

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE I
JULY 2018**

QUESTION 1 — 40 POINTS

Angela and Bobby were validly married six years ago. It was the first marriage for each of them.

On the day before the wedding, Bobby presented Angela with a written agreement which provided that, in the event of a divorce, each spouse fully and irrevocably waived any and all rights to both interim and final periodic support. Both Angela and Bobby signed the agreement before the wedding, but not until after the wedding did they appear before a notary and two witnesses to have their signatures duly acknowledged.

A month before the wedding, Angela had given birth to a child, Christine. Bobby was at the hospital for the birth and signed the birth certificate. Bobby believed Christine was his child, but unbeknownst to Bobby, he was not Angela's only sexual partner around the time of conception. Angela and Bobby had a son named David two years after their marriage. Bobby was there and signed David's birth certificate as well. Bobby was the sole wage earner in this family. Angela has never worked out of the home and has no independent source of income but instead has taken care of Christine and David. Bobby has not attended any of the children's school events or extracurricular activities, and he has not shown any interest in developing a relationship with either child.

Immediately after the wedding, Bobby moved into Angela's home, which she inherited from her grandmother before her marriage to Bobby. The home was worth \$150,000 when Bobby moved in, but it was outdated and had fallen into disrepair. Bobby personally did all the renovations on the home (valued at \$50,000) and used \$100,000 from his pre-marriage earnings to pay for new fixtures, supplies and materials. As their family grew, Bobby and Angela decided to buy a new home together for \$650,000. Angela sold the existing home for \$400,000 and used those proceeds to fund a portion of the purchase price of their new home. The couple obtained a \$250,000 loan from a bank for the remaining \$250,000 of the purchase price on the new home.

Over the last three years, Bobby was not home much. Feeling neglected, Angela had a brief affair with her tennis coach, but she ended things and confessed her indiscretion to Bobby. Although he was upset, Bobby did not leave Angela. He continued to live at the home with her as husband and wife; however, the reason for his absence was that he had secretly developed a gambling problem. Unbeknownst to Angela, he had also started to embezzle from his employer. Over the last three years, Bobby deposited into their joint checking account \$300,000 that he had embezzled from his employer; he used the funds for household obligations, such as the mortgage payment as well as for his gambling debts.

After Bobby's employer discovered the theft, he was fired and convicted of the crime of embezzlement. His sentence was five years in prison at hard labor. His employer also filed a civil suit and obtained a \$300,000 judgment against Bobby.

Please answer the six subquestions on the next page. The subquestions in Question 1 are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

TEST CONTINUES ON NEXT PAGE

- 1.1. What are each spouse's options for divorce? What potential time delays, benefits and complications are associated with each option? Discuss. (10 points)**
- 1.2. Is either Angela or Bobby entitled to interim and/or final spousal support? Discuss. (5 points)**
- 1.3. Should the new family home be classified as Angela's separate property or as the couple's community property? Discuss. (10 points)**
- 1.4. Should the employer's \$300,000 civil judgment be classified as Bobby's separate obligation or as the couple's community obligation? Discuss. (5 points)**
- 1.5. Assume for this question only that Bobby now learns that Christine is not his daughter. Will an action to disavow paternity of Christine be timely? Discuss. (5 points)**
- 1.6. Assume for this question only that Bobby has just been released from prison and is on probation and that the parties did not obtain a custody order before now. If Angela and Bobby cannot agree on custody for the two children and Bobby does not disavow Christine, to whom should the court award custody? Discuss. (5 points)**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

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QUESTION 2 — 40 POINTS

Forty years ago, Frank inherited 100 acres in Louisiana from his parents. The land is square shaped, bordered by a public road on the north and a lake on the south, with a private 10-foot gravel road traversing the length of the property on the westernmost side. Frank and Winter married 32 years ago and built a beautiful family home overlooking the lake just east of this gravel road (the “Lake House”).

Thirty-one years ago, Frank granted a rice farming lease to Rice, Inc. over the northeastern 25 acres of the property. The lease provides for a rent of \$1,000 per month and is recorded in the appropriate parish conveyance records. Immediately after the lease was granted, Rice, Inc. constructed a processing facility on a 300 x 400 foot portion of the leased premises, as allowed by the lease. Rice, Inc. laid a cement slab, attached heavy processing equipment by bolting it into the cement, and constructed a metal building, with a roof, around the production equipment. The facility has electric power and water and is surrounded by a locked gate. At the same time, Rice, Inc. also laid a pipeline below ground from the processing facility, traversing southward all the way to the lake and across other portions of Frank’s property not subject to its lease.

Frank and Winter had three children: Adam (born 25 years ago), Bethany (born 23 years ago), and Charles (born 19 years ago). During their marriage, Frank and Winter collected beautiful furnishings for their home, including antiques and rugs. They were also wine connoisseurs, collecting 25 bottles of fine wine.

Frank died two years ago. He left to his three children, in full ownership, a six-acre square parcel along the northern boundary of the property just east of the gravel roadway and left all of his remaining property to his three children, in equal portions, subject to a lifetime usufruct in favor of Winter.

Adam lives in New York now and visits Louisiana only once a year when he goes to the fishing camp that he and his father built on the southeastern most portion of the property when Adam was a child. Charles is still away at college, but he lives at home during summer breaks and holidays. Bethany was married last year, after which she and her husband substantially renovated a dilapidated old building, turning it into a beautiful four-bedroom house into which they moved. The house is located on a part of the six acres inherited in full ownership by Bethany and her siblings. Bethany did not ask anyone whether she could renovate or move into the building.

Winter recently married John. At their wedding reception, they served the 25 bottles of wine that Frank and Winter had acquired. Winter and John are also redecorating the Lake House, so they sold the antiques and rugs for their current fair market value of \$250,000. The children are upset and dislike John. John also dislikes them and demanded that Winter tell Adam he is no longer allowed to use the camp. Charles cannot bear to live with Winter and John, so he asked to move into Bethany’s house on the six-acre parcel, but Bethany refused.

Please answer the eight subquestions on the next page. The subquestions in Question 2 are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

TEST CONTINUES ON NEXT PAGE

- 2.1. What rights, if any, did Winter and the children each have before Frank's death as to Rice, Inc.'s monthly rental payments, and what rights, if any, does each have as to Rice, Inc.'s monthly rental payments paid after Frank's death? Discuss. (6 points)**
- 2.2. What are the nature, classification and ownership of the processing facility? Discuss. (7 points)**
- 2.3. What are Rice, Inc.'s rights, if any, with regard to the pipeline across the southeastern two acres to the lake? Discuss. (7 points)**
- 2.4. Was Winter entitled to serve the wine at her wedding reception? Was she entitled to sell the antiques and rugs? Discuss. (6 points)**
- 2.5. What rights or remedies, if any, do Adam, Bethany and Charles have against Winter for (a) serving the wine and (b) selling the antiques and rugs? Discuss. (5 points)**
- 2.6. Does Winter have the right to evict Adam from the fishing camp? Discuss. (2 points)**
- 2.7. Can Bethany refuse to allow Charles to move into the house that Bethany renovated? Discuss. (2 points)**
- 2.8. What are Adam's rights with regard to Bethany's renovations? Discuss. (5 points)**

[End of Question 2]

**LOUISIANA STATE BAR EXAMINATION
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QUESTION 3 — 20 POINTS

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

- 3.1. movables by anticipation

- 3.2. parental authority; authority over child's property

- 3.3. co-ownership; partition

- 3.4. nullity of marriage; effect of absolute versus relative nullities

- 3.5. presumption of paternity of the husband

- 3.6. payment for improvements by a usufructuary

- 3.7. enclosed estates; acquisitive prescription for apparent servitudes

- 3.8. child custody; burdens of proof

- 3.9. absent persons; declarations of death

- 3.10. full and limited interdiction

[End of Question 3]

END OF CIVIL CODE I TEST

**LOUISIANA STATE BAR EXAMINATION
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FEBRUARY 2018**

QUESTION 1 — 40 POINTS

Alice and Bobby dated for several years and then were validly married eight years ago. Two months before the wedding, Alice gave birth to a son, Chase. Bobby was at the hospital for the birth and signed the birth certificate. Unbeknownst to Bobby, Alice had met with an old boyfriend and had sex approximately nine months before Chase was born. Alice does not know who Chase's father is, but she never told Bobby about the sexual encounter with her old boyfriend.

A week before their wedding, Bobby presented Alice with a written agreement which provided that, in the event of a divorce, each spouse fully and irrevocably waived any and all rights to both interim and final periodic support. It also provided that the parties elected to opt out of Louisiana's community property regime with respect to any immovable property. The agreement also specified that any unenforceable provision be severed from the agreement and the remaining provisions be enforced. Both Alice and Bobby signed the agreement before the wedding, but no notary or witnesses were present when they signed it. Three months later, Alice and Bobby appeared before a notary and two witnesses to duly acknowledge their signatures on the agreement, to re-affirm their intent to opt-out of the community property regime with respect to immovable property and to waive interim and final support in the event of a divorce.

Shortly after their wedding, Bobby and Alice found a beautiful old, neglected home in a desirable area of Louisiana. Bobby (but not Alice) signed the act of sale purchasing the home for \$600,000. Bobby used \$100,000 from his bank account, which contained only pre-marriage earnings, and borrowed the remaining \$500,000 for the purchase price from a bank via a loan in his name only. Alice loved the house and spent the next year meticulously renovating it. Using money she inherited from her grandmother, she paid \$100,000 to purchase materials for the renovations. Had the couple hired someone to perform the work that Alice did herself, it would have cost them another \$150,000. The home became their family home and is now valued at \$1.3 million. The couple diligently paid the home loan down with Bobby's post-marriage earnings and paid off the loan in full six months ago.

A year after their marriage, Alice gave birth to another son, David. Bobby and Alice decided that Alice would resign from her position as a mechanical engineer to care for Chase and David. Bobby continued to operate his successful real estate development business. The family has lived on Bobby's income for support at all relevant times.

A few years after David was born, Bobby had an affair with another woman. Alice found out about the affair and was devastated. She confronted Bobby, who ended the affair. Bobby and Alice worked to restore their relationship, and they continued to live together and engage in marital relations for several months. The damage to the marriage, however, was irreparable. Their relationship deteriorated, and they began to argue and fight in front of the children. Alice also became depressed and began to drink excessively. Three months ago, Bobby moved out of the family home and into a condominium 45 minutes away. Although Bobby has telephoned Chase and David, he has not seen them since he moved out. He has, however, been seen around town having dinner with numerous women. A month ago, Alice ran into her former boyfriend and would like to begin dating him.

TEST CONTINUES ON NEXT PAGE

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

- 1.1. What are each spouse's options for divorce? What potential time delays, benefits and complications are associated with each option? Discuss. (10 points)**
- 1.2. If either spouse files a divorce action, is Alice entitled to interim and/or final spousal support? Discuss. (5 points)**
- 1.3. Did Alice and Bobby validly opt out of the community property regime for immovable property? Discuss. (5 points)**

For the remaining subquestions of Question 1, assume that Alice and Bobby did not sign any agreement between themselves or otherwise seek to opt out of the community property regime.

- 1.4. How should the family home be classified: as Bobby's separate property or as the couple's community property? Discuss. (5 points)**
- 1.5. What credit, if any, is Alice entitled to receive if the court awards the home to Bobby as part of a divorce proceeding? Discuss. (5 points)**
- 1.6. If Bobby now learns that Chase is not his son, will an action to disavow paternity of Chase be timely? Discuss. (5 points)**
- 1.7. If a divorce proceeding is filed and Alice and Bobby cannot agree on custody for the two boys and Bobby does not disavow Chase, how should the court initially award custody of the two boys? Discuss. (5 points)**

[End of Question 1]

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QUESTION 2 — 40 POINTS

By a valid act of sale over 40 years ago, Frank acquired 200 acres of land in a roughly square shape; he used most of the land for farming sugar cane. Frank's property fronted a paved public road on the north and was bounded by other persons' properties on the east and west sides and by a lake on the south.

Frank had a good relationship with his neighbor Ralph, who operated a rice farm on the north side of the public road. Because Ralph's property did not have access to water, Ralph asked Frank if he could install an irrigation pipeline running from the lake across Frank's property. Frank granted to Ralph, as owner and operator of the rice farm, the right to install and operate a pipeline across Frank's property for transportation of water, provided that the pipeline be buried at least six (6) feet below ground and that Ralph build a dirt road over the pipeline so that Frank could use it to reach the lake from the public road. The Pipeline Agreement was properly recorded in the parish conveyance records 40 years ago. The Pipeline Agreement did not specify a precise location for the pipeline, but promptly after the Pipeline Agreement was recorded, Ralph installed the pipeline six feet under the western portion of Frank's property and also built a dirt road directly over where he laid the pipeline. Ralph has been using the pipeline continuously since then and has also regularly used the dirt road to access the lake from the public road. Although Frank and Ralph had never discussed Ralph's use of the dirt road to access the lake, being a good neighbor and friend, Frank did not object to Ralph's use of the dirt road, and for almost 40 years Ralph has in fact used the dirt road to go fishing in the lake. To preserve his remaining land for farming, Frank chose not to build any other roads to the lake.

Frank built a beautiful home on the southern-most portion of his property along the lake 20 years ago and has been using the dirt road to access his home since it was built.

Five years ago, Frank subdivided a 20-acre parcel from the northwest corner of his property to create "Sugar Cane Plantation Estates," a planned residential community. Ralph's pipeline and the dirt road above it both run through this 20-acre parcel. Frank then retired, and he validly donated the 20-acre site to his two children, Allison and Brandon, subject to all "encumbrances, servitudes and rights-of-ways." Allison and Brandon prepared detailed designs for a gated community and constructed a brick wall to enclose the property with a coded gate at the north entrance for access from the public road.

Three years ago, Frank married Wynona. He died last year, leaving his remaining 180 acres, the lake house and all of his remaining property to Allison and Brandon, subject to a usufruct in favor of Wynona. Allison and Brandon never liked Wynona and wanted nothing to do with her. Wynona moved into the lake house on a full-time basis after Frank died. Without any prior notice to Allison or Brandon, Wynona spent \$25,000 building a pier for access to the lake.

Ralph's pipeline is interfering with the planned Sugar Cane Plantation Estates, so Allison and Brandon demanded that Ralph re-locate the pipeline to the east, off the 20-acre site and on to other acreage now owned by them subject to Wynona's usufruct. Ralph objected to moving the pipeline, and Wynona objected to Ralph's placement of the pipeline on the property subject to her usufruct. In response and to prevent both Ralph and Wynona from using the existing dirt road across Sugar Cane Plantation Estates, Brandon changed the code for the gate across the dirt road. Wynona was outraged and has forbidden both Allison and Brandon from setting foot on the lake house property or using the pier for boat access.

Allison told Brandon that, until the dispute with Ralph was resolved, she did not want any homes to be constructed on Sugar Cane Plantation Estates. Brandon disagreed and proceeded with the development plans, spending \$1.5 million of his money to construct the first 10 homes, which increased the value of Sugar Cane Plantation Estates by \$2 million.

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Please answer the following eight subquestions (five points each). Explain each answer; an answer without an explanation will receive no credit.

- 2.1. What kind of servitude is the servitude granted for the pipeline? Discuss.**
- 2.2. Who owns the pipeline across Frank's property, and how is the pipeline classified (either movable or immovable property)? Discuss.**
- 2.3. Has Ralph acquired the right to use the dirt road under the doctrine of acquisitive prescription? Discuss.**
- 2.4. For purposes of this subpart 2.4, assume Ralph did not acquire a right to use the dirt road via acquisitive prescription. What rights, if any, does Ralph have to use the dirt road from the public road across Sugar Cane Plantation Estates to the lake? Discuss.**
- 2.5. What rights, if any, does Wynona have to use the dirt road across Sugar Cane Plantation Estates in order to access the lake house? Discuss.**
- 2.6. Do Allison and Brandon have the right to relocate the pipeline? Discuss.**
- 2.7. What rights, if any, does Brandon have against Allison regarding the construction of the ten homes; and what rights, if any, does Allison have against Brandon regarding this same construction? Discuss.**
- 2.8. What amounts, if any, is Wynona entitled to recover from Allison and Brandon for the \$25,000 amount to build the pier? Discuss.**

[End of Question 2]

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QUESTION 3 — 20 POINTS

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

- 3.1. Building restrictions
- 3.2. Emancipation
- 3.3. Co-ownership; partition
- 3.4. Rights of usufructuary
- 3.5. Child custody; burdens of proof
- 3.6. Nullity of marriage (effect of absolute versus relative nullities)
- 3.7. Rights against a good faith possessor of land
- 3.8. Classification of property; separate versus community
- 3.9. Domicile/Residency
- 3.10. Domicile/Residency

[End of Question 3]

END OF CIVIL CODE I TEST

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QUESTION 1 — 40 POINTS

After Amy and Brian had dated for years, they decided to buy a house together for \$200,000. Due to Brian's bad credit at the time, Amy supplied the entire \$20,000 down-payment, obtained a 30-year mortgage for the remaining \$180,000, and acquired the house in her name alone. A week later, Amy and Brian married each other in a properly officiated ceremony and moved into the house together. Over the next few months, Brian worked on the weekends to renovate the house by himself; if Amy and Brian had had to pay someone else to do this work, the labor cost would have been \$60,000. As part of the renovations, Brian installed \$40,000 worth of materials, which he paid for with money the couple received as a wedding gift. Upon the completion of these renovations, the house was worth \$300,000. Brian has made all the mortgage payments since inception and to date; he has paid \$200,000 (\$50,000 in principal and \$150,000 in interest), all from his earnings during the marriage. The house is now worth \$400,000.

About a year after they married, Brian had a brief affair but ended it shortly after it began. Brian confessed to Amy and apologized profusely, and Amy forgave Brian and resumed their marital relationship. About two years later, Amy had an affair with a co-worker, Charles. The affair lasted for about six months, but Amy ended it when she became pregnant. Amy delivered a boy named Sam. Amy never told Brian about the affair, and she has never performed DNA tests on Sam to determine whether Brian or Charles is Sam's father.

Amy stopped working after Sam was born, and Brian continued to support the family. Two years later, Amy and Brian had a second son together. Amy spent her days taking care of the boys and the home. She was the one who took the boys to their doctors' appointments, picked them up and dropped them off at school, and got them to their swim lessons and other activities. Brian was an active father too, coaching each boy's little league baseball teams and teaching both boys how to play soccer.

On Sam's tenth birthday six months ago, Amy, Brian and Sam ran into Charles, who introduced them to his nine-year old son. Brian and Charles were both shocked by how much Sam looked like Charles' nine-year old. Charles contacted Amy the next week and demanded a DNA test to determine whether he was Sam's father. Amy and Brian acquiesced to Charles' demand, and DNA tests confirmed that Charles, not Brian, was Sam's biological father.

Brian was completely devastated by this news about Sam and moved out of the house three months ago. Amy initially tried to resume the relationship and even had sex with Brian one night a month ago. But at this point, Amy has likewise recognized that the marriage cannot be saved.

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

- 1.1. What are each spouse's options for divorce? Are there any potential time delays and complications associated with each option? Discuss. (8 points)**
- 1.2. If either spouse files a divorce action, is Amy entitled to interim spousal support? Discuss. (3 points)**
- 1.3. If either spouse files a divorce action, is Amy entitled to final spousal support? Discuss. (3 points)**
- 1.4. Should the home be classified as separate property or instead as community property? Discuss. (5 points)**
- 1.5. What credit, if any, is Brian entitled to if the court awards the home to Amy as part of a divorce proceeding? Discuss. (7 points)**
- 1.6. If Brian now files an action to disavow paternity of Sam, will his action be timely? Discuss. (3 points)**
- 1.7. If Charles now files an action to establish paternity over Sam, will his action be timely? Discuss. (3 points)**
- 1.8. If a divorce proceeding is filed and Amy and Brian cannot agree on custody for the two boys and Brian does not disavow Sam, to whom should the court initially award custody of the two boys? Discuss. (8 points)**

[End of Question 1]

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QUESTION 2 — 40 POINTS

Sallie owned a four-acre square tract of land, which borders a public highway on the north, a river on the south, and properties of other landowners on the east and west. In 2003, on the northwest one acre, Sallie built a store, with a concrete parking lot to the east of the building. In 2006, Sallie then sold that one-acre portion with its building and parking lot to Drugstore. As part of the sale, Drugstore established a non-exclusive servitude of passage dedicated to the remaining three acres and conveyed to Sallie, as well as her heirs and assigns, a non-exclusive right of way on a strip of ground measuring 30 feet in width along the eastern edge of the one-acre portion as depicted on the plat attached to the act of sale, which was duly recorded in the local parish conveyance records.

Promptly after this sale, Sallie built on the northeast one-acre portion of the three remaining acres a strip mall and a concrete parking lot between the strip mall and the highway. The strip mall runs along the entire southern end of this same one-acre portion from the eastern boundary of her property to the new property boundary with Drugstore's one-acre lot. Sallie leased stores in the strip mall to a variety of companies. Sallie and all of the mall tenants had direct access to the public highway, so none of them or their customers have ever used the 30-foot passageway on the eastern edge of Drugstore's property.

In 2014, Sallie sold the southern two acres to Hardware Chain, together with "all servitudes and rights of ways." Immediately after the sale, Hardware Chain constructed a large store and parking lot on its two acres. Hardware Chain immediately began to use the 30-foot passageway on the east side of Drugstore's property, during both construction and operation of its store. Hardware Chain's customers likewise accessed Hardware Chain's store from the public highway through this same 30-foot passageway. This use of the passageway by Hardware Chain's customers has angered Drugstore's management because Hardware Chain's customers often traversed the passageway at high rates of speed and some occasionally collided into cars of Drugstore's customers.

In 2016, Drugstore entered into a five-year lease with Mr. Sno for a 50-foot by 50-foot square area at the northeast corner of its property. The lease expressly requires Drugstore's consent to Mr. Sno to construct any building or other structure on the leased premises. With Drugstore's consent, Mr. Sno constructed a snowball stand immediately adjacent to the public highway and in the path of the 30-foot passageway. The snowball stand has a concrete slab, four walls, a ceiling, plumbing and electricity. After the snowball stand was built, Hardware Chain customers started to use a 28-foot dirt road on the west side of Drugstore's building in order to access Hardware Chain's store and parking lot. Although Drugstore authorized Mr. Sno to build the snowball stand, the lease did not address ownership of the snowball stand at lease termination.

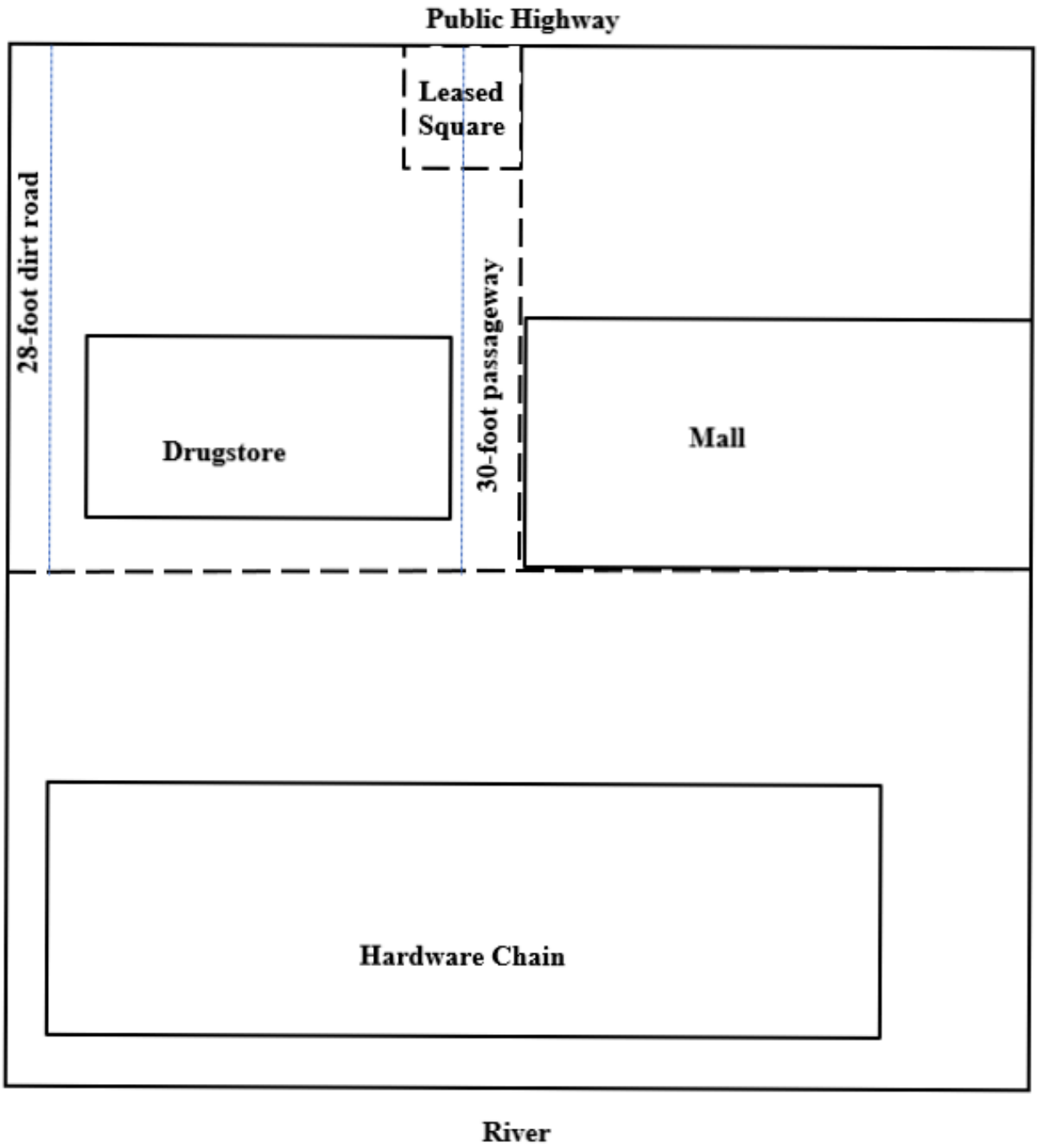
Mr. Sno also constructed a walk-up hamburger stand on the leased property. The hamburger stand is approximately half the size of the snowball stand, but likewise is constructed on a concrete slab with four walls, a ceiling, plumbing and electricity. Mr. Sno did not seek or obtain Drugstore's consent to build the hamburger stand.

On the next page is a sketch of the four-acre area; please note that the sketch is not to exact scale.

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Please answer the following eight subquestions (five points each). Explain each answer; an answer without an explanation will receive no credit.

- 2.1. Is the servitude granted by Drugstore to Sallie for the 30-foot passageway a predial or instead a personal servitude? Discuss.**
- 2.2. What rights, if any, does Hardware Chain have to use Drugstore's property to access the public highway? Discuss.**
- 2.3. What rights, if any, does Hardware Chain have in response to the construction of the snowball stand on the passageway along the eastern side of Drugstore's one-acre parcel? Discuss.**
- 2.4. Assume solely for this question 2.4 that Drugstore wants to relocate the 30-foot passageway on the east side of its property to the 28-foot dirt road on the west side of its property. What rights, if any, might it have to do so? Discuss.**
- 2.5. What are the consequences, if any, of Sallie's failure to use the passageway for ten years? Discuss.**
- 2.6. Who owns the snowball stand and the hamburger stand, and how should each be classified (as either movable or immovable property)? Discuss.**
- 2.7. What are Mr. Sno's and Drugstore's rights and obligations with regard to the snowball stand at the expiration of the lease? Discuss.**
- 2.8. What are Mr. Sno's and Drugstore's rights and obligations with regard to the hamburger stand at expiration of the lease? Discuss.**

[End of Question 2]

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QUESTION 3 - (20 POINTS)

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

Acquisitive prescription (1), classification of things (2), conflict of laws (1), co-ownership (1), marriage (1), matrimonial regimes (1), personal servitudes of usufruct (3)

[End of Question 3]

END OF CIVIL CODE I TEST

**LOUISIANA STATE BAR EXAMINATION
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FEBRUARY 2017**

QUESTION 1 — 40 POINTS

Harold and Annie were married in New Orleans about ten years ago. On the night before their wedding, Harold presented Annie with a written agreement which provided that, in the event of a divorce, each spouse fully and irrevocably waived any and all rights to either interim or final periodic support. Harold and Annie each signed the agreement, and they were married the next day. The day after the wedding ceremony, Harold and Annie purchased a home in New Orleans for \$800,000. They paid the full purchase price at closing using \$600,000 jointly borrowed from a bank in exchange for a mortgage and the remaining \$200,000 by check from Harold's trust fund established before his marriage.

The next year, Annie gave birth to their child Lily. Annie continued working as a physician but reduced her work schedule to three days per week in order to care for Lily. Harold continued his career in sales. When Lily was a toddler, Annie had a brief affair, but she ended that affair as soon as Harold learned about it. Annie apologized and explained that she was lonely and feeling undesirable after the birth of their child, after which Harold and Annie resumed their family life without disruption.

Last year, Harold's employer promoted him to the Regional Manager position, which, in addition to a substantial pay increase, entailed a transfer to Alexandria, Louisiana. Rather than close Annie's medical practice, uproot Lily from school, and sell their home in New Orleans, Harold and Annie agreed that Harold would get an apartment in Alexandria, would live there Monday through Friday, and would return home each weekend. They also agreed that Annie would care for Lily (getting her to school, carpooling, practices, doctors' appointments and other activities during the week), and that Harold would share child duties on the weekends.

Unbeknownst to Annie, Harold began to have an affair with his co-worker Beth shortly after renting the apartment in Alexandria. Harold did not tell Beth that he was married, and Beth had no idea that Annie or Lily existed. Harold and Beth were married before a justice of the peace. They purchased a new home together and began to live as husband and wife. Harold continued his weekend returns to New Orleans and explained his absences by telling Beth that he had training exercises out of town. He lived this double life for several months until Beth surprised him with a weekend visit by locating him on a GPS app on her cell phone. When Beth showed up at Harold's New Orleans home, she found Harold having dinner with Annie and Lily. Beth told Annie that she and Harold were married.

Beth returned to Alexandria and changed the locks on their home. Beth turned to her childhood sweetheart, George, for solace. George was still in love with Beth and thrilled to resume their relationship. Beth filed a proceeding to declare her marriage to Harold as a nullity and later married George. Shortly after her marriage to George, Beth discovered that she was pregnant. Her son Nicholas was born 270 days after Beth kicked Harold out of their home. George was with Beth at the hospital for the delivery and signed the birth certificate. DNA testing revealed that Harold was Nicholas' father.

Equally outraged at Harold when learning about Beth, Annie demanded a divorce and asked Harold to move out. Harold left but stayed in the New Orleans area, hoping to make amends with Annie. In the nine months that Harold and Annie lived separately, they occasionally met for dinner to discuss family matters. After one of those dinners, Harold and Annie had sexual relations.

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Please answer the following eight subquestions (5 points each). Explain each answer; an answer without an explanation will receive no credit.

- 1.1. What are Annie's options for divorce? Explain any potential time delays and complications associated with each option.**
- 1.2. Is Annie entitled to interim spousal support? Why or why not?**
- 1.3. Is Annie entitled to final spousal support? Why or why not?**
- 1.4. How is the New Orleans home classified: as separate property or as community property? Discuss.**
- 1.5. If Harold and Annie cannot agree on custody for Lily, to whom should the court initially award custody? Discuss.**
- 1.6. Are Harold and Beth legally married to each other? Why or why not?**
- 1.7. Is Beth entitled to receive interim and/or final spousal support from Harold? Why or why not?**
- 1.8. Is Beth entitled to receive child support from Harold? Why or why not?**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

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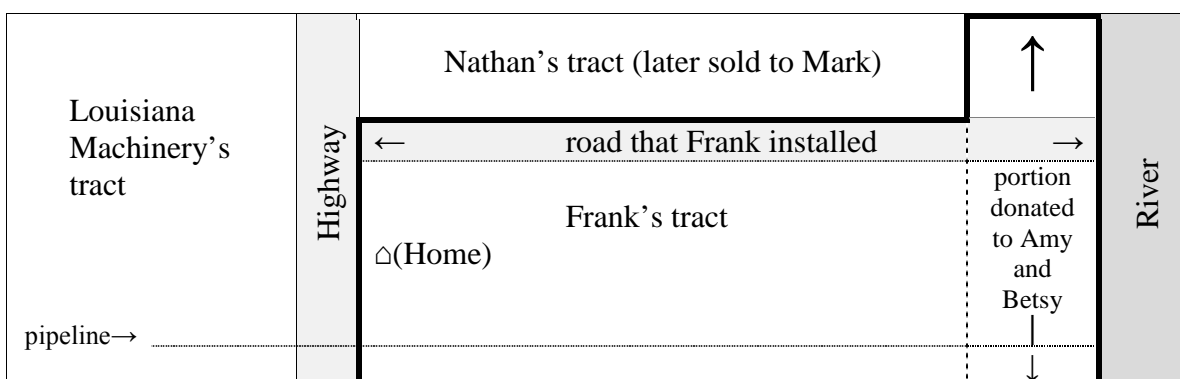
QUESTION 2 — 40 POINTS

Frank purchased a 10-acre tract of land in Louisiana 35 years ago, after his wife died. The property is “L” shaped, bounded on the east by a river; on the north in part by the land of his neighbor and friend, Nathan, and in the part closer to the river by another property owner; on the south by another property owner, and on the west by a public highway.

Frank promptly built a home for himself and his then-young daughters, Amy and Betsy, on the western portion of his property near the highway but did not use the rest of the property for anything other than occasional recreational use. Frank also promptly installed a dirt road from the highway to the river across his property just south of the boundary with Nathan’s property so that he and his daughters could access the river with their trucks and boat trailer. Although Frank installed a locked gate across the road near the highway, he gave a gate key to Nathan so that Nathan and his family could use the dirt road to get their boats to the river as well. With Frank’s ready approval, Nathan even put gravel down on the road so that they could all traverse it more easily. Fifteen years ago, Nathan sold his land to Mark in a valid sale. When Nathan sold his land to Mark, Nathan gave his gate key to Mark; Mark and his family thereafter continued to use the roadway to access the river without any objection from Frank.

Twelve years ago, Frank signed an agreement allowing Louisiana Machinery, and its successors or assigns, to build and operate a pipeline near the southern boundary of his property for delivery of water from the river to Louisiana Machinery’s property on the west side of the highway. The agreement requires that the pipeline be buried at least five feet beneath the ground and be removed at the expiration of a 50-year term. The agreement was promptly recorded in the parish conveyance records.

Eight years ago, Frank validly donated to Amy and Betsy two acres on the far east side of his property next to the river, as depicted below; the donation was made subject to any existing contracts and encumbrances.



Shortly thereafter, Frank remarried, this time to a woman named Wilma. Two years ago, Frank died and left the remaining eight acres and his home to his daughters subject to a usufruct in favor of Wilma. Wilma spent \$50,000 renovating the kitchen and bathrooms of the family home on the western portion of the property, \$25,000 for an entirely new roof, and another \$25,000 on necessary repairs. Wilma asked Amy and Betsy to pay this \$100,000, but they refused.

TEST CONTINUES ON NEXT PAGE

About a year ago, Amy sought to move back into the family home, but Wilma refused. Amy decided to build both a small home and restaurant at the southern end of the two-acre property, which had remained undeveloped ever since Frank first acquired the initial ten-acre property. Amy's construction crew used the gravel road to access the two-acre property, but the noise and activity annoyed Wilma. When Amy sought to install a small electric utility line along the gravel road to connect into the nearest utility lines (which were along the highway), Wilma refused to allow the workers to install an electric line across the eight-acre tract.

Only after Amy had completed construction of the house and restaurant did Betsy learn of their construction. When Wilma likewise refused to allow Betsy to move back to the home Frank had built, Betsy told Amy that she wanted to move into Amy's new house when she finished building it. Amy, however, refused to allow Betsy to live in that house. Betsy then demanded that Amy tear down both the house and restaurant, but Amy refused to do so. So Betsy decided to build her own house on the property, but Amy objected because, she stated, with a second house, there would be too many structures on the property. Ignoring Amy's objection, Betsy proceeded to build her own small home on the two-acre property.

Wilma recently replaced the lock on the gate across the gravel road and did not give anyone else a new key; thus she is now preventing anyone other than herself from using the gravel roadway. Mark, Amy and Betsy were all outraged at Wilma's interference with their continued use of the gravel roadway.

Please answer the following eight subquestions (5 points each). Explain each answer; an answer without an explanation will receive no credit.

- 2.1. What is the nature of Louisiana Machinery's pipeline rights over the ten-acre property? Discuss.**
- 2.2. How is the portion of the pipeline across the ten-acre property classified: as a movable or as an immovable? Who owns that portion at this time? Discuss.**
- 2.3. Has Mark acquired any rights over the gravel roadway via prescription? Discuss.**
- 2.4. What rights, if any, do Amy and Betsy have against Wilma to obtain electricity for their two-acre tract? Discuss.**
- 2.5. What rights, if any, do Amy and Betsy have to use the gravel road? Discuss.**
- 2.6. Describe what rights, if any, Wilma has to prevent Amy and Betsy from moving back into their family home.**
- 2.7. Describe what rights, if any, Wilma has to demand that Amy and Betsy pay for the renovation and repair work.**
- 2.8. Does Betsy have the right to demand that Amy demolish and remove Amy's house or the restaurant? Does Amy have the right to demand that Betsy demolish and remove Betsy's house? Discuss as to each item.**

[End of Question 2]

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**QUESTION 3
(20 points)**

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

- 3.1 Acquisitive prescription
- 3.2 Child custody; burdens of proof
- 3.3 Conflicts of laws
- 3.4 Community/Separate Property; allocation of assets from divorce; one spouse's separate property used for the other spouse's separate property
- 3.5 Payment for improvements by a usufructuary
- 3.6 Usufructuary entitled to set-off for payments made for ordinary repairs
- 3.7 Treatment of cash and stock dividends for stock subject to a usufruct
- 3.8 Movables by anticipation
- 3.9 Usufruct; repairs
- 3.10 Usufruct; repairs

[End of Question 3]

END OF CIVIL CODE I TEST

**LOUISIANA STATE BAR EXAM
CIVIL CODE I
JULY 2016**

**QUESTION 1
(40 points)**

Henry and Wendy were married in Shreveport several years ago in a ceremony performed by a judge authorized to perform marriages where they announced their desire to take one another as husband and wife. That was not Henry's first marriage, however. When Henry was 18 years old, he and his high school girlfriend married during a night of heavy drinking. The next morning, they regretted it and immediately met with an attorney to obtain an annulment or divorce. Henry signed the documents presented by the attorney, but has never seen a final judgment of annulment or divorce.

Well before his marriage to Wendy, Henry's parents died and he inherited a large tract of land, which he leased to an exploration company that discovered substantial oil and gas reserves on the property. When Henry inherited the land, he opened a bank account for his substantial rents and royalties, and he continued to deposit rents and royalties into that account after his marriage. Since marriage, Henry has not used any funds from that bank account except for \$250,000 that he used the day after his wedding to fund part of the purchase price for a new home for him and Wendy to live in. He borrowed \$250,000 to fund the remaining 50% of the home's \$500,000 purchase price.

Fifteen months ago, Wendy gave birth to a daughter, Diana. Henry was present for her birth and was delighted with the baby. Wendy stopped working to remain home to care for the child after the birth. Ten months ago, Henry discovered that Wendy had been having an affair and that Diana may not be his daughter. He confronted Wendy, and she admitted the affair but assured Henry that it was over and that he (Henry) is Diana's father. Henry had a DNA paternity test performed and received the test results within two weeks after learning about Wendy's affair; DNA establishes that Henry is not Diana's biological father. Henry moved out of the family home a few weeks later. A few months after he left, following a party, Henry and Wendy went home together and had sexual relations. Henry did not move back into the house and they have not been together again.

Henry has contacted you to discuss whether he may obtain a divorce from Wendy, whether Wendy may obtain a divorce from him, the issues and ramifications of divorce, and whether he may disavow Diana.

TEST CONTINUES ON NEXT PAGE

Please answer the following eight subquestions (5 points each). Explain each answer; an answer without an explanation will receive no credit.

- 1.1 For purposes of this Question 1.1 only, assume that Henry's first marriage was **not** properly terminated. Are Henry and Wendy legally married? If not, is either of them entitled to the civil effects of marriage? Discuss.

* * * *

For the remaining subquestions below, assume that Henry's first marriage was properly terminated.

- 1.2 Describe Wendy's options to obtain a divorce from Henry based on living separate and apart. [For purposes of this Question 1.2 only, assume that Diana is the biological child of Henry.]
- 1.3 Is Henry entitled to obtain an immediate divorce based on fault? Discuss.
- 1.4 If Wendy files for divorce from Henry, will she be entitled to receive interim or final periodic spousal support? Discuss.
- 1.5 How should the funds comprised of the oil and gas royalties and rents in the bank account be classified: are they separate property, community property or a combination of both? Discuss.
- 1.6 How should the family home be classified: is it separate property, community property or a combination of both? Discuss.
- 1.7 Is Henry entitled to disavow Diana at this time? Discuss.
- 1.8 If Henry and Wendy cannot agree on custody of Diana and Henry has not disavowed her, to whom should the court initially award custody? Discuss.

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAM
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**QUESTION 2
(40 points)**

In the early 1970s, Amanda acquired a 10-acre tract of land in Louisiana by a valid act of sale. A few years later, her good friend Bob (then a single man) acquired a 20-acre tract of land immediately to the north of Amanda's land and built his home on the land. In the early 1980s, Bob began to drive across Amanda's property because it was a more convenient route to town rather than going around the other side of his property. Bob and his family and guests regularly used this route across Amanda's property, eventually creating a dirt road. Being a good neighbor and friend, Amanda did not object.

Thirty-three years ago, Amanda constructed a fence between her land and Bob's land. The fence had an automated gate that allowed Bob to continue to use the dirt road across Amanda's property. Amanda did not obtain a survey before building the fence, and unbeknownst to both of them, the fence was not built on the property line but instead entirely on Bob's land. A total of two acres of Bob's land that was south of the fence was cut off from the rest of his land.

Two years ago, Amanda sold her property to Carol by an Act of Sale transferring Amanda's 10 acres (using the valid property description from the act of sale by which Amanda had acquired those same 10 acres) "together with all rights of prescription, whether acquisitive or liberative, to which said vendor may be entitled." Shortly thereafter, Bob died leaving all his property to his daughter Debra subject to a usufruct in favor of his new wife, Wanda.

Wanda was out of the country when Bob died; she did not return until several months later. During Wanda's absence after Bob's death, a plumbing issue arose and Debra incurred \$15,000 in necessary repairs to address plumbing leaks in Bob's home. When Wanda returned, Debra initially refused to allow Wanda to move into the home until Wanda paid the \$15,000 spent for the repairs. After fighting about that for several months, Debra finally allowed Wanda to move into the home even though Wanda refused to pay the money. Just a few weeks later, a tornado destroyed the home and the insurer (under a homeowners' insurance policy Bob had obtained before his death) tendered the full \$250,000 policy limits.

Wanda asked Debra to rebuild the home; Debra refused to rebuild the home, but told Wanda that she (Wanda) could do so. Wanda decided to re-build a home on the southern portion of the property near the fence. Wanda engaged a surveyor to mark the boundaries for construction, and the surveyor discovered that the fence enclosed two acres of Bob's property. After discussing the matter with Debra, Wanda built a new home and instructed her contractor to take down the fence and erect a new fence on the proper boundary line.

Carol objected to Wanda's efforts to remove and relocate the fence, claiming ownership of the two acres enclosed by the fence. Carol was so angry that she constructed barricades at the roadway and refused to allow Wanda (or anyone else) to use the dirt road to get from Wanda's property to town.

TEST CONTINUES ON NEXT PAGE

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

- 2.1 What are the nature and classification of the rights, if any, that Bob could have acquired in the dirt road; and does Carol have the right to prevent Wanda from using the dirt road? Explain. (10 points)
- 2.2 Who owns the two acres of land south of the fence constructed by Amanda? Explain. (10 points)
- 2.3 Did Debra have the legal right to refuse to give Wanda access to the home until Wanda reimbursed Debra for the repair costs that she incurred? Explain. (7 points)
- 2.4 Who is entitled to the \$250,000 insurance proceeds? Explain. (4 points)
- 2.5 Is Wanda entitled to require Debra to rebuild the home? Explain. (3 points)
- 2.6 What rights, if any, does Wanda have against Debra to recover any of the costs she incurred in rebuilding the home? Explain. (6 points)

[End of Question 2]

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**LOUISIANA STATE BAR EXAM
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JULY 2016**

**QUESTION 3
(20 points)**

**LOUISIANA STATE BAR EXAM
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JULY 2016**

**QUESTION 3
(20 points)**

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

- 3.1 Allocation of assets from divorce; one spouse's separate property used for the other spouse's separate property.
- 3.2 Building restrictions.
- 3.3 Possessor versus encroacher.
- 3.4 Usufruct and fruits of property.
- 3.5 Usufruct and management or leasing.
- 3.6 Co-ownership; substantial alterations and improvements.
- 3.7 Co-ownership; substantial alterations and improvements.
- 3.8 Co-ownership, use and management of co-owned property; expense of maintenance and management.
- 3.9 Child custody; changes in custody.
- 3.10 Grandparent visitation rights.

[End of Question 3]

End of Civil Code I Exam