



LOUISIANA FEBRUARY 2015 BAR EXAM MODEL ANSWERS

Code 1 Model Answer
February 2015 Exam

Question One

- 1.1 Yes, the contract the couple signed the morning of their wedding is an enforceable matrimonial agreement. A prenuptial matrimonial agreement is enforceable without requirement of court approval, and there is no requirement of execution a specified period in advance of the marriage ceremony. A contract signed any time in advance of the marriage ceremony will still be classified as a prenuptial matrimonial agreement. Such an agreement must be made by authentic act or act under private signature duly acknowledged. Here, Henry and Wendy signed the agreement before a notary and two witnesses. That the notary and witnesses were friends and family of one of the parties to the agreement is immaterial. There is no requirement that notaries and witnesses to an authentic act be "strangers" to the parties. Wendy may attempt to have the agreement declared a relative nullity, claiming duress, since she "reluctantly" signed it. She is not likely to succeed on this claim. The pressure one feels to sign an agreement due to a planned marriage ceremony has never been held to give rise to duress; rather, a court would need to find that Wendy's will was absolutely overborne such that she was forced to sign an agreement against her will. Those facts are not present here.

One portion of the agreement, however, will be null. Henry and Wendy attempted to waive both interim and final periodic support through this matrimonial agreement. Waivers of final periodic support, when executed in proper form, are perfectly permissible. But waivers of interim spousal support have been held by the Louisiana Supreme Court to violate public policy. As a result, the provision attempting to waive interim spousal support (and that provision only) will be unenforceable.

(It should be noted, for the purposes of answering the parts below, that the parties did not attempt to develop a separate property regime through this agreement, nor did they attempt to modify Louisiana's default community property regime in any way.)

- 1.2 The New Orleans family home will be Henry's separate property. Because the parties possessed the home during the course of their marriage, it will be presumed community property, but Henry can easily overcome that presumption. Wendy did not sign the act of sale, nor does her name appear on the title, but those facts are wholly irrelevant to classification of property in Louisiana. Rather, the home will be classified in accordance with the source of the funds used to acquire it. Here, the couple used \$10,000 of community property. The money given by Wendy's parents after the wedding is community property because it was given by joint donation. The intent of the donor is the controlling test. Wendy's parents may testify that they intended to give the money to their daughter alone, but a judge is not likely to be persuaded that this was their intent at the time of the donation. A gift given to the couple just after the wedding ceremony is likely intended as a joint gift.

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Albert A Gayle



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Table of Contents July 2013 Louisiana Bar Exam Model Answers

1. Understanding the eBook July 2013 Louisiana Bar Exam Model Answers
 - The Rise of Digital Reading July 2013 Louisiana Bar Exam Model Answers
 - Advantages of eBooks Over Traditional Books
2. Identifying July 2013 Louisiana Bar Exam Model Answers
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an July 2013 Louisiana Bar Exam Model Answers
 - User-Friendly Interface
4. Exploring eBook Recommendations from July 2013 Louisiana Bar Exam Model Answers
 - Personalized Recommendations
 - July 2013 Louisiana Bar Exam Model Answers User Reviews and Ratings

- July 2013 Louisiana Bar Exam Model Answers and Bestseller Lists
- 5. Accessing July 2013 Louisiana Bar Exam Model Answers Free and Paid eBooks
 - July 2013 Louisiana Bar Exam Model Answers Public Domain eBooks
 - July 2013 Louisiana Bar Exam Model Answers eBook Subscription Services
 - July 2013 Louisiana Bar Exam Model Answers Budget-Friendly Options
- 6. Navigating July 2013 Louisiana Bar Exam Model Answers eBook Formats
 - ePub, PDF, MOBI, and More
 - July 2013 Louisiana Bar Exam Model Answers Compatibility with Devices
 - July 2013 Louisiana Bar Exam Model Answers Enhanced eBook Features
- 7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of July 2013 Louisiana Bar Exam Model Answers
 - Highlighting and Note-Taking July 2013 Louisiana Bar Exam Model Answers
 - Interactive Elements July 2013 Louisiana Bar Exam Model Answers
- 8. Staying Engaged with July 2013 Louisiana Bar Exam Model Answers
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers July 2013 Louisiana Bar Exam Model Answers
- 9. Balancing eBooks and Physical Books July 2013 Louisiana Bar Exam Model Answers
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection July 2013 Louisiana Bar Exam Model Answers
- 10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
- 11. Cultivating a Reading Routine July 2013 Louisiana Bar Exam Model Answers
 - Setting Reading Goals July 2013 Louisiana Bar Exam Model Answers
 - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of July 2013 Louisiana Bar Exam Model Answers
 - Fact-Checking eBook Content of July 2013 Louisiana Bar Exam Model Answers
 - Distinguishing Credible Sources

13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements
 - Interactive and Gamified eBooks

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