminated on December 31, 2035, assuming that the law in effect at the present time has not been changed, will Lawrence be entitled to an interest in the principal of the trust?

QUESTION 9

(5 points)

Assume that George has four (4) children who are all living at the time of Genevieve's death, and that George executes a valid renunciation of his share of Genevieve's bequest in her will dated April 16, 2003 of all of the rest of her land and all of the rest of her stock to her children in equal portions. As a result of George's renunciation, who will receive George's share of that bequest?

QUESTION 10

(5 points)

Assume that Genevieve also had \$100,000 in a savings account at National Bank at the time of her death. Who is entitled to receive those funds?

LOUISIANA BAR EXAMINATION

CODE III

JULY, 2008

Question One: TOTAL OF TWENTY POINTS

For each of the following ten subparts of this question, write in your examination 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. A privilege arises:

- A. only if granted by authentic act or act under private signature.
- B. only if granted by authentic act or act under private signature duly acknowledged.
- C. only if granted under a contract proved by at least one witness and other corroborating circumstances.
- D. only if the act creating it is in writing; however, a privilege may be created by oral agreement if the obligor recognizes the privilege when interrogated under oath.
- E. only for those debts for which it is expressly granted by law.

2. Which of the following is a correct statement of Louisiana law?

- A. The choice of law by the parties to a contract is enforceable only to the extent that the law chosen is the law of the state whose policies would be most seriously impaired if its law were not applied to the contract.
- B. The choice of law by the parties to a contract is enforceable only if the law chosen is the law of a state in which at least one of the parties is domiciled.
- C. All issues of conventional obligations are governed by the law expressly chosen by the parties, provided that the law chosen is (1) the law of the state of making, (2) the law of the state of performance or (3) the law of the state of common domicile or place of business of the parties.
- D. All issues of conventional obligations are governed by the law expressly chosen by the parties.
- E. None of the above.

**QUESTION ONE CONTINUES
ON FOLLOWING PAGE.**

- 3. A judicial mortgage is:**
- A. a general mortgage affecting all movable and immovable property of the obligor.
 - B. a general mortgage burdening only that immovable property owned by the obligor at the time that the judicial mortgage is created.
 - C. a general mortgage burdening the property of the obligor as well all property of his heirs or legatees who have accepted his succession.
 - D. a general mortgage established over all property susceptible of mortgage that the obligor owns when the judicial mortgage is created and over future property susceptible of mortgage when the obligor acquires it.
 - E. a special mortgage that is created by filing with the recorder of mortgages a judgment expressly declaring or recognizing that the judgment creditor has a mortgage upon property of the obligor.
- 4. The extinction of the principal obligation:**
- A. extinguishes ordinary suretyship for the obligation, but does not extinguish commercial suretyship.
 - B. extinguishes suretyship for the obligation, but does not extinguish mortgages securing the obligation.
 - C. extinguishes all mortgages securing the obligation, but does not extinguish suretyship.
 - D. extinguishes both suretyship and mortgages securing the obligation.
 - E. has no effect on either suretyship or mortgages securing the obligation.
- 5. The term of a reconducted nonagricultural lease having an initial term of one year is:**
- A. from year to year.
 - B. from month to month.
 - C. from week to week.
 - D. from day to day.
 - E. for a period equal in length to the initial term of the lease.
- 6. An agreement whereby one party promises to sell and the other party promises to buy a thing at a later time is:**
- A. a right of first refusal.
 - B. an option.
 - C. a bilateral promise of sale.
 - D. a sale by weight, tale or measure.
 - E. a sale on view or trial.

- 7. Which of the following is a correct statement of Louisiana law?**
- A. Nullity of the principal obligation renders a stipulated damages clause null.
 - B. Nullity of the stipulated damage clause renders the principal obligation null.
 - C. An obligor whose failure to perform the principal obligation is justified by a valid excuse is nonetheless bound for the payment of stipulated damages.
 - D. An obligee who avails himself of a stipulated damages clause must prove that the actual damages caused by the obligor's breach approximate the amount of the stipulated damages.
 - E. An obligee may avail himself of a clause stipulating damages for delay without the necessity of putting the obligor in default.
- 8. An obligation is rendered null by:**
- A. a suspensive condition that depends solely on the will of the obligor.
 - B. a suspensive condition that depends solely on the will of the obligee.
 - C. a resolutive condition that depends solely on the will of the obligor.
 - D. a resolutive condition that depends solely on the will of the obligee.
 - E. all of the above.
- 9. Which of the following is *not* a correct statement of Louisiana law?**
- A. A contract is an agreement by two or more parties whereby obligations are created, modified or extinguished.
 - B. A contract is bilateral when the parties obligate themselves reciprocally so that the obligation of each party is correlative to the obligation of the other.
 - C. A contract is onerous when each of the parties obtains an advantage in exchange for his obligation.
 - D. A contract is aleatory when it is not given a special designation, such as sale, lease, loan or insurance.
 - E. A contract is commutative when the performance of the obligation of each party is correlative to the performance of the other.
- 10. Fraud vitiates consent:**
- A. only when it arises from an affirmative misrepresentation of the truth.
 - B. only if the error induced by fraud concerns the principal cause of the obligation.
 - C. regardless of whether the party against whom the fraud was directed could have ascertained the truth without difficulty, inconvenience, or special skill.
 - D. when the fraud is committed by a third person if the other party to the contract knew or should have known of the fraud.
 - E. only if proved by clear and convincing evidence.

**LOUISIANA BAR EXAMINATION
CODE III
JULY, 2008**

Question Two: TOTAL OF THIRTY POINTS

On January 2, 1995, Mary, who was then and is now unmarried, purchased a house and the lot upon which it is situated in St. Tammany Parish, Louisiana (the "property"). To finance a part of the purchase price of the property, she borrowed \$80,000 from St. Tammany Bank ("STB"). This loan is evidenced by a promissory note, which she executed on the date of the purchase, payable in monthly installments of principal and interest over a ten-year term, with a final balloon payment due and payable in full on January 1, 2005. At the same time she signed the promissory note, Mary also executed in favor of STB a mortgage which contained a proper legal description of the property and stated that the mortgage would secure all present and future obligations of the mortgagor (Mary) up to the limit of \$100,000 at any one time outstanding. The mortgage contained a covenant that Mary would not sell the property without STB's consent and a provision that any sale made without STB's consent would be a default under the mortgage. The mortgage did not specifically identify the promissory note Mary signed, nor did it state the maturity date of any of the obligations secured by the mortgage.

Mary recalls that, when she signed the mortgage, she was in a conference room at the bank alone with her loan officer, who indicated that he would later present the mortgage she had signed to a notary public employed by the bank and two bank tellers, who would sign the mortgage as witnesses. Mary never saw either the notary or the witnesses.

Four years later, in early 1999, Mary decided that she no longer wished to live in the house. A local real estate agent helped her locate a buyer, Bob, who agreed to purchase the property for a \$20,000 cash payment and his assumption of the \$79,500 balance remaining on her mortgage loan. Bob and Mary visited the STB loan officer together to ask for the bank's consent to the sale. After checking into Bob's credit history, the loan officer sent a letter to Mary and Bob stating as follows: "Having reviewed Bob's request to assume the outstanding balance of Mary's mortgage loan, we are pleased to advise that St. Tammany Bank consents to the sale of the property to Bob as well as his assumption of the loan. We congratulate him on his purchase and welcome him into the family of STB customers." Shortly after this letter was received, Bob and Mary appeared before a notary public and signed an act of sale, which recited that Mary conveyed the property to Bob for the price of \$20,000, which was paid in cash, plus Bob's assumption of the remaining \$79,500.00 balance owing to STB under Mary's mortgage loan. Mary delivered possession of the property to Bob that afternoon.

It is now July 2008, and in all the years following her sale of the property to Bob in 1999, Mary has had no further dealings with either Bob or STB. However, yesterday she received a letter in the mail from STB advising that Bob had made no payment on the loan since December 1, 2002. The letter demands payment from Mary of each of the monthly installments that have fallen due on January 1, 2003 and the first day of each month thereafter, as well as payment of the balloon payment, in the amount of \$60,000, that became due under the terms of the promissory note on January 1, 2005. Mary seeks your advice.

Before advising Mary, you investigate and learn the following: First, Bob has fallen upon hard times in recent years. While he has many debts, he has no assets other than the property he purchased from Mary. You also learn that one of his creditors, ABC Loan Company, has obtained a \$100,000 judgment against him. You arrange for an abstractor to review the conveyance and mortgage records of St. Tammany Parish, Louisiana, and, from examining this abstract, you learn that the following are the only instruments recorded since January 1, 1995 in any way involving Mary, Bob or the property:

- (1) Act of Sale by which Mary purchased the property, recorded in the Conveyance Records on January 3, 1995.

- (2) Act of Mortgage executed by Mary in favor of STB, recorded in the Mortgage Records on January 3, 1995.
- (3) Act of Sale executed by Mary, as vendor, and Bob, as vendee, recorded in the Mortgage and Conveyance Records on April 30, 1999.
- (4) A judgment rendered by 22d Judicial District Court for the Parish of St. Tammany against Bob in favor of ABC Loan Company for the amount of \$100,000, plus interest, costs and attorney's fees, recorded in the Mortgage Records on November 2, 2003.

Part A: Discuss defenses available to Mary against the claims asserted by STB. Be sure to include a discussion of any potential defenses which are suggested by the facts, even though you conclude that they will not be meritorious. **TEN POINTS.**

Part B: Assuming that Mary is held liable for the balance owed to STB, discuss any rights available to Mary against Bob and/or the property, including a discussion of any complications presented by ABC Loan Company's judgment. **TEN POINTS.**

* * * * *

Part C: Forklift Suppliers Inc. ("FSI"), a Louisiana corporation having its principal place of business in Orleans Parish, is engaged in the business of selling and servicing forklifts from three stores which it operates in New Orleans, Orleans Parish, Louisiana; Baton Rouge, East Baton Rouge Parish, Louisiana; and Beaumont, Jefferson County, Texas. In order to secure a \$500,000 loan that it borrowed from XYZ Bank ("XYZ"), FSI, through a properly authorized corporate officer, executed a written security agreement by which it granted XYZ a security interest in collateral described as follows: "All of Debtor's now owned or hereafter acquired equipment; all of Debtor's present and future accounts." At the time the security agreement was signed, XYZ filed in the UCC records of the East Baton Rouge Parish Clerk of Court a financing statement which identified FSI and XYZ as debtor and secured party, respectively, specified addresses for each of them, and contained a collateral description identical to that found in the security agreement. Assuming that the actions described above were the only steps taken to achieve perfection of the security interests granted under the security agreement, please state whether XYZ's security interest in each of the following items or types of collateral is perfected. In the case of each item or type of collateral, your answer should begin with the words "PERFECTED" or "UNPERFECTED", followed by a short (one or two sentence) explanation of why the security interest in the indicated collateral is or is not perfected. *In giving your answer, you should assume (i) that, to the extent that the law of any other state may be relevant, its law is identical to the law of Louisiana; and (ii) that the forklifts held by FSI for sale are not subject to the certificate of title law of any jurisdiction.*

1. New forklifts which FSI has for sale on its showroom floor in New Orleans.
2. Tools which FSI keeps in its New Orleans store for the purpose of making repairs to forklifts brought in for repairs by customers.
3. A delivery truck which FSI uses to deliver forklifts to its customers in southeastern Louisiana.
4. Monthly payments owed by an hydraulic piston sales company to FSI for the exclusive right to occupy an extra office suite that is located within FSI's building in Baton Rouge.
5. Amounts owed to FSI by a customer for the purchase price of a new forklift purchased at FSI's Beaumont Store.

Each of the foregoing five items is worth TWO POINTS.

LOUISIANA BAR EXAMINATION

CODE III

JULY, 2008

Question Three: TOTAL OF TWENTY-FIVE POINTS

On the night of her high school graduation, Liz, age 17, accepted a proposal of marriage from her high school sweetheart, James. The next afternoon, she made a visit to a local dressmaker, Le Grand Couturier ("LGC"), which specializes in custom-made wedding gowns. Upon arriving at LGC's store, Liz was greeted by Pierre, the store manager, who displayed for her a wide array of possible designs. After several hours, she selected a design that seemed perfect to her. Pierre then produced a written purchase order, which he completed with the description of the design Liz had selected and its price. He also inserted in the purchase order her planned wedding date of August 15, 2007, and a delivery date for the dress of August 14, 2007. Liz signed the purchase order and paid Pierre \$500 in cash, which LGC required as a deposit toward the cost of the gown. She also made an appointment to return to the store the following week to be measured for the gown. At the time she returned to be measured, Liz made her final selection of fabrics and was told that there was nothing further she needed to do other than to return to the store to pick up her gown on August 14.

In late June, James, who had joined the National Guard shortly after his graduation, received orders that he would be commencing a tour of duty overseas on August 1, 2007. Though they were both dismayed at this news, James and Liz decided to change their wedding date to July 28, 2007, which happened to be Liz's 18th birthday. On June 30, they visited Pierre at the LGC store in order to let him know of the change in their plans and to make sure that the wedding dress could be ready on time. Both James and Liz remember that Pierre assured them that there would be no problem at all in having the wedding gown ready by their new wedding date.

Unfortunately, when Liz visited the store on July 20 to see if her dress might be ready early, she learned that Pierre had left the employment of the store two weeks earlier. His replacement, Muffin, located Liz's purchase order and explained to her that Liz must be mistaken because the dress was not supposed to be ready until August 14, 2007. Muffin also mentioned that, if Pierre had intended to change the date on the purchase order as Liz claimed, he had not done so, and LGC therefore had no way of knowing that the gown would be needed sooner than August 14. Liz broke into tears upon hearing this news. Muffin told her there was little point in crying, because LGC was very busy and there was simply no possibility that the gown could be ready by July 28. Muffin suggested that Liz either change her wedding date back to August 15 or find another wedding dress elsewhere.

Rather than changing her wedding date, Liz attempted to find another custom dressmaker who could make a suitable wedding dress for her in the days remaining before July 28. The few other dressmakers in the city told her that there was not enough time to do so. Ultimately, Liz settled on a dress that she purchased at a local discount retailer for a tiny fraction of the cost a custom-made gown would have cost. Although she was supremely happy that she was able to marry James before his departure, she felt that the joy of her wedding day was greatly diminished by her inability to wear the beautiful gown that she had dreamed of. Liz contacted an attorney, who wrote to LGC demanding that it not only return her \$500 deposit but also pay her for the damages she has suffered, including the sadness she experienced on the most important day of her life by being deprived of the custom-made gown she had ordered from LGC. LGC's attorney has now replied putting forth the following defenses:

- (A) The contract was null and void from its inception, because Liz was a minor at all relevant times;

- (B) LGC was not contractually obligated to Liz, because only her signature appeared on the purchase order, which LGC itself never signed;
- (C) Even if a contract did exist between the parties, delivery of the dress was to be made by August 14, 2007 under the terms of the purchase order, and oral testimony would not be admissible to vary or alter the written purchase order.
- (D) Any agreement Pierre may have made to change the delivery date was unenforceable, because he was totally without authority from LGC to enter into any such agreement.
- (E) Liz has in any event suffered no damages, because she was able to purchase another wedding dress at a price considerably lower than the amount she had agreed to pay to LGC.

PART A: Discuss the merits of the defense asserted by LGC in item (A) above. **FIVE POINTS.**

PART B: Discuss the merits of the defense asserted by LGC in item (B) above. **FIVE POINTS.**

PART C: Discuss the merits of the defense asserted by LGC in item (C) above. **FIVE POINTS.**

PART D: Discuss the merits of the defense asserted by LGC in item (D) above. **FIVE POINTS.**

PART E: Discuss the merits of the defense asserted by LGC in item (E) above. **FIVE POINTS.**

**EXAMINATION CONTINUES
ON FOLLOWING PAGE.**

LOUISIANA BAR EXAMINATION

CODE III

JULY, 2008

Question Four: TWENTY-FIVE POINTS

In February of 2007, Linda placed an advertisement in a weekly classified newspaper advertising for sale a used bass boat that had been manufactured in 1979. The advertisement listed a sale price of \$3,000 for the boat, motor and trailer, and stated that the boat was "lake-ready." The boat had been owned since the time it was new by Linda's father, who recently passed away. Linda knew very little about the boat, except that she remembered going fishing with her father in it when she was in elementary school. Upon reading the advertisement, Mark telephoned Linda and made arrangements to view the boat the following day. On February 28, 2007, he returned a second time to view the boat, this time bringing his wife along. On that occasion, Linda's husband started the boat's motor in Mark's presence and pointed out that the trailer lights needed to be rewired and some gauges on the boat's control console would have to be reconnected. Because Mark had never owned a boat before, he felt that he should be cautious about purchasing a boat, particularly one as old as that being offered for sale by Linda. To assuage his concerns, Linda offered to allow him to take the boat to a nearby lake, try it out that afternoon, and return it if he did not find it to be satisfactory. Mark readily agreed to this offer. He and his wife used the boat for several hours that afternoon, finding it to operate perfectly. That evening, Mark returned to Linda's residence and handed her a check for \$3,000. She produced a handwritten bill of sale, which they each signed. Though Mark did not bother to read the bill of sale at the time, it contained the following language: "The herein described boat, motor and trailer are sold 'AS IS'."

Because of unexpected demands of his job, Mark had only one more occasion to use the boat during 2007. At that time, the boat performed just as well as it had the day he purchased it. Over the winter, Mark stored the boat in a climate-controlled storage facility near his home. However, the following spring, when Mark was preparing to use the boat for the first time that season, a friend pointed out that the wooden stern of the boat, which served as a mount for the motor, had a crack in it that had been filled with silicone. At the friend's urging, Mark immediately took the boat to a local boat repair facility, where it was discovered that the stern of the boat was significantly rotted. According to the repairman, it was "a miracle" that the mounting brackets of the motor had not simply penetrated completely through the heavily rotted wooden stern. He also feared that if the boat were towed on the highway, the motor might simply break away and fall off onto the road. Thus, the repairman warned Mark that he should not use the boat or even transport it over the highway. The repairman told Mark that he should not blame himself for failing to detect the rotten stern because it was difficult to spot beneath the fiberglass covering and "you would have to know what you are looking for." The repairman also told Mark that the boat was worthless because, in view of its age, it was not worth the cost of repair.

After hearing this report on March 15, 2008, Mark contacted Linda to ask for the return of his money. She refused, pointing out that she had sold him the boat "AS IS." On April 30, 2008, Mark filed suit against Linda for a refund of his money.

Discuss the nature and merits of Mark's claims, and possible defenses that are available to Linda. **TWENTY-FIVE POINTS.**

END OF EXAMINATION

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

QUESTION I (25%)

Succinctly answer the following questions:

- 5% A. Client seeks your assistance regarding a Partnership Agreement that he has entered with a long time acquaintance. Although his Partner has not yet breached the Partnership Agreement, Client believes that his Partner is about to violate the terms of the agreement. His Partner has justified his threatened actions by interpreting certain provisions of the Partnership Agreement in a manner that Client believes is fundamentally incorrect. Although the action threatened by Partner would cause Client only monetary harm, Client asks you if there is any legal action he can bring in advance of a contemplated breach of the Agreement that might confirm that Partner's interpretation of the Agreement is incorrect.
- 2.5% (1) What is the appropriate legal action, if any, that you would recommend and what kind of relief can the Court provide in conjunction therewith.
- 2.5% (2) The Partnership at issue has a Third Partner who agrees with Client's interpretation of the Partnership Agreement but does not want to join in any action related thereto. In light of your answer to No. 1 above, what, if anything, must be done with respect to this Third Partner? If something must be done please explain why.
- 5% B. You represent Building Corp., which has just been sued for breach of a construction contract. You believe the lawsuit is improper because the construction contract at issue contains a mandatory arbitration clause which requires any disputes arising therefrom to be resolved by arbitration.
- 2.5% (1) Please succinctly explain what pleadings you would file in response to the lawsuit, the allegations that you would assert therein and the goal you seek to achieve by doing so.
- 2.5% (2) Assume the trial court rejects your argument and allows the breach of construction contract lawsuit to proceed. Please succinctly explain what actions, if any, you can take to try to reverse the trial court's ruling and obtain your original desired goal.
- 8% C. Plaintiff, a resident of Bossier Parish, entered a written construction contract with Building Corp., a Louisiana corporation whose registered office is located in Calcasieu Parish, for the construction of a camp in Sabine Parish. Plaintiff signed the contract in Bossier Parish while Building Corp. signed the contract in Calcasieu Parish. All work and services for the camp construction project were performed in Sabine Parish. The project was supervised by Building Corp.'s Natchitoches Parish office.
- After construction is completed, Plaintiff has a variety of complaints concerning Building Corp.'s deficient contract performance and would like to sue Building Corp. for breach of contract. Please identify all parishes in which venue for a breach of contract action against Building Corp. would be proper. For each parish identified, you must explain the basis for venue in order to receive credit.

3% D. Please succinctly describe the requirements for a detailed descriptive list of succession property.

4% E. Father and his 16 year old son visit you and ask what steps they need to take in order to have 16 year old son judicially emancipated. They report that 16 year old son's mother was killed four years earlier in a kiln explosion. Please identify the proper court where such an action must be brought and succinctly explain the specific pleading, consent and evidentiary requirements that must be met in order for the father and son to achieve their objectives?

Question II (25%)

4% A. Your law firm represents Plaintiff in a products liability action that is scheduled for trial in 6 months. The partner handling the case asks you to prepare the appropriate documents that will elicit as much information as possible about the opposing party's expert witnesses and the opinions they hold. Please describe what options are available to secure the information sought by the partner?

3% B. You are representing defendant insurance company in an action brought against it by its insured. After three days of a bench trial, the plaintiff insured has rested her case. You believe that the plaintiff insured has failed to offer evidence needed to establish her cause of action. What, if anything, can you now do to try to secure an immediate ruling in favor of your client?

3% C. During the course of a jury trial, the judge has sustained your opponent's objections to a specific line of questioning you intended to cover with your expert witness that you believe is crucial to the outcome of the case. What, if anything, can you do to ensure that the excluded area of testimony can be reviewed and considered by an appellate court?

4% D. Client comes to see you concerning an executory process lawsuit that was recently filed against him by his neighbor. Neighbor had sold an adjacent 5 acre tract of land to Client, for which Client was to pay Neighbor \$1000 per month for 30 months. Client made timely payment for five months. During the sixth month, Client was injured in a single vehicle accident while riding as a guest passenger in Neighbor's car (with Neighbor driving). Client tells you that Neighbor agreed to waive the next 15 months of payments for the 5 acre tract as an offset for the damages that Client sustained in the accident. That agreement was not documented. For the next 14 months and in accordance with their unwritten agreement, Client did not make the monthly payments to Neighbor. At the end of the 14th month, Neighbor filed the executory process lawsuit against Client. Client asks you whether he can assert a reconventional demand against Neighbor for damages arising from the auto accident.

3% E. You represent the defendant driver in a personal injury lawsuit arising from a motor vehicle accident. At the beginning of the litigation, Plaintiff's counsel propounded interrogatories asking your client to identify all witnesses to the accident, which you timely and accurately answered. Two weeks before trial, you learn of a new, previously unidentified witness who observed the accident. You do not plan to call this witness at trial, since her testimony will be adverse to your client's interests. What responsibility, if any, do you have to divulge the identity of this new witness to opposing counsel?

- 5% F. Plaintiff filed suit against defendant for breach of contract. In its answer, defendant filed a general denial to the petition allegations, but asserted no affirmative defenses. Defendant later asserted a reconventional demand against plaintiff in which defendant alleged that the contract that forms the basis for the lawsuit lacked consideration and was the result of error or mistake. At the trial of the matter, defense counsel seeks to introduce evidence relating to the issues of failure of consideration and error or mistake when she is met by the objection of plaintiff's counsel, who correctly states that failure of consideration and error or mistake are affirmative defenses that were not specifically pled in the answer of the defendant. Should the defendant be allowed to introduce evidence of failure of consideration and error or mistake? Why or why not? Please explain your answer.
- 3% G. You have just completed your first jury trial in which you represented the defendant insurer in a lawsuit arising from a motor vehicle accident. The jury rendered a seven figure verdict against your client, and the news of that verdict has made all of the local papers. Four days after the verdict, you receive a call from Unknown Witness, who tells you that she read the newspaper account and was shocked by the verdict since she had witnessed the accident and saw the plaintiff run a red light and cause the accident in question. You meet with Unknown Witness later that same day and learn that both she and her 22-year-old son witnessed the accident but were not referenced on the accident report and were never contacted by anyone about the matter. What, if anything, can you do with this information at this point and, if anything can be done, what burden or standard must be met?

Question III (25%)

- 3% A. Appellee has not answered the appeal, but requests by brief that it should receive interest at the judicial rate from the date of judicial demand. The judgment of Trial Court did not make such an award. How should Appellate Court rule on this request? Briefly explain.
- 3% B. Corporation has been sued by three of its ten shareholders to compel it to collect vacation travel expenses improperly charged to Corporation by several of its directors. The remaining shareholders have not been joined as defendants. Is there anything that you can do to obtain the dismissal of this action? Please explain.
- 6% C. Television Station sold \$10,000 worth of advertising to Bob's Guns Extravaganza, for a traveling gun show that is scheduled to operate at the local convention center for three days. Bob, a citizen and resident of Idaho, has stopped payment on the check sent in payment for the advertising. Television Station wants you to take every step that you can to protect its interests. Bob has two truckloads of inventory parked at the convention center having an approximate retail value of \$30,000. In three days, Bob will move his merchandise to Little Rock, Arkansas. What action, if any, can you take to protect Television Station's interests? Please specify what pleadings must be filed and explain why the desired relief is available.
- 10% D. You have just obtained a judgment against Debtor for the payment of \$150,000 to Client. Although the time for suspensively appealing the judgment has run, Debtor recently has filed a Petition for Devolutive Appeal. Client wants to execute upon the judgment as soon as possible. You know that Debtor is

employed at Bank. You also know she owns an automobile but are unsure as to what other assets she possesses.

3% (1) Can you execute on the judgment at this point? If so, please explain how.

7% (2) Assume that you can execute on the judgment. What steps, if any, can you take to determine what other assets Debtor possesses and to otherwise execute on the judgment? Explain fully describing each step in the process and explaining whether there is any property owned by Debtor which cannot be executed upon.

3% E. During the course of gathering and reviewing documents to respond to your opponent's discovery requests, 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. You have been successful in obtaining a trial verdict in favor of your client in excess of \$1 million. The defendant, an individual, has filed a motion for suspensive appeal, offering a bond issued by the defendant's brother-in-law (who is NOT a licensed Louisiana surety), which attests to the fact that the brother-in-law is worth more than the amount of the judgment over and above all of his other obligations. Your client does not believe that the defendant's brother-in-law, now appearing as surety, has the financial means to do so.

4% (1) What action, if any, can your client take to determine whether the brother-in-law actually has the financial sufficiency to properly serve as a surety and who has the burden of proof in this proceeding?

4% (2) Assume that the Court requires a new or supplemental bond. What time constraints, if any, exist for the furnishing of such a new or supplemental bond and what effect, if any, does the new or supplemental bond have on the validity of the underlying suspensive appeal?

4% B. As part of your pro-bono work, you have agreed to represent Plaintiff in a redhibition action relating to a used truck that Plaintiff purchased to drive to work. Plaintiff is very poor and lacks the means to pay court costs to prosecute this law suit. What, if anything (other than paying court costs on Plaintiff's behalf) can you do to allow Plaintiff to proceed with his lawsuit? Please describe what, if anything, you must file and establish to accomplish this.

3% C. Thomas Smith filed his petition for divorce from Mary Smith on July 10, 2008. On July 17, 2008, a deputy sheriff served a copy of the citation and the petition on Edward Jones, Mary Smith's brother, at his office. Mrs. Smith works in the same office as her brother and is living with him after leaving her husband. Was the service of process proper? Please explain.

4% D. When a lawyer signs a pleading filed for a client, what does the lawyer signify personally, if anything?

- 3% E. 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.
- 3% F. You are defending a commercial contract dispute that has been set for trial in two weeks. Plaintiff's counsel has filed a motion for continuance, contending that a material witness who previously has not been deposed has disappeared and cannot be located. Plaintiff seeks a continuation of the trial so that further efforts may be made to locate this witness. Your client does not believe that the testimony of the missing witness will affect the trial outcome and would like to keep the current trial date in place. What, if anything, can you do to maintain the current trial date for your client?

LOUISIANA BAR EXAMINATION

TORTS

JULY 2008

Question One: SIXTY POINTS

Jack was employed by Big Cola Company. He was the driver of the horse drawn Big Cola wagon that was used for promotional purposes.

Jack was driving the wagon at the parish fair parade. Jack occasionally used his whip to excite the horses believing that made for a better show for the crowd. Jack and Big Cola had both been warned by police authorities about Jack's use of the whip.

During the parade, Jack had checked the horses' harness and found it to be unusually loose. As the horse drawn carriage galloped along the parade route, the brass harness on the lead horse snapped which allowed the horses and wagon to go into the crowd of spectators. The harness had been manufactured by Big Brass Corporation. Big Brass had been unable to import sufficient amounts of certain metals to manufacture their harnesses according to their specifications and had been using a lesser quality alloy.

A spectator along the parade route, Billy Bob, was knocked to the ground by a runaway horse. Billy Bob, who had been in perfect health, had been drinking beer while watching the parade and was slow to react to the horse's approach. Watching with Billy Bob were his wife, Mrs. Billy Bob, Huey, a major child, Dewey and Louie, minor children, his mother, Mama, and his adult brother, Worthless. Mama and Worthless resided with Billy Bob and were dependent upon him for support.

As a result, Billy Bob dies 2 weeks after the incident.

Discuss all legal claims.

Question Two: TWENTY POINTS

As a result of the injuries sustained in question one, Billy Bob was taken to General Hospital for treatment. During the period of his hospitalization, the doctors failed to detect an accumulation of blood in his abdomen and Billy Bob died in the hospital two weeks after the incident.

Discuss any additional issues.

Question Three: TWENTY POINTS

Les White was a patron at Super Foodstore pushing a shopping cart when he slipped in spaghetti sauce on the floor in the spaghetti aisle. This was witnessed by another patron, Betti Davis, who had noticed it on the floor prior to the fall. Davis was returning from reporting this to management and it had taken her approximately one minute to travel from the site of the spill to the front of the store to talk to the manager and she spoke to the manager for approximately one minute before returning to the site of the spill.

Five store employees were working in the produce area adjacent to the area where White fell. Super's policy regarding floor care and maintenance did not specify how often the aisles needed to be inspected, but it was the manager's preference to check the aisles every thirty to forty-five minutes.

Discuss White's claim.

Louisiana Bar Exam

Business Entities and Negotiable Instruments

July 23, 2008

Question 1 – 30% (6 points each subpart):

Honest Henry is an accomplished and trustworthy businessman from the Westbank. He is primarily involved in the real estate industry and owns a Louisiana real estate title company doing business in Orleans and Jefferson Parish. Honest Henry meets Greedy Gretchen who is a notary and has many lucrative contacts in the real estate title business on the Northshore in St. Tammany Parish. Greedy Gretchen represents to Honest Henry that her contacts will produce many real estate closings and therefore revenues. Honest Henry and Greedy Gretchen discuss getting into business together. They ultimately agree to establish a company on the Northshore that will be owned by Honest Henry and Greedy Gretchen in equal shares (50/50). They will both contribute start-up capital and will be the company's first officers and directors along with Henry's wife, Sally. Henry will be president, Gretchen will be treasurer and Sally will be secretary. They will all be directors. The company's name will be Trustworthy Title, Inc. Greedy Gretchen will receive a base salary of \$75,000, plus quarterly bonuses of 50% of the net profits of Trustworthy Title.

For several years while real estate is booming, the arrangement worked well and was profitable for Greedy Gretchen, Honest Henry and Trustworthy Title. During this time, Greedy Gretchen's earnings were in the range of \$600,000 to \$800,000. However, the real estate market bottomed out as interest rates began to climb. This caused real estate closings to decline rapidly which then caused Trustworthy Title's revenues and net profits to decrease significantly. This likewise had a detrimental impact on Greedy Gretchen's bonuses although she continued to receive her base salary.

Greedy Gretchen decided she was not happy with splitting the profits with Honest Henry and Trustworthy Title. Because of this, Greedy Gretchen secretly planned with the employees of Trustworthy Title to organize a competing company, Cheatem Title, LLC that she would own 100% as its sole member. Greedy Gretchen convinced the employees of Trustworthy Title to stage a walk-out without any advance notice to Honest Henry or Trustworthy Title. In fact, at 9:00 a.m. on the last day of the month which is very busy for a title company, Greedy Gretchen left with the employees and opened the doors of Cheatem Title--the same day. She used client contacts and other proprietary information from Trustworthy Title to get a head-start. To make matters worse, Greedy Gretchen contacted clients of Trustworthy Title in advance of the staged walk-out and advised them that Trustworthy Title was going out of business. Since then, Trustworthy Title's revenues continue to fall.

Honest Henry comes to you for advice concerning the situation. He has solicited your advice for the following questions:

- A. Has Greedy Gretchen violated any legal duties to Honest Henry or Trustworthy Title? Please discuss fully.
- B. What types of claims might Honest Henry be able to bring against Greedy Gretchen and discuss their probability for success?
- C. Could Greedy Gretchen have withdrawn from Trustworthy Title and started her own competing business without violating any duties if

Trustworthy Title was a Louisiana partnership owned equally by Honest Henry and Greedy Gretchen as general partners? If so, please explain under what circumstances.

- D. Could Greedy Gretchen have withdrawn from Trustworthy Title and started her own competing business without violating any duties if Trustworthy Title was a member-managed Louisiana limited liability company owned equally by Honest Henry and Greedy Gretchen. If so, please explain under what circumstances.
- E. Assume Greedy Gretchen does not orchestrate a walk-out and remains with Trustworthy Title. Instead, Trustworthy Title looks for new office space in order to save money on its lease and cut expenses. Greedy Gretchen and her sister, Earnest Esther, own an office building in Mandeville under a Louisiana limited liability company, Cheap Rent, LLC. Cheap Rent agrees to lease the same size and quality of office space to Trustworthy Title at 80% of the market rate. A board meeting is called of Trustworthy Title to vote on the lease with Cheap Rent, LLC. Considering her connection to Cheap Rent, LLC, Greedy Gretchen seeks your advice on whether her ownership in Cheap Rent, LLC could give rise to claims by Trustworthy Title or Honest Henry and what Greedy Gretchen could do to protect herself?

Question No. 2 - 25% (5 points each subpart):

Billy Bob is a televangelist and philanthropist from Shreveport whose congregation donates monies to Billy Bob's church (the "Repenting Sinners") for charitable causes. The Repenting Sinners is a Louisiana non-profit corporation for which Bill Bob is the sole shareholder and director. A charity from Lake Charles (the "Rebuilders") implores Billy Bob and the Repenting Sinners to donate \$250,000 to the Rebuilders for purpose of rebuilding churches damaged from Hurricane Rita. Billy Bob attends a public ceremony in Lake Charles at the L'Auberge Resort during which Billy Bob gives a speech in a public ceremony concerning the need for rebuilding churches and the Repenting Sinner's willingness to donate \$250,000 to the Rebuilders for this purpose. During the ceremony, Billy Bob presents a typical U.S. bank check from the Repenting Sinners church account at DEF Bank made payable to the "Rebuilders" in the amount of \$250,000 and dated July 21, 2008. The check bears Billy Bob's signature but no other handwriting or comments.

Billy Bob stays at L'Auberge too long the night of the ceremony and loses hundreds of thousands of the Repenting Sinner's weekly collections in several hours of gambling. Because of this, he knows the Repenting Sinner's church cannot afford to honor the donation to the Rebuilders. Three days after Billy Bob has lost the church's money, he calls the Rebuilders and explains his unfortunate turn at the gaming tables. The Rebuilders advise Billy Bob that the charity has already presented the check for payment at its bank (ABC Bank & Trust) and the charity has received the funds. Billy Bob then advises the Rebuilders that he contacted his bank (DEF Bank) yesterday and placed a stop-payment on the check.

You are asked for your legal opinion on the following:

- A. Please discuss whether the check from Billy Bob to the Rebuilders is a negotiable instrument and identify any additional information necessary to make that determination.
- B. Please discuss whether ABC Bank & Trust is a holder-in-due-course of the check. Please identify any assumptions necessary to make that determination.
- C. If the Repenting Sinner's account required two signatures on the check and only Billy Bob signed the check, who bears the risk of loss between ABC Bank & Trust and DEF Bank if the check is honored when presented for payment by the Rebuilders? Please explain fully.
- D. Assume that Billy Bob stopped payment on the check because he learned that it had been stolen from the Rebuilders and that the thief was presenting the check to ABC Bank & Trust for payment. Can Billy Bob successfully defend his liability to ABC Bank & Trust on the check if ABC Bank & Trust honors it when presented for payment? Please explain fully.
- E. Assume Billy Bob stopped payment on the check because he had learned that the board members of the Rebuilders intended to use the money on a lavish vacation rather than for rebuilding efforts as it was intended, can Bill Bob successfully defend his liability on the instrument if ABC Bank & Trust has honored the check when presented for payment by the Rebuilders? Please explain fully.

Question No. 3 – 25% (5 points each subpart):

A new client of yours, Ben, needs legal advice on organizing a new business entity for his engineering firm. Ben has two co-venturers, Steve and Tom, and they will all be working engineers involved in the day-to-day operations and decisions of the business. If they form a corporation, they want the corporation to have rights of redemption, and the owners want to have rights of first refusal, preemptive rights and other restrictions on transfer with regard to their shares or interests.

- A. Ben, Steve and Tom want to form a corporation for their business, discuss the documents required to form the company, their contents and any filing requirements.
- B. If Ben, Steve and Tom wanted to form a limited liability company for their business, discuss the documents required to form the company, their contents and any filing requirement.
- C. Ben, Steve and Tom are considering a partnership *in commendam* for their business entity? Discuss the prerequisites to form a partnership *in commendam* and whether Ben, Steve and Tom could use this form for their business.
- D. If they decide to use a corporation, do they have to elect officers and directors? If so, how many of each?
- E. If Ben, Steve and Tom decided to form a registered limited liability partnership, what are the filing requirements and what would be the benefits of using an “LLP?”

Question No. 4 – 20% (2 points each subpart):

Please answer the following questions in sentences in order to give a full explanation. One word answers will receive zero credit.

- A. What legal duties do the managers of a limited liability company owe (i) the company and (ii) the members?
- B. Does a director of a corporation, acting alone, have the authority to sign contracts on behalf of the corporation and thereby bind the corporation?
- C. Does a partner in a partnership, acting alone, have the authority to sign contracts on behalf of the partnership and thereby bind the partnership?
- D. Is a director of a corporation automatically entitled to reimbursement from the corporation for reasonable attorney's fees incurred in successfully defending a lawsuit brought against the director by a third party by reason of the directorship?
- E. Is a member in a limited liability company automatically entitled to reimbursement from the company for the reasonable attorney's fees he/she incurs in successfully defending a lawsuit brought by a third party by virtue of his/her status as a member?
- F. Can a shareholder of a corporation withdraw from the corporation and require the corporation to purchase his/her stock in the corporation? If so, under what circumstances?
- G. Explain the difference between a member-managed and a manager-managed limited liability company.
- H. What type of vote is required by members of a limited liability company to transfer or sell immovable property owned by the LLC? Please explain any pertinent assumptions.
- I. Can partners be expelled from a partnership, and, if so, under what circumstances and by what vote?
- J. What is cumulative voting?

**LOUISIANA BAR EXAMINATION
CONSTITUTIONAL LAW
JULY 25, 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 THREE QUESTIONS.

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

QUESTION ONE – (35 points)

Louisiana legislators decided to create a task force to evaluate the impact of same sex marriages on school-aged children's health, behavior, and understanding of family values. After three months of surveying students across the state ranging in age from nine to 17, the Task Force issued the following conclusions: (1) Children who resided in a home with a mother and father (hereinafter "family unit home children") had healthier mental health and fewer instances of obesity and diabetes than children who resided with a single parent (hereinafter "single home children"). (2) Family unit home children received better grades in school, had higher self esteem, exhibited less dysfunctional behavior, and had fewer disciplinary problems than single home children. (3) 90% of the family unit home children expressed a desire to marry when they reached adulthood, while only 20% of single home children expressed a similar desire. It also found that survey responses for family unit home children exposed to extreme mental or physical abuse or excessive arguing resembled those of single home children. The Task Force could not locate any children residing in homes with same sex couples.

Based upon the findings of the Task Force, the Louisiana legislature created legislation to protect the sanctity of marriage, the family unit, and the children. It believed that the Task Force's research, which prompted the legislation, would prevent it from offending the United States or Louisiana constitutions. Legislators wanted to prevent full marriage rights for same-sex partners and did not want the time delay of a state constitutional amendment.

The legislature enacted the Louisiana Defense of Marriage Act (DOMA), which permitted domestic-partner registration to grant same-sex couples all state-level rights and obligations of marriage in areas such as income tax, retirement benefits, and insurance, but not inheritance. DOMA further provided that only marriage between a man and a woman is valid or recognized in Louisiana and that same sex marriages performed in any other state would not have any effect in Louisiana. The law further provided that same sex couples were prohibited from adopting children or serving as foster parents within the state, unless they owned their own home and had lived together for at least seven (7) years.

Dee and Roz have been partners for seven (7) years and have lived in a 2500 square foot apartment in Beaux Bridge during that entire time. They have wanted to marry and adopt children for several years. Before DOMA, Dee and Roz were certain that Louisiana would follow the lead of the California Supreme Court and allow same sex marriages.

Accordingly, Dee and Roz had applied to a private agency, Tender Love Homes, to adopt a child before DOMA's enactment. The agency, which has only five employees, receives funding from private donations (20%), federal and state grants (70%), and fundraising efforts (10%). Dee and Roz's application was pending, along with 730 other same sex couple applications, at the time DOMA was enacted. A week after DOMA became effective, Dee and Roz received a letter in the mail from Tender Love Homes denying their application because they did not live in a house. When they called to challenge the decision, they were told that their case was "closed." They were angered and hurt.

(1) What constitutional argument(s) can Dee and Roz raise regarding the DOMA? (20 points)

(2) What constitutional argument(s) can Dee and Roz raise regarding the denial from Tender Love Homes? (15 points)

Include an explanation of any potential weaknesses in any of the arguments.

QUESTION TWO – (35 points)

Congress passed certain amendments to the Animal Welfare Act which involved the addition of a section making it illegal for any person to knowingly sell, buy, transport, deliver or receive for the purpose of transportation in interstate or foreign commerce, any animal for the purpose of having the animal participate in an animal fighting venture. Before the amendment, the Act expressly exempted crawfish fighting in states where this sport was legal. Crawfish fighting was legal in Louisiana. After the amendment the express exemption was removed from the Act. The amended Act did not define animal fighting venture. The amendments also raised the potential fine for violations of the Act up from a maximum of \$5,000 to a maximum of \$15,000.

Bo Breaux, who classifies himself as Cajun, is the manager and owner of a Louisiana crawfish fighting venue known as the Fighting Claw Arena. At the Fighting Claw, crawfish fighting derbies take place on weekends, and he has a huge annual fight that draws crawfish fighters from all parts of the country and Japan. According to Bo, the amendment will have a severe effect on his business as the arena cannot adequately supply itself with enough large, hard-shelled crawfish if it is limited to Louisiana crawfish. Because Louisiana citizens capture and consume most of the crawfish produced in the state, the crawfish have inadequate time to grow to large sizes and develop the hard shells that are needed for the fights. Bo typically imports 10 inch Bottlebrush crawfish from Tennessee and 17 inch Cambaridae crawfish from

Japan. He estimates that he will lose a significant amount of money due to the decrease in derbies.

Bo contacted his state representatives. They got legislation passed that amended the Louisiana animal cruelty statutes, which already exempt crawfish fighting. The legislature found that crawfish fighting was a unique cultural activity of Cajuns that should be protected. The amended crawfish statute provides, *inter alia*, that a crustacean transported from another state or country is not deemed to be involved in an animal fighting venture if it does not engage in any fights for at least four (4) months of its birth or its arrival in Louisiana. The amended statute also provides that transporting the eggs of crawfish does not constitute transporting crawfish. Finally, the statute requires that all out-of-state crawfish competing in Louisiana must have a native Louisianan Cajun trainer handling the crawfish during the competition. No qualifications for the trainer were specified.

Max Victor, a big crawfish and lobster fighter in Atlanta, has competed in Bo's annual derby for many years. Max is a Louisiana Cajun who was raised in Atlanta. He has used the same trainer (a Mexican who has resided in Atlanta) for the last 17 years. He does not want to use a Louisiana trainer, and he also does not want to transport his prized crawfish as eggs in order to get them to the big annual crawfish fight in Louisiana. His best fighters are fully-grown 11 inch crawfish with very hard, dark red shells.

Max seeks legal advice from your law office. He asks what Constitutional challenges may be made in opposition to the crawfish statute. Please draft a response explaining the Constitutional challenges that he may raise regarding the dormant commerce clause, preemption, and privileges and immunities. Include an explanation of any potential weaknesses in the argument(s). **DO NOT DISCUSS ANY PROCEDURAL DUE PROCESS ARGUMENTS IN THIS ANSWER.** (35 points)

QUESTION THREE – (30 points)

Civil District Court Judge John Correct, a devout Christian who became chief judge of a parish court in Louisiana, implemented several new policies in the court. First, he instructed the judges to begin all court proceedings with a statement of thanksgiving and acknowledgement. He drafted a politically correct statement for the judges to use that reverently acknowledged the gods of the major religions from around the world. The acknowledgment ended with the following line: "...and as stated on our country's currency: In God we trust." The judges were instructed to ask, before reading the acknowledgement, all those present whether they wished to participate in the acknowledgment. He further instructed that if anyone opted not to participate, the judge was to ask that person to exit the court for the two minute time period during which the acknowledgement was read.

Sue Nonee, an atheist, is hired as a stenographer for the court. She heard Judge Correct's acknowledgement and was deeply offended. The next time she had to appear in court she elected not to participate in the acknowledgment. However, the looks of disapproval she received from the judge and the other people present in the courtroom made her very uncomfortable.

What constitutional arguments can Sue Nonee raise? (30 points) Include an explanation of any potential weaknesses in the argument(s). **DO NOT DISCUSS ANY SUBSTANTIVE OR PROCEDURAL DUE PROCESS ISSUES IN THE ANSWER.**

LOUISIANA BAR EXAMINATION
CRIMINAL LAW, PROCEDURE AND EVIDENCE

July 25, 2008

Question I.
(40 points may be earned)

A certified financial planner, Mel considered himself a financial wizard and was proud of his professional record. News of his prodigious talent spread throughout his small town, resulting in an ever-expanding client base. The rapid growth of his business soon demanded the hiring of an administrative assistant. Several well qualified applicants vied for the position, but Mel eventually acceded to the demands of his mother, who insisted that he hire his troubled younger brother, Lee. In dire need of a decent job, Lee had drifted from one job to another since his release from the Hunt Correctional Center after serving time for aggravated arson.

During his first few months on the job, Lee proved to be an exceptional protégé. He was knowledgeable and well-prepared when dealing with clients, and his natural charm and wit won him the confidence of Mel's clients. Over time, Mel's clients entrusted Lee with their most sensitive financial affairs; however, none were aware of Lee's past transgressions.

Eventually, Lee developed great confidence in his own financial management skills and he began to take liberties with Mel's client accounts. On several occasions, he directed clients to send money directly to him for deposit and investment, rather than to Mel. When client funds were received at the office, Lee would sometimes skim a few bucks off the top before investing the remainder. For those clients who preferred to transfer funds through electronic means, Lee used social security numbers and other personal data of clients to authorize the transfers. Often, Lee would later use this confidential information to open credit card accounts in his own name. On other occasions, Lee would simply open new credit accounts in his client's name but would use Mel's office address as the billing address. Unbeknownst to the clients or Mel, Lee sometimes signed the client's name to the account application and he designated himself to be an authorized user of the account.

Lee's vices were eventually discovered by Pierre, one of Mel's most loyal clients. After detecting numerous discrepancies in his quarterly financial statements, Pierre demanded a full and complete accounting of his investment activity. Pierre suspected that improprieties attributable to Lee had resulted in the severe financial losses reflected in the account statements.

Pierre angrily drove to Mel's office to confront Lee with his suspicions. He stormed into Lee's office and loudly voiced his suspicions. Lee attempted to assuage Pierre but was unable to do so. The confrontation grew increasingly heated. Embarrassed and enraged, Lee left the office and walked to the parking lot, where he retrieved a hunting rifle from the trunk of his car. As he reentered the building with the rifle, Lee was approached by Karen, the building security officer, who demanded that he leave the building at once. Lee refused. Karen then attempted to disarm him. While doing so, Lee aimed the barrel of the rifle at Karen and ordered her to back away. Disregarding the order, Karen lunged toward Lee and grabbed the barrel of the rifle. Lee was unable to control the weapon. It discharged, striking Tiffany, the building's receptionist. She died instantly. Lee managed to wrest control of the weapon from Karen. He then struck her with the butt end of the rifle and, pointing the gun directly at her, ordered her to enter a utility closet. He then braced a chair under the door knob, preventing Karen from leaving. Lee was not aware that the utility closet contained toxic malodorous cleaning supplies. Karen tried to free herself from the confinement but was unable to do so. After several minutes in the confined space, Karen was overcome by the toxic fumes and died.

Before leaving the building, Lee ran to Mel's office and confessed everything he had done, including the manipulations of the client accounts. Mel assured him that all would be corrected to the satisfaction of the clients. He urged Lee to leave immediately before anyone called the police. Mel then gave Lee a credit card in Pierre's name and urged him to leave the state at once. Lee later used the card.

Discuss all crimes with which Lee and Mel 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.

Question II.

(30 points may be earned)

Assume all the facts as stated in Question I, in addition to the following. During the crime scene investigation at Mel's office, witnesses reported that Lee bragged openly about having recently acquired a hunting rifle. Police then immediately drove to Lee's home with the intention of conducting a search for the weapon. Upon arrival, they identified themselves to Lee's mother, who lived with her son, and requested her consent to conduct a search of the residence. However, she refused to give consent and officers were forced to apply to a local judge for a search warrant. Officers seized the house and denied Lee's mother access to Lee's bedroom. After a period of almost five hours, officers finally obtained a warrant authorizing a search for the suspected hunting rifle. Soon after beginning the search, officers discovered the rifle in a closet in Lee's bedroom. Later, Lee's lawyer filed a motion to suppress the admission of the rifle at trial, claiming that the delay in conducting the search amounted to an unreasonable and unconstitutional delay.

After finding the rifle, but before leaving Lee's home, officers decided to take a look in several other locations to assure themselves that no other contraband was present. In a detached garage located several yards from the residence, officers discovered a plastic bag containing cocaine. The bag was seized and Lee was charged accordingly. Lee's lawyer moved to suppress the admission of the drug evidence.

Earlier in the day, after leaving Mel's office, Lee ran through a quiet subdivision to elude capture. After a six-block run, he paused, then walked briskly down the subdivision's main street. He was spotted by a police officer on patrol in the area. Unaware of the incident at Mel's office, the officer nonetheless grew suspicious when he saw Lee and decided to stop and question him. During the questioning, the officer patted Lee down and discovered a plastic bag containing marijuana in Lee's jacket pocket. He was immediately placed under arrest.

After the incident, the officers conducted a search of Lee's desk at Mel's office. In a desk drawer, officers located an unloaded 9mm pistol. Prosecutors later tried to introduce the pistol into evidence at Lee's trial.

Detectives working the homicide investigation were informed that Lee kept a locked briefcase under his desk. Believing that the case may have contained important papers related to the investigation, officers retrieved the case and pried open the lock. Their search revealed documentary evidence of several financial improprieties concerning Pierre's account.

After placing Lee under arrest and transporting him to the police precinct, officers attempted to interrogate him. Having been advised of his Miranda rights, Lee refused to answer any questions put to him by the officers and he was not further pressed to participate in an interview. However, five hours later, at approximately 2:00 a.m., officers entered Lee's holding cell and again requested to interview. Again, Lee refused. Several hours later, at 9:00 a.m., officers again asked Lee to submit to an interview. On this occasion, Lee finally consented, waiving his right to counsel while doing so. His statement was offered into evidence by prosecutors at his trial.

Discuss all state and federal constitutional bases for challenging the following: (1) the delay in conducting the search Lee's home; (2) the admissibility of the cocaine found in Lee's garage; (3) the seizure of the marijuana; (4) the admissibility of the 9mm pistol; (5) the admissibility of the contents of the briefcase; and (6) Lee's statement to officers.

Question III.

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

At Lee's trial, the following events or testimony occurs. Address the following issues that arose either before or during trial. Explain your answers fully.

(1) The prosecutor calls Lee's girlfriend to testify for the state. During the prosecutor's direct examination, her answers are evasive and non-responsive. May the prosecutor ask leading questions?

(2) At trial, prosecutors intend to introduce an audio taped statement from Lee's former cellmate at the Hunt Correctional Center, who claims on the tape that Lee told him that he planned to take money from his brother's clients. Assuming that it is properly authenticated, may the taped statement be admitted into evidence?

(3) If Lee is not charged with a gun crime, may prosecutors introduce evidence to prove that he was previously convicted of the felony arson charge?

(4) Mel agrees to cooperate with prosecutors in exchange for leniency. He testifies that Lee told him, "Pierre is filthy rich and won't even realize that his account is missing money." The defense attorney objects to the statement and asks that it be stricken from the record. She asserts that the statement is hearsay. How should the judge rule?

(5) Lee's lawyer seeks to introduce evidence of her client's drugged condition as a defense at Lee's trial. Assuming the pre-trial notice requirement is satisfied, what must Lee's lawyer prove to successfully assert the defense?

(6) Lee's attorney intends to present the testimony of Lee's minister who will testify as a character witness. The minister is prepared to testify that, among church members, Lee has a favorable reputation for non-violence and truthfulness. Will this testimony be permitted?

(7) Lee's neighbor, Gail, appears in court to testify on Lee's behalf. The prosecutor is aware that two years ago Gail was arrested and charged with felony theft. The charges were later dropped. Can the arrest be raised during Gail's cross-examination testimony?

(8) As a key part of Lee's defense strategy, his attorney seeks to introduce evidence of the security guard's dangerous character. Specifically, she plans to show that Karen exhibited aggressive behavior towards Lee just prior to the altercation resulting in Tiffany's death. Prosecutors object to the evidence. How should the judge rule?

(9) Attorney Adam was present in the lobby of the building at the time Pierre confronted Lee. He witnessed the entire episode. Although he represented Lee in a personal injury matter in the past, he does not represent Lee on the current charges or any pending charges. May prosecutors call him as a witness at Lee's trial?

(10) A police investigator is called to the witness stand during Lee's trial. She testifies that Michael, a known drug dealer, told her that he spoke to Lee about buying drugs. Michael claimed that Lee told him, "I don't want junk this time; I want the good stuff," which Michael understood to be a reference to high quality cocaine. Michael does not testify at the trial. Is this testimony admissible against Lee?

END OF EXAMINATION

LOUISIANA BAR EXAMINATION
Federal Jurisdiction and Procedure
July 2008

Question One (25 Points)

Bob, a Louisiana citizen, was employed for several years at Ace Co. in an administrative position. Ace Co. has New York citizenship. Bob had difficulty satisfying one of his supervisors, Zeke, and Bob believed that Zeke disliked the fact that Bob was a member of an area church that was controversial because it had a lesbian pastor. Zeke, also a Louisiana citizen, often made snide comments about Bob's church and pastor. Bob stayed at his job, despite that friction, because the pay was good and he had become so efficient that he had spare time during the workday to tend to his online store where he sold collectibles and antiques that he purchased from estate sales.

The Sunday paper featured an article about Bob's church and its controversial pastor. When Bob arrived at work on Monday morning, he was met at the door by Zeke and a security guard. Zeke told Bob that he was fired for operating a personal business during work hours. The guard handed Bob a box, and Zeke said the box contained all of Bob's personal property from his office. Bob was banned from the premises.

Bob believed that the real reason for his firing was discrimination based on his religion. He was, fortunately, soon able to get a new job at the same salary, and research showed that the value of his Title VII claim was likely no more than \$20,000.

Bob hired an attorney who filed a suit for him in federal court. The complaint set forth a claim under the federal Title VII statutes regarding employment discrimination and a similar Louisiana anti-discrimination statute. Bob believed that Zeke did not turn over all of Bob's personal property from his office, so the complaint also set forth a Louisiana law claim for conversion of \$5,000 in property. Bob had become distant and moody after he was fired, and his relationship with his wife, Jan, suffered as a result. The complaint set forth on behalf of Jan a state-law claim for loss of consortium valued at no more than \$10,000. The named defendants on each claim were Ace Co. and Zeke.

5 pts. 1.A Explain, with respect to each of Bob's claims, why the federal court does or does not have the authority to hear the claim.

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

4 pts. 1.B Ace hired attorney Tim Steel to represent Ace and Zeke in the federal case. Tim did some research and then wrote a letter to the attorney for Bob and Jan. Tim pointed out circuit precedent that holds that (1) Title VII does not provide a consortium claim to the spouse of a person who asserts a Title VII claim and (2) there is no basis to assert a Title VII claim against a mere supervisor because he is not an “employer” as defined by the statute. Tim asked that Bob and Jan’s attorney review the cited cases and voluntarily dismiss the challenged claims rather than put Tim’s client to the time and expense of filing a motion to attack the claims. Bob and Jan’s attorney called Tim upon receipt of the letter, said he did not have time to read the cases Tim cited, and told Tim that he should not expect a voluntary dismissal of any claims.

Tim was furious and immediately began to prepare a Rule 11 motion for sanctions based on what he believed was the assertion of meritless claims. Tim sees you later that day and says that he plans to file the motion on the next Friday so that it will ruin his opponent’s weekend. What procedural advice might you give Tim to improve the chances of his motion for sanctions being granted? What standard should the court apply when it assesses the merits of the motion?

2 pts. 1.C Tim decides that, rather than anger opposing counsel by seeking sanctions, he will simply try to have the meritless claims dismissed as soon as possible. Write down the letter of the *one* motion listed below that would be the most appropriate for Tim to file to achieve his goal.

- A. Motion to Amend the Complaint
- B. Motion to Remand the Meritless Claims to State Court
- C. Motion for More Definite Statement pursuant to Rule 12(e)
- D. Motion to Dismiss pursuant to Rule 12(b)(6)

3 pts. 1.D Tim files the correct motion and then sends a letter to the plaintiffs’ lawyer and suggests that counsel hold a Rule 26(f) conference to develop a proposed discovery plan. The plaintiffs’ lawyer is getting tired of all of these letters and motions from Tim. Rather than respond to the letter, the plaintiffs’ lawyer served notices of 12 depositions of Ace employees and served Tim with 32 requests for admissions. What procedural grounds, if any, could Tim raise on behalf of his clients to object to the depositions and requests?

5 pts. 1.E Once the procedural matters are ironed out, discovery gets underway. All of the Ace employees who were deposed testified that Zeke had nothing to do with gathering Bob’s personal items and that the security guard, alone, had cleaned out the office.

Tim would like to use the deposition testimony to support a motion aimed at dismissing the conversion claim against Zeke. What pre-trial procedure is available to Tim to obtain a dismissal of that claim? Describe the burdens that the Zeke and the plaintiffs will face if such a procedure is used. What is the minimum time the plaintiffs must be allowed to oppose such a procedure?

4 pts. 1.F The judge is persuaded by Tim's various arguments that the claims against Zeke lacked merit, and he enters an order that dismisses all state and federal law claims against Zeke. The claims against Ace Co. remain set for trial in about six months. Explain whether or not Bob and Jan may immediately appeal the dismissal of all claims against Zeke. What procedure might Bob and Jan ask the district judge to employ that would ensure that the dismissal of the claims against Zeke are subject to immediate appellate review?

2 pts. 1.G The claims against Ace proceed to trial, and Bob and Jan procure a final judgment in their favor for \$250,000. Ace wants to appeal the judgment and put a halt to any efforts to collect or enforce the judgment pending the appeal.

Write down the letter of the *one* of the following procedural devices that is the most appropriate for Ace to achieve that goal:

- A. Interlocutory appeal
- B. Declinatory exception of collection
- C. Impleader of appeal
- D. Stay by supersedeas bond

**EXAMINATION CONTINUES ON
NEXT PAGE**

Question Two (25 Points)

Gas Tech, L.L.C. (GT), a limited liability company, was organized under Delaware law. GT, which has two members, has its office in Oklahoma City, Oklahoma. The business manager is John Red, a lifelong resident of Oklahoma, who is paid a salary but does not own a membership interest in GT. Red is the sole employee of GT, administers all of its business, and handles marketing.

One member of GT is Able, Inc., a Delaware corporation whose sole shareholder is Bill Smith, who lives in Atlanta, Texas. Able has designed and manufactured a piece of drilling equipment that Bill believes is lighter, stronger and less expensive than the current industry standard equipment. Able assigned to GT the right to market and sell the new equipment that Able produces. Bill drives daily to the Able factory in nearby Hope, Arkansas to oversee Able's production of the equipment and otherwise tend to the manufacturing process. He keeps the books and records of the corporation at his home-office in Atlanta, and he receives payments, pays bills, and takes care of other paperwork from that office.

The other member of GT is Sue Brown, a wealthy investor who has provided capital to make and market the new equipment, which she believes is going to generate a fortune in sales. Sue was born in Florida and lived there for 35 years, before making her wealth. She then began purchasing homes throughout the country, and now owns homes in Arkansas, California, Colorado, and Mississippi. She spends a few months per year at each home, depending on the season, and no longer owns a home in Florida. She is currently staying in her Mississippi residence and, given its rustic charm, she thinks she may just settle down there for good.

Drill Man, LP (DM), a Louisiana limited partnership headquartered in Vivian, Louisiana, is engaged in the drilling business in Louisiana and surrounding states. Its sole limited partner is David Hobbs, who lives and works in Dallas, Texas. Its sole general partner is Bob Varsha, a lifelong resident of Vivian.

DM was approached by John Red about contracting to purchase the new equipment being marketed by GT. After lengthy negotiations by telephone and email between John Red in Oklahoma City and DM in Louisiana, DM partner Bob Varsha traveled to Oklahoma City for a one day visit, and he and Red managed to hammer out the final terms and sign a contract between GT and DM. The contract called for GT to ship a certain number of pieces of equipment monthly from the Hope, Arkansas factory to DM's Vivian headquarters over a two-year term, with DM to make payments of \$5,000 per month over the 24-month term.

DM made its first six monthly payments, but it learned that the new equipment did not live up to its hype, and frequent breakdowns and repairs made the new equipment much more expensive to use than what it had replaced. DM notified GT that it would no longer accept the equipment and would not make any further payments under the contract.

- 10 pts. 2.A** GT wants to sue DM for all future payments due under the contract. Discuss whether and how a federal court would have subject matter jurisdiction over the case if GT chose to file suit in federal court.
- 5 pts. 2.B** Assume that GT could get subject matter jurisdiction in a federal court. GT would like to file the case in an Oklahoma federal court for reasons of convenience. Discuss whether an Oklahoma federal court could properly exercise personal jurisdiction over DM in such a case.

3 pts. 2.C GT decides to sue DM in federal court in Louisiana. After the suit is filed but before service is made, Sue Brown decides to liquidate her interest in GT and use the cash for another venture. The purchaser of Sue's membership interest is Larry Carter, an Amarillo, Texas cattleman. Discuss the effect that Carter's becoming a member of GT would have on subject matter jurisdiction over the federal suit.

2 pts. 2.D Assume that GT filed suit in a Louisiana federal court and delivers a properly worded request that DM waive service pursuant to F.R.C.P. 4(d). If DM timely returns the waiver, it need not serve an answer to the complaint until:

- A. 60 days after GT sent the request for waiver to DM;
- B. 20 days after DM returned the signed waiver to GT; or
- C. Within 120 days of the filing of the complaint.

Write the letter of the *one* correct answer.

2 pts. 2.E Assume that DM decides to refuse to waive service, and GT is forced to pay a private process server to make actual service on DM. Write down the letter of the *one* of the following that is *not* a possible penalty that might be imposed on DM under Rule 4 if DM refused to execute the waiver without good cause:

- A. GT's expenses to hire the process server
- B. The entry of a default
- C. Attorney fees incurred in filing a motion to collect the service expenses

3 pts. 2.F GT files its suit in federal court in Louisiana, and the parties disagree over whether the contract should be interpreted under Louisiana, Arkansas, or Oklahoma law, which differ as to the remedies available for breach of contract. The choice of law rules in the three states also vary. Which state's choice of law rules should the federal judge apply? Why?

**EXAMINATION CONTINUES ON
NEXT PAGE**

Question Three (25 Points)

Jim, a Utah citizen, was driving through Louisiana on his way to Key West, Florida when his car was struck by a commercial truck driven by Tom, a Lafayette (Acadia Parish), Louisiana native and resident, who was driving a tractor rig that he owned and pulling a trailer owned and loaded by Boudin Queen, Inc. (BQ), which has operated solely in Lafayette since its inception. A traffic investigation suggested that the load in the trailer shifted suddenly because it was not properly stacked, and Tom overcorrected his truck, all leading to the accident. Jim suffered a compound fracture of his right femur and three broken ribs. He incurred \$20,000 in medical expenses, and his \$70,000 BMW was totaled.

Jim filed suit against Tom and BQ on May 1, 2008 in the Acadia Parish, Louisiana state court praying for recovery of his personal injury and property damages. The sheriff served BQ on May 10, 2008, and Tom on May 20, 2008. Tom's attorney wanted to transfer the case to federal court, and he called BQ's attorney to discuss that strategy. BQ's attorney was not sure he wanted the case in federal court, and he told Tom's attorney that he would get back with him. By June 15, 2008, Tom's attorney believed that he had waited long enough to hear from BQ, and he elected to file papers that day to state Tom's desire to transfer the case to federal court.

- 5 pts. 3.A** Describe in detail the procedure and requirements Tom must follow to transfer the case to federal court. To which federal court may the case be transferred?
- 6 pts. 3.B** Jim's lawyer wants to return the case to state court. Describe three grounds disclosed by the facts that he may use to argue for a return to state court.
- 4 pts. 3.C** What must Jim's lawyer file to seek a return of the case to state court? What time limits, if any, does he face? Describe the effect, if any, on the grounds you identified in question 3.B, if Jim's lawyer does not so act until August 1, 2008.
- 2 pts. 3.D** Assume the case remains in federal court. The judge assigned to the case orders that the attorneys exchange initial disclosures. Describe, generally, the categories of information that must be included in the initial disclosures required by Rule 26.
- 2 pts. 3.E** BQ's attorney, when discussing the initial disclosure requirements with his client, learns that an employee who witnessed the trailer being loaded yelled to the men who were loading the truck that they were doing it incorrectly. The employee had no other knowledge about the events leading to the accident, so BQ's attorney made a note that there was "no way" he would call that employee as a witness at trial. Explain whether or not BQ must disclose the name of that employee in its initial disclosures?

4 pts. 3.F The accident occurred near the intersection of a parish road and a state highway. Tom and BQ believe that Tom would have maintained control of the truck and avoided the accident had the shoulders of the intersecting roads been better maintained by Acadia Parish and the Louisiana Department of Transportation and Development (DOTD). What pleading should Tom and BQ file if they wish to bring the parish and DOTD into the suit? Would either of the new parties have grounds to object to the power of the federal court to enter an award of money damages against them? Explain why or why not with respect to both the parish and DOTD.

2 pts. 3.G Write down the letter of the *one* of the following that *is* a correct statement of law:

- A. Waiver of service of the summons and complaint waives any objection to venue but not personal jurisdiction.
- B. A motion to dismiss for lack of personal jurisdiction may be filed at any time, even if the defense was not asserted in the answer.
- C. Service of a motion to dismiss under Rule 12 ordinarily extends the time to file a responsive pleading until 10 days after notice that the court has denied the motion or postponed its disposition until trial.
- D. Service of a summons and complaint may be made by any person who is of suitable age and discretion.

**EXAMINATION CONTINUES ON
NEXT PAGE**

Question Four (25 Points)

3 pts. 4.A Plaintiff, a Louisiana citizen, hired Defendant contractor, a Texas citizen, to build an office park in Baton Rouge, Louisiana. Plaintiff paid for the work but soon discovered what it believed were defects in the construction, and it filed a \$200,000 civil action against Defendant. Plaintiff could have elected to file the action in a Louisiana federal court, but it heard that the district in which Defendant was located in Texas had a “rocket docket” that would quickly bring the claim to trial, so it filed the suit based on diversity jurisdiction in a Texas federal court.

Defendant filed a \$50,000 third-party demand against Subcontractor, a Louisiana citizen. Defendant alleges that Subcontractor installed the floors poorly and contributed to the damages sought by Plaintiff. Discuss whether the federal court would have subject matter jurisdiction over Defendant’s claim against Subcontractor.

3 pts. 4.B Assume the facts set forth in the above question. Plaintiff, alerted that Subcontractor was responsible for the floors, amended its complaint to assert its own \$50,000 claim directly against Subcontractor based on the shoddy work at the office park, as well as a \$100,000 claim for poor work that Plaintiff claims Subcontractor performed on a job at a nearby apartment complex. Discuss whether the federal court could exercise subject matter jurisdiction over Plaintiff’s claims against Subcontractor in this case.

3 pts. 4.C Betty, a Louisiana citizen, borrowed \$100,000 from River Parishes Bank, a Louisiana banking corporation. Betty’s monthly statement showed the amount of principal and interest due for the month, plus a \$10 per month documentation fee. Betty dutifully paid the principal and interest, but she refused to pay the \$10 fee. The bank sent a demand letter to Betty, and her lawyer responded that the fee was not collectible because it was not disclosed in the loan documents in the proper size font required by the federal Truth In Lending Act (TILA). Betty posted on her blog about the bank’s TILA violation, and several other bank customers began to refuse to pay the fee. The bank’s lawyers conducted research and found several federal circuit court decisions that they believe will defeat the TILA argument, so the bank declared the \$80,000 balance of Betty’s loan was accelerated and due and also demanded the \$500 in unpaid fees that had caused the dispute. Discuss whether a federal district court in Louisiana would have subject matter jurisdiction over the bank’s suit against Betty.

4 pts. 4.D Plaintiff filed suit in federal court against her former employer for retaliation in violation of Title VII. Plaintiff presented the testimony of five of her seven listed witnesses and announced that her final two witnesses were her counselor and psychologist who would testify only with respect to damages. Defense counsel believes that Plaintiff cannot prevail on her Title VII retaliation claim because she did not submit evidence that her employer changed her job duties enough to qualify as “ultimate employment discrimination” as required by circuit precedent.

What motion could defense counsel properly raise during the trial in an effort to dismiss the Title VII retaliation claim? Discuss whether defense counsel must wait until Plaintiff rests her case or if the motion could be made now. Finally, discuss the standard that the trial judge should apply in ruling on the motion.

3 pts. 4.E Plaintiff, a Louisiana citizen, slipped and fell in a store owned by C-Store, Inc., a New York citizen. Plaintiff filed suit in a Louisiana state court for personal injuries reasonably estimated as valued over \$100,000. The petition named as defendants C-Store, Inc. and Frank Mills, the store manager. The petition alleged that Mills, who was not on duty at the time of the accident, is nonetheless liable because he did not adequately enforce the store’s cleaning policy. Mills, like Plaintiff, is a citizen of Louisiana.

C-Store, Inc.’s lawyer researches Louisiana law and becomes convinced that Plaintiff does not have a valid cause of action against Mills. Discuss any jurisprudential doctrine that might be available to C-Store, Inc. to transfer the case to federal court despite the apparent lack of complete diversity. What standard should the federal court apply in determining whether to permit the transfer?

4 pts. 4.F Plaintiff believes that a new state law that severely restricts the permissible location of street performances is a violation of the First Amendment. She filed a suit in federal court that invoked 42 U.S.C. § 1983 and asserted a number of claims. Discuss what effect, if any, the Eleventh Amendment would have with respect to the following claims:

- (1) A claim against the State of Louisiana for a declaratory judgment that the law is unconstitutional.
- (2) A claim against the Attorney General in his official capacity to enjoin future enforcement of the law.

3 pts. 4.G The City of Gonzalez, Louisiana adopted an ordinance that required developers in residential areas to pay a \$500 impact fee or tax for each house that is framed with less than 50% Louisiana-milled lumber. Proceeds are combined with general tax receipts and allocated by the City as needed to fund improvements to its utility systems and to provide fire and police protection in the rapidly-growing city.

A developer filed a suit against Gonzalez in a Louisiana federal court under 42 U.S.C. § 1983. The developer alleges that the impact fee unconstitutionally discriminates against interstate commerce. He seeks a declaration that the fee is unconstitutional and an order that Gonzalez cease collecting the fee. You represent Gonzalez. What jurisdictional argument might you raise in an effort to get the case dismissed?

2 pts. 4.H Write down the letter of the *one* of the following that is *not* a correct statement of law:

- A. Parties may ordinarily obtain discovery regarding any non-privileged matter that is relevant to a claim or defense.
- B. To be relevant for discovery purposes, information must be admissible at trial.
- C. Ordinarily, a party may not discover documents that another party prepared in anticipation of litigation.
- D. A Rule 26 discovery plan must state the parties' views and proposals on any issues about discovery of electronically stored information.

END OF EXAM