



## LOUISIANA FEBRUARY 2015 BAR EXAM MODEL ANSWERS

Code I 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.

# Louisiana Barbri Answers

**Ying-Ying Zheng**



## **Louisiana Barbri Answers:**

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## Table of Contents Louisiana Barbri Answers

1. Understanding the eBook Louisiana Barbri Answers
  - The Rise of Digital Reading Louisiana Barbri Answers
  - Advantages of eBooks Over Traditional Books
2. Identifying Louisiana Barbri 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 Louisiana Barbri Answers
  - User-Friendly Interface
4. Exploring eBook Recommendations from Louisiana Barbri Answers
  - Personalized Recommendations
  - Louisiana Barbri Answers User Reviews and Ratings
  - Louisiana Barbri Answers and Bestseller Lists
5. Accessing Louisiana Barbri Answers Free and Paid eBooks
  - Louisiana Barbri Answers Public Domain eBooks
  - Louisiana Barbri Answers eBook Subscription Services
  - Louisiana Barbri Answers Budget-Friendly Options
6. Navigating Louisiana Barbri Answers eBook Formats
  - ePub, PDF, MOBI, and More
  - Louisiana Barbri Answers Compatibility with Devices
  - Louisiana Barbri Answers Enhanced eBook Features
7. Enhancing Your Reading Experience
  - Adjustable Fonts and Text Sizes of Louisiana Barbri Answers
  - Highlighting and Note-Taking Louisiana Barbri Answers
  - Interactive Elements Louisiana Barbri Answers
8. Staying Engaged with Louisiana Barbri Answers

- Joining Online Reading Communities
  - Participating in Virtual Book Clubs
  - Following Authors and Publishers Louisiana Barbri Answers
9. Balancing eBooks and Physical Books Louisiana Barbri Answers
- Benefits of a Digital Library
  - Creating a Diverse Reading Collection Louisiana Barbri Answers
10. Overcoming Reading Challenges
- Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
11. Cultivating a Reading Routine Louisiana Barbri Answers
- Setting Reading Goals Louisiana Barbri Answers
  - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Louisiana Barbri Answers
- Fact-Checking eBook Content of Louisiana Barbri 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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