

Thursday Morning
July 28, 2016
Essay Questions 1 - 6



TEXAS BAR EXAMINATION

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**If hand-writing, answer in the section marked Question 1.
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Question 1

During Sam's brief marriage to his first wife Penny, Sam legally adopted Penny's son Zach. In 1965, after Sam's divorce from Penny, Sam married Helen, and they had two natural children, Alex and Beth.

Helen died in 2010 and was survived by Sam, Alex, and Beth. Helen left her entire estate to Sam, including the 1,000-acre Hill Country Ranch (Ranch) that she had inherited from her parents many years ago. After Helen's death, Sam asked his daughter Beth, an attorney, to draft a will for him.

Beth drafted the will in accordance with Sam's instructions, including the following provisions:

- (a) The Ranch in equal shares to Alex and Beth; and
- (b) The rest, residue, and remainder to Sam's niece, Carol.

In the will, Beth properly described the Ranch, which was Sam's only significant asset at the time. Sam executed the will with all appropriate formalities, including a self-proving affidavit.

Sam sold the Ranch in 2013 and used the proceeds to buy shares in Easy Mutual Funds (Shares). The Shares were held in Sam's name only, with no named beneficiary.

Carol, who was Sam's brother's daughter, died in 2014. Carol was survived by two children, Xavier and Yolanda.

Sam died in 2015.

Zach challenges the will, arguing that it is not valid because Beth drafted it, naming herself as a beneficiary of Sam's estate.

Alex and Beth claim they are entitled to receive the Shares because they were purchased with the proceeds from the sale of the Ranch.

- (1) What will be the result of Zach's challenge to the will, and what impact will it have on the disposition of Sam's estate? Explain fully.**
- (2) Assuming the will is valid, who will receive the Shares and in what proportions? Explain fully.**

**If hand-writing, answer in the section marked Question 2.
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Question 2

Steve died intestate. Steve was survived by his wife, Jill, and their two minor sons, Mark and John, a licensed driver. The only debt Steve and Jill had was \$5,000 owed on a signature loan they took out to pay for a final family vacation. When Steve died, Steve and Jill owned the following assets:

- (a) The house in Travis County that Steve and Jill purchased shortly after they were married and lived in throughout their marriage (House);
- (b) A qualified retirement plan from Steve's employment, valued at \$200,000 and designating Jill as sole beneficiary (Retirement Plan);
- (c) Home furnishings, consumables, and clothing valued at \$25,000 (Household Effects);
- (d) Family heirlooms, which Steve inherited from his grandfather, valued at \$15,000 (Heirlooms);
- (e) Two automobiles valued at \$8,000 and \$12,000, respectively (Automobiles); and
- (f) A joint checking account with a balance of \$45,000 (Checking Account).

- (1) What is the most efficient method for Jill to transfer title of Steve's assets to his heirs and satisfy the \$5,000 debt, if necessary? Explain fully.**
- (2) To whom and in what proportions should the following assets be distributed? Explain fully.**

(a) House

(b) Retirement Plan

(c) Household Effects

(d) Heirlooms

(e) Automobiles

(f) Checking Account

**If hand-writing, answer in the section marked Question 3.
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Question 3

Carlos, a well-regarded lawyer, collected rare art. He decided to buy a security alarm system to protect the extensive and valuable collection he had acquired over many years. He hired Sam, a professional security consultant, for help in finding a reliable security company. Sam highly recommended Security Company (Security), and he told Carlos that Security was “the best in the business,” used “state of the art equipment,” employed only “licensed and bonded security experts,” and had an “excellent reputation in the security community.”

Based on Sam’s advice, Carlos purchased a security alarm system from Security. Carlos signed an installation agreement that was printed entirely in uniform type and included the following statements:

All work performed by licensed and trained personnel.

Waiver: Customer hereby waives all legal rights.

The next day, an employee from Security installed a security alarm system in Carlos’s house. A few weeks later, Carlos’s house was broken into and his entire art collection was stolen. The security alarm system completely failed to operate. When Carlos discovered the theft, he became deeply distraught and was unable to go to work for a week. Carlos then hired a lawyer who immediately filed suit against Security under the Texas Deceptive Trade Practices Act (DTPA).

In pretrial discovery, Carlos learned that the security alarm system failed due to improper installation by the Security employee, who was not licensed and had been on the job for only one day. It was also revealed that Security had a terrible reputation in the security business and was very well known by other security companies, but not the general public, for using inexperienced, unlicensed employees.

- (1) Under the DTPA, what claims may Carlos assert against Sam? Against Security? Explain fully.**
- (2) What remedies and damages may Carlos seek under the DTPA?**
- (3) What defenses may Security assert, and, which defenses, if any, are likely to succeed? Explain fully.**

**If hand-writing, answer in the section marked Question 4.
If laptop, answer in the screen marked Question 4.**

Question 4

Walt, a successful commercial fisherman from Rockport, Texas, operates his own boat and personally handles his own business affairs. Headed back to dock after a productive week of fishing, Walt sustains a serious head injury on the boat, goes into a coma, and is immediately hospitalized. Walt's prognosis is uncertain, although there is a possibility he will require surgery.

Walt does not have a durable power of attorney and has not authorized anyone to operate his boat or fishing business. In addition, Walt's substantial inventory of fish, valued at \$150,000, has to be delivered to market within 5 days or risks being lost. Walt's personal assets include investments, real property, and \$1,000,000 that he recently inherited from an uncle.

Walt's sole surviving family member, Brian, lives in Alaska where he works as a hunting guide. Brian and Walt were close growing up, but have not spoken in over 20 years. Brian was once fired from a job when he was suspected of stealing from his employer.

Frank, Walt's life-long best friend, is also a very experienced fisherman, but has struggled financially and previously declared bankruptcy.

George, Walt's banker has handled Walt's banking business for over 10 years and is generally experienced in financial matters.

Two days after Walt's injury, Brian, Frank, and George each file an application to be appointed as Walt's guardian.

- (1) What findings must a court make before appointing a guardian for Walt and under which evidentiary standards must the findings be made? Explain fully.**
- (2) How is the Court likely to rule on the applications filed by Brian, Frank, and George, and is there a basis for a temporary guardianship? Explain fully.**

**If hand-writing, answer in the section marked Question 5.
If laptop, answer in the screen marked Question 5.**

Question 5

John employed Alice as his in-home aide for more than 10 years. Alice reviewed John's mail and helped him pay bills and conduct bank business. She had no authority to sign checks for John. Alice left John's employ in May 2016. During the last two months that Alice was in John's employ, the following events occurred:

- Alice had John indorse the back of a \$2,000 check that was payable to "John and Mary." John's sister Mary had already indorsed the check, intending that John deposit it into his bank account. Instead of depositing the check into John's account, Alice signed her name to the back of the check below John and Mary's signatures. She then deposited the check into her own account. John has demanded that Alice's bank credit his account \$2,000.
- John received a bill from Ace Landscape for \$500. He disputed some of the charges. John directed Alice to prepare a check to Ace for \$300. He wrote "Payment in Full" on the memo line when he signed the check. Ace cashed the check. Ace then sent John another bill for the \$200 balance. John told Alice he would not pay the \$200 bill from Ace because Ace had already been paid in full. Ace continues to demand payment.
- John had Alice prepare a check payable to her for \$500. John signed the check and gave it to Alice as her weekly salary. John failed to notice that Alice had left sufficient space for Alice to add a "3" between the \$ and the 5 in "\$ 500" and to add the word "Thirty-" before the words "Five Hundred Dollars." Now instead of being a check for \$500, it appeared to be a check for \$3,500. Alice indorsed the check and deposited it into her account. Alice's bank credited \$3,500 to her account. John disputed the check nine months later when he reviewed his bank statement. John demanded that his bank credit his account \$3,000.

Answer the following questions under the Texas Uniform Commercial Code.

- (1) **As to the check payable to "John and Mary," will Alice's bank be required to pay John the \$2,000? Explain fully.**
- (2) **As to the \$200 bill that Ace Landscape sent to John, what are the rights and liabilities of John and Ace Landscape? Explain fully.**
- (3) **As to the \$3,500 check to Alice, what are the rights and liabilities of John and John's bank? Explain fully.**

**If hand-writing, answer in the section marked Question 6.
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Question 6

Joanne's Appliances (Appliances), a Texas corporation, sells washing machines in its retail store. Appliances borrowed money from Bank, a Texas bank, to purchase washing machines for its inventory. It signed a security agreement with Bank naming the washing machines as security for the loan and authorized Bank to file a financing statement. Before Bank approved the loan to Appliances, it checked with the Texas Secretary of State and learned that no financing statements were on file naming Appliances as a debtor.

On June 1, Bank pre-filed the financing statement with the Texas Secretary of State, asserting a security interest in "all of Joann's Appliances' watching machines." Bank did not notice the mistake in naming the company "Joann's Appliances" instead of "Joanne's Appliances" or the mistake in describing "washing machines" as "watching machines."

On June 10, using money borrowed from Bank and a line of credit from Universal, a washing machine distributor, Appliances purchased 10 washing machines from Universal. Before extending credit to Appliances, Universal checked the Texas Secretary of State's computer system, which did not pick up Bank's financing statement because of the misspelling of "Joanne" as "Joann." Universal obtained a security agreement signed by Appliances, delivered the 10 washing machines to Appliances, and then immediately filed a financing statement with the Texas Secretary of State asserting a security interest in the 10 washing machines.

Appliances has not repaid either Bank or Universal.

- (1) Does Bank have a security interest in the washing machines purchased by Appliances? Why or why not? Is it perfected? Why or why not? Explain fully.**
- (2) Does Universal have a security interest in the washing machines purchased by Appliances? Why or why not? Is it perfected? Why or why not? Explain fully.**
- (3) If there is more than one security interest in the washing machines purchased by Appliances, who has priority? Explain fully.**

This concludes the morning portion of the Texas Essay Questions.

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