

Thursday Afternoon
July 28, 2016
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

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**If hand-writing, answer in section marked Question 7.
If laptop, answer in the screen marked Question 7.**

Question 7

Hugh and Nancy announced their intention to marry. Before the wedding, Nancy's mother threw a bridal shower for Nancy and gave Nancy a new car as a wedding gift.

On their first anniversary, Hugh gave Nancy an expensive necklace. The next day, Hugh was in a car accident and suffered severe injuries. After some litigation, the case against the other driver was settled. The settlement agreement provided specific amounts for Hugh's pain and suffering, Hugh's lost wages, Hugh's medical expenses, and Nancy's loss of consortium. The settlement money was deposited into a new joint checking account opened by Hugh and Nancy. The medical expenses were paid from the account, but no other money has been deposited into or withdrawn from the account, and no interest has been earned.

Five years after the accident, Hugh filed for divorce. Hugh's salary at the time of the divorce filing was \$100,000 per year. Nancy was not employed outside the home and had no special training or earning ability. Nancy filed a counter-petition for divorce, seeking a disproportionate division of property and spousal maintenance.

(1) Describe Hugh's and Nancy's community and/or separate property interests in the following property:

- (a) The car;**
- (b) The necklace; and**
- (c) The settlement money.**

(2) Is Nancy entitled to an award of spousal maintenance for any period after the divorce?

Explain fully.

**If hand-writing, answer in the section marked Question 8.
If laptop, answer in the screen marked Question 8.**

Question 8

Husband and Wife live in Odessa, Texas. Wife is a dentist employed by a local practice, with a net income of \$20,000 per month. She has a large amount of personal debt accrued during the marriage from a failed private practice. Husband and Wife have one son, and Husband is not employed outside the home.

Husband files for divorce, and Wife is properly served with notice of a temporary orders hearing. Wife does not appear for the hearing. The Court names Husband and Wife joint managing conservators, with Husband continuing to live in the family home with their son. The Court also orders Wife to pay monthly (i) \$1,800 in temporary child support, (ii) \$6,000 in temporary spousal maintenance, and (iii) the mortgage payment on the family home.

The next week, Wife files for bankruptcy. She refuses to make any payments under the temporary orders, claiming the bankruptcy filing stays the divorce and the Court has no authority to make her pay because of the stay. Husband files a motion for enforcement.

(3) While the bankruptcy stay is in effect, can the Court require Wife to pay:

- (a) Temporary child support? Explain fully.**
- (b) Temporary spousal maintenance? Explain fully.**
- (c) The mortgage payments? Explain fully.**

(4) While the bankruptcy stay is in effect, can the Court:

- (a) Finalize the divorce? Explain fully.**
- (b) Divide Husband and Wife's property and debts? Explain fully.**

**If hand-writing, answer in the section marked Question 9.
If laptop, answer in the screen marked Question 9.**

Question 9

Buck and Loretta Pratt intend to open a retail store called “Pratt’s Hats” to sell cowboy hats. They have entered into a contract containing the following terms:

- All management decisions will be made jointly by Buck and Loretta;
- Loretta will be the sole employee and receive a salary to be agreed upon annually by them;
- Buck will have no liability for any aspect of the business;
- Buck will advance \$100,000 as operating capital and will receive the first 5% of any profit from the business each year;
- Before any profit distribution, other than the first 5%, Buck and Loretta must mutually agree whether, and how much of, the additional profit is to be distributed and how much is to be retained for use as operating capital; and
- If Buck and Loretta distribute any profit other than the first 5%, the additional profit will be distributed equally between the two of them.

(1) Do the terms of their agreement prevent Buck and Loretta from using any of the following business associations as the legal entity for Pratt’s Hats:

- (a) A General partnership? Explain fully.**
- (b) A limited partnership? Explain fully.**
- (c) A limited liability company? Explain fully.**

(2) What steps must Buck and Billy take to legally use the name “Pratt’s Hats”? Explain fully.

**If hand-writing, answer in the section marked Question 10.
If laptop, answer in the screen marked Question 10.**

Question 10

A & B Law Firm is a general partnership. The original partners were Al, Bill, and Cody.

In January 2015, Cody committed malpractice while representing Jane in a legal matter. In May 2015, Cody was convicted of possession of cocaine, and Al and Bill voted to expel Cody from the partnership, as allowed by the partnership agreement.

In June 2015, Dan joined A & B Law Firm as a partner and contributed \$50,000 as his share of the firm's capital account to be used for operating funds.

Jane learned of Cody's malpractice in August 2015 and wishes to sue A & B Law Firm and its current and former partners for \$1 million in damages. Neither A & B Law Firm nor any of the partners carry professional liability insurance. The partnership's current assets are less than \$1 million.

(1) Which of the following are liable and which are not? Explain fully as to each:

- (a) A&B Law Firm?**
- (b) Al and Bill, individually?**
- (c) Cody, individually?**
- (d) Dan, individually?**

**If hand-writing, answer in the section marked Question 11.
If laptop, answer in the screen marked Question 11.**

Question 11

Mallco owns and operates a shopping mall (Mall) in the state of Texas. Tenant entered into a standard 5-year retail lease (Lease) with Mallco for Space 123 (Premises) in the Mall that commenced on December 1, 2011. Tenant became delinquent in its rent obligations under the Lease, having not paid Mallco the March and April 2016 rent validly due and owing under the Lease. In early May 2016, Tenant abandoned the Premises, taking most, but not all, of its retail stock. Tenant's furniture and equipment also remain within the Premises.

- (1) Under the Texas Property Code, how can Mallco lawfully re-take possession of the Premises? Explain fully.**

- (2) Under the Texas Property Code, what rights and obligations does Mallco have with regard to Tenant's retail stock, furniture, and equipment that remain within the Premises after Tenant's abandonment? Explain fully.**

- (3) In which court can Tenant properly file a complaint for reentry to the Premises?**

**If hand-writing, answer in the section marked Question 12.
If laptop, answer in the screen marked Question 12.**

Question 12

In 1983, Allison inherited Blueacre, a 300-acre tract of land in Comanche County, Texas. Allison conveyed Blueacre to Ben via a special warranty deed and properly reserved for herself a 1/8th royalty interest in all oil, gas, and other minerals.

In 1984, Ben signed a valid oil and gas lease with Dirty Oil with a stated term of 3 years and as long thereafter as oil, gas, or other minerals are produced in paying quantities. The Dirty Oil lease also contained all typical oil and gas lease terms, including a royalty interest for Ben. Dirty Oil promptly drilled a well on Blueacre capable of producing oil in paying quantities. Dirty Oil timely paid Allison and Ben the required royalty payments for 5 years. Ben signed division orders acknowledging receipt of such royalty payments. Dirty Oil then abandoned the well without plugging it, took all of its equipment, and left Blueacre.

In 2010, Ben entered into an oil and gas lease with Clean Oil on terms identical to his former lease with Dirty Oil. Clean Oil timely drilled a well on Blueacre capable of producing oil in paying quantities. Clean Oil promptly paid Allison and Ben royalty payments. Ben signed division orders acknowledging receipt of such royalty payments.

In 2015, Clean Oil discovered Dirty Oil's abandoned well. As required by law, Clean Oil reported to the Texas Railroad Commission that the well had not been plugged.

Dirty Oil ceased to operate. It legally dissolved in 1990, and none of its shareholders can be located.

When Clean Oil sent Ben the next division order to sign, it included a requirement that to receive the royalty payments owing to Ben and Allison, Ben would need to pay to cap the abandoned Dirty Oil well. Ben refused to sign the division order with such a requirement and Clean Oil refused to make the royalty payments to Ben and Allison.

- (1) Can the Texas Railroad Commission properly require Allison, Ben, or Clean Oil to plug Dirty Oil's abandoned well? Explain fully.**
- (2) Can Clean Oil properly condition payment of the royalty payments on Ben agreeing to sign a division order that includes the requirement that Ben pay to cap the former Dirty Oil well? Explain fully.**
- (3) Will the lease terminate if Clean Oil fails to make royalty payments to Allison and Ben? Explain fully.**

This concludes the Texas Bar Examination.

Write the Honor Pledge before turning in your exam materials.

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