

Thursday Morning  
July 27, 2017  
Essay Questions 1 - 6



## TEXAS BAR EXAMINATION

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

**Question 1**

A Texas general partnership (Partnership) was formed by John and Mary for the purpose of printing birthday cards. After Partnership was formed, the following occurred:

Mary, using her own money, purchased a vehicle. Title to the vehicle was issued to Partnership.

John, using a personal check, purchased a printing machine. The bill of sale shows "John" as the purchaser.

John, using a check drawn on Partnership's bank account, purchased 1,000 blank cards from Vendor. The bill of sale shows "John" as the purchaser.

Without Mary's knowledge, John purchased an additional 500 blank cards from Vendor with his own personal check. John then used the printing machine to make 500 birthday cards for a friend and kept the sales proceeds for himself. John did not have sufficient money in his checking account to cover the personal check written to Vendor, which was dishonored by John's bank.

- (1) Who owns the vehicle, the printing machine, and the initial 1,000 blank cards? Explain fully.
- (2) Has John violated any duty to Partnership? Explain fully.
- (3) Is Partnership liable to Vendor for the additional 500 blank cards purchased by John using his personal check? Explain fully.

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

**Question 2**

ABC, Inc. (ABC) is a Texas corporation formed in 2005. Ten thousand (10,000) shares of ABC stock were authorized when ABC was incorporated.

Following its incorporation, ABC issued 5,000 shares of stock. Bill owns 500 shares (10%) of ABC stock. Other shareholders together own a total of 4,500 shares (90%) of ABC stock. The remaining 5,000 shares were not issued.

ABC's board of directors notified all of its shareholders of its intent to: 1) give 1,000 shares of unissued stock to ABC's president as compensation; 2) give 1,000 shares of unissued stock to a vendor in exchange for equipment; and 3) sell the remaining 3,000 shares of unissued stock to the general public.

Upon learning this news, Bill wrote ABC's treasurer, stating, "I do not want to exercise a preemptive right to purchase any of the unissued shares of stock." Later, Bill called ABC's treasurer to tell her he had changed his mind and that he, in fact, did wish to exercise a preemptive right to purchase all the unissued shares of stock that he is entitled to purchase.

Thereafter, Bill and all ABC shareholders received timely and proper notice under the Texas Business Organizations Code (TBOC) of a special shareholder's meeting to vote on a proposed merger of ABC into another corporation. Bill disagrees with the merger and wishes to relinquish his shares in ABC and be paid for them.

- (1) Does Bill have a preemptive right to purchase any of ABC's unissued shares? Explain fully.**
- (2) If Bill could establish a preemptive right, how many shares would he have the right to purchase? Explain fully.**
- (3) Can Bill require ABC to pay him for his shares, and, if so, what statutorily required steps under TBOC must he take to perfect that right? Explain fully.**

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

**Question 3**

Travel Agent (Travel) started his new business in Houston, Texas in September 2016. He did the following:

On September 15, 2016, Travel took delivery of a copier and phone system purchased on credit from Office Suppliers (Suppliers). Travel agreed to grant Suppliers a security interest in this equipment, but never signed any agreement with Suppliers.

On October 16, 2016, Travel went to First Bank (Bank) and obtained a line of credit to use for working capital for his business. He signed an agreement giving Bank a security interest in all of his currently-owned and after-acquired equipment, inventory, and accounts receivable. The same day, Bank filed proper financing statements in all required public offices. Travel immediately borrowed money on the line of credit to pay business expenses.

On November 20, 2016, Travel bought \$25,000 worth of office furniture on credit from Furniture World (Furniture) and signed a note and security agreement granting to Furniture a security interest in the furniture. Furniture's credit manager did not file financing statements in the required public offices until January 15, 2017.

On December 1, 2016, Travel purchased on credit from Budget Computer (Budget) six computers for his business. Travel immediately took possession of the six computers. The computers cost \$10,000. Travel signed a security agreement granting Budget a security interest in all six computers and in Travel's accounts receivable. On December 12, 2016, Budget filed financing statements in all required public offices.

On December 15, 2016, Travel sold two of the computers purchased from Budget to Worldwide Wanderings (Wanderings), another travel agency. Travel did not tell Budget about the sale to Wanderings and he did not tell Wanderings about Budget's security interest in the computers.

On January 3, 2017, Travel closed his business without paying any of his debts.

**(1) As among Suppliers, Bank, Furniture, and Budget, explain fully who holds a superior security interest in the following:**

- (a) The copier and phone system;**
- (b) The office furniture;**
- (c) The computers; and**
- (d) The accounts receivable.**

**(2) Are the computers purchased by Wanderings subject to Budget's security interest? Explain fully.**

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

**Question 4**

Mary became the manager of Bakery Delights, Inc. (Bakery) in Austin, Texas in July 2010. Bakery's owners authorized Mary to sign checks drawn on Bakery's account at Central Bank. In January 2013, Mary opened an account at Suburban Bank in the name of Heavenly Frostings (Frostings), a company that did not exist. To open the Suburban Bank account, Mary presented a fictitious assumed name certificate for Frostings purporting to show that she owned this non-existent company. Suburban Bank had no reason to question the authenticity of the assumed name certificate.

Several weeks later, Mary wrote a \$3,000 check on Bakery's account at Central Bank payable to Frostings. Mary indorsed the check and deposited it into Frostings' account at Suburban Bank. Upon presentment, Central Bank paid the \$3,000 check.

Mary subsequently learned that Bakery's owners were planning to sell the business and had hired an outside auditor to review the company. Mary decided to quit her job and move out of the country. She withdrew all funds from Frostings' account at Suburban Bank and closed the account. On May 3, 2015, Mary wrote a check on Bakery's account to purchase a \$500 cashier's check from Central Bank. The cashier's check was payable to Movers to ship her belongings from Austin. Movers did not know where Mary had gotten the money to pay them.

The next day Bakery learned that Mary had stolen money from the company. Before Movers cashed the \$500 cashier's check, Bakery demanded that Central Bank stop payment on the cashier's check.

- (1) What rights, if any, does Bakery have against Central Bank and Suburban Bank to recover the \$3,000 paid on the check to Frostings? Explain fully.**
  
- (2) Is Central Bank obligated to stop payment on the \$500 cashier's check to Movers? Explain fully.**
  
- (3) If Central Bank stops payment on the cashier's check, what liability, if any, does Central Bank have to Movers? Explain fully.**

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

**Question 5**

Tenant signed a lease with Landlord for a two-bedroom residential apartment in the Landlord's multi-unit apartment complex in Austin, Texas for successive terms of one year. Tenant is currently in his second year of residence in the apartment and has timely paid all rent owed under the lease. Tenant is responsible for paying all utilities except water, which is included in the rent.

Tenant recently made a written request to Landlord to replace stained carpet in the living room, to repaint the master bedroom, and to add ceiling fans to each bedroom to help cut down on the electricity costs. In the same request, Tenant also asked Landlord to repair the apartment's two malfunctioning smoke alarms.

Concerned about rising crime in the area, Tenant sent another written request asking Landlord to rekey the locks in Tenant's apartment and furnish security guards at the apartment complex.

**Answer the following under the Texas Property Code:**

**(1) How should Landlord properly respond to Tenant's request to:**

**(a) replace the stained carpet in the living room? Explain fully.**

**(b) repaint the master bedroom? Explain fully.**

**(c) add ceiling fans to each bedroom? Explain fully.**

**(2) How should Landlord properly respond to Tenant's request to replace the malfunctioning smoke alarms? Explain fully.**

**(3) How should Landlord properly respond to Tenant's request to:**

**(a) rekey the apartment's locks? Explain fully.**

**(b) furnish security guards at the apartment complex? Explain fully.**

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

**Question 6**

Bonnie and her husband Wally purchased Blackacre, a 50-acre tract of land in Hidalgo County, Texas. They built a home on Blackacre and began living there in 1990. When Bonnie's mother died in 1995, Bonnie inherited Greenacre, an unimproved 75-acre tract of land also located in Hidalgo County, Texas. Blackacre and Greenacre were not contiguous, but were located within a few miles of each other. Neither Blackacre nor Greenacre was located within the limits of a municipality or its extraterritorial jurisdiction.

In 1998, Wally signed an oil and gas lease with Big Oil Company (Big Oil) covering Blackacre for a primary term of five years and "for so long thereafter as oil and gas is produced in paying quantities" in exchange for a 1/8<sup>th</sup> royalty interest and standard lease benefits. Big Oil promptly drilled a producing well.

In 2000, Bonnie signed a gift deed granting her daughter Lisa a 1/16<sup>th</sup> interest in all the oil and gas produced, saved, and marketed, cost free, in Greenacre. The gift deed did not grant any "executive rights" such as the right to lease, the right to receive bonus or delay rentals, or the right to enter upon the property. Lisa promptly recorded the gift deed in the Hidalgo County, Texas County Clerk's office and declared, "I'm a mineral owner!"

- (1) Which tract of land constitutes Bonnie and Wally's homestead property? Explain fully.**
- (2) Is Big Oil's oil and gas lease valid? Explain fully.**
- (3) Did Lisa receive a mineral interest in the gift deed from Bonnie? Explain fully.**

**This concludes the morning portion of the Texas Essay Questions.**

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