Thursday Morning
July 26, 2018
Essay Questions 1 - 6

TEXAS BAR EXAMINATION

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

Question 1

Husband and Wife own fee simple title to and live on a 150-acre ranch in rural Limestone County, Texas (Ranch). In August 2016, Oil Co. approached Husband and Wife with an offer to lease Ranch's mineral rights. Husband and Wife discussed but ultimately declined Oil Co.'s offer.

In March 2017, Oil Co. again approached Husband and Wife with an offer to lease Ranch's mineral rights. Without Wife's knowledge or consent, Husband accepted the offer. Oil Co. and Husband signed a standard oil and gas lease leasing all of Ranch's mineral rights to Oil Co.

Husband and Wife also own fee simple title to Greenacre, a 500-acre tract of land in Kendall County, Texas. In July 2017, both Husband and Wife entered into a five-year agricultural lease with Tenant for the north one-half (250 acres) of Greenacre. The agricultural lease gave Tenant the right to plant, cultivate, and harvest olive trees on the leased property, along with exclusive rights of ingress and egress. Additionally, the lease provided that Husband and Wife waived all surface rights to the leased portion of Greenacre. With Husband and Wife's consent, Tenant promptly recorded a Memorandum of Agricultural Lease in Kendall County, Texas.

In September 2017, Husband and Wife executed an oil and gas lease with Oil Co. that covered all of Greenacre for a primary term of three years and "for so long thereafter as oil and gas is produced in paying quantities."

Husband and Wife took out a loan from Bank to buy two bulls valued at over $100,000 for Ranch. The Bank loan was secured by a properly signed and notarized deed of trust lien on Ranch. Bank promptly recorded the deed of trust in Limestone County, Texas.

(A) What rights, if any, does Oil Co. have to conduct drilling operations on Ranch? Explain fully.

(B) What rights, if any, does Oil Co. have to conduct drilling operations on Greenacre? Explain fully.

(C) Does Bank have a valid lien on Ranch? Explain fully.

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

Question 2

Developer owned a large tract of unimproved land in Liberty County, Texas suitable for commercial use (Property). Developer and Contractor entered into a construction contract on October 15, 2016 wherein Contractor agreed to build a commercial office building and lifestyle center on Property for an agreed sum of money. Contractor started work on Property the next day and promptly filed an Affidavit of Commencement of Construction (Affidavit of Commencement) signed by both Developer and Contractor in the Official Public Records of Real Property of Liberty County, Texas. The Affidavit of Commencement set forth the date (October 16, 2016) and time (9:03 a.m.) Contractor started its work on Property.

Developer initially self-funded the construction on Property and paid Contractor from Developer's own funds. On February 1, 2017, to continue to finance the construction on Property, Developer borrowed money from its longtime financial institution (Bank), secured by a deed of trust lien on Property (Deed of Trust). Bank promptly recorded Deed of Trust on Property in Liberty County but did not require a title search or title insurance on Property. Deed of Trust required Bank to give Developer 10 days' written notice of and opportunity to cure any default prior to pursuing any remedies.

Construction on Property and Developer's payments to Contractor continued until May 2017, when Developer stopped paying both Contractor and its Bank loan. Developer left town and has not been heard from since May 2017.

Contractor properly filed an Affidavit for Mechanic's Lien against Property. Contractor sent the required notices in the required manner to Developer, as owner.

Bank checked Property's title and found Contractor's Affidavit of Commencement filed prior to its Deed of Trust lien, along with evidence that Developer did not pay the 2015 ad valorem taxes on Property.

(A) As among Liberty County, Contractor, and Bank:

(1) Who is in a first lien position on Property? Explain fully.

(2) Who is in a second lien position on Property? Explain fully.

(3) Who is in a third lien position on Property? Explain fully.

(B) What steps must Bank take to (1) exercise any power of sale right conferred under the Deed of Trust and (2) post Property for a non-judicial foreclosure sale? Explain fully.

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

Question 3

Al, Brian, and Charlie are individuals associated in two businesses legally formed in Texas. One of the businesses is Brick L.L.P. (Brick), which manufactures bricks. Al, Brian, and Charlie are partners in Brick.

The second business is Mortar Limited (Mortar), which manufactures mortar. Al is the general partner; Brian and Charlie are limited partners. Brian takes little interest in the day-to-day operation of the business, but Charlie frequently consults with Al about business operations.

Two lawsuits are pending against Brick and each of its partners individually:

(1) One of Brick's suppliers is suing for collection of a past due debt. The amount of the debt is more than the available assets of Brick.

(2) A plaintiff is suing for an alleged tort committed by Brian in the course and scope of Brian's business for Brick. Neither Al nor Charlie was directly involved in the activity that led to the alleged tort, nor did either of them have notice of the alleged tortious activity until after it occurred. The insurance coverage for Brick appears to be less than the expected recovery for this tort.

There are also two similar lawsuits pending against Mortar and each of its partners individually:

(1) One of Mortar's suppliers is suing for collection of a past due debt. The amount of the debt is more than the available assets of Mortar.

(2) A plaintiff is suing for an alleged tort committed by Brian in the course and scope of Brian's business for Mortar. Neither Al nor Charlie was directly involved in the activity that led to the alleged tort, nor did either of them have notice of the alleged tortious activity until after it occurred. The insurance coverage for Mortar appears to be less than the expected recovery for this tort.

Are Al, Brian, or Charlie personally liable for:

(A) The debt owed to Brick's supplier?

(B) The alleged tort for which Brick is being sued?

(C) The debt owed to Mortar's supplier?

(D) The alleged tort for which Mortar is being sued?

Explain fully as to each.

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

Question 4

Company is an ordinary Texas business corporation with a three-member board of directors with staggered terms such that in any given year, one of the three directors is re-elected or replaced. Company's bylaws provide that an annual meeting of the shareholders shall be held at Company's principal office on the first Monday in June of each year, at which time the shareholders shall re-elect or replace a director for a three-year term by majority vote.

Prior to the June 2017 annual meeting, Preston, Company's president and also a director who was not eligible for replacement until 2019, solicited the written proxies of the shareholders holding 80% of Company's shares. The proxies did not recite whether they were revocable or irrevocable.

Ten shareholders, who cumulatively held 60% of Company's outstanding shares, were among those who had given their written proxies to Preston. After giving Preston their written proxies, they learned that Preston intended to ask the board of directors to vote to sell substantially all of Company's assets to an entity owned by Preston. The 10 shareholders opposed the sale and agreed to attend the annual meeting to vote as a block to elect a new director who would agree to fire Preston. Shortly before the scheduled June 2017 meeting, Preston and one of the other directors spoke by telephone and agreed to reschedule the annual meeting to the first Monday in August.

Although no notice of the rescheduled annual meeting was sent to the shareholders, all shareholders learned of the change in date and attended the rescheduled August meeting. The 10 dissenting shareholders announced that they revoked their proxies and were voting their own shares at the meeting.

Answer each question in accordance with the Texas Business Organizations Code:

(A) Was the rescheduling of the annual meeting proper? Explain fully.

(B) Can the 10 dissenting shareholders successfully object to the rescheduled meeting they attended? Explain fully.

(C) Did the 10 dissenting shareholders have the legal right to revoke their proxies? Explain fully.

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

Question 5

Ann and Bob were married in 1999. No children were born to them or adopted by them during their marriage. Bob had a son (Chris) by a previous marriage. Ann had only one living relative, a niece (Donna).

Ann and Bob died as a result of a boating accident. Ann died instantly. Bob died two days later. Neither had a will.

At the time of their deaths, Ann and Bob owned the following property:

(1) A **house** in Houston valued at $800,000. Bob purchased the house in 1998 for $320,000, paying $20,000 down and signing a $300,000 mortgage. Bob also spent $80,000 to renovate the house before Ann and Bob's wedding. The full $300,000 mortgage was repaid during the marriage entirely from their earnings.

(2) A joint **checking account**, with a balance of $20,000. Ann and Bob each signed a joint with right of survivorship account agreement.

(3) A $200,000 life **insurance policy** Ann purchased on her life in 2008. Ann named Bob as the beneficiary.

(4) A **doll collection**, worth $10,000, that Ann inherited from her aunt in 2003.

Ann was survived by Donna. Bob was survived by Chris, who is married and has a child (Edward).

(A) To whom and in what proportions will the estates of Ann and Bob be distributed? Explain fully and organize your answer in a separate paragraph for each asset, identified by the following headings:

(1) House

(2) Checking Account

(3) Insurance Policy

(4) Doll Collection

(B) Assuming that Chris does not want anything from Bob's estate, what must Chris do to effectively reject any inheritance, and to whom and in what proportions would such rejected inheritance be distributed? Explain fully.

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

Question 6

In 2000, Luke executed a valid will that included the following provisions:

> *I leave my entire estate to my wife Mary, if she survives me. If my wife does not survive me, then I leave my family's ranch in Burnet County to my children for life, with remainder to my children's descendants, per stirpes. I leave the rest, residue, and remainder of my estate to my children, Peter, Rachel, and Tom.*

Rachel died in 2009. Rachel is survived by her son Steve, who was born in 2008.

In 2010, Luke and Mary divorce, and the district court signed a final divorce decree dissolving the marriage.

In 2016, Luke was killed by his son, Peter, who was subsequently convicted of Luke's murder.

When Luke died, he owned the following assets:

(1) The ranch in Burnet County that Luke inherited from his grandparents (Ranch), valued at $4,000,000; and

(2) A portfolio of stocks and bonds (Portfolio), valued at $1,000,000.

Luke is survived by Peter and Tom (Luke's two remaining children), Steve (Rachel's son) and Beth (Peter's adult daughter).

Tom does not have any biological children. After Luke's death Tom legally adopted his friend, Kelly, who is 30 years old. Tom, who has been diagnosed with cancer, wishes for Kelly to receive the remainder interest in Tom's share of the Ranch upon Tom's imminent death.

Beth has filed the will for probate and seeks a declaratory judgment to establish that Kelly does not qualify as a remainder beneficiary of a portion of the Ranch.

How will Luke's estate be distributed? Explain fully and organize your answer in a separate paragraph for each of the following individuals, explaining what interests, if any, each has in the Ranch and the Portfolio.

(A) Mary

(B) Peter

(C) Tom

(D) Beth

(E) Steve

(F) Kelly

This concludes the morning portion of the Texas Essay Questions.

Write the pledge on the back of this question book.

Laptop Examinees: Follow the Laptop Instructions that were handed out to you at the beginning of this session. Remember, you must **leave your laptop in the exam room** during the lunch break.

Handwriting Examinees: If you finish *before* the 15-minute warning, write the Honor Pledge on the back of this question book, give your question book and answer book to your proctor, gather your belongings—including your Admission Ticket and your ID—and exit the Secure Area. If you finish *after* the 15-minute warning, you must remain seated until you are dismissed.