

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS
JULY 2018**

QUESTION 1 — 50 POINTS (FIVE POINTS EACH SUBPART)

- 1.1. What is an “indorsement,” and what are the effects of an indorsement?**
- 1.2. What is a “holder in due course,” and what is the effect of this designation?**

The following fact pattern applies to subquestions 1.3 to 1.4.

In January of this year, Alice and Betty started a new business, A&B, Inc. Purporting to act on behalf of the company, they signed a purchase agreement in that same month with Office Supply Co. to buy office furniture. The purchase is on credit with monthly payments due over the next three years. The office equipment was delivered days after the purchase agreement was signed. None of the monthly payments due to Office Supply Co. has been made. Alice and Betty did not file the Company’s articles of incorporation with the Secretary of State until April of this year.

- 1.3. Does Office Supply Co. have the right to bring an action directly against A&B, Inc. for the failure to make the monthly payments, and is it likely to prevail? Explain.**
- 1.4. Does Office Supply Co. have the right to bring an action directly against Alice and Betty personally for the failure to make the monthly payments, and is it likely to prevail? Explain.**

The following fact pattern applies to subquestions 1.5 to 1.6.

RST, Inc. is a real estate development company formed in 2016 and is equally owned by Ron, Steve and Tom, who also serve as its three board members. Investor LLC is a company owned solely by Ron’s wife, Wilma. Investor LLC recently proposed to sell a tract of land to RST at a price that Ron, but not Steve or Tom, knew was substantially over its fair market value. At a properly called board meeting, Ron, Steve and Tom all attended the meeting and voted in favor of accepting Investor LLC’s proposal. Ron never disclosed his relationship to Wilma or the fact that the price proposed by Investor LLC was substantially above the fair market price.

- 1.5. Did Ron violate any duties he owed as a board member of RST, Inc.? Explain.**
- 1.6. Tom is now concerned that Ron has been diverting money from RST. Tom wants to see the corporate and financial records of RST. What records is Tom as a shareholder entitled to review, and what must he do to obtain access to those records? What difference, if any, would it make if Tom owned only three percent of the outstanding shares of RST? Explain.**

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The following fact pattern applies to subquestions 1.7 to 1.8.

Last year, Nancy hired Mary as a personal assistant to help Nancy with paying bills and managing other household affairs given Nancy's busy travel schedule. Before Nancy left on an extended but unexpected trip from March 20 through July 2, Mary wrote several checks to pay Nancy's regular monthly bills, such as credit cards, home mortgage and utilities, but forgot to have Nancy sign the checks before her departure. Mary signed Nancy's name to the checks in her absence and delivered the checks to the payees, who negotiated them. Nancy had been paying Mary \$500 in cash each month for her services. Because Nancy was gone longer than expected, Mary wrote out and signed Nancy's name to three checks payable to herself (Mary) each in the amount of \$500: one on April 4, one on May 4, and one on June 4. Mary deposited the checks into her personal account on the fifth day of each month respectively. A bank statement for Nancy's checking account was received at Nancy's home by the third day of each month.

When Nancy returned on July 3, she opened her bank statement for the month of June and discovered the \$500 check dated June 4 that Mary had signed payable to herself. Nancy then checked her previous bank statements and discovered the two other checks signed by Mary and payable to herself, as well as the other checks Mary signed to pay Nancy's bills.

1.7. For which of the checks payable to Mary, if any, is the bank liable to reimburse Nancy's account? Explain.

1.8. Is the bank obligated to reimburse Nancy's account for the amount of the checks signed by Mary to pay Nancy's regular bills? Explain.

The following fact pattern applies to subquestion 1.9.

Yvonne and Zelda formed a validly organized partnership (the "YZ Partnership") to construct modular homes. They agreed that Yvonne would contribute \$50,000 in cash to fund the purchase of materials and that Zelda would perform the construction services to build the homes. Yvonne's contribution would be made the earlier of within 30 days or as soon as needed. They further agreed to share the profits equally.

A subdivision developer and the YZ Partnership signed a construction contract under which the partnership agreed to build 10 homes for the developer. Before purchasing any materials for this work, Zelda received the partnership's bank statement and discovered that Yvonne's contribution had not been made. Zelda asked Yvonne to make the contribution, since they needed working capital to purchase the materials to build the homes for the subdivision developer. Citing monetary problems, Yvonne refused to put up her capital contribution and told Zelda that she would need at least three to four months before she will be able to raise the money. The lack of funds caused the partnership to breach the construction contract with the developer. Angry with Yvonne's failure to make her agreed contribution, Zelda is considering forming her own company to take over the project.

1.9. What steps might Zelda take to create a new business entity for the purpose of taking over the construction contract? Explain.

The following fact pattern applies to subquestion 1.10.

Larry and Joe decided to form a limited liability company. They filed the proper forms with the Secretary of State to form the LLC. After the company had been in operation for several years, Larry died. His son, Junior, who has been placed into possession of all of Larry's assets by a proper judgment of possession in Larry's succession proceedings, wants to become a member of the LLC. The organizational documents of the company contain only the minimum requirements for formation.

1.10. Is Junior entitled to be admitted as a member of the LLC? Explain.

[End of Question 1]
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QUESTION 2 — 30 POINTS (THREE POINTS EACH SUBPART)

- 2.1. **If three persons form a corporation and are all directors as well as shareholders of the corporation, does any of them, acting alone, have the authority to sign contracts on behalf of the corporation and thereby bind the corporation? Explain.**
- 2.2. **Under what circumstances, if any, may a person be expelled as a shareholder from their corporation? Explain.**
- 2.3. **How much time must pass without an annual shareholders' meeting for a corporation before the shareholders have the right to call for an annual shareholders' meeting, and, which of the shareholders would be required to call for such a meeting?**
- 2.4. **What are the differences between forming a member-managed LLC and a manager-managed LLC? Explain.**
- 2.5. **By what vote do members of a member-managed limited liability company make decisions? Is their vote counted by heads or their respective percentage membership interests? Explain.**
- 2.6. **For a manager-managed limited liability company, list three types of decisions that require the vote of the membership.**
- 2.7. **For a partnership, does any single partner, acting alone, have the authority to sign contracts on behalf of the partnership and thereby bind the partnership? Explain.**
- 2.8. **If a third party files a lawsuit against a person by virtue of his/her status as a partner of a partnership, and he/she successfully defends the suit, is he/she automatically entitled to reimbursement from the partnership for the reasonable attorneys' fees incurred in defending the suit? Explain.**
- 2.9. **For a Louisiana partnership in commendam, what duties/responsibilities is the partner in commendam allowed to have and what activities, if any, must the partner in commendam avoid in order to preserve his/her limited liability protection?**
- 2.10. **What information is required in the organizational documents of a Louisiana partnership in commendam, and what are the filing requirements, if any?**

[End of Question 2]

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QUESTION 3 — 20 POINTS

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

- 3.1. corporations – meeting and quorum requirements**

- 3.2. corporations – election of directors**

- 3.3. corporations – authority under unanimous governance agreements**

- 3.4. corporations – shares subject to unanimous governance agreements, remedies**

- 3.5. negotiable instruments – holder in due course requirements**

- 3.6. negotiable instruments – conflicting writings**

- 3.7. partnerships – formation**

- 3.8. corporations – required officers**

- 3.9. partnerships – liability of partners to third persons**

- 3.10. limited liability companies – voting**

[End of Question 3]

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS
FEBRUARY 2018**

QUESTION 1 — 25 POINTS (FIVE POINTS EACH SUBPART)

Allison maintains a checking account with Baton Rouge Bank (“BRB”). Allison is divorced and lives with her 25-year-old daughter, Ella. Without Allison’s knowledge, Ella obtained access to Allison’s checkbook, which Allison kept in a drawer at home. Ella began forging Allison’s signature on checks, and cashing the checks drawn on Allison’s account at BRB.

Every month during the period December 2016 through March 2017, Ella forged and cashed at BRB a \$1,000 check, for a total of \$4,000 over this four-month period. Each forged check was included in BRB’s monthly statement to Allison. Allison received the monthly statement for each of December, January and February by the seventh day of the following month, but she initially did not review those statements. On April 16, 2017, Allison received and reviewed her March 2017 bank statement from BRB and discovered a check in the amount of \$1,000 that bore an obvious forgery of her signature and had been cashed by Ella in March. Allison then immediately reviewed the three earlier bank statements and discovered the three earlier checks that had also been obviously forged by Ella.

On that same day, upon further investigation, Allison also discovered that Ella found a check payable to Allison in the amount of \$3,000 that Allison had received for the sale of an old car. The check had been sitting in a pile of mail on a table in the kitchen. Ella had forged Allison’s endorsement on the back of the check and cashed it at BRB on April 10, 2017. The check was drawn on an account at Federal Bank.

Allison immediately demanded that BRB remit payment to her for \$7,000: \$4,000 for the four \$1,000 checks and another \$3,000 for the check on which Ella had forged Allison’s endorsement. BRB maintains that it followed standard banking practices and paid all these checks in good faith. BRB also asserts that Allison was negligent in failing to restrict access to her checkbook.

- 1.1. As a general rule, does the bank or the depositor suffer the loss for payment of an instrument bearing a forged signature of the depositor? Explain fully.**
- 1.2. Is BRB’s defense that Allison was negligent in failing to restrict access to her checkbook likely to succeed? Explain fully.**
- 1.3. What other defenses, if any, does BRB have (beyond any possible defense addressed in Question 1.2. above) in order not to have to reimburse Allison for the four forged checks that were included in Allison’s monthly bank statements? Explain fully.**
- 1.4. Can Allison recover from either or both of BRB or Federal Bank the amount of the \$3,000 check that she had received from the sale of her old car? What defenses might be available to prevent her from recovering? If Allison is successful in obtaining recovery from the banks, which of them must bear the loss as between the banks? Explain fully.**
- 1.5. What impact, if any, would it make if Allison could prove that BRB failed to follow its own internal policy of reviewing and comparing signature cards for any checks in excess of \$500?**

[End of Question 1]

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QUESTION 2 — 30 POINTS (THREE POINTS EACH SUBPART)

Short Answer Questions. Please answer each question and provide a brief explanation for your answer.

- 2.1. What is a holder in due course? What advantages does a holder in due course have?
- 2.2. Under the Louisiana Business Corporation Act, how and when are the directors of a corporation elected and by what vote? How are the officers elected and by what vote?
- 2.3. Under the Louisiana Business Corporation Act, with respect to an action proposed to be taken by a corporation's board of directors, what in general are the qualifications that a director must have to be considered a "qualified director"?
- 2.4. Identify three matters that require the approval of the majority of the members of a limited liability company (absent a contrary provision in its articles of organization or written operating agreement).
- 2.5. What are the required votes and procedure for a corporation to dissolve?
- 2.6. What legal duties do directors and officers owe to a corporation?
- 2.7. What is the difference between a direct action and a derivative action by a shareholder against the directors of a corporation?
- 2.8. What is cumulative voting, and why might a shareholder want cumulative voting?
- 2.9. What minimum information must be included in a partnership agreement to establish a partnership in commendam?
- 2.10. What is piercing the corporate veil, and what are the elements necessary to establish entitlement to piercing of the veil in a suit?

[End of Question 2]

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QUESTION 3 — 25 POINTS (FIVE POINTS EACH SUBPART)

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

AGREEMENT

This 1st day of January, 2016, we, Alice and Bessie, agree to form and carry on as co-owners for profit a home design and decorator business in Louisiana named A&B Home Design Partners (“Home Design”), for a period of two years from the date hereof or such later date as we may mutually agree in writing. We each promise to contribute \$10,000 in cash to Home Design upon signing this agreement, to perform services exclusively for Home Design for the period of this agreement and to share profits from the business equally.

Bessie contributed \$10,000 on January 1, 2016, by depositing that amount in Home Design’s bank account. Alice orally promised to Bessie that she would likewise deposit her \$10,000 contribution in Home Design’s bank account by January 28, 2016.

Without Bessie’s knowledge, one week later, on January 8, 2016, Alice entered into an agreement with Upscale Properties, Inc. (“Upscale”) to design and implement the interior designs for two homes. Alice set forth the terms of the agreement in a letter to Upscale on Home Design letterhead, which Alice signed as “Partner.” The agreement provided that Upscale would advance all funds upon request to Home Design for the costs of all building materials for Home #1 and Home #2 and that Upscale would pay Home Design \$20,000 upon completion of work on Home #1 and an additional \$20,000 upon completion of work on Home #2.

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

At Alice’s request, on January 10, 2016, Upscale advanced \$10,000 to Alice to pay for materials for Home #1. Alice deposited the \$10,000 into her personal bank account and purchased the materials for Home #1 with a personal check in the amount of \$10,000. Alice completed the work on Home #1 on January 23, 2016, at which time Upscale paid Alice, as agreed, the additional \$20,000 for Home #1. Alice immediately deposited the \$20,000 into her personal bank account.

On January 30, 2016, at Alice’s request, Upscale advanced to Alice another \$10,000 for materials for Home #2, which Alice deposited into her personal account. On February 1, 2016, before Alice purchased any materials for or began work on Home #2, Bessie received Home Design’s bank statement and discovered that Alice had not made her initial \$10,000 contribution to the business as promised. Bessie confronted Alice about her failure to make her agreed contribution. During their ensuing discussions, Bessie learned for the first time about Alice’s dealings with Upscale. Angered by this information, Bessie sold her entire interest in Home Design to Candy on February 3, 2016 for \$10,000. By letter dated February 3, 2016, Bessie advised Alice: “I am hereby withdrawing from Home Design, and Candy is now your new business partner.”

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- 3.1. Were Alice and Bessie partners on January 8, 2016 when Alice signed the agreement with Upscale? Explain fully.**

For questions 3.2 through 3.5 below, assume that Alice and Bessie validly formed a Louisiana partnership on January 1, 2016.

- 3.2. What was the legal effect, if any, of Bessie's February 3, 2016 letter to Alice? Explain fully.**
- 3.3. Did Candy become a partner of Home Design? Explain fully.**
- 3.4. If Alice refuses to do the work on Home #2 and Upscale is entitled to damages for breach of contract, explain the respective liability, if any, of Alice, Bessie and Home Design to Upscale.**
- 3.5. Can Home Design recover from Alice the \$10,000 contribution that Alice promised but did not pay? Can Home Design recover from Alice the \$20,000 profit paid to Alice by Upscale for the work on Home #1? Explain both fully.**

[End of Question 3]

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QUESTION 4 — 20 POINTS

Ten multiple choice questions, each worth 2 points, tested the following areas of law:

- 4.1. Shareholder appraisal rights
- 4.2. Commercial paper – endorsements
- 4.3. Partnership liabilities
- 4.4. Partnership liabilities
- 4.5. Limited Liability Companies – initial report
- 4.6. Limited Liability Companies – dissolution
- 4.7. Limited Liability Companies – division of profits
- 4.8. Limited Liability Companies – acts outside ordinary course
- 4.9. Holder in due course
- 4.10. Board of director and shareholder resolutions

[End of Question 4]

END OF BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS TEST

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS
JULY 2017**

QUESTION 1 — 30 POINTS

The following facts apply to Questions 1.1. to 1.4.

Acme Corporation is a properly formed Louisiana corporation. Its articles of incorporation provide in part that “This Corporation shall have authority to issue an aggregate of 4,000 shares of no par value common stock.” To date, 2,000 shares of stock have already been issued by Acme. The articles do not address bylaws one way or the other.

Feeling that the corporation required considerably more capital, the board of directors met last month and unanimously adopted a single bylaw, stating “This Corporation shall have authority to issue an aggregate of 5,000 shares of no par value common stock.”

Last week at a properly convened meeting, the shareholders disagreed with the board’s action and thus unanimously amended the single bylaw to read “This Corporation shall have authority to issue an aggregate of 2,000 shares of no par value common stock; the board of directors has no authority to amend this bylaw.” The shareholders also unanimously signed (and filed with Acme) a shareholders’ agreement providing the same thing.

No other corporate bylaws have ever been adopted. No attempt has yet been made to issue any further shares of stock.

- 1.1. Did the board of directors have the authority to adopt its single bylaw? Discuss. (3 points)**
- 1.2. Did the shareholders of Acme have the authority to adopt their amendment to the single bylaw adopted by the board of directors of Acme? Discuss. (4 points)**
- 1.3. After the passage of the single bylaw by the board of directors and its subsequent amendment by the shareholders, how many further shares of stock in the aggregate does the board now have the power to issue? Discuss. (5 points)**
- 1.4. What other actions can the shareholders of Acme take to ensure that Acme cannot issue any further shares of stock and to bind future shareholders to such a limitation? For each action, also describe any limitations as to the effectiveness of such action. Discuss. (8 points)**

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The following facts apply to Question 1.5.

Allison, Bob, Cathy, Donna and Eric are the directors of ExCom, Inc., a Louisiana corporation. ExCom has five shareholders:

Shareholder	# of Shares
Allison	200
Cathy	200
Donna	50
Eric	300
Fred	450
TOTAL	1,200

Eric is the president of ExCom. Cathy is the vice-president and secretary of ExCom. Cathy and Eric are siblings and have always had a very close relationship with each other. One month ago, Donna and Eric got married to each other.

Eric wants to sell an office building that he owns to ExCom for ExCom to use as its new headquarters for a price of \$1 million (Eric thinks the building would be perfect for ExCom's needs and, in any event, he wants the money to buy a house for him and Donna to live in). This price is \$200,000 more than the office building's value reported in a private appraisal six months ago that Eric personally ordered; however, Eric still considers it a fair deal based on its location, premium finishes and layout. Eric has not yet revealed the appraisal to anyone else.

- 1.5. What steps might Eric take to ensure that neither ExCom nor a shareholder may enjoin the sale or be entitled to damages, and is he likely to succeed? Discuss. (10 points)**

[End of Question 1]

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QUESTION 2 — 30 POINTS (THREE POINTS EACH SUBPART)

Short Answer Questions. Please answer each question and provide a brief explanation for your answer.

- 2.1. In an action against a corporate director for conduct in his official capacity as a director, describe the differences between indemnity and advance of expenses.**
- 2.2. To form a corporation under Louisiana law, what document or documents must be filed, and where must such document or documents be filed?**
- 2.3. What qualifications must a director have to be considered a “qualified director”?**
- 2.4. What is shareholder oppression, and what remedies are available to a shareholder who is subject to shareholder oppression?**
- 2.5. Identify at least two activities that could cause a limited partner in a partnership in commendam to be held personally liable as a general partner.**
- 2.6. Explain the legal duty owed by an officer of a corporation.**
- 2.7. What is a unanimous governance agreement, and how is it formed?**
- 2.8. What are the differences between a direct action and a derivative action by a shareholder against the directors of a corporation?**
- 2.9. What records of a corporation may a shareholder inspect? What are the requirements for a shareholder to inspect the records of a corporation?**
- 2.10. What are the requirements for an instrument to be considered negotiable?**

[End of Question 2]

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QUESTION 3 — 20 POINTS (FIVE POINTS EACH SUBPART)

Elizabeth has developed a formula for a hybrid motor fuel that she believes will perform more efficiently, produce no harmful emissions and cost less than one third of the current per gallon cost of gasoline-based motor fuels. Elizabeth has two friends, Julie and Nadine, who are interested in investing in a business with Elizabeth to produce and sell this new fuel. Each of the three would invest \$100,000, for a total of \$300,000. There may be a substantial risk of loss in this new business, and the investors do not want to risk their family fortunes in it. In setting up the business, the investors have four stated objectives they wish to accomplish:

- (1) To limit the liability of each investor to the \$100,000 that each contributed;
- (2) To give each investor assurance of an equal voice in the management and operation of the business without exposing the investor to personal liability beyond the amount of the investment;
- (3) To ensure that the profit and loss resulting from the business can be reported as income or taken as a deduction directly on the individual federal income tax returns of the investors without being taxed first to the entity; and
- (4) To minimize the legal formalities necessary to create and operate the company.

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

- 3.1. What steps must be taken to form a Louisiana limited liability company?**
- 3.2. What steps must be taken to form a Louisiana partnership in commendam?**
- 3.3. What are the relative advantages and disadvantages of each entity with respect to the investors' stated objectives?**
- 3.4. If the investors decide to form a partnership in commendam, how should it be structured to best satisfy their stated objectives?**

[End of Question 3]

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QUESTION 4 - (20 POINTS)

Ten multiple choice questions, each worth 2 points, testing the following areas of law:

Corporations (3), negotiable instruments (6), partnership (1)

[End of Question 4]

END OF BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS TEST

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS
FEBRUARY 2017**

QUESTION 1 — 30 POINTS (SIX POINTS EACH SUBPART)

The following facts apply to Questions 1.1 to 1.3.

Deep South, L.L.C. is a Louisiana limited liability company formed by Bob to raise funds to donate to LA University's football program. Deep South has two managers, and Bob is one of them. Through Bob's fund raising efforts, Deep South raised \$500,000 that it agreed to donate to LA University in order to buy out its coach's remaining contract. Deep South hosted a televised press conference during which Bob donated the money (\$500,000) on its behalf to LA University, expressly stating that the money was donated for the purpose of buying out the coach's remaining contract. During the press conference, Bob presented LA University with a poster-size bank check drawn against Deep South's account at Bayou Bengal Bank, made payable to LA University in the amount of \$500,000 and dated the date of the press conference. The check bears only Bob's signature and has no other handwriting or comments.

Three days after the press conference, Bob learned that one of Deep South's employees had embezzled a large portion of its funds. Bob called LA University that day to inform it that Deep South could no longer afford to make such a generous donation and needed the funds to pay its own operating expenses. He also told LA University that the check was not valid anyway, because it had not been signed by both of Deep South's managers, as required by Deep South's deposit account agreement with Bayou Bengal Bank. LA University advised Bob that it had already presented the check for payment at its bank, Tigerland Bank and had actually received the funds.

- 1.1. Does the poster-size \$500,000 check from Deep South to LA University used at the press conference satisfy the elements of a negotiable instrument? Discuss.**
- 1.2. Is Tigerland Bank a holder-in-due-course of Deep South's check? Discuss.**
- 1.3. If the deposit account agreement governing the Deep South deposit account requires two signatures on each check, will Bayou Bengal Bank be liable to reimburse to Deep South the amount that Bayou Bengal Bank paid on the check? Discuss.**

The following facts apply to Questions 1.4 to 1.5.

Susie's son, Paul, recently filed for bankruptcy and returned home to live with his mother. When he moved into Susie's home, she told him to help himself to whatever he needed. A few days afterward, Susie asked Paul to purchase some groceries and told him to sign one of her checks to get himself some cash for the groceries. Susie is the only authorized signatory on her checking account. Paul located his mother's checkbook and signed his mother's name on a check payable to bearer in the amount of \$150. After cashing the check at the Bank, Paul met his girlfriend on the way to the grocery store. He changed his mind about grocery shopping and decided to take his girlfriend out to lunch, spending the entire \$150.

The next month, Paul went shopping at Dillard's to buy himself new clothes. To pay for the clothes that he bought, he wrote another check (signing his mother's name) on Susie's checking account payable to Dillard's for \$1,000. One month later, Paul went shopping at Macy's to buy himself some more clothes. He wrote another check, as before, on Susie's checking account payable to Macy's for \$1,000.

When Susie reviewed her preceding two bank statements the next month, she discovered the checks written on the account to Dillard's and Macy's. She then looked back at her earlier bank statement from three months earlier when Paul started living at home and recalled that she had authorized the check for \$150 for the cash to buy groceries but not the other two checks. Susie confronted Paul, who admitted that he had used the \$1,000 checks to buy clothes. He also admitted he had used the cash from the \$150 check to take his girlfriend out to lunch rather than to buy groceries. Susie immediately informed the Bank of the checks that Paul had signed and asked that the Bank credit her account for the amount of all three checks.

- 1.4. Should the Bank be liable to refund to Susie's account the check written by Paul for \$150? Discuss.**
- 1.5. Should the Bank be liable to refund to Susie's account the \$1,000 checks to Dillard's and Macy's and what arguments might the Bank reasonably assert that it is not fully liable for these checks? Discuss.**

[End of Question 1]

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QUESTION 2 — 30 POINTS (THREE POINTS EACH SUBPART)

Short Answer Questions. Please answer each question providing a brief explanation.

- 2.1. What are presentment warranties?
- 2.2. In a member-managed limited liability company:
 - a) By what vote do members make decisions?
 - b) Is their vote counted by heads or their respective percentage membership interests?
 - c) In what manner may the voting approval requirements and/or method of calculating votes be changed?
- 2.3. In a validly formed Louisiana corporation, what qualifications must a director have to be considered a “qualified director”?
- 2.4. List three actions of a Louisiana corporation that might involve authorization or approval by qualified directors under the Business Corporation Act?
- 2.5. In a manager-managed limited liability company, list three types of decisions that would require the vote of the membership.
- 2.6. Does each partner in a general partnership formed for the purpose of investing in real estate have the authority to bind the partnership in borrowing money from banks for purchasing partnership property? Discuss.
- 2.7. Identify three circumstances causing the termination of a partnership under Louisiana law?
- 2.8. Regarding a validly formed Louisiana corporation:
 - a) What qualifies as an “emergency” for the board of directors to exercise emergency powers under the Business Corporation Act?
 - b) What powers can the board of directors exercise when there is an “emergency”?
 - c) What two elements must a corporate director, officer or employee satisfy to avoid personal liability for an action during an emergency?
- 2.9. Regarding a Louisiana corporation that was validly formed after January 1, 2015:
 - a) What is a voting trust?
 - b) How is a voting trust formed?
 - c) What is the maximum permissible term of the voting trust?
- 2.10. For a validly formed Louisiana corporation, what is a proxy, and what are the requirements for a valid proxy under Louisiana law?

[End of Question 2]

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QUESTION 3 — 20 POINTS (FIVE POINTS EACH SUBPART)

Ben, Elaine and Charlie wanted to start a hotel. They agreed to form a corporation named “Taft Hotel Inc.” (“THC”). They agreed that each would receive 1,000 shares and that the board of directors would consist of the three of them. Elaine and Charlie each contributed \$250,000 for their shares. Ben agreed to work without salary for one year as president of the corporation in return for his shares. Ben introduced the group to his good friend, Fred, who wanted to invest in the proposed hotel. Fred agreed to contribute \$100,000 for an additional 400 shares. All of the shares were properly authorized and are still held by the shareholders to whom they were initially issued.

The board of directors met, and Ben recommended that THC purchase an old bank building to house the hotel. At the same meeting, Ben was authorized to negotiate to buy the old bank building. A week later at the next board meeting, Ben reported that the building was owned by Robinson Corporation and that he had negotiated the purchase of the building for the price of \$400,000. Ben recommended the purchase stating that this was a good price. Ben did not provide any documentation as to the seller, the building, or the proposed sale. All three directors voted to approve the sale.

Ben did not disclose to the board that the Robinson Corporation was owned by Ben and his family and that Ben owned 60 percent of the outstanding shares of Robinson Corporation. Ben and Elaine did not tell Charlie that they were having a long-time affair.

Ben, on behalf of THC, closed the purchase of the old bank building and delivered in payment a check on the THC account in the amount of \$400,000.

Following the purchase, THC converted the bank building into a hotel and opened it for business. However, Ben was so busy seeing Elaine that he had little time to supervise the hotel. Ben also took advantage of his position as President of THC to rent rooms (without charge to himself) for his liaisons with Elaine.

The hotel quickly went downhill and was forced to close its doors. Fred investigated and found out all of the facts regarding Ben’s interest in the Robinson Corporation, his affair with Elaine and his supervision and use of the hotel. In addition, he learned that the old bank building was appraised at \$250,000 at the time of purchase by THC.

- 3.1. Was the approval of the purchase of the old bank building valid? Discuss.**
- 3.2. If the purchase of the old bank building had been approved by all of the shareholders of THC, would that have constituted a valid approval? Discuss.**
- 3.3. What actions for damages should Fred bring against THC or its directors as a result of the purchase of the old bank building? What would he need to establish? Discuss.**
- 3.4. Do the factual circumstances described above entitle Fred to withdraw from THC and receive fair value for his shares as an oppressed shareholder as that term is defined in the Business Corporation Act? Discuss.**

[End of Question 3]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS
FEBRUARY 2017**

QUESTION 4 — 20 POINTS (TWO POINTS EACH)

Multiple choice questions, each worth 2 points, testing the following areas of law:

- 4.1 Corporate officers – formation
- 4.2 Negotiable instruments – holder in due course
- 4.3 Limited Liability Corporations – dividing profits
- 4.4 Corporations – shareholders meetings
- 4.5 Corporations – election of directors
- 4.6 Corporations – quorum requirements
- 4.7 Negotiable Instruments – requirements for an instrument to be negotiable
- 4.8 Corporations - mergers
- 4.9 Partnerships - formation
- 4.10 Partnerships – assets upon withdrawal

[End of Question 4]

LOUISIANA STATE BAR EXAMINATION

BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS

July 2016

QUESTION 1
(25 POINTS TOTAL)

Mason owns a hunting camp in rural Louisiana. Andrew is the manager of Grand Paper, LLC (“GP”), which operates a local paper mill. Andrew approached Mason about renting the camp to Andrew for the next season for a total of \$30,000. Mason agreed to the offer. Though the lease was in favor of Andrew personally and was not expected to benefit GP in any way, Andrew paid Mason a part of the rent by way of a check dated June 1, 2016, made payable to Mason in the amount of \$10,000 drawn on GP’s checking account at City Bank. Andrew signed this check on behalf of GP. For the remainder of the rent, Andrew signed a promissory note on behalf of GP, in his capacity as its manager, payable to bearer in the amount of \$20,000, bearing a maturity date of July 1, 2016. The promissory note contained no other terms and/or conditions. This note was dated June 1, 2016 and delivered to Mason that same day.

On June 15, 2016, Mason took the promissory note to his bank, Bank of Louisiana, and asked that the bank purchase the note at face value. Bank of Louisiana agreed to do so and paid Mason \$20,000 for the promissory note. Contemporaneously, Mason delivered the promissory note to Bank of Louisiana. Two weeks later, Andrew was replaced as GP’s manager, and he no longer works for GP. Bank of Louisiana made demand on GP on July 2, 2016 to pay the promissory note consistent with its terms. GP denied that it was obligated to Bank of Louisiana on the promissory note since Andrew did not have GP’s authority to issue the promissory note on its behalf. On this same date, GP learned of the \$10,000 check. GP immediately contacted City Bank and instructed City Bank to stop payment on the check. Mason had already cashed the check at Bank of Louisiana a few days earlier, but Bank of Louisiana has not yet presented it to City Bank for payment.

The deposit account agreement applicable to the deposit account maintained by GP at City Bank requires the signatures of any two of GP’s authorized signers on each item drawn against the account. Andrew is one of the persons named in the agreement as an authorized signer.

Please address the following questions (5 points each).

- 1.1 Does the promissory note satisfy the legal requirements for a negotiable instrument? Explain.
- 1.2 Is Bank of Louisiana a holder in due course of the promissory note? Explain.
- 1.3 On what grounds, if any, might City Bank refuse to honor the check when it is presented by Bank of Louisiana? Explain.
- 1.4 Assume that City Bank honored the check before it had a reasonable opportunity to act on GP’s stop payment order and charged the amount of the check against GP’s account. GP takes the position that the check was not properly signed. Should City Bank be obligated to reimburse GP’s account? Explain.
- 1.5 Is GP likely to be successful in an action to obtain reimbursement from Andrew if GP is held liable to pay the promissory note? Explain.

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

LOUISIANA STATE BAR EXAMINATION

BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS

July 2016

QUESTION 2
(30 POINTS TOTAL)

Short Answer Questions (3 points each). Please answer each question providing a brief explanation.

- 2.1 What are presentment warranties with respect to a draft?
- 2.2 a) By what vote do members of a member-managed limited liability company make decisions?
- b) Are their votes counted by heads or by their respective percentage membership interests?
- c) Under what circumstances may the voting approval requirements and/or method of calculating votes be changed?
- 2.3 What are transfer warranties with respect to an item?
- 2.4 List two types of decisions that require the vote of the membership of a manager-managed limited liability company.
- 2.5 What is the minimum information that must be included in articles of partnership in order to establish a partnership in commendam?
- 2.6 If a lawsuit is brought by a third party against a partner of a general partnership on account of his/her status as a partner, and the partner successfully defends the suit, is the partner automatically entitled to reimbursement from the partnership for the reasonable attorneys' fees incurred in defending the suit? Explain.
- 2.7 a) What is the minimum information that must be contained on a stock certificate?
- b) Which types of Louisiana business entities are required to issue such certificates?
- 2.8 a) What are preemptive rights?
- b) Under what circumstances does a person have preemptive rights?
- 2.9 What percentage vote of the shareholders is necessary to amend the articles of incorporation?
- 2.10 A corporation has failed to file its annual report, which was due 150 days ago. What effect, if any, does this have on the corporation's existence, and what steps must be taken to remedy the situation?

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

LOUISIANA STATE BAR EXAMINATION

BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS

July 2016

QUESTION 3
(25 POINTS TOTAL)

Please address the following questions (5 points each).

Part A

Questions 3.1 and 3.2 are based on the following facts.

Allison owns an insurance agency, Insurance Inc. Insurance Inc. has a checking account at National Bank. Allison is the authorized signer for the account. Allison has one employee, her receptionist Barbara. Barbara stole a blank check from Allison's unlocked top desk drawer, made the check payable to Barbara, forged Allison's signature on the check and deposited it in Barbara's own bank account at State Bank. State Bank presented the check to National Bank and obtained payment of the check from National Bank. Upon receiving Insurance Inc.'s monthly bank statement from National Bank at the end of the month, Allison immediately reviewed it, discovered that the account of Insurance Inc. had been charged for the amount of the check payable to Barbara, and notified National Bank that she had not signed or authorized that check.

- 3.1 a) Does Insurance Inc. have recourse against either National Bank or State Bank for repayment of the amount of the check? If so, which of the two banks will bear the loss?
- b) What defenses, if any, does the responsible bank have to Insurance Inc.'s demand for repayment?
- 3.2 Barbara found in the offices of Insurance Inc. a check drawn on its account at National Bank. This check was already made payable to Clayton Office Supplies, Inc. and signed by Allison, as the authorized signer for Insurance Inc. Barbara stole this check, endorsed it in the name of Clayton Office Supplies, Inc. and cashed the check at State Bank.
- a) Does Insurance Inc. have recourse against either National Bank or State Bank for repayment of the amount of the check? If so, which of the two banks will bear the loss?
- b) What defenses, if any, does the responsible bank have to Insurance Inc.'s demand for repayment?

TEST CONTINUES ON NEXT PAGE

PART B

Questions 3.3-3.5 are based on the following facts:

Several years ago, Don, Ed and Frank formed a Louisiana limited liability company to develop a residential subdivision in St. Tammany Parish. The name of the company is DEF, LLC (DEF), and it has 100 membership units. At the time it was formed, Don contributed to DEF a 50-acre tract of land that he owned, for the location of the subdivision. In exchange for this contribution, Don received 70 membership units. Ed holds a general contractor's license in Louisiana for residential construction. Ed has agreed to build homes at no charge to DEF. In exchange for agreeing to contribute these services, Ed received 20 membership units. Frank is a Louisiana real estate agent, and he agreed to market and sell the houses at no charge to DEF. In exchange for contributing these services to the DEF, Frank received 10 membership units. The articles of organization of DEF contain no provisions relative to voting rights of its members, and DEF has no operating agreement.

The tract of land is the only asset owned by DEF. DEF is responsible for providing materials and supplies to Ed to construct the homes. Don has no day-to-day responsibilities for operating DEF because he is a physician and spends most of his work days seeing patients. Ed and Frank therefore agreed to be responsible for managing DEF.

For the first few years, business was good. Frank marketed several different floor-plan options to prospective buyers, generating productive sales. Within those first few years, Ed built enough houses to complete one half of the subdivision. The houses were built to order for each homeowner, and when complete, the house and lot were sold by DEF, to each homeowner. Recently the demand for the houses diminished significantly. Business became very slow, and DEF has not built or sold any houses in the last year. Another developer has approached DEF about buying the remaining undeveloped land so that that developer can complete the subdivision.

- 3.3 Did Don, Ed and Frank each make a valid contribution in exchange for his membership interest in DEF, LLC? Explain.
- 3.4 Based on the facts presented, should DEF, LLC be member-managed or manager-managed? Explain the difference between the two forms of management and why one would be preferable to the other in this case.
- 3.5 Which member or members (at a minimum) must vote in favor of selling the land to the developer in order to approve the sale for DEF?

[End of Question 3]

TEST CONTINUES ON NEXT PAGE

LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS

July 2016

QUESTION 4
(20 points total)

Multiple choice questions, each worth 2 points, tested the following areas of the law:

- 4.1 Corporations – future services as consideration for shares
- 4.2 Corporations – unanimous governance agreements
- 4.3 Corporations – unanimous governance agreements
- 4.4 Holder in due course – rights
- 4.5 Promissory note – negotiability
- 4.6 Partnerships – formation
- 4.7 L.L.C. – dissolution
- 4.8 L.L.C. – division of profits
- 4.9 L.L.C. – acts outside ordinary course
- 4.10 Corporations – meeting and quorum requirements

[End of Question 4]

END OF BUSINESS ENTITIES AND NEGOTIABLE INSTRUMENTS EXAM