

Thursday Afternoon
July 26, 2018
Essay Questions 7 - 12



TEXAS BAR EXAMINATION

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

Question 7

Carl inherited a substantial amount of property and was not comfortable preparing his annual income tax return. He searched online for an accountant and found a website for “Dan’s CPA Services” that included the statement “BEST IN THE BUSINESS!” Carl called the listed telephone number and spoke to Dan. Dan said that he was a “very successful CPA” with “over 30 years in the tax preparation business” and had “tons of clients.” He also said that he had an “extensive staff” and an “updated computer system capable of handling any online filing.”

Impressed by Dan’s representations, Carl made an online payment of \$5,000 to Dan for his services. Well before the filing deadline, Carl emailed Dan all the necessary documentation to prepare his return. Dan reassured Carl the return would be timely filed. A few weeks after the deadline, Carl received a notice from the Internal Revenue Service citing him for failure to file his tax return and assessing substantial penalties and interest.

Carl went to Dan’s office and discovered that Dan had no staff and only a single laptop computer in the office. Dan said he was unable to file Carl’s tax return by the deadline because his computer “crashed.” Upset, Carl left and called another accountant who told him that Dan was not actually a certified public accountant, and had very few clients and a bad reputation. Distraught, Carl suffered an anxiety attack that required medical treatment. Carl hired an attorney who immediately filed suit against Dan.

- (A) Under the Texas Deceptive Trade Practices Act (DTPA), what claims, if any, can Carl assert against Dan? Explain fully.**
- (B) What defenses, if any, can Dan assert and which defenses, if any, are likely to succeed? Explain fully.**
- (C) What remedies and damages, if any, can Carl seek under the DTPA? Explain fully.**

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

Question 8

Ward, a widower, began to show signs of being unable to care for himself. Because Ward had a sizable amount of cash in the bank (Bank) and lived by himself in his house in Galveston, Texas, Ward's family became concerned and filed an Application for the Appointment of a Guardian in a proper probate court.

At the guardianship hearing on February 1, 2018, the judge found that Ward was physically and mentally incapacitated. The judge also signed a written order (Order) appointing Ward's brother Greg as guardian of Ward's person and estate and directing the issuance of letters of guardianship contingent upon Greg's filing of a \$50,000 bond.

Greg never took the oath of guardianship, never filed the ordered bond, and never filed any documents with the probate court. Greg did present the Order to Bank and used it to withdraw \$100,000 from Ward's account, which Greg then deposited in his own bank account in New Orleans, Louisiana.

On March 1, 2018, Greg placed Ward in an unlicensed nursing home in Galveston and then moved to New Orleans and did not return to Texas. On July 15, 2018, the judge was notified of Greg's actions. Without notice or hearing, the judge, on her own motion, removed Greg as guardian and appointed another family member to take his place.

- (A) Was Greg eligible and did he qualify as Ward's legal guardian? Explain fully.**
- (B) Was it proper for the judge to remove Greg as guardian without notice or a hearing? Explain fully.**
- (C) On what basis, if any, may Greg apply for reinstatement as Ward's guardian, and by when must he file the application? Explain fully.**

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

Question 9

Father and Mother are married and live in Houston, Texas. They have one child who is eight years old (Child). Mother has a drug addiction and has recently participated in in-patient rehabilitation. Mother has never used drugs while she was in the presence of Child. Father travels regularly for work, and Mother's parents (Grandparents) take care of Child when Father is away from home.

Father files for divorce. Grandparents intervene to be named non-parent conservators of Child. Father and Mother do not object to the intervention.

Father, Mother, and Grandparents agree to the terms of Temporary Orders. The Temporary Orders include the following provisions:

- (1) Father, Mother, and Grandparents are named joint managing conservators of Child;
- (2) Father is granted the exclusive right to establish the residence of Child;
- (3) Mother is granted supervised access to Child two evenings each week;
- (4) Father and Grandparents are granted alternating weekly possession of Child based on Father's work travel; and
- (5) Father and Grandparents are granted independent rights to make educational, medical, and psychological decisions concerning Child. Mother has no right to make these decisions.

Two months after the Temporary Orders are entered, Father dies.

- (A) Immediately upon Father's death, what rights do Mother and Grandparents retain with regard to Child? Explain fully.**
- (B) Grandparents want to raise Child and restrict Mother's access. What legal actions are available to Grandparents to achieve this objective? Explain fully.**
- (C) Are Grandparents likely to overcome an objection by Mother to their standing to assert any legal actions, rights, and duties?**

Explain fully as to each.

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

Question 10

Prior to their marriage, Husband and Wife signed a premarital agreement (Agreement). Agreement was drafted by Husband's attorney. Wife did not consult an attorney. The parties attempted to disclose their assets in Agreement, but Husband failed to disclose a checking account that contained \$20,000. Agreement includes the following provisions:

Provision 1: Upon divorce, Husband will be awarded 60% of the community estate.

Provision 2: In the event the parties have children, neither will pay nor receive child support.

Provision 3: The home Husband owns as his separate property will become community property upon marriage.

Provision 4: Wife agrees to write a will that bequeaths Husband 100% of the inheritance she expects to receive when her grandmother dies. Upon receipt from her grandmother's estate, the funds will be kept in a separate account.

After their marriage, Husband and Wife did not sign anything further regarding Agreement.

The parties are now divorcing. They have two children who will primarily reside with Husband. Their estate is worth \$500,000, including cash accounts, the home Husband owned prior to marriage, and \$250,000 inherited by Wife from her grandmother's estate.

You are Wife's divorce attorney.

(A) Can she set aside Agreement? Advise and explain fully.

(B) Are Provisions 1, 2, 3, and 4 enforceable? Advise and explain fully as to each.

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

Question 11

Retailer is a traveling dress shop operating out of a large tent in various locations around Austin, Texas. Employee has worked for Retailer for over ten years managing all facets of Retailer's business.

On September 1, Employee purchased 200 dresses from Supplier. She gave Supplier a company check from Retailer for \$4,000 (Check). Employee signed Check with her name "Kelly Smith" using a machine signature. Check was drawn on Alpha Bank where Retailer maintains its company account. Alpha Bank refused to pay Check because of insufficient funds in Retailer's account.

On September 15, Employee, on Retailer's instruction, visited Tent Sales to purchase a smaller tent to use at local music festivals and other temporary events. Tent Sales knew Employee because she represented Retailer for the purchase of Retailer's larger tent. Tent Sales agreed to be paid the \$15,000 purchase price with two promissory notes (Note 1 and Note 2). Note 1 stated "I promise to pay \$10,000 to the order of Tent Sales on November 1." Note 2 stated "I promise to pay \$5,000 to the order of Tent Sales on December 1." Employee signed each note "Kelly Smith, Agent" and timely delivered them to Tent Sales. On October 15, Tent Sales sold Note 2 to Beta Bank. Neither note referenced Retailer. Neither Retailer nor Employee has paid anything on Note 1 or Note 2, both of which are now past due.

Supplier has sued both Retailer and Employee on the dishonored Check. Tent Sales has sued Employee on Note 1. Beta Bank has sued Employee on Note 2.

- (A) Is Retailer liable to Supplier on the dishonored Check? Explain fully.**
- (B) Is Employee liable to Supplier on the dishonored Check? Explain fully.**
- (C) Is Employee liable to Tent Sales on Note 1? Explain fully.**
- (D) Is Employee liable to Beta Bank on Note 2? Explain fully.**

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

Question 12

Texas Bank (Bank) made a loan (Loan) to ABC Appliance (ABC), a retail store selling televisions. Bank properly perfected a security interest in ABC's inventory to secure Loan. Shortly thereafter, Amy bought a new television (New TV) for her home from ABC for \$800. She put \$200 down on New TV and signed a retail credit installment agreement (Agreement) promising to pay \$50 a month to ABC until the balance she owed on New TV was paid. Under Agreement, ABC retained a security interest in New TV until Amy paid the balance. ABC immediately sold and delivered Agreement to XYZ Credit (XYZ). XYZ then sent Amy a letter directing her to pay XYZ the \$50 due monthly under Agreement. ABC closed its business before making any payments to Bank on Loan and before Amy paid any of the installments on New TV to either ABC or XYZ.

After Amy purchased New TV from ABC, she sold her older model television (Old TV) to her neighbor Joe, who placed Old TV for sale in his used appliance store. Amy did not tell Joe that she still owed money to Capitol Appliance (Capitol) on Old TV. Capitol never filed a financing statement for its transaction with Amy when she bought Old TV. After selling Old TV to Joe, Amy quit making payments to Capitol for Old TV.

Answer the following under the Texas UCC:

- (A) Can Bank recover possession of New TV from Amy? Explain fully.**
- (B) Who has rights to the installment payments Amy is obligated to make on New TV under Agreement? Explain fully.**
- (C) Can Capitol recover possession of Old TV from Joe? Explain fully.**

This concludes the Texas Bar Examination.

Write the Honor 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.

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.