LOUISIANA STATE UNIVERSITY LAW CENTER
Final Examination

Louisiana Civil Law Obligations (§ 1) Wednesday, April 26, 2000
Professor Trahan 1:30 to 5:45 pm

INSTRUCTIONS

1. This is a closed-book exam. You may not consult any materials other than (i) the exam packet itself and (ii) the statutory appendix.

2. Before you begin reading the exam, make sure you have all of the pages. There are fourteen (14) pages in all.

3. Do not sign your paper. Identify your paper using only your exam number.

4. You have a total of four (4) hours and fifteen (15) minutes (4.25 hours) to complete this exam. To assist you in budgeting your time, I have indicated the amount of time that I think you should spend on each Part of the exam. This time is also indicative of the weight I will assign to each Part. You may, of course, allocate your time as you wish. But be careful not to get behind. If you do, chances are you will never catch up. Further, whatever you do, be sure not to leave any of the Parts entirely unanswered. Unanswered questions will receive zero points.

5. Be sure to justify every answer that you give to the extent time permits. Unexplained or undocumented answers won’t get you much.

6. In answering the questions in this exam, you should apply (i) only the law that you learned in this course and (ii) the current law and the current law only.

7. If you should encounter what you consider to be some anomaly, inconsistency, or contradiction in one of the narratives, DON’T JUST SIT THERE PUZZLED. Instead, come find me and ask me for a clarification.

8. If, for some reason, you think that you need additional information in order to answer a question, you may make reasonable alternative assumptions and proceed accordingly. But be sure to identify those assumptions and to explain how they affect your answer.

9. Record your answers to the Questions in all Parts of the exam in the exam packet itself. Do your best to confine your answers to the space provided. If it’s absolutely essential, you can complete the last sentence of your answer on the back.

10. Scattered throughout the exam are footnotes that contain helpful “hints” and “notes.” Be sure not to overlook them. REMEMBER: Only an idiot fails to read the footnotes to an exam.

I (40 minutes)

Saúl has decided to enter a new line of business--rice farming. To do that, however, he needs (among other things) some land and some equipment. Confident that he’ll have no trouble getting the land, he concentrates first on getting the equipment. And so he approaches Alain, who owns a tractor, with the following proposal: "If I buy a tract of land suitable for rice farming by May 1 of this year, which I reserve the right not to do, then I’ll rent your tractor from you for a period of six (6) months, starting May 1 of this year, for a price of $100 per month." "Provided that I retain the right to terminate the lease at any time before the end of that six-month period, at my sole discretion, on, say, one week's notice," Alain answers, "we have a deal." "Hecho!" says Saúl. "Fait!" says Alain. The date is March 1 of this year.

1 Trans.: “Done!”

2 Trans.: “Done!”
A
(15 of the 40 minutes)

In early March the rice market hits “rock bottom.” Saúl, now recognizing that he will lose money if he goes into rice farming, drops the idea and, so, makes no further effort to buy farmland.

It is now May 2. What rights, if any, does Alain have against Saúl? Explain.

B
(10 of the 40 minutes)

Forget Part A. In early March Alain gets an offer from Katherine to lease the tractor for one year, starting April 15, for $500. On April 2 Alain, mistakenly believing that the date for execution of his lease to Saúl was April 1 (instead of May 1) and having heard nothing from Saúl, accepts Katherine’s offer. On April 15 Katherine picks up and starts to use the tractor. On May 1, Saúl, having bought his farmland, arrives at Alain’s place to pick up the tractor. Once Alain explains the situation to him, Saúl goes to Katherine’s place to demand the tractor. Who is entitled to the tractor now—Saúl or Katherine? Why? Assume that the suspensive condition attached to the lease between Saúl and Alain was not purely potestative.
Forget Parts A and B. Having bought some farmland, Saúl picks up Alain's tractor on May 1 and begins to use it. The next day Alain receives an offer from Katherine to lease the tractor for six (6) months, starting May 30, for $200 per month. Alain neither accepts nor rejects it. The day after that Alain and Saúl get into a heated argument regarding the "true sources" of the Louisiana Digest of 1808, at the end of which Alain shouts, "I hereby notify you of my intention to terminate our contract. Return the tractor to me in one week." The next day Alain accepts Katherine's offer. Must Saúl now return the tractor to Alain? Why or why not? Assume (i) that the suspensive condition attached to the lease between Saúl and Alain was not purely potestative and (ii) that, though Saúl could rent a replacement tractor from someone else, the cheapest rate he could get would be $300 per month and, further, that Saúl's profit margin is already slender.

II

(60 minutes)

Frank, who has just passed the bar and landed a job in Chalmette, needs to move his things there from Baton Rouge. To handle the transportation, he hires Sal, another young lawyer who runs a moving company on the side. According to their contract, Sal obligates himself to haul Frank's things (which Frank had assured Sal, in good faith, weighed no more than 3 tons) between Frank's Baton Rouge residence and his girlfriend's house in Chalmette on a certain date and, further, to obtain a $500
surety bond to cover the risk of damage to Frank's things while in transit. For his part, Frank obligates himself “to pay” Sal in “services,” namely, to draw up a testament for him (Frank’s firm’s usual charge for this service is $300) within thirty (30) days after the move, and, further, to line up a surety to secure performance of that duty. Sal obtains his surety bond from Beverly's Big Bailbonds, Inc. (the bond covers “any and all losses regardless of the cause” and is payable “immediately upon receipt of notice of loss”); to serve as his surety, Frank engages his friend and Sal’s, Molly. Molly, as it turns out, had been interdicted just days earlier. Though both Frank and Sal had long known that she was a little "odd," neither was aware of the interdiction.

Shortly before the move is to take place, problems develop. First, Frank discovers, contrary to his belief and prior representation to Sal, that his things weigh 3 and ½ tons. Second, he has a falling out with his girlfriend, the upshot of which is that he'll have to move into his mother's house, which is located a few blocks away from that of his girlfriend. When Frank calls Sal to inform him of these developments, Frank gets Sal's answering machine, on which Frank then leaves a detailed message telling him everything. Several hours later, Sal calls back. “Well,” Sal says, “this has actually worked out well. You see, I don’t think I need a testament after all. Why, then, don’t you just pay me, by the same deadline, the cash equivalent for the testament—$300—plus an extra $50 for my carrying the extra freight?” “Fine,” Frank answers. Unbeknownst to Sal, he had just awakened Frank from a drunken stupor (Frank had been out celebrating his admission to the bar). The next day, Frank did not recall the conversation.

The move is uneventful, with one exception. Near LaPlace Sal swerves off the road, causing one of Frank's treasures, a framed group photo of the girlfriends he went through in 1999 (ten in all), to fall to the floor of the moving van. As a result, the frame, which Frank thinks was worth $100 dollars but Sal and his bondsperson think was worth only $50, is destroyed.

A few weeks after the move, Frank realizes that he won’t be able to complete the testament by the 30-day deadline. When Frank informs Sal, Sal says, “Hey! Don't you remember? We agreed that you would pay me in cash—$350—instead of doing the testament.” Frank says nothing. “Can you pay the cash by the deadline?” “No,” says Frank, “I can't do that either.” Sal then says, “Well, I can give you another month to pay. But before I do that, I'd like to get somebody else on the hook to whom I can look for payment.” Frank immediately thinks of another friend, Ann, who has bailed him out of financial trouble before. When Frank asks her if she'll "take over" his debt to Sal “as a favor to me,” she answers, "Sure. Anything for you, Frank." At a meeting held in Sal's office, Frank, Sal, and Ann sign an instrument that reads as follows: "1. I, Ann, do hereby agree to be bound to pay Sal the charge that Frank owes him. 2. I, Sal, will not demand payment of that charge for another month."

A
(20 of the 60 minutes)

Frank, tied of waiting to be reimbursed for the loss of the photo frame, brings suit against Beverly's Big Bailbonds, Inc. Evaluate his chances of success. As you do so, be sure to consider every defense that might be available to Beverly's.
Forget Part A. Though the 30-day deadline for Frank’s performance has come and gone, Sal still has not received that performance. To get satisfaction he wants to pursue either Molly or Ann or both. But what, precisely, are his rights against each? As you answer this question, be sure (i) to consider every defense that might be available to Molly or Ann and (ii) to assume that Frank was “deprived of reason” when he agreed to pay Sal $350 cash instead of drafting a testament for him.
Marcel persuades his grandniece, Annette, aged 19, and her friends, Babette, aged 18, and Colette, aged 17, to help him "get even" with his archenemy, Vincent. Pursuant to a plan Marcel concocted, the three girls sneak onto Vincent's estate under cover of darkness and set Vincent's house (worth $240,000) ablaze, burning it to the ground. Not long thereafter, the three arsonists, together with their master co-conspirator Marcel, are apprehended by the authorities.
A few weeks later Marcel hangs himself in his jail cell. He is survived by his son, Michel, and his daughter, Mignon, who accept his succession. Mignon promptly mails a check to Vincent for $20,000, to which is attached a note that reads: "Partial payment of Dad's debt to you." Vincent cashes the check.

Not long after that, Annette begs Vincent to "renounce solidarity" as to her, for which benefit she offers to pay him $10,000. Vincent accepts. Annette dies the next day, survived by her father, Antoine, and mother, Amie, her sole heirs, who accept her succession. When Vincent learns of Annette’s death, he sends Amie, on whom he has long had a secret crush, a note that reads as follows: "I forgive you of your part of Annette’s debt to me." Amie does not respond.

A few days later, Vincent, desperate for cash, sends Colette (now 18 years old) this letter: "Pay me $75,000 now and I’ll release you from all liability to me." Over the strenuous objection of her mother, Celeste, Colette sends Vincent a check for $75,000 to which she attaches this note: "I accept. My share paid in full."

NOTE: Parents inherit an estate just as do descendants, that is, in “indivision,” i.e., each one gets his or her share.

In answering this question, you may find the following Civil Code articles to be particularly helpful: (i) CC art. 2324 A ("He who conspires with another person to commit an intentional or wilful act is answerable, in solido, with the person, for the damage cause by such act."); (ii) CC art. 3492 ("Delictual actions are subject to a liberative prescription of one year.")

NOTE: For the few of you who may know of new CC art. 3493.10, which creates a two year prescriptive period for claims arising from torts that happen also to be “violent crimes,” I have this advice: forget about it and just apply CC art. 3492!

(15 of the 70 minutes)

Just before the anniversary of the arson, Vincent files suit against Babette. The case drags on. After the anniversary of the last event mentioned in the narrative (i.e., Colette’s payment to Vincent), Vincent decides to file another suit, this time against Michel, Mignon, Antoine, Amie, Colette, and Celeste. Which, if any, of the defendants could raise the defense of liberative prescription and which, if any, could not? Explain.
Forget Part A. Before the anniversary of the arson arrives (but after all the events mentioned in the narrative have taken place), Babette, after having squandered all her wealth, seeks bankruptcy protection and is declared insolvent.

Vincent is now prepared to assert his remaining rights. Whom can he still sue and what is the maximum amount he can recover from each? Why?

In answering this question, assume that, if such a suit were brought, the jury would find (i) that each of the malefactors—Marcel, Annette, Babette, and Colette—was equally responsible for the arson; (ii) that Celeste was vicariously responsible for Colette’s fault under CC art. 2318; and (iii) that Vincent's house was worth $240,000.

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5 “The father and mother . . . are responsible for the damage occasioned by their minor or unemancipated children . . . .” CC art. 2318.
C
(20 of the 70 minutes)

Don’t forget Part B. Assume that, after Vincent gets his judgment, Michel pays Vincent the maximum amount for which he (Michel) was liable. Could Michel then demand reimbursement from anyone else? If so, from whom and how much? Why?^6

^6 HINT: Just as Michel owes one-half of Marcel’s duties, he has one-half of Marcel’s rights.
NOTE: Though the “object” of this security interest—the furniture in the house—is somewhat indefinite, it is sufficiently definite that the object is considered to be “determined.” There is, then, no “object problem” in the security contract. 

Lapin evidently has in mind the security interest that CC art. 2705 accords the lessor of a house: “The lessor has, for the payment of his rent . . . , a right of pledge on the movable effects of the lessee that are found on the property leased. * * *[In the case of houses and other edifices, [this right] includes the furniture of the lessor . . . .]” As against other security interests of the same order, such as UCC-9 security interests, the lessor’s privilege ranks by time (first in time, first in right).

IV
(45 minutes)

Dee and Dum together lease an unfurnished house from Lapin for a year at a rent of $1000 per month. According to the lease instrument, Lapin is entitled to collect the full rent ($1000) from either Dee or Dum and, further, can "accelerate" the rent (i.e., demand payment in full of the rent owed for all of the months that remain of the one year period) in the event that any one rental payment is late. For the first six months of the lease, Dee pays Lapin the rent on time, after which Dum reimburses Dee for half ($500). But then Dee runs into financial trouble. For help he turns first to Dum, who loans him $1000. The loan is not secured. Then he borrows $1000 from Sharkie. To secure the loan, Dee grants Sharkie a UCC-9 security interest in what Dee describes, in the security instrument, as “all my furniture inside the house I’m renting from Lapin.” Then, on the date on which the next rental payment is due, Dee, without making that payment, disappears without warning and without a trace. Lapin, exercising his right to accelerate the rent, then sends Dee and Dum a letter (i) demanding "full payment of the remaining rent--$6000--immediately" and (ii) threatening to "foreclose on my lessor's lien on everything you have in the house" in the event of any delay on their part in making that full payment. Dum, who doesn’t have that much money, then turns to his father, Carroll, for help. Carroll loans Dum half the amount--$3000. Their loan contract, which the father and son write up, specifies that the funds are to be used to pay off Dum’s debt to Lapin. With those funds and $3000 of his own money, Dum then pays off Lapin.

Before long, Sharkie forecloses on his UCC-9 security interest in Dee's furniture. Dum then intervenes in the proceedings, claiming that he has a superior security interest in the furniture, namely, a “lessor's lien.” Right after that, Carroll likewise intervenes, claiming that he, too, enjoys a “lessor's lien” on the property. Suppose that the sale of the furniture yields only $4000. As among Sharkie, Dum, and Carroll, who gets how much? Why?
Mauvais, a doctor and a rabid "pro choice" advocate, wants to open an abortion clinic in Assumption Parish. Fearing opposition by militant "pro life" advocates, he thinks it would be best to locate the clinic in some remote place. To find him a suitable facility to lease, he hires Sarien, a real estate agent. Mauvais, for fear that if his objective were known Sarien might not be willing to represent him or that potential lessors might shy away from doing business with him, does not reveal that objective to Sarien or to anyone else; rather, he tells her and anyone else who asks only that he "wants to open a medical clinic." Before long, Sarien finds Mauvais a facility on the outskirts of Napoleonville. The owner and lessor, a close friend of Sarien, is none other than Jeanne-Marie, a devout Benedictine Oblate and the founder and president of Sauvez Nos Enfants, Louisiana's leading pro-life organization. The lease agreement, signed by both Jeanne-Marie (who's never even heard of Mauvais) and Mauvais (who has no reason to know or even to suspect that his lessor is the Jeanne-Marie of Sauvez Nos Enfants), provides only that the leased premises may be used "for any legitimate business purpose," that the lease shall last for one year, and that the lessee shall pay rent of "$2000 per month plus 5% of net revenues per month." Mauvais then moves his equipment into the building and opens for business.

Jeanne-Marie, who has just learned what Mauvais is up to, wants to rescind the lease. Does she have a shot? If so, what is (are) her ground(s) and why will she prevail? If not, why not?

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9 A layperson affiliated with the orders of Roman Catholic religious (monks and nuns) founded by Sts. Benedict and Scholastica.

10 Trans.: Save Our Children.
Forget Parts A & B. Mid-way through the term of the lease, the United States Supreme Court overturns Roe v. Wade (1973). The Assumption Parish Council, reacting swiftly, passes an ordinance forbidding abortions in Assumption Parish. Though Jeanne-Marie, who has since learned what Mauvais is up to, recognizes that Mauvais can't (legally) run his abortion clinic now, she still wants him to pay the rent for the rest of the lease term (6 months). Is there any way that Mauvais can get out of his obligation to pay the rent for the rest of the term? If so, how and why? If not, why not? Assume that the Assumption Parish ordinance is constitutionally valid.