

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

QUESTION 1 (40 POINTS)

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

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

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

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

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

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

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

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

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

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

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

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

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

[End of Question 1]

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QUESTION 2 (40 POINTS)

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

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

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

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

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

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

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

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

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

[End of Question 2]

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**LOUISIANA STATE BAR EXAMINATION
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QUESTION 3 (20 POINTS)

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

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

[End of Question 3]

END OF CIVIL CODE I TEST

**LOUISIANA STATE BAR EXAM
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FEBRUARY 2023**

QUESTION 1 (40 POINTS)

In late 2018, while Willow and Henry were dating, Willow gave birth to a son named Sean. Henry believed that Sean was his son, signed the birth certificate, and raised him as his own. Unbeknownst to Henry, Willow had had a brief affair with an ex-boyfriend, Bill, nine months before Sean was born and Bill is Sean's biological father.

In early 2019, three months after Sean was born, Henry and Willow were validly married. On the day before the wedding, Willow presented Henry with agreements that provided that, in the event of a divorce, each spouse fully and irrevocably waived any and all rights to both interim and final periodic support and each spouse opted out of the matrimonial regime. Both Henry and Willow signed the agreements before the wedding in front of two witnesses, but not before a notary.

A month after the wedding, someone told Henry and Willow that important legal documents were always required to be notarized. Realizing that the agreements signed before the wedding were not notarized, Henry and Willow then signed a new copy of the earlier agreements before a notary and two witnesses so that they were duly acknowledged.

Before the wedding, Henry inherited a commercial property that was rented out to a bakery. Three months after the wedding ceremony, Henry's uncle donated to Henry a 2-family residential duplex property worth \$200,000 that needed substantial renovations. Six months after the wedding Henry used \$100,000 of funds from Henry and Willow's joint savings account to hire a contractor to renovate the duplex property. Once renovated, the duplex property was worth \$400,000 and was fully rented out to long-term tenants. Henry kept the rental funds from both properties in a single, separate account that listed him as the sole account holder.

In late 2021, Willow ran into Bill and they resumed their affair. After Henry came home and found them having sexual relations, Willow confessed the affair and she also told Henry that Sean was Bill's son. Although extremely upset, Henry did not immediately leave Willow. Willow swore that she would never see Bill again and she did in fact cease all communication with Bill. Henry and Willow continued to live together and tried to move past the affair, occasionally engaging in sexual relations.

For six months, Henry tried to forgive Willow and continue in their marriage, but Henry was unable to trust her again due to her earlier infidelity. Henry told Willow he wanted a divorce and he moved out of the family home in mid-2022.

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

- 1.1 What are each spouse's options for divorce? What potential time delays, benefits and complications are associated with each option? Explain. (10 points)**
- 1.2 Did Henry and Willow validly waive their rights to interim and final spousal support? Explain. (5 points)**
- 1.3 Have Willow and Henry validly opted out of Louisiana's community property regime? Explain. (5 points)**
- 1.4 Assume for purposes of this Question 1.4 that Henry and Willow did not opt out of a community property regime. Should the rental duplex property donated to Henry by his uncle after the marriage ceremony be classified as Henry's separate property or as the couple's community property? Explain. (5 points)**

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- 1.5** Assume for purposes of this Question 1.5 that Henry and Willow did not opt out of a community property regime and that the rental duplex property is Henry's separate property. Is Willow entitled to a credit for the amounts used for the renovations of the rental duplex property? Is Willow entitled to a credit for the increased valuation of the rental duplex property after the renovation? Explain. (6 points)
- 1.6** Assume for purposes of this Question 1.6 that Henry and Willow did not opt out of a community property regime. Should the post-marriage rental income from the commercial property rented to the bakery inherited by Henry before the marriage ceremony be classified as Henry's separate property or as the couple's community property? Explain. (5 points)
- 1.7** Is there a presumption of paternity of Sean in favor of Henry? How? Explain. (4 points)

[End of Question 1]

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FEBRUARY 2023**

QUESTION 2 (40 POINTS)

By a valid act of sale 25 years ago, Alan acquired 10 acres of land in a square shape as his separate property. Alan's property was bounded by a non-navigable river to the north, a paved public highway road to the south, his neighbor Wes to the west and his neighbor Esther to the east. Alan had one son Sam with his first wife. Alan bought the property after his first wife died.

Immediately after Alan acquired the property, Wes put up a fence between his and Alan's land the length of the boundary line. Alan was aware of the fence, but never discussed it with Wes. However, in placing the fence on the property, Wes inadvertently placed the fence onto Alan's property so that two feet of the westernmost portion of Alan's property was separated from the rest of Alan's property by Wes's fence. About 12 years ago, Wes sold his property to Doug "together with all rights of prescription, whether acquisitive or liberative, to which said vendor may be entitled," but it did not specifically reference the two-foot strip of land enclosed by Wes's fence. Doug was aware of the fence, but never discussed it with Alan. Both Wes and Doug continually used the property all of the way to the fence. Alan and his successors ceased using the property on Wes and Doug's side of the fence.

Two years after buying the property, Alan was approached by his neighbor Stratton across the public highway about building an irrigation pipeline to run from the river across Alan's property to Stratton's strawberry farm across the public highway. Through a duly acknowledged written agreement, Alan granted the right to install and operate a pipeline for 30 years across Alan's property for transportation of water to "Stratton, as owner and operator of the strawberry farm depicted on the attached plat," provided that the pipeline be buried at least 6 feet below ground; the attached plat depicted both Stratton's strawberry farm and Alan's property. The agreement was properly recorded in the parish conveyance records once it was signed. Promptly after the agreement was recorded, Stratton installed the pipeline six feet under the westernmost portion of Alan's property to the east of alongside Wes's fence. Recently, Stratton sold the strawberry farm to Flo; the act of sale did not mention this pipeline agreement.

Alan built a house on the western half of his property and traveled between his house and the public highway by a gravel road that started immediately east of his house and then meandered onto the eastern half of his property until it switched back westward and eventually reached the public highway on the western half of Alan's property.

About fifteen years ago, Alan married Wanda. Just before marrying Wanda, he sold the eastern half of his property to Gary. This property included part, but not all, of the gravel road. Gary built a home right next to the portion of the gravel road that was on his property and thereafter used all of the gravel road, including the portion on Alan's property, to access the public highway. Alan knew that Gary was using the gravel road and never objected to its use, even though use of the gravel road was not mentioned in the recorded deed transferring the property to Gary.

About twelve years ago, Alan died. He left all of his immovable and movable property to Sam with a lifetime usufruct in favor of Wanda. Last year, a tornado hit and completely destroyed the house Alan built, but left the remaining property intact. The house was insured, and the insurer adjusted the claim for \$300,000. Wanda wants to build a new home on the property. Sam does not want to build a new home and instead wants to keep the insurance proceeds. Wanda would also like to put up a fence between the property and Gary's property and build a new road to access the public highway without traveling on Gary's property. Gary objects to the fence because he would no longer be able to use the portion of the gravel road on the other property to access the public highway.

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

2.1 Who owns the two-foot strip immediately to the west of the fence constructed by Wes? Explain. (10 points)

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- 2.2 What kind of servitude was granted to Stratton? What right, if any, does Flo have to the servitude? Explain. (8 points)**
- 2.3 On what basis, if any, can Gary object to a fence being built preventing his use of the roadway? Explain. (6 points)**
- 2.4 Who is entitled to the insurance proceeds from the destroyed home? Upon what property does Wanda maintain a usufruct after the home was destroyed? Explain. (6 points)**
- 2.5 Does Wanda have a right to require Sam to rebuild the home on the property? Explain. (4 points)**
- 2.6 Can Wanda build the new home on the property as a usufructuary? If so, what steps are necessary to do so? Explain. (3 points)**
- 2.7 For purposes of this question, presume that Wanda can build the new home on the property as a usufructuary. What rights, if any, does Wanda have against Sam to recover any of the costs for building the new home either now or at the end of the usufruct? Explain. (3 points)**

[End of Question 2]

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QUESTION 3 (20 POINTS)

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

- 3.1 Disavowal
- 3.2 Usufruct
- 3.3 Co-ownership; partition
- 3.4 Classification of property
- 3.5 Legal impediments to marriage
- 3.6 Child custody; burdens of proof
- 3.7 Co-ownership
- 3.8 Responsibility for repairs to property subject to a usufruct
- 3.9 Absent persons; declarations of death
- 3.10 Conflicts of laws

[End of Question 3]

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QUESTION 1(40 POINTS)

Harold and Wanda had been together for three years when they were married in May 2018 in person before a licensed minister. Years before this marriage, Harold had been married to Abby, after a wild weekend in Las Vegas. Although it was a drive-through wedding, it was a legally valid marriage. Harold and Abby separated soon thereafter. After the separation, Harold consulted a friend who was an attorney. The friend incorrectly told Harold that his marriage to Abby was not valid. Because Harold believed that this marriage was not valid, he never took any steps to obtain a divorce. Before he and Wanda married, Harold never told Wanda about Abby.

Three months before the wedding ceremony, Wanda had a brief affair with an ex-boyfriend, Bill. She never mentioned the affair to Harold.

A month after the wedding ceremony, Wanda inherited a home from her uncle. Harold and Wanda promptly moved into the home. Six months later, Harold and Wanda decided to renovate the home. The home was worth \$300,000 when Wanda inherited it. Harold personally did all the renovations, which would have cost \$20,000 if performed by someone else. He and Wanda also used \$80,000 of their post-marriage earnings to pay for new fixtures, supplies and materials. When the renovation was finished, the home was worth \$450,000.

In May 2019, Harold received a call from Abby. She was getting married herself, and her lawyer explained that she had needed a divorce from Harold to get married again. Harold agreed, and he and Abby obtained a valid divorce. At this time, he told Wanda about his prior marriage. Rather than have another marriage ceremony, Harold and Wanda decided to just acknowledge their prior marriage ceremony by signing an authentic act in September 2019.

In September 2020, Wanda resumed her affair with Bill. After Harold came home and found them having sexual relations, Wanda confessed to the affair and also told Harold that she had had an affair with Bill just before the wedding. Although extremely upset, Harold did not immediately leave Wanda. Wanda swore that she would never see Bill again, and she did in fact cease all communication with Bill. Harold and Wanda continued to live together to try to move past these discoveries and occasionally engaged in sexual relations with each other.

Harold was the primary wage earner in the family. Distraught over the discovery that Wanda had an affair with Bill both before and during their marriage, Harold could not focus on work and his earnings plummeted. To offset this, Harold started embezzling from his employer and put the funds he took into his family's bank account and used them to pay the family's expenses.

Harold's employer discovered the theft and fired him in late 2021. At that time, he left the family home. Harold pled guilty and was convicted of the felony crime of embezzlement in December 2021. His sentence was five years in prison at hard labor. His employer also filed a civil suit and obtained a \$75,000 judgment against Harold.

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

1.1 Are Harold and Wanda legally married? Is either of them entitled to the civil effects of marriage? If so, for how long? Explain fully. (10 points).

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FOR THE REMAINDER OF QUESTION 1, ASSUME HAROLD AND WANDA WERE LEGALLY MARRIED.

- 1.2** What are each of Harold and Wanda's options for divorce? What potential time delays, benefits and complications are associated with each option? Explain fully. (10 points)
- 1.3** How should the family home be classified: as Wanda's separate property, or as the couple's community property? Explain fully. (6 points)
- 1.4** *Assume for purposes of this question 1.4* that the home is Wanda's separate property. Is Harold entitled to any reimbursement relating to the home; and if so, in what amount and for what reason? Explain fully. (8 points).
- 1.5** How should the employer's \$75,000 civil judgment be classified: as Harold's separate obligation, or as the couple's community obligation? Explain fully. (6 points)

[End of Question 1]

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QUESTION 2 (40 POINTS)

By a valid act of sale 35 years ago, Arthur acquired 40 acres of land in a square shape as his separate property. Arthur's property was bounded by a lake to the north, a paved public road to the south, his neighbor Wayne to the west and his neighbor Edith to the east.

Immediately after Arthur acquired the property, Wayne put up a fence between his and Arthur's land along the length of the boundary line. However, in placing the fence on the property, Wayne inadvertently placed the fence onto Arthur's property so that ten feet of the westernmost portion of Arthur's property was separated from the rest of Arthur's property by Wayne's fence. About twenty years ago, Wayne sold his property to Dennis "together with all rights of prescription, whether acquisitive or liberative, to which said vendor may be entitled." Dennis then continually used the property all of the way to the fence.

Two years after buying the property, Arthur was approached by Pipeline Inc. to build an irrigation pipeline to run from the lake across Arthur's property to Pipeline Inc.'s property across the public road. Through a written Pipeline Agreement, Arthur granted to Pipeline Inc. the right to install and operate a pipeline for 65 years across Arthur's property for transportation of water "for the benefit of Pipeline Inc. for its own convenience," provided that the pipeline be buried at least 6 feet below ground and that Pipeline Inc. build a gravel road over the pipeline so that Arthur could use it to reach the lake from the public road. The Pipeline Agreement contained no other restrictions as to this right. The Pipeline Agreement was properly recorded in the parish conveyance records once it was signed. Promptly after the Pipeline Agreement was recorded, Pipeline Inc. installed the pipeline six feet under the western portion of Arthur's property alongside Wayne's fence and also built a gravel road directly over where it laid the pipeline. Recently, Pipeline Inc. sold its property across the public road (including any rights it had related to the irrigation pipeline) to Waterco through a legally valid act of sale.

Arthur built a large house on the lake immediately to the east of this road. The house was well stocked with expensive bottles of fine wine and many valuable antiques that he had collected from his travels over the years.

Arthur had a son, Seth, with his first wife, who had died before Arthur bought the property. About three years ago, Arthur married Louise. To pay for his wedding to Louise, Arthur sold to Fred five acres of his land on the northeastern-most portion of his property along the lake.

Fred built a fishing camp on his property. While building the camp, Fred would drive over Arthur's property on a dirt road that went from Fred's property all the way to the public access road. Before Pipeline Inc. built the gravel road, Arthur had used this dirt road, which was the shortest route to access the public road for Fred. Although Arthur and Fred never discussed letting Fred use the road and it was not mentioned in the act of sale, Arthur also never objected to Fred's doing so.

Last year, Arthur died. His will left all of his property to Seth with a lifetime usufruct in favor of Louise. During Arthur's succession, it was discovered that Wayne's fence did not follow the property description on Arthur's title.

Neither Louise nor Seth liked Fred. Shortly after Arthur died, both told Fred that he could no longer use the dirt road on their property to get to the public road.

Louise was upset about Arthur's death, and she started drinking the fine wine that he had collected before they had been married. She also could not stand to look at the antiques in the lake house because they reminded her of Arthur. Therefore, she started donating some of the antiques—which still had substantial value—to various friends and acquaintances. Seth was shocked and angry to just learn that Louise has drunk the wine and donated the antiques. There are still a few bottles of wine and antiques left that Seth wants to preserve.

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

- 2.1 Does Dennis own the ten-foot strip immediately to the west of the fence Wayne installed? Explain fully. (10 points)**
- 2.2 What kind of servitude was granted to Pipeline Inc.? What right, if any, does Waterco have to the servitude? Explain fully. (10 points)**
- 2.3**
 - a. Does Fred have the right to continue to use the dirt road to access the public road? Explain fully. (5 points)**
 - b. If Fred does have the right to continue using the dirt road, must he compensate Seth and Louise for his use of the dirt road? Explain fully. (5 points)**
- 2.4**
 - a. Was Louise entitled to drink the wine? Explain fully (3 points)**
 - b. Was she entitled to donate the antiques? Explain fully. (2 points)**
- 2.5 What rights or remedies, if any, does Seth have against Louise related to the wine and the antiques, either now or at the end of the usufructuary? Explain fully. (5 points)**

[End of Question 2]

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QUESTION 3 (20 POINTS)

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

- 3.1 Building restrictions
- 3.2 Immovables/movables
- 3.3 Legal impediments/nullity
- 3.4 Moveables by anticipation
- 3.5 Termination of a usufruct
- 3.6 Classification of property; moveable/immoveable
- 3.7 Absent persons
- 3.8 Waiver of spousal support
- 3.9 Emancipation of a minor
- 3.10 Child custody; burden of proof

[End of Question 3]

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**LOUISIANA STATE BAR EXAM
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FEBRUARY 2022**

QUESTION 1 (40 POINTS)

Willa and Horace were validly married in 2015. It was the first marriage for each of them.

On the day before the wedding, Willa presented Horace 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 and opted out of the matrimonial regime. Both Willa and Horace 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, Willa had given birth to a child, Dina. Horace was at the hospital for the birth and signed the birth certificate. Unbeknownst to Horace, Dina was not Horace's biological daughter. Willa gave birth to Sonny in 2018, who was Horace's biological son. Horace was there and signed Sonny's birth certificate as well.

Horace was the primary wage earner in this family. Willa worked 10 hours a week as a part-time bookkeeper at a nonprofit entity and was primarily responsible for taking care of Dina and Sonny. When Dina was first born, Horace was actively involved as a parent with her and would routinely do things with her.

Immediately after the wedding, Horace moved into Willa's home, which she inherited from her uncle before her marriage to Horace. The home was worth \$200,000 when Horace moved in, but it was outdated and had fallen into disrepair. Horace personally did all the renovations on the home and Willa paid \$30,000 for the new fixtures, supplies and materials with the last of her pre-marriage inheritance from her uncle. If Horace had not done the work, it would have cost another \$120,000 for the renovations. After the renovations, the home was worth \$350,000. As their family grew, Horace and Willa decided to buy a new home together for \$400,000. Willa sold the first home for \$350,000 and used those proceeds to fund a portion of the purchase price of their new home. The couple obtained a \$50,000 loan from a family friend for the remainder of the purchase price on the new home.

After Sonny was born, Horace was rarely home and told Willa it was due to his work schedule, although he never moved out of the home. Horace also stopped being actively involved as a parent with Dina and was never really involved with Sonny. Since Sonny was born, Horace has not attended any of the children's school events or extracurricular activities, and he has generally not shown any interest in having a relationship with either child. Resentful of Horace's attitude towards the children and feeling neglected, Willa had a brief affair with a neighbor in 2019, but she ended things and confessed her indiscretion to Horace. Although he was upset, Horace did not leave Willa. He continued to live at their home, and they occasionally engaged in sexual relations.

However, although he had told Willa he was traveling for work, the real reason for his absence was that he had secretly developed a substance abuse problem. In 2020, Horace was fired from his job, arrested, and convicted of felony drug possession. His sentence was five years in prison at hard labor.

Please answer the following five subquestions. The subquestions in Question 1 are not weighted equally. 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? Explain fully. (10 points)**
- 1.2. What rights does either spouse have to interim spousal support, final spousal support and the community property regime? Explain fully. (10 points)**

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- 1.3. *Assume solely for this subquestion 1.3* that Willa and Horace never made any attempt to opt out of the community property regime. Should the new family home be classified as Willa's separate property or as the couple's community property? Explain fully. (10 points)
- 1.4. *Assume solely for this subquestion 1.4* that Horace has just been released from prison, has obtained treatment for his substance abuse and been clean and sober for the past 3 years, and is on probation. Also assume that the parties did not obtain a custody order before now. If Willa and Horace cannot agree on custody for the two children and Horace does not disavow Dina, to whom should the court award custody? Explain fully. (10 points)

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAM
CIVIL CODE I
FEBRUARY 2022**

QUESTION 2 (40 POINTS)

By a valid act of sale 45 years ago, Andy acquired 400 acres of land in a square shape as his separate property. He used this land mostly for growing satsumas that he sells at market. These 400 acres are bounded by a lake to the north, a paved public road to the south, Wesley's property on the west, and Emily's property on the east.

La Rice Inc. operated a rice field on the south side of this same public road, but the rice field did not have direct access to water. Immediately after Andy bought his 400 acres, La Rice Inc. asked Andy for an agreement to install an irrigation pipeline running from the lake across Andy's property. Through a written Pipeline Agreement, Andy granted to La Rice Inc., as owner and operator of the rice farm, the right to install and operate a pipeline across Andy's property for transportation of water, provided that the pipeline be buried at least 4 feet below ground and that La Rice Inc. build a dirt road over the pipeline for Andy's use. The Pipeline Agreement was properly recorded in the parish conveyance records over 40 years ago. The Pipeline Agreement did not specify a precise location for the pipeline, but promptly after the Pipeline Agreement was recorded, La Rice Inc. installed the pipeline four feet under the western portion of Andy's property and also built a dirt road directly over where it laid the pipeline.

Andy was good friends with his neighbor Wesley, as both were avid fishermen. A few years after buying his 400 acres, Andy leased to Wesley for 50 years one acre of land at the northwestern corner of the property, adjacent to Wesley's property. This land was immediately to the west of the dirt road that La Rice Inc. had built. The lease was properly recorded in the parish conveyance records at the time. Wesley built a fishing camp on a concrete slab, with two bedrooms, plumbing and electricity.

Over one weekend a month after he obtained his lease from Andy, Wesley paved the entire dirt road installed by La Rice Inc. Andy did not learn about this until a few weeks later. Wesley's actions irked Andy since Wesley never asked for Andy's permission to pave this road and also never had permission from Andy to use the dirt road and since Wesley could separately access the fishing camp from his own property to the west. Andy repeatedly told Wesley not to use the road across Andy's land. But despite Andy's objections, Wesley has continuously used the road for the past 40 years to get to the fishing camp. Andy, however, never took any action to have Wesley remove the paving or to stop Wesley from using the road.

Twenty years ago, Andy built a home on his property along the lake immediately to the east of the road that Wesley had paved. Andy has been using the road to access his home since he built the home.

Five years ago, Andy subdivided a 40-acre parcel from the southwest corner of his property to create "Satsuma Orchard Estates," a planned residential community. La Rice Inc.'s pipeline and the road above it both run through this 40-acre parcel. Andy then retired, and he validly donated the 40-acre site to his daughter Cindy, subject to his "continued right to use the existing road across Satsuma Orchard Estates." In preparing to build the community, Cindy constructed a fence to enclose the 40-acre site, with a coded gate at the south entrance for access from the public road.

Three years ago, Andy married Uma after his first wife died. Andy died last year, leaving his remaining 360 acres, the lake house and all of his remaining property to Cindy, subject to a lifetime usufruct in favor of Uma. Out of loyalty to her mother, Cindy never associated with Uma and wanted nothing to do with her. Uma planned to live in the lake house on a full-time basis, but it had fallen into a general state of disrepair by the time Andy had died. Uma demanded that Cindy pay to repair the home, but Cindy refused to do so. Uma used \$100,000 of her own money to make general repairs and, without any prior notice to Cindy, also spent another \$50,000 building a swimming pool on the east side of the lake house.

TEST CONTINUES ON NEXT PAGE

Both La Rice Inc.'s pipeline and the paved road across Satsuma Orchard Estates is interfering with Cindy's plans for Satsuma Orchard Estates, so Cindy demanded that La Rice Inc. re-locate the pipeline to run along the edge of Satsuma Orchard Estates and changed the code for the gate across the paved road. La Rice Inc. objected to moving the pipeline, and Uma objected to Cindy's refusal to give Uma the new code to the gate.

Cindy intends to proceed with her development plans for Satsuma Orchard Estates. To fund the development, she intends to sell to Emily the easternmost 100 acres she had inherited from Andy. None of the fishing camp, the pipeline, the lake house, or Satsuma Orchard Estates overlaps or abuts these 100 acres. Emily would like to develop these 100 acres into another residential community like Satsuma Orchard Estates. A large amount of acreage fronting the public road would remain between Satsuma Orchard Estates to the west and these 100 acres to the east.

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

- 2.1. What type of servitude did Andy grant La Rice in this case? In explaining your answer, describe the different types of servitudes under Louisiana law. (6 points)**
- 2.2. What is the nature, classification and ownership of:**
 - a. the pipeline? Explain fully. (7 points)**
 - b. the fishing camp? Explain fully. (8 points)**
- 2.3. Assume solely for this subquestion 2.3 that the fishing camp is not an enclosed estate. Has Wesley acquired the right to use the roadway he paved? Explain fully. (7 points)**
- 2.4. Does Cindy have the right to relocate the pipeline to another portion of Satsuma Orchard Estates? If so, who is responsible for the cost for such relocation? Explain fully. (6 points)**
- 2.5. What amounts, if any, is Uma entitled to recover from Cindy for the amounts incurred by Uma to repair the lake house and to build the swimming pool? Explain fully. (6 points)**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAM
CIVIL CODE I
FEBRUARY 2022**

QUESTION 3 (20 POINTS)

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

- 3.1. Presumption of paternity
- 3.2. Full and limited interdiction
- 3.3. Building restrictions
- 3.4. Usufruct; management; leasing
- 3.5. Child custody; burdens of proof
- 3.6. Co-ownership
- 3.7. Right of a good faith possessor of land
- 3.8. Absent persons; declarations of death
- 3.9. Paternal authority
- 3.10. Management and disposition of community property

[End of Question 3]

[END OF CIVIL CODE I TEST]

**LOUISIANA STATE BAR EXAMINATION
CIVIL CODE I
JULY 2021**

QUESTION 1 (100 POINTS)

Herb and Wynonna were married fifteen years ago in Louisiana. On the day before the wedding, Wynonna asked Herb to sign a matrimonial agreement in which they agreed to opt out of a community property regime and both parties agreed to waive interim and final spousal support. Herb and Wynonna immediately signed the document, but not before any witnesses. After the wedding, they properly acknowledged the agreement before a notary and two witnesses. Herb and Wynonna never had any children.

A few months ago, Wynonna had a brief affair with an ex-boyfriend. Herb came home and found them together in bed. Herb confronted Wynonna, who admitted to the affair. Herb demanded that she move out of the house. After much pleading from Wynonna, Herb agreed to allow her to return home where they lived together for the next three months and had resumed occasional sexual relations. During that time, however, Herb was unable to forgive Wynonna and started drinking heavily. One night, while heavily intoxicated, he struck Wynonna and gave her a black eye. Wynonna did not call the police or otherwise press charges against Herb. But the next day, Wynonna told Herb to leave the home and never return. Herb did not return to the home. Herb and Wynonna have been living separate and apart for the last three months.

Wynonna's aunt Annie bought 30 acres of land in 1986, 35 years ago. The land is bounded by a river on the east, a highway on the west, and two large private estates to the north and south. Immediately after purchasing the land, Annie signed an agreement with Company Chemical to allow "Company Chemical, its successors, and assigns" to build and operate an underground pipeline near the northern boundary for the delivery of water from the river to Company Chemical's property on the other side of the highway. The agreement required the pipeline to be built at least five feet beneath the ground and removed after 50 years. This agreement was promptly recorded in the appropriate parish conveyance records.

In 1988, two years after purchasing the property, Annie donated the ten acres of land closest to the river to her brother, Ben, who is Wynonna's father. Company Chemical's pipeline passes under this parcel. Ben immediately created a 500 foot by 500 foot enclosed area for his horses on the eastern side of the property next to the river. However, unbeknownst to either Annie or Ben, the fence for the enclosed area encroached 5 feet past the boundary line onto Annie's property. Therefore, a 5 foot by 500 foot portion of the enclosed area was on Annie's property and not on the property that she donated to Ben.

In 2001, fifteen years after reaching its agreement with Annie, Company Chemical sold its facility to Energy Company, including its rights to the pipeline. This sale to Energy Company is also recorded in the appropriate parish conveyance records.

TEST CONTINUES ON NEXT PAGE

In 2016, 28 years after receiving the donated land from Annie, Ben died. Wynonna inherited all of Ben's assets, including title to the property donated by Annie and all rights of prescription.

Last week, Annie realized that the enclosed area is partially on property that she never donated to Ben and has now demanded that Wynonna remove the portions of the fence on that property.

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

- 1.1 What are Wynonna's options for divorce? What are Herb's options for divorce? Explain any potential time delays and complications associated with each option. (30 points)**
- 1.2 Have Herb and Wynonna properly opted out of:**
 - (a) the community property regime?**
 - (b) the obligation to pay interim spousal support?**
 - (c) the obligation to pay final periodic spousal support?****Explain fully. (30 points)**
- 1.3 What is the nature of Energy Company's pipeline rights over the thirty-acre property? Can Wynonna demand its removal from her 10 acres? Explain fully. (20 points)**
- 1.4 Is Annie likely to succeed in demanding that Wynonna remove the portions of the fence from the 5 foot by 500 foot portion of land that Ben fenced in but that was not part of the 10 acres that Annie donated to Ben? Explain fully. (20 points)**

[End of Civil Code I Test]