

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
JULY 2023**

QUESTION 1 (40 POINTS)

Andrew, Bob, Claire, and Dan started a business together manufacturing and selling specialized computer keyboards for gamers. They signed the following agreement:

Partnership Agreement

1. We agree to form a partnership constituted without a term, and its name shall be The Keyboard Company (“TKC”).
2. Andrew will serve as the manager of the business.
3. Each of the partners will contribute \$10,000 to TKC.
4. The partners will share equally in the profits of the business.
5. Bob, Claire, and Dan will have no mandatary relationship with TKC and no authority to bind TKC in the performance of any contractual obligations.
6. Dan will not be involved in the daily operations of TKC, and he will not be liable to third persons for the obligations or liabilities incurred by TKC.

Andrew, Bob, Claire, and Dan each sent \$10,000 to TKC’s bank account. Andrew used the funds to purchase tools, equipment, and parts needed to build keyboards. He named the keyboards Blasterboards and offered them for sale at \$500 each.

Claire met with her friend Rusty, who owns an electronics store. Claire told Rusty about TKC and its Blasterboards. Rusty offered to purchase 20 Blasterboards if TKC would give him a volume discount. Without consulting with Andrew, Claire agreed to a 50% discount and signed the following agreement with Rusty: “TKC agrees to sell 20 Blasterboards to Rusty for \$5,000. The keyboards will be delivered to Rusty within 6 months, and payment is due at time of delivery.” Claire signed the agreement on behalf of TKC.

The following day, Claire told Andrew about the agreement she signed with Rusty. Andrew told Claire that she did not have authority to sign the agreement on behalf of TKC. Andrew instructed Claire to tell Rusty the agreement is off. But Claire was too embarrassed to tell Rusty anything.

A few days later, Claire visited her cousin Violet. Violet hosts a popular internet website known as “Gamer’s Guide,” which publishes reviews on gaming keyboards. Violet told Claire that she recently purchased a Blasterboard and that it was the best gaming keyboard she had ever used. Violet commented that TKC was going to make a fortune. Claire didn’t think so, and she offered to sell Violet her partnership interest in TKC for \$10,000. Violet accepted. Claire didn’t inform Andrew, Bob, or Dan about her sale of the partnership interest to Violet.

The following day, Violet published on the Gamer’s Guide website a glowing review of the Blasterboard, and orders for Blasterboards began flooding into TKC. To meet the sudden increased demand for Blasterboards, Andrew asked Bob, Claire, and Dan to each contribute \$50,000 to the partnership to fund the hiring of new employees to assist Andrew in manufacturing Blasterboards. Bob, Claire, and Dan declined to contribute funds to expand production. In response, Andrew notified Bob, Claire, and Dan that, effective immediately, he was resigning as manager and withdrawing from the partnership.

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Earlier that same day, TKC's first customer, Michael, suffered severe burns to his face and hands when his Blasterboard caught fire and exploded. Michael brought a lawsuit against TKC for personal injury. The court awarded Michael a judgment against TKC for \$100,000. TKC has no cash or other assets and no insurance to pay the judgment.

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

- 1.1 Is TKC bound to the agreement that Claire signed with Rusty? Explain. (5 points)**
- 1.2 Was Andrew's withdrawal from TKC effective? Explain. (5 points)**
- 1.3 For each of the following persons—Andrew, Bob, Claire, Dan, and Violet—determine whether he/she is liable for payment of any amount of the \$100,000 judgment awarded to Michael. Explain the basis for your conclusions on liability; and for each individual, state the dollar amount, if any, for which he/she is liable. (20 points)**
- 1.4 *Solely for purposes of this question 1.4, assume that (i) instead of executing the Partnership Agreement described above and forming a partnership, Andrew, Bob, Claire, and Dan validly formed a member-managed Louisiana limited liability company known as TKC LLC and (ii) Claire has assigned all of her rights in TKC LLC to Violet without informing the other members of TKC LLC that she had done so, and (iii) Michael has obtained a \$100,000 judgment against TKC LLC for his personal injuries.***
 - a. What right, if any, does Violet have to inspect TKC's business records? Explain. (5 points)**
 - b. As a member of TKC LLC, is Bob personally liable for any amount of the \$100,000 judgment the court awarded against TKC LLC? Explain. (5 points)**

[End of Question 1]

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**LOUISIANA STATE BAR EXAMINATION
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QUESTION 2 (40 POINTS)

The following eight subquestions are not related to each other. The subquestions in Question 2 are not weighted equally. Explain each answer; an answer without an explanation will receive no credit.

- 2.1** LDL Corp. is a validly-formed Louisiana corporation that owns and operates fast-food restaurants throughout the state. Tim, Stan, and Heather, who have no familial relationship to each other, are the sole shareholders of LDL Corp. Tim, Stan, and Heather are also the directors of LDL Corp.

LDL's directors convened a meeting to consider an offer received from LDL's main competitor, Hot Wings, Inc., to sell several Hot Wings restaurants to LDL for \$10 million. Without obtaining an independent estimate of the value of the restaurants offered for sale, LDL's directors unanimously voted to accept the offer. At the time of the vote, Tim was engaged to be married to Matilda. He knew that Matilda was Hot Wings, Inc.'s sole shareholder and that the restaurants offered for sale were worth no more than \$5 million. Tim did not disclose these facts to Stan and Heather prior to the vote by the directors. Neither the directors nor the shareholders took any further action to authorize or ratify the purchase.

Following the vote and LDL's purchase of the Hot Wings restaurants, Stan saw a news story involving Hot Wings and began investigating. Stan discovered the worth of Hot Wings and that LDL had overpaid by \$5 million dollars for the stores that it had purchased from Hot Wings. Stan and Heather, on behalf of LDL, brought an action against Tim to recover the loss.

- a. Was the vote by the LDL directors a Director's Conflicting Interest Transaction? Explain. (4 points)
 - b. Can Tim be held personally liable for payment of monetary damages to LDL resulting from his vote to accept Hot Wings' offer? Explain. (6 points)
- 2.2** Kitchen Design, L.P. ("KD") is a validly formed Louisiana partnership in commendam that offers residential kitchen design and construction services. KD's written partnership agreement filed with the secretary of state identifies Ken as a general partner and Sue and Charles as partners in commendam. The partnership agreement also states that Sue and Charles each will contribute \$50,000 to the partnership. Sue made her contribution. Charles did not.

Sue encouraged her best friend, Tina, to hire KD to design and build a kitchen for Tina's new home. Sue met Tina at KD's showroom several times to assist Tina in selecting appliances, cabinets, and countertops for her kitchen project and in taking Tina's orders for her selections. Several months after KD completed work on the kitchen, Tina brought a lawsuit against KD alleging poor workmanship and breach of contract. Tina ultimately obtained a judgment for \$100,000 against KD. KD currently has no assets or cash to satisfy the judgment. KD also owes \$30,000 to Appliances, Inc. for payment of appliances KD purchased for various kitchen projects.

- a. Is Sue personally liable for any amount of either the judgment obtained by Tina or the debt owed to Appliances, Inc.? Explain. (4 points)
- b. Is Charles personally liable for any amount of either the judgment obtained by Tina or the debt owed to Appliances, Inc.? Explain. (4 points)

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- 2.3 In a manager-managed limited liability company, what fiduciary duties, if any, are owed to the LLC by a member who is not a manager? Explain. (3 points)**
- 2.4 Under what circumstances, if any, may a partner be expelled from a partnership that is constituted for a term? Explain. (3 points)**
- 2.5 May a corporation unilaterally compel a shareholder to sell its shares to the corporation? Explain. (2 points)**
- 2.6 What is the statutory remedy provided for “shareholder oppression” under Louisiana law, and what conduct may constitute oppression? Explain. (5 points)**
- 2.7 What is a “unanimous governance agreement” (UGA) under Louisiana law; how is a UGA formed; and are there any limitations on what a UGA can do? Explain. (4 points)**
- 2.8 Sharon owns 10% of the outstanding common shares of a Louisiana corporation. She has owned the shares for more than a year. She wants to inspect the records of how a particular director voted at meetings of the corporation’s board of directors during the past year. Does Sharon have a right to inspect such records, and, if so, what, if any, requirement(s) must she satisfy in order to be permitted to inspect such records? Explain. (5 points)**

[End of Question 2]

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**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
JULY 2023**

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 Limited liability company; expulsion of member
- 3.2 Corporations; mergers
- 3.3 Agency; form of mandate
- 3.4 Corporations; authority under unanimous governance agreements
- 3.5 Corporations; quorum
- 3.6 Partnerships; liability of partners to third persons
- 3.7 Limited liability company; persons authorized to bind
- 3.8 Agency; express and apparent authority
- 3.9 Partnerships; formation
- 3.10 Partnerships; contribution

[End of Question 3]

END OF BUSINESS ENTITIES TEST

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
FEBRUARY 2023**

QUESTION 1 (40 POINTS)

Bernard, Emily, and Abby decided to go into business together to open and operate a restaurant, and they validly formed Good Food, Inc. (“Good Food”) in Louisiana for that purpose. Good Food’s articles of incorporation provide that it will have three directors; that Bernard, Emily, and Abby will serve as the initial directors; and that the corporation is authorized to issue 10,000 shares of stock. The articles also provide that no shareholder may inspect the records of Good Food unless the shareholder is an officer, director, or employee of Good Food.

Last year, on February 1, at a properly-convened meeting of the board of directors, Bernard, Emily, and Abby voted unanimously: (1) to appoint Bernard president and secretary of Good Food; (2) to authorize Bernard to negotiate the purchase of a suitable location for a restaurant; (3) to issue 2,000 shares each to Bernard, Emily, and Abby; and (4) to issue 4,000 shares to Courtney in exchange for her investment of \$200,000 in cash.

One month later, on March 1, at a properly-convened meeting of the board of directors, Bernard reported to Emily and Abby that he had found a perfect location for a restaurant—a warehouse owned by Family Holdings, Inc. (“Family Holdings”). Bernard explained that the warehouse was not listed for sale, but that he had negotiated with Family Holdings to purchase the warehouse for \$500,000. Bernard told Emily and Abby that \$500,000 was a fair and reasonable price for the warehouse, and he recommended that the board vote to approve the purchase. Emily and Abby asked no questions, and Bernard provided no additional information about Family Holdings or the warehouse. The directors voted unanimously to approve the purchase.

On April 1, Good Food and Family Holdings executed an act of the sale, and Good Food became the owner of the warehouse. Within a week, Bernard hired a construction team, which began work converting the warehouse to a restaurant. Shortly thereafter, Bernard became romantically involved with Emily, and for several months Bernard was so preoccupied with seeing Emily that he spent little time overseeing the construction work at the warehouse.

On July 1, Abby visited the warehouse and spoke with Stan, the leader of the construction team. Stan informed Abby that the construction was several weeks behind schedule due to a delay in purchasing a walk-in refrigeration unit for the restaurant. As Stan explained, two months ago he and Bernard had met with the president of Refrigeration, Inc. (“RI”) and selected a refrigeration unit to purchase for the restaurant. RI’s president provided Bernard a purchase order detailing the terms of the sale—specifically that RI agreed to sell the refrigeration unit to Good Food for \$100,000, with payment due ten days after delivery of the unit. Stan told Abby that Bernard had not signed the purchase order and that he had not seen or heard from Bernard since the meeting with RI’s president. Stan provided a copy of the purchase order to Abby and urged her to sign it in Bernard’s absence. Abby carefully reviewed the purchase order and attempted several times to contact Bernard to discuss the purchase order. But Bernard did not respond. Before leaving the warehouse that day, Abby signed the purchase order as “Abby, Member of Good Food Board of Directors,” and instructed Stan to deliver the signed purchase order to RI that day.

On July 15, RI delivered the refrigeration unit to Good Food’s warehouse. The next day, Bernard went to the warehouse, saw that the refrigeration unit had been delivered, and learned then that Abby had signed the purchase order. Bernard demanded that RI take back the refrigeration unit, claiming that Abby had no authority to sign the purchase order on behalf of Good Food. RI refused and demanded that Good Food honor its agreement to pay RI \$100,000 for the refrigeration unit.

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That evening, Bernard and Emily were married. At the wedding reception, Courtney overheard Bernard and his brother discussing Family Holdings and the warehouse. She learned that Bernard and his brother had formed Family Holdings in 2020; that Bernard owned 60% of Family Holdings' total authorized shares since its formation; and that Family Holdings purchased the warehouse for \$100,000 just a few months before it sold the warehouse to Good Food, based on an appraisal that was completed on the day Family Holdings purchased the warehouse. That appraisal valued the warehouse at \$100,000.

Three months after the wedding, Good Food's board of directors received a letter from Courtney detailing what she had learned in overhearing Bernard's conversation with his brother. Courtney demanded that Good Food's board of directors remove Bernard as a director and require Bernard to pay Good Food \$400,000—the difference between the price that Good Food paid for the warehouse and the amount for which the warehouse appraised when Family Holdings acquired it.

The next day, at a properly-convened meeting of the board of directors, Bernard admitted to Emily and Abby that Courtney's claims were all true. He also admitted that the warehouse was worth \$100,000 when the Good Food's board voted to authorize its purchase of the warehouse for \$500,000. Bernard left the room, and directors Emily and Abby voted unanimously to approve and ratify Good Food's purchase of the warehouse for \$500,000. They also passed a resolution stating that Good Food's board of directors remained fully confident in Bernard's ability to serve as a director and officer of Good Food; that the board would not remove Bernard as a director or officer; and that the board would not require Bernard to pay any amount to Good Food for any reason relating to Good Food's purchase of the warehouse. Emily mailed a copy of the resolution to Courtney that day with a cover letter stating: "Courtney, this is what you get for eavesdropping at my wedding."

Since receiving the copy of the resolution from Emily, Courtney has sent numerous letters to Good Food's board of directors requesting access to inspect Good Food's corporate records. The board has refused all of her requests based on the provision in Good Food's articles of incorporation that a shareholder may not inspect Good Food's records unless the shareholder is an officer, director, or employee of Good Food. And most recently, the board of directors sent a letter to Courtney last month demanding that she stop bothering them with her "silly" requests and threatened to exclude her from all Good Food shareholder events and meetings.

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

- 1.1 What duties, if any, did Bernard breach by his actions involving Good Food's purchase of the warehouse? Explain fully. (6 points)**
- 1.2 Can Bernard be held liable for payment of damages to Good Food for any loss or harm Good Food might have sustained in purchasing the warehouse from Family Holdings for \$500,000? Explain fully. (15 points)**
- 1.3 Does Courtney have a right to inspect Good Food's corporate records? Explain fully. (5 points)**
- 1.4 What amount, if any, can RI recover from Good Food for payment of the refrigeration unit? Explain fully. (6 points)**
- 1.5 Courtney has brought an action under Louisiana law to withdraw from Good Food and require Good Food to buy her shares at fair value based on shareholder oppression. Is she likely to succeed? Explain fully. (8 points)**

[End of Question 1]

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**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
FEBRUARY 2023**

QUESTION 2 (40 POINTS)

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

2.1 *The following facts pertain only to Question 2.1:*

Mason and Oscar formed a validly organized partnership (“MO Partnership”) to construct modular homes. They agreed that Mason would contribute \$50,000 in cash to fund the purchase of materials and that Oscar would perform the construction services to build the homes. Mason’s contribution would be made within 30 days after MO Partnership was formed. They further agreed to share the profits equally.

Six weeks later, a subdivision developer and MO Partnership signed a construction contract under which MO Partnership agreed to build 10 homes for the developer. Before purchasing any materials for this work, Oscar received MO Partnership’s bank statement and discovered that Mason’s \$50,000 contribution had not been made. Oscar asked Mason to make the contribution, since they needed working capital to purchase the materials to build the homes for the subdivision developer. Citing monetary problems, Mason refused to put up his contribution and told Oscar that he would need at least three to four months before he would be able to raise the money. The lack of funds caused MO Partnership to breach the construction contract with the developer. Angry with Mason’s failure to make his agreed contribution, Oscar is considering forming his own company to take over the project.

What steps might Oscar take to create a new business entity for the purpose of taking over the construction project? Explain fully. (6 points)

- 2.2** Which contracts does a single partner, acting alone, have the authority to enter into on behalf of the partnership? Explain fully. (5 points)
- 2.3** Paula is a partner of a partnership. If a third party files a lawsuit against Paula by virtue of her status as a partner of the partnership, and Paula successfully defends the suit, is Paula automatically entitled to reimbursement from the partnership for reasonable attorneys’ fees Paula incurred in defending the suit? Explain fully. (5 points)
- 2.4** What information is required in the organizational document of a Louisiana partnership in commendam, and what are the filing requirements, if any? Explain fully. (4 points)
- 2.5** For a partnership in commendam, what duties/responsibilities is a partner in commendam allowed to have and what activities, if any, must a partner in commendam avoid in order to preserve his/her limited liability protection? Explain fully. (5 points)

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2.6 *The following facts pertain only to Question 2.6:*

Troy and Barry decided to form a limited liability company. They executed and filed with the Secretary of State the proper organizational documents to form the LLC. These organizational documents contain only the minimum requirements for formation of the LLC, and the LLC has no operating agreement. After the LLC had been in operation for several years, Troy died. His son, Junior, who has been placed into possession of all of Troy's assets by a proper judgment of possession in Troy's succession proceedings, wants to become a member of the LLC.

Is Junior entitled to be admitted as a member of the LLC? Explain fully. (6 points)

2.7 What are the differences in the formation and operation of a member-managed LLC and a manager-managed LLC? Explain fully. (5 points)

2.8 For a manager-managed LLC, list four types of decisions that require the vote of the membership. (4 points)

[End of Question 2]

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**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
FEBRUARY 2023**

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 Corporations; indemnification
- 3.2 Agency; form of mandate
- 3.3 Corporations; provisions for protecting against shareholder dilution
- 3.4 Corporations; meeting and quorum requirements
- 3.5 Partnership; partnership contributions
- 3.6 Corporations; authority under unanimous governance agreements
- 3.7 Corporations; mergers
- 3.8 Agency; express and apparent authority
- 3.9 LLC; dissolution
- 3.10 LCC; dividing profits

[End of Question 3]

END OF BUSINESS ENTITIES TEST

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
JULY 2022**

QUESTION 1 (40 POINTS)

Crazy Lanes, Inc. (“CLI”) owns and operates a popular bowling alley. CLI has three directors – Claire, Emily, and Rusty – and one officer, Margo, who serves as president and secretary. Claire and Rusty are married to each other.

Other than names and street addresses, CLI’s articles of incorporation provide only that CLI will have three directors, that CLI is authorized to issue 300 shares, and that no shareholder may inspect CLI’s records unless that shareholder is an employee of CLI.

Two years ago, CLI expanded the bowling alley to add a restaurant. The restaurant has been a big success, and its signature dish, the Two-Pound Burger, has become a local sensation. CLI subsequently opened several drive-through restaurants throughout the state serving the Two-Pound Burger.

One month ago, CLI received an offer from Beef House, Inc. (“BHI”), a local fast-food chain, to purchase CLI’s entire drive-through business for \$10 million. CLI’s directors convened a meeting to discuss the offer and invited Margo to attend. At the meeting, Margo expressed concern that BHI’s offering price was too low. She recommended that CLI hire an accounting firm to provide an estimate of the value of the drive-through business. Rusty, the board’s chairman, thanked Margo for her input and said that the directors would discuss the matter further.

After Margo left the meeting, Rusty said to the other directors: “I don’t know what Margo is thinking. Our drive-through business is not worth \$10 million – not even close. We need to accept BHI’s offer right now, before BHI realizes it has offered too much. We should vote on it right now.” Claire and Emily were never very interested in CLI’s business, and they had no idea what the drive-through business was worth. They did what Rusty suggested, and the three directors voted unanimously to accept BHI’s offer and to authorize the sale of the drive-through business to BHI. At the time the directors voted, Rusty knew that \$10 million was not a fair price for the drive-through business. He also owned 40 percent of BHI’s total stock shares, which he did not disclose to Claire or Emily before the directors voted.

One week after the directors voted, Margo hired an accounting firm on behalf of CLI to estimate the value of CLI’s drive-through business. She received the report just a few days ago. The report states that, on the day the directors voted to sell the drive-through business, the business was worth at least \$30 million. Margo resigned from CLI the following day, but before she left, she wrote a letter to CLI’s shareholders informing them of the board’s actions and the accounting firm’s report.

Once news of the pending sale broke to the public, the share price of BHI’s stock skyrocketed, just as Rusty expected it would.

Abigail owns six percent of CLI’s issued shares. She inherited the shares from her grandfather one year ago. She wants to bring an action to prevent CLI’s sale of the drive-through business to BHI, and she wants to review the accounting firm’s report. CLI and BHI are planning to execute the sale in one week.

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

- 1.1 In light of the provision in CLI’s articles of incorporation that no shareholder may inspect the company’s records unless the shareholder is an employee of CLI, does Abigail have any right to review the accounting firm’s report; and, if so, what steps must she take to exercise that right? Explain fully. (5 points)**
- 1.2 What grounds, if any, does Abigail have to challenge the validity of the directors’ vote to accept BHI’s offer, and what steps, if any, can CLI’s directors take to prevent or defeat any challenge to that vote? Explain fully. (15 points)**

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1.3 What fiduciary duties do Rusty, Claire, and Emily owe as directors of CLI, and what, if any, duties did they breach by voting to accept BHI's offer? Explain fully. (6 points)

1.4 *Solely for purposes of this question 1.4, assume the following:*

- *The sale of CLI's drive-through business to BHI has already occurred.*
- *Abigail brought a derivative action for damages against Rusty, Claire, and Emily.*
- *As a result of the derivative action, the court found that \$10 million was not a fair price for CLI's drive-through business; that the three directors breached their fiduciary duties to CLI by voting to accept BHI's offer; and that CLI sustained damages from that breach.*

- a. Are the three directors personally liable to pay damages to CLI? Explain fully. (7 points)
- b. Would CLI be permitted, if it chooses, to indemnify the three directors for the legal expenses they incurred in connection with the derivative proceeding? Explain fully. (7 points)

[End of Question 1]

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
JULY 2022**

QUESTION 2 (40 POINTS)

PART A (20 POINTS)

Andy, Bob, Carl, Daryl, and Earl are brothers and members in a member-managed Louisiana limited liability company (“LLC”) that owns several acres of land. The five brothers each own a one-fifth membership interest in the LLC. Bob maintains the financial records of the LLC in the safe at his home.

A few months ago, Earl was killed in a car accident. His surviving daughter, Matilda, inherited Earl’s membership interest in the LLC. One month later, Andy invited Bob, Carl, Daryl, and Matilda to attend the meeting to discuss the future of the LLC.

At the meeting, Andy called for a vote to approve the sale of LLC’s land. Andy, Bob, and Matilda voted to approve the sale of the land. Carl and Daryl voted against. The following day, Andy contacted a real estate broker to have the LLC’s land listed for sale.

During the same meeting, immediately following the vote, Carl told Bob that he would like to review the company’s financial records during a weekday morning within the next ten business days. Bob did not respond to the request at the meeting, nor did Bob respond to an email Carl sent two days after the meeting reiterating his request to review the records.

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

- 2.1 What, if anything, can Carl and Daryl do to prevent the sale of the LLC’s land; and, if they can, on what grounds? Explain fully. (15 points)**
- 2.2 What right, if any, does Carl have to review the LLC’s financial records? Explain fully. (5 points)**

PART B (20 POINTS)

Five years ago, Sara and Eric opened a medical diagnostic imaging center, Accurate Imaging Center (“AIC”). They operated the business as a partnership and shared equally in the profits and expenses of the business.

Four months ago, while Sara and Eric were having lunch, Eric suggested that they begin upgrading some of their imaging equipment, starting with AIC’s MRI machine. Sara knew there was nothing wrong with the one machine they had, and she believed buying a new one would be a waste of money, but she did not express her concern to Eric.

The following month, Eric, without informing Sara, purchased a new MRI machine for \$3 million. When Sara learned of the purchase, she confronted Eric: “What were you thinking, Eric! There is nothing wrong with the MRI machine we have! How can you spend \$3 million of our money on a new MRI machine that we don’t need and not even think to speak with me about it first?”

Eric responded, “MRI service is a huge part of our business, and we need to have the best MRI machine available to remain competitive. Plus, if I had checked with you before I purchased it, you just would have said, no.” Sara replied, “I can’t be a partner with you in this business if that’s how you think! I quit!” To which Eric replied, “Fine! Leave! I can run this \$40 million business perfectly fine without you!” Sara packed up her office and left that day.

One month later, Eric signed an agreement with Parts Inc. to purchase repair parts for one of AIC’s X-ray machines. The parts cost \$20,000, with payment due ten days after delivery.

One week later, the X-ray repair parts were delivered to AIC. That night, AIC’s facility and all its contents, including the X-ray repair parts, were destroyed in a fire. The \$20,000 balance for the X-ray repairs remains unpaid.

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

- 2.3 Did Eric have authority to purchase the MRI machine without Sara’s consent? Explain fully. (5 points)**
- 2.4 Did Sara properly withdraw from the partnership? Explain fully. (5 points)**
- 2.5 *Solely for purposes of this question 2.5, assume that Sara properly withdrew from the partnership. What amount, if any, is Sara entitled to receive for her share in the partnership? Explain fully. (5 points)***
- 2.6 *Solely for purposes of this question 2.6, assume that Sara did not properly withdraw from the partnership. What amount, if any, can Parts Inc. recover from Sara for the \$20,000 balance owed for X-ray repair parts? Explain fully. (5 points)***

[End of Question 2]

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
JULY 2022**

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 Partnership; formation
- 3.2 Limited Liability Company; persons authorized to bind
- 3.3 Corporation; meeting and quorum requirements
- 3.4 Corporation; election of directors
- 3.5 Limited Liability Company; allocation of profits
- 3.6 Corporation; officers
- 3.7 Partnership; immoveable property
- 3.8 Partnership; liability of partners to third persons
- 3.9 Corporation; authority under unanimous governance agreements
- 3.10 Corporation; provisions for protecting against shareholder dilution

[End of Question 3]

END OF BUSINESS ENTITIES TEST

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
FEBRUARY 2022**

QUESTION 1 (40 POINTS)

Ernest Smith was a successful sugar cane farmer. He had three children: Evan, William, and Molly. Ernest employed all of them in his business. In 2002, Ernest decided to retire and to hand over his farming business to his children. That year, Ernest formed Sugar Farm, Inc. The articles of incorporation provided only the following: (1) the corporation would have three directors; (2) the directors would be elected annually by a majority vote of the shareholders; (3) the articles named Evan, William, and Molly as the initial directors; (4) an authorization for Sugar Farm to issue 300 shares of stock; and (5) the election of preemptive rights.

At the first meeting of the board of directors, Evan, William, and Molly voted to appoint Evan as president, William as secretary, and Molly as treasurer. The directors also approved the issuance of Sugar Farm's 300 authorized shares to the directors, each receiving 100 shares.

Sugar Farm grew rapidly under the leadership of Ernest's children, and as the business grew, Ernest's children were able to employ their own children in the business. Evan, William, and Molly informally agreed that Sugar Farm would offer to each of their children, on his or her 18th birthday, full-time employment with Sugar Farm.

Ten years ago, Evan discovered that Molly had embezzled \$5,000 from Sugar Farm's accounts. Evan and William voted to remove Molly as a director, and Evan terminated Molly's employment with Sugar Farm. Evan and William did not appoint or elect a new director to replace Molly.

One year ago, Molly died. She left all her shares in Sugar Farm to her only child, Elaine. Before Molly died, she told Elaine about the agreement she and her brothers had to offer full-time employment to each child in the Smith family on the child's 18th birthday.

Elaine turned 18 one month after Molly died. She wrote a letter to her uncles Evan and William asking if they would allow her to work for Sugar Farm. Evan and William were not receptive. After receiving Elaine's letter, Evan emailed William: "Just received a letter from Molly's kid asking for a job. I have no intention of allowing that brat to join our family business! Hope you agree." William responded: "I agree completely! Let's discuss a more permanent solution to keep her out of our affairs. The brat currently owns one-third of our company!" Evan and William then sent a letter to Elaine, refusing her request for employment, providing no explanation for the refusal.

The following day, Evan and William convened a meeting of the board of directors and voted to approve the following resolutions: (1) to increase Sugar Farm's authorized shares from 300 to 1,000 shares; (2) to issue 150 shares each to Evan and William, as additional compensation for their employment with Sugar Farm; (3) to issue 100 shares each to four children of Evan and William who were currently employed by Sugar Farm, as additional compensation for their employment; (4) to amend the articles of incorporation to provide that no shareholder may inspect corporate records unless the shareholder is employed by the corporation; and (5) to discontinue annual dividend payments to shareholders and to apply the funds instead to increase the salaries of Evan, William, and the four children of Evan and William currently employed by Sugar Farm.

One month ago, Elaine signed and sent a letter to William requesting copies of, or access to, all written offers of employment sent by Sugar Farm to any member of the Smith family. Elaine stated in her letter that she seeks access to the requested documents in order to determine whether she was unfairly treated in being denied employment with the company. William sent a reply letter to Elaine denying her request, stating: "Although you are a shareholder of record holding more than five percent of Sugar Farm's issued shares, and you have held those shares for more than six months, you are not currently employed by Sugar Farm and, therefore, have no right to inspect any records of the corporation."

Yesterday, Sugar Farm held its annual shareholders' meeting at its principal office in Baton Rouge. Evan and William orally informed their children of the shareholders' meeting but did not provide written notice of the meeting to any shareholders.

TEST CONTINUES ON NEXT PAGE

Although Elaine did not receive written notice of the meeting, one of her cousins told her about the meeting. Elaine attended the meeting along with every other shareholder.

At the start of the meeting, William announced that the board of directors would be proposing two amendments to the articles of incorporation for approval by the shareholders: (1) an amendment to reduce the number of directors from three to two, and (2) an amendment to add a provision that “no director or officer of Sugar Farm, Inc. shall be liable to the corporation or its shareholders for any action taken, or any failure to take action, as a director or officer.” Elaine shouted: “I was not provided written notice of this shareholders’ meeting or of the proposed amendments. I object to this meeting and any voting on the proposed amendments.” The meeting continued, and votes were taken on the proposed amendments. Elaine voted her 100 shares against the proposed amendments. The remaining shareholders voted their shares (900 shares) in favor of the proposed amendments. William then announced: “Both proposed amendments have been approved by a majority vote of the shareholders and are hereby adopted.”

This morning, Elaine discovered that during the past several months, Evan and William, as directors, voted to authorize the use of corporate funds to pay for improvements made to their private residences.

- 1.1. What potential grounds, if any, does Elaine have for an action to invalidate the issuance of the 700 new shares to Evan, William, and their children or, alternatively, to require Sugar Farm to issue additional shares to her? What defenses might reasonably be raised, and is Elaine likely to succeed? (10 points)**
- 1.2. What rights, if any, does Elaine have to inspect Sugar Farm’s corporate records? What steps, if any, must she take to obtain access to any written offers of employment sent by Sugar Farm to members of the Smith family? Explain fully. (5 points)**
- 1.3. Can Elaine bring an action to compel Evan and William to reimburse Sugar Farm for payments made for improvements to their private residences? Discuss fully what type of action(s); the requirements of any such action(s); and the likelihood of success of such action(s) that Elaine might bring and any defenses that Evan, William, or any other party might assert to any such action(s). (10 points)**
- 1.4. What action(s), if any, can Elaine bring to compel Sugar Farm to purchase her shares? What must Elaine establish to obtain that relief, and is she likely to succeed? Explain fully. (5 points)**
- 1.5. On what grounds may Elaine seek to invalidate the amendment approved by the shareholders reducing the number of directors from three to two, and is she likely to succeed? Explain fully. (10 points)**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
FEBRUARY 2022**

QUESTION 2 (40 POINTS)

Part A – 24 Points

Claire, Andrew, and Rusty are avid homebrewers. They decided to go into business together and open a brewery. They agreed that they would share equally in the profits and losses of the business and that they would conduct the business as a limited liability company. They agreed to call the company Swamp Juice.

Claire, Andrew, and Rusty prepared and signed articles of organization and an initial report. Andrew told the others he would file the documents with the Secretary of State's office that day, but it slipped his mind, and he never filed the documents.

The following day, Claire informed Andrew and Rusty that a local brewery, Bad Beer, Inc., was going out of business and was seeking a buyer for its brewery equipment. The three agreed that Swamp Juice needed brewery equipment and that Claire should purchase Bad Beer, Inc.'s brewery equipment.

Claire contacted Bad Beer, Inc. and agreed to purchase the brewery equipment for \$50,000. Claire did not inform Bad Beer, Inc. that she was purchasing the equipment for Swamp Juice, and she signed a purchase agreement as "Claire." The purchase agreement required payment in full within one month of delivery.

Later that same day, Rusty was driving through town looking for a suitable location for Swamp Juice's brewery. He spotted a vacant warehouse and contacted the owner. The owner offered to sell the warehouse for \$40,000. Rusty called Claire and Andrew and informed them of the warehouse and the offer. Claire and Andrew were pleased with the amount of the offer, but they told Rusty not to accept the offer until they had a chance to visit the warehouse with him.

The warehouse owner overheard Rusty's conversation with Claire and Andrew. After the call, the warehouse owner said to Rusty: "I know your buddies want to see the warehouse first, but if you accept my offer right now, I'll agree to finance the entire purchase price." Rusty accepted the offer. He and the owner proceeded to a nearby notary's office and executed an act of sale and a \$40,000 promissory note. Rusty signed each of the documents as "Swamp Juice, through Rusty, its representative."

One week later, the brewery equipment was delivered to the warehouse. Claire, Andrew, and Rusty began assembling the equipment in preparation for their first brew. The following day, a boiler tank collapsed, spilling hundreds of gallons of boiling fluid onto the warehouse floor. In the chaos of the accident, Rusty forgot to turn off the gas supply to the boiler. The warehouse caught fire that evening. The warehouse and all of its contents were destroyed in the fire. No payments have been made to date on either the purchase agreement with Bad Beer, Inc. or the \$40,000 promissory note.

- 2.1. Who is liable to Bad Beer, Inc. for the purchase price of the brewery equipment? Explain fully. (12 points)**
- 2.2. Who is liable on the \$40,000 promissory note for the purchase of the warehouse? Explain fully. (12 points)**

TEST CONTINUES ON NEXT PAGE

Part B – 16 Points

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

- 2.3. What are “emergency powers” for a Louisiana corporation, and how are such powers used? (5 points)**
- 2.4. What is a “unanimous governance agreement” for a Louisiana corporation? (5 points)**
- 2.5. Can shareholders of a Louisiana corporation unilaterally remove a director, and, if so, under what circumstances? (6 points)**

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
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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. Partnership; member contributions
- 3.2. Partnership; liability for partnership debts
- 3.3. Approval needed for transaction of corporate director
- 3.4. LLC; division of profits
- 3.5. Partnerships; formation
- 3.6. LLC; dissolution
- 3.7. Indemnity for corporate directors
- 3.8. Authority for LLC managers
- 3.9. Management of the affairs of another (negotiorum gestio)
- 3.10. LLC; authority of members for extraordinary transactions

[End of Question 3]

[END OF BUSINESS ENTITIES TEST]

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
FEBRUARY 2020**

QUESTION 1 – 40 POINTS

Part A – 20 POINTS (5 points each subpart)

Questions 1.1-1.4 are based on the following facts:

Allison, Billy and Clayton want to form a Louisiana corporation to sell college football championship apparel. They will name their business “ABC, Inc.” and initially issue 350 shares of stock. Allison will own 150 shares, Billy will own 100 shares, and Clayton will own 100 shares. ABC, Inc. will also be authorized to issue an additional 150 shares. All shares will be without par value. Billy and Clayton will run the day-to-day business, and Allison will be a silent investor with no managerial responsibilities. Allison, Billy and Clayton want the right to maintain their respective ownership percentages in the event ABC, Inc. decides to sell the authorized, but unissued 150 shares. They also want a right of first refusal to purchase each other’s shares in the event a shareholder decides to sell his or her shares. Finally, they want to require that any new prospective shareholder be approved by a majority vote of the current shareholders.

- 1.1 (a) What organizational papers are necessary to form ABC, Inc. as a Louisiana corporation? (b) What minimum information must be included in these papers to validly form ABC, Inc.? (c) What, if any, additional provisions are required to achieve the objectives as stated above?**
- 1.2 (a) Is ABC, Inc. required to issue certificates of stock representing the shares to be issued? Explain. (b) If ABC, Inc. issues certificates of stock, what information is to be shown on each share certificate? (c) If ABC, Inc. does not issue stock certificates, will this change the rights and obligations Allison, Billy or Clayton owe to ABC, Inc.? Explain.**
- 1.3 (a) Does the law require that any of Allison, Billy and Clayton be an officer or director of ABC, Inc.? Explain. (b) What officer positions (if any) must they elect? (c) May Billy hold more than one officer position at one time? Explain. (d) Does the law require that the officers also be directors? Explain. (e) What is the difference between straight voting and cumulative voting for director positions? (f) When will shareholders have cumulative voting rights?**
- 1.4 Assume that Allison, Billy and Clayton want to form a Louisiana limited liability company (LLC) instead of a corporation for their proposed venture. To achieve the objectives stated above, should the LLC be formed as a member-managed LLC or instead as a manager-managed LLC? Explain the difference between these two forms of LLC.**

Part B – 20 POINTS (5 points each subpart)

Questions 1.5-1.8 are based on the following facts:

Three radiologists—Amanda, Jack, and Matthew—opened a radiology practice together six years ago. They agreed to call their business “X-Ray Mart,” to divide the profits equally, and to run the practice together in a manner that would be competitive. Toward that end, they purchased state-of-the-art radiology imaging equipment comparable to that of other radiology offices in the community.

Shortly after opening the practice, Amanda, Jack, and Matthew retained an attorney to organize the practice as a limited liability company. The attorney prepared the appropriate articles of organization and the initial report and forwarded the documents to Amanda, Jack, and Matthew for signature. They each signed and dated the documents; however, they were so involved in their radiology practice that they did not send the documents to the attorney or anyone else.

A month ago, Amanda suggested to Jack and Matthew that the practice replace some of the imaging equipment. Jack was worried about overspending on imaging equipment, but he did not express his concern to Amanda and Matthew.

A week ago, Amanda, without discussing the matter further with either Jack or Matthew, purchased for the office a \$400,000 state-of-the-art digital x-ray machine like those recently acquired by other radiology offices in the community.

Yesterday, after the purchase but prior to delivery, Jack learned what Amanda had done and was furious. Jack did not believe the practice could afford such an expensive machine. When Jack confronted Amanda, Amanda said, “Too bad, it’s a done deal—get over it.” At that, Jack responded, “That’s it. I’ve had enough. This machine was purchased without my consent. It’s a terrible idea. I’m out of here and never coming back. Just give me my share of the value of the practice.” Worried that Jack’s withdrawal would jeopardize critical contract negotiations that the practice needed to finalize with certain insurance companies, Amanda asked Jack to reconsider. But Jack replied, “Nope. My mind is made up.”

- 1.5 What type of business entity is X-Ray Mart? Explain fully.**
- 1.6 Did Amanda have the authority to purchase the imaging machine; and if so, were there any actions that Jack and Matthew could have taken to revoke or limit her authority? Explain fully.**
- 1.7 Did Jack’s statements to Amanda constitute an effective withdrawal from X-Ray Mart? Explain fully.**
- 1.8 *Assume for this question 1.8 that Jack’s withdrawal from X-Ray Mart was effective. What, if anything, should he be entitled to from X-Ray Mart, and who would be obligated to pay it? Explain fully.***

[End of Question 1]

**LOUISIANA STATE BAR EXAMINATION
BUSINESS ENTITIES
FEBRUARY 2020**

QUESTION 2 – 40 POINTS

PART A – 30 POINTS (10 points each subpart)

Questions 2.1-2.3 are based on the following facts:

Helios, Inc. (Helios), a Louisiana corporation, was formed in 2018. Helios’s certificate of incorporation states that its purpose is “to manufacture or market solar cells and panels, and no other purpose.” Helios’s shares are publicly traded.

Donna purchased shares in Helios in January 2019. Two months later, Helios’s board of directors properly called a directors’ meeting to consider whether Helios would invest \$500,000 in a Utah lithium ion battery manufacturer. Although not a director of Helios, Donna appeared at the directors’ meeting to object to the proposed investment. Over Donna’s objections, Helios’s board of directors voted unanimously to invest in the lithium ion battery manufacturer. Two days after the approval, it became public knowledge that the chairman of Helios’s board of directors partially owned the battery manufacturer.

Two weeks after the board of directors’ approval, Helios wired \$500,000 to complete the investment in the lithium ion battery manufacturer. Since then, the value of Helios’s investment in the battery manufacturer has fallen to zero, which caused the value of Helios’s shares to drop by one-half of what it was when Donna acquired her shares in Helios.

- 2.1 At the time of the board meeting, what actions might Donna have taken to prevent Helios from investing in the battery manufacturer; and for each such action is she likely to succeed? Explain fully.**
- 2.2 What actions, if any, should Donna take to recover her losses in her Helios stock? Explain fully, including the basis for any action and any procedural requirements.**
- 2.3 Assume that Donna sold all of her shares of Helios, Inc. to Carol the day after the board approved Helios’s investment in the battery manufacturer. (a) What action, if any, might Carol have taken to block the battery manufacturer investment? (b) What action, if any, might Carol take to recover her losses in her Helios stock? Explain fully.**

Part B – 10 POINTS - Short Answer (2 points each)

- 2.4 What is a “qualified director”?**
- 2.5 What records of a corporation may a shareholder inspect? What are the requirements for a shareholder to inspect the records of a corporation?**
- 2.6 How are the officers and directors of a corporation elected, and by what vote?**
- 2.7 What is a unanimous governance agreement? Discuss.**
- 2.8 What is the difference between express and implied authority by an agent?**

[End of Question 2]

**LOUISIANA STATE BAR EXAMINATION
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QUESTION 3 – 20 POINTS

The following subject matters were tested in this multiple choice section:

Agency; express and apparent authority (2 questions)
Agency; form of mandate
Corporations; voting
LLC; dissolution
LLC; management and division of profits
Negotiorum gestio
Partnership; liability for partnership debts
Partnership; partnership buyouts
Unanimous governance agreements

[End of Question 3]

END OF BUSINESS ENTITIES TEST